

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

ZAYN AL-ABIDIN MUHAMMAD HUSAYN,
A.K.A. ABU ZUBAYDAH, ET AL.,
Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE* PHYSICIANS FOR
HUMAN RIGHTS, AMERICAN PSYCHOANA-
LYTIC ASSOCIATION, COALITION FOR AN
ETHICAL PSYCHOLOGY, PSYCHOLOGISTS
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INTEREST OF AMICI CURIAE¹

Physicians for Human Rights, Inc. (“PHR”) is a non-profit corporation based in New York, New York, whose physicians, scientists, and other professionals investigate and document the medical consequences of human rights violations and advocate for reform.² In 1999, PHR co-authored the international standard for the medical documentation of torture and ill-treatment (“Istanbul Protocol”).³

PHR has published numerous studies that address the matters before this Court. Much of this

¹ The parties have consented to Amici’s filing this brief, and their letters of consent have been filed with the Clerk. No party or party’s counsel authored this brief, in whole or in part, or contributed money intended to fund preparing or submitting this brief. No person other than Amici and its counsel contributed money intended to fund preparing or submitting this brief.

² In 1997, PHR shared the Nobel Peace Prize as part of the Steering Committee of the International Campaign to Ban Land Mines.

³ Office of the UN High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series No.8/Rev.1 (2004), <http://physiciansforhumanrights.org/issues/torture/international-torture.html>. (“Istanbul Protocol”)

brief is based upon this research and, as such, the articles will not be cited further:⁴

- *Nuremberg Betrayed: Human Experimentation and the CIA Torture Program* (2017)
- *Truth Matters: Accountability for CIA Psychological Torture* (2015).
- *Doing Harm: Health Professionals' Central Role in the CIA Torture Program* (2014).
- *Experiments in Torture: Evidence of Human Subject Research and Experimentation in the "Enhanced" Interrogation Program* (2010).
- *Aiding Torture: Health Professionals' Ethics and Human Rights Violations Revealed in the May 2004 CIA Inspector General's Report* (2009).
- *Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact* (2008).
- *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (2007) (along with Human Rights First).
- *Break Them Down: Systematic Use of Psychological Torture by US Forces* (2005).
- *Interrogations, Torture and Ill Treatment: Legal Requirements and Health Consequences* (2004).

⁴ PHR, *Papers and Reports on U.S. Torture*, Investigation and Documentation (2021), <https://phr.org/issues/torture/prevention/papers-and-reports-on-u-s-torture/>.

The American Psychoanalytic Association (APsaA), founded in 1911, is the oldest psychoanalytic organization in the nation, with approximately 3000 members. APsaA is a professional organization for psychoanalysts, and focuses on education, research and membership development. In addition to the national organization, APsaA's membership includes 33 approved training institutes and 38 affiliate societies throughout the United States.

The Coalition for an Ethical Psychology is a grass-roots organization promoting ethical professional psychological practice. The Coalition is devoted to exposing and opposing psychologist involvement in any state-supported abuse with a national security rationale.

Psychologists for Social Responsibility is a non-profit organization that applies psychological expertise to promote peace, social justice, human rights, and sustainability. PsySR members are psychologists, behavioral scientists, mental health professionals, students, and advocates for social change internationally. Much of PsySR's activity has focused on ending psychologist involvement with abusive interrogation and detention.

Phil G. Zimbardo, PhD, is Professor Emeritus at Stanford University, past-President of the American Psychological Association, a prolific author, and recipient of the Gold Medal for Lifetime Achievement in the Science of Psychology from the American Psychological Foundation.

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Matthew Wynia, MD, MPH, FACP, is both a Professor and the Director of the Center for Bioethics and Humanities at the University of Colorado School of Medicine, and formerly the Director of the Institute of Ethics at the AMA from 2000-2011 and member of the American Psychological Association (“APA”) Blue Ribbon Commission on Ethics Processes.

Kerry J. Sulkowicz, MD, is the Managing Principal of the Boswell Group, a CEO advisory firm based in New York City, President-elect of the American Psychoanalytic Association, Clinical Professor of Psychiatry at NYU School of Medicine, and past board chair of PHR.

Stephen Soldz, PhD, is a psychologist, psychoanalyst, and research methodologist in Boston who serves as Director of Research and Evaluation at the Boston Graduate School of Psychoanalysis and is a past-President of PsySR.

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thor of numerous books in the field of psychiatry.

Steven Reisner, PhD, has served on the teaching faculties at the International Trauma Studies program at New York University (Senior Faculty), the Program in Clinical Psychology at Columbia University (Adjunct Professor) and the NYU School of Medicine (Clinical Assistant Professor), and is a past-President of PsySR.

Vincent Iacopino, MD, PhD, is the principal organizer and author of the Istanbul Protocol, Adjunct Professor of Medicine with the University of Minnesota Medical School, Senior Research Fellow at the Human Rights Center of U.C. Berkeley, and former Medical Director of PHR with decades of experience investigating and documenting clinical evidence of torture.

David S. Cantor, PhD, MS, QEEG-D, BCN, is the Director of the Mind & Motion Developmental Centers of Georgia, and past-President of the International Society of Neuroregulation and Research.

Carol A. Bernstein, MD, is a Professor of Psychiatry and Obstetrics and Gynecology at the Albert Einstein College of Medicine and past-President of the American Psychiatric Association.

Collectively, amici comprise professionals and organizations that have an abiding interest in the

mental health consequences of torture and the ethical practice of the mental health professions. Amici believe that whenever torture takes place, as it has to Respondent, the fact that torture has occurred should be exposed and made fully transparent in order that at minimum appropriate measures and reform may take place.

SUMMARY OF ARGUMENT

Although this case involves legal questions regarding assertion of the state secrets privilege, amici believe that full consideration of these questions requires understanding the perspective of the mental health profession toward the interrogation techniques at issue here.

The discovery at the heart of this appeal concerns two practicing mental health practitioners, psychologists James Mitchell and Bruce Jessen, who employed the learning and research of the mental health profession to implement an interrogation regime universally recognized as torture. The mental health profession's view of these practices underscores the powerful public interest in allowing litigants, the public generally, and the mental health profession itself access to the details regarding their conduct.

This brief, which is submitted by a host of mental health professionals and organizations, and intimately details how the regime devised by Mitch-

ell and Jessen – which required Abu Zubaydah to remain naked, suffer sleep deprivation, be rectally “fed,” and undergo waterboarding (83 times in one month alone) — violates numerous medical and ethical standards, including those of the American Psychological Association, the American Psychiatric Association, and the American Medical Association.

The brief further explains how the techniques used by these psychologists to “break” detainees, including Abu Zubaydah, violated myriad U.S. and international legal prohibitions, including the U.S. War Crimes Act, the U.S. Torture Convention Implementation Act of 1994, the U.S. Detainee Treatment Act of 2005, and laws against nonconsensual human subject research.

The government seeks to shield much of this egregious conduct under the veil of secrecy afforded by what amici mental health professionals believe is an overbroad and dangerous use of the state secrets privilege. While some facts have been disclosed about the conduct of Mitchell and Jessen, transparency is sorely needed to implement all of the changes necessary to prevent future unethical conduct and rebuild trust in the mental health profession and the government. The torture perpetrated by Mitchell and Jessen, ostensibly on behalf of the U.S., constitutes one of the most severe abuses of professional ethics imaginable. This stain on morals, ethics, and law should not be covered up.

ARGUMENT

I. THE ROLE OF PSYCHOLOGISTS MITCHELL AND JESSEN

A. The Government's Working Relationship with Psychologists Mitchell and Jessen

Before 2001, psychologists James E. Mitchell, PhD, and John Bruce Jessen, PhD, consulted with the U.S. military's Survival, Evasion, Resistance, and Escape (SERE) program in training armed service members to resist torture and exploitation by subjecting them to simulated harsh conditions and treatment if captured by governments or other entities that did not adhere to the Geneva Conventions.⁵ This SERE training was first developed to counter Chinese Communist torture of U.S. service members captured during the Korean War.⁶ Given that coercive techniques had extracted false confessions from

⁵ Office of Professional Responsibility, *Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of Enhanced Interrogation Techniques' on Suspected Terrorists* 34 (Jul. 29, 2009), <https://fas.org/irp/agency/doj/opr-final.pdf> ("OPR Report"); Senate Armed Services Committee (110th Cong.), *Inquiry into the Treatment of Detainees in U.S. Custody* 4 (Nov. 20, 2008), http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf ("SASC Report"); Deposition of James Mitchell in *Salim v. Mitchell*, No. 2:15-CV-286-JLQ, 44-60, Jan. 16, 2017, <https://www.thetorturedatabase.org/document/salim-v-mitchell-james-mitchell-deposition-transcript> ("Mitchell Dep.").

⁶ SASC Report xiii.

American prisoners of war (POWs), U.S. researchers, responding to so-called “brainwashing,”⁷ developed a training to help volunteers deal with isolation, environmental manipulation, stress positions, sleep deprivation, unpredictability, dependence, and attempted destruction of an individual’s personality.⁸

In 2001, after 9/11, the CIA contracted with these two SERE consultants, Mitchell and Jessen, to design and develop an interrogation operation (SSCI FC11)⁹ based upon the assumption that al-Qaeda operatives were highly trained to resist hostile questioning. In response, Mitchell and Jessen drafted a white paper¹⁰ and worked to reverse engineer the

⁷ See Central Intelligence Agency (“CIA”), *Brainwashing from a Psychological Viewpoint* (Feb. 1956), <https://www.cia.gov/readingroom/docs/CIA-RDP65-00756R000400050004-9.pdf>.

⁸ SASC Report 31; Deposition of Bruce Jessen in *Salim v. Mitchell* (“Jessen Dep.”), No. 2-15-CV-286-JLQ, 41-42 and 56-60, Jan. 20, 2017, <https://www.thetorturedatabase.org/document/salim-v-mitchell-bruce-jessen-deposition-transcript>.

⁹ SSCI refers to the Senate Select Committee on Intelligence Study on the CIA’s Detention and Interrogation Program. S. Rep. No. 113-288 (2014), available at http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=7c85429a-ec38-4bb5-968f-289799bf6d0e&SK=D500C4EBC500E1D256BA51921189590 (“SSCI”). SSCI references appear in text due to their frequency. The SSCI Report is divided into three sections. Hereinafter, “Forward” will be referred to as “F”; “Findings and Conclusions” will be “FC”; and “Summary” will be “S”.

¹⁰ CIA Cable, *Eyes Only – Countermeasures to Al-Qa’ida Resistance to Interrogation Techniques* (Apr. 1, 2002),

SERE program's techniques for withstanding torture and abuse.¹¹

As is reflected in dozens of government contracts for "applied research," development, and operational support, Mitchell and Jessen created what has been subsequently described as "an entire program of exploitation of prisoners using torture as a central pillar."¹² For this work, Mitchell and Jessen were extremely well compensated both individually and through their company, Mitchell, Jessen & Associates, which was formed in 2005, and named Company Y in the SSCI report. Mitchell, Jessen & Associates, "was granted a sole source contract to provide operational psychologists, debriefers, and security personnel at CIA detention sites" (SSCI S168) and ultimately was paid \$81M, while Mitchell and Jessen separately received more than \$1 million each. (SSCI FC11, S168-169). The two psychologists and their company were also provided with legal

https://www.thetorturedatabase.org/files/foia_subsite/96o.pdf.

¹¹ Mitchell Dep. 186-87,192, 279-81; Jessen Dep. 69-70, 78; Office of Medical Services, *Summary and Reflections of Chief of Medical Services on OMS Participation in the RDI Program* 14 (Aug. 14, 2018), <https://www.aclu.org/report/summary-and-reflections-chief-medical-services-oms-participation-rdi-program> ("OMS Summary").

¹² Jason Leopold and Jeffrey Kaye, *EXCLUSIVE: CIA Psychologist's Notes Reveal True Purpose Behind Bush's Torture Program*, TruthOut (Mar. 22, 2011), <https://truthout.org/articles/exclusive-cia-psychologists-notes-reveal-true-purpose-behind-bushs-torture-program/> (quoting Air Force Capt. Michael Kearns, ret.).

counsel and an indemnity agreement for non-prosecution of potential criminal activity (SSCI FC11).

B. Psychologists Mitchell and Jessen Designed and then Implemented their System of “Enhanced Interrogation”

In 2002, the two psychologists – given the pseudonyms “Grayson Swigert” (Mitchell) and “Hammond Dunbar” (Jessen) – designed a system of interrogation methods euphemistically named “enhanced interrogation techniques” (EITs).¹³ They did this by reverse engineering the SERE program (SSCI S21, S26, S464),¹⁴ refining techniques intended to disrupt detainees’ resistance, produce

¹³ Metin Basoglu, *Definition of Torture in United States Law: Does It Provide Legal Cover for ‘Enhanced Interrogation Techniques’?*, Mass Trauma, Mental Health & Human Rights Blog (Feb. 7, 2015), <https://metinbasoglu.wordpress.com/2015/02/07/definition-of-torture-enhanced-interrogation>.

¹⁴ CIA Cable, *Eyes Only – Interrogation Plan [redacted]* 2 (Apr. 12, 2002), https://www.thetorturedatabase.org/files/foia_subsite/50_0.pdf. In contrast to Mitchell and Jessen’s program, SERE training was always conducted on volunteers and “carefully regulated, both for students’ safety, and to ensure that the training increases rather than decreases their confidence in their ability to resist.” The Constitution Project, *Report of the Constitution Project’s Task Force on Detainee Treatment* (“C.P. Report”) 205 (Mar. 2013), <http://detaineeataskforce.org/pdf/Full-Report.pdf>. See also Department of Defense (“DOD”), *Pre-Academic Laboratory (PREAL) Operating Instruction 4*, 16 (May 7, 2002), <https://info.publicintelligence.net/DoD-PREAL.pdf>; see also Mitchell Dep. 92-97; OMS Summary 13.

compliance,¹⁵ and understand the threshold at which the techniques could achieve “learned helplessness” — a psychological phenomenon in which individuals become passive and depressed in response to severe adverse uncontrollable events. (SSCI S21, S26, S32, 464).¹⁶

In essence, Mitchell and Jessen’s goal was to “break” detainees to such an extent that any resistance to intelligence collection would be impossible. Their intention was to deprive detainees of a sense of control over their own minds through the use of abusive confinement conditions and brutal “interrogation” techniques. This they believed would ensure each detainee regressed to a state of extreme psychological debilitation, suffering, and submission.¹⁷ Theoretically, the interrogator could then “establish absolute control,” “induce dependence to meet needs,” “elicit compliance,” and “shap[e] cooperation.”¹⁸

¹⁵ Bruce Jessen, Joint Personnel Recovery Agency, DOD Briefing Slides, Part 1, 15, undated, https://www.thetorturedatabase.org/files/foia_subsite/exploitation_slides_part1.pdf, https://www.thetorturedatabase.org/files/foia_subsite/exploitation_slides_part2.pdf (“Exploitation Slides”).

¹⁶ See also OPR Report 34-36; SASC Report 17.

¹⁷ David Luban and Katherine S. Newell, *Personality Disruption as Mental Torture: The CIA, Interrogational Abuse, and the U.S. Torture Act*, 108 Geo. L. J. 333, 378 (2019), <https://scholarship.law.georgetown.edu/facpub/2214>.

¹⁸ Exploitation Slides, Part 1, 15. See also CIA, *Background Paper on CIA’s Combined Use of Interrogation Techniques* 1-9 (Dec. 2004), https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001126.pdf (“Background Paper”). Rather

Prior to Mitchell and Jessen's program, "debility, dependence, and dread," — the SERE program's underpinning for psychological regression — had never been used for interrogation by U.S. forces, although it had been studied and had influenced the CIA's historical counter-intelligence strategies.¹⁹ The phenomenon of learned helplessness, effectively a continuation of that theory, had also been studied in animal models, but it had never been used, let alone demonstrated as effective for producing cooperation, accurate intelligence, or meaningful confessions.

The battery of EITs designed by Mitchell and Jessen included waterboarding, stress positions, sensory deprivation and overload, beatings, prolonged isolation, and dietary manipulation (SSCI FC11-12, S35-36). At times Mitchell and Jessen even personally applied these to detainees, conducted psychological evaluations of detainees they tortured, and trained other personnel in their use.

In order to effectuate their program, a multi-stage system was implemented:

than being designed to achieve the truth, the real goal of torture is often the "deterioration of cognitive, emotional, and behavioral functions." Istanbul Protocol 45.

¹⁹ See *KUBARK Counterintelligence Interrogation* (Jul. 1963), <https://nsarchive.gwu.edu/NSAE/NSAE/NSAE122/CIA%20Kubark%201-60.pdf>; SSCI S18; Vincent Iacopino, Scott A. Allen, and Allen S. Keller, *Bad Science Used to Support Torture and Human Experimentation*, 331 *Science* no. 6013 at 34-35 (2011), <https://science.sciencemag.org/content/331/6013/34>.

- Upon a detainee’s capture, rendition, and initial confinement, personnel would exploit “capture shock,” and employ hooding, shackling, and sensory deprivation;
- Once at a black site, administrative procedures, and medical assessment were used to create apprehension, uncertainty, and dread, including through shaving, nude photographs, and evaluation to identify medical contraindications for torture as well as individual psychological vulnerabilities;²⁰
- Transition to interrogation consisted of an initial interview to assess the detainee’s “resistance posture” and willingness to cooperate;
- Detainees were then subjected to prolonged deprivation of food, sound, light, and sleep (up to 180 hours); diapering; nudity; self-soiling; repeated beatings; and multiple near-drowning experiences by waterboarding — at times to the point of unconsciousness.²¹

Significantly, Mitchell and Jessen’s EITs were intentionally designed to maximize suffering while showing no long-term visually observable physical manifestations.²² But torture cannot be

²⁰ For instance, insects were put into Abu Zubaydah’s confinement box, because it was believed that he had a fear of insects. OMS Summary 15.

²¹ Background Paper 1-9; Jessen Dep. 244.

²² The methods used in the enhanced interrogation program no doubt have lasting effects on those enduring them. Subjection to Mitchell and Jessen’s EITs can cause post-traumatic stress, depression, suicidal ideations, devastating levels of

gauged just by its visual physical scars. Effects of physical and psychological torture must be viewed from the perspective of not only acute but also long-term sequelae. Mitchell and Jessen’s interrogations were deliberately designed to have the long-term effect of breaking down both the psyche and brain function through the use of physical and mental pain and suffering.²³

To be sure, serious concerns regarding Mitchell and Jessen were being voiced early on. The CIA Office of Medical Services (“OMS”) stated in a 2003 memorandum for the CIA Inspector General:

OMS concerns about conflict of interest ... were nowhere more graphic than in the setting in which the same individuals applied an EIT which only they were approved to employ,

shame, detachment from one’s spouse and family, and loss of sexual function. Sensory deprivation can lead to anxiety, depression, and psychotic thinking. Days and weeks of sleep deprivation are known to cause cognitive impairment, including attention deficits, decreases in short-term memory, speech impairments, perseveration, and inflexible thinking. Within one week, sleep deprivation can also lead to symptoms resembling paranoid schizophrenia. See Stephen N. Xenakis, *Neuropsychiatric evidence of waterboarding and other abusive treatments*, 22 *Torture Suppl* 1 at 22 (2012); *Kaplan and Sadock’s Comprehensive Textbook of Psychiatry*. Vol. 1., 289 (Benjamin Sadock & Virginia Sadock, eds., 8th ed., 2005); Gonzalo G. Alvarez, Najib T. Ayas, *The Impact of Daily Sleep Duration on Health: A Review of the Literature*, 19 *Progress in Cardiovascular Nursing* 56–59 (2004); Mary A. Carskadon, *Sleep deprivation: Health Consequences and Societal Impact*, 88:3 *Medical Clinics of North America* 767–77 (2004); Iacopino, et al., *supra*.

²³ Istanbul Protocol 29; Luban and Newell, *supra* at 378.

judged both its effectiveness and detainee resilience, and implicitly proposed continued use of the technique - at a daily compensation reported to be \$1800/day, or four times that of interrogators who could not use the technique. (SSCI S66).

Yet, it was not until December 9, 2014, that the SSCI released its executive summary, findings, and conclusions of its 6,700-page report on the CIA's post-9/11 torture program. The SSCI report documents the "abuses and countless mistakes" which followed the decision of "CIA personnel, aided by two outside contractors [Mitchell and Jessen], [to] initiate a program of indefinite secret detention and the use of brutal interrogation techniques in violation of U.S. law, treaty obligations, and our values." (SSCI F2).

C. Known Treatment of Abu Zubaydah by Mitchell and Jessen

Abu Zubaydah was captured in Pakistan on March 28, 2002, and rendered to Detention Site Green (Thailand) on March 31, 2002. He was the first detainee to undergo EITs upon Mitchell's recommendation. Mitchell wrote an interrogation plan for Abu Zubaydah designed to disorient him psychologically to "increas[e his] sense of learned helplessness." (SSCI S26).

On April 12, 2002, the purpose of this treatment was spelled out: "The development of psychological dependence, learned helplessness and short-

term thinking are key factors in reducing [redacted] sense of hope...”²⁴ Subsequently, Abu Zubaydah was kept in isolation for 47 days between June and August 2002 in order to keep him “off-balance.” (SSCI S30). Handcuffs, leg shackles, and loud music were employed to exacerbate a “sense of hopelessness.” Throughout, he was kept naked and subject to sleep-deprivation. (SSCI S29) During this time, it was determined that Abu Zubaydah should “remain in isolation and incommunicado for the remainder of his life.” (SSCI S35)

On August 4, in the presence of medical officers, Abu Zubaydah was waterboarded for the first time (SSCI S41):

Over a two-and-a-half-hour period, Abu Zubaydah coughed, vomited, and had ‘involuntary spasms of the torso and extremities’ during waterboarding.

That day, a medical officer described Abu Zubaydah’s waterboarding session in an email to OMS leadership entitled, “So it begins.”

The Senate report summary notes reactions and comments by witnesses:²⁵

²⁴ CIA Cable, *Eyes Only – Interrogation Plan [Redacted]*, *supra* at 2.

²⁵ Sessions with Abu Zubaydah were taped, but those tapes were destroyed consistent with Mitchell’s recommendation (Mitchell Dep. 389), in violation of a court order. American Civil Liberties Union, *Citing Destruction of Torture Tapes*,

- August 5, 2002: "...want to caution [medical officer] that this is almost certainly not a place he's ever been before in his medical career.... It is visually and psychologically very uncomfortable."
- August 8, 2002: "Today's first session ... had a profound effect on all staff members present.... It seems the collective opinion that we should not go much further.... Everyone seems strong for now but if the group has to continue ... we cannot guarantee how much longer."
- August 8, 2002: "Several on the team profoundly affected ... some to the point of tears and choking up." (SSCI S44-45)

Abu Zubaydah was waterboarded at least 83 times in August 2002 alone.²⁶ As the summary states, "Physical reactions to waterboarding did not necessarily end when the application of water was discontinued, as both Abu Zubaydah and KSM vomited after being subjected to the waterboard" (SSCI S423). Moreover, the effect of the waterboarding was amplified by rotating Abu Zubaydah between small and large confinement boxes during sessions.²⁷

ACLU Asks Court to Hold CIA in Contempt (Dec. 12, 2007), <https://www.aclu.org/press-releases/citing-destruction-torture-tapes-aclu-asks-court-hold-cia-contempt>.

²⁶ C.P. Report 181, 209.

²⁷ OMS Summary 15,18.

The express aim of Mitchell and Jessen – to profoundly disrupt the senses and personality of detainees by inducing learned helplessness – was evident in a cable they sent to CIA headquarters in August 2002 after interrogating Abu Zubaydah:

Our goal was to reach the stage where we have broken any will or ability of subject to resist or deny providing U.S. information... (SSCI S46).

In December 2002 the Thailand black site was closed and the black site BLUE was opened in Poland. Mitchell and Jessen then continued their work in Poland.²⁸

Throughout, the available record makes it clear that the operational goal of Mitchell and Jessen was to destroy Abu Zubaydah using methods and practices long recognized as torture. In doing this, as will be discussed below, Mitchell and Jessen flagrantly broke U.S. and international law, while grossly violating the ethical duties of mental health professionals.

²⁸ The summary documents that Jessen traveled in January 2003 to a CIA black site in Poland, where he evaluated Abd al-Rahim al-Nashiri and recommended the use of waterboarding, to be administered by himself with the assistance of Mitchell (SSCI S63). In June 2003, both Mitchell and Jessen went to Poland to interrogate Khalid Sheikh Mohammed, whom they subjected to waterboarding and other techniques. (SSCI S65).

II. MITCHELL AND JESSEN VIOLATED MORAL, ETHICAL, AND PROFESSIONAL STANDARDS

To this day, Mitchell and Jessen eschew any ethical obligations inherent to their training, practice, and obligations as mental health clinicians. They argue that they do not bear any responsibility for the detainees that they tortured.²⁹ Instead, Mitchell has even excoriated psychologists for being so “liberal” that “they tend to be primarily focused on who they perceive as the patient rather than necessarily the client.”³⁰

Yet, it is the hallmark of all health professions, not just the mental health profession, that the individual being treated is paramount. It certainly can never be the “client’s” need for torture to be committed. Not only is torture prohibited by the ethical principles and standards of all health professions, there is a universal requirement for doctors, psychologists, and others to “do no harm.”

At no time were Mitchell and Jessen’s actions reconcilable with this overriding ethical principle. The concept of to “do no harm” is as true for psychologists as it is for every other health professional. The largest body of psychologists in the U.S. is the

²⁹ In 2016, Mitchell co-published a book and reiterated to interviewers that he had no regrets. See James E. Mitchell & Bill Harlow, *Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America* (2016).

³⁰ Mitchell Dep. 270:9-12.

American Psychological Association (“APA”). Section 3.04(a) of the APA’s Ethical Principles of Psychologists and Code of Conduct provides that “[p]sychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and avoidable.”³¹

Without question, from the very beginning of their employment of “enhanced interrogation techniques,” Mitchell and Jessen abjectly violated the APA’s ethical principles. As information regarding their activities became increasingly public, APA undertook a number of serious and necessarily more exacting reviews of its policies regarding psychologists’ role in interrogations. In 2005, APA’s governing Council of Representatives first issued what would become a series of policies and guidelines on the ethics of interrogation practices for psychologists, including an absolute ban on participation in torture and ill-treatment, and a reiteration of the duty to report psychologists observed engaging in abuses.³²

In 2005, APA, without directly addressing any allegations, enumerated “ethical obligations in

³¹ APA, *Ethical Principles of Psychologists and Code of Conduct* (2017), <https://www.apa.org/ethics/code>.

³² APA, *APA Council Endorses Ethical Guidelines for Psychologists Participating in National Security-Related Investigations and Interrogations* (2005), <https://www.apa.org/news/press/releases/2005/08/security>.

doing national security-related work.” These included: 1) not participating in “torture or other cruel, inhuman, or degrading treatment;” and 2) if serving “in various national security-related roles, such as a consultant to an interrogation,” to do so only “in a manner that is consistent with the Ethics Code.”³³

Mitchell resigned from the APA in 2006, because he “didn’t like the stance that they took on involvement of psychologists in custodial interrogations of detainees.” Mitchell understood that the vast majority of psychologists would object to what he was doing, and, therefore, it was unlikely that he could “go back to mental health work.”³⁴

In 2007, APA revisited its 2005 and 2006 statements on psychologist support for interrogations, issuing more explicit guidance. This included banning psychologists from directly or indirectly participating in national security interrogations or any other detainee-related operations involving specific techniques detailed in media reports. Most relevant were hooding, forced nakedness, stress positions, slapping or shaking, and “sensory deprivation and over-stimulation and/or sleep deprivation used in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm.”³⁵ Not only were psychologists barred from involvement in the prohibited techniques, APA members had a specific

³³ OMS Summary 73-74.

³⁴ Mitchell Dep. 151:7-15; 270:12-16.

³⁵ OMS Summary 78.

duty to report any psychologist who participated in these techniques.³⁶

In 2010, APA released a letter from its President Carol Goodheart to the Texas State Board of Examiners in support of ethics charges filed against Mitchell. That letter stated that the psychologist's conduct as described warranted "that [his] state license to practice psychology ... be revoked."³⁷

Then, in 2015 the APA Council, after an extensive review,³⁸ passed a resolution to explicitly prohibit psychologists from ever playing any role in national security interrogations or participating in any capacity at "black sites."³⁹

³⁶ APA, *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as Enemy Combatants* ("APA 2008 Reaffirmation") (Feb. 22, 2008), <https://www.apa.org/about/policy/torture>. See also OMS Summary 78-79.

³⁷ APA, *Letter to Texas State Board of Examiners of Psychologists* (Jun. 30, 2010), <https://www.apa.org/news/press/statements/texas-mitchell-letter.pdf>.

³⁸ See generally David Hoffman, *Report to the Special Committee of the Board of Directors of the American Psychological Association* (Sept. 4, 2015), <https://www.apa.org/independent-review/revised-report.pdf>.

³⁹ APA, *Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings* (2015),

Meanwhile, this need to reiterate and make explicit the ban on participation in torture and ill-treatment, particularly of detainees, spanned the health professions. In May 2006 the American Psychiatric Association issued a 'Position Statement' on 'Psychiatric Participation in Interrogation of Detainees.' It stated that psychiatrists should not participate in, or otherwise assist or facilitate, the commission of torture⁴⁰ — which reinforced its longstanding ban on torture participation. The American Medical Association similarly reinforced its ethics stance: “Physicians must not conduct, directly participate in, or monitor an interrogation with an intent to intervene, because this undermines the physician's role as healer.”⁴¹ In 2017, the World Psychiatric Association likewise adopted a ban on psychiatrist involvement in interrogations.⁴²

It has been claimed that the presence or involvement of health professionals with Mitchell and Jessen somehow legitimized and proved the safety of their “enhanced interrogations,” but the facilitation of torture is one of the most severe abuses of medical ethics imaginable. Psychologists and mental health

<https://www.apa.org/independent-review/psychologists-interrogation.pdf>.

⁴⁰ American Psychiatric Association, *Position Statement on Psychiatric Participation in Interrogation of Detainees* (May 2006), [position-psychiatric-participation-in-interrogation-of-detainees%20\(3\).pdf](https://www.apa.org/independent-review/psychologists-interrogation.pdf).

⁴¹ OMS Summary 74-75.

⁴² Pau Perez-Sales, et al., *WPA Position Statement on Banning the Participation of Psychiatrists in the Interrogation of Detainees*, 17 *World Psychiatry*, no. 2 at 237-238 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5980430/>.

professionals were used by Mitchell and Jessen to enable them to conduct their torture. Physicians were used to monitor vitals and medics to “patch up” detainees for further interrogation, violating their own ethical standards by participating. Not only did Mitchell and Jessen flout their ethical obligations as psychologists, but they also enlisted other health professionals to assist them through calibrating, monitoring and enabling the harm.

Long before the actions of Mitchell and Jessen, the universal nature of the ban on medical complicity in torture was internationally established by such resolutions as the World Medical Association’s (“WMA”) 1975 *Declaration of Tokyo*,⁴³ U.N.’s 1983 *Principles of Medical Ethics*,⁴⁴ and the U.N.’s 1999 *Istanbul Protocol*. The *Declaration of Tokyo* states that “a physician shall not countenance, condone or participate in the practice of torture,” defining “torture” as “the deliberate, systematic or wanton infliction of physical or mental suffering ... to

⁴³ World Medical Association, *WMA Declaration of Tokyo – Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*, World Medical Assembly, (“Declaration of Tokyo”) (last amended Oct. 2016), <https://www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/>.

⁴⁴ UN General Assembly, *Principles of Medical Ethics*, Dec. 16, 1983, A/RES/38/118.

force another person to yield information, to make a confession, or for any other reason.”⁴⁵

Despite the clarity of these declarations, Mitchell and Jessen’s EITs required other medical professionals to repeatedly violate their own clearly spelled out professional ethics. At the same time, the presence of health personnel emboldened Mitchell and Jessen to take detainees to the brink of death,⁴⁶ at best believing the detainees could be resuscitated if they went too far.

Records show that during one waterboarding session of Abu Zubaydah, a health professional observed and recorded information such as “[l]ongest time with the cloth over his face so far has been 17 seconds” and that because Abu Zubaydah had been vomiting food that he had eaten 10 hours before, his diet would be switched to only “Ensure for a while now.” (SSCI S41-42,44).

Shot during his capture, Abu Zubaydah suffered extensive leg, groin, and abdominal injuries, as well as eye, leg, and respiratory infections. (OMS Summary 7-9) By August a medical officer at the site acknowledged that Abu Zubaydah’s medical condition was likely to decline to an “unacceptable level.” (SSCI S491) Yet, five days later, an email stated:

⁴⁵ Declaration of Tokyo. The WMA was founded after WWII by the AMA among others.

⁴⁶ One detainee, Gul Rahman, died at a detention site in November 2002. SSCI S54.

We are currently providing absolute minimum wound care (as evidenced by the steady deterioration of the wound), [Zubaydah] has no opportunity to practice any form of hygienic self care (he's filthy), the physical nature of this phase dictates multiple physical stresses... and nutrition is bare bones (six cans of Ensure daily). (SSCI S111).

The SSCI summary further states:

Later, after one of Abu Zubaydah's eyes began to deteriorate, CIA officers requested a test of Abu Zubaydah's other eye, stating that the request was 'driven by our intelligence needs vice [sic] humanitarian concern for AZ.' The cable relayed, '[w]e have a lot riding upon his ability to see, read and write.' (SSCI S112).

In July 2002, Mitchell's plans for the "aggressive phase" of Abu Zubaydah's interrogation prompted discussion that he could suffer a heart attack or even die. Despite this, it was affirmed that "the interrogation process takes precedence over preventative medical procedures" (i.e., measures to prevent catastrophic injury or death), and that he would be cremated, and, regardless, kept incommunicado. (SSCI 34-35)

Moreover, not only were medical professionals required to violate their ethics by assisting torture, Mitchell and Jessen even made withholding necessary medical intervention a tool of coercion: "...delaying a medical session for 72 hours after the start of the new phase of interrogation would convey

to Abu Zubaydah that his level of medical care was contingent upon his cooperation.” (SSCI S491, OMS Summary 17).

III. MITCHELL AND JESSEN’S “ENHANCED INTERROGATION” BOTH CONCEPTUALLY AND IN PRACTICE VIOLATED U.S. AND INTERNATIONAL LEGAL PROHIBITIONS

Mitchell and Jessen’s enhanced interrogation program is not only completely antithetical to ethical standards required of mental health professionals, but it is also illegal under both U.S. and international law. These laws universally recognize that intentionally-caused physical and mental pain, suffering, and abuse, all of which are practices central to the enhanced interrogation program, constitute torture.

Since the close of the Second World War and the signing of the 1949 Geneva Conventions,⁴⁷ the vast majority of nations have agreed that the use of torture, including the methods that Mitchell and Jessen conceived and implemented, should be

⁴⁷ The conventions have been signed by 196 nations. See International Committee of the Red Cross, *Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>. Those that violate the Geneva Conventions may be prosecuted for war crimes under a theory of universal jurisdiction.

banned from use against POWs.⁴⁸ Common Article 3 of the Geneva Conventions (“Common Article 3”) prohibits “torture,” “cruel treatment,” and particularly “outrages upon personal dignity, in particular, humiliating and degrading treatment” during armed conflicts where at least one non-State party is involved.⁴⁹ “Torture,” under Common Article 3, is understood to include mental torture⁵⁰ and means “the infliction of suffering on a person in order to obtain from that person, or from another person, confessions or information.”⁵¹ International tribunals have defined “cruel treatment” as an act that causes “serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”⁵² “Outrage upon personal dignity” has been defined as

⁴⁸ Mitchell testified that he was aware of the details of the Geneva Conventions (Mitchell Dep. 124:1-18), however he was “told that the Geneva Conventions did not apply to the captured detainees.” Mitchell Dep. 197:9-11. He knew this was violative of American law and never states what law would apply.

⁴⁹ Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, <http://hrlibrary.umn.edu/in-tree/y3gctpw.htm>.

⁵⁰ Int’l Committee of the Red Cross, *Convention (III) Relative to the Treatment of Prisoners of War: Commentary of 2020*, <https://ihl-atabases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=7E7EA7C8323AEE34C1258585004474B8>.

⁵¹ Int’l Comm. Red Cross, *Commentary on the Geneva Conventions of August 12, 1949*, Vol. IV (2020).

⁵² *Prosecutor v. Deliac*, Case No. IT-96-21-T, Judgment, para 552, Nov. 16, 1998, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=AC8BB88157E3F8B4C12563CD004299A8>;

an act that causes “serious humiliation or degradation to the victim” such that a reasonable person would be outraged.⁵³

Under the enhanced interrogation program, detainees were subjected to innumerable outrageous acts upon personal dignity. Among other things, they were often stripped naked, physically seduced by female interrogators, forced to wear women’s underwear, and led on a leash and forced to perform “dog tricks.”⁵⁴ Psychological torture included prolonged sleep deprivation, isolation, sensory deprivation, and sensory bombardment. Detainees, including Abu Zubaydah, were subjected to rectal rehydration and feeding, which without consent is a form of sexual assault.⁵⁵ Such acts constitute serious humil-

⁵³ *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, Judgment, para 56, Jun. 25, 1999.

⁵⁴ Gen. Randall Schmidt & Brig. Gen. John Furlow, *U.S. Army, Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility* 12 (2005), <https://www.thetorturedatabase.org/document/schmidt-furlow-report-ar-15-6-investigation-fbi-allegations-detainee-abuse-guantanamo-bay>.

⁵⁵ The International Criminal Court defines “rape” as: “The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion was committed by force, or by the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent.”

iation and degradation that would outrage any reasonable person and are clearly violative of the prohibitions set out in Common Article 3.

In 1996, the U.S. enacted the U.S. War Crimes Act ("WCA"), making the violation of Common Article 3 a crime under U.S. law. The enhanced interrogation program was clearly illegal under U.S. law at the time of Mitchell and Jessen's offenses described above. Although later in 2006 The Military Commissions Act ("MCA") narrowed the scope of prosecutable offenses under the WCA to "grave breaches" (as opposed to any breaches) of Common Article 3; "grave breaches" would still include the acts of Mitchell and Jessen. Punishable acts include "torture", which is defined as "an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind." Grave breaches also include "cruel and inhuman treatment," which is defined as "an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering in-

Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, U.N. Doc. ICCASP/1/3, art. 7(1)(g), Sept. 3–10, 2002, http://legal.un.org/icc/asp/1sts-session/report/english/part_ii_b_e.pdf.

cidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.”⁵⁶

Further, since entering into force in 1987, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention” or CAT) has made the absolute prohibition against torture an accepted principle of customary international law. When the U.S. ratified the Convention, it did so subject to a reservation limiting the definition of torture, which is reflected in the U.S. Torture Convention Implementation Act (“Torture Act”) of 1994. The Torture Act still applies, because it defines “torture” as an act “committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain and suffering [other than pain or suffering incidental to lawful sanctions] upon another person within his custody or physical control.” “Severe mental pain and suffering” is further defined as “prolonged mental harm caused by or resulting from” intentional or threatened “severe physical pain or suffering,” administration or threat of “mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality,” “threat of imminent death,” or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or mind-altering substances or procedures.⁵⁷ Thus, even under the

⁵⁶ War Crimes Act, 18 U.S.C. § 2441(d)(1)(A), (B).

⁵⁷ Torture Act, 18 U.S.C. § 2340(1) and (23) (2004).

U.S.'s own definition, the enhanced interrogation program is illegal under the Convention and the U.S. Torture Act.

The enhanced interrogation program is also likely illegal under the U.S. Detainee Treatment Act ("DTA") of 2005. The DTA prohibits "cruel, inhuman, or degrading treatment or punishment" barred by the Fifth, Eighth and Fourteenth Amendments against prisoners of the U.S. government regardless of their location or nationality. The DTA also requires military interrogations to follow guidelines provided in the U.S. Army Field Manual for Human Intelligence Collector Operations.⁵⁸ While the courts have not yet interpreted the standard of treatment under the DTA, in the domestic context prisoner treatment violates substantive due process where it "shocks the conscience," "is bound to offend even hardened sensibilities," or offends a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."⁵⁹

Finally, each time a detainee was subjected to waterboarding,⁶⁰ sleep deprivation, sensory deprivation or overload, isolation, stress positions, sexual

⁵⁸ Detainee Treatment Act, 42 U.S.C.S. § 2000dd (2006).

⁵⁹ *Rochin v. People of California*, 342 U.S. 165, 172 (1952).

⁶⁰ Waterboarding has been found to violate U.S. law. *United States v. Lee*, 744 F2d 1124 (5th Cir. 1984) (Texas sheriff sentenced to 10 years for "water torture" of prisoners); *United States v. Hideji Nakamura, et al.*, U.S. Military Commission, Yokohama, 1-28, May 1947 (prosecution of Japanese officers for waterboarding after WWII); Matthew K. Wynia, *Laying the Groundwork for a Defense Against Participation in Torture?* 38

humiliation, or any of the other abusive techniques employed, a number of details, including pain calibration, were meticulously recorded by Mitchell and Jessen (SSCI S41-42, S44, S86, S493-494). Collecting, evaluating and maintaining this data falls within the definition of “human subjects research” and, therefore, was illegally done under federal law.⁶¹

In our society, the fundamental purpose of incarcerating suspected criminals cannot be for “medical experimentation” nor can it be for the sole purpose of extracting information about others. In our system of laws and governance any purpose of incarceration before trial must be preparatory for eventual prosecution. But according to Mitchell, “The CIA was never interested in prosecutions, ... They

National Library of Medicine, no. 1 at 11-13 (2008), <https://pubmed.ncbi.nlm.nih.gov/18314801/> (U.S. soldier court-martialed for waterboarding a North Vietnamese soldier in 1968).

⁶¹ A “human subject” is defined as “a living individual about whom an investigator... conducting research: (i) [o]btains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (ii) [o]btains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.” 45 C.F.R. § 46.102(e)(1) (2018). *See, e.g.*, The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report: Ethical Principles and Guidelines for the Projection of Human Subjects Research* 9 (Apr. 18, 1979), <https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/index.html>.

were going to go right up to the line of what was legal, put their toes on it and lean forward.”⁶² Not only did Mitchell and Jessen “lean forward,” they fell into a swamp of grotesque, illegal conduct.

IV. TRANSPARENCY IS PARAMOUNT FOR THE MENTAL HEALTH PROFESSION AND SOCIETY AT LARGE

Institutional transparency is essential to mental health professionals for many reasons, the most important being the success of the polity as a whole. Mental health professionals often serve people in vulnerable situations and the trust necessary for that relationship is essential not only for successful treatment⁶³ but also for those who must rely on and interact with these individuals in society. Where there is openness and accessibility of information, as opposed to fear and opacity, individual patients and society on the whole benefits. It is precisely because the power entrusted to health professionals may easily be abused that both ethical standards and transparency are required for the practice of medicine and mental health. Confidentiality, when it is invoked,

⁶² Danielle Wallace, *Ex-CIA Contractor Who Developed Controversial Interrogation Program Testifies at Guantanamo Bay*, Fox News (Jan. 22, 2020), <https://www.foxnews.com/world/cia-contractor-testifies-guantanamo-trial-9-11-architect-water-board>.

⁶³ This generalized fear of the medical profession as a whole is exemplified by the generalized concerns of being experimental subjects that has caused many Americans to be suspicious of critical health modalities, such as COVID vaccines.

should be for the protection of the patient, not for the doctor, much less for non-medical purposes.

The nation is experiencing a mental health crisis.⁶⁴ Rebuilding the integrity of the mental health professions is more important than ever. Effectiveness of treatment depends heavily on whether patients trust doctors and counselors to heal, not to harm.⁶⁵ One of the major reasons why people do not seek treatment is distrust, and one of the major reasons for that distrust is the perception that powerful people who value profits over patients are in control of it.⁶⁶ The continued government protection of psychologists Mitchell and Jessen, whom the government paid handsomely for work that shocks the conscience, can only serve to feed this problematic narrative.

The mental health profession and its governing bodies deserve to know the full depth of any psychologist's involvement in torture so that they can continue to implement the changes needed to minimize potential future unethical conduct, rebuild

⁶⁴ Even before the global coronavirus pandemic, approximately 1 in 5 Americans experienced a mental illness. Almost a quarter of those individuals have not been able to get the care they need. Mental Health American, *2021 State of Mental Health in America* 34 (Oct. 10, 2020), <https://mhanational.org/issues/state-mental-health-america>.

⁶⁵ Dhruv Khullar, *Do You Trust the Medical Profession?*, New York Times (Jan. 23, 2018), <https://www.nytimes.com/2018/01/23/upshot/do-you-trust-the-medical-profession.html>.

⁶⁶ *Id.*

trust, and continue to serve the public. Such knowledge also enables the profession to keep practitioners accountable and subject to relevant independent oversight. For instance, psychologists can be sanctioned by state psychological associations, professional groups, psychology boards, and other state and federal agencies. If, after an investigation, a licensing body determines that a psychologist has violated their ethical or legal obligations, their license to practice may be suspended or revoked.⁶⁷ But first, the full nature of that practice must be known and not shrouded in a veil of state secrecy.

The public is also entitled to transparency in order to hold the government accountable and prevent any reoccurrence of reprehensible conduct done under the government's auspices. Just last year, Mitchell himself stated that he would "get up today and do it again."⁶⁸ This lack of remorse is unacceptable, and is only buttressed by the government's position here which amounts to continued protection of health professionals' participation in torture.⁶⁹ What signal does such protection give?

⁶⁷ CAPP/BPA Task Force, *Understanding Licensing Board Disciplinary Procedures* (Jun. 27, 2003), <https://www.apaservices.org/practice/ce/state/disciplinary-procedures.pdf>.

⁶⁸ See Stephen N. Xenakis, *More on 'The Role and Responsibilities of Psychiatry in 21st Century Warfare*, 48 J. Am. Acad. Psychiatry L. 290-91 (2020).

⁶⁹ Dror Ladin, *There's So Much We Still Don't Know About the CIA's Torture Program. Here's How the Government Is*

The information released in the Senate report on the enhanced interrogation program has already revealed an utter disregard for life and law perpetrated by Mitchell and Jessen at CIA detention facilities, but much more remains hidden under the guise of state secrecy.⁷⁰ It is incumbent upon the government to release the full Senate report and to investigate those who broke the law. The government should not be permitted to shirk its responsibility by entangling damaging information with national security concerns under the state secrets doctrine asserted on behalf of two of its most offensive consultants, as it attempts to do here. To do so legitimizes reprehensible conduct.

The U.S. holds itself out as a bastion for human rights, but the U.S. cannot reasonably hold that mantle before the world while allowing abuses to be carried on in the name of national security and under the cover of the state secrets privilege. The enhanced interrogations designed and conducted by Mitchell and Jessen constituted gross violations of professional ethics, federal law, and international law. Almost a decade since the U.S. Senate first met to review their conduct, they should not continue to be completely shielded under the veil of secrecy afforded by the state secrets privilege. The need for transparency for the profession of psychology, the mental health profession generally, and society at

Keeping the Full Story a Secret, Time (Feb. 7, 2020), <https://time.com/5779579/cia-torture-secrecy/>.

⁷⁰ *Id.*

large is paramount and certainly outweighs the overbroad application of the state secrets privilege that the government seeks.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

Respectfully submitted,

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