

July 7, 2010

Ronald Ross, PhD., CPM
Executive Director
Ohio Board of Psychology
77 S. High Street, Suite 1830
Columbus, Ohio 43215-6108

Complaint Form – Larry C. James, License No. 6492

Dear Dr. Ross:

Enclosed, you will find a professional misconduct complaint against Dr. Larry C. James, Ohio License # 6492, and Dean of the School of Professional Psychology at Wright State University in Dayton, Ohio.

We are Ohio residents – a veteran, a minister, a psychologist, and a mental health advocate – who are deeply concerned that our State Psychology Board has chosen to license and continues to license a psychologist who may have used his healing skills and training to hurt human beings.

This complaint gathers publicly available evidence indicating that Dr. James’s conduct rendered him ineligible for licensure at the time of his application to this Board and warrants revocation of his license today. We present the complaint in good faith, and on the information and belief that the information it contains is true and correct. Based on our clear identification of eighteen specific violations that this Board has the authority to address,¹ we request a prompt, thorough, and impartial investigation into the evidence presented. We hope this Board will agree that “violations are likely to have occurred” and will bring formal charges against Dr. James and conduct a hearing.² If through that hearing this Board finds that Dr. James engaged in any of the acts of misconduct alleged herein, we ask this Board to revoke permanently his license to practice psychology in the State of Ohio.

Summary of Alleged Misconduct and Violations

In 2003 and from 2007-2008, Dr. James was a U.S. Army Colonel who served as Chief Psychologist for the intelligence command at the U.S. Naval Station in Guantánamo Bay, Cuba. As outlined in the attached Statement of the Complaint, credible evidence indicates that in that position, Dr. James played an integral role in the system of abusive interrogation and detention used to exploit prisoners’ mental and physical vulnerabilities, maximize their feelings of

¹ See State Board of Psych Regulatory Compliance Handbook (Revised March 2002)(“The complaint is evaluated by the Regulatory Compliance staff, in consultation with the Executive Director, for clarity, specificity, actual violation, and the authority of the Board of Psychology.”)

² *Id.* (“In many instances, the investigation may reveal information suggesting that violations are likely to have occurred. At that time, formal charges may be brought and the process leading to an administrative hearing and/or a “Consent Agreement” begins.”)

disorientation and helplessness, and render them dependent upon their interrogators. These detainees included minors in Dr. James's custody and care.

Dr. James was a senior member – we believe the commanding officer – of the Behavioral Science Consultation Team (BSCT), a small but influential group of mental health professionals that advised on interrogation plans, monitored interrogations, and worked with detention operations to create an environment designed to break down prisoners.

During Dr. James's tenure as the senior intelligence psychologist in Guantánamo, boys and men were threatened with rape and death for themselves and their family members; sexually, culturally, and religiously humiliated; forced naked; deprived of sleep; subjected to sensory deprivation, over-stimulation, and extreme isolation; short-shackled into stress positions for hours; and physically assaulted. The evidence indicates that abuse of this kind was systemic, that BSCT health professionals played an integral role in its planning and practice, and that Dr. James, as the Chief Psychologist of the intelligence command, at minimum knew or should have known it was being inflicted.

The evidence further indicates that Dr. James, directly and/or in his supervisory capacity:

- failed to protect his clients from harm;
- entered into prohibited multiple relationships that compromised his judgment and objectivity and led to the exploitation of people with whom he worked;
- failed to protect confidential information; and
- failed to represent honestly his own conduct, experience, and the results of his services.

Individually, each act of alleged misconduct falls below the standard of practice established by the Board and professional ethics associations. Combined, they reveal a pattern of consistent disregard for the rules that govern his profession and demonstrate a lack of good moral character.

Specifically, Dr. Larry James, through the policies he implemented and the services he provided and supervised, appears to have violated Ohio statutes and the Board's rules governing:

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|--|-------------------------------|
| • Good Moral Character | ORC § 4732-10(B)(2) |
| • Negligence in the Practice of Psychology | ORC § 4732-17(A)(5) |
| • Willful, Unauthorized Communication | ORC § 4732-17(A)(4) |
| • Negligence | OAC § 4732-17-01(B)(1) |
| • Misrepresentation of Affiliations | OAC § 4732-17-01(B)(3) |
| • False/Misleading Public Statements | OAC § 4732-17-01(B)(3)(c) |
| • Conflict of Interest | OAC § 4732-17-01(C)(1) |
| • Dependency | OAC § 4732-17-01(C)(4) |
| • Welfare of the Client-Informed Choice | OAC § 4732-17-01(C)(5) |
| • Prohibited Multiple Relationships | OAC § 4732-17-01(E)(2)(a)(ii) |
| • Confidentiality | OAC § 4732-17-01(G) |
| • Preventing Client Identification | OAC § 4732-17-01(G)(1)(b) |
| • Limiting Access to Client Records | OAC § 4732-17-01(G)(1)(d) |

- Former Client Confidentiality OAC § 4732-17-01(G)(1)(e)
- Safeguarding Confidential Information OAC § 4732-17-01(G)(2)(d)
- Notice of Limits of Confidentiality OAC § 4732-17-01(G)(2)(e)
- Use of Fraud, Misrepresentation, or Deception OAC § 4732-17-01(I)(2)
- Reporting Violations to Board OAC § 4732-17-01(J)(4)

This Board has the Power and Duty to Investigate and Discipline Dr. James

Pursuant to the Ohio Revised Code and the Ohio Administrative Code, this Board retains the authority and obligation to deny, suspend, or revoke a license to practice psychology in the State of Ohio.³ Circumstances or factors that may justify an increase in the degree of discipline to be imposed can include:

- adverse impact on the welfare and quality of life of others;
- substantial harm to the client/s including exploitation of trust;
- high level of vulnerability of the victim;
- willful, reckless misconduct;
- lack of insight into the wrongfulness of the conduct; and
- pattern of misconduct.⁴

The evidence suggests that many, if not all, of these aggravating factors are present here.

This Board’s primary mission is to protect the public and “consumers of psychological services.” It does this through, among other means, investigating “complaints regarding the professional conduct of Ohio’s psychologists, and levying sanctions for violations.”⁵ This Board has declared itself “accountable to the public to appropriately sanction licensees who engage in misconduct ... to foster the safe provision of psychological services and confidence in the profession.” And it also recognizes that accountability to the public “includes the Board’s licensees,” and an obligation to be consistent and fair in its “determination of sanctions.”⁶

Nothing in the federal law or the regulations issued by the Department of Defense prevents this Board from formally investigating the allegations against Dr. James and taking appropriate disciplinary action. The military relies on state health professional boards to license, regulate, and sanction the conduct of military health professionals.⁷

A Matter of Concern to the Complainants as Ohio Residents

As residents of Ohio, we rely on this Board to ensure the psychologists practicing in this State are of sound professional character.

³ See ORC § 4732.10; OAC §§ 4732-17 to 4732-17-01

⁴ See Ohio State Board of Psychology, Guidelines for Disciplinary Actions and Corrective Orders.

⁵ See *id.*

⁶ See *id.*

⁷ See 10 U.S.C.A. § 1094 (a)(1); Department of Defense Directive 6025.13 § 5.2.2.2 (May 4, 2004).

To allow Dr. James's continued licensure without proper investigation would send the mistaken message to psychologists, students, and patients in Ohio that the rules of this State do not apply equally to all psychologists who hold the power to practice granted by this State. It would foster a culture of impunity that would undermine the standards of the profession in Ohio and would threaten the safety of the people of this State.

There is much at stake. The license issued by this Board grants Dr. James the power to not only practice psychology, but also to hold a position of great influence, as Dean of Wright State University's School of Professional Psychology in Dayton. In that capacity, he will be viewed as a role model and leader for a generation of students, many of whom go on to practice psychology in Ohio.

We trust this Board will take this matter seriously, as it would all complaints with merit, in accordance with its mandate. We look forward to a full investigation, and expect that when this Board reviews the ample evidence against Dr. James, it will act in the best interests of the people of Ohio.

Sincerely,

Michael Reese, Complainant
Dr. Trudy Bond, Complainant
Rev. Colin Bossen, Complainant
Josephine Setzler, Complainant

Michael Reese is a former private of the U.S. Army , and a member of Disabled American Veterans. He studied mental health at Columbus State Community College and worked for more than a decade as a counselor or teacher for people with disabilities. Michael is a former political action chair of the Columbus NAACP and now divides his time between Columbus and Cleveland.

Trudy Bond, Ed.D., is an independent psychologist in Toledo, Ohio, where she has been treating patients for 30 years . Dr. Bond earned her doctorate in counseling psychology from Oklahoma State University at age 26 and obtained her license to practice psychology in 1980.

Rev. Colin Bossen is minister of the Unitarian Universalist Society of Cleveland. He is a graduate of Denison University and the Meadville Lombard Theological School.

Josephine Setzler, Ph.D., is a retired chemistry professor and environmental scientist who currently serves as executive director of a local affiliate of the National Alliance on Mental Illness. Josie got involved in mental health advocacy more than 20 years ago, following her brother's diagnosis of mental illness. She lives in Fremont, Ohio.

STATEMENT OF COMPLAINT

MISCONDUCT

The allegations contained in this complaint are based on information and belief that they are true and correct.

OHIO LICENSEE LARRY C. JAMES

1. Dr. Larry C. James is a licensed psychologist in Ohio.¹ He applied for his license in July 2008.² In September 2008, while his application to this Board was pending, Dr. James published a book titled *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*.³ On November 4, 2008, he was issued license number 6492 by this Board.⁴
2. Since August 1, 2008, Dr. James has served as Dean of the School of Professional Psychology at Wright State University in Dayton, Ohio.⁵ In this capacity, Dr. James oversees the training and education of numerous future psychologists, many of whom will go on to practice in Ohio.⁶ Dr. James's position is conditioned on his holding a license to practice in this state.⁷

¹ See Ohio License Center, Apr. 4, 2008, <https://license.ohio.gov/Lookup/SearchDetail.asp?ContactIdnt=3989161&DivisionIdnt=83&Type=L/> [hereinafter Ohio License Center].

² See Letter from Carolyn Knauss, Ohio State Board of Psychology, to Trudy Bond (Sept. 16, 2008).

³ See Larry C. James, *Fixing Hell: An Army Psychologist Confronts Abu Ghraib* (2008) [hereinafter *Fixing Hell*]. From June 2004 to October 2004, Dr. James was the Director of the Behavioral Science Unit at the Joint Interrogation and Debriefing Center at the Abu Ghraib prison in Iraq, where his responsibilities largely mirrored his responsibilities as Chief Psychologist of the BSCT at Guantánamo. See Larry C. James, Curriculum Vitae, at 2 (obtained from Wright State University in 2010) [hereinafter Second CV (2010)]; American Psychological Association (APA), Presidential Task Force on Psychological Ethics and National Security (PENS), 2003 Members' Biographical Statement, available at <http://www.clarku.edu/peacepsychology/tpens.html> [hereinafter APA PENS 2003 Biography]; Lieutenant General Kevin C. Kiley, Army Surgeon General, *Assessment of Detainee Medical Operations for Operation Enduring Freedom (OEF), Guantánamo (GTMO), and Operation Iraqi Freedom (OIF)* (Apr. 13, 2005) ¶ 18-20(b), available at <http://www1.umn.edu/humanrts/OathBetrayed/Army%20Surgeon%20General%20Report.pdf> [hereinafter *Army Surgeon General Report*]; Vice Admiral A.T. Church III, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques*, at 355 (Mar. 7, 2005), available at http://www.aclu.org/files/pdfs/safefree/church_353365_20080430.pdf [hereinafter *Church Report*].

⁴ See Ohio License Center, *supra* note 1.

⁵ See Faculty & Staff page for Larry James, Wright State University School of Professional Psychology, <http://www.wright.edu/sopp/faculty/admin/James.html>; Press Release, Wright State University, Wright State University's School of Professional Psychology Names New Dean, Mar. 13, 2008, available at http://www.wright.edu/cgi-bin/cm/news.cgi?action=news_item&id=1432.

⁶ See Press Release, Wright State University, Maximum Reaccreditation Granted to WSU School of Professional Psychology (June 5, 2005), available at http://www.cosm.wright.edu/cgibin/news_item.cgi?961 (stating that nearly half of the graduates of the School of Professional Psychology from 1982 to 2005 went on to practice in Ohio); Wright State University Office of Admissions/Alumni Relations, SOPP 2010 Entering Class Stats, Jun. 27, 2010 (stating that 57% of 2010 incoming students are from Ohio), available at <http://www.wright.edu/sopp/apply/2010%20Entering%20Class%20Overview.pdf>.

⁷ See Announcement for Dean, School of Professional Psychology, Wright State University, Aug. 27, 2007.

STATEMENT OF COMPLAINT

EVIDENCE INDICATES THAT DR. JAMES COMMANDED A TEAM OF MENTAL HEALTH PROFESSIONALS ACTING AS INTERROGATION CONSULTANTS AT GUANTÁNAMO

Evidence Indicates That Dr. James Was the Head of the Joint Intelligence Group Behavioral Science Consultation Team (BSCT) at Guantánamo.

3. Until 2008, Dr. James was a psychologist and colonel in the United States Army.⁸ From January to May 2003, Dr. James served as Chief Psychologist of the Joint Task Force at the U.S. Naval Station at Guantánamo Bay, Cuba.⁹ Dr. James's admission that he was known as "Biscuit 1," along with military policy documents specifying that "BSCT1" was the designation for the Chief of the Behavioral Science Consultation Team (BSCT), strongly suggest that he led the Guantánamo BSCT at this time.¹⁰ Dr. James admits to leading the BSCT upon his return to Guantánamo in June 2007 through May/June 2008.¹¹
4. The Guantánamo BSCT advised on interrogation and detention policy, as well as on individual interrogation plans and specific interrogations.¹²

⁸ See Second CV (2010), *supra* note 3, at 2; *Fixing Hell*, *supra* note 3, at 11; APA PENS 2003 Biography, *supra* note 3; Shanita Simmons, *BSCT Operation Integral to JTF Mission Success*, Joint Task Force Guantanamo Newsletter (Jan. 28, 2008), available at <http://www.jtfgtmo.southcom.mil/storyarchive/2008/January/012808-1-BSCT.html> [hereinafter *BSCTs Integral*, JTF-Guantanamo Newsletter (Jan. 28, 2008)]; Jim DeBrosse, *Retired Colonel Puzzled by Guantánamo Critics*, Dayton Daily News, Sept. 21, 2009, available at <http://www.daytondailynews.com/news/dayton-news/retired-colonel-puzzled-by-Guantánamo-critics-307976.html> [hereinafter DeBrosse, DDN].

⁹ See Second CV (2010), *supra* note 3, at 2; APA PENS 2003 Biography, *supra* note 3 (stating that "[i]n 2003, he was the Chief Psychologist for the Joint Intelligence Group at GTMO, Cuba").

¹⁰ See *Fixing Hell*, *supra* note 3, at 35 ("I was the senior psychologist, so I was known as Biscuit 1."); JTF GTMO-BSCT Memorandum for Record, BSCT Standard Operating Procedures ¶ 3(a) (Dec. 10, 2004) [hereinafter BSCT SOP (2004)] ("BSCT Chief (BSCT1): ... Chief, responsible for all issues relating to BSCT operations."); BSCT, Joint Intelligence Group, JTF-GTMO, Standard Operating Procedure ¶ 3(a) (Mar. 28, 2005) [hereinafter BSCT SOP (2005)] (specifying that "BSCT1" is the designation for the BSCT Chief); DeBrosse, DDN, *supra* note 8 ("Col. Larry C. James ... was the leader of the team of five psychologists assigned to Gitmo interrogators."). *But see* *BSCTs Integral*, JTF-Guantanamo Newsletter (Jan. 28, 2008), *supra* note 8 (reporting that he served as the "deputy director of BSCT here from January 2003 to May 2003"). To our knowledge, he has never explained how a U.S. Army Colonel who was Chief Psychologist of the Joint Intelligence Group, was known as BSCT1, advised Gen. Miller, and had the authority to "fix" abuse throughout the camp would not have been in charge of this three-to-five person team. See *infra* ¶¶ 5-7.

¹¹ See Second CV (2010), *supra* note 3, at 2; see also *BSCTs Integral*, JTF-Guantanamo Newsletter (Jan. 28, 2008), *supra* note 8.

¹² See JTF GTMO-BSCT Memorandum for Record, BSCT Standard Operating Procedures (Nov. 11, 2002) (draft), at ¶¶ 3, 4(a), 4(d) [hereinafter BSCT SOP (2002)]; *BSCTs Integral*, JTF-Guantanamo Newsletter (Jan. 28, 2008), *supra* note 8; *Fixing Hell*, *supra* note 3, at 49; Army Surgeon General Report, see *supra* note 3, at 1-8 ("There is no doctrine or policy that defines the role of behavioral science personnel in support of interrogation activities. The most complete guidance found by the team were SOPs that describe the role and responsibilities of personnel serving in BSCT positions.").

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Evidence Indicates That As BSCT1, Dr. James Created Policy for His Team and Was Responsible for His Team Members' Conduct As Well As His Own.

5. Dr. James admits to having the authority to create BSCT policy for his subordinates to follow.¹³
6. Evidence in the public record suggests that, as BSCT1, Dr. James had command authority over the other two to four mental health professionals who served on the team, as well as other individuals who assisted the team.¹⁴ As team commander, in addition to being responsible for his own conduct, he would have also been legally responsible for conduct by BSCT members and others under his command. That responsibility included the obligation to prevent, report, investigate, and punish abuse inflicted by his subordinates.¹⁵

¹³ See DeBrosse, DDN, *supra* note 8 (“[Dr. James] had the authority to set policy for his small team of psychologists.”); Shanita Simmons, *Association Vote Supports Psychologist Presence at Guantánamo*, JTF Guantánamo Public Affairs, Sept. 13, 2007, at 34b, available at <http://www.jtfgtmo.southcom.mil/storyarchive/2007/September/091307-1-BSCTteam.html> [hereinafter *APA Vote*, JTF-Guantanamo Newsletter] reporting that Dr. James “was intimately involved in creating the policy used by BSCT psychologists who work within military detention facilities”).

¹⁴ See U.S. Army Medical Command, Memorandum for Commanders, Behavioral Science Consultation Policy ¶ 3(c)(2) (Oct. 20, 2006) [hereinafter *BSC Policy* (Oct. 20, 2006)] (“The senior military BSC serves as team leader for any other military, civilian, or contractor employee, enlisted, or officer behavioral science personnel who serve on or assist the BSCT.”); *Fixing Hell*, *supra* note 3, at 35; BSCT SOP (2004), *supra* note 10, ¶ 3(a) (“BSCT Chief...[is] responsible for all issues relating to BSCT operations); *APA Vote*, JTF-Guantanamo Newsletter, *supra* note 13, at 34b (stating that in his second deployment, “James [was the] officer in charge of the Behavioral Science Consultation Team (BSCT)”); see also BSCT SOP (2002), *supra* note 12, ¶¶ 2(a)-(c) (BSCT comprised of one clinical psychologist, one psychiatrist, and one mental health specialist); BSCT SOP (2004), *supra* note 10, ¶¶ 3(a)-(c) (BSCT comprised of two clinical psychologists and one mental health specialist); BSCT SOP (2005) *supra* note 10, ¶¶ 3(a)-(c) (BSCT comprised of two clinical psychologists and one mental health specialist); DeBrosse, DDN, *supra* note 8 (reporting that Col. James led a “team of five psychologists assigned to Gitmo interrogators”).

¹⁵ See Army Command Policy, Army Regulation 600-20 ¶ 2-1(b) (revised Nov. 30, 2009) [hereinafter *A.R. 600-20*] (“Commanders are responsible for everything their command does or fails to do...Commanders delegate sufficient authority to Soldiers in the chain of command to accomplish their assigned duties, and commanders may hold these Soldiers responsible for their actions. Commanders who assign responsibility and authority to their subordinates still retain the overall responsibility for the actions of their commands.”); *id.* ¶ 4-1(c) (“Commanders and other leaders will maintain discipline according to the policies of this chapter, applicable laws and regulations, and the orders of seniors.”); *id.* ¶ 4-4(a)(2) (“Ensuring the proper conduct of Soldiers is a function of command. Commanders and leaders in the Army ... will ... [t]ake action consistent with Army regulation in any case where a Soldier’s conduct violates good order and military discipline.”); see also Michael Schmitt, *The American Military Justice System and the Response to Prisoner Abuse*, Crimes of War Project, Jun. 2, 2004, <http://www.crimesofwar.org/onnews/news-justice.html> (“[C]ommanders are responsible for crimes of subordinates if they knew or should have known that they were being committed or about to be committed and did nothing to stop them and/or report the matter to appropriate authorities for investigation and prosecution.”); Uniform Code of Military Justice, at 10 U.S.C. § 877-77 [hereinafter *UCMJ*], (extending criminal liability to those who aid, abet, counsel, command, or procure the commission of an offense or cause an act to be done which if directly performed by them would be an offense); U.S. Army Field Manual 27-10-501 (stating that responsibility for acts of subordinates “arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof”); UCMJ, 10 U.S.C. § 871-92(3) (specifying that dereliction of duty is a punishable offense); Manual for Courts Martial United States ¶ 16.c.(3)(c) [hereinafter *MCM*], (“A person is derelict in the performance of duties when that person

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7. As a psychologist responsible for other mental health professionals, and as the supervisor of psychological and medical care provided to three juvenile patients,¹⁶ Dr. James also had professional and ethical duties to prevent and report misconduct committed by those under his command, administration and/or supervision.¹⁷

EVIDENCE INDICATES THAT DR. JAMES APPLIED HIS PROFESSIONAL PSYCHOLOGICAL TRAINING TO AID EXPLOITATIVE AND ABUSIVE INTERROGATIONS

The Guantánamo Interrogation Program Was Designed to Exploit Detainees Psychologically and Physically.

8. The system of interrogation and detention employed at Guantánamo was specifically designed to exploit prisoners' psychological vulnerabilities, maximize their feelings of disorientation and helplessness, and put them in a position of absolute dependency upon their interrogators. "All aspects of the [detention] environment should enhance capture shock, dislocate expectations, foster dependence, and support exploitation to the fullest

willfully or negligently fails to perform that person's duties or when that person performs them in a culpably inefficient manner.").

¹⁶ See *infra*, ¶¶ 44-47.

¹⁷ OAC § 4732-17-01(J)(4) ("Reporting of violations to the board"); American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* § 1.05 (2002), available at <http://www.apa.org/ethics/code/code.pdf> [hereinafter APA Ethics Code] ("Reporting ethical violations"); *id.* at § 2.05 ("Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others...take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity... and (3) see that such persons perform these services competently."); *id.* § 3.04 ("Avoiding Harm—Psychologists 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 unavoidable."); OAC §§ 4732-13-01 to 4732-13-04 (explicitly recognizing theory of *respondeat superior* for supervisors).

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extent possible,” wrote Dr. John Leso,¹⁸ the first BSCT psychologist and Dr. James’s predecessor and mentee.¹⁹

9. This exploitative interrogation system was based on techniques from the U.S. military’s Survival, Evasion, Resistance and Escape (SERE) program.²⁰ The SERE program was originally designed to train U.S. soldiers to resist the types of psychological and physical torture that had been used by the Chinese and North Koreans on our own troops in the Korean War “to generate propaganda not intelligence.”²¹ In an effort to prepare them for possible capture, the SERE program subjects U.S. personnel to sleep deprivation, isolation, starvation, verbal and physical abuse, exposure to extreme temperatures, sexual and religious humiliation, and, until 2007, waterboarding under controlled conditions.²²

¹⁸ Senate Armed Services Committee, *Inquiry into the Treatment of Detainees in U.S. Custody* at 52 (Apr. 21, 2009), available at <http://documents.nytimes.com/report-by-the-senate-armed-services-committee-on-detainee-treatment> [hereinafter *SASC Report*] (quoting BSCT, *Counter-resistance Strategies* at 4-5); see also *id.* at 38-62 (reporting that the assistant-commandant of the U.S. Army Intelligence Center and School recommended that the Guantánamo BSCT work with other teams to create an environment that would be “conducive to extracting information by exploiting the detainee’s vulnerabilities”); JTF-GTMO-CG, Camp Delta Standard Operating Procedures ¶ 4-20(a), at 4.3 (Mar. 28, 2003), available at <http://ccrjustice.org/files/Camp%20Delta%20Operating%20Procedures.pdf> [hereinafter Camp Delta SOP] (“The purpose of the Behavior Management Plan is to enhance and exploit the disorientation felt by a newly arrived detainee in the interrogation process. It concentrates on isolating the detainee and fostering dependence of the detainee on his interrogator.”); Neil A Lewis, *Interrogators Cite Doctors’ Aid at Guantánamo Prison Camp*, N.Y. Times, June 24, 2005, available at <http://www.nytimes.com/2005/06/24/politics/24gitmo.html> [hereinafter Lewis, *Doctors’ Aid*] (According to former Guantánamo interrogators, military health professionals “aided interrogators in conducting and refining coercive interrogations of detainees, including providing advice on how to increase stress levels and exploit fears”).

¹⁹ *Fixing Hell*, *supra* note 3, at 18-24. In 2005 and 2008, Dr. James defended clinical psychologist John F. Leso (New York License No. 013429), implying to an American Psychological Association task force that the policy Dr. Leso drafted helped eliminate abuse. See E-mail from Col. Larry C. James PhD, Re: regarding our report (July 29, 2005), in E-mail Messages to the Listserv of the APA PENS Presidential Task Force, at p. 157 [hereinafter APA PENS Listserv], available at <http://www.propublica.org/documents/item/e-mails-from-the-american-psychological-associations-task-force-on-ethics-a> (“The Army Psychologist (ironically the gentleman who was blasted in the NEJM article) was the one who actually developed a memorandum for the secretary of defense that laid out the outlawed procedures...”).

²⁰ U.S. Department of Defense, Office of the Inspector General, *Review of the DoD-Directed Investigations of Detainee Abuse* (Aug. 25, 2006), at 23-29, available at <http://www.fas.org/irp/agency/dod/abuse.pdf> [hereinafter *OIG-DOD Report*]; *SASC Report*, *supra* note 18, at 38 (“Just weeks after the JPRA training at Fort Bragg, two GTMO personnel who attended the Fort Bragg training drafted a memo proposing the use of physical and psychological pressures in interrogations at GTMO, including some pressures used at SERE schools to teach U.S. soldiers how to resist interrogation by enemies that do not follow the Geneva Conventions.”); *id.* at 46, 50 (citing Committee staff interview of MAJ Paul Burney (Aug. 21, 2007)); *id.* at 66 (quoting General Hill in June 3, 2004 Media Availability with Commander U.S. Southern Command).

²¹ Colonel Steven M. Kleinman, Statement Before the United States Committee on Armed Services: Hearing on the Treatment of Detainees in US Custody, (Sept. 25, 2008), at 3, available at <http://armed-services.senate.gov/statemnt/2008/September/Kleinman%2009-25-08.pdf>; see also *SASC Report*, *supra* note 18, at 26 (“JPRA’s techniques were designed to show Americans the worst possible treatment that they may face...”) (citing Committee staff interview of Lt Col Daniel Baumgartner (Aug. 8, 2007)).

²² *SASC Report*, *supra* note 18, at 4, 21; JTF-GTMO SERE Interrogation Standard Operating Procedure (Dec. 10, 2002), available at http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-standard-operating-procedures/gtmo_sere_interrogation_sop.pdf [hereinafter JTF-

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10. In 2002, psychologists²³ reverse-engineered the defensive SERE techniques into an offensive interrogation program for use against prisoners held by the U.S. in the “War on Terror.”²⁴ They did so without proper scientific basis,²⁵ but most importantly, ignoring the U.S. government’s longstanding recognition that those techniques are illegal. Government officials have since re-affirmed that some of these techniques constitute torture.²⁶ Torture and other cruel, inhuman or degrading treatment or punishment are illegal under domestic and international law.²⁷

GTMO SERE SOP].

²³ Two psychologists who played a primary role in this process are James Elmer Mitchell (Texas License No. 23564) and John “Bruce” Jessen (Idaho License No. Psy-195). On June 16, 2010, Texas psychologist Dr. Jim Cox filed a complaint against Dr. Mitchell with the Texas State Board of Examiners of Psychology. Todd Essig, *Psychology and Torture*, Simu-Nation (Jun. 17, 2010), available at <http://trueslant.com/toddessig/files/2010/06/MIT-FINL.pdf>.

²⁴ *SASC Report*, *supra* note 18, at 6-11, 23 (“I believe our niche lies in the fact that we can provide the ability to exploit personnel based on how our enemies have done this type of thing over the last five decades.”) (citing memo from Joseph Witsch to Col Randy Moulton and Christopher Wirts, Exploitation Training (July 16, 2002)); *id.* at 26 (“Mr. Shiffrin confirmed that one of the purposes for seeking information from JPRA was to ‘reverse-engineer’ the techniques.”); JTF-GTMO SERE SOP, *supra* note 22, ¶ 1 (“[SERE] tactics can be used to break real detainees during interrogation operations.”); *see also* Jane Mayer, *The Experiment*, *New Yorker*, July 11, 2005, available at http://www.newyorker.com/archive/2005/07/11/050711fa_fact4?currentPage=all; Scott Shane, *Interrogation Inc.: 2 U.S. Architects of Harsh Tactics in 9/11’s Wake*, *N.Y. Times*, Aug. 11, 2009, available at http://www.nytimes.com/2009/08/12/us/12psychs.html?_r=4&hp=&pagewanted=all [hereinafter Shane, *Interrogation Inc.*].

²⁵ U.S. Department of Justice, Letter Attaching FBI Analysis of Guantánamo Interrogation Tactics, at 983, 1020-21 (May 30, 2003), available at http://www.aclu.org/files/assets/torturefoia_11062009_pages5to29.pdf [hereinafter May 30, 2003 FBI Analysis] at 983-85 (stating that techniques were of “questionable effectiveness”); Shane, *Interrogation Inc.*, *supra* note 24 (“They had never carried out a real interrogation. . . . They [Mitchell and Jessen] had no relevant scholarship.”); Katherin Eban, *Rorschach and Awe*, *Vanity Fair*, July 17, 2007, available at <http://www.vanityfair.com/politics/features/2007/07/torture200707> (“The tactics were a ‘voodoo science,’ says Michael Rolince, former section chief of the F.B.I.’s International Terrorism Operations. . . . In truth, many did not consider Mitchell and Jessen to be scientists. They possessed no data about the impact of SERE training on the human psyche, say former associates.”); *see also* Central Intelligence Agency, Office of the Inspector General, *Counterterrorism Detention and Interrogation Activities (September 21 – October 2003)* (May 7, 2004), at 21-22, n. 26, 37 [hereinafter *OIG-CIA Report*].

²⁶ Bob Woodward, *Detainee Tortured, Says U.S. Official*, *Wash. Post.*, Jan. 14, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html> (Susan J. Crawford, Convening Authority for Military Commissions under the Bush Administration, admitted that “[w]e tortured [Mohammed al-]Qahtani. . . [h]is treatment met the legal definition for torture.”); *Obama Says Waterboarding is Torture*, *Voice of America*, Apr. 30, 2010, available at <http://www1.voanews.com/english/news/a-13-2009-04-30-voa47-68684982.html>; *see also* May 30, 2003 FBI Analysis, *supra* note 25 at 983, 1020-2 (warning that many of the techniques may constitute violations of the Torture Statute); *SASC Report*, *supra* note 18, at 20 (quoting LTC Mark Gingras, Army IG Interview (Oct. 11, 2005)); *SASC Report*, *supra* note 18, at 67-70 (“As lawyers we’re talking about adherence to the rule of law being important. . . . And so suddenly we look like we’re brushing this aside or we’re twisting the law. The feeling was that decision makers within the Pentagon didn’t much care about that. They cared about winning the War on Terrorism. And if that meant you had to pull out fingernails, you’d pull out fingernails, figuratively speaking.”).

²⁷ *See* 18 U.S.C. §§ 2340-2340A (Torture Statute); U.S. Const. Amend. VIII; U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. International Covenant on Civil and Political Rights (Dec. 19, 1966), art. 7, S. Exec. Doc. No. 95-2, at 23 (1978), 999 U.N.T.S. 171, 175; *see also* Geneva Conventions; the Uniform Code of Military Justice, 10 U.S.C.

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11. Nevertheless, members of the first Guantánamo BSCT trained in SERE tactics²⁸ and developed an interrogation policy based on those tactics.²⁹ Many of these techniques were promoted, used, and further codified as official policy during Dr. James's tenure in Guantánamo.

As Mental Health Professionals, Dr. James and his Behavioral Science Consultation Team Were Vital to the Exploitative Interrogation Program.

12. The Guantánamo BSCT was first created in the summer of 2002 to apply psychology and behavioral science in support of the interrogation mission.³⁰ Some say this was a novel role for a military BSCT.³¹ Until then, behavioral science teams had been used primarily to treat combat stress, evaluate soldiers' suitability for duty, and help former soldiers transition back to civilian life.³²
13. Mental health professionals thus became essential to the development and implementation of the psychological system of exploitation at Guantánamo. Selected because of their training in mental health,³³ available evidence indicates that Dr. James and the BSCT members allegedly under his command were involved in most, if not all, interrogations conducted

§ 801 et seq.; the Military Extraterritorial Jurisdiction Act, 18 U.S.C. §§ 3261-3267; and the War Crimes Act, 18 U.S.C. § 2441.

²⁸ Members of the first Guantánamo BSCT, including Dr. John Leso and BSCT psychiatrist Paul Burney (Wisconsin License No. 48820-20), traveled to Ft. Bragg, North Carolina on September 16, 2002, to learn about SERE techniques and determine which techniques "might be useful in interrogations at Guantánamo." See *SASC Report*, *supra* note 18, at 43-46; *OIG-DOD Report*, *supra* note 20, at 25. Dr. James asserts that he and his colleague, senior Army SERE psychologist Lt. Colonel Louie "Morgan" Banks (North Carolina License No. 1340), decided to send Dr. Leso to that training, which Dr. Banks eventually organized. Contrary to the conclusions reached by two government investigations, Dr. James portrays the training as a briefing intended to teach Dr. Leso how to follow the Geneva Conventions and "treat all prisoners with decency and respect and how to use incentive-based interviews rather than harsh interrogation tactics." *Fixing Hell*, *supra* note 3, at 22. But see *SASC Report*, *supra* note 18, at 39-49.

²⁹ *SASC Report*, *supra* note 18, at 50, 61-62; see *Camp Delta SOP* *supra* note 18, ¶ 4-20(a), at 4.3.

³⁰ *SASC Report*, *supra* note 18, at 38; BSCT SOP (2002), *supra* note 12, ¶ 3 (BSCT's mission was to "provide behavioral science consultation in support of JTF GTMO's interrogation mission."); see Major General Geoffrey Miller, Assessment of DOD Counterterrorism Interrogation and Detention Operations in Iraq (Sept. 9, 2003), at 5, available at <http://www1.umn.edu/humanrts/OathBetrayed/Taguba%20Annex%2020.pdf> [hereinafter Miller Report] ("[BSCTs] are essential in developing integrated interrogation strategies and assessing interrogation intelligence production."); *Church Report*, *supra* note 3, at 355 (One of the BSCT's "core missions" is to "support interrogations.").

³¹ *SASC Report*, *supra* note 18, at 38-39; *Army Surgeon General Report*, *supra* note 3, at 1-8.

³² *SASC Report*, *supra* note 18, at 38-39. See, e.g., Spc. Blanka Stratford, *Combating Combat Stress in Iraq*, *Anaconda Times*, Mar. 8, 2004, at 4 (describing Combat Stress Control teams), available at <http://www.arcent.army.mil/media/10407/08mar%20anaconda%20times.pdf>.

³³ See BSCT SOP (2002), *supra* note 12, ¶ 2(a)-(c); BSCT SOP (2004), *supra* note 10, ¶¶ 3(a)-(c), 5(a)-(b); BSC Policy (Oct. 20, 2006), *supra* note 14, ¶¶ 4(a)-(b), 7(a)(1) (showing a license is a prerequisite for BSCT personnel).

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during his 2003 and 2007-2008 deployments.³⁴ Dr. James admits that he was aware of interrogation practices throughout the prison.³⁵ According to an internal FBI e-mail, BSCT personnel “[knew] everything [that was] going on with each detainee.”³⁶

14. Dr. James also admits to having “shape[d] the national DOD policy for the biscuit.”³⁷ Issued in 2006, that policy provides that BSCT members should “evaluate the psychological strengths and vulnerabilities of detainees” and “assist in integrating these factors into a successful interrogation.”³⁸

Preparation and planning for interrogations

15. Available evidence suggests that Dr. James and the BSCT members allegedly under his command met frequently with interrogators to review interrogation plans.³⁹ They also advised and trained interrogators on specific interrogation techniques.⁴⁰

³⁴ *SASC Report*, *supra* note 18, at 39, n. 277 (stating that the 2002 BSCT SOP defined BSCT tasks as “observing interrogations and providing feedback to interrogators on detainee behavior”); BSCT SOP (2004), *supra* note 10, at ¶ 6(b) (listing one of the BSCT’s “Mission Essential Tasks” as “[m]onitoring interrogations and other staff-detainee interactions”). BSC Policy (Oct. 20, 2006), *supra* note 14, ¶ 6(a) (BSCT members were an “embedded resource” to the interrogation/debriefing process); *see* Memorandum for Major General Geoffrey D. Miller, Commander, JTF-GTMO, Subject: Results of Commander’s Inquiry, re: Allegation of Inhumane Treatment of [REDACTED], at 1323 (Apr. 30, 2003) [hereinafter Commander’s Inquiry], *available at* <http://action.aclu.org/torturefoia/released/072605/> (reproducing an April 22, 2003, interrogation plan that includes a standard field for “Behavioral Analysis Assessment” and was marked “YES FROM BSCT”).

³⁵ *BSCTs Integral*, JTF-Guantanamo Newsletter, *supra* note 8 (“[T]he BSCT works with interrogators assigned to the Joint Intelligence Group by monitoring their interactions with detainees and providing feedback ... [Dr. James said,] ‘It is not unusual to see myself or a member of my team walking around the camps observing and interacting with the guards, interrogators and analysts.’”); *see Fixing Hell*, *supra* note 3, at 37, 43, 50-51, 62.

³⁶ E-mail from FBI [parties redacted] re: GTMO (Jul. 31, 2005), FOIA Document #: DOJFBI001428-DOJFBI001429, at DOJFBI-001328, *available at* <http://www.aclu.org/files/projects/foiasearch/pdf/DOJFBI001327.pdf>.

³⁷ *Fixing Hell*, *supra* note 3, at 256.

³⁸ Memorandum from Kevin C. Kiley, Army Surgeon General, to Commanders, MEDCOM Major Subordinate Commands, Behavioral Science Consultation Policy, Oct. 20, 2006, at 00147, *available at* <http://content.nejm.org/cgi/data/359/11/1090/DC1/1>.

³⁹ *See* Commander’s Inquiry, *supra* note 34, at 1365 (“while developing IP’s [Interrogation Plans] have daily mtgs re; mt. w/ BISCUIT – very planned procedures ... talked about ahead of time”); *see also supra* note 34.

⁴⁰ *Fixing Hell*, *supra* note 3, at 55 (“I had a hundred scenarios we could try. No matter which strategy we employed, the goal was always the same: get the prisoner to say something in response. *Anything.*”); BSCT SOP (2002), *supra* note 12, ¶ 4(a) (listing “consult[ing] on interrogation approach techniques” as a BSCT “Mission Essential Task”); BSCT SOP (2004), *supra* note 10, ¶¶ 5(a)-(b), 6(a), (d) (BSCTs “provide recommendations to enhance the effectiveness of interrogation operations” “[p]rovide[] consultation to interrogation staff” and “[p]rovide[] training on behavioral, psychological, cultural, and religious issues pertaining to the detainee population.”); BSC Policy (Oct. 20, 2006), *supra* note 14, ¶¶ 5(a)(8) (BSCTs can “provide advice concerning interrogations” and “provide training for interrogators”, 5(a)(10), 6(e)); *BSCTs Integral*, JTF-Guantanamo Newsletter, *supra* note 8 (“Although the BSCT team has gone through several iterations since its inception in summer 2002, Dr. James said its objectives remain the same – to read behavior, look for clues on how to improve communication and to teach techniques on

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16. Guantánamo policy documents indicate that Dr. James’s responsibilities included working with others in the intelligence and detention commands to develop “detention facility behavior management plans.”⁴¹ True to Dr. Leso’s 2002 recommendation that the detention environment should shock, dislocate, exploit, and render dependent the detainees, the 2003 Camp Delta Behavior Management Plan, developed during Dr. James’s tenure, stated that its purpose was to “to enhance and exploit the disorientation and disorganization” of all incoming prisoners so as to render them dependent on their interrogators.⁴²
17. Based on information taken from their medical records, Dr. James admits that his team assessed detainees to determine their fitness for interrogation.⁴³ Dr. James further admits to instituting a policy that required treating health professionals to disclose detainee medical information to the BSCT.⁴⁴ Former interrogators and the ICRC report that both before and after Dr. James’s tenure, BSCT personnel and interrogators used medical information to exploit detainees’ phobias and psychologically break them down.⁴⁵ Dr. James contends that

how to manage uncooperative detainees.”); *Army Surgeon General Report*, *supra* note 7, ¶¶ 18-19(c)(5)-(7), at 18-13.

⁴¹ BSCT SOP (2002), *supra* note 12, ¶ 4(d) (listing “Assist in the development of detention facility behavior management plans” as a “Mission Essential Task”); *see* BSCT SOP (2004), *supra* note 10, ¶ 6(g) (detention policy); BSC Policy (Oct. 20, 2006), *supra* note 14, ¶ 5(a)(11) (“BSCs may advise command authorities on detention facility environment...”); *see also* *Fixing Hell*, *supra* note 3, at 69 (“What dumbass psychologist at the prison let this happen? Didn’t he read the standard operating procedures I wrote at Gitmo a year ago?”).

⁴² Camp Delta SOP, *supra* note 18, ¶ 4-20(a), at 4.3.

⁴³ *See* *Fixing Hell*, *supra* note 3, at 58-59; *see also* BSC Policy (Oct. 20, 2006), *supra* note 14, ¶ 5(a)(5) (listing “permissible purposes” for which BSCTs would be able to disclose detainee medical information); *Army Surgeon General Report*, *supra* note 3, ¶ 18-19(e), at 18-13 (until June 2004, “[s]everal BSCT personnel [at Guantánamo] did have access to detainee medical records”); BSCT SOP (2002), *supra* note 12, ¶ 4(e) (one BSCT “Mission Essential Task” was to “[d]escribe the implications of medical diagnoses and treatment for the interrogation process”); *see also* DoD Instruction 2310.08E (June 6, 2006), at 4.4, *available at* <http://www.dtic.mil/whs/directives/corres/pdf/231008p.pdf>.

⁴⁴ *Fixing Hell*, *supra* note 3, at 57 (contending that he and Lt. Comm. Henderson “devised a plan” whereby “[t]he biscuit staff were the only members of the Joint Intelligence Group or the entire intel community who would have any access or discuss any medical information with the doctors and nurses.”). A previous policy had required medical personnel to “convey any information concerning ... the accomplishment of a military or national security mission ... obtained from detainees” to military personnel “who have an apparent need to know the information”. Brigadier General R.A. Huck, U.S. Southern Command Confidentiality Policy for Interactions Between Health Care Providers and Enemy Persons Under U.S. Control Detained in Conjunction with Operation ENDURING FREEDOM (Aug. 6, 2002), ¶ 4(d), *available at* <http://www1.umn.edu/humanrts/OathBetrayed/Huck%208-2-02.pdf>.

⁴⁵ *Fixing Hell*, *supra* note 3, at 59 (“[T]he International Committee of the Red Cross... reported...that we were using [the information]... to tell interrogators exactly where to poke the prisoner with a sharp stick.”); Neil A. Lewis, *Red Cross Finds Abuse in Guantánamo*, N.Y. Times, Nov. 30, 2004, at A01, *available at* <http://www.nytimes.com/2004/11/30/politics/30gitmo.html> (reporting that in July 2004, the ICRC said the U.S. had “intentionally used psychological and sometimes physical coercion ‘tantamount to torture,’” “asserted that some doctors and other medical workers at Guantánamo were participating in planning for interrogations, in what the report called ‘a flagrant violation of medical ethics,’” and that “[d]octors and medical personnel conveyed information about prisoners’ mental health and vulnerabilities to interrogators ... sometimes directly, but usually through a group called the Behavioral Science Consultation Team”).

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his policy's intent was to "eliminate the possibility that any ill or fragile detainee would be harmed as a result of *some abusive interrogation technique*."⁴⁶

Recommending techniques and monitoring interrogations

18. The record also suggests that Dr. James and BSCT members allegedly under his command observed and monitored many, if not all, interrogations.⁴⁷ Directly and/or in his supervisory capacity, he assessed and evaluated detainee behavior, suggested techniques, and had at least *de facto* authority to end ongoing interrogations.⁴⁸ Dr. James admits to monitoring and intervening in interrogations on the base.⁴⁹
19. As a formal matter, Dr. James may have been assigned a concurrent "safety monitor" role; beginning in 2004, the standard operating procedures [SOPs] stated that the BSCT should ensure that interrogations and detention operations be "*safe, legal and effective*" (emphasis added).⁵⁰ However, these SOPs must be read in the context of a program that had at least for a period purportedly redefined acts such as "waterboarding, forced nudity, sleep deprivation, temperature extremes, stress positions and prolonged isolation," previously recognized as illegal, "to be 'safe, legal and effective' 'enhanced' interrogation techniques (EITs)."⁵¹ In practice, the record indicates that these mental health professionals were not so

⁴⁶ *Fixing Hell*, *supra* note 3, at 58-59 ("We used the information to eliminate the possibility that any *ill or fragile* detainee would be harmed as a result of some abusive interrogation technique." (emphasis added)). This statement implies that at least some detainees were certified as fit for "some abusive interrogation technique." In 2005, Army Surgeon General Kevin Kiley gave the impression that he was publicly repudiating this policy when he told reporters that a "firewall" had been erected to keep BSCTs away from medical records. The change, he told reporters, was out of "concern for the detainees' privacy" and "to be sure that there was no perception that BSCT members were ... also health care providers to the detainees." Lt. Gen. Kevin C. Kiley, Special Defense Department Briefing (Jul. 07, 2005), available at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3168>. *But see Army Surgeon General Report*, *supra* note 12, at 18-13 (reporting that although as of June 2004, the Guantánamo BSCT lacked direct access to medical records, they still retained access to "a restricted database which provided medical information on detainees"); M. Gregg Bloche & Jonathan H. Marks, *Doctors and Interrogators at Guantánamo Bay*, 35 N. Engl. J. Med. 6, 7-8 (2005) (citing a May 24, 2005, Army Medical Command memo which refers to the "interpretation of relevant excerpts from medical records" for the purpose of "assistance with the interrogation process").

⁴⁷ *See supra* ¶¶ 13-14.

⁴⁸ *See supra* ¶¶ 12-20; *BSCTs Integral*, JTF-Guantanamo Newsletter, *supra* note 8 (stating that Dr. James's duties at Guantánamo included providing interrogators and guards "with feedback by coaching, mentoring and helping to improve their interactions with the detainees"); *infra* ¶ 36.

⁴⁹ *See supra* ¶ 13 and note 35; *Fixing Hell*, *supra* note 3, at 50 ("I walked toward the observation room with its one-way mirror that would allow me to peek into the interrogation booths."); *id.* at 62 ("As I watched through a one-way observation window, I saw a detainee being held straight up in a corner ...").

⁵⁰ BSCT SOP (2004), *supra* note 10, ¶ 4; *see also id.* at 6(b) (listing "... provides consultation on policies and strategies for ensuring the safety of detainees ..." as one of the "Mission Essential Tasks"). *But see* BSCT SOP (2002), *supra* note 12 (containing no visible reference to safety).

⁵¹ Physicians for Human Rights, *Experiments in Torture: Evidence of Human Subject Research and Experimentation in the "Enhanced" Interrogation Program* (Jun. 2010), at 3 [hereinafter *Experiments in Torture*], available at http://phrtorturepapers.org/?dl_id=9.

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much concerned with *protecting* detainees from pain and suffering, so much as *calibrating* it.⁵² Such “medical” monitoring was essential to the Bush Administration’s purported legal justification of the program. Justice Department lawyers argued that the mere presence of health personnel in these monitoring roles with the purported intent to regulate the severity of harm was sufficient to immunize those involved from criminal liability for torture.⁵³

20. Finally, Physicians for Human Rights recently reported that “[h]ealth professionals working for and on behalf of the CIA” “conducted human research and experimentation on prisoners in US custody as part of [their] monitoring role.”⁵⁴ Given that CIA and Department of Defense personnel sometimes worked jointly in Guantánamo, these findings raise questions that merit further investigation.

DR. JAMES HAD A PSYCHOLOGIST-CLIENT RELATIONSHIP WITH ALL DETAINEES INTERROGATED AND HELD DURING HIS TENURE IN GUANTÁNAMO

21. Dr. James admits that he had obligations as both a psychologist and soldier.⁵⁵ In undertaking to provide psychological services, both as a treatment supervisor and as a senior

⁵² See, e.g. *Fixing Hell*, *supra* note 3, at 48 (“My days were intense, trying to make sure the boys were not abused or *unnecessarily* stressed while also facilitating their interrogation.” (emphasis added)); *infra* ¶ 36 (“The BSCT psychiatrist’s “protection” of the detainee was limited to asking the interrogator to move chairs out of the way before forcibly dropping the man to the floor. Although the mental health professional decided to end the interrogation in time for dinner and prayer, s/he did so because the guards were tired and the detainee had disclosed sufficient information.”); Center for Constitutional Rights, *When Healers Harm: John Leso*, <http://whenhealersharm.org/john-leso/> (last visited Jul. 1, 2010) [hereinafter CCR, John Leso] (citing sources reporting that in 2002, Dr. Leso monitored the torture of Mohammed Al Qahtani and failed to intervene or advised on how to increase his suffering); *infra* note [147] (citing sources reporting that in 2003, Dr. Diane Zierhoffer, called in to assess whether teenage prisoner Mohammed Jawad needed mental health help, advised instead on how to increase his suffering).

⁵³ See, e.g. Office of Legal Counsel, Memorandum for John Rizzo, Interrogation of al Qaeda Operative (Aug. 1, 2002), at 16, available at <http://www.scribd.com/doc/14346668/DOJ-Torture-Memo-Interrogation-of-Qaeda-Operative-Jay-S-Bybee-812002> (“To violate the statute, an individual must have the specific intent to inflict severe pain or suffering ... Based on the information you have provided us, we believe that those carrying out these procedures would not have the specific intent to inflict severe physical pain or suffering. ... the constant presence of personnel with medical training who have the authority to stop the interrogation should it appear it is medically necessary indicates that it is not your intent to cause severe physical pain.”); Office of Legal Counsel, Memorandum for John A. Rizzo, Application of 18 USC §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees (May 10, 2005), at 14 [hereinafter Office of Legal Counsel, Combined Use of Certain Techniques] available at http://luxmedia.com.edgesuite.net/aclu/olc_05102005_bradbury_20pg.pdf (“The close monitoring of each detainee for any signs that he is at risk of experiencing severe physical pain reinforces the conclusion that the combined use of interrogation techniques is not intended to inflict such pain.”); see also Sheri Fink, *Bush Memos Suggest Abuse Isn’t Torture If a Doctor Is There*, HUFFINGTON POST, Apr. 19, 2009, http://www.huffingtonpost.com/sheri-fink/bush-memos-suggest-abuse_b_188645.html.

⁵⁴ *Experiments in Torture*, *supra* note 51, at 3.

⁵⁵ See *Fixing Hell*, *supra* note 3, at 178-179 (“I began to see myself as wearing a white doctor’s lab coat while at the same time I also wore a soldier’s uniform ... I could no longer try to keep them as separate but equal entities... as most health care professionals in the military try to do, but rather I had to find a way to merge them into one.”).

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BSCT member, he incurred a duty of care to all the detainees he assessed, monitored, or treated directly and in his supervisory capacity. This duty to the individual detainee clients existed alongside his duty to the U.S. military, his organizational client.⁵⁶

22. Three young prisoners received medical and psychological treatment under Dr. James's close supervision.⁵⁷ He admits to using his psychological training to, among other things, supervise the design of the treatment plans for these juveniles, who were under his custody and care.⁵⁸ As such, these minors were his clients.
23. In his senior BSCT role, Dr. James also engaged in the "practice of psychology."⁵⁹ Directly and/or in a supervisory capacity, he provided "service[s] involving the application of psychological procedures ... to the assessment ... of psychological adjustment or functioning."⁶⁰ He did so by, directly and/or in a supervisory capacity, applying psychological "principles, methods, [and] procedures of understanding, predicting, or influencing behavior."⁶¹ These included "principles pertaining to . . . interviewing, counseling, behavior modification, [and] environmental manipulation."⁶²

⁵⁶ This Board recognizes that it is possible, though not usually desirable, for a psychologist to have multiple clients with conflicting interests. See *Consent Agreement Between Ronald W. Wright, Ph.D. and the State Board of Psychology of Ohio* (Jul. 26, 2005) [hereinafter *Wright Consent Agreement*] (in which this Board uses the term "client" to refer to all of the individuals evaluated by the psychologist in relation to a domestic dispute, including both adverse parties and their children).

⁵⁷ *Fixing Hell*, *supra* note 3, at 38-43.

⁵⁸ *Id.* at 40 ("We need to devise a plan for the correctional custody, medical care, and psychological treatment of these young people, and we had to determine how one can safely and morally interrogate teenage terrorists.").

⁵⁹ ORC § 4732.01(B) ("The practice of psychology' means rendering or offering to render to individuals, groups, organizations, or the public any service involving the application of psychological procedures to assessment, diagnosis, prevention, treatment, or amelioration of psychological problems or emotional or mental disorders of individuals or groups; or to the assessment or improvement of psychological adjustment or functioning of individuals or groups, whether or not there is a diagnosable pre-existing psychological problem."); see *Fixing Hell*, *supra* note 3, at 35 ("I was the senior psychologist...").

⁶⁰ See ORC § 4732.01(B), *supra* note 59; *supra* ¶¶ 12-14; *SASC Report*, *supra* note 18, at 39, n. 277 ("A standard operating procedure was drafted in November 2002, several months after the BSCT was established. It described the BSCT tasks including: consulting on interrogation approach techniques, conducting detainee file reviews to construct personality profiles and provide recommendations for interrogation strategies, observing interrogations and providing feedback to interrogators on detainee behavior, flow of the interrogation process, translator and cultural issues and possible strategies for further interrogation.").

⁶¹ ORC § 4732.01(C) ("Psychological procedures' include but are not restricted to application of principles, methods, or procedures of understanding, predicting, or influencing behavior, such as the principles pertaining to learning, conditioning, perception, motivation, thinking, emotions, or interpersonal relationships; the methods or procedures of verbal interaction, interviewing, counseling, behavior modification, environmental manipulation, group process, psychological psychotherapy, or hypnosis; and the methods or procedures of administering or interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, or motivation."); see *supra* ¶¶ 12-14; *SASC Report*, *supra* note 18, at 39, n. 277.

⁶² ORC § 4732.01(C).

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24. Dr. James and those allegedly under his command and supervision continuously assessed all detainees interrogated and held in Guantánamo. They studied and sought to influence the prisoners' responses to specific techniques and environmental conditions.⁶³ As Dr. James admits, his team even evaluated them by reviewing their medical information prior to interrogation.⁶⁴ As such, all these detainees were his clients.

DR. JAMES PARTICIPATED IN, ORDERED, SUPERVISED, RATIFIED, FACILITATED, ACQUIESCED IN, AND/OR FAILED TO PREVENT, STOP, REPORT, AND PUNISH ABUSE THAT AT TIMES CONSTITUTED TORTURE

25. Detainees were systematically abused while Dr. James served on and allegedly led the Guantánamo BSCT. Dr. James participated in, ordered, supervised, ratified, facilitated, acquiesced in, and/or failed to prevent, stop, report, and punish that abuse. As a senior advisor on interrogation policy and, evidence suggests, commander of a team that advised on individual interrogations, he influenced the interrogations and detention conditions of all detainees held from approximately mid-January 2003 to May 5, 2003 and June 2007 to May/June 2008.⁶⁵

Directly and/or in his supervisory capacity, Dr. James advised on, participated in, and acquiesced in abusive interrogations.

Interrogations were routinely abusive while Dr. James served as Chief Psychologist and advised the base commander on interrogation policy.

26. During the time that Dr. James advised the Guantánamo commander, Major General Geoffrey Miller, on interrogation policy,⁶⁶ Miller reported to his superiors that the use of isolation, sensory deprivation, 20-hour interrogations, stress positions, removal of clothing, hooding, forced grooming, and "individual phobias (such as dogs) to induce stress" were "essential to mission success."⁶⁷ If Dr. James is telling the truth about the extent to which

⁶³ See *supra* ¶ 18; *SASC Report*, *supra* note 18, at 39, n. 277.

⁶⁴ *Fixing Hell*, *supra* note 3, at 58-59; see also *Army Surgeon General Report*, *supra* note 3, ¶ 18-19(c).

⁶⁵ See *supra* ¶¶ 3-4, 12-20.

⁶⁶ See *Fixing Hell*, *supra* note 3, at 36 ("General Miller knew from the outset that we needed to reform the interrogation process and that was the main reason I was on his island."); see also *id.* at 32 ("The room was packed with the key leaders of the command, and the psychologist – that would be me from now on – was required to sit right behind the general."); *id.* at 43 (regarding the juveniles, "it was a requirement by Major General Miller that in order for any interrogation to be conducted, I had to be present the entire time.").

⁶⁷ In a January 21, 2003, memo, MG Miller stated that "[t]he command must have the ability to conduct interrogations using a wide variety of techniques" and listed nine techniques as "essential to mission success": "use of an isolation facility; interrogating the detainee in an environment other than the standard interrogation room . . . ; varying levels of deprivation of light and auditory stimuli to include the use of a white room for up to three days; the use of up to 20-hour interrogations; the use of a hood during transportation and movement; removal of all comfort items (including religious items); serving of meals ready to eat (MREs) instead of hot rations; forced grooming, to include shaving of facial hair and head; and the use of false documents and reports." These techniques, MG Miller

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Miller relied on his advice, the fact that Miller's demand for abusive techniques intensified between January and March 2003 supports the inference that Dr. James was an advocate for, rather than an opponent of, such abuse. Following the efforts of Miller and his senior advisors, by April 2003, isolating detainees, "adjusting" their sleep, manipulating their diet, and exploiting their fears were among the approved interrogation methods at the prison camp.⁶⁸

27. Those conducting the interrogations understood the message. Reports of abuse were so numerous in the spring of 2003 that a subsequent government review concluded that they "signif[ied] a consistent problem" and resulted from command failure at the prison.⁶⁹ The U.S. Senate Armed Services Committee found that the techniques reported, used, or planned for use while Dr. James and his team advised on interrogations in Guantánamo included "threats of death,"⁷⁰ "sensory deprivation,"⁷¹ "loud music" and "strobe lights,"⁷² religious

explained, were "intended to induce cooperation over a period of time by weakening the detainee's mental and physical ability to resist." On February 12, 2003, another of MG Miller's chief advisors, LTC Diane Beaver reported to her superiors that "[t]he hallmark" was "isolation and up to 20 hour interrogation," and that "[w]ithout that we can't be successful. . ." By March 21, 2003, MG Miller had expanded the list of techniques that he deemed "essential" and "appropriate," now calling for the use of "stress positions," "removal of clothing," "using detainees' individual phobias (such as dogs) to induce stress," and "grabbing, poking and light pushing." *SASC Report, supra* note 18, at 113-14; 128-130.

⁶⁸ Memorandum from Secretary of Defense Donald Rumsfeld to Commander, U.S. Southern Command, Counter-Resistance Techniques in the War on Terrorism (Apr. 16, 2003), at Tab A (E, F, G, T, V) [hereinafter Rumsfeld Apr. 16, 2003 Memo]; *SASC Report, supra* note 18, at 132.

⁶⁹ *SASC Report, supra* note 18, at 133-134 (citing Memo, Historic Look at Inappropriate Interrogation Techniques Used at GTMO (undated)).

⁷⁰ *SASC Report, supra* note 18, at 134-135 ("[T]hreats of death were either used or planned for use in specific JTF-GTMO interrogations..."); *see also infra* ¶ 49 (Canadian Omar Khadr, 16-years-old at the time, reported he was threatened with rape and death in the spring of 2003); Physicians for Human Rights, *Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impact*, at 58 (June 2008) [hereinafter *Broken Laws, Broken Lives*] (detainee held from 2002 to November 2003 reported guards threatening to shoot him during interrogations). Reports of threats continued after Dr. James's departure. In August, 2003, Mohamadou Walid Slahi was taken on a boat and led to believe he would be transferred to Jordanian or Egyptian custody. He was shown a forged letter reporting that his mother had been captured and would soon be brought to Guantánamo, where she would be the first female prisoner at the "previously all-male prison environment." He was also told that "his family was 'in danger if he . . . did not cooperate.'" *See* U.S. Department of Justice, Office of the Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq* (May 2008), at 123-24, available at <http://www.justice.gov/oig/special/s0805/final.pdf> [hereinafter OIG/DOJ Report].

⁷¹ *SASC Report, supra* note 18, at 134-135.

⁷² *Id.* Short-shackling detainees into painful positions while subjecting them to flashing lights and deafening noise seems to have been common practice in Guantánamo at the time. *See* OIG/DOJ Report, *supra* note 70 at 179-180. Some interrogators considered the use of lights to be part of the "environmental manipulation" technique formally approved for use at Guantánamo in April 2003, but possibly used earlier. *See* Rumsfeld Apr. 16, 2003 Memo, *supra* note 68; OIG/DOJ report, *supra* note 70 at 190 (citing *Church Report*, at 138, 172). *See also* Army Regulation 15-6: *Final Report, Investigation into FBI Allegations of Detainee Abuse at Guantánamo Bay, Cuba Detention Facility*, at 9 (Apr. 1, 2005, amended June 9, 2005) [hereinafter Schmidt-Furlow Report], available at http://www.humanrightsfirst.org/us_law/detainees/schmidt-army-reg-150605.pdf (finding that "bright flashing lights and/or loud music were also used to manipulate a detainee's environment on 'numerous occasions' between July 2002 and October 2004. . ."); OIG/DOJ Report, *supra* note 70, at 190 (approximately 50 FBI agents formerly stationed at Guantánamo told DOJ investigators that they "witnessed or heard about the use of bright lights on

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humiliation,⁷³ and sexual assault and cultural humiliation by female interrogators, including a forced “lap dance”⁷⁴ and “wip[ing] . . . [fake] menstrual blood on a detainee’s face and forehead.”⁷⁵ Military personnel held detainees in extreme temperatures, sometimes for days, and some prisoners reported being subjected to pressurized or ice cold water.⁷⁶ Interrogation and detention teams often applied these techniques in combination, which severely intensified their effect.⁷⁷

detainees, sometimes in conjunction with other harsh non-law enforcement techniques.”); Eric Stover and Laurel Fletcher, UC Berkeley Human Rights Center, *Guantánamo and its Aftermath: U.S. Detention and Interrogation Practices and Their Impact on Former Detainees*, at 43 (Jul., 08, 2009) [hereinafter *Guantánamo and its Aftermath*], available at <http://hrc.berkeley.edu/pdfs/Gtmo-Aftermath.pdf> (“Several detainees reported being short shackled and left alone in a room while being bombarded with loud music and strobe lights for hours on end.”); *Broken Laws, Broken Lives*, *supra* note 70, at 33, 78-79.

⁷³ *SASC Report*, *supra* note 18, at 134-135 (“forced shaving”); see also *OIG/DOJ Report*, *supra* note 70, at 193. Former U.S. Army Chaplain James Yee reported that in 2003 “[m]any MPs [at Guantánamo] . . . continued to go out of their way to abuse the Qur’ans.” James Yee, *For God and Country: Faith and Patriotism under Fire*, 120-21 (2005).

⁷⁴ An ACS contractor reported that on April 17, 2003, a female Guantánamo interrogator “removed her overblouse behind the individual and proceeded [sic] stroking his hair and neck while uttering sexual overtones and making comments about his religious affiliation. The session progressed to where she was seated on his lap making sexual [sic] affiliated movements with her chest and pelvis while again speaking sexual [sic] oriented sentences.” The detainee was then forced to the floor, where the interrogator straddled him. **The analyst said the activity was documented and approved.**” Department of Defense, Memorandum for Record, Subj: Possible Inappropriate Activities (Apr. 26, 2003) (emphasis added), available at http://action.aclu.org/torturefoia/released/072605/1243_1381.pdf; see also *OIG/DOJ Report*, *supra* note 70, at 188-190.

⁷⁵ *OIG/DOJ Report*, *supra* note 70, at 189; see also *Broken Laws, Broken Lives*, *supra* note 70, at 58 (a detainee held from 2002 to November 2003 reported “a woman enter[ing] the interrogation room naked and smear[ing] what he perceived to be menstrual blood on him, which he described as horrifying,” and “being forced to look at pornography and to witness naked men and women appearing to have intercourse”); see also Shafiq Rasul, Asif Iqbal, Ruhel Ahmed, Composite Statement: Detention in Afghanistan and Guantanamo Bay ¶¶ 216-32 (Jul. 26, 2004) [hereinafter Tipton Three Statement], available at http://ccrjustice.org/files/report_tiptonThree.pdf (reporting that around March/April 2003, UK national Asif Iqbal reported that he was short-shackled for long periods of time, subjected to extreme temperatures and taunted with pornographic magazines as part of his interrogation).

⁷⁶ *OIG/DOJ Report*, *supra* note 70, at 180-181 (reporting that in February or March 2003, an FBI agent saw a detainee short-shackled in a room where “the air conditioner had been set to make it very cold . . . and the detainee was shivering,” had “urinated in his pants,” and, according to the guards, “had been in the room since the previous day with the air conditioner left on the whole time,” without “food, water, or anything else until the interrogators returned.” “The agent said the MPs told her that the interrogators were trying to ‘break down’ detainees through the use of temperature manipulation, loud music, and immobility.”); Tipton Three Statement, *supra* note 75, ¶¶ 180-90, 216-32; see also *Broken Laws, Broken Lives*, *supra* note 70, at 58.

⁷⁷ See *supra* notes 75 and 76; see also Office of Legal Counsel, Combined Use of Certain Techniques, *supra* note 53; *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at 28 (Aug. 9, 2009), available at <http://physiciansforhumanrights.org/library/documents/reports/istanbul-protocol.pdf> (“A method-listing approach [of torture methods] may be counterproductive, as the entire clinical picture produced by torture is much more than the simple sum of lesions produced by [individual] methods on a list. Thus, solitary confinement, detention in small or overcrowded cells, exposure to extremes in temperature and deprivation of normal sensory stimulation are some torture methods whose cumulative effects over a period of time should be considered.”).

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Military policy documents suggest that, directly and/or in his supervisory capacity, Dr. James assisted in the development of abusive detention policy.

28. Publicly available government documents indicate that as part of the interrogation program, Dr. James and/or BSCT members allegedly under his command contributed to detention policy that caused and continues to cause detainees debilitating physical and psychological harm. The self-described purpose of the 2003 Camp Delta behavior management plan for incoming detainees was to “isolat[e] the detainee and foster[] dependence on his interrogator” in order to “enhance and exploit the disorientation and disorganization” of detainees.⁷⁸ To that end and through the specific written policy, all detainees were subjected to at least 30 days of solitary confinement in eight-by-six-foot steel cages upon arrival.⁷⁹ They were to be denied prayer items and access to a military chaplain and the ICRC.⁸⁰ By October 2003, ICRC officials had voiced concern about “excessive isolation”⁸¹ and the “deterioration of mental health of a large number of the detainees.”⁸²
29. “Detainee Behavior Management” at Guantánamo during Dr. James’s tenure also meant creating a manipulative system of arbitrary rewards and punishments.⁸³ Basic toiletries, toilet paper, mattresses, cups, and at least in practice, even clothes were considered “comfort items” to be given or withheld depending on compliance with interrogators.⁸⁴ “Disobedience” – which often included trivial acts, such as writing “have a nice day” on a

⁷⁸ Camp Delta SOP, *supra* note 18, ¶ 4-20(a), at 4.3.

⁷⁹ Interrogators could choose to extend isolation beyond the initial 30 day period. Camp Delta SOP, *supra* note 18, ¶ 4-20, at 4.3; *see also* Abdurahman Khadr Testimony 131, July 13, 2004, in *MCI & Solliciteur General du Canada c. Adil Charkaoui* [2003] F.C. 1418, available at <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimony-of-a-cia-asset/court-testimony-of-abdurahman-khadr-july-13-2004> (“So you are in this room alone. You can’t talk to anybody. Again, they use this room to torture us. So they put the heat up or they put it too low so we are freezing or we are suffocating because there is no air. They put the music on so you cannot sleep. They throw rocks in the block so you can’t sleep. They keep on throwing big rocks. ... This is pretty much the treatment in isolation. After a month in isolation, I was moved to the general population.”); Moazzam Begg, *Enemy Combatant: A British Muslim’s Journal to Guantánamo and Back* 194-95 (2006).

⁸⁰ Camp Delta SOP, *supra* note 18, ¶ 4-20(a), at 4.3; *see also id.*, ¶ 4-20(a)-(h), (b)(1)-(2) (specifying that in “Phase One,” detainees should be denied access to a “Koran, prayer beads, [or a] prayer cap” and that “Phase Two” extended the process of isolating detainees for two weeks).

⁸¹ JTF-GTMO Memorandum for Record, Re: ICRC Meeting with MG Miller (Oct. 9, 2003), at 1, available at <http://www.washingtonpost.com/wp-srv/nation/documents/GitmoMemo10-09-03.pdf> [hereinafter ICRC Meeting with MG Miller].

⁸² Associated Press, *Red Cross Finds Deteriorating Mental Health at Guantánamo*, USA Today, Oct. 10, 2003, available at http://www.usatoday.com/news/world/2003-10-10-icrc-detainees_x.htm [hereinafter AP, *ICRC Finds Mental Health Deterioration*] (“We have observed what we consider to be a worrying deterioration in the psychological health of a large number of the internees’ because of the uncertainty of their situation...”) (quoting ICRC spokesperson after a two-month visit to GTMO in 2003). For more on the effect of isolation and other techniques, see *infra* ¶¶ 50-51.

⁸³ *See* Camp Delta SOP, *supra* note 18, ¶ 8-1, at 8.1.

⁸⁴ *See* Camp Delta SOP, *supra* note 18, ¶ 4-20(a)(4)(a)-(h), at 4.3, ¶ 8-6, at 8.2, Table 8-3 (“Comfort Items”); OIG/DOJ Report, *supra* note 70 at 199-200 (describing how on one occasion, detention operations stripped noncompliant detainees of their pants because “there were no other comfort items left to confiscate”).

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cup,⁸⁵ not giving up a towel,⁸⁶ or refusing medication⁸⁷ – was punished by riot squads that violently beat detainees.⁸⁸ Termed “Initial Response Force,” or IRF teams, they were made up of five guards dressed in full riot gear who stormed into cells carrying plastic shields and pepper spray.⁸⁹ On January 24, 2003, a military guard playing the role of a prisoner during an IRF training drill was so severely beaten that he sustained lasting brain injuries. The guard, Sean Baker, was dressed in an orange jumpsuit, and some of the IRF team members were unaware that he was not a detainee. In November 2004, he was still suffering epileptic seizures as a consequence of the beating by fellow U.S. soldiers.⁹⁰

As reported by other interrogators, a BSCT member allegedly under Dr. James’s command recommended that a man be violently and repeatedly slammed to the floor.

30. On April 22, 2003, a BSCT psychiatrist allegedly under Dr. James’s command, recommended that a man be forcefully and repeatedly lifted and dropped to the floor as a means of keeping him awake and “install[ing] interr[ogator’s] dominance in [the] room.”⁹¹ According to a military investigator, the psychiatrist “believed that the technique was appropriate, approved, applied properly, and was common practice.”⁹² A government review concluded that the command may have sanctioned the incidents and that “command failures [had] allowed such activity to take place.”⁹³

⁸⁵ Tipton Three Statement, *supra* note 75, ¶ 149; Human Rights Watch, *Guantánamo: Detainee Accounts*, at 18 (Oct. 26, 2004), available at <http://www.hrw.org/en/node/77734>.

⁸⁶ Incident Report (Jan. 18, 2003), FOIA Release from the Office of the Secretary of Defense, available at http://humanrights.ucdavis.edu/projects/the-Guantánamo-testimonials-project/testimonies/testimonies-of-military-guards/released-irf-reports-disaggregated/f1_45_48-49.pdf.

⁸⁷ Mark Denbeaux et al., *The Guantanamo Detainees During Detention*, Data from Department of Defense Records, Seton Hall University Law School (Jul. 10, 2006), available at http://law.shu.edu/publications/guantanamoReports/guantanamo_third_report_7_11_06.pdf at 6-12; David Hicks Aff. ¶ 16 (Aug. 5, 2004) to Major Michael Mori, available at <http://www.smh.com.au/news/World/David-Hicks-affidavit/2004/12/10/1102625527396.html> (“I have seen detainees IRF’ed while they were praying, or for refusing medication.”).

⁸⁸ See OIG/DOJ Report, *supra* note 70, at 195 (stating that the officer in charge of detentions reported that “one medical person” was required to be present during these “forced cell extractions”); see also Paisley Dodds, *Videos of Riot Squads at Guantánamo Show Prisoners Being Punched and Stripped From the Waist Down*, Associated Press, Feb. 2, 2005, available at <http://www.commondreams.org/headlines05/0202-03.htm>; Jeremy Scahill, *Little Known Military Thug Squad Still Brutalizing Prisoners at Gitmo Under Obama*, Altnet, May 15, 2009, available at http://www.altnet.org/rights/140022/little_known_military_thug_squad_still_brutalizing_prisoners_at_gitmo_under_obama/.

⁸⁹ Camp Delta SOP, *supra* note 18, ¶ 24-1, at 24.1

⁹⁰ Rebecca Leung, *GI Attacked During Training*, CBS, Nov. 4, 2004, <http://www.cbsnews.com/stories/2004/11/02/60II/main652953.shtml>.

⁹¹ See Commander’s Inquiry, *supra* note 34, at 1360-1362 (Investigator’s Notes from Interview with BSCT Member).

⁹² *Id.* at 1319.

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31. A contract interrogator and a contract analyst observing the incident from a neighboring booth reported that, while the intelligence team watched, two guards slammed the man to the floor as many as 25-30 times⁹⁴ using force “adequate to cause severe internal injury.”⁹⁵ The contract interrogator, who had trained and served in the U.S. Army, was so alarmed that he left the room to report the abuse.⁹⁶
32. Although the BSCT health professional disputed the degree of force, s/he admitted to recommending a technique termed “fear up harsh” that included forced exercise.⁹⁷ S/he told a military investigator that such techniques were “effective” against “manipulative” and “purposely non-compliant” detainees, and that they did “no harm.”⁹⁸
33. Another doctor who examined the prisoner four days after the interrogation noted that the prisoner showed injuries consistent with his account of being, “lifted . . . up then ‘slammed’ . . . down on his knees, made his mouth . . . spit[] up blood, made a tooth loose, bruised several areas of his upper arms and torso, and created pain on his [left] lower ribs.”⁹⁹
34. The prisoner told the doctor that the pain was so bad “he tried to ‘cut’ the artery in his neck with his fingernails.”¹⁰⁰ Yet, he initially refused treatment, telling the doctor, “let me die from what they are doing to me.”¹⁰¹ Apparently implying that treatment would merely enable more abuse, he said he “did not want [one] person to cause the problem to have another person fix it.”¹⁰²
35. The examining physician noted that the detainee had been examined for a hyperventilation episode prior to the incident, that he had been on a hunger strike for some time, and that he had a “history of depressive disorder, NOS, in remission.”¹⁰³ The BSCT psychiatrist

⁹³ *SASC Report, supra* note 18, at 133 (citing *Memo, Historic Look at Inappropriate Techniques Used at GTMO* (undated)). This review criticized Miller’s investigation and rejected his conclusion that the use of this technique had been an isolated incident. The Senate Armed Services Committee adopted that criticism in its report, finding that the inquiry had been improperly limited, had failed to “address the command failures that allowed such activity to take place, despite apparent command sanctioning of the incidents,” and ignored other reports of abuse, including two involving sexual and religious harassment by female interrogators. *Id.* at 133-34. Concluding that the incidents “signif[ied] a consistent problem at GTMO,” it noted that despite interrogators’ admissions that they were using techniques like loud music, yelling and strobe lights, the chain of command insisted they were not used. *Id.* at 134.

⁹⁴ Commander’s Inquiry, *supra* note 34, at 1318 (Memorandum for General Geoffrey D. Miller).

⁹⁵ *Id.* at 1330 (Memorandum from ACS Defense Contractor).

⁹⁶ *Id.*

⁹⁷ *Id.* at 1360-63 (Investigator’s Notes from Interview with BSCT Member).

⁹⁸ *Id.* at 1362 (Investigator’s Notes from Interview with BSCT Member).

⁹⁹ *Id.* at 1347-48 (Narrative Medical Summary).

¹⁰⁰ *Id.* at 1348.

¹⁰¹ *Id.* at 1347.

¹⁰² *Id.*

¹⁰³ *Id.*

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allegedly under Dr. James's command had access to the prisoner's medical information but nevertheless cleared the interrogation and actively participated in it. S/he failed to include any of the information noted by the examining physician in the medical and psychiatric history sections of the BSCT post-interrogation report.¹⁰⁴

36. The BSCT psychiatrist's "protection" of the detainee was limited to asking the interrogator to move chairs out of the way before forcefully dropping the man to the floor.¹⁰⁵ Although the mental health professional decided to end the interrogation in time for dinner and prayer, s/he did so because the guards were tired and apparently the detainee had disclosed sufficient information.¹⁰⁶

Dr. James failed to prevent and report violent sexual humiliation, religious humiliation, and physical abuse that he witnessed.

37. Dr. James admits to witnessing an interrogator subject a man to violent sexual humiliation, religious humiliation, degradation, and physical abuse without immediately stopping, reporting, or punishing those involved.
38. Dr. James admits that he watched behind a one-way mirror while an interrogator and three prison guards wrestled a struggling near-naked man on the floor.¹⁰⁷ The prisoner had been forced into pink women's panties, lipstick, and a wig. The men then pinned the prisoner to the floor in an effort "to outfit him with the matching pink nightgown."¹⁰⁸
39. Instead of immediately stopping the abuse and reporting the men for discipline, Dr. James wrote that he "opened [his] thermos, poured a cup of coffee, and watched the episode play out, *hoping* it would take a better turn and not wanting to interfere *without good reason*, even if this was a terrible scene" (emphasis added).¹⁰⁹ It was only later that Dr. James claims to have determined that "someone [was] *gonna* get hurt" (emphasis added) and purportedly decided to intervene.¹¹⁰
40. Even then, Dr. James admits that he "never once said anything about the lingerie or the interrogation" to the interrogator and did not report the incident.¹¹¹ Yet, in a 2005 e-mail, he

¹⁰⁴ See *id.* at 1327 (BSCT Memorandum for Record).

¹⁰⁵ *Id.* at 1361 (Investigator's Notes from Interview with BSCT Member).

¹⁰⁶ Compare *id.* at 1361 (Investigator's Notes from Interview with BSCT Member), with *id.* at 1327-28 (BSCT Memorandum for Record), and *id.* at 1319 (Memorandum for General Geoffrey D. Miller).

¹⁰⁷ *Fixing Hell, supra* note 3, at 50-51.

¹⁰⁸ *Id.* at 50.

¹⁰⁹ *Id.* at 50-51.

¹¹⁰ *Id.* at 51.

¹¹¹ *Fixing Hell, supra* note 3, at 51.

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admits that failure to report coercive interrogation or degradation of detainees is a serious violation of military law.¹¹² He explained:

*...military psychologists as military officers are bound by the Geneva convention [sic], APA ethics code AND the UCMJ(uniformed [sic] code of military justice). A military officer found guilty of violating the UCMJ . . . may very well get an all expenses paid trip to Leavenworth federal prison. As a military officer, If I observe [sic] a violation and I do not act I may be subject to prosecution under the UCMJ.*¹¹³

41. As a colonel and the senior BSCT psychologist, Dr. James ratified the soldiers' conduct by failing to immediately stop the abuse and to report and discipline the men directly responsible. In his book, he recognized the importance of leadership:

*When any soldier crossed the line, it had to be dealt with immediately. This meant that if the infraction was not dealt with by the leaders, soldiers would continue to do it because it was allowed by the leaders in charge.*¹¹⁴

*Remember, soldiers will do what their leaders allow them to do. If you allow it, a soldier will do it. Thus, you better be clear on what are the appropriate and inappropriate standards of conduct.*¹¹⁵

*...they should be posted everywhere, what behaviors will be accepted in your organization and what is clearly, flat-out not to be tolerated.*¹¹⁶

42. Unfortunately for the soldiers and the prisoners, Dr. James did not follow his own advice. His command failure sent an implicit message to his subordinates and others involved in interrogations that such behavior was permitted. It helped to foster the climate of abuse and impunity that characterized Guantánamo both during and after his tenure.¹¹⁷ Interrogators, guards, analysts, and at least one BSCT member seemed to believe that abusive techniques were "appropriate [and] approved."¹¹⁸ Many continued to use them after he left.¹¹⁹

¹¹² APA PENS Listserv, *supra* note 19, at 157. For more on the duty to report, see *supra* note 15.

¹¹³ *Id.* This message was reiterated by others members of the APA PENS Task Force; see, e.g., E-mail from Banks, Louis M. COL, Re: Thoughts for the Presidential Task Force (May 11, 2005), in APA PENS Listserv, *supra* note 19, at 15-16 ("If a DoD psychologist is aware of the illegal abuse of detainees, and does not attempt to prevent or stop it, he or she is culpable, and should be charged, at least, with dereliction of duty.").

¹¹⁴ *Fixing Hell*, *supra* note 3 at 234.

¹¹⁵ *Fixing Hell*, *supra* note 3 at 238.

¹¹⁶ *Fixing Hell*, *supra* note 3 at 233.

¹¹⁷ See *supra*, ¶¶ 26-43.

¹¹⁸ Commander's Inquiry, *supra* note 34, at 1319 (Memorandum for General Geoffrey D. Miller); see also *id.* at 1362 (Investigator's Notes from Interview with BSCT Member); see also *supra* ¶ 30.

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Dr. James failed to report the ethical violations of other mental health professionals

43. Dr. James failed to report the misconduct of his mentee and Guantánamo BSCT predecessor, Major John Francis Leso. During Dr. James’s first visit to Guantánamo, Dr. Leso told him that he had “witnessed many harsh and inhuman interrogation tactics” and “felt pressure to teach interrogators procedures and tactics that were a challenge to his ethics as a psychologist.”¹²⁰ By 2005, if not earlier, Dr. James was aware that Dr. Leso had played a role in drafting abusive detainee policies at Guantánamo.¹²¹ However, nothing indicates that Dr. James took action to report or discipline this misconduct.

Dr. James exploited minors and failed to protect them from harm.

Dr. James exploited three boys under his custody and care

44. At Guantánamo, Dr. James admits to supervising closely the medical care, psychological treatment, education, custody, and interrogation of three boys, aged twelve to fourteen years.¹²² [REDACTED] were forcibly and

¹¹⁹ See, e.g., *supra* note 70; *infra* ¶ 49; *SASC Report*, *supra* note 18; *OIG/DOJ report*, *supra* note 70; *Center for Constitutional Rights, Report on Torture and Cruel, Inhuman, or Degrading Treatment or Punishment of Prisoners at Guantánamo Bay, Cuba* (July 2006), available at http://ccrjustice.org/files/Report_ReportOnTorture.pdf [hereinafter *CCR, Torture Report* (2006)]; *Center for Constitutional Rights, Current Conditions of Confinement at Guantánamo* (Feb. 23, 2009), available at http://ccrjustice.org/files/CCR_Report_Conditions_At_Guantanamo.pdf [hereinafter *CCR, Current Conditions* (Feb. 2009)].

¹²⁰ *Fixing Hell*, *supra* note 3, at 29; see also *CCR, John Leso*, *supra* note 52.

¹²¹ See E-mail from Col. Larry C. James PhD, Re: regarding our report (July 29, 2005), in *APA PENS Listserv*, *supra* note 19, at 157 (referring to Dr. Leso, Dr. James wrote that “the Army Psychologist (ironically the gentleman who was blasted in the *NEJM* article) was the one who actually developed a memorandum for the secretary of defense that laid out the outlawed procedures”). The Senate Armed Services Committee did in fact confirm that Dr. Leso (along with Dr. Burney) wrote a memo that eventually formed the basis for a memo signed by Rumsfeld in December 2, 2002. However, it was precisely this memo that first authorized abusive interrogation techniques and later became the subject of so much controversy.

¹²² *Fixing Hell*, *supra* note 3, at 38-49.

[REDACTED]

[REDACTED]

[REDACTED]

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arbitrarily detained and transported thousands of miles away from their families and denied access to counsel. [REDACTED] they were released without charge. [REDACTED]

45. Dr. James admits that he had a duty to “ensure that [the boys] were never harmed in any way whatsoever.”¹²⁷ Yet, he admits that he transferred them from Bagram Air Force Base in Afghanistan to Guantánamo.¹²⁸ Dr. James not only permitted, but oversaw their loading onto a cargo plane, [REDACTED] for a flight that typically lasted over 20 hours.¹²⁹ Others who appear to have been transferred from Bagram to Guantánamo that same day reported being chained around the waist, wrists, back and ankles and the intense pain of being unable to speak, see, hear, move, or even stretch or breathe properly.¹³⁰

[REDACTED]

[REDACTED]

[REDACTED]

¹²⁷ *Fixing Hell*, *supra* note 3, at 43.

¹²⁸ *Fixing Hell*, *supra* note 3, at 41.

[REDACTED]

[REDACTED]

[REDACTED]

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49. As a senior policy advisor and available evidence suggests, the commander of consultants to individual interrogations, Dr. James knew or should have known that other minors were being seriously harmed by the abusive policies and practices outlined *supra*. At minimum, he had a responsibility to prevent, stop, report, and punish their abuse. These minors include: ■

- Omar Khadr, a Canadian national detained by U.S. forces at the age of 15.¹⁴⁴ During interrogations in the spring of 2003, Omar was spit on; threatened with rape and death; repeatedly lifted by the neck and arms and forcefully dropped to the floor; short-shackled in painful positions for hours; left to urinate on himself; dragged through a mixture of pine oil and urine; and forced to remain in soiled clothing for two days.¹⁴⁵
- Mohammed Jawad, detained at the age of 15 or 16 and forcibly transferred to Guantánamo in February 2003, possibly on the same flight in which Dr. James brought the other juveniles.¹⁴⁶ Upon arrival, Mohammed was subjected to 30 days of physical and linguistic isolation.¹⁴⁷ Military records from throughout 2003 indicate that he repeatedly cried and asked for his mother during interrogation.¹⁴⁸ In

¹⁴⁴ Omar Khadr Aff. ¶¶ 2-3, Omar Ahmed Khadr v. Prime Minister Can., No. T-1228-08 (Fed. Ct. July 30, 2008), available at <http://whenhealersharm.org/wp-content/uploads/o-khadr-affadavit1.pdf>, [hereinafter Omar Khadr Aff.].

¹⁴⁵ *Id.* ¶¶ 54-59 (“The interrogator became extremely angry, then called in military police and told them to cuff me to the floor. First, they cuffed me with my arms in front of my legs. After approximately half an hour they cuffed me with my arms behind my legs. After another half hour they forced me onto my knees, and cuffed my hands behind my legs. Later still, they forced me on my stomach, bent my knees, and cuffed my hands and feet together. At some point, I urinated on the floor and on myself. Military police poured pine oil on the floor and on me, and then, with me lying on my stomach and my hands and feet cuffed together behind me, the military police dragged me back and forth through the mixture of urine and pine oil on the floor. Later, I was put back in my cell, without being allowed a shower or a change of clothes. I was not given a change of clothes for two days. They did this to me again a few weeks later...”).

¹⁴⁶ Amended Petition for Writ of Habeas Corpus on Behalf of Mohammed Jawad ¶¶ 18, 39, Al Halmandy v. Bush, No. 05-cv-2385 (D.D.C. Jan. 13, 2009), available at http://www.aclu.org/files/pdfs/natsec/amended_jawad_20090113.pdf [hereinafter ACLU Petition] (stating that Jawad was taken to Guantánamo on or around February 6, 2003). *But see id.* ¶ 40 (stating that Jawad arrived on February 3, 2003).

¹⁴⁷ ACLU Petition, *supra* note 145, ¶ 40.

¹⁴⁸ *Id.* ¶ 42. Mohammed also showed signs of mental illness during his detainment. *Id.* ¶ 43. In September 2003, an interrogator concerned about Mohammed’s mental health consulted BSCT psychologist Lt. Col. Diane Zierhoffer. Instead of protecting him, she reportedly observed: “He appears to be rather frightened, and it looks as if he could break easily if he were isolated from his support network and made to rely solely on the interrogator.” She also reportedly suggested that interrogators emphasize to Jawad that his family appeared to have forgotten him: “Make him as uncomfortable as possible. Work him as hard as possible.” Based on the recommendation of Dr. Zierhoffer, Mohammed was subjected to another 30 days of physical and linguistic isolation. *See* Dan Efron, *The Biscuit Breaker*, NEWSWEEK, Oct. 18, 2008, available at <http://www.newsweek.com/id/164497/output/print>; Daily Kos,

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December 2003, Mohammed tried to kill himself.¹⁴⁹

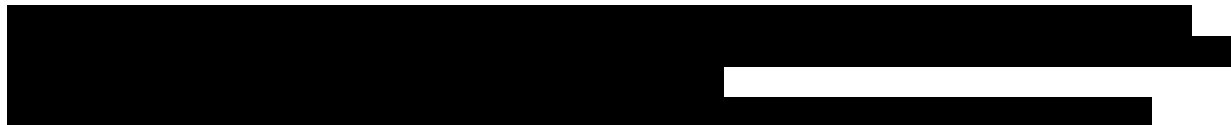


DETAINEES SUFFERED SERIOUS PSYCHOLOGICAL AND PHYSICAL HARM AS A RESULT OF ABUSIVE INTERROGATIONS AND CONDITIONS

50. Many detainees have suffered serious harm as a consequence of the systematic effort to “break them” during Dr. James’s tenure.¹⁵⁵ This harm was foreseeable.¹⁵⁶ Numerous studies have found that stress positions, deprivation of basic needs, and isolation can cause post-traumatic stress disorder, depressive disorder, and psychosis.¹⁵⁷ Men and boys held in

Army Psychologist Pleads ‘Fifth’ in Case of Prisoner 900, <http://www.dailykos.com/story/2008/8/14/202415/685/395/568118> (Aug. 14, 2008, 17:25 PDT); ACLU Petition, *supra* note 146, ¶ 44; Amnesty International, *From Ill-Treatment to Unfair Trial: The Case of Mohammed Jawad, Child ‘Enemy Combatant’* (Aug. 2008), available at <http://www.amnesty.org/en/library/asset/AMR51/091/2008/en/ed9d7f13-691e-11dd-8e5e-43ea85d15a69/amr510912008eng.html>; ACLU, *Major David J. R. Frakt’s Closing Argument in Favor of Dismissal of the Case Against Mohammed Jawad* (June 19, 2008), available at <http://www.aclu.org/national-security/major-david-j-r-frakts-closing-argument-favor-dismissal-case-against-mohammad-jawa>.

¹⁴⁹ ACLU Petition, *supra* note 145, ¶ 46



¹⁵⁵ See generally Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by US Forces* (2005), available at <http://physiciansforhumanrights.org/library/report-2005-may.html> [hereinafter *Break Them Down*].

¹⁵⁶ In fact, it was more than foreseeable; it was intended. See *supra* ¶¶ 10-11; *infra* ¶ 47.

¹⁵⁷ Dr .Craig Haney, an expert on the effects of solitary confinement, wrote in January 2003 that "there is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects." C. Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, 49 *Crime & Delinquency* 124 (2003). See also PHR, *Leave No Marks: Enhanced Interrogation Techniques and the*

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Guantánamo have suffered from insomnia, depression, nightmares, irritability, and aggression, both during and after their detention.¹⁵⁸ They also face physical health problems, such as recurring headaches, eye problems, and general deterioration and pains in their wrists, ankles, back, and knees, a legacy from extended periods of shackling.¹⁵⁹ Individuals detained during James's tenure attempted suicide on multiple occasions.¹⁶⁰ They also demonstrated signs of schizophrenia¹⁶¹ and psychosis.¹⁶² In 2003 alone, the conditions of detention in Guantánamo, including solitary confinement, led to 350 acts of "self-harm," including 120 "hanging gestures."¹⁶³

51. The effects of detention persist, even after release. Many return home only to be shunned by their families or communities, or turned away by employers because of the stigma that Guantánamo still carries,¹⁶⁴ or to discover that loved ones have died, fallen ill, or built new

Risk of Criminality (Aug. 2007) (citing Metin Basoglu, *A Multivariate Contextual Analysis of Torture and Cruel, Inhuman, and Degrading Treatments: Implications for an Evidence-Based Definition of Torture*, 79 *Am. J. of Orthopsychiatry* 135 (2009), H. S. Andersen et al., *A Longitudinal Study of Prisoners on Remand: Repeated Measures of Psychopathology in the Initial Phase of Solitary Versus Nonsolitary Confinement*, 26 *Int'l J. L. & Psychiatry* 165 (2003), among others); PHR, Commentary on APA PENS Report, Mar. 15, 2006, available at http://www.division39.org/sec_com_pdfs (citing A. Keller & J. Gold, *Survivors of Torture*, in *Kaplan and Sadock's Comprehensive Textbook of Psychiatry* 2400 (B. Sadock & V. Sadock eds., 8th ed., 2005), among others). Additionally, by 2003 extensive data had already been collected on the effect of SERE training on soldiers. That literature demonstrated that the techniques as applied to the soldiers carried a high risk of physical and psychological harm to them. It also indicated that the harm would be amplified by the use, for entirely different purposes, of more severe and prolonged applications of those techniques against non-consenting enemy suspects. *Experiments in Torture*, *supra* note 52, Appendix 1, at 19-24.

¹⁵⁸ International Human Rights Clinic, Univ. of Cal., Berkeley, School of Law, *Returning Home: Resettlement and Reintegration of Detainees Released from the U.S. Naval Base in Guantánamo Bay, Cuba* (Mar. 2009), at 7, available at <http://hrc.berkeley.edu/pdfs/Gtmo-ReturningHome.pdf> [hereinafter *Returning Home*]. *Broken Laws, Broken Live*, *supra* note 70, at 91-92; see generally *Break Them Down*, *supra* note 154.

¹⁵⁹ *Returning Home*, *supra* note 157, at 7.

¹⁶⁰ See *supra* ¶ 49; Human Rights Watch, *Locked Up Alone: Detention Conditions and Mental Health at Guantánamo* (June 2008), at 33-34, available at <http://www.hrw.org/en/reports/2008/06/09/locked-alone> [hereinafter *HRW, Locked Up Alone*] (reporting that in December 2007, Ahmed Belbacha tried to kill himself, later telling his lawyer that he felt like he was "being buried alive," and Mohammed El Gharani, captured at 15, tried to kill himself seven times, twice in mid-2007).

¹⁶¹ *HRW, Locked Up Alone*, *supra* note 159, at 24-25.

¹⁶² *Id.* at 36-37 (reporting that in January 2008, an independent psychiatrist forced to perform a proxy assessment of "B." because the government would not allow him to examine him in person told B.'s lawyers that his "psychiatric symptoms have expanded and worsened in the past two years. He now appears to meet the clinical criteria for both Post Traumatic Stress Disorder and Major Depressive Disorder with Mood Congruent Psychotic Features. These disorders represent both a quantitative and qualitative worsening of his condition. . . As a result of his continued detention, isolation, and maltreatment, he has begun to lose touch with reality (become psychotic) in addition to experiencing an expanding array of painful and incapacitating psychiatric symptoms.").

¹⁶³ See Paisley Dodds, *Terror Suspects at Guantánamo Attempted Mass Hanging and Strangling Protest in 2003*, *U.S. Military Reports*, ASSOCIATED PRESS WORLDSTREAM, Jan. 24, 2005, available at <http://www.chron.com/disp/story.mpl/headline/world/3007315.html>; Mark P. Denbeaux et al, Seton Hall Law School, *The Guantanamo Detainees During Detention: Data from Department of Defense Records* (2006), at 13-14, available at http://law.shu.edu/publications/guantanamoReports/guantanamo_third_report_7_11_06.pdf.

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lives without them.¹⁶⁵ These experiences exacerbate trauma and make recovery more difficult.

DR. JAMES MISREPRESENTED HIS EXPERIENCE, THE NATURE OF HIS AFFILIATIONS, AND THE RESULTS OF HIS SERVICES AT GUANTÁNAMO

Dr. James Misrepresented to the Public and to His Professional Association the Nature and Results of His Services As a BSCT Psychologist.

52. Dr. James misrepresented, directly and/or by implication, the purpose and characteristics of the Guantánamo BSCT as a unit concerned primarily with protecting detainees from harm. He also provided false and/or misleading information about the nature and results of his psychological services in Guantánamo. Relevant statements made by Dr. James that are at odds with evidence in the public record and/or internally inconsistent include:

- Statements in his book and to the press that he went to Guantánamo to “improve the treatment of the detainees,”¹⁶⁶ that he “institut[ed] policies intended to prevent prisoner abuse at all military institutions,”¹⁶⁷ that he “helped [interrogators] stay within the SOP [standard operating procedures] and stay away from abusive behaviors,”¹⁶⁸ that in 2003, Major General Miller “made it very clear that he wanted the BSCT to work with interrogators on how to develop rapport-building strategies and techniques with detainees,”¹⁶⁹ and that under Miller’s direction, his job was to “teach interrogators how to get intel without yelling, slapping, sleep deprivation, humiliation, or food deprivation”;¹⁷⁰
- Statements in his book and to the press, and e-mails to an APA task force that reports of abuse in Guantánamo ceased with his arrival,¹⁷¹ that the “harsh techniques” listed by an

¹⁶⁴ See *Broken Laws, Broken Lives*, *supra* note 70, at 92-93. Despite the paucity of evidence against most individuals detained in Guantánamo, and that the vast majority of those who have been released from there have never been charged with or convicted of a crime by the U.S. government, “[t]he U.S. government repeatedly insists that its decision to release detainees is not an admission that they are cleared of wrongdoing.” This absence of a formal exoneration has meant public shunning and abuse, suspicion, limited employment opportunities and even death threats for released detainees in their communities, extending the hell of Guantánamo for these men. See *Guantánamo and its Aftermath*, *supra* note 72, at 61-72.

¹⁶⁵ See *Guantánamo and its Aftermath*, *supra* note 72, at 65-67.

¹⁶⁶ *Fixing Hell*, *supra* note 3, at 270. *But see supra* ¶¶ 18-20, 25-28.

¹⁶⁷ *Fixing Hell*, *supra* note 3, at 270 (“May 5, 2003: Colonel Larry James leaves Guantánamo Bay after instituting policies intended to prevent prisoner abuse at all military institutions.”). *But see supra* ¶ 28.

¹⁶⁸ *Id.* at 255 (“...I helped [interrogators] stay within the boundaries of the SOP and stay away from abusive behaviors.”). *But see supra* ¶¶ 29-36.

¹⁶⁹ *APA Vote*, JTF-Guantanamo Newsletter (Sept. 13, 2007), *supra* note 13.

¹⁷⁰ *Fixing Hell*, *supra* note 3, at 34 (“General Miller had discussed... that it would be my job to teach the interrogators how to get intel without yelling, slapping, sleep deprivation, humiliation, or food deprivation.”). *But see supra* ¶¶ 37-42.

¹⁷¹ *Id.* at 262 (“There...have been no incidents of abuse at Guantánamo Bay by either an interrogator or psychologist reported since my arrival in Cuba in January 2003.”). *But see supra* ¶¶ 30-40, 49-50.

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August 2007 APA resolution as prohibited for psychologists “were not used under [his] watch at Gitmo,”¹⁷² that the Joint Task Force in Guantánamo “treat[ed] detainees like every human being should be treated – safely and humanely,” and did “not abuse, beat or strip anybody...”;¹⁷³ that the “problems” of abuse were in fact “fixed,” and that psychologists were responsible for such “fix[ing].”¹⁷⁴

- A statement in an open letter to then-APA President Sharon Brehm that he had never “used ‘SERE’ techniques in any aspect of [his] work related to interrogations.”¹⁷⁵
- A statement in his book that his predecessor and mentee, Dr. Leso, “was sent to Fort Bragg for briefing on the appropriate and inappropriate behaviors, the rules of engagement, what was legal and not legal, and, most importantly, the Geneva Conventions”;¹⁷⁶
- Statements in e-mails to an American Psychological Association (APA) task force that “psychologists at these facilities worked to protect the welfare and safety of the detainees” and characterized this function as a “major safety role”;¹⁷⁷

¹⁷² *Id.* at 255. *But see supra* ¶¶ 37-40 (in which he describes witnessing an interrogator and four guards wrestle a naked man in an attempt to dress him in women’s clothing, conduct that clearly amounts to forced nakedness and sexual, religious and cultural humiliation, all of which are on APA’s list of prohibited techniques).

¹⁷³ *APA Vote*, JTF-Guantanamo Newsletter (Sept. 13, 2007), *supra* note 13 (“We treat detainees like every human being should be treated – safely and humanely ... There is a percentage of the public that believes what we are doing here is unethical and immoral. No matter what we do, there is nothing we can do to convince some people that we do not abuse, beat or strip anybody...”); *see also BSCTs Integral*, JTF-Guantanamo Newsletter (Jan. 28, 2008), *supra* note 8 (“During my time here, I am proud to say that I have not seen a guard or interrogator abuse anyone in any shape or form”). *But see supra* ¶¶ 30-40.

¹⁷⁴ E-mail from Col. Larry C. James, Re: PENS-A sample agenda (May 23, 2005), *in* APA PENS Listserv *supra* note 19, at 47 (“I am very proud of the fact, it was psychologists who fixed the problems and not caused it. ***This is a factual statement!***”) (emphasis in original); E-mail from Col. Larry C. James PhD, Re: regarding our report (July 29, 2005), *in* APA PENS Listserv *supra* note 19, at 157-58 (“[T]hanks to psychologists, procedures are in place to prevent these things from happening again at GITMO.”). *But see supra* ¶¶ 12-14.

¹⁷⁵ Letter from Col. Larry C. James to APA President Dr. Sharon Brehm (Jun. 18, 2007), *available at* <http://psychoanalystsopposewar.org/blog/wp-content/uploads/2007/06/larryjameslettertoapapresidentrsharonbrehm.pdf> [hereinafter Letter to Sharon Brehm (Jun. 2007)] (“I do not use nor have I ever used “SERE” techniques in any aspect of my work related to interrogations.”). *But see supra* ¶¶ 9-11.

¹⁷⁶ *Fixing Hell*, *supra* note 3, at 22 (asserting that it was he and Morgan Banks who decided to send Dr. Leso for training in Fort Bragg in September 2002, and adding that “Colonel Banks emphasized to Major Leso that it was imperative for him to teach interrogators how to treat all prisoners with decency and respect and how to use incentive-based interviews rather than harsh interrogation tactics”). *But see supra*, ¶¶ 8-11.

¹⁷⁷ E-mail from Col. Larry C. James PhD, Re: Talking about the report (Jul. 7, 2005), *in* APA PENS Listserv *supra* note 19, at 129; e-mail from Col. Larry C. James PhD, Re: FYI – NE Jnl, *in* APA PENS Listserv *supra* note 19, at 144 (“[O]ne of the things I emphasized is the major safety role we (psychologists) have. The psychologist, in order to protect the welfare of the detainee, needs to know if the detainee has a major medical condition.”); *see also Fixing Hell*, *supra* note 3, at 58-59 (arguing that “the intent of the biscuit [sic] was to be the keepers of the relevant medical information so that no detainee would ever be harmed” and “we used this information to eliminate the

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Evidence Indicates that Dr. James Misrepresented His Experience to this Board.

53. Dr. James omitted from his paper application for licensure by this Board any reference to his psychological work experience in Guantánamo and Abu Ghraib.¹⁷⁸ In response to this Board's request for "a complete list of all psychological training and work experience,"¹⁷⁹ Dr. James listed only two positions:

- Chief, Dept. of Psychology, Tripler Army Medical Center, Honolulu, May 2004 to July 2008
- Chief, Dept. of Psychology, Walter Reed, Washington, D.C. August 1999 to May 2004.¹⁸⁰

Asked to describe his activities and responsibilities in each position, he responded that in both positions he "directed the service, research + training programs for a large APA approved program/ department."¹⁸¹

possibility that any ill or fragile detainee would be harmed as a result of some abusive interrogation technique").
But see supra ¶¶ 30-36, 44-47, 50-51.

¹⁷⁸ This allegation is based on the application released by this Board to Dr. Bond in response to her public records request of February 9, 2009. *See* Larry James, Application to the Ohio State Board of Psychology (Aug. 13 2008) [hereinafter James Application (Aug. 2008)]. James's CV circulated by Wright State University while he was being considered for hire also omitted his deployments in Abu Ghraib and Guantánamo. *See infra* ¶ 53.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* *But see supra* ¶¶ 3-4. Similarly, the 24-page *curriculum vitae* that was circulated by Wright State University when Dr. James interviewed for the Dean's position in the Spring of 2008 contained no reference to his Guantánamo and Abu Ghraib assignments. *See* Larry C. James, Curriculum Vitae (obtained in Spring 2008) [hereinafter First CV]. However, in response to a reporter's request in January 2010, Wright State University produced a different version of Dr. James's CV than the one it had circulated in 2008. *See* Second CV (2010), *supra* note 3, at 2. To the extent that it might shed further light on his credibility, we note that discrepancies exist between Dr. James's application and his CV. Included among these are ten psychology-related jobs in seven different institutions that he failed to mention in his application to this Board. Finally, Dr. James also failed to disclose in his application that from January 25, 1989 to December 31, 2000, he was licensed by the territory of Guam. *See* E-mail from Mamie Balajadia, Ed.D., Clinical Psychology Representative on the Guam Board of Allied Health Examiners, Re: Verification of psychology licensure [sic] (Jun. 22, 2010).

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VIOLATIONS

EVIDENCE INDICATES THAT DR. JAMES ENGAGED IN A PATTERN AND PRACTICE OF MISCONDUCT THAT DEMONSTRATED A LACK OF GOOD MORAL CHARACTER AND CONSTITUTED NEGLIGENCE IN THE PRACTICE OF PSYCHOLOGY

“Requirements for admission to examination for a psychologist license shall be that the applicant . . . [i]s of good moral character.”

ORC 4732.10(B)(2)

“A psychologist . . . shall be considered negligent if his/her behaviors toward his/her clients, supervisees, employees or students, in the judgment of the board, clearly fall below the standards for acceptable practice of psychology . . .”

OAC 4732-17-01(B)(1)

“The state board of psychology may refuse to issue a license to any applicant, may issue a reprimand, or suspend or revoke the license of any licensed psychologist . . . on . . . the . . . grounds [of] [b]eing negligent in the practice of psychology . . .”

ORC 4732.17(A)(5)

54. Dr. James’s alleged conduct, both during and since his tenure in Guantánamo, demonstrates a lack of the good moral character required by ORC 4732.10(B)(2). Individually and collectively, these alleged actions fall substantially below acceptable standards of care, constituting negligence in the practice of psychology in violation of OAC 4732-17-01(B)(1).

55. Under Ohio law, a psychologist seeking licensure must demonstrate that he or she is of “good moral character.”¹⁸² This Board has the power to refuse to issue or revoke a license for the negligent practice of psychology,¹⁸³ defined by the OAC as behavior that “clearly fall[s] below the standards for acceptable practice of psychology.”¹⁸⁴

56. This Board has found that negligent practice can include the following:

- Submitting evaluative reports in custody proceedings that lacked objectivity and impartiality;¹⁸⁵
- Holding oneself out as the psychologist of a person who is not one’s client;¹⁸⁶

¹⁸² ORC § 4732.10(B)(2).

¹⁸³ ORC § 4732.17(A)(5).

¹⁸⁴ OAC § 4732-17-01(B)(1).

¹⁸⁵ *Consent Agreement Between Deborah Baum, Ph.D. and the State Board of Psychology of Ohio* (Mar. 5, 2003); *Consent Agreement Between Jeanne Dennler, Ph.D. and the State Board of Psychology of Ohio* (May 5, 2003); *Consent Agreement Between Larry Pendley Ph.D. and the State Board of Psychology of Ohio* (Dec. 12, 2002).

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- Reporting suspected child neglect based on insufficient information;¹⁸⁷
 - Engaging in “inappropriate personal disclosure to clients and ex-clients;”¹⁸⁸
 - Creating a treatment plan with clients and then not scheduling follow-up appointments or arranging for alternative care;¹⁸⁹
 - Taking three months to write a time-sensitive report requested by a client;¹⁹⁰ and
 - Assuming a conflicting forensic role in a domestic dispute involving a client;¹⁹¹
57. Moreover, in at least 41 disciplinary cases in 2004, 2006, and 2008, the Board found client welfare, multiple relationship, fraud or misrepresentation, and confidentiality breaches to occur alongside findings of negligence.¹⁹²
58. Dr. James’s alleged misconduct in Guantánamo, as detailed *infra*, is at least as serious, and arguably far more serious than the conduct previously disciplined by this Board. As indicated by available evidence, Dr. James’s alleged misconduct includes the intentional, reckless, or negligent:
- Failure to protect clients from harm, instead affirmatively causing them psychological and physical harm;
 - Failure to avoid prohibited conflicting relationships with persons with whom he worked, compromising his judgment and objectivity and leading to their exploitation;
 - Failure to protect confidential information; and

¹⁸⁶ *Consent Agreement Between William Wells Friday, Ph.D. and the State Board of Psychology of Ohio* (Dec. 1, 2009).

¹⁸⁷ *Consent Agreement Between William McFarren, Ph.D. and the State Board of Psychology of Ohio* (Feb. 25, 2003).

¹⁸⁸ *Consent Agreement Between Margaret Petrone, Ph.D. and the State Board of Psychology of Ohio* (Jan. 6, 2003).

¹⁸⁹ *Consent Agreement Between Rick J. Capasso, Ph.D. and the State Board of Psychology of Ohio* (Dec. 1, 2005) [hereinafter *Capasso Consent Agreement*].

¹⁹⁰ *Consent Agreement Between Eileen Cohen, Ph.D. and the State Board of Psychology of Ohio* (Oct. 7, 2004).

¹⁹¹ *Consent Agreement Between Diane Frey, Ph.D. and the State Board of Psychology of Ohio* (Jul. 17, 2007); *Consent Agreement Between Susan E. Snyder, Ph.D. and the State Board of Psychology of Ohio* (Oct. 2, 2004).

¹⁹² Ohio State Board of Psychology Disciplinary Cases: James E. Althof, Deborah Baum, Joseph J. Bendo, Virginia A. Black, Mark I. Byrd, Rick J. Capasso, James Rod Coffman, Eileen Lee Cohen, Norma I. Cofresi, Janet King Davis, Jeanne S. Dennler, Robert C. Erikson, Diane E. Frey, William W. Friday, Colin C. Gordon, Michael Hartings, James E. Kaplar, Margaret Lahner, Rhonda J. Lilley, William P. McFarren, Alice Neuman, Meryl A. Orlando, Sharon Pearson, Margaret M. Petrone, Thomas E. Pickton, Michael F. Pignatiello, Stephen Redle, Janice Roberts, Frederick M. Sacks, Daniel W. Sanders, Joseph D. Schroeder, Jeff D. Sherrill, Susan Snyder, Janet K. Strupp, Donald J. Tosi, Dale Wenke, John P. Wilson, Sandra S. Wittstein, Ronald W. Wright, Keli A. Yee, J. Scott Yount. *State Board ALERT!: License Registration 2004*, June 24, 2004, available at <http://www.psychology.ohio.gov/pdfs/alert2004v7%20REV4%2011inch.pdf>; *State Board ALERT!: License Registration 2006*, June 24, 2006, available at <http://www.psychology.ohio.gov/pdfs/alert2006%20final.pdf>; *State Board ALERT!: License Registration 2008*, June 24, 2008, available at <http://www.psychology.ohio.gov/pubs/2008Newsletter.pdf>.

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- Failure to represent honestly his own conduct and experience, deceiving not only the general public, but also his current employer, faculty, students, patients, and this Board.

59. The evidence indicates that Dr. James's actions caused his clients harm by, among other things, facilitating their abusive interrogations and conditions of confinement¹⁹³ [REDACTED]. Many have suffered serious physical and psychological trauma as a result. Moreover, his false accounts of the services he provided as a psychologist in Guantánamo have and continue to injure the public at large.¹⁹⁵
60. Individually, each of Dr. James's alleged acts of misconduct falls below the standards of practice established by this Board and national and international professional institutions. Combined, the alleged acts reveal a lack of good moral character and a pattern of consistent disregard for the rules that govern the psychological profession.
61. This Board is empowered to take a range of disciplinary actions and corrective orders.¹⁹⁶ Most of the violations enumerated above carry a minimum penalty of reprimand; for fraud and misrepresentation, the minimum penalty is active license suspension.¹⁹⁷ All of them carry a maximum penalty of license revocation or denial of license application.¹⁹⁸ Circumstances or factors that may justify an increase in the degree of discipline to be imposed may include (1) adverse impact on the welfare and quality of life of others, (2) substantial harm to the client/s including exploitation of trust, (3) high level of vulnerability of the victim, (4) willful, reckless misconduct, (5) lack of insight into the wrongfulness of the conduct, and (6) pattern of misconduct.¹⁹⁹
62. The evidence suggests that all of these aggravating factors are present here. If this Board, pursuant to a fair, thorough, and impartial investigation and a fair hearing, finds these violations to have occurred, such conduct would merit immediate revocation of Dr. James's Ohio license.

¹⁹³ See *supra* ¶¶ 44-47, 50-51.

[REDACTED]

¹⁹⁵ See *In Re Barnes*, 510 N.E.2d 392, 398 (Ohio Ct. App. 1986) (noting that “[o]ne of the obvious purposes of the regulation of professions is to prevent damage from misrepresentations about a professional’s competence before any person in the general public is damaged. It is preventive justice ...”). See Cover Letter.

¹⁹⁶ ORC § 4732.17(A).

¹⁹⁷ Ohio State Board of Psychology, Guidelines for Disciplinary Actions and Corrective Orders, at 5-7, 9, 12, 15, available at <http://www.psychology.ohio.gov/pdfs/discguidelinesapproved.pdf>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 4.

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DR. JAMES EXPLOITED THE DEPENDENCY OF HIS CLIENTS AND FAILED TO PROTECT THEM FROM HARM

“[A] psychologist . . . shall not exploit the trust or dependency of any client, supervisee, evaluatee or other person with whom there is a professional psychological role”

OAC § 4732-17-01(C)(4)

“A psychologist . . . shall accord each client . . . reasonable protection from physical or mental harm or danger.”

OAC § 4732-17-01(C)(5)

“A psychologist . . . who has substantial reason to believe that another licensee or psychological . . . supervisee has committed an apparent violation of the statutes or rules of the board that has substantially harmed or is likely to substantially harm a person or organization shall so inform the board in writing”

OAC § 4732-17-01(J)(4)

63. In violation of OAC §§ 4732-17-01(C)(4)-(5), Dr. James failed to provide reasonable protection to the detainees under his care. He further neglected this duty under OAC § 4732-17-01(J)(4) by failing to report the ethical violations of his subordinates and colleagues.

64. The obligations to protect clients,²⁰⁰ refrain from exploiting them,²⁰¹ and to report abuse by other psychologists²⁰² are basic tenets of professional responsibility, and they require

²⁰⁰ See OAC § 4732-17-01(C)(5); see also APA Ethics Code, *supra* note 17, § 3.04 (requiring that “psychologists take reasonable steps to avoid harming clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable”); *id.* at Principle A: Beneficence (“[p]sychologists strive to benefit those with whom they work . . . In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons. . .”).

²⁰¹ See OAC § 4732-17-01(C)(4); see also, e.g., APA Ethics Code, *supra* note 17, § 3.08 (requiring that “psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as clients/patients, students, supervisees, research participants, and employees”); *id.* at Principle A: Beneficence (“psychologists . . . take care to do no harm”); APA, Against Torture: Joint Resolution of the American Psychiatric Association and the American Psychological Association (1985), available at <http://www.apa.org/news/press/statements/joint-resolution-against-torture.pdf> [hereinafter APA Against Torture Resolution (1985)] (“. . . WHEREAS American psychologists are bound by their *Ethical Principles* to ‘respect the dignity and worth of the individual and strive for the preservation and protection of fundamental human rights,’ . . . and WHEREAS psychological knowledge and techniques may be used to design and carry out torture, and WHEREAS torture victims often suffer from multiple, long-term psychological and physical problems, Be it resolved, that . . . the [APA] condemn[s] torture wherever it occurs, and Be it further resolved, that . . . the [APA] support[s] the [UN Convention Against Torture] . . . and the UN Principles of Medical Ethics, as well as the joint Congressional Resolution opposing torture.”). Dr. James himself admits that “the ethics code for a psychologist says we can do no harm to a human being.” *Fixing Hell*, *supra* note 3, at 35.

²⁰² The duty to report abuse follows naturally from the duty to protect one’s clients from physical and psychological harm. See OAC § 4732-17-01(J)(4); APA Ethics Code, *supra* note 17, § 1.05 (“If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for [resolving by bringing it to the attention of that individual] or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional

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psychologists to refrain from acting in ways “reasonably likely to cause harm.”²⁰³ The Board has found, for example, that such a reasonable likelihood arises when a psychologist initiates a client relationship and then fails to provide follow-up or referral services.²⁰⁴ Dr. James’s apparent conduct, as discerned from available evidence, would constitute a far more grievous dereliction of his ethical duties.

65. Dr. James assumed professional psychological roles in evaluating and treating detainees at Guantánamo, and as such, these detainees were his clients.²⁰⁵ Notwithstanding this relationship and the heightened professional obligations that arose from it, evidence suggests that Dr. James played a direct and intentional role in their abuse and exploitation. Furthermore, as Chief Psychologist and alleged commander and supervisor of other BSCT members, Dr. James would also have been legally and ethically responsible for their behavior.²⁰⁶ Yet, the evidence indicates that he ordered, supervised, ratified, facilitated, acquiesced in, and/or failed to prevent, stop, report, and punish abusive behavior by other members of the BSCT, causing psychological devastation to people he was duty-bound to protect.²⁰⁷ The harm arising from his conduct was more than “reasonably likely.” As such, Dr. James violated his ethical duty to protect, engaged in the negligent practice of psychology, and demonstrated that he lacks the good moral character necessary for licensure in Ohio.²⁰⁸

Dr. James and/or the BSCT Members Allegedly under His Command and Supervision Intentionally and Actively Participated in the Abusive and Exploitative Treatment of Detainees.

ethics, to state licensing boards, or to the appropriate institutional authorities.”); *see also* ORC § 2151.421(A)(1)(a) (“No [licensed psychologist] who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division.”).

²⁰³ *Capasso Consent Agreement, supra* note 189, ¶ 11.

²⁰⁴ *Capasso Consent Agreement, supra* note 189 (in which this Board found that by “fostering hope during a family crisis and by subsequently failing to afford [clients’] basic rights to professional follow-through or referral to another appropriate provider,” the acts of one psychologist “were reasonably likely to cause harm”).

²⁰⁵ *See supra* ¶¶ 21-22.

²⁰⁶ *See supra* ¶¶ 5-7; *see also* OAC § 4732-17-01(J)(3) (“A psychologist...shall exercise appropriate supervision over supervisees, as set forth in the rules of the board.”); APA Ethics Code, *supra* note 17, § 2.05 (“Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently.”).

²⁰⁷ *See supra* ¶ 50.

²⁰⁸ *See* OAC §§ 4732-17-01(C)(5), (B)(1); ORC § 4732.10(B)(2); *see supra* § 54-56.

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66. Dr. James and/or the BSCT members allegedly under his command and supervision helped to develop interrogation plans designed to exploit detainees' particular psychological weaknesses in order to "break" them.²⁰⁹ As noted above, during James's tenure at Guantánamo, boys and men were threatened with rape and death for themselves and their family members; sexually, culturally, and religiously humiliated; forced naked; deprived of sleep; subjected to sensory deprivation, over-stimulation, and extreme isolation; short-shackled into stress positions for hours; and physically assaulted.²¹⁰ These techniques can only be characterized as harmful.²¹¹ The evidence indicates that abuse of this kind was systemic, that BSCT health professionals played an integral role in its planning and practice, and that Dr. James, as the Chief Psychologist of the intelligence command, at minimum knew or should have known it was being inflicted.²¹²
67. The BSCT's role in reviewing detainees' medical information in order to deem them fit for interrogation only served to validate such abuse.²¹³ The purpose behind granting BSCT members access to detainee medical information is disputed,²¹⁴ but even Dr. James's account implies that he and BSCT members allegedly under his command and supervision may have certified some detainees as fit for abuse.²¹⁵ Such conduct is prohibited not only by Ohio laws and rules,²¹⁶ but also by national and international norms that forbid health professionals from using their medical skills and knowledge to assess a person's ability to withstand abusive interrogation.²¹⁷

²⁰⁹ See Lewis, *Doctors' Aid*, *supra* note 18; see also *supra* ¶¶ 8, 16-17.

²¹⁰ See *supra* ¶¶ 25-42.

²¹¹ See *supra* ¶¶ 50-51. Moreover, the APA expressly and "absolutely" prohibits its members from "knowingly planning, designing, participating in or assisting in the use" of each one of these techniques. See APA, Amendment to the Reaffirmation of the APA 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" (Feb. 22, 2008), available at <http://www.apa.org/about/governance/council/torture-amend.aspx> [hereinafter APA Position Against Torture (2008)]. But see *Fixing Hell*, *supra* note 3 at 255 (in which Dr. James states that he supported the prohibition on psychologists advising on this "set of harsh techniques," and contends that they "were not used under [his] watch at Gitmo ... and [he] would never recommend them as an ethical, moral way to obtain intel").

²¹² See *supra* ¶¶ 3-14.

²¹³ See *supra* ¶ 17.

²¹⁴ See *supra* ¶¶ 17, 52.

²¹⁵ See *Fixing Hell*, *supra* note 3, at 58-59 (contending that they "used the information to eliminate the possibility that any ill or fragile detainee would be harmed as a result of *some abusive interrogation technique*" (emphasis added), implying that at least some detainees may have been certified as fit for such techniques).

²¹⁶ See ORC 4732-17(A)(5); OAC § 4732-17-01(C)(5); OAC § 4732-17-01(J)(4).

²¹⁷ See APA Against Torture Resolution (1985) *supra* note 200 (expressing support for UN Principles of Medical Ethics, which state that "[i]t is a contravention of medical ethics for health personnel...[t]o certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments"); American Medical Association, Opinions on Social Policy: E-2.067 Torture (Dec. 1999), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2067.shtml> ("physicians should not treat individuals to verify their health so that

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68. Dr. James also failed to protect detainees from harm by ordering, supervising, and/or failing to prevent, stop, report, and punish abuse by BSCT members allegedly under his command and supervision.²¹⁸ For example, in the April 22, 2003 incident noted above, the BSCT psychiatrist monitoring interrogation recommended a technique that one witness described as repeatedly slamming a detainee's upper body and face to the floor.²¹⁹ The physician who examined the prisoner later confirmed that he sustained injuries consistent with his account of the incident.²²⁰ The man told the doctor that the pain was so bad "he tried to 'cut' the artery in his neck with his fingernails."²²¹ The BSCT member, when questioned in the investigation, reported that the technique had been previously used.²²² The investigator's conclusion that "[a]ll concerned believed that the technique was appropriate, approved, applied properly, and was common practice,"²²³ strongly suggests that Dr. James not only knew about this practice that was "reasonably likely to cause harm," but condoned, supervised and/or ordered it.
69. Military policy documents also suggest that, directly and/or in a supervisory capacity, Dr. James helped to develop a detention policy explicitly designed "to enhance and exploit [a detainee's] disorientation and disorganization" by "concentrat[ing] on isolating the detainee and fostering dependence of the detainee on his interrogator."²²⁴ This policy required that all detainees be subjected to mandatory 30 days of solitary confinement upon arrival and granted interrogators the power to extend that period of isolation.²²⁵ During this period, detainees were not to be visited by members of the ICRC or their own chaplain, and they were deprived of religious items necessary to pray.²²⁶ As with the use of "forced exercise," this policy was not only "reasonably likely" to cause harm, it was affirmatively designed to do just that.

torture can begin or continue"); World Medical Association, Declaration of Tokyo, Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment ¶ 3 (Oct. 1975, as amended May 2006), *available at* <http://www.wma.net/en/30publications/10policies/c18/index.html> ("The physician shall not use nor allow to be used, as far as he or she can, medical knowledge or skills, or health information specific to individuals, to facilitate or otherwise aid any interrogation, legal or illegal, of those individuals."); International Dual Loyalty Working Group, Dual Loyalty & Human Rights: In Health Professional Practice; Proposed Guidelines & Institutional Mechanisms ¶ 8 (2002), *available at* <http://physiciansforhumanrights.org/library/documents/reports/report-2002-duelloyalty-sect4.pdf> ("The health professional should abstain from participating, actively or passively, in any form of torture."); *id.* ¶ 9 ("[t]he health professional should not provide any means or knowledge to facilitate the practice of torture or cruel, inhuman, or degrading treatment or punishment...").

²¹⁸ *See supra* ¶¶ 30-36.

²¹⁹ *See supra* ¶¶ 30-36.

²²⁰ *See supra* ¶¶ 30-36.

²²¹ *See supra* ¶¶ 30-36.

²²² *See supra* ¶ 30.

²²³ *Id.*

²²⁴ *See supra* ¶¶ 5, 8, 14-16, 28.

²²⁵ *See supra* ¶ 28.

²²⁶ *Id.*

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70. Dr. James’s alleged actions and omissions regarding the three young prisoners were also more than “reasonably likely” to cause them harm. He knowingly exposed them to physical and mental harm by leading an operation in which they were forced onto a cargo plane, reportedly bound and blindfolded, for over 20 hours from Afghanistan to Guantánamo.²²⁷ Dr. James “facilitated” interrogations of boys [REDACTED]. [REDACTED] These boys—held incommunicado thousands of miles from their families²³⁰—had no one to turn to except for Dr. James and the military personnel he selected to supervise them.²³¹ Dr. James and his subordinates rendered them dependent and then exploited that dependency in order to extract information. In Dr. James’s own words: “We needed these boys to talk to us, and we established a program that would help us get to know them and encourage them to talk to us.”²³²

Dr. James Failed to Prevent, Stop, Report, and/or Punish the Abusive and Unethical Behaviors of Others.

71. Dr. James acquiesced in, ratified and/or failed to prevent, stop, report, and punish the abusive behavior of others, including other mental health professionals.²³³ To fulfill his obligation to protect detainees from harm, Dr. James was required to stop and punish or, at the very least, object to and report treatment reasonably likely to cause harm.²³⁴ Dr. James’s senior rank and/or alleged command position would have heightened his obligation to ensure that others on his team were acting ethically.²³⁵ A supervisor’s fidelity to the duty to report ethical breaches sets a standard of professionalism for his or her subordinates and supervisees. By failing to discipline those under his command and control and to report abuse by others, Dr. James ratified their actions. He contributed to the climate of abuse and impunity that characterized Guantánamo during his tenure, thus ensuring that the abuse would continue.²³⁶
72. By his own admission, Dr. James failed to immediately stop or even object to the incident, described above, of physical violence and sexual and religious humiliation perpetrated by

²²⁷ See supra ¶¶ 44-47.

[REDACTED]

²²⁹ See supra ¶ 46

²³⁰ See supra ¶ 44.

²³¹ *Id.*

²³² See supra ¶ 47.

²³³ See supra ¶¶ 25-43.

²³⁴ OAC § 4732-17-01(C)(5); OAC § 4732-17-01(J)(4).

²³⁵ See supra ¶¶ 3-7, 18, 21-24.

²³⁶ See supra ¶¶ 26-40, 49.

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military police and interrogators against a detainee, whom they had forced into lipstick, a wig, and women's underwear. Rather, Dr. James asserted that his first reaction was to drink coffee and *hope* it would take a “*better turn*” (emphasis added).²³⁷ His admission that he acted only after watching this abuse unfold, and that only after some time did he conclude that “[s]omeone [was] *gonna get hurt*” (emphasis added)²³⁸ demonstrates his callous disregard for the mental and physical harm that had already been inflicted on the detainee. According to his own account of this incident, Dr. James “never once said anything about the lingerie or the interrogation.”²³⁹ His failure to communicate explicitly the wrongfulness of the conduct and to discipline those involved amounted to ratification of those particular acts.²⁴⁰

73. Finally, Dr. James failed to report the ethical violations of other mental health professionals.²⁴¹ As BSCT Commander, Chief Psychologist, or even as a senior-ranking member of a 3-5 person team charged with advising on interrogations throughout the base, Dr. James knew or should have known that his colleagues were advising interrogators on how to hurt detainees and calibrate their suffering.²⁴² He certainly knew that Dr. Leso had been involved in unethical conduct.²⁴³ The evidence suggests that he also must have known of the BSCT psychiatrist's participation in the April 22, 2003 interrogation that repeatedly slammed the detainee to the floor. The psychiatrist and all others involved in the interrogation contended that the technique was “appropriate, approved, applied properly, and was common practice.”²⁴⁴ More importantly, the matter was the subject of an investigation conducted while Dr. James was still in Guantánamo and in which key command leaders were questioned.²⁴⁵ Yet, nothing indicates that he reported any mental health professional's misconduct to the APA or appropriate licensing authority.²⁴⁶ Instead, he has gone to great lengths to publicly misrepresent the type of services provided by Dr. Leso and other BSCT psychologists and psychiatrists in Guantánamo.²⁴⁷

²³⁷ See *supra* ¶¶ 37-40.

²³⁸ *Id.*

²³⁹ *Id.* at 51.

²⁴⁰ His failure to report or punish this treatment could also constitute a war crime and dereliction of duty. See *supra* note 15. However, the relevant question for this Board is not whether the conduct was legal, but whether it is ethical for a prison psychologist, in a position of influence, to witness the violent forcing of a naked, distraught, non-consenting man into women's lingerie and not, at minimum, report the conduct. We do not think it is. Neither, it seems, does the APA. See, e.g., APA Position Against Torture (2008), *supra* note 210.

²⁴¹ OAC § 4732-17-01(J)(4).

²⁴² See *supra* ¶¶ 3-19.

²⁴³ See *supra* ¶ 43;

²⁴⁴ See *supra* ¶ 42; see also *supra* ¶ 30.

²⁴⁵ See *supra* ¶ 30.

²⁴⁶ See *supra* ¶ 43.

²⁴⁷ See *infra* ¶ 52.

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74. By failing to report abuse and the ethical violations of his subordinates and colleagues, Dr. James exposed detainees to further harm and seriously damaged the integrity of the profession.²⁴⁸

DR. JAMES MAINTAINED PROHIBITED MULTIPLE RELATIONSHIPS THAT LED TO THE EXPLOITATION OF DETAINEES AND TO CONFLICTS OF INTEREST COMPROMISING HIS JUDGMENT AND OBJECTIVITY.

“The board prescribes that certain multiple relationships are expressly prohibited due to inherent risks of exploitation, impaired judgment by clients, supervisees and evaluatees, and/or impaired judgment, competence or objectivity of the psychologist.”

OAC § 4732-17-01(E)(2)

“A psychologist . . . shall not: . . . Undertake a professional psychological role with persons with whom he/she has had a familial, personal, social, supervisory, employment, or other relationship, and the professional psychological role results in: exploitation of the person; or, impaired judgment, competence, and/or objectivity in the performance of one’s functions as a psychologist.”

OAC § 4732-17-01(E)(2)(a), (a)(ii)

75. Dr. James violated OAC § 4732-17-01(E)(2)(a)(ii) by maintaining multiple conflicting relationships with detainees.
76. Ohio law prohibits psychologists from assuming multiple professional psychological roles that could result in the exploitation of those with whom they work or the impairment of the psychologist’s judgment or objectivity.²⁴⁹ This Board has often disciplined psychologists who assume conflicting “dual relationships” that corrupt the integrity of their work.²⁵⁰ In 2004, for example, the Board indefinitely suspended the license of a psychologist who violated this rule by failing to maintain objectivity in the dual roles of therapist and forensic consultant for two children.²⁵¹
77. The multiple professional psychological roles that Dr. James assumed at Guantánamo—including supervising treating psychologist, purported safety monitor, interrogation planner,

²⁴⁸ See *supra* note 119.

²⁴⁹ OAC § 4732-17-01(E)(2)(a)(ii). The APA Ethics Code similarly requires that a “psychologist refrain[] from entering into a multiple relationship if the multiple relationship could reasonably be expected to . . . risk[] exploitation or harm to the person with whom the professional relationship exists.” APA Ethics Code, *supra* note 17, § 3.05(a).

²⁵⁰ See, e.g., *In re Virginia A. Black* (Ohio State Bd. of Psychology Mar. 21, 2003) (decision and order); *In re Mark Byrd* (Ohio State Bd. of Psychology Mar. 12, 2003) (decision and order); *In re James E. Althof, Ph.D.* (Ohio State Bd. of Psychology Oct. 21, 2004) (decision and order); *In re Dr. Susan Snyder* (Ohio State Bd. of Psychology June 27, 2005) (hearing report and recommendations) [hereinafter *In re Snyder* (June 27, 2005)]; *In re Janet K. Strupp* (Ohio State Bd. of Psychology Dec. 5, 2005) (adjudication order); *Consent Agreement between Rhonda J. Lilley, Ph.D. and Ohio State Bd. of Psychology* (Jan. 28, 2005);

²⁵¹ See *In re Snyder* (June 27, 2005), *supra* note 249, ¶¶ 34-35 (Findings of Fact) (expert testimony of Dr. Jeffrey Smalldon).

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and advisor—created conflicts of interest that exploited detainees and compromised Dr. James’s judgment and objectivity. Rather than avoiding these directly conflicting roles, Dr. James embraced them, violating his ethical duties, engaging in the negligent practice of psychology, and demonstrating a lack of the good moral character necessary for licensure in Ohio.

Dr. James Assumed Multiple Prohibited Relationships with Minors under His Care by Assuming a Role in Their Treatment and Their Interrogation.

78. Dr. James admits that he “was charged with building a team for the academic, medical, [and] psychological . . . efforts” for three boys held at Guantánamo. As such, Dr. James assumed a professional role as the boys’ supervising treating psychologist.²⁵² While admitting that the boys were “fragile psychologically” and claiming that his job was to ensure that they were not harmed,²⁵³ Dr. James nonetheless assumed the conflicting professional role of advisor to their interrogators. He oversaw the intelligence collection efforts relating to the minors under his care,²⁵⁴ was present at all of their frequent and prolonged interrogations,²⁵⁵ and apparently provided interrogators and guards “with feedback by coaching [and] mentoring.”²⁵⁶
79. Ohio law prohibits conflicting roles where they merely “risk” exploitation.²⁵⁷ Dr. James’s involvement in interrogations was *aimed* at exploitation. The purpose of these interrogations was, at best, to use the boys to gather actionable military intelligence, not to provide treatment.²⁵⁸ Dr. James describes his role as “getting [the boys’] health on track” in preparation for interrogation.²⁵⁹ He admits: “There was no mistaking our intentions. We needed these boys to talk to us, and we established a program that would help us get to know them and encourage them to trust us.”²⁶⁰

²⁵² See *supra* ¶ 44.

²⁵³ *Id.*

²⁵⁴ See *supra* ¶ 44-47.

²⁵⁵ See *supra* ¶ 46.

²⁵⁶ *BSCTs Integral*, JTF-Guantanamo Newsletter, *supra* note 8.

²⁵⁷ OAC § 4732-17-01(E)(2); see also APA Ethics Code, *supra* note 17, § 3.06 (“[P]sychologists refrain from taking on a professional role when . . . professional . . . interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.”). The DOD has instructed BSCT members to be “keenly aware” of multiple relationships since these relationships are inevitable in military situations. BSC Policy (Oct. 20, 2006), *supra* note 14, at 18-19.

²⁵⁸ See *supra* ¶ 47.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

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80. Dr. James's assumption of dual relationships with these boys led to role confusion, which impaired his judgment and objectivity. Although the juveniles were released without ever having been charged with a crime,²⁶¹ Dr. James published a book characterizing them as "teenage terrorists"²⁶² and intelligence sources [REDACTED]
81. The interests of a treating psychologist (to protect and heal the prisoner) and of an interrogation advisor (to exploit the prisoner's dependency and weaknesses for intelligence) are irreconcilable. Dr. James knew that these roles were in conflict.²⁶⁴ Yet, instead of withdrawing from these conflicting roles, Dr. James chose to flout established standards by doing precisely what professional – and military rules – have long prohibited.²⁶⁵ Reflecting on his roles at Guantánamo, and later at Abu Ghraib, Dr. James admits that he first saw himself "as wearing a white doctor's lab coat while at the same time . . . a soldier's uniform."²⁶⁶ Then, he said, he decided to "no longer try to keep them as separate but equal entities . . . , as most health care professionals in the military try to do, but rather . . . find a way to merge them into one."²⁶⁷ Finally, he wrote:
- It was clear to me that I was no longer a doctor but rather a combatant with the sole purpose of helping the Army kill or capture the enemy.*²⁶⁸
82. The problem, of course, is that Dr. James *was* a "doctor," insofar as he held a healing license. More importantly to this Board, despite having grossly disregarded his ethical obligations as a psychologist, Dr. James nevertheless sought to retain the privilege and status

²⁶¹ DoD Releases Juveniles (Jan. 29, 2004), *supra* note 126.

²⁶² *Fixing Hell*, *supra* note 3, at 39.

²⁶⁴ *See supra* ¶ 21; *Fixing Hell*, *supra* note 3, at 49 ("It was a constant struggle to find the right psychological balance between seeing them as either terrorists who happened to be fourteen or harmless boys caught up in the tragedy of their third world nation's plight."); *Fixing Hell*, *supra* note 3, at 48 ("My days were intense, trying to make sure the boys were not abused or unnecessarily stressed while also facilitating their interrogation.").

²⁶⁵ *See, e.g.*, APA Ethics Code, *supra* note 17, § 3.05 ("Multiple Relationships"); DoD Directive 3115.09 (Nov. 3, 2005) ¶ 3.4.3.3, available at http://www.cdi.org/news/law/DoD-Directive-3115_09.pdf (stating that behavioral science consultants who provide interrogation advice "may not provide medical care for detainees except in an emergency when no other health care providers can respond adequately"); *see also* E-mail from Col. Louie M. Banks re: Discussion (May 11, 2005), in APA PENS Listserv *supra* note 19, at 17-18 (noting requirement that military personnel involved in mental health evaluation and treatment not be involved in interrogation support); *see also* American Medical Association, Code of Medical Ethics Opinion E-2.068 - Physician Participation in Interrogation, available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2068.shtml> ("Physicians must neither conduct nor directly participate in an interrogation, because a role as physician-interrogator undermines the physician's role as healer and thereby erodes trust in the individual physician-interrogator and in the medical profession.").

²⁶⁶ *Fixing Hell*, *supra* note 3, at 178-179; *supra* ¶ 21.

²⁶⁷ *Id.* at 179.

²⁶⁸ *Id.* at 170.

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that come with being a “doctor.” Yet, his decision to merge the roles of healer and interrogator was made to the clear detriment of his clients,²⁶⁹ and embodied exactly the sort of ethical conflict against which the OAC is meant to protect.²⁷⁰

To the Extent that BSCT Members Were Charged with Monitoring Detainee Safety, Dr. James and Those Allegedly under His Command Entered into Prohibited Multiple Relationships with Other Detainees at Guantánamo.

83. If in addition to exploiting their prisoners for intelligence, Dr. James and those allegedly under his command were also purportedly expected to monitor their safety, then the duties of the Guantánamo BSCT required assuming conflicting multiple relationships. While Dr. James and his team may have been formally assigned the role of “safety monitors,”²⁷¹ fulfilling this function while simultaneously advising on ways to increase the detainees’ stress constituted a clearly established and recognizable conflict of interest.
84. The roles of protector and exploiter are fundamentally in conflict, and a reasonable psychologist would have recognized that the assumption of these conflicting roles was unethical. Yet, Dr. James—who allegedly had control over the scope and definition of BSCT members’ duties—*embraced and promoted* the idea that psychologists could simultaneously exploit and protect.²⁷² In doing so, he not only assumed the prohibited multiple relationships himself, but also ensured that his subordinates and their successors would find themselves in a position where fulfilling their BSCT tasks meant violating their own ethical obligations.²⁷³
85. Dr. James’s assumption of conflicting protective and intelligence extraction roles at Guantánamo compromised his judgment and objectivity. Within the “enhanced interrogation program” context, the detainees’ exploitation was not so much a “risk” but an inherent factor of Dr. James’s dual role.²⁷⁴ In fact, detainees suffered tremendously under Dr. James’s watch.²⁷⁵

²⁶⁹ See *supra* ¶¶ 50-51.

²⁷⁰ OAC § 4732-17-01(E)(2)(a)(ii).

²⁷¹ See *supra* ¶ 19.

²⁷² See *supra* ¶¶ 45, 47.

²⁷³ Following orders is not a defense to ethical or legal liability. See APA Ethics Committee, No Defense to Torture under the APA Ethics Code (Jun. 2009), available at <http://www.apa.org/news/press/statements/ethics-statement-torture.pdf>; APA Ethics Code, *supra* note 17, §§ 1.02 -1.03 (as amended, Feb. 10, 2010), available at <http://www.apa.org/news/press/releases/2010/02/ethics-code.aspx>; ICRC, Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal (1950), Principle IV, available at <http://www.icrc.org/ihl.nsf/FULL/390?OpenDocument>.

²⁷⁴ See *supra* ¶¶ 8-20.

²⁷⁵ See *supra* ¶¶ 49-51.

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DR. JAMES FAILED TO MAINTAIN CONFIDENTIALITY

“When any case report or other confidential information is used as the basis of teaching, research, or other published reports, a psychologist . . . shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client or subject identification.”

OAC § 4732-17-01(G)(1)(b)

“A psychologist . . . shall continue to treat all information regarding a client as confidential after the professional relationship between the psychologist . . . and the client has ceased.”

OAC § 4732-17-01(G)(1)(e)

“The state board of psychology may refuse to issue a license to any applicant, may issue a reprimand, or suspend or revoke the license of any licensed psychologist or licensed school psychologist [for] willful, unauthorized communication of information received in professional confidence.”

ORC § 4732-17(A)(4)

“A psychologist . . . shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional duties. With the exceptions as required or permitted by statute, a psychologist . . . shall disclose confidential information to others only with the informed written consent of the client.”

OAC § 4732-17-01(G)(2)(d)

“A psychologist . . . shall limit access to client records and shall ensure that all persons working under his/her authority comply with the requirements for confidentiality of client material.”

OAC § 4732-17-01(G)(1)(d)

86. Dr. James violated OAC § 4732-17-01(G)(1)(b), OAC § 4732-17-01(G)(1)(e), and ORC § 4732-17(A)(4) by failing to protect client confidentiality and willfully communicating information received in professional confidence.

87.

[REDACTED]

Moreover, during his tenure at Guantánamo, he failed to safeguard and limit access to client records in violation of OAC § 4732-17-01(G)(2)(d) and OAC § 4732-17-01(G)(1)(d).

88. The OAC defines confidential information as “information revealed by an individual or individuals or otherwise obtained by a psychologist . . . where there is reasonable expectation that it was revealed or obtained as a result of the professional relationship between the individual(s) and the psychologist.”²⁷⁷ Psychologists rely on confidentiality rules to build trust with their clients. Without this trust, they cannot carry out their professional responsibilities effectively. Dr. James’s confidentiality breaches undermined

²⁷⁷ OAC § 4732-17-01(G)(1).

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the profession, exacerbated harm,²⁷⁸ constituted negligent practice of psychology, and demonstrated that he lacks the good moral character necessary for licensure in Ohio.

[REDACTED]

[REDACTED]

[REDACTED]

Dr. James Failed to Safeguard Confidential Information and Limit Access to Client Records by Instituting a Policy That Granted the BSCT Access to Detainee Medical Information.

- 91. In violation of the ethical duty to safeguard confidential information and limit access to client records, Dr. James admits to developing a policy requiring that treating health professionals provide the BSCT with access to the medical information of detainees.²⁸⁴
- 92. As discussed above, widely recognized professional norms prohibit all health professionals – those directly treating detainees and those acting in other capacities – from vetting detainees for abusive interrogation.²⁸⁵ Dr. James instituted a policy that attempted to circumvent this ethical duty by requiring treating health professionals to improperly disclose confidential information to the BSCT. Yet, BSCT members were themselves health professionals

²⁷⁸ See supra ¶¶ 50-51.

[REDACTED]

²⁸⁴ See supra ¶ 17.

²⁸⁵ Id.

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specifically charged with vetting prisoners for abusive interrogation.²⁸⁶ Adding a new layer of psychologists and psychiatrists to do the vetting did not correct the ethical problem.

93. Furthermore, the function of the BSCT was inherently exploitative and harmful to detainees.²⁸⁷ By ensuring that he and other BSCT personnel would have access to detainee medical information, Dr. James's confidentiality breach increased the detainees' risk of being exploited. A reasonable psychologist in his position would have been aware of this risk. Thus, in creating this policy, he also violated his duty to protect the detainees from harm.²⁸⁸

DR. JAMES MISREPRESENTED HIS EXPERIENCE, THE NATURE OF HIS AFFILIATIONS, AND THE RESULTS OF HIS SERVICES

"The psychologist . . . shall not misrepresent directly or by implication his/her affiliations or the purposes or characteristics of institutions and organizations with which the psychologist is associated."

OAC § 4732-17-01(B)(3)

"A psychologist . . . shall not include false or misleading information in public statements concerning psychological services offered."

OAC § 4732-17-01(B)(3)(c)

"A psychologist . . . shall not use fraud, misrepresentation, or deception in obtaining a psychology . . . license, in taking a psychology . . . licensing examination, . . . in providing psychological . . . services, in reporting the results of those services, or in conducting any other activity related to the practice of psychology or school psychology..."

OAC § 4732-17-01(I)(2)

94. In violation of the OAC, Dr. James has repeatedly misrepresented to the public, directly and/or by implication, the purpose and characteristics of the Guantánamo BSCT and the nature and results of the psychological services he provided as a senior member of that team. He made misrepresentations prior to his Ohio licensing application, while his application was pending, and he has continued to make misrepresentations after receiving a license by this Board. Furthermore, Dr. James's publicly released application to this Board suggests that he may have used fraud, misrepresentation and/or deception in obtaining a psychology license by omitting from his application any reference to his psychological work experience in Guantánamo and Abu Ghraib.

²⁸⁶ *Id.*

²⁸⁷ *See supra* ¶¶ 8-20, 30-36.

²⁸⁸ Because Dr. James was neither required nor permitted by statute to develop this policy, his conduct is not exempted under OAC § 4732-17-01(G)(2)(d). Nor can he defend his policy under OAC § 4732-17-01(G)(2)(f), which only permits psychologists to "release confidential information . . . to conform with state or federal laws, rules, or regulations." This exemption exists to allow psychologists to conform with existing regulations instituted by others; it cannot be used by psychologists wishing to immunize themselves from liability by *themselves* formulating regulations that call for the systematic violation of client confidentiality.

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95. We recognize that the extent of Dr. James's individual complicity in the abuse in Guantánamo is ultimately a matter for this Board to determine, following an investigation and hearing. However, no further investigation is needed to establish that men and boys were physically and psychologically abused as a matter of policy in Guantánamo during, between, and following his deployments. The record on this is clear, thanks not only to victim testimony and reporting by the media and human rights organizations, but also to the critical work of the Senate Armed Services Committee and the inspectors general of the CIA, DOD and DOJ. There is no question that Dr. James has made numerous false or misleading statements. Moreover, the amount, source, and public nature of the evidence contradicting his statements suggest that Dr. James is acting with intent to deceive and mislead.
96. In affirming this Board's decision to indefinitely suspend a psychologist's license, the Court of Appeals of Ohio, Tenth Appellate District clarified that "[o]ne of the obvious purposes of the regulation of professions is to prevent damage from misrepresentations about a professional's competence before any person in the general public is damaged."²⁸⁹ Dr. James's status as a public figure and position of influence heightens the risk of damage posed by his misrepresentations. As Dean of Wright State University's School of Professional Psychology, President of the Society for Military Psychology of the American Psychological Association,²⁹⁰ and the convener of trainings such as this year's Executive Workshop for high-level government officials,²⁹¹ his statements reach a wide and important audience.
97. Therefore, in addition to violating the rules enumerated above, Dr. James's past and ongoing misrepresentations constitute negligence in the practice of psychology and demonstrate a lack of good moral character required for licensure in Ohio.

The Evidence Suggests that Dr. James May Have Misrepresented His Experience to the Ohio State Board of Psychology.

98. Dr. James omitted from his paper application for licensure by this Board any reference to his psychological work experience in Guantánamo and Abu Ghraib.²⁹² In response to this Board's request for "a complete list of all psychological training and work experience,"²⁹³ Dr. James listed only that he served as chief of the psychology departments at Walter Reed in Washington, D.C. (August 1999 to May 2004) and at Tripler Army Medical Center in Honolulu (May 2004 to July 2008). Asked to describe his activities and responsibilities in

²⁸⁹ *In re Barnes*, 510 N.E.2d at 398 (emphasis added).

²⁹⁰ See APA, Society for Military Psychology (Division 19), <http://www.apa.org/about/division/div19.aspx> (last visited Jul. 2, 2007).

²⁹¹ See Wright State University, Psychology of Terrorism Executive Workshop (Feb. 3-4, 2010), available at http://www.wright.edu/idse/Psychology_of_Terrorism_Executive_Workshop.pdf.

²⁹² See *supra* ¶ 53.

²⁹³ *Id.*

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each position, he responded only that he “directed the service, research + training programs for a large APA approved program/department.”²⁹⁴

99. Even if he formally retained his title at Walter Reed and Tripler Army Medical Center while on assignment in Guantánamo and Abu Ghraib, Dr. James had an obligation to inform this Board that from January 2003 to May 2003, from June 2004 to October 2004, and from June 2007 to June/July 2008, he held vastly different positions in different institutions and locations, requiring different responsibilities, and for which he performed psychological activities of a very different nature.²⁹⁵ Dr. James was well aware of the heated controversy surrounding these prisons and, in particular, the role of military psychologists in the interrogation and treatment of prisoners held in them.²⁹⁶ And as a vigorous and visible participant in the debate over the ethics of psychologist participation, he was aware that many in his profession considered such participation highly relevant to the assessment of a psychologist’s moral character.²⁹⁷
100. Ohio courts recognize that a violation of a rule against misrepresentation can be established by a professional’s omission.²⁹⁸ Thus, unless Dr. James provided additional documentation to this Board (documentation that the Board did not release in response to Dr. Bond’s two public records requests), then Dr. James used fraud, misrepresentation and/or deception in obtaining a psychology license, in violation of OAC § 4732-17-01(I)(2).

Evidence Indicates that Dr. James Misrepresented to the Public and His Professional Association the Nature of His Affiliations and the Results of His Services.

101. Dr. James violated OAC § 4732-17-01(I)(2). By stating that reports of abuse in Guantánamo ceased with his arrival;²⁹⁹ that the “harsh techniques” prohibited by the APA for psychologists “were not used under [his] watch at Gitmo;”³⁰⁰ that the Joint Task Force in Guantánamo “treat[ed] detainees like every human being should be treated – safely and

²⁹⁴ *Id.*

²⁹⁵ *See supra* note 180 for additional omissions, including his licensure in Guam.

²⁹⁶ *See, e.g.,* Letter to Sharon Brehm (Jun. 2007), *supra* note 174; APA PENS Listserv *supra* note 19; *Fixing Hell supra* note 3, at 240-256 (Ch. 13: “Facing My Critics”).

²⁹⁷ *See* Letter to Sharon Brehm (Jun. 2007), *supra* note 174; *Fixing Hell supra* note 3, at 240-256 (Ch. 13: “Facing My Critics”).

²⁹⁸ *In Re Barnes*, 510 N.E.2d 392, 397 (“...in the regulation of a profession (such as psychology), a violation of a rule against ‘misrepresentation’ can be established by the actions (and in some circumstances, the inactions) of a professional without the necessity of demonstrating that any other person (patient, client, customer, or other professional) has been misled to his/her damage ... We are examining the authority of the state to regulate a profession for the protection of the public. The profession of psychology is not unlike the legal profession in the importance of its relationship with its clientele, which is drawn from the general public...”).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

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humanely,” and did “not abuse, beat or strip anybody...”;³⁰¹ that the “problems” of abuse were in fact “fixed;” and that psychologists were responsible for such “fix[ing],”³⁰² Dr. James engaged in fraud, misrepresentation, and/or deception in reporting the results of his services.

102. Dr. James also violated OAC § 4732-17-01(B)(3) by misrepresenting, directly and/or by implication, the purpose and characteristics of the Guantánamo BSCT as a unit concerned primarily with protecting detainees from harm. He violated OAC § 4732-17-01(B)(3)(c) by providing false and/or misleading information to the public about the nature of his psychological services. For example, in e-mails to an American Psychological Association task force, Dr. James wrote that “psychologists at these facilities worked to protect the welfare and safety of the detainees” and characterized this function as a “major safety role.”³⁰³
103. As discussed *supra*, the Senate Armed Services Committee concluded that the Guantánamo BSCT played an integral role in the exploitative interrogation program used at the prison.³⁰⁴ Dr. James and his subordinates were not independent monitors; they were active and important participants in interrogation teams tasked with breaking down prisoners. Their role as advisers may have included calibrating the amount of harm that detainees suffered. But ensuring that detainees were slammed to the floor *in the right way*,³⁰⁵ or that they not be stripped naked and sexually and religiously humiliated *for too long*³⁰⁶ is under no reasonable interpretation “protecting [their] welfare and safety.”
104. Dr. James was not sent to Guantánamo to ensure the humane treatment of detainees. At the time of his deployment and during his tenure, neither the Department of Defense leadership nor JTF-GTMO’s commanding officer showed any intention of adopting lawful and humane treatment of detainees. In January 2003, Secretary of Defense Rumsfeld had convened a working group intent on producing, over the objections of high-ranking military lawyers, an April 2003 policy that reinstated approval of abusive interrogation techniques such as isolation, sleep deprivation, diet manipulation, and fear exploitation.³⁰⁷ While Dr. James contends that Miller tasked him with getting intelligence without humiliation or sleep deprivation, the Senate Armed Services Committee reports that, during the period of Dr. James’s tenure, Miller insisted on the need to, among other things, strip detainees and interrogate them for 20 hours.³⁰⁸

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *See supra* ¶ 52.

³⁰⁴ *See supra* ¶ 12.

³⁰⁵ *See supra* ¶¶ 30-36.

³⁰⁶ *See supra* ¶¶ 37-42.

³⁰⁷ *See supra* ¶ 26 and note 68.

³⁰⁸ *See supra* ¶ 26 and note 67.

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105. Dr. James’s statement that he “helped [interrogators] stay within the SOP [standard operating procedures] *and* stay away from abusive behaviors” (emphasis added) is highly misleading, in that it . The suggestion is that staying within the SOP prevented soldiers from abusing detainees. However, abusive behavior was enshrined in the standard operating procedures, thanks in part to the BSCT members themselves.³⁰⁹
106. Despite clear evidence that SERE-based techniques were camp policy and regularly used at the time,³¹⁰ Dr. James vehemently denies having ever used them. To date, he has not explained how he played an influential role in the BSCT at this time without using any of the techniques outlined in the task force’s standard operating procedures.
107. It is not true that “it was psychologists who fixed the problems and not caused it.” As described *supra*, BSCT psychologists played an integral role in planning, implementing, and purportedly legitimizing abusive interrogations and detention conditions.³¹¹ They did this before Dr. James’s arrival, and continued after his departure. Guantánamo’s first BSCT psychologist, John Leso, co-drafted the blueprint for abusive techniques and participated in the application of those techniques to Mohammed al Qahtani in 2002.³¹² In the fall of 2003, Dr. James’s successor, BSCT psychologist Diane Zierhoffer, reportedly advised interrogators to increase the suffering of the mentally fragile teenage prisoner Mohammed Jawad.³¹³
108. Another example of Dr. James’s inconsistency: in September 2007 and January 2008, he told reporters that the Joint Task Force in Guantánamo “treat[ed] detainees ... safely and humanely” and did “not abuse, beat or strip anybody,” and that he had “not seen a guard or interrogator abuse anyone in any shape or form.” Yet a few months later, he published a book in which he described having witnessed, in 2003, three guards and an interrogator violently wrestling a naked detainee to the floor in an attempt to force him into women’s lingerie.³¹⁴ Taking yet another confusing turn, he insisted later in the same book that none of the “harsh techniques” prohibited by the APA were used while he was in Guantanamo. That list includes forced nudity and sexual, religious, and cultural humiliation.
109. Finally, and easiest of all to disprove, is Dr. James’s direct and implied contention that abuses came to a stop after his arrival in Guantanamo. Dr. James did not “fix” abuse at the prison. As discussed *supra*, the Senate Armed Services Committee reported that abuses continued during and after his tenure. The Senate concluded that among the many abusive techniques reportedly used or planned for use in Guantánamo during the spring and summer

³⁰⁹ See *supra* ¶¶ 3-20.

³¹⁰ See *supra* ¶¶ 8-11.

³¹¹ See *supra* ¶¶ 12-42.

³¹² See *supra* note 52.

³¹³ See *supra* ¶ 52 and note 148.

³¹⁴ See *supra* ¶¶ 37-40.

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of 2003 were “threats of death,” “sensory deprivation,” religious humiliation, and sexual assault and humiliation by female interrogators.”³¹⁵

110. By September 2008, when Dr. James published his book, the public record was replete with “incidents of abuse by [interrogators and psychologists] reported since [his] arrival in Cuba in January 2003.”³¹⁶ Since then, even more reports have come to light.³¹⁷ Yet, instead of acknowledging earlier reports or subsequently correcting his previous statements, Dr. James misrepresented and has continued to misrepresent the truth.³¹⁸

REQUEST FOR INVESTIGATION AND SANCTION

111. Following a prompt, thorough, and impartial investigation into the fitness of Dr. Larry James to practice psychology, we ask this Board to seek permanent revocation of his license to practice psychology in the State of Ohio.

³¹⁵ See *supra* notes 74-75.

³¹⁶ See, e.g., *Commander’s Inquiry* (Apr. 30, 2003), *supra* note 34; OIG/DOJ Report (May 2008), *supra* note 70; Schmidt-Furlow Report (Apr. 1, 2005, am. June 9, 2005), *supra* note 72; Tipton Three Statement (Jul. 26, 2004), *supra* note 75; *ICRC Finds Mental Health Deterioration* (Oct. 10, 2003), *supra* note 82; *Break Them Down* (2005) *supra* note 154; *Locked Up and Alone* (June 2008), *supra* note 159; *Broken Laws, Broken Lives* (June 2008), *supra* note 70.

³¹⁷ See, e.g., *SASC Report* (Nov. 2008, released Apr. 21, 2009), *supra* note 18; *Experiments in Torture* (Jun. 2010), *supra* note 51; *Guantanamo and its Aftermath* (Jul. 2009), *supra* note 72; ACLU Petition (Jan. 13, 2009), *supra* note 145.

³¹⁸ See *supra* ¶ 52.

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