



THE CENTER FOR JUSTICE & ACCOUNTABILITY  
Bringing Human Rights Abusers To Justice.

**TESTIMONY OF**

**KATHY ROBERTS**

**STAFF ATTORNEY**

**THE CENTER FOR JUSTICE & ACCOUNTABILITY**

**BEFORE THE**

**SENATOR THOMAS K. DUANE**

**PUBLIC FORUM ON MEDICAL PROFESSIONALS, TORTURE, AND THE LAW**

**NEW YORK ASSEMBLY**

**NOVEMBER 15, 2011**

**Testimony of**  
**Kathy Roberts**  
**Staff Attorney**  
**The Center for Justice & Accountability**

**Before the**  
**Senator Thomas K. Duane**

**Public Forum on Medical Professionals, Torture, and the Law**  
**November 15, 2011**

Good morning Senator Duane and distinguished participants in this Public Forum on Medical Professionals, Torture, and the Law. I would like to thank you for holding this important hearing. I would also like to applaud Senators Duane and Gottfried for their leadership in advancing the New York Anti-Torture Bill A.6665-B.

My name is Kathy Roberts. I am a Staff Attorney at the Center for Justice and Accountability (CJA – cja.org). CJA is a nonprofit legal organization dedicated to ending torture and seeking justice. We represent hundreds of survivors of torture and other human rights abuses in civil litigation using the Alien Tort Statute and the Torture Victim Protection Act in the United States. In addition, we work as a popular prosecutor on human rights criminal prosecutions in Spain where we are lead counsel on the *Jesuits Massacre Case* and the *Guatemala Genocide Case*. Further, we currently represent 45 Civil Parties in the Second Khmer Rouge trial scheduled to begin in Phnom Penh in November of this year.

In the past twelve years, we have brought cases in the United States against human rights abusers from Bosnia, Chile, China, Colombia, El Salvador, Haiti, Honduras, Indonesia, Peru and Somalia. Last year, CJA filed our first and only complaint against a U.S. official. Specifically, we filed a complaint with the New York Office of Professional Discipline (OPD) on behalf of New York psychologist Dr. Steven Reisner against New York psychologist Dr. John Leso for his role in designing, implementing, and participating in a system of abusive interrogations at United States Naval Station at Guantánamo Bay, Cuba. We are, therefore, in a unique position to offer insights about the role of New York psychologists in abusive interrogation and torture at Guantánamo, New York's current professional standards governing the role of psychologists in interrogations, and the importance of this legislation.

## 1. **ROLE OF NEW YORK PSYCHOLOGIST IN ABUSIVE INTERROGATION AND TORTURE AT GUANTÁNAMO**

Documents made public by the United States Senate Armed Services Committee, the Central Intelligence Agency (CIA), and the Department of Defense, among others, make clear that prisoners held in U.S. detention facilities in Guantánamo, Iraq, Afghanistan, and in CIA-operated “black sites” around the world were tortured and subjected to abusive interrogation techniques. Further, health professionals, and psychologists in particular, played a prominent role at every stage of the development and implementation of the torture and abusive interrogation techniques used at these sites.

Although most of the names of the individuals involved in the development and implementation of these programs are not known, public documents have revealed the name of one New York psychologist, Dr. John Francis Leso.

Dr. Leso received his PhD in psychology from SUNY in Albany and completed his doctoral training and residency at Bellevue Hospital in New York City. He has been licensed to practice psychology in New York since 1998.

Dr. Leso led the first Behavioral Science Consultation Team (BSCT) at the United States Naval Station at Guantánamo Bay, Cuba (Guantánamo or GTMO) from June 2002 to January 2003. While at Guantánamo, Dr. Leso co-authored an interrogation policy memorandum that incorporated techniques used by the Chinese and North Korean military against U.S. prisoners of war. These recommendations included a series of interrogation techniques, with increasing psychological and physical abuse, to be applied against detainees held by the United States. Dr. Leso’s recommendations were implemented in Guantánamo in 2002 and provided the foundation for the degrading and physically debilitating interrogation tactics used at that time.<sup>1</sup>

The interrogation tactics Dr. Leso recommended for use against high priority detainees included a noxious cocktail of stress positions; sensory deprivation; sleep deprivation through daily 20 hour interrogations; strict isolation without the right of visitation by treating medical professionals or the International Committee of the Red Cross; food restrictions; scenarios designed to convince the detainee he might experience a painful or fatal outcome; “non-injurious” physical consequences; removal of clothing; and exposure to cold temperatures and water.

Many of the techniques and conditions that Dr. Leso helped put in place were applied to suspected al-Qaeda member Mohammed al Qahtani under Dr. Leso’s direct supervision, as well

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<sup>1</sup> See CJA Complaint at 6-9, *available at* <http://www.cja.org/article.php?id=885>.

as to other men and boys held at Guantánamo. Eventually, similar techniques were also used on prisoners held in U.S. custody in Iraq and Afghanistan.

The use of these techniques is well documented in a leaked interrogation log of prisoner Mohammad al Qahtani. The log captures in excruciating detail how al Qahtani was interrogated by use of sexual humiliation, sensory deprivation, extreme sleep deprivation, exposure to extreme cold which led to hypothermia, stress positions, and being threatened with military dogs. Qahtani was hooded between movements, subject to 160 days of isolation, and 48 days of consecutive 18 to 20 hour interrogations. He was also forcibly injected with three and half bags of saline, causing a fluctuation in Qahtani's weight, swelling in his limbs, and eventually causing him to soil himself.<sup>2</sup>

Although Dr. Leso's presence is documented at various times throughout the interrogation, there is no indication that Dr. Leso intervened at any time to ensure the physical or mental well-being of al-Qahtani or to say that the interrogation had gone too far. On the contrary, despite directly observing al-Qahtani in extreme psychological trauma, Dr. Leso continued to advise interrogators on how to further the abuse.<sup>3</sup>

## **2. NEW YORK'S CURRENT PROFESSIONAL STANDARDS GOVERNING THE ROLE OF PSYCHOLOGISTS IN INTERROGATIONS**

The US military requires its psychologists to maintain valid licenses issued by one of the 50 states and relies on the states to set professional and ethical standards for their own licenses.<sup>4</sup> The Department of Defense regulations hold that a professional license is only valid where the "issuing authority accepts, investigates and acts upon quality assurance information such as practitioner professional performance, conduct, and ethics of practice regardless of the practitioner's military status or residency."<sup>5</sup> This requirement applies to all healthcare practitioners practicing in the military or operation environments. Accordingly, the Department of Defense recognizes that the state licensing body has the authority to investigate and discipline cases of unethical conduct, regardless of the location where the misconduct occurs.

New York State's Education Department administers professional regulations through its office of Professions. This office oversees and investigates complaints against licensees and determines whether there has been a violation of NY's standards of professional conduct.

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<sup>2</sup> See CJA Complaint at 9-16, *available at* <http://www.cja.org/article.php?id=885>.

<sup>3</sup> See CJA Complaint at 17-19, *available at* <http://www.cja.org/article.php?id=885>.

<sup>4</sup> See 10 U.S.C. § 1094; Department of Defense Directive 6025.13-R "Medical Health System Clinical Quality Assurance [hereinafter CQA] Program Regulations Ch 4 1.1.1, 4 1.1.4 (June 11, 2004).

<sup>5</sup> CQA DL1.1.23.2.

In July 2010, CJA filed a complaint with New York’s Office of Professional Discipline (OPD)<sup>6</sup> on behalf Dr. Reisner alleging that Dr. Leso violated New York Education Law and requesting that the OPD initiate an investigation into the misconduct. Our complaint alleges that Dr. Leso’s recommendation and supervision of abusive interrogation techniques constitute unprofessional conduct and the practice of the profession beyond its authorized scope, in violation of New York Education Law. Moreover, we allege that Dr. Leso’s conduct exhibited a moral unfitness to practice the profession, neglect of a patient in need of immediate care, willful abuse and harassment, and unauthorized and unwarranted treatment in violation of the New York Rules of Regents.<sup>7</sup> The complaint is supported by numerous documents made public by the United States Senate Armed Services Committee, the Central Intelligence Agency, and the Department of Defense, among others.

The OPD’s duty to investigate allegations of professional misconduct is mandatory under New York Education Law and the Education Commissioner’s own rules and regulations. The Complaint against Dr. Leso alleges and documents multiple instances of professional misconduct, thereby imposing a mandatory obligation upon the OPD to investigate. The OPD, however, has vigorously opposed the allegations in the Complaint, asserting that it had no oversight authority over the alleged acts of Dr. Leso. OPD’s conclusions are wrong, and CJA has joined the New York Civil Liberties Union in a lawsuit against OPD seeking to compel OPD to investigate whether Dr. Leso’s acts violated existing ethical rules. In the meantime, while this case works its way through the courts, CJA strongly supports legislation that will explicitly prohibit medical professionals’ participation in torture.

### **3. IMPORTANCE OF ENACTING THIS LEGISLATION**

As of today, no remedial or disciplinary action has been taken against any health care professional who was involved in military torture and abusive interrogation committed in furtherance of the “War on Terror.” Dr. Leso and other U.S. health care professionals lost their way in the context of detention and interrogation at facilities abroad. New York’s Office of Professional Discipline has interpreted the current ethical regime to permit discipline of a psychologist for overbilling a patient, but not for participating in torture. The complaint against Dr. Leso illustrates the need to expressly define professional obligations in these situations.

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<sup>6</sup> New York State’s Education Department administers professional regulations through its Office of Professional Discipline

<sup>7</sup> §§ 6509 (2) prohibiting practice beyond the authorized scope of the profession, gross incompetence, and gross negligence, section (9), prohibiting unprofessional conduct; Rules of Regents section 29.1(b)(5), prohibiting conduct exhibiting a moral unfitness to practice the profession and (11) prohibiting unauthorized treatment; and Rules of Regents section 29.2(a)(1) prohibiting neglect of a patient in need of immediate care, (2) prohibiting willful abuse and harassment, and (7) prohibiting unwarranted treatment.

As the Department of Defense has vested the authority for reviewing ethical complaints in state licensing bodies, it is imperative that the New York OPD be given clear guidelines that involvement in torture and abusive interrogations constitutes a violation of professional ethics. Such clarity will not only protect the public but is also necessary to protect psychologists who may be unclear on their ethical duties in situations of abusive military interrogation.

Transition from a period of extreme violence is a difficult process. There are lessons to draw from South Africa, Chile, and other countries that have survived violent national traumas like the one that shook the U.S. ten years ago. As in Chile and South Africa and other countries, we must also work for justice in the United States to ensure that the cost and consequences of 9/11 do not eclipse our commitment to the rule of law, to human rights, and to ethical medical practice.

Thank you.