

Medical ethics at Guantanamo Bay detention centre and in the US military: a time for reform

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President Obama has pledged to close the US detention centre at Guantanamo Bay, Cuba, by Jan 23, 2010. Physicians have a special interest in how this pledge is going to be accomplished since the use of brutal interrogation and force-feeding of prisoners as sanctioned by George Bush's administration has damaged the integrity of the physicians working for the military and the Central Intelligence Agency (CIA). These physicians had a conflict of loyalty because of their ethical obligations to their imprisoned patients and the Bush administration's demands to further the goals and interests of military commanders and intelligence officials.¹ A declassified congressional report shows that military physicians developed and implemented interrogation methods, including sleep deprivation, isolation, threats, nakedness, and stress positions.² The release of previously secret memoranda from the US Justice Department shows the involvement of physicians working for the CIA in designing, using, and monitoring interrogation methods, including water boarding.³ The International Committee of the Red Cross has established that these methods amount to torture.⁴

In January, 2009, President Obama directed Robert Gates, the Secretary of Defense, to review the current practices at the detention centre in Guantanamo Bay to determine whether the prisoners were being held in accordance with Common Article 3 of the Geneva Conventions.⁵ Admiral Patrick Walsh, Vice Chief of Naval Operations, led the review team that produced an 81 page report including subjects of special interest to the medical community, such as the health and medical treatment of the prisoners, and the role of medical personnel in hunger strikes and in interrogation support.⁶

Military physicians have been important in stopping hunger strikes at the detention centre in Guantanamo Bay from the outset.⁷ At least since 2005, they have used restraint chairs to put hundreds of prisoners in eight-point restraints (ie, both ankles, wrists, and shoulders, one lap belt, and one head restraint) before, during, and after the placement of a nasogastric tube so that the prisoners can be force-fed.⁷ The use of coercion, physical force, or physical restraints to force-feed competent individuals on hunger strike has been condemned by the World Medical Association as a form of "inhuman and degrading treatment"⁸ that is prohibited according to Common Article 3.⁹

The report,⁶ although noting the World Medical Association's application of the prohibitions of Common Article 3 of the Geneva Conventions to force-feed

prisoners, relies instead on the 2006 medical instruction¹⁰ of the Department of Defense, and the regulations of the US Bureau of Prisons, both of which permit force-feeding to prevent self-harm.¹¹ Admiral Walsh's team—in summarising current practice—perhaps inadvertently, draws attention to some of the main ethical challenges associated with the involvement of physicians in force-feeding prisoners. The first is that the decision alone to force-feed is made on the basis of a classified medical protocol. Second, the physician does not make the decision since "a medical recommendation for intervention with involuntarily intravenous therapy or enteral feeding must be approved by the CJTF [Commander Joint Task Force]."⁶ Third, prisoners often refuse to be taken to be force-fed and then must be forcibly removed from their cells and transported by the non-medical forced-cell-extraction team, consisting of five security personnel in riot gear, a member of the medical staff, and a videographer. Fourth, restraints are used "to protect both the detainee and staff."⁶ Fifth, "time in the feeding chair may not exceed two hours".⁶

The team concluded first, that the policy of force-feeding is designed "to preserve the life and health" of the prisoners; second, the policy is similar to that used by the US Bureau of Prisons; third, the "feeding program is being conducted solely as a medical procedure to sustain the life and health" of individuals on hunger strikes; fourth, the process is "lawful and is being administered in a humane manner"; and fifth, is "in accordance with Common Article 3 and Department of Defense policy."⁶

2 years before physician-assisted force-feeding of individuals on hunger strike at the centre in Guantanamo Bay began, President Bush's Bioethics Council had described the force-feeding of competent prisoners on hunger strike with the use of restraints and a nasogastric tube as a form of torture.¹² The opinions expressed by the Bioethics Council were ignored by the Bush administration, which also ignored the statements of the World Medical Association, American Medical Association, and other organisations that condemned the involvement of physicians in force-feeding and the use of restraint chairs as unethical.^{13,14}

Walsh's team did not question the ethics of the use of a classified medical protocol; a non-physician (the base commander) making a medical treatment decision and the decision to use forced-cell extraction of individuals on hunger strike; the unlikelihood of a prisoner who is strong enough to pose a safety and security danger to the guards needing forced-feeding to save his life or protect his health (force-feeding is routinely started long before it could reasonably be considered medically necessary); the

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absence of justification for the use of restraint chairs for 2 h; and the reliance on procedures used in US prisons that are neither followed at the centre in Guantanamo Bay nor governed by the Geneva Conventions.

In US prisons, when prisoners have been tried, convicted, and sentenced, physicians have exclusive authority to make a final decision, and everything done to prisoners in the USA must be consistent with the US Constitution (not the Geneva Conventions). Prisoners are fed in their cells, and not taken to a central area by guards. In February, 2009, a judge at a US federal district court accepted the US military's position that force-feeding individuals on hunger strike in restraint chairs did not violate the Eighth Amendment of the US Constitution, but the judge did not decide whether force-feeding constitutes torture or cruel, inhuman, or degrading treatment according to the Common Article 3 of the Geneva Conventions.¹⁵ Since January, 2009, there have been 25–50 prisoners on hunger strikes at any time. How many, if any, of the hunger strikers are mentally incompetent or how many, if any, are being coerced by other prisoners to stop eating is not known. Neither of these circumstances, however, would justify force-feeding them in restraint chairs.

With respect to interrogation, since 2002, the Department of Defense, through its behavioural science consultation teams, has used psychologists and, in some cases, psychiatrists, to participate in interrogation.² Walsh's team, in their report, recognise that the Department of Defense continues to use behavioural consultants to make psychological assessments of the character, personality, and other behavioural characteristics of detainees, advise interrogators about strategy and tactics, and monitor interrogations.^{2,16} The team also reported that medical records were no longer available for use by the behavioural science consultants and were subject to strict procedural safeguards. However, the disclosure of medical records for law enforcement and intelligence purposes is allowed according to the department's policy, so clinical records could be available to interrogators.

These roles of the behavioural science consultants in interrogation violate the essential ethical principles of the health professions. Interrogation almost always includes ways to increase the detainee's level of stress, anxiety, and fear, and are inconsistent with the duties of beneficence and non-maleficence. The World Medical Association, American Medical Association, and American Psychiatric Association have all established that the participation of physicians in interrogation, even in the absence of torture, is a breach of their duty not to inflict harm, and is therefore unethical.^{17–19} An independent investigation of the full range of activities of the behavioural science consultation teams has never been undertaken.

To justify the use of these consultation teams in view of the ethical prohibitions, the Department of Defense

during the Bush Administration attempted to exclude them from governing ethical standards on the basis that they are not involved in the clinical practice of medicine or psychology. The professions and ethical standards, however, have no such distinction: all health professionals are bound by the ethics of their specialty no matter what roles they have.²⁰

The Bush Administration's policy is reflected in the report by Walsh's team. The report emphasises that behavioural science consultants report through an intelligence chain of command, not a medical one; do not provide treatment; and do not identify themselves as clinicians to prisoners. Of little comfort is the fact that the report stresses that behavioural science consultants are "operating in accordance with governing policies and procedures."⁶ As with force-feeding, the policies are flawed because they invite and even require unethical behaviour and persist in the use of clinical skills to support interrogation.

Admiral Walsh's team, in reviewing the quality of clinical care given to detainees, complimented the professionalism and the dedication of the medical staff and concluded that "the scope, quality and documentation of care provided to detainees are similar and in most cases identical to care received by US Armed Forces personnel."⁶ The only recommendation was to increase the availability of medical interpreters during evenings and weekends. Walsh's team, however, did not arrange for detainees to have access to independent medical assessments, and the Department of Defense has continued to refuse requests by medical and human-rights groups to do medical assessments of prisoners independently or jointly with military physicians. Therefore, an assessment of the validity of the report's health-related conclusions is not possible.

The unquestioning acceptance by Walsh's team of the claims from the medical staff at the detention centre in Guantanamo Bay about the mental health of prisoners is of special concern. The Walsh report, in citing just one clinician at the detention centre in Guantanamo Bay, stated that the proportion of prisoners with active symptoms of mental disorder is 8%, far lower than the 40–55% noted in US prisons. Lawyers for prisoners, however, have reported their clients' severe mental anguish and reduced functioning that could signify symptoms of serious mental disorders. Some lawyers have sought, so far unsuccessfully, to obtain independent medical and mental health examinations for their clients. Detailed medical and psychological examinations of four detainees released from the detention centre at Guantanamo Bay showed that years after their release the men continued to suffer from disorders including depression, anxiety, and post-traumatic stress disorder.²¹

In conclusion, the difficulties posed when the Department of Defense investigates itself are evident in the report by Walsh's team. This report does not vindicate the many military physicians and psychologists

who acted with honour and integrity. The quandary of dual loyalty in military medicine is not addressed by the report.^{1,22} The issue of how to determine when, if ever, military physicians need not follow basic principles of medical ethics is not confronted in the report. Three actions are needed. First, the Department of Defense should abandon practices, including employing physicians to support interrogation and force-feeding of competent individuals on hunger strike, that are inconsistent with medical ethics. The rule in the US military should be that military physicians never have to compromise medical ethics to serve their country.²² Second, the Department of Defense should permit independent medical reviews of the physical and mental health conditions of the prisoners at the detention centre in Guantanamo Bay and other US military prisons. Third, an independent commission should be established to review not only the entire regime of detention and interrogation of terror suspects by the USA, with emphasis on the role of physicians and psychologists, but also the Department of Defense's protocol for management of prisoners on hunger strike.

Contributors

Both LSR and GJA contributed equally.

Conflicts of interest

LSR is affiliated with Physicians for Human Rights, Cambridge, MA, USA, whose request to examine detainees is referenced in this Viewpoint, and has no financial conflicts of interest. GJA is co-founder of Global Lawyers and Physicians, Boston, MA, USA, a non-governmental organisation that sponsored a series of workshops about military medical ethics that brought the leading military physicians together with representatives from human rights groups and academics to discuss medical policy at Guantanamo Bay (2005–08); and is also a member of the committee for human rights of the national academies, which recommended that the Institute of Medicine should do a study about military medical ethics.

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LSR is on sabbatical from Physicians for Human Rights, MA, USA, and is a Jennings Randolph Senior Fellow at the US Institute of Peace, Washington, DC, USA.

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