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U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 2002

Memorandum for [REDACTED]

Interrogation of [REDACTED]

You have asked for this Office's views on whether certain proposed conduct would violate the prohibition against torture found at Section 2340A of title 18 of the United States Code. You have asked for this advice [REDACTED]

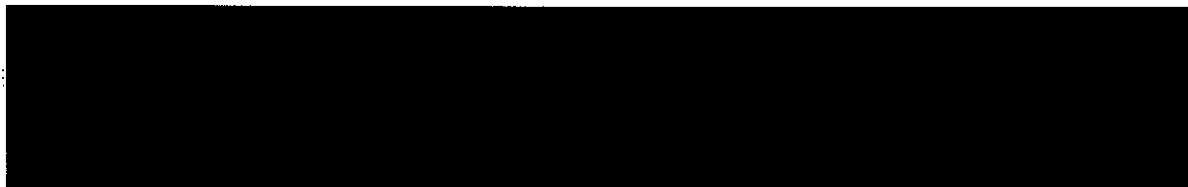
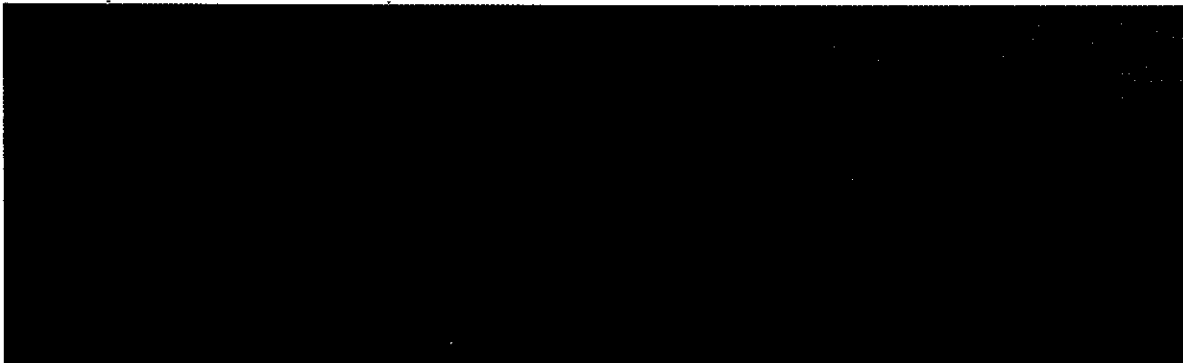
I.

Our advice is based upon the following facts, which you have provided to us. We also understand that you do not have any facts in your possession contrary to the facts outlined here, and this opinion is limited to these facts. If these facts were to change, this advice would not necessarily apply. [REDACTED]

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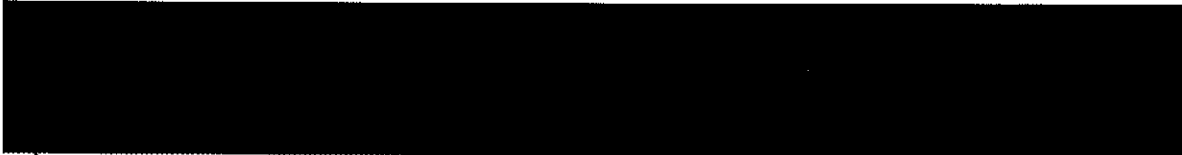
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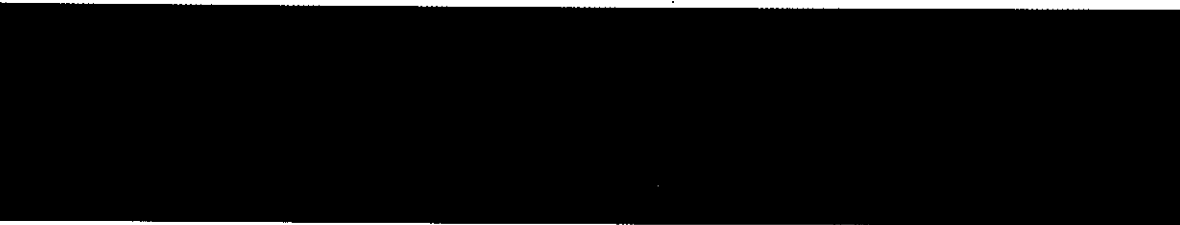
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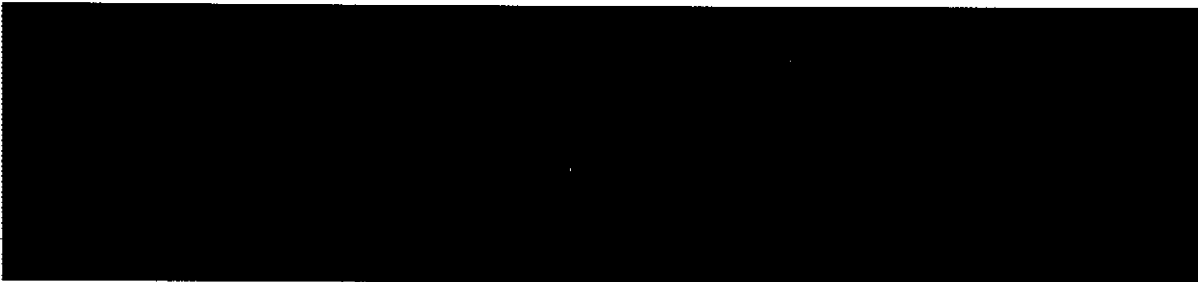
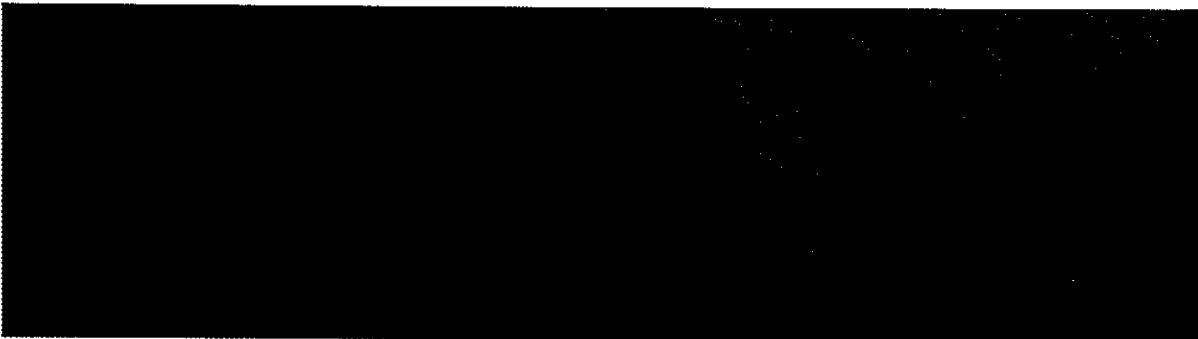


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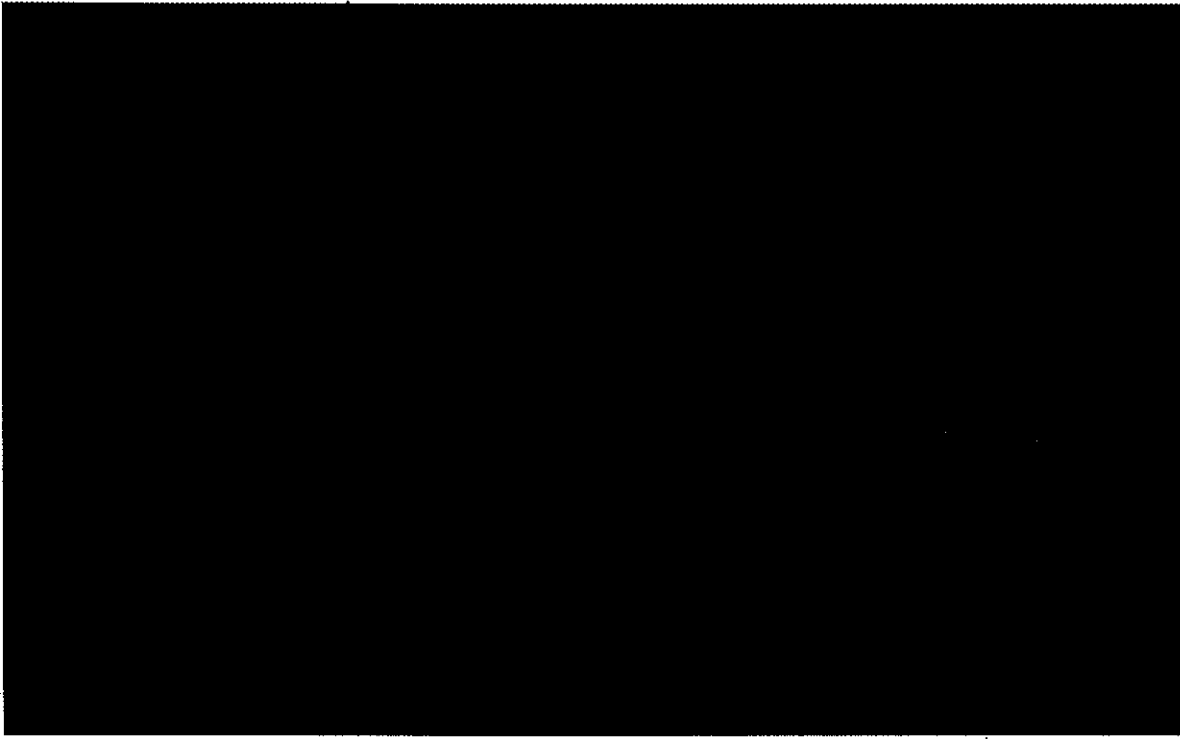
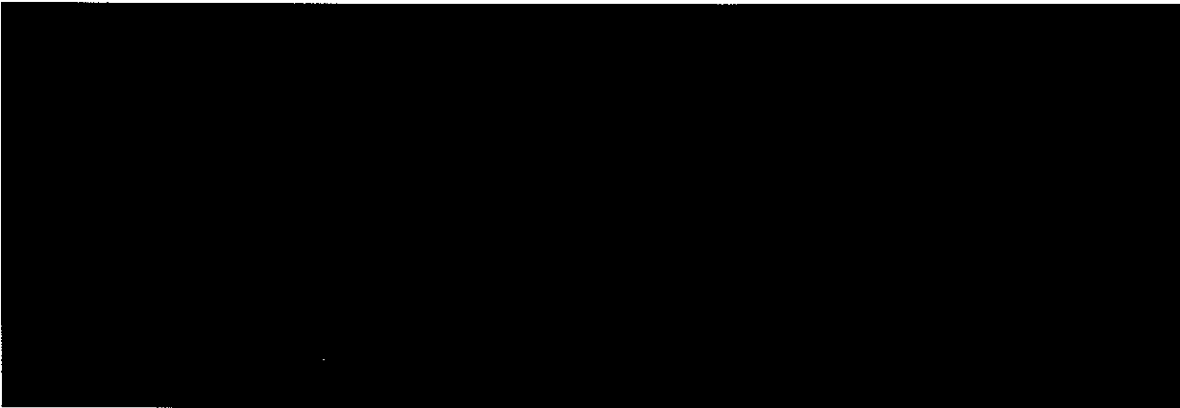
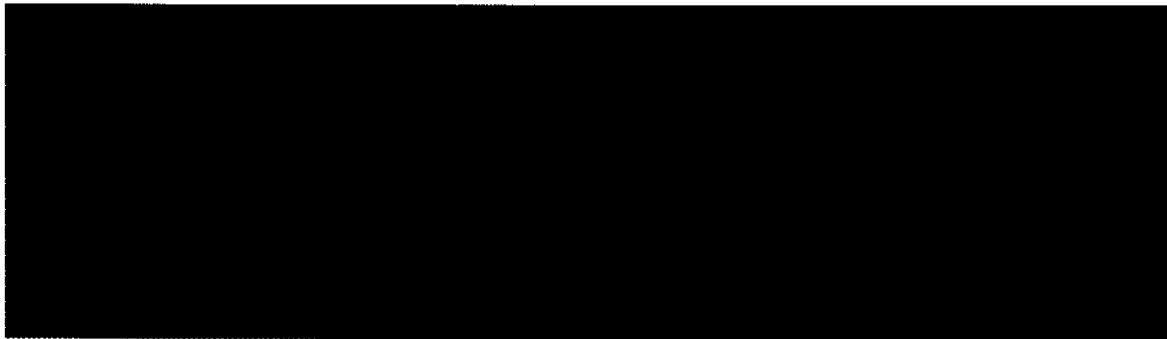


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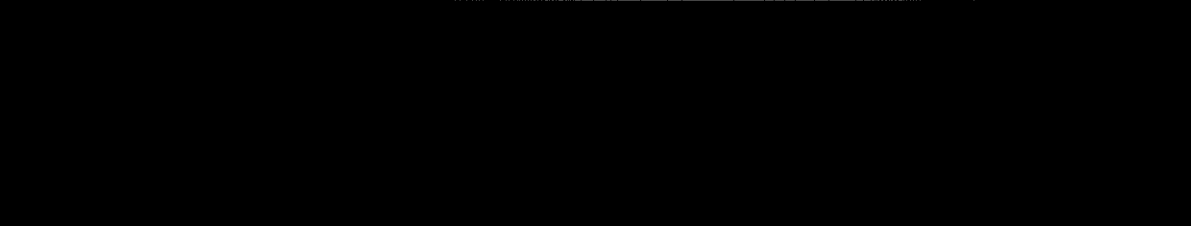
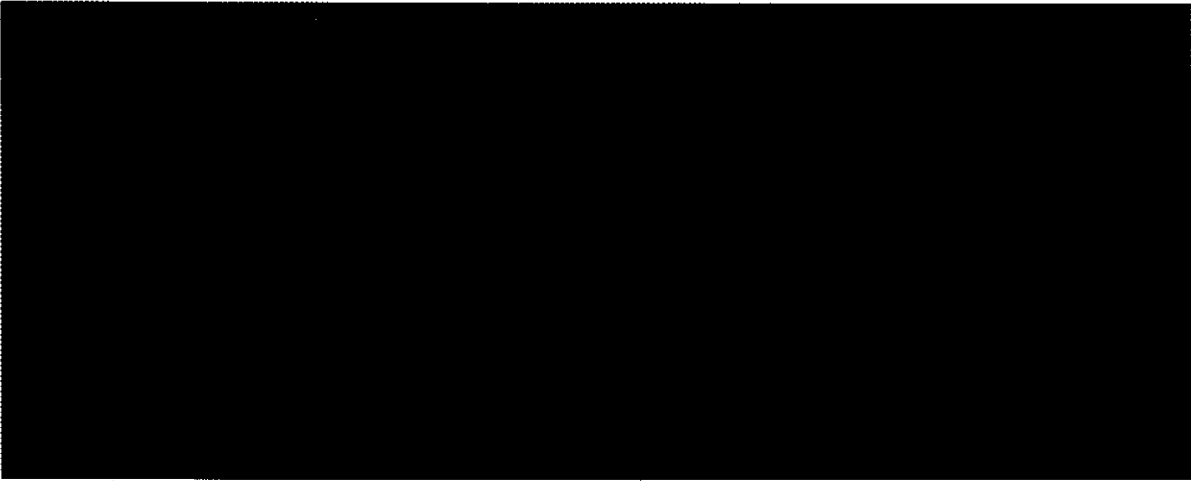
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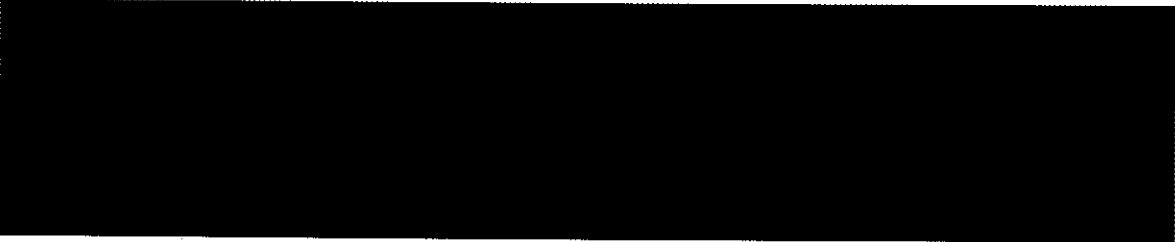
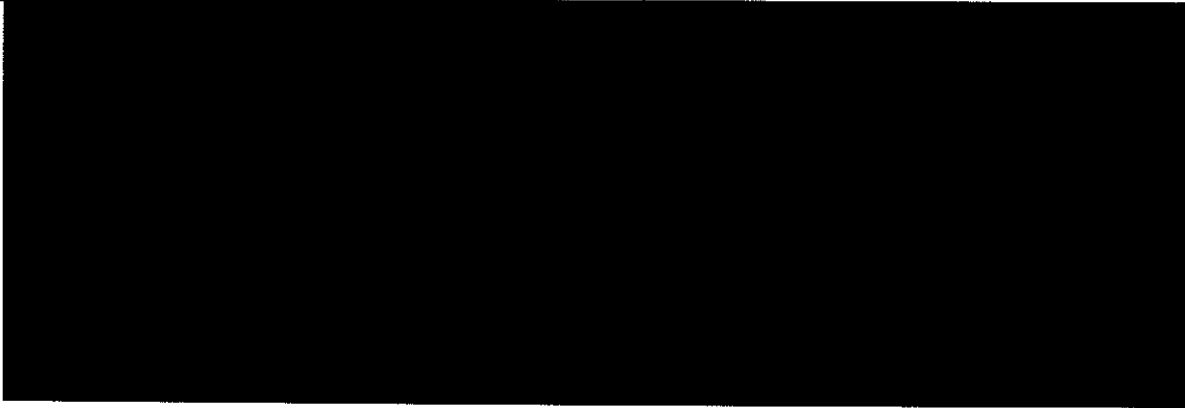
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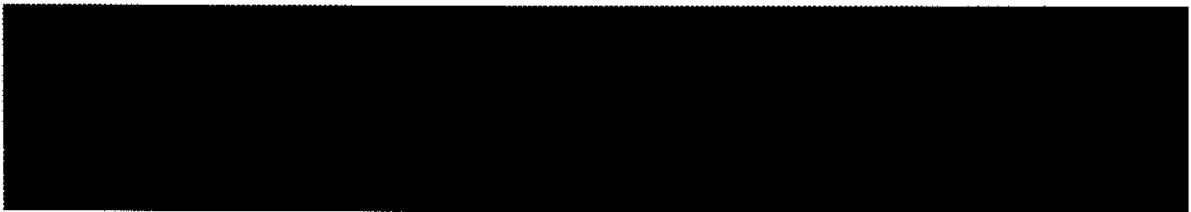
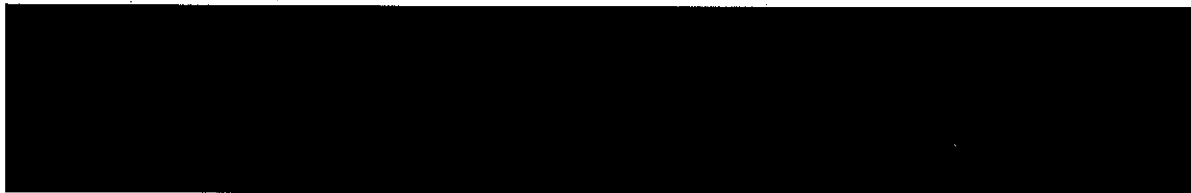
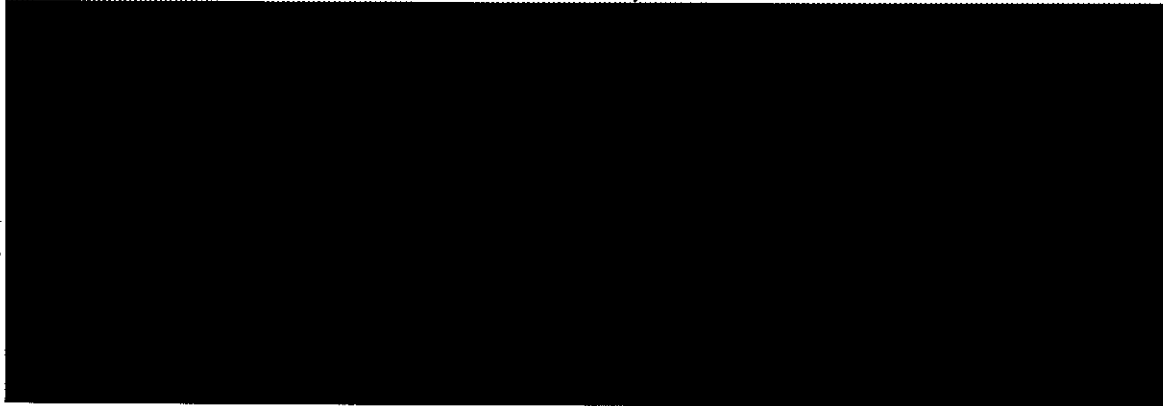
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III

Section 2340A makes it a criminal offense for any person "outside of the United States [to] commit[] or attempt[] to commit torture." Section 2340(1) defines torture as:

an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

18 U.S.C. § 2340(1). As we outlined in our opinion on standards of conduct under Section 2340A, a violation of 2340A requires a showing that: (1) the torture occurred outside the United States; (2) the defendant acted under the color of law; (3) the victim was within the defendant's custody or control; (4) the defendant specifically intended to inflict severe pain or suffering; and (5) that the act inflicted severe pain or suffering.

Section 2340 defines torture as the infliction of severe physical or mental pain or suffering. We will consider physical pain and mental pain separately. *See* 18 U.S.C. § 2340(1). With respect to *physical* pain, we previously concluded that "severe pain" within the meaning of

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Section 2340 is pain that is difficult for the individual to endure and is of an intensity akin to the pain accompanying serious physical injury. See Section 2340A Memorandum at 6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

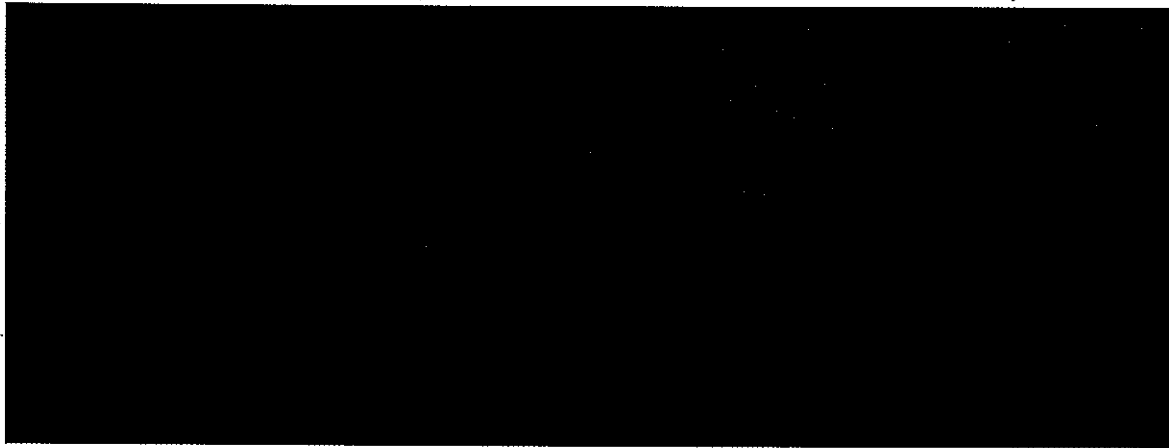
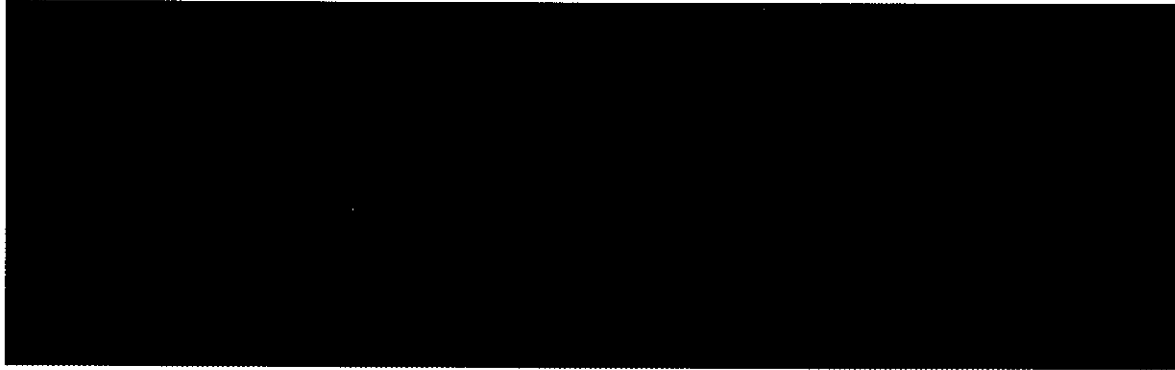
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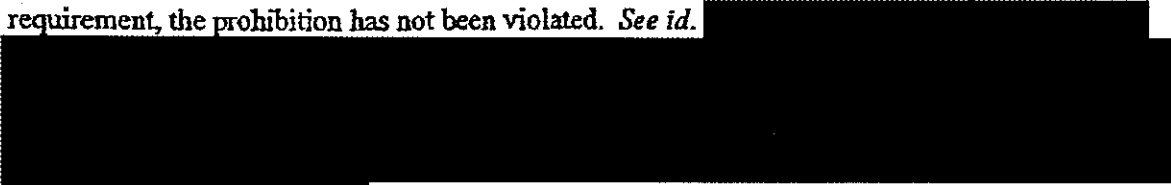


We next consider whether the use of these techniques would inflict severe *mental* pain or suffering within the meaning of Section 2340. Section 2340 defines severe mental pain or suffering as "the prolonged mental harm caused by or resulting from" one of several predicate

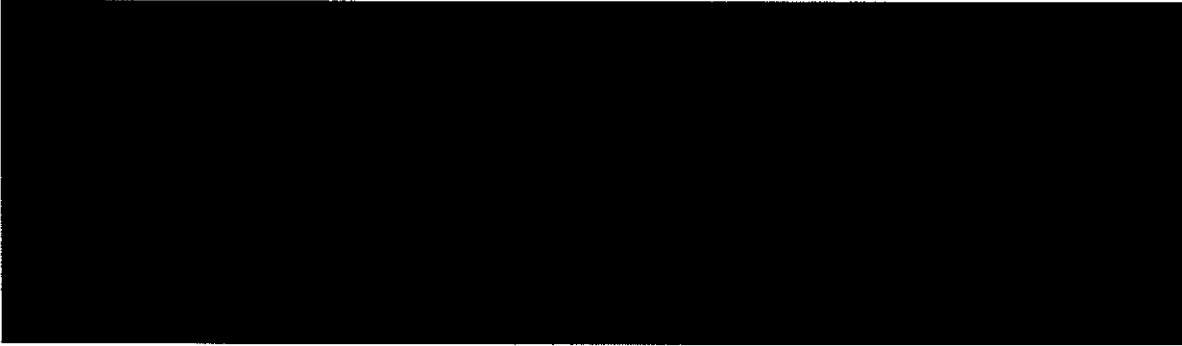
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acts. 18 U.S.C. § 2340(2). Those predicate acts are: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that any of the preceding acts will be done to another person. See 18 U.S.C. § 2340(2)(A)-(D). As we have explained, this list of predicate acts is exclusive. See Section 2340A Memorandum at 8. No other acts can support a charge under Section 2340A based on the infliction of severe mental pain or suffering. See *id.* Thus, if the methods that you have described do not either in and of themselves constitute one of these acts or as a course of conduct fulfill the predicate act requirement, the prohibition has not been violated. See *id.*

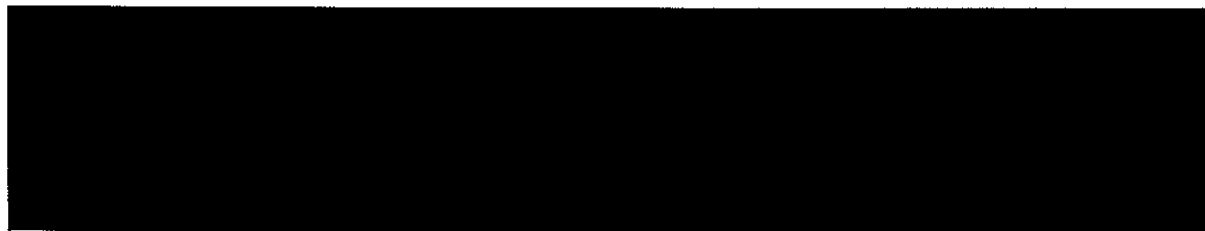
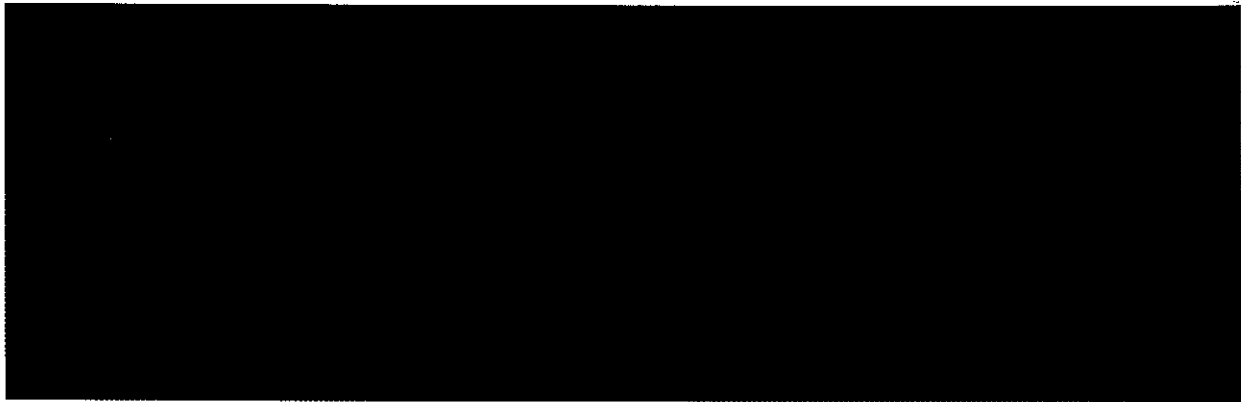
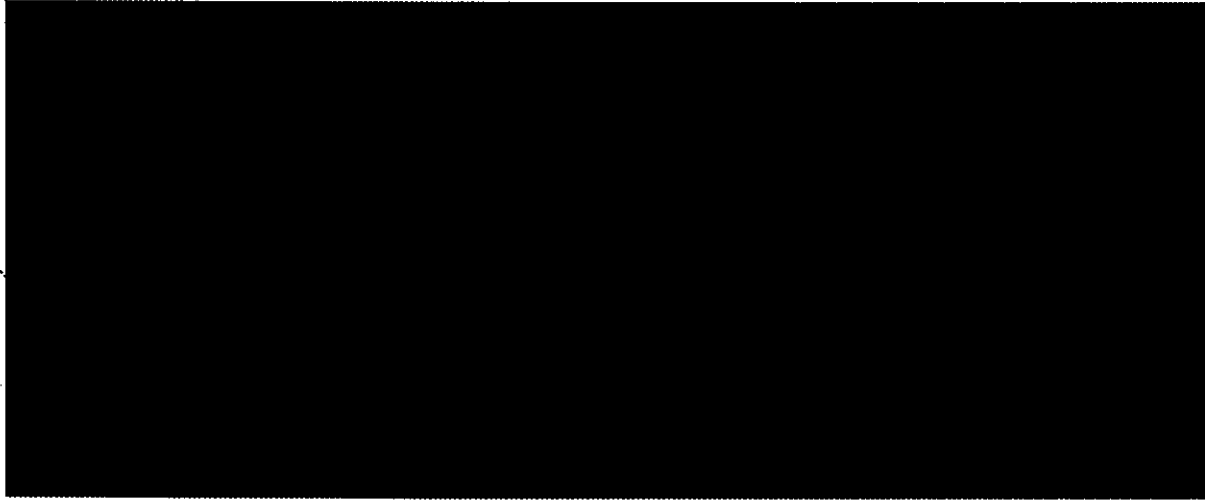


As we previously explained, whether an action constitutes a threat must be assessed from the standpoint of a reasonable person in the subject's position. See *id.* at 9.



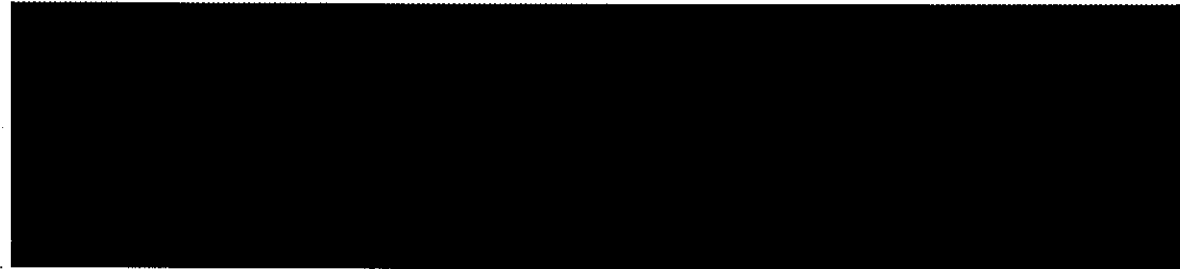
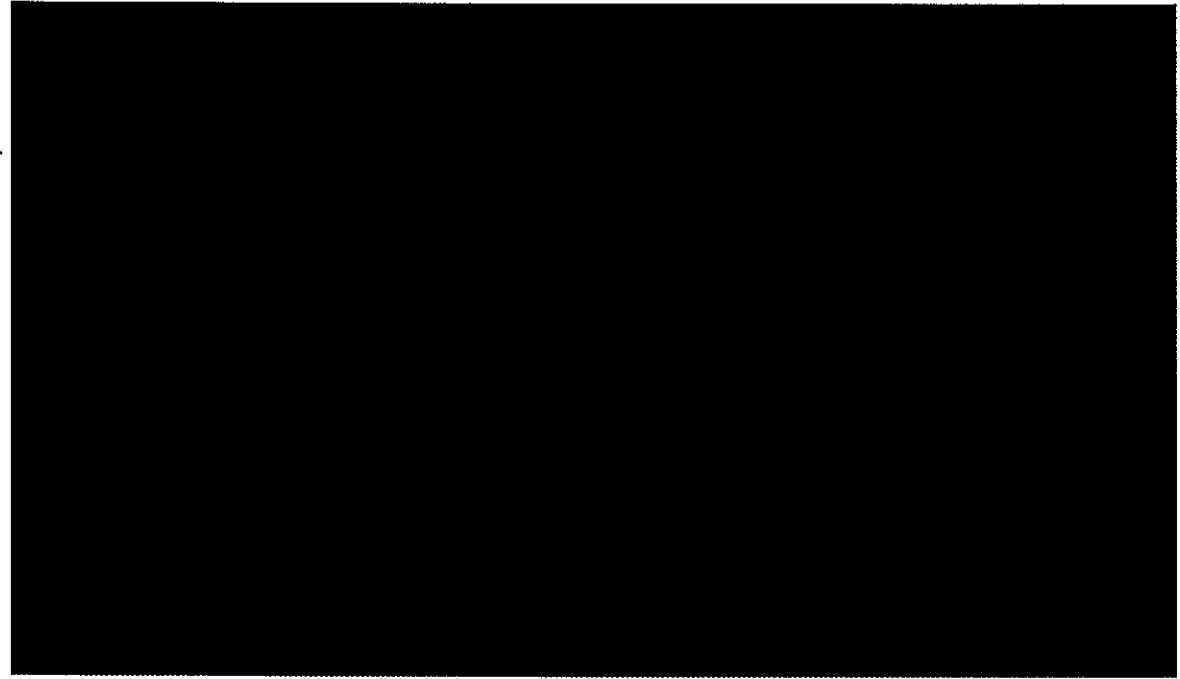
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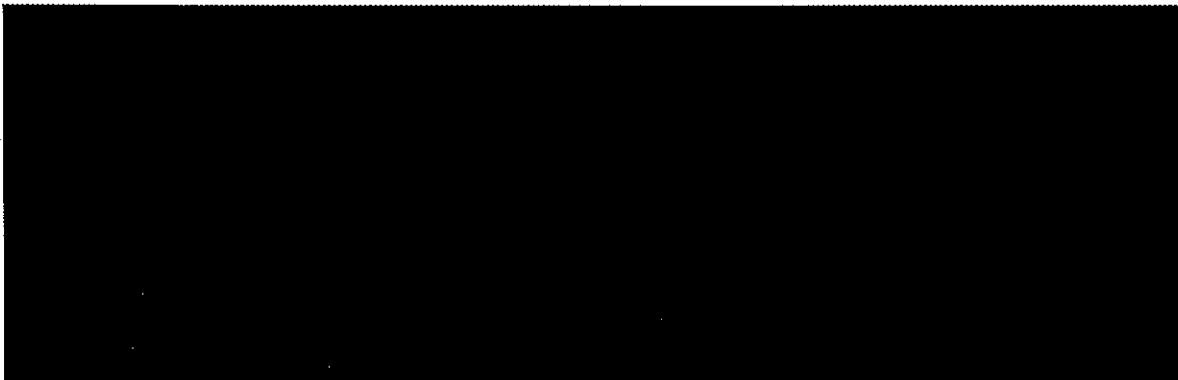
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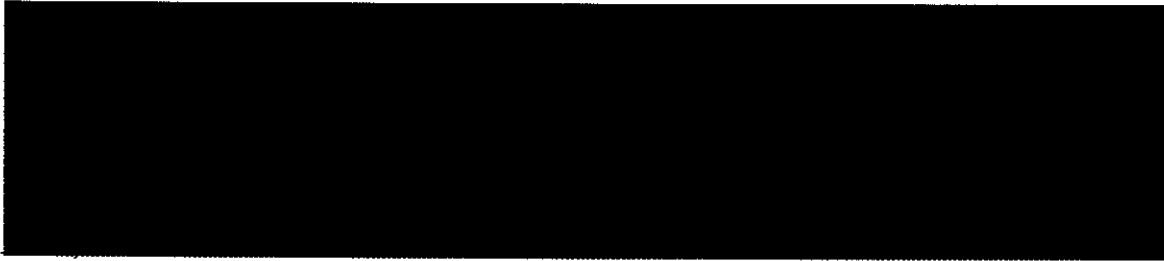

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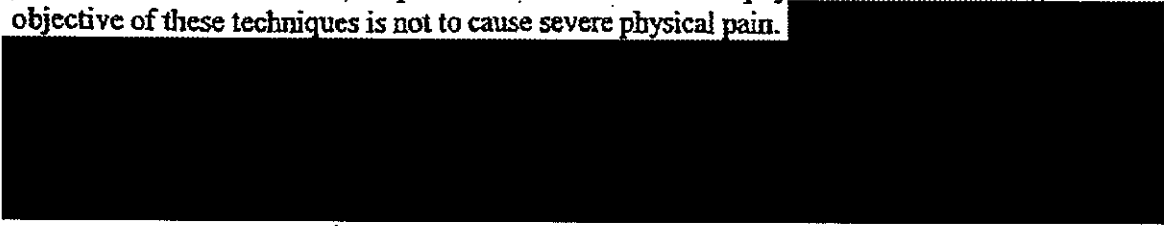

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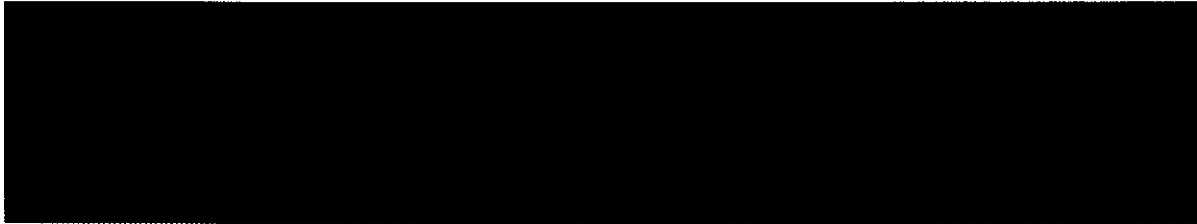
Specific Intent. To violate the statute, an individual must have the specific intent to inflict severe pain or suffering. Because specific intent is an element of the offense, the absence of specific intent negates the charge of torture. As we previously opined, to have the required specific intent, an individual must expressly intend to cause such severe pain or suffering. See Section 2340A Memorandum at 3 citing *Carter v. United States*, 530 U.S. 255, 267 (2000). We have further found that if a defendant acts with the good faith belief that his actions will not cause such suffering, he has not acted with specific intent. See *id.* at 4 citing *South Atl. Lmt'd. Ptrshp. of Tenn. v. Reise*, 218 F.3d 518, 531 (4th Cir. 2002). A defendant acts in good faith when he has an honest belief that his actions will not result in severe pain or suffering. See *id.* citing *Cheek v. United States*, 498 U.S. 192, 202 (1991). Although an honest belief need not be reasonable, such a belief is easier to establish where there is a reasonable basis for it. See *id.* at 5. Good faith may be established by, among other things, the reliance on the advice of experts. See *id.* at 8.

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 objective of these techniques is not to cause severe physical pain.





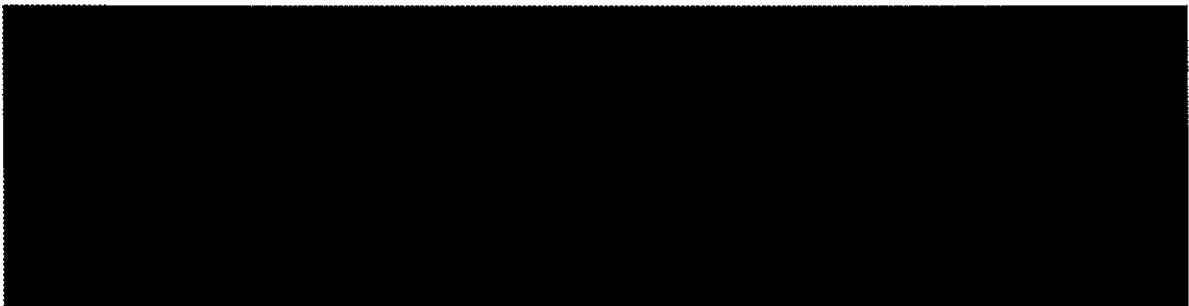

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Furthermore, no specific intent to cause severe mental pain or suffering appears to be present. As we explained in our recent opinion, an individual must have the specific intent to cause prolonged mental harm in order to have the specific intent to inflict severe mental pain or suffering. See Section 2340A Memorandum at 8. Prolonged mental harm is substantial mental harm of a sustained duration, e.g., harm lasting months or even years after the acts were inflicted upon the prisoner. As we indicated above, a good faith belief can negate this element. Accordingly, if an individual conducting the interrogation has a good faith belief that the procedures he will apply, separately or together, would not result in prolonged mental harm, that individual lacks the requisite specific intent. This conclusion concerning specific intent is further bolstered by the due diligence that has been conducted concerning the effects of these interrogation procedures.

 the psychological impact of a course of conduct must be assessed with reference to the subject's psychological history and current mental health status: The healthier the individual, the less likely that the use of any one procedure or set of procedures as a course of conduct will result in prolonged mental harm.



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[REDACTED]

[REDACTED]
[REDACTED] Your review of the literature uncovered no empirical
data on the use of these procedures, with the exception [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Jay S. Bybee
Jay S. Bybee
Assistant Attorney General

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