

Physicians for Human Rights



Nuremberg Betrayed

Human Experimentation
and the CIA Torture Program

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Cover: A detainee at Guantánamo Bay detention center. Some detainees tortured at secret CIA "black sites" around the world were later transferred to Guantánamo. Photo: John Moore/Getty

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Executive Summary

After the 9/11 terror attacks, as part of its counterterrorism efforts, the Bush administration authorized the systematic torture and ill-treatment of detainees in U.S. custody. In order to do so, it created a legal and policy framework to permit abusive interrogation and detention practices and undid long-standing, internationally-agreed protections for prisoners of war. The goal of the Central Intelligence Agency (CIA) “enhanced interrogation” program was to break detainees psychologically, using harsh techniques designed to inflict severe pain and suffering. The program rested on the flawed claim that torture could be useful in overcoming a person’s resistance to interrogation and in facilitating the collection of intelligence. Physicians for Human Rights (PHR) has previously documented that, as part of the CIA torture program, U.S. health professionals systematically collected data involving torture and conducted analysis to make this information generalizable to other aspects of the program. These activities amounted to human subjects research, a term used interchangeably with human experimentation. Analysis of new information indicates that the CIA torture program was itself a regime of applied research on detainees and implicitly conceptualized as such by the CIA. This constitutes one of the gravest breaches of medical ethics by U.S. health professionals since the Nuremberg Code was developed to protect individuals from nonconsensual human experimentation following Nazi medical atrocities during World War II.

At the heart of the CIA’s research was an unproven theory that exposing detainees to uncontrollable stress and trauma would disrupt normal mechanisms of resistance and create “learned helplessness” and dependence.¹ That, in turn, would induce total compliance in detainees, enabling interrogators to secure their cooperation and elicit accurate intelligence from them. The techniques proposed for this process were derived from the U.S. military’s Survival, Evasion, Resistance, and Escape (SERE) training program to teach service personnel how to resist abusive treatment if captured. These tactics were themselves a distillation of coercion methods used by Cold War communist regimes to produce false confessions. While the underlying phenomenon of helplessness and dependency had been studied by U.S. researchers trying to understand the apparent “brainwashing” effect of such techniques, the new theory that torture would produce learned helplessness – and that this would ultimately produce intelligence – had never been researched or demonstrated to be “effective.” At the time the CIA program began, the existing evidence suggested that coercive approaches to

Analysis of new information indicates that the CIA torture program was itself a regime of applied research on detainees.

interrogation did not work and were counterproductive.² Nevertheless, psychologists contracted by the CIA promoted this theory, improvised and applied various torture techniques, and reported outcomes in line with their contention that these techniques facilitated detainee compliance and cooperation with interrogation.

This research was driven by implicit hypotheses of “efficacy” and “safety.” The CIA sought to demonstrate that the tactics “worked” for interrogation and would not injure the subjects beyond a certain threshold of harm, as delineated in secret “torture memos” issued by the Department of Justice Office of Legal Counsel (OLC). The August 2002 OLC memos authorized the use of “enhanced interrogation” techniques, to be applied in an isolated and sequential manner, and redefined “pain and suffering” such that the effects had to be much more severe and/or lasting than previously permitted in order for the techniques to be regarded as torture. This created a permissive, rather than prohibitive, approach to torture. Relatedly, the memos also directed medical personnel to conduct systematic monitoring of interrogations in order to calibrate pain and mitigate harm. This role posed a conflict from the outset. Medical ethics absolutely prohibit the involvement of health professionals in torture and ill-treatment, including even being present when abuse is used or threatened. In addition, it is a violation of ethics to mitigate harm in the context of facilitating the intentional infliction of physical or mental pain and suffering. Torture cannot be made “safe,” nor was the Bush administration interested in making it “safe.” Instead, it was interested in not exceeding certain limits of injury.

Health professionals in the CIA Office of Medical Services (OMS) were ordered to ensure interrogators did not exceed these limits – thus ostensibly maintaining the “safety” of the subjects – with little idea in actual practice of how to do so. The extant literature was restricted to SERE studies, which involved limited application of milder forms of the methods for the purposes of increasing, rather than destroying, resilience. The SERE subjects were volunteers from the U.S. military who were able to stop the infliction of the torture techniques at any time. In addition, precautions were taken to prevent the risk of harm, which was well-documented in the SERE literature.

By contrast, the people subjected to the CIA’s “enhanced interrogation” were indefinitely detained, did not provide consent, and were unable to stop the infliction of physical or mental pain. In light of the vast gap between the SERE and CIA models and populations, medical officers worked to monitor, collect, analyze, and disseminate data on the effects of the torture tactics in real world applications to detainees. These observations were used to formulate clinical protocols to modify the techniques and guide medical monitors in future interrogations – conducting, in effect, a “safety trial.” This research was part of an effort to contend that the torture tactics did not exceed the elevated physical and mental pain thresholds established by OLC lawyers. At the same time, the CIA’s research was driven by a need to create a legal defense for U.S. personnel involved in the “enhanced interrogation” program, in the event of future torture charges. OLC lawyers claimed that reviewing evidence gained in the course of

interrogations could establish that interrogators lacked the intent to inflict lasting harm, and thus commit torture. The resulting findings were used to justify commission of the crime and to protect perpetrators from legal liability.

The CIA's "enhanced interrogation" program was based on a tenuous theory proffered by contract psychologists with a financial vested interest. The subsequent deployment of this crude program required constant invention, assessment, and modification in the field – based on actual applications of torture techniques on non-consenting interrogation subjects – to refine the approach and demonstrate the promised "safety" and "efficacy." In any other context, such an approach would be considered merely improvisational. However, when the individuals improvising are scientists and the subjects are humans, such improvisation is something more. When human subjects undergo an intervention or interventions (particularly harmful interventions) and their response is methodically measured and analyzed, and the results of the analysis are disseminated – even internally within a program – the activity meets the U.S. government's definition of human subjects research.

The definition of research does not require that the methodology used be sound or that investigators intend or are even aware that their investigation constitutes research. Indeed, it appears the CIA's research to establish learned helplessness as a theoretical construct, and parallel efforts to try to prove that torture did not have lasting health effects, all lacked a legitimate research purpose, design, and methodology. The premise of "efficacy" conflicted with the extant literature on effective interrogation, which showed that coercive measures were counterproductive and undermined intelligence collection. Similarly, the premise of "safety" conflicted with the U.S. government's own SERE research, which showed a significant risk of harm even in the controlled environment of training. Here, the CIA's activities not only met the essential criteria for human subjects research, they were explicitly conceptualized as such: a systematic investigation – including data collection and analysis – to create generalizable information in support of "enhanced interrogation" and detention.

The CIA's research evolved to fit the legal needs of the Bush administration in response to internal and external pressures on the torture program. In particular, interrogators were using multiple torture techniques in combination, with a far greater severity, duration, and repetition than initially described to OLC lawyers. This was inflicting far greater physical and mental injury to detainees, contradicting representations that the techniques were safe. Health professionals faced increasing pressure to generate data to justify and indemnify torture practices that were already in use, but that exceeded the scope of authorization or were not yet approved. Accordingly, OMS medical guidelines were created to reflect and incorporate the latest findings of CIA medical officers. In response to requests by Bush administration officials to provide scientific and clinical assurances of "safety" and legality, these findings were reinforced with additional data to develop new legal memos.

Over time, the severe physical and psychological harm of the torture techniques, as well as an absence of proof of their effectiveness for interrogation purposes, undermined the flawed theories of “safety” and “efficacy.” The torture program was eventually reined in and ultimately ended – but not before great damage had been done to the human beings at its center.

The available evidence documents, at a minimum, deployment by the CIA of coercive techniques for interrogation that were unproven both in terms of “efficacy” and “safety.” There was, at the very least, an ad hoc effort to assess these newly deployed techniques on detainees in the field – at secret “black site” prisons. The documents newly in the public domain, which form the basis of this report, detail activities by the CIA that meet the definition of human subjects research. Without a more complete record, it is difficult to say how formal or extensive this research was. What is clear is that this type of research on prisoners or detainees is the very reason the Nuremberg Code protocols were developed. In the course of facilitating the crime of torture, U.S. health professionals committed a second and related crime: human subjects research and experimentation on detainees being tortured, in violation of medical ethics and U.S. and international law.

There must be accountability for both the crime of torture and the second and related crime of human experimentation. There is also a pressing need for additional information to come to light, with transparency as a critical first step toward accountability for and prevention of grave human rights violations. Drawing on the lessons of Nuremberg, we must never again permit the exigencies of national security – or any other reason – to be used as justification for unlawful and unethical research on human beings. In this uncertain political climate, it is even more crucial to shine a light on this disturbing chapter and act now to prevent such crimes from being repeated.

Methodology

This Physicians for Human Rights (PHR) report is based on analysis of public source materials documenting the Central Intelligence Agency (CIA) rendition, detention, and interrogation program. This includes review of thousands of pages of declassified U.S. government records, reports, and other materials from the CIA, Department of Defense, Department of Justice, and other U.S. agencies. Many of these materials were publicly released, or released in substantially less redacted form, following the 2014 publication of the summary of the U.S. Senate Select Committee on Intelligence report on CIA torture, as well as in response to Freedom of Information Act requests by human rights, civil liberties, and media organizations. In addition, this report draws on more than 15 years of PHR’s research, investigation, and reporting in connection with the U.S. torture program and the role of U.S. health professionals in detainee mistreatment and harm.

PHR analyzed the factual record, reviewed the state of knowledge about the physical and psychological effects of so-called “enhanced interrogation” techniques at the time the CIA program began, and conducted research on the ethical and legal protections for the human subjects of research, including especially vulnerable populations such as prisoners. In addition, this analysis references evidence cited in PHR’s 2010 publication, “Experiments in Torture,”³ the first report to show human subjects research and experimentation in the CIA program, as well as additional data that has come to light.

This report is limited to publicly available sources. Given the scope, complexity, and secrecy of the CIA program, this analysis does not claim to provide a complete picture of the public record, nor a definitive analysis of the CIA’s illegal and unethical research on prisoners. To date, no evidence has been made public of a formalized research protocol, plan, or ethics review. In addition, actual data from psychological evaluations, medical monitoring, and other observations is not publicly available. Nevertheless, a research regime can be inferred from CIA contracts discussing “applied research,” CIA medical guidelines reflecting generalizable knowledge drawn from prior interrogation of detainees, references to data collection, analysis, and dissemination in government records, and documented activities of CIA personnel corresponding with human subjects research and experimentation.

The analysis is made more difficult by the continued classification of the CIA program, including the concealment of the names and titles of the health professionals who were involved. Many relevant documents remain classified, and most of the declassified documents that are available are heavily redacted,⁴ including nearly all information regarding Office of Medical Services personnel. In addition, the U.S. government continues to make incomplete, conflicting, and inaccurate representations regarding the program.⁵

I. Introduction

After the 9/11 terror attacks, the Bush administration authorized the torture and ill-treatment of detainees in U.S. custody as part of its counterterrorism efforts. In order to do so, it created a legal and policy framework to permit abusive interrogation and detention practices and undid long-standing, internationally-agreed protections for prisoners of war (POWs). The goal of this so-called “enhanced interrogation” program was to exploit detainees for intelligence collection purposes. The Bush administration authorized the capture, rendition, and indefinite secret detention of individuals considered to have links with terrorist organizations. It additionally authorized a range of interrogation tactics long recognized by the United States as illegal, such as waterboarding, isolation, sleep deprivation, sensory deprivation, forced nudity, extreme temperature manipulation, and stress positions. Over time, these practices, as well as their legal and operational justifications, spread from the Central Intelligence Agency

(CIA) “black sites” – secret overseas prisons – to military detention and interrogation facilities.

In the wake of the 9/11 attacks, the CIA faced pressure to obtain better intelligence from human sources derived from more aggressive interrogation strategies.⁶ Psychological expertise in human manipulation and exploitation was seen as especially critical to these efforts.⁷ The Bush administration sought to “take the gloves off,”⁸ yet experienced professionals within the intelligence community did not support the use of coercion or torture.⁹ The CIA turned to psychologists James Mitchell and Bruce Jessen to design and develop its interrogation operations.¹⁰ In December 2001, the CIA contracted with them to review the Manchester Manual – a training manual of the terrorist organization al-Qaeda discovered in Manchester, England – which ostensibly contained strategies for resisting interrogation by countries compliant with the Geneva Conventions’ protections for POWs.¹¹ Mitchell and Jessen drafted a white paper assessing that al-Qaeda operatives were highly trained to resist hostile questioning.¹² They proposed providing a range of psychological consultation services, reflected in dozens of contracts for “applied research,” development, and operational support. Individually, they each received in excess of \$1 million, in addition to \$81 million paid to their consulting company, Mitchell Jessen and Associates, between 2005 and 2009.¹³

CIA contract psychologist James Mitchell speaks at the American Enterprise Institute on December 6, 2016 while promoting his new book on the CIA torture program.



In addition to Mitchell and Jessen, who ultimately designed, implemented, and oversaw a vast regime of psychological torture and ill-treatment, a wide range of health professionals were complicit in the program. Psychologists, physicians, physician assistants, nurses, and medics participated in torture, monitored and collected data ostensibly to manage harm, maintained abusive detention conditions and treatment, and provided basic care to an institutionalized population.¹⁴ They were involved in the following activities: withholding food, medical care, and personal hygiene; medically clearing detainees for torture; medically treating detainees to return to abusive treatment; sharing medical information with interrogators; advising on the application

of techniques; directly committing acts of torture and ill-treatment; studying and experimenting with the effects of torture; failing to stop and report abuse; and concealing evidence of mistreatment.

Physicians for Human Rights (PHR) has previously documented evidence that the CIA engaged in activities constituting nonconsensual human subjects research and experimentation on detainees being tortured.¹⁵ New evidence indicates that the CIA “enhanced interrogation” program itself was a regime of human subjects research and that the agency conceptualized it as such. This creates the most complete picture of this illegal and unethical enterprise to date. In 2016, Mitchell co-published a book describing his participation in waterboarding and other forms of torture and told interviewers he had no regrets.¹⁶ Yet due to continued secrecy surrounding the program, the identities of many other individuals involved, including health professionals, remain unknown.

Definition of Research and Experimentation

The system of protections for human subjects of research is enshrined in U.S. federal policy in the form of the Common Rule and Code of Federal Regulations Title 45 part 46. The latter contains a detailed definition of what constitutes human subjects research:

“Research means a **systematic investigation**, including research development, testing, and evaluation, designed **to develop or contribute to generalizable knowledge**. Activities that meet this definition constitute research for purposes of this policy, **whether or not they are conducted or supported under a program that is considered research** for other purposes. For example, some demonstration and service programs may include research activities. [...]

Human subject means a **living individual** about whom an investigator (whether professional or student) conducting research **obtains**

- 1 **Data through intervention or interaction** with the individual, or
- 2 Identifiable private information.

Intervention includes both **physical procedures** by which data are gathered (for example, venipuncture) and **manipulations of the subject or the subject's environment** that are performed for research purposes. Interaction includes **communication or interpersonal contact between investigator and subject.**¹⁷ [emphasis added]

To be considered a “systematic investigation,” the concept of a research project must meet the following criteria: it attempts to answer research questions; it is methodologically driven (that is, collects data or information in an organized and

consistent way; the data or information (whether quantitative or qualitative) is analyzed in some way; and conclusions are drawn from the results.

“Generalizable knowledge” must include one or more of the following concepts: the knowledge contributes to a theoretical framework of an established body of knowledge; the primary beneficiaries of the research are other researchers, scholars, and practitioners in the field of study; publication, presentation, or other distribution of the results is intended to inform the field of study; the results are expected to be generalized to a larger population beyond the site of data collection; and the results are intended to be replicated in other settings.¹⁸

Accordingly, the key elements of human subjects research are:

- 1 Systematic investigation (data collection) about an interaction or intervention with a living individual,
- 2 Designed to develop or contribute to generalizable knowledge.

Legitimate human subjects research can include studying the effectiveness of specific medical treatments or procedures on patients, collecting data to better understand a sociological problem, or assessing the susceptibility of certain demographic groups to disease, among other applications. The term “human experimentation” is often used interchangeably with “human subjects research,” as in this analysis, and involves the systematic variation and study of a new or unproven practice. Research can be considered experimental when it is based on untested ideas or involves methods or devices that lack an established or accepted scientific basis, procedure, or clinical standards. As a result, it entails inherent uncertainty about benefits, risks, and effectiveness of the intervention.¹⁹ Note, however, that these definitions do not require that an activity was contemplated or conceived of as research by the investigators in order to constitute research, nor do they require a particular study design, the testing of hypotheses, the use of control groups, or even a legitimate scientific purpose.

In addition, the evaluation of “service” programs – that is, formal or ad hoc efforts to promptly improve a process rather than contribute to generalizable knowledge – can constitute research if it meets the criteria detailed above. However, guidance exists to help differentiate quality improvement processes that would not be subject to rigorous human subject protections from research subject to ethics review by an Institutional Review Board (IRB). While both processes involve the systematic collection of data, several features preclude designation as quality improvement, including activities that pose risk to human subjects or activities that are in fact designed to determine the “safety” and “efficacy” of an intervention. The quality improvement designation generally applies only when monitoring the application of low-risk interventions that have already been well-established in the field as a solid, evidence-based practice – which does not apply in the context of torture.

Research Hypothesis for CIA Torture

CIA contract psychologists Mitchell and Jessen proposed using coercive techniques and abusive conditions of confinement to break detainees down psychologically.²⁰ They claimed that torture could be useful in overcoming an individual's resistance to interrogation and in creating conditions that were conducive to intelligence collection. The psychologists hypothesized that exposing detainees to uncontrollable stress and trauma would disrupt normal mechanisms of resistance and create the condition of "learned helplessness."²¹ That, in turn, would induce total compliance and cooperation with interrogation, causing detainees to voluntarily provide accurate intelligence. The interrogator's goal was to "establish absolute control," "induce dependence to meet needs," "elicit compliance," and "shap[e] cooperation."²²

Mitchell and Jessen formulated their research hypothesis in part from the U.S. military's Survival, Evasion, Resistance, and Escape (SERE) counter-resistance training program, which taught select U.S. service personnel strategies to resist exploitation if captured by countries that did not adhere to the Geneva Conventions.²³ The purpose of the training was to build resistance to the extreme stresses of capture, interrogation, and detention by exposing students to simulated scenarios in a controlled and constructive manner. The physical and mental pressures used in the SERE curriculum carried a serious risk of psychological and physical harm.²⁴ In particular, SERE manuals in 2002 warned that instructors needed to take steps to prevent learned helplessness from the tactics, particularly waterboarding:

"Maximum effort will be made to ensure that students do not develop a sense of 'learned helplessness' during the pre-academic laboratory.... The goal is not to push the student beyond his means to resist or to learn (to prevent 'Learned Helplessness')."²⁵

Mitchell and Jessen proposed doing the reverse – using torture to produce "fear and panic"²⁶ and, ultimately, learned helplessness²⁷ – and adapting this process for use on detainees. Consistent with this implicit hypothesis, their research centered on whether the psychological and physical pressures employed in SERE training could be used to disrupt detainees' resistance and produce compliance,²⁸ and when the threshold of learned helplessness had been reached.²⁹

On December 15-16, 2001, Mitchell, already under contract with the CIA, met with a select group of intelligence personnel and academics in the home of Martin Seligman, the psychologist who first identified the learned helplessness phenomenon based on electroshock experiments on dogs. The purpose of this meeting was to discuss counterterrorism strategies based on the "psychology of capitulation" as applied to

“jihad Islamic” terrorist organizations.³⁰ By March 2002, Jessen was conducting briefings for the military on counter-resistance techniques for interrogation, including on how to “apply psychological torture.”³¹

By April 1, 2002, Mitchell was urging the CIA to focus on developing learned helplessness in detainees.³² Mitchell met with Seligman two days later to discuss learned helplessness, along with Jessen and psychologist Kirk Hubbard, their operational supervisor at the CIA.³³ Hours later, Mitchell flew to Thailand to advise on the interrogation of Abu Zubaydah, a Saudi citizen whom the CIA claimed was a high-ranking leader of al-Qaeda.³⁴

In Thailand, Mitchell continued to recommend learned helplessness as an aid to gaining compliance and cooperation. For example, an April 12, 2002 interrogation plan proposed for use on Abu Zubaydah stated: “The development of psychological dependence, learned helplessness and short term thinking are key factors in reducing [redacted] sense of hope that his well-honed counter-measure interrogation skills will help him from disclosing important intelligence.”³⁵ The CIA relayed to the White House that inducing learned helplessness was essential to preparing the detainee for interrogation:

“At the meeting, the CIA attorneys explained that **the plan developed by CIA psychologists relied on the theory of ‘learned helplessness,’** a passive and depressed condition that leads a subject to believe that his resistance to disclosing information is futile. The condition reportedly creates a psychological dependence and instills a sense that, because resistance is futile, cooperation is inevitable.... The CIA attendees reportedly outlined the effects of learned helplessness, citing the psychologist who had developed the theory for them, [redacted]. They told [former Justice Department lawyer John] Yoo that [redacted] had concluded that learned helplessness does not result in a permanent change in a subject’s personality, and that full recovery can be expected once the conditions inducing learned helplessness are removed.”³⁶ [emphasis added]

U.S. personnel present at Abu Zubaydah’s initial interrogations described Mitchell’s approach to interrogation, as conveyed to investigative journalist Jane Mayer: “Mitchell announced that the suspect had to be treated ‘like a dog in a cage,’ informed sources said. ‘He said it was like an experiment, when you apply electric shocks to a caged dog, after a while, he’s so diminished, he can’t resist.’”³⁷

Mitchell and Jessen’s advocacy of this protocol resulted in its adoption by the CIA. Throughout the torture program, learned helplessness continued to be a central objective of the prototypical “enhanced” interrogation, as noted in a 2005 Department of Justice (DOJ) Office of Legal Counsel (OLC) memo providing renewed policy authorization for torture:

“Although the combination of interrogation techniques will wear a detainee down physically, we understand that the principal effect, as well as the primary goal, of interrogation using these techniques is psychological – **‘to create a state of learned helplessness and dependence** conducive to the collection of intelligence in a predictable, reliable, and sustainable manner’ ... and numerous precautions are designed to avoid inflicting ‘severe physical or mental pain or suffering.’”³⁸ [emphasis added]

From its inception, the research hypothesis advanced by Mitchell and Jessen was not only unethical but conceptually flawed. First, it conflated ideas of coercion, compliance, cooperation, and truth-telling, based on inaccurate and disconnected interpretations of the underlying theoretical constructs. The “enhanced interrogation” techniques were derived from the U.S. military’s SERE training school. The SERE tactics, in turn, were a distillation of coercive methods used by communist regimes to produce “debility, dependence, and dread” in U.S. prisoners of war (POWs).³⁹ These methods were designed to make POWs compliant through coercion in order to generate propaganda statements and false confessions.⁴⁰ This coercion was aimed at destroying the individual’s sense of self.

“Debility, dependence, and dread,” the theoretical basis of the SERE program, had never been used for interrogation by U.S. forces, although the phenomenon had been studied and had influenced the CIA’s historical counterintelligence methods.⁴¹ The phenomenon of learned helplessness, effectively a continuation of that theory, had also been studied. However, it had never been used for intelligence collection purposes, demonstrated to be effective in producing cooperation – let alone truth-telling – nor researched in this context. Moreover, using torture to voluntarily “encourage” a detainee to talk necessarily conflicts with the underlying theory of learned helplessness: that of an individual who is psychologically incapable of taking action to improve their situation. By definition, an individual with learned helplessness would be incapable of cooperating with interrogators in the manner described by the CIA.

Second, the contention that mental and physical pressures could be used in this manner to produce intelligence results was entirely theoretical, as SERE tactics had only been used defensively on volunteers, never offensively, or on prisoners.⁴² Historically, torture has been used as a tool to force compliance with captors. There is no experimental evidence from studies of victims measuring the degree of compliance or indicating that these techniques “work” to elicit accurate information. As interrogation experts have affirmed, any truthful information produced would be an incidental as well as unreliable byproduct; for this reason, U.S. military and intelligence doctrine has long rejected abusive treatment as counterproductive. Prior to 9/11, the CIA had concluded that “inhumane physical or psychological techniques are counterproductive because they do not produce intelligence and will probably result in false answers.”⁴³

Third, the SERE program fundamentally differed in purpose, scope, and application from what Mitchell and Jessen proposed. The 2008 Senate Armed Services report describes a number of differences, including:

“... (1) the extensive physical and psychological pre-screening processes for SERE school students that are not feasible for detainees, (2) the variance in injuries between a SERE school student who enters training and a detainee who arrives at an interrogation facility after capture, (3) the limited risk of SERE instructors mistreating their own personnel, especially with extensive oversight mechanisms in place, compared to the risk of interrogators mistreating non-country personnel, (4) the voluntary nature of SERE training, which can be terminated by a student at any time, compared to the involuntary nature of being a detainee, (6) the limited duration of SERE training, which has a known starting and ending point, compared to the often lengthy, and unknown, period of detention for a detainee, and (7) the underlying goals of the SERE school (to help students learn from and benefit from their training) and the mechanisms in place to ensure that students reach those goals compared to the goal of interrogation (to elicit information).”⁴⁴

Omitted from this list was the brutality of the tactics used in each context and the purpose it was intended to serve. The SERE program was designed to develop resistance by exposing students to extreme stress in a controlled environment. The goal was to increase their ability to withstand harsh treatment. By contrast, “enhanced interrogation” was designed to overcome resistance by exposing detainees to uncontrollable stress. The goal was to decrease their ability to withstand harsh treatment. Intensifying the application of the techniques – to go past the point of mental and physical endurance – would be expected to be harmful, particularly without the controls, safety measures, and oversight mechanisms employed in SERE.⁴⁵ These differences would render any SERE data on “safety” irrelevant for the purposes of understanding the effects of CIA methods on detainees.

In addition, the existing SERE research documented extreme physiologic stress reactions to limited application of these techniques in a mock training exercise.⁴⁶ These studies’ purpose was to identify the risks of the techniques and measure their immediate and short-term effects in order to protect volunteers from harm. They did not look at long-term physical or psychological harm, such as post-traumatic stress disorder, nor did they investigate “safety” parameters to prevent such risks. There was no literature on minimizing the harms of torture in order to continue it, in large part because such research would be highly unethical.

The CIA acknowledged the difference between the SERE training program and real world application of the techniques in seeking initial legal authorization for “enhanced interrogation” from the DOJ.⁴⁷ It also acknowledged the health risks of such differences:

“...[W]hile the interrogation techniques mentioned above (attention grasp, walling, facial hold, facial slap (insult slap), cramped confinement, wall standing, stress positions, sleep deprivation, waterboard, and mock burial) are administered to student volunteers in the U.S. in a harmless way, with no measurable impact on the psyche of the volunteer, **we do not believe we can assure the same here for a man forced through these processes and who will be made to believe this is the future course of the remainder of his life.** While CIA will make every effort possible to ensure that the subject is not permanently physically or mentally harmed **some level of risk still exists.** The intent of the process is to make the subject very disturbed, but with the presumption that he will recover.”⁴⁸

It further stated that detainees subjected to such treatment could “suffer a heart attack, stroke, or other adverse event.”⁴⁹ The departure of “enhanced interrogation” techniques from SERE techniques highlights the experimental nature of the torture program. The CIA’s calculated representations – that there was a sufficient empirical basis to proceed, yet “real world” application was sufficiently distinct to introduce a risk of death – suggest an awareness of that experimental nature.

Mitchell and Jessen proposed developing and scaling this model. Over the course of the program, they oversaw the intentional infliction of severe pain and suffering on detainees, with the stated aim of overcoming resistance, inducing learned helplessness, creating compliance, and shaping cooperation. Despite the CIA’s stated goal of obtaining actionable intelligence, Mitchell and Jessen measured success (i.e., “efficacy”) in a more restricted way –through information indicating the degree of detainees’ willingness to “participate” with interrogation. As SERE trainers, Mitchell and Jessen would have been aware of false confessions associated with the physically and mentally coercive interrogation practices. That did not stop them from promising what they could not provide – an effective means of obtaining actionable intelligence.⁵⁰ In 2015, Mitchell stated that he and Jessen intended to “find and pay an independent researcher” to study the effectiveness of the techniques, but that this never took place because their contract was terminated.⁵¹ Ultimately, the CIA paid Mitchell, Jessen, and their consulting company more than \$81 million to diminish the resistance of detainees on the apparent presumption that it would produce actionable intelligence.⁵²

In 2006, the value of the CIA's base contract with the company formed by the psychologists with all options exercised was in excess of \$180 million; the contractors received \$81 million prior to the contract's termination in 2009. In 2007, the CIA provided a multi-year indemnification agreement to protect the company and its employees from legal liability arising out of the program. The CIA has since paid out more than \$1 million pursuant to the agreement.

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Psychologists James Mitchell, Bruce Jessen, and their consulting company were paid more than \$81 million to design, implement, and oversee the CIA torture program, as noted in this excerpt from the summary of the 2014 Senate Select Committee on Intelligence’s torture report.

Experimentation to Develop “Enhanced Interrogation” Model

Mitchell and Jessen conducted a behavioral experiment to induce learned helplessness in detainees. They conducted their research in the context of the threat and experience of extrajudicial and indefinite detention, prolonged isolation, additional forms of torture and ill-treatment, and abusive conditions of confinement. The goal was to achieve psychological disintegration by exercising total control over the detainee, beginning with dislocation from all legal and social connections. This included extrajudicial detention – namely, the tactical elimination of Geneva protections. Mitchell and Jessen identified this as a critical factor in undermining detainee resistance:

“It is apparent from reading the [redacted] manual that the thrust of the resistance training provided to operatives in special terrorist cells focuses on preparation for **capture in countries [redacted]**.... The text in these documents converge to instruct captives to stick to a preplanned cover story during interrogation, request legal counsel, complain about treatment and conditions, ask for medical attention, and then report that they have been tortured and mistreated regardless of actual events.”⁵³ [emphasis added]

Social isolation was viewed as “a main building block of the exploitation process” because it “allow[ed] the captor total control over personal inputs to the captive.”⁵⁴ This was designed to achieve phased, tactical destruction of the personality and basic senses of the detainee. Mitchell and Jessen developed and proposed a list of several “enhanced interrogation” techniques, which included waterboarding, sensory manipulation, beatings, prolonged isolation, and other methods of inflicting severe physical and mental harm.⁵⁵ These tactics were instrumental not simply because they caused pain and discomfort but because they infringed on the most intimate aspects of life associated with autonomy and the sense of self. They were designed to be used together to achieve a synergistic effect of degradation and loss of control, as the CIA described in a 2004 memo to the OLC:

“Effective interrogation is based on the concept of using both physical and psychological pressures in a comprehensive, systematic, and cumulative manner to influence HVD [high value detainee] behavior. The goal of interrogation is to create a state of learned helplessness and dependence conducive to the collection of intelligence in a predictable, reliable, and sustainable manner. [...] The use of these conditioning techniques do not generally bring immediate results; rather, it is the cumulative effect of these techniques, used over time and in combination with other interrogation techniques and intelligence exploitation methods, which achieve interrogation objectives.”⁵⁶

Mitchell and Jessen proposed an exploitation process that would proceed in several stages:

- During capture and rendition, initial conditions, and setting the stage, including exploiting “capture shock,” hooding, shackling, and sensory deprivation;
- Upon reception at the black site, administrative procedures, and medical assessment in order to create apprehension, uncertainty, and dread, including shaving, nude photographs, medical evaluation to identify contraindications for torture, and psychological evaluation to identify the detainee’s psychological vulnerabilities; and
- Transition to interrogation, consisting of an initial interview to assess the detainee’s “resistance posture” and willingness to cooperate with interrogators.⁵⁷

By December 2004, the CIA’s “prototypical interrogation” process for “high value” detainees consisted of four parts:

- Detention conditions – to disorient and destabilize, such as loud noise, constant light, and other environmental manipulations;
- Conditioning techniques – to reduce the detainee to a “baseline, dependent state” “to demonstrate to the [detainee] that he has no control over basic human needs” and to create a “mindset in which he learns to perceive his personal welfare, comfort, and immediate needs more than the information he is protecting,” such as nudity, sleep deprivation, and dietary manipulation;
- Corrective techniques – to confuse or startle, such as the so-called insult slap, abdominal slap, facial hold, and attention grasp;
- Coercive techniques – to place the detainee in high physical and psychological stress and considered “more effective” tools in persuading detainees to cooperate, such as so-called walling, water dousing, stress positions, wall standing, and cramped confinement.⁵⁸

The objective was to “shape compliance of high value captives” and transition them to a point where they were “participating in a predictable, reliable, and sustainable manner,”⁵⁹ at which point they would be interviewed and debriefed by substantive intelligence experts.⁶⁰ Eventually, select detainees would be transitioned to “long-term” detention, for continuing exploitation⁶¹ or to ensure that they would “remain in isolation and incommunicado” for the remainder of their lives.⁶²

Earlier iterations of the “enhanced interrogation” model were ad hoc and involved “rapid escalation and indiscriminate repetitions” of the techniques.⁶³ Even as the program evolved, the CIA maintained that “there is no template or script that states with certainty when and how these techniques will be used in combination during interrogation,” indicating an ongoing level of improvisation despite the development of a prototypical process.⁶⁴ As discussed below, this caused problems for the program, forcing CIA interrogators in collaboration with medical professionals to modify the techniques in response to changing internal and external pressures. Over time, the CIA presented this more nuanced model, which purported to “gradually [rely] less on

coercion” as its “understanding of the effectiveness of the techniques grew.”⁶⁵ In medicine and clinical research, this process is often referred to as “learning by doing.”

Mitchell and Jessen proposed transforming SERE into a larger program significantly expanded in terms of duration of exposure, severity of the application, and combination of techniques. They claimed, without supporting evidence, that this would eliminate detainees’ resistance to disclosing information and facilitate the intelligence collection process. Neither the “safety” nor “efficacy” of this theoretical approach had ever been established. As they developed this methodology, they consulted with a number of CIA, military, and FBI operational psychologists, academics, and various American Psychological Association members.⁶⁶ Ultimately, the CIA and White House supported the experimentation of Mitchell and Jessen and approved their research.

Implementation of this plan would occur over six years and in multiple countries, and would meet standard definitions of human subjects research, including systematic collection of information involving human subjects for the purpose of testing a hypothesis or creating generalizable information. This truth would be acknowledged by internal CIA reporting as well as its own inspector general, who requested further data on “efficacy” but denied a need for “additional, guinea pig research on human beings” when objections over possible human experimentation were raised.⁶⁷ As the CIA worked to create legal protection for the “enhanced interrogation” program, it also began to monitor, collect, and analyze data on the health impacts of the tactics on detainees. Over time, these efforts resulted in an expanded regime of human subjects research to support torture.

Legal and Policy Changes Conducive to Human Subjects Research

The Bush administration created a legal and policy framework to enable the torture and ill-treatment of detainees while attempting to avoid criminal liability. In doing so, it dismantled longstanding barriers to the exploitation and mistreatment of prisoners of war, which also reduced protections against their use as human subjects of research. In addition, a number of these legal and policy changes created a practical need to conduct research to justify and indemnify the use of torture, creating a vicious cycle of escalating abuse.

Liability for Human Experimentation under Customary International Law

Shortly after 9/11, the CIA began reviewing legal standards for detention and interrogation operations and exploring potential legal defenses to torture.⁶⁸ In particular, the agency argued that it should be exempted from the Geneva Conventions, because the legal protections contained in these documents would “significantly hamper the ability of the CIA to obtain critical threat information necessary to save American lives.”⁶⁹ On January 22, 2002, the OLC issued a memo concluding that neither customary international law nor U.S. treaty obligations, as a matter of federal law,

applied to “war on terror” detainees.⁷⁰ This closed off the humane treatment protections that are common to all four Geneva Conventions (known as “Common Article 3”), as well as specific Geneva protections against “torture or inhuman treatment, including biological experiments.” It additionally removed liability for these acts under the War Crimes Act.⁷¹

On February 7, 2002, President Bush signed an order stating that al-Qaeda and Taliban detainees were not entitled to prisoner of war status under Geneva and that Common Article 3 did not apply to them.⁷² The order stated that, as a matter of policy, the U.S. military would “continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”⁷³ However, the CIA was deliberately exempted from this requirement – reflecting ongoing discussions of the legality of “enhanced interrogation” techniques within the administration. In February 2003, then-CIA General Counsel Scott Muller affirmed the Bush administration’s position that customary international law did not protect detainees beyond the Convention Against Torture, to which the United States is a party.⁷⁴ Notably, the Convention does not explicitly ban human experimentation,⁷⁵ as the Geneva Conventions⁷⁶ and the International Covenant on Civil and Political Rights⁷⁷ do.

These developments produced weaker domestic legal protections for human research subjects, regardless of whether such an effect was intended.⁷⁸ After the Supreme Court’s 2006 ruling in *Hamdan v. Rumsfeld*, which held that Common Article 3 afforded “some minimal protection” to enemy combatants, the War Crimes Act was amended to specify which acts were punishable as “grave breaches.” The amended language maintained the ban on biological experiments. However, it weakened the exceptions under which such research could take place, no longer requiring it to be “carried out in the detainee’s interest” and justified by his medical treatment. Instead, it merely prohibited research lacking “a legitimate medical or dental purpose” that also endangered the subject’s body or health.⁷⁹ This weakened language currently remains in effect, but, even in its more narrow form, would never have made the CIA human subjects experiments allowable.

Medical Monitoring Creates a Practical Need for Research

Over the course of the program, the OLC issued numerous legal opinions analyzing the statutory prohibition on torture and ill-treatment, most of which have since been withdrawn.⁸⁰ An August 1, 2002 memo written by Assistant Attorney General Jay Bybee (“Bybee I Memo”) elevated the threshold of pain or suffering that an act would need to cause in order to constitute torture:

“Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.”⁸¹

By contrast, the Convention Against Torture defines torture as the deliberate infliction of severe mental or physical pain or suffering, by or with the consent or acquiescence of state authorities, for a specific purpose, such as extracting information or a confession, punishment, or intimidation.⁸² Cruel, inhuman, and degrading treatment is the infliction of severe pain or suffering, by or with the consent or acquiescence of state authorities.⁸³

Thus, the Bybee definition improperly substituted the effects of torture – i.e., its harms – for the act itself, while inventing new severity and duration requirements that had not previously existed.⁸⁴ A companion memo (“Bybee II Memo”) directed health professionals to monitor the application of “enhanced” techniques and intervene if the detainee experienced severe pain or suffering, as defined by the OLC.⁸⁵ This would ensure the techniques were applied in a “safe” and therefore legal manner, according to Bush administration lawyers. Medical and psychological personnel thus became responsible for identifying when interrogators had crossed the threshold of “severe pain or suffering” and calibrating the levels to keep them within authorized limits.

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The earliest iteration of formal CIA Office of Medical Services (OMS) medical guidelines were developed in March 2003.⁸⁶ They appear to have been informed by the CIA’s experience from past interrogations of detainees, including the catastrophic August 2002 waterboarding of Abu Zubaydah.⁸⁷ The guidelines set medical limits on the physical pressures used in interrogation. To date, there are just three sets of publicly available guidelines, including a “draft” dated September 2003, a formal version dated May 2004, and a revision dated December 2004.⁸⁸

However, in the early stages of the CIA program, health professionals tasked with medical supervision lacked guidance on how to do so, ultimately leading to the development of the OMS guidelines. The threshold itself was undefined, as the OLC’s definition was pieced together from unrelated health benefits statutes⁸⁹ and had no basis in the existing scientific literature or clinical practice. Nor were there clinically accepted standards for monitoring pain to keep torture “safe.” In the clinical context, measures of pain are created to assess the ability to make pain go away, not to determine the tolerance for sustained, inflicted pain. In addition, measures of effect – i.e., of harm or disability – do not necessarily correlate with severity of pain and suffering. Lastly, the extant SERE literature did not address how to keep the techniques “safe.” Instead, it documented high risks of harm, even with limited application in a controlled setting.

Therefore, in order to establish the practical guidelines, health professionals needed to collect data to define a process for this more expansive and aggressive application of the SERE techniques against detainees held in the context of armed conflict. The OLC memos thus effectively created a research mandate. To perform the monitoring role as directed, health professionals needed to develop a basic understanding of the harm caused by the expanded use of the techniques in actual theater of war settings, define its clinical parameters and indicators, and develop a standard of “safety.” Collecting data was a practical necessity, given the untested nature of the techniques and the lack of literature on using torture for compliance related to intelligence collection in the field.

“Good Faith Belief” Defense Makes Research a Form of Legal Due Diligence
The OLC created a heightened standard for the “specific intent” element of the crime of torture, further eroding the scope of protection against abuse.⁹⁰ Accordingly, even if officers knew their actions would cause detainees severe physical pain or severe and prolonged mental harm, the OLC argued that producing this result had to be their “precise objective” in order for the act to be illegal. The “specific intent” requirement dovetailed with a parallel heat shield that OLC lawyers were constructing in concert with the CIA. The legal defense of “good faith belief” was designed to account for harm nonetheless caused. Officers could negate the “specific intent” requirement if they demonstrated a good faith belief that their actions would not cause severe or prolonged harm. In July 2002, OLC lawyer John Yoo advised the CIA how to do so: “Due diligence to meet this standard might include such actions as surveying professional literature, consulting with experts, or evidence gained from past experience.”⁹¹

By then, the OLC was already incorporating data from interrogations to generate legal cover for the “enhanced interrogation” program. The CIA provided the DOJ and White House with information about the psychological effects of the techniques on Abu Zubaydah⁹² as well as on his “resilience to date.”⁹³ It further claimed that the use of the techniques would not cause prolonged mental harm. These representations were folded into the August 1, 2002 OLC memos. Before the OLC even declared the use of “enhanced interrogation” techniques legal, it was already advising the CIA that evidence, and the act of evidence-generation, could be used to avoid criminal prosecution. At the same time, the CIA was already collecting, analyzing, and providing preliminary evidence.

Over the course of the program, the OLC and CIA continued to contend that drawing on a “relevant body of knowledge” regarding the effects of interrogation could help negate a charge of torture, including research conducted on detainees. This was made explicit in a joint CIA-OLC memo, dated June 2003:

“The absence of specific intent (i.e., good faith) can be established through, among other things, evidence of efforts to review relevant professional literature, consulting with experts, **reviewing evidence gained from past experience where available (including experience gained in the course of U.S. interrogations of detainees)**, providing medical and psychological

assessments of a detainee (including the ability of the detainee to withstand interrogation without experiencing severe physical or mental pain or suffering), providing medical and psychological personnel on site during the conduct of interrogations...⁹⁴ [emphasis added]

Thus, research data and the research process itself – i.e., consulting experts and learning from their experience through a process of evaluation, analysis, and refinement – were cited as a way to demonstrate due diligence in avoiding harm.

II. CIA Torture Experiments

Mitchell and Jessen were contracted by the Central Intelligence Agency (CIA) to develop the “enhanced interrogation” program. They claimed that resistance training scenarios from the U.S. military’s Survival, Evasion, Resistance, and Escape (SERE) program could be developed into offensive techniques to induce learned helplessness and produce compliance. They further claimed that learned helplessness would cause detainees to become cooperative, enabling interrogators to extract useful information from them. This ignores well-established information that torture is falsely premised, ineffective, and counterproductive,⁹⁵ as well as illegal and unethical. While the full scope of the research conducted by Mitchell and Jessen is not known, from 2002 to 2004, at least a dozen contracts explicitly referred to “applied research.”⁹⁶ The domestic portion of this work consisted of developing research methodologies and advising the CIA on their application.⁹⁷ The overseas portion involved “conducting specified, time-limited research projects” – that is, site-based investigation. The contracts do not specify what the research entailed. However, the available evidence suggests it involved scaling SERE methods for exploitation purposes and studying the effects, consistent with Mitchell and Jessen’s white paper hypothesis.⁹⁸ At a minimum, it appears that Mitchell and Jessen conducted an uncontrolled observational study. The contracts correspond with their documented activities at various CIA black site secret prisons and were executed at critical moments of the CIA program.

Conducting Initial Experiments

Gathering Baseline Data

Two unidentified CIA officers – but likely Mitchell and Jessen, given the dates – proposed an interrogation plan in March 2002,⁹⁹ two weeks before Abu Zubaydah’s capture and rendition to a black site in Thailand. Mitchell’s contract for “applied research” was modified and increased on April 4 (\$101,600), immediately before he deployed to Thailand to consult on the psychological aspects of Abu Zubaydah’s interrogation.¹⁰⁰ Throughout the spring and summer of 2002, the CIA tortured Abu Zubaydah and shared the results with the White House and Department of Justice (DOJ) as part of an ongoing discussion about the legality of the techniques. Specifically,

A Department of Defense memo recommending the continued detention of Abu Zubaydah at Guantánamo Bay detention center, where he was transferred after being tortured at secret CIA “black sites.”



Mitchell “wrote cables every night to get the next day’s abuse approved by [White House Counsel] Alberto Gonzales.”¹⁰¹ These cables likely detailed the effects of the techniques on Abu Zubaydah in order to secure approval. As the CIA began using techniques described by an FBI agent on-site as “borderline torture,” Abu Zubaydah reportedly became uncooperative with the interrogation process.¹⁰²

Not obtaining the results it sought, the CIA became progressively convinced it needed to use harsher tactics.¹⁰³ Mitchell and Jessen were “tasked with devising a more aggressive approach to interrogation.”¹⁰⁴ This resulted in accelerated development of “a formal set of enhanced interrogation techniques” the psychologists were in the process of developing.¹⁰⁵ By mid-April, Mitchell had taken over the interrogation.¹⁰⁶ As he proposed the use of increasingly harsh measures,¹⁰⁷ his “applied research” contract was again increased (\$162,600).¹⁰⁸ The CIA began pushing for written authorization to use waterboarding and other “enhanced techniques” on Abu Zubaydah, and placed him in a six-week period of extreme isolation in June. This enabled Mitchell to return to the United States and attend meetings with CIA, DOJ, and White House officials to discuss legal authorization to proceed.¹⁰⁹

These discussions increasingly turned on the question of whether or not the abusive practices deployed in these experiments would cause lasting damage to detainees. Mitchell and Jessen set about obtaining observational data on the historical use of the SERE techniques on volunteers, conducting desk research (a literature review), and “soliciting information on effectiveness and harmful after effects from various psychologists, psychiatrists, academics, and the Joint Personnel Recovery Agency (JPRA), which oversaw military SERE programs.”¹¹⁰ By early July, a plan was worked out for a 20-day “aggressive phase,” to be handled exclusively by the two psychologists.¹¹¹ However, the White House and DOJ remained fixated on potential exposure of interrogators and U.S. officials to criminal liability for inflicting or ordering prolonged mental harm.

False Claims of “Safety” and “Efficacy” in Exchange for Legal Cover

The CIA stated that medical personnel would be present during the “enhanced interrogations” to keep interrogators from crossing the threshold of inflicting severe pain or suffering that would constitute torture. At the same time, the CIA represented that there were medical risks of heart attack, stroke, and death. It requested assurances that Abu Zubaydah would remain in isolation and incommunicado for the rest of his life, indicating the severity of techniques to come.¹¹²

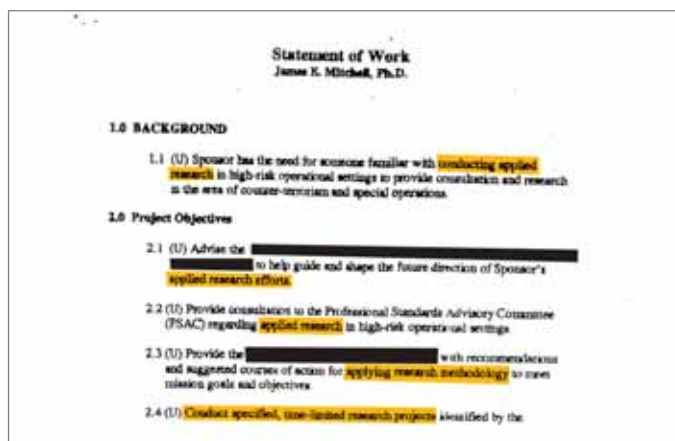
The CIA and DOJ discussed legal defenses in the event that the predicate, or underlying, act of torture did occur in spite of medical monitoring. This centered on undertaking acts of due diligence to show “good faith,” as a defense to the criminal element of specific intent. After CIA Senior Deputy General Counsel John Rizzo asked the OLC for written advice on elements of the federal anti-torture statute, the OLC’s John Yoo noted that due diligence could be shown, among other things, by evidence gained from past experience. As the Senate torture report summary notes:

“Finally, the Agency presented OLC with a psychological profile of Abu Zubaydah and with the conclusions of officials and psychologists associated with the SERE program that the use of EITs [enhanced interrogation techniques] would cause no long term mental harm. OLC relied on these representations to support its conclusion that no physical harm or prolonged mental harm would result from the use on him of the EITs, including the waterboard.”¹¹³

The purpose of psychological profiling was to identify vulnerabilities for interrogators to exploit. It should be noted that this activity, done in support of the intentional infliction of pain and suffering, could not be construed as a legal defense against torture. Nevertheless, the CIA asserted this and made additional representations about the manner in which the techniques would be applied, including limits in time, on an as-needed basis, in an escalating fashion, and according to precise procedure.¹¹⁴ Mitchell and Jessen reasserted that “the safety of any technique lies primarily in how it is applied and monitored.”¹¹⁵ Such representations, however, failed to acknowledge the range of ways in which scaling SERE would be fundamentally different: detention basis/legal status (prisoner of war), conditions of confinement, basic treatment, and the frequency and severity of mistreatment. As the CIA sought legal authorization to proceed, based on the SERE medical findings and data collected from Abu Zubaydah, Mitchell’s pay was substantially increased (\$257,600) and Jessen was given his own “applied research” contract (\$135,000).

The DOJ approved the “enhanced” techniques on August 1, 2002 in a pair of legal memos. These incorporated the findings to date and institutionalized the need for research as part of a carefully constructed legal defense. By requiring medical monitoring of a new harm standard, the memos gave rise to a practical need to conduct research – not just to perform a “safety” monitor role, but to generate data to define a

Starting in 2001, psychologist James Mitchell was contracted by the CIA to conduct applied research on the effects of torture on U.S. detainees.



harm standard. Shortly after, Mitchell and Jessen began the “aggressive phase” of Abu Zubaydah’s interrogation. Mitchell and Jessen began waterboarding Abu Zubaydah on August 4.¹¹⁶ A period of escalating mistreatment followed, so extreme that personnel were warned to “prepare for something not seen previously” and some were affected to the point of tears. The Senate torture report summary notes reactions and comments by CIA personnel:

- August 5, 2002: “...want to caution [medical officer] that this is almost certainly not a place he's ever been before in his medical career.... It is visually and psychologically very uncomfortable.”
- August 8, 2002: “Today's first session ... had a profound effect on all staff members present.... It seems the collective opinion that we should not go much further.... Everyone seems strong for now but if the group has to continue ... we cannot guarantee how much longer.”
- August 8, 2002: “Several on the team profoundly affected ... some to the point of tears and choking up.”¹¹⁷

When the “aggressive phase” came to an end, Mitchell and Jessen proposed it be used as a template for future interrogations, with psychologists shaping compliance first.¹¹⁸

Mitchell and Jessen began waterboarding Abu Zubaydah on August 4. A period of escalating mistreatment followed, so extreme that personnel were warned to “prepare for something not seen previously” and some were affected to the point of tears.

Refining the Variables

The CIA extended Mitchell’s psychological assessment contract on August 21, 2002.¹¹⁹ He and Jessen had been evaluating CIA captives and promoting this as critical to the “enhanced interrogation” process. This included initial assessments to analyze the

detainee's personality, identify vulnerabilities, and determine whether to use "enhanced" techniques;¹²⁰ subsequent evaluations of the impact of the techniques on the detainee;¹²¹ and mental examinations before waterboarding and other measures requiring pre-approval.¹²² Mitchell was specifically tasked with analyzing psychological variables relevant to detainee manipulation and exploitation as well as behavioral science theories and methods for motivating and influencing human behavior.¹²³ The assessments themselves constituted a form of internal data collection and were disseminated outside the agency.¹²⁴

Scaling Up the Torture Research

Translating Initial Experiments into Methodology

The CIA, in collaboration with Mitchell and Jessen, built a repertoire of "enhanced interrogation" tactics and a pattern of deployment of those tactics that they subsequently used on others. It evaluated the effects of torture on detainees as well as the methodology itself. Over time, the CIA undertook efforts to develop written protocols and procedures for the interrogations, incorporating data collected by interrogators, medical staff, and other personnel. The systematic monitoring and analysis of "enhanced interrogation" methods to induce compliance, and the widening efforts to study the physical limits of how methods were combined (and sequenced) all constituted human subjects research.

Throughout the program, Mitchell's and Jessen's contracts for "applied research" increased in value. Because the contracted rate remained the same, this suggests that the number of work days increased. These increases coincided with the capture or rendition of new detainees, in addition to the ongoing "exploitation" of detainees already in custody. For example, the CIA increased Mitchell's and Jessen's pay on September 5, 2002, days after the "Salt Pit" prison opened in Afghanistan and Ridha al-Najjar's abusive treatment began.¹²⁵ It increased Mitchell's pay on September 12, the day after Ramzi bin al Shibh was captured.¹²⁶ It increased Jessen's pay on October 24, after Abd al Rahim al Nashiri's capture and just before Gul Rahman's capture.¹²⁷

The CIA program was operationalized hastily, without established guidelines or procedures. Interrogations were described as involving "rapid escalation and indiscriminate repetitions."¹²⁸ Gul Rahman's death while in U.S. custody in Afghanistan in November 2002 and the use of "unauthorized" techniques on other detainees exposed the ad hoc nature of the program.¹²⁹ In January 2003, the CIA instituted its first written guidelines, which required advance headquarters approval for "enhanced interrogation" techniques, on-site physical and psychological examinations by health personnel, and medical monitoring during application.¹³⁰ Over time, the program was subjected to greater internal scrutiny. The CIA Office of Inspector General conducted an internal review in 2003 and early 2004, at which time a number of CIA personnel

expressed concerns over the “efficacy” of the techniques.¹³¹

Refining the Research Experiment: “Less Invasive Techniques”

In May 2003, Mitchell and Jessen developed a proposal “to study how CTC [CIA Counterterrorism Center] can develop and apply even less-intrusive techniques without any loss in the interrogation’s psychological impact” – which the CIA would “field test.”¹³² Starting in April 2003, they began transitioning from a direct interrogation role to strategic consulting, research and program development, and other undisclosed projects.¹³³ Mitchell was contracted to develop a model for conducting assessments and applied research – to include refining variables to apply the model to specific individuals and developing ways to evaluate the variables.¹³⁴ Jessen’s contemporaneous contracts involved developing a model for providing psychological consultation and assessments to the intelligence community – including modifying the process to inform strategies for applying research methodology.¹³⁵

This transition appears to have signaled a shift from operationalizing research findings – that is, applying generalized knowledge from discrete interventions to the exploitation and interrogation process – to engaging in broader research involved in the expansion and scale up of the program’s tactics, techniques, and procedures.¹³⁶ The CIA has explained this as intentional: “... as interrogators became more knowledgeable, as it became easier to use information from one detainee to get more from another, and as our understanding of the effectiveness of various techniques grew, CIA’s interrogations gradually relied less on coercion.”¹³⁷

However, the record suggests that factors beyond a desire to use less coercion were at work. At the time, the CIA was in fact pushing the DOJ for written authorization to continue using harsh methods.¹³⁸ In addition, there was dissent within the agency over Mitchell and Jessen’s role. The CIA’s Office of Medical Services (OMS), in particular, supported a revised role for the psychologists, focusing on “external data collection” regarding the program’s “efficacy” and leaving detainee assessments to medical officers. The OMS also discussed the need for greater evidence of “safety” and “efficacy” as a matter of programmatic “due diligence.”¹³⁹ Significantly, OMS complaints about Mitchell and Jessen acknowledged that the “enhanced interrogation” process involved collecting data from detainees. The DOJ provided written approval in June 2003 in a still-classified memo.¹⁴⁰

Refining the Research Experiment: Combined Use of Techniques

The CIA began restricting the use of “enhanced interrogation” techniques and fully suspended them in May 2004, following the Abu Ghraib torture scandal and the release of the CIA’s internal report.¹⁴¹ In June, the Bybee memos were withdrawn, and the OLC began to distance itself from the jointly developed “Bullet Points,” which contained the most concrete expression that evidence from abused detainees could form part of a good faith legal defense.¹⁴² Throughout the next several months, into 2005, the CIA requested a new opinion on the legality of “enhanced interrogation” methods from the

DOJ, which in turn requested additional information on specific techniques and their combined application.¹⁴³

As of 2005, the research questions were still evolving, in response to internal pressure to demonstrate the “efficacy” and “safety” of the “enhanced interrogation” techniques.¹⁴⁴ Mitchell and Jessen defended their methodology, stating that the individual physical techniques could not be studied or evaluated, and that one must look at the total effect of sequencing multiple techniques. An undated OMS memo quotes a 2005 paper written by the psychologists:

“... the choice of which physical techniques, if any, to use is driven by an individually tailored interrogation plan and by a real-time assessment of the detainee’s strengths and weaknesses and reactions to what is happening. In this process, a single physical interrogation technique is almost never employed in isolation from other techniques and influence strategies, many of which are not coercive. Rather, multiple techniques are deliberately orchestrated and sequenced as a means for inducing an unwilling detainee to actively seek a solution to his current predicament, and thus work with the interrogator who has been responding in a firm, but fair and predictable way.”¹⁴⁵

This hypothesis, as well as evidence generated by the OMS to support these findings, was reflected in the 2005 Bradbury memos – a series of OLC opinions written by Principal Deputy Assistant Attorney General Steven Bradbury, authorizing additional “enhanced interrogation” techniques to be applied individually or in combination. However, the DOJ Office of Professional Responsibility’s (OPR) 2009 report into OLC memos issued in connection with the torture program notes that the Bradbury memos were erroneous and failed to recognize significant differences between the CIA program and the SERE antecedent. As summarized in the OPR Report:

“The 2005 Bradbury Memo acknowledged that most SERE trainees experienced the technique only once, or twice at most, whereas the CIA program involved multiple applications, and that ‘SERE trainees know it is part of a training program,’ that it will last ‘only a short time,’ and that ‘they will not be significantly harmed by the training.’”¹⁴⁶ [...]

“The Classified Bybee Memo also summarized some of the information provided to OLC by the CIA concerning the medical supervision and monitoring of interrogation, the views of experts about the effects of EITs, the experience of SERE training, and the CIA’s review of relevant professional literature.”¹⁴⁷

Dissemination of Research Findings

Throughout the “enhanced interrogation” program, the CIA produced generalizable knowledge derived from its research on detainees. These observations and findings were shared in the form of reports, presentations, briefings, training materials, and consultations with individuals inside and outside the agency. In particular, Mitchell and Jessen developed a model to train CIA and military personnel in using “enhanced interrogation” and organized specialized training courses in which they presented what they had learned to date, based on their research. At least some of the courses were attended or otherwise observed by OMS personnel, indicating an overlap between the “safety” and “efficacy” inquiries.¹⁴⁸ The CIA also contracted with the company Mitchell and Jessen formed in 2005 to staff the program with operational psychologists and provide consultation and training. This included analyzing past and current practices and providing recommendations for the program’s operation and development.¹⁴⁹

The dissemination process took place through organized as well as ad hoc channels, and involved applying the generalizable knowledge to a broader population of practitioners. Some of these discussions included the utility of research related to detainee interrogations. For example, in late 2002, psychologist Melvin Gravitz, a member of the CIA’s Professional Standards Advisory Committee and a former American Psychological Association (APA) official, was consulted on whether Mitchell’s participation in detainee interrogations was ethical. This was in response to an OMS complaint that Mitchell was conducting interrogations and evaluating the effects of his own efforts. Gravitz concluded that the participation was ethical. In a February 2003 email to Mitchell, he noted:

“Psychologists base their work on established scientific and professional knowledge. It follows that, when there is a minimal knowledge base existing in science or practice, such services may be informed by the psychologist’s prior and ongoing experience.”¹⁵⁰

As the 2015 report on the APA’s independent review into APA ethics, national security, and torture (Hoffman Report) notes, “this appears to be a reference to the relative paucity of research on the effectiveness of the ‘enhanced’ interrogation techniques, and a suggestion that Mitchell’s experience with SERE training or other detainee interrogations could be relied upon.”¹⁵¹ Gravitz’ opinion thus appeared to suggest that research could supplement a lack of knowledge, making an otherwise untested activity ethical.

In July 2003, the APA and RAND Corporation co-sponsored an invitation-only workshop on the “Science of Deception: Integration of Theory and Practice,” with CIA funding, which was attended by Mitchell, Jessen, and other personnel connected with U.S. interrogation operations.¹⁵² Mitchell was particularly focused on conducting research in the counterterrorism context, as one participant’s follow up email to a CIA psychologist indicates: “Kirk, I appreciated how Jim Mitchell kept saying (especially on the second day), ‘this is an empirical question; we need to collect data and do studies.’”¹⁵³

III. Research on the Health Effects of Torture

Creating Illusions of Legitimacy and “Safety”

The Central Intelligence Agency (CIA) worked to give the “enhanced interrogation” program an appearance of legal legitimacy and safety. As Mitchell and Jessen conducted their initial experiments and scaled up data collection on multiple detainees across the CIA program, they engaged in regular communications about the documented health consequences of their research with CIA personnel and officials in the Department of Justice (DOJ), Department of Defense, and the White House.¹⁵⁴ The CIA sought legal guidance as well as preemptive immunity from prosecution for activities it recognized would violate the ban on torture.¹⁵⁵ In turn, DOJ lawyers sought assurances that the techniques would not cause severe pain or suffering or prolonged harm to detainees in order to protect its client, the Bush administration.¹⁵⁶

Health professionals in the CIA Office of Medical Services (OMS) were accordingly tasked with conducting medical monitoring of the techniques. This presented an ethical as well as a practical dilemma: how to define “safety” while intentionally inflicting pain and how to keep the techniques from inflicting harm beyond what was authorized by the Office of Legal Counsel (OLC) memos. The extant literature derived from the military’s Survival, Evasion, Resistance, and Escape (SERE) training fell short of providing the clinical guidance that was needed. The SERE program had involved limited exposure to minimal applications of select techniques to young, healthy volunteers in mock prisoner-of-war settings. Even in those lower risk applications, SERE investigators recorded serious risk of harm, including dramatic stress hormone spikes and psychological stress measures.¹⁵⁷

Medical officers thus worked to develop clinical standards in order to fulfill the role of “safety officer.” They collected and aggregated data on detainee health, generally and specific to the medical effects of torture and abusive conditions of confinement. They analyzed the data, producing findings that were incorporated into interrogation protocols and clinical guidance for use across the detainee population.

As the program continued, a greater variety and combination of tactics were employed, exceeding the scope of initial authorization. The severity of the harms also increased and the OMS encountered increasingly complex clinical presentations.¹⁵⁸ Yet the CIA repeatedly misrepresented the health effects of the techniques, as the Senate torture report summary notes:

“From 2002 to 2007, the Office of Legal Counsel (OLC) within the Department of Justice relied on CIA representations regarding: (1) the conditions of confinement for detainees, (2) the application of the CIA’s enhanced interrogation techniques, (3) the physical effects of the techniques on detainees, and (4) the effectiveness of the techniques. Those representations were inaccurate in material respects.”¹⁵⁹

These variations forced the OMS to continue expanding its knowledge base. OMS research became increasingly tailored to the effects of the techniques as they were actually used, in order to document their “safety” – despite the various conflicts of interest inherent in mitigating as well as measuring harm. These observations were documented and analyzed. They informed the development of individual procedures, which in turn informed standard operating procedures across the detainee population. Those protocols informed the development of subsequent legal standards.

Developing Clinical Parameters for Torture

New documents confirm that the OMS was collecting data and generating findings – to define and standardize acceptable levels of harm – to a degree that reaches clinical research. The OMS guidelines, which represented “best practice” based on accumulated experiences in the CIA program, outlined the responsibilities of medical officers:

“OMS is responsible for assessing and monitoring the health of all Agency detainees subject to ‘enhanced’ interrogation techniques, and for determining that the authorized administration of these techniques would not be expected to cause serious or permanent harm.... As a practical matter, the detainee’s physical condition must be such that these interventions will not have lasting effect, and his psychological state strong enough that no severe psychological harm will result.”¹⁶⁰

New documents confirm that the OMS was collecting data and generating findings – to define and standardize acceptable levels of harm – to a degree that reaches clinical research.

The only way to determine this would be through long-term studies, which did not appear to exist. Therefore, they were asked to provide judgment in the absence of any knowledge or evidence. Accordingly, the OMS guidelines explicitly instructed health professionals to document their clinical observations for use by future on-site medical personnel.¹⁶¹ This record-keeping differed in significant respects from the routine management of medical files that occurs in other institutional and correctional settings. OMS staff were not just keeping records on the use of accepted medical or security practices on individual detainees. They were collecting data on the medical effects of

the techniques, with the aim of standardizing the application of those techniques. The purpose of the data collection was to develop clinical standards that would enable the OMS to identify and manage harm across the detainee population, not just at the level of individual detainees.

The monitoring requirement created a need for research to address the lack of theoretical or practical knowledge of how to deploy the methods. Unlike the controlled environment of SERE training, those monitoring the interrogations were compelled to explore a different question: how to keep the techniques from causing severe or lasting harm, despite extreme applications over indefinite periods of time on a hostile, involuntary, and cross-cultural population. This knowledge gap was reflected in the OMS' own records, including the medical guidelines and cables from the black sites.¹⁶²

Medical monitoring thus gave rise to a research endeavor to define torture practices as “safe” and “effective.” From 2002 on, the OMS worked to address this knowledge gap and undertook activities to identify the health effects of the techniques, develop scientific procedures for their use, and define both limitations to their use and the medical rationale. The OMS monitored and documented harm, i.e. discernible effects, and collected data to inform future medical judgments. It appears that medical data was being collected consistent with guidelines and shared systematically inside and outside the CIA.¹⁶³

Even the physical abuse was aimed at psychological manipulation – namely, inducing learned helplessness and dependency. Notably, the documentation had a bias for short-term physical effects, as there is no evidence of guidelines for monitoring psychological harm, despite it being the precise objective of the program. In fact, the techniques that formed the basis of “enhanced interrogation” were already known to cause severe and lasting physical and psychological harm. As noted in PHR’s 2010 report, which analyzed publicly available SERE literature at the time the CIA program began:

“Among other findings, the SERE studies indicated that the exposure of the soldier-subjects to the ‘uncontrollable stress’ of the survival training exercise produced ‘rapid and profound changes in cortisol’ and other stress hormones. The cortisol levels measured were found to be high enough to produce immune suppression and adversely affect memory and were comparable to levels measured in subjects undergoing major surgery. Norepinephrine and epinephrine (noradrenaline and adrenaline) levels were comparable to levels measured in novice parachutists and during tracheal suctioning in intubated patients. The protective neuropeptide, NPY, was found to be rapidly depleted during the short exercise, and testosterone levels were reduced by over 50% (all participants studied were men).”¹⁶⁴

A July 2002 memo from SERE’s chief of psychology services, which informed the decision of the OLC to authorize “enhanced interrogation,” concluded that there were

minimal long-term psychological effects from SERE training, based on efforts undertaken to mitigate temporary risks and to ensure that training did not become “traumatic” for students. The officer later said the analysis was produced with students in mind and would not be applicable to real-world detainees, noting that “while long-term psychological harm can occur from relatively brief distressing experiences, the likelihood of psychological harm is generally increased by more lengthy and uncertain detentions.”¹⁶⁵

There were no credible OMS guidelines to conduct psychological assessments in accordance with international, UN standards. Nonetheless, the OMS worked to develop medical limits and medical justifications for the techniques, which included identifying unique sequelae and physical forensic patterns specific to torture; comparing the effects with reported research and previous observations; identifying contraindications, risk factors, warning signs, and clinical correlations; alleviating interrogation-limiting conditions to allow abuse to proceed; and establishing procedures to monitor and modify effects for the purpose of enhancing operational impact or mitigating clinical risks.

The following examples illustrate how the OMS conducted research on “safety,” and in particular struggled with a lack of past research to perform this role. In each case, the development of the torture procedures met the criteria that define research, including:

- **Implicit Research Question:** The activities attempted to answer research questions driven by a lack of clinical standards, in response to a lack of knowledge about the “safety” of a technique or, alternatively, an awareness of the potential risks of a technique.
- **Methodology:** The activities were methodologically driven, involving systematic data collection.
- **Data Collection and Analysis:** Data was collected from observations of and interactions with detainees and subsequently analyzed. Conclusions were drawn from the results.
- **Generalizable Knowledge:** This work was designed to contribute to generalizable knowledge, as evidenced by the application and dissemination of the findings. They were directly incorporated into interrogation protocols, clinical standards, legal authorizations, and operational trainings for application across the detainee population. In some instances, the interrogation or clinical procedures were modified based on these findings.

Water Dousing

The CIA began using water dousing as an interrogation technique at COBALT, a CIA black site in Afghanistan, as early as February 2003.¹⁶⁶ This torture method was also described as “bathing.” A variant that did not involve full immersion – cold showers – was in use as a “deprivation technique” as early as November 2002.¹⁶⁷ Water dousing involved pouring water over detainees while they were lying on a tarp or in a tub or hosing them down while they were shackled in a standing sleep deprivation position.¹⁶⁸ In some instances, detainees were strapped to a wooden board and had water poured over their faces in an approximation of waterboarding.¹⁶⁹ Throughout the process, they were kept naked or in wet clothing. Afterwards, they were placed in cold rooms, still wet and shackled.¹⁷⁰

Shackling in upright sitting or horizontal position	body weight; or evidence of dehydration 48 hours standard; longer periods require medical monitoring	significant malnutrition and requires corrective action Prolonged standing likely to induce dependent edema, increase risk for DVT, cellulitis.	CTC guidelines; experience with 20+ detainees
Water dousing	Cessation upon evidence of hypothermia; ambient temperature minimum of 64 F / 18 C; potable water source	Increased heat loss promoted by contact with water below 35 C; death can result from prolonged (i.e. 6 hour) exposure to 15 C water, 2 hrs at 10 C, 1 hr at 5 C; hypothermia can be induced in 30 minutes with 5 C / 41 F water, 45 minutes with 10 C / 54 F water, and 60 minutes with 15 C / 59 F water immersion. Immersion at temperatures below 25 C / 77 F will eventually be fatal over time.	“Wilderness Medicine” 4 th Ed., Ch 6 – Accidental Hypothermia; Ch 9 Immersion into cold water; Transport Canada, “Survival in Cold Waters”, PREAL Operating Instructions

Medical and psychological guidelines issued by the CIA's Office of Medical Services in December 2004 detailing medical limits for various torture practices, including water dousing.

Water dousing was not approved for use by CIA headquarters until June 2003, when it was classified as a “standard technique.”¹⁷¹ In the preceding months, the OMS was involved in developing the method at COBALT.¹⁷² This involvement included research focused on identifying and mitigating the health risks and harms. Specifically, detainees subjected to cold water immersion, sometimes combined with exposure to cold temperatures, were at risk of developing hypothermia. In addition, detainees who had water poured over their faces were at risk of inhaling or ingesting fluid.¹⁷³ These risks were articulated in medical OMS guidelines, as well as in later representations that medical personnel would monitor and mitigate such risks.

It is unclear how much formal guidance existed on the use of water dousing, including medical monitoring and support, before the September 2003 “draft” OMS guidelines, which is the earliest publicly available version.¹⁷⁴ From these guidelines, it is apparent that little was known about water dousing at the time. Although it was purportedly used in SERE training, the clinical reference points cited consisted of guidelines for exposure to water, derived from U.S. naval submersion studies dating to the 1940s.¹⁷⁵ In addition, the section on water dousing was contained within a larger section on “uncomfortably cool environments,” suggesting the practice may have emerged as a variation of cold exposure. The available evidence suggests that this input, and the development of the water dousing procedure itself, formed part of an iterative process that meets the elements of research.

There was an implicit research question, namely how to monitor and maintain “safety” during applications of water dousing.

There was systematic data collection. OMS personnel were directed to observe the effects of water dousing and document what they saw. Particular attention was to be paid to environmental and core body temperatures, as well as factors affecting heat retention: contact with the floor, immobilization by restraints, low muscle mass, a state of fatigue, being older than 45.¹⁷⁶ In addition, the OMS was instructed to note wet skin or clothing from “partial or complete soaking.” The Senate torture report contains multiple examples of notes kept by the OMS, which were shared in an organized manner with several parties. For example, the CIA investigator general investigated a report of unauthorized water dousing or waterboarding from March through May 2003 of Mustafa al-Hawsawi, a Saudi national who remains in U.S. custody at Guantánamo Bay, and made specific reference to notes kept by the OMS, Counterterrorism Center (CTC) Legal, and CTC/Renditions and Detainees Group.¹⁷⁷

The data collected was analyzed and conclusions were drawn from the results, resulting in changes to the administration of the method. This observational data was documented with the aim of applying the findings to inform future practice. This included advising on interrogations and modifying the use of water dousing on specific detainees. CIA and other records provide the following examples of the OMS experimenting with the procedure at the Salt Pit prison in Afghanistan:

- March 2003: “OMS advised that placing KSM [Khalid Sheikh Mohammed, a Pakistani national held at a black site in Poland] on bare cement could cause his body heat to leach much faster than if he is placed on a towel or sheet. Also, the air temp must be above 65 degrees if KSM would not be dried immediately.”¹⁷⁸
- May 2003: OMS advised that the water dousing procedure could be modified for two detainees with broken feet, Abu Hazim and Mohammed Shoroeiya (a.k.a. Abd al-Karim), by wrapping their legs in plastic.¹⁷⁹

- Date unknown: In an interview with Human Rights Watch, former CIA detainee Khalid al-Sharif indicated a male doctor took part in his water dousing, telling others in the room to either continue with the tactic or stop: “Sharif also said that the cast he had on his leg due to his broken foot became soft as a result of this water treatment, so the doctor put another type of cast on him that had three sides that could be removed. They would take off his leg cast before the sessions with water and then put it back on afterwards, binding it with mesh.”¹⁸⁰

The activities were designed to contribute to generalizable knowledge. These observations were aggregated across the detainee population to inform interrogation protocols and to standardize clinical guidelines.

The May 2004 OMS guidelines, however, addressed water dousing in a standalone section incorporating the previously reported research and anecdotal observations. It also contained specific recommendations, including to advise on acceptable lower temperatures “in certain operational settings;” modify or limit the practice if detainees showed signs of mild hypothermia; and provide aggressive medical intervention if detainees showed moderate hypothermia.¹⁸¹ These were, in turn, incorporated into the December 2004 guidelines, with more detail about specific risk factors (e.g., wet skin, wet clothing, low ambient temperatures) and risks (hypothermia), mitigation and intervention strategies, and reference to CTC guidelines.¹⁸²

- “In our opinion, a partial dousing, with concomitant less total exposure and potential heat loss, would therefore be safe to undertake within these parameters.”
- “The total dousing time represents a maximum for safety reasons; evidence of developing hypothermia should prompt immediate rewarming and recommendation to terminate water exposure for the session, regardless of the amount of time elapsed.”¹⁸³

In this manner, the clinical guidelines underwent modification and development, based on the aggregate observation of detainees. These findings were also used for additional legal authorization of water dousing, particularly its prior yet unauthorized use in connection with sleep deprivation. According to the Senate torture report summary:

- At an August 2004 meeting with the OLC, “[w]ith regard to water dousing, CIA officers represented that ‘water is at normal temperature; CIA makes no effort to “cool” the water before applying it.’”¹⁸⁴
- In a May 2005 response to questions from the OLC, “[w]ith regard to the effect of sleep deprivation on the experience of water dousing, the CIA response stated that ‘at the temperatures of water we have recommended for the program the likelihood of induction of pain by water dousing is very low under any circumstances, and not a phenomenon we have seen in detainees subject to this technique.’”¹⁸⁵

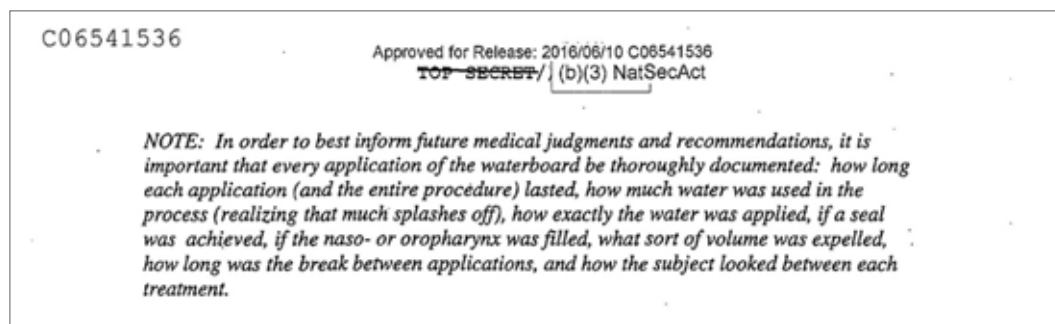
In January 2004, water dousing was recategorized by the CIA as an “enhanced” interrogation technique.” This classification affected how authorization proceeded for use of techniques at other sites.¹⁸⁶

By March 2004, the CIA was urging the OLC to approve water dousing’s use, describing a well-developed protocol:

“Water dousing is ‘intended to weaken the detainee’s overall resistance posture and persuade him to cooperate with interrogators by removing his sense of predictability and control. The detainee, dressed or undressed, is restrained by shackles and/or interrogators in a standing, sitting or supine position on the floor, bench or similar level surface.’ Potable water is poured on the detainee from a container or garden hose connected to a water source. Water is applied so as to not enter the nose or mouth. A session can last from 10 minutes (a single application) to an hour (multiple applications). The detainee’s resilience, level of cooperation, amount and temperature of water, temperature of the ambient air, and physical and mental state are all factors regulating the length of the water dousing session.”¹⁸⁷

Waterboarding

Human research and medical experimentation were employed to measure the effects of waterboarding and adapt the procedure to avoid injury and fatalities. The evidence consists of OMS guidelines for the systematic collection and documentation of medical data and subsequent refinement of waterboarding practices, which made use of data from the medical monitoring and documentation.



Medical and psychological guidelines issued by the CIA’s Office of Medical Services in December 2004 directing health professionals to systematically document each waterboarding session, “to best inform future medical judgments and recommendations.”

There was an implicit research question, namely how to monitor and maintain “safety” during applications of waterboarding.

There was systematic data collection. Medical personnel were required to monitor all waterboarding practices and collect detailed medical information that was used to

design, develop, and deploy subsequent waterboarding procedures. The OMS guidelines state:

“In order to best inform future medical judgments and recommendations, it is important that every application of the waterboard be thoroughly documented: how long each application (and the entire procedure) lasted, how much water was applied (realizing that much splashes off), how exactly the water was applied, if a seal was achieved, if the naso- or oropharynx was filled, what sort of volume was expelled, how long was the break between applications, and how the subject looked between each treatment.”¹⁸⁸

Prior to the experimental use of large-volume waterboarding on detainees in U.S. custody, little scientific information was apparently available to the OMS to develop parameters for the application of this technique. The OMS guidelines state:

“A rigid guide to the medically approved use of the waterboard in essentially healthy individuals is not possible, as safety will depend on how the water is applied and the specific response each time it is used. The following general guidelines are based on very limited knowledge, drawn from very few subjects whose experience and response was quite varied.”¹⁸⁹

In particular, OMS guidelines noted the extent to which CIA waterboarding differed from the procedure used in the SERE training model, particularly when applied to an individual less fit than a SERE trainee:

“Our very limited experience with the waterboard is different [from the SERE model].... D/CTC policy set an occlusion limit of 40 seconds, though this was very rarely reached. Additionally, the procedure was repeated sequentially several times, for several sessions a day, and this process extended with varying degrees of frequency/intensity for over a week.”¹⁹⁰

The guidelines also recognized the heightened medical risks of waterboarding, as a result of this deviation:

“In our limited experience, extensive sustained use of the waterboard can introduce new risks. Most seriously, for reasons of physical fatigue or psychological resignation, the subject may simply give up, allowing excessive filling of the airways and loss of consciousness.”¹⁹¹

The data collected was analyzed and conclusions were drawn from the results, resulting in changes to the administration of the method. These risks began manifesting from the earliest use of waterboarding, and medical personnel began manipulating its application to mitigate such effects. For example, to reduce the risk of aspiration of vomit, Abu Zubaydah was placed on a liquid diet, as reflected in an email

from a medical officer to OMS leadership: “He did vomit a couple of times during waterboarding with some beans and rice. It’s been 10 hours since he ate so this is surprising and disturbing. We plan to only feed Ensure.”¹⁹² The serious respiratory risks similarly became clear during an August 2002 incident in which he lost consciousness: “Abu Zubaydah remained unresponsive until his interrogators gave him a ‘xyphoid thrust,’ at which point he regained consciousness and expelled ‘copious amounts of liquid.’”

As a result of OMS observations and interventions, a number of modifications to the waterboarding procedure became part of the standard operating procedure. This included initial medical screening and assessment of detainees for specific contraindications to provide “reasonable assurance that the subject does not have serious heart or lung disease, particularly any obstructive airway disease or respiratory compromise from morbid obesity” and to ensure the detainee has “stable anterior dentition, no recent facial or jaw injuries, and an intact gag reflex.”¹⁹³

This also included mandatory presence of medical personnel “to respond immediately” in the case of a crisis caused by respiratory arrest associated with laryngospasm, including a physician present in the treatment room. In addition, the OMS supervised the introduction of other medical equipment and procedures for waterboarding, including a “specially designed” gurney to move the detainee upright quickly in case of choking, the use of a blood oximeter to measure detainee vital signs, placing detainees on a liquid diet so their emesis would be soft and less likely to cause choking or aspiration pneumonia if the detainee were to vomit, the delivery of a sub-xyphoid thrust to expel water if the detainee lost consciousness, and possession of a tracheotomy kit “not visible to the detainee” in case a detainee’s airway had to be surgically opened in order to prevent drowning. The May 10, 2005 Bradbury “Individual Techniques” Memo stated:

“During the use of the waterboard, a physician and a psychologist are present at all times. The detainee is monitored to ensure that he does not develop respiratory distress. If the detainee is not breathing freely after the cloth is removed from his face, he is immediately moved to a vertical position in order to clear the water from his mouth, nose, and nasopharynx. **The gurney used for administering this technique is specially designed** so this can be accomplished very quickly if necessary. Your medical personnel have explained that the use of the waterboard does pose a small risk of certain potentially significant medical problems and that certain measures are taken to avoid or address such problems. First a detainee might vomit and then aspirate the emesis. To reduce this risk, any detainee on whom this technique will be used is **first placed on a liquid diet**. Second, the detainee might aspirate some of the water, and the resulting water in the lungs might lead to pneumonia. To mitigate this risk, a **potable saline solution is used in the procedure**. Third, it is conceivable (though, we understand from OMS, highly unlikely) that a

detainee could suffer spasms of the larynx that would prevent him from breathing even when the application of water is stopped and the detainee is returned to an upright position. In the event of such spasms, **a qualified physician would perform a tracheotomy.** Although the risk of such spasms is considered remote (it has apparently never occurred in thousands of instances of SERE training), we are informed that the **necessary emergency medical equipment is always present – although not visible to the detainee** – during any application of the waterboard.”¹⁹⁴ [emphasis added]

The OMS [The Office of Medical Services] supervised the introduction of other medical equipment and procedures for waterboarding, including a “specially designed” gurney to move the detainee upright quickly in case of choking . . . placing detainees on a liquid diet so their emesis would be soft and less likely to cause choking or aspiration pneumonia if the detainee were to vomit, the delivery of a sub-xyphoid thrust to expel water if the detainee lost consciousness, and possession of a tracheotomy kit “not visible to the detainee” in case a detainee’s airway had to be surgically opened in order to prevent drowning.

OMS data collection and analysis activities regarding waterboarding were designed to contribute to generalizable knowledge. This included the development of standardized medical guidelines themselves. The OMS guidelines state:

“Several such sessions per 24 hours have been employed without apparent medical complication. The exact number of sessions cannot be medically prescribed and will depend on the response to each; however, all medical officers must be aware of the Agency policy on waterboard exposure.... By days 3-5 of an aggressive program, cumulative effects become a potential concern. Without any hard data to quantify either this risk or the advantages of this technique, we believe that beyond this point continued intense waterboard applications may not be medically appropriate. Continued aggressive use of the waterboard beyond this point should be reviewed by the HVT [high-value target] team in consultation with Headquarters prior to any further aggressive use. (Absent medical contraindications, sporadic use probably carries little risk.) Beyond the increased medical concern (for both acute and long term effects, including PTSD), there possibly would be desensitization to the technique.”¹⁹⁵

CIA medical personnel also helped modify the SERE version of the technique for the purposes of studying “efficacy:”

“While SERE trainers believe trainees are unable to maintain psychological resistance to waterboarding, our experience was otherwise. Some subjects unquestionably can withstand a large number of applications, with no immediately discernable cumulative impact beyond their strong aversion to the experience. Whether the waterboard offers a more effective alternative to sleep deprivation and/or stress positions, or is an effective supplement to these techniques is not yet known.”¹⁹⁶

Over time, OMS research was incorporated into development of legal authorization, as reflected in 2005 OLC memos:

- “Safety” of the technique: “We understand that these limitations have been established with extensive input from OMS, based on experience to date with this technique and the OMS’ professional judgment that use of the waterboard on a healthy individual subject to these limitations would be ‘medically acceptable’ ... There is no evidence for such prolonged mental harm in the CIA’s experience with the technique.”¹⁹⁷
- “Safety” of repeated use: “... the CIA has previously used the waterboard repeatedly on two detainees, and as far as can be determined, these detainees did not experience physical pain or, in the professional judgment of doctors, is there any medical reason to believe they would have done so.”¹⁹⁸

Indemnifying Harms of Repeated and Combined Use

OMS health professionals continued to record clinical observations, experimental modifications, clinical indicators, forensic patterns, and warning signs. This program came under increasing scrutiny starting in 2003 as a result of the legal, policy, and operational factors described above. The CIA faced increasing pressure to demonstrate the “safety” and “efficacy” of the “enhanced interrogation” program. At the same time, OMS medical officers faced increasing pressure to manage not just the severity of pain as described by the August 2002 OLC memos, but also the long-term harmful effects of the practices across the detainee population. They struggled to address the unique sequelae and clinical presentations, which lay outside their clinical expertise and experience.

Mitchell and Jessen had claimed the SERE techniques would scale smoothly in the CIA program. However, “enhanced interrogation” differed from SERE in fundamental respects. The CIA’s captives were not “jihadist” analogues to ultrafit U.S. soldiers, but rather arbitrarily detained individuals with varying health issues. They were subjected to severe and repeated torture and mistreatment, over months and years, with no control over their future. By contrast, SERE students could stop the techniques at any time and the training itself was time-limited, meaning they could predict a future after

the training. The fact of indefinite, extrajudicial detention, potentially the most detrimental aspect of the CIA program, meant there was no end in sight to the abusive treatment in the mind of detainees.¹⁹⁹

The SERE and CIA programs were thus fundamentally different psychological experiences. These differences were intentional, and the CIA exploited them as part of the experimental effort. Everything in the “enhanced interrogation” program was a variation of indefiniteness and uncontrollability, to foster helplessness and dependency. It is not surprising that these differences produced uncontrolled and tragic effects. Detainees were suffering extreme harm from the abuse, including death, maiming, brain damage, and signs of profound psychological disturbance.²⁰⁰ For example, Gul Rahman died of hypothermia as the result of short shackling, isolation, water dousing, and rough takedowns, which were not officially authorized and, in some cases, went unreported in CIA cables.²⁰¹ The use of the techniques exceeded existing authorization with respect to the severity, repetition, combined use, and cumulative effect over time.

Past authorization covered single techniques used in a limited fashion in sequential order. The CIA had claimed that the mere presence of health professionals could keep torture “safe.” Not only was this untrue, but the manner in which the techniques were applied bore no resemblance to these representations.²⁰² By May 2004, the CIA had suspended the use of the techniques and the August 2002 memos were withdrawn two months later.²⁰³ With authorization increasingly limited to a per detainee basis, the CIA increasingly relied on the OMS to provide data to justify past, current, and future practices.²⁰⁴

This data was desperately needed because the CIA was running into complications from using techniques not yet authorized, notably the combined use of tactics.²⁰⁵ The research process itself was thus part of the Bush administration’s position that if detainees died, it was not through intent or negligence relating to authorized practices, but rather because of technicalities or failure to follow the articulated standards. OMS staff investigated the degree to which severe pain that may meet the legal definition of torture arose from the applications of specific techniques or from combinations of individual techniques. Harm thus became a rationale for the CIA’s expanding human subjects research program, even as this data was needed for authorization of the techniques after they had been suspended.²⁰⁶

Sleep Deprivation

Health professionals documented sleep deprivation on more than a dozen detainees that lasted between 48 and 180 hours. The Bradbury “Individual Techniques” Memo states:

“To assist in monitoring experience with the detainees, we understand that there is regular reporting on medical and psychological experience with the use

of these techniques on detainees and that there are special instructions on documenting experience with sleep deprivation and the waterboard.”²⁰⁷

In addition, the OMS drew conclusions based on its observations. For example, a May 4, 2005 fax from the CIA to the OLC contained the following findings:

“OMS believes the studies on sleep deprivation and pain threshold remain inconsistent in their findings in healthy subjects, even in the papers cited. Where differences in pain threshold may have been demonstrated (i.e. increased sensitivity to heat, nonsignificant or no differences in cold, nonsignificant changes in perception to pressure), they are not germane to the techniques used in the interrogation program. None of CIA’s methods are designed to induce pain, under any circumstances; to the extent that they might (i.e. facial slap, abdominal slap), they do not involve application of heat, cold, pressure, any sharp objects (or indeed any objects at all)... We believe that because of fatigue (not increased sensitivity to pain), sleep deprivation would reduce the ability to maintain a stress position compared to normal subjects, leading to sooner release from the position, not greater pain. In other words, when the individual reaches his limit, the technique ends, and we would expect him to reach that limit sooner under conditions of sleep deprivation. We have no reason to believe slaps are more painful, and no reason to believe, based on CIA or SERE experience, that they would induce severe permanent injury.”²⁰⁸

The OLC later used that observational data and related conclusions to set limits and procedures for the use of sleep deprivation based on the research allegedly performed by health professionals. The Bradbury “Individual Techniques” Memo states:

“We understand from OMS, and from our review of the literature on the physiology of sleep, that even very extended sleep deprivation does not cause physical pain, let alone severe physical pain.... We noted that there are important differences between sleep deprivation as an interrogation technique used by the CIA and the controlled experiments documented in the literature.... OMS staff have also informed us, based on their experience with detainees who have undergone extended sleep deprivation and their review of the relevant medical literature, that extended sleep deprivation does not cause physical pain. Although edema, or swelling, of the lower legs may sometimes develop as a result of the long periods of standing associated with sleep deprivation, we understand from OMS that such edema is not painful and will quickly dissipate once the subject is removed from the standing position.... For these reasons, we conclude that the authorized use of extended sleep deprivation by adequately trained interrogators would not be expected to cause and could not reasonably be considered specifically intended to cause severe physical pain.”²⁰⁹

Combined Use of Tactics

Health professionals apparently collected data that was used to draw conclusions about whether the application of a combination of several “enhanced interrogation” techniques at once, versus individually applied tactics, increased the susceptibility of 25 detainees to severe pain. The Bradbury “Combined Use” Memo stated:

“But as we understand the experience involving the combination of various techniques, the OMS medical and psychological personnel have not observed any such increase in susceptibility. Other than the waterboard, the specific techniques under consideration in this memorandum – including sleep deprivation – have been applied to more than 25 detainees. No apparent increase in susceptibility to severe pain has been observed either when techniques are used sequentially or when they are used simultaneously – for example, when an insult slap is simultaneously combined with water dousing or a kneeling stress position, or when wall standing is simultaneously combined with an abdominal slap and water dousing. Nor does experience show that, even apart from changes in susceptibility to pain, combinations of these techniques cause the techniques to operate differently so as to cause severe pain. OMS doctors and psychologists, moreover, confirm that they expect that the techniques, when combined as described in the Background Paper and in the April 22 [redacted] Fax, would not operate in a different manner from the way they do individually, so as to cause severe pain.”²¹⁰

IV. Applications of CIA Research on Detainees

The evidence reviewed by Physicians for Human Rights (PHR) indicates that the Central Intelligence Agency (CIA) engaged in human subjects research. One aspect of this research involved engaging the services of psychologists Mitchell and Jessen to induce learned helplessness in detainees through torture, in an effort to obtain compliance during interrogation. As that work was scaled up, detainees were subjected to an increasing variety and number of techniques. In response, risk managers inside the CIA sought more information on the physical limits and other generalizable data on the effects of torture, which evolved into a parallel area of research. CIA research on detainees appears to have been driven by the need to justify and provide legal cover for the torture program, as well as practical questions from health professionals tasked with keeping the process “safe” and “effective.” Health professionals were central to the Bush administration’s strategy for legitimizing and sanctioning the use of torture. Their role extended to providing legal cover to U.S. officers and officials who committed, ordered, and authorized torture and ill-treatment at the very highest levels of the administration and shielding them from potential prosecution. These activities took place in a legal and

policy framework devised by lawyers to weaken existing protections regarding the treatment of detainees in order to protect the White House from the legal risks of that experiment.

Health professionals were central to the Bush administration's strategy for legitimizing and sanctioning the use of torture. Their role extended to providing legal cover to U.S. officers and officials who committed, ordered, and authorized torture and ill-treatment at the very highest levels of the administration and shielding them from potential prosecution.

Operational Support of the Torture Program

The CIA's torture activities were carried out as research and the program itself was set up as a research project with human subjects. Data collection and meticulous record-keeping was undertaken for the purposes of "ongoing evaluation of the 'efficacy' of each technique and its potential for any unintended or inappropriate results."²¹¹ The "enhanced interrogation" techniques program and the monitoring and collection of data regarding the physical and psychological responses of subjects clearly meets the following definitions of research:

Data collection attempted to answer implicit research questions. The CIA's collection of data was an attempt to answer research questions. Among them: 1) Could "enhanced interrogation" produce a state of learned helplessness?; 2) Would learned helplessness render a human subject compliant with interrogators?; and 3) If so, would compliance lead to the production of reliable intelligence (the object of interrogation in national security settings)? While Mitchell and Jessen have denied investigating the third question,²¹² the CIA has claimed that the use of coercive measures produced intelligence – a claim rejected by the Senate Intelligence Committee's investigation. The CIA itself has acknowledged it lacked a "sustained, systematic, and independent means ... to evaluate the effectiveness of the approaches used with detainees."²¹³

In addition, there were explicitly stated questions about a fourth area of investigation: 4) Could this process be done "safely," and, if so, how? The "safety" of the techniques and potential limits and/or modifications to the application of techniques were based on knowledge derived from the data collection and analysis of initial applications in the field. The implicit hypothesis of this investigation was that the techniques could establish a state of learned helplessness, and that the state of learned helplessness would yield compliance of the subject and result in disclosure of actionable intelligence – and that this could all be done safely.

Data was systematically collected, as instructed by and reflected in the Office of Medical Services (OMS) guidelines, as well as other CIA and Department of Justice (DOJ) communications.

The data collected was analyzed and conclusions were drawn from the results.

The data derived from the application of these techniques was analyzed after the fact to assess the “safety” of the techniques. Such analysis is referred to in the Office of Legal Counsel (OLC) memoranda authorizing continued use of the techniques. Minimally, conclusions (albeit incorrect conclusions) were derived from an analysis of the data. This is also documented in the OLC memos.

The research was designed to contribute to generalizable knowledge.

- **Connection to a theoretical framework:** The research was justified within the theoretical framework of an established body of knowledge, including theories of learned helplessness (psychologist Martin Seligman’s work) and the effects of the techniques (literature from the military’s Survival, Evasion, Resistance, and Escape (SERE) program), even though the investigation made rather broad leaps from both theoretical frameworks.
- **The primary beneficiaries of the research were other practitioners:** The primary beneficiaries of the acquired knowledge were other “practitioners in the field,” i.e. other CIA interrogators and health professionals. Although it could be argued that the “safety” of the subjects was one area of knowledge derived that could be of benefit to the subject, that interpretation ignores that the context of the investigation was the application of torture. The main reasons for undertaking the investigation was to provide interrogators with effective tools and to provide legal cover for interrogators and health professionals.
- **Distribution of the results:** While clearly constrained by national security concerns, the results of the research were distributed to other “practitioners” in the agency as well as legal counsel and others in the administration.
- **Results generalized beyond the subject population:** The results of the research were generalized for further application to other individuals in U.S. custody who were not the subject of the initial research investigation.
- **Replication of results:** The results of the research were intended to be replicated in other settings, and, in fact, were replicated.

There were not established or accepted standards for the safe or efficacious deployment of the “enhanced interrogation” techniques. In multiple documents, government officials acknowledged as much. The literature on the SERE program, a much milder form of the techniques applied to military volunteers, documented real and significant risk of harm to the subjects. “Enhanced interrogation” had never been tested as an interrogation tool before these investigations and its “efficacy” has never been established.

Legal Indemnification of the Torture Program

The Bush administration engaged in an overlapping strategy of using OMS and other CIA data, and the research process itself, to authorize and justify the program and mitigate it from legal risks. The unlawful nature of the CIA “enhanced interrogation” program gave rise to the need for operational proof of “efficacy” as well as legal cover in the form of empirical data demonstrating “safety.” Research thus evolved to meet the legal needs of the program.

As an initial matter, health professionals conducted research into the pain and harm inflicted by the “enhanced interrogation” tactics. This was done to comply with the “safety” monitor requirement in the OLC memos, as a means of preventing interrogators from violating the flawed legal definition of torture given by Bush administration lawyers. Due to the lack of scientific research into the techniques, conducting research was also a practical necessity. To prevent interrogators from “crossing the line,” health professionals first had to define what the line was and what its clinical parameters were. Health professionals ostensibly worked to increase the knowledge available about the effect of the tactics by gathering, systematizing, and extracting conclusions from the data collected. Data collection and evaluation were thus necessary to fulfil the monitoring role and became part of the monitoring process itself.

Health professionals also conducted research on detainees as a means of providing interrogators and other U.S. officials with evidence of “good faith” efforts to prevent a prohibited level of harm. Notably, the activities did not need to be in service of avoiding inflicting the harm. Instead, the mere fact of undertaking such activities could be used to provide proof of “due diligence” and establish a lack of intent to cause harm. Throughout 2002 and 2003, the CIA, OLC, and White House discussed the legal defense of drawing on past experience gained from the interrogation of U.S. detainees.²¹⁴ The OLC thus built research into the interrogation process with a view to redefining certain procedures as “safe” and to develop guidelines for engaging in such “safe” torture. These “good faith” efforts were likely employed so as to support the assertion that U.S. officers and officials did not specifically intend to cause pain that would constitute torture.

There is evidence that OMS officers at times expressed concern over the health effects of the techniques seen in detainees.²¹⁵ The Senate torture report summary provides an overview of severe psychological problems brought on by abusive treatment in many detainees, including hallucinations, paranoia, insomnia, attempts at self-harm, psychosis, and mental states on the “verge of a breakdown.”²¹⁶ Notably, these objections did not appear to have stopped the continued mistreatment of detainees, including by health professionals. Given the U.S. government’s continued efforts to conceal the mental and physical effects of CIA abuse,²¹⁷ there is a pressing need for more relevant information to come to light.

As the program evolved and evidence of extreme physical and psychological harm mounted, including due to variations from SERE parameters, the research function of health professionals became increasingly explicit and formalized in policy. Bush administration lawyers increasingly demanded and the CIA provided empirical data in order to indemnify practices already in use and justify practices that lacked authorization. The collection of data on the health “limits” of torture was critical to assessments and approvals for continued mistreatment, as seen in the CIA’s 2013 response regarding waterboarding:

“Technique was used with a frequency that exceeded CIA’s representations to the Department of Justice’s Office of Legal Counsel (OLC), and this intensity raised serious concerns on the part of the Agency’s own medical staff about the lack of available data upon which to draw conclusions about its safety.... The Attorney General later reaffirmed the legality of the technique despite the intensity of use, but the medical concerns, combined with CIA’s increasing knowledge base, its improving skill using less coercive techniques, and the move of al-Qaida’s senior leaders beyond its reach, ended the use of this technique.”²¹⁸

There is evidence that OMS officers objected to their increasing legal indemnification role in the program. For example, on March 13, 2003, a medical officer raised concerns that waterboarding Khalid Sheikh Mohammed a third time that day would exceed draft OMS guidelines and sought written authorization from CIA headquarters. This failed to materialize, yet waterboarding continued. As the Senate torture report summary notes:

“At the end of the day, the medical officer wrote [redacted] OMS that “things are slowly evolving from [sic] OMS being viewed as the institutional conscience and the limiting factor to the ones who are dedicated to maximizing the benefit in a safe manner and keeping everyone’s butt out of trouble.”²¹⁹

However, research data – and the research process itself – continued to be used as evidence of “safety” and thereby of the legality of torture. This process is most apparent in the development of the 2005 Bradbury “Combined Use” memo. The OLC specifically demanded empirical data from past practice with CIA detainees. This data was used to justify the legal implications of abusive practices whose severity, duration, and combined use were not accounted for in the August 2002 memos. The purpose of this data was to show that any detainees harmed would be the result of technicalities or improper adherence, rather than the authorization of fundamentally harmful practices or a lack of understanding with respect to that harm.

In April 2005, the OMS reviewed the draft Bradbury memo and expressed concern that its medical assessments were being used to determine the legality of techniques:

“...[s]imply put, OMS is not in the business of saying what is acceptable in causing discomfort to other human beings, and will not take on that burden... OMS did not review or vet these techniques prior to their introduction, but rather came into this program with the understanding of your office and DOJ that they were already determined as legal, permitted and safe. We see the current iteration [of the OLC memorandum] as a reversal of that sequence, and a relocation of those decisions to OMS. If this is the case, that OMS has now the responsibility for determining a procedure’s legality through its determination of safety, then we will need to review all procedures in that light given this new responsibility.”²²⁰

Despite objections by some personnel, the OMS summarized its findings to date and affirmed the “safety” of the experimental techniques.²²¹ The research findings were incorporated into operational and legal guidance for torture.

Knowledge of Illegal Human Experimentation

OMS ad hoc research activities regarding “safety” and harm were part of a larger research enterprise examining the operational effects of abusive treatment for intelligence collection purposes. The CIA’s ongoing efforts to secure legal cover for the torture program indicate an awareness that the techniques were likely illegal and exposed officers to potential criminal liability. At various times, CIA and other officers expressed concern over “enhanced interrogation,” both as torture and ill-treatment and as potential human experimentation. Some of these concerns related to Mitchell and Jessen’s brutal approach, including its escalation and lack of scientific credibility, described above.²²² Complaints by the OMS in particular reflected internal acknowledgment of data collection and analysis on detainees.

In 2007, the Senate Armed Services Committee interviewed Jessen, among others in the course of its investigation into detainee abuses in connection with the military’s interrogation program. Its report noted:

“Dr. Jessen acknowledged that empirically, it is not possible to know the effect of a technique used on a detainee in the long-term, unless you study the effects in the long-term. However, he said that his conclusion about the long-term effects of physically coercive techniques was based on forty years of their use at SERE school.”

The CIA’s ongoing efforts to secure legal cover for the torture program indicate an awareness that the techniques were likely illegal and exposed officers to potential criminal liability.

Yet in 2015, as noted above, Mitchell stated that he and Jessen had intended to commission a study of the effectiveness of the techniques.²²³ And during the course of the CIA inspector general's (IG) review, concerns were raised over potential human experimentation. The May 2004 IG report included a recommendation that the CIA's operational division conduct a study of the "efficacy" of each "enhanced interrogation" technique and environment deprivation to determine if any should be "added, modified, or discontinued."²²⁴ The two senior officers who undertook an informal assessment declined to assess the question of "efficacy." As the Senate torture report summary notes:

"...[they] determined it would not be possible to assess the effectiveness of the CIA's enhanced interrogation techniques **without violating 'Federal Policy for Protection of Human Subjects'** regarding human experimentation."²²⁵ [emphasis added]

In effect, the IG pushed for the creation of a model to study the program's "efficacy." Such a course would simply reproduce a process that those within the program, including Mitchell and Jessen, had already been engaged in. However, when an outside unit was asked to create such a model, they refused on the grounds that doing so would violate the Common Rule of the U.S. Code of Federal Regulations within the existing human subjects protection framework. In 2013, under pressure to justify its program, the CIA again echoed these concerns. It stated that if it were to conduct a "systematic study over time of the effectiveness of the techniques," even for monitoring and evaluation purposes, it would have "been encumbered by a number of factors," including **"federal policy on the protection of human subjects and the impracticality of establishing an effective control group."**²²⁶ [emphasis added]

The IG's recommendation triggered an additional objection. Sometime between May 2004 and January 2005, CIA medical officers raised additional concerns that the assessment of "efficacy" could present liability for human experimentation. On January 28, 2005, the IG attempted to put these concerns to rest:

"I fear there was a misunderstanding. **OIG [Office of Inspector General] did not have in mind doing additional, guinea pig research on human beings.** What we are recommending is that the Agency undertake a careful review of its experience to date in using the various techniques and that it draw conclusions about their safety, effectiveness, etc., that can guide CIA officers as we move ahead. We make this recommendation because we have found that the Agency over the decades has continued to get itself in messes related to interrogation programs for one overriding reason: we do not document and learn from our experience – each generation of officers is left to improvise anew, with problematic results for our officers as individuals and for our Agency. We are not unaware that there are subtleties to this matter, as the effectiveness of techniques varies among individuals, over time, as administered, in

combination with one another, and so on. **All the more reason to document these important findings.**"²²⁷ [emphasis added]

The reference to “**additional**, guinea pig research on human beings” implies that **previous** research had taken place, and was not limited to data collected for clinical purposes but rather primary data collection. This implication is strengthened by the fact that the concern was first raised by the OMS. The IG’s statement, combined with his efforts to distance his request from past research, indicate an awareness that the program potentially constituted human experimentation. The communication to the OMS indicates this awareness was shared across different parts of the CIA. In addition, it is noteworthy that after denying an interest in “guinea pig research,” the IG nevertheless requested a review of the experience of the “enhanced interrogation” interventions on actual subjects, in order to develop generalizable knowledge from the experience. In other words, he proceeded to request human subjects research without using the word.

VI. Conclusion

In the course of facilitating the crime of torture, U.S. health professionals committed a second and related crime: human subjects research and experimentation on detainees being tortured, in violation of medical ethics and U.S. and international law. Human subjects research entails the systematic collection and analysis of data from living individuals for the purpose of developing generalizable knowledge. The Central Intelligence Agency’s (CIA) “enhanced interrogation” program was a research experiment on detainees. The deployment of this new program required applied research to develop and refine the torture methodology in order to generate proof of its “safety” and “efficacy.” CIA health professionals not only monitored interrogation and detention practices that employed the use of torture, but also collected and analyzed the results, sought to derive generalizable knowledge to be applied to subsequent interrogations of and clinical interactions with detainees, and disseminated the results. The CIA referred to interrogation activities as “applied research” and they were conducted on living individuals.

In the course of facilitating the crime of torture, U.S. health professionals committed a second and related crime: human subjects research and experimentation on detainees being tortured, in violation of medical ethics and U.S. and international law.

The flawed hypothesis, the lack of rigorous scientific procedures, and the lack of an effective control group and other methodological deficits does not mean the CIA was not conducting research. The application and study of experimental practices on detainees brought psychologists James Mitchell and Bruce Jessen and the CIA squarely

into the realm of conducting human subjects research. This research would not pass institutional review board review owing to lack of informed consent of the subjects, the infliction of intentional harm on subjects, and fundamental research design flaws, including a poorly supported hypothesis, among other reasons.

Furthermore, in order to meet legal and ethical standards, research must at a minimum be conducted with the informed consent of the participants, an absence of coercion, and efforts to minimize harm. Here, the research and the experimental interventions informed by the research were performed on prisoners without their consent and for the purposes of inflicting torture. They were conducted for nonclinical purposes and without evidence of benefit or avoidance of harm. They were not serving the interests of the subject in any arguable way; making a torture technique “safer” cannot be considered an act done in the service of the torture victim. These activities were not medically ethical nor done in service of the detainee.²²⁸ Instead, they served operational and legal aims.

The CIA’s torture research was never safe, legal, or “effective.” It was research based on bad science, focused on how to make torture “work” to extract information and deflect legal responsibility.²²⁹ Moreover, the research itself yielded no evidence that torture was “safe,” nor could it. The architects of the research disregarded the known harms in the torture and military literature and the actual harms manifesting from real time application. They disregarded the inability and inappropriateness of medical personnel to measure pain or keep torture “safe” and disregarded accepted standards to assess the physical and psychological effects of torture. They formed part of a systematic effort to brutalize and degrade human beings in captivity in violation of a health professional’s core ethical duty to do no harm and the absolute prohibition against torture and ill-treatment in domestic and international law.

Karl Brandt, Adolf Hitler’s personal physician, hears his sentence at the post-WWII Doctors Trials at Nuremberg. In the wake of Nazi medical atrocities, the Nuremberg Code was developed to protect individuals from nonconsensual human experimentation.



Seventy years ago, the Doctors Trial at Nuremberg created an ethical bright line: health professionals are ethically prohibited from experimenting on prisoners. Instead, their obligation to people in custody is to treat them humanely and provide care. The CIA’s experimental research on detainees violates the expansive regime of human subjects

protections developed and strengthened since World War II. The regulations and practices regarding ethical research were especially designed for vulnerable populations such as prisoners, based on the inherent risk of their dehumanization and inability to freely provide informed consent. The CIA's research on detainees constitutes a stark violation of the lessons of Nuremberg.

The CIA's experimental research on detainees violates the expansive regime of human subjects protections developed and strengthened since World War II ... [and] constitutes a stark violation of the lessons of Nuremberg.

Evidence of illegal human subjects research by the CIA torture program under the Bush administration is highly relevant for current practices. First and foremost, the full scope of research on detainees by the CIA and other agencies must be known, which requires an end to the continued secrecy in connection with the U.S. torture program. In addition, several critical lessons from Physicians for Human Rights' analysis can be used to monitor and promote ethical actions by the U.S. government:

- 1 The U.S. government must prohibit all human experimentation that does not comply with the Code of Federal Regulations (CFR), regardless of the purpose or focus of the activities.
- 2 The CIA and other U.S. security services must not engage in, promote, or profit from unethical and illegal human subjects research in furtherance of torture or in any manner that skirts U.S. and international law.
 - a Human subjects research involving any practices that meet legal definitions of torture or cruel, inhuman, or degrading treatment is always prohibited.
 - b Even when interrogation methods do not meet criteria for torture or ill-treatment, the systematic collection of data to test a hypothesis or otherwise contribute to generalizable information constitutes human subjects research and is unethical in the absence of voluntary, informed consent and other internationally recognized human subjects protections.
 - c When questions are raised about the ethical or legal underpinning of U.S. interrogation practices by interrogation program staff, their leadership, or outside parties such as the inspector general, such practices should cease immediately until review by qualified experts in human subjects research and other relevant legal disciplines is conducted.
- 3 Oversight of U.S. interrogation practices should include a requirement to show that any collection of data involving human subjects has been reviewed by an ethics or institutional review board comprised of a majority of non-security board members, in accordance with 45 CFR 46.

- 4 Professional societies in medicine, psychology, and psychiatry should prohibit involvement in illegal human subjects research, including:
 - a Updating professional guidance on conducting research to include avoiding participation in nonconsensual and other illegal human subjects research.
 - b Developing continuing medical education modules that present realistic scenarios that clinicians may encounter in working with armed forces and security services.
- 5 Both the U.S. government and professional societies for health professionals must ensure that health professionals do not become participants in the torture of detainees.

Finally, the U.S. government has continuously obstructed the public's access to full information about the CIA torture program. This report presents clear evidence of illegal and unethical conduct, sanctioned at the highest levels of the Bush administration, including nonconsensual research conducted on prisoners in the context of torture.

There is a pressing need for additional information to come to light, with transparency as a critical first step toward accountability for and prevention of grave human rights violations. Drawing on the lessons of Nuremberg, we must never again permit the exigencies of national security – or any other reason – to be used as justification for unlawful and unethical research on human beings. In this uncertain political climate, it is even more crucial to shine a light on this disturbing chapter and act now to prevent such crimes from being repeated.

Recommendations

To the President of the United States:

- Order the attorney general to undertake an immediate criminal investigation of alleged illegal human experimentation and research on detainees conducted by the CIA and other government agencies following the attacks on September 11, 2001.
- Issue an executive order immediately suspending any federally funded human subjects research involving detainees currently occurring in secret.
- Declassify and release the full Senate Select Committee on Intelligence's report, Panetta Review, and other records relevant to the CIA rendition, detention, and interrogation program, redacting only what is strictly necessary to protect national security.

To the Central Intelligence Agency:

- Declassify and release any applied research proposals or protocols of James Mitchell, Bruce Jessen, or CIA Office of Medical Services personnel, and any clinical observations, redacting only what is strictly necessary to protect national security.

To the Department of Health and Human Services:

- Instruct the Office for Human Research Protections to begin an investigation of any violations of the federal protections for human subjects contained in the Common Rule by the CIA and other government agencies as part of the "enhanced" interrogation program.
- Refer personnel found to have violated the law to the Department of Justice for prosecution.

To Congress

- Amend the War Crimes Act to eliminate changes made to the Act in 2006 which weaken the prohibition on biological experimentation on detainees, and ensure that the War Crimes Act definition of the grave breach of biological experimentation is consistent with the definition of that crime under the Geneva Conventions.
- Convene a joint select committee comprising members of the House and Senate committees responsible for oversight on intelligence, military, judiciary, and health and human services matters to conduct a full investigation of alleged human research and experimentation activities on detainees in U.S. custody.

To Health Professional Associations

- Convene a commission to conduct a full investigation of alleged human research and experimentation activities on detainees in U.S. custody to establish the public record of what is known, including the participation of health professionals.
- Refer health professionals found to have violated their ethical obligations to state licensing and disciplinary bodies for appropriate sanctions.

Appendix A: Legal and Ethical Standards for Human Subjects Protection

U.S. and international law have established clear standards for all ethical research involving human subjects, which form the basis of an extensive regime of legal and ethical protections. The main tenets of these standards are: 1) the requirement that a person give meaningful voluntary informed consent to any research or experimentation carried out on them; and 2) the need for special protections for populations considered particularly vulnerable to abuse, such as, for example, prisoners and detainees.²³⁰

Human subjects research is regulated to protect the interests of research and to prevent abuse. The basis for these protections is respect for persons: research subjects must be treated with the dignity befitting human beings, not as experimental guinea pigs. Health professionals must treat individuals with their best interests in mind and minimize avoidable harms and unjustified risks in the service of a research goal. In addition, health professionals are required to use treatments that are expected to be effective and not engage in speculative medicine at the expense of a human subject.²³¹

The prohibition against nonconsensual research and experimentation on human subjects is the cornerstone of modern medical ethics. First articulated at the international level in the Nuremberg Code, this prohibition emerged from the prosecution of physicians who committed medical atrocities in Nazi Germany during World War II, including painful and often deadly medical experiments on concentration camp prisoners without their consent

“The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision.”²³²

The history of experimentation in prisons and on other vulnerable populations reveals the extreme risks of using these subjects in state-sanctioned or private medical experiments. Reflecting this history, the prohibition against nonconsensual human experimentation is particularly concerned with the treatment of people who are detained or otherwise in state custody, especially in the context of war.

International Laws and Standards

Unlawful human experimentation is a violation of customary international law.²³³ It is a war crime in the context of armed conflict and rises to the level of *jus cogens*.²³⁴ In addition, it is a *jus cogens* crime in time of peace when it is part of crimes against humanity, genocide, or torture.²³⁵ Unlawful human experimentation is a separate crime from torture. However, it falls within the meaning of torture²³⁶ and is outlawed by some of the same instruments. For example, the Geneva Conventions define “torture or inhuman treatment, including biological experiments” as “grave breaches.”²³⁷ The International Committee of the Red Cross (ICRC) notes:

“‘Biological experiments’ are prohibited by the First and Second Geneva Conventions, while the Third and Fourth Geneva Conventions prohibit ‘medical or scientific experiments’ not justified by the medical treatment of the person concerned.... Additional Protocol I prohibits ‘medical or scientific experiments’.... Additional Protocol I also prohibits ‘any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards’ and makes it a grave breach of the Protocol if the medical procedure undertaken seriously endangers the physical or mental health or integrity of the person concerned. Additional Protocol II contains the same prohibition with respect to persons deprived of their liberty for reasons related to the armed conflict.”²³⁸

Common Article 3 of the Geneva Conventions outlaws “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” – prohibitions that often accompany the ban on illegal human experimentation.²³⁹ It also outlaws “outrages upon personal dignity, in particular humiliating and degrading treatment.” Thus, adherence to Common Article 3 would preclude illegal human experimentation, even though it is not explicitly prohibited.

The right to be free from nonconsensual human experimentation has also been incorporated into international human rights treaties and instruments, including the International Covenant on Civil and Political Rights. Article 7 prohibits “medical or scientific experimentation” along with torture and ill-treatment.²⁴⁰ The ICRC notes:

“The U.N. Human Rights Committee, in its General Comment on Article 7, specifies that special protection against such experiments is necessary in the case of persons not capable of giving valid consent, in particular those under any form of detention or imprisonment.”²⁴¹

This right is additionally contained within the right to the highest attainable standard of health. The U.N. Committee on Economic, Social and Cultural Rights notes that the right to health contains the freedom “to control one’s health and body, including ... the

right to be free from torture, non-consensual medical treatment and experimentation.”²⁴²

Additional guidance offered to member states includes: the UNESCO Universal Declaration on Bioethics and Human Rights; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²⁴³ and the Standard Minimum Rules for the Treatment of Prisoners.²⁴⁴ Both were adopted by consensus by the UN General Assembly, and both affirm the autonomy of prisoners and prohibit acts that may constitute torture or ill-treatment, including medical or scientific experimentation that may be detrimental to health, even with the detainee’s consent.

The World Medical Association’s Declaration of Helsinki notes that human subjects research includes research on identifiable human material and data, and sets out comprehensive ethical standards for such research, including the requirement of voluntary informed consent, the need to prioritize, at all times, the interests and rights of the individual research subjects, and the obligation to implement specifically considered protections for groups and individuals who have an increased likelihood of being wronged or of incurring additional harm.²⁴⁵

International and U.S. standards set out specific protections for populations whose ability to make an informed and voluntary decision to participate in research, and consent to the risks involved, is compromised as a result of their greater vulnerability or conditions giving rise to the possibility of coercion.²⁴⁶ This category includes children, pregnant women, mentally disabled persons, prisoners, and economically or educationally disadvantaged persons.²⁴⁷ With respect to prisoners, there are only very limited circumstances in which they may participate in medical research. Any such research must be expected to benefit the prisoner as part of their hospital treatment and the prisoner must freely and fully consent to participate in the research. In addition, the norm against nonconsensual human experimentation is written into the domestic laws of more than 80 nations.

U.S. Laws and Regulations

In the United States, protections of individual research and experimentation subjects are codified in federal regulations, as well as in codes of professional conduct.²⁴⁸ The U.S. system of protection for human research subjects is heavily influenced by the Belmont Report of 1979, which improved the process of obtaining informed consent and demanded equitable selection of participants to avoid populations that may be unfairly coerced into participating.²⁴⁹ Based on the Belmont Report, the Department of Health and Human Services (DHHS) began a process that led to the adoption of revised regulations for the protection of human subjects by 15 U.S. federal departments and agencies. Subpart A of the Code of Federal Regulations (CFR) Title 45 Part 46, often referred to as the “Common Rule” or “Protection of Human Subjects Regulations,” serves

as the baseline standard of ethics to which government-funded research in the United States is held.²⁵⁰

The systematic collection of data from any human subject for purposes other than their direct benefit requires human subjects protections and prospective review of and approval by an institutional review board (IRB). These protections must at a minimum guarantee that:

- Risks of harm to the subject are minimized;
- Risks of harm to the subject are reasonable in relation to anticipated benefits to the subject and the importance of the knowledge that is expected to result;
- Selection of research subjects is equitable, with an assessment of research setting and special problems of research involving vulnerable groups; and
- Informed consent is sought from each prospective subject and appropriately documented.²⁵¹

The Common Rule, and 45 CFR 46 more broadly, requires rigorous procedures to ensure compliance with these protections and provide for the establishment and empowerment of IRBs, which review and determine whether or not a proposed activity is in fact human subjects research, and then determine whether it is ethical and is permissible. Subpart C of 45 CFR 46 affords extra protections to prisoners in light of their greater vulnerability and compromised ability to give truly non-coerced informed consent.²⁵²

Although the CIA has not codified the Common Rule in its regulations, by executive order any human subjects research sponsored, contracted, or conducted by the CIA must comply with DHHS-issued guidelines, and thus all subparts of 45 CFR 46.²⁵³ As such, the CIA is one of three federal agencies to be bound by the more rigid regulations for protection of prisoners in medical studies. When research is conducted outside the United States, international laws and regulations may apply, but, in any event, the restrictions must meet or exceed the Common Rule standards.

Appendix B: Select New Evidence Since PHR's 2010 Analysis

- Declassified CIA contracts of James Mitchell and Bruce Jessen for “applied research” dating from 2002 to 2005, corresponding with known events in the public record regarding torture at CIA black sites (released in 2016)²⁵⁴
- Declassified documents on the evolution of Mitchell and Jessen’s experimental proposal,²⁵⁵ including 2002 presentation materials,²⁵⁶ CIA contracts for Mitchell, Jessen and Associates dating from 2005 to 2009, and CIA records and memoranda²⁵⁷ (released in 2016)
- Declassified or newly unredacted documents on the activities of the CIA Office of Medical Services,²⁵⁸ including medical guidelines issued in 2003 and 2004²⁵⁹
- Declassified or newly unredacted reports of the CIA Office of Inspector General into the mistreatment and/or deaths of detainees (released in 2016)
- Newly unredacted portions of the 2004 CIA Inspector General’s special review of the CIA’s detention and interrogation activities from 2001 to 2003 (released in 2016)
- Newly unredacted portions of the 2009 U.S. Department of Justice Office of Professional Responsibility’s report on the Office of Legal Counsel’s memoranda, including discussion of “learned helplessness” and the evolution of legal defenses (released in 2016)
- Declassified information on the collection, analysis, and dissemination of medical and interrogation data among and within the CIA, Department of Justice, and White House officials (released in 2016)²⁶⁰
- Report of the American Psychological Association’s independent review relating to APA Ethics Guidelines, National Security Interrogations, and Torture (released in 2015)²⁶¹
- Declassified summary of the U.S. Senate Select Committee on Intelligence’s report on the CIA’s detention and interrogation practices, including concerns expressed over potential violation of federal human subjects protection rules (released in 2014)²⁶²

Appendix C: Select Timeline of Relevant Events

2001

- August 8, 2001: James Mitchell is granted a Central Intelligence Agency (CIA) contract for \$90,000 to develop methods for conducting “cross-cultural” psychological assessments overseas.
- September 11, 2001: Terrorist attacks occur.
- December 2001: “Learned helplessness” theorist Martin Seligman hosts meeting with Mitchell and others. CIA asks Mitchell and Bruce Jessen to review the Manchester Manual. They draft a white paper hypothesizing that coercion can be used to reduce detainee resistance to hostile questioning.
- December 21, 2001: Mitchell is granted a CIA contract for \$10,000 to consult on CIA Office of Technical Services “applied research efforts” overseas and to conduct “specific, time-limited research projects.”

2002

- March 16, 2002: Two CIA officers develop a draft proposal to use “enhanced interrogation” techniques.
- March 28, 2002: Abu Zubaydah is captured in Pakistan and flown to Thailand on March 31.
- April 3, 2002: Seligman meets with Mitchell about learned helplessness.
- April 4, 2002: Mitchell’s “applied research” contract is modified and increased to \$101,600. Shortly after, he deploys to Thailand to consult on detainee Abu Zubaydah’s interrogation.
- April 16, 2002: First record of the Office of Legal Counsel (OLC) advising CIA on the legal meaning of “specific intent” to torture.
- April to June 2002: CIA uses increasingly abusive techniques on Abu Zubaydah in Thailand.
- May 14, 2002: Mitchell’s “applied research” contract is increased to \$162,600.
- June-July 2002: To secure approval for more “aggressive” techniques, Mitchell and Jessen consult experts and literature regarding “long-term psychological effects” of Survival, Evasion, Resistance, and Escape (SERE) methods.
- July 2002: COBALT, a CIA black site, opens in Afghanistan and operates without written interrogation or medical guidance.
- July 1-2, 2002: Mitchell’s “applied research” contract is increased to \$257,600.
- July 22, 2002: Jessen is granted his first CIA contract for \$135,000 to conduct “applied research.”
- July 12, 2002: OLC advises CIA that “evidence gained from past experience” can form part of a “good faith” defense of torture. CIA discusses medical risks of SERE techniques in real world applications.

- July 12-24, 2002: White House, Department of Justice (DOJ), FBI, and CIA personnel discuss legal authorization for “enhanced interrogation,” including the aim of producing learned helplessness.
- August 1, 2002: OLC legal memos require health professionals to monitor harm and discuss “evidence gained from past experience” as part of “good faith” defense.
- August 4-23, 2002: CIA subjects Abu Zubaydah to waterboarding and other “enhanced” methods.
- August 21, 2002: Mitchell is granted a contract to identify relevant psychological variables and develop a model for psychological assessment.
- September 5, 2002: Jessen’s “applied research” contract is increased to \$187,500. Mitchell’s “applied research” contract is increased to \$310,100. Several days later, it is increased to \$410,100.
- November 12-18, 2002: CIA runs a pilot training program on interrogation of “high value” detainees.
- November 20, 2002: Detainee Gul Rahman freezes to death in his cell at COBALT prison.
- October 24, 2002: Jessen’s “applied research” contract is increased to \$267,500.
- December 2002: The Office of Medical Service (OMS) takes over psychological coverage at COBALT. The Thailand black site is closed and BLUE in Poland opens.

2003

- Early 2003: Mitchell claims that the “wheels had come off” the CIA’s “enhanced interrogation” program.
- January 1, 2003: Mitchell’s “applied research” contract is increased to \$348,000. Jessen’s is increased to \$348,000. Jessen receives an additional contract to develop a consultation and training model.
- January 28, 2003: CIA issues written interrogation and detention guidelines. CIA Office of Inspector General (OIG) initiates an internal review of the CIA program.
- February 2003: The American Psychological Association’s Mel Gravitz affirms that Mitchell’s involvement is ethical, stating “prior and ongoing experience” can supplement a lack of knowledge basis in applying psychological skills in this area.
- March 2003: OMS completes a draft version of medical guidelines. A medical officer describes a shift in the OMS’s role from limiting to “maximizing” the impact of interrogations and indemnifying interrogators.
- April 2003: OLC and CIA begin jointly developing “Bullet Points” discussing legal defenses to torture.
- May 2003: Mitchell and Jessen shift from interrogator to program developer role and develop a proposal to apply “even less intrusive techniques,” which CIA will then “field test.”
- June 2003: OLC issues a still-classified legal memo providing written authorization of waterboarding and other techniques.
- June 13, 2003: Mitchell’s and Jessen’s “applied research” contracts are both increased to \$598,000. Jessen receives an additional contract to develop a consultation and

training model. Mitchell is given a contract to adapt and modify additional psychological theories for use in “operational settings.”

- June 16, 2003: OLC/CIA Bullet Points include data gained from interrogations as part of a “good faith” defense. OMS objects to Mitchell’s and Jessen’s dual role and calls any data collected by them “suspect.”
- June 20, 2003: The DOJ distances itself from joint Bullet Points. OMS reviews Mitchell’s and Jessen’s contracts.
- July 17-18, 2003: Mitchell and Jessen discuss data collection and studies at the APA/CIA/RAND Science of Deception conference.
- September 2003: OMS issues “draft” medical guidelines. The black site BLUE closes in Poland and BLACK in Romania is opened.

2004

- January 1, 2004 : Mitchell and Jessen are granted contracts to consult on debriefing efforts at black sites and to conduct training.
- January 13, 2004: OMS raises concerns about Mitchell’s and Jessen’s conflicts of interest, as part of the OIG Special Review process.
- March 2, 2004: CIA requests that OLC reaffirm the Bullet Points and other legal interpretations.
- April 2004: COBALT prison is closed.
- April 28, 2004: Photos of dead or tortured detainees at Abu Ghraib are publicly released.
- May 3, 2004: CIA Inspector General (IG) recommends a study of the “efficacy” of the techniques. A rapid review is undertaken by two senior CIA officers, but they decline to review “efficacy,” citing concern over federal human subjects protection rules.
- May 17, 2004: OMS issues official medical guidelines.
- May 24, 2004: CIA General Counsel Scott Muller states that “enhanced interrogation” techniques were suspended on this date.
- June 2004: CIA and OLC continue to discuss the status of the Bullet Points. Mitchell and Jessen write a paper defending their interrogation methods.
- June 15-18, 2004: Assistant Attorney General Jack Goldsmith withdraws Assistant Attorney General Jay Bybee’s legal guidance.
- June 23, 2004: IG Helgeson transmits Special Review to the House and Senate Intelligence Committees.
- July 2004: CIA seeks a formal written opinion regarding the legality of “enhanced” techniques.
- August 2004: Close Counterterrorism Center/OLC communication re authorization of specific techniques, including representations from OMS doctors.
- November/December 2004: CIA reiterates that it is not possible to conduct a study of “efficacy.”
- December 2004: OMS issues revised medical guidelines.
- December 30, 2004: CIA sends OLC a 20-page “background paper” on the combined use of techniques.

2005

- January 1, 2005: Mitchell's and Jessen's contracts for debriefing and training support are increased to \$235,000 each. The black site VIOLET opens in Lithuania.
- January 8-15, 2005: OLC begins drafting a "combined techniques" memo and CIA sends updated OMS guidelines.
- January 28, 2005: IG reassures OMS that a study of "efficacy" did not involve "additional guinea pig research," indicating OMS had expressed concerns, likely between May 2004 and January 2005.
- February 2005: Mitchell and Jessen issue paper explaining that individual physical techniques can't be studied but must be assessed in light of the total effect of sequencing multiple techniques.
- March 2005: OLC and CIA communicate regularly about effects of "enhanced" techniques. Mitchell, Jessen and Associates are granted a consulting contract for \$1.1 million to develop the CIA's interrogation capabilities, which includes training operational psychologists and other CIA personnel.
- April 11, 2005: OMS expresses concerns about an apparent shift in its role to determining the legality of techniques.
- May 4, 2005: Mitchell's and Jessen's debriefing and training contracts are increased to \$378,700 each.
- May 4-5, 2005: Bradbury faxes CIA questions regarding the medical effects of various techniques. CIA responds, based on OMS description of its findings to date with CIA detainees.
- May 10-30, 2005: OMS research findings are incorporated into new Bradbury legal memos.

Endnotes

- 1 U.S. Senate, Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, December 9, 2014, 10, 32, https://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf ["SSCI Summary"].
- 2 SSCI Summary, 17-18; U.S. Senate Armed Services Committee, Report of its Inquiry into the Treatment of Detainees in U.S. Custody, November 20, 2008, xii, 69, 100, 102, https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf ["SASC Report"].
- 3 Physicians for Human Rights [PHR], "Experiments in Torture: Evidence of Human Subject Research and Experimentation in the 'Enhanced' Interrogation Program," June 2010, https://s3.amazonaws.com/PHR_Reports/Experiments_in_Torture.pdf.
- 4 For more on the U.S. government's wrongful classification of information regarding the CIA torture program, see Open the Government's September 15, 2015 complaint to the U.S. National Archives and Records Administration (NARA), http://www.openthegovernment.org/sites/default/files/ISOO_Complaint_CIA_torture.pdf.
- 5 See, e.g., U.S. Department of Justice, Office of Professional Responsibility, Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of "Enhanced Interrogation Techniques" on Suspected Terrorists, July 29, 2009, 242-243, https://www.thetorturedatabase.org/files/foia_subsite/33.pdf ["OPR Report"]. See also U.S. Senator Dianne Feinstein's statements regarding the CIA's inaccurate representations: <https://www.feinstein.senate.gov/public/index.cfm/senate-intelligence-committee-study-on-cia-detention-and-interrogation-program>.
- 6 National Commission on Terrorist Attacks upon the United States, The 9/11 Commission report: final report of the National Commission on Terrorist Attacks upon the United States, 2004, <https://9-11commission.gov/report>.
- 7 Jean Maria Arrigo, Roy J. Eidelson, and Ray Bennett, "Psychology under fire: Adversarial operational psychology and psychological ethics," *Peace and Conflict* 18, no. 4 (2012): 384-400, <http://psycnet.apa.org/journals/pac/18/4/384>.
- 8 Cofer Black, former CIA Counterterrorism Center Director, quoted in Jane Mayer, "Outsourcing Torture," *New Yorker*, February 14, 2005, <http://www.newyorker.com/magazine/2005/02/14/outsourcing-torture>.
- 9 SSCI Summary, 18. See also Ali Soufan, *The Black Banner: The Inside Story of 9/11 and the War Against al-Qaeda* (New York: W.W. Norton & Co., 2011).
- 10 U.S. Senate, Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Findings and Conclusions, December 9, 2014, 11 ["SSCI Summary, Findings and Conclusions"].
- 11 Jane Mayer, "The Experiment," *New Yorker*, July 11, 2005, <http://www.newyorker.com/magazine/2005/07/11/the-experiment-3>.
- 12 CIA Cable, "Eyes Only – Countermeasures to Al-Qa'ida Resistance to Interrogation Techniques," April 1, 2002, https://www.thetorturedatabase.org/files/foia_subsite/960.pdf ["Countermeasures Cable"]. This document appears to draw on the still-classified white paper developed by Mitchell and Jessen in December 2001, "Recognizing and Developing Countermeasures to Al Qaeda Resistance to Interrogation Techniques: A Resistance Training Perspective." See SSCI Summary, 21.
- 13 SSCI Summary, Findings and Conclusions, 11; SSCI Summary, 168-169.
- 14 SSCI Summary, Findings and Conclusions, 11-12; PHR, "Doing Harm: Health Professionals' Central Role in the CIA Torture Program," December 2014, http://s3.amazonaws.com/PHR_Reports/doing-harm-health-professionals-central-role-in-the-cia-torture-program.pdf.
- 15 PHR, "Experiments in Torture."
- 16 James E. Mitchell and Bill Harlow, *Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America* (New York: Crown Publishing, 2016); Alexandra King, "CIA contractor: Enhanced interrogation techniques 'saved lives'," *CNN*, December 17, 2016, <http://www.cnn.com/2016/12/17/politics/james-mitchell-advanced-interrogation-cnntv>.
- 17 45 C.F.R. § 46 (2016). A revision the Common Rule, set to take effect January 19, 2018, includes the following exemptions: "For purposes of this part, the following activities are deemed not to be research: 'Authorized operational activities (as determined by each agency) in support of

intelligence, homeland security, defense, or other national security missions." "§ __.102: Definitions for purposes of this policy," Federal Register 82 (12), January 19, 2017, 7261, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01058.pdf>.

18 See, e.g., California State University San Marcos, "Definition: Guidelines for Defining Systematic Investigation and Generalizable Knowledge," Graduate Studies and Research, https://www.csusm.edu/gsr/irb/documents/policy_guidelines/definition.html.

19 Richard Cash, Daniel Wikler, Abha Saxena, and Alexander Capron (eds.), Casebook On Ethical Issues in International Health Research (Geneva: World Health Organization, 2009), http://apps.who.int/iris/bitstream/10665/44118/4/9789241547727_eng.pdf; Jay Katz, "Human Experimentation and Human Rights," Saint Louis University Law Journal 38, no. 7 (1993), http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3917&context=fss_papers; Elliott J. Schuchardt, "Walking a Thin Line: Distinguishing Between Research and Medical Practice during Operation Desert Storm," Columbia Journal of Law and Social Problems 26, no. 77 (1992).

20 See, e.g., Countermeasures Cable; Bruce Jessen, Joint Personnel Recovery Agency, "Al Qaida Resistance: Training Based on Recently Obtained Al Qaida Documents," DOD Briefing Slides, March 1, 2002, https://www.thetorturedatabase.org/files/foia_subsite/al-qaida_resistance_slides_part1.pdf, https://www.thetorturedatabase.org/files/foia_subsite/al-qaida_resistance_slides_part2.pdf ("Resistance Slides"); Bruce Jessen, Joint Personnel Recovery Agency, "Exploitation," DOD Briefing Slides, undated, https://www.thetorturedatabase.org/files/foia_subsite/exploitation_slides_part1.pdf, https://www.thetorturedatabase.org/files/foia_subsite/exploitation_slides_part2.pdf ("Exploitation Slides"); SASC Report, 7-9.

21 SSCI Summary, 10, 32. For an analysis of "learned helplessness" theory as applied in the CIA torture program, see Metin Basoglu, "Definition of torture in United States law: Does it provide legal cover for "enhanced interrogation techniques"?", February 7, 2015, <https://metinbasoglu.wordpress.com/2015/02/07/definition-of-torture-enhanced-interrogation>.

22 Exploitation Presentation. See also CIA, Background Paper on CIA's Combined Use of Interrogation Techniques, December 2004, 1-9, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLCoo1126.pdf ["Background Paper"].

23 OPR Report, 34; SASC Report, 4.

24 See, e.g., PHR, "Experiments in Torture," 19-24; SASC Report, 31.

25 OPR Report, 34.

26 Jason Leopold, "Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects," VICE News, December 15, 2014, <https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>.

27 SSCI Summary, 21, 26, 464; CIA Cable, "Eyes Only – Interrogation Plan [redacted]," April 12, 2002, 2, https://www.thetorturedatabase.org/files/foia_subsite/50_o.pdf.

28 Exploitation Slides, Part 1, 15.

29 See SSCI Summary, 21, 26, 32, 464; OPR Report, 40-42; SASC Report, 17, citing Jane Mayer, "The Black Sites," The New Yorker, August 13, 2007, <http://www.newyorker.com/magazine/2007/08/13/the-black-sites>.

30 David H. Hoffman et al., Sidley Austin LLP, Report to the Special Committee of the Board of Directors of the American Psychological Association: Independent Review Relating to APA Ethics Guidelines, National Security Interrogations, and Torture, July 2, 2016, 48, <http://www.apa.org/independent-review/revise-report.pdf> ["Hoffman Report"]; Hoffman Report, Binder 5, "How to Win the Peace," 830, <http://www.apa.org/independent-review/binder-5.pdf>.

31 Resistance Slides, Part 1, 12. See also SASC Report, 8-9.

32 SSCI Summary, 463-464.

33 Hoffman Report, 127.

34 Seligman denies discussing interrogation with Mitchell or other CIA personnel, despite contemporaneous media accounts that psychologists were involved in inflicting "non-violent forms of coercion" in the interrogation of Abu Zubaydah. See "'Learned Helplessness' & Torture: An Exchange," Martin Seligman, Reply by Tamsin Shaw, The New Yorker, April 21, 2016, <http://www.nybooks.com/articles/2016/04/21/learned-helplessness-torture-an-exchange>.

35 CIA Cable, "Eyes Only – Interrogation Plan (Redacted)," April 12, 2002.

36 OPR Report, 40-42.

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- 37 Jane Mayer, *The Dark Side: The Inside Story of How The War on Terror Turned into a War on American Ideals* (New York: Anchor Books, 2009): 156.
- 38 Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, "Memorandum for John A. Rizzo [Senior Deputy General Counsel, CIA]; Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques that May Be Used in the Interrogation of a High Value al Qaeda Detainee," May 10, 2005, 59, https://www.thetorturedatabase.org/files/foia_subsite/20.pdf ["Bradbury Individual Techniques Memo" (May 2005)], citing Background Paper.
- 39 SASC Report, 103.
- 40 OPR Report, 34, 226-227. See also Senator Carl Levin in 2008: "These techniques were designed to give our students a taste of what they might be subjected to if captured by a ruthless, lawless enemy so that they would be better prepared to resist. The techniques were never intended to be used against detainees in U.S. custody. As one [Joint Personnel Recovery Agency (JPRA)] instructor explained, SERE training is based on illegal exploitation (under the rules listed in the 1949 Geneva Convention Relative to the Treatment of Prisoners of War) of prisoners over the last 50 years." SSCI Summary, 32.
- 41 KUBARK Counterintelligence Interrogation, July 1963, <https://nsarchive.gwu.edu/NSAEBB/NSAEBB122/CIA%20Kubark%201-60.pdf>. See also SSCI Summary, 18.
- 42 SASC Report, xxvii, 5, 6, 30, 172, 231.
- 43 SSCI Summary, 18.
- 44 SASC Report, 31.
- 45 See SASC Report, 4-5, 29-31, 36.
- 46 See PHR, "Experiments in Torture," 19-24.
- 47 OPR Report, 55.
- 48 Ibid.; CIA Cable, "Eyes Only – Comments on Proposed Enhanced Interrogation Process," July 23, 2002, 1-2, https://www.thetorturedatabase.org/files/foia_subsite/31_o.pdf.
- 49 OPR Report, 65.
- 50 Mitchell and Jessen's company agreed to train CIA officers in order to provide "the capability of employing 'state of the art' scientifically based exploitation and interrogation tactics, techniques and procedures designed to gain actionable intelligence from willing and unwilling human sources under time urgent conditions." Mitchell, Jessen & Associates, "Statement of Work: DCI's Counterterrorist Center (CTC): Elicitation and Training for CTC, 'ETC' Project," June 15, 2005, 5, https://www.thetorturedatabase.org/files/foia_subsite/cia_43.pdf ["MJA Contract, June 15, 2005"].
- 51 Hoffman Report, 128.
- 52 SSCI Summary, Findings and Conclusions, 11; SSCI Summary, 168-169.
- 53 Countermeasures Cable, 6. The document further states, "Skillfully crafted countermeasures can be developed in such a way that they do not violate the Geneva Conventions." However, Jessen told the Senate Armed Services Committee in 2007 that there was no basis to make such a claim. SASC Report, 10-11.
- 54 SASC Report, 9.
- 55 SSCI Summary, Findings and Conclusions, 11.
- 56 Background Paper, 1.
- 57 Ibid., 1-9.
- 58 Ibid.
- 59 Ibid.
- 60 SSCI Summary, 46.
- 61 MJA Statement of Work, June 15, 2005, 3-5
- 62 SSCI Summary, 35.

63 CIA OMS, "Summary and Reflections of Chief of Medical Services on OMS Participation in the RDI Program," undated, 46, https://www.thetorturedatabase.org/files/foia_subsite/cia_24.pdf ["OMS Summary and Reflections"].

64 Background Paper, 1-9.

65 CIA, "CIA Comments on the Senate Select Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program," June 27, 2003, 7, https://fas.org/irp/congress/2014_rpt/cia-ssci.pdf ["CIA Comments"].

66 See, e.g., Hoffman Report, 48 (discussing a December 2001 meeting between Seligman, Mitchell, Jessen, and Kirk Hubbard); 165 (discussing a January 2002 meeting of the CIA's Professional Standards Advisory Committee (PSAC), in which Mitchell presented "research findings in cross-cultural assessment of personality"); 48 (discussing a February 2002 meeting with American Psychological Association academics and researchers and various law enforcement and intelligence personnel, including Hubbard and Mitchell); 127, 164 (discussing an April 2002 meeting between Seligman, Mitchell, Jessen, and Hubbard); 51 (discussing PSAC member Mel Gravitz's email communication with Mitchell); and 53 (discussing a joint APA, CIA and RAND conference on "The Science of Deception," attended by Mitchell, Jessen). See also SASC Report, 11, 14-16 (discussing Jessen's 2002 contacts with JPRA regarding interrogation training and prisoner handling recommendations); CIA OIG Report, 14 (discussing OTS consultations with JPRA experts and academics on the SERE techniques); and Stephen Soldz, Nathaniel Raymond, Steven Reisner et al., All the President's Psychologists: The American Psychological Association's Secret Complicity with the White House and U.S. Intelligence Community in Support of the CIA's "Enhanced" Interrogation Program, April 2015, <https://s3.amazonaws.com/s3.documentcloud.org/documents/2069718/report.pdf>.

67 SSCI Summary, 126.

68 CIA, Inspector General, Special Review: Counterterrorism Detention and Interrogation Activities, May 7, 2004, 11, https://www.thetorturedatabase.org/files/foia_subsite/cia_26.pdf ["CIA OIG Report"]; SSCI Summary, 12, 18-20.

69 SSCI Summary, 20.

70 Ibid.

71 For a discussion of Geneva prohibitions against human experimentation, see M. Cherif Bassiouni, Crimes Against Humanity in International Criminal Law, 2d rev. ed. (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1999). See also Hoffman Report, 144-149.

72 SASC Report, 2; SSCI Summary, 20. In *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), the Supreme Court rejected the Bush Administration's interpretation of Common Article 3 set forth by the President in 2002. The Supreme Court found that Common Article 3 applied to all individuals in the conflict, required fair trials for all detainees, and prohibited torture and indefinite detention. In response, Congress enacted the Military Commissions Act (MCA) of 2006, 28 U.S.C. § 2241, which barred victims of Common Article 3 violations from invoking the Geneva Conventions in habeas corpus proceedings or civil actions, effectively rendering Common Article 3 unenforceable except for conduct that [could be prosecuted under the War Crimes Act if it] fell within the MCA's narrow definition of "grave breaches." The MCA further delegated authority to define Common Article 3 violations other than grave breaches to the President. Subsequently, in 2007, President Bush issued Executive Order 13440 which provided an interpretation of Common Article 3's application the CIA's detention and interrogation program; this order was rescinded in 2009 by President Obama in Executive Order 13493.

73 "Memorandum from President George W. Bush to the Vice President, Secretary of State, Secretary of Defense, Attorney General, Chief of Staff to the President, CIA Director, Assistant to the President for National Security Affairs and Chairman of the Joint Chiefs of Staff, regarding "Humane Treatment of al Qaeda and Taliban Detainees," February 7, 2002, <https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2013/05/Memorandum-from-President-to-Vice-President-et-al.-Humane-Treatment-of-al-Qaeda-and-Taliban-Detainees-Feb-7-2002.pdf>

74 See Human Rights Watch (HRW), *No More Excuses: A Roadmap to Justice for CIA Torture*, December 2014, 53-55, <https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture>. See also SSCI Summary, 115-116, citing CIA General Counsel Scott W. Muller, "Memorandum for the Record: 'Humane' Treatment of CIA detainees," February 12, 2003, <https://ciasavedlives.com/bdr/humane-treatment-of-cia-detainees.pdf>.

75 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> [Convention against Torture]. The United States ratified the Convention in October 1994.

76 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted August 12, 1949, 75 UNTS 31, entered into force October 21, 1950, art. 50, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8DE472A17F7E30AFC12563CDO051A2D6> [Geneva Convention I]; Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted August 12, 1949, 75 UNTS 287, entered into force October 21, 1950, art. 147, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/9861b8c2foe83ed3c1256403003fb8c5/f8d322bf3c0216b2c12563cd0051c654> [Geneva Convention II]; Geneva Convention relative to the Treatment of Prisoners of War, adopted August 12, 1949, 75 UNTS 135, entered into force October 21, 1950, art. 130, <https://ihl-databases.icrc.org/ihl/WebART/375-590156?OpenDocument> [Geneva Convention III]; and Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted August 12, 1949, 75 UNTS 287, entered into force October 21, 1950, art. 147, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F8D322BF3C0216B2C12563CDO051C654> [Geneva Convention IV].

77 International Covenant on Civil and Political Rights (ICCPR), Art. 7, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), UN Doc. A/6316 (1966), 999 U.N.T.S. 171, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; see also ICRC, "Rule 92."

78 Throughout this period, human subjects protections were also weakened in connection with military research. In December 2001, Congress amended the U.S. criminal code to allow the Secretary of Defense to waive informed consent for experimental research projects to "advance the development of a medical product necessary to the armed forces," if it might "directly benefit the subject." <https://www.gpo.gov/fdsys/pkg/BILLS-107hr2586rh/pdf/BILLS-107hr2586rh.pdf> In March 2002, the Department of Defense (DOD) withdrew a 1983 directive on the protection of human subjects in DOD-supported research. The new version replaced requirements of Nuremberg compliance with weaker language requiring Nuremberg familiarity. See DOD Instruction, "Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research," DODD 3216.02, March 25, 2002, http://www.med.navy.mil/sites/nmrc/documents/hspp_dod3216_2.pdf. In addition, as a practical consequence, because the Common Rule no longer applied to detainees, neither did the Code of Federal Regulations. These changes potentially impacted the CIA program, given the comingling of DOD and CIA activities, personnel, and detention facilities. See, e.g., SSCI Summary, 140; Memo from Scott W. Muller to James L. Pavitt, "CIA Detainees at GITMO," February (redacted) 2004, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c06552087_cia_detainees_at_gitmo.pdf; and Memorandum of Agreement between the Department of Defense (DOD) and Central Intelligence Agency (CIA) Concerning the Detention by DOD of CIA Terrorists at a Facility at Guantanamo Bay Naval Station, September 1, 2006, <https://www.cia.gov/library/readingroom/docs/OO06541712.pdf>. For a lengthier discussion, see Hoffman Report, 144-149.

79 War Crimes Act, 18 U.S.C. § 2441(d)(1)(C) (2006).

80 See, e.g., Memorandum from David J. Barron, Acting Assistant Attorney General, OLC, for the Attorney General, Re: Withdrawal of Office of Legal Counsel Opinions (April 15, 2009), <https://fas.org/irp/agency/doj/olc/withdraw-0409.pdf> and Memorandum from David J. Barron, Acting Assistant Attorney General, OLC, for the Attorney General, Re: Withdrawal of Office of Legal Counsel Opinion (June 11, 2009), <https://fas.org/irp/agency/doj/olc/withdraw-0609.pdf>.

81 Memorandum from Jay S. Bybee, assistant attorney general, to Alberto R. Gonzales, counsel to the president, regarding "Standards for Conduct of Interrogation under 18 U.S.C. Sections 2340-2340A," August 1, 2002, 1, <https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf> ["Bybee I Memo"].

82 Convention against Torture, art. 1.

83 See Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Human Rights Council, 30, U.N. Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010),

http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf;

http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5735&context=fss_papers.

84 See David J. Luban and Henry Shue, "Mental Torture: A Critique of Erasures in U.S. Law," *Georgetown Law Journal* 100, no. 3, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1619&context=facpub> (describing the "substitution trick," a fallacy by "which mental pain and suffering get defined through their causes and aftermath and not the experience itself").

85 Memorandum from Jay S. Bybee, assistant attorney general, to John Rizzo, acting general counsel of the CIA, regarding 'Interrogation of al Qaeda Operative,'" August 1, 2001, <http://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-bybee2002.pdf> ["Bybee II Memo"].

86 SSSI Summary, 84.

87 One episode of waterboarding, in which Abu Zubaydah lost consciousness, was cited in multiple OMS emails from March 6, 2003 through at least October 26, 2004. SSSI Summary, 44.

88 CIA Office of Medical Services, "Draft OMS Guidelines on Medical and Psychological Support to Detainee Interrogations," September 4, 2003 <https://www.thetorturedatabase.org/document/cia-oig-special-review> ["OMS Guidelines (September 2003)"]; "OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention," May 17, 2004, <https://www.aclu.org/sites/default/files/torturefoia/released/103009/cia-olc/2.pdf> ["OMS Guidelines (May 2004)"]; "OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention," December 2004, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c06541536_oms_guidelines_on_medical_and_psychological_support_to_detainee_rendition_interrogation_and_detention.pdf ["OMS Guidelines (December 2004)"].

89 Bybee I Memo, 5-6.

90 *Ibid.*, 8-9.

91 OPR Report, 48, 66.

92 *Ibid.*, 52.

93 *Ibid.*, 56, 66.

94 Letter from Scott Muller, CIA, to Jack Goldsmith, OLC, re: legal principles applicable to the CIA interrogation program, March 2, 2004, https://www.thetorturedatabase.org/files/foia_subsite/55.pdf ["Bullet Points"]. For a lengthier discussion, see OPR Report, 100-103 and HRW, *No More Excuses*, 67.

95 See, e.g., SSSI Summary, 18; SASC Report, xii; Shane O'Mara, *Why Torture Doesn't Work: The Neuroscience of Interrogation* (Cambridge: Harvard University Press, 2015); Steven M. Kleinman, "The Promise of Interrogation v. the Problem of Torture," *Valparaiso University Law Review* 43, no. 4 (2009): 1577-1590, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1128&context=vulr>; John W. Schieman, *Does Torture Work?* (Oxford: Oxford University Press, 2016); Allison D. Redlich, Christopher E. Kelly, and Jeanee C. Miller, "The Who, What, and Why of Human Intelligence Gathering: Self-Reported Measures of Interrogation Methods," *Applied Cognitive Psychology* 28, no. 6 (2014): 817-828, <http://onlinelibrary.wiley.com/doi/10.1002/acp.3040/abstract>; High-Value Detainee Interrogation Group Report, *Interrogation: A Review of the Science*, September 2016, <https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.pdf/view>; and Mark Costanzo, Ellen Gerrity, and M. Brinton Lykes, "Psychologists and the Use of Torture in Interrogations," *Analyses Social Issues and Public Policy* 7, no. 1 (2007): 7-20, <https://www.spssi.org/index.cfm?fuseaction=page.viewpage&pageid=1251>; Letter to Presidential Candidates signed by 26 interrogation and intelligence professionals, September 17 2015, <http://www.humanrightsfirst.org/sites/default/files/interrogator-letter-candidates.pdf>.

96 See Mitchell's CIA contracts for "applied research," dated December 21, 2001; April 4, 2002; May 14, 2002; July 1, 2002; September 5, 2002; September 12, 2002; January 1, 2003; April 8, 2003; June 16, 2003; June 16, 2003; and January 1, 2004, <https://assets.documentcloud.org/documents/2992829/Read-the-contracts-for-James-Mitchell.pdf> ["Mitchell Research Contracts"]; Jessen's CIA contracts for "applied research," dated July 22, 2002; September 5, 2002; October 24, 2002; January 1, 2003; April 8, 2003; and June 16, 2003, <https://assets.documentcloud.org/documents/2992828/Read-the-contract-for-John-B-Jessen.pdf> ["Jessen Research Contracts"]. Some of the contracts have missing, undated, or ambiguous Statements of Work.

97 The contracts classify work as CONUS (contiguous United States, i.e., domestic) and OCONUS (outside contiguous United States, i.e., abroad).

98 See Countermeasures Cable.

99 This plan is cited in a Vaughn Index describing documents from the files of the CIA Office of Inspector General, in response to 2003 and 2004 FOIA requests by the American Civil Liberties Union. See ACLU OIG Remand, "Other-81," 71, https://www.aclu.org/sites/default/files/field_document/oig_vaughnindex.pdf ["OIG Vaughn Index"].

100 Mitchell Research Contract, April 4, 2003; SSCI Summary, 26; and Mitchell, Enhanced Interrogation, 16-17.

101 Marcy Wheeler, "Did Abu Zubaydah's Torture Begin After May 28, 2002?," Emptywheel, May 22, 2009, <https://www.emptywheel.net/2009/05/22/did-abu-zubaydahs-torture-begin-after-may-28-2002>, citing Ari Shapiro, "Did White House OK Earliest Detainee Abuse?," NPR, May 20, 2009, <http://www.npr.org/templates/story/story.php?storyId=104350361> and ACLU's "Torture FOIA List" in *ACLU v. Department of Defense*, 04-CV-4151, May 18, 2009, https://www.aclu.org/sites/default/files/torturefoia/legaldocuments/torturefoia_list_20090518.pdf. See also Sheri Fink, "Do CIA cables show doctors monitoring torture?," Salon, May 28, 2009, http://www.salon.com/2009/05/28/torture_27.

102 OPR Report, 33.

103 *Ibid.*, 34. See also, e.g., CIA Cable, "IMMEDIATE Turning Up the Heat in the AZ Interrogations," April 30, 2002, https://www.thetorturedatabase.org/files/foia_subsite/990.pdf.

104 OMS Summary and Reflections, 13.

105 OPR Report, 33-34.

106 SSCI Summary, 27-30. See also CIA Email, "Hold Eyes Only - Request IC Psychologist Remain at (redacted)," mid-April 2002, https://www.thetorturedatabase.org/files/foia_subsite/19_o.pdf.

107 SSCI Report, 30. See also Soufan, *The Black Banner*, 399; CIA Email, "IMMEDIATE: Turning up the Heat in the AZ Interrogations," April 30, 2002, https://www.thetorturedatabase.org/files/foia_subsite/990.pdf; and CIA Cable, "Eyes Only - Plans to Increase Pressure on Abu Zubaydah," May (redacted), 2002, https://www.thetorturedatabase.org/files/foia_subsite/970.pdf.

108 Mitchell Research Contract, May 17, 2002.

109 SSCI Summary, 30-31; OMS Summary and Reflections, 13-14.

110 OMS Summary and Reflections, 15. See also OIG Report, 13-14.

111 OMS Summary and Reflections, 13-14.

112 SSCI Summary, 34.

113 CIA OIG Report, 21.

114 *Ibid.*

115 SSCI Summary, 36.

116 *Ibid.*, 40-42.

117 *Ibid.*, 44-45.

118 *Ibid.*, 36, 42.

119 Mitchell Contracts, August 8, 2001; August 21, 2002; April 8, 2003; June 16, 2003.

120 See, e.g., CIA Memo, Draft "Psychological Assessment of Zain al-"Abedin al-Abideen Mohammad Hassan, a.k.a., Abu Zubaydah," undated, <https://www.aclu.org/sites/default/files/torturefoia/released/082409/olcremand/20040lc4.pdf> and CIA Email, "Setting up for Interrogations," September 22, 2002, https://www.thetorturedatabase.org/files/foia_subsite/36_o.pdf.

121 SSCI Summary, 65-66, 71-72. See also CIA Email, "Mental Status Examination and Recommended Interrogation Plan for Gul Rahman," November 2002, https://www.thetorturedatabase.org/files/foia_subsite/63.pdf and CIA Cable, "Eyes Only - Interrogation/Psychological Assessment of Abu Zubaydah," July 2003, https://www.thetorturedatabase.org/files/foia_subsite/80.pdf.

122 CIA Director of Central Intelligence, "Guidelines on Interrogations Conducted Pursuant to the Presidential Memorandum of Notification of 17 September 2001," January 28, 2003, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c06541522_guidelines_on_interrogations_conducted_pursuant

_to_the_presidential_memorandum_of_notification_of_17_september_2001.pdf ["DCI Interrogation Guidelines"]. See CIA Email, "Setting up for Interrogations," September 22, 2002, www.thetorturedatabase.org/files/foia_subsite/36_o.pdf.

123 Mitchell Contracts, April 8, 2003 and June 16, 2003.

124 See, e.g., OPR Report, 56, 125 and SSCI Summary, 114, 416.

125 Mitchell Research Contract, September 5, 2002; SSCI Summary, 49-50, 53.

126 Mitchell Research Contract, September 12, 2002; SSCI Summary, 75.

127 Jessen Research Contract, October 24, 2002; SSCI Summary, 66; CIA OIG, Report of Investigation, Death of a Detainee in [redacted], April 27, 2005, 2, 35-36, https://www.thetorturedatabase.org/files/foia_subsite/cia_25_29.x.pdf ["OIG Rahman Report"].

128 OMS Summary and Reflections, 45.

129 Ibid., 33; Memorandum for Deputy Director for Operations (CIA), "Death Investigation – Gul Rahman," January 28, 2003, 8-9, https://www.thetorturedatabase.org/files/foia_subsite/cia_17_29.m_o.pdf ["Rahman Investigation"]. Following Rahman's death, Jessen stated that the use of "hard takedowns" and other techniques "need to be written down and codified with a stamp of approval or you're going to be liable." CTC Memo, Rahman Death Investigation – Interview of John B. Jessen," undated, https://www.thetorturedatabase.org/files/foia_subsite/cia_1_o.pdf.

130 SSCI Summary, 63, 102.

131 Ibid., 124. See also OMS Summary and Reflections, 41.

132 CIA Email, "Availability of (redacted) Psychologist Jim Mitchell / Role of Mitchell and Jesson (sic)," May 28, 2003, https://www.thetorturedatabase.org/files/foia_subsite/4_o.pdf. See also CIA Email, "(Redacted) RDG Tasking for IC Psychologists Jessen and Mitchell," June 16, 2003, https://www.thetorturedatabase.org/files/foia_subsite/cia_16_29.t.pdf.

133 "From now on they will be doing mostly strategic consulting, research and program development projects, and the [redacted] psychology role. They are willing to interrogate, mentor, given presentations, or whatever as needed, but they now believe we have enough interrogators to go forward and need them much less in the interrogation role, if at all." CIA Email, "Availability of (redacted) Psychologist Jim Mitchell / Role of Mitchell and Jesson (sic)," May 28, 2003.

134 Mitchell Research Contracts, April 8, 2003, possibly June 16, 2003.

135 Jessen Research Contracts, April 8, 2003, June 16, 2003.

136 CIA Email, "(Redacted) RDG Tasking for IC Psychologists Jessen and Mitchell," June 16, 2003.

137 CIA Comments, 7.

138 OPR Report, 106, 116, 124-125.

139 CIA Email, "RDG Tasking for IC Psychologists Jessen and Mitchell," June 16, 2003.

140 Joby Warrick, "CIA Tactics Endorsed in Secret Memos," Washington Post, October 15, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/10/14/AR2008101403331.html>.

141 SSCI Summary, 135, 413.

142 OPR Report, 106, 116, 124-125, 132-133. See also Bradbury Fax, May 4, 2005.

143 SSCI Summary,

144 Ibid., 124, 126-127.

145 OMS Summary and Reflections, 45.

146 OPR Report, 134-137, quoting "Memorandum for John A. Rizzo (Senior Deputy General Counsel, CIA), Re: Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques that May Be Used in the Interrogation of a High Value al Qaeda Detainee," May 10, 2005, 6, 8, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/olc_6_compressed.pdf.

147 OPR Report, 164.

148 OMS Summary and Reflections, 29; CIA Email, "Study by VIP Med," undated, https://www.thetorturedatabase.org/files/foia_subsite/109.pdf; CIA Email, "interro course critiques," July 28, 2004, https://www.thetorturedatabase.org/files/foia_subsite/1130.pdf.

149 Mitchell, Jessen and Associates, "Letter Contract for Project, March 2005,
https://www.thetorturedatabase.org/files/foia_subsite/cia_42.pdf.

150 Email from Melvin Gravitz to Jim Mitchell, "FYI," February 13, 2003. Hoffman Report, Binder 4, 164, <http://www.apa.org/independent-review/binder-4.pdf>.

151 Hoffman Report, 50-51.

152 Ibid., 53. See also Soldz et al., All the President's Psychologists.

153 Email from Brandon to Gerwehr et al., "rude shock," July 21, 2003, in Hoffman Report, Binder 3, 31.

154 See, e.g., OMS Guidelines (September 2003); (May 2004); (December 2004); Background Memo; SSCI Report, 84-87, 415, 495; OPR Report, 40-42, 127, 131-133; and CIA Fax, from: (redacted) Legal Group, DCI Counterterrorist Center; to: Steve Bradbury, OLC, DOJ, May 4, 2005, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/co6541714_fax_to_steve_bradbury.pdf ["Bradbury Fax, May 4, 2005"].

155 OPR Report, 37.

156 See note 154, supra.

157 See PHR, "Experiments in Torture," 19-24.

158 See, e.g., SSCI Summary, 111-113.

159 SSCI Summary, Findings and Conclusions, 4-5.

160 OMS Guidelines (December 2004), 9.

161 "Documented subsequent medical rechecks during the interrogation period should be performed on a regular basis... The recheck can be more focused on relevant factors. The content of the documentation should be similar to what would ordinarily be recorded in a medical chart. Although brief, the data should reflect what was checked and include negative findings....This file must be available to successive medical practitioners at site." OMS Guidelines (December 2004), 6.

162 With respect to waterboarding, see references to "limited experience," a lack of "hard data to quantify either the risk or advantages of this technique," and the directive to document "every application" "to best inform future medical judgments and recommendations," in OMS Guidelines (December 2004), 17-20. See also Bradbury Individual Techniques Memo, 14: "We understand that these limitations have been established with extensive input from OMS, based on experience to date with this technique...." With respect to shackles and standing sleep deprivation, see references to "our experience with a number of detainees," in OMS Guidelines (December 2004), 14. With respect to sleep deprivation, see "[t]here is little if any research evidence to support a fixed period of time" for sleep to allow sleep deprivation to continue and circumstances facing medical officers differing from "ones that have been subject to reported research," in OMS Guidelines (December 2004), 16.

163 See note 154, supra.

164 PHR, "Experiments in Torture," 20.

165 SASC Report, 30-31.

166 Spencer Ackerman, "Torture by another name: CIA used 'water dousing' on at least 12 detainees," The Guardian, October 16, 2015, <https://www.theguardian.com/law/2015/oct/16/cia-torture-water-dousing-waterboard-like-technique>. See also SSCI Summary, 105.

167 SSCI Summary, 89, 99, 103. See OIG Rahman Report, 2, 35-36.

168 SSCI Summary, 453.

169 See *ibid.*, 96, 106-107, 419. HRW describes the following, based on an interview with former CIA detainee Khalid al-Sharif: "While this was going on he would be made to wear a black hood made out of thick cloth over his head and they would also pour jugs of freezing cold water directly over his nose and mouth." HRW, *Delivered Into Enemy Hands: US-Led Abuse and Rendition of Opponents to Guaddafi's Libya*, September 5, 2012, <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>.

170 SSCI Summary, 105-107.

171 Water dousing was classified as a "standard" interrogation technique in June 2003. This designation required off-site medical and psychological personnel to be available for possible consultation. Water dousing was recategorized as an "enhanced" technique in January 2004, which required OMS personnel to be physically present on-site during its use. SSCI Summary, 63, 99, 102-103, 412; OMS Summary and Reflections, 32-33.

172 SSCI Summary, 107

173 OMS Guidelines (December 2004), 12.

174 Interrogation activities were communicated and approved via cables between COBALT and CIA's Headquarters. SSCI Summary, 99.

175 OMS Guidelines (December 2004), 13, 34.

176 Ibid., 11.

177 CIA, Disposition Memorandum: Alleged Use of Unauthorized Interrogation, December 6, 2006, 2,
https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c06541723_alleged_use_of_unauthorized_interrogation_techniques.pdf ["CIA Hawsawi Memo"].

178 CIA, Disposition Memorandum: Alleged Use of Unauthorized Interrogation, December 6, 2006, 6,
https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c05959918_disposition_memorandum.pdf ["CIA Al-Libi Memo"].

179 SSCI Summary, 112, 492.

180 HRW, *Delivered Into Enemy Hands*.

181 OMS Guidelines (May 2004), 10, 23.

182 OMS Guidelines (December 2004), 12-13.

183 Ibid., 13.

184 SSCI Summary, 415.

185 Ibid., 419.

186 See, e.g., *ibid.*, 103.

187 Bullet Points.

188 OMS Guidelines (December 2004), 17.

189 Ibid., 18.

190 Ibid., 17.

191 Ibid., 18.

192 SSCI Summary, 41-42.

193 OMS Guidelines (December 2004), 18.

194 Steven G. Bradbury, Principal Deputy Assistant Attorney General, OLC, DOJ, "Memorandum for John A. Rizzo (Senior Deputy General Counsel, CIA): Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees," May 10, 2005, 59, 68, https://www.thetorturedatabase.org/files/foia_subsite/20.pdf ["Bradbury Combined Use Memo"].

195 OMS Guidelines (December 2004), 19.

196 Ibid., 17.

197 Bradbury Combined Use Memo, 18.

198 Bradbury Individual Techniques Memo, 44.

199 See SASC Report, 31.

200 See, e.g., SSCI Summary, 111-115. In addition, PHR clinicians evaluated a contemporaneous cohort of military detainees subjected to "enhanced interrogation"-style techniques, which reveal long-term physical and mental health problems resulting from torture. PHR, "Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact," June 2008, <http://phr.org/library/reports/broken-laws-torturereport-2008.html>.

201 SSCI Summary, 56, 63.

202 SSCI Summary, 99-105. See also OPR Report, 247, discussing waterboarding: "most if not all of the CIA's past experience with that technique appear to have exceeded the limitations, conditions, and understandings recited in the Classified Bybee Memo and the Bradbury Memo."

203 Ibid., 135, 413.

204 See, e.g., SSCI Summary, 87, 419-421; OPR Report, 135-140; Bradbury Fax, May 4, 2005.

205 The CIA has been implicated in a number of detainee deaths, including Gul Rahman and Manadel al-Jamadi. See Hina Shamsi, "Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan," February 2006, <https://www.humanrightsfirst.org/wp-content/uploads/pdf/06221-etn-hrf-dic-rep-web.pdf>. For more detail on psychological problems exhibited by detainees, see SSCI Summary, 113-115. While details on physical sequelae of torture remain difficult to come by, they may be gleaned from detainees' Combatant Status Review transcripts, <https://www.aclu.org/csrt-foia>. See also PHR, "Broken Laws, Broken Lives."

206 SSCI Summary, 135, 413.

207 Bradbury Individual Techniques Memo, 30.

208 Bradbury Fax, May 4, 2005, 1-2.

209 Bradbury Individual Techniques Memo, 38-39.

210 Bradbury Combined Use Memo, 61.

211 Soldz et al., *All The Presidents' Psychologists*, 24, citing "Memorandum for John A. Rizzo (Senior Deputy General Counsel, CIA); Re: Application of United States Obligations Under Article 16 of [Convention against Torture] to certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees," May 30, 2005, 8, <http://www.justice.gov/sites/default/files/olc/legacy/2013/10/21/memo-bradbury2005.pdf> ["Bradbury CIDT Memo"].

212 See Hoffman Report, 128.

213 CIA Comments, 24.

214 OPR Report, 48, 53, 59, 66, 103, 108, 161-162, 165.

215 SSCI Summary, 472.

216 *Ibid.*, 114.

217 See Open the Government's NARA complaint, *supra* note 4.

218 CIA Comments, 6.

219 SSCI Summary, 87.

220 SSCI Summary, 420.

221 See, e.g., Bradbury Fax, May 4, 2005. See also SSCI Summary, 419-421; OPR Report, 135-140.

222 See, e.g., Soufan, *The Black Banners*, 399; SSCI Summary, 71; CIA Email, "RDG Tasking for IC Psychologists Jessen and Mitchell," June 16, 2003; June 20, 2003, 2:19:53 PM, https://www.thetorturedatabase.org/files/foia_subsite/cia_prod_co6552086_-_ocr.pdf; June 20, 2003, 5:23:29 PM, https://www.thetorturedatabase.org/files/foia_subsite/7_o.pdf.

223 Hoffman Report, 128.

224 SSCI Summary, 124.

225 SSCI Summary, Findings and Conclusions, 13, 19.

226 CIA Comments, 24.

227 SSCI Summary, 126.

228 An example includes medical officers minimizing wound care for Abu Zubaydah to enable interrogation to take precedence. SSCI Report, 412. Another example: "These medical interventions, however, should not undermine the anxiety and dislocation that the various interrogation techniques are designed to foster." OMS Guidelines (December 2004), 10. See also PHR, "Doing Harm," and Katherine Hawkins, "Medical Complicity in CIA Torture, Then and Now," *Just Security*, July 1, 2016, <https://www.justsecurity.org/31762/medical-complicity-cia-torture>.

229 Vince Iacopino, Scott Allen and Allen Keller, "Bad Science Used to Justify and Support Torture and Human Experimentation," *Science* 331, no. 6013 (2011): 34-35, <http://science.sciencemag.org/content/331/6013/34?ijkey=yeImJBWU9oKIY&keytype=ref&siteid=sci>.

230 The Nuremberg Code, "Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10," Vol. 2 (Washington, D.C.: U.S. Government Printing Office, 1949): 181-182, <https://history.nih.gov/research/downloads/nuremberg.pdf>.

231 *Ibid.*

232 *Ibid.*

233 M. Cherif Bassiouni (ed.), *International Criminal Law: Sources, Subjects, and Contents* (Leiden: Martinus Nijhoff, 2008), 138.

234 Customary international law is the custom of states that has been accepted as law, and that doesn't require a convention or treaty to be seen as a legal obligation. The respect for sovereignty, for example, or the proportionality of punishment to crime. By observing what states do and say, scholars identify customary international legal norms that have weight (status) even without conventions behind them. *Ius cogens* (Latin for "compelling law" or rather "the law that is brought together") is a part of customary international legal norms. They are the specific part of customary law that states are not allowed to derogate from under any circumstances (because they are so compelling). While international law allows for (even demands) the derogation from the principle of national sovereignty in some circumstances (to protect against a genocide, for example) the prohibition of torture is absolute and is both customary law and part of *ius cogens*.

235 Bassiouni, *International Criminal Law*, 148-149.

236 *Ibid.*, 161-162.

237 Geneva Convention I, art. 50; Geneva Convention II, art. 147; Geneva Convention III, art. 130; and Geneva Convention IV, art. 147.

238 International Committee of the Red Cross (ICRC), "Rule 92. Mutilation and Medical, Scientific or Biological Experiments," https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule92.

239 Bassiouni, *International Criminal Law*, 148-149.

240 ICCPR, Art. 7; see also ICRC, "Rule 92."

241 ICRC, "Rule 92."

242 U.N. Committee on Economic Social and Cultural Rights, "General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12)," August 11, 2000, U.N. Doc. E/C.12/2000/4, para. 8., <http://www.refworld.org/pdfid/4538838do.pdf>.

243 ICRC, "Rule 92."

244 UN Economic and Social Council (ECOSOC), Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), May 13, 1977, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

245 World Medical Association, "Declaration of Helsinki, Ethical Principles for Medical Research Involving Human Subjects," as amended by the 64th WMA General Assembly, Fortaleza, Brazil, October 2013, paras. 8, 19, 25, <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects>.

246 45 C.F.R. §46, subpart C and requirements for informed consent: <http://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html>; <http://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/index.html>

247 45 C.F.R. §46.

248 *Ibid.*

249 U.S. Department of Health & Human Services (DHHS), *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research* (Bethesda, MD: The Commission, 1979), <https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report>.

250 Each federal agency and department to have codified the Common Rule includes in its chapter of the Code of Federal Regulations section numbers and language identical to that of the Department of Health and Human Services' (HHS) codification at 45 C.F.R. §46, subpart A. For all participating departments and agencies, the Common Rule outlines the basic provisions for institutional review boards, informed consent, and assurances of compliance. The regulations were amended in 2005 and remained unchanged until the issuance of a final rule published in the Federal Register on January 19, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/2017-01058.pdf>.

251 45 C.F.R. §46.

252 Only four narrow categories of biomedical or behavioral research conducted or supported by DHHS may include prisoner subjects: (1) research about the effects of incarceration; (2) research about prisons as institutions; (3) research about conditions particularly affecting prisoners; and (4) research about practices expected to improve the health of individual subjects. See 45 C.F.R. §46.306(a)(2)(i)-(iv), <http://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html>; <http://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/index.html>

253 Executive Order 12333, paragraph 2.10 (1981) ("Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by HHS. The subject's informed consent shall be documented as required by those guidelines."), <https://www.cia.gov/about-cia/eo12333.html>.

254 Mitchell Research Contracts, December 21, 2001; April 4, 2002; May 14, 2002; July 1, 2002; September 5, 2002; September 12, 2002; January 1, 2003; April 8, 2003; June 16, 2003; June 16, 2003; and January 1, 2004; and Jessen Research Contracts, July 22, 2002; September 5, 2002; October 24, 2002; January 1, 2003; April 8, 2003; and June 16, 2003.

255 See, e.g., Countermeasures Cable; Background Paper; and OMS Summary and Reflections.

256 Exploitation Slides and Resistance Slides.

257 See ACLU's Torture Database, <https://www.thetorturedatabase.org>.

258 See, e.g., DCI Interrogation Guidelines; OIG Rahman Report.

259 OMS Guidelines (September 2003), OMS Guidelines (May 2004), and OMS Guidelines (December 2004).

260 See, e.g., SSCI Summary, 87, 472; CIA Email, "RDG Tasking for IC Psychologists Jessen and Mitchell," June 16, 2003; June 20, 2003, 2:19:53 PM; June 20, 2003, 5:23:29 PM; CIA Email, "8 April Draft Opinion from DoJ – OMS Concerns," April 11, 2005, 10:12 AM,

https://www.thetorturedatabase.org/files/foia_subsite/pdfs/cia_production_c06552088_8_april_draft_opinion_from_doj-_oms_concerns.pdf; and Bradbury Fax, May 4, 2005.

261 Hoffman Report.

262 SSCI Summary, Findings and Conclusions, 13; SSCI Summary, 126; CIA Comments.



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