

Physicians for Human Rights



Nuremberg Betrayed

Human Experimentation
and the CIA Torture Program

Executive Summary

June 2017





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 undid long-standing, internationally agreed protections for prisoners of war.

Physicians for Human Rights has analyzed new information showing that the CIA torture program was an applied research regime in which psychologists and other health professionals designed, applied, and collected data on the effects of torture techniques on detainees for the purpose of providing legal cover for U.S. personnel involved in the “enhanced interrogation” program. This constitutes one of the gravest breaches of medical ethics by U.S. health professionals since the Nuremberg Code was first developed to protect individuals from nonconsensual human experimentation. The violation of international and domestic protections for human subjects is a crime.

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

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 establishment of the Nuremberg Code, which was first developed in the wake of Nazi medical atrocities to protect individuals from nonconsensual human experimentation.

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. 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 interrogation did not work and were counterproductive. 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.

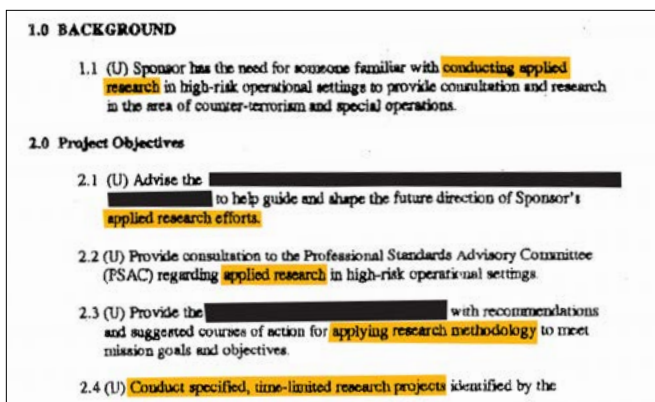
The CIA torture program was itself a regime of applied research on detainees.

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 torture when inflicted in real world settings on 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 investigations constitute research. Indeed, it appears the CIA’s research to try to prove “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.



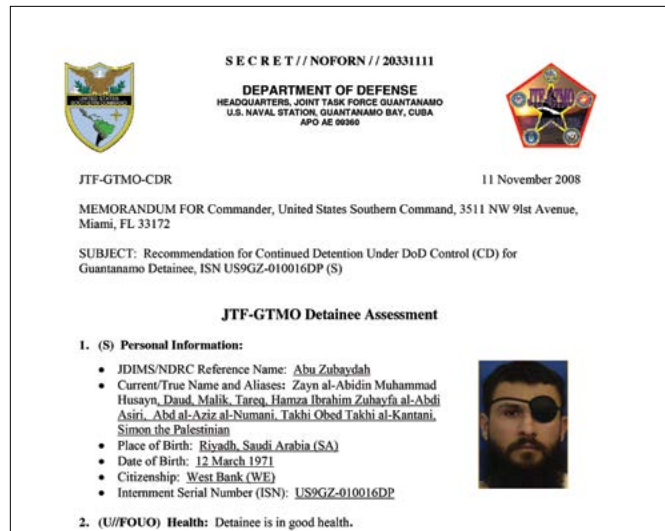
A CIA contract with psychologist James Mitchell for “applied research,” dated December 2001.

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 on 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.



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

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.

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 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.



Physicians for
Human Rights

For more than 30 years, Physicians for Human Rights (PHR) has used science and the uniquely credible voices of medical professionals to document and call attention to severe human rights violations around the world. A Nobel Peace Prize co-laureate, PHR employs its investigations and expertise to advocate for persecuted health workers and facilities under attack, prevent torture, document mass atrocities, and hold those who violate human rights accountable.



Nobel Peace Prize
Co-laureate