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Wolfowitz Directive Gave Legal Cover to Detainee Experimentation Program

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In 2002, as the Bush administration was turning to torture and other brutal techniques for interrogating "war on terror" detainees, Deputy Defense Secretary Paul Wolfowitz loosened rules against human experimentation, an apparent recognition of legal problems regarding the novel strategies for extracting and evaluating information from the prisoners.

Wolfowitz issued his directive on March 25, 2002, about a month after President George W. Bush stripped the detainees of traditional prisoner-of-war protections under the Geneva Conventions. Bush labeled them "unlawful enemy combatants" and authorized the CIA and the Department of Defense (DoD) to undertake brutal interrogations.

Despite its title - "**Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research**" - the Wolfowitz directive weakened protections that had been in place for decades by limiting the safeguards to "prisoners of war."

"We're dealing with a special breed of person here," Wolfowitz said about the war on terror detainees only four days before signing the new directive.

One former Pentagon official, who worked closely with the agency's ex-general counsel William Haynes, said the Wolfowitz directive provided legal cover for a top-secret Special Access Program at the Guantanamo Bay prison, which experimented on ways to glean information from unwilling subjects and to achieve "deception detection."

"A dozen [high-value detainees] were subjected to interrogation methods in order to evaluate their reaction to those methods and the subsequent levels of stress that would result," said the official.

A July 16, 2004 Army Criminal Investigation Division (CID) report obtained by Truthout shows that between April and July 2003, a "physiological warfare specialist" attached to the military's Survival, Evasion, Resistance and Escape (SERE) program was present at Guantanamo. The CID report says the instructor was assigned to a top-secret Special Access Program.

It has been known since 2009, when President Barack Obama declassified some of the Bush administration's legal memoranda regarding the interrogation program, that there were experimental elements to the brutal treatment of detainees, including the sequencing and duration of the torture and other harsh tactics.

However, the Wolfowitz directive also suggests that the Bush administration was concerned about whether its actions might violate Geneva Conventions rules that were put in place after World War II when grisly Nazi human experimentation was discovered. Those legal restrictions were expanded in the 1970s after revelations about the CIA testing drugs on unsuspecting human subjects and conducting other mind-control experiments.

For its part, the DoD insists that it "has never condoned nor authorized the use of human research testing on any detainee in our custody," according to spokeswoman Wendy Snyder.

However, from the start of the war on terror, the Bush administration employed nontraditional methods for designing interrogation protocols, including the reverse engineering of training given to American troops trapped behind enemy lines, called the SERE techniques. For instance, the near-drowning technique of waterboarding was lifted from SERE manuals.

Shielding Rumsfeld

Retired US Air Force Capt. Michael Shawn Kearns, a former SERE intelligence officer, said the Wolfowitz directive appears to be a clear attempt to shield then-Defense Secretary Donald Rumsfeld from the legal consequences of "any dubious research practices associated with the interrogation program."

Scott Horton, a human rights attorney and constitutional expert, noted Wolfowitz's specific reference to "prisoners of war" as protected under the directive, as opposed to referring more generally to detainees or people under the government's control.

"At the time that Wolfowitz was issuing this directive, the Bush administration was taking the adamant position that prisoners taken in the 'war on terror' were not 'prisoners of war' under the Geneva Conventions and were not entitled to any of the protections of the Geneva Conventions.

"Indeed, it called those protections 'privileges' that were available only to 'lawful combatants.' So the statement [in the directive] that 'prisoners of war' cannot be subjects of human experimentation ... raises some concerns - why was the more restrictive term 'prisoners of war' used instead of 'prisoners' for instance."

The Wolfowitz directive also changed other rules regarding waivers of informed consent. After the scandals over the CIA's MKULTRA program and the Tuskegee experiments on African-Americans suffering from syphilis, Congress passed legislation known as the Common Rule to provide protections to human research subjects.

The Common Rule "requires a review of proposed research by an Institutional Review Board (IRB), the informed consent of research subjects, and institutional assurances of compliance with the regulations."

Individuals who lack the capacity to provide "informed consent" must have an IRB determine if they would benefit from the proposed research. In certain cases, that decision could also be made by the subject's "legal representative."

However, according to the Wolfowitz directive, waivers of informed consent could be granted by the heads of DoD divisions.

Professor Alexander M. Capron, who oversees human rights and health law at the World Health Organization, said the delegation of the power to waive informed consent procedures to Pentagon officials is "controversial both because it involves a waiver of the normal requirements and because the grounds for that waiver are so open-ended."

The Wolfowitz directive also changes language that had required DoD researchers to strictly adhere to the **Nuremberg Directives for Human Experimentation** and other precedents when conducting human subject research.

The Nuremberg Code, which was a response to the Nazi atrocities, made "the voluntary consent of the human subject ... absolutely essential." However, the Wolfowitz directive softened a requirement of strict compliance to this code, instructing researchers simply to be "familiar" with its contents.

"Why are DoD-funded investigators just required to be 'familiar' with the Nuremberg Code rather than required to comply with them?" asked Stephen Soldz, director of the Center for Research, Evaluation and Program Development at Boston Graduate School of Psychoanalysis.

Soldz also wondered why "enforcement was moved from the Army Surgeon General or someone else in the medical chain of command to the Director of Defense Research and Engineering" and why "this directive changed at this time, as the 'war on terror' was getting going."

Treating Soldiers

The original impetus for the changes seems to have related more to the use of experimental therapies on US soldiers facing potential biological and other dangers in war zones.

The House Armed Services Committee proposed amending the law on human experimentation prior to the 9/11 attacks. But the Bush administration pressed for the changes after 9/11 as the United States was preparing to invade Afghanistan and new medical products might be needed for soldiers on the battlefield without their consent, said two former officials from the Defense Intelligence Agency.

Yet, there were concerns about the changes even among Bush administration officials. In a September 24, 2001, memo to lawmakers, Bush's Office of Management and Budget (OMB) said the "administration is concerned with the provision allowing research to be conducted on human subjects without their informed consent in order to advance the development of a medical product necessary to the armed forces."

The OMB memo said the Bush administration understood that the DoD had a "legitimate need" for "waiver authority for emergency research," but "the provision as drafted may jeopardize existing protections for human subjects in research, and must be significantly narrowed."

However, the broader language moved forward, as did planning for the new war on terror interrogation procedures.

In December 2001, Pentagon general counsel Haynes and other agency officials contacted the Joint Personnel Recovery Agency (JPRA), which runs SERE schools for teaching US soldiers to resist interrogation and torture if captured by an outlaw regime. The officials wanted a list of interrogation techniques that could be used for detainee "exploitation," according to a **report** released last year by the Senate Armed Services Committee.

These techniques, as they were later implemented by the CIA and the Pentagon, were widely discussed as "experimental" in nature.

Bryan Thomas, a spokesman for the Senate Armed Services Committee, declined to comment on the Wolfowitz directive.

Back in Congress, the concerns from the OMB about loose terminology were brushed aside and the law governing how the DoD spends federal funds on human experimentation and research, was amended to give the DoD greater leeway regarding experimentation on human subjects.

A paragraph to that law, 10 USC 980, which had not been changed since it was first enacted in 1972, was added authorizing the defense secretary to waive "informed consent" for human subject research and experimentation. It was included in the 2002 Defense Authorization Act passed by Congress in December 2001. The Wolfowitz directive implemented the legislative changes Congress made to the law when it was issued three months later.

The changes to the "informed consent" section of the law were in direct contradiction to presidential and DoD memoranda issued in the 1990s that prohibited such waivers related to classified research. A memo signed in 1999 by Secretary of Defense William Cohen called for the prohibitions on "informed consent" waivers to be added to the Common Rule regulations covering DoD research, but it was never implemented.

Congressional Assistance

As planning for the highly classified Special Access Program began to take shape, most officials in Congress appear to have averted their eyes, with some even lending a hand.

The ex-DIA officials said the Pentagon briefed top lawmakers on the Senate Defense Appropriations Committee in November and December 2001, including the panel's chairman Sen. Daniel Inouye (D-Hawaii) and his chief of staff Patrick DeLeon, about experimentation and research involving detainee interrogations that centered on "deception detection."

To get a Special Access Program like this off the ground, the Pentagon needed DeLeon's help, given his long-standing ties to the American Psychological Association (APA), where he served as president in 2000, the sources said.

According to former APA official Bryant Welch, DeLeon's role proved crucial.

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"For significant periods of time DeLeon has literally directed APA staff on federal policy matters and has dominated the APA governance on political matters," Welch wrote. "For over twenty-five years, relationships between the APA and the Department of Defense (DOD) have been strongly encouraged and closely coordinated by DeLeon...."

"When the military needed a mental health professional to help implement its interrogation procedures, and the other professions subsequently refused to comply, the military had a friend in Senator Inouye's office, one that could reap the political dividends of seeds sown by DeLeon over many years."

John Bray, a spokesman for Inouye, said in late August he would look into questions posed by Truthout about the Wolfowitz directive and the meetings involving DeLeon and Inouye. But Bray never responded nor did he return follow-up phone calls and emails. DeLeon did not return messages left with his assistant.

Legal Word Games

Meanwhile, in January 2002, President Bush was receiving memos from then-Justice Department attorneys Jay Bybee and John Yoo as well as from Defense Secretary Rumsfeld and Bush's White House counsel Alberto Gonzales, advising Bush to deny members of al-Qaeda and the Taliban prisoner-of-war status under the Geneva Conventions.

Also, about a month before the Wolfowitz directive was issued, the Defense Intelligence Agency (DIA) asked Joint Forces Command if they could get a "crash course" on interrogation for the next interrogation team headed out to Guantanamo, according to the Armed Services Committee's report. That request was sent to Brig. Gen. Thomas Moore and was approved.

Bruce Jessen, the chief psychologist of the SERE program, and Joseph Witsch, a JPRA instructor, led the instructional seminar held in early March 2002.

The seminar included a discussion of al-Qaeda's presumed methods of resisting interrogation and recommended specific methods interrogators should use to defeat al-Qaeda's resistance. According to the Armed Services Committee report, the presentation provided instructions on how interrogations should be conducted and on how to manage the "long term exploitation" of detainees.

There was a slide show, focusing on four primary methods of treatment: "isolation and degradation," "sensory deprivation," "physiological pressures" and "psychological pressures."

According to Jessen and Witsch's instructor's guide, isolation was the "main building block of the exploitation process," giving the captor "total control" over the prisoner's

"inputs." Examples were provided on how to implement "degradation," by taking away a prisoner's personal dignity. Methods of sensory deprivation were also discussed as part of the training.

Jessen and Witsch denied that "physical pressures," which later found their way into the CIA's "enhanced interrogation" program, were taught at the March meeting.

However, Jessen, along with Christopher Wirts, chief of JPRA's Operational Support Office, wrote a memo for Southern Command's Directorate of Operations (J3), entitled "Prisoner Handling Recommendations," which urged Guantanamo authorities to take punishment beyond "base line rules."

So, by late March 2002, the pieces were in place for a strategy of behavior modification designed to break down the will of the detainees and extract information from them. Still, to make the procedures "legal," some reinterpretations of existing laws and regulation were needed.

For instance, attorneys Bybee and Yoo would narrow the definition of "torture" to circumvent laws prohibiting the brutal interrogation of detainees.

"Vulnerable" Individuals

In his directive, Wolfowitz also made subtle, but significant, word changes. While retaining the blanket prohibition against experimenting on prisoners of war, Wolfowitz softened the language for other types of prisoners, using a version of rules about "vulnerable" classes of individuals taken from regulations meant for civilian research by the Department of Health and Human Services (DHHS).

This research and experimentation examined physiological markers of stress, such as cortisol, and involved psychologists under contract to the CIA and the military who were experts in the field, the ex-DIA officials said.

One study, called "The War Fighter's Stress Response," was conducted between 2002 and 2003 and examined physiological measurements of mock torture subjects drawn from the SERE program and other high-stress military personnel, such as Special Forces Combat Divers.

Researchers measured cortisol and other hormone levels via salivary swabbing and blood samples, a process that also was reportedly done to war on terror detainees.

Three weeks after the Wolfowitz directive was signed, SERE psychologist Jessen produced a Draft Exploitation Plan for use at Guantanamo. According to the Armed Services Committee's report, JPRA was offering its services for "oversight, training,

analysis, **research**, and [tactics, techniques, and procedures] development" to Joint Forces Command Deputy Commander Lt. Gen. Robert Wagner. (Emphasis added.)

There were other indications that research was an important component of JPRA services to the DoD and CIA interrogation programs. When three JPRA personnel were sent to a Special Mission Unit associated with Joint Special Operations Command (JSOC) in August 2003 for what was believed to be special training in interrogation, one of the three was JPRA's manager for research and development.

Three former top military officials interviewed by the Armed Services Committee have described Guantanamo as a "battle lab."

According to Col. Britt Mallow, the commander of the Criminal Investigative Task Force (CITF), he was uncomfortable when Guantanamo officials Maj. Gen. Mike Dunleavy and Maj. Gen. Geoffrey Miller used the term "battle lab," meaning "that interrogations and other procedures there were to some degree experimental, and their lessons would benefit DoD in other places."

CITF's deputy commander told the Senate investigators, "there were many risks associated with this concept ... and the perception that detainees were used for some 'experimentation' of new unproven techniques had negative connotations."

In May 2005, a former military officer who attended a SERE training facility sent an **email** to Middle East scholar Juan Cole stating that "Gitmo must be being used as a 'laboratory' for all these psychological techniques by the [counter-intelligence] guys."

The Al-Qahtani Experiment

One of the high-value detainees imprisoned at Guantanamo who appears to have been a victim of human experimentation was Mohammed al-Qahtani, who was captured in January 2002.

A sworn statement filed by Lt. Gen. Randall M. Schmidt, al-Qahtani's attorney, said Secretary Rumsfeld was "personally involved" in the interrogation of al-Qahtani and spoke "weekly" with Major General Miller, commander at Guantanamo, about the status of the interrogations between late 2002 and early 2003.

The treatment of al-Qahtani was cataloged in an 84-page "**torture log**" that was leaked in 2006. The torture log shows that, beginning in November 2002 and continuing well into January 2003, al-Qahtani was subjected to sleep deprivation, interrogated in 20-hour stretches, poked with IVs and left to urinate on himself.

Gitanjali S. Gutierrez, an attorney with the Center for Constitutional Rights who represents al-Qahtani, had said in a sworn declaration that his client, was subjected to months of torture based on verbal and written authorizations from Rumsfeld.

"At Guantánamo, Mr. al-Qahtani was subjected to a regime of aggressive interrogation techniques, known as the 'First Special Interrogation Plan,'" Gutierrez said. "These methods included, but were not limited to, 48 days of severe sleep deprivation and 20-hour interrogations, forced nudity, sexual humiliation, religious humiliation, physical force, prolonged stress positions and prolonged sensory over-stimulation, and threats with military dogs."

In addition, the Senate Armed Services Committee report said al-Qahtani's treatment was viewed as a potential model for other interrogations.

In his book, "Oath Betrayed," Dr. Steven Miles wrote that the meticulously recorded logs of al-Qahtani's interrogation and torture focus "on the emotions and interactions of the prisoner, rather than on the questions that were asked and the information that was obtained."

The uncertainty surrounding these experimental techniques resulted in the presence of medical personnel on site, and frequent and consistent medical checks of the detainee. The results of the monitoring, which likely included vital signs and other stress markers, would also become data that could be analyzed to understand how the new interrogation techniques worked.

In January 2004, the Director of Defense Research and Engineering (DDR&E) initiated a DoD-wide review of human subjects protection policies. A Navy slide presentation at **DoD Training Day** on November 14, 2006, hinted strongly at the serious issues behind the entire review.

The Navy presentation framed the problem in the light of the history of US governmental "non-compliance" with human subjects research protections, including "US Government Mind Control Experiments - LSD, MKULTRA, MKDELTA (1950-1970s)"; a 90-day national "stand down" in 2003 for all human subject research and development activities "ordered in response to the death of subjects"; as well as use of "unqualified researchers."

The Training Day presentation said the review found the Navy "not in full compliance with Federal policies on human subjects protection." Furthermore, DDR&E found the Navy had "no single point of accountability for human subject protections."

DoD refused to respond to questions regarding the 2004 review. Moreover, Maj. Gen. Ronald Sega, who at the time was the DDR&E, did not return calls for comment.

Ongoing Research

Meanwhile, the end of the Bush administration has not resulted in a total abandonment of the research regarding interrogation program.

Last March, Director of National Intelligence Dennis Blair, who recently resigned, disclosed that the Obama administration's High-Value Detainee Interrogation Group (HIG), planned on conducting "scientific research" to determine "if there are better ways to get information from people that are consistent with our values."

"It is going to do scientific research on that long-neglected area," Blair said during testimony before the House Intelligence Committee. He did not provide additional details as to what the "scientific research" entailed.

As for the Wolfowitz directive, Pentagon spokeswoman Snyder said it did not open the door to human experimentation on war on terror detainees.

"There is no detainee policy, directive or instruction - or exceptions to such - that would permit performing human research testing on DoD detainees," Snyder said. "Moreover, none of the numerous investigations into allegations of misconduct by interrogators or the guard force found any evidence of such activities."

Snyder added that DoD is in the process of updating