

# ALLOWING HUMAN EXPERIMENTATION UNDER THE WAR CRIMES ACT

I felt like they were experimenting and trying out techniques to be used later on other people. – Abu Zubaydah to the Red Cross

Physicians for Human Rights just released a report documenting what Jeff Kaye and more recently Jason Leopold have been discussing for years: America's torturers were conducting a kind of human experimentation on the earliest detainees. PHR is calling on Attorney General Holder to investigate whether CIA's medical personnel committed the war crime of human experimentation.

Most of the contents of the report will be familiar to readers of this blog. I find the following detail the most interesting new observation.

As part of the 2006 Military Commissions Act, the WCA was amended to delineate the specific violations of Common Article 3 that would be punishable. Among those violations is "performing biological experiments." The amended language prohibits:

The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.<sup>61</sup>

While this language maintains the

existing prohibition on biological experiments contained in the previous version of the WCA, the effect of this amendment appears to weaken the prohibition by moving away from the type of strict language found in the Geneva Conventions (Third Geneva Convention, Article 13), which states:

No prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental, or hospital treatment of the prisoner concerned and carried out in his interest.

The new language of the WCA added two qualifications that appear to have lowered the bar on biological experimentation on prisoners. That language requires that the experiment have a "legitimate" purpose, but does not require that it be carried out in the interest of the subject. It also adds the requirement that the experiment not "endanger" the subject, which appears to raise the threshold for what will be considered illegal biological experimentation.

That is, one of the things the Bush Administration did with the Military Commissions Act was retroactively change the law on human experimentation such that experimentation no longer needed to have a personal benefit to the research subject, and could instead be justified because of a "legitimate" interest.

You know, like the "legitimate" interest of knowing how long a human could be subject to sleep deprivation before they started hallucinating?

Which suggests to me that someone in government recognized the risk CIA's torturers faced.