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Military Commission Declassifies Defense Attack on Classification of Defendant's Thoughts

"the defendants were exposed to classified interrogation techniques only in the sense that Hiroshima was exposed to the classified Manhattan Project"

Washington D.C., April 24, 2013: Yesterday, the military commission released a 312-page declassified version of the defense response to the government's argument that the "observations and experiences" of the defendants are classified because they have been "exposed to classified information." (AE013G.) This release marks the first time the defense brief has been available to the public. The document is available at http://ow.ly/kobzQ.

The declassified document goes to the heart of a continuing controversy over the government's use of classification to limit public information about its interrogation of the 9/11 defendants. "The idea that the government can classify a torture survivor's experiences contravenes the most basic principles of human rights," said James Connell, attorney for Ammar al Baluchi and author of the declassified legal brief.

In the declassified brief, Connell wrote, "Unlike a document, a person's pain and fear is not a thing which the government can double-wrap and courier between secure facilities. . . . A person's

own experiences--whether the smell of a rose or the click of a gun near one's head--are what make them a person, and the government can never own or control them."

Although filed on May 18, 2012, the brief remained under seal until April 23, 2013. On January 29, 2013, the military commission granted a defense motion (AE055) and ordered public release of redacted versions of classified pleadings over prosecution objection. The military commissions website did not release any declassified versions until April 2, 2013.

On December 6, 2012 (AE013P), and again on February 9, 2013 (AE013AA), the military commission ruled that the "observations and experiences of an accused with respect to the matters" surrounding their arrest and interrogation are classified. Under the terms of a military commission protective order, this decision means that media, the public, and victims will be excluded from any hearing on U.S. treatment of the defendants. The ACLU and a coalition of media organizations challenged the protective order, but a military commission appeals court dismissed their lawsuit on March 27, 2013. Several motions regarding Bush Administration policies and detention facilities are currently pending before the military commission.

James G. Connell, III is a civilian Defense Department attorney who has been counsel for Mr. al Baluchi since 2011. He has served as attorney in a number of high profile death penalty cases in state and federal courts.

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI

AE013G
UNCLASSIFIED NOTICE
Mr. al Baluchi's (Ali Abdul Aziz Ali)
Unclassified Notice of Response to Government Motion to Protect Against Disclosure of National Security Information

18 May 2012

In accordance with the Military Commission Trial Judiciary Rules, the defense provides this unclassified notice that it has filed a classified version of the above captioned motion. The classified version has been hand delivered to the Clerk of Court and as directed by the prosecution.

This response is filed outside the timeframe established by the Commission's order of 9 May 2012. The Defense respectfully moves to file this response one day out of time. The prosecution has authorized counsel to represent that it does not oppose the request.

Very respectfully,

//s//
JAMES G. CONNELL, III
Detailed Learned Counsel

//s//
STERLING R. THOMAS
Lt Col, USAF
Detailed Military Defense Counsel

Counsel for Mr. al Baluchi

CERTIFICATE OF SERVICE

I certify that on the 18th day of May, 2012, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by e-mail.

//s//
JAMES G. CONNELL, III,
Learned Counsel

[redacted]

~~TOP SECRET~~

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703-101
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Appellate Exhibit AE013G(AA)
Page ___ of ___

UNITED STATES OF AMERICA
v.
KHALID SHAIKH MOHAMMAD, WALID BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI

AE013G

Joint Defense Response to Government Motion
To Protect Against Disclosure of National Security Information
(AMENDED)
18 May 2012

1. **Timeliness:** This response is filed out of time 17 May 2012. The Defense respectfully requests to file this Response out of time, which request is not opposed by the prosecution.

2. **Overview:**

~~(U)~~ The commission should deny the government's request to file its Attachments A and B *ex parte*, as *ex parte* invocation of classified information privilege in this context would violate both MCRE 505 and the balancing test established in *Ellsberg v. Mitchell*.[1] The *Ellsberg* factors, including the defendants' need for the classified information and the lack of "self-evident" harm from disclosure, strongly favor requiring the government to invoke classified information in an adversarial setting. If the government reveals the basis for its claim of damage to national security, it is unlikely to support the government's sweeping claim of classified information privilege.

~~(U)~~ Other than the presumptive classification addressed in AE009, the core problem with government's proposed protective order is its overbroad definition of classified information. The Military Commissions Act of 2009 and MCRE 505(b)(1) limit a claim of classified information privileged to information classified under an Executive order, statute, or regulation, and restricted data. The government's definition far exceeds these limits.

~~(S//NF)~~ The government's claim that an Original Classifying Authority has presumptively classified the defendant's statements is demonstrably inaccurate.

[1] ~~(U)~~ 709 F.2d 51 (D.C. Cir. 1983).

~~(U)~~ Although the government can classify documents about the experiences of the defendants within its control, Executive Order 13526 does not allow the government to classify the actual experiences of the defendants.

~~(U)~~ Finally, the government's protective order fails to provide any actual useful guidance. The handling guidance in this case is plagued by serious information failures, ranging from issues as basic as the proper cover sheets and to those as complex as the boundaries of the purported Special Access Program. Given these failures, the government's proposed protective order is both overbroad and underinclusive.

3. ~~(U)~~ **Facts:**

A. ~~(S//NF)~~ **The Central Intelligence Agency has never claimed to presumptively classify all high-value detainee statements, and does not currently claim to presumptively classify any high-value detainee statements.**

~~(U//FOUO)~~ To the best of counsel's knowledge after diligent inquiry, the CIA has issued three relevant documents providing classification guidance. [redacted]

[redacted]

[redacted]

[redacted]

B. ~~(U)~~ Defense counsel has virtually no information about the Special Access Program with whose rules they are expected to comply.

~~(S)~~ As of 17 May 2012, no member of any of the defense teams in this case has been briefed on the requirements of [redacted] the Special Access Program which purportedly governs information relating to their clients.[8]

~~(U//FOUO)~~ Most defense team members have received the so-called "special handling" or "proximity" brief from the Office of the Under Secretary of Defense for Intelligence. In vague language, the special handling brief allows counsel to receive potentially classified information

[redacted]

from their clients, but provides virtually no other guidance.[9] The briefing acknowledgement form states,

> ~~(U//FOUO)~~ Due to the necessity for HVD counsel to speak frankly with their clients for the purpose of representing them in the OMC process, counsel staff is being provided limited security approvals that authorize them to receive TS/SCI information from their clients. Counsel's limited security approval for the purpose of receiving compartmented information from their clients *does not* authorize them to receive compartmented documents or information from the U.S. Government.[10]

~~(U//FOUO)~~ The only other information contained in the special handling brief regarding the boundaries of the compartment is couched in terms of client statements. The briefing acknowledgement continues,

> ~~(U//FOUO)~~ Information received from HVDs (whether written or oral, and any notes taken based on conversations with detainees) is presumed to be and should be handled as TS/SCI information until a U.S. Government classification review is completed. Notwithstanding the disclosure of the same or similar information in the media, compartmented information includes, but is not limited to: location(s) of detention; method(s) of interrogation; condition(s) of confinement; and identities of U.S. Government and liaison personnel.[11]

~~(S)~~ On 23 September 2011, [redacted] of the Office of the Under Secretary of Defense for Intelligence provided James Connell, counsel for Ammar al Baluchi, and CPT Michael Schwartz, counsel for Walid bin 'Attash, with the special handling brief. Mr. Connell and CPT Schwartz viewed a PowerPoint slide presentation regarding [redacted] and signed copies of the SCI Briefing for High Value Detainee, Defense Counsel Team Members acknowledgement form.[12] Mr. Connell and CPT Schwartz asked for copies of the form they were signing, but Ms. [redacted] said she did not have authority to provide them, despite that they are

[9] ~~(U//FOUO)~~ Attachment E (SCI Briefing for High Value Detainee, Defense Counsel Team Members).
[10] ~~(U//FOUO)~~ *Id.* (emphasis in original).
[11] ~~(U//FOUO)~~ *Id.*
[12] ~~(U//FOUO)~~ *Id.*

only Unclassified/For Official Use Only.[13] Ms. [redacted] informed Mr. Connell and CPT Schwartz that the appropriate trigraph for [redacted] she said that the program name was classified Secret, and that the trigraph was unclassified.[14]

~~(U)~~ The first serious issue regarding [redacted] erupted in early December 2011. On 6 December 2011, a person associated with the Trial Judiciary emailed counsel for the government and for Mr. al Nashiri proposing that the military judge provide counsel for Mr. al Nashiri with classified summaries on a rolling basis.[15] In responding, counsel for the government stated,

> ~~(U)~~ Additionally, the Commission may or may not be aware that the defense currently cannot receive information that is classified at a TS/SCI for the SAP applicable in this case. The government is and has been working to solve that problem but, as of now, material that is classified at the TS/SCI level cannot be produced to the defense.[16]

~~(U)~~ On 9 December 2011, counsel for Mr. al Nashiri filed a motion challenging the readiness of the prosecution to proceed in light of this government claim.[17]

~~(S//NF)~~ Learning from the example of Mr. al Nashiri's counsel, on 12 December 2011, Mr. Connell began to seek information about [redacted]. Mr. Connell requested from his security manager, [redacted] a copy of the document he had signed, a copy of the PowerPoint slides, the appropriate cover sheet, the original classification authority for [redacted] and the procedures for classification challenges within [redacted].[18] Ms. [redacted] forwarded Mr. Connell's questions to Michael Breslin at the Convening Authority.[19] Mr. Breslin

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[13] ~~(U)~~ Attachment F (Email string beginning 12 December 2011).
[14] ~~(U)~~ *Id.*
[15] ~~(U)~~ Attachment G at Attachment A (AE025 Defense Motion to Abate Proceedings Until Such Time as the Prosecution is Prepared to Proceed, *United States v. al Nashiri*).
[16] ~~(U)~~ *Id.*
[17] ~~(U)~~ *Id.*
[18] ~~(S//NF)~~ Attachment F. Mr. Connell referred to the document he had signed as a Non-Disclosure Agreement, because he mistakenly believed the document to be a Non-Disclosure Agreement. The cover sheet issue is discussed in depth in the next section.
[19] ~~(U)~~ *Id.*

responded with general answers, including the following response to Mr. Connell's request for identification of the OCA for [redacted]:

> ~~(S//NF)~~ Your request for identification of the Original Classification Authority (OCA) does not lend itself to an easy answer. Information is classified by different OCAs depending on the source of the information and the level of classification. . . . If you are marking a document with information received from an HVD, that information is only presumed classified (no OCA has reviewed it), therefore there is no identifiable OCA.[20]

~~(S//NF)~~ On 20 December 2011, Mr. Connell replied to Mr. Breslin with requests for more specific information about [redacted]. Among other questions, Mr. Connell asked:

- ~~(S//NF)~~ "Is [redacted] a Special Access Program within the meaning of Chapter 8 of DoD 5200.1-R?"
- ~~(S//NF)~~ "Who are the program managers for [redacted]?"
- ~~(S//NF)~~ "How does information become classified if there is no OCA?"
- ~~(S//NF)~~ Assuming the existence of presumptive classification, "who is that 'competent OCA' for information in [redacted]?"
- ~~(S//NF)~~ "If there is no OCA, what date do we use to mark derivatively classified documents with the 'declassify on' date per DoD 5200.1-R § C5.2.5.3?"
- ~~(S//NF)~~ "Who is the 'classifier of the information' in [redacted] within the meaning of DoD 5200.1-R C4.9.1.1?"[21]

~~(U)~~ On 21 December 2011, the government responded that no member of Mr. al Nashiri's defense team had been authorized to receive SAP information because no member of the team had a need to know such information.[22]

~~(S//NF)~~ On 6 January 2012, Mr. Breslin emailed Mr. Connell to say that he had forwarded his questions to higher authorities, and that he would provide more information when it was available.[23]

~~(S//NF)~~ On 2 February 2012, Mr. Connell emailed Mr. Breslin to follow up on his earlier requests and to update Mr. Breslin on confusing new handling guidance Mr. Connell had

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[20] ~~(U)~~ *Id.*
[21] ~~(U)~~ *Id.*
[22] ~~(U)~~ Attachment H at 4 (AE025 Government Response to Defense Motion to Abate Proceedings Until Such Time as the Prosecution Is Prepared to Proceed).
[23] ~~(U)~~ *Id.*

received from D.C. District Court Information Security Officer Christine Gunning.[24] Because the answer affected whether he needed an escort to courier documents, Mr. Connell sought guidance from Mr. Breslin on "what exactly falls within the SAP, if in fact [redacted] is a SAP."[25] Mr. Connell also inquired at what point a document not containing HVD statements became "presumptively classified" because it affects what system he could use to prepare actually unclassified but presumptively classified documents.[26]

~~(U)~~ Mr. Breslin did not respond.

~~(S//NF)~~ On 14 February 2012, Mr. Connell followed up again. Mr. Connell called Mr. Breslin's attention to Revision 1 of Marking Classified National Security Information, which had just come out in January 2012.[27] Given that document's direction not to mark documents as classified unless that had been properly designated as classified under E.O. 13526, Mr. Connell inquired if "applying classification markings to documents which have neither been originally not derivatively classified violate EO 13526?"[28]

~~(U)~~ Mr. Breslin did not respond. As of 17 May 2012, the Convening Authority has not addressed Mr. Connell's questions.

C. ~~(S)~~ There is no existing guidance on the appropriate cover sheet or markings for [redacted] or related information.

~~(S//NF)~~ In early December 2011, [redacted] who conducts the data handling or proximity briefs for [redacted] for the Under Secretary of Defense for Intelligence, informed OCDC contract intelligence analyst [redacted] that OCDC is supposed to use [redacted]-specific cover sheets. When Ms. [redacted] informed him of Ms. [redacted] statement, Mr. Connell emailed his

[24] ~~(U)~~ *Id.*
[25] ~~(U)~~ *Id.*
[26] ~~(U)~~ *Id.*
[27] ~~(U)~~ *Id.*
[28] ~~(U)~~ *Id.*

security manager, [redacted] to request a copy of the [redacted] cover sheets.[29] In response, on 15 December 2011, Ms. [redacted] provided two generic cover sheets, one marked HUMINT[30] and one marked HUMINT/COMINT/TALENT-KEYHOLE.[31] In an email, Ms. [redacted] stated, "As a reminder when you mark the coversheet with the [redacted] it becomes classified."[32]

~~(S//NF)~~ Ms. [redacted] forwarded Mr. Connell's email to the Convening Authority. The next day, on 16 December 2011, Michael Breslin of the Convening Authority emailed Mr. Connell that, "The program managers are preparing a uniform cover sheet and Ms. [redacted] will provide it to you."[33]

~~(S//NF)~~ On 20 December 2011, Mr. Connell emailed Mr. Breslin to confirm his understanding that the cover sheets that Ms. [redacted] 'are not the correct cover sheets, and a new one is being prepared."[34] Given that Ms. [redacted] advice of 15 December 2011 on the classification of a cover sheet noting [redacted] contradicted Ms. [redacted] briefing on 23 September 2011 that the trigraphs were unclassified, Mr. Connell asked Mr. Breslin whether the trigraph [redacted] was classified, unclassified, or unclassified in isolation but classified in combination with a cover sheet.[35] Mr. Connell also asked Mr. Breslin for the appropriate page and portion markings for [redacted] information.[36] On 6 January 2012, Mr. Breslin emailed Mr. Connell that he had forwarded Mr. Connell's questions to higher authorities.

~~(U)~~ The cover sheet question came into sharp relief in February. Following an unwritten policy of presumptive classification, D.C. District Court Information Security Officer Christine

[29] ~~(U)~~ Attachment F.
[30] ~~(U)~~ Attachment I (HUMINT cover sheet).
[31] ~~(U)~~ Attachment J (HUMINT/COMINT/TALENT-KEYHOLE cover sheet).
[32] ~~(U)~~ Attachment K (Email dated 15 December 2012).
[33] ~~(U)~~ Attachment F.
[34] ~~(U)~~ *Id.*
[35] ~~(U)~~ *Id.*
[36] ~~(U)~~ *Id.*

Gunning instructed Mr. Connell to treat his federal Complaint in *Connell v. Woods*[37] as within [redacted] even though the Complaint contained no detainee statements.[38] Ms. Gunning's instructions directed Mr. Connell to hand deliver the filings "with Top Secret/Codeword Coversheets attached."[39] After Mr. Connell explained that he had no "Top Secret/Codeword" cover sheets, Ms. Gunning agreed that Mr. Connell could use an SF703 stamped "CODEWORD."[40]

~~(S)~~ On the day the cover sheet issue arose in the D.C. District Court, Mr. Connell emailed Mr. Breslin again to let him know of the importance of a resolution to the cover sheet question.[41] Mr. Connell followed up again on 14 February 2012, with no result.[42]

~~(S)~~ In early April 2012, OCDC leadership briefed OCDC staff that until further notice, requests for classification guidance should be directed to Michael Chapman at the Convening Authority. On 10 April 2012, Mr. Connell emailed Mr. Chapman to request information on the appropriate cover sheet to use in various situations.[43] When he received no response, Mr. Connell emailed to follow up on 8 May 2012.[44] The next day, Mr. Chapman emailed that his colleagues were working on the issue, and that he hoped to respond soon.[45] As of 17 May 2012, the Convening Authority has not provided any guidance on the appropriate cover sheet(s).

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[37] ~~(U)~~ *Connell v. Woods*, Civil Action No. 12-cv-176 (PLF) (D.D.C.) is a declaratory judgment action in the District of D.C. challenging the RDML Woods' written communications policy of 27 December 2011. A copy of the Complaint may be found as Attachment B to AE028 Mr. al Baluchi's Defense Notice Pursuant to MCRE 505(g)(1)(A).

[38] ~~(U)~~ Attachment L (Email string beginning 31 January 2012).

[39] ~~(U)~~ *Id.*

[40] ~~(U)~~ *Id.*

[41] ~~(U)~~ Attachment J.

[42] ~~(U)~~ *Id.*

[43] ~~(U)~~ Attachment M (Email string beginning 10 April 2012).

[44] ~~(U)~~ *Id.*

[45] ~~(U)~~ *Id.*

4. Law:

A. ~~(U)~~ The military commission should deny the government's motion to prevent defense access to AE020 Attachments A and B.

~~(U)~~ In AE013 Government Motion to Protect Against Disclosure of National Security Information and in AE009B Government's Response to Defense Motion to End Presumptive Classification, the government asks the military commission to rely on secret evidence which the defense has not seen. If adopted by the military commission, this procedure would violate MCRE 505 and controlling case law on invocation of classified information privilege.

(1) ~~(U)~~ MCRE 505(a)(2) requires this military commission to provide Attachments A and B to the defense.

~~(U)~~ MCRE 505 does not permit use of evidence against the defendants unless it is provided to them. Title 10 U.S.C. § 949p-1(b) provides, "Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge shall be provided to the accused." The SECDEF incorporated this provision verbatim into MCRE 505(a)(2), entitled "Access to Evidence."

~~(U)~~ Section § 949p-1(b) and MCRE 505(a)(2) mandate that the government cannot both use evidence against the defendants and hide it from them. In AE013 and AE009B, the government cited the *ex parte* Attachments A & B in support of its arguments no less than eleven times, more citations than it made to Executive Order 13526. The government cited CIA Decl. [redacted] as the sole authority for the proposition, "any and all statements by the Accused are presumptively classified until a classification review can be completed."[46] The government cannot use a document against the defendants (as opposed to merely providing it in discovery) unless they provide a copy "to the accused" as required by § 949p-1(b) and MCRE 505(a)(2).

[46] ~~(U)~~ AE009B at 6.

(2) ~~(U)~~ MCRE 505(c) does not permit the United States to invoke classified information privilege *ex parte*.

~~(U)~~ Drawing on the procedure in *Reynolds v. United States*,[47] MCRE 505(c) states in relevant part that classified information privilege "may be claimed by the head of the executive or military department or government agency concerned based on a finding that the information is properly classified and that disclosure would be detrimental to the national security." This subsection makes no provision for *ex parte* invocation of classified information privilege.

~~(U)~~ The government's string citation in support of its request that AE013 Attachments A and B is instructive. The government claims as authority for its *ex parte* filing "10 U.S.C. §§ 949p-2(b), 949p-4(b)(2), 949p-6(a)(3), 949p-6(d)(4); MCRE 505(d)(2), 505(f)(2)(B), 505 (h)(3)(A)."[48] Section 949p-6(a)(3) (which, although not cited, became MCRE 505(h)(1)(C)) does not provide for *ex parte* submissions at all, but rather only the closing of commissions hearings which may result in the disclosure of classified information.

~~(U)~~ The other provisions cited by the government highlight the contrast between the lack of *ex parte* provisions in MCRE 505(c) and those portions of MCRE 505 in which the SECDEF authorized *ex parte* proceedings. For example, § 949p-2(b) and MCRE 505(d)(2) explicitly permit *ex parte* consideration of a motion under MCRE 505(d)(1). Section 949p-4(b)(2) and MCRE 505(f)(2)(B) explicitly permit *ex parte* but recorded presentations in support of proposed redactions or substitutions under MCRE 505 (f)(2)(A). And MCRE 505(h)(3)(A) explicitly permits *ex parte* hearings under MCRE 505(h). Whether or not these *ex parte* proceeding provisions are constitutional, they highlight the absence of any authorization for *ex parte* invocation of classified information privilege under MCRE 505(c).

[47] ~~(U)~~ 345 U.S. 1 (1953).
[48] ~~(U)~~ AE013 at 9.

(3) ~~(U)~~ In these circumstances, D.C. Circuit precedent requires the invocation and justification of classified evidence privilege to take place in public and on the record to the extent possible.

~~(U)~~ The leading case on the ability of the government to invoke and justify classified information privilege without adversarial testing is the D.C. Circuit's decision in *Ellsberg v. Mitchell*, 709 F.2d 51 (D.C. Cir. 1983).[49] The core holding of *Ellsberg* on this point is that,

> ~~(U)~~ in situations in which close examination of the government's assertions [of privilege] is warranted, the trial judge should insist (1) that the formal claim of privilege be made on the public record and (2) that the government either (a) publicly explain in detail the kinds of injury to national security it seeks to avoid and the reasons those harms would result from revelation of the requested information or (b) indicate why such an explanation would itself endanger national security.[50]

~~(U)~~ The court explained that "such close examination of the basis of a privilege claim is required when a litigant has shown a strong need for the requested information and the surrounding circumstances do not render 'self-evident' the harms likely to follow from disclosure."[51]

~~(U)~~ The defendants have a strong need for the information for which the government seeks to invoke classified information privilege in AE009B and AE013: information relating to the rendition, interrogation, and detention of the defendants. Information about torture and other forms of cruel, inhuman, and degrading treatment is critical to several aspects of the military commissions proceeding, including the admissibility of a defendant's statements,[52] the admissibility of a hearsay declarant's statements,[53] and evidence in extenuation and mitigation.[54]

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[49] ~~(U)~~ The United States Court of Appeals for the D.C. Circuit, of course, is the closest thing this military commission has to an authoritative Article III intermediate court. *See* 10 U.S.C. § 950g(a).
[50] ~~(U)~~ *Ellsberg v. Mitchell*, 709 F.2d 51, 63-64 (D.C. Cir. 1983).
[51] ~~(U)~~ *Id.* at 63 n.53.
[52] ~~(U)~~ *See* MCRE 304(a).
[53] ~~(U)~~ *See* MCRE 304(a)(3).
[54] ~~(U)~~ *See* RMC 1004(b)(3).

The SECDEF considered the statements of the defendants important enough to justify a separate pre-arraignment disclosure provision as part of MCRE 304 on suppression of statements.[55]

~~(U)~~ Conversely, the circumstances do not make it "self-evident" that disclosure of the information the government seeks to cover with classified information privilege would cause damage to national security. In *Ellsberg*, the D.C. Circuit considered two factors in its assessment of whether damage to national security was self-evident: the passage of time since the use of the techniques at issue and the authorized public disclosure of information about the techniques.[56]

~~(U)~~ Substantially more time has passed since the CIA custody of the defendants than the "five years [which] had elapsed since the last of the wiretaps" in *Ellsberg*.[57]

~~(TS/~~[redacted] These years matter: the interrogation techniques the CIA used against the defendants have not been available to the CIA or any other United States government entity since at least 2009, and probably earlier.[58]

~~(U)~~ The information that the government is seeking to cover with classified information privilege describes activities that today are prohibited as a matter of clear law and policy, through prohibitions on torture and other forms of cruel, inhuman, and degrading treatment, and the application of Common Article 3.[59] In the years since 2006, each branch of government has made unequivocal statements barring such interrogation methods.[60]

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[55] ~~(U)~~ *See* MCRE 304(c)(1).
[56] ~~(U)~~ *Id.* at 61.
[57] ~~(U)~~ *Id.*
[58] ~~(TS/~~[redacted] The defense does not concede these techniques were ever lawful.
[59] ~~(U)~~ These actions affirmed prohibitions that were already in place,
[60] ~~(U)~~ *See, e.g.*, Detainee Treatment Act, Pub. L. 109-148, Title X, § 1003, Pub. L. 109-163, Title XIV, § 1402; *Hamdan v. Rumsfeld*, 548 U.S. 557, 629-30 (2006); Executive Order 13491, "Ensuring Lawful Interrogations," 74 Fed. Reg. 4893 (Jan, 22, 2009); Headquarters, Dep't of the Army, FM 2022.3 (FM34-52) Human Intelligence Collector Operations (Sep. 2006); Dep't of Justice, Office of Legal Counsel, "Withdrawal of Office of Legal Counsel CIA Interrogation Opinions" (Apr. 15, 2009).

~~(U)~~ Analogously to *Ellsberg*, "official inquiry in the intervening years ha[s] resulted in public disclosure" not only of the fact of the defendants' rendition, detention, and interrogation, but also of many of the techniques involved.[61] Over the years, the United States government has released tens of thousands of documents which, in the aggregate, constitute official disclosure of many of the techniques involved.[62]

~~(U)~~ In this case, there is one additional fact favoring disclosure not present in *Ellsberg*: the government has already disclosed descriptions of its reasons for claiming damage to national security. In *Khan v. Bush*,[63] the government in 2006 filed a declaration from a named CIA Information Review Officer regarding the claimed damage to national security from allowing *habeas* counsel access to Majid Khan.[64] In that declaration, the government described three grounds for damage to national security: (1) risks to the ongoing CIA RDI program; (2) locations of CIA black sites that could put allies at risk; and (3) the possibility that terrorists may train to resist future CIA interrogation.[65] In 2009, following the declassification of the Office of Legal Counsel memoranda, the government filed an even more detailed statement of claimed damage to national security in *ACLU v. DoD*[66] from then-CIA Director Leon Panetta.[67] The Panetta declaration claimed two grounds for damage to national security: (1) the possibility that terrorists may train to resist future CIA interrogation; and (2) the possible propaganda use of detainee abuse. It is difficult to imagine that the declarations the government seeks to have the commission consider *ex parte* could reveal much more than these two documents.

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[61] ~~(U)~~ *Id.*
[62] ~~(U)~~ Attachment N (Open-source Government Information About the CIA Rendition, Detention and Interrogation (RDI) Program, dated 21 May 2011).
[63] ~~(U)~~ Civil Action No. 06-cv-1690 (RBW) (D.D.C.).
[64] ~~(U)~~ Attachment O (Declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency).
[65] ~~(U)~~ *Id.*
[66] ~~(U)~~ Civil Action No. 04-cv-4151 (S.D.N.Y.)
[67] ~~(U)~~ Attachment P (Declaration of Leon E. Panetta, Director, Central Intelligence Agency).

B. ~~(U)~~ The government's proposed definition of classified information is overbroad.

(1) ~~(U)~~ The definitions of classified information in the Military Commissions Act and MCRE 505 limit the classified information privilege to information properly classified and Restricted Data.

~~(U)~~ The government does not write on a clean slate in defining the phrase "classified information." The Military Commissions Act of 2009 and MCRE 505 limit the authority of the government to invoke classified information privilege and the authority of the commission to issue a protective order to two categories: (1) information determined by the United States pursuant to executive order, statute, or regulation to require protection against unauthorized disclosure for reasons of national security and (2) Restricted Data. This definition sets the outer boundary of the government's claim of classified information privilege.

~~(U)~~ Title 10 U.S.C. § 948a(2) defines "classified information" as "(A) any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security. (B) Any restricted data, as that term is defined in section 11 y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))." MCRE 505(b)(1) defines "classified information" almost identically: "any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security, and any restricted data, as defined in 42 U.S.C. § 2014(y)."

~~(U)~~ Adopted by both Congress and the SECDEF, this definition of classified information is a critical limit beyond which the government may not claim classified information privilege. Commentary on the definition of classified information in MRE 505(b)(1)—identical to that in MCRE 505(B)(1)—explains that, "The definition of 'classified information' is a limited one and

includes only that information protected 'pursuant to an executive order, statute, or regulation,' and that material which constitutes restricted data pursuant to 42 U.S.C. 2014(y) (1976)." In other words, the classified information definition serves as rule of exclusion, not a rule of inclusion. The MCRE(b)(1) definition is incorporated into almost every procedural provision of MCRE 505; the defined phrase appears in MCRE 505 no less than seventy-three times.

~~(U)~~ Two of the uses of the term of art "classified information" are especially important to this commission's authority. First, the definition of classified information restricts the government's invocation of the classified information privilege. The MCRE 505(b)(1) definition is incorporated into the basic rule of privilege that, "Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security."[68] The government simply does not have authority to invoke privilege beyond classified information as defined in MCRE 505(B)(1).

~~(U)~~ Second, the definition of classified information restricts the authority of the commission to enter a protective order. MCRE 505(e) provides that, "Upon motion of the trial counsel, the military judge shall issue an order to protect against the disclosure of any classified information . . . ."[69] The same provision which provides the commission authority to issue a protective order contains its limitation; the protective order may not extend beyond the definition of classified information set forth in MCRE 505(b)(1).

~~(U)~~ The statutory and regulatory definition of classified information is fatal to the government's efforts to expand the scope of its restrictions in its proposed protective order. The MCRE 505(b)(1) definition excludes ¶ 7(b) of the government's proposed order, which includes declassified information because the government has specifically decided that declassified

[68] ~~(U)~~ MCRE 505(a)(1); *see also* 10 U.S.C. § 949p-1(a).
[69] ~~(U)~~ *See also* 10 U.S.C. § 949p-3.

information does not need protection against disclosure. The definition also excludes the government's proposed presumptive classification provision, ¶ 7(D)(vi), because detainee statements have not "been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security."[70]

~~(U)~~ The government's proposed ¶ 7(a) and (c) are included within the statutory and regulatory definition. To the extent that an OCA has properly classified the list of information in proposed ¶ 7(d)(i)-(v), this information is also included in the MCRE 505(b)(1) definition.

~~(U)~~ The government's proposed ¶ 7(e) is not included within the MCRE 505(b)(1) definition, but for a slightly different reason. The language of proposed ¶ 7(e) bears a vague similarity to an offense under the Espionage Act for disclosure of national defense information,[71] and the MCRE 505(b)(1) definition includes information classified pursuant to statute. But the language of proposed ¶ 7(e) goes far beyond national defense information to include "any document or information . . .related to a foreign government or dealing with matters of U.S. foreign policy, intelligence, or military operations." Furthermore, the key element which saves the Espionage Act from fatal vagueness is the willfulness requirement,[72] which has no place in a strict liability scheme such as a protective order.

(2) ~~(U)~~ Executive Order 13526 limits the authority of the CIA to classify information to that owned by, produced by or for, or under the control of the United States government, which cannot include the personal experiences of the defendants.

~~(U)~~ Executive Order 13526 § 1.1(a) imposes four conditions for classification of information, all of which must be met. Condition Two requires that "the information is owned by, produced by or for, or is under the control of the United States Government." No

[70] ~~(U)~~ MCRE 505(a)(1); *see also* 10 U.S.C. § 949p-1(a).
[71] ~~(U)~~ *See* 18 U.S.C. § 793.
[72] ~~(U)~~ *See, e.g., United States v. Morison*, 844 F.2d 1057, 1073-74 (4th Cir. 1988).

government can own, produce, or control the personal experiences of a person who has experienced torture or cruel, inhuman, and degrading treatment, or indeed, of any person at all. While the government can certainly classify the documents it produced while the defendants were in its custody, it cannot classify—presumptively or otherwise—the defendants' personal expression of their personal experiences.

~~(U)~~ Only one court has considered a variation of this argument, and its reasoning is instructive. In *ACLU v. DoD*, the ACLU sought access to classified records introduced in the Combatant Status Review Tribunals, arguing that "the government lacks the authority to classify information derived from the detainees; personal observations and experiences."[73] The D.C. Circuit did not disagree with the argument; it simply found the argument irrelevant because the ACLU was seeking access to documents in the custody of the DoD.[74] Through its protective order, the government does not seek to presumptively classify documents about the defendants' experiences, as an OCA has clearly classified such documents. Instead, the government attempts to regulate the defendants' own expression about their own experiences—something the government cannot own, produce, or control. Unlike a document, a person's pain and fear is not a thing which the government can double-wrap and courier between secure facilities.

~~(TS/~~ [redacted] The individual is the exclusive witness to the core of his pain and suffering, to its memory, and to whatever transformative effects it has wrought within him. An observer can hear descriptions of medical symptoms or injuries; can be told another human was screaming, or vomiting, or lost control of his bowels; can be shown shackles, a pail of feces, or a small featureless room. Such an observer might try to imagine herself in that person's situation, and search for language to describe the imagined experience. But the observer cannot approach

[73] ~~(U)~~ 628 F.3d 612, 623 (D.C. Cir. 2011).
[74] ~~(U)~~ *Id.*

understanding of the peculiar nature and severity of the other person's pain and suffering without access to that person's story.[75]

~~(U)~~ The violation of a person's humanity inherent in silencing a person who has suffered abuse at the hands of the government is in some ways the obverse of the right against compelled self-incrimination. The American rule against compelled self-incrimination reflects "our respect for the inviolability of the human personality and of the right of each individual to a private enclave where he may lead a private life,"[76] even if that enclave is his own mind. A person's own experiences—whether the smell of a rose or the click of a gun near one's head—are what make them a person, and the government can never own or control them. The idea that the United States may treat even its enemies as unpersons by appropriating their personal experiences as property of the State crosses the fundamental line between democratic and totalitarian institutions.

~~(TS//~~ [redacted] In a gross physical sense, of course, the United States does "control" the defendants themselves by keeping them in a detention facility. In that sense, the United States controls all of the more than 200,000 inmates incarcerated by the Bureau of Prisons. But in an important way, the United States exercises less control over the defendants than over some of their domestic counterparts: the defendants can meet with the ICRC. The government does not apply its claimed classification rules, presumptive and actual, to the ICRC. The ICRC follows a self-imposed rule of confidentiality,[77] [redacted]

[redacted]

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[75] ~~(U)~~ As an example, the Supreme Court described the "full moral force" of an individual's personal story as one of the considerations underlying the admission of victim impact evidence in a capital trial. *Cf. Payne v. Tennessee*, 501 U.S. 808, 825 (1991).

[76] ~~(U)~~ *Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52, 54 (1964).

[77] ~~(U)~~ *See Confidentiality: key to the ICRC's work but not unconditional*, www.icrc.org/eng/resources/documents/interview/confidentiality-interview-010608.htm (Sep. 20, 2010).

[redacted]

C. ~~(U)~~ The United States has waived its classified information privilege under MCRE 510(a) by disclosing interrogation techniques and conditions of confinement to the defendants.

~~(U)~~ The government's horrible logic that the defendants were "exposed" to classified interrogation techniques and conditions of confinement during their torture by the CIA in black sites ultimately proves too much. If the defendants were exposed to classified interrogation techniques and conditions of confinement, it is the government which voluntarily disclosed those interrogation techniques and conditions of confinement to the defendants, with authorization from the highest levels of government. That voluntary, authorized "disclosure" waived the government's claim of classified information privilege. If the government did not want the defendants to know the CIA's torture techniques, the CIA should not have used them on the defendants.

~~(U)~~ The government's core argument for restricting the ability of the defendants to discuss their personal experiences in CIA custody is as follows: "Because the Accused were detained and interrogated in the CIA program, they were exposed to classified sources, methods, and activities. Due to their exposure to classified information, the Accused are in a position to reveal this information publicly through their statements."[79] This reasoning is both ludicrous and terrifying: the defendants were exposed to classified interrogation techniques only in the sense that Hiroshima was exposed to the classified Manhattan Project.

~~(U)~~ If the commission accepts this logic, however, it cannot shrink from the next conclusion: that the United States voluntarily disclosed their interrogation techniques and conditions of confinement to the defendants by using them on the defendants. The United States's actions toward the defendants were, at least to them, the equivalent of "official acknowledgement": specific techniques the CIA disclosed to the defendants in an official and

[79] ~~(U)~~ AE013 at 6.

documented manner. *Cf. Wolf v. CIA*, 473 F.3d 370, 378 (D.C. Cir. 2007); *Fitzgibbon v. CIA*, 911 F.2d 755, 765 (D.C. Cir. 1990). Declassified CIA documents demonstrate that the CIA required advance approval for all techniques they considered "standard" and prior approval in writing for the use of any technique the CIA defined as "enhanced."[80] According to Jose Rodriguez, former head of the CIA National Clandestine Service, CIA interrogators only escalated to more aggressive techniques after specific written authorization from CIA headquarters.[81]

~~(TS/~~[redacted] Under these circumstances, the government has waived its classified information privilege. Adopted as MCRE 510, the ancient rule of waiver holds that the holder of a privilege waives that privilege if he or she voluntarily discloses the privilege matter. The United States waived whatever privilege it may have had to keep its inhuman interrogation practices secret when it elected to use them on the defendants.

D. The government's proposed order is both overbroad and underinclusive.

~~(U)~~ The government's proposed protective order is clearly a legacy document, passed down through generations of *habeas* cases and accruing new provisions with each new iteration.[82] As written, the government's proposed protective order provides both too much and too little guidance. The government's proposed protective order provides too much guidance because many of its provisions are redundant with DoDM 5200.01, MCRE 505, the Military Commissions Act of 2009, and Chapter 18 of the Regulations for Trial by Military Commissions, or even misstate the rules contained in those authorities. At the same time, the government's

[80] ~~(U)~~ Attachment R (Guidelines on Interrogations Conducted Pursuant to the [redacted]); *see also* Attachment S (Guidelines on Confinement Conditions for CIA Detainees) (requiring each interrogating officer to receive a copy of the Guidelines on Interrogations Conducted Pursuant to the [redacted]).

[81] Jose Rodriguez, *Hard Measures* (2012).

[82] ~~(U)~~ *See, e.g.*, *In re Guantanamo Bay Detainee Litigation*, 577 F. Supp. 2d 143 (D.D.C. 2008) (setting out most recent version of the protective order in the *habeas* cases).

proposed protective order does nothing to address the real security issues plaguing counsel for both sides, including critical information about the Special Access Program, proper marking and cover sheets, and declassification procedures.

~~(U)~~ One misstated proposition in the government's proposed order is the idea that OCAs determine the need to know of a prospective receiver of classified information. E.O. 13526 § 6.1(dd) defines "need to know" as "a determination within the executive branch in accordance with directives issued pursuant to this order that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function." Although classification level is decided by an OCA, any authorized holder of classified information determines the need to know of a prospective recipient. This policy is in fact the only workable rule. Otherwise, an OCA would have to adjudicate the need to know of every person in the intelligence community every time one person wanted to share specific classified information with another.

~~(U)~~ To provide meaningful guidance, the protective should address the following handling issues:

(1) ~~(U)~~ Direct the Commission Security Officer or other appropriate person to provide counsel for the defendants with a copy of all existing classification guidance specific to issues in the case which they are expected to follow, including information regarding boundaries, special handling requirements, program manager, and classification challenge procedures for the purported Special Access Program;

(2) ~~(U)~~ Direct the United States to grant access to the Special Access Program for qualified members of defense teams, assuming that the United States intends to provide discovery implicating the Special Access Program;

Appellate Exhibit ___
Page ___ of ___

(3) ~~(U)~~ Recognize appropriate cover sheets and markings for information controlled under specific relevant classification guidance;

(4) ~~(U)~~ Appoint or direct the appointment of Defense Security Officer(s) to provide a privileged mechanism for classification review;

(5) ~~(U)~~ Recognize that defense team members have a presumptive need to know information relating to the defense of their clients;

(6) ~~(U)~~ Address mechanisms for information sharing among attorneys representing the same client in different matters.

This commission should initially deny the government's request to file Attachments A and B *ex parte*. If the government does not choose to withdraw Attachments A and B, the commission should hold a hearing on whether the government's claims justify its invocation of classified information privilege. Although some information is clearly properly classified, the commission should reject the prosecution's proposed protective order as overbroad. If the commission elects to enter a protective order, it should provide meaning solutions to the guidance and handling problems the participants in the military commissions actually confront.

5. Oral argument: Oral argument is requested.

Very respectfully,

//s//
JAMES G. CONNELL, III
Learned Counsel

//s//
STERLING R. THOMAS
Lt Col, USAF
Defense Counsel

Counsel for Mr. al Baluchi

//s//
DAVID Z. NEVIN
Learned Counsel

//s//
DEREK A. POTEET
Maj, USMC
Defense Counsel

//s//
JASON D. WRIGHT
CPT, USA
Defense Counsel

Counsel for Mr. Muhammad

//s//
CHERYL T. BORMANN
Learned Counsel

//s//
WILLIAM T. HENNESSY
Maj, USMC
Defense Counsel

//s//
MICHAEL A. SCHWARTZ
Capt, USAF
Defense Counsel

Counsel for Mr. bin 'Attash

//s//
JAMES P. HARRINGTON
Learned Counsel

//s//
KEVIN BOGUCKI
LCDR, USN
Defense Counsel

Counsel for Mr. bin al Shibh

//s//
WALTER B. RUIZ
CDR, USN
Defense Counsel

Certificate of Service

~~(U)~~ On 17 May 2012, per my consultation with opposing counsel, I caused a true copy of AE013G to be hand-delivered to the Office of the Clerk to be picked up by opposing counsel.

//s//
JAMES G. CONNELL, III
Learned Counsel

List of Attachments

A ~~(U)~~ Certificate of Service

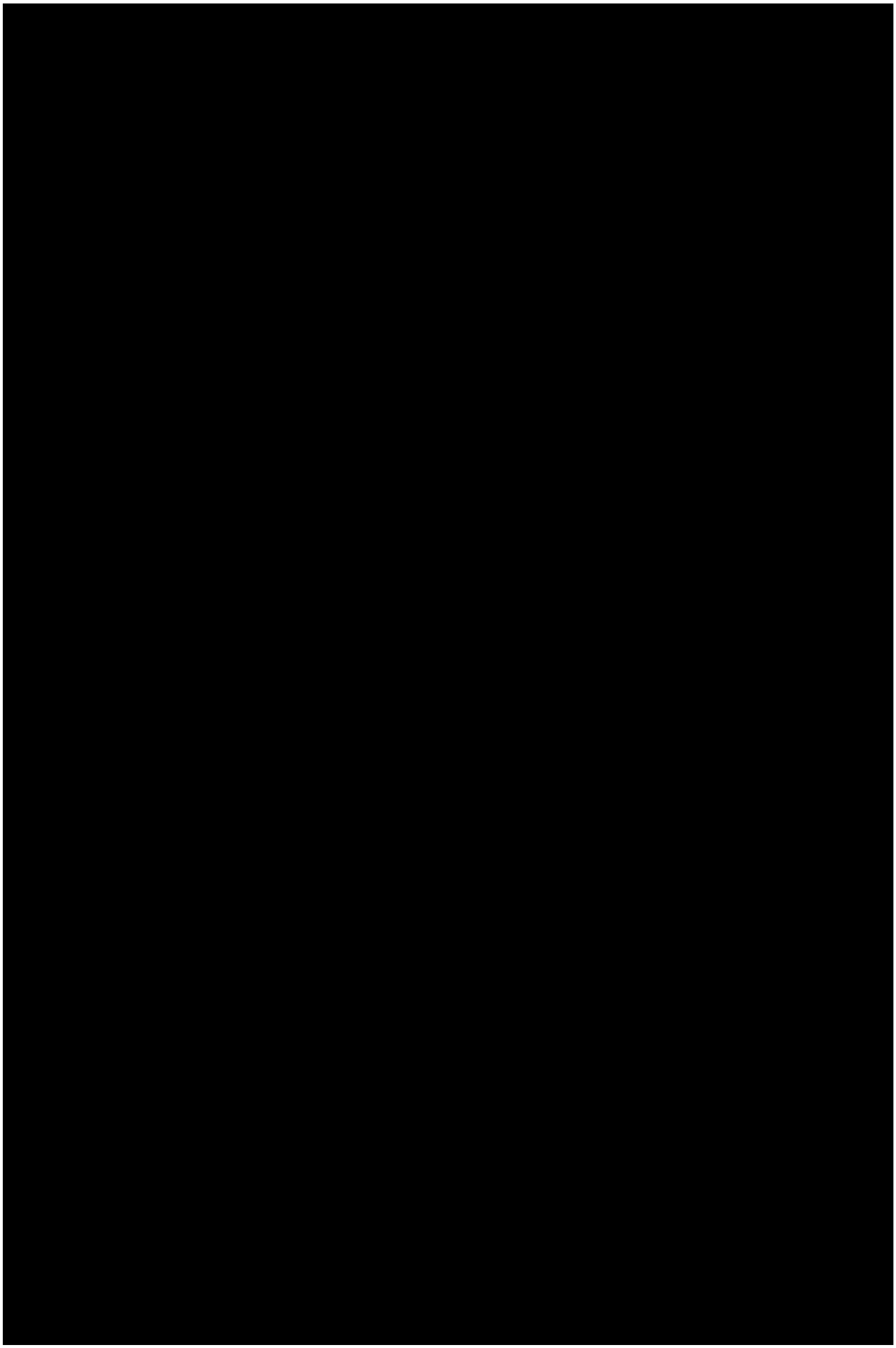
[redacted]

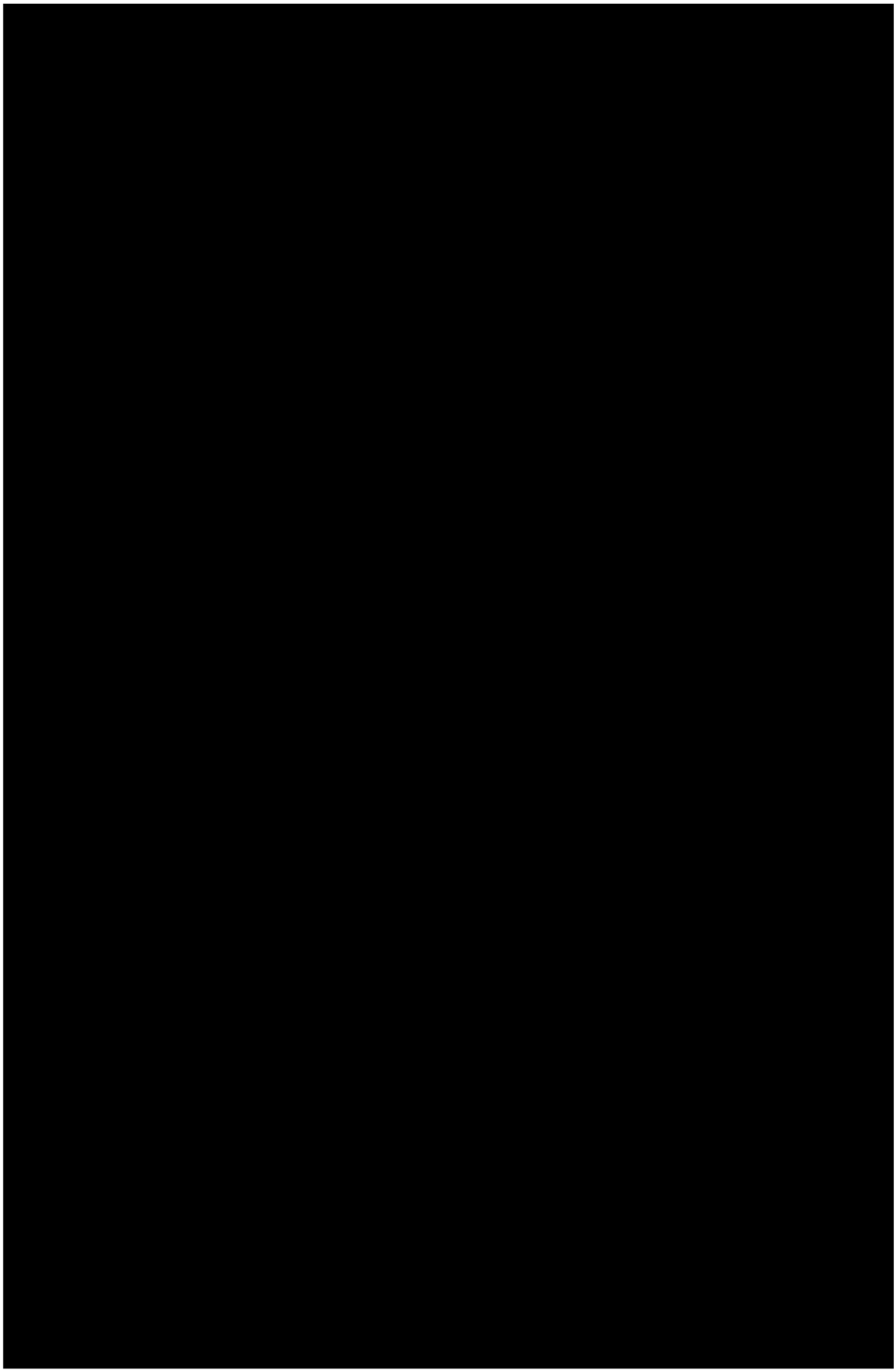
E ~~(U//FOUO)~~ SCI Briefing for HVD Defense Counsel Team Members
F ~~(U)~~ Email string beginning 12 December 2011
G ~~(U)~~ AE025 Defense Motion to Abate, *al Nashiri*
H ~~(U)~~ AE025 Government Response to Defense Motion to Abate, *al Nashiri*
I ~~(U)~~ HUMINT Cover sheet
J ~~(U)~~ HUMINT/COMINT/TALENT-KEYHOLE cover sheet
K ~~(U)~~ Email string beginning 15 December 2011
L ~~(U)~~ Email string beginning 31 January 2012
M ~~(U)~~ Email string beginning 10 April 2012
N ~~(U)~~ Open-source Government Information About the CIA RDI Program
O ~~(U)~~ Declaration of Marilyn Dorn
P ~~(U)~~ Declaration of Leon Panetta

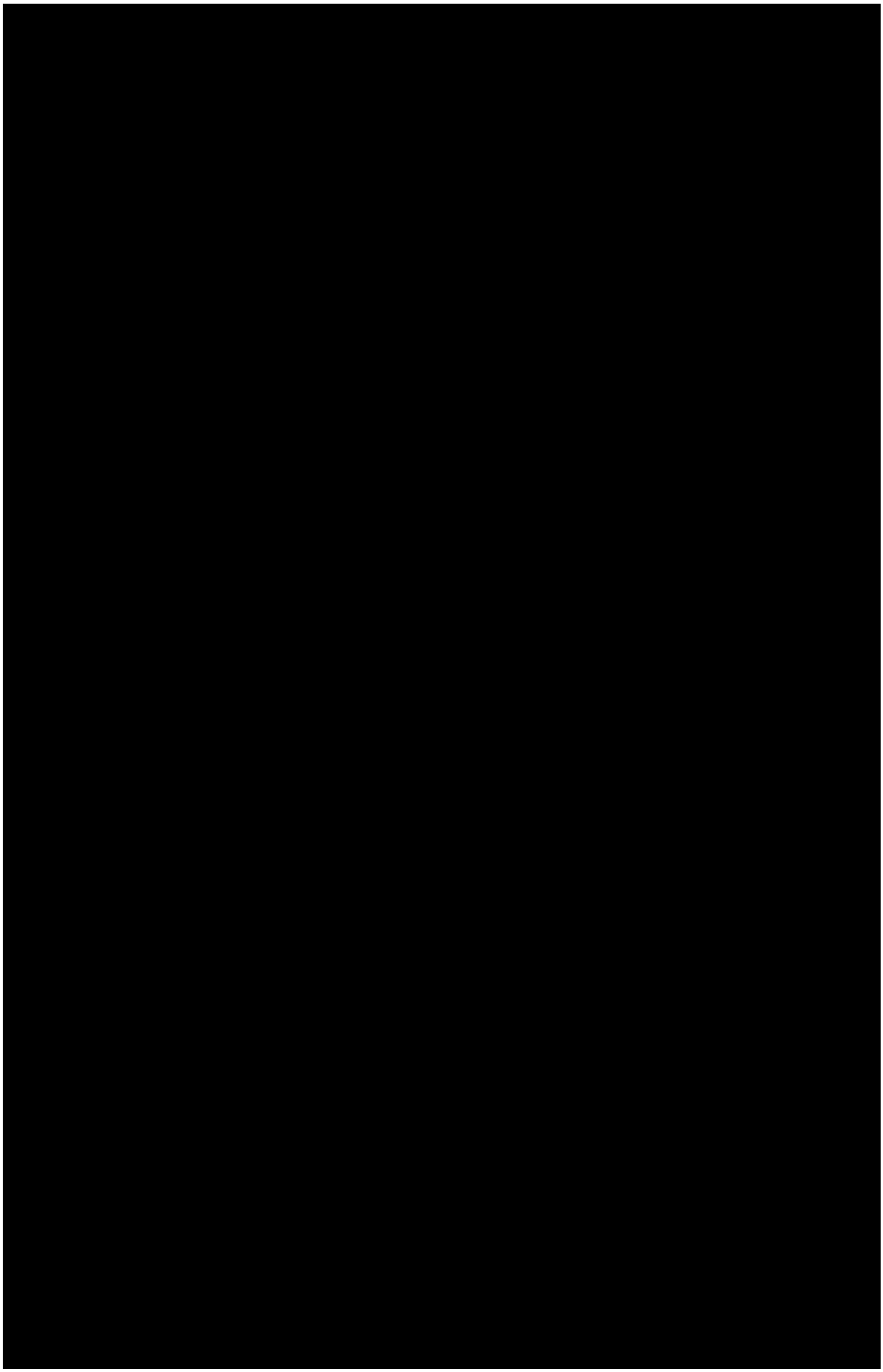
[redacted]

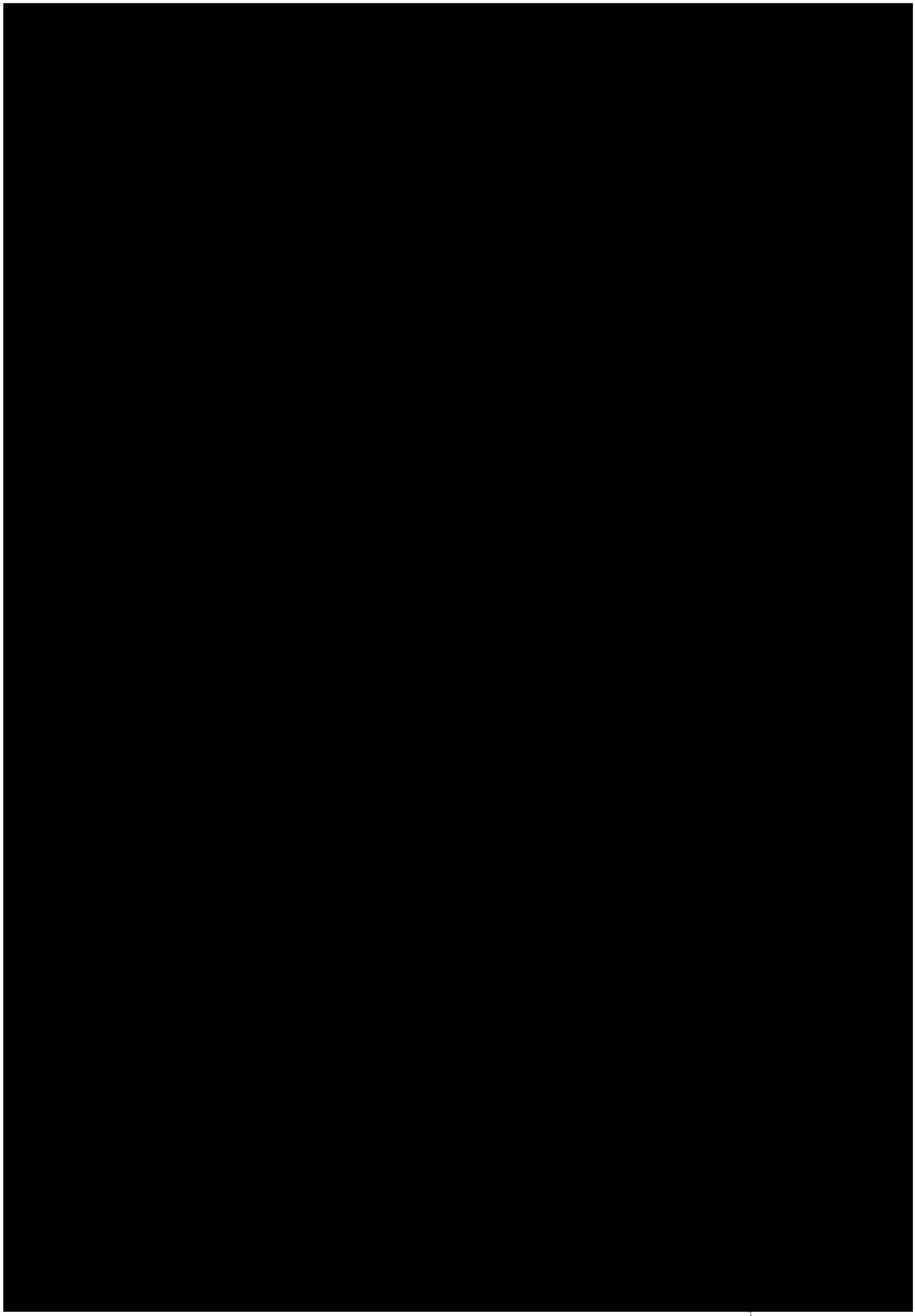
R ~~(U)~~ Guidelines on Interrogations Conducted Pursuant to the __
S ~~(U)~~ Guidelines on Confinement Conditions for CIA Detainees
T ~~(U)~~ Email dated 26 April 2012
U ~~(U)~~ Email dated 27 April 2012
V ~~(U)~~ Email dated 25 April 2012

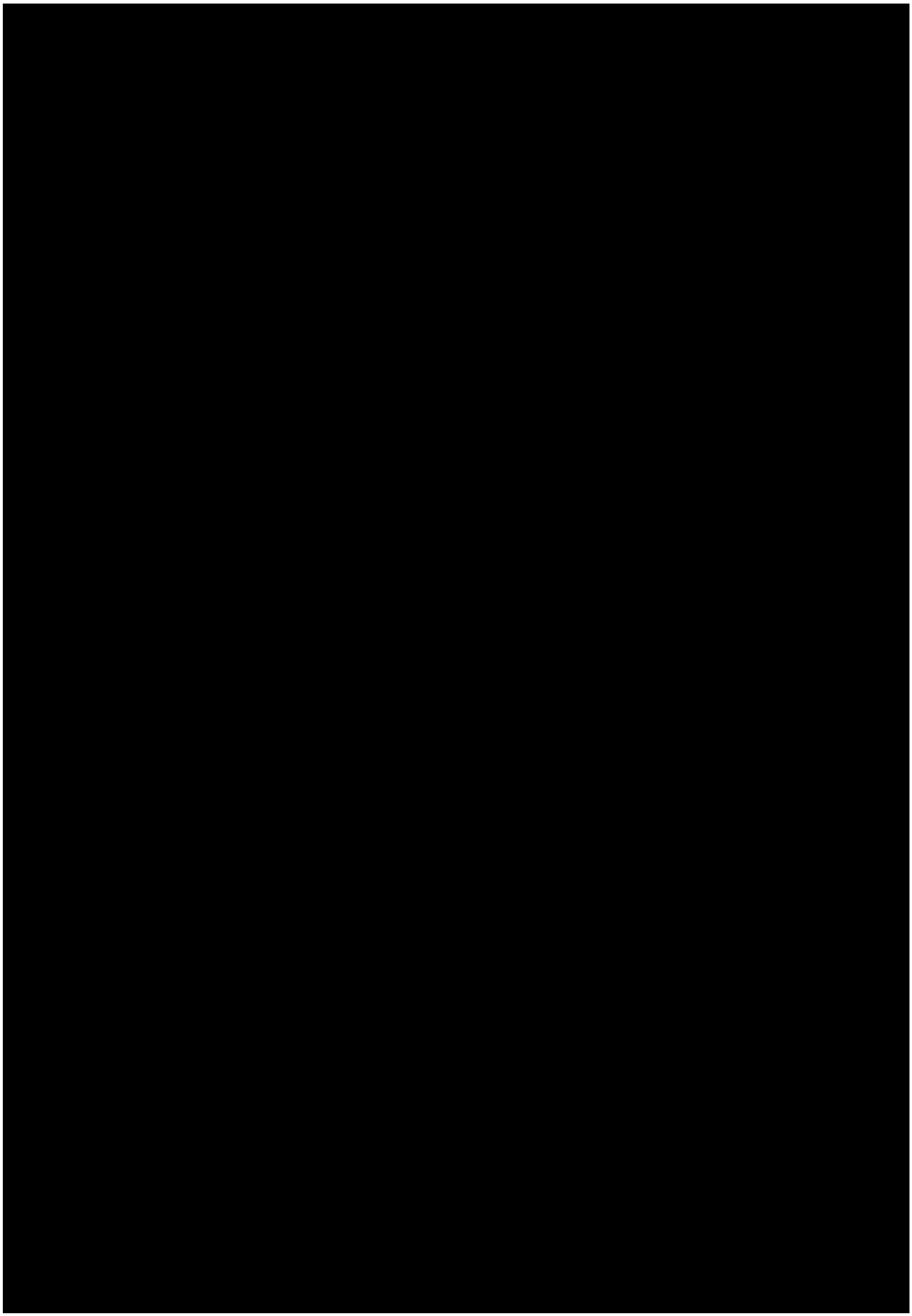
Appellate Exhibit ___
Page ___ of ___

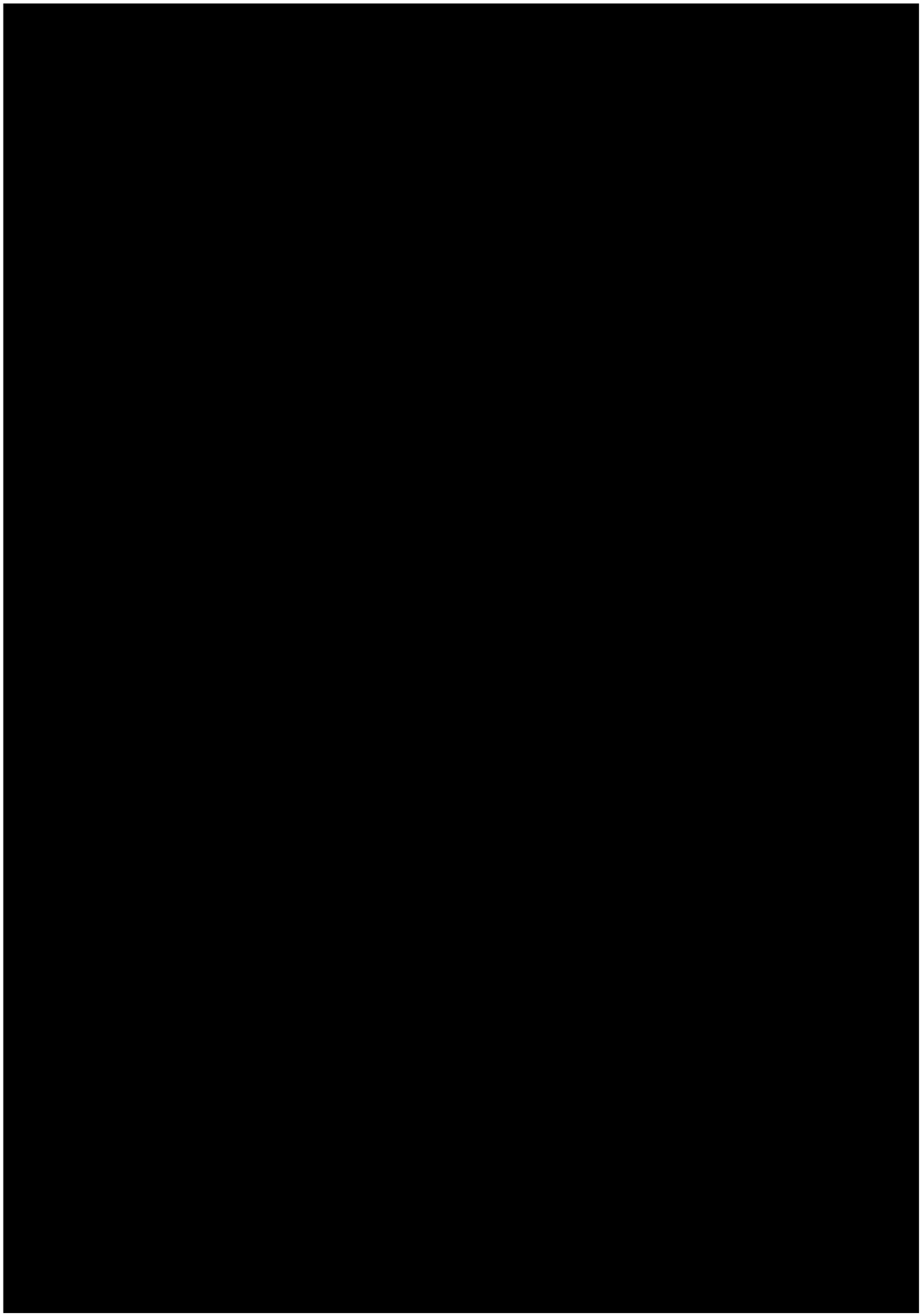


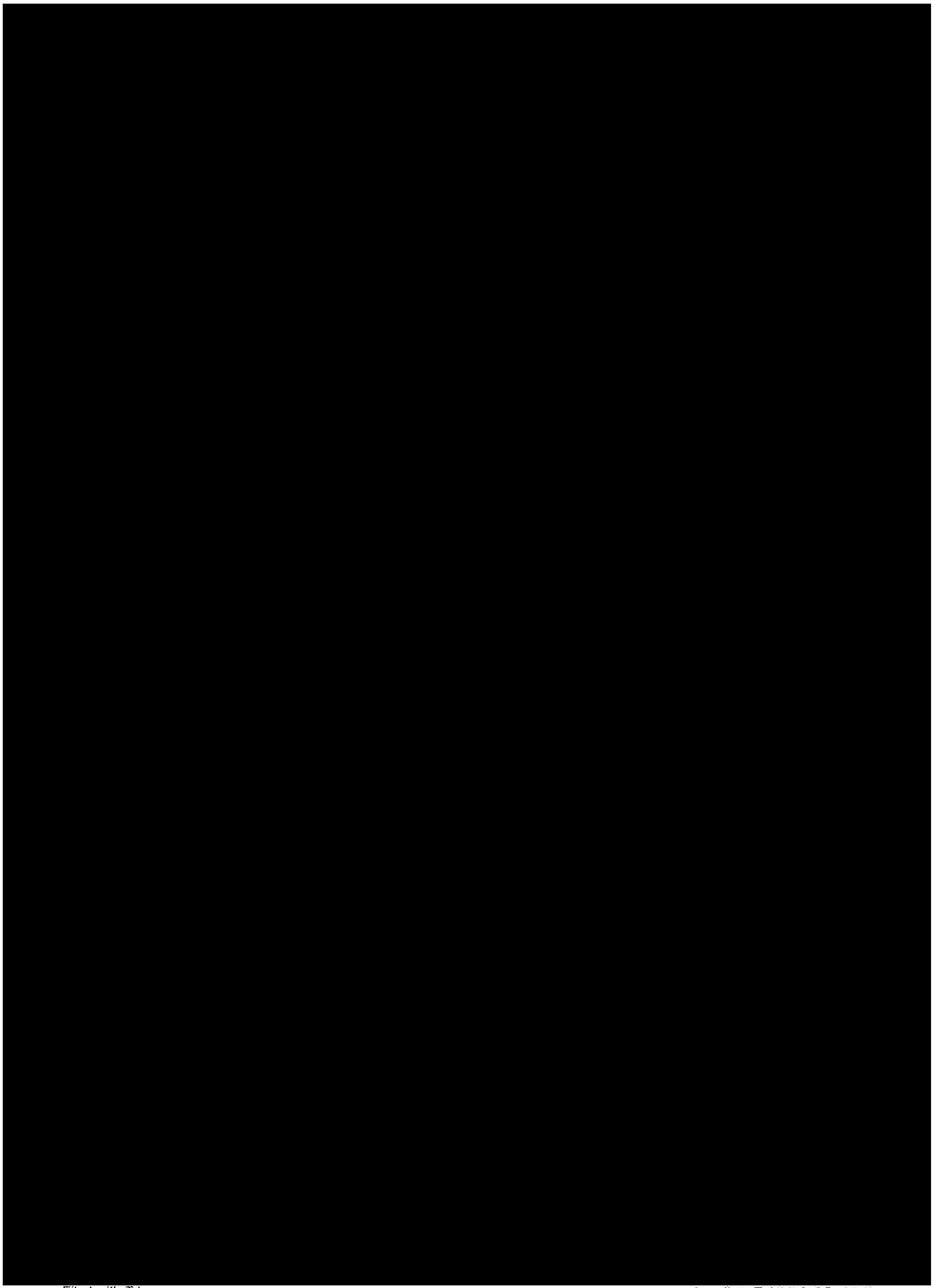


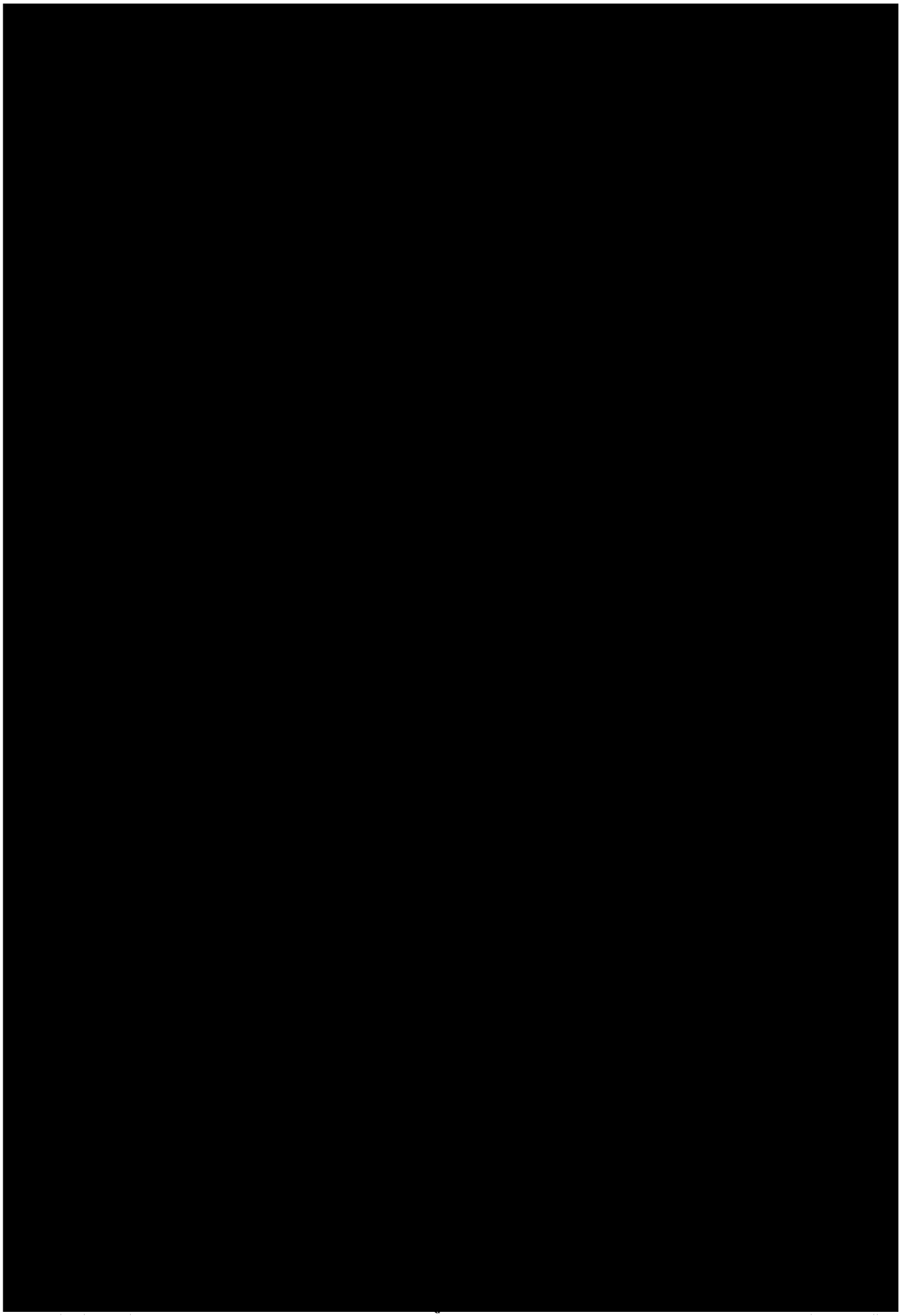


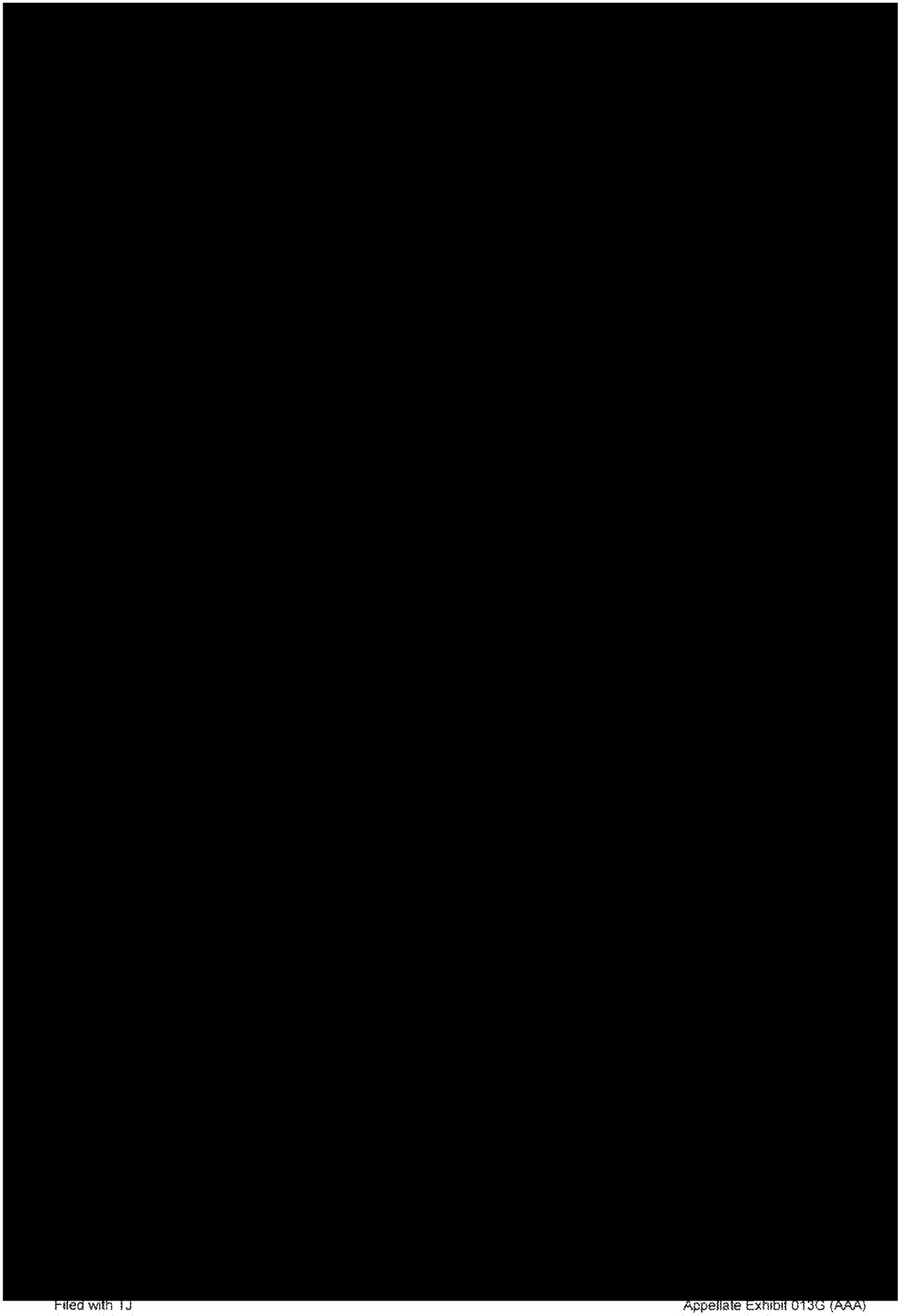


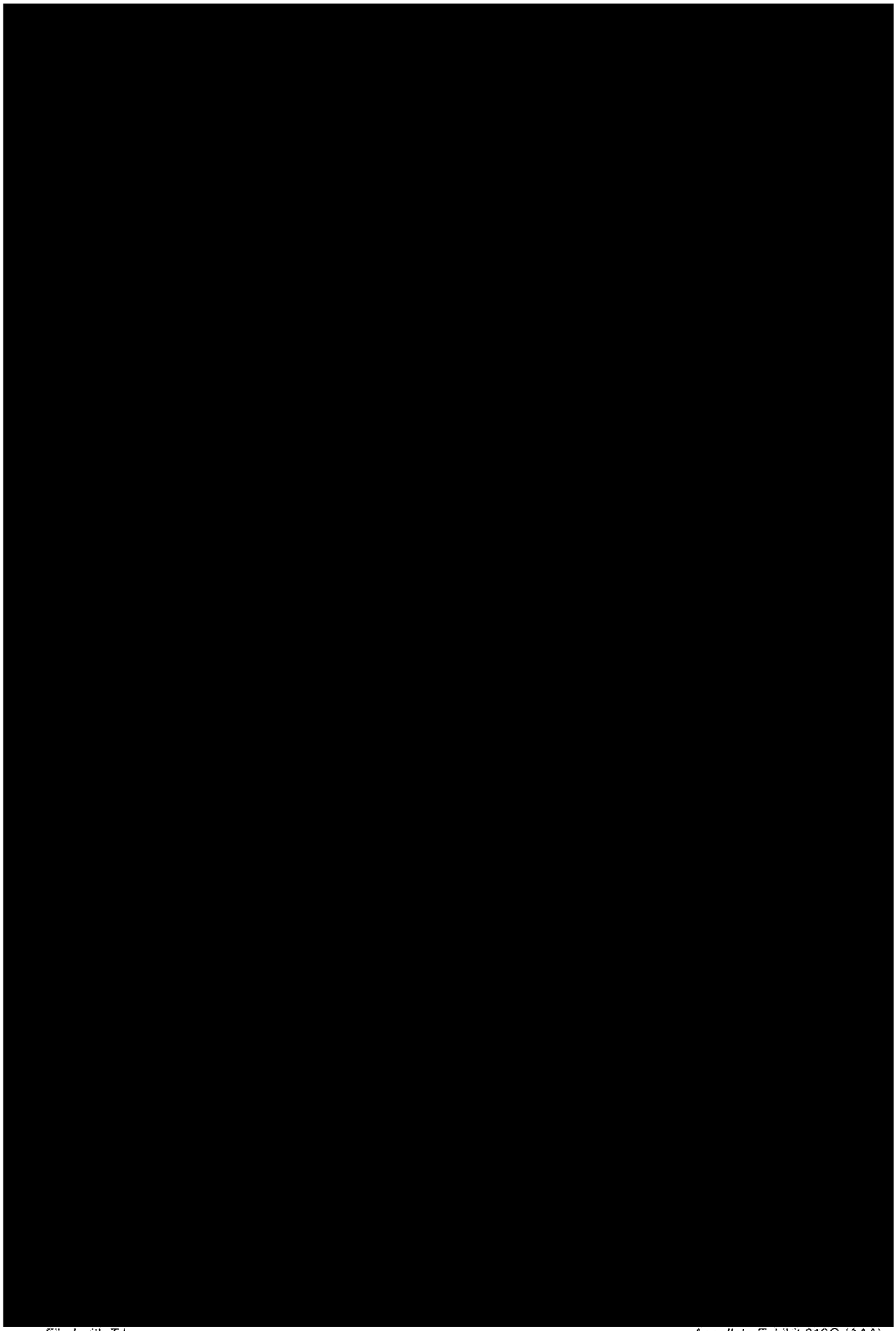


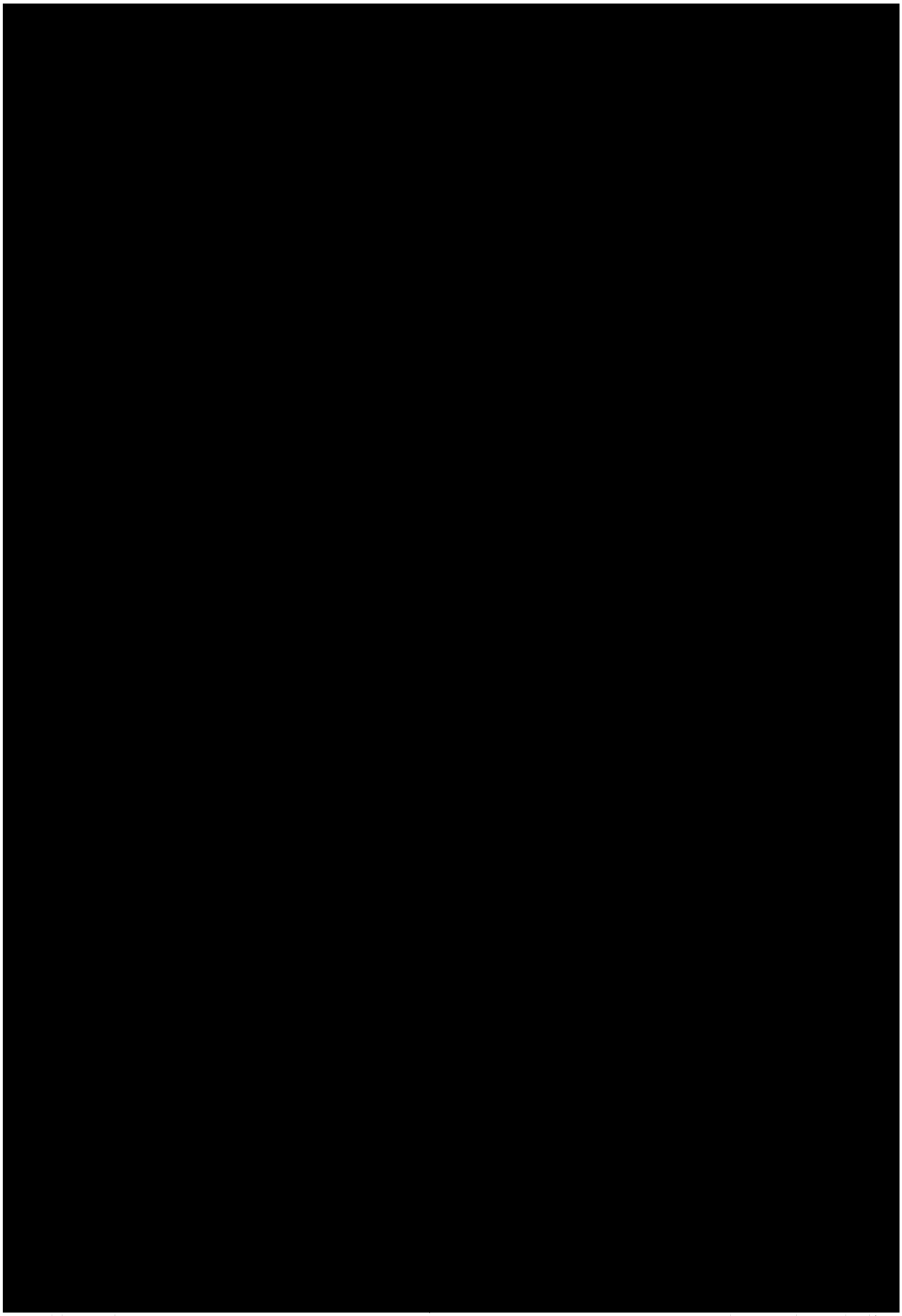


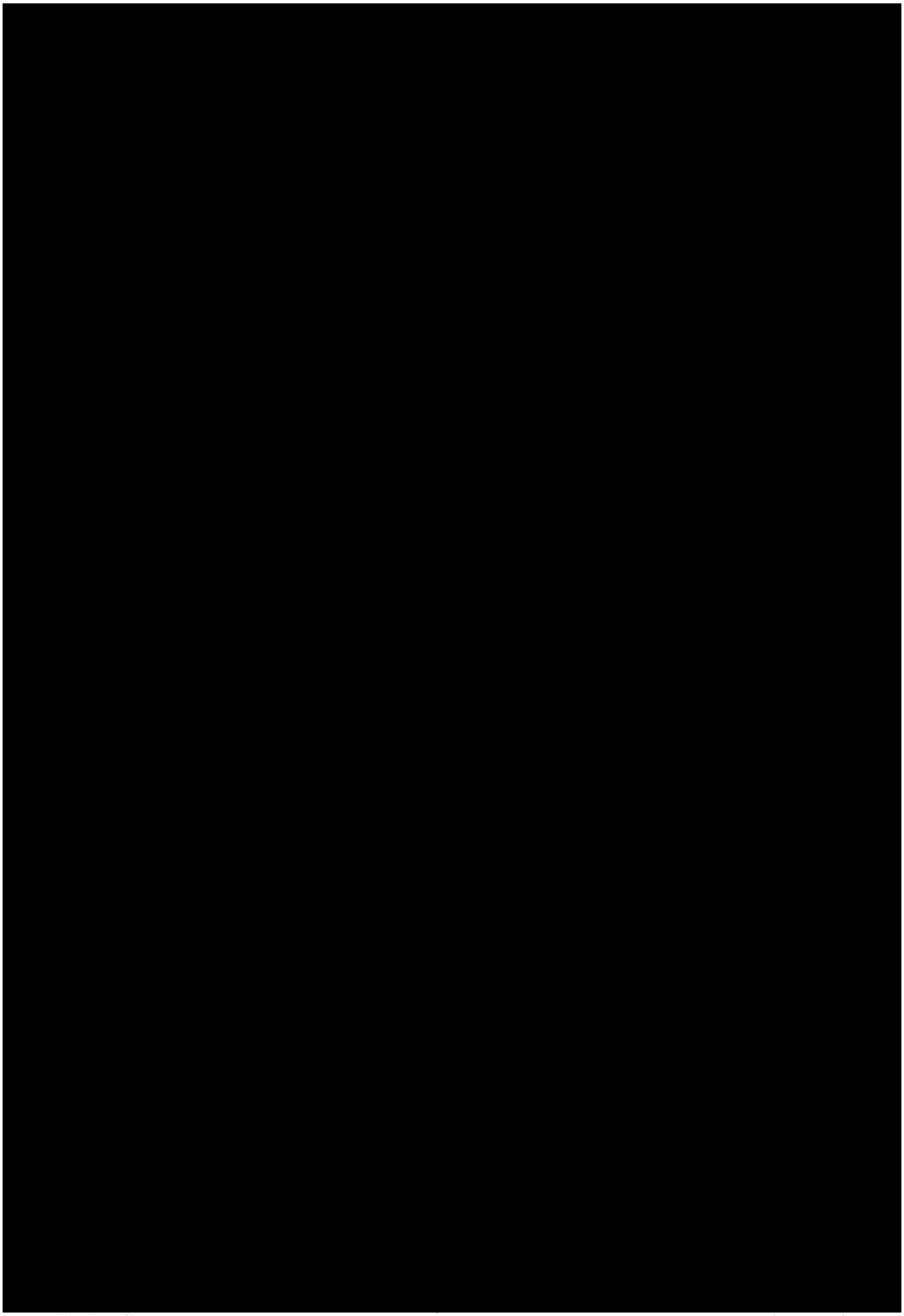


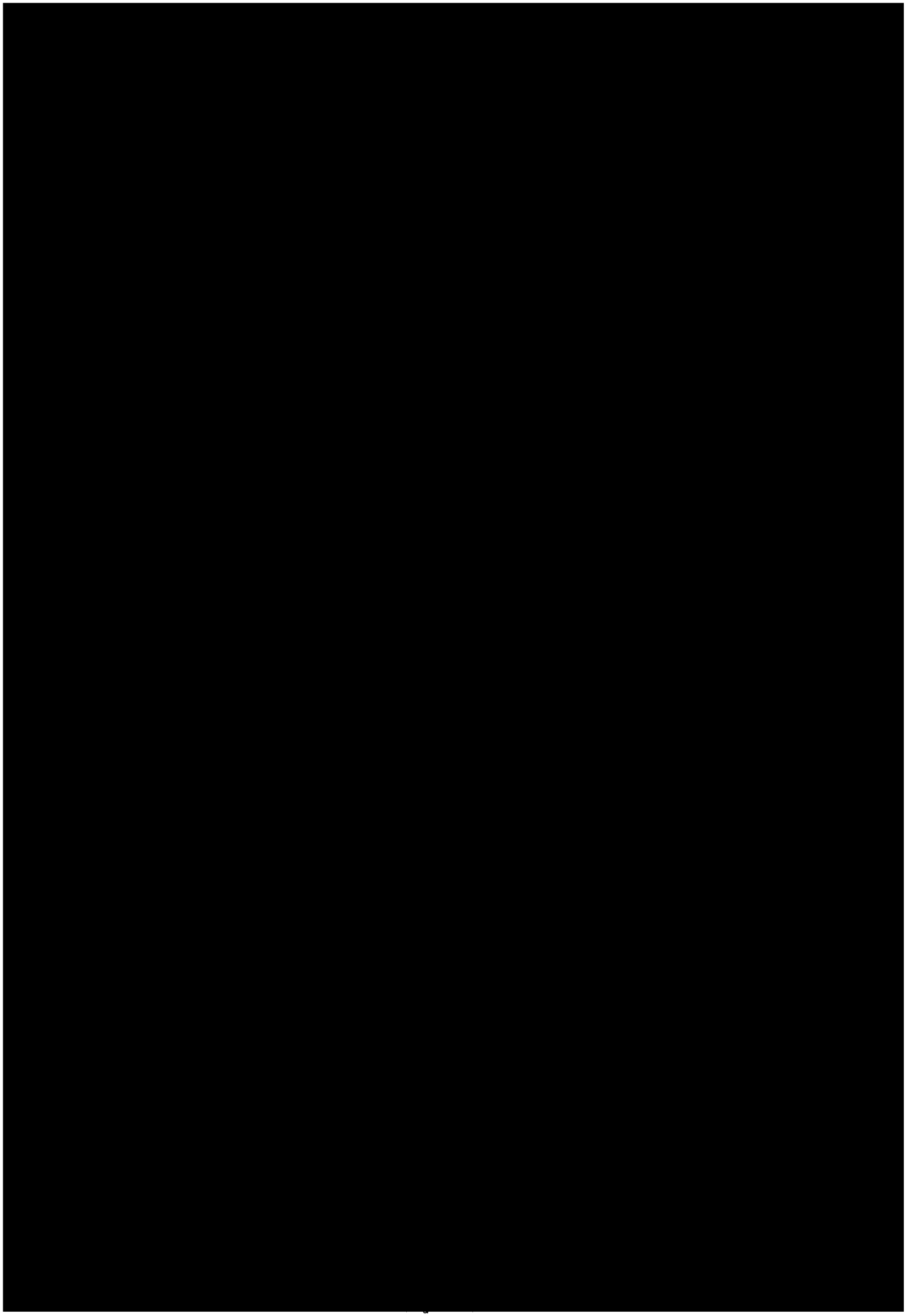












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Office of Military Commissions

SCI Briefing for High Value Detainee, Defense Counsel Team Members

- High Value Detainees (HVD) have been exposed to information that is classified at the TOP SECRET (TS) level and are further subject to the special access restrictions of Sensitive Compartmented Information (SCI). As such, counsel staff for HVDs has been submitted for security clearances at the TS/SCI level.
- Due to the necessity for HVD counsel to speak frankly with their clients for the purpose of representing them in the OMC process, counsel staff is being provided limited security approvals that authorize them to receive TS/SCI information from their clients. Counsel's limited security approval for the purpose of receiving compartmented information from their clients *does not* authorize them to receive compartmented documents or information from the U.S. Government.
- Information received from HVDs (whether written or oral, and any notes taken based on conversations with detainees) is presumed to be and should be handled as TS/SCI information until a U.S. Government classification review is completed. Notwithstanding the disclosure of the same or similar information in the media, compartmented information includes, but is not limited to: location(s) of detention; method(s) of interrogation; condition(s) of confinement; and identities of U.S. Government and liaison personnel.
- Discussion of TS/SCI information shall occur in a Sensitive Compartmented Information Facility (SCIF) or Special Access Program Facility (SAPF), either in person or using a secure telephone at the TS/SCI level.
- Other than the taking of handwritten notes during conversations with detainees, writing of TS/SCI information shall take place only on an authorized stand-alone computer provided for counsel's use in the SCIF/SAPF locations in the National Capital Region or Guantanamo (Amended).
- Storage of TS/SCI documents, including notes, shall be in a SCIF and in a safe accessible only by authorized personnel.
- Transportation of TS/SCI documents between the interview facility and the Expeditionary Legal Complex (ELC) shall be in an approved, locked security pouch or double-wrapped (consult Security Manager). A military escort may be required pursuant to the requirements of the Addendum to the Guantanamo Procedures Guide.
- Facsimile transmission of TS/SCI documents shall be by a TS/SCI device (Amended).
- Violations of these procedures can be grounds for access suspension and further adjudication.

I acknowledge these handling procedures for specific HVD sensitive information:

CONNELL, III, James G. [redacted] 9/23/11

[redacted] Learned Counsel

DoD Briefing Official

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~~SECRET//NOFORN~~

Connell, James G III CIV OSD OMC Defense

From: Connell, James G III CIV OSD OMC Defense
Sent: Tuesday, February 14, 2012 2:16 PM
To: Breslin, Michael J Mr OSD OMC Convening Authority
Cc: [redacted] Ms OSD OMC Convening Authority; [redacted] CTR OSD OMC
Subject: RE: Data handling questions ~~(U//FF)~~

Classification: ~~SECRET//NOFORN~~

Dear Mr. Breslin,

I am in the process of preparing an amended complaint for filing in the District of DC which implicates the questions I raised in my 2 February email. Have you heard any response from the authorities you consulted?

In addition, Ms. [redacted] provided me today with Revision 1 of Marking Classified National Security Information ("MCNSI"), dated January 2012. This document emphasizes many of the questions I asked previously. For example, MCNSI states that, "Only individuals specifically authorized in writing may classify documents originally," and that, "The terms 'Top Secret,' 'Secret,' and 'Confidential' are not to be used to mark executive branch information that has not been properly designated as classified national security information under E.O. 13526." (p.2). Does applying classification markings to documents which have neither been originally nor derivatively classified violate EO 13526?

Any guidance you can provide would be greatly appreciated. If I should direct my questions elsewhere, please let me know the appropriate person.

Best regards,

James Connell

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense
Sent: Thursday, February 02, 2012 10:02 AM
To: Breslin, Michael J Mr OSD OMC Convening Authority
Cc: [redacted] Ms OSD OMC Convening Authority; [redacted] CTR OSD OMC
Subject: RE: Data handling questions ~~(U//FF)~~

Classification: ~~SECRET//NOFORN~~

Dear Mr. Breslin,

I am writing to follow up on my 20 December request for information, as several issues the request raises came up this week. The context is that I filed a complaint in the District of DC, which the CSO directed me to treat as presumptively classified because it could involve statements of an HVD. The specific issues which came up are:

(1) Cover sheet & banner markings. I asked Ms. Gunning what cover sheet and banner markings I should use, a similar question to that I asked in 3(b) and (c) below. She told me to use SF703 with "CODEWORD" printed on it, and the banner marking "TOP SECRET/CODEWORD PENDING CLASSIFICATION REVIEW." When she initially told me to mark it "codeword," I asked if she wanted me to literally use the word "codeword," or if I should mark the document using the trigraphs (which I was briefed are unclassified). She said the situation was confusing

~~SECRET//NOFORN~~

because habeas counsel are not given the trigraphs, and that I should use the word "codeword" on the cover sheet and banner markings.

(2) SAP. A second issue came up regarding what exactly falls within the SAP, if in fact [redacted] is a SAP, a similar question to that in 1(a) below. Ms. [redacted] advised that if the material fell within a SAP, I need a second person to courier the documents with me, but that my courier card authorized me to courier the documents alone if not. I contacted Ms. Gunning, who provided guidance that I could courier the documents alone because she was not aware of any information that fell within the SAP. That raises the question--do potential HVD statements become presumptively TS/SCI without becoming presumptively under the SAP?

(3) Presumptive classification. The third issue which came up this week is at what point a document becomes "presumptively classified," a process I asked about in question 4 below. The court filing I made today was not derived from actual classified information, and I have no reason to believe any part of it is actually classified. Ms. Gunning directed me to treat the court filing as TS, which I will do. It is clear that she considered the court filing "presumptively classified" prior to its actual filing, however, as she gave me instructions for the courier process. The SCI Briefing for High Value Detainee, Defense Counsel Team Members you were kind enough to send me, howver, only says that "[i]nformation received from detainees" "is presumed to be and should be handled as TS/SCI information until a U.S. Government classification review is completed." My filing does not contain information received from detainees, but only information from JTF-GTMO personnel about an HVD.

That process raises the question--why and at what point does the filing become presumptively classified? I can think of several points at which a document which does not actually contain client statements could become "presumptively classified," none of which seem consistent with governing policies:

(a) At creation. Every document could be presumptively classified, as hypothetically in the future it could contain client statements. This approach would seem to violate the directive in EO 13526 not to overclassify documents, in addition to being totally impractical.

(b) At marking. A document could become presumptively TS when it is marked. This would defeat the purpose of the prophylactic presumptive classification rule, as one could avoid presumptive classification by simply not marking the document.

(c) At filing. A document could become presumptively classified when it is filed with the court. That rule would essentially be an information handling guideline internal to the court; they will treat it as classified until they conclude otherwise. That rule would not require defense or prosecution filers to mark and courier the documents, however, because the presumption would not arise until it had left their hands and been filed with the court.

I would greatly appreciate it if you or your colleagues could clarify the application of this rule, or even point me to a policy statement in which it is articulated so that I may reach my own conclusions.

Mr. Breslin, I am committed to following the rules, but I am struggling mightily to understand how the classified handling guidance I read in presidential and DoD directives matches up with the information I am entrusted to handle. I understand that security is not your core area, and you answered my original 13 December email as a courtesy. If I should be directing my requests elsewhere, please let me know and I will act accordingly.

Thank you very much for your attention to this matter.

Best regards,

~~SECRET//NOFORN~~

James Connell

-----Original Message-----
From: Breslin, Michael J Mr OSD OMC Convening Authority
Sent: Friday, January 06, 2012 4:54 PM
To: Connell, James G III CIV OSD OMC Defense
Subject: RE: Data handling questions ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~

Mr. Connell:

I forwarded your questions to higher authorities. Unfortunately, they haven't been able to respond yet. I will let you know as soon as I get word from them.

Sorry for the delay.

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense
Sent: Tuesday, December 20, 2011 4:25 PM
To: Breslin, Michael J Mr OSD OMC Convening Authority
Cc: [redacted] Ms OSD OMC Convening Authority
Subject: RE: Data handling questions ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~

Mr. Breslin:

Thanks very much for your response. I am new to this area of the law, and I very much appreciate your explanations. The answers generate more questions for me, so I will have to ask you to forgive the length of this email. If the answers to these follow-up questions are contained in an authority, please feel free to point me to it rather than answer at length. For clarity, I will use the same item numbers for my follow-up questions.

1. Acknowledgment.

(a) I believe I understand the distinction you are drawing between an NDA, which is a contract, and an acknowledgment, which is essentially a notice. But I want to make sure that I understand your use of the phrase "handling briefing for classified information" as opposed to "read-on to subcompartment." I suspect I may have been using the wrong vocabulary. Here are my specific questions:

(i) Is [redacted] a Special Access Program within the meaning of Chapter 8 of DoD 5200.1-R?
(ii) If [redacted] is not a SAP, what is the proper vocabulary to describe it?
(iii) What is the proper vocabulary to describe the [redacted]?

(b) Is there anything further I need to do, or a POC I need to follow up with, to obtain a copy of the acknowledgment I signed?

2. Security brief. What is the name of the Chief Security Officer with whom I should follow up to schedule a review of the briefing slides?

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3. Cover sheets.

(a) On Thursday, 15 December, Ms. [redacted] by way of Ms. [redacted], had sent two cover sheets in response to my request #3. Do I correctly understand you to say that those cover sheets are not the correct cover sheets, and a new one is being prepared?

(b) In Ms. [redacted] 15 December response to my email, she noted, "As a reminder when you mark the coversheet with the [redacted] it becomes classified." In September, Ms. [redacted] briefed me that although the full name of the compartment and subcompartment are classified Secret, the trigraphs themselves are unclassified. I also note that DoD 5200.1-R § C8.1.4.6.1 provides that, "Each DoD SAP shall be assigned an unclassified nickname." Can you clarify the rule for me? Is the rule:

(i) The trigraphs are classified. (If this is the rule, what is their classification level?)
(ii) The trigraphs are unclassified. (I.e., the suggestion that marking the cover sheet with the trigrams makes it classified was not accurate.)
(iii) The trigraphs are unclassified in isolation, but are classified in combination with a cover sheet. (If this is the rule, what is the classification of the cover sheet with the trigraphs on it?)

(c) My review of the Authorized Classification and Control Markings Register at 11 and DoD 5200.1-PH at 28 suggested to me that the appropriate page marking was "TOP SECRET/SPECIAL ACCESS REQUIRED" or "TOP SECRET[redacted]" and that the appropriate derivative paragraph marking was [redacted] I see now that this may not be correct, depending in part on the answer to Question 1(a), above. Can you please clarify the following for me?

(i) What is the appropriate header/footer marking for a document containing [redacted] information?
(ii) What is the appropriate paragraph marking for a paragraph containing [redacted] information?

(d) Who are the program managers for [redacted]?

4. Information from a HVD. For clarity, my question only relates to information I receive directly or indirectly (e.g., a statement to prior counsel) from an HVD. I understand you to say that in that situation, there is no identifiable OCA and the information is only "presumed classified." Can you please clarify the following for me?

(a) I read § 1.1(a)(1) of EO 13526 to say that information may only be classified if "an original classification authority is classifying the information." How does information become classified if there is no OCA?

(b) I read the Prosecution's brief (AE013B) in the al Nashiri case, in which they argue that "presumptively TS/SCI" means that, "Once the accused makes a statement, a competent OCA must review what the accused says, whether orally or in writing, and determine[] whether than information is classified or unclassified." Assuming that is accurate, who is that "competent OCA" for information in [redacted]?

(c) If there is no OCA, does that mean that I am exempt from the various requirements to mark a classified document with its OCA (e.g., DoD 5200.1-R § C5.1.3.1.3 or C5.2.3.1)?

(d) If there is no OCA, what date do we use to mark derivatively classified documents with the "declassify on" date per DoD 5200.1-R § C5.2.5.3? The rules for marking derivative documents without a "definitive date or event" in DoD 5200.1-R § C5.2.5.3.3.3 do not seem to apply, and there is no "Originating Agency" to use for "OADR."

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(e) Administrative Instruction 26, the 1987 OSD supplement to DoD 5200.1-R, contains some additional guidance, such as the mandatory OCA marking contained in § 4-104.1.1. Is Administrative Instruction 26 still operative, or is there a newer version which tracks the newer version of DoD 5200.1-R?

5. DoD classification challenge procedures. I asked Ms. [redacted] for a reference to the classification challenge procedures for information in [redacted]. You pointed me to DoD 5200.1-R § C4.9, which I appreciate. Could you please clarify further:

(a) I had believed (perhaps incorrectly) that classification challenges had to be directed to the OCA because only the OCA has authority to declassify under EO 13526 § 3.1(b). Do I correctly understand your answer to mean that DoD has authority to review and declassify information in [redacted]?

(b) Who is the "classifier of the information" in [redacted] within the meaning of DoD 5200.1-R C4.9.1.1?

(c) DoD 5200.1-R § C4.9.1.1 states that, "heads of the DoD Components shall establish procedures through which authorized holders of classified information within their organizations may challenge classification decisions." (See also DoD 5200.1-R § C4.9.2.) Could you please point me to or provide a copy of these procedures?

I know these are a lot of questions, but they are important to the proper administration of security protocols to information for which I am responsible. I greatly appreciate your attention to these issues, and wish you a happy holiday season.

Best regards,

James Connell
Office of Chief Defense Counsel

-----Original Message-----
From: Breslin, Michael J Mr OSD OMC Convening Authority
Sent: Friday, December 16, 2011 4:31 PM
To: Connell, James G III CIV OSD OMC Defense
Cc: [redacted] Ms OSD OMC Convening Authority
Subject: FW: Data handling questions ~~(S//NF)~~
Importance: High

Classification: ~~SECRET//NOFORN~~

Mr. Connell:

Ms [redacted] from this office forwarded to me your e-mail with data handling questions. After consulting with responsible offices, I offer the following answers to your questions:

1. The form that you signed on 23 September 2011 was an acknowledgment that you received the handling briefing for classified information. This office keeps copies of the forms and we can provide that to you.

2. With regard to your request for the PowerPoint slides, the National Programs office does not provide copies of those slides, but you may review them as needed. The Chief Security Officer in this office has these slides, so you can review them here if you prefer.

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3. The program managers are preparing a uniform cover sheet and Ms. [redacted] will provide it to you.

4. Your request for identification of the Original Classification Authority (OCA) does not lend itself to an easy answer. Information is classified by different OCAs depending on the source of the information and the level of classification. If you receive classified information from the government, the OCA should be on the first page of the document (if it is properly marked), and any document you prepare with information derived from that original source should have the same OCA. If you are marking a document with information received from an HVD, that information is only presumed classified (no OCA has reviewed it), therefore there is no identifiable OCA.

5. The DoD classification challenge procedures are found in DoD 5200.1-R, Sec. C4.9 et seq.

Hope this answers your questions.

Michael Breslin
Deputy Legal Advisor
Office of Military Commissions

-----Original Message-----
From: [redacted] Ms OSD OMC Convening Authority
Sent: Tuesday, December 13, 2011 3:37 PM
To: Breslin, Michael J Mr OSD OMC Convening Authority; Wilkins, Donna L CIV OSD OMC Convening Authority
Subject: FW: Data handling questions ~~(S//NF)~~
Importance: High

Classification: ~~SECRET//NOFORN~~

Good Afternoon,

Here is the email that I received from OMC-D that is requesting assistance from our office. Please see email below.

I will provide them with cover sheets.

Sincerely,

[redacted]
Security Manager
OSD/OMC
[redacted](O)

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense
Sent: Monday, December 12, 2011 11:44 AM
To: [redacted] Ms OSD OMC Convening Authority
Cc: [redacted] CTR OSD OMC
Subject: Data handling questions ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~

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Dear Ms. [redacted]

I hope you are doing well. We have met briefly, but as a reminder, I am civilian Learned Counsel for one of the 9/11 cases.

At a data handling brief at the Pentagon on Friday, one of my colleagues raised some questions about [redacted] to which I do not know the answers. At the brief, Ms. [redacted] informed my colleague that we should raise the questions to OMC Security, so I am turning to you for help in ensuring that we maintain proper security for all the information entrusted to us. Specific requests follow:

1. Please send me a copy of the [redacted] Non-Disclosure Agreement I signed on 23 September. I understand that the NDA is only FOUO, and I want to make sure that we comply with its requirements. I asked for a copy of the NDA when I signed it, but Ms. [redacted] said she did not have authority to provide one.

2. Please send me a copy of the PowerPoint brief for the [redacted] Again, we want to make sure that we comply with all the directives associated with the subcompartment. I understand that the brief itself is classified SECRET//NOFORN.

3. Please send me a PDF of the appropriate cover sheet for the [redacted] Ms. [redacted] informed Ms. [redacted] on Friday that subcompartment-specific cover sheets exist, and that we are supposed to use them for information within the subcompartment. This statement comes as a surprise to me; I thought that SF 703 was the proper cover sheet, and I want to make sure I and my team mark classified documents properly.

4. Please identify the Original Classification Authority for information within [redacted] I had thought that someone at CIA was the OCA, but information provided today suggests that someone at the National Security Council is the OCA. This is important, of course, because Administrative Instruction 26, OSD Supplement to DOD 5200.1-R §§ 4-104.1.1, 402.2 (Apr. 1987), requires us to mark derivatively classified documents with the identity of the OCA, identified by position title if possible. It is also important because only the OCA or his or her successor, supervisor, or delegee may declassify information under the terms of EO 13526 Sec. 3.1(b).

5. Please send me a reference to or copy of the procedures for classification challenges to information within [redacted] established pursuant to EO 13526 Sec. 1.8(b). These are important, among other reasons, because EO 13526 Sec. 1.8(a) imposes a duty upon us as authorized holders of classified information to seek declassification when we believe its status is improper.

I know that you are busy, and the holidays are always a difficult time of year. I am hopeful that the information I am requesting is close at hand, and will not impose too greatly on your time. Please don't hesitate to call me at [redacted] with any questions, and please accept my sincere thanks for your help. If you cannot honor these requests, I would appreciate it if you would let me know the proper channels.

Best regards,

James G. Connell, III
DERIVED FROM: Multiple Sources
DECLASSIFY ON: 12 Dec 2021

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 13 Dec 2021

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DECLASSIFY ON: 16 Dec 2021

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20 Dec 2021

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 06 Jan 2022

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 31 Jan 2022

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 14 Feb 2022

UNITED STATES OF AMERICA v. ABD AL-RAHIM HUSSEIN MUHAMMED ABDU AL-NASHIRI	**Defense Motion** TO ABATE PROCEEDINGS UNTIL SUCH TIME AS THE PROSECUTION IS PREPARED TO PROCEED 09 December 2011

1. **Timeliness**: This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905.

2. **Relief Requested**: The Defense respectfully requests that the Commission order the abatement of proceedings in this case until such time as counsel for the prosecution certify to the military judge that the government is prepared and able to comply with the discovery orders issued by the military judge. The defense further seeks relief from the military judge's order seeking a proposed litigation schedule by 4 January 2012. Finally, the defense asks that the delay of this case from Arraignment until the date of the Prosecution's certification be counted against the Government for speedy trial purposes.

3. **Overview**: Unbeknownst to defense counsel and the military judge, the government has discoverable information that cannot be produced to the defense because of the Special Access Program ("SAP") that is particular to this case. Email from Trial Counsel to the Judge's Clerk, 7 December 2011 ("Trial Counsel Email"), at 2 (Attachment A). Given that Mr. Al-Nashiri is a so-called "High Value Detainee," that is likely to describe most of the relevant evidence in this case.

The government's revelation is a concession that, contrary to its representations to the military judge at Mr. Al-Nashiri's arraignment, it is not actually prepared to proceed. It appears the prosecution has been operating under restrictions that prevent them from meeting basic discovery obligations respecting evidence that is central to the merits and sentencing phase of this capital case. While defense counsel do not deny their good faith when they say that they are

"working to solve that problem," it is highly inappropriate to allow this case to proceed until that problem is solved. The military judge should therefore order proceedings abated until the government certifies to this Commission that problem is resolved and that they are able and willing to provide discovery to the defense.

The defense asks that the merits of its motion for abatement be argued at the hearing scheduled for 17 January 2012. As soon as is practicable, however, the defense asks to be relieved from providing a proposed litigation schedule by 4 January 2012, pursuant to this Commission's order of 6 December 2011 (AE 26A). The defense is in no position to know how long the government will take in resolving this problem and cannot even begin to know how long the preparation of this case will take until the defense knows when evidence will be forthcoming.

Finally, the defense seeks to withdraw its waiver under R.M.C. 707, made on the record on 9 November 2011. Mr. Al-Nashiri's waiver was premised on the reasonable belief that counsel for the prosecution were not operating under restrictions that make the litigation of discovery matters impossible. The defense asks that any delay that is attendant to the prosecution's inability to proceed in this case be counted against the government for speedy trial purposes.

4. Burden of Proof: The defense bears the burden of persuasion as the moving party on this motion and the standard is proof by a preponderance of evidence. R.M.C. 905(c).

5. Facts:

a. Mr. Al-Nashiri was arrested in Dubai in October 2002 and turned over to U.S. custody. The government has disclosed that it held Mr. Al-Nashiri in top-secret "black sites" for four years. Central Intelligence Agency Inspector General, *Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003)*, 2003-7123-IG (May 7, 2004)

declassified and redacted on August 24, 2009 ("CIA-IG Report"). While in CIA custody, the CIA-IG Report publicly admits that CIA agents tortured Mr. Al-Nashiri in order to compel him to incriminate himself, including menacing him with loaded firearms and power tools, threatening to have his female relatives sexually assaulted in front of him and the use of the water torture known as the "waterboard." *Id.* at 42-44. The declassified CIA-IG Report is, however, heavily redacted and most of the facts surrounding Mr. Al-Nashiri's arrest, detention and treatment remain classified at the TS/SCI level.

b. Mr. Al-Nashiri was publicly transferred to the U.S. Naval Station at Guantanamo Bay in September 2006, where he remains in custody. He is classified as a "High Value Detainee."

c. On 30 June 2011, the government swore eight charges against Mr. Al-Nashiri for conducting spanning 1996-2002. The government's investigation into the allegations spanned continents and involved the direct participation of a number of government agencies.

d. The Convening Authority referred these charges for trial by military commission on 19 December 2008. Just prior to arraignment, the Convening Authority withdrew these charges without prejudice after the military judge denied the government's motion for a 120-day continuance. Then on 20 April 2011, the government swore to eleven charges against Mr. Al-Nashiri for the same conduct covered in the 2008 charges against him. On 15 September 2011, the government forwarded a second charging document to the Convening Authority.[1] And on 28 September 2011, the Convening Authority convened this military commission.

e. At the arraignment, the military judge squarely asked trial counsel when it would be ready to proceed. Trial counsel responded "We respectfully submit a trial date of February

[1] The first and second charging documents differed only in the identification of alleged victims, who were non-fatally injured, and how certain allegations were worded.

2nd, 2012, Your Honor." Unofficial/Unauthenticated Transcript of 803 Session held on 9 November 2011, at 170. Defense counsel sought and was granted an additional nine months to prepare. The prosecution conditioned consent to this delay on the defense's waiver of the speedy trial clock under R.M.C. 707. Trial counsel stated specifically that the government did not object "as long as it is hard and firm waiver under 707." *Id.* at 171. The defense then agreed to defer argument on discovery issues on the presumption that discovery would be turned over to the defense shortly after the arraignment and the military judge's issuance of the protective orders. *Id.* at 172. The defense's willingness to waive the speedy trial clock and the litigation of discovery issues was premised on the understanding that the government was prepared to comply with their discovery obligations, which given the nature of the case, necessarily includes the production of material that is classified at the TS/SCI level.

f. On 7 December 2011, trial counsel wrote the military judge an email in which the defense was copied. The purpose of this email was to lodge the government's objections to the military judge's proposed plan for expediting the review of classified discovery. Trial counsel informed the military judge and defense counsel of restrictions that the government has apparently been operating under:

> Additionally, the Commission may or may not be aware that the defense currently cannot receive information that is classified at a TS/SCI for the SAP applicable in this case. The government is and has been working to solve that problem but, as of now, material that is classified at the TS/SCI level cannot be produced to the defense.

Trial Counsel Email at 2. It was the first time that notice was given of the fact that "material that is classified at the TS/SCI level cannot be produced to the defense."

6. Argument:

Substantively, the revelation made by trial counsel creates three problems for the defense that need to be remedied before this case can proceed:

First, the defense asks for immediate relief from proposing a litigation schedule on 4 January 2011, pursuant to this Commissions order of 6 December 2011. The defense is in no position to know when discovery will be forthcoming. The government has been apparently laboring with this issue and any proposals by the defense as to the timing of this litigation would be nothing more than speculation.

Second, the defense asks for abatement of these proceedings until the government is actually ready to proceed with this case. The government acknowledges that this is a problem and claim they are working to have it resolved. But the defense cannot be expected to provide a remotely adequate defense if the government has no intention of ever providing discovery that will be central to Mr. Al-Nashiri's defense and whether the government will execute him. Abatement until the government actually succeeds in solving this problem is therefore necessary if the defense is to know how to prepare.

Third and finally, the defense asks to withdraw its waiver under R.M.C. 707 and asks for any delay brought about by the government's belated revelations to be counted against it for speedy trial purposes. This case has been pending with the same counsel for over three years. Mr. Al-Nashiri should not be required to suffer the burdens of the government's disorganization.

A. Because the Defense does not Know when the Government will be able to make TS/SCI Discovery Available, the Defense asks to be Relieved from Speculating about what Litigation Schedule is Reasonable.

On 6 December 2011, the Commission ordered the parties to submit proposed litigation schedules by 4 January 2012. The defense was prepared to meet this deadline until it received trial counsel's mail on 7 December 2011. Prior to this email, the defense and the Commission were led to believe that the only stumbling blocks that stood in the way of the government's full

compliance with its discovery obligations were the protective orders submitted to the Commission in October. Apparently, this is not the case.

The government claims that it is and has been working to resolve what it concedes to be a problem, insofar as the defense is barred from receiving any discovery that is classified at the TS/SCI level. Since this may describe most of the significant evidence in this case, the defense is not in any position to know when discovery will be forthcoming. The government could be working on this problem for years. The defense can only speculate. Once the government certifies on the record that it is ready to proceed as it is required to do under the Military Commissions Act, then the defense will have a better sense of what the litigation schedule in this case will look like. The defense therefore asks to be relieved from filing a proposed litigation schedule until the government can certified on the record when classified discovery will be made available to the defense.

B. Further Proceedings should be Abated until the Government is Actually Prepared to proceed with this Case.

Mr. Al-Nashiri does not ask for abatement lightly. He has been held in U.S. custody for over nine years. He has been a criminal suspect since at least 2003, when the United States named his a co-conspirator in a death eligible indictment in the Southern District of New York that relates to the very same charges brought against him here. *United States v. al-Badawi, et al.*, No. 98-CR-1023 (S.D.N.Y. unsealed May 15, 2003). Mr. Al-Nashiri has been facing military commission charges for three-and-a-half years. This delay has prejudiced Mr. Al-Nashiri in incalculable ways and the further delay that would result from abatement would only compound this prejudice. The government, however, has left no other choice.

The government has had an enormous head start in the preparation of its case. And there has been an extensive back and forth over the past three months respecting discovery between

counsel and the military judge. Only now, however, have counsel for the prosecution thought to mention that regardless of what the military judge may order, they are unable to provide certain discovery.

This is the capital trial of a so-called "High Value Detainee." As the military judge is well aware from previous filings, *everything* Mr. Al-Nashiri says is presumptively TS/SCI. Essential to the merits of Mr. Al-Nashiri's case and in mitigation of the death sentence that the government seeks is the evidence of *why* everything Mr. Al-Nashiri says is classified as TS/SCI.

The consistent rationale for diverting cases like Mr. Al-Nashiri's from the federal courts to military commissions has been the special protections in place to ensure the protection of classified information. Congress went to great lengths to ensure that counsel would be qualified to receive and safeguard the classified information that these cases obviously contemplate. The statute requires that civilian counsel be eligible for a security clearance and further requires Mr. Al-Nashiri to retain uniformed judge advocates on his defense team. 10 U.S.C. § 949c(b).

Congress did not create military commissions to short-change due process. The Military Commissions Act is clear. Mr. Al-Nashiri's "opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution." 10 U.S.C. § 949j(a)(2). For classified information, the defense is entitled to production so long as the information is "noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing, in accordance with standards generally applicable to discovery of or access to classified information in Federal criminal cases." 10 U.S.C. § 949p-4(a)(2). As in a federal court, the government ultimately has the choice of prosecuting Mr. Al-Nashiri in conformity with due process or invoking its privilege over classified information that is relevant to his defense. It

cannot seek prosecution and a death sentence while at the same time withholding entire classes of evidence that will be central to this case. *Jencks v. United States*, 353 U.S. 657, 671 (1957) ("The rationale of the criminal cases is that, since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense.").

It is the duty of the military judge to determine whether evidence is material to the defense and if it is, its production is necessary. Yet, now we learn that evidence cannot be turned over to the defense at this time because it is classified at the TS/SCI level, regardless of any order by the military judge. No consideration of relevance. No consideration of necessity. No consideration of the interests of justice. The government's revelation is a declaration that an entire body of known, relevant evidence is currently unavailable. And the fact that it could be made available at any time by the government, requires the government to make a choice between "whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of state secrets and other confidential information in the Government's possession." *Jencks*, 353 U.S. at 672.

The trial counsel's email does indicate that the government is "working to solve the problem" and we trust that they are doing so in good faith. But this case cannot be allowed to proceed when the government offers no prospect that the problem will be solved at any time in the near future. Indeed, given the amount of time the government has had to ready its case for litigation, Mr. Al-Nashiri very well may be on the eve of trial or sentencing before the government solves the problem, if ever. Defense counsel need a full picture of the available evidence if they are to investigate the merits of Mr. Al-Nashiri's defense and mitigation case

with any effectiveness or to file motions that relate to the viability of the charges or discovery. Insofar as the government chooses to make these materials unavailable, the appropriate remedy is abatement until they have solved this acknowledged problem. *Cf.* R.M.C. 703(f).

C. Delay Caused by the Government's New Revelations should be Counted Against it for Speedy Trial Purposes.

The defense cannot trust in the same good faith, however, with respect to the government's repeated representations that it is ready to proceed. Clearly, it is not.

On numerous occasions, both in 802 conferences, by email and by their silence on the record, trial counsel have represented to defense counsel and this Commission that they are prepared to comply with their discovery obligations. The only thing that has postponed their full compliance thus far, we have been led to believe, is this Commissions' issuance of two protective orders.

At arraignment, the military judge squarely asked trial counsel when it would be ready to proceed. Trial counsel represented that the government would be ready to go to trial by 2 February 2012 and then insisted that any delay be conditioned on the defense's waive Mr. Al-Nashiri' rights under R.M.C. 707. Under the reasonable belief that trial counsel was being candid with the tribunal and that discovery would be forthcoming as soon as the ink on the protective orders was dry, defense counsel were willing to make such a waiver. This reasonable belief, however, was an error.

All of Mr. Al-Nashiri's defense counsel have made the investment of time and resources to obtain TS/SCI security clearances, as did his government-approved mitigation specialist. The defense has done all it can do to expedite the litigation schedule. Now it is the government's turn.

The defense's consent to delay under R.M.C. 707 was induced by knowing representations by trial counsel. The defense and the Commission were led to believe on the record that the government was ready and willing to proceed with this case under the Military Commissions Act. The defense believed more time was necessary so that it could be ready for trial, not so the government could be prepared to provide discovery.

Trial counsel conceded that its inability to provide any TS/SCI discovery is a problem. They claim they are doing what they can to resolve it. But if they were not prepared to meet their discovery obligations, then they were not prepared to try this case. They should not have preferred charges or, at a minimum, have requested postponement of referral until they were actually prepared to move forward.

The government must bear the burden of its poor planning and organization, especially when it belatedly revealed critical facts to defense counsel and the Commission about its ability and willingness to proceed. *Doggett v. United States*, 505 U.S. 647, 656 (1992); *see also United States v. Goode*, 38 C.M.R. 382 (C.M.A. 1968) (delay in obtaining records from another Army base counted against the government for speedy trial purposes); *United States v. Kuelker*, 20 M.J. 715, 716 (N.M.C.M.R. 1985) ("the need to obtain crucial evidence in the custody of another agency of the United States is a common problem and therefore associated delay" should be counted against the government). The defense therefore asks to withdraw its consent to delay under R.M.C. 707 and to have any further delay brought about by the government's efforts to resolve this newly revealed problem be counted against it for speedy trial purposes.

7. **Oral Argument**: The defense requests oral argument on this motion at the January 17th hearing.

8. **Witnesses**: N/A

9. Conference with Opposing Counsel: The defense has notified trial counsel about this motion.

10. List of Attachments:

A. Email from Trial Counsel to the Judge's Clerk, 7 December 2011

/s//
STEPHEN C. REYES
LCDR, JAGC, USN
Detailed Defense Counsel

//s//
ALLISON C. DANELS, Maj, USAF
Assistant Detailed Defense Counsel

//s//
MICHEL PARADIS
Assistant Detailed Defense Counsel

//s//
RICHARD KAMMEN
Civilian Learned Counsel

CERTIFICATE OF SERVICE

I certify that on 9 December 2011, I electronically filed the forgoing document with the Clerk of the Court and served the forgoing on all counsel of record by e-mail.

//s//
STEPHEN C. REYES
Lieutenant Commander
JAGC, US Navy
Detailed Defense Counsel

From: [redacted]
To: [redacted]
Subject: RE: Proposed Discovery Proceedure for US v. Al Nashari
Date: Wednesday, December 07, 2011 4:11:05 PM

Major [redacted]

We received your email regarding the Commission's proposed discovery procedure where the government would produce to the defense its proposed classified summaries before Judge Pohl completes his 505 review. The government respectfully submits the Commission's proposal does not comport with MCRE 505, it does not adequately protect national security, and it prejudices the government. The government therefore objects to the Commission's proposed discovery procedure.

The government cannot produce the classified summaries to the defense until Judge Pohl signs two protective orders pending with the Commission: (1) the protective order governing classified information and (2) the protective order filed pursuant to M.C.R.E. 505. The protective order governing classified information must be signed before the government produces its summaries to the defense because the summaries themselves remain classified. The protective order filed pursuant to M.C.R.E. 505 must be signed before the government produces its summaries to the defense because, otherwise, the government effectively would forfeit its ability to balance national security interests with the prosecution of the accused. The 505 protective order states the government has met its discovery obligations with regard to the specific information submitted to the Commission for approval. Should the Commission find that a particular summary is insufficient to satisfy the government's discovery obligations, thus preventing the Commission from signing the 505 protective order, the government may choose among several options that could include not producing the summary to defense. If that is the case, the government may then choose to propose a different summary for approval by the Commission (in lieu of the insufficient one), it may substitute a statement admitting relevant facts that the classified information or material would tend to prove, or it may modify the charges on which the accused will be tried, thereby narrowing the scope of discovery on a particular subject. See 10 U.S.C. § 949p-4(b).

If the proposed discovery procedure were followed, the government would produce classified summaries to the defense before the Commission finds that the government satisfied its discovery obligations. If the Commission finds that the government has not met its discovery obligations, the government would have already produced information to the defense and thus not be able to consider options that include not producing the problematic summary at all. Were the government to find that, on balance, it should not produce the summary, the summary would have already been provided to the defense. The government would have produced classified information that the defense has no need to know, thus violating the protective order governing classified information. What Rule 505 contemplates, and what this proposal omits, is for the original classification authorities of any information the MJ might propose to expand to have an opportunity to review the MJ's proposed amendments and to voice their objection or propose an alternative through trial counsel.

Additionally, the Commission may or may not be aware that the defense currently cannot receive information that is classified at a TS/SCI for the SAP applicable in this case. The government is and has been working to solve that problem but, as of now, material that is classified at the TS/SCI level cannot be produced to the defense.

Finally, the government notes the request by LCDR Reyes that the defense be allowed, after receipt of the summaries, to make any future objections to the military judge in person and ex parte regarding the adequacy of the proposed summaries. This proposal also does not comport with Rule 505, and the government objects to any such procedure being adopted by the Commission.

Please let me know whether this response is sufficient, or whether Judge Pohl prefers that we file a formal objection to his proposal.

Thank you,
Tony

Anthony W. Mattivi
Trial Counsel/Team Chief - USS COLE Prosecution
[redacted]

-----Original Message-----
From: [redacted] MAJ OSD OMC Trial Judiciary [redacted]
Sent: Tuesday, December 06, 2011 2:13 PM
To: [redacted]
Subject: Proposed Discovery Proceedure for US v. Al Nashari

Classification: UNCLASSIFIED

COUNSEL,

There is a great deal of 505 material that the judge is currently reviewing to ensure the proposed summaries are sufficient. Once the protective order is signed and in order to expedite discovery, the judge proposes that the government provide defense now with the current redacted summaries. Once the judge completes his 505 review, he will authorize supplemental disclosure of additional material he deems should be given to the defense. Does either side object to this procedure? Please reply NLT 8 Dec 11.

THANKS

[redacted]

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA

UNITED STATES OF AMERICA v. ABD AL RAHIM HUSSAYN MUHAMMAD AL NASHIRI	**AE 025** **Government Response** To Defense Motion to Abate Proceedings Until Such Time as the Prosecution is Prepared to Proceed 21 December 2011

1. Timeliness.

This response is filed timely pursuant to Military Commissions Trial Judiciary Rule of Court 3.7.c(1).

2. Relief Sought.

The government respectfully requests the Commission deny AE 025, the defense motion to abate these proceedings. Further, in light of the defense request to withdraw its waiver of speedy trial, the government requests the Commission set a firm trial date of 2 February 2012. Finally, the government does not oppose the defense request for relief from the Commission's order to submit proposed litigation schedules, but the government intends to submit a proposed litigation schedule that adheres to the February 2012 trial date. The government further requests that Attachments B-F remain UNDER SEAL.

3. Overview.

The defense's request for abatement of these proceedings is premature and therefore it should be denied. The defense has not been denied access to any discovery to which it is currently entitled. Though abatement may be appropriate when the defense has been denied such access, abatement is only appropriate after other measures, such as continuances, have failed to

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result in the production of discovery. Moreover, as of the date of this filing, the defense is not entitled to receive any discovery for which they do not have the requisite security clearances. Any request for relief based on denial of access to government information is therefore premature.

The prosecution has identified arguably discoverable materials that include Special Access Program (SAP) information. This information is the subject of the government's motion for a protective order pursuant to the M.C.A., 10 U.S.C. § 949p-4, and M.C.R.E. 505 (CLASSIFIED/SEALED), 14 November 2011 (AE 22) (*hereinafter* M.C.R.E. 505 Motion). *See* AE 022. If the proposed summaries attached to the government's motion are approved by the Commission pursuant to M.C.R.E. 505, that approval will trigger a need to provide defense counsel with access to certain SAP information. The government is working diligently to ensure that this access will be granted in a timely manner and prior to the defense's need to receive this SAP information.

The defense also seeks to withdraw its waiver under Rule 707.[1] Without such waiver, the government is required to bring the accused to trial within 120 days of the service of charges. The government assumes that the defense wishes to comply with the rules, as such, to set a trial date of no later than 2 February 2012. The defense also must wish to waive any motions not raised by that date and any discovery disputes not resolved by that date. If the defense is permitted to withdraw the waiver, the government suggests the Commission set this case for trial beginning 2 February 2012. The government requests this be a firm setting, so the government may begin making arrangements to have the necessary witnesses and evidence present for trial.

[1] Though the defense seeks to withdraw its R.M.C. 707 waiver and corresponding request for a continuance, the defense does not in fact demand a trial within 120 days; rather, it seeks to abate the proceedings. The defense therefore seeks to simultaneously withdraw its waiver and seek a delay of the trial. Thus, the requested relief is not only inconsistent with the law but is also logically inconsistent.

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Nonetheless, the 30-day period between the arraignment and the date of the defense's motion should be excluded for R.M.C. 707 speedy trial purposes as resulting from the conduct of the accused.

Finally, the defense seeks relief from the Commission's Docketing Order (AE 023A) that, prior to 4 January 2012, the parties provide a proposed litigation schedule. The government has no objection to the defense not proposing a litigation schedule. However, the government intends to provide the Commission with a litigation schedule proposing a trial date of 2 February 2012.

4. Burden of proof.

As the moving party, the defense must demonstrate by a preponderance of the evidence that the requested relief is warranted. R.M.C. 905(c)(1)-(2).

5. Facts.

Abd Al Rahim Hussayn Muhammad Al Nashiri ("Nashiri") is charged with multiple offenses under the Military Commissions Act of 2009 (M.C.A.), 10 U.S.C. §§ 948a, *et seq.*, relating to his participation in the attack on USS COLE (DDG 67) on 12 October 2000, and MV Limburg on 6 October 2002, and in the attempted attack on USS THE SULLIVANS (DDG 68) on 3 January 2000. The attack on the USS COLE (DDG 67) resulted in the deaths of 17 United States Sailors, injury to at least 37 additional United States Sailors, and significant property damage.

This case involves information classified at the TOP SECRET//SENSITIVE COMPARTMENTED INFORMATION (TS/SCI) level, including a very limited amount of information related to one or more SAPs. The government has invoked the National Security Privilege over the SAP information. M.C.R.E. 505 Motion, Attachment B, at ¶¶ 89-90 (AE 22).

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To access SAP information, an individual must have a TS security clearance with SCI eligibility and must have been granted affirmative authorization to receive information within that particular SAP. Only individuals with a need-to-know SAP information will be granted such authorization.

At present, no member of the defense team has a need-to-know SAP information. Consequently, no member of the defense team has been authorized to receive SAP information from the government. Nonetheless, to facilitate communication between members of the defense team and the accused, various executive branch officials granted members of the defense team limited security approval to communicate frankly with their client, even if their client may be in position to provide members of the defense team with SAP information.

The defense has been aware of its limited access to SAP information since at least 2008. On or after that date, each member of the defense team acknowledged in writing that he or she is not entitled to receive SAP information from the government. The written acknowledgement states:

> Due to the necessity for HVD counsel to speak frankly with their clients for the purpose of representing them in the OMC process, counsel staff is being provided limited security approvals that authorize them to receive TS/SCI information from their clients. Counsel's limited security approval for the purpose of receiving compartmented information from their clients does *not* authorize them to receive compartmented documents or information from the U.S. Government.

See Attachments C-G (emphasis in original documents).

The prosecution has identified arguably discoverable material that contains SAP information. The prosecution has claimed the National Security Privilege over this information and it has prepared summaries of the material for the Commission's consideration pursuant to M.C.R.E. 505. Some of the proposed summaries are releasable only to persons with the appropriate SAP access. *See generally* M.C.R.E. 505 Motion (AE 22). As of the date of this

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filing, the Commission has not ruled on the prosecution's motion under M.C.R.E. 505; therefore, no SAP material has been approved or authorized for release to the defense.

At the arraignment of the accused, the government told the Commission that the government is prepared to proceed to trial on 2 February 2012. Aware of their limited access to SAP information, the defense waived the right of the accused under R.M.C. 707, and it requested that the trial be continued until no earlier than 9 November 2012; the Commission then set a trial date of 9 November 2012.

6. **Law and Argument.**

I. There is no legal justification to abate these proceedings.

Abatement of proceedings is appropriate under exceedingly limited circumstances. With respect to discovery, abatement is only appropriate when the defense has been denied access to evidence and three conditions are met: (1) the defense is entitled to the evidence; (2) the evidence is "of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such evidence;" and, (3) other remedies, such as continuances, have failed to result in the production of evidence. R.M.C. 703(f)(1)-(2); R.M.C. 703(f)(2)(A)-(B). In this case, none of these three conditions have been met.

First, under M.C.R.E. 505, the defense is entitled to evidence that is "relevant, necessary and noncumulative." R.M.C. 703(f), discussion. The defense is entitled to *classified* evidence only if such evidence is also "helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing." R.M.C. 701(c), discussion (citing *United States v. Yunis*, 867 F.2d 617 (D.C. Cir. 1989) (to be discoverable, classified information must be more than just relevant; it must be actually helpful to the defense); *see also* 701(a)(2) ("The defense's right to examine classified evidence … is subject to [the National Security Privilege protecting classified

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information] and Mil. Comm. R. Evid. 505 and 506 as applicable."); M.C.R.E. 505(f)(1)(B). In some instances, the government may provide the defense with classified information in its original form, without implementing the protections of M.C.R.E. 505. In other instances, the government may identify potentially discoverable classified information that requires additional protection from disclosure.

When the government identifies potentially discoverable material requiring application of the M.C.R.E. 505 process, the government may invoke the National Security Privilege over the information. R.M.C. 701(f); M.C.R.E. 505. Once the government has done so, the government may seek to satisfy its discovery obligations by producing substitutes for the classified information rather than the classified source material. M.C.R.E. 505(f)(2). The military judge determines whether the government's proposed substitutes satisfy the government's discovery obligations using procedures set forth in M.C.R.E. 505. If the military judge does not approve a proposed substitute, the prosecution has an opportunity to propose an alternative substitute.[2] Until the military judge approves the government's proposed substitute for the privileged classified information, the defense is not entitled to receive the classified information at issue.[3] Therefore, with respect to discovery of classified information over which the government has invoked the National Security Privilege, abatement is not an appropriate remedy under R.M.C. 703(f)(1)-(2) until *after* the M.C.R.E. 505 process has been completed and other forms of relief

---

[2] Like the Classified Information Procedures Act (CIPA) procedures on which M.C.R.E. 505 is modeled, this process balances the accused's right to obtain evidence with the need to protect national security.

[3] This is true regardless of security clearances held by members of the defense because, prior to the determination under M.C.R.E. 505 that the defense is entitled to the classified information in discovery, no member of the defense has a "need-to-know," as required for access to any classified information. *See* Executive Order 13526, Classified National Security Information (December 29, 2009) § 4.1(a)(3). *See also*, AE 013E.

Furthermore, even if the military judge determines that the only information that satisfies the government's discovery obligations is the classified source material itself, the defense is still not entitled to the information under R.M.C. 701(c). Rather, the government may decide to amend the charges, stipulate to certain facts or dismiss all the charges to prevent release of the classified source material to the defense.

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have failed to result in the production of discoverable information that is actually relevant and helpful to the defense.

In this case, the government has claimed the National Security Privilege over certain SAP information and it has filed a motion under M.C.R.E. 505 invoking the privilege and proposing substitutes for discovery. To date, the Commission has issued no rulings approving the proposed substitutes for the underlying classified information or issuing the necessary protective order. Until the Commission issues an order authorizing use of the proposed substitutions, the defense is not entitled to receive any information that is the subject of the government's motion, including SAP information, regardless of the status of security clearances held by the defense team. The first condition for abatement of proceedings is therefore not met.

Only after the defense is provided access to approved summaries may the defense argue the information contained within the summaries is insufficient to satisfy the government's discovery obligations and only then may the defense seek other relief from the government. Therefore, the defense has not even made a threshold showing at this early stage regarding the second and third conditions that must be met before the Commission may order abatement of the proceedings. The motion by the defense to abate the proceedings is therefore premature.

The government will comply with all discovery orders and produce all discovery to which the defense is entitled after all necessary protective orders have been issued by this Commission. R.M.C. 701(a)(2) and (b) (all discovery to which the defense is entitled is subject to M.C.R.E. 505 and 506, which authorizes the issuance of protective orders); R.M.C. 701(e) (disclosure of exculpatory evidence is subject to M.C.R.E. 505 and 506); R.M.C. 703(f)(1) (production of evidence is subject to M.C.R.E. 505 and 506); M.C.R.E. 304(c) (discovery of materials usually produced prior to arraignment is subject to the requirements of M.C.R.E. 505

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and 506). To date, although the protective order for classified information has been issued, the protective order specific to the M.C.R.E. 505 motion has not been issued.

II. The defense misstates the amount of SAP information involved in this case.

The SAP information in this case forms none of the government's evidence against the accused and a very small part of all the information likely to be produced in discovery. At the outset of its pleading the defense claims that highly classified SAP material will "likely [be] most of the relevant evidence in this case." Def. Br. at 1. In reality, however, SAP information makes up just a small fraction of the discovery materials in this case, and even less of the relevant evidence.

The evidence the government expects to present in its case-in-chief is entirely unclassified, which means the government does not expect to present any evidence in this case that is classified at the TS/SCI level or which falls within an SAP. The Commission signed the protective order for classified information on 8 December 2011. On 15 December 2011, the government provided 17,219 pages of classified discovery to the defense. The government is prepared to disclose approximately 52,000 pages of additional discovery as soon as the Commission signs the government's proposed protective order for unclassified information. These 52,000 pages consist primarily of unclassified information. In response to a discovery request submitted by the defense, the government is reviewing and assembling additional potential discovery materials—most of which are unclassified.

III. Absent a waiver by the defense under R.M.C. 707, the Commission should set a trial date of 2 February 2012.

The defense seeks to withdraw its waiver of rights under Rule 707. In doing so, the defense effectively asks to withdraw its request to continue the trial to 9 November 2012 and agrees to proceed to trial no later than 2 February 2012. The defense then necessarily waives all

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motions not brought by that date, including discovery motions, and access to any discovery not requested and ordered to be produced by that date.

Absent a waiver of R.M.C. 707, this case must be brought to trial within 120 days of service of charges. M.C.R.E. 707(a)(2). In calculating the date on which the speedy trial clock runs, delays resulting from continuances are excluded. R.M.C. 707(b)(4)(E); 707(c). Additionally, delay attributable to the conduct of the accused is excludable. R.M.C. 707(c); *United States v. Dies*, 45 M.J. 376, 378 (C.A.A.F. 1996). This latter rule reflects the principle that the right to a speedy trial may not be used tactically by a defendant to thwart the interests of the public in bringing accused criminals to trial. *Barker v. Wingo*, 407 U.S. 514, 531 (1972). A delay is attributable to the conduct of the accused if that conduct prevented the government from proceeding to trial as it otherwise would have. *Dies*, 45 M.J. at 378 (because unauthorized absence prevents the government from preparing for and proceeding to trial, delay during period of unauthorized absence is excludable for speedy trial purposes).

In this case, from service of charges, the defense requested a delay of 14 days from the original arraignment date. The Commission attributed that delay to the defense. Second, a delay of at least 30 days is excludable from the government as the delay resulted from the accused's representation to the Commission and the government that the accused does not wish to proceed to trial until November 2012 at the earliest.[4] At the accused's arraignment, the government informed the Commission that it was prepared to proceed to trial on 2 February 2012. The accused responded by requesting a trial date no earlier than one year from the arraignment. The Commission set a trial date of 9 November 2012 to accommodate the accused. Since then, the government has been moving diligently toward trial. Nonetheless, the government has not been

[4] As the defense requests oral argument on this motion in January, the government reserves the right to seek exclusion of additional delay based on the defense demand for oral argument, which perpetuates the uncertainty as to a trial date and hinders the government's ability to secure logistical arrangements for trial.

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making the specific preparations it would have been making had the Commission scheduled the trial for 2 February 2012. In refraining from making these preparations, the government relied upon the accused's representation before the Commission. The government received no notice contradicting the defense's representations until its 9 December 2011 motion to abatement these proceedings. Therefore, although the government wishes to proceed to trial on 2 February 2012, delay equal to at least the 30-day period between the date of arraignment and the date of the defense motion is attributable to the accused and should be excluded from the 120-day calculation under R.M.C. 707(c). The R.M.C. 707 time frame therefore does not expire until 12 March 2012. To hold otherwise would encourage the tactical use of the speedy trial provision contrary to longstanding U.S. Supreme Court precedent precluding such use. *Barker*, 407 U.S. at 531.

The defense argues that any period between service of charges and defense counsel obtaining access to SAP information should be counted against the government for speedy trial purposes, regardless of its requests for delay and conduct of the accused. In its argument in support of this position, the defense accuses the government of a lack of candor with the tribunal and only belatedly revealing to the defense and the Commission that the defense is not entitled to receive SAP information connected with this case. Def. Br. at 10. The defense also claims that the limits on defense access to SAP information were previously "unbeknownst" to members of the defense team. *Id.* at 1. The defense then argues that because of this lack of candor, any delay from the date of arraignment should be assigned to the government for R.M.C. 707 calculation purposes.

This argument is not consistent with the facts and is unsupported by legal authority. First, as explained in Section I above, there has been no delay in this case attributable to the

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defense's lack of access to SAP information. Until the M.C.R.E. 505 process is complete with respect to SAP information, the defense is not entitled to such information and therefore has no reason to access SAP information. Therefore, the lack of authorization to receive SAP information from the government at this time has not resulted in any delay.

Second, the facts clearly demonstrate that the defense was well aware of its limitations with respect to SAP information as early as 2008. The government had not only disclosed the limitations to the defense, but members of the defense team signed documents affirmatively acknowledging that they understood the limits. If the defense believed these limits prevented the government from being ready to provide "most" of the relevant evidence in the case in a timely fashion, it was incumbent upon the defense to raise this with the Commission. Instead, the defense waited until the government apprised the Commission of the defense's limited access to SAP information to claim surprise, withdraw the waiver of speedy trial, and demand abatement of the proceedings. These facts offer no basis for relief.

IV. The government does not object to the defense foregoing its opportunity to submit a proposed litigation schedule.

The defense seeks relief from the Commission's Docketing Order (AE 023A) that the parties provide a proposed litigation schedule by 4 January 2012. The government does not object to the defense foregoing its opportunity to submit a proposal trial schedule. In light of the withdrawal of the R.C.M. 707 waiver, however, the government intends to submit a proposed litigation schedule that adheres to the 120-day speedy trial requirement.

7. Conclusion.

This Military Commission should deny the defense's request to abate the proceedings. If the defense withdraws its R.M.C. 707 waiver, the Commission should exclude at least 30 days from the 120-day trial clock as attributable to the conduct of the accused. Additionally, the

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Commission should find that waiving the speedy trial provision of R.M.C. 707 effectively waives all motions and discovery matters not raised by that date. Finally, the Commission should set a trial date of 2 February 2012.

8. Oral Argument.

In light of the accused withdrawing his waiver of speedy trial, the government respectfully requests oral argument as soon as practicable, so that the parties can begin preparations for trial commencing on or about 2 February 2012.

9. Witnesses and Evidence.

See Attachments C-G.

10. Additional Information.

The government has no additional information.

11. Attachments.

A. Certificate of Service

B. Under Secretary of Defense for Intelligence, Office of National Programs, Data Handling Brief, OMC Defense (March 2011) (CLASSIFIED) (filed *in camera* under seal).

C. Acknowledgement Letter, Office of Military Commissions SCI Briefing for High Value Detainee, Defense Counsel Team Members (Mr. Kammen), dated 15 September 2008 (filed *in camera* under seal).

D. Acknowledgement Letter, Office of Military Commissions SCI Briefing for High Value Detainee, Defense Counsel Team Members (LCDR Reyes), dated 14 July 2008 (filed *in camera* under seal).

E. Acknowledgement Letter, Office of Military Commissions SCI Briefing for High Value Detainee, Defense Counsel Team Members (Maj. Danels), dated 7 January 2010 (filed *in camera* under seal).

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F. Acknowledgement Letter, Office of Military Commissions SCI Briefing for High Value Detainee, Defense Counsel Team Members (Mr. Paradis), dated 5 May 2011 (filed *in camera* under seal).

G. Proposed Order Placing Attachment B-F Under Seal.

Respectfully submitted,

//s//

Anthony W. Mattivi
CDR Andrea Lockhart, JAGC, USN
Justin T. Sher
Trial Counsel

Mark Martins
Chief Prosecutor

Office of the Chief Prosecutor
Office of Military Commissions
1610 Defense Pentagon
Washington, D.C. 20301

APPELLATE EXHIBIT 025A
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CERTIFICATE OF SERVICE

I certify that on the 21st day of December, 2011, I filed the **AE 025 Government Response** To Defense Motion to Abate Proceedings Until such Time as the Prosecution is Prepared to Proceed, with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//
Anthony W. Mattivi
Trial Counsel
Office of the Chief Prosecutor
Office of Military Commissions

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Attachment A, Page 1 of 1

Attachment H
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ROUTING			
TO:	NAME AND ADDRESS	DATE	INITIALS
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	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

REMARKS:

FROM: NAME, ADDRESS, AND PHONE NO.	DATE

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~~SECRET//NOFORN~~

Connell, James G III CIV OSD OMC Defense

From: [redacted] Ms OSD OMC Convening Authority
Sent: Thursday, December 15, 2011 1:09 PM
To: [redacted] Ms OSD OMC Convening Authority; Connell, James G III CIV OSD OMC Defense
Cc: [redacted] CTR OSD OMC
Subject: RE: Data handling questions ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~

Hi Sir,

Ms. [redacted] is bringing back coversheets for your office to use. As a reminder when you mark the coversheet with the [redacted] it becomes classified. I'm also trying to find SAP coversheets also if they are available which they aren't sometimes.

Ms. Wilkins is working on 4. and 5. for me to try to get that information because it is not only 1 person or agency, but a few agencies.

I have requested information about how to request a copy of the NDA Statement for [redacted] you signed. I'm waiting for a response.

Sincerely,

[redacted]
Security Specialist
[redacted]

-----Original Message-----
From: [redacted] Ms OSD OMC Convening Authority
Sent: Monday, December 12, 2011 6:54 PM
To: Connell, James G III CIV OSD OMC Defense
Cc: [redacted] CTR OSD OMC
Subject: RE: Data handling questions ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~
Hi Sir,

I can provide you the coversheets that you need to use.

I can provide you the regulation regarding OCA, but I will have to do research for the specific one that you need.

Ms. [redacted] is correct that she doesn't have the authority to provide you the copy of the NDA so I need to find out who does have that authority.

Give me a few days to do research on some of the other items you are requesting and let you know who you need to contact .

Sincerely,

~~SECRET//NOFORN~~ 1

Attachment K
Page 1 of 3

~~SECRET//NOFORN~~

[redacted]
OSD/OMC
[redacted]

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense
Sent: Monday, December 12, 2011 11:44 AM
To: Woodard, Teresa Ms OSD OMC Convening Authority
Cc: [redacted] CTR OSD OMC
Subject: Data handling questions ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~

Dear Ms. [redacted]

I hope you are doing well. We have met briefly, but as a reminder, I am civilian Learned Counsel for one of the 9/11 cases.

At a data handling brief at the Pentagon on Friday, one of my colleagues raised some questions about [redacted] to which I do not know the answers. At the brief, Ms. [redacted] informed my colleague that we should raise the questions to OMC Security, so I am turning to you for help in ensuring that we maintain proper security for all the information entrusted to us. Specific requests follow:

1. Please send me a copy of the [redacted] Non-Disclosure Agreement I signed on 23 September. I understand that the NDA is only FOUO, and I want to make sure that we comply with its requirements. I asked for a copy of the NDA when I signed it, but Ms. [redacted] said she did not have authority to provide one.

2. Please send me a copy of the PowerPoint brief for the [redacted] Again, we want to make sure that we comply with all the directives associated with the subcompartment. I understand that the brief itself is classified SECRET//NOFORN.

3. Please send me a PDF of the appropriate cover sheet for the [redacted] Ms. [redacted] informed Ms. [redacted] on Friday that subcompartment-specific cover sheets exist, and that we are supposed to use them for information within the subcompartment. This statement comes as a surprise to me; I thought that SF 703 was the proper cover sheet, and I want to make sure I and my team mark classified documents properly.

4. Please identify the Original Classification Authority for information within [redacted]. I had thought that someone at CIA was the OCA, but information provided today suggests that someone at the National Security Council is the OCA. This is important, of course, because Administrative Instruction 26, OSD Supplement to DOD 5200.1-R §§ 4-104.1.1, 402.2 (Apr. 1987), requires us to mark derivatively classified documents with the identity of the OCA, identified by position title if possible. It is also important because only the OCA or his or her successor, supervisor, or delegee may declassify information under the terms of EO 13526 Sec. 3.1(b).

5. Please send me a reference to or copy of the procedures for classification challenges to information within [redacted] established pursuant to EO 13526 Sec. 1.8(b). These are important, among other reasons, because EO 13526 Sec. 1.8(a) imposes a duty upon us as authorized holders of classified information to seek declassification when we believe its status is improper.

~~SECRET//NOFORN~~

I know that you are busy, and the holidays are always a difficult time of year. I am hopeful that the information I am requesting is close at hand, and will not impose too greatly on your time. Please don't hesitate to call me at [redacted] with any questions, and please accept my sincere thanks for your help. If you cannot honor these requests, I would appreciate it if you would let me know the proper channels.

Best regards,

James G. Connell, III
DERIVED FROM: Multiple Sources
DECLASSIFY ON: 12 Dec 2021

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 12 Dec 2021

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 15 Dec 2021

Connell, James G III CIV OSD OMC Defense

From: Gunning, Christine E (JMD) [redacted]
Sent: Tuesday, January 31, 2012 12:15 PM
To: Connell, James G III CIV OSD OMC Defense
Cc: Thurschwell, Adam Mr OSD OMC Defense; Thomas, Sterling R Maj OSD OMC Defense; [redacted] SSgt OSD OMC Defense; CSO_GTMO_Mailbox (JMD); [redacted] CTR OSD OMC
Subject: RE: Filing tomorrow

Perfect, thank you.

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense [redacted]
Sent: Tuesday, January 31, 2012 12:03 PM
To: Gunning, Christine E (JMD)
Cc: Thurschwell, Adam Mr OSD OMC Defense; Thomas, Sterling R Maj OSD OMC Defense; [redacted] SSgt OSD OMC Defense; CSO_GTMO_Mailbox (JMD); [redacted] CTR OSD OMC
Subject: RE: Filing tomorrow

ATTORNEY COMMUNICATION: DO NOT MONITOR

Ms. Gunning,

Thanks for your help. Per our conversation, I will use the SF703 cover sheet stamped "CODEWORD" and banner markings "Top Secret/Codeword Pending Classification Review."

I have discussed this issue with LN1 [redacted] and CDR Ruiz, and am copying our security officer.

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301-1620
[redacted]

This email is an attorney communication exempt from DoD monitoring, and may be privileged and confidential. If you have received it in error, please notify me, then permanently delete it. Thank you.

-----Original Message-----
From: Gunning, Christine E (JMD) [redacted]
Sent: Tuesday, January 31, 2012 10:28 AM
To: Connell, James G III CIV OSD OMC Defense
Cc: Thurschwell, Adam Mr OSD OMC Defense; Thomas, Sterling R Maj OSD OMC Defense; [redacted] SSgt OSD OMC Defense; [redacted] LN1 OSD OMC Defense; CSO_GTMO_Mailbox (JMD)
Subject: RE: Filing tomorrow

James,

Thank you for the heads up. Please treat this filing as a presumptively classified under seal filing. The original and seven copies should be hand delivered to my office with Top Secret/Codeword Coversheets attached. When we receive it, it will be considered filed. The top and bottom of each page should contain a header and footer that states Top Secret/Codeword Pending Classification Review. Please do not disseminate or serve this

document via email or in an unclassified manner. If you wish to provide a listing of who should be served, we will do our best to comply. Please understand that we are not permitted to send documents relating to a "high value detainee" via secure email. We will request that the agencies involved expedite a review for classified and protected information asap. Once that review is completed, we will either alert you that the document can be filed on the public record or we will provide you with a redacted version for public filing. I'm awaiting instructions from the Clerk's Office with regard to how the filing fee should be handled.

Please let me know if you have any other questions.

Christine

Christine E. Gunning
Chief of Operations
Litigation Security Group
U.S. Department of Justice
Two Constitution Square
145 N Street N.E.
Suite [redacted]
Washington, DC 20530
[redacted]

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense [redacted]
Sent: Tuesday, January 31, 2012 8:48 AM
To: Gunning, Christine E (JMD)
Cc: Thurschwell, Adam Mr OSD OMC Defense; Thomas, Sterling R Maj OSD OMC Defense; [redacted] SSgt OSD OMC Defense
Subject: Filing tomorrow

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Ms. Gunning,

As a head's up, I wanted to let you know that I intend to file a complaint in the District of DC tomorrow involving the JTF-GTMO legal mail policy. The plaintiff is me as an individual, rather than an HVD, but the complaint contains statements attributed to my HVD client by JTF-GTMO staff. Unlike our previous filing, I do not believe the complaint contains actual classified material. Unless you tell me otherwise, I will have the complaint couriered to you rather than file it in the Clerk's Office.

I have emailed Mr. [redacted] and his colleagues to ask if they wish to accept service on behalf of RDML Woods, and will let you know.

I have a few questions I am hoping you can help me with:

(1) How many copies should we deliver to you? (I think 7, but want to comfirm.)
(2) What cover sheet should go on the package?
(3) I will be paying the filing fee rather than requesting in forma pauperis status. Do I bring the filing fee to you with the other material, or take it to the Clerk's Office?

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon

Washington, DC 20301-1620
[redacted]

This email is an attorney communication exempt from DoD monitoring, and may be privileged and confidential. If you have received it in error, please notify me, then permanently delete it. Thank you.

~~SECRET//NOFORN~~

Connell, James G III CIV OSD OMC Defense

From: Connell, James G III CIV OSD OMC Defense
Sent: Wednesday, May 16, 2012 9:37 AM
To: Chapman, Michael C Mr OSD OMC Convening Authority
Cc: Thomas, Sterling R Lt Col OSD OMC Defense
Subject: RE: Cover sheets ~~(S)~~

Classification: ~~SECRET//NOFORN~~

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Chapman,

Thank you very much for your email. Just so you know, I am going to ask the Commission to include a direction as to the proper cover sheet(s) in its protective order governing classified information. Of course, if guidance is forthcoming, I will simply ask the Commission to memorialize that guidance.

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301-1620
[redacted]

-----Original Message-----
From: Chapman, Michael C Mr OSD OMC Convening Authority
Sent: Wednesday, May 09, 2012 11:32 AM
To: Connell, James G III CIV OSD OMC Defense
Subject: RE: Cover sheets [redacted]

Classification: [redacted]

Mr. Connell, my folks are working your request. I'm sorry that it is taking so long to reply. You should hear from us soon.

Mike Chapman

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense
Sent: Tuesday, May 08, 2012 12:34 PM
To: Chapman, Michael C Mr OSD OMC Convening Authority
Subject: FW: Cover sheets ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~

ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Chapman,

~~SECRET//NOFORN~~

I am writing to follow up on the request below.

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301-1620
[redacted]

-----Original Message-----
From: Connell, James G III CIV OSD OMC Defense
Sent: Tuesday, April 10, 2012 8:00 PM
To: Chapman, Michael C Mr OSD OMC Convening Authority
Subject: Cover sheets ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~
ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Chapman,

Can you please send me a PDF of the appropriate cover sheet to use in the following situations?
(1) A document which contains information relating to the RDI program which I receive from my client?
(2) A document which contains information relating to the RDI program which I receive from a source other than my client?
(3) A document which contains statements of an HVD which are presumptively classified but actually unclassified?
(4) A document which relates to an HVD but is actually unclassified?

I first requested a PDF of the "appropriate cover sheet for the [redacted] on 12 December 2011 after Ms. [redacted] informed Ms. [redacted] that subcompartment-specific cover sheets exist, and that we are supposed to use them. On 15 December 2011, Ms. Woodard, by way of Ms. [redacted], provided me with two cover sheets, one marked TOP SECRET//HUMINT and the other marked TOP SECRET//HUMINT/COMINT/TALENT-KEYHOLE. On 16 December 2011, Mr. Breslin emailed me that, "The program managers are preparing a uniform cover sheet and Ms. Woodard will provide it to you." On 20 December 2011, I emailed Mr. Breslin asking (in an admittedly long email) whether I correctly understood him "to say that those cover sheets are not the correct cover sheets, and a new one is being prepared." On 6 January 2012, Mr. Breslin emailed me that he had forwarded my questions to higher authorities.

On 2 February 2012, I emailed to follow up on the cover sheet issue after I filed a document in the District of DC which discussed an HVD, but contained no statements by the HVD nor any classified information (situation (4) above). CISO Ms. Gunning had advised me to use an SF703 cover sheet with "CODEWORD" printed on it. On 14 February 2012, after reviewing the prohibition against marking unclassified information as classified in Revision 1 of Marking Classified National Security Information, provided to me by Ms. [redacted], I emailed to refresh my request. As of this writing, I have neither received any guidance nor a cover sheet to use.

I would greatly appreciate any light you can shed on the recurring cover sheet questions I have encountered.

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

Also, I marked this email ~~S//NF~~ because I mentioned the subcompartment trigraphs. At my data handling brief, Ms. [redacted] briefed me that the trigraphs are unclassified, but Ms. Woodard wrote me on 15 December that "when you mark the coversheet with the [redacted] it becomes classified. For convenience, I will send a separate email on this question.

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301-1620
[redacted]

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 10 Apr 2022

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 08 May 2022

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 09 May 2022

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 16 May 2022

Open-source Government Information about the CIA Rendition, Detention and Interrogation (RDI) Program

21 May 2011

I. INTRODUCTION

1. Unless otherwise noted, the following description of the Central Intelligence Agency (CIA) Rendition, Detention and Interrogation (RDI) program is based on U.S. government documents released to the public in response to requests under the Freedom of Information Act (FOIA).

2. The scope of this publicly-released material is subject to a number of limitations. FOIA allows the U.S. government to withhold information responsive to requests for a wide variety of reasons, including because the information is classified as national security information, or because the information is specifically exempted by other statutes.[1] Most of the open source information describing the *actual* manner in which CIA detainees were captured, transported, interrogated and detained by the United States remains classified or otherwise controlled, and therefore has not been released.[2] Much of the information that has been released was prepared by the CIA for the Department of Justice Office of Legal Counsel (OLC), and used to support legal assertions that the selected "enhanced interrogation techniques" were lawful.[3] DOJ's Office of Professional Responsibility concluded that such representations and assurances concerning the development, procedure, monitoring, safeguard, method of implementation, and effectiveness of interrogation techniques cannot be accepted as objective or complete.[4]

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[1] For example, operational files from the CIA's National Clandestine Service (NCS) (of which the Counter Terrorism Center is a component) are exempted from FOIA search and review pursuant to the CIA Information Act, 50 U.S.C. § 431. The Directorate of Operations (DO) was renamed the National Clandestine Service on October 13, 2005.

[2] *See, e.g.*, Declaration of Leon E. Panetta, Director, Central Intelligence Agency, *ACLU et al v. DoD et al*, 04 Civ. 4151 (SDNY) *available at* http://www.fas.org/sgp/jud/aclu-panetta.pdf (descriptions of enhanced interrogation techniques "as applied in actual operations" are of a "qualitatively different nature than the EIT descriptions in the abstract", and information concerning "application of EITs must remain classified as TOP SECRET"). The notable exception is the *CIA OIG Special Review (May 7, 2004)*. Nevertheless, the *CIA OIG Special Review (May 7, 2004)* was also redacted, and only addressed behavior that the OIG felt was excessive given the limitations in place, at the time, themselves a source of controversy. *Id.*

[3] *See, e.g., OPR Report (July 29, 2009)*, at 226 (referring to OLC opinions that did not "represent thorough, objective, and candid legal advice, but were drafted to provide [the CIA] with a legal justification for an interrogation program that included the use of certain ["enhanced interrogation techniques"]").

[4] "Under these circumstances, we question whether it was reasonable for Department officials to accept such representations, at face value, given the CIA's previous history with EITs, the inevitable pressures faced by interrogation teams to achieve results, the CIA's demonstrated interest in shielding its interrogators from legal jeopardy, and the difficulty of detecting, through "monitoring," the largely subjective experiences of severe mental or physical pain or suffering... In addition, we question whether it was reasonable for OLC to rely on CIA representations as to the effectiveness of the EITs." *OPR Report (July 29, 2009)*, at 242-243. The *OPR Report (July 29, 2009)* notes several apparent deficiencies with the CIA's representations about the RDI program: despite the CIA's representations and assurances to OLC about "safeguards" and monitoring used with EITs, "many abuses nevertheless took place"; there are inconsistencies in the CIA's descriptions of method of implementation of certain EITs; and that there is evidence that CIA's "effectiveness reviews consistently relied on the originators of the program." *Id., at* 242-243.

3. Within these limitations, the aim of this narrative is to present information about the treatment and material conditions of detention of detainees in the CIA RDI program, based on information provided to the public by the U.S. government. Omissions from the available sources and the suspect nature of at least some of the U.S. government's representations leave the scope, policies and practices of the program largely obscure. A description based on these materials will tend to present a conservative view of a detainee's treatment. The U.S. government holds the information that would dispel doubt.

II. BACKGROUND

4. Reports that suspected al Qaeda operatives were being held abroad by the CIA in undisclosed locations began circulating in 2002.[5] By 2004, a number of suspected al Qaeda operatives were declared by human rights advocates to have been "disappeared" by the U.S. government.[6] Advocates alleged that "the most sensitive and high-profile terrorism suspects have been detained by the United States in "undisclosed locations," presumably outside the United States, with no access to the International Committee of the Red Cross (ICRC), no notification to families, no oversight of any sort of their treatment, and in many cases no acknowledgement that they are even being held."[7]

5. In September of 2006, the President announced the transfer of a group of detainees to Guantánamo that had been "held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency."[8] The President said this transfer would bring these detainees "into the open." Detainees in this program had been subjected to "an alternative set of [interrogation] procedures"[9] in a "new interrogation program."[10]

6. This covert CIA program was apparently authorized under a classified Presidential finding which reportedly gave the CIA broad powers to kill, capture, detain and interrogate

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[5] See, for example, "Getting al Qaeda to talk," CNN.com, September 17, 2002 *available at* http://archives.cnn.com/2002/US/09/17/bergen.otsc/index.html (last accessed Sept. 29. 2009) (discussing the detention of Ramzi bin al-Shibh); "'Appropriate pressure' being put on al Qaeda leader," CNN.com, March 3, 2003 *available at* http://www.cnn.com/2003/WORLD/asiapcf/south/03/02/pakistan.arrests/index.html (last accessed Sept. 29. 2009) (stating that CIA had brought Khalid Shaikh Mohammed, who was arrested in Pakistan, to an undisclosed location outside of the United States).

[6] *See generally* Human Rights Watch, *The United States' "Disappeared": The CIA's Long-Term "Ghost Detainees"* (October 2004) *available at* http://www.hrw.org/legacy/backgrounder/usa/us1004/index.htm (last accessed Dec. 22, 2009) (describing reports of high-level "ghost" detainees in prolonged incommunicado detention; the United States' refusal to disclose the fate or whereabouts of the detainees; and allegations of mistreatment).

[7] *Id.*, at 8.

[8] *Bush Statement (Sept. 6, 2006).*

[9] *See id.*

[10] *See ODNI Summary of HVD Program* (ODNI discussing the capture of Abu Zubaydah in March 2002 and stating that "Over the ensuing months, the CIA designed a new interrogation program...").

suspected al Qaeda leaders and their associates.[11] Officials from the CIA, the White House, and the National Security Council were routinely involved in decision-making about the program, including the use of specific forms of physical and psychological pressure on specific detainees.[12]

7. CIA interrogators operated under authoritative legal advice provided by OLC that domestic and international legal limits on torture and other forms of cruel, inhuman or degrading treatment either did not apply to the treatment of aliens held overseas by the CIA, or allowed interrogators to lawfully inflict high levels of pain and suffering on these detainees.[13]

8. CIA officers were told that they might lawfully subject detainees to treatment and conditions that have been considered torture in certain circumstances under traditional domestic and international standards. From 2002 to at least 2004, CIA officers were told that, if ordered by the President, they might lawfully subject detainees to treatment and conditions considered torture under 18 U.S.C. § 2340A, the statute criminalizing torture.[14]

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[11] The American Civil Liberties Union (ACLU) requested through FOIA a directive signed by then-President Bush granting the CIA the authority to set up detention facilities outside the United States and/or outlining interrogation methods that may be used against detainees. The CIA confirmed that it had located one document responsive to this request, and described the document as "a memorandum from President Bush to the Director of the CIA." *See* Letter from Office of General Counsel, CIA to Melanca D. Clark, Gibbins [sic], Del Deo, Dolan, Griffinger & Vecchione, P.C., Nov. 10, 2006 (letter sent in connection with *ACLU et. al.* v. *DOD et. al.*, 04-Civ.-4151 (S.D.N.Y.), remanded 06-0205-cv (2nd Cir.), *available at* http://www.aclu.org/images/torture/asset_upload_file825_27365.pdf (last accessed Sept. 29, 2009).

[12] *See* ABC News, *Sources: Top Bush Advisors Approved 'Enhanced Interrogation'* (April 9, 2008) *available at* http://abcnews.go.com/TheLaw/LawPolitics/story?id=4583256%26page=1 (last accessed April 7, 2010).

[13] OLC legal opinions provided legal justification for interrogators to inflict high levels of pain and suffering on detainees. *See generally OLC Interrogation Techniques (May 10, 2005)*; *OLC Interrogation Techniques Combined (May 10, 2005)*; *OLC Interrogation Techniques and CIDT (May 30, 2005)*. The CIA sought several legal opinions from the Office of Legal Counsel (OLC) of the Department of Justice (DoJ) concerning the legality of detention and interrogation practices used by its officers. Not all these legal opinions have yet been released, or even publically acknowledged. *See generally Rockefeller Letter* (citing CIA records of NSC and other high-level interagency briefings throughout the course of the program). *See also OLC Legal Standards for Interrogation (August 1, 2002)*, at 1 (stating that for an act to constitute torture, it must inflict pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."). This opinion was withdrawn in June 2004 and replaced with another OLC opinion on December 30, 2004. *OLC Legal Standards for Interrogation (December 30, 2004)*.

[14] For a period between 2002 and 2004, OLC guidance posited that US interrogators were permitted to use even torture with Presidential authorization. *OLC Legal Standards for Interrogation (August 1, 2002)*, at 31 ("Even if an interrogation method arguably were to violate Section 2340A, [which criminalizes "torture"] the statute would be unconstitutional if it impermissibly encroached on the President's constitutional powers to conduct a military campaign … Any effort to apply Section 2340A in a manner that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional."). This opinion was withdrawn in June 2004 and replaced with another OLC opinion on December 30, 2004, which did not reach this point. *OLC Legal Standards for Interrogation (December 30, 2004)*.

III. INTERROGATION IN THE CIA PROGRAM

9. The DOJ OLC guidance allowed permissive standards for interrogation in the CIA program, a system in which "more physical and psychological stress" for the detainee was directly equated with success.[15] DOJ OLC guidance also set a standard for zeal. When then-CIA Director Hayden spoke of new limits that Congress was considering for the CIA program in 2008, he alluded to this phenomenon:

> Let me say something very clearly, Senator. I really need to put this on the record. We will do — *we will play to the edges of the box that the American political process gives us.* In the creation of that box, if we're asked a view, we'll give a view. But the lines drawn by that box are the product of the American political process. Once you've drawn the box, once that process creates a box, *we have a duty to play to the edge of it. Otherwise we're not protecting America....* (emphasis added). [16]

10. Long before the advent of the RDI program, the CIA recognized that successful interrogation involves a "continuum" of process, or the totality of the subject's circumstances, and that "everything that takes place in the continuum influences all subsequent events."[17] The CIA's system of interrogation and detention therefore utilized the totality of circumstances to break resistant detainees. In this system, applying "more" physical and psychological stress was believed to increase the chances of success.[18] Combining stressors amplified the effects of physical and psychological pressures, and was "essential to the creation of an interrogation environment....".[19]

11. According to the CIA, the RDI program was deliberately designed to facilitate interrogation by inducing a state of "learned helplessness and dependence" in detainees by the application of physical and psychological pressure:

> Effective interrogation is based on the concept of using both *physical and psychological pressures in a comprehensive, systematic, and cumulative manner* to

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[15] An illustration of which appears in the CIA's explanation to DOJ OLC in 2004 of how "enhanced" interrogation techniques were combined: "Certain interrogation techniques place the detainee in *more physical and psychological stress and, therefore, are considered more effective tools* in persuading a resistant HVD to participate with CIA interrogators." (emphasis added). *CIA Background Paper on Combined Techniques (2004),* at 7.

[16] General Michael Hayden, Director of the Central Intelligence Agency, Testimony before the Senate Select Committee On Intelligence, "Annual Worldwide Threat Assessment", February 5, 2008, p.53, transcript *available at* http://www.fas.org/irp/congress/2008_hr/020508transcript.pdf.

[17] *KUBARK,* at 41.

[18] "Certain interrogation techniques place the detainee in *more physical and psychological stress and, therefore, are considered more effective tools* in persuading a resistant HVD to participate with CIA interrogators. (emphasis added.)" *CIA Background Paper on Combined Techniques (2004),* at 7.

[19] *Id.,* at 17.

influence HVD behavior, to overcome a detainee's resistance posture. 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. (emphasis added)[20]

12. "Learned helplessness" can be described as a phenomenon "in which exposure to a series of unforeseen adverse situations gives rise to a sense of helplessness or an inability to cope with or devise ways to escape such situations, even when escape is possible."[21] While researchers debate the theoretical mechanisms for learned helplessness, the basic phenomenon is recognized as one in which uncontrollable trauma debilitates a subject's ability to cope with adversity, impacting the subject's motivation to escape, ability to learn coping mechanisms, and emotional reaction to aversive events.[22] Early experiments involved dogs made passive and hopeless in the face of painful treatment over which they had no control.[23] Researchers also initiated experiments to "to show that it was indeed the *uncontrollability* of the aversive events that was critical" to the phenomenon.[24]

13. Experts have long considered "psychological techniques to break down the individual," including accentuating feelings of helplessness, among forms of abuse that can amount to torture or other forms of cruel, inhuman or degrading treatment.[25] "One of the central aims of torture is to reduce an individual to a position of extreme helplessness and distress that can lead to a deterioration of cognitive, emotional and behavioral functions."[26] "Techniques that are

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[20] *Id.*, at 1.

[21] The American Heritage Stedman's Medical Dictionary. Houghton Mifflin Company (Sept. 22, 2009) *available at* http://dictionary.reference.com/browse/learned helplessness (last accessed Oct. 1, 2009).

[22] *See* J. Bruce Overmier, *On Learned Helplessness, Integrative Physiological & Behavioral Science*, January-March 2002, Vol. 37, No. 1, 4-8, available at http://bc7pt8jv6n.search.serialssolutions.com/?sid=EBSCO:Academic+Search+Complete&genre=article&title=Integrative+Physiological+%26+Behavioral+Science&atitle=On+Learned+Helplessness.&author=Overmier%2c+J.+Bruce&authors=Overmier%2c+J.+Bruce&date=20020101&volume=37&issue=1&spage=4&issn=1053881X (last accessed May 5, 2010) (hereinafter "On Learned Helplessness (2002)").

[23] *Id.* Follow-on research has explored connections to such biological consequences as anorexia, decreased sensitivity to pain, vulnerability to psychosomatic disorders, super-sensitivity to the depletion of certain powerful neurotransmitters, and reduced immune competence. *See* J. Bruce Overmier, *Richard L. Solomon and Learned Helplessness, Integrative Physiological & Behavioral Science*, Oct/Dec 1996, Vol. 31, Issue 4, p331-337, available at http://web.ebscohost.com/ehost/detail?vid=2&hid=112&sid=e10bd969-c8b6-4cd7-b84f-233a223839ea%40sessionmgr111&bdata=JnNpdGU9Ws3QtbGl2ZQ%3d%3d#db=a9h&AN=9701174991 (last accessed May 5, 2010). Researchers have also explored the relationship between learned helplessness and fear, and between learned helplessness and depression. *Id.*

[24] *See On Learned Helplessness (2002)* (emphasis in original).

[25] *The Istanbul Protocol*, at 29. The Istanbul Protocol contains international guidelines on the assessment of individuals who allege torture and ill treatment, the investigation of cases of alleged torture, and on reporting the findings of such investigations to the judiciary and any other bodies. *The Istanbul Protocol* became a United Nations official document in 1999 and is published by the Office of the UN High Commissioner for Human Rights in its Professional Training Series.

[26] *Id.*, at 45.

highly unpredictable or involve a high degree of uncontrollability are associated with higher degrees of distress than those techniques in which the victim feels that he or she has some degree of control over the level of pain and suffering that is inflicted."[27]

14. To achieve "learned helplessness", CIA officers planned to reduce a detainee to "a baseline, dependant state":[28]

> Establishing this state is important to demonstrate to the HVD that he has no control over basic human needs. The baseline state also creates in the detainee a mindset in which he learns to perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting.[29]

Each detainee was to be intentionally subjected to treatment and conditions designed specifically to "psychologically 'dislocate' [him], maximize his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist [CIA] efforts to obtain critical intelligence."[30] Detainees were intentionally subjected to mental and physical pain and suffering as part of this process.

15. The pressures identified by the CIA were fully expected to cause detainees psychological suffering. The CIA chose pressures that would *inter alia*, incorporate "a high level of unpredictability" in the interrogation process;[31] demonstrate their control over the detainee;[32] intensify feelings of apprehension, uncertainty and dread;[33] shock, surprise, and humiliate the detainee;[34] cause "a high degree of distress;"[35]and adversely manipulate his

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[27] Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by US Forces* (May 2005) *available at* http://physiciansforhumanrights.org/library/documents/reports/break-them-down-the.pdf, at 71.
[28] *CIA Background Paper on Combined Techniques (2004)*, at 4.
[29] *Id.*, at 4.
[30] *OMS Guidelines (Dec. 2004)*, at 8.
[31] *CIA Background Paper on Combined Techniques (2004)*, at 6 (describing the "abdominal slap" as similar to the "insult slap" but "provide[ing] the variation necessary to keep a high level of unpredictability in the interrogation process.").
[32] *CIA Background Paper on Combined Techniques (2004)*, at 6 (describing "facial hold" as "used to correct the detainee in a way that demonstrates the interrogator's control over the HVD").
[33] *Id.*, at 2 (describing a "rendition and reception process" that "generally create[d] significant apprehension in the ["high-value detainee"] because of the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread a detainee might have of US custody"); *id.*, at 7 (describing "walling" as "one of the most effective interrogation techniques because it wears down the HVD physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the HVD knows he is about to be walled again.").
[34] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2 (goal of slapping detainee); *OLC Interrogation Techniques (May 10, 2005)*, at 8, 33; *OLC Interrogation Techniques (May 10, 2005)*, at 7-8, 32 (humiliating detainees through nudity); *OLC Interrogation Techniques (May 10, 2005)*, at 40 (humiliating detainees through diapering). *See also OPR Report (July 29, 2009)*, at 36 ("The subject is forced to wear adult diapers and is denied access to toilet facilities for an extended period, in order to humiliate him.").

unique psychological phobias.[36] The CIA anticipated and accepted that interrogations actions might subject a detainee to the effect of repeated threats of imminent death,[37] and cause him to experience "hallucinations that could fairly be characterized as a 'profound' disruption of the subject's senses" lasting hour or days.[38] The CIA also anticipated and accepted that interrogators' statements and actions might be understood by the detainee as threats of severe physical pain or suffering, actions to disrupt profoundly his senses or personality, or even imminent death.[39] The CIA anticipated and accepted that as a result of sanctioned interrogations, a detainee might lose the will to live and welcome death as respite from the treatment.[40]

16. Psychological abuse can amount to torture or other forms of cruel, inhuman or degrading treatment, with long-term effects:

> Psychological torture and cruel, inhuman, and degrading treatment can have extremely destructive health consequences for detainees. The effects can include memory impairment, reduced capacity to concentrate, somatic complaints such as headache and back pain, hyperarousal, avoidance, and irritability. Additionally, victims often experience severe depression with vegetative symptoms, nightmares, and "feelings of shame and humiliation" associated with sexual violations, among others.... The lack of physical signs can make psychological torture seem less significant than physical torture, but the consensus among those who study torture and rehabilitate its victims is that psychological torture can be more painful and cause more severe and long-lasting damage even than the pain inflicted during physical torture.[41]

17. The pressures identified by the CIA were fully expected to cause detainees physical pain and suffering. The CIA regulated the anticipated infliction of pressures on detainees not by whether pain and suffering was expected, but by the intensity and duration of the pain and suffering expected from those techniques.[42] The CIA anticipated a range of physical and

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[35] *OLC Interrogation Techniques (May 10, 2005)*, at 41.
[36] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 14 (detainee with fear of insects placed in small dark box with insect).
[37] *Id.*, at 15 ("We find that the use of the waterboard constitutes a threat of imminent death.").
[38] *OLC Interrogation Techniques (May 10, 2005)*, at 39 (hallucinations possible but acceptable; intervene upon evidence of hallucinations); *id.*, at 40 (acknowledging detainee may have hallucinations that are undetected by observers hence may continue or worsen over remainder of sleep deprivation period). *See also OLC Interrogation Techniques Combined (May 10, 2005)*, at 17.
[39] *Id.*, at 18-19.
[40] *OMS Guidelines (Sept.4, 2003)*, at 8; *OMS Guidelines (May 17, 2004)*, at 16; *OMS Guidelines (Dec. 2004)*, at 18 ("physical fatigue" or "psychological resignation" caused by waterboarding may lead a subject to "simply give up," allowing airways to fill with water and loss of consciousness).
[41] Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by US Forces* (May 2005) *available at* http://physiciansforhumanrights.org/library/documents/reports/break-them-down-the.pdf, at 48.
[42] *See, e.g., OLC Interrogation Techniques (May 10, 2005)*, at 23.

mental effects from interrogation, even "severe" pain and suffering.[43] The CIA anticipated that these effects would occur repeatedly, over extended periods of time, and/ or in combination.[44]

18. *Inter alia*, the CIA anticipated detainees would experience the following effects:[45]

- dependence on CIA officers for assistance with basic bodily functions, such as eating, urinating, defecating, and bathing;[46]
- multiple episodes of dehydration;[47]
- the debilitation of being placed in an uncomfortably cool environment for hours or days, to include multiple episodes of hypothermia;[48]
- the effects of various, multiple periods of exposure to sounds ranging in volume from that of a chain saw (up to 2 hours at a time) to that of a garbage disposal (up to 24 hours

[43] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 11 (intervene upon evidence that detainee "is experiencing severe pain or suffering").
[44] *CIA Background Paper on Combined Techniques (2004)*, at 17 ("Since the start of this program, interrogation techniques have been used in combination and separately …"). "[M]ost of the CIA's authorized techniques are design to be used with particular detainees in an interrelated or combined manner as part of an overall interrogation program …". *OLC Interrogation Techniques (May 10, 2005)*, at FN 6. "Effective interrogation is based on the concept of using both physical and psychological pressures in a comprehensive, systematic, and cumulative manner ...". *CIA Background Paper on Combined Techniques (2004)*, at 1. However, in 2002, CIA assured OLC that "enhanced" interrogation techniques would "not be used with substantial repetition." *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 11.
[45] Some of the cited sources describe these effects as medical limitations. However, these limitations actually sanctioned the debilitation or harm to the detainee *up to the point of* the stated ultimate effect, only after which, when the ultimate effect in fact occurred, was the limitation reached. These therefore were not policies designed to prevent debilitation or harm to the detainee. They unequivocally anticipated that detainees would in fact suffer these harms, and required, encouraged, or permitted the infliction of harm up to the point at which the ultimate effect occurred, was evident to observers, and was medically addressed. The legal limitation on the infliction of harm allowed the actual infliction of severe mental or physical pain of suffering so long as the infliction of severe mental or physical pain was not "the precise objective" of the perpetrator. *OLC Legal Standards for Interrogation (August 1, 2002)*, at 3-4 ("[B]ecause Section 2340 requires that a defendant act with the specific intent to inflict sever pain, the infliction of such pain must be the defendant's precise objective… knowledge alone that a particular result is certain to occur does not constitute specific intent.").
[46] Detainees undergoing sleep deprivation could be fed by hand or diapered by CIA officers. *OLC Interrogation Techniques (May 10, 2005)*, at 12 (feeding by hand); *OMS Guidelines (May 17, 2004)*, at 23 (diapering); *OMS Guidelines (Dec. 2004)*, at 28 (diapering). CIA officers sometimes bathed detainees. *CIA OIG Special Review (May 7, 2004), at* para. 98 (reporting incident in which interrogators used a stiff brush to bathe a detainee).
[47] *OMS Guidelines (Sept.4, 2003)*, at 4; *OMS Guidelines (May 17, 2004)*, at 9; *OMS Guidelines (Dec. 2004)*, at 10, 29 (intervene at "earliest signs of dehydration"; modify restricted diet upon evidence of hydration).
[48] *OMS Guidelines (Sept.4, 2003)*, at 4; *OMS Guidelines (May 17, 2004)*, at 9-10, 23, 24, 25; *OMS Guidelines (Dec. 2004)*, at 10-11, 28, 29, 30 (monitor for development of hypothermia; cease water dousing upon evidence of hypothermia; waterboarding presents risk of hypothermia).

at a time) to include multiple episodes of hearing loss;[49]

- "significant malnutrition," and other effects of days or weeks of a reduced-calorie, non-palatable, liquid diet;[50]
- sensory overload lasting hours or days, to "elevate the agitation level of a person and increase their emotionality, as well as enhance the effects of isolation;"[51]
- pressure sores from shackling in fixed positions;[52]
- multiple episodes of an automatic physiological sensation of drowning, and incipient panic, caused by the water filling the back of one's throat;[53]
- a risk of aspiration of one's own vomit;[54]
- a risk of pneumonia;[55]

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[49] *See, e.g., CIA Background Paper on Combined Techniques (2004)*, at 4; *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 2; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5; *OMS Guidelines (Dec. 2004)*, at 13. *OMS Guidelines (Sept.4, 2003)*, at 5; *OMS Guidelines (May 17, 2004)*, at 12; *OMS Guidelines (Dec. 2004)*, at 13 (limit is "permanent" hearing loss). Limits given to medical personnel were equivalent to 24-hour-a-day exposure to sound louder than a garbage disposal (at 80 dB); 18 hour-a-day exposure to sound louder than a garbage disposal and less than a propeller aircraft (at 88 dB); 8 hours of exposure to a shouted conversation or a motorcycle at 25 feet (at 90 dB); 4 hours on a subway car at 35 mph (95 dB); and 2 hours exposure to sound louder than a power mower (at 96 dB) and less than a chain saw (at 110 dB). Comparisons used by the CIA. *See OMS Guidelines (Dec. 2004)*, at 13; *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 2.

[50] *OMS Guidelines (Sept.4, 2003)*, at 4; *OMS Guidelines (May 17, 2004)*, at 9, 11; *OMS Guidelines (Dec. 2004)*, at 10, 12 (diet need not be palatable; restricted diet safe for weeks at a time; liquid diet appropriate). *See also OMS Guidelines (May 17, 2004)*, at 23-24; *OMS Guidelines (Dec. 2004)*, at 28-29 (modify restricted diet upon evidence of weight loss of greater than 10% of baseline body weight, which constitutes "significant malnutrition").

[51] *JPRA Description of Physical Pressures*.

[52] *OMS Guidelines (Sept.4, 2003)*, at 5; *OMS Guidelines (May 17, 2004)*, at 12; *OMS Guidelines (Dec. 2004)*, at 14 (treat pressure sores and adjust shackles).

[53] *OMS Guidelines (Sept.4, 2003)*, at 8; *OMS Guidelines (May 17, 2004)*, at 15; *OMS Guidelines (Dec. 2004)*, at 17 ("primary desired effect" of waterboarding is "sense of suffocation" and "psychological impact of continued application of water"). *OMS Guidelines (May 17, 2004)*, at 17; *OMS Guidelines (Dec. 2004)*, at 20 (physician records when detainee's naro- or oropharynx fills with water); *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 4 (waterboarding causes "perception of suffocation and incipient panic" and "an automatic physiological sensation of drowning").

[54] *OMS Guidelines (May 17, 2004)*, at 11; *OMS Guidelines (Dec. 2004)*, at 12 (liquid diet to avoid aspiration of vomit during used of enhanced techniques, especially waterboard). *OLC Interrogation Techniques (May 10, 2005)*, at 14. "[A]n individual is always placed on a fluid diet before he may be subjected to the waterboard in order to avoid aspiration of regurgitated food." *CIA Horizontal Sleep Deprivation*.

[55] *OMS Guidelines (May 17, 2004)*, at 25; *OMS Guidelines (Dec. 2004)*, at 30 (waterboard presents risk of aspiration pneumonia). *OLC Interrogation Techniques (May 10, 2005)*, at 14.

- rapid weight loss;[56]
- skin lesions on buttock and/or genitals due to extended contact with human waste materials;[57]
- multiple episodes of degraded cognitive performance, visual disturbances, and acute reduction in immune competence;[58]
- the risk of drowning or near drowning;[59]
- the need for emergency resuscitation;[60]
- laryngospasm, requiring emergency tracheotomy;[61]
- risks of deep vein thrombosis;[62]
- risks of claustrophobia;[63]
- multiple episodes of visual, auditory and/or tactile hallucinations from sleep deprivation or from deprivation of sensory input, that may continue or worsen over hours or days,[64] and other "abnormal reactions" to sleep deprivation;[65]

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[56] *OMS Guidelines (May 17, 2004)*, at 11 (detainee's minimum intake of calories per day equivalent to that of commercial weight loss program).
[57] *OMS Guidelines (May 17, 2004)*, at 23; *OMS Guidelines (Dec. 2004)*, at 28 (intervene upon evidence of loss of skin integrity from prolonged diapering).
[58] *OMS Guidelines (May 17, 2004)*, at 24; *OMS Guidelines (Dec. 2004)*, at 29 ("Sleep deprivation does degrade cognitive performance, may induce visual disturbances, may reduce immune competence acutely.").
[59] *OMS Guidelines (May 17, 2004)*, at 25; *OMS Guidelines (Dec. 2004)*, at 30 (waterboarding presents drowning risk).
[60] *OMS Guidelines (May 17, 2004)*, at 25; *OMS Guidelines (Dec. 2004)*, at 30 (waterboarding requires need for "resuscitation capability immediately at hand").
[61] *OMS Guidelines (Dec. 2004)*, at 30 (laryngospasm a risk of waterboarding); *OLC Interrogation Techniques (May 10, 2005)*, at 16 (spasms of the larynx require emergency tracheotomy).
[62] *OMS Guidelines (May 17, 2004)*, at 25; *OMS Guidelines (Dec. 2004)*, at 30 (cramped confinement causes risk of DVT).
[63] *OMS Guidelines (May 17, 2004)*, at 25; *OMS Guidelines (Dec. 2004)*, at 30 (cramped confinement causes risk of claustrophobia).
[64] *OLC Interrogation Techniques (May 10, 2005)*, at 39, 40 (acknowledging hallucinations may occur during sleep deprivation); *OLC Interrogation Techniques Combined (May 10, 2005)*, at 17; *JPRA Description of Physical Pressures* (noting deprivation of sensory input for 6-8 hours not uncommonly produces hallucinations).
[65] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 (but such reactions abate after uninterrupted sleep).

- effects of prolonged restricted movement in a dark, cramped space;[66]
- multiple episodes of muscle fatigue resulting in physical collapse, under threat of pain upon collapse;[67]
- multiple episodes of serious edema, or swelling, in the lower extremities;[68]
- risk of hyponatremia, or low sodium in the blood, a condition causing mild to severe health problems;[69]
- physical pain of multiple slaps to the face and abdomen;[70]
- prolonged and heightened susceptibility to physical pain, while physically painful techniques are being applied;[71]
- multiple episodes of "substantial" "physical discomfort and distress" of extended sleep deprivation, such as from physical weakness, impairment to coordinated body movement, difficulty with speech, nausea, blurred vision, and unpleasant physical sensations from drop in body temperature;[72]
- physical pain of being repeatedly pushed into a wall with "considerable force" by means of a neck collar;[73]
- multiple episodes of "extreme physical distress."[74]

[66] *Id.*, at 2-3 (effect of cramped confinement).
[67] *OLC Interrogation Techniques (May 10, 2005)*, at 9, 33, 34; *CIA Background Paper on Combined Techniques (2004)*, at 8 (stress positions "are usually self-limiting tin that temporary muscle fatigue usually leads to the HVD being unable to maintain the stress position after a period of time"); *id.*, at 14-15 (CIA routinely used the threat of walling to induce detainees to hold stress positions).
[68] *Id.*, at 11, 36.
[69] *Id.*, at 13.
[70] *Id.*, at 33 (face slap and abdominal slap cause pain; slaps may be used several times); *CIA Background Paper on Combined Techniques (2004)*, at 5, 6 (face (insult) and abdominal slaps used periodically throughout interrogation).
[71] *OLC Interrogation Techniques (May 10, 2005)*, at FN 44 (studies find decrease in threshold for heat pain, cold pain, and mechanical or pressure pain).
[72] *Id.*, at 37.
[73] *Id.*, at 32 (walling collar may cause pain).
[74] *Id.*, at 38 (intervene upon evidence of extreme physical distress).

19. In August 2002, DOJ provided the CIA with a legal opinion in which it determined that certain specific "enhanced interrogation techniques" would not violate the torture prohibition.[75] "This work provided the foundation for the policy and administrative decisions that guide[d] the … Program."[76]

20. At various times, "enhanced interrogation techniques" were defined to include:

- Waterboarding.[77]
- Various forms of cold stress, such as water dousing and water pouring, flicking, and tossing (water PFT).[78]
- Beating, shaking, and other forms of forceful physical contact, such as walling, abdominal slaps, facial slaps and grabs.[79]
- Sleep deprivation.[80]

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[75] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at 15.

[76] *Id.*, at 4.

[77] Waterboarding is a particular means by which the subject is made to feel as though he is suffocating. *See infra*, "Appendix A: Selected Forms of Mistreatment." *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3-4, 11, 15; *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2; *SERE Contractor/Psychologist Business Plan*, at 17; *CIA "Legal Principles" (2003)*; *CIA OIG Special Review (May 7, 2004)*, at para. 10; *OMS Guidelines (Sept.4, 2003)*, at 2, 8-10; *OMS Guidelines (May 17, 2004)*, at 7, 14-17; *OMS Guidelines (Dec. 2004)*, at 8, 17-20; *OLC Interrogation Techniques (May 10, 2005)*, at 13-15, 41-45; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 8-9, 11, 16, 17-18, 18-19; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 5-7, 15; *Waterboarding*.

[78] Cold stress is the loss of excessive body heat to the environment. *See infra*, "Appendix A: Selected Forms of Mistreatment." *See, e.g., OMS Guidelines (Sept.4, 2003)*, at 1; *CIA Background Paper on Combined Techniques (2004)*, at 7-8; *CIA Additional Techniques Letter (March 2, 2004)*, at 2; *OMS Guidelines (May 17, 2004)*, at 7, 11-12; *OMS Guidelines (Dec. 2004)*, at 8, 12-13; *OLC Interrogation Techniques (May 10, 2005)*, at 9-10, 34-35; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 6, 11, 12, 14; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 14-15.

[79] "Walling" was the act of forcibly throwing a subject into a wall. *See infra*, "Appendix A: Selected Forms of Mistreatment." *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2-3; *CIA OIG Special Review (May 7, 2004)*, at 15; *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2; *CIA "Legal Principles" (2003) at 3*; *OMS Guidelines (Sept.4, 2003)*, at 1, 2; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8; *OLC Interrogation Techniques (May 10, 2005)*, at 8.

[80] *See infra*, "Appendix A: Selected Forms of Mistreatment." *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3, 10, 14-15; *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2; *SERE Contractor/Psychologist Business Plan*, at 17; *CIA "Legal Principles" (2003)*; *OMS Guidelines (Sept.4, 2003)*, at 2; *CIA OIG Special Review (May 7, 2004)*, at FN 33 (period for "enhanced" reduced from 72 to 48 hours); *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8; *OLC Interrogation Techniques (May 10, 2005)*, at 11-13, 35-40; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 9, 11, 12, 13-14, 15-16, 16, 18; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12-13.

- Various stress positions.[81] Including but not limited to sitting with legs extended and arms held straight up;[82] kneeling with body leaning forward or backward at 45 degree angle (later limited to leaning backward);[83] leaning forward so forehead supports one's own weight against wall;[84] wall standing, or leaning forward so one's outstretched arms support one's own weight against wall, legs spread;[85] and an additional stress position not described in open sources.[86]

- Prolonged diapering. In lieu of allowing a detainee to defecate into a bucket or latrine, CIA officers would put diapers on the detainee, change diapers soiled with urine and feces, and inspect the skin on his buttocks and genitals for "loss of skin integrity due to contact with human waste materials," i.e., skin lesions.[87] This process may have continued over a period of days or weeks.

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[81] A stress position may be an abnormal human position, such as suspension or inversion, or a normal human position, such as sitting, standing or lying, that a subject is forced to hold for an abnormal period of time. *See infra*, "Appendix A: Selected Forms of Mistreatment." *See, e.g., CIA "Legal Principles" (2003)* (approving unspecified stress positions).

[82] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3, 10, 13; *OLC Interrogation Techniques (May 10, 2005)*, at 9, 34; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 6, 11, FN 8, 14; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15.

[83] *OMS Guidelines (Sept.4, 2003)*, at 2; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8; *OLC Interrogation Techniques (May 10, 2005)*, at 9, 34; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 6, 11, FN 8, 14; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15.

[84] *OMS Guidelines (Sept.4, 2003)*, at 2; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8; *OLC Interrogation Techniques (May 10, 2005)*, at 9, 34; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 6, 11, FN 8, 14; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15; *OLC Interrogation Techniques (May 10, 2005)*, at 9-11, 33-34; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 8-9, 11, FN 8, 14 (stress positions generally); *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5.

[85] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3, 10, 13; *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2; *CIA Background Paper on Combined Techniques (2004)*, at 7, 8; *OMS Guidelines (Dec. 2004)*, at 8.

[86] *CIA Additional Techniques Letter (March 2, 2004)*, at 2.

[87] *See also OMS Guidelines (May 17, 2004)*, at 23; *OMS Guidelines (Dec. 2004)*, at 28 (intervene upon evidence of loss of skin integrity from prolonged diapering). The CIA initially managed diapering an interrogation technique in its own right. *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 (listing "use of diapers for limited periods (generally not to exceed 72 hours, [redacted] " among "Standard Techniques".); *SERE Contractor/Psychologist Business Plan*, at 15 (diapering for "limited periods" was "standard interrogation technique"), 17 (diapering for "prolonged periods" was "enhanced interrogation technique"). *See also OPR Report (July 29, 2009)*, at 36 ("The subject is forced to wear adult diapers and is denied access to toilet facilities for an extended period, in order to humiliate him."). In 2005, CIA asserted to OLC that "diapers are used solely for sanitary and health reasons and not in order to humiliate the detainee." *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13. However, in the same document, CIA stated that diapers were necessary because "releasing a detainee from shackles would present a security problem and would interfere with the effectiveness of the [sleep deprivation] technique." *Id.*

- Cramped confinement.[88]

- Identification and exploitation of a psychological weakness through personal fear, in the form of confining a detainee afraid of insects in a dark, cramped space with an insect the detainee believed would sting him.[89]

- An unknown "enhanced interrogation technique" comparable to the "attention grasp," "walling," and the "facial slap."[90]

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[88] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2-3; *SERE Contractor/Psychologist Business Plan*, at 17; *CIA "Legal Principles" (2003)*; *OMS Guidelines (Sept.4, 2003)*, at 2, 7; *CIA Background Paper on Combined Techniques (2004)*, at 8-9; *OMS Guidelines (May 17, 2004)*, at 7, 14; *OMS Guidelines (Dec. 2004)*, at 8, 16-17; *OLC Interrogation Techniques (May 10, 2005)*, at 9, 33; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 11; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15. "This technique involves placing the individual in the confined space, the dimensions of which restrict the individual's movement. The confined space is usually dark. The duration of confinement varies based upon the size of the container." *OLC Interrogation Techniques (May 10, 2005)*, at 9. Cramped confinement "accelerate[s] the physical and psychological stresses of captivity." *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15, *quoting* PREAL Manual. JPRA advocated cramped confinement as an effective way to "instill fear and despair, to punish selective behavior, to instill humiliation or cause insult." *JPRA Description of Physical Pressures.*

[89] OLC approved the following in 2002:

> You would like to place Zubaydah in a cramped confinement box with an insect. You have informed us that he appears to have a fear of insects. In particular, you would like to tell Zubaydah that you intend to place a stinging insect into the box with him. You would, however, place a harmless insect in the box with him. You have orally informed us that you would in fact place a harmless insect such as a caterpillar in the box with him. [redacted]. ... If you do so, to ensure that you are outside the predicate act requirement, you must inform him that the insects will not have a sting that would produce death or severe pain. If, however, you were to place the insect in the box without informing him that you are doing so, then, in order not to commit a predicate act, you should not affirmatively lead him to believe that any insect is present which has a sting that could produce sever pain or suffering or even cause his death. [redacted].
> [redactions in open source]

OLC Interrogation of al Qaeda Operative (August 1, 2002), at 3, 14. CIA referred to this technique as "use of harmless insects." *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2; *SERE Contractor/Psychologist Business Plan*, at 17; *CIA "Legal Principles" (2003)*; *OLC Interrogation Techniques (May 10, 2005)*, at FN 13 (CIA removed this technique from the list of authorized interrogation techniques). However, it is not clear interrogators were limited to exploiting only this particular form of personal fear. *See, e.g., CIA "Legal Principles" (2003)* (approving unspecified techniques comparable to list that included use of insect).

[90] *See CIA Additional Techniques Letter (March 2, 2004).*

> We also would like to share with you our views on [ ] additional interrogation techniques... [redacted] such as the, attention grasp, walling and the facial slap, all of which have been reviewed by your office. [redactions in open source]

21. These techniques were meant to be used together:

> ["Prototypical"] Session Three…
>
> The HVD remains in sleep deprivation, dietary manipulation and is nude. [subsequent paragraph redacted in open source]
>
> Like the earlier sessions, the HVD begins the session standing against the walling wall with the walling collar around his neck.
>
> If the HVD still maintains a resistance posture, interrogators will continue to use walling and water dousing. All of the Corrective Techniques (insult slap, abdominal slap, facial hold, attention grasp) may be used several times during his session based on the response and actions of the HVD. Stress positions and wall standing will be integrated into interrogations
>
> Intense questioning and walling would be repeated multiple times.
>
> Interrogators will often use one technique to support another…[91] (emphasis in original)

22. CIA officers were not limited to this list of "enhanced interrogation techniques." Interrogators could also use "such other techniques as may be approved" in accordance with DCI guidance.[92] Improvised actions were not prohibited, so long as authorized.[93] In June of 2003, attorneys at DOJ OLC condoned the CIA's use of "comparable, approved techniques" without enumeration.[94]

23. By 2007, the CIA had used "enhanced interrogation techniques" on 30 of 98 detainees in the program.[95] However, the CIA also utilized a wide range of approaches that it referred to as "standard interrogation techniques." According to program guidance promulgated in

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Id., at 1, 2.

[91] *CIA Background Paper on Combined Techniques (2004)*, at 14.

[92] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2.

[93] *CIA OIG Special Review (May 7, 2004)*, at para. 63

[94] *CIA "Legal Principles" (2003). CIA "Legal Principles" (2003)* concluded that the use of enumerated and unenumerated "comparable" interrogation techniques "did not violate any Federal statute of other law, where the CIA interrogators do not specifically intend to cause the detainees to undergo severe physical or mental pain or suffering (i.e., the act with the good faith belief that their conduct will not cause such pain or suffering…". *CIA "Legal Principles" (2003)*, at 3. DOJ OLC later disputed CIA's characterization of this document as an opinion from OLC or formal statement of OLC's views. *OLC Disowns "Legal Principals" (June 18, 2004)*, at 1.

[95] *See OLC Interrogation Techniques and WCA, DTA, and Common Article 3 (July 20, 2007)*, at 2.

January 2003, "standard interrogation techniques" were techniques that the CIA presumed[96] did not involve "physical or substantial psychological pressure."[97] While the CIA's designation of a technique as "standard" versus "enhanced" reduced the amount of control and oversight of interrogators' use of the technique, it is not clear that such a designation made much practical difference to the detainee.[98]

24. The agency-level guidelines for interrogation in the RDI program did not require interrogators to obtain advance permission or ensure that medical personnel were on site for the use of "standard interrogation techniques".[99] DOJ OLC's 2002 and 2005 assessments of whether the CIA's interrogation approach might result in torture did not take into account "standard interrogation techniques" or other forms of treatment not classified by the CIA as "enhanced" measures, singly or in combination with "enhanced" techniques.[100]

25. According to the CIA OIG, by November 2002, CIA interrogators were using "standard interrogation techniques" that, despite "a precedent of detailed cables between [redacted] and Headquarters regarding the interrogation and debriefing of detainees," were not addressed in written guidance from headquarters, did not require prior approval, and did not require medical oversight.[101] At various times, "standard interrogation

[96] A number of "standard" techniques apparently did, in fact, involve physical or substantial psychological pressure. *See generally* "Appendix A: Selected Forms of Mistreatment."

[97] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1: "Standard Techniques are techniques that do not incorporate physical or substantial psychological pressure." (emphasis in original). "Enhanced interrogation techniques" did involve "physical or substantial psychological pressure", or at least involved some measure beyond that of "standard interrogation techniques." *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2: "Enhanced Techniques are techniques that do incorporate physical or psychological pressure beyond Standard Techniques." (emphasis in original).

[98] Consider, for example, the hypothetical effects on a detainee subjected to repeated cycles of 56-hour periods of sleep deprivation followed by "brief rests," over a 30-day period, labeled a "standard" approach in September 2003, but an "enhanced" approach eight months later. *Compare OMS Guidelines (Sept.4, 2003)*, at 2 (sleep deprivation over 72 hours is "enhanced"), *with OMS Guidelines (May 17, 2004)*, at 7 (sleep deprivation over 48 hours is "enhanced"). The CIA maintained a similar distinction without a practical difference between interrogation techniques and conditions of confinement. *Compare DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 ("isolation" is standard interrogation technique), *with OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7 -9, 13; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4-5, 16-19 ("isolation" is condition of confinement).

[99] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 3 ("Whenever feasible, advance approval is required for the use of Standard Techniques by an interrogation team."); *id.*, at 2 ("Appropriate medical and psychological personnel shall be [redacted] readily available for consultation and travel to the interrogation site during all detainee interrogation employing Standard Techniques, and appropriate medical and psychological personnel must be on site for all detainee interrogations employing Enhanced Techniques.").

[100] In 2002, OLC briefly determined that a course of conduct of "enhanced" interrogation techniques was authorized, based on CIA's assurances that "enhanced" interrogation techniques would "not be used with substantial repetition." *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 11.

[101] *CIA OIG Special Review (May 7, 2004)*, at para. 89. The four "standard interrogation techniques" were sleep deprivation; continual use of light or darkness in a cell; loud music; and "white" noise. *CIA OIG Special Review*

techniques" included but were not limited to:[102]

- Forced shaving or grooming;[103]
- Stripping and prolonged nudity;[104]
- Hooding;[105]
- Isolation;[106]

(May 7, 2004), at FN 43. Documents refer to *white noise*, suggesting the sound could be characterized as positive or benign. The author herein refers interchangeably to *"white" noise* (in quotations) or to *background noise*, in order to use the common terms but to avoid characterizing the sound.

[102] The DCI list of standard interrogation techniques was not exclusive. *See DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 ("Among").

[103] CIA forcibly shaved each detainee's head and face upon his arrival at the detention facility, and at various times throughout his detention. Detainees could also be groomed at any point during their detention for the purposes of "hygiene and safety", presumably with or without their consent. At various times CIA handled "shaving" as a "standard" interrogation technique or as a condition of confinement. DOJ OLC noted than even when described as a condition of confinement, the initial act of shackling a detainee to a chair and forcibly shaving his head and face, in combination with other factors, "is more like an interrogation technique than a condition of confinement." *OMS Guidelines (Sept.4, 2003)*, at 1 (listing shaving among "standard" interrogation techniques); *OMS Guidelines (Dec. 2004)*, at 8 (listing shaving among "sanctioned interrogation techniques"); *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1 (listing shaving among conditions of detention required by CIA security); *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7, 9; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, FN 3, 12 (citing shaving for the purposes of hygiene and security, but also comparing the initial shaving to interrogation techniques).

[104] *OMS Guidelines (Sept.4, 2003)*, at 1 ("stripping" is standard measure); *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8; *CIA Background Paper on Combined Techniques (2004)*, at 4, 5, 9-10 (nudity as "conditioning technique"). "The [detainee's] clothes are taken from him and he remains nude until interrogators provide clothes to him." *CIA Background Paper on Combined Techniques (2004)*, at 5. Interrogators typically stripped the detainee while he was hooded and presumably in a state of heightened uncertainty. "This technique is used to cause psychological discomfort, particularly if a detainee, for cultural or other reasons, is especially modest." *OLC Interrogation Techniques (May 10, 2005)*, at 7. Nude detainees were more susceptible to cold stress. The CIA OIG describes reports of an incident circa December 2002 in which CIA officers reported that a detainee was "left in a cold room, shackled and naked, until he demonstrated cooperation." *CIA OIG Special Review (May 7, 2004)*, at para. 184. In 2005, DOJ OLC assessed nudity alongside "enhanced interrogation techniques." *OLC Interrogation Techniques (May 10, 2005)*, at 7-8, 31-32; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 12, 13; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12.

[105] The CIA hooded or blindfolded detainees during interrogation, during transport, and at other times throughout their detention at the black sites. *OMS Guidelines (Sept.4, 2003)*, at 1 (listing "hooding" among "standard" interrogation techniques); *OMS Guidelines (Dec. 2004)*, at 8; *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1 (listing "hooding" as standard condition of detention); *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1 (text that corresponds to information on "hooding" in *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)* is redacted). Open source government documents describe situations in which hooding or blindfolding likely exacerbated detainees' fear and uncertainty during other mistreatment. In a "prototypical" "session one" of interrogation, detainees were first stripped naked, shackled, and put in a "walling collar" while hooded; only then was the hood removed. *CIA Background Paper on Combined Techniques (2004)*, at 9-10. In 2006, OLC assessed "blindfolding" as a condition of confinement. *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7 (noting practice of blindfolding is characterized as a "special security measure"); *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4.

[106] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 (isolation is standard technique); *SERE*

- Loud music or "white" noise;[107]
- Continuous light, constituting sensory overload;[108]
- Continuous darkness, constituting sensory deprivation;[109]
- Cold;[110]
- Sleep deprivation;[111]
- Restricted diet;[112]
- Deprivation of reading material;[113]
- Forced use of adult diapers, denying subject access to toilet facilities for an extended period;[114]

Contractor/Psychologist Business Plan, at 15; *CIA "Legal Principles" (2003)*; *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8.

[107] *See CIA OIG Special Review (May 7, 2004)*, at para. 89, fn. 43; *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15-16; *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (Dec. 2004)*, at 8.

[108] *See CIA OIG Special Review (May 7, 2004)*, at para. 89, fn. 43; *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (Dec. 2004)*, at 8.

[109] *See CIA OIG Special Review (May 7, 2004)*, at para. 89, FN 43 (listing "continual use of light or darkness in a cell" as a standard interrogation technique approved as early as November 2002); *OMS Guidelines (Sept.4, 2003)*, at 1 (listing "continuous light or darkness" among "standard" interrogation techniques); *OMS Guidelines (Dec. 2004)*, at 8 (listing "continuous light or darkness" among "sanctioned interrogation techniques").Later open source documents do not refer to continuous darkness as an interrogation technique, and its use may have been discontinued at some point in the program. A detainee placed in "cramped confinement" may also have been subjected to "continuous darkness", as the confined space was "usually dark." *OLC Interrogation Techniques (May 10, 2005)*, at 9.

[110] *OMS Guidelines (Sept.4, 2003)*, at 1, 4-5 ("uncomfortably cool environment" is standard); *OMS Guidelines (May 17, 2004)*, at 7, 9-10; *OMS Guidelines (Dec. 2004)*, at 8, 10-11. *See also OMS Guidelines (Sept.4, 2003)*, at 1 ("water dousing" is standard).

[111] Sleep deprivation was "a central part of the 'prototypical interrogation.'" *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13. As early as November 2002, the CIA considered sleep deprivation up to 72 hours a standard interrogation technique for which interrogators were not required to obtain headquarters approval. *CIA OIG Special Review (May 7, 2004), at* FN 43. In late December 2003, the CIA began requiring headquarters' approval for fewer hours of continuous sleep deprivation, periods exceeding 48 hours. *CIA OIG Special Review (May 7, 2004), at* FN 34. See also *SERE Contractor/Psychologist Business Plan*, at 15. In 2002, the CIA restricted continuous sleep deprivation to 11 days "at a time". *CIA OIG Special Review (May 7, 2004)*, at 15. By 2005 the CIA established a limit of 180 hours (7.5 days) for each cycle of continuous sleep deprivation. *OLC Interrogation Techniques (May 10, 2005)*, at 12. *See also OMS Guidelines (Dec. 2004)*, at 15-16 (limiting a cycle of sleep deprivation to 180 hours; most information redacted). Detainees could be subjected to repeated cycles of sleep deprivation.

[112] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15; *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (May 17, 2004)*, at 11; *OMS Guidelines (Dec. 2004)*, at 8, 12; *OLC Interrogation Techniques (May 10, 2005)*, at 7; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12.

[113] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 ("deprivation of reading material" is "standard technique"); *SERE Contractor/Psychologist Business Plan*, at 15; *CIA "Legal Principles" (2003)*.

[114] Diapering was an interrogation technique, meant to humiliate detainees. *OPR Report (July 29, 2009)*, at 36 ("use of diapers," "in order to humiliate" detainee); *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 (listing "use of diapers for limited periods (generally not to exceed 72 hours, [redacted]" among

- Undefined "moderate" psychological pressure;[115]
- Shackling;[116] and
- "Water dousing," later considered an "enhanced interrogation technique."[117]

26. By January 2003, "standard interrogation techniques" in the RDI program also included "all lawful forms of questioning employed by US law enforcement and military interrogation personnel."[118] Techniques deemed "legally" available by DOD attorneys in 2002-2003 and later[119] included the following approaches:

- "Fear up harsh;"
- "Pride and ego down;"
- "Futility;"
- "Mutt and Jeff;"
- "Change of scenery down;"
- Hooding;
- "Mild" physical contact;
- Dietary manipulation;
- Environmental manipulation, such as temperature;

"Standard Techniques"); *SERE Contractor/Psychologist Business Plan*, at 15 (diapering for "limited periods" was "standard interrogation technique"), 17 (diapering for "prolonged periods" was "enhanced interrogation technique"). In 2005, CIA asserted to OLC that "diapers are used solely for sanitary and health reasons and not in order to humiliate the detainee." *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13. However, in the same document, CIA stated that diapers were necessary because "releasing a detainee from shackles would present a security problem and would interfere with the effectiveness of the [sleep deprivation] technique." *Id.* The typical means by which a detainee was kept awake for sleep deprivation was standing with arms shackled overhead, nude except for a diaper. CIA OIG describes interrogators who reported smoking cigars during "enhanced" interrogation to "mask the stench" in the room. *CIA OIG Special Review (May 7, 2004)*, at para. 96.

[115] *CIA OIG Special Review (May 7, 2004)*, at para. 63. It is not clear from open sources what constituted "moderate".

[116] *SERE Contractor/Psychologist Business Plan*, at 16; *OMS Guidelines (Sept.4, 2003)*, at 1, 5-7; *OMS Guidelines (May 17, 2004)*, at 7, 12-13; *OMS Guidelines (Dec. 2004)*, at 8, 14; *OLC Interrogation Techniques (May 10, 2005)*; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 16; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13; *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 3; *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 11-12; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 6, 23-24. Interrogators also shackled detainees for sleep deprivation and stress positions, and bound detainees in order to manhandle or immobilize them for the application of additional techniques.

[117] *OMS Guidelines (Sept.4, 2003)*, at 1 ("water dousing" is standard); *OMS Guidelines (May 17, 2004)*, at 7, 11-12 ("water dousing" is enhanced).

[118] *See DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15.

[119] In 2002 and 2003, the Department of Defense concluded a number of forms of treatment were "legally" available to military interrogation personnel, subject to certain limitations, but not all techniques were implemented by the military as a matter of policy. *See SECDEF Memorandum (Nov. 27, 2002)*; *DoD Interrogation Working Group Report (4 April 2003)*.

- Sleep "adjustment" and deprivation;
- Deceiving the detainee by interrogators presenting a false identity… "to paint the interrogator as either a citizen of a foreign nation, or as an interrogator from a country with a reputation for harsh treatment of detainees;"[120]
- Threatened transfer to a third country;
- Isolation;
- Prolonged interrogations (i.e., 20-hour interrogations);
- Forced grooming (shaving of facial hair, etc.);
- Prolonged standing;
- Sleep deprivation;
- Physical "training", i.e., physical activity to induce fatigue or exhaustion;
- Slapping;
- Removal of clothing;
- Exploitation of a detainee's individual phobias (such as fear of dogs) to induce stress;
- Stress positions;
- Yelling;
- "Multiple interrogators;"
- Falsified documents or reports;
- Interrogation in other than standard interrogation booth;
- Deprivation of light and auditory stimuli;
- Removal of all comfort items, including religious items;
- Threats of severe pain or death against detainee and/or his family;
- The use of "mild, non-injurious" physical contact; and
- Suffocation by water.

27. Office of Military Commission Convening Authority Susan J. Crawford later characterized the treatment of a particular Guantánamo detainee questioned by military interrogation personnel using "authorized techniques" as meeting "the legal definition of torture."[121]

28. Interrogators appear to have carefully calibrated relationships between physical and mental effects on detainees. For example, interrogators appear to have employed the psychological approach of convincing the detainee his physical pain was "self-imposed," or something he had chosen voluntarily:

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[120] *SECDEF Memorandum (Nov. 27, 2002).*

[121] As applied by military interrogation personnel to one particular detainee at Guantánamo. Bob Woodward, *Detainee Tortured, Says U.S. Official: Trial Overseer Cites 'Abusive' Methods Against 9/11 Suspect*, Washington Post (January 14, 2009) *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html.

> The interrogators … explain the HVD's situation to him, tell him that the interrogators will do what it takes to get important information, and that he can improve his conditions immediately by participating [sic] with the interrogators… interrogators will remind the HVD that he is responsible for this treatment and can stop it, at any time by cooperating with the interrogators.[122]

29. Instructors in the SERE program utilized stress positions, *inter alia*, as a tool to "demonstrate self-imposed pressure."[123] The effect has long been recognized by the CIA and U.S. military as one "that tends to make [certain] method[s] of torture so effective in the breakdown of the individual."[124]

> [O]ne form of torture was experienced by a considerable number of Air Force prisoners of war during [Communist Chinese] efforts to coerce false confessions from them. The prisoners were required to stand, or sit, at attention for exceedingly long periods of time — in one extreme case, day and night for a week at a time with only brief respites. In a few cases, the standing was aggravated by extreme cold. This form of torture had several distinct advantages for extorting confessions.
>
> In the simple torture situation — the 'bamboo splinters' technique of popular imagination — the contest is clearly one between the individual and his tormentor. Can he endure pain beyond the point to which the interrogator will go in inflicting pain? The answer for the interrogator is all too frequently yes.
>
> Where the individual is told to stand at attention for long periods, an intervening factor is introduced. The immediate source of pain is not the interrogator but the victim himself. The contest becomes, in a way, one of the individual against himself. The motivational strength of the individual is likely to exhaust itself in this internal encounter.
>
> Bringing the subject to act "against himself" in this manner has additional advantages for the interrogator. It leads the prisoner to exaggerate the power of the interrogator. As long as the subject remains standing, he is attributing to his captor the power to do something worse to him ... Returnees who underwent long periods of standing and sitting, however, report no other experience could be more excruciating.[125]

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[122] *CIA Background Paper on Combined Techniques (2004)*, at 5, 10, 15. As a CIA officer/contractor explained to the CIA OIG, "physical and environmental discomfort was used to encourage detainees to improve their environment." *CIA OIG Special Review (May 7, 2004)*, at para. 185.
[123] *See JPRA Description of Physical Pressures.*
[124] *1957 Communist Control Techniques*, at 37-38 (describing techniques used by the Soviet KGB during interrogations, in report commissioned in the 1950s by the CIA).
[125] *Biderman's Principles*, at 620.

30. For the sake of comparison, the following forms of treatment are among those that medical, legal, human rights, and other experts have long considered abusive, particularly when combined, prolonged, or inflicted on a vulnerable subject. These and other forms of abuse can amount to torture or other forms of cruel, inhuman or degrading treatment:

- Blunt trauma, such as a punch, kick, slap, or falling down;
- Positional abuse, using suspension, stretching limbs apart, prolonged constraint of movement, forced positioning;
- Asphyxiation, such as wet and dry methods, drowning, smothering, choking or use of chemicals;
- Conditions of detention, such as a small or overcrowded cell, solitary confinement, unhygienic conditions, no access to toilet facilities, irregular or contaminated food and water, exposure to extremes of temperature, denial of privacy and forced nakedness;
- Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, food, water, toilet facilities, bathing, motor activities, medical care, social contacts, isolation within prison, loss of contact with the outside world (victims are often kept in isolation in order to prevent bonding and mutual identification and to encourage traumatic bonding with the torturer);
- Humiliation, such as verbal abuse, performance of humiliating acts;
- Threats of death, harm to family, further torture, imprisonment, mock executions;
- Psychological techniques to break down the individual, including forced betrayals, accentuating feelings of helplessness, exposure to ambiguous situations or contradictory messages; or
- Violation of taboos.[126]

31. The U.S. State Department, in its annual country reports on human rights practices, repeatedly condemned harsh interrogation techniques utilized by foreign governments that resemble practices used on detainees.[127] As noted by OLC in 2005:

[126] *The Istanbul Protocol*, at 29.
[127] *See CIA OIG Special Review (May 7, 2004)*, at para. 229.

> Certain of the techniques the United States has condemned appear to bear some resemblance to some of the CIA interrogation techniques. In their discussion of Indonesia, for example, the reports lists as "[p]sychological torture" conduct that involves "food and sleep deprivation," but gives no specific information as to what these techniques involve. In their discussion of Egypt, the reports list as "methods of torture" "stripping and blindfolding victims; suspending victims from a ceiling or doorframe with feet just touching the floor; beating victims [with various objects]; ... and dousing victims with cold water." *See also, e.g,* Algeria (describing the "chiffon" method, which involves "placing a rag drenched in dirty water in someone's mouth; Iran (counting sleep deprivation as either torture or severe prisoner abuse); Syria (discussing sleep deprivation and "having cold water thrown on" detainees as either torture or "ill-treatment").[128]

32. DOJ OLC acknowledged that, "The State Department's inclusion of nudity, water dousing, sleep deprivation, and food deprivation among the conduct it condemns is significant and provides some indication of an executive foreign relations tradition condemning the use of these techniques."[129] Nevertheless, OLC determined that these techniques were lawful.

33. Cold War-era CIA officers understood this sort of treatment as used by the Soviets to obtain information and confessions thus:

> The effects of isolation, anxiety, fatigue, lack of sleep, uncomfortable temperatures, and chronic hunger produce disturbances of mood, attitudes, and behavior in nearly all prisoners. The living organism cannot entirely withstand such assaults.
>
> The Communists do not look upon these assaults as "torture"... But these methods do constitute torture and physical coercion and should never be considered otherwise. All of them lead to serious disturbances of many bodily processes and to demobilization of the personality.[130]

[128] *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 36.
[129] *Id.*, at 36.
[130] *Brainwashing (1956)*, at 25-26. This 1956 CIA study on Soviet techniques to obtain information and confessions was forwarded by then-CIA Director Allen Dulles to FBI Director J. Edgar Hoover. DCI Dulles wrote, "I feel you will find [this study] well worth your personal attention. It represents the thinking of leading psychologists, psychiatrists and intelligence specialists... I believe the study reflects a synthesis of majority expert opinion." *Id.*, at cover letter.

IV. "PROTOTYPICAL" PROCESS

34. For the first several months of the program, interrogators utilizing the "new" techniques received only *ad hoc* guidance. During this time, CIA personnel committed a number of unauthorized activities that were later investigated by the CIA OIG.

> The [*ad hoc*] guidance ... did not specifically address the issue of whether or not Agency officers could improvise with any other techniques. No formal mechanisms were in place to ensure that personnel going to the field were briefed on the existing legal and policy guidance.[131]

Nor did the guidance address standard interrogation techniques that the CIA identified as early as November 2002, which CIA personnel were authorized to employ on a detainee without Headquarters' prior approval.[132] The CIA OIG later concluded that the CIA had "failed to issue in timely manner comprehensive written guidelines for detention and interrogation activities."[133]

35. The CIA issued the first Agency-level guidance for RDI interrogation in January 2003.[134] The CIA OIG later determined the January 2003 guidance left "substantial room for misinterpretation and [did] not cover all Agency detention and interrogation activities."[135]

36. The CIA described the phases of a "prototypical" interrogation process in a memorandum from 2004 offering "background" on how the CIA combined interrogation techniques.[136] The memorandum discusses interrogation techniques "used in combination" with other techniques. However, this discussion does not include all forms of contemporaneous enhanced interrogation techniques, nor does the memorandum consider the lingering effects of previous enhanced techniques. The memorandum does not address "standard" interrogation techniques and conditions of confinement that the CIA may have used at any time.

37. According to the CIA, the first phase of the "prototypical" interrogation process began upon capture. A detainee's initial detention environment and experience contributed to his physical and psychological condition once he was turned over to the CIA, including his individual experience of and reaction to "capture shock".[137] The CIA's process of rendering

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[131] *CIA OIG Special Review (May 7, 2004)*, at para. 89.
[132] *Id.*
[133] *Id.*, at para. 259. *See also id.*, at para 89.
[134] *See generally DCI Interrogation Guidelines (Jan. 28, 2003).*
[135] *CIA OIG Special Review (May 7, 2004)*, at para. 15.
[136] *See generally CIA Background Paper on Combined Techniques (2004).*
[137] *CIA Background Paper on Combined Techniques (2004)*, at 1 ("Capture, [redacted] contribute to the physical and psychological condition of the HVD prior to the start of interrogation. Of these, "capture shock" and detainee reactions [redacted] are factors that may vary significantly between detainees [redacted]

detainees and receiving them a "Black Site" was meant to be deliberate and methodical, calculated to show the detainee that his captors were in complete control, and to generate in him a mental state of "significant apprehension," uncertainty, and dread.[138]

38. While each HVD is different, the rendition and reception process generally creates significant apprehension in the HVD because of the enormity and suddenness of the change in environment, the uncertainty about what will happen next, and the potential dread and HVD might have of US custody.[139]

39. According to this memorandum, CIA interrogators would initiate a series of conditioning techniques to "reduce" a new detainee to a "baseline, dependant state."[140] These techniques were used singly or in combination for up to weeks, with approval for their use renewable after 30 days.[141] The CIA memorandum states that, "establishing this baseline state is important to demonstrate to the ["high-value detainee"] that he has no control over basic human needs."[142] The CIA relied on "the cumulative effect of these techniques, used over time and in combination with other interrogation techniques and intelligence exploitation methods."[143]

40. The memorandum states that "conditioning" techniques were nudity, sleep deprivation, and dietary manipulation, to which restrained shackling and diapering were incidental. The memo notes that other enhanced interrogation techniques typically would be used while the detainee was subject to "conditioning" techniques.

41. The memorandum further describes how interrogators would also employ "corrective" techniques, those which required physical interaction between the interrogator and detainee in order to "correct" or "startle" the detainee, "or to achieve another enabling objective".[144] "Corrective" techniques "generally are used while the detainee is subjected to the conditioning techniques"[145] and accentuated the detainee's feelings of helplessness by "keep[ing] a high level of unpredictability in the interrogation process" and "demonstrate[ing] the interrogators' control over the HVD,"[146] The memorandum refers to "conditioning" techniques such as various slaps and grabs, and notes some can be used simultaneously with other enhanced

[redacted]. [redactions in open source]."

[138] *Id.*, at 2.
[139] *Id.*, at 2.
[140] *CIA Background Paper on Combined Techniques (2004)*, at 5.
[141] *Id.*, at 5; *OLC Interrogation Techniques (May 10, 2005)*, at 5.
[142] *CIA Background Paper on Combined Techniques (2004)*, at 4.
[143] *Id.*, at 5, 7 (conditioning techniques used with corrective and coercive techniques).
[144] *Id.*, at 5.
[145] *Id.*, at 5.
[146] *Id.*, at 6.

interrogation techniques such as water dousing and stress positions.[147]

42. Finally, the memorandum describes how interrogators sought to employ "coercive" techniques, those which "place the detainee in more physical and psychological stress, and therefore are considered more effective tools in persuading a resistant HVD to participate with CIA interrogators."[148] These techniques (walling, water dousing, stress positions, wall standing, and cramped confinement) could be combined, and combined with conditioning and corrective techniques, subject to physical dynamics (for example, it would not be possible to combine walling with horizontal sleep deprivation, but a detainee could be doused with cold water while nude and sleep deprived in a stress position). "Coercive" techniques cause psychological as well as physical stress: repetitive walling, for example, "was designed to wear down the detainee and to shock or surprise the detainee ...".[149]

43. The memorandum does not address how "conditioning", "corrective" and "coercive" techniques may have affected a subject experiencing the concurrent effects of "standard" interrogation techniques, conditions of confinement in a covert detention facility (a "black site"), prolonged isolation, indefinite detention, and medical treatment controlled by an interrogation mission rather than the best interests of the patient.

44. The CIA's interrogation approach created and exploited the detainee's belief that at any time, interrogators could cause him significant pain or suffering, regardless of their intent. CIA interrogators set out to psychologically "dislocate" each subject's expectations regarding the treatment he believed he would receive, and to "maximize his feeling of vulnerability and helplessness."[150] Detainees were specifically told that interrogators would "do what it takes to get important information."[151] Detainees were subjected to specific techniques used to "dislodge expectations that the detainee will not be touched."[152] When the Director of the CIA discussed the value of these interrogation techniques with the CIA OIG, he emphasized that the subjects were "detainees who had otherwise believed they were safe from any harm in the hands of Americans."[153]

45. The memorandum, which was issued in 2004, does not address how a progressive

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[147] *See generally id.*
[148] *CIA Background Paper on Combined Techniques (2004)*, at 7.
[149] *OLC Interrogation Techniques (May 10, 2005)*, at 8. Walling "wears down a detainee physically... and creates a sense of dread when the HVD knows he is to be walled again." *CIA Background Paper on Combined Techniques (2004)*, at 7.
[150] *OMS Guidelines (Dec. 2004)*, at 8.
[151] *CIA Background Paper on Combined Techniques (2004)*, at 10. Because the statement might be construed as a threat of harm, OLC suggested in 2005 that CIA reconsider whether "a different statement might be adequate to convey to the detainee the seriousness of his situation." *OLC Interrogation Techniques Combined (May 10, 2005)*, at 19.
[152] *OLC Interrogation Techniques (May 10, 2005)*, at 9.
[153] *CIA OIG Special Review (May 7, 2004)*, at para. 218.

increase in these techniques and the degree of physical violence, which "alter[s] [a detainee's] expectations about the treatment he believes he will receive ... [and] dispel[s] a detainee's expectations that interrogators will not use increasing levels of force..."[154] might lead a detainee to fear that serious bodily harm or even death is imminent. However, in August 2002, the DOJ OLC had already advised that procedures "used in a course of conduct, moving incrementally and rapidly from least physically intrusive, e.g., facial hold, to the most physical contact, e.g., walling or waterboard," might constitute a threat of severe physical pain or suffering.[155]

> Based on the facts you have provided to us, we cannot say definitively that the entire course of conduct [contemplated for Abu Zubaydah] would cause a reasonable person to believe that he is being threatened with severe pain or suffering within the meaning of Section 2340. On the other hand, however, under certain circumstances – for example, rapid escalation in the use of these techniques culminating in the waterboard (which we acknowledge constitutes a threat of imminent death) accompanied by verbal, or either suggestions that physical violence will follow – might cause a reasonable person to believe that they are faced with such a threat.[156]

46. Over the course of days or weeks of a "prototypical" interrogation, interrogators likely would have used most techniques multiple times on detainees deemed fit for such treatment.[157] As each detainee transitioned to "compliance", CIA officers were to apply interrogation techniques less frequently in order to "improve" the "interrogation environment" "in accordance with the detainee's demonstrated consistent participation with the interrogators."[158]

47. CIA officers could "reinstate" intense interrogation with associated detention conditions of for a detainee previously assessed as "compliant," and did so for at least one detainee.[159] There is substantial reason to doubt the reliability of interrogators' judgments that a detainee was either compliant or non-compliant. In 2004, the CIA OIG noted that agency officers had reported that:

> [R]eliance on analytical assessments that were unsupported by credible intelligence may have resulted in the application of EITs [enhanced interrogation techniques]

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[154] *OLC Interrogation Techniques (May 10, 2005)*, at 8. Walling "wears down a detainee physically, heightens uncertainty in the detainee about what the interrogator may do to him, and creates a sense of dread when the HVD knows he is to be walled again." *CIA Background Paper on Combined Techniques (2004)*, at 7.

[155] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 15.

[156] *Id.* DOJ OLC attorneys decided they were unable to decide because the CIA had not described either the order or the precise timing for implementing procedures. *Id.*

[157] *OMS Guidelines (Dec. 2004)*, at 16.

[158] *CIA Background Paper on Combined Techniques (2004)*, at 16, 18.

[159] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at para. 91-92, 224. The CIA OIG describes how a named detainee was interrogated with "enhanced interrogation techniques", assessed as "compliant", then reassessed as "withholding" and subject to additional "enhanced interrogation techniques." *Id.*

without justification. Some participants in the Program, particularly field interrogators, judge that CTC assessments to the effect that detainees are withholding information are not always supported by an objective evaluation of available information and the evaluation of the interrogators but are too heavily based, instead, on presumptions of what the individual might or should know.[160]

V. ORIGINS OF THE APPROACHES

48. Early in the program, two different teams provided medical support. While personnel from the CIA's Office of Medical Services (OMS) provided medical treatment for detainees,[161] the interrogation process itself was developed and overseen by personnel in the CIA's Counter Terrorism Center (CTC) and Office of Technical Services (OTS),[162] working with private contractors with experience as psychologists in the U.S. Air Force's and DoD's Survival, Evasion, Rescue and Escape (SERE) training programs.[163] OMS and OTS chain of command did not intersect at a level below that of the office of the Director of Central Intelligence.[164] The CIA OIG later found a significant lack of coordination between OTS and OMS, to the point where OMS was "neither consulted nor involved in the initial analysis of the risk and

[160] *CIA OIG Special Review (May 7, 2004)*, at para. 104. Open sources do not indicate whether the IG recommended or the CIA took corrective action.

[161] *Id.*, at para. 7 ("By November 2002, the Agency had Abu Zubaydah and another high value detainee, 'Abd Al-Rahim Al-Nashiri, in custody, [redacted] and the Office of Medical Services (OMS) provided medical care to the detainees."). OMS is a component of the CIA's Directorate of Support, one of four basic components of the CIA. *See CIA Organization Chart* (last updated Feb 20, 2009) *available at* https://www.cia.gov/about-cia/leadership/70040-BLU-Jan-09-OPA.pdf.pdf.

[162] CTC managed the CIA's RDI program, and with the assistance of OTS, proposed "certain more coercive" interrogation techniques. *CIA OIG Special Review (May 7, 2004)*, at para. 5. OTS also prepared a report analyzing the proposed enhanced interrogation techniques that assessed their potential long-term psychological effects on detainees, incorporated information solicited from psychologists and "knowledgeable academics in the area of psychopathology", and included input from JPRA regarding techniques used in SERE training. *See CIA OIG Special Review (May 7, 2004)*, at para. 33-44 (describing OTS role); *see also id., at* FN 26 (citing to "OTS Report"). OTS's report was used by DOJ OGC in evaluating the legality of the techniques in the *OLC Interrogation of al Qaeda Operative (August 1, 2002). CIA OIG Special Review (May 7, 2004)*, at para. 252 ("OGC worked closely with DoJ to determine the legality of the measures that came to be known as enhanced interrogation techniques (EITs)…. [The resulting DoJ legal opinion of 1 August 2002] was based, in substantial part, on OTS analysis and the experience and expertise of non-Agency personnel and academics concerning whether long-term psychological effects would result from use of the proposed techniques."). OMS, OTS and CTC are each part of one of the four basic components of the CIA, respectively, the Directorate of Support, the Directorate of Science and Technology, and the National Clandestine Service, formerly the Directorate of Operations. *See CIA Organization Chart* (last updated Feb 20, 2009) *available at* https://www.cia.gov/about-cia/leadership/70040-BLU-Jan-09-OPA.pdf.pdf.

[163] SERE training in the Department of Defense was overseen by the Joint Personnel Recovery Agency (JPRA).

[164] *See CIA Organization Chart* (last updated Feb 20, 2009) *available at* https://www.cia.gov/about-cia/leadership/70040-BLU-Jan-09-OPA.pdf.pdf.

benefits of EITs."[165]

49. Without OMS, the SERE contractor/psychologists developed the CIA's interrogation approaches in 2002 by reverse-engineering procedures from approaches utilized by U.S. government instructors in SERE training. SERE training was designed to help U.S. personnel prepare for possible detention by captors who would not adhere to the Geneva Conventions, and was based in part on studies of North Korean and Chinese practices designed to compel confessions from American prisoners.[166] Cold War-era CIA studies of Soviet and Communist Chinese efforts to "brainwash" and "condition" detainees describe programs with remarkable similarities to the CIA RDI approach to interrogation.[167]

50. As such, SERE training was not an interrogation program, the SERE contractor/psychologists hired by the CIA were not interrogators, and CIA OMS medical personnel concluded that SERE contractor/psychologists exaggerated their predicted ability to extract useful intelligence using these methods.[168]

51. There are significant differences between counter-resistance training for US personnel and coercive interrogation for suspected terrorists. In 2005, OLC acknowledged some of the differences between the techniques used in SERE and by the CIA:

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[165] "According to the Chief, Medical Services, OMS was neither consulted nor involved in the initial analysis of the risk and benefits of EITs, nor provided with the OTS report cited in the OLC opinion." *CIA OIG Special Review (May 7, 2004)*, at FN 26.

[166] A 2008 Congressional investigation revealed that SERE instructors sent to Guantánamo in December 2002 to train military interrogators on "interrogation fundamental and resistance to interrogation" provided them with a chart of "Coercive Management Techniques" that was, in fact, copied verbatim from a 1957 Air Force study of Chinese Communist techniques used during the Korean War to obtain confessions from American prisoners, many of them false. Scott Shane, *China Inspired Interrogations, at Guantánamo*, N.Y. Times, July 2, 2008.

[167] *See, e.g., 1957 Communist Control Techniques*. The CIA commissioned this report in the 1950s to describe techniques used by the Soviet KGB during interrogations. *See also Brainwashing (1956)*. This 1956 CIA study was forwarded by then-CIA Director Allen Dulles to FBI Director J. Edgar Hoover for his "personal attention." *Id.*, at cover letter. Both documents describe programs that used isolation, environmental manipulation, stress positions, sleep deprivation, unpredictability, dependence, and the "deliberate destr[uction of] the integration of a personality." *Brainwashing (1956)*, at iv.

[168] *See OMS Guidelines (May 17, 2004)*, at 15-16 (SERE trainers misevaluated effect and medical risks of waterboarding); *CIA OIG Special Review (May 7, 2004)*, at FN 26:

> OMS contends that the reported sophistication of the preliminary EIT review was exaggerated, at least as it related to the waterboard, and that the power of this EIT was appreciably overstated in the report. Furthermore, OMS contends that the expertise of the SERE psychologist/interrogators on the waterboard was probably misrepresented at the time, as the SERE waterboard experience is so different from the subsequent Agency usage as to make it almost irrelevant. Consequently, according to OMS, there was no *a priori* reason to believe that applying the waterboard with the frequency and intensity with which it was used by the psychologist/interrogators was either efficacious or medically safe.

> SERE training, for example, or other experience with sleep deprivation, does not involve its use with the standing position used here, extending nudity, extended dietary manipulation, and the other techniques which are intended "to create a state of learned helplessness," and SERE training does not involve repeated applications of the waterboard. A statement that the interrogators "will do what it takes to get important information" moves the interrogations, at issue here even further from this body of experience.[169]

Other significant differences between SERE training and the CIA interrogation techniques have been noted by the same expert upon whose factual conclusions concerning SERE DOJ OLC relied in a 2002 decision that "enhanced" interrogation techniques were lawful.[170]

52. SERE contractor/psychologists are not medical doctors. There were apparently no medical doctors present when SERE contractor/psychologists first subjected detainees to "enhanced" interrogation techniques.[171]

53. Nor, it appears, were medical doctors among the CIA personnel who designed the initial limitations on the use of "enhanced" interrogation techniques.[172] OMS, the CIA

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[169] *OLC Interrogation Techniques Combined (May 10, 2005)*, at 19.

[170] Such as the following:

- the extensive physical and psychological pre-screening processes for SERE school students that are not feasible for detainees;
- the variance in injuries between a SERE school student who enters training and a detainee who arrives, at an interrogation facility after capture;
- 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;
- 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;
- 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 the underlying goals of 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).

See SASC Detainee Report (November 20, 2008), at 31, *citing* Responses of Dr. Jerald Ogrisseg to Questions for the Record (July 28, 2008). Dr. Ogrisseg is cited in *OLC Interrogation of al Qaeda Operative (August 1, 2002)*.

[171] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 1. "As part of this increased pressure, Zubaydah will have contact only with a new interrogation specialist, whom he has not met previously, and the Survival, Evasion, Resistance, Escape ("SERE") training psychologist who has been involved with the interrogations since they began." *Id.*

[172] In 2002, DOJ OLC referred to "personnel with medical training" who would monitor interrogations. *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3, 15, 16. In 2005, DOJ OLC conditioned approval of the CIA's use of "enhanced interrogation techniques" on the involvement of medical personnel, noting that "involvement of medical personnel in designing safeguards for, and in monitoring implementation of, the procedures *is a significant difference from earlier uses of the techniques* [emphasis added]...." *OLC Interrogation*

component with responsibility for medical programs, was excluded from this process.[173] OMS doctors later told the CIA OIG that despite the SERE contractor/psychologists' representations otherwise, there was no *a priori* reason to believe at least one of the "enhanced" interrogation techniques was medically safe.[174] OMS doctors later drafted medical guidance for "enhanced" interrogation techniques that differed from those utilized by the SERE contractor/psychologists.[175]

54. SERE contractor/psychologists did not have personal experience physically applying "enhanced" or other interrogation techniques on human subjects with the frequency, variety, duration, or intensity of the CIA usage. In SERE training, instructors applied calibrated levels of mental and physical stress to students to prepare them for captivity through "stress inoculation" and "stress resolution," helping them internalize and strengthen their personal coping mechanisms in a realistic but controlled detention environment.[176] The program recognized that too much stress risked damaging the student, making the student *more* vulnerable to the effects of captivity, and SERE instructors were obliged to curtail use of physical and mental stressors before a student "broke."[177] The CIA, however, sought this precise objective with detainees. OMS medical personnel later told the CIA IG that "the expertise of the SERE psychologist/interrogators on the waterboard was probably misrepresented at the time, as the SERE waterboard experience is so different from the subsequent Agency usage as to make it almost irrelevant."[178]

55. Nor should it be assumed the SERE contractor/psychologists had any practical experience inducing "learned helplessness" in a human being or monitoring its effects. The SERE training mission demanded instructors *avoid* inducing "learned helplessness."[179] A

Techniques (May 10, 2005), at 29 (discussing "certain overall features of the CIA's approach that are significant to our conclusions").

[173] "According to the Chief, Medical Services, OMS was neither consulted nor involved in the initial analysis of the risk and benefits of EITs, nor provided with the OTS report cited in the OLC opinion." *CIA OIG Special Review (May 7, 2004)*, at FN 26.

[174] *See CIA OIG Special Review (May 7, 2004)*, at FN 26.

[175] *OLC Interrogation Techniques (May 10, 2005)*, at 29 (medical personnel imposed limitation and required changes to certain procedures).

[176] SERE training is designed to expose a student to a form of "controlled realism" in order to prepare him or her for captivity through "stress inoculation" and "stress resolution." *See generally July 25, 2002 document entitled "Physical Pressures used in Resistance Training and Against American Prisoners and Detainees"*, Tab 3 of *SASC Detainee Report (November 20, 2008) Documents (June 17, 2008)* at 6-9.

[177] "Physical pressures used in resistance training are *not* designed to elicit compliance… If too much physical pressure is applied, the student is made vulnerable to the effects of learned helplessness, which will render him/her less prepared for captivity than s/he was prior to training [i.e., defeat the training mission]. (emphasis added)." *JPRA Description of Physical Pressures*. Basically, if a student breaks, they are doing it wrong.

[178] *CIA OIG Special Review (May 7, 2004)*, at FN 26.

[179] "Physical pressures used in resistance training are *not* designed to elicit compliance… If too much physical pressure is applied, the student is made vulnerable to the effects of learned helplessness, which will render him/her less prepared for captivity than s/he was prior to training [i.e., defeat the training mission]. (emphasis

SERE instructor who deliberately or accidentally induced "learned helplessness" in a SERE student or continued a training scenario once a SERE student reached such a state would have acted in direct opposition to the SERE training goal.[180]

56. Regardless, the CIA regarded the SERE contractor/psychologists as experts in physically applying "enhanced" or other interrogation techniques, and in inducing and maintaining "learned helplessness," and assumed they were qualified to finely calibrate the degree of pain and suffering experienced by their subjects. Under the OLC's assessment, the lawfulness of the CIA approach hinged on this ability.

57. SERE contractor/psychologists did not administer interrogation techniques as planned, neither as administered in SERE training, nor as described to DOJ OLC for the purpose of legal review.[181]

VI. STANDARDS FOR MEDICAL TREATMENT

58. In a typical detention system, the standard of medical care for detainees is neutral in relation to the purposes of the detention; detainee medical care is neither reward nor punishment. As described above, the purpose of detention in the CIA RDI program was to gather intelligence from non-compliant detainees through the deliberate downward manipulation of each detainee's mental state, i.e., the creation and maintenance of a state of learned helplessness and dependence. The goal of the program was therefore fundamentally inimical to detainees' mental and physical health, and incompatible with standards based on the best medical interests of the detainee/patient.[182]

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added)." *JPRA Description of Physical Pressures*. Basically, if a student breaks, they are doing it wrong.

[180] *See OPR Report (July 29, 2009)*, at 34-35, quoting a May 7, 2002 SERE training manual, "Pre-Academic Laboratory (PREAL) Operating Instructions", at Sec. 1.6, 5.3.1. "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")…." *Id.*

[181] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at 79:

> OIG's review of the videotapes revealed that the waterboard technique employed at [redacted] was different from the technique as described in the DoJ opinion and used in the SERE training. The difference was in the manner in which the detainee's breathing was obstructed. At the SERE School and in the DoJ opinion, the subject's airflow is disrupted by the firm application of a damp cloth over the air passages; the interrogator applies a small amount of water to the cloth in a controlled manner. By contrast, the Agency interrogator continuously applied large volumes of water to a cloth that covered the detainee's mouth and nose. One of the psychologists/interrogators acknowledged that the Agency's use of the technique differed from that used in SERE training and explained that the Agency's technique is different because it is "for real" and is more poignant and convincing.

[182] For this reason, the author uses the term "medical treatment" instead of "medical care," which implies action controlled by the best interests of a patient.

59. Public records do not indicate what standards guided detainee medical treatment in the program prior to April 2003. Until at least January 2003, SERE contractor/psychologists, who were neither interrogators nor medical personnel, designed and oversaw the application of "enhanced" and other interrogation techniques on detainees in the program under *ad hoc* guidance which they may or may not have actually followed.[183]

60. In January 2003, the CIA issued the first agency-level guidance for detention and interrogation.[184] "The DCI Guidelines specif[ied] legal "minimums"; require[d] that "due provision must be taken to protect the health and safety of all CIA Detainees..."[185] and approved of providing:

> [B]asic levels of medical care (which need not comport with the highest standards of medical care that is provided in US-Based medical facilities); food and drink which meets minimum medically appropriate nutritional and sanitary standards; ... and sanitary facilities (which may, for example, comprise of buckets for the relief of personal waste).[186]

Regarding the role of medical personal during interrogation:

> [M]edical and psychological personnel shall suspend the interrogation if they determine that significant and prolonged physical or mental injury, pain or suffering is likely to result if the interrogation is not suspended.[187]

This standard sets the operational limit at the "likely" infliction of torture under the OLC's definition.

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[183] The CIA OIG noted a number of unauthorized interrogation activities took place during this time. For example:

> OIG's review of the videotapes [of waterboarding] revealed that the waterboard technique employed at [redacted] was different from the technique as described in the DoJ opinion and used in the SERE training. The difference was in the manner in which the detainee's breathing was obstructed.... One of the psychologists/interrogators acknowledged that the Agency's use of the technique differed from that used in SERE training and explained that the Agency's technique is different because it is "for real" and is more poignant and convincing.

CIA OIG Special Review (May 7, 2004), at para. 79.

[184] *See DCI Interrogation Guidelines (Jan. 28, 2003); DCI Confinement Guidelines (Jan. 28, 2003).*

[185] *CIA OIG Special Review (May 7, 2004)*, at para. 59, *quoting DCI Confinement Guidelines (2006)*, at 1.

[186] Memorandum of Law in Support of Defendant Ahmed Khalfan Ghailani's Motion to Dismiss Indictment Due to the Denial of His Constitutional Rights to a Speedy Trial (Dec. 1, 2009), *US v. Hage, et al, include. Ghaliani*, 1:98-cr-01023-LAK (SDNY), *available at* https://ecf.nysd.uscourts.gov/doc1/12717138103, at 6, *citing* GBN 2009-00011923b. This document appears to be *DCI Confinement Guidelines (Jan. 28, 2003). See CIA OIG Special Review (May 7, 2004)*, at para. 59 (describing and quoting *DCI Confinement Guidelines (Jan. 28, 2003)).*

[187] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2.

61. By at least April 2003, doctors from the CIA medical division (OMS) added medical supervision of detainee interrogations[188] to their existing role providing general medical treatment for detainees. OMS doctor guidelines instructed medical and psychological personnel supporting interrogations thus:[189]

> The following guidelines offer general references for medical officers supporting the detention of terrorists captured and turned over to the Central Intelligence Agency for interrogation and debriefing. There are three different contexts in which these guidelines may be applied: (1) during the period of initial interrogation, (2) during the more sustained period of debriefing at an interrogation site, and (3) [redacted].
>
> *INTERROGATION SUPPORT*
>
> Captured terrorists turned over to the C.I.A. for interrogation and debriefing may be subjected to a wide range of legally sanctioned [sic] techniques, all of which are also used on U.S. military personnel in SERE training program. These techniques are designed to psychologically "dislocate" the detainee, maximize his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist our efforts to obtain critical intelligence...[190]

As noted previously, the statement that the techniques "are also used on U.S. military personnel in SERE training" is false.

62. OMS doctor guidelines for interrogation support addressed "medical treatment" thus:

> It is important that adequate medical care be provided to detainees, even those undergoing enhanced interrogation. Those requiring chronic medications should receive them, acute medical problems should be treated, and adequate fluids and nutrition provided. [remainder of paragraph redacted]

[188] *CIA OIG Special Review (May 7, 2004)*, at para. 262 (noting OMS first issued formal medical guidelines for interrogation techniques in April 2003).
[189] According to the CIA OIG, OMS issued "draft" guidelines "per the advice of CTC/Legal". *CIA OIG Special Review (May 7, 2004)*, at para. 262 ("OMS did not issue formal medical guidelines until April 2003. Per the advice of CTC/Legal, the OMS Guidelines were then issued as "draft" and remain[ed] so even after being re-issued in September 2003."). Redacted versions of OMS guidelines from September 2003, May 2004, and December 2004 have been released publicly through FOIA. *See generally OMS Guidelines (Sept. 4, 2003)*; *OMS Guidelines (May 17, 2004)*; *OMS Guidelines (Dec. 2004)*.
[190] *OMS Guidelines (Sept. 4, 2003)*, at 1. *See also OMS Guidelines (May 17, 2004)*; *OMS Guidelines (Dec. 2004)*.

63. OMS doctors supporting interrogations were specifically instructed to use limits developed by CIA and DOJ OLC attorneys for interrogators, prohibiting "torture" as narrowly defined by those agencies.

> 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. [FN] The standard used by the Justice Department for "mental" harm is "prolonged mental harm," i.e., "mental harm of some lasting duration, e.g., mental harm lasting months or years." "In the absence of prolonged mental harm, no severe mental pain or suffering would have been inflicted." (citations omitted)[191]

64. In short, medical personnel supporting interrogations received guidance for detainee medical care compatible with the guidance given to interrogators. Furthermore, the CIA appears to have instructed doctors that the Hippocratic Oath, an ethical standard, was subordinate to the "anything but torture" rule, the CIA's accepted legal standard:

> All medical officers remain under the professional obligation to do no harm. [redacted] Medical officers must remain cognizant at all times of their obligation to prevent "severe physical or mental pain or suffering."[192]

65. Detainees were required to submit to medical exams and medical treatment, with or without restraints, regardless of consent.[193] If OMS medical personnel treating detainees who

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[191] *OMS Guidelines (Sept.4, 2003)*, at 2.

[192] *OMS Guidelines (May 17, 2004)*, at 9; *OMS Guidelines (Dec. 2004)*, at 10. "[S]evere physical or mental pain or suffering" was defined in this context as "serious" or "permanent", *id.* at 9. *E.g.*, "The standard used by the Justice Department for "metal" harm is "prolonged mental harm," i.e., "mental harm of some lasting duration, e.g., metal harm lasting months of years." "In the absence of prolonged mental harm, no severe mental pain or suffering would have been inflicted." [citations omitted]. *Id.*, at FN 1. The Hippocratic Oath does not appear to be referenced in earlier versions of the OMS Guidelines. *Compare OMS Guidelines (Sept.4, 2003)*, at 4, *with OMS Guidelines (May 17, 2004)*, at 9, and *OMS Guidelines (Dec. 2004)*, at 10 (corresponding text absent from earlier version).

[193] "[P]rior to interrogation, each detainee is evaluated by medical and psychological professionals from the CIA's Office of Medical Services ("OMS") to entire that he is not likely to suffer any severe physical or mental pain of suffering as a result of interrogation." *OLC Interrogation Techniques (May 10, 2005)*, at 4. "New detainees are to have a thorough initial medical assessment, with a complete, documented history and physical addressing in depth any chronic or previous medical problems [redactions in open source] Vital signs and weight should be recorded, and blood work drawn. [redactions in open source] Documented subsequent medical rechecks should be performed on a regular basis, [redactions in open source]..." Detainees were required to submit to medical exams and medical treatment, with or without restraints, regardless of consent.[193]. *OMS Guidelines (Sept.4, 2003)*, at 3; *see also OMS Guidelines (May 17, 2004)*, at 5-6, *OMS Guidelines (Dec. 2004)*, at 6 ("This [intake evaluation] should especially attend to cardio-vascular, pulmonary, neurological and musculoskeletal findings..."). *See CIA*

were also undergoing interrogation were held to a higher standard than those supporting interrogations, they would have been obligated to take steps essentially undoing the work of interrogators and medical personnel supporting interrogations.[194] Given the apparent atypical standard for medical care for detainees, and the relationship between detainee medical treatment and the intelligence mission,[195] it is not clear that medical procedures for a detainee deemed "resistant" to interrogation would have been performed with regard for possible harm or pain over and above the "no torture" rule. Consequently, medical personnel who took a detainee's blood, gave him injections, stripped him, examined his anal cavity or prostate, force-fed him, or performed invasive emergency procedures may or may not have attempted to limit his embarrassment, discomfort, or pain, and may even have taken affirmative steps to thereby contribute "more physical and psychological stress." Similarly, a detainee deemed "compliant" may have been rewarded with a standard of care to which he was entitled regardless of his complacency.

66. The fact that detainees knew medical personnel supported interrogations would likely have impacted the ability of any medical professional associated with the program to form doctor/patient relationships with detainee/patients sufficient to provide adequate care, particularly mental health care.

67. The interrogation support mission for CIA medical personnel translated into a set of functions that are highly controversial among members of the medical community and beyond, and implicate fundamental standards of medical ethics, morality, and the rule of law. Medical personnel supporting interrogations took the following actions, *inter alia*:

- established guidance for use of interrogation techniques;[196]
- medically evaluated detainees' ability to withstand use of interrogation techniques;[197]

Background Paper on Combined Techniques (2004), at 3 (medical officer and psychologist interview detainee and "determine if there are any contraindications to the use of interrogation techniques"). *See also* "Appendix A: Selected Forms of Treatment" (describing emergency procedures anticipated during waterboarding).

[194] In the author's opinion, it is therefore unlikely CIA instituted a policy mandating some other, more humane standard for treating detainees who resisted interrogation, at least not after OMS took over both roles.

[195] *See above* "Standards for Medical Treatment".

[196] *CIA OIG Special Review (May 7, 2004)*, at para. 262 (noting OMS first issued formal medical guidelines for interrogation techniques in April 2003).

[197] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2. "The use of each Enhanced Technique is subject to specific temporal, physical, and related conditions, including a competent evaluation of the medical and psychological state of the detainee." *Id. See also OLC Interrogation Techniques Combined (May 10, 2005)*, at 4, *citing CIA Background Paper on Combined Techniques (2004)*, at 2-3 ("...and he is given medical and psychological interviews to assess his condition and to make sure there are no contraindications to the use of any particular interrogation techniques.").

- "monitored" detainees' medical condition during interrogation, particularly during use of techniques with the highest medical risk;[198]
- calibrated the amount of pain and suffering experienced by detainees during interrogation relevant to "acceptable" levels; [199]
- provided treatment for detainees in order to allow interrogations to continue; and [200]
- used medical information about detainees to inform interrogations.[201]

Medical officers also collected information about detainees' responses to certain interrogation techniques in a manner that has been likened to non-consensual human experimentation.[202]

68. This involvement in the interrogation process falls within established standards defining medical personnel's "participation in torture":

> "Participation in torture" includes evaluating an individual's capacity to withstand ill-treatment; being present, at, supervising or inflicting maltreatment; resuscitating individuals for the purposes of further maltreatment or providing medical treatment immediately before, during or after torture on the instructions of those likely to be

[198] *See, e.g., OLC Interrogation Techniques (May 10, 2005)*, at 5 ("Medical and psychological personnel on scene throughout (and, as detailed below, physically present or otherwise observing during the application of many techniques, including all techniques involving physical contact with detainees)…".). The CIA OIG noted "the fact that precautions have been taken to provide on-site medical oversight in the use of all EITs is evidence that their use poses risks." *CIA OIG Special Review (May 7, 2004)*, at para. 220.

[199] "More generally, medical personnel watch for signs of physical distress or mental harm so significant as possibly to amount to the "severe physical or mental pain or suffering" that is prohibited by sections 2340-2340A." *OLC Interrogation Techniques (May 10, 2005)*, at 6.

[200] For example, OMS personnel monitored detainees shackled in a standing position for sleep deprivation for indications of edema or other contraindications, and could require interrogators to end sleep deprivation, or reshackle the detainee in a sitting or horizontal position for continued sleep deprivation. *OLC Interrogation Techniques (May 10, 2005)*, at 11, *citing OMS Guidelines (Dec. 2004)*, at 14-16. "Upon completion of water dousing session(s), the detainee is moved to another room, monitored as needed by a medical officer to guard against hypothermia, and steps are taken to ensure the detainee is capable of generating necessary body heat and maintain normal body temperature." *CIA Additional Techniques Letter (March 2, 2004)*, at 3.

[201] For example, "[redacted] feigned memory problems (which CIA psychologists ruled out through intelligence and memory tests)…". *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 8.

[202] "Monitoring of interrogation techniques by medical professionals to determine their effectiveness uses detainees as human subjects without their consent, and thus also approaches unlawful experimentation." Physicians for Human Rights, *Aiding Torture: Health Professionals' Ethics and Human Rights Violations Revealed in the May 2004 CIA Inspector General's Report* (August 2009) *available at* http://physiciansforhumanrights.org/library/documents/reports/aiding-torture.pdf (last accessed Sept. 30, 2009), at 4. Physicians for Human Rights was particularly concerned about OMS guidelines that noted OMS' "limited knowledge" about subjects' reactions to the waterboard, then instructed CIA medical personnel that "every application of the waterboard be thoroughly documented." *Id., citing OMS Guidelines (Dec. 2004)*, at 18, 20.

responsible for it; providing professional knowledge or individuals' personal health information to torturers; intentionally neglecting evidence and falsifying reports, such as autopsy reports and death certificates.[203]

VII. DETENTION CONDITIONS

69. The CIA program sought the "creation of an interrogation environment."[204] The interrogation goal defined the totality of the circumstances of the detainee's day to day life in the RDI program.

70. Any aspect of the detainee's life in custody was a potential tool of interrogation. For example, "[redacted] explained that if a detainee was cooperative, he would be given a warm shower. He stated that when a detainee was uncooperative, the interrogators accomplished two goals by combining the hygienic reason for a shower with the unpleasantness of a cold shower. [redacted]"[205]

71. The CIA secretly held detainees in the RDI program in covert, overseas facilities, where conditions of confinement were not required to conform to "U.S. prison or other standards."[206] As described by DOJ OLC in 2006, the CIA utilized special security measures inside the facilities in order to address "the unique and significant security concerns associated with holding extremely dangerous terrorist-detainees in the kinds of covert facilities used by the CIA."[207]

> The facilities in which the CIA houses these high-value detainees were not built as ordinary prisons, much less as high-security detention centers for violent and sophisticated terrorists. In order to keep their location secret [redacted] [redacted] Those limitations, in turn, require that special security measures be used inside the facilities to make up for the buildings' architectural shortcomings. It is in this unique context that the CIA has imposed the conditions of confinement described herein.[208]

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[203] *The Istanbul Protocol*, para. 53.
[204] *CIA Background Paper on Combined Techniques (2004)*, at 17.
[205] *CIA OIG Special Review (May 7, 2004)*, at para. 183.
[206] The CIA Inspector General (IG) noted this fact in 2004; it is not clear if the IG considered "other standards" to include those for pre-trial detention for persons charged with a crime or for prisoners of war. *CIA OIG Special Review (May 7, 2004)*, at para. 59, *citing DCI Confinement Guidelines (Jan. 28, 2003)*.
[207] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 2-3.
[208] *Id.*

72. Because "special security measures" imply more restriction, not less, it is reasonable to assume these the standard conditions of confinement employed within these facilities were more restrictive than would be found in a U.S. high-security detention center.[209] Whereas detainees may have been given some respite from certain conditions of detention as reward for compliance, security measures were more likely to have been consistent. The CIA noted that at least some detention conditions had a dual application, an "an impact on the detainee undergoing interrogation" that "may be a factor in interrogations."[210]

73. It is not clear what minimum requirements there were, if any, for detainees' access to hygiene, open air, sunlight, basic and religious items, or exercise. The CIA believed using "buckets for the relief of personal wastes" satisfied a requirement that "due provision...be taken to protect the health and safety of all CIA Detainees."[211]

74. CIA interrogators admitted to the CIA OIG that they smoked cigars during a named detainee's interrogation, and some blew smoke in his face.

> An Agency [redacted] interrogator admitted that, in December 2002, he and another [redacted] smoked cigars and blew smoke in Al-Nashiri's face during an interrogation. The interrogator claimed they did this to "cover the stench" in the room and to help keep the interrogators alert late at night.... Another Agency interrogator admitted that he also smoked cigars during two sessions with Al-Nashiri to mask the stench in the room. He claimed he did not deliberately force smoke into Al-Nashiri's face. [multiple redactions][212]

The "stench" referred to in both accounts might have been the detainee's urine and feces.[213]

75. In 2005, the CIA asked DOJ OLC attorneys to evaluate five specific conditions that were "standard in the covert overseas facilities that the CIA uses to detain individuals

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[209] The author has not compared CIA documents describing these standards with guidelines for U.S. prisons. *See generally Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*; *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*. Conditions of confinement described in these sources may have changed with CIA policy or practice, or may have persisted throughout a detainee's entire confinement.

[210] *CIA Background Paper on Combined Techniques (2004)*, at 4.

[211] *DCI Confinement Guidelines (Jan. 28, 2003), quoted in* Memorandum of Law in Support of Defendant Ahmed Khalfan Ghailani's Motion to Dismiss Indictment Due to the Denial of His Constitutional Rights to a Speedy Trial (Dec. 1, 2009), *US v. Hage, et al, include. Ghaliani*, 1:98-cr-01023-LAK (SDNY), *available at* https://ecf.nysd.uscourts.gov/doc1/127127138103, at 6, *and CIA OIG Special Review (May 7, 2004)*, at para. 59.

[212] *CIA OIG Special Review (May 7, 2004)*, at para. 96. The OIG did not reach an authoritative determination of the facts of these allegations, even though they were made by the participants. *CIA OIG Special Review (May 7, 2004)*, at para. 90.

[213] JPRA advocated blowing "an extraordinary amount of thick, sickening smoke" into a subject's face during interrogation in order to "produce discomfort" and to "instill fear and despair, to punish selective behavior, to instill humiliation or cause insult." *JPRA Description of Physical Pressures*.

[redacted]".[214] These and other conditions were sanctioned measures associated with detention:

- Blindfolding;[215]
- Isolation;[216]
- "White" noise;[217]
- Use of loud music;[218]
- Constant illumination;[219]
- Shackling;[220]
- Forced grooming.[221]

76. Other detention conditions materially affecting detainees' mental or physical health may not be described in these open source materials.

[214] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 2-3.

[215] Hooding or blindfolding was used as a special security measure when a detainee was moved into or around the facility. *See Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1 (listing hooding among conditions of detention required by CIA security); *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4.

[216] *See below* "Appendix A: Selected Forms of Treatment" (describing isolation).

[217] Background noise was also used in the walkways of the detention facilities to prevent detainees from being able to communicate with each other or identify other detainees, at levels loud enough to be heard in detainees' cells. *See, e.g., OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5. Measurements taken by the CIA in one facility indicated a standard level of ambient noise in the cells similar to that of a "normal conversation." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5. By 2004, CIA rules mandated that background noise as a condition of confinement was not to exceed 79 dB, or slightly less than a garbage disposal (at 80 dB), within a range OMS considered "loud." *CIA Background Paper on Combined Techniques (2004)*, at 4; *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 2; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5. In 2006, OLC assessed "white noise" as a condition of confinement, but noted it also served "other purposes." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 13.

[218] In 2005-2006, CIA dropped "loud music" from its list of standard conditions of CIA detention after the DOJ OLC assessed whether standard conditions of confinement in CIA's covert facilities violated the Fifth Amendment. *Compare Standard Conditions of CIA Detention (pre-Dec. 19, 2005) with Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*. OLC did not include an assessment of loud music in its legal analysis. *See generally OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006), OLC Conditions of Confinement and DTA (Aug. 31, 2006)*.

[219] *See Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1 (listing "constant light" as standard condition of detention); *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1 (listing "constant light" as standard condition of detention).

[220] *See below* "Appendix A: Selected Forms of Treatment" (describing shackling).

[221] According to the CIA detainees were allowed to groom as requested throughout their detention, but detainees could also be groomed at any point during their detention for the purposes of "hygiene and safety." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14-16. It is not clear from open sources how this forced grooming may have resembled the initial shaving, or whether interrogators scheduled or exploited forced grooming.

77. Some detention conditions that the CIA represented as essential to security in 2006 were similar or identical to treatment that the CIA had previously described as interrogation techniques.[222] These included isolation;[223] blindfolding/ hooding;[224] constant noise;[225] constant light;[226] and forced grooming.[227]

[222] OPR raised this concern in 2009 when questioning whether it was reasonable for OLC to have accepted CIA representations about detainee treatment at face value. *OPR Report (July 29, 2009)*, at 242-243.
[223] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7 -9, 13; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4-5, 16-19.
[224] *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1; *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14.
[225] In 2006, OLC assessed "white noise" as a condition of confinement, but noted it also served "other purposes." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 13.
[226] *See Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1 (listing "constant light" as standard condition of detention); *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1 (listing "constant light" as standard condition of detention).
[227] *See OMS Guidelines (Sept.4, 2003)*, at 1 (listing shaving among "standard" interrogation techniques); *OMS Guidelines (Dec. 2004)*, at 8.

APPENDIX A: SELECTED FORMS OF TREATMENT

Threats

1. The CIA's interrogation approach, rooted in the inducement of helplessness and dependency, essentially depended on threats – the detainee's belief that at any time, interrogators could cause him significant pain or suffering, whether intentional or not.

2. CIA interrogators set out to psychologically "dislocate" each subject's expectations regarding the treatment he believed he would receive, and to "maximize his feeling of vulnerability and helplessness."[1] Detainees were specifically told that interrogators would "do what it takes to get important information."[2] When the Director of the CIA discussed the value of these interrogation techniques with the CIA OIG, he described the subjects as "detainees who had otherwise believed they were safe from any harm in the hands of Americans."[3]

3. In a "prototypical" interrogation process, detainees were subjected to techniques used principally to "correct, startle, or to achieve [sic] another enabling objective",[4] and "dislodge expectations that the detainee will not be touched."[5] Such techniques included but were not limited to a variety of slaps and grabs used interchangeably during an interrogation session to "provide[] the variation necessary to keep a high level of unpredictability in the interrogation process."[6]

4. In SERE training, techniques later adapted by the CIA were meant specifically to threaten students or cause them to have feelings such as fear, despair, and apprehension.[7] The SERE approach was based on Cold War-era studies of Soviet and Communist Chinese efforts to elicit confessions, in which "the ever-present fear of violence in the mind of the prisoner appears to have played an important role in inducing compliance. The Communists generally fostered such fears through vague threats and the implication that they were prepared to do drastic things."[8]

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[1] *OMS Guidelines (Dec. 2004)*, at 8.
[2] *CIA Background Paper on Combined Techniques (2004)*, at 10. Because the statement might be construed as a threat of harm, OLC suggested in 2005 that CIA reconsider whether "a different statement might be adequate to convey to the detainee the seriousness of his situation." *OLC Combined Techniques Memo (May 10, 2005)*, at 19.
[3] *CIA OIG Special Review (May 7, 2004)*, at para. 218.
[4] *CIA Background Paper on Combined Techniques (2004)*, at 5.
[5] *OLC Techniques Memo (May 10, 2005)*, at 9.
[6] *CIA Background Paper on Combined Techniques (2004)*, at 5.
[7] *JPRA Description of Physical Pressures* (describing typical conditions for application of specific techniques, such as to threaten, intimidate, punish or cause insult, or to instill feelings or fear, despair, apprehension and humiliation).
[8] *Biderman's Principles*, at 620.

5. As recognized by the DOJ OLC in 2002, waterboarding constituted a threat of imminent death.[9]

> As you have explained the waterboard procedure to us, it creates in the subject the uncontrollable physiological sensation that the subject is drowning. Although the procedure will be monitored by personnel with medical training and extensive SERE school experience with this procedure who will ensure the subject's mental and physical safety, the subject is not aware of any of these precautions. From the vantage point of any reasonable person undergoing this procedure in such circumstances, he would feel as if he is drowning at very moment of the procedure due to the uncontrollable physiological sensation he is experiencing. Thus, this procedure cannot be viewed as too uncertain to satisfy the imminence requirement. Accordingly, it constitutes a threat of imminent death....[10]

6. The CIA OIG reported allegations that interrogators made multiple verbal threats against at least two named detainees:

> During another incident, the same [redacted] Headquarters debriefer, according to a [redacted] was present, threatened Al-Nashiri by saying that if he did not talk, 'We could get your mother in here," and, "We can bring your family in here." The [redacted] debriefer reportedly wanted Al-Nashiri to infer, for psychological reasons, that the debriefer might be [redacted] intelligence officer based on his Arabic dialect, and that Al-Nashiri was in [redacted] custody because it was widely believed in Middle East circles that [redacted] interrogation technique involves sexually abusing female relatives in front of the detainee....
>
> [T]he [redacted] interrogators said to Khalid Shaykh Muhammad that if anything else happens in the United States, "We're going to kill your children." According to the interrogator, one of the [redacted] interrogators said [redacted] [multiple redactions][11]

[9] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 15 ("We find that the use of the waterboard constitutes a threat of imminent death.").

[10] *Id.* The memo continued thus: "Although the waterboard constitutes a threat of imminent death, prolonged mental harm must nonetheless result to violate the statutory prohibition on infliction of severe, mental pain or suffering....". *Id.*

[11] *CIA OIG Special Review (May 7, 2004)*, at para. 94-95.This report did not investigate any incidents that may have occurred after mid-October 2003. *Id.*, at para. 2.

7. CIA officers took other threatening actions against at least one detainee:

> Sometime between 28 December 2002 and 1 January 2003, the debriefer used an unloaded semi-automatic handgun as a prop to frighten Al-Nashiri into disclosing information. After discussing this plan with [redacted] the debriefer entered the cell where Al-Nashiri sat shackled and racked the handgun once or twice close to Al-Nashiri's head. On what was probably the same day, the debriefer used a power drill to frighten Al-Nashiri. With [redacted] consent, the debriefer entered the detainee's cell and revved the drill while the detainee stood naked and hooded. The debriefer did not touch Al-Nashiri with the power drill.[12]

The debriefer was "not a trained interrogator and was not authorized to use EITs."[13]

8. The CIA OIG noted the use of the handgun and drill were "the most significant" of the allegations of unauthorized techniques used by the CIA, and they became the subject of a separate CIA OIG investigation.[14] Even some of the most ardent supporters of the RDI program admit these actions crossed a line.[15]

9. Open source CIA documents describe other threats issued to the same detainee:

> During another incident [redacted] the same Headquarters debriefer, according to a [redacted] who was present, threatened Al-Nashiri by saying that if he did not talk, "We could get your mother in here," and, "We can bring your family in here." The [redacted]

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[12] *CIA OIG Special Review (May 7, 2004)*, at para. 92 (*internal citations omitted*). This report did not investigate any incidents that may have occurred after mid-October 2003. *Id.*, at para. 2.

[13] *Id.*, at FN 44. The *CIA OIG Special Review (May 7, 2004)* notes the following distinction between *debriefers* and *interrogators*:

> A debriefer engages a detainee solely through question and answer. An interrogator is a person who completes a two-week interrogations training program, which is designed to train, qualify and certify a person to administer EITs… An interrogator transitions the detainee from a non-cooperative to a cooperative phase in order that a debriefer can elicit actionable intelligence through non-aggressive techniques during debriefing sessions. An interrogator may debrief a detainee during an interrogation; however, a debriefer may not interrogate a detainee.

Id., at FN 6.

[14] *CIA OIG Special Review (May 7, 2004)*, at para. 90.

[15] For example, Marc Thiessen, a former speechwriter in the Bush Administration, argues that "the C.I.A. interrogation program did not inflict torture by any reasonable standard," and there was "only one single case" in which "inhumane" techniques were used," these threats against this named detainee. MARC A. THIESSEN, COURTING DISASTER: HOW THE C.I.A. KEPT AMERICA SAFE AND HOW BARACK OBAMA IS INVITING THE NEXT ATTACK (2010), *quoted in* Jane Mayer, *Counterfactual: A curious history of the C.I.A.'s secret interrogation program*, The New Yorker (Mar. 29, 2010) *available at* http://www.newyorker.com/arts/critics/books/2010/03/29/100329crbo_books_mayer (last accessed 30 Mar 2010).

> [redacted] debriefer reportedly wanted Al-Nashiri to infer, for psychological reasons, that the debriefer might be [redacted] intelligence officer based on his Arabic dialect, and that Al-Nashiri was in [redacted] custody because it was widely believed in Middle East circles that [redacted] interrogation technique involves sexually abusing female relatives in front of the detainee. The debriefer denied threatening Al-Nashiri through his family. The debriefer also said he did not explain who he was or where he was from when talking with Al-Nashiri. The debriefer said he never said he was [redacted] intelligence officer but let Al-Nashiri draw his own conclusions. [multiple redactions][16]

10. The CIA acknowledged other forms of abuse served as implicit or explicit threats. For example, the CIA used the threat of walling to induce detainees to hold painful stress positions.[17]

11. As early as August 2002, DOJ OLC advised that such procedures, "used in a course of conduct, moving incrementally and rapidly from least physically intrusive, e.g., facial hold, to the most physical contact, e.g., walling or waterboard," might constitute a threat of severe physical pain or suffering.[18]

> Based on the facts you have provided to us, we cannot say definitively that the entire course of conduct [contemplated for Abu Zubaydah] would cause a reasonable person to believe that he is being threatened with severe pain or suffering within the meaning of Section 2340. On the other hand, however, under certain circumstances – for example, rapid escalation in the use of these techniques culminating in the waterboard (which we acknowledge constitutes a threat of imminent death) accompanied by verbal, or either suggestions that physical violence will follow – might cause a reasonable person to believe that they are faced with such a threat.

Beating, Shaking, and Other Forms of Forceful Physical Contact

12. Beating occurs when a detainee is subjected to forceful physical contact, either directly or through an instrument. "Shaking" "is a term of art for an established, violent interrogation method;"[19] "[s]evere case of violent shaking have all the usual, and potentially fatal, features

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[16] *CIA OIG Special Review (May 7, 2004), at* para. 94.
[17] *CIA Background Paper on Combined Techniques (2004)*, at 14-15.
[18] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 15. DOJ OLC attorneys decided they were unable to decide because the CIA had not described either the order or the precise timing for implementing procedures. *Id.*
[19] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 26.

of the more familiar "shaken infant syndrome".[20]

13. The CIA requested and received an opinion from DOJ OLC that its officers could lawfully subject detainees to multiple forms of forceful physical contact as "enhanced interrogation techniques." The CIA designated at least five different forms of forceful physical contact for use as "enhanced interrogation techniques:"

- "Facial slap" (or "insult slap"): Interrogators could strike a detainee in the face.[21]
- "Facial hold": Interrogators could grab a detainee's face.[22]
- "Attention grasp": An interrogator could snatch the detainee toward himself by the collar, with both hands.[23] Rapidly repeated "attention grasp" motions would likely have constituted shaking. "CIA sources" described "attention grab" thus to ABC News in 2005: "The interrogator forcefully grabs the shirt front of the prisoner and shakes him."[24] Open sources do not describe limits on "attention grasp" that would have precluded shaking.
- "Abdominal slap": Interrogators could strike a detainee in the abdomen.[25]
- "Walling": Interrogators could forcibly throw a detainee into a wall.[26]

14. The CIA prescribed the positioning and placement of interrogators' hands when they were grabbing or striking detainees.[27] At least one procedure was modified after OMS medical personnel assessed the techniques.[28] It is not clear how policy or practice operated in such a tense environment to ensure CIA officers struck and grabbed each detainee in the precise,

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[20] DARIUS REJALI, TORTURE AND DEMOCRACY (2007), at 340.
[21] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at 15.
[22] *Id.*
[23] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2 ("The attention grasp consists of grasping the individual with both hands, one hand on each side of the collar opening, in a controlled and quick motion. In the same motion as the grasp, the individual is drawn toward the interrogator."). *See, e.g., CIA OIG Special Review (May 7, 2004)*, at 15.
[24] "Brian Ross and Richard Esposito, ABC News, *CIA's Harsh Interrogation Techniques Described* (Nov. 18, 2005) *available at* http://abcnews.go.com/Blotter/Investigation/story?id=1322866 (accessed 18 January 2011).
[25] Added by or before January 2003. *See, e.g., DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2 (listing "the abdominal slap" among "enhanced techniques"). Not considered by OLC in 2002 memorandum. *See generally OLC Interrogation of al Qaeda Operative (August 1, 2002)* ("abdominal slap" not discussed).
[26] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at 15.
[27] *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2.
[28] *Compare id.*, at 2 (walling requires neck support; requirement for neck support for attention grasp not described), *with OMS Guidelines (Sept.4, 2003)*, at 2 ("All walling and most attention grasps are delivered only with the subject's head solidly supported with a towel to avoid extension-flexion injury.").

prescribed manner.

15. "Walling" was an action whereby CIA personnel forcefully threw a detainee into a wall. OMS considered walling to be one of the most intense "enhanced interrogation techniques", surpassed only by close confinement and waterboarding.[29] Interrogators valued the walling technique's combination of both physical and psychological effects. [30]At some point, the CIA adopted a requirement that interrogators physically manipulate the detainee by means of a rolled towel, a collar, or some other form of neck support, and throw the detainee against a special wall designed to increase the shock of impact and to control injury. [31]

16. Open source CIA materials describe how, by 2004, the act of collaring the detainee for walling was "typically" incorporated into the initial process of instilling fear and dread, and how walling was one of the first coercive techniques employed:

> Session One.
>
> a. The HVD is brought into the interrogation room, and under the direction of the interrogators, striped of his clothes, and placed in shackles [redacted].
>
> b. The HVD is placed standing with his back to the walling wall. The HVD remains hooded.
>
> "c. Interrogators approach the HVD, place the walling collar over his head and around his neck, and stand in front of the HVD. [redacted]

[29] *See id.*, at 2; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8 (listing "sanctioned interrogation techniques" in "approximately ascending order of intensity").

[30] "Walling is one of the most effective interrogation techniques because it wears down the HVD physically, heightens uncertainly in the detainee about what the interrogator may do to him, and creates a sense of dread when the HVD knows he is about to be walled again." *CIA Background Paper on Combined Techniques (2004)*, at 7. In SERE, the "facial slap" (or "insult slap") and "abdominal slap" would have been used to "instill fear and despair, to punish selective behavior, to instill humiliation or cause insult"; the "Facial hold" would have been used to "threaten or intimidate via invasion of personal space, instill fear and apprehension… and punish…."; and the "Attention grasp" to "to startle, to instill fear, apprehension, and humiliation or cause insult." *JPRA Description of Physical Pressures.*

[31] "During the walling technique, the detainee is pulled forward and then quickly and firmly pushed into a flexible false wall so that his shoulder blades hit the wall. His head and neck are supported with a rolled towel to prevent whiplash." *CIA OIG Special Review (May 7, 2004)*, at 15; *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2 ("the false wall is in part constructed to create a loud sound when the individual hits it, which will further shock or surprise in the individual").

[redacted].

d. The interrogators remove the detainee's hood and [redacted] explain the HVD's situation to him, tell him that the interrogators will do what it takes to get important information, and that he can improve his conditions immediately by participating with the interrogators. [text describes typical use of a series of facial and/or abdominal slaps…]

f. The interrogators will likely use walling once it becomes clear that the HVD is lying, withholding information, or using other resistance techniques.[32]

17. A detainee could be walled repeatedly in rapid succession:[33]

An HVD may be walled one time (one impact with the wall to make a point) or twenty to thirty times consecutively when the interrogator requires a more significant response to a question. During an interrogation session that is designed to be intense, an HVD will be walled multiple times in the session.[34]

18. Walling, like other techniques, created the basis for an implicit or explicit threat. "Walling … heightens uncertainly in the detainee about what the interrogator may do to him…."[35] Walling was intended to cause "dread",[36] in anticipation of "shock and surprise" and "a sense of powerlessness that comes from being roughly handled by the interrogators."[37] Detainees were explicitly induced to hold painful stress positions upon threat of walling.[38]

19. The CIA OIG heard reports of frequent use of the "hard take-down" in which CIA personnel would violently subdue and restrain a detainee, with a level of force unrelated to security or safety.[39] "[T]he hard takedown was used often in interrogations at [redacted] as part of the "atmospherics." For a time, it was the standard procedure for moving a detainee to the sleep deprivation cell. It was done for shock and psychological impact and signaled the transition to another phase of the interrogation…."[40] In one case, the CIA officers

[32] *CIA Background Paper on Combined Techniques (2004)*, at 9-10.
[33] *Id.*, at 14.
[34] *Id.*, at 7. *See also OLC Interrogation Techniques (May 10, 2005)*, at 8.
[35] *CIA Background Paper on Combined Techniques (2004)*, at 7.
[36] *OLC Interrogation Techniques Combined (May 10, 2005)*, at 6.
[37] *Id.*, at FN4.
[38] *CIA Background Paper on Combined Techniques (2004)*, at 14-15. The psychological power of "self-induced" suffering is described *supra*, at para. 35.
[39] *See generally CIA OIG Special Review (May 7, 2004)*, at para. 190-192. In the public version of this document, para. 190 is redacted in its entirety.
[40] *Id.*, at para. 191. Portions of the CIA OIG description of "hard take-down" are redacted, but unredacted text refers to diapering. The detainee probably also would have been stripped during "hard take-down," unless he was already naked.

described a detainee who was "dragged along a corridor" and received abrasions from the hard concrete floor of the facility as he struggled to resist diapering and transfer to the "sleep deprivation cell."[41]

20. It is not clear if or when CIA leadership took steps to regulate the use of "hard take-down" and similar uses of force. The CIA OIG described circumstances indicating that at some point guidance was insufficient to regulate this activity:

> [redacted] stated he did not discuss the hard takedown with [redacted] managers, but he thought they understood what techniques were being used at [redacted] stated that the hard takedown had not been used recently [redacted] After taking the interrogation class, he understood that if he was going to do a hard takedown, he must report it to Headquarters. Although the DCI and OMS Guidelines address physical techniques and treat them as requiring advance Headquarters approval, they do not otherwise specifically address the "hard takedown."... [multiple redactions]
>
> [redacted] asserted that [hard takedowns] are authorized and believed they had been used one or more times at in order to intimidate a detainee. [redacted] stated that he would not necessarily know if they have been used and did not consider it a serious enough handling technique to require Headquarters approval.[42] [multiple redactions]

21. In a typical lawful detention system, detention staff may use forceful physical contact against a detainee only as a last alternative, after all other reasonable efforts to resolve a situation have failed; when force is used, it will be only the amount of force required to subdue an inmate, or preserve or restore institution security and good order.[43] As described above, the purpose of detention in the CIA RDI program was to gather intelligence from detainees deemed "resistant" to interrogation by inducing learned helplessness and dependence. CIA conditions of confinement were not required to conform to "U.S. prison or other standards,"[44] and CIA officers were authorized to apply "special security measures" within the CIA's covert facilities.[45] This suggests the "typical" standards for use of forceful physical contact against detainees were discarded not only by interrogators, but also by CIA officials performing

[41] *Id.*, at para. 191-192.
[42] *CIA OIG Special Review (May 7, 2004)*, at para. 191-192.
[43] *See, e.g.*, U.S. Department of Justice, Federal Bureau of Prisons, *Program Statement 5566.06: Use of Force and Application of Restraints* (30 Nov.2005), *available at* http://www.bop.gov/policy/progstat/5566_006.pdf (last accessed 12 January 2011).
[44] *OIG Special Review (May 7, 2004)*, at para. 59, *citing DCI Confinement Guidelines (Jan. 28, 2003)*.
[45] *See generally Standard Conditions of CIA Detention (pre-Dec. 19, 2005); Standard Conditions of CIA Detention (pre-Oct. 27, 2006).*

detention actions. Detainees were likely subjected to violence regardless of their own actions;[46] detainees were therefore unlikely to accurately predict when they would be subjected to physical violence, leaving them in constant apprehension, and furthering their debilitation toward "learned helplessness."[47]

22. There is indication that CIA personnel utilized both interrogation actions and routine, day-to-day physical contact with detainees deemed "resistant" to interrogation as opportunities for forceful physical contact in a program that directly equated "more physical and psychological stress" for the detainee with success. [48] *Inter alia*:

- As described above, some CIA officers used "hard take-down" as a standard procedure for transition to sleep deprivation, whether the detainee complied or not.[49] It is reasonable to expect forceful physical contact was similarly used during other movements of detainees deemed "resistant" to interrogation within or between facilities.

- CIA officers were required to physically position and restrain detainees against struggle or involuntary movements for interrogation techniques such as "cold water dousing,"[50] sleep deprivation,[51] stress positions,[52] "cramped confinement," [53] shaving,[54] and

[46] Hard take-down, for example, was used as a standard procedure for transfer to sleep deprivation in at least one facility, whether the detainee physically resisted the transfer or not. *CIA OIG Special Review (May 7, 2004), at* para. 191.

[47] As discussed above, researchers believe the uncontrollability of adverse events contributes to the development of "learned helplessness.".

[48] An illustration of which appears in the CIA's explanation to DOJ OLC in 2004 of how "enhanced" interrogation techniques were combined: "Certain interrogation techniques place the detainee in *more physical and psychological stress and, therefore, are considered more effective tools* in persuading a resistant HVD to participate with CIA interrogators." (emphasis added) . *CIA Background Paper on Combined Techniques (2004),* at 7. Detention conditions played a role in interrogations. *Id.*, at 4 ("Detention conditions are not interrogation techniques, but they have an impact of the detainee undergoing interrogation.").

[49] *CIA OIG Special Review (May 7, 2004), at* para. 191.

[50] CIA personnel physically positioned and restrained a detainee subjected to "cold water dousing" so cold water could be poured over him, then moved him to a different room for recovery. "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." *CIA Additional Techniques Letter (March 2, 2004),* at 3. *See, e.g., OLC Interrogation Techniques (May 10, 2005),* at 9, 10 ("Water dousing: Cold water is poured on the detainee … If the detainee is lying on the floor…").

[51] *OLC Interrogation Techniques (May 10, 2005),* at 11.

[52] *See, e.g., CIA OIG Special Review (May 7, 2004),* at para. 98.

[53] *OLC Interrogation of al Qaeda Operative (August 1, 2002),* at 2-3; *SERE Contractor/Psychologist Business Plan,* at 17; *CIA "Legal Principles" (2003); OMS Guidelines (Sept. 4, 2003),* at 2, 7; *CIA Background Paper on Combined Techniques (2004),* at 8-9; *OMS Guidelines (May 17, 2004),* at 7, 14; *OMS Guidelines (Dec. 2004),* at 8, 16-17; *OLC Interrogation Techniques (May 10, 2005),* at 9, 33; *OLC Interrogation Techniques Combined (May 10, 2005),* at 11; *OLC Interrogation Techniques and CIDT (May 30, 2005),* at 15.

[54] DOJ OLC noted than even when described as a condition of confinement, the initial act of shackling a detainee

waterboarding.[55] Each occasion offered opportunities for multiple forms of forceful physical contact. For example, interrogators who waterboarded a detainee, *inter alia,* forced the detainee on the gurney;[56] covered his eyes with the waterboarding cloth;[57] poured water on his face to induce suffocation; could grab his face to direct water into his mouth and nose; [58] and may have performed "aggressive medical intervention."[59] The CIA OIG investigated a situation in which abrasions on a detainee's ankles were attributed to an Agency officer accidentally stepping on the detainee's shackles while repositioning him into a stress position.[60]

- As described above, detainees were required to submit to medical exams and medical treatment, with or without restraints, regardless of consent.[61] Medical personnel may or

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to a chair and forcibly shaving his head and face, in combination with other factors, "is more like an interrogation technique than a condition of confinement." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, FN 3, 12 (citing shaving for the purposes of hygiene and security, but also comparing the initial shaving to interrogation techniques).

[55] *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("the individual is bound securely to an inclined bench"); *OLC Interrogation Techniques (May 10, 2005)*, at 14 ("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 nose, mouth, and nasopharynx. The gurney used for administering this technique is specially designed so that this can be accomplished very quickly if necessary."). A detainee may have been bound to the board without being waterboarded, as a threat. As noted in a Navy SERE training manual: "The water board demonstrates omnipotence of the captor. Once the tactic is used on a student, it may be used as a credible threat." FASO Detachment Brunswick Instruction 3305.C, p. E-5 (January 1, 1998) (emphasis in original) *quoted in SASC Detainee Report (November 20, 2008) (November 20, 2008)*, at FN 710.

[56] *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3; *OLC Interrogation Techniques (May 10, 2005)*, at 14.

[57] Detainees may have had their eyes covered while they were waterboarded. *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("A cloth is placed over forehead and eyes."); *OLC Interrogation Techniques (May 10, 2005)*, at 13 ("A cloth is placed over the detainee's face, and cold water is poured on the cloth from a height of approximately 6 to 18 inches.").

[58] *OLC Interrogation Techniques (May 10, 2005)*, at 13:

> We understand that if the detainee makes an effort to defeat the technique (e,g., by twisting his head to the side and breathing out of the comer of his mouth), the interrogator may cup his hands around the detainee's nose and mouth to dam the runoff, in which case it would not be possible for the detainee to breathe during the application of the water.

[59] "An unresponsive subject should be righted immediately, and the interrogator should deliver a sub-xyphoid thrust to expel the water. If this fails to restore normal breathing, aggressive medical intervention is required." *OMS Guidelines (Dec. 2004), at* 9. OMS guidelines also state that in the event a detainee experiences laryngeal spasms during waterboarding, a qualified physician should immediately intervene, and, if necessary, perform a tracheotomy. *OLC Interrogation Techniques (May 10, 2005)*, at 14, *citing OMS Guidelines (Dec. 2004), at* 17-20. This section is redacted from the publicly released version of the *OMS Guidelines (Dec. 2004).*

[60] *CIA OIG Special Review (May 7, 2004)*, at para. 98.

[61] "[P]rior to interrogation, each detainee is evaluated by medical and psychological professionals from the CIA's Office of Medical Services ("OMS") to entire that he is not likely to suffer any severe physical or mental pain of suffering as a result of interrogation." *OLC Interrogation Techniques (May 10, 2005)*, at 4. "New detainees are to

may not have attempted to limit a detainee's embarrassment, discomfort, or pain during examinations or procedures, and may even have taken affirmative steps to thereby contribute "more physical and psychological stress."

- CIA personnel shackled detainees to chairs and forcibly shaved and groomed their hair and beards.[62] Open source materials neither confirm nor deny CIA personnel also shaved their bodies and pubic areas. Until at least late 2004, "shaving" was considered a "standard interrogation technique,"[63] one of the "pressures" used by the CIA "in a comprehensive, systematic, and cumulative manner" to "create a state of learned helplessness and dependence" in detainees.[64]

- During the interrogation process, interrogators forced detainees into diapers,[65] shackled them,[66] and covered their heads or eyes.[67] Interrogators "stripped" detainees in

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have a thorough initial medical assessment, with a complete, documented history and physical addressing in depth any chronic or previous medical problems [redactions in open source] Vital signs and weight should be recorded, and blood work drawn. [redactions in open source] Documented subsequent medical rechecks should be performed on a regular basis, [redactions in open source]...", *OMS Guidelines (Sept.4, 2003)*, at 3; *see also OMS Guidelines (May 17, 2004)*, at 5-6, *OMS Guidelines (Dec. 2004)*, at 6 ("This [intake evaluation] should especially attend to cardio-vascular, pulmonary, neurological and musculoskeletal findings..."). *See CIA Background Paper on Combined Techniques (2004)*, at 3 (medical officer and psychologist interview detainee and "determine if there are any contraindications to the use of interrogation techniques"). *See also* "Appendix A: Selected Forms of Treatment" (describing emergency procedures anticipated during waterboarding).

[62] In 2005, DOJ OLC attorneys observed that the initial act of shackling a detainee to a chair and forcibly shaving his head and face, in combination with other factors, was "more like an interrogation technique than a condition of confinement." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, FN 3 (citing shaving for the purposes of hygiene and security, but also comparing the initial shaving to interrogation techniques; "other factors" redacted in open source).

[63] *See OMS Guidelines (Sept.4, 2003)*, at 1 (shaving is standard interrogation technique); *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8.

[64] *CIA Background Paper on Combined Techniques (2004)*, at 1. In 2006, CIA categorized "shaving" as a condition of confinement, and DOJ OLC asserted that "the CIA does not shave detainees in order to take advantage of their cultural or religious sensitivities or to exploit whatever psychological vulnerability that practice may create." *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 13. *See Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1-2; *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1, 2. However, OLC also observed the initial act of shackling a detainee to a chair and forcibly shaving his head and face, in combination with other factors, "is more like an interrogation technique than a condition of confinement." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, FN 3, 12. The "other factors" that concerned OLC are redacted from this document. *Id.*

[65] *DCI Interrogation Guidelines (Jan. 28, 2003)*; *CIA OIG Special Review (May 7, 2004)*, at para. 191-192 (detainee diapered during hard take-down); *OPR Report (July 29, 2009)*, at 36 ("The subject is forced to wear adult diapers and is denied access to toilet facilities for an extended period, in order to humiliate him.").

[66] In addition to shackling incidental to sleep deprivation, water dousing, stress positions, and other interrogation techniques, shackling was a standard interrogation technique in its own right. *OMS Guidelines (Sept.4, 2003)*, at 1 (listing "shackling in upright sitting or horizontal position" among "standard" interrogation techniques, separately from "sleep deprivation" and other techniques involving shackling); *OMS Guidelines (May 17, 2004)*, at 7, 12-13 ("shackling and prolonged standing" discussed separately from "sleep deprivation"); *OMS Guidelines (Dec.*

circumstances reasonably expected to heighten fear.[68] Interrogators periodically checked and changed a detainee's diapers, and inspected his buttocks and genitals for lesions.[69] Interrogators may have put food in his mouth by hand while he was shackled in a stress position.[70] Interrogators "collared" detainees for walling,[71] and possibly for shaking.[72] Each of these actions offered opportunity for forceful physical contact.

23. Beatings and other forms of violent physical contact present serious risks:

> Beatings can be delivered in a variety of ways with different types of instruments, including the open palm. Most beating is known to lead to physical harm. Beating commonly results in blunt trauma — caused by the application of force to the human body but not penetrating the skin. Blunt trauma inflicted by beating may result in bruises caused by bleeding from ruptured blood vessels. ...The extent and severity of the trauma depend not only on the amount of force applied but also on where it is applied. Studies have observed the persistence of musculoskeletal pain (muscle and

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2004), at 8.

[67] In addition to hooding or blindfolding incidental to other interrogation techniques, hooding was a standard interrogation technique in its own right. *OMS Guidelines (Sept.4, 2003)*, at 1 ("hooding" is standard technique); *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8. Detainees may have had their eyes covered while they were waterboarded. *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("A cloth is placed over forehead and eyes."); *OLC Interrogation Techniques (May 10, 2005)*, at 13 ("A cloth is placed over the detainee's face, and cold water is poured on the cloth from a height of approximately 6 to 18 inches."). Hooding or blindfolding was also considered a standard condition of CIA detention. *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1 ("Hooding [redacted]"); *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14. *See also Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1.

[68] *See CIA Background Paper on Combined Techniques (2004)*, at 9 (at a "prototypical" first session, "The HVD is brought into the interrogation room, and under the direction of the interrogators, stripped on his clothes, and placed in shackles" while hooded and before interrogators "explain the HVD's situation to him"). *See also OMS Guidelines (Sept. 4, 2003)*, at 1 ("stripping", vice nudity); *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8.

[69] "If the detainee is wearing a diaper, it is checked regularly and changed as necessary." *OLC Interrogation Techniques (May 10, 2005)*, at 12. *OMS Guidelines (May 17, 2004)*, at 23; *OMS Guidelines (Dec. 2004)*, at 28 (intervene upon evidence of loss of skin integrity from prolonged diapering).

[70] "We understand that a detainee undergoing sleep deprivation is generally fed by hand by CIA personnel so that he need not be unshackled." *OLC Interrogation Techniques (May 10, 2005)*, at 12.

[71] *See, e.g., CIA Background Paper on Combined Techniques (2004)*, at 9-10 (*inter alia*, at "prototypical" first session, interrogators approach hooded, nude detainee, "place the walling collar over his head and around his neck, and stand in front of the HVD. [redacted] The interrogators remove the HVD's hood ..."). *See id.* (collar applied at beginning of subsequent sessions).

[72] *OMS Guidelines (Sept.4, 2003)*, at 2 (neck support required for most attention grasps); *OLC Interrogation Techniques (May 10, 2005)*, at 8; *OMS Guidelines (Dec. 2004)*, at 9.

joint pain) caused by blunt trauma even a decade after the beating occurred....

Beating can also result in damage to the underlying muscle tissue. When released in sufficiently large amounts, breakdown products from damaged tissue can enter the circulation and result in life-threatening kidney failure in a condition known as rhabdomyolysis. ...

Open hand slapping is a form of beating. A slap diffuses the blunt trauma force over a greater area than a closed-fist punch, but depending on where the slap is applied, it may nonetheless result in significant injury. Slaps delivered to vulnerable areas of the face including nose, eyes or mouth can result in severe pain and suffering, as well as soft tissue injury, bruising and lacerations. Facial bones may also be fractured, and a slap to the face may result in neck injury. (citations omitted)[73]

24. Shaking also presents risk of prolonged harm:

Because brain damage represents the greatest risk from violent shaking, its harmful consequences can extend to both physical and mental health. Violent shaking poses extreme danger of trauma to the brain through an acceleration-deceleration mechanism. In addition to causing retinal hemorrhages (bleeding of the retinal vessels due to tearing), violent shaking may cause intracranial hemorrhage (bleeding of the brain), and cerebral edema (swelling of the brain), resulting in increased intracranial pressure and permanent neurologic deficits and/or death. These findings are similar to the more well known traumatic condition referred to as "shaken baby syndrome." Increased pressure due to swelling or bleeding is a dangerous condition as the increased pressure within the limits of the rigid skull can result in the herniation of the brain, an often fatal complication in which brain matter is literally squeezed through the narrow intracranial space into the brainstem.

Non-fatal brain trauma from violent shaking can potentially result in more subtle but clinically significant cognitive impairment possibly due to diffuse axonal injury, injury to the brain cells themselves. Non-fatal consequences of shaking may also include recurrent headaches, disorientation and mental status changes, all of which can become chronic. Violent shaking can also produce neck trauma, producing a whiplash mechanism of cervical strain. Cervical spine fracture with spinal cord compression may also occur, resulting in quadriplegia.[74]

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[73] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 13.

[74] *Id.*, at 25-26.

Sensory Overload: Light and Noise

25. According to JPRA, sensory overload "includes being constantly exposed to bright, flashing lights, loud music annoying / irritating sounds, etc.," and was likely to "elevate the agitation level of a person and increase their emotionality, as well as enhance the effects of isolation."[75] JPRA conceptualized sensory overload as a tactic to "induce control, dependency, compliance and cooperation."[76]

26. By at least November 2002, the CIA had authorized multiple "standard" interrogation techniques involving forms of sensory overload. These included continuous light in a cell, loud music, and "white noise (background hum)."[77] All three remained on OMS's list of standard interrogation techniques through at least 2004,[78] and possibly through 2007.[79] In December 2004, CIA told OLC that constant light and "white noise/loud music" were detention conditions that "are not interrogation techniques, but [that] have an impact on the detainee undergoing interrogation."[80] Nevertheless, OMS guidelines from the same period list "white noise or loud music" and "continuous light or darkness" among sanctioned interrogation techniques.[81]

27. Constant light, white noise, and loud music were conditions of confinement for "all" detainees in CIA facilities through at least December 2005.[82] After OLC reviewed these conditions for compliance with the DTA and Common Article 3,[83] the CIA continued to authorize constant light and white noise.[84]

28. During periods of intense interrogation, detainees were likely exposed to "continuous light in a cell" while subjected to other standard or enhanced interrogation techniques, for

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[75] *JPRA Description of Physical Pressures.*
[76] *Id.*
[77] *CIA OIG Special Review (May 7, 2004)*, at para. 89. The CIA authorized these "standard" interrogation techniques: "(1) sleep deprivation … (2) continual use of light or darkness in a cell, (3) loud music, and (4) white noise (background hum)." *Id.* Sensory overload was part of the sleep deprivation process (sound and light).
[78] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *CIA "Legal Principles" (2003)* ("loud music or white noise"); *OMS Guidelines (Sept.4, 2003)*, at 1 (light, loud music); *CIA Background Paper on Combined Techniques (2004)*, at 4 ("constant light during portions of the interrogation process"); *OMS Guidelines (May 17, 2004)*, at 7, 12 ("continuous light," "white noise or loud music"); *OMS Guidelines (Dec. 2004)*, at 8, 13 ("continuous light," "white noise or loud music").
[79] *See OLC Interrogation Techniques and WCA, DTA, and Common Article 3 (July 20, 2007)*, at 6 (citing *OMS Guidelines (Dec. 2004)* as then-current authority).
[80] *CIA Background Paper on Combined Techniques (2004)*, at 3. The CIA stated this in a paper that focused "strictly on the topic of combined use of interrogation techniques." *Id.*, at 1.
[81] *OMS Guidelines (Dec. 2004)*, at 8, 13.
[82] *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1.
[83] *See generally OLC Conditions of Confinement and DTA (Aug. 31, 2006)* and *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006).*
[84] *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1.

periods of time that may have lasted hours, days or weeks. However, it is not clear from open sources what "continuous light" as an interrogation technique actually entailed. Relevant factors might include, *inter alia*: the length of time for which lighting was continuous; direction and diffusion; lighting intensity; whether intensity varied and how rapidly (such as, constant, strobing, or intermittently dimmed); color temperature; the refresh rate of fluorescent bulbs, if used (i.e., flicker); and whether the lights generated heat.

29. In 2006, OLC described cell lighting as a condition of confinement thus:

> The CIA also kept detainees' cells illuminated 24-hours-a-day. Each cell is lit by two 17-watt T-8 fluorescent tube light bulbs, which illuminate the cell to about the same brightness as an office. [redacted] [citation omitted][85]

30. Standard conditions of confinement employed within covert "black site" facilities were likely more restrictive than would be found in a U.S. high-security detention center.[86] OLC accepted the CIA's assertion that the constant, long term light did not appear to have adverse effects on detainees' ability to obtain "adequate" sleep, that some detainees were provide eyeshades, and detainees could cover their eyes with their blankets.[87]

31. During periods of intense interrogation, detainees were likely exposed to continuous loud music or sound while subjected to other standard or enhanced interrogation techniques, for periods of time that may have lasted hours, days or weeks. Use of continuous loud music or sound was itself an interrogation technique, but was also used incidental to other techniques. For example, CIA used background noise to keep detainees awake for sleep deprivation during periods of interrogation.[88]

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[85] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5-6.

[86] "By keeping the facilities under constant illumination and closed-circuit surveillance, the CIA is attempting to do with technology what other detention facilities do with architecture or manpower." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 22. The author has not compared CIA documents describing these standards with guidelines for U.S. prisons. *See generally Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*; *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*. Conditions of confinement described in these sources may have changed with CIA policy or practice, or may have persisted throughout a detainee's entire confinement.

[87] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5-6.

[88] *CIA Background Paper on Combined Techniques (2004)*, at 10-11, 13. This source does not address use of loud music.

32. Agents from the FBI's Counterterrorism Operational Response Section (CTORS) told the DOJ OIG that they observed the following at a CIA-controlled facility in late 2002 and early 2003: "The Assistant Chief [of CTORS] said that the detainees wee manacled to the ceiling and subjected to blaring music around the clock… Thomas stated that Binalshibh was naked and chained to the floor when Tomas was given access to him…".[89]

33. The CIA placed limitations on the use of loud music and background noise that were calibrated to levels that might cause *permanent* hearing loss. CIA limits do not appear to have precluded causing detainees to experience multiple episodes of temporary hearing loss, long- or short-term ringing in the ears, or stress responses which may increase the risk of heart disease or heart attack.[90] CIA limits do not appear to have required consideration of the psychological effects caused by continuous noise exposure over an extended period of time.[91]

34. By 2004, CIA rules mandated that background noise as a condition of confinement was not to exceed 79 dB,[92] or slightly less than a garbage disposal (at 80 dB),[93] within a range OMS considered "loud."[94] CIA medical personnel were told:

> As a practical guide, there is no permanent hearing risk for continuous, 24-hours-a-day exposure to sound at 82 dB or lower; at 84 dB for up to 18 hours a day; 90 dB for up to 8 hours a day, 95 dB for up to 4 hours, and 100 dB for 2 hours.[95]

These limits were equivalent to 24-hour-a-day exposure to sound louder than a garbage disposal (at 80 dB); 18 hour-a-day exposure to sound louder than a garbage disposal and less than a propeller aircraft (at 88 dB); 8 hours of exposure to a shouted conversation or a motorcycle at 25 feet (at 90 dB); 4 hours on a subway car at 35 mph (95 dB); and 2 hours exposure to sound louder than a power mower (at 96 dB) and less than a chain saw (at 110 dB).[96] It is not clear whether the guidelines specified a break in sound exposure between these periods; if not, the guidelines might have allowed CIA officers to subject detainees to round-the-clock noise louder than a garbage disposal for days or weeks on end.

35. The CIA approved exposing detainees to extended periods of continuous sound as a condition of confinement.[97] The CIA noted that this security measure had a dual application,

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[89] *DoJ OIG FBI & Detainee Interrogations (rev 2009)*, at 74.
[90] *OMS Guidelines (Dec. 2004)*, at 13. Portions of this document relating to use of sound were redacted from the public copy. *Id.* DOJ OLC's legal limits did not preclude these effects, limiting concern to permanent harm.
[91] *Id.*
[92] *CIA Background Paper on Combined Techniques (2004)*, at 4; *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 2.
[93] A comparison used by the CIA. *See Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 2.
[94] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5.
[95] *OMS Guidelines (Dec. 2004)*, at 13.
[96] Comparisons used by the CIA. *See Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 2.
[97] *CIA Background Paper on Combined Techniques (2004)*, at 4 ("white noise/loud sounds (not to exceed 79

an "an impact on the detainee undergoing interrogation" that "may be a factor in interrogations."[98]

36. Background noise was used in the walkways of the detention facilities to prevent detainees from being able to communicate with each other or identify other detainees, at levels loud enough to be heard in detainees' cells.[99] Measurements taken by the CIA in one facility indicated a standard level of ambient noise in the cells similar to that of a "normal conversation."[100] Background noise used in the walkways of the detention facilities may have also interfered with detainees' ability to sleep, resulting in sleep deprivation or restriction and its associated health effects.[101] Because detainees were held in covert facilities where "special security measures [were] used inside the facilities to make up for the buildings' architectural shortcomings," this practice may have been more intrusive than similar measures in typical U.S. prison situations.[102]

37. In 2005-2006, CIA dropped "loud music" from its list of standard conditions of CIA detention after the DOJ OLC assessed whether standard conditions of confinement in CIA's covert facilities violated the Fifth Amendment.[103] The DOJ OLC did not include an assessment of loud music in its opinion, but approved the use of background noise as a condition of confinement, as described by the CIA, and noted that there were "other purposes" for using background noise.[104]

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decibels)"); *OLC Interrogation Techniques Combined (May 10, 2005)*, at fn. 3 (detention conditions include "white noise/loud sounds (not to exceed 79 decibels)"); *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 2 ("use of loud music or white noise"); *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 10 ("white noise"); *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5, 19-20 ("white noise"); *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1, 2-3 ("use of white noise").

[98] *CIA Background Paper on Combined Techniques (2004)*, at 4. In 2006, OLC assessed "white noise" as a condition of confinement, but noted it also served "other purposes." *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 13.

[99] *See, e.g., OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5.

[100] *Id.*, at 5.

[101] OLC noted in 2006 that the CIA had observed that standard levels of noise and light did not appear to affect detainees' ability to sleep, but it is not clear what level of disruption CIA personnel would have considered notable. *Id.*, at 19, 21.

[102] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 2-3.

[103] *Compare Standard Conditions of CIA Detention (pre-Dec. 19, 2005) with Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*. OLC did not include an assessment of loud music in its legal analysis. *See generally OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006); OLC Conditions of Confinement and DTA (Aug. 31, 2006)*. Note that "loud music" may still have been included on lists of standard interrogation techniques. *See OLC Interrogation Techniques and WCA, DTA, and Common Article 3 (July 20, 2007)*, at 6 (citing *QMS Guidelines (Dec. 2004)* as then-current authority).

[104] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 13 (discussion of "other purposes" for using white noise redacted in public version of document).

38. It is not clear whether loud music or background noise were used continuously or intermittently over the extent of a detainee's confinement. If the former, a detainee could have literally gone for years without ever experiencing the respite of silence.

39. Aural and visual stress presents short and long-term risks:

> Use of lights and loud music is intended to cause physiologic distress and encourages disorientation and withdrawal from reality as a defense. The body can interpret certain noises as danger signals, inducing the release of stress hormones which may increase the risk of heart disease or heart attack. Loud music can also cause hearing loss or ringing in the ears; these consequences can be both short term and chronic, with chronic tinnitus, or ringing in the ears, being more common.
>
> Strobe lights may also induce a stress response with increased heart rate according to data from studies. In studies involving professional drivers, headlight glare was shown to increase blood pressure, especially in drivers with underlying cardiac disease. Adverse effects of headlight glare in the laboratory include electrocortical arousal, EEG desynchronization, a rise in diastolic blood pressure and even ventricular arrythmias, potentially life threatening electrical rhythm disturbances of the heart. Loud noise and bright lights can also be used to interrupt sleep, resulting in sleep deprivation and its associated health effects. (citations omitted)[105]

Continuous Darkness, Hooding, and Other Forms of Sensory Deprivation

40. A person subjected to sensory deprivation is denied a normal level of stimuli from one or more of their senses for prolonged periods. JPRA described sensory deprivation thus:

> When a subject is deprived of sensory input for an interrupted period [sic, probably "uninterrupted"], for approximately 6-8 hours, it is not uncommon for them [sic] to experience visual, auditory and/or tactile hallucinations. If deprived of input, the brain will make it up. This tactic is used in conjunction with other methods to promote dislocation of expectations and induce emotions.[106]

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[105] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 25.

[106] *JPRA Description of Physical Pressures*. In 2002, OLC acknowledged that hallucinations associated with sleep deprivation might fairly be characterized as "a 'profound' disruption of the subject's senses." *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3, 6 ("hallucinations or other profound disruptions of the senses"); *OLC Interrogation Techniques (May 10, 2005)*, at 39 (hallucinations possible but acceptable; intervene upon evidence of hallucinations). *See also OLC Interrogation Techniques Combined (May 10, 2005)*, at 17.

41. By November 2002 through at least December 2004, the CIA authorized interrogators to hold detainees in darkened cells for extended periods ("continuous darkness") as a "standard" interrogation technique.[107]

42. A detainee placed in "cramped confinement" may also have experienced the extreme effects of sensory deprivation, as the detainee could spend up to 18 hours in a confined space that was "usually dark."[108] In 2002, the CIA planned to manipulate the personal phobia of a named detainee who was afraid of insects by putting an insect into the "cramped confinement" box with him, and telling him the insect could sting.[109] In its review of this procedure, OLC did not address how sensory deprivation, and any resulting anxiety or hallucinations, might compound the detainee's reaction to the presence of an unseen insect which he believed might sting him.[110]

43. "Hooding" is a form of sensory deprivation that involves covering the subject's entire head, including ears, nose and mouth, restricting sight, sound, and possibly the subject's breathing. The CIA used "hooding" as a standard interrogation technique at least though December 2004, [111] possibly as late as 2007,[112] and in conjunction with other interrogation techniques, authorized and unauthorized. For example, according to the CIA OIG, a named detainee was threatened with a handgun and a drill while hooded, the "the most significant" of the unauthorized techniques alleged to the CIA OIG. [113] Waterboarding, as described by OLC in 2002, began with covering the detainee's eyes.[114]

44. Use of hoods, goggles,[115] "blindfolds or similar eye-coverings", earmuffs, or "some opaque material" to cover detainees' eyes were considered a special security measure associated with confinement through at least 2006.[116] In 2006, OLC approved such measures when used in a non-injurious manner and during limited times, in contrast to earlier usage.[117]

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[107] *CIA OIG Special Review (May 7, 2004)*, at para. 89; *OMS Guidelines (Sept.4, 2003)*, at 1, *OMS Guidelines (May 17, 2004)*, at 7, *OMS Guidelines (Dec. 2004)*, at 8. In 2007, OLC cited *OMS Guidelines (Dec. 2004)* as then-current guidance. *OLC Interrogation Techniques and WCA, DTA, and Common Article 3 (July 20, 2007), at 6.*

[108] *OLC Interrogation Techniques (May 10, 2005)*, at 9.

[109] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 14.

[110] *See generally id.*

[111] *OMS Guidelines (Sept.4, 2003)*, at 1, *OMS Guidelines (May 17, 2004)*, at 7, *OMS Guidelines (Dec. 2004)*, at 8.

[112] In 2007, OLC cited *OMS Guidelines (Dec. 2004)* as then-current guidance. *OLC Interrogation Techniques and WCA, DTA, and Common Article 3 (July 20, 2007), at 6.*

[113] *CIA OIG Special Review (May 7, 2004)*, at para. 90.

[114] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("A cloth is placed over the [detainee's] forehead and eyes.").

[115] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14.

[116] *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1; *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14.

[117] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14.

45. According to Physicians for Human Rights, "Sensory deprivation is a technique that is "calculated to disrupt profoundly the senses" and "the personality." It tends not only to result in situations of complete dependency on the interrogator but also leads to severe anxiety and often causes hallucinations." [118] The CIA studied sensory deprivation in the 1960's:

> One reported study designed to test the results of eliminating most sensory stimuli and masking others, involved 17 paid volunteers who spent between 1 hour and 38 minutes and 36 hours in a tank respirator with restrained movement. Although the established time limit was 36 hours and though all physical needs were taken care of, 11 people terminated the experiment early. The results of the sensory deprivation included inability to concentrate effectively, daydreaming and fantasy, illusions, delusions, and hallucinations. It was concluded that the deprivation of sensory stimuli induces stress that may be unbearable for some subjects. Deprivation of stimuli causes some subjects progressively lose touch with reality, focus inwardly, and produce delusions, hallucinations, and other pathological effects. (citations omitted)[119]

Dietary Manipulation

46. Dietary manipulation was one of several "conditioning techniques" used by the CIA to "reduce" a new detainee to a "baseline, dependant state."[120] CIA officers were authorized to reduce a detainee's caloric intake and limit him to unpleasant food in order to affect his general health or emotional state.[121] CIA officials also modified detainee diet to enhance or accommodate other interrogation techniques.[122] The CIA expected detainees would undergo weeks of restricted diet,[123] and might experience "significant malnutrition."[124]

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[118] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 5 May 2011), at 31.
[119] *Id.*, at 31-32, *citing KUBARK.*
[120] *CIA Background Paper on Combined Techniques (2004),* at 5.
[121] The CIA was authorized to subject detainees to "reduced caloric intake" of food that was "not required to be palatable". *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *OLC Interrogation Techniques (May 10, 2005)*, at 7. "During the interrogation phase, detainee diets may be modified to enhance compliance with interrogators and facilitate movement to the debriefing phase." *OMS Guidelines (May 17, 2004)*, at 10.
[122] *See, e.g., Waterboarding.*
[123] *OMS Guidelines (Sept.4, 2003)*, at 4; *OMS Guidelines (May 17, 2004)*, at 9, 11; *OMS Guidelines (Dec. 2004)*, at 10, 12 (restricted diet safe for weeks at a time).
[124] *See OMS Guidelines (May 17, 2004)*, at 23-24; *OMS Guidelines (Dec. 2004)*, at 28-29 (modify restricted diet upon evidence of weight loss of greater than 10% of baseline body weight, which constitutes "significant malnutrition").

47. By January 2003, the CIA was authorized to feed detainees a reduced calorie diet as a "standard" interrogation technique.[125] Detainees were put on a reduced-calorie and/or liquid diet as part of their "baseline" conditioning.[126] Various documents issued from 2003 to late 2004 stated that the caloric amount was to be sufficient to "maintain the general health" of the detainee,[127] and generally required that the CIA give "adequate" fluids and nutrition to detainees.[128] However, by May 2004, guidelines "recommended" a detainee's minimum intake of 1000 calories/day,[129] described a regime as low as 500 calories/day,[130] and allowed weight loss up the point of what OMS termed "significant malnutrition," or weight loss of greater than 10% of baseline body weight.[131] By December 2004, OMS "recommended" a higher minimum intake of 1500 calories/day,[132] but nevertheless still used "significant malnutrition" as a limitation.[133]

48. OLC apparently did not evaluate the effects of dietary manipulation in 2002.[134] In 2005, OLC evaluated dietary manipulation alongside enhanced interrogation techniques, suggesting the CIA developed concerns about the legality of its use.[135] At this time, OLC required that detainee diet be "nutritionally complete."[136]

49. The CIA believed dietary manipulation made other techniques, like sleep deprivation, more "effective."[137] The CIA knew extended sleep deprivation may be associated with increased food consumption,[138] essentially increasing a detainee's hunger. By 2003, detainees who were to be subjected to waterboarding were placed on a liquid diet to reduce the chance

[125] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 (reduced caloric intake).
[126] *Id.*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15; *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (Dec. 2004)*, at 8.
[127] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15; *CIA "Legal Principles" (2003); OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (May 17, 2004)*, at 7, 9, 10; *OMS Guidelines (Dec. 2004)*, at 8, 11-12.
[128] *OMS Guidelines (Sept.4, 2003)*, at 3; *OMS Guidelines (May 17, 2004)*, at 9; *OMS Guidelines (Dec. 2004)*, at 10, 11.
[129] *OMS Guidelines (May 17, 2004)*, at 11.
[130] *Id.*
[131] *OMS Guidelines (Dec. 2004)*, at 28-29 (modify restricted diet upon evidence of weight loss of greater than 10% of baseline body weight, which constitutes "significant malnutrition").
[132] *OMS Guidelines (Dec. 2004)*, at 12.
[133] *Id.*, at 28-29. This version of the guidelines added "dehydration" to the medical limitations. *Id.*, at 29.
[134] *See generally OLC Interrogation of al Qaeda Operative (August 1, 2002).*
[135] *OLC Interrogation Techniques (May 10, 2005)*, at 7.
[136] *Id.*
[137] *OLC Interrogation Techniques (May 10, 2005)*, at 7; *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12.
[138] *See OLC Interrogation Techniques (May 10, 2005)*, at fn 44; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13-14.

they might aspirate their vomit, but this precaution may not have been instituted until after at least two detainees were waterboarded in 2002.[139]

50. The CIA may have deliberately induced nutritional deficiencies in detainees, at least early in the program, before OLC required detainees be afforded "nutritionally complete" diets.[140] SERE contractor/psychologists were likely familiar with ways in which nutritional deficiencies could affect a detainee's mental and physical health. According to JPRA:

> Manipulation of diet: Purposeful manipulation of diet, nutrients, and vitamins can have a negative impact on the subject's general health and emotional state. Medical personnel in the POW camps in North Korea believe that a B vitamin compound was responsible, in large part, to the phenomenon called "give up-itis." Recent studies suggest the removal of certain amino acids from a diet can induce heightened levels of emotional agitation."[141]

Cold Stress

51. Cold stress is the loss of excessive body heat to the environment. A human body's first response to cold stress is to conserve body heat by reducing blood circulation through the skin and extremities. A cold environment also forces the body to work harder to maintain temperature. Environmental factors contributing to cold stress include air temperature, air movement, wetness, and contact with cold surfaces. Cold stress can cause hypothermia, be physically painful, cause prolonged neurological effects, and cause death.

52. The CIA adopted several interrogation techniques utilizing cold stress, described below. In addition, several other standard and enhanced interrogation techniques used in conjunction with cold stress may have increased a subject's physical susceptibility to the effects of cold stress; these include sleep deprivation;[142] dietary manipulation;[143] and nudity.[144]

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[139] *CIA Horizontal Sleep Deprivation.*

[140] *See OLC Interrogation Techniques (May 10, 2005)*, at 7 (first reference to requirement for "nutritionally complete" diet in open sources).

[141] *JPRA Description of Physical Pressures.*

[142] A detainee undergoing sleep deprivation might face an increased risk of cold stress and hypothermia. *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13. Cold water could be thrown on a detainee to keep him awake. Sleep deprivation may also lower a subject's cold pain threshold. *OLC Interrogation Techniques (May 10, 2005)*, at FN 44.

[143] A detainee on a reduced calorie diet might face an increased risk of cold stress and hypothermia. *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13 ("[E]xtended sleep deprivation may cause a small decline in body temperature and increased food consumption. Water dousing and dietary manipulation and perhaps even nudity may thus raise dangers of enhanced susceptibility to hypothermia or other medical conditions for a detainee undergoing sleep deprivation." (citations omitted)).

[144] A naked or lightly clothed detainee faced an increased risk of cold stress and hypothermia. *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13 ("[E]xtended sleep deprivation may cause a small decline in body

53. In July-August 2002, interrogators were authorized to put a detainee in a cold room without clothing or blankets for what may have been as long as two weeks:

> In late July to early August 2002, a detainee was being interrogated [redacted] Prior to proceeding with any of the proposed methods, [redacted] officer responsible for the detainee [redacted] requesting Headquarters authority to employ a prescribed interrogation plan over a two-week period. The plan included the following:
>
> > Physical Comfort Level Deprivation: With use of a window air conditioner and a judicious provision/deprivation of warm clothing/blankets, believe we can increase [the detainee's] physical discomfort level to the point where we may lower his mental/trained resistance abilities.
>
> CTC/Legal responded and advised, "[Claution must be used when employing the air conditioning/blanket deprivation so that [the detainee's] discomfort does not lead to a serious illness or worse."[145] [multiple redactions]

54. The CIA OIG describes reports of an incident circa December 2002 in which CIA officers reported that a detainee was "left in a cold room, shackled and naked, until he demonstrated cooperation."[146]

55. Detainees were also given cold showers.

> Many of the officers interviewed about the use of cold showers as a technique cited that the water heater was inoperable and there was no other recourse except for cold showers. However, [redacted] [redacted] explained that if a detainee was cooperative, he would be given a warm shower. He stated that when a detainee was uncooperative, the interrogators accomplished two goals by combining the hygienic reason for a shower with the unpleasantness of a cold shower.[147]

56. FBI agents observed CIA agents utilizing cold stress on a detainee in early- to mid-2002,[148] but the CIA did not ask DOJ OLC to provide legal review of cold stress interrogation techniques in the August 2002 memo, and the first Agency-level guidance for the program did

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temperature and increased food consumption. Water dousing and dietary manipulation and perhaps even nudity may thus raise dangers of enhanced susceptibility to hypothermia or other medical conditions for a detainee undergoing sleep deprivation." (citations omitted)).

[145] *CIA OIG Special Review (May 7, 2004)*, at para. 178 (omitting citations).

[146] *Id.*, at para. 184.

[147] *CIA OIG Special Review (May 7, 2004)*, at para. 183.

[148] *DoJ OIG FBI & Detainee Interrogations (rev 2009)*, at 68.

not directly address cold stress.[149] By February 2003, CIA officers had clearly incorporated cold stress into a regimen designed to cause detainees "physical and environmental discomfort," even though its effects were apparently neither fully understood by interrogators nor regulated by their supervisors:

> When asked in February 2003, if cold was used as an interrogation technique, the [redacted] responded, "not per se." He explained that physical and environmental discomfort was used to encourage the detainees to improve their environment. [redacted] observed that cold is hard to define. He asked rhetorically, "How cold is cold? How cold is life threatening?" He stated that cold water was still employed [redacted] however, showers were administered in a heated room. He stated there was no specific guidance on it from Headquarters, and [redacted] was left to its own discretion in the use of cold. [redacted] added there is a cable from [redacted] documenting the use of "manipulation of the environment."[150] [multiple redactions]

57. By early- to mid-2003, CIA interrogators had introduced a process to induce cold stress known as "water dousing," or "cold water bath," by laying detainees on the ground, and dousing them with cold water, presumably to be left wet for some time in a cold room.[151] As with other uses of cold, it appears the process of "water dousing" was initially left to interrogators' discretion, or was used under only *ad hoc* guidance.

> A review [redacted] from April and May 2003 revealed that [redacted] sought permission from CTC [redacted] to employ [*inter alia*, water dousing]. Subsequent cables reported the use and duration of the techniques by detainee per interrogation session. One certified interrogator, noting that water dousing appeared to be a most effective technique, requested CTC to confirm guidelines on water dousing. A return cable directed that the detainee must be placed on a towel or sheet, may not be placed naked on the bare cement floor, and the air temperature must exceed 65 degrees if the detainee will not be dried immediately.[152] [multiple redactions]

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[149] Neither the 2002 DOJ OLC analysis of enhanced interrogation techniques, nor the first agency-level guidance, issued in January 2003, listed cold stress among authorized interrogation techniques. *See generally OLC Interrogation of al Qaeda Operative (August 1, 2002)* (no discussion of cold stress); *DCI Interrogation Guidelines (Jan. 28, 2003)* (no discussion of cold stress). The *DCI Interrogation Guidelines (Jan. 28, 2003)* did not list every authorized standard interrogation technique.

[150] *CIA OIG Special Review (May 7, 2004)*, at para. 185.

[151] CIA OIG reports "water dousing has been used since early 2003 when [redacted] officer introduced this technique to the facility… A review [redacted] from April and May 2003 revealed that [redacted] sought permission from CTC [redacted] to employ specific techniques for a number of detainees… [including] water dousing." [redactions in open source] *CIA OIG Special Review (May 7, 2004)*, at para. 187-188. Descriptions of the technique in various CIA materials confirm the practice was meant to induce cold stress. *See, e.g. CIA OIG Special Review (May 7, 2004)*, at para. 187-188 (describing "water dousing" with references to contact with cold surfaces, water temperature, and ambient air temperature); *id.*, at FN 73 ("water dousing" also known as "cold water bath").

[152] *CIA OIG Special Review (May 7, 2004)*, at para. 188.

58. By September 2003, the OMS medical guidelines incorporated the practice of "water dousing" as a "standard interrogation technique."[153]

59. The CIA described "water dousing" thus:

> 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… A session can last from 10 minutes (a single application) to an hour (multiple applications). … Upon completion of the water dousing session(s), the detainee is moved to another room, monitored as needed by a medical officer to guard against hypothermia, and steps are taken to ensure the detainee is capable of generating necessary body heat and maintain normal body functions.[154]

Presumably, the detainee was "moved to another room" for warming when the dousing session concluded because he was doused in a cold room.

60. CIA later re-designated "water dousing" an "enhanced interrogation technique,"[155] suggesting CIA officers found "water dousing" incorporated more "physical or substantial psychological pressure" than first anticipated.[156] Medical personnel were issued guidelines for "water dousing" which appeared to allow interrogators to induce hypothermia before medical personnel were required to intervene.[157]

61. By September 2003, the OMS medical guidelines also described another form of cold stress as a "standard interrogation technique," placing detainees in an "uncomfortably cool

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[153] *OMS Guidelines (Sept.4, 2003)*, at 1 (listing "water dousing" among "standard" interrogation techniques). *See also OMS Guidelines (May 17, 2004)*, at 9; *OMS Guidelines (Dec. 2004)*, at 10. OMS promulgated medical guidelines in April 2003 which may have addressed this practice; this first version of the OMS medical guidelines has not been released to the public. *CIA OIG Special Review (May 7, 2004)*, at para. 262. According to CIA OIG, OMS purposefully kept this set of guidelines in "draft" form, per advice of CTC/Legal. *Id.*

[154] *CIA Additional Techniques Letter (March 2, 2004)*, at 3.

[155] *Compare OMS Guidelines (Sept.4, 2003)*, at 1 ("water dousing" is standard technique); *with OMS Guidelines (May 17, 2004)*, at 7, 11-12 ("water dousing" is enhanced technique).

[156] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1, 2: "Standard Techniques are techniques that do not incorporate physical or substantial psychological pressure…Enhanced Techniques are techniques that do incorporate physical or psychological pressure beyond Standard Techniques." (emphasis in original) *Id.* ("water dousing" is standard technique).

[157] OMS Guidelines from May 2004 described time/temperature guidelines for "water dousing" that were meant to guard against hypothermia, but the "medical limitation" for "water dousing" was "cessation upon evidence of hypothermia," suggesting that medical personnel could allow a detainee to develop symptoms of hypothermia before they intervened. *OMS Guidelines (May 17, 2004)*, at 11-12; *id.*, at App. A, 24 (medical limitation for "water dousing").

environment."[158] OMS asserted that "[d]etainees can safely be placed in uncomfortably cool environments for varying lengths of time, ranging from hours to days."[159] Detainees could be wet or dry, clothed or naked.[160] OMS medical guidelines from 2003 accommodated ambient room temperatures below 64°F, possibly even as low as 50°F.[161] Other versions of the medical guidelines set medical limits requiring a room in which a detainee was stripped of his clothing to have at least 64°F ambient air temperature.[162] Detainees who were not wet (and presumably clothed) could be held up to three hours in a room with an ambient temperature less than 60°F, with monitoring for hyperthermia.[163] Wet detainees could be subjected to temperature less than 60°F for some lesser time.[164]

62. By 2004, interrogators were also formally authorized to use a variation on water dousing referred to as water pouring, flicking, and tossing ("water PFT") or some subset thereof.[165]

> Water PFT is intended to create a distracting technique, to startle, humiliate, and cause insult. Water PFT is intended to wear down the detainee physically and psychologically. Up to one pint of potable water may be used so long as it is applied in such a manner as to prevent its inhalation or ingestion.[166]

In addition to these physical and psychological effects described by the CIA, water pouring, flicking, and/or tossing presented a risk of cold stress.[167] The CIA noted that "the use of water

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[158] *OMS Guidelines (Sept.4, 2003)*, at 1 (listing "uncomfortably cool environment" and "water dousing" among "standard" interrogation techniques). *See OMS Guidelines (Sept.4, 2003)*, at 4 ("Detainees can safely be placed in an uncomfortably cool environment for varying lengths of time, ranging from hours to days"); *OMS Guidelines (May 17, 2004)*, at 9; *OMS Guidelines (Dec. 2004)*, at 10.

[159] *OMS Guidelines (Sept.4, 2003)*, at 4. *See also OMS Guidelines (May 17, 2004)*, at 9; *OMS Guidelines (Dec. 2004)*, at 10.

[160] OMS Guidelines from this period provided medical officers with information on "safe" temperature ranges, including "when a detainee is wet or unclothed." *CIA OIG Special Review (May 7, 2004)*, at para. 186.

[161] *OMS Guidelines (Sept.4, 2003)*, at 5 ("At ambient temperatures below 18°C/64°F, detainees should be monitored for the development of hypothermia."); at 4 (providing information about effects of ambient air temperature of 10°C/50°F when the subject has been exposed for two hours).

[162] *OMS Guidelines (Dec. 2004)*, at 10 ("Medical rationales for limitations on physical pressures … Stripping // Ambient air temperature at minimum 64 F/18 C // Below this temperature hypothermia may develop").

[163] *OMS Guidelines (Dec. 2004)*, at 10 ("Medical rationales for limitations on physical pressures … Uncomfortably cool environment // <3 hours below 60 F/16 C, with monitoring for development of hypothermia; use of water will further limit exposure time // … risk is patient-specific").

[164] *Id.*

[165] CIA informed OLC in 2004 that it had adopted the use of water dousing and water PFT. *CIA Additional Techniques Letter (March 2, 2004)*, at 2. OMS Guidelines from December 2004 list "water dousing and tossing" as one enhanced technique. *OMS Guidelines (Dec. 2004)*, at 8. In 2005, OLC evaluated water dousing, and described "flicking" as a variation. *OLC Techniques Memo (May 10, 2005)*, at 10-11, 35.

[166] *CIA Additional Techniques Letter (March 2, 2004)*, at 3.

[167] Both OMS and OLC came to treat water PFT as variation on water dousing.. *OMS Guidelines (Dec. 2004)*, at 8 (listing "water dousing and tossing" as one enhanced technique); *OLC Techniques Memo (May 10, 2005)*, at 10-

with detainees has proven to be a very effective part of some detainee interrogations."[168]

63. The CIA intentionally used water PFT to startle, distract, or humiliate detainees.[169] The startle effect may have served to threaten or suggest more extreme physical violence, particularly when the subject had been previously beaten, walled or waterboarded. The CIA also used water PFT to keep detainees awake during sleep deprivation.[170] One description of water PFT set a limit of "up to one pint" every 15-20 minutes.[171] Water PFT could lead to cold stress and possibly hypothermia, particularly for a detainee who was already sleep-deprived and naked or lightly clothed in a cold room, or made vulnerable by some other contemporaneous or previous mistreatment.

64. Cold stress was also a factor with waterboarding.[172]

65. Cold stress can present serious risks:

> Exposing a detainee to the cold can have serious health consequences even if the environmental temperature is well above freezing. The body is highly regulated to maintain core body temperature within a narrow range. Maintenance of this core temperature is essential to human survival. Hypothermia can have a number of adverse physical effects. Even moderate cold exposure can lead to significant shifts from the peripheral circulation to the body core, slowing heart function (including arrhythmias,

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11, 35 (evaluated "flicking" as a variation of dousing).

[168] *CIA Additional Techniques Letter (March 2, 2004)*, at 2.

[169] *Id.*, at 2. JPRA described the use of water in SERE training thus:

> When using this tactic, water is poured, flicked, or tossed on the subject. The water is used as a distracter, to disturb the subject's focus on the line of interrogation. When pouring, the subject is usually on their knees and the water is poured slowly over their head. Flicking water is generally directed to the face and again used to distract the subject's attention and focus. Tossing water is more forceful and should come as a surprise. The water is usually directed to the mouth and chin area of the face and care is used to avoid the subject's eyes. (Typical conditions for application: to create a distracting pressure, to startle, to instill humiliation or cause insult).

JPRA Description of Physical Pressures.

[170] *CIA Additional Techniques Letter (March 2, 2004)*, at 2.

[171] *Id.*, at 2 (limit "up to one pint" every 15-20 minutes for water PFT).

[172] At least one description of waterboarding notes the water was "cold". *OLC Interrogation Techniques (May 10, 2005)*, at 13. CIA guidelines for medical officers noted, "Risks [of waterboarding] include ... hypothermia from water exposure."*OMS Guidelines (May 17, 2004)*, at 25. A detainee on a reduced calorie diet in advance of waterboarding might face an increased risk of cold stress and hypothermia. *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13. The amount of water used for water PFT was not necessarily much different from what could be used in waterboarding. *Compare CIA Additional Techniques Letter (March 2, 2004)*, at 2 (limit "up to one pint" every 15-20 minutes for water PFT) *with OLC Interrogation of al Qaeda Operative (August 1, 2002), at* 4 (regarding waterboarding, "the water is usually applied from a canteen cup or small watering can with a spout.").

> ventricular fibrillation and cardiac arrest), gastrointestinal function, and possibly a decreased resistance to infection. If the body temperature drops below 90°F, there may be cognitive effects including amnesia. If the body temperature drops below 86°F, major organs can fail and death can occur....
>
> In addition to immediate effects, hypothermia can result in prolonged adverse health consequences. The neurologic effects of hypothermia include mental slowing, diminished reflexes and eventually flaccid muscle tone. With exposure to temperatures below 32°C (89.6°F) patients develop amnesia and below 31°C (87.8°F) there may be loss of consciousness. (citations omitted)[173]

Positional and Restraint Abuse

66. A stress position may be an abnormal human position, such as suspension or inversion, or a normal human position, such as sitting, standing or lying, that a subject is forced to hold for an abnormal period of time. Stress positions may be bound or unbound, and restraints can inflict additional pain or injury over time or if misapplied or otherwise manipulated.

67. In 2002, the CIA requested and received an opinion from DOJ OLC that its officers could lawfully subject detainees to stress positions as "enhanced interrogation techniques." Over time, the CIA designated at least five different "stress positions" for use during interrogation:

- Sitting stress position. Interrogators were authorized to force a detainee to sit on the floor for an extended period of time with his legs extended straight out in front and his arms raised above his head.[174]

- Kneeling, leaning back. Interrogators were authorized to force a detainee to kneel on the floor for an extended period of time while leaning back at a 45 degree angle.[175]

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[173] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 16.

[174] *OLC Interrogation of al Qaeda Operative (August 1, 2002), at* 3; *OLC Interrogation Techniques (May 10, 2005)*, at 9. DOJ OLC and CIA memoranda in 2002, 2004 and 2005 describe an authorized sitting stress position, but OMS Guidelines from 2003 and 2004 do not include this position in a list of authorized stress positions. *Compare OLC Interrogation of al Qaeda Operative (August 1, 2002),* at 3 (describing a sitting stress position); *CIA Request for Reaffirmation of Legal Principles*, at 2 (referring to "sitting and kneeling stress positions"); *OLC Interrogation Techniques (May 10, 2005)*, at 9 (lists three stress positions, to include sitting); *with OMS Guidelines (Sept.4, 2003),* at 2 (sitting stress position not listed among others); *OMS Guidelines (May 17, 2004)*, at 7 (sitting stress position not listed among others); *OMS Guidelines (Dec. 2004)*, at 8 (sitting stress position not listed among others).

[175] *OLC Interrogation of al Qaeda Operative (August 1, 2002), at* 3.

DOJ OLC attorneys evaluated this position in 2002 and 2005.[176]

- Kneeling, leaning forward. CIA adopted another kneeling position in which a kneeling detainee was forced to lean forward at a 45 degree angle.[177] DOJ OLC attorneys apparently did *not* evaluate this position in 2002 or 2005.[178]

- "Wall standing," leaning weight on fingers on wall. Interrogators were authorized to force a detainee to lean against a wall and support his weight with his outstretched arms and fingertips. He would not be permitted to move or reposition his hands or feet for an extended period of time.[179]

- "Forehead leaning," leaning weight on forehead on wall. Interrogators were authorized to force a detainee to lean against a wall and support his weight with his forehead. His head and neck would support his body weight for an extended period of time.[180]

- A third vertical/leaning position. In 2004, CIA notified OLC that it had added to its list of approved interrogation techniques "two standing stress positions involving the detainee leaning against the wall."[181] One of these appears to have been the "forehead leaning" position described above; the other was likely a third vertical/leaning position not described elsewhere in open sources.[182]

68. The CIA authorized other forms of positioning and/or restraint during interrogation and at other times. These include, *inter alia*:

- Shackling in upright, sitting or horizontal position to enforce sleep deprivation.

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[176] In 2002 and 2005, DOJ OLC described a kneeling stress position in which detainees were forced to lean back. OMS Guidelines from 2003 and 2004 described a kneeling stress position in which detainees were forced to lean forward or back. *Compare OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("kneeling on floor while leaning back"); *OLC Interrogation Techniques (May 10, 2005)*, at 9 (stress positions include on knees, body slanted backward); *with OMS Guidelines (Sept.4, 2003)*, at 2 (body slanted forward or backward); *OMS Guidelines (May 17, 2004)*, at 7 (body slanted forward or backward); *OMS Guidelines (Dec. 2004)*, at 8 (body slanted forward or backward).

[177] *Id.*

[178] See *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("kneeling on floor while leaning back"); *OLC Interrogation Techniques (May 10, 2005)*, at 9 (stress positions include on knees, body slanted backward).

[179] *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 (discussing "wall standing").

[180] *See OMS Guidelines (Sept.4, 2003)*, at 2 (listing "stress positions", to include "leaning with forehead on wall", but not "wall standing", among "enhanced measures"); *OMS Guidelines (Dec. 2004)*, at 8; *OLC Interrogation Techniques (May 10, 2005)*, at 9.

[181] See *CIA Request for Reaffirmation of Legal Principles*. "[I]n addition to the sitting and kneeling stress positions discussed earlier with OLC, the Agency has added to its list of approved interrogation techniques two standing stress positions involving the detainee leaning against a wall." *Id.*, at 2.

[182] DOJ OLC had already addressed "wall standing" when this memo, advising the OLC of "new" techniques adopted by the CIA, was written. *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3.

Interrogators were authorized to bind a detainee in at least three different positions uncomfortable enough to keep him awake for days at a time in order to enforce sleep deprivation.[183] Such restraint was considered "standard" for periods of two to three days, and "enhanced" for longer periods.[184] Shackling may have inflicted additional pain or injury if, for example, restraint was prolonged or shackles were misapplied or otherwise manipulated.[185] Shackling so affected detainees subjected to sleep deprivation that, in lieu of releasing the detainee from shackles so he might defecate into a bucket or latrine, CIA officers put detainees in adult diapers.[186] In lieu of releasing one or both of the detainee's hands from shackles so he might feed himself, CIA officers might feed him by hand as he stood, sat or lay in shackles.[187]

- "Facial hold" interrogation technique. Interrogators could immobilize a detainee's head by grabbing his face.[188] SERE contractor/psychologists would have understood this technique as a tool to "threaten or intimidate via invasion of personal space, instill fear and apprehension… and punish….".[189] When used for CIA interrogation, the maneuver involved physical and/or substantial psychological pressure and was therefore

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[183] *See, e.g., OLC Interrogation Techniques (May 10, 2005)*, at 11.

[184] By late 2002, the CIA considered sleep deprivation up to 72 hours at a time a "standard interrogation technique;" periods greater than 72 hours were considered an "enhanced interrogation technique." *CIA OIG Special Review (May 7, 2004), at* FN 43. By late December 2003, CIA had re-designated sleep deprivation exceeding 48 hours at a time an "enhanced interrogation technique." *CIA OIG Special Review (May 7, 2004)*, at FN 34.

[185] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at para. 98 ("A CTC manager … attributed the abrasions on al-Nashiri's ankles to an Agency officer accidentally stepping on Al-Nashiri's shackles while repositioning him into a stress position"); *OMS Guidelines (Sept.4, 2003)*, at 5 ("Shackling in non-stressful positions requires only monitoring for the development of pressure sores with appropriate treatment and adjustment of the shackles as required"); *OMS Guidelines (May 17, 2004)*, at 12; *OMS Guidelines (Dec. 2004)*, at 14.

[186] Diapers were also a means by which a detainee could be humiliated. *OPR Report (July 29, 2009)*, at 36 ("The subject is forced to wear adult diapers and is denied access to toilet facilities for an extended period, in order to humiliate him."). In 2005, CIA asserted to OLC that "diapers are used solely for sanitary and health reasons and not in order to humiliate the detainee." *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13. However, in the same document, CIA stated that diapers were necessary because "releasing a detainee from shackles would present a security problem and would interfere with the effectiveness of the [sleep deprivation] technique." *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13.

[187] "We understand that a detainee undergoing sleep deprivation is generally fed by hand by CIA personnel so that he need not be unshackled." *OLC Interrogation Techniques (May 10, 2005)*, at 12.

[188] *See OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("One open palm is placed on either side of the individual's face. The fingertips are kept well away from the individual's eyes."). *See also DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2 (listing "the facial hold" among "enhanced techniques"); *CIA "Legal Principles" (2003)* , at 3 (condoning use of "the facial hold)"); *OMS Guidelines (Sept.4, 2003)*, at 1 (listing "facial hold" among "enhanced measures"); *OMS Guidelines (May 17, 2004)*, at 7 (listing "facial hold" among "enhanced measures"); *OMS Guidelines (Dec. 2004)*, at 8 (listing "facial hold"); *OLC Interrogation Techniques (May 10, 2005)*, at 8.

[189] *JPRA Description of Physical Pressures.*

considered an "enhanced interrogation technique."[190] It also presented another opportunity for forceful psychical contact, as described above.

- "Attention grasp" interrogation technique. An interrogator would snatch the detainee toward himself with both hands in a move which, if repeated rapidly, would constitute shaking.[191] The interrogator may have grabbed the detainee's collar or some other form of neck support.[192] SERE contractor/psychologists would have understood this technique as a tool "to startle, to instill fear, apprehension, and humiliation or cause insult."[193] When used for CIA interrogation, the maneuver involved physical and/or substantial psychological pressure and was therefore considered an "enhanced interrogation technique."[194] It also presented another opportunity for forceful psychical contact, as described above.

- Interrogators were authorized to subject detainees to "cramped confinement" by forcing them into "a confined space, the dimensions of which restrict the individual's movement" for extended periods.[195] DOJ OLC understood the "confinement boxes" restricted the subject's movement and were therefore "physically uncomfortable."[196] CIA planned to use multiply the effects of close confinement by exploiting a detainee's personal psychological phobias whilst confined.[197]

- Interrogators also bound detainees in order to manhandle or immobilize them for the application of "enhanced" techniques other than sleep deprivation. Interrogators used shackles to immobilize detainees for water dousing.[198] Interrogators used a form of a neck collar to throw a detainee into a wall for "walling;" DOJ OLC attorneys noted in 2005 that this "walling" collar can cause pain and irritation.[199] Interrogators may also

[190] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1-2.
[191] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2 ("The attention grasp consists of grasping the individual with both hands, one hand on each side of the collar opening, in a controlled and quick motion. In the same motion as the grasp, the individual is drawn toward the interrogator."). *See also OLC Interrogation Techniques (May 10, 2005)*, at 8. Neither memo describes limits on repeated "attention grasp" motions.
[192] *OMS Guidelines (Sept.4, 2003)*, at 2 (neck support required for most attention grasps); *OLC Interrogation Techniques (May 10, 2005)*, at 8; *OMS Guidelines (Dec. 2004)*, at 9.
[193] *JPRA Description of Physical Pressures.*
[194] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1-2.
[195] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2.
[196] *Id.*, at 10.
[197] *Id.*, at 3 ("You would like to place Zubaydah in a cramped confinement box with an insect. You have informed us that he appears to have a fear of insects...."); *id.*, at 14 ("In addition to using the confinement box alone, you also would like to introduce an insect into one of the boxes with Zubaydah.").
[198] *CIA Additional Techniques Letter (March 2, 2004)*, at 3. "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...." *Id.*
[199] *OLC Interrogation Techniques (May 10, 2005)*, at 32.

have used a form of collar for some attention grasps.[200] A detainee bound to a waterboard presumably would have been secured tightly enough to immobilize him during inversion, struggle, or involuntary, instinctive movements.[201]

- Interrogators also used shackling as an interrogation technique in its own right. Interrogators were authorized to shackle detainees in various positions as a "standard" interrogation technique, which did not require advance approval from CIA headquarters.[202] Shackling may have inflicted pain or injury if, for example, restraint was prolonged or shackles were misapplied or otherwise manipulated.[203] Open source materials that describe medical limitations for shackling are heavily redacted.[204]

- CIA officers also used shackling to "enhance security in all aspects of detainee management and movements" in covert facilities.[205] This included such activities, for example, as inter- or intra-facility transfer; "hard take-down;"[206] forced grooming;[207]

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[200] *OMS Guidelines (Sept 4, 2003)*, at 2 (neck support required for most attention grasps); *OLC Interrogation Techniques (May 10, 2005)*, at 8; *OMS Guidelines (Dec. 2004)*, at 9.

[201] *See, e.g., OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("the individual is bound securely to an inclined bench"); *OLC Interrogation Techniques (May 10, 2005)*, at 14 ("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 nose, mouth, and nasopharynx. The gurney used for administering this technique is specially designed so that this can be accomplished very quickly if necessary."). For information about involuntary movements associated with the Instinctive Drowning Response, see Mario Vittone and Francesco A. Pia, Ph.D, "*It Doesn't Look Like They're Drowning: ' How To Recognize the Instinctive Drowning Response"* in *On Scene: The Journal of U. S. Coast Guard Search and Rescue* (Fall 2006) COMDTPUB P16100.4 *available at* http://www.uscg.mil/hq/cg5/cg534/On%20Scene/OSFall06.pdf (last accessed January 4, 2011).

[202] DOJ OLC memoranda describe shackling as incidental to sleep deprivation, but OMS Guidelines from 2003 and 2004 refer to shackling as a discrete interrogation technique. *See OMS Guidelines (Sept.4, 2003)*, at 1, 5-7; *OMS Guidelines (May 17, 2004)*, at 7, 12-13; *OMS Guidelines (Dec. 2004)*, at 8, 14.

[203] *See, e.g., CIA OIG Special Review (May 7, 2004)*, at para. 98. ("A CTC manager … attributed the abrasions on Al-Nashiri's ankles to an Agency officer accidentally stepping on Al-Nashiri's shackles while repositioning him into a stress position.").

[204] *See, e.g., OMS Guidelines (Dec. 2004)*, at 14-15 (of more than a page and half of text describing shackling during interrogations, only three sentences are unredacted).

[205] *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 3; *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 11-12; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 6, 23-24; *Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1, 3-4. Because detainees were held in covert facilities where "special security measures [were] used inside the facilities to make up for the buildings' architectural shortcomings," shackling may have been more extensively used than in typical U.S. prison situations. *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 2-3.

[206] The CIA OIG heard reports of frequent use of the "hard take-down" in which CIA personnel would physically subdue and restrain a detainee with more than the minimum amount of necessary force. *See generally CIA OIG Special Review (May 7, 2004)*, at para. 190-192. In the public version of this document, para. 190 is redacted in its entirety.

[207] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4 (detainee shackled to chair during forced grooming).

and security during interrogation.[208] It is not clear how policy or practice operated in such a tense environment and in such a variety of applications to ensure CIA officers did not misapply or otherwise manipulate shackles.

69. The CIA seems to have managed the use of stress positions as authorized "enhanced interrogation techniques" with limited regard for differences between the actual positions themselves. The SERE contractor/psychologists likely understood "stress positions" as encompassing "any number of uncomfortable physical positions."[209] In 2002, OLC opined the legality of three stress positions, but recognized a variety might be used.[210] The CIA's first agency-level guidance for interrogators did not limit approval to specific positions.[211] CIA medical guidance from 2003 and 2004 does not appear to offer much guidance on use of specific stress positions, other than to list them among approved techniques[212] and refer to JPRA materials.[213] Even though "wall standing" was specifically approved as a stress position by OLC and the DCI in 2002 and 2003, the CIA's medical guidelines apparently did not address its use until late 2004.[214] Similarly, even though OLC did not address the kneeling/leaning forward stress position in either the 2002 or 2005 memoranda, CIA listed the

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[208] *SERE Contractor/Psychologist Business Plan*, at 16 (shackling "for security reasons" while a detainee is standing).

[209] *JPRA Description of Physical Pressures* (regarding "stress positions": "Note: there are any number of uncomfortable physical positions that can be used and considered in this category.").

[210] In addition to "wall standing," OLC described two stress positions among a "variety." *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 ("A variety of stress positions may be used … Two particular stress positions are likely to be used on Zubaydah…"; separately approves use of "wall standing").

[211] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2 (listing unspecified "stress positions" and "wall standing" among "enhanced techniques").

[212] *See OMS Guidelines (Sept.4, 2003)*, at 2 (listing three "stress positions": kneeling, leaning forward; kneeling, leaning back; forehead leaning); *OMS Guidelines (May 17, 2004)*, at 7 (listing same three "stress positions"); *OMS Guidelines (Dec. 2004)*, at 8 (listing four "stress positions", same three plus wall standing). These documents do not appear to discuss medical guidelines for use of these positions; however, public versions of the OMS Guidelines are redacted, and there is a possibility this material was omitted in this public release.

[213] *OMS Guidelines (Dec. 2004)*, at 30, cites "PREAL Operating Instructions" as the reference for "medical rationales for limitations" on "stress positions". This probably refers to a May 7, 2002 SERE training manual cited in at least one 2005 OLC memorandum. *See OLC Interrogation Techniques and CIDT (May 30, 2005)* at 14 (citing Pre-Academic Laboratory (PREAL) Operating Instructions (PREAL Manual)). *See also OPR Report (July 29, 2009)*, at 34 (referring to "a May 7, 2002 SERE training manual, "Pre-Academic Laboratory (PREAL) Operating Instructions"); *id.* ("OLC's files included a copy of the PREAL Manual but no indication of how or when it was obtained.").

[214] "Wall standing" was addressed in some materials as a discrete "enhanced interrogation technique," addressed in other materials as a variation of a "stress position", and omitted from lists of techniques in other materials. *See OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 (discussing "wall standing"); *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2 (approving "wall standing"); *CIA "Legal Principles" (2003)*, at 3 (condoning use of "wall standing"); *OMS Guidelines (Sept.4, 2003)*, at 2 ("wall standing" neither listed as technique nor described among "stress positions"); *OMS Guidelines (May 17, 2004)*, at 7 ("wall standing" neither listed as technique nor described among "stress positions"); *OLC Interrogation Techniques (May 10, 2005)*, at 9 (listing "wall standing"); *OMS Guidelines (Dec. 2004)*, at 8 (describing position of wall standing among "stress positions").

position in 2003 and 2004 medical guidance.[215]

70. The CIA publicly acknowledges that interrogators forced at least one named detainee to kneel on the floor while leaning back at a 45-degree angle.[216] The CIA OIG investigated an allegation that he was further abused in this position in 2002:

> OIG received reports that interrogation team members employed potentially injurious stress positions on Al-Nashiri. Al-Nashiri was required to kneel on the floor and lean back. On at least one occasion, an Agency officer reportedly pushed Al-Nashiri backward while he was in this stress position.[217]

71. The CIA OIG also investigated allegations that CIA personnel suspended the same detainee by his arms, in a position resembling the *strappado*:[218]

> On another occasion, [redacted] said he had to intercede after [redacted] expressed concern that Al-Nashiri's arms might be dislocated from his shoulders. [redacted] explained that, at the time, the interrogators were attempting to put Al-Nashiri in a standing stress position. Al-Nashiri was reportedly lifted off the floor by his arms while his arms were bound behind his back with a belt. [multiple redactions][219]

The interviewee appeared to have understood this incident as interrogators' misguided "attempt" to vary an approved position.[220]

72. In 2002, when evaluating the "legality" of using "stress positions" as an interrogation technique, the DOJ OLC failed to evaluate, *inter alia,* how prisoners would be forced to

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[215] For example, OLC did not address kneeling/ leaning forward stress position in 2002 or 2005 memos that are publicly available, yet this stress position is listed in three versions of OMS Guidelines. *Compare OMS Guidelines (Sept.4, 2003)*, at 2; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8, *with OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 (describing stress positions); *OLC Interrogation Techniques (May 10, 2005)*, at 9 ("There are three stress positions that may be used… (2) kneeling on the floor while leaning back at a 45 degree angle…"). OLC did not address "forehead leaning" in 2002, yet this stress position is described in three versions of OMS Guidelines. *Compare OMS Guidelines (Sept.4, 2003)*, at 2; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8, *with OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3 (describing stress positions).

[216] *CIA OIG Special Review (May 7, 2004)*, at para. 97.

[217] *Id.* The OIG did not reach an authoritative determination of the facts of these allegations. *Id.*, at para. 90.

[218] The CIA OIG did not characterize the technique as the *strappado*, a technique found among the "great tradition of restraint tortures," but the resemblance is striking. *See generally* DARIUS REJALI, TORTURE AND DEMOCRACY (2007), at 295-296.

[219] *CIA OIG Special Review (May 7, 2004)*, at para. 97. The CIA OIG did not reach an authoritative determination of the facts of these allegations. *CIA OIG Special Review (May 7, 2004)*, at para. 90.

[220] "[redacted] [redacted] explained that, at the time, the interrogators were attempting to put Al-Nashiri in a standing stress position." *CIA OIG Special Review (May 7, 2004)*, at para. 97.

maintain stress positions, specifically whether detainees would be shackled, threatened, or beaten by the interrogators.[221] Based on this and other failings, the DOJ OPR subsequently determined the DOJ OLC's conclusion that the use of stress positions would not result in severe physical pain or suffering was "not based on thorough, objective, and candid analysis of the issues."[222]

73. CIA officers maintained that stress positions that did not involve contortion would not cause physical discomfort more severe than muscle fatigue, and that a detainee in the RDI program would "fall out" of a stress position from muscle fatigue before he experienced severe pain or suffering.[223] DOJ OLC accepted the CIA's emphasis on this as the key limiting factor in the use of stress position interrogation techniques.[224]

74. These assumptions, however, belie the CIA's own practice. Detainees were physically unable to "fall out" of a position when bound, such as for sleep deprivation. Furthermore, the CIA routinely used the threat of walling to induce detainees to hold stress positions:

> [I]nterrogators would tell an HVD in a stress position that he (HVD) is going back to the walling wall (for walling) if he fails to hold the stress position until told otherwise by the [interrogator]. This places additional stress on the HVD who typically will try to hold the stress position for as long as possible to avoid the walling wall. [redacted] interrogators will remind the HVD that he is responsible for this treatment and can stop it at any time by cooperating with the interrogators.[225]

75. An historical understanding of the power of positional abuse is described in publicly-available CIA research from the Cold War.

> Another [form of pressure] which is widely used [by the Soviet KGB during

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[221] *See generally OLC Interrogation of al Qaeda Operative (August 1, 2002).*

[222] *OPR Report (July 29, 2009)*, at 236-7.

[223] *CIA Background Paper on Combined Techniques (2004)*, at 8 ("Stress positions … are usually self-limiting in that temporary muscle fatigue usually leads to the HVD being unable to maintain the stress position after a period of time."). It is not clear whether "falling out" describes a detainee who relaxes his muscles to shift position (if unbound) or who falls unconscious.

[224] *Id. See, e.g., OLC Interrogation Techniques (May 10, 2005)*, at 34:

> As with wall standing we understand that duration of the technique is self-limited by the individual detainee's ability to sustain the position; thus, the short duration of the discomfort means that this technique would not be expected to cause, and could not reasonably be considered specifically intended to cause, severe physical suffering.

[225] *CIA Background Paper on Combined Techniques (2004)*, at 14-15.

> interrogations] is that of *requiring the prisoner to stand throughout the interrogation session or to maintain some other physical position which becomes painful.* This, like of features of the KGB procedure, is a form of physical torture, in spite of the fact that the prisoners and KGB officers alike do not ordinarily perceive it as such. Any fixed position which is maintained over a long period of time ultimately produces excruciating pain. (emphasis in original)[226]
>
> In addition to the physiological effects, this type of torture creates a psychological conflict. When the prisoner is required to stand in one position, there is often engendered within him an initial determination to "stick it out". [sic] This internal act of resistance provides a feeling of moral superiority, at first. As time passes and the pain mounts, the individual becomes aware that, to some degree, it is his own original determination to resist that is causing the continuance of pain. There develops a conflict within the individual between his moral determination and his desire to collapse and discontinue the pain. It is this extra internal conflict, in addition to the conflict over whether or not to give in to the demands made of him, that tends to make this method of torture so effective in the breakdown of the individual.[227]

76. The CIA recognized the psychological impact of "self-induced" pain and suffering on someone who "chooses" to hold a position rather than face a supposed punishment, as well as the power of the abuse to serve as a threat:

> [W]hereas pain inflicted on a person from outside himself may actually focus or intensify his will to resist, his resistance is likelier to be sapped by pain which he seems to inflict on himself... The immediate source of pain is not the interrogator but the victim himself... As long as the subject remains standing, he is attributing to his captor the power to do something worse to him, but there is actually no showdown of the interrogator to do so.[228]

This understanding was consistent with the use of stress positions in SERE training to "demonstrate self-imposed pressure."[229]

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[226] *1957 Communist Control Techniques*, at 37-38. The CIA commissioned this report in the 1950s to describe techniques used by the Soviet KGB during interrogations.
[227] *Id.*, at 37-38. *See also Brainwashing (1956)*, at 75 ("The prisoner may be tortured by being forced to stand in one spot for several hours or assume some other pain-inducing position..."). This 1956 CIA study was forwarded by then-CIA Director Allen Dulles to FBI Director J. Edgar Hoover. DCI Dulles wrote, "I feel you will find [this study] well worth your personal attention. It represents the thinking of leading psychologists, psychiatrists and intelligence specialists... I believe the study reflects a synthesis of majority expert opinion." *Id.*, at cover letter.
[228] *KUBARK*, at 94 *citing* Biderman, Albert D., "Communist attempts to Elicit False Confession from Air Force Prisoners of War", Bulletin of the New York Academy of Medicine, September 1957, Vol. 33.
[229] *JPRA Description of Physical Pressures.*

77. According to medical experts:

> Stress positions result in a number of physical effects that can be long lasting or even permanent, such as nerve, joint and circulatory damage. These effects are relevant to the determination of whether such positions constitute "torture" or "cruel or inhuman treatment."... [P]rolonged standing may result in blood clots in the legs (deep vein thrombosis) which may subsequently travel to the lungs as pulmonary embolism. Pulmonary embolism can be fatal, and the risk is increased when immobility follows blunt trauma... In addition to circulatory effects, prolonged standing can result in musculoskeletal (muscle and joint) foot and back pain, and can result in damage to peripheral nerves. Such nerve damage can result in decreased motor sensation, and decrease the ability of an individual to feel warmth, cold, or vibrations. (citations omitted)[230]

Isolation and "Disappearance"

78. Detainees were "isolated from the outside world and from one another."[231]

79. Detainees were held in "solitary confinement in which they [were] unable to see or talk with other detainees."[232] Typical confinement was described thus by OLC in 2006, at which point several detainees had been held by the CIA for as long as four years before their transfer to Guantánamo:

> The detainee is isolated from companions of his choosing, confined to his cell for much of each day, under constant surveillance, and is never permitted a moment to rest in the darkness and privacy that most people seek during sleep.[233]

80. Isolation was a "standard interrogation technique,"[234] one of the " pressures" used by the CIA "in a comprehensive, systematic, and cumulative manner" to "create a state of learned

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[230] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 11.

[231] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7, 9. *See also OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4-5.

[232] *Id.*

[233] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 13. A detainee may or may not have been held in his own cell during periods of interrogation. *See, e.g., CIA OIG Special Review (May 7, 2004), at* para. 191 (referring to "the sleep deprivation cell").

[234] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15; *CIA "Legal Principles" (2003)*; *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8.

helplessness and dependence" in detainees.[235] It is not clear what limits or safeguards were in place to regulate the use or overuse of isolation in the CIA program. Open source materials do not show that DOJ OLC evaluated isolation as an interrogation technique, nor what its effect might be when used in conjunction with other interrogation techniques.[236] OMS medical guidelines listed isolation as a "standard interrogation technique" with what appears to be little to no discussion,[237] and described medical limitations on isolation as "none."[238]

81. As late as mid-2003, an accompanying "standard interrogation technique" was "deprivation of reading material."[239] Such a deprivation would almost certainly have significantly enhanced "isolation" as a tool for inducing learned helplessness and dependence, and accelerated the debilitating effects of a denial of intellectual stimulation.[240] By mid-2003, CIA did not include "deprivation of reading material" as a discrete entry on a list of interrogation techniques given to medical personnel.[241] In 2006, DOJ OLC described the provision of reading material and other forms of intellectual stimulation to detainees as a positive effort on the part of the CIA to mitigate the debilitating effects of their isolation.[242]

82. In addition to a "standard interrogation technique," isolation used as a standard condition of confinement. In 2005, the CIA asked DOJ OLC to evaluate the lawfulness of isolation as a standard condition of confinement, used to prevent "the coordination of attacks on facility personnel or false stories among co-conspirators."[243] When DOJ OLC determined this use of isolation complied with Common Article 3 of the Geneva Conventions and the Detainee Treatment Act of 2005 *as used in 2006,* DOJ attorneys took special note of two

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[235] *CIA Background Paper on Combined Techniques (2004)*, at 1. Discussed supra.
[236] *See generally OLC Interrogation of al Qaeda Operative (August 1, 2002); OLC Interrogation Techniques (May 10, 2005); OLC Interrogation Techniques Combined (May 10, 2005); OLC Interrogation Techniques and CIDT (May 30, 2005).*
[237] *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8. It is possible isolation was discussed in text redacted from the publicly-released documents.
[238] *OMS Guidelines (Dec. 2004)*, at 28. "Rationale for limitation" was "methodology used in SERE, prison settings." *Id.* These guidelines cite an additional reference for use by medical personnel, but the title is redacted. *Id.*
[239] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1; *SERE Contractor/Psychologist Business Plan*, at 15; *CIA "Legal Principles" (2003).*
[240] In 2006, DOJ OLC describes the provision of reading material and other forms of intellectual stimulation to detainees as a positive effort on the part of the CIA to mitigate the debilitating effects of their isolation. *See OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5. "The CIA takes reasonable steps to mitigate the psychological strain of isolation through [redacted] and other diversions in the form of books, music, videos, and games, short of interactions with their co-combatants." *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 13-14.
[241] *OMS Guidelines (Sept.4, 2003)*, at 1; *OMS Guidelines (May 17, 2004)*, at 7; *OMS Guidelines (Dec. 2004)*, at 8.
[242] *See OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7; *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5.
[243] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 9. *See also OLC Conditions of Confinement and DTA (Aug. 31, 2006); Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1.

factors: detainees were allowed intellectual stimulation in the form of books, music, movies, and other diversions;[244] and that this particular use of isolation was "tailored to security and intelligence purposes –that is, preventing the coordination of attacks on facility personnel or false stories among co-conspirators."[245] These factors distinguish CIA's use of isolation as a condition of confinement in 2006 from isolation as a standard interrogation technique in 2002, 2003, and beyond.[246]

83. Detainees were held in covert facilities where "special security measures [were] used inside the facilities to make up for the buildings' architectural shortcomings."[247] Insofar as detention conditions were not required to conform to "U.S. prison or other standards,"[248] isolation as a general condition of confinement likely exceeded than found in U.S. prison situations. It is possible that a detainee was held in isolation for years in CIA custody.

84. Detainees were also apparently subjected to constant surveillance over years of detention. "[E]ach detention cell has full-time closed-circuit video monitoring…".[249] A detainee may have gone years without any privacy. "By keeping the facilities under constant illumination and closed-circuit surveillance, the CIA is attempting to do with technology what other detention facilities do with architecture or manpower."[250]

85. Isolation without the intellectual stimulation of peer-to-peer interaction can be extremely debilitating, with long-term consequences. According to Physicians for Human Rights:

> Studies have identified anxiety, depression, higher measures of anger, and low self-esteem as significant negative consequences of isolation among patients in clinical settings. For persons in prolonged and profound solitary confinement in a prison

[244] "The CIA takes reasonable steps to mitigate the psychological strain of isolation through [redacted] and other diversions in the form of books, music, videos, and games, short of interactions with their co-combatants." *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 13-14. OLC did not conclude that such measures were necessary to satisfy common Article 3, "but they do provide significant comfort that the CIA's detention condition does not approach common Article 3 limits." *Id.*, at 7.

[245] *Id.*, at 9. DOJ OLC viewed this factor as "important."

[246] DOJ OLC also favorably noted other measures taken by the CIA to mitigate the long-term effects of isolation, to include the provision of routine psychological examination. *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7. It is not clear how effective such examinations would have been, given the CIA's particular standards for detainee medical treatment (i.e., best interests of the patient subordinate to the interrogation mission, as described above).

[247] *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 2-3.

[248] The CIA Inspector General (IG) noted this fact in 2004; it is not clear if the IG considered "other standards" to include those for pre-trial detention for persons charged with a crime or for prisoners of war. *CIA OIG Special Review (May 7, 2004)*, at para. 59, *citing DCI Confinement Guidelines (Jan. 28, 2003)*.

[249] *OLC Interrogation Techniques (May 10, 2005)*, at 7. *See also id.*, at 11 ("You have assured us [OLC] that detainees are constantly monitored by closed-circuit television…").

[250] *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 22.

environment, the symptoms associated with sensory deprivation are equally, if not more, destructive than the symptoms exhibited by patients in clinical settings.

People who are exposed to isolation for the first time develop a group of symptoms that include "bewilderment, anxiety, frustration, dejection, boredom, obsessive thoughts or ruminations, depression, and, in some cases, hallucination." Consistently, longitudinal studies (research that follows subjects for a specific period of time) have found significantly higher risk for developing psychiatric disorders such as depression and adjustment disorders among solitary confinement prisoners compared to non-solitary confinement prisoners.

Prolonged isolation has been demonstrated to result in increased stress, abnormal neuroendocrine function, changes in blood pressure and inflammatory stress responses. Social isolation has been associated with higher risk of death from widely varying causes. For example, reports indicate the suicide rates in Texas and California prisons are on the rise, with the majority occurring among inmates in solitary confinement.

Findings from clinical research performed by prominent psychologists such as Dr. Stuart Grassian and Dr. Craig Haney, highlight the destructive impact of solitary confinement. Effects include depression, anxiety, difficulties with concentration and memory, hypersensitivity to external stimuli, hallucinations and perceptual distortions, paranoia, suicidal thoughts and behavior, and problems with impulse control. (citations omitted)[251]

86. Isolation prevents detainees from bonding with equals and mutually identifying with other abused detainees, and encourages traumatic bonding with the people responsible for their abusive treatment (captors and interrogators).[252] Such bonding would have been in accordance with the CIA's goal of transitioning each detainee into a state of learned helplessness and dependence.

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[251] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 32.

[252] *The Istanbul Protocol*, at 29. "[E]x-prisoners recall having felt affection and love for their perpetrators, who during the period of total isolation and solitude were their only human contact. This contradiction, of having affectionate feelings toward a person who was abusive, may be impossible to integrate into one's value system and view of the world... (citations omitted)" Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by US Forces* (May 2005) *available at* http://physiciansforhumanrights.org/library/documents/reports/break-them-down-the.pdf, at 68.

87. Cold War-era CIA officials understood the effects of isolation thus:

> A major aspect of [the subject's Soviet] prison experience is isolation. Man is a social animal; he does not live alone. From birth to death, he lives in the company of his fellow men. His relations with other people and, especially with those closest to him, are almost as important to him as food and drink. When a man is totally isolated, he is removed from all of the interpersonal relationships which are so important to him and taken out of the social role which sustains him. His internal as well as his external life is disrupted....[253]

> Isolation appears to be an unusually efficacious control pressure. Individual differences in psychological reaction to isolation are very great. Some individuals appear to be able to withstand prolonged periods of isolation without deleterious effect; while a relatively short period of isolation reduces others to the verge of psychosis....[254]

88. In addition to isolation from each other, CIA detainees were isolated from the outside world. As a subject of the CIA RDI program, detainees were held in indefinite detention in secret locations for years before their transfer to Guantánamo. During this time, the United States refused to disclose their whereabouts, to disclose their status – living or dead, and whether they were in US custody – and to allow them access to family, lawyers or the International Committee of the Red Cross.

89. Under international law, enforced disappearances are considered among the most serious violations of the fundamental rights of human beings.[255] "Disappeared" detainees are removed from the protection of normal legal processes, and thereby placed in a situation of complete defenselessness. Detainees in the CIA RDI program were unable to use the protection of the law to secure their fundamental human rights, including the right to due process and the

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[253] *Brainwashing (1956)*, at 19.

[254] *Id.*, at 72.

[255] "Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field." Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/13.3 of 18 December 1992, *available at* http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.47.133.En?Opendocument (last accessed Sept. 30, 2009). "[T]he forced disappearance of persons is an affront to the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being ..." Organization of American States, *Inter-American Convention on Forced Disappearance of Persons*, adopted for signature June 9, 1994, entered into force March 28, 1996, *available at* http://www.oas.org/juridico/english/treaties/a-60.html (last accessed Sept. 30, 2009). Pursuant to the Rome Statute of the International Criminal Court, the widespread or systematic practice of "disappearances" can constitute a crime against humanity. Rome Statute of the International Criminal Court, entered into force July 1, 2002, *available at* http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf (last accessed Sept. 30, 2009), at Art. 7.

right to be free from torture or other forms of cruel, inhuman or degrading treatment.

90. Indefinite detention can have serious long-term mental and physical effects. The potential health consequences for detainees who have been held in prolonged indefinite detention are well-known:

> Medical knowledge and experience clearly demonstrate that indefinite detention without charge or trial results in harmful mental health consequences including severe depression and anxiety. This is above and beyond the inherent and already quite substantial stressors of incarceration. In particular, the pervasive uncertainty of prolonged detention results in profound feelings of despair, hopelessness, anger and frustration. Vegetative symptoms, sleep difficulties, suicidal thoughts are common. Profound depression and vegetative symptoms result from realizing nothing that individuals do matters and that there is no way to end, foreshorten or even know the duration of their suffering.[256]

Sleep Deprivation

91. Sleep deprivation was "a central part of the 'prototypical interrogation'."[257] It was one of several "conditioning techniques" used by the CIA to "reduce" a new detainee to a "baseline, dependant state."[258] The CIA asserted that the primary purpose of sleep deprivation as to "weaken the subject and wear down his resistance."[259] Sleep deprivation was combined with other techniques,[260] and was thought to make other techniques "more effective."[261] Sleep deprivation and other conditioning techniques were used in combination "in almost all

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[256] Letter to Senator, from Allen S. Keller, M.D., Associate Professor of Medicine, NYU School of Medicine, Director, Bellevue/NYU Program for Survivors of Torture, Director, NYU School of Medicine Center for Health and Human Rights, Douglas A. Johnson Executive Director, The Center for Victims of Torture, John. C. Bradshaw, J.D., Washington Director, Physicians for Human Rights (July 14, 2009), *available at* http://www.survivorsoftorture.org/files/Indefinite_Detention_Medical_Consequences_Letter.pdf (last accessed Sept. 30, 2009)

[257] *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13.

[258] *CIA Background Paper on Combined Techniques (2004)*, at 5.

[259] *OLC Interrogation Techniques (May 10, 2005)*, at 11.

[260] The CIA relied on "the cumulative effect of these techniques, used over time and in combination with other interrogation techniques and intelligence exploitation methods." *CIA Background Paper on Combined Techniques (2004)*, at 5, 7 (conditioning techniques used with corrective and coercive techniques).

[261] *See, e.g.*, *Waterboarding*, at 2 (noting sleep deprivation "contributes to the effectiveness of the waterboard as an interrogation technique" because it "reduces the detainee's will to resist."). "Waterboarding" was known to potentially lead a detainee to "give up" and allow himself to die in order to escape the treatment, a condition that could only have been exacerbated by lower his "will to resist." *See OMS Guidelines (Sept.4, 2003)*, at 8; *OMS Guidelines (May 17, 2004)*, at 16; *OMS Guidelines (Dec. 2004)*, at 18 ("physical fatigue" or "psychological resignation" caused by waterboarding may lead a subject to "simply give up," allowing airways to fill with water and loss of consciousness).

cases."[262]

92. By late 2002, the CIA considered sleep deprivation up to 72 hours at a time a "standard interrogation technique" for which interrogators were not required to obtain headquarters approval. Periods greater than 72 hours were considered an "enhanced interrogation technique".[263] The CIA generally restricted continuous sleep deprivation to 11 days "at a time".[264] Detainees could be subjected to repeated cycles of sleep deprivation, but it is not clear what recovery period was required between cycles.

93. By late December 2003, the CIA appears to have determined that sleep deprivation incorporated more "physical or substantial psychological pressure" than the CIA had initially anticipated.[265] CIA re-designated sleep deprivation exceeding 48 hours at a time an "enhanced interrogation technique,"[266] down from 72 hours, and lowered the general limit for each cycle of continuous sleep deprivation from 11 days to 7.5 days (180 hours).[267] CIA required that the detainee be afforded eight hours of uninterrupted sleep after 180 hours of continuous sleep deprivation, but may have required no more than a "brief rest" for shorter periods.[268] Detainees could still be subjected to repeated cycles of sleep deprivation.[269]

94. For a time, "hard takedown" was part of a standard procedure for moving a detainee to a sleep deprivation cell in at least one CIA facility.[270] "It was done for shock and psychological impact and signaled the transition to another phase of the interrogation."[271]

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[262] *OLC Interrogation Techniques Combined (May 10, 2005)*, at 12, *citing CIA Background Paper on Combined Techniques (2004)*, at 17. "[I]n all but one case, these detainees have been subjected to at least some other interrogation technique besides the sleep deprivation itself." *OLC Interrogation Techniques Combined (May 10, 2005)*, at 18.

[263] *CIA OIG Special Review (May 7, 2004)*, at FN 43.

[264] *Id.*, at 15. As with any limits on interrogation techniques, interrogators could request case-by-case exceptions.

[265] *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1 2. "Standard Techniques are techniques that do not incorporate physical or substantial psychological pressure...Enhanced Techniques are techniques that do incorporate physical or psychological pressure beyond Standard Techniques." (emphasis in original) *Id.*, at 1, 2.

[266] *CIA OIG Special Review (May 7, 2004)*, at FN34.

[267] *OLC Interrogation Techniques (May 10, 2005)*, at 12. *See also OMS Guidelines (Dec. 2004)*, at 15-16 (limiting a cycle of sleep deprivation to 180 hours; most information redacted). As with any limits on interrogation techniques, interrogators could request case-by-case exceptions.

[268] *OLC Interrogation Techniques (May 10, 2005)*, at 12 (eight hours of uninterrupted sleep after 180 hours of continuous sleep deprivation); *OMS Guidelines (Sept.4, 2003), at* 7 ("Examinations performed during periods of sleep deprivation should include the current number of hours without sleep; and, if only a brief rest preceded this period, the specifics of the previous deprivation also should be recorded.").

[269] *OMS Guidelines (Sept.4, 2003), at* 7.

[270] *CIA OIG Special Review (May 7, 2004)*, at para. 191. *See* "Appendix A: Selected Forms of Mistreatment" (describing beating, shaking, and other forms of forceful physical contact).

[271] *CIA OIG Special Review (May 7, 2004)*, at para. 191.

95. The CIA's "primary method" of keeping a detainee awake was shackling him in an uncomfortable position.[272] The detainee may also have been kept awake by hunger;[273] cold stress, including having cold water thrown on him;[274] loud sounds or music;[275] and/or constant light.[276] Interrogators may have beaten or otherwise used forceful physical contact on detainees who did not comply with instructions to stay awake or maintain a physical position.[277]

96. Detainees were shackled in various stress positions for sleep deprivation. For vertical sleep deprivation:

> [T]he detainee is standing and is handcuffed, and the handcuffs are attached by length of chain to the ceiling. The detainee's hands are shackled in front of his body, so that the detainee has approximately a two- to three-foot diameter of movement. The detainee's feet are shackled to a bolt in the floor. ... The detainee's hands are generally between the level of his heart and his chin ... All of the detainee's weight is borne by his legs and feet during standing sleep deprivation.... should the detainee begin to fall asleep, he will lose his balance and awaken, either because of the sensation of losing his balance or of the restraining tension of the shackles.... (citations omitted)[278]

97. For sitting sleep deprivation:

> In lieu of standing sleep deprivation, a detainee may instead be seated on and shackled to a small stool. The stool supports the detainee's weight, but is too small to permit the subject to balance himself sufficiently to be able to go to sleep. (citations omitted)[279]

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[272] *OLC Interrogation Techniques (May 10, 2005)*, at 11. As such, the detainee's position during sleep deprivation must be evaluated as a stress position, which may be an abnormal human position, such as suspension or inversion, or a normal human position, such as sitting, standing or lying, that a subject is forced to hold for an abnormal period of time.

[273] "[T]he CIA believes dietary manipulation makes other techniques, such as sleep deprivation, more effective." *OLC Interrogation Techniques (May 10, 2005)*, at 7. *See also OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12.

[274] *CIA Additional Techniques Letter (March 2, 2004)*, at 2 (CIA used water PFT to keep detainees awake during sleep deprivation).

[275] *See "Appendix A: Selected Forms of Mistreatment"* (describing aural stress).

[276] As early as November 2002, standard interrogation techniques included "continual use or light or darkness in a cell" and loud music. *CIA OIG Special Review (May 7, 2004)*, at FN 43.

[277] Interrogators were authorized to use "corrective techniques", a variety of slaps and grabs, when, for example, "the interrogator needs to immediately correct the detainee or provide a consequence to a detainee's response or non-response." *CIA Background Paper on Combined Techniques (2004)*, at 5-6. The CIA asserted that interrogators intervened when detainees in the vertical position fell asleep and hung from their shackles; it is not clear how "corrective actions" may have been used in such an intervention.

[278] *OLC Interrogation Techniques (May 10, 2005)*, at 11.

[279] *Id.*

98. Detainees shackled in a horizontal position were placed prone on the floor with their arms and legs in an outstretched position "in such a manner that the arms [and legs] cannot be bent or used for balance or comfort."[280] "The position [was] sufficiently uncomfortable to detainees to deprive them of unbroken sleep, while allowing their lower limbs to recover from the effects of standing sleep deprivation."[281]

99. Detainees sometimes experienced serious edema (swelling) in their lower extremities from the long periods of standing associated with sleep deprivation.[282] CIA officers reported at least three occasions "early" in the program when detainees developed edema.[283] Interrogators could reposition detainees with edema in a horizontal position to reduce the edema and continue sleep deprivation.[284] Detainees who had "sufficiently recover[e]d" from edema could be returned to the sitting or standing position for continued sleep deprivation.[285]

100. Detainees typically wore diapers for sleep deprivation.[286] The CIA asserted that unshackling a detainee so he could use a bucket or latrine "interfered with the effectiveness" of sleep deprivation.[287] In 2005, CIA asserted to OLC that "diapers are used solely for sanitary and health reasons and not in order to humiliate the detainee."[288] However, in the same document, CIA stated that diapers were necessary because "releasing a detainee from shackles would present a security problem and would interfere with the effectiveness of the [sleep deprivation] technique."[289] OPR reported that a diapering was specifically meant to humiliate detainee.[290] A detainees undergoing sleep deprivation could also be fed by hand by CIA officers in lieu of releasing one or both of his hands so he might feed himself.[291]

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[280] *CIA Horizontal Sleep Deprivation.*
[281] *Id.*
[282] *OLC Interrogation Techniques (May 10, 2005)*, at 11.
[283] *Id.*, at FN 15.

> Specifically, you have informed us that on three occasions early in the program, the interrogation team and the attendant medical officers identified the potential for unacceptable edema in the lower limbs of detainees undergoing standing sleep deprivation, and in order to permit the limbs to recover without impairing interrogation requirements, the subjects underwent horizontal sleep deprivation. (citations omitted)

Id.
[284] "On rare occasions, a detainee may also be restrained in a horizontal position when necessary to enable recovery from edema without interrupting the course of sleep deprivation (citations omitted)." *Id.*, at 11.
[285] *Id.*, at 12.
[286] "If a detainee is clothed, he wears an adult diaper under his pants. Detainees subject to sleep deprivation who are also subject to nudity as a separate interrogation technique will at times be nude and wearing a diaper." *OLC Interrogation Techniques (May 10, 2005)*, at 12.
[287] *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13.
[288] *Id.*, at 13.
[289] *Id.*
[290] *OPR Report (July 29, 2009)*, at 36 ("The subject is forced to wear adult diapers and is denied access to toilet facilities for an extended period, in order to humiliate him.").
[291] *OLC Interrogation Techniques (May 10, 2005)*, at 12 (feeding by hand).

101. Legitimate questions include whether a detainee in the midst of an enhanced interrogation regimen would be physically capable of feeding himself or using a latrine unassisted without some period of rest or recuperation, which would arguably "interfere" with the technique; and if CIA interrogators faced a choice between unshackling a detainee while subject to an environmental condition which might "present a security problem", such as darkness or flashing lights, and alleviating the environmental condition so he might be more safely unshackled (another "interfere[nce]" with the process).

102. In 2002, when evaluating the "legality" of sleep deprivation, the DOJ OLC did not inquire about or consider the effects of the means by which the detainee was kept awake, limiting legal analysis to the physical effects of the lack of sleep.[292] Based on this and other failings, the DOJ OPR subsequently determined the DOJ OLC's conclusion that the use of sleep deprivation would not result in severe physical pain or suffering was "not based on thorough, objective, and candid analysis of the issues."[293]

103. The CIA anticipated that detainees might experience "substantial physical distress" from sleep deprivation, increasing throughout the period of deprivation.[294] Such distress could include, *inter alia*, physical weakness, impairment to coordinated body movement, difficulty with speech, nausea, blurred vision, and unpleasant physical sensations from drop in body temperature;[295] and degraded cognitive performance, visual disturbances, and acute reduction in immune competence.[296] The CIA knew extended sleep deprivation may be associated with a decline in body temperature and increased food consumption, and with reduced tolerance for heat pain, cold pain, and mechanical or pressure pain.[297] "Water dousing and dietary manipulation and perhaps even nudity may thus raise dangers of enhanced susceptibility to hypothermia or other medical conditions for a detainee undergoing sleep deprivation."[298] Nevertheless, these techniques were approved for use in conjunction with sleep deprivation.

104. It was also acknowledged that some individuals subject to sleep deprivation may experience "hallucinations that could fairly be characterized as a 'profound' disruption of the

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[292] An OLC attorney later asserted that OLC did not know in 2002 about diapering and shackling associated with sleep deprivation. "[I]t had not been known in 2002 that detainees were kept in diapers, potentially for days at a time. It had also not been known that detainees were kept awake by shackling their hands to the ceiling… ". *OPR Report (July 29, 2009)*, at 140 *quoting Written Response Patrick Philbin*.

[293] *OPR Report (July 29, 2009)*, at 236.

[294] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3; *OLC Interrogation Techniques (May 10, 2005)*, at 37.

[295] *OLC Interrogation Techniques (May 10, 2005)*, at 37, 38.

[296] *OMS Guidelines (May 17, 2004)*, at 24; *OMS Guidelines (Dec. 2004)*, at 29 ("Sleep deprivation does degrade cognitive performance, may induce visual disturbances, may reduce immune competence acutely.").

[297] *See OLC Interrogation Techniques (May 10, 2005)*, at fn 44; *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13-14.

[298] *OLC Interrogation Techniques Combined (May 10, 2005)*, at 13.

subject's senses."[299] The CIA knew these hallucinations might continue undetected by observers until the detainee was allowed to sleep, for periods lasting hours or days.[300] In 2002, the DOJ OLC assumed that detainees subject to sleep deprivation would be allowed to sleep before hallucinations set in.[301] Nevertheless, the CIA later acknowledged that by 2005 at least some detainees had, in fact, experienced hallucinations.[302]

105. U.S. military guidelines listed "abnormal" sleep deprivation among acts of "physical and mental torture."[303]

106. A "host of negative psychological effects" can appear after one night of total sleep deprivation, or after only a few night of sleep restriction.[304]

> Sleep deprivation ... causes significant cognitive impairments including deficits in memory, learning, logical reasoning, complex verbal processing, and decision-making; sleep appears to play an important role in processes such as memory and insight formation. Sleep deprivation may also result in decreases in psychomotor performance as well as alterations in mood.
>
> In recent years, a growing body of research has emerged that points to the complex and bidirectional relationships between sleep disturbance and psychiatric disorders. For example, evidence suggests that sleep disturbance is not only a symptom of major depression but it also independently affects the clinical outcome and the course of the disorder. Moreover, sleep disturbance seems to be associated with an independent increase in the risk of suicidal ideation and actions.

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[299] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3, 6 ("hallucinations or other profound disruptions of the senses"); *OLC Interrogation Techniques (May 10, 2005)*, at 39 (hallucinations possible but acceptable; intervene upon evidence of hallucinations). *See also OLC Interrogation Techniques Combined (May 10, 2005)*, at 17.

[300] *OLC Interrogation Techniques (May 10, 2005)*, at 40 (acknowledging hallucinations may occur undetected by observers).

[301] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 14.

[302] In 2005, OLC noted that "OMS has informed us, based on the scientific literature *and on its own experience with detainees who have been sleep deprived*, that any such hallucinatory effects would not be prolonged." (emphasis added) *OLC Interrogation Techniques (May 10, 2005)*, at 40. *See also OLC Interrogation Techniques and WCA, DTA, and Common Article 3 (July 20, 2007)*,at 9 ("Extended sleep deprivation may cause diminished cognitive functioning and, in a few isolated cases, has caused the detainee to experience hallucinations.").

[303] "As prohibited acts of physical and mental torture, the Field Manual lists "[f]ood deprivation" and "[a]bnormal sleep deprivation" respectively." *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 35, *citing AFM 34-52 (1992)*, at I-8.

[304] Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by US Forces* (May 2005) *available at* http://physiciansforhumanrights.org/library/documents/reports/break-them-down-the.pdf, at 69.

> Even sleep restriction of four hours per night for less than a week can result in physical harm, including hypertension, cardiovascular disease, altered glucose tolerance and insulin resistance. Sleep deprivation can impair immune function and result in increased risk of infectious diseases. Further, chronic pain syndromes are associated with alterations in sleep continuity and sleep patterns. (citations omitted)[305]

107. The former Israeli Prime Minister, Menachem Begin, described his experiences with sleep deprivation while being held in a Soviet prison thus:

> In the head of the interrogated prisoner a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep, to sleep just a little, not to get up, to lie, to rest, to forget … Anyone who has experienced this desire knows that not even hunger or thirst are comparable with it … I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them. He did not promise them their liberty. He promised them – if they signed – uninterrupted sleep![306]

Suffocation by Water, or "Waterboarding"

108. "Waterboarding" is a form of controlled drowning, in which a restrained subject is made to feel suffocation and panic by his inability to breathe through a wet cloth and/or pouring water.

109.

> The application of the waterboard technique involves binding the detainee to a bench with his feet elevated above his head. The detainee's head is immobilized and an interrogator places a cloth over the detainee's mouth and nose while pouring water onto the cloth in a controlled manner. Airflow is restricted for 20 to 40 seconds and the technique produces the sensation of drowning and suffocation....[307]

> This causes an increase in carbon dioxide level in the individual's blood. This increase in the carbon dioxide level stimulates increased effort to breathe. This effort plus the cloth produces the perception of "suffocation and incipient panic," i.e., the perception of drowning....You have orally informed us that this procedure triggers an automatic physiological sensation of drowning that the individual cannot control even though he may be aware that he is in fact not drowning.[308]

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[305] *Id.*, at 22-23.
[306] *Quoted by* Tom Malinowski, Washington Post, *The Logic of Torture* (June 27, 2004).
[307] *CIA OIG Special Review (May 7, 2004)*, at 15.
[308] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 4.

110. In 2002, OLC recognized waterboarding as a threat of imminent death.[309]

> From the vantage point of any reasonable person undergoing this procedure in such circumstances, he would feel as if he is drowning at very moment of the procedure due to the uncontrollable physiological sensation he is experiencing. Thus, this procedure cannot be viewed as too uncertain to satisfy the imminence requirement. Accordingly, it constitutes a threat of imminent death....[310]

Nevertheless, DOJ OLC deemed the CIA's use of the waterboard in detainee interrogations was lawful, on the premise that it would not likely cause detainees "prolonged mental harm."[311]

111. CIA received authorization to waterboard detainees in July of 2002, and began using the technique without delay.[312] The CIA later reported waterboarding three detainees in 2002 and 2003.[313] The CIA requested and received authorization to waterboard at least one more detainee, in 2004.[314] OLC determined the requested use was lawful,[315] but it appears the CIA did not waterboard the detainee.[316]

112. In 2002, OLC determined that CIA plans for waterboarding were lawful based largely in part upon a memorandum stating that that the "proposed interrogation methods have been used and continue to be used in SERE training" without "any negative long-term mental health consequences."[317] However, the author of the memorandum later testified to Congressional

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[309] *Id.*, at 15 ("We find that the use of the waterboard constitutes a threat of imminent death.").
[310] *Id.*
[311] The memo continued thus: "Although the waterboard constitutes a threat of imminent death, prolonged mental harm must nonetheless result to violate the statutory prohibition on infliction of severe, mental pain or suffering....". *Id.*
[312] *See generally Rockefeller Letter (April 22, 2009).* "Interrogators applied the waterboard to Abu Zubaydah at least 83 times during August 2002." *CIA OIG Special Review (May 7, 2004)*, at para. 223.
[313] "Let me make it very clear and to state so officially in front of this Committee that waterboarding has been used on only three detainees. It was used on Khalid Shaykh Mohammed. It was used on Abu Zubaydah. And it was used on Nashiri." *Hayden Testimony (2008)*, at 71-72. *See also CIA OIG Special Review (May 7, 2004)*, at para. 223, 225.
[314] Letter to John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Daniel B. Levin, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice (Aug. 6, 2004) (released Aug. 24, 2009) *available at* http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc74.pdf (last accessed 16 May 2011).
[315] *Id.*
[316] *Hayden Testimony (2008)*, at 72 ("It was used on Khalid Shaykh Mohammed. It was used on Abu Zubaydah. And it was used on Nashiri. // The CIA has not used waterboarding for almost 5 years.").
[317] *OPR Report (July 29, 2009)*, at 235, *citing OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 17. In 2005, despite acknowledging "the substantial differences between SERE training and the use of ["enhanced interrogation techniques"] by the CIA, [OLC] nevertheless cited data obtained from the SERE program to support the conclusion that the ["enhanced interrogation techniques"] under consideration were lawful as implemented by the CIA." *OPR Report (July 29, 2009)*, at 242. The DOJ OLC relied in part on what appears to have been a memo

committee staff that "the conclusions in his memo were not applicable to the offensive use of SERE techniques against real world detainees and he would not stand by the conclusions in his memo if they were applied to the use of SERE resistance training techniques on detainees."[318]

113. The CIA used the waterboard far more aggressively than contemplated by OLC or as used in the Navy SERE school:

> OIG's review of the videotapes revealed that the waterboard technique employed at [redacted] was different from the technique as described in the DoJ opinion and used in the SERE training. The difference was in the manner in which the detainee's breathing was obstructed. At the SERE School and in the DoJ opinion, the subject's airflow is disrupted by the firm application of a damp cloth over the air passages; the interrogator applies a small amount of water to the cloth in a controlled manner. By contrast the Agency interrogator [redacted] continuously applied large volumes of water to a cloth that covered the detainee's mouth and nose. One of the psychologists/interrogators acknowledged that the Agency's use of the technique differed from that used in SERE training and explained that the Agency's technique is different because it is "for real" and is more poignant and convincing.[319]

114. In 2004, the CIA OIG issued findings regarding the CIA's previous use of the waterboard.[320] The finding noted the "lack of training, improper administration, misrepresentation of expertise, and divergence from the SERE model in the CIA interrogation program."[321]

115. Navy SERE school instructors were directed to waterboard students thus: "Two canteen cups (one pint each) of water may be slowly poured directly onto the student's face from a height of about twelve inches throughout the interrogation. No attempt will be made to direct

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written by Dr. Jerald Ogrisseg, former Chief of Psychology Services at the U.S. Air Force SERE school. This memo concluded that lasting psychological effects of SERE training on U.S. military students were minimal, and waterboarding did not pose "a real and serious physical danger" to students. *See July 24, 2002 Memorandum from Chief of Psychology Services at the 336th Training Support Squadron, Surgeon General Flight to JPRA Chief of Staff, attached to JPRA Memorandum of July 26, 2002,* Tab 4 of *SASC Detainee Report Documents (June 17, 2008)* at 10-11; *SASC Detainee Report (November 20, 2008)*, at 31, 34 (JPRA sent materials that included Ogrisseg memo to DoD General Counsel, and sent copy of same information to an attorney for another agency, name redacted); *SASC Detainee Report (November 20, 2008)*, at 31, 34-35 (describing indications that JPRA input was part of the factual basis for the Administration's determination that the CIA could use enhanced interrogation techniques);.

[318] *SASC Detainee Report (November 20, 2008)*, at 30. *See also* Statement of Dr. Jerald Ogrisseg before the Senate Committee on Armed Services (17 June 2008), *available at* http://armed-services.senate.gov/statemnt/2008/June/Ogrisseg%2006-17-08.pdf.

[319] *CIA OIG Special Review (May 7, 2004)*, at para. 79.

[320] *See generally CIA OIG Special Review (May 7, 2004).*

[321] *OPR Report (July 29, 2009)*, at 136-7.

the stream of water into the student's nostrils or mouth."[322]

116. CIA interrogators waterboarded detainees thus: "[T]he Agency interrogator [redacted] continuously applied large volumes of water to a cloth that covered the detainee's mouth and nose."[323] CIA medical personnel who later reviewed the SERE contractor/psychologists use of "enhanced" interrogation techniques observed the SERE experience with waterboarding was "so different from the subsequent Agency usage as to make it almost irrelevant."[324]

117. In 2002, OLC determined that CIA plans for waterboarding were lawful based in part upon CIA assurances that "these acts will not be used with substantial repetition."[325] However, in 2002 and 2003, two detainees were waterboarded for 83 and 183 times respectively.[326]

118. In September of 2003, OMS warned of the risks of using an "aggressive program" of waterboarding beyond a 3-5 day period.[327] However, the CIA had already waterboarded two detainees dozens of times over the course of several weeks.[328]

119. In 2002, the DOJ OLC relied on the CIA's assertion that their "on-site psychologists... have extensive experience with the use of the waterboard in Navy training..." and "[redacted] also indicated that he had observed the use of the waterboard in Navy training some ten or twelve times."[329] But neither of the two psychologists "who had [redacted] SERE experience" and who "developed a list of new and more aggressive ["enhanced" interrogation techniques] that they recommended for use in interrogation" are described as having served in the Navy SERE school, the one U.S. service SERE school that incorporated waterboarding into its advanced training regime.[330] However, OMS medical personnel later told the CIA IG that "the expertise of the SERE psychologist/interrogators on the waterboard was probably misrepresented at the time, as the SERE waterboard experience is so different from the

[322] FASO Detachment Brunswick Instruction 3305.C, p. E-5 (January 1, 1998) (emphasis in original) *quoted in SASC Detainee Report (November 20, 2008) (November 20, 2008)*, at fn. 710.
[323] *CIA OIG Special Review (May 7, 2004)*, at para. 79.
[324] *See id.*, at fn. 26.
[325] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 11.
[326] "Interrogators applied the waterboard to Abu Zubaydah at least 83 times during August 2002." *CIA OIG Special Review (May 7, 2004)*, at para. 223. "Khalid Shaykh Muhammad received 183 applications of the waterboard in March 2003." *Id.*, at para. 225.
[327] *OMS Guidelines (Sept.4, 2003)*, at 10. "[W]e 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 team in consultation with Headquarters prior to any further use [next paragraph redacted in open source]." *Id.*
[328] *CIA OIG Special Review (May 7, 2004)*, at para. 223, 225.
[329] *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 6.
[330] *CIA OIG Special Review (May 7, 2004)*, at para. 32.

subsequent Agency usage as to make it almost irrelevant."[331]

120. The Senate Armed Services Committee reported that JPRA instructors trained interrogators from a government agency other than the military on the use of physical pressures in SERE training, to include waterboarding, but the JPRA instructors were neither experienced with waterboarding, nor familiar with SERE limitations on waterboarding.[332]

121. It appears as though the CIA indentified a number of risks associated with interrogation waterboarding *after* the technique was first approved by OLC in 2002.[333] It is possible that OMS learned of these risks as a result of waterboarding sessions conducted on detainees in 2003 and/or 2002.[334]

122. By 2004, the CIA had identified certain "potentially significant medical problems" associated with waterboarding:

- By 2004, OMS identified "cumulative effects" as a "potential concern," and established additional controls after a certain time limit.[335]

> 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 team in

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[331] *Id.*, at fn. 26.

[332] *SASC Detainee Report (November 20, 2008) (November 20, 2008)*, at 93 ("None of the JPRA personnel at [redacted] training had performed waterboarding or were qualified to teach others how to perform the technique. In fact, Mr. Witsch, who described the technique to [redacted] at the training, testified that he did not recall all of the safety limitations associated with waterboarding." (citations omitted)).

[333] These risks and precautions are noted in OMS medical guidelines from 2003-2004 and/or OLC guidance from 2005. *See generally OMS Guidelines (Sept 4, 2003)*, at 8-10; *OMS Guidelines (May 17, 2004)*, at 14-17; *OMS Guidelines (Dec. 2004)*, at 17-20; *OLC Interrogation Techniques (May 10, 2005)*, at 14 (referring to "potentially significant medical problems"). However, they are not described in the *OLC Interrogation of al Qaeda Operative (August 1, 2002)*, which purported to assess the totality of the circumstances associated with waterboarding and other "enhanced" techniques, including medical risks and the accompanying safeguards. *See generally OLC Interrogation of al Qaeda Operative (August 1, 2002)*.

[334] OMS Guidelines are worded to suggest these risks and safeguards were based on the OMS personnel's knowledge of previous use of waterboarding outside of the SERE program. "The historical context here was limited knowledge of the use of the waterboard in SERE training… In our limited experience, extensive sustained use of the waterboard can introduce new risks…The following general guidelines are based on very limited knowledge, drawn from very few subjects whose experience and response was quite varied." *OMS Guidelines (Sept.4, 2003)*, at 8, 9. *See also OMS Guidelines (May 17, 2004)*, at 15, 16; *OMS Guidelines (Dec. 2004)*, at 18, 19.

[335] *OMS Guidelines (Sept.4, 2003)*, at 10; *OMS Guidelines (May 17, 2004)*, at 17; *OMS Guidelines (Dec. 2004)*, at 19.

consultation with Headquarters prior to any further aggressive use. [remainder of paragraph redacted] [336]

In 2002 and 2003, two detainees were waterboarded over periods of time that almost certainly exceeded this 3-5 day timeframe, perhaps as long as a month.[337]

- CIA medical personnel realized that a detainee might vomit and then breathe in the emesis.[338] DOJ OLC was told in 2005 that any detainee who was to be waterboarded would first be placed on a liquid diet to reduce this risk.[339] OMS considered a liquid diet appropriate of any detainee undergoing enhanced techniques and mandatory for those who would be waterboarded.[340]

- CIA medical personnel realized that a detainee might develop hyponatremia, i.e., water intoxication, from substantial repetition of the procedure. CIA officers reasoned that a detainee might try to defeat the effects of the waterboard (i.e., implement a "countermeasure") by "drinking" the water that "enter(ed)" and "accumulate(ed)" in his mouth and nasal cavity, "possibly in significant quantities."[341] In 2005, DOJ OLC was told detainees would be waterboarded with a potable saline solution rather than plain water to "reduce the possibility" of water intoxication.[342]

- CIA medical personnel realized that a detainee who breathed liquid into his lungs during waterboarding might get pneumonia.[343] DOJ OLC was told detainees would be waterboarded with a potable saline solution to reduce this risk of this complication.[344]

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[336] *OMS Guidelines (Sept.4, 2003)*, at 10; *OMS Guidelines (May 17, 2004)*, at 17; *OMS Guidelines (Dec. 2004)*, at 19.

[337] "Interrogators applied the waterboard to Abu Zubaydah at least 83 times during August 2002." *CIA OIG Special Review (May 7, 2004)*, at para. 223. "Khalid Shaykh Muhammad received 183 applications of the waterboard in March 2003." *Id.*, at para. 225.

[338] *OMS Guidelines (May 17, 2004)*, at 11; *OMS Guidelines (Dec. 2004), at* 14.

[339] *OLC Interrogation Techniques (May 10, 2005)*, at 14.

[340] *OMS Guidelines (May 17, 2004)*, at 11; *OMS Guidelines (Dec. 2004), at* 14.

[341] *OLC Interrogation Techniques (May 10, 2005)*, at 13 (detainee might drink the water that "enter(s)" and "accumulate(s)" in his mouth and nasal cavity as a "countermeasure," "possibly in significant quantities," therefore a potable saline solution should be used to "reduce the possibility of hyponatremia").

[342] *OLC Interrogation Techniques (May 10, 2005)*, at 13. However, OMS guidelines on waterboarding do not appear to require saline. *See generally OMS Guidelines (Sept.4, 2003), OMS Guidelines (May 17, 2004), OMS Guidelines (Dec. 2004)* (no references to saline, water intoxication, or pneumonia); *see also OMS Guidelines (Dec. 2004)*, at 30 ("medical limitations" for waterboarding include "potable water source…" without specifying saline). It is possible this information was redacted from the public versions of these documents prior to their release.

[343] *OLC Interrogation Techniques (May 10, 2005)*, at 14 (detainee might aspirate some of the liquid).

[344] *Id.* (use potable saline solution to reduce risk of pneumonia in case of aspiration). However, OMS guidelines on waterboarding do not appear to require saline. *See generally OMS Guidelines (Sept.4, 2003), OMS Guidelines (May 17, 2004), OMS Guidelines (Dec. 2004)* (no references to saline, water intoxication, or pneumonia); *see also*

- CIA medical personnel realized that a detainee could suffer spasms of the larynx that would prevent him from breathing even when the application of water was stopped and the detainee was returned to an upright position.[345] This phenomenon was unknown in SERE training.[346] OMS guidelines state that in the event of such spasms, a qualified physician should immediately intervene, and, if necessary, perform a tracheotomy.[347] OMS guidelines required the presence of a physician with the necessary emergency medical equipment during any application of the waterboard.[348] In 2002, DOJ OLC noted that "a medical expert with SERE experience will be present" during waterboarding, but did not require the presence of a physician.[349]

- CIA medical personnel realized, "from ... limited experience", that a detainee may simply give up, "allowing excessive filling of the airways and loss of consciousness."[350] "An unresponsive subject should be righted immediately, and the interrogator should deliver a sub-xyphoid thrust to expel the water. If this fails to restore normal breathing, aggressive medical intervention is required."[351]

- By May 2004, CIA guidelines for medical officers noted "Risks [of waterboarding] include ... hypothermia from water exposure," i.e., severe cold stress.[352]

123. By at least September 2003, OMS medical personnel were given detailed instructions to "thoroughly document[]" every application of the waterboard "in order to best inform future medical judgments and recommendations."[353] Commentators contend that these instructions,

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OMS Guidelines (Dec. 2004), at 30 ("medical limitations" for waterboarding include "potable water source..." without specifying saline). It is possible this information was redacted from the public versions of these documents prior to their release.

[345] *OLC Interrogation Techniques (May 10, 2005)*, at 14.

[346] *Id.* ("it apparently has never occurred in thousands of instances of SERE training").

[347] *Id., citing OMS Guidelines (Dec. 2004), at* 17-20. This section is redacted from the publicly released version of the *OMS Guidelines (Dec. 2004)*, and is either redacted or did not appear in earlier version of the OMS guidelines.

[348] *Id.*

[349] *OLC Interrogation of al Qaeda Operative (August 1, 2002), at* 4.

[350] *OMS Guidelines (May 17, 2004)*, at 16; *OMS Guidelines (Dec. 2004)*, at 18. OMS linked this phenomenon to physical fatigue or psychological resignation arising from excessive use of the waterboard, *id.*, but it is possible a detainee who had not been "excessively" waterboarded would experience the same conditions, particularly after an extended interrogation with other "enhanced" techniques.

[351] *OMS Guidelines (Dec. 2004), at* 9.

[352] *OMS Guidelines (May 17, 2004)*, at 25.

[353] *OMS Guidelines (Sept.4, 2003)*, at 10; *OMS Guidelines (May 17, 2004)*, at 17; *OMS Guidelines (Dec. 2004)*, at 20. Doctors were instructed to document:

> ...how long each application (and the entire procedure) lasted, how much water was used in the process (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.

coupled with the evident changes to waterboard procedures implemented after the CIA first used the technique, indicate CIA health professionals conducted unlawful human research and experimentation on prisoners.[354]

124. CIA OIG raised serious concerns about the CIA's use of waterboarding in the program:

> This Review identified concerns about the use of the waterboard, specifically whether the risks of its use were justified by the results, whether it has been unnecessarily used in some instances, and whether the fact that it is being applied in a manner different from its use in SERE training brings into question the continued applicability of the DoJ opinion to its use.[355]

125. By 2003, OMS was not certain that its medical guidelines for waterboarding would sufficiently guard against the infliction of torture:

> The following general medical guidelines are based on very limited knowledge drawn from very few subjects whose experience and response was quite varied. These represent only the medical guidelines; *legal guidelines also are operative and may be more restrictive*. (emphasis added)[356]

126. Medical experts have identified additional risks from waterboarding:

> During "simulated" drowning, hypoxia (shortage of oxygen in the body) caused by deprivation of adequate oxygen can and probably does occur. At the same time, a dramatic physiologic stress response, with tachycardia (rapid heartbeat), hyperventilation (rapid respiratory rate) and labored breathing (airway obstruction and breathlessness) is almost unavoidable. The stress resulting from this technique could

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Id.

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> Health professionals working for and on behalf of the CIA monitored the interrogations of detainees, collected and analyzed the results of those interrogations, and sought to derive generalizable inferences to be applied to subsequent interrogations. Such acts may be seen as the conduct of research and experimentation by health professionals on prisoners, which could violate accepted standards of medical ethics, as well as domestic and international law. These practices could, in some cases, constitute war crimes and crimes against humanity.
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> Physicians for Human Rights, *Experiments in Torture: Evidence of Human Subject Research and Experimentation in the "Enhanced" Interrogation Program* (June 2010), *available at* http://physiciansforhumanrights.org/library/news-2010-06-07.html (access 17 May 2011), at 3.

[355] *CIA OIG Special Review (May 7, 2004)*, at para. 220.

[356] *OMS Guidelines (Sept 4, 2003)*, at 9. *See also OMS Guidelines (May 17, 2004)*, at 16; *OMS Guidelines (Dec. 2004)*, at 18. The same documents cite elsewhere to OLC guidance. *OMS Guidelines (Sept.4, 2003)*, at 2; *OMS Guidelines (May 17, 2004)*, at 8; *OMS Guidelines (Dec. 2004)*, at 9.

induce the obstruction of blood flow to the heart (cardiac ischemia) or irregular heart beat (arrhythmia) in vulnerable individuals. Brief oxygen deprivation can cause neurological damage.

Complications of near asphyxiation include bleeding into the skin (known as petechiae), nosebleeds, bleeding from the ears, congestion of the face, infections of the mouth, and acute or chronic respiratory problems. Studies show that even more than a decade after the event, survivors of suffocation torture continue to suffer from pain in the back and head. Breathing fluid into the lungs can result in aspiration pneumonia which can be fatal.

Studies indicate that simulated drowning — calculated as it is to "disrupt profoundly the senses"— can also cause severe psychological harm.... The experience of near-suffocation is also associated with the development of predominantly respiratory panic attacks, high levels of depressive symptoms, and prolonged posttraumatic stress disorder. ... [C]linicians who treat torture survivors at the Bellevue/NYU Program for Survivors of Torture have observed that survivors of water torture and other forms of near-asphyxiation suffer from long-lasting trauma... (citations omitted)[357]

[357] Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (August 2007) *available at* http://physiciansforhumanrights.org/library/documents/reports/leave-no-marks.pdf (accessed 18 January 2011), at 18.

APPENDIX B: TIMELINE OF USG APPROVAL OF INTERROGATION TECHNIQUES AND CONDITIONS OF CONFINEMENT

Electronic versions of this document can be manipulated by "text sort" function to organize data by column titles.

Date	Who apprv'd	Type	Technique	Source	Notes
			Abdominal slap		Note this technique was not discussed in *OLC Interrogation of al Qaeda Operative (August 1, 2002)*
2003.01.28 on	CIA appd	Interrogation	Abdominal slap	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced
2003.03.02	CIA	Interrogation	Abdominal slap	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced
2003.06.00	OLC appd?	Interrogation	Abdominal slap	*CIA "Legal Principles" (2003)*	
2003.09.4	CIA medical guide	Interrogation	Abdominal slap	*OMS Guidelines (Sept.4, 2003)*, at 2	Enhanced
2004.00.00 before	CIA appd	Interrogation	Abdominal slap	*CIA Background Paper on Combined Techniques (2004)*, at 6	
2004.03.02 before	CIA appd and OLC appd orally	Interrogation	Abdominal slap	*CIA Additional Techniques Letter (March 2, 2004)*, at 2	
2004.0	CIA	Interrogation	Abdominal slap	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced

Date	Who apprv'd	Type	Technique	Source	Notes
5.17	medical guide				
2004.12.00	CIA medical guide	Interrogation	Abdominal slap	*OMS Guidelines (Dec. 2004)*, at 8	
2005.05.10	OLC appd in writing	Interrogation	Abdominal slap	*OLC Interrogation Techniques (May 10, 2005)*, at 8-9, 33 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 11, 14 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13-14	
			Attention grasp		Attention grasp or grab
2002.08.01 on	OLC appd in writing	Interrogation	Attention grasp	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 10, 12	
2003.01.28 on	CIA appd	Interrogation	Attention grasp	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced
2003.03.02	CIA	Interrogation	Attention grasp	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced
2003.06.00	OLC appd?	Interrogation	Attention grasp	*CIA "Legal Principles" (2003)*	
2003.09.4	CIA medical guide	Interrogation	Attention grasp	*OMS Guidelines (Sept.4, 2003)*, at 1	Enhanced

Date	Who apprv'd	Type	Technique	Source	Notes
2004.00.00 before	CIA appd	Interrogation	Attention grasp	*CIA Background Paper on Combined Techniques (2004)*, at 6	
2004.05.17	CIA medical guide	Interrogation	Attention grasp	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced
2004.07.02		Interrogation	Attention grasp	*CIA Memorandum for John Bellinger (July 2, 2004)*	"The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
2004.12.00	CIA medical guide	Interrogation	Attention grasp	*OMS Guidelines (Dec. 2004)*, at 8	
2005.05.10	OLC appd in writing	Interrogation	Attention grasp	*OLC Interrogation Techniques (May 10, 2005)*, at 8, 32 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13-14	
			Blindfolding		Blindfolding or hooding
2003.09.4	CIA medical guide	Interrogation	Blindfolding	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard "hooding"

Date	Who apprv'd	Type	Technique	Source	Notes
2004.00.00 before	CIA appd	Confinement	Blindfolding	*CIA Background Paper on Combined Techniques (2004)*	"Deprived of sight and sound through the use of blindfolds, earmuffs, and hoods." During flight to black site
2004.05.17	CIA medical guide	Interrogation	Blindfolding	*OMS Guidelines (May 17, 2004)*, at 7	Standard "Hooding"
2004.12.00	CIA medical guide	Interrogation	Blindfolding	*OMS Guidelines (Dec. 2004)*, at 8	"hooding"
2005.12.19 before	CIA appd	Confinement	Blindfolding	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1	"Hooding [redacted]"
2006.08.31	OLC appd in writing	Confinement	Blindfolding	*OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7	
2006.08.31	OLC appd in writing	Confinement	Blindfolding	*OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14	
2006.10.27 before	CIA appd	Confinement	Blindfolding (?)	*Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1	
			Cool environment		a form of cold stress, as was water dousing, water PFT, cold showers, and possibly waterboarding
2003.09.4	CIA medical guides	Interrogation	Cool environment	*OMS Guidelines (Sept.4, 2003)*, at 1, 4-5	Standard "uncomfortably cool environment"

Date	Who apprv'd	Type	Technique	Source	Notes
2004.05.17	CIA medical guide	Interrogation	Cool environment	*OMS Guidelines (May 17, 2004)*, at 7, 9-10	Standard "uncomfortably cool environment"
2004.12.00	CIA medical guide	Interrogation	Cool environment	*OMS Guidelines (Dec. 2004)*, at 8, 10-11	"uncomfortably cool environment"
			Cramped confinement		Reportedly only used on AZ
2002.08.01 on	OLC appd in writing	Interrogation	Cramped confinement	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 10, 13	
2003.01.28 on	CIA appr	Interrogation	Cramped confinement	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced
2003.03.02	CIA	Interrogation	Cramped confinement	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced
2003.06.00	OLC appd?	Interrogation	Cramped confinement	*CIA "Legal Principles" (2003)*	
2003.09.4	CIA medical guide	Interrogation	Cramped confinement	*OMS Guidelines (Sept.4, 2003)*, at 2, 7	Enhanced
2004.00.00 before	CIA appd	Interrogation	Cramped confinement	*CIA Background Paper on Combined Techniques (2004)*, at 8-9	
2004.05.17	CIA medical guide	Interrogation	Cramped confinement	*OMS Guidelines (May 17, 2004)*, at 7, 14	Enhanced
2004.0		Interrogation	Cramped	*CIA Memorandum for John Bellinger*	"The authorized techniques are

Date	Who apprv'd	Type	Technique	Source	Notes
7.02			confinement	*(July 2, 2004)*	those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
2004.12.00	CIA medical guide	Interrogation	Cramped confinement	*OMS Guidelines (Dec. 2004)*, at 8, 16-17	
2005.05.10	OLC appd in writing	Interrogation	Cramped confinement	*OLC Interrogation Techniques (May 10, 2005)*, at 9, 33 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 11 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15	
			Darkness		Constant or continuous. Note "constant light" and "constant darkness" typically addressed as variations of same treatment, until "constant darkness" was dropped from lists of techniques, possibly when primary justification shifted to security
2002.11 before	CIA used	Interrogation	Darkness	*CIA OIG Special Review (May 7, 2004)*, at para. 89	Standard

Date	Who apprv'd	Type	Technique	Source	Notes
2003.09.4	CIA medical guide	Interrogation	Darkness	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard
2004.05.17	CIA medical guide	Interrogation	Darkness	*OMS Guidelines (May 17, 2004)*, at 7	Standard "continuous light or darkness"
2004.12.00	CIA medical guide	Interrogation	Darkness	*OMS Guidelines (Dec. 2004)*, at 8	"continuous light or darkness"
			Deprivation of reading material		Later, OLC cites provision of reading material as a factor alleviating the effects of isolation
2003.01.28 on	CIA appd	Interrogation	Deprivation of reading material	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard
2003.03.02	CIA	Interrogation	Deprivation of reading material	*SERE Contractor/Psychologist Business Plan*, at 15	Standard
2003.06.00	OLC appd?	Interrogation	Deprivation of reading material	*CIA "Legal Principles" (2003)*	
			Diapering		Incidental to sleep deprivation, but also listed as a separate technique; note also "unhygienic conditions"
2003.01.28 on	CIA appd	Interrogation	Diapering	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard "generally not to exceed 72 hours, [redacted]"
2003.01.28 on	CIA appd	Interrogation	Diapering	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Standard "the use of diapers for limited periods (generally not to exceed 72 hours, [redacted]

Date	Who apprv'd	Type	Technique	Source	Notes
					[redacted])"
2003.03.02	CIA	Interrogation	Diapering	*SERE Contractor/Psychologist Business Plan*, at 16	Standard "the use of 'diapers' for limited periods [redacted][redacted])"
2003.03.02	CIA	Interrogation	Diapering	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced. "use of diapers for prolonged periods"
2003.06.00	OLC appd?	Interrogation	Diapering	*CIA "Legal Principles" (2003)*	"the use of diapers"
2003.09.4	CIA medical guide	Interrogation	Diapering	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard "generally for periods not later than 72 hours"
2003.09.4	CIA medical guide	Interrogation	Diapering	*OMS Guidelines (Sept.4, 2003)*, at 2	Enhanced "prolonged diapering"
2004.00.00 before	CIA appd	Interrogation	Diapering	*CIA Background Paper on Combined Techniques (2004)*, at 5	Incidental to sleep deprivation
2004.05.17	CIA medical guide	Interrogation	Diapering	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced "prolonged diapering" deleted from *OMS Guidelines (Dec. 2004)*
2004.05.17	CIA medical guide	Interrogation	Diapering	*OMS Guidelines (May 17, 2004)*, at 7	Standard "generally for periods not greater than 72 hours"
2005.05.10	OLC	Interrogation	Diapering	*OLC Interrogation Techniques (May 10, 2005)* *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5	Discussed incidental to sleep deprivation

Date	Who apprv'd	Type	Technique	Source	Notes
				OLC Interrogation Techniques and CIDT (May 30, 2005), at 13	
			Diet		Reduced caloric intake; bland diet; liquid diet used as safeguard against ingestion of emesis during waterboarding
2003.01.28 on	CIA appd	Interrogation	Diet	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard "reduced caloric intake (so long as amount is calculated to maintain the general health of the detainee)"
2003.03.02	CIA	Interrogation	Diet	*SERE Contractor/Psychologist Business Plan*, at 15	Standard "reduced caloric intake (so long as amount is calculated to maintain the general health of the detainee)"
2003.06.00	OLC appd?	Interrogation	Diet	*CIA "Legal Principles" (2003)*	"reduced caloric intake (so long as the amount…"
2003.09.4	CIA medical guide	Interrogation	Diet	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard "restricted diet, including reduced caloric intake"
2004.00.00 before	CIA appd	Interrogation	Diet	*CIA Background Paper on Combined Techniques (2004)*, at 5	Liquid diet, reduced caloric intake
2004.05.17	CIA medical guide	Interrogation	Diet	*OMS Guidelines (May 17, 2004)*, at 7, 9, 10	Standard "restricted diet, including reduced caloric intake (sufficient to maintain general health)"
2004.12.00	CIA medical guide	Interrogation	Diet	*OMS Guidelines (Dec. 2004)*, at 8, 11-12	"dietary manipulation (sufficient to maintain health)"

Date	Who apprv'd	Type	Technique	Source	Notes
2005.04.22 before	CIA appd	Interrogation	Diet	*Waterboarding*	Describes use of dietary manipulation and sleep dep in conjunction with waterboarding
2005.05.10	OLC appd in writing	Interrogation	Diet	*OLC Interrogation Techniques (May 10, 2005)*, at 7, 31 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 12, 12, 16 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12	"dietary manipulation"
			Facial hold		
2002.08.01 on	OLC appd in writing	Interrogation	Facial hold	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 10, 12	
2003.01.28 on	CIA appd	Interrogation	Facial hold	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced
2003.03.02	CIA	Interrogation	Facial hold	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced
2003.06.00	OLC appd?	Interrogation	Facial hold	*CIA "Legal Principles" (2003)*	
2003.09.4	CIA medical guide	Interrogation	Facial hold	*OMS Guidelines (Sept.4, 2003)*, at 1	Enhanced
2004.00.00	CIA appd	Interrogation	Facial hold	*CIA Background Paper on Combined Techniques (2004)*, at 6	

Date	Who apprv'd	Type	Technique	Source	Notes
before					
2004.05.17	CIA medical guide	Interrogation	Facial hold	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced
2004.07.02		Interrogation	Facial hold	*CIA Memorandum for John Bellinger (July 2, 2004)*	"The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
2004.12.00	CIA medical guide	Interrogation	Facial hold	*OMS Guidelines (Dec. 2004)*, at 8	
2005.05.10	OLC appd in writing	Interrogation	Facial hold	*OLC Interrogation Techniques (May 10, 2005)*, at 8, 32-33 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13-14	
			Facial slap		Facial slap or insult slap
2002.08.01 on	OLC appd in writing	Interrogation	Facial slap	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 11, 12	
2003.01.28	CIA appd	Interrogation	Facial slap	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced

Date	Who apprv'd	Type	Technique	Source	Notes
on					
2003.03.02	CIA	Interrogation	Facial slap	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced
2003.06.00	OLC appd?	Interrogation	Facial slap	*CIA "Legal Principles" (2003)*	"facial slap (insult slap)"
2003.09.4	CIA medical guide	Interrogation	Facial slap	*OMS Guidelines (Sept.4, 2003)*, at 1	Enhanced "Insult/facial slap"
2004.00.00 before	CIA appd	Interrogation	Facial slap	*CIA Background Paper on Combined Techniques (2004)*, at 5-6	"insult slap"
2004.05.17	CIA medical guide	Interrogation	Facial slap	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced "insult (facial) slap"
2004.07.02		Interrogation	Facial slap	*CIA Memorandum for John Bellinger (July 2, 2004)*	"The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
2004.12.00	CIA medical guide	Interrogation	Facial slap	*OMS Guidelines (Dec. 2004)*, at 8	"insult (facial) slap"
2005.05.10	OLC appd in writing	Interrogation	Facial slap	*OLC Interrogation Techniques (May 10, 2005)*, at 8, 33 *OLC Interrogation Techniques*	Facial slap or insult slap

Date	Who apprv'd	Type	Technique	Source	Notes
				Combined (May 10, 2005), at 5, 11, 14 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 13-14	
			Insects		
2002.08.01 on	OLC appd in writing	Interrogation	Insects	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3, 10, 14	placed in confinement box
2003.01.28 on	CIA approved	Interrogation	Insects	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2.	Enhanced "harmless"
2003.03.02	CIA	Interrogation	Insects	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced "use of harmless insects"
2003.06.00	OLC appd?	Interrogation	Insects	*CIA "Legal Principles" (2003)*	"the use of harmless insects"
2004.07.02		Interrogation	Insects	*CIA Memorandum for John Bellinger (July 2, 2004)*	"The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense"
2005.05.10		Interrogation	Insects	*OLC Interrogation Techniques (May 10, 2005)*, at fn. 13	"CIA never used that technique and has removed it from the list of authorized interrogation techniques"
			Isolation		Early considered a standard interrogation technique, later

Date	Who apprv'd	Type	Technique	Source	Notes
					categorized as condition of confinement
2003.01.28 on	CIA appd	Interrogation	Isolation	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard
2003.03.02	CIA	Interrogation	Isolation	*SERE Contractor/Psychologist Business Plan*, at 15	Standard
2003.06.00	OLC appd?	Interrogation	Isolation	*CIA "Legal Principles" (2003)*	
2003.09.4	CIA medical guide	Interrogation	Isolation	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard
2004.05.17	CIA medical guide	Interrogation	Isolation	*OMS Guidelines (May 17, 2004)*, at 7	Standard
2004.12.00	CIA medical guide	Interrogation	Isolation	*OMS Guidelines (Dec. 2004)*, at 8	
2005.12.19 before	CIA appd	Confinement	Isolation	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1	listed as condition of confinement in *OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)* and *OLC Conditions of Confinement and DTA (Aug. 31, 2006)*
2006.08.31	OLC appd in writing	Confinement	Isolation	*OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 7 -9, 13	
2006.08.31	OLC appd in	Confinement	Isolation	*OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4-5, 16-19	

Date	Who apprv'd	Type	Technique	Source	Notes
	writing				
			Law enforcement interrogation techniques		
2003.01.28 on	CIA appd	Interrogation	Law enforcement interrogation techniques	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard "all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel"
2003.03.02	CIA	Interrogation	Law enforcement interrogation techniques	*SERE Contractor/Psychologist Business Plan*, at 15	Standard "all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel"
			Light		Constant or continuous Note "constant light" and "constant darkness" typically addressed as variations of same treatment, until "constant darkness" was dropped from lists of techniques, possibly when primary justification shifted to security
2002.11 before	CIA used	Interrogation	Light	*CIA OIG Special Review (May 7, 2004)*, at para. 89	Standard
2003.09.4	CIA medical guide	Interrogation	Light	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard
2004.0	CIA	Confinement	Light	*CIA Background Paper on Combined*	"constant light during portions of the

Date	Who apprv'd	Type	Technique	Source	Notes
0.00 before	appd			*Techniques (2004)*, at 4	interrogation process" Detention conditions "may be a factor in interrogations… Detention conditions are not interrogation techniques, but they have an impact of the detainee undergoing interrogation… these factors provide additional operational security…" (p.4)
2004.05.17	CIA medical guide	Interrogation	Light	*OMS Guidelines (May 17, 2004)*, at 7	Standard "continuous light or darkness"
2004.12.00	CIA medical guide	Interrogation	Light	*OMS Guidelines (Dec. 2004)*, at 8	"continuous light or darkness"
2005.05.10	CIA used	Confinement	Light	*OLC Combined Techniques Memo (May 10, 2005)*, at fn. 3	"constant light during portions of the interrogation process"
2005.12.19 before	CIA appd	Confinement	Light	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 2-3	"constant light"
2006.08.31	OLC appd in writing	Confinement	Light	*OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 10-11	
2006.08.31	OLC appd in writing	Confinement	Light	*OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5-6, 21-23	
2006.1	CIA	Confinement	Light	*Standard Conditions of CIA*	"constant light"

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Date	Who apprv'd	Type	Technique	Source	Notes
0.27 before	appd			*Detention (pre-Oct. 27, 2006)*, at 1, 3	
			Loud music		Note "white noise" and "loud music" typically addressed as variations of same treatment, until "loud music" was dropped from lists of techniques
2002.11 before	CIA used	Interrogation	Loud music	*CIA OIG Special Review (May 7, 2004)*, at para. 89	Standard
2003.01.28 on	CIA appd	Interrogation	Loud music	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard
2003.06.00	OLC appd?	Interrogation	Loud music	*CIA "Legal Principles" (2003)*	"loud music or white noise (at a decibel level calculated to avoid damage to the detainees' hearing)"
2003.09.4	CIA medical guide	Interrogation	Loud music	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard
2004.05.17	CIA medical guide	Interrogation	Loud music	*OMS Guidelines (May 17, 2004)*, at 7, 12	Standard "white noise or loud music (at a decibel level that will not damage hearing)"
2004.12.00	CIA medical guide	Interrogation	Loud music	*OMS Guidelines (Dec. 2004)*, at 8, 13	"White noise or loud music (at a decibel level that will not damage hearing)"
2005.12.19 before	CIA appd	Confinement	Loud music	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 2	"use of loud music or white noise (at a decibel level <79db – calculated to avoid damage to detainees' hearing)" "loud music" deleted from Standard

Date	Who apprv'd	Type	Technique	Source	Notes
					Conditions of CIA Detention (pre-Oct. 27, 2006)
2004.00.00 before	CIA appd	Confinement	Loud music (?)	*CIA Background Paper on Combined Techniques (2004)*, at 4	"white noise/loud sounds (not to exceed 79 decibels)"; doesn't say music, but does say "loud sounds," and other documents dated before and after this one refer to music Detention conditions "may be a factor in interrogations… Detention conditions are not interrogation techniques, but they have an impact of the detainee undergoing interrogation… these factors provide additional operational security…" (p.4)
			Military interrogation techniques		
2003.01.28 on	CIA appd	Interrogation	Military interrogation techniques	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard "all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel"
2003.03.02	CIA	Interrogation	Military interrogation techniques	*SERE Contractor/Psychologist Business Plan*, at 15	Standard "all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel"
2004.0		Interrogation	Military	*CIA Memorandum for John Bellinger*	"The authorized techniques are

Date	Who apprv'd	Type	Technique	Source	Notes
7.02			interrogation techniques	*(July 2, 2004)*	those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
			Noise		Note "white noise" and "loud music" typically addressed as variations of same treatment, until "loud music" was dropped from lists of techniques
2002.11 before	CIA used	Interrogation	Noise	*CIA OIG Special Review (May 7, 2004)*, at para. 89	Standard "white noise"
2003.01.28 on	CIA appd	Interrogation	Noise	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard "white noise"
2003.03.02	CIA	Interrogation	Noise	*SERE Contractor/Psychologist Business Plan*, at 15-16	Standard "use of loud noise (not damaging)"
2003.06.00	OLC appd?	Interrogation	Noise	*CIA "Legal Principles" (2003)*	"loud music or white noise (at a decibel level calculated to avoid damage to the detainees' hearing)"
2003.09.4	CIA medical guide	Interrogation	Noise	*OMS Guidelines (Sept.4, 2003)*, at 1, 5	Standard "white noise"
2004.00.00 before	CIA appd	Confinement	Noise	*CIA Background Paper on Combined Techniques (2004)*, at 4	"white noise/loud sounds (not to exceed 79 decibels)" Detention conditions "may be a

Date	Who apprv'd	Type	Technique	Source	Notes
					factor in interrogations… Detention conditions are not interrogation techniques, but they have an impact of the detainee undergoing interrogation… these factors provide additional operational security…" (p.4)
2004.05.17	CIA medical guide	Interrogation	Noise	*OMS Guidelines (May 17, 2004)*, at 7, 12	Standard "white noise or loud music (at a decibel level that will not damage hearing)"
2004.12.00	CIA medical guide	Interrogation	Noise	*OMS Guidelines (Dec. 2004)*, at 8, 13	"White noise or loud music (at a decibel level that will not damage hearing)"
2005.05.10	CIA used	Confinement	Noise	*OLC Combined Techniques Memo (May 10, 2005)*, at fn. 3	"white noise/loud sounds (not to exceed 79 decibels)"
2005.12.19 before	CIA appd	Confinement	Noise	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 2	"use of loud music or white noise (at a decibel level <79db – calculated to avoid damage to detainees' hearing)"
2006.08.31	OLC appd in writing	Confinement	Noise	*OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 10	"white noise"
2006.08.31	OLC appd in writing	Confinement	Noise	*OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 5, 19-20	"white noise"
2006.10.27 before	CIA appd	Confinement	Noise	*Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1, 2-3	"use of white noise" Note that *Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 2 also listed "loud music", but

Date	Who apprv'd	Type	Technique	Source	Notes
					"loud music" is deleted from *Standard Conditions of CIA Detention (pre-Oct. 27, 2006).*
			Nudity		Stripping or nudity.
2003.09.4	CIA medical guide	Interrogation	Nudity	*OMS Guidelines (Sept. 4, 2003)*, at 1.	"Stripping" Standard technique.
2004.00.00 before	CIA appd	Confinement	Nudity	*CIA Background Paper on Combined Techniques (2004)*, at 3	Photographs taken while nude
2004.00.00 before	CIA appd	Interrogation	Nudity	*CIA Background Paper on Combined Techniques (2004)*, at 5	Nudity is "conditioning technique" "HVD's clothes are taken and he remains nude until the interrogators provide clothes to him"
2004.05.17	CIA medical guide	Interrogation	Nudity	*OMS Guidelines (May 17, 2004)*, at 7	Standard technique "Stripping"
2004.12.00	CIA medical guide	Interrogation	Nudity	*OMS Guidelines (Dec. 2004)*, at 8	"Stripping"
2005.05.10	OLC appd in writing	Interrogation	Nudity	*OLC Interrogation Techniques (May 10, 2005)*, at 7-8, 31-32 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 12, 13 *OLC Interrogation Techniques and*	Discussed alongside "enhanced" techniques.

Date	Who apprv'd	Type	Technique	Source	Notes
				CIDT (May 30, 2005), at 12	
			Psychological pressure		Don't know what this specifically entailed; as "standard" technique, was not meant to "incorporate physical or substantial psychological pressure…" *DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1
		Interrogation	Psychological pressure	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	*CIA OIG Special Review (May 7, 2004)*, at para. 63
2003.01.28	CIA appd	Interrogation	Psychological pressure	*CIA OIG Special Review (May 7, 2004)*, at para. 63, *citing* DCI Interrogation Guidelines (Jan. 28, 2003)	"moderate"
2003.03.02	CIA	Interrogation	Psychological pressure	*SERE Contractor/Psychologist Business Plan*, at 16	Standard "moderate psychological pressure"
			Shackling		Incidental to sleep deprivation; as separate technique; for security reasons
2003.03.02	CIA	Interrogation	Shackling	*SERE Contractor/Psychologist Business Plan*, at 16	"for security reasons while a detainee is standing" (description of sleep deprivation)
2003.09.4	CIA medical guide	Interrogation	Shackling	*OMS Guidelines (Sept.4, 2003)*, at 1, 5-7	Standard "in upright, sitting, or horizontal position"; technique listed separately from sleep deprivation
2004.00.00 before	CIA appd	Confinement	Shackling	*CIA Background Paper on Combined Techniques (2004)*	During flight to back site
2004.0	CIA	Interrogation	Shackling	*OMS Guidelines (May 17, 2004)*, at	Standard "in upright, sitting, or

Date	Who apprv'd	Type	Technique	Source	Notes
5.17	medical guide			7, 12-13	horizontal position"; technique listed separately from sleep deprivation; "shackling and prolonged standing"
2004.12.00	CIA medical guide	Interrogation	Shackling	*OMS Guidelines (Dec. 2004)*, at 8, 14	"in upright sitting or horizontal position" listed separately from sleep deprivation
2005.05.10	OLC	Interrogation	Shackling	*OLC Interrogation Techniques (May 10, 2005)* *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 16 *OLC Interrogation Techniques and CIDT (May 30, 2005)*	Discussed incidental to sleep deprivation
2005.12.19 before	CIA appd	Confinement	Shackling	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1, 3	
2006.08.31	OLC appd in writing	Confinement	Shackling	*OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 11-12	
2006.08.31	OLC appd in writing	Confinement	Shackling	*OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 6, 23-24	
2006.10.27 before	CIA appd	Confinement	Shackling	*Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1, 3-4	
			Shaving		A form of forced grooming
2003.0	CIA	Interrogation	Shaving	*OMS Guidelines (Sept.4, 2003)*, at 1.	Standard

Date	Who apprv'd	Type	Technique	Source	Notes
9.4	medical guide				
2004.00.00 before	CIA appd	Confinement	Shaving	*CIA Background Paper on Combined Techniques (2004)*, at 2	"reception procedures include… detainee's head and face are shaved"
2004.05.17	CIA medical guide	Interrogation	Shaving	*OMS Guidelines (May 17, 2004)*, at 7	Standard
2004.12.00	CIA medical guide	Interrogation	Shaving	*OMS Guidelines (Dec. 2004)*, at 8	
2005.12.19 before	CIA appd	Confinement	Shaving	*Standard Conditions of CIA Detention (pre-Dec. 19, 2005)*, at 1	
2006.08.31	OLC appd in writing	Confinement	Shaving	*OLC Conditions of Confinement and Common Article 3 (Aug. 31, 2006)*, at 12-13	
2006.08.31	OLC appd in writing	Confinement	Shaving	*OLC Conditions of Confinement and DTA (Aug. 31, 2006)*, at 4, 14-16	Says shaving is for the purposes of hygiene and security, but also compares the initial shaving to interrogation techniques.
2006.10.27 before	CIA appd	Confinement	Shaving	*Standard Conditions of CIA Detention (pre-Oct. 27, 2006)*, at 1, 2	
			Sleep deprivation		
2002.08.01	OLC appd in	Interrogation	Sleep deprivation	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3,	Enhanced.

Date	Who apprv'd	Type	Technique	Source	Notes
on	writing			10, 14-15	
2002.08.01 before	CIA used	Interrogation	Sleep deprivation	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 3	AZ kept awake for 72 hours
2002.11 before	CIA used	Interrogation	Sleep deprivation	*CIA OIG Special Review (May 7, 2004)*, at para. 89.	Standard less than 72 hours
2003.01.28 on	CIA appd	Interrogation	Sleep deprivation	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	Standard less than 72 hours
2003.01.28 on	CIA appd	Interrogation	Sleep deprivation	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced more than 72 hours
2003.03.02	CIA	Interrogation	Sleep deprivation	*SERE Contractor/Psychologist Business Plan*, at 15, 16, 17.	Standard "not to exceed 48 hours" (p. 15) "beyond 48 hours" (p. 17) *but* "non-enhanced sleep deprivation" is "shorter than 72 hours" (p. 16)
2003.03.02	CIA	Interrogation	Sleep deprivation	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced "beyond 48 hours"
2003.06.00	OLC appd?	Interrogation	Sleep deprivation	*CIA "Legal Principles" (2003)*	unspecified
2003.09.04	CIA medical guide	Interrogation	Sleep deprivation	*OMS Guidelines (Sept.4, 2003)*, at 1, 7	Standard (up to 72 hours)
2003.09.4	CIA medical guide	Interrogation	Sleep deprivation	*OMS Guidelines (Sept.4, 2003)*, at 2.	Enhanced "over 72 hours"
2003.1	CIA	Interrogation	Sleep	*CIA OIG Special Review (May 7,*	Enhanced Period for enhanced

Date	Who apprv'd	Type	Technique	Source	Notes
2 (late Dec)	appd		deprivation	*2004)*, at fn. 34	reduced from 72 to 48 hours
2003.12.00 (late Dec)	CIA appd	Interrogation	Sleep deprivation	*CIA OIG Special Review (May 7, 2004)*, at fn. 34	Standard Period for enhanced reduced from 72 to 48 hours
2004.00.00 before	CIA appd	Interrogation	Sleep deprivation	*CIA Background Paper on Combined Techniques (2004)*, at 5	
2004.05.17	CIA medical guide	Interrogation	Sleep deprivation	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced "over 48 hours"
2004.05.17	CIA medical guide	Interrogation	Sleep deprivation	*OMS Guidelines (May 17, 2004)*, at 7, 14	Standard "up to 48 hours"
2004.12.00	CIA medical guide	Interrogation	Sleep deprivation	*OMS Guidelines (Dec. 2004)*, at 8	"over 48 hours"
2004.12.00	CIA medical guide	Interrogation	Sleep deprivation	*OMS Guidelines (Dec. 2004)*, at 8, 15-16	"up to 48 hours"
2005.04.22 before	CIA used	Interrogation	Sleep deprivation	*Horizontal Sleep Deprivation*	"three occasions early in the program" where dets had significant edema; descriptions of horiz sleep dep position
2005.04.22	CIA appd	Interrogation	Sleep deprivation	*Waterboarding*	Describes use of dietary manipulation and sleep dep in

Date	Who apprv'd	Type	Technique	Source	Notes
before					conjunction with waterboarding
2005.05.10	OLC appd in writing	Interrogation	Sleep deprivation	*OLC Interrogation Techniques (May 10, 2005)*, at 11-13, 35-40 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 9, 11, 12, 13-14, 15-16, 16, 18 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 12-13	Enhanced "more than 48 hours"
			Stress positions		
2002.08.01 on	OLC appd in writing	Interrogation	Stress positions	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3, 10, 13	Including but not limited to: —sitting, legs extended and arms up —kneeling, while leaning **back** at 45 degree angle
2003.01.28 on	CIA appd	Interrogation	Stress positions	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced unspecified
2003.03.02	CIA	Interrogation	Stress positions	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced unspecified
2003.06.00	OLC appd?	Interrogation	Stress positions	*CIA "Legal Principles" (2003)*	unspecified
2003.09.4	CIA medical guide	Interrogation	Stress positions	*OMS Guidelines (Sept.4, 2003)*, at 2	Enhanced Specified: —kneeling, body slanted **forward or backward** —leaning with forehead on wall
2004.00.00	CIA appd	Interrogation	Stress positions	*CIA Background Paper on Combined Techniques (2004)*, at 7, 8	Technique separate from "wall standing"

Date	Who apprv'd	Type	Technique	Source	Notes
before					
2004.03.02 before	CIA appd	Interrogation	Stress positions	*CIA Additional Techniques Letter (March 2, 2004)*, at 2	2 more unspecified: —unknown standing —standing, probably forehead leaning
2004.05.17	CIA medical guide	Interrogation	Stress positions	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced Specified: —on knees, body slanted **forward or backward** —leaning with forehead on wall
2004.07.02		Interrogation	Stress positions	*CIA Memorandum for John Bellinger (July 2, 2004)*	"The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
2004.12.00	CIA medical guide	Interrogation	Stress positions	*OMS Guidelines (Dec. 2004)*, at 8	Specified positions: —kneeling, body slanted **forward or backward** —forehead leaning —wall standing, not labeled as such, but described Guidelines also refer to "shackling and prolonged standing" p. 14
2005.05.10	OLC appd in writing	Interrogation	Stress positions	*OLC Interrogation Techniques (May 10, 2005)*, at 9, 34 *OLC Interrogation Techniques*	Specific (p. 9) —sitting —kneeling, leaning **back** —forehead leaning

Date	Who apprv'd	Type	Technique	Source	Notes
				Combined (May 10, 2005), at 5, 6, 11, fn. 8, 14 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 15	Analysis equated to the one for wall standing (p.34)
			Unhygienic conditions		
2003.01.28 on	CIA appd	Confinement	Unhygienic conditions	*DCI Confinement Guidelines (Jan. 28, 2003)*, at 1, *quoted in* Memorandum of Law in Support of Defendant Ahmed Khalfan Ghailani's Motion to Dismiss Indictment Due to the Denial of His Constitutional Rights to a Speedy Trial (Dec. 1, 2009), *US v. Hage, et al, include. Ghaliani*, 1:98-cr-01023-LAK (SDNY), *available at* https://ecf.nysd.uscourts.gov/doc1/127117138103, at 6, *and CIA CIA OIG Special Review (May 7, 2004)*, at para. 59	"The CIA believed using "buckets for the relief of personal wastes" satisfied a requirement that "due provision…be taken to protect the health and safety of all CIA Detainees."
			Unknown other(s)		Look at source to see if reference is to one or more than one technique
2003.01.28 on	CIA appd	Interrogation	Unknown other(s)	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1	list in this doc is not exclusive "Unless otherwise approved…"
2003.01.28	CIA appd	Interrogation	Unknown other(s)	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 1, 2	Standard "Among standard techniques are…" "such other

Date	Who apprv'd	Type	Technique	Source	Notes
on					techniques as may be approved…"
2003.03.02	CIA	Interrogation	Unknown other(s)	*SERE Contractor/Psychologist Business* Plan, at 17	Enhanced redacted
2003.06.00	OLC appd?	Interrogation	Unknown other(s)	*CIA "Legal Principles" (2003)*	Open-ended "and of comparable approved techniques…"
2004.03.02 before	CIA appd and OLC appd orally	Interrogation	Unknown other(s)	*CIA Additional Techniques Letter (March 2, 2004)*, at 2	Another technique, which probably involved use of physical force, insofar as CIA says comparable to attn grasp, walling, and facial slap, and used in SERE
2006.00.00 on	CIA appd	Confinement	Unknown other(s)	*DCI Confinement Guidelines (2006)*	
			Wall standing		a form of stress position but addressed as separate technique
2002.08.01 on	OLC appd in writing	Interrogation	Wall standing	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3, 10, 13	
2003.01.28 on	CIA appd	Interrogation	Wall standing	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced
2003.06.00	OLC appd?	Interrogation	Wall standing	*CIA "Legal Principles" (2003)*	Listed sep from stress positions
2004.00.00 before	CIA appd	Interrogation	Wall standing	*CIA Background Paper on Combined Techniques (2004)*, at 7, 8	Technique separate from "Stress positions"

Date	Who apprv'd	Type	Technique	Source	Notes
2003.09.4	CIA medical guide	Interrogation	Walling	*OMS Guidelines (Sept.4, 2003)*, at 2	Enhanced
2004.00.00 before	CIA appd	Interrogation	Walling	*CIA Background Paper on Combined Techniques (2004)*, at 7	
2004.05.17	CIA medical guide	Interrogation	Walling	*OMS Guidelines (May 17, 2004)*, at 7	Enhanced
2004.07.02		Interrogation	Walling	*CIA Memorandum for John Bellinger (July 2, 2004)*	"The authorized techniques are those previously approved for use with Abu Zubaydah (with the exception of the waterboard) and the 24 approved by the Secretary of Defense on 16 April 2003 for use by the Department of Defense."
2004.12.00	CIA medical guide	Interrogation	Walling	*OMS Guidelines (Dec. 2004)*, at 8	
2005.05.10	OLC appd in writing	Interrogation	Walling	*OLC Interrogation Techniques (May 10, 2005)*, at 8, 32 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 6, 12, 14 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 14	

Date	Who apprv'd	Type	Technique	Source	Notes
			Water dousing		a form of cold stress
2003.09.4	CIA medical guide	Interrogation	Water dousing	*OMS Guidelines (Sept.4, 2003)*, at 1	Standard
2004.00.00 before	CIA appd	Interrogation	Water dousing	*CIA Background Paper on Combined Techniques (2004)*, at 7-8	
2004.03.02 before	CIA appd and maybe used	Interrogation	Water dousing	*CIA Additional Techniques Letter (March 2, 2004)*, at 2	"use of water has proven effective" doesn't specify which use of water
2004.05.17	CIA medical guide	Interrogation	Water dousing	*OMS Guidelines (May 17, 2004)*, at 7, 11-12	Enhanced In OMS Sept 2003, this was a standard technique. *Compare CIA OIG Special Review (May 7, 2004)*, at para. 188, *citing* CTC cable ("the air temperature must exceed 65 degrees if the detainee will not be dried immediately"); *with OMS Guidelines (May 17, 2004)*, at App. A, 24 (medical limitation for "water dousing" requires minimum ambient air temperature of 64°F).
2004.12.00	CIA medical guide	Interrogation	Water dousing	*OMS Guidelines (Dec. 2004)*, at 8, 12-13	"water dousing and tossing" one technique

Date	Who apprv'd	Type	Technique	Source	Notes
2005.05.10	OLC appd in writing	Interrogation	Water dousing	*OLC Interrogation Techniques (May 10, 2005)*, at 9-10, 34-35 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 5, 6, 11, 12, 14 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 14-15	
			Water PFT		
2004.03.02 before	CIA appd and maybe used	Interrogation	Water PFT	*CIA Additional Techniques Letter (March 2, 2004)*, at 2	"use of water has proven effective" doesn't specify which uses of water had been already used; does specify CIA considered water PFT and water dousing approved by OLC
2004.12.00	CIA medical guide	Interrogation	Water PFT	*OMS Guidelines (Dec. 2004)*, at 8	Water PFT not listed, but "water dousing and tossing" listed as one technique. Water PFT not listed in May 2004 OMS Guidelines.
2005.05.10	OLC appd in writing	Interrogation	Water PFT	*OLC Interrogation Techniques (May 10, 2005)*, at 10-11, 35	Only reference is to "flicking" in section on water dousing. Water PFT not a separate technique – treated as form of water dousing
			Waterboard		CIA reportedly last used WB in March 2003. DOJ withdrew approval for WB between May 2004 and May 2005. DOJ approved use of WB on a specific detainee in August 2004, but

Date	Who apprv'd	Type	Technique	Source	Notes
					it appears WB was not used.
2002.08.01 on	OLC appd in writing	Interrogation	Waterboard	*OLC Interrogation of al Qaeda Operative (August 1, 2002)*, at 2, 3-4, 11, 15	
2003.01.28 on	CIA appd	Interrogation	Waterboard	*DCI Interrogation Guidelines (Jan. 28, 2003)*, at 2	Enhanced
2003.03.00	CIA used	Interrogation	Waterboard	*Waterboarding*	CIA last used waterboarding in March 2003.
2003.03.02	CIA	Interrogation	Waterboard	*SERE Contractor/Psychologist Business Plan*, at 17	Enhanced
2003.06.00	OLC appd?	Interrogation	Waterboard	*CIA "Legal Principles" (2003)*	"the use of harmless insects"
2003.07.29	OLC appd orally	Interrogation	Waterboard	*CIA OIG Special Review (May 7, 2004)*, at para. 10	Enhanced "Certain deviations" from projected use of technique as originally described to DoJ
2003.07.29 before	CIA used	Interrogation	Waterboard	*CIA OIG Special Review (May 7, 2004)*, at para. 10	Used on two detainees with "certain deviations" from projected use of technique as originally described to DoJ
2003.09.4	CIA medical guide	Interrogation	Waterboard	*OMS Guidelines (Sept.4, 2003)*, at 2, 8-10	Enhanced
2004.05.17	CIA medical guide	Interrogation	Waterboard	*OMS Guidelines (May 17, 2004)*, at 7, 14-17	Enhanced
2004.12.00	CIA medical	Interrogation	Waterboard	*OMS Guidelines (Dec. 2004)*, at 8, 17-20	

Date	Who apprv'd	Type	Technique	Source	Notes
	guide				
2005.05.10	OLC appd in writing	Interrogation	Waterboard	*OLC Interrogation Techniques (May 10, 2005)*, at 13-15, 41-45 *OLC Interrogation Techniques Combined (May 10, 2005)*, at 8-9, 11, 16, 17-18, 18-19 *OLC Interrogation Techniques and CIDT (May 30, 2005)*, at 5-7, 15	

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MAJID KHAN, *et al.*,	)	
	)	
Petitioners	)	
	)	
v.	)	Civil Action No. 06-CV-1690 (RBW)
	)	
GEORGE W. BUSH,	)	
President of the United States,	)	
et al.,	)	
	)	
Respondents.	)	
	)	

DECLARATION OF MARILYN A. DORN,
INFORMATION REVIEW OFFICER,
CENTRAL INTELLIGENCE AGENCY

I, MARILYN A. DORN, hereby declare and say:

1. I am the Information Review Officer (IRO) for the National Clandestine Service (NCS) of the Central Intelligence Agency (CIA). After serving one and a half years as Associate NCS/IRO, I was appointed to my current position on 1 August 2003.

2. The NCS is the organization within the CIA responsible for conducting the CIA's foreign intelligence and counterintelligence activities; conducting covert action; conducting liaison with foreign intelligence and security services; serving as the repository for foreign counterintelligence information; supporting clandestine technical collection; and coordinating CIA support to the Department of Defense. Specifically, the NCS is responsible for the conduct of foreign intelligence collection through the clandestine use of human sources.

3. The IRO is responsible for the review of records maintained by offices in the NCS that may be responsive to requests from the Department of Justice in criminal and civil litigation. As part of my official duties, I ensure that determinations such as the release or withholding of information related to the CIA are proper and do not jeopardize CIA interests, personnel, or facilities, and, on behalf of the Director of the CIA, do not jeopardize CIA intelligence activities, sources, or methods.

4. As a senior CIA official and under a written delegation of authority pursuant to section 1.3(c) of Executive Order 12958, as amended,[1] I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification and declassification decisions.

5. Through the exercise of my official duties, I am generally familiar with this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

Purpose of this Declaration

6. I understand that a Petition for Writ of Habeas Corpus has been filed on behalf of Majid Kahn and that petitioner's counsel has requested that the Court enter a standard protective order used in a number of previous cases involving detainees at the United States Naval Base in Guantanamo Bay, Cuba. Such protective orders are entered to establish the procedures that must be followed by petitioner's counsel and various other individuals who receive access to potentially classified national security information in connection with these cases. The purpose of this declaration is to inform the Court that

[1] (U) Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 25, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. See Exec. Order No. 12,958, 3 C.F.R. 333 (1995), *reprinted as amended in* 50 U.S.C.A. § 435 note at 180 (West Supp. 2006).

the classified national security information likely to arise in this case is different and more sensitive than any of the previous cases involving detainees at Guantanamo Bay. Therefore, the standard protective order used in previous cases is insufficient to protect that information.

The Classified National Security Information at Issue

7. On September 6, 2006, President George W. Bush delivered a speech in which he disclosed the existence of a secret CIA program to capture, detain, and interrogate key terrorist leaders and operatives in order to help prevent terrorist attacks. President Bush also disclosed that fourteen individuals formerly in CIA custody as part of the secret CIA program had been transferred to Department of Defense (DOD) custody at Guantanamo Bay. Petitioner was one of the fourteen individuals formerly in the secret CIA program, now detained by DOD at Guantanamo Bay.

8. While the President publicly disclosed that the fourteen individuals were detained and questioned outside the United States in a program operated by the CIA, he also explicitly stated that many specifics of the program, including where the detainees had been held, the details of their confinement, the employment of alternative interrogation methods, and other operational details could not be divulged and would remain classified. In fact, such details constitute and involve TOP SECRET, Sensitive Compartmented Information (SCI).

9. Under Executive Order 12958, as amended, the anticipated severity of the damage to national security resulting from disclosure determines which of three classification levels is applied to the information. Thus, if an unauthorized disclosure of information reasonably could be expected to cause *damage* to the national security, that

information may be classified as CONFIDENTIAL; *serious damage* may be classified as SECRET; and *exceptionally grave damage* may be classified as TOP SECRET. Executive Order 12958, section 4.3, provides that specified officials may create special access programs upon a finding that the vulnerability of, or threat to, specific information is exceptional, and the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure. This section further provides that the Director of the CIA is responsible for establishing and maintaining special access programs relating to intelligence activities, sources, and methods. These special access programs relating to intelligence are called Sensitive Compartmented Information (SCI) programs.

10. Information relating to the CIA terrorist detention program has been placed in a TOP SECRET//SCI program to enhance protection from unauthorized disclosure. Because Majid Kahn was detained by CIA in this program, he may have come into possession of information, including locations of detention, conditions of detention, and alternative interrogation techniques, that is classified at the TOP SECRET//SCI level.

The Damage to the National Security

11. The President made clear in his speech that operation of the secret CIA detention program will continue. In order to fully appreciate the risk to the national security that disclosure of the operational details of the program would pose, the Court must first understand the importance of the program to the national security. Information obtained from the program has provided the U.S. Government with one of the most useful tools in combating terrorist threats to the national security. It has shed light on probable targets and likely methods for attacks on the United States, and has led to the

disruption of terrorist plots against the United States and its allies. Information obtained from the program has also played a role in the capture and questioning of additional senior al Qaeda operatives.

12. One of the most critical tools in the war against al Qaeda and its affiliates is the close intelligence relationships that the United States maintains with allies around the world. Many countries take great risks in order to assist the United States, and they do so with the explicit agreement that the nature of their assistance will remain secret. Should operational details about the program be improperly disclosed, such as the locations of CIA detention facilities, it would put our allies at risk of terrorist retaliation and betray relationships that are built on trust and are vital to our efforts against terrorism.

13. Improper disclosure of details regarding the conditions of detention and specific alternative interrogation procedures could also cause exceptionally grave consequences. Many terrorist operatives are specifically trained in counter-interrogation techniques. If specific alternative techniques were disclosed, it would permit terrorist organizations to adapt their training to counter the tactics that CIA can employ in interrogations. If detainees in the CIA program are more fully prepared to resist interrogation, it could prevent the CIA from obtaining vital intelligence that could disrupt future planned attacks.

The Inadequacy of the Standard Protective Order Used in Previous Cases

14. The very purpose of a protective order is to establish the procedures that are to be followed by petitioner's counsel, translators for the parties, and various other individuals who will receive access to potentially classified national security information. The protective order that petitioner requests the Court to adopt contemplates that the

national security information at issue would be classified at the SECRET level, rather than at the TOP SECRET//SCI level as it is here. As such, the standard protective order used in previous detainee habeas cases fails, on its face, to adequately protect the national security information that may arise in this case.

15. By way of specific example, the protective order proposed by petitioner requires petitioners' counsel to hold a valid United States security clearance at only the SECRET level. Similarly, it does not require other individuals who may have access to potentially classified information provided by a detainee, such as translators, to possess clearances above the SECRET level. To adequately protect TOP SECRET//SCI information potentially provided by a detainee, access to such information would have to be restricted to individuals with TOP SECRET// SCI security clearances who have received briefings regarding the security procedures, signed a non-disclosure agreement, and been determined to have a need-to-know[2] the information at issue. In addition, the protective order proposed by petitioner permits procedures for handling and controlling potentially classified information that may be permissible for SECRET information, but is expressly prohibited for TOP SECRET//SCI. For example, information classified at the SECRET level may be transmitted via certified mail, a procedure that is prohibited for our nation's most guarded secrets at the TOP SECRET//SCI level. Similarly, documents at the SECRET level may be stored in a facility with fewer security devices than information at the TOP SECRET//SCI level. A protective order that allows individuals without the necessary security clearances access to TOP SECRET//SCI information, or permits the use of procedures not appropriate for TOP SECRET//SCI

[2] Executive Order 12958, as amended, defines "need-to-know" as a "determination by an authorized holder of classified information that a prospective recipient requires access to classified information in order to perform or assist in a lawful and authorized governmental function."

information, cannot possibly begin to adequately protect such information from unauthorized disclosure. Moreover, such procedures would explicitly violate the safeguarding requirements prescribed to protect classified information in Executive Order 12958, Part 4, as amended.

Conclusion

16. I have determined that Majid Kahn may have come into possession of national security information that is classified at the TOP SECRET// SCI level. I have also determined that handling of such information under the standard protective order used in previous cases poses an unacceptable risk of disclosure, which reasonably could be expected to cause extremely grave damage to the national security.

* * * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of October, 2006.

Marilyn A. Dorn
Information Review Officer
National Clandestine Service
Central Intelligence Agency

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, et al., Plaintiffs, v. DEPARTMENT OF DEFENSE, et al., Defendants.	04 Civ. 4151 (AKH)

DECLARATION OF LEON E. PANETTA, DIRECTOR, CENTRAL INTELLIGENCE AGENCY

I, LEON E. PANETTA, hereby declare and state:

I. INTRODUCTION

1. I am the Director of the Central Intelligence Agency (CIA). In my capacity as Director, I lead the CIA and manage the Intelligence Community's human intelligence and open source collection programs on behalf of the Director of National Intelligence (DNI). I have held this position since 13 February 2009. I have held a number of positions in the executive and legislative branches, including serving as President Clinton's Chief of Staff from 1994 to 1997, Director of the Office of Management and Budget (OMB) from 1993 to 1994, and congressional representative to California's 16th (now 17th) Congressional District from 1977 to 1993.

2. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. The judgments expressed in this declaration are my own.

3. Through the exercise of my official duties, I have been advised of this litigation and I am familiar with the CIA documents and information currently at issue in this case. I understand that the Plaintiffs filed this suit on June 2, 2004, under the Freedom of Information Act (FOIA) seeking, among other things, CIA records relating to the treatment of detainees in U.S. custody. I also understand that on May 7, 2009, the Court ordered the Government to compile a list of documents related to the contents of 92 destroyed videotapes of detainee interrogations that occurred between April and December 2002; and that pursuant to the Court's Order, the CIA has identified 580 documents. I further understand that, pursuant to the Court's Order, a sample of 65 documents was selected for review for potential release.

4. The purpose of this declaration and accompanying Vaughn index (attached and hereby incorporated) is to describe, to the greatest extent possible on the public record my determination, that the 65 documents currently at issue must be withheld in their entirety from public disclosure. I am also submitting a classified in camera, ex parte declaration to provide additional

details that cannot be discussed on the public record. Part II of this declaration describes the CIA documents and information at issue; and Part III describes the FOIA exemptions upon which the CIA relies.

II. CIA DOCUMENTS AND INFORMATION AT ISSUE

5. The majority of the documents currently at issue are TOP SECRET communications to CIA Headquarters from a covert overseas CIA facility where interrogations were being conducted. These TOP SECRET communications consist primarily of sensitive intelligence and operational information concerning interrogations of Abu Zubaydah. Drafted during the timeframe the interrogations were being conducted, these communications are the most contemporaneous documents the CIA possesses concerning these interrogations. In addition to these TOP SECRET communications, there are also a small number of miscellaneous documents, which include notes of CIA employees who reviewed the 92 videotapes before they were destroyed, logbooks containing details of the interrogations, and a photograph. These miscellaneous documents, like the operational communications, contain TOP SECRET operational information concerning the interrogations, and were drafted either contemporaneously with the interrogations or with a viewing of the now-destroyed videotapes.

6. I want to emphasize to the Court that the operational documents currently at issue contain detailed intelligence information, to include: intelligence provided by captured terrorists; intelligence requirements that CIA prioritized at specific points in time; what the intelligence community did not know about our enemies in certain time frames, i.e., intelligence gaps; information concerning intelligence methods, that would permit terrorists to evade questioning; information that could identify CIA officers and others engaged in clandestine counterterrorism operations; and information that would disclose the locations of covert CIA facilities overseas and the identities of foreign countries that have assisted the CIA in collecting information on terrorist organizations.

7. Much of the information in the documents is intelligence that was being provided to the field and intelligence that was being gathered from the interrogations. This sensitive intelligence provides important insight into what the CIA knew--and what the CIA did not know, i.e. intelligence gaps--at specific points in time on specific matters of intelligence interest. I have determined that the disclosure of intelligence about al-Qai'da reasonably could be expected to result in exceptionally grave damage to the national security by informing our enemies of what we knew about them, and when, and in some instances, how we obtained the intelligence we

possessed. This intelligence information is therefore properly exempt from disclosure under FOIA Exemptions b(1) and b(3).

8. Information concerning the names and titles of CIA personnel, and information concerning CIA organization, functions, and filing information, has also been withheld from the documents at issue based on FOIA Exemptions b(1) and b(3). Names and identifying information of CIA personnel, and CIA contractors and employees of other federal agencies involved in clandestine counterterrorism operations, also has been withheld on the basis of FOIA Exemption b(6), as the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.[1] As I discuss below, disclosing the identities of CIA employees and others involved in clandestine counterterrorism operations could place those individuals, as well as their families and friends, at grave risk from extremists seeking retribution.

9. The documents at issue also disclose the locations of covert CIA facilities and the identities of countries cooperating with the CIA in counterterrorism operations. As I discuss in my classified declaration, such information is properly classified and exempt form disclosure under FOIA Exemptions b(1) and b(3).

[1] As described in the attached Vaughn index, 62 of the 65 documents at issue contain names or identifying information of Agency employees or personnel involved in clandestine counterterrorism operations.

10. As the Court knows, on April 16, 2009, the President of the United States declassified and released in large part Department of Justice, Office of Legal Counsel (OLC) memoranda analyzing the legality of specific Enhanced Interrogation Techniques (EITs). As the Court also knows, some of the operational documents currently at issue contain descriptions of EITs being applied during specific overseas interrogations. These descriptions, however, are of EITs *as applied* in actual operations, and are of a qualitatively different nature than the EIT descriptions *in the abstract* contained in the OLC memoranda. As discussed below and in my classified declaration, I have determined that information contained within the operational documents at issue concerning *application* of the EITs must continue to be classified TOP SECRET, and withheld from disclosure in its entirety under FOIA Exemptions b(1) and b(3).

11. The recently declassified OLC memoranda are legal analyses by Department of Justice (DOJ) attorneys. Although they discuss the legality of specific proposed intelligence activities, they do not reveal the type of information in the operational documents at issue: details of *actual* intelligence activities, sources, and methods. Even if the EITs are never used again, the CIA will continue to be involved in questioning terrorists under legally approved guidelines. The information in these documents would provide future terrorists with a

guidebook on how to evade such questioning. I elaborate further on this point in my classified declaration.

12. Additionally, disclosure of explicit details of specific interrogations where EITs were applied would provide al-Qa'ida with propaganda it could use to recruit and raise funds. Al-Qa'ida has a very effective propaganda operation. When the abuse of Iraqi detainees at the Abu Ghraib prison was disclosed, al-Qa'ida made very effective use of that information in extremist websites that recruit jihadists and solicit financial support. Information concerning the details of the EITs being applied would provide ready-made ammunition for al-Qa'ida propaganda. The resultant damage to the national security would likely be exceptionally grave, and the withholding of this information is therefore proper under FOIA Exemption b(1).

13. A small amount of information has been withheld based on FOIA Exemption b(5), as it is deliberative, attorney-client communications, or attorney work-product.[2] Eight of the documents at issue contain deliberative process information, to include evaluations, opinions, and recommendations from CIA employees to their management concerning a future policy or course of action; one of those documents also contains an Agency

[2] As described in the attached Vaughn index, documents 28, 54, 56, 57, and 59-62 contain deliberative process privileged information; and documents 59 and 60 contain attorney-client communications and attorney work-product.

employee's notes from a discussion with a CIA attorney who reviewed the videotapes to evaluate legal and policy compliance; and another of those documents also contains that attorney's analysis and conclusions to CIA management concerning his legal and policy review.

14. I have determined that no meaningfully segregable information can be released from the operational documents at issue. In some instances, relatively innocuous words or sentences, some of which may even have been released in other contexts, are so inextricably intertwined with the classified information that their release would produce only meaningless, incomplete, fragmented, unintelligible words or sentences. Additional justification for denying these documents in full is provided in my classified declaration. I am not suggesting a blanket CIA policy whereby no communications from the field, or documents containing operational information, could ever be released in part. The CIA has at times, in its history, released in part such documents and I expect that we will again, even in this case. The documents at issue, however, were purposefully selected for review based on the sensitive operational information they contain. Where non-operational documents are at issue, as is the case with a portion of the documents within the scope of the recent remand order, the CIA will consider such documents for release.

15. Lastly, I also want to emphasize to the Court that my determinations expressed above, and in my classified declaration, are in no way driven by a desire to prevent embarrassment for the U.S. Government or the CIA, or to suppress evidence of any unlawful conduct. My sole purpose is to prevent the exceptionally grave damage to the national security reasonably likely to occur from public disclosure of any portion of these documents, and to protect intelligence sources and methods.

III. FOIA EXEMPTIONS

A. FOIA Exemption b(1)

16. FOIA Exemption b(1) provides that the FOIA does not apply to matters that are:

> (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and
>
> (B) are in fact properly classified pursuant to such Executive order.

5 U.S.C. § 552(b)(1).

17. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 12958.[3] I have reviewed the documents at issue

[3] Executive Order 12958 was amended by Executive Order 13292. *See* Exec. Order No. 13292 (Mar. 28, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. *See* Exec. Order No. 12,958, 3 C.F.R. 333 (1995), *reprinted as amended in* 50 U.S.C.A. § 435 note at 193 (West. Supp. 2008).

under the criteria established by Executive Order 12958 and have determined that the information withheld on the basis of FOIA Exemption b(1) is in fact properly classified pursuant to the Order.

18. Section 6.1(h) of the Executive Order defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 6.1(y) of the Order defines "national security" as the "national defense or foreign relations of the United States."

19. Section 1.1(a) of the Executive Order provides that information may be originally classified under the terms of this order only if all of the following conditions are met:

> (1) an original classification authority is classifying the information;
>
> (2) the information is owned by, produced by or for, or is under the control of the United States Government;
>
> (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
>
> (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Exec. Order 12958, § 1.1(a).

20. *Original classification authority* - Section 1.3(a) of the Executive Order provides that the authority to classify information originally may be exercised only by the President and, in the performance of executive duties, the Vice President; agency heads and officials designated by the President in the *Federal Register;* and United States Government officials delegated this authority pursuant to section 1.3(c) of the Order. Section 1.3(c)(2) provides that TOP SECRET original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to section 1.3(a)(2) of the Executive Order.

21. In accordance with section 1.3(a)(2), the President designated the Director of the CIA as an official who may classify information originally as TOP SECRET.[4] Section 1.3(b) of the Executive Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL. With respect to the withheld information for which FOIA Exemption b(1) is

[4] Order of President, Designation under Executive Order 12958, 70 Fed. Reg. 21,609 (Apr. 21, 2005), *reprinted in* U.S.C.A. § 435 note at 205 (West Supp. 2008). This order succeeded the prior Order of President, Officials Designated to Classify National Security Information, 60 Fed. Reg. 53,845 (Oct. 13, 1995), *reprinted in* U.S.C.A. § 435 note at 466 (West 2006), in which the President similarly designated the Director of the CIA as an official who may classify information originally as TOP SECRET.

asserted, I have reviewed the documents at issue and have determined that they contain information that is currently and properly classified SECRET and TOP SECRET.

22. *U.S. Government information* - Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the United States Government. With respect to the withheld information for which FOIA Exemption b(1) is asserted, I have reviewed the documents at issue and have determined that they are owned by the U.S. Government, produced by the U.S. Government, and under the control of the U.S. Government.

23. *Categories of classified information* - Information may be classified only if it concerns one of the categories of information set forth in section 1.4 of the Executive Order. With respect to the withheld information for which FOIA Exemption b(1) is asserted, I have reviewed the documents at issue and have determined that they contain information that concerns one or more of the following classification categories in the Executive Order:

> (a) Information concerning intelligence activities (including special activities), or intelligence sources or methods [§ 1.4(c)]; and
>
> (b) Information concerning foreign relations or foreign activities of the United States, including confidential sources [§ 1.4(d)].

24. *Damage to the national security* - Section 1.2(a) of the Executive Order provides that information shall be classified at one of three levels if the unauthorized disclosure of the information reasonably could be expected to cause damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in *exceptionally grave damage* to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in *serious damage* to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in *damage* to the national security.

25. With respect to the withheld information for which FOIA Exemption b(1) is asserted, I have reviewed the documents at issue and have determined that the unauthorized disclosure of the withheld information reasonably could be expected to result in serious or exceptionally grave damage to the national security, including damage to the United States' defense against transnational terrorism and to the foreign relations of the United States, and thus the information is classified SECRET or TOP SECRET, respectively. The damage to national security that reasonably could be expected to result from the unauthorized

disclosure of this classified information is described in the relevant paragraphs above, and my classified declaration.

26. *Proper purpose* - I have reviewed the documents at issue and have determined that the withheld information has been classified for a proper purpose and that no information has been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

27. *Marking* - I have reviewed the documents at issue and have determined that the classified versions of these documents are properly marked in accordance with section 1.6 of the Executive Order.[5] Each document bears on its face a classification level; the identity, by name or personal identifier and position, of the original classification authority; the agency and office of origin, if not otherwise evident; declassification instructions; and a concise reason for classification that, at a minimum, cites the applicable classification categories of section 1.4.

[5] Many of the operational communications were originally marked as SECRET in our communications database even though they should have been marked as TOP SECRET, and some of the miscellaneous documents were not properly marked. While we are not altering original electronic copies, this error is being corrected for copies printed for review in this case.

28. *Proper classification* - I have reviewed the documents at issue and have determined that the information withheld pursuant to Exemption (b)(1) has been classified in accordance with the substantive and procedural requirements of Executive Order 12958 and that, therefore, the withheld information is currently and properly classified.

29. *Special access program* - Section 6.1(kk) of the Executive Order defines a "special access program" as "a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level." Section 4.3 of the Order specifies the U.S. Government officials who may create a special access program. This section further provides that for special access programs pertaining to intelligence activities (including special activities, but not including military operations, strategic, and tactical programs), or intelligence sources or methods, this function shall be exercised by the Director of the CIA. This section specifies that special access programs shall be established only when the program is required by statute or upon a specific finding that the vulnerability of, or threat to, specific information is exceptional; and the normal criteria for determining eligibility for access applicable to information

classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

30. Officials of the National Security Council (NSC) determined that in light of the extraordinary circumstances affecting the vital interests of the United States and the sensitivity of the activities contemplated in the CIA terrorist detention and interrogation program, it was essential to limit access to the information in the program. NSC officials established a special access program[6] governing access to information relating to the CIA terrorist detention and interrogation program. As the executive agent for implementing the terrorist detention and interrogation program, the CIA is responsible for limiting access to such information in accordance with the NSC's direction. While CIA is no longer using EITs or operating detention facilities, certain information related to the program remains classified TOP SECRET. I explain this information in greater detail in my classified declaration.

B. **FOIA Exemption b(3)**

31. FOIA Exemption b(3) provides that the FOIA does not apply to matters that are:

> specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute

[6] The name of the special access program is itself classified SECRET.

> (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
>
> (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld . . .

5 U.S.C. § 552(b)(3). I have reviewed the documents at issue and have determined that there are two relevant withholding statutes.

32. *National Security Act of 1947* - Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1), provides that the DNI shall protect intelligence sources and methods from unauthorized disclosure. I have reviewed the documents at issue and have determined that they contain information, including information that remains classified, that if disclosed would reveal intelligence sources and methods. The CIA, therefore, relies on the National Security Act of 1947 to withhold any information that would reveal intelligence sources and methods.

33. In contrast to Executive Order 12958, the National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. In any event, the information relating to intelligence sources and

methods in the documents at issue that is covered by the National Security Act is the same as the information relating to intelligence activities, sources, and methods that is covered by the Executive Order for classified information. Therefore, the damage to the national security, including damage to the United States' defense against transnational terrorism and to the foreign relations of the United States, that reasonably could be expected to result from the unauthorized disclosure of such information relating to intelligence sources and methods is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information, which is described above, and in my classified declaration.

34. *Central Intelligence Agency Act of 1949* - Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 403g, provides that in the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of Title 50, which provides that the DNI shall be responsible for the protection of intelligence sources and methods from unauthorized disclosure, the CIA shall be exempted from the provisions of any law which requires the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA. In accordance with

section 403-4a(d) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-4a(d), foremost among the functions of the CIA is the collection of intelligence through human sources and by other appropriate means.

35. I have reviewed the documents at issue and have determined that they contain information, including information that remains classified, that if disclosed would reveal the organization and functions of the CIA, including the conduct of clandestine intelligence activities to collect intelligence from human sources using interrogation methods. In the interests of the security of the foreign intelligence activities of the United States and in order to further implement the DNI's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure, the CIA relies on the Central Intelligence Agency Act of 1949 to withhold any information that would reveal the organization, functions, names, and official titles of personnel employed by the CIA, including the collection of foreign intelligence through intelligence sources and methods--such as the conduct of clandestine intelligence activities to collect intelligence from human sources using interrogation methods.

36. Again, in contrast to Executive Order 12958, the CIA Act's statutory requirement to further protect intelligence sources and methods by protecting the organization, functions,

names, and official titles of persons employed by the CIA, does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. In any event, the information relating to the organization and functions of the CIA and intelligence sources and methods contained in the documents at issue that is covered by the CIA Act's statutory requirement is the same as the information relating to intelligence activities, sources, and methods that is covered by the Executive Order for classified information. Therefore, the damage to national security, including damage to the United States' defense against transnational terrorism and to the foreign relations of the United States, that reasonably could be expected to result from the unauthorized disclosure of the organization and functions of the CIA and intelligence sources and methods is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information, which is described above and in my classified declaration.

C. FOIA Exemption b(5)

37. FOIA Exemption b(5) provides that the FOIA does not apply to matters that are inter-agency or intra-agency memorandums or letters which would not be available by law to a private party other than an agency in litigation with the

Agency. I have reviewed the documents at issue and determined that eight are intra-agency memoranda that contain information that is protected from disclosure under the deliberative process privilege (pre-decisional deliberations, preliminary evaluations, opinions, and recommendations from CIA employees to their management concerning a future policy or course of action); and two of those contain information that is protected from disclosure as attorney work-product and attorney-client confidential communications (notes from a CIA employee's discussion with a CIA attorney about the attorney's review, at management request, of the videotapes to evaluate legal and policy compliance; and the CIA attorney's legal analysis and conclusions to CIA management concerning his legal and policy review). Disclosure of deliberative process information would discourage open, frank discussions on matters of policy between subordinates and superiors. Disclosure of attorney-client communications and attorney work-product would discourage CIA managers from seeking the advice of CIA lawyers, and could inhibit CIA lawyers from issuing opinions to CIA managers concerning complex and unsettled areas of law.

D. FOIA Exemption b(6)

38. FOIA Exemption b(6) provides that the FOIA does not apply to personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted

invasion of personal privacy. I have reviewed the documents at issue and determined that sixty-two contain personal information, and that the disclosure of that information would constitute a clearly unwarranted invasion of personal privacy. Disclosing information that could identify CIA employees and other personnel engaged in clandestine counterterrorism operations could place those individuals, and their families and friends, at grave risk from extremists seeking retribution. There is no legitimate countervailing public benefit that could come close to outweighing this paramount concern to protect U.S. Government employees and their associates.

IV. CONCLUSION

39. The CIA has withheld from the 65 sampled documents information that concerns intelligence activities, sources, and methods, and foreign relations and foreign activities of the United States, primarily on the bases of FOIA Exemptions b(1), and b(3) in conjunction with the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. Relatively small amounts of information have also been withheld pursuant to FOIA Exemptions b(5) and b(6), as they pertain to the deliberative process, attorney work-product, and attorney-client communications; and information the disclosure of which would be a clearly unwarranted invasion of personal privacy. With

respect to my decision that the documents at issue must remain classified TOP SECRET in their entirety, and that no reasonably segregable information can be released, I have duly considered that small amounts of similar information have been released in other contexts. Because the operational documents at issue are of a qualitatively different nature than the declassified OLC memoranda and, as discussed in greater detail in my classified declaration, because of the exceptionally grave damage to clandestine human intelligence collection and foreign liaison relationships reasonably likely to occur from releasing any portion of them, they must continue to be classified in their entirety.

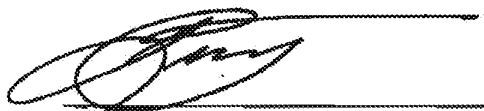
40. The CIA's primary mission is to gather the human intelligence necessary to prevent terrorist attacks targeting U.S. persons, property, and interests. It is important to note that the disruption of terrorist plots is rarely the dramatic last minute heroism displayed in popular culture, television, and movies. Instead, careful intelligence collection and analysis is designed to identify plotters and their objectives and neutralize them before their plans can materialize. Often this involves identifying and focusing intelligence collection efforts on specific individuals who are involved in nefarious activities. This targeting would be greatly diminished without clandestine human sources, robust liaison relationships, and the

cooperation of foreign countries, all of which require the Agency and our Government to maintain the trust and secrecy necessary for these relationships to exist.

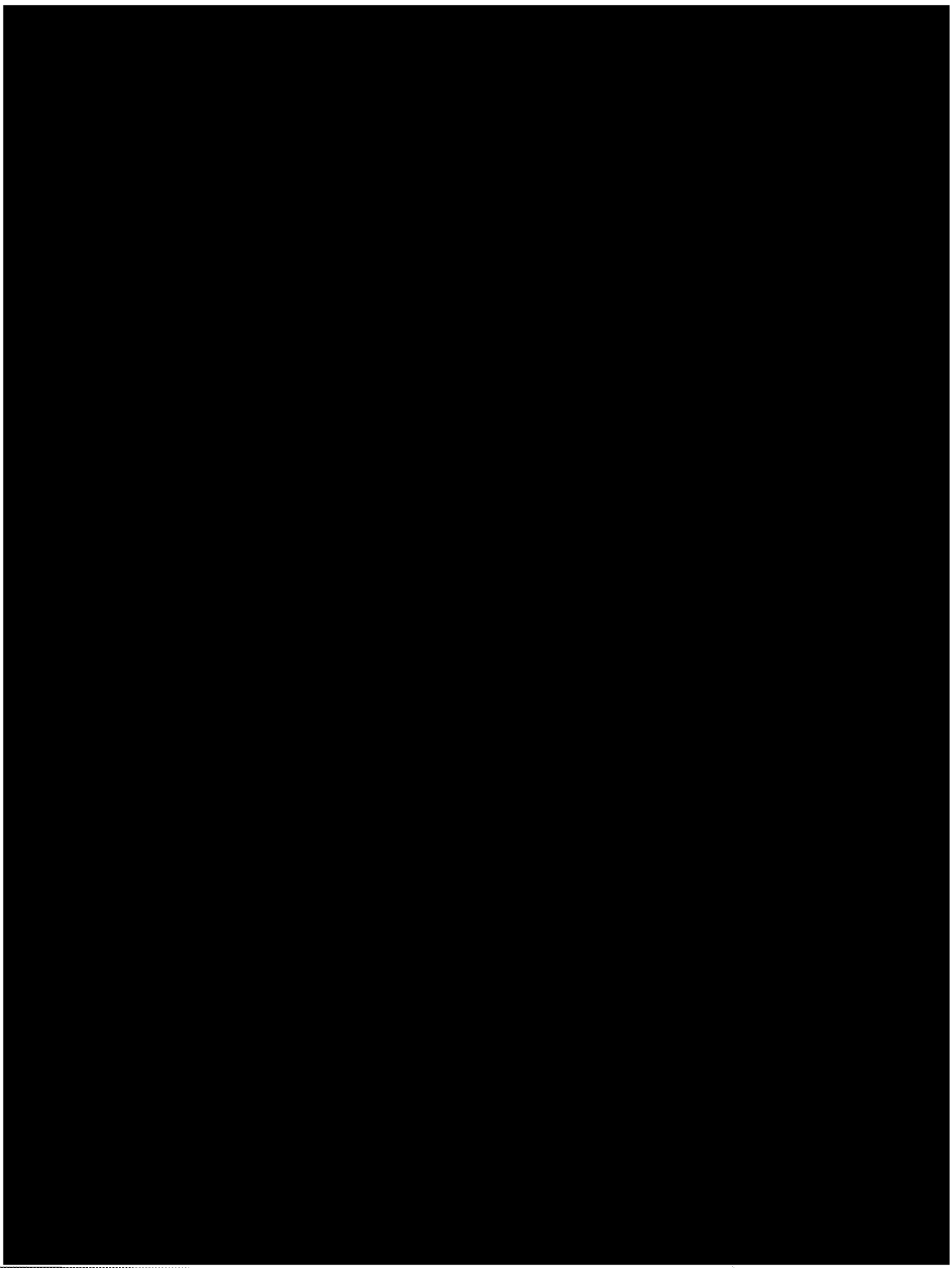
* * * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of June, 2009.



Leon E. Panetta
Director
Central Intelligence Agency



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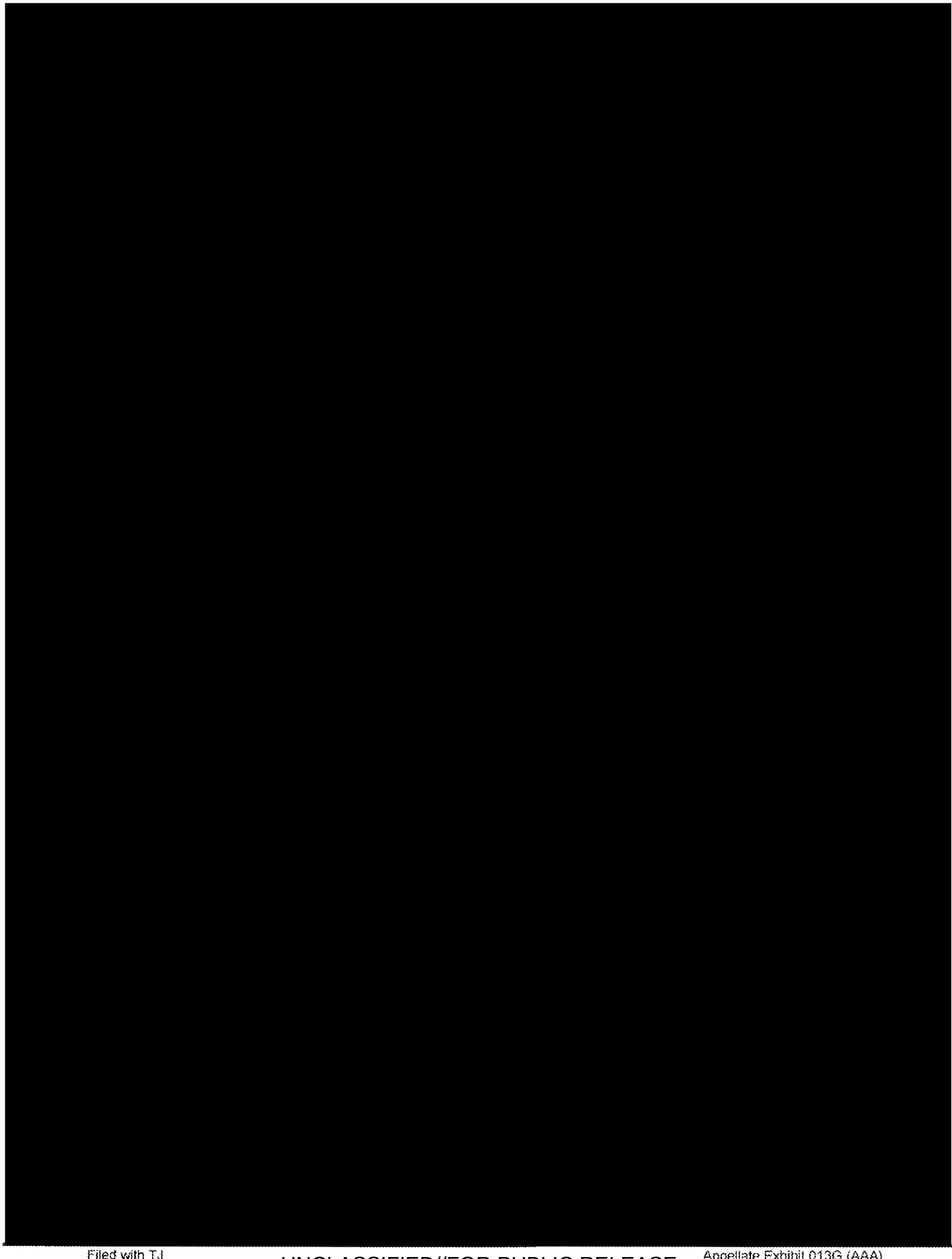

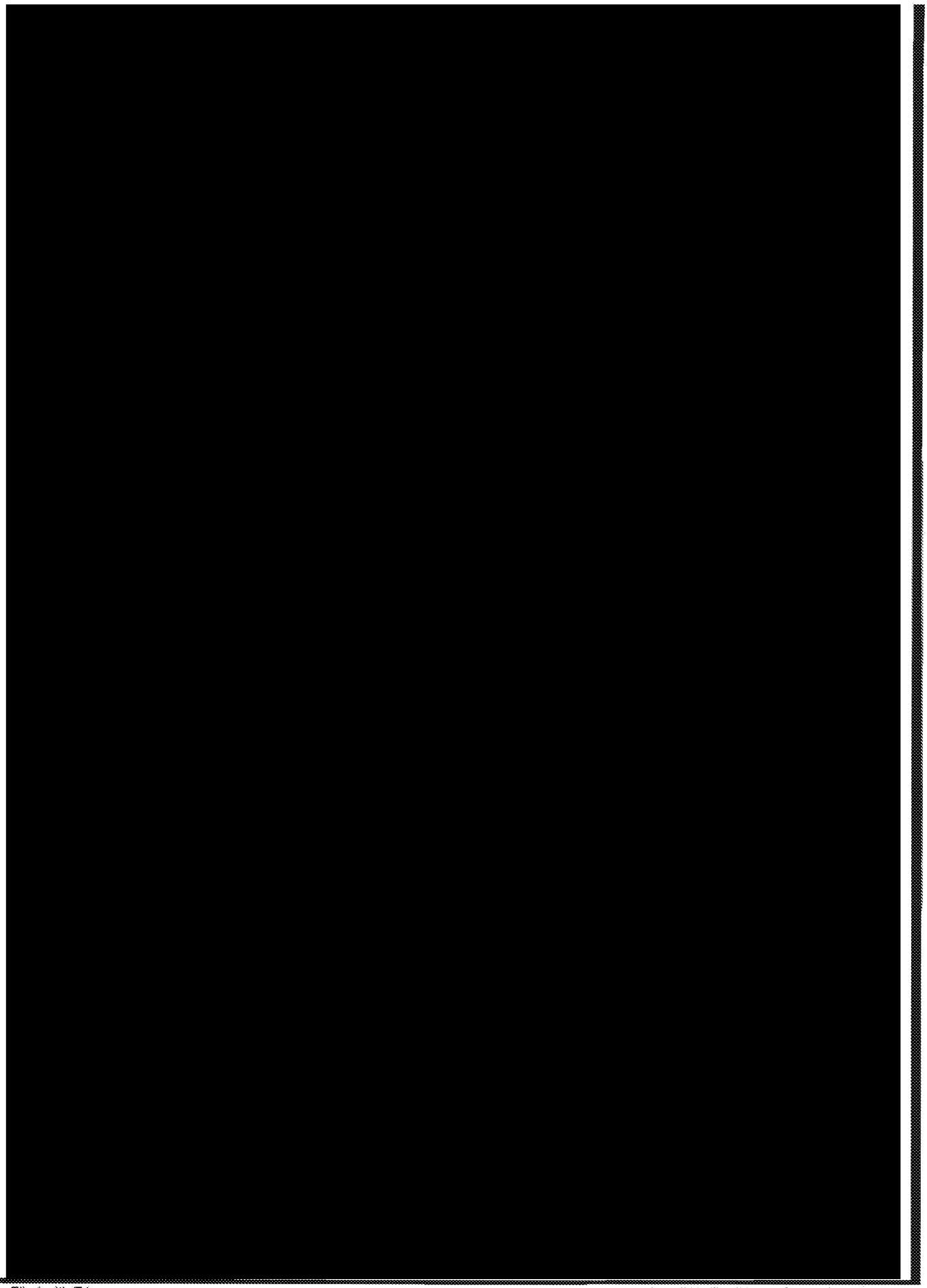

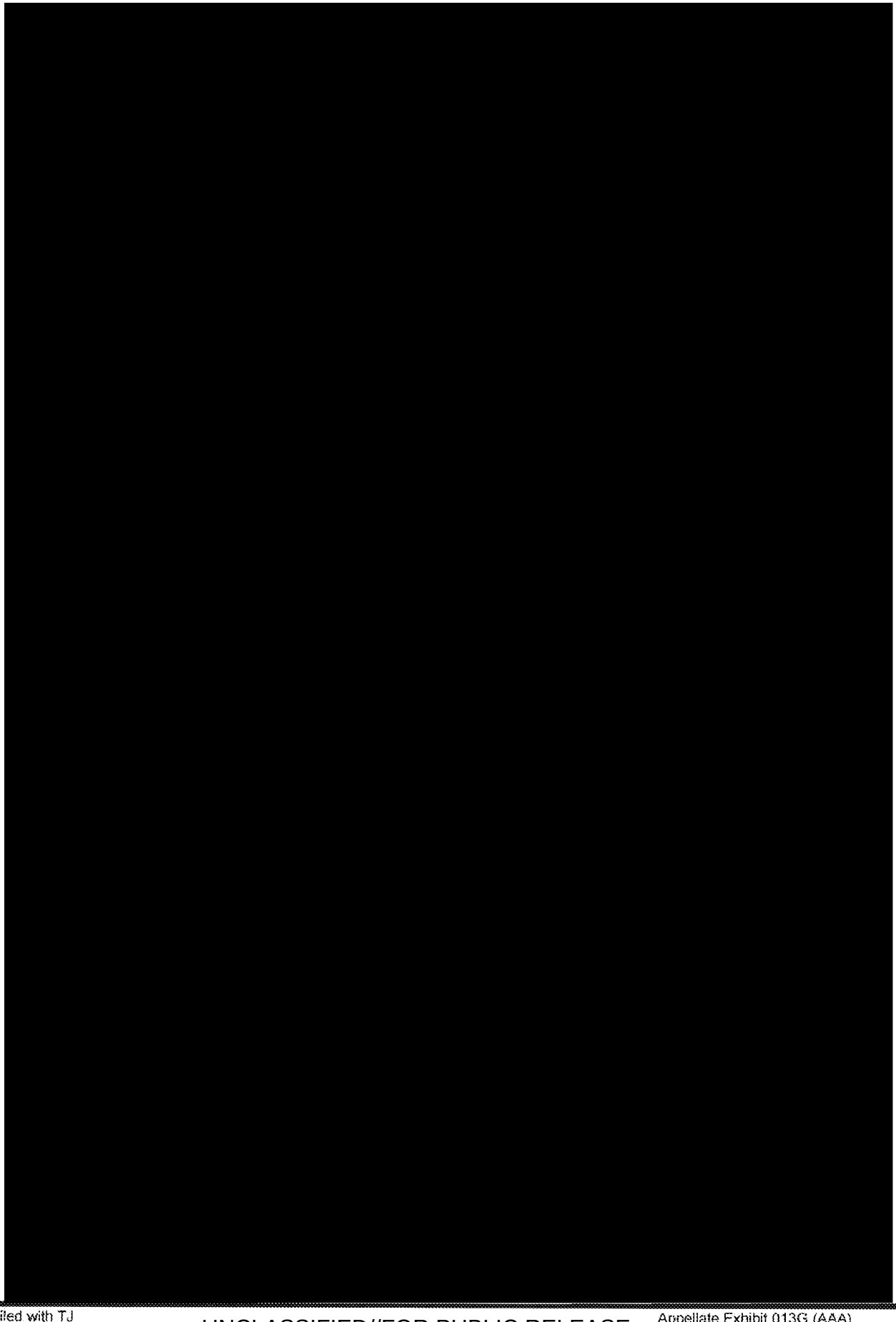

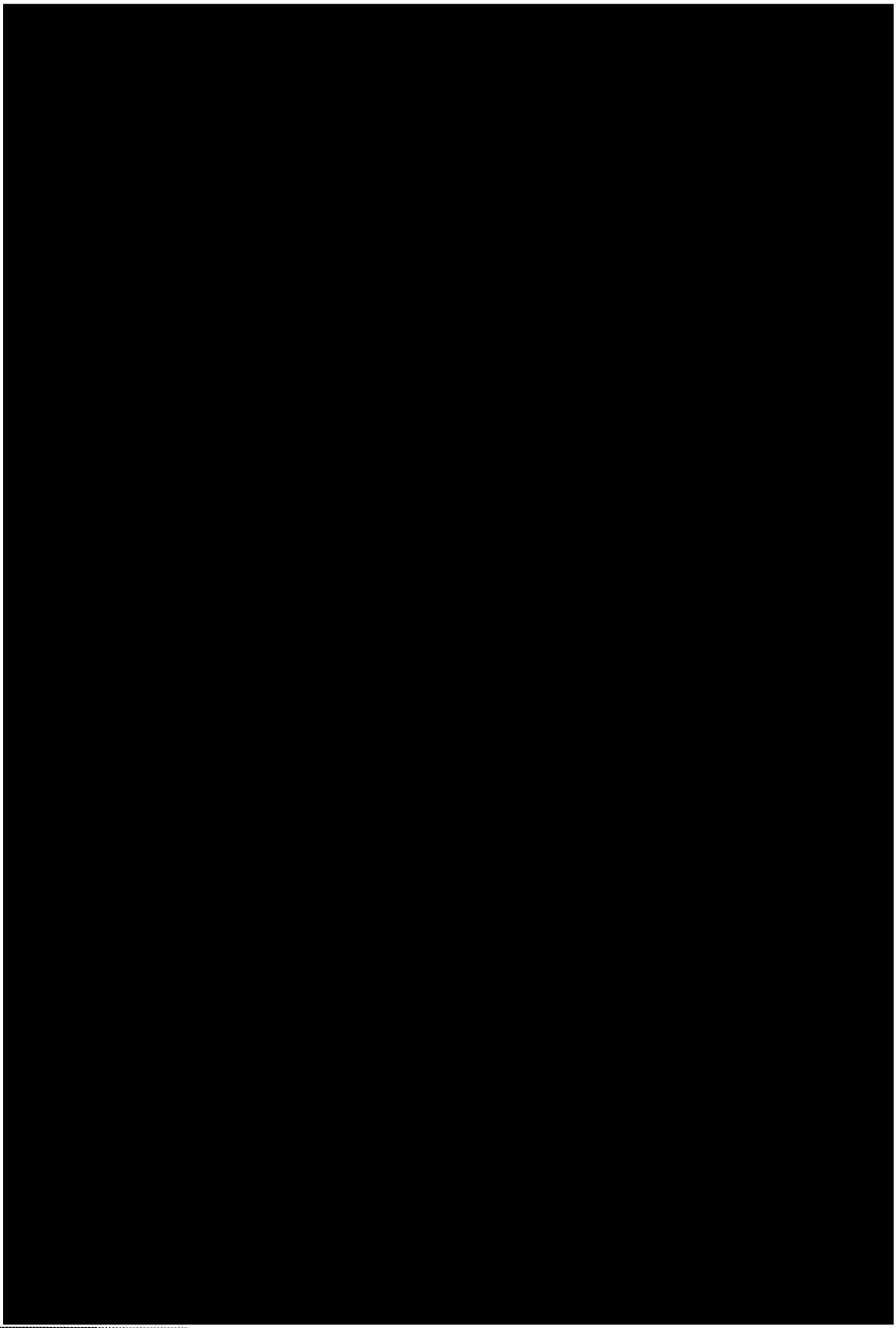

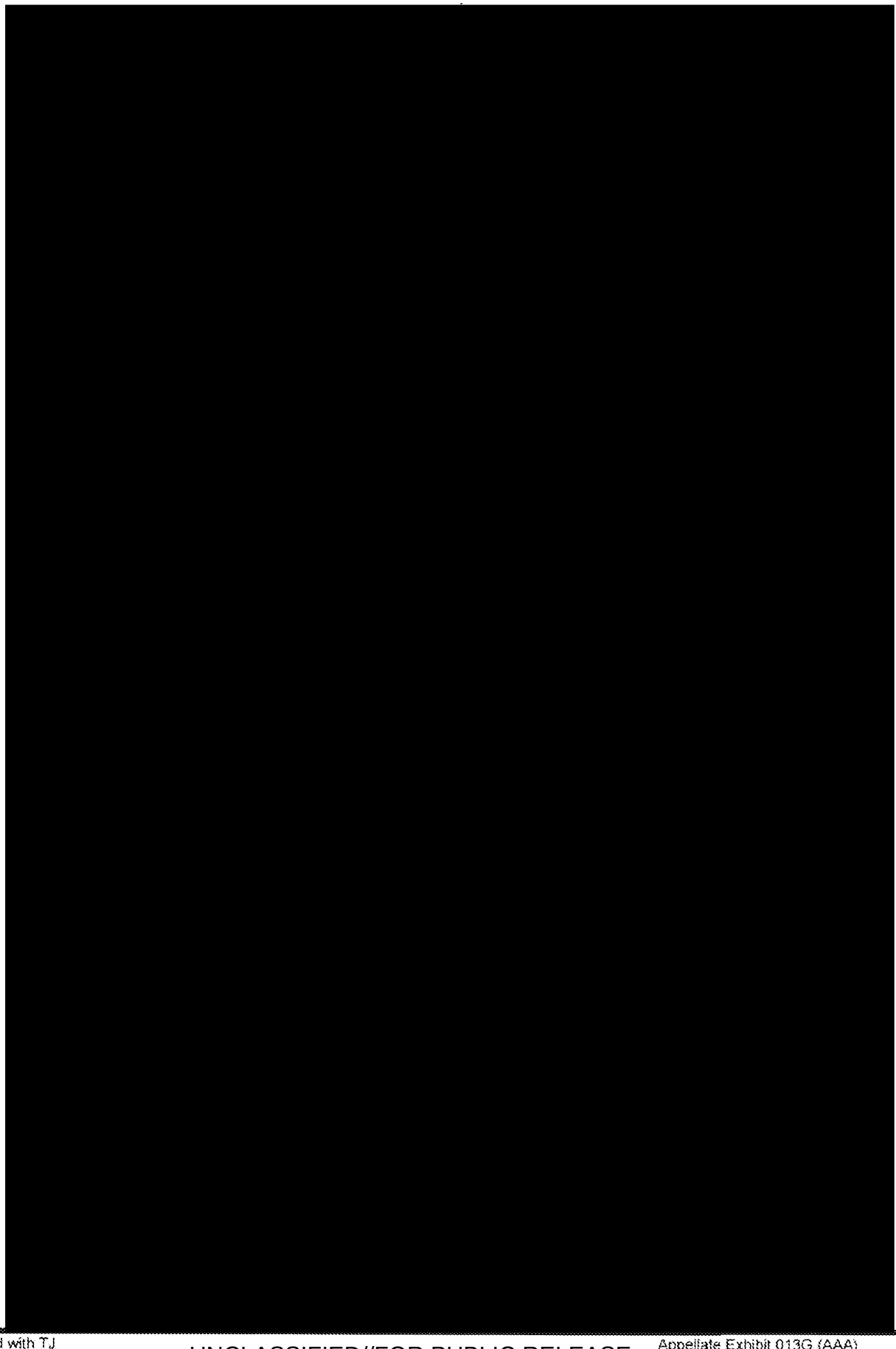

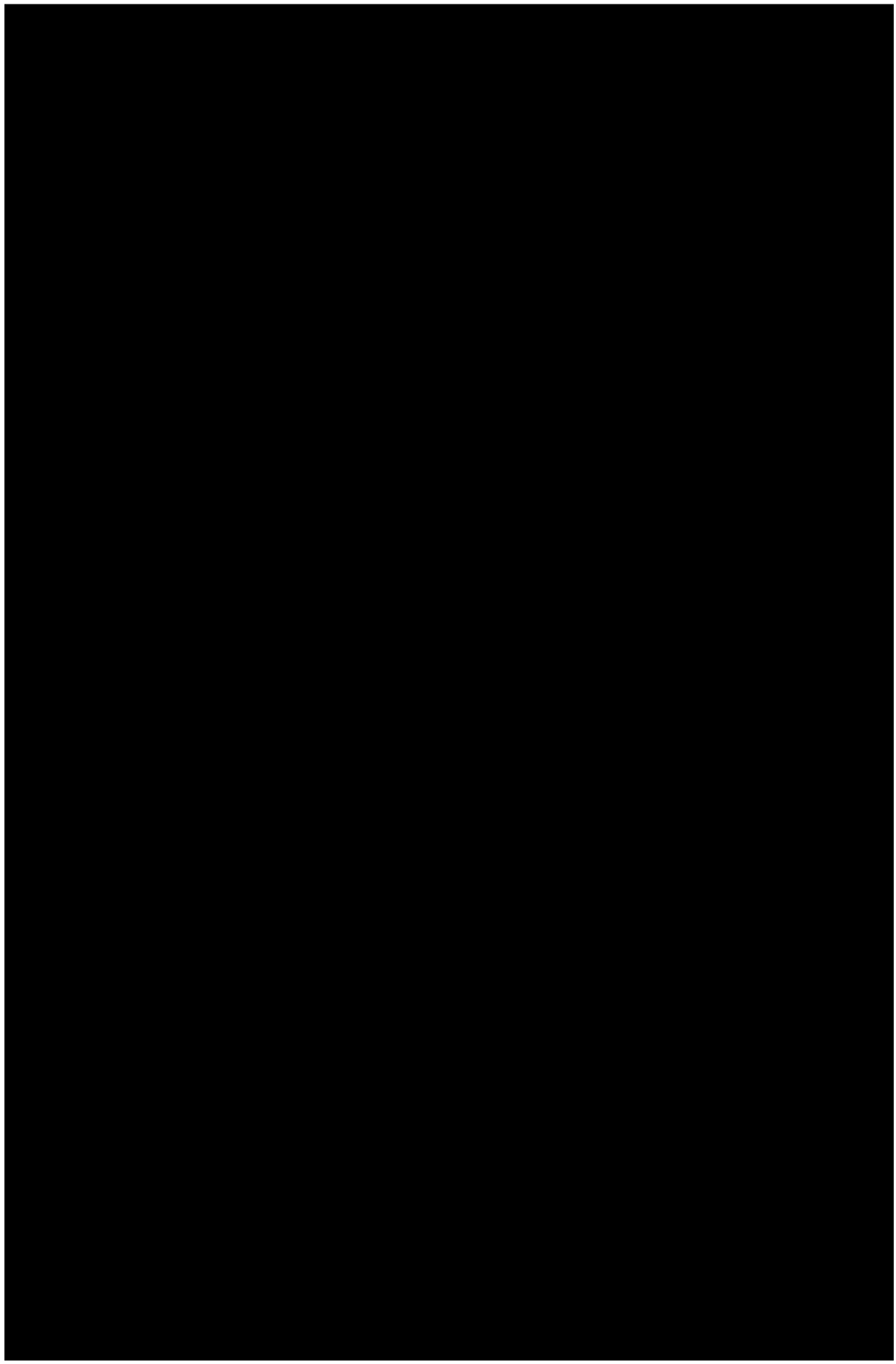

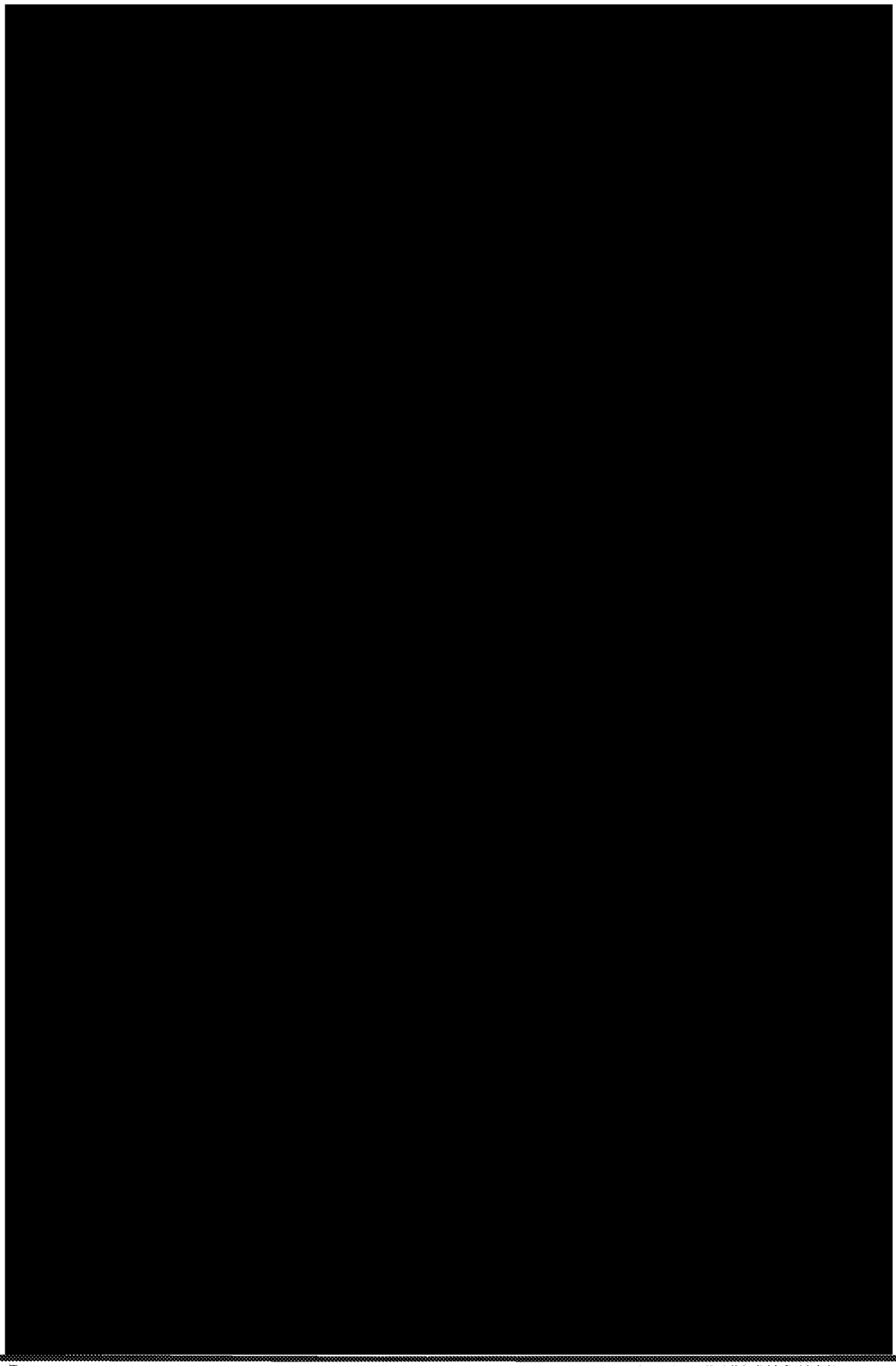

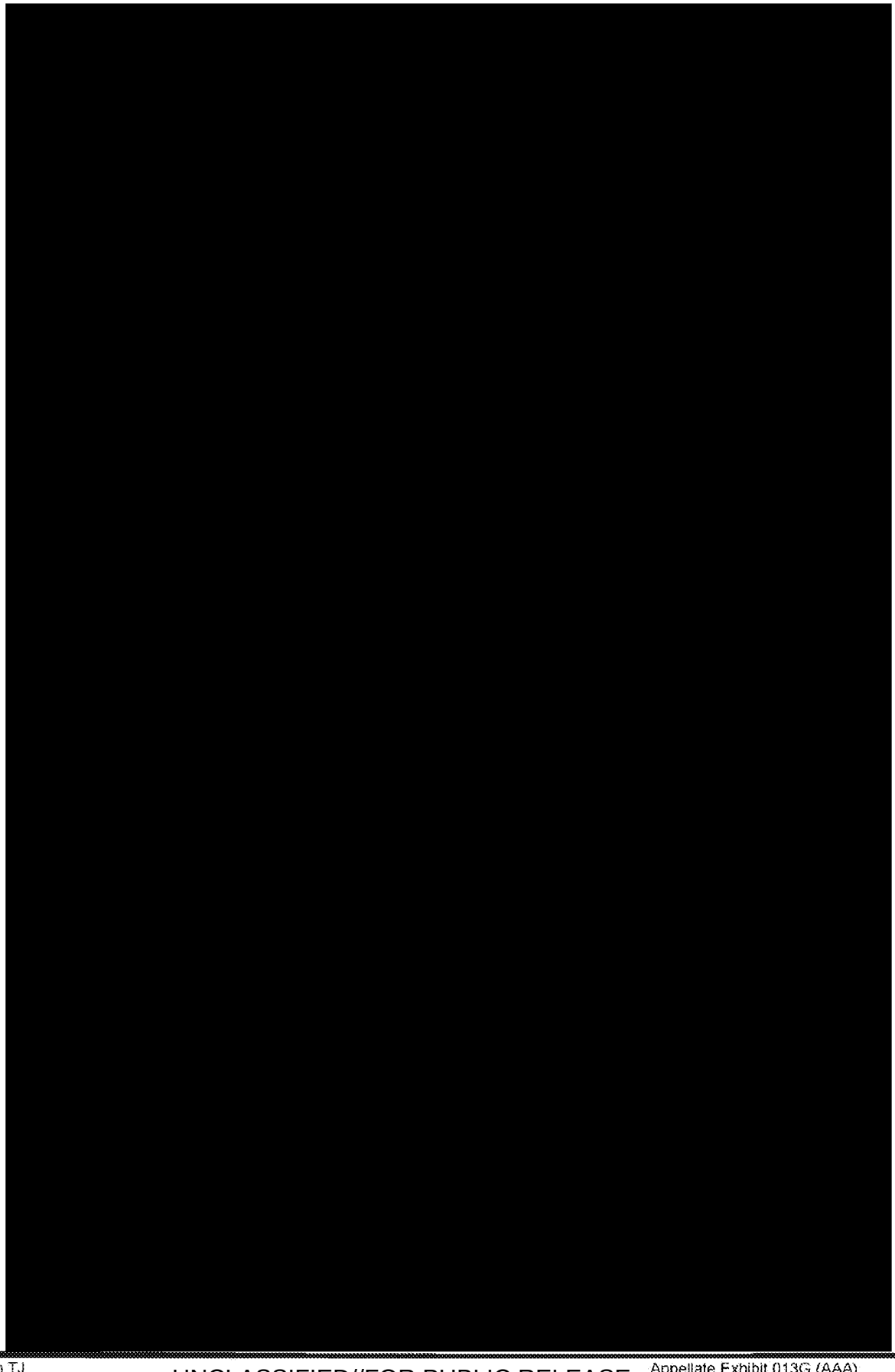

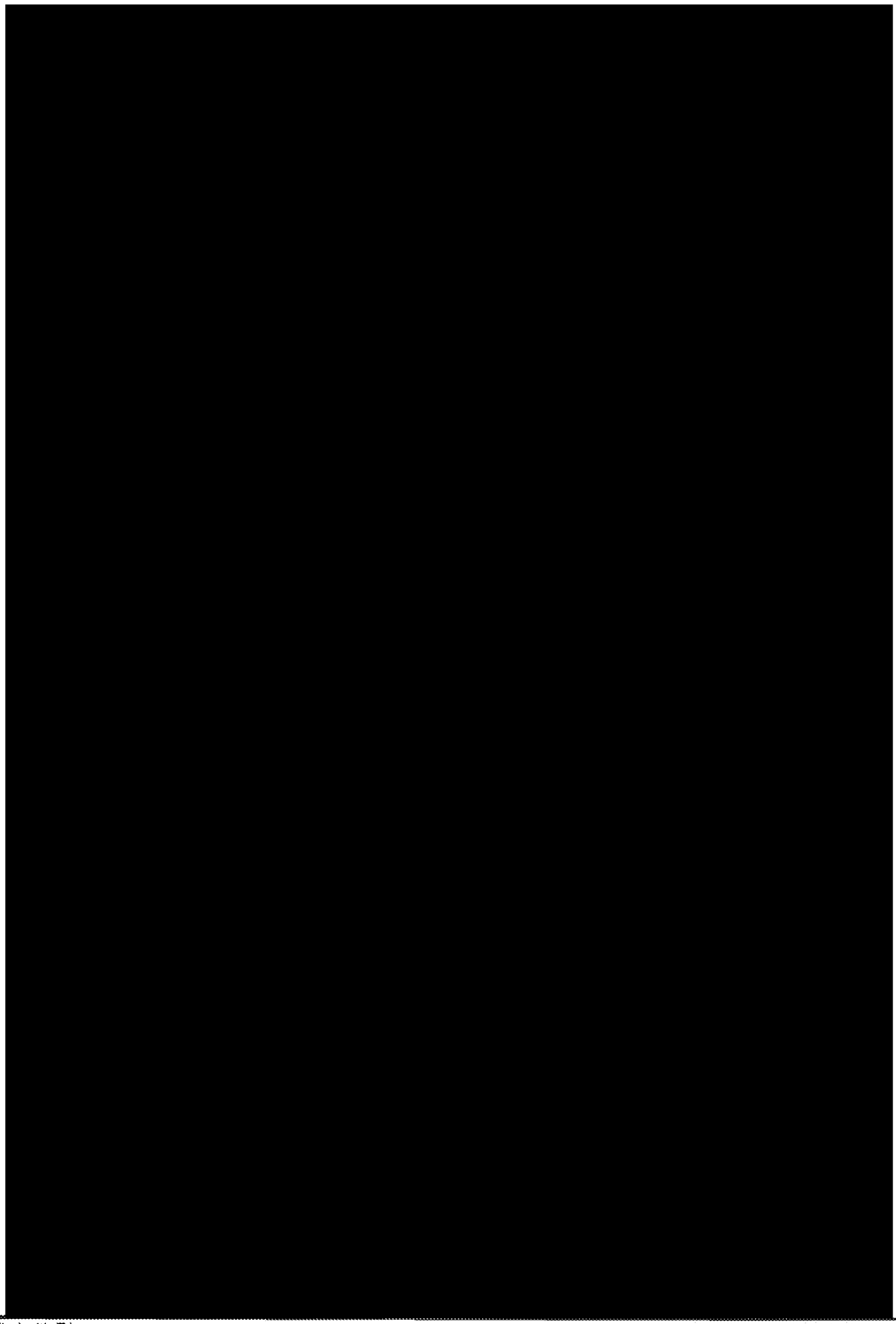

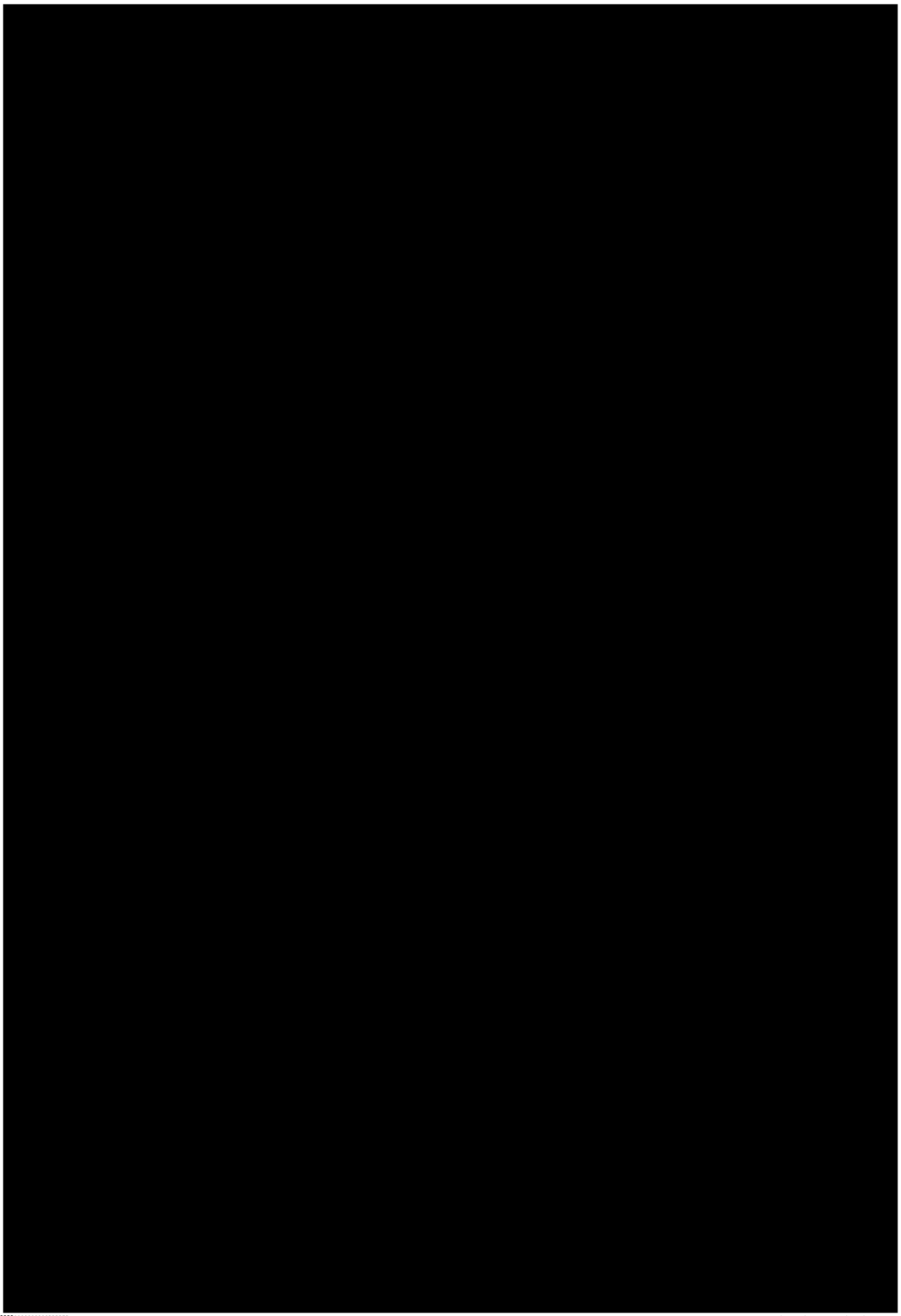

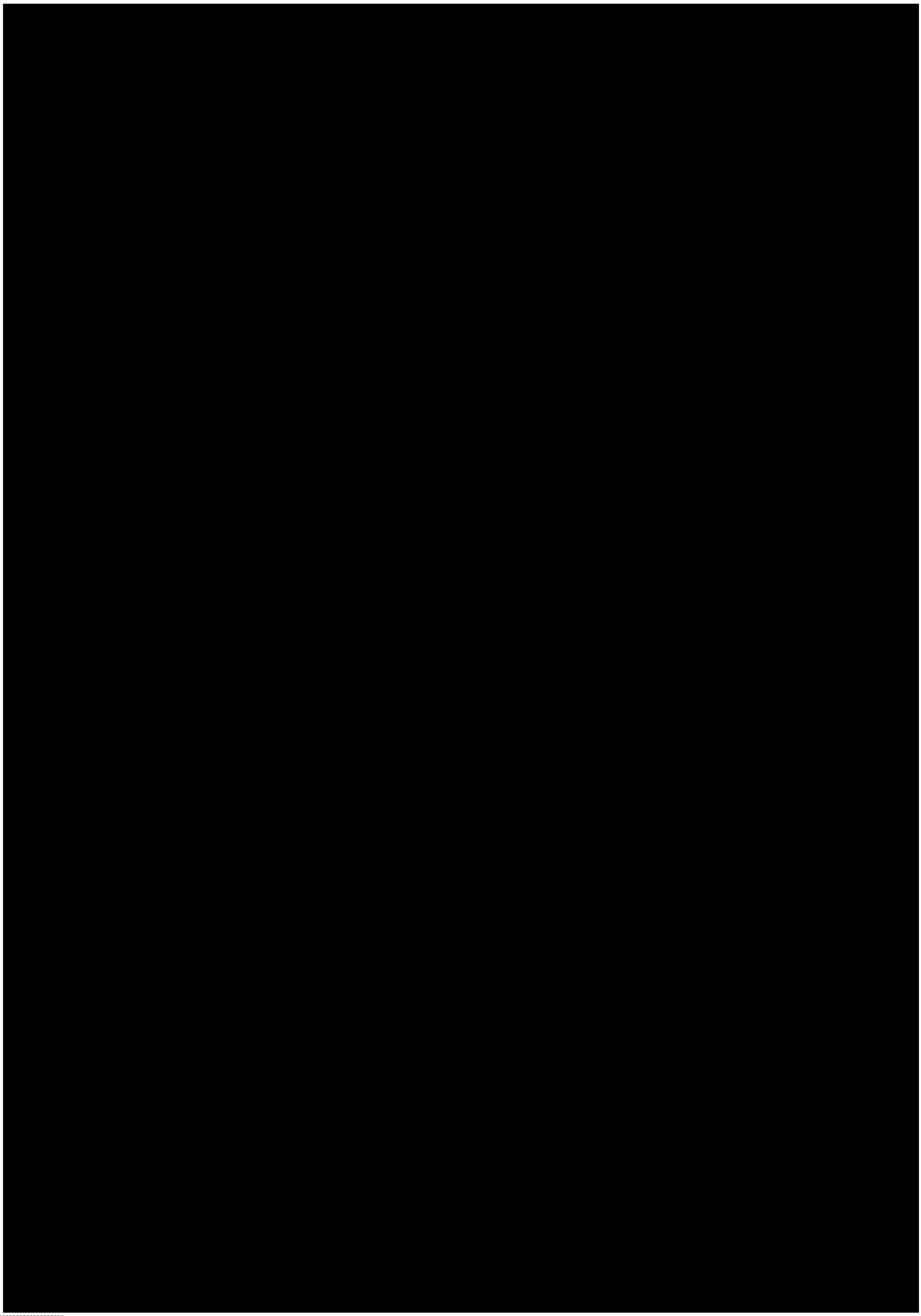

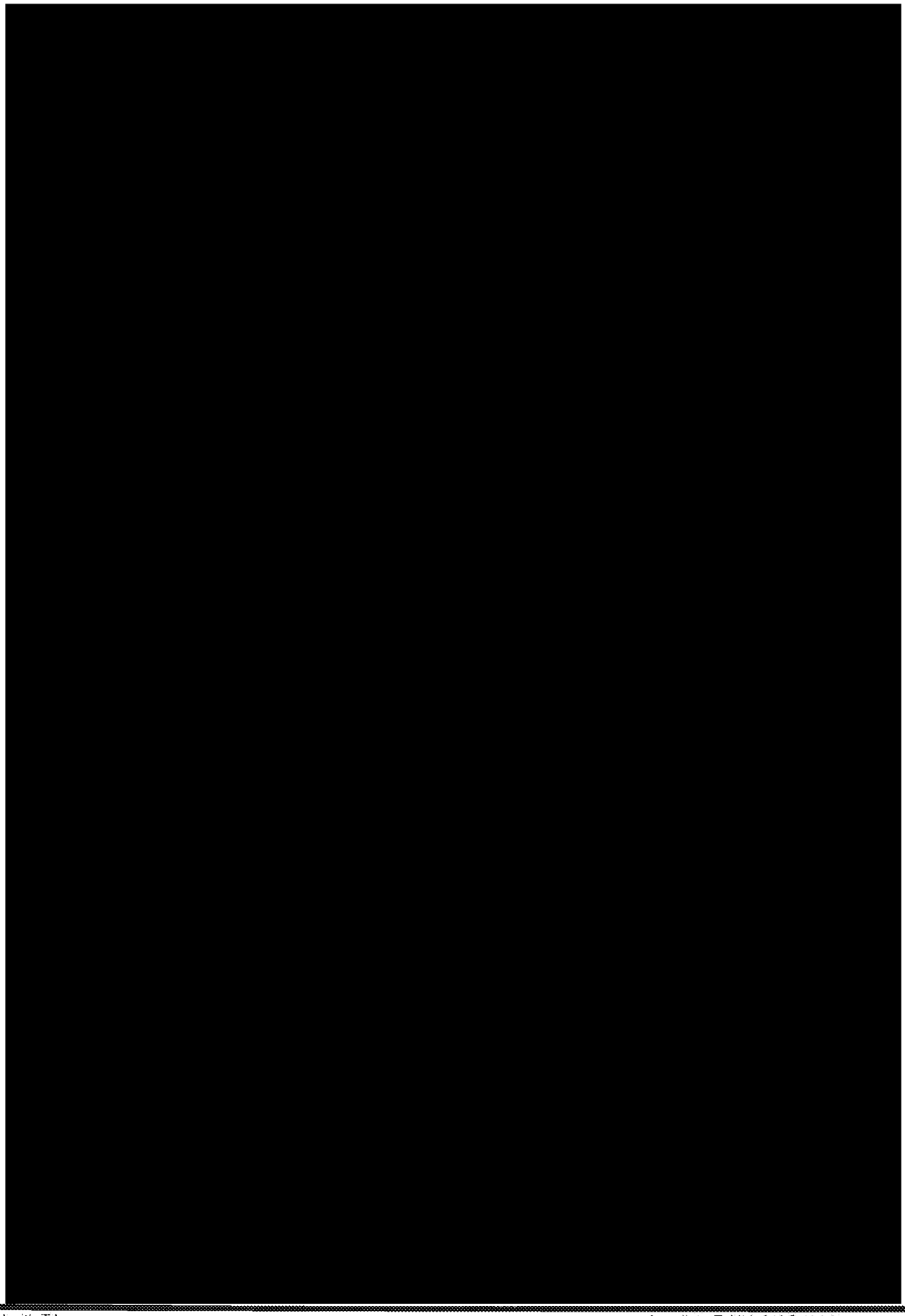

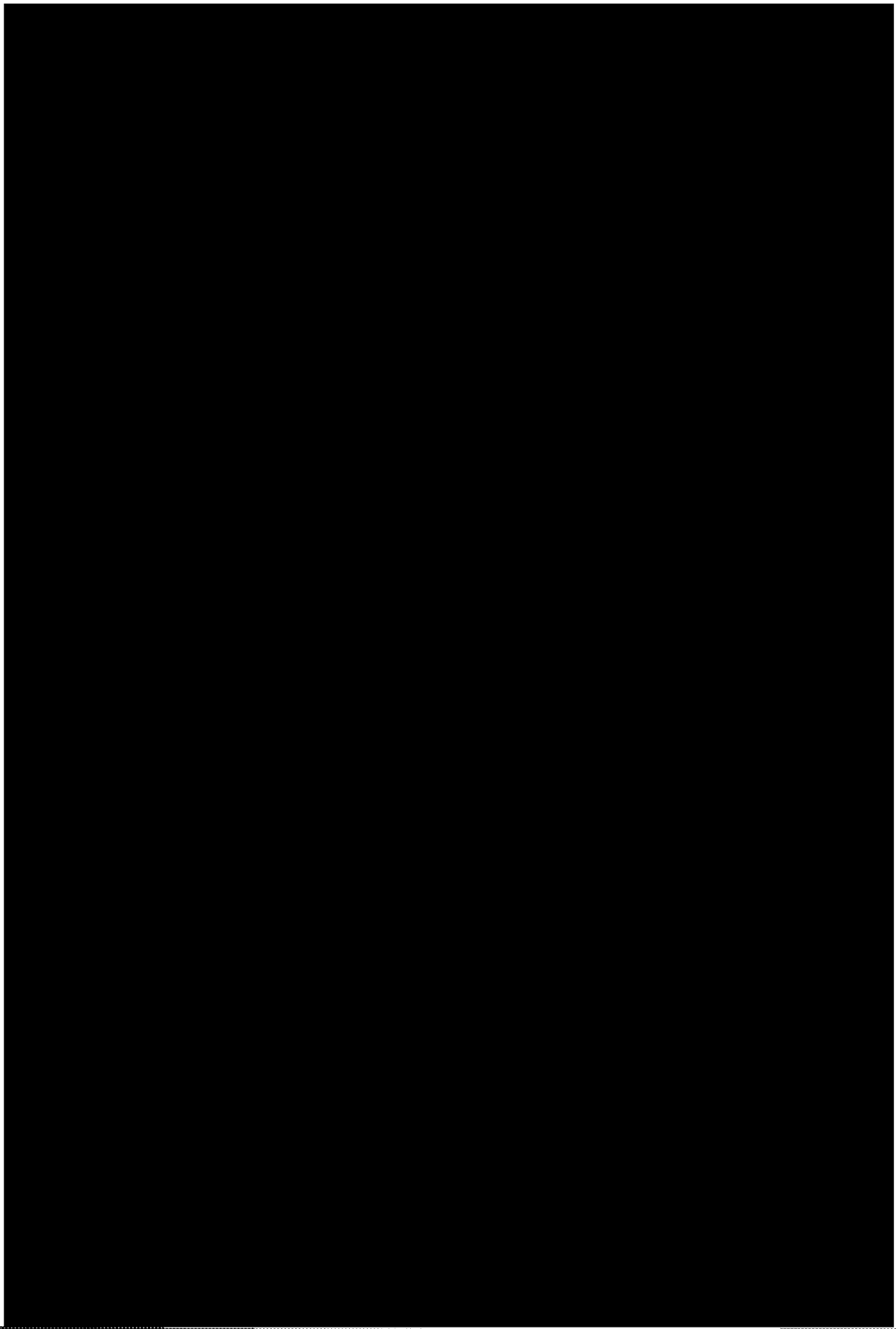

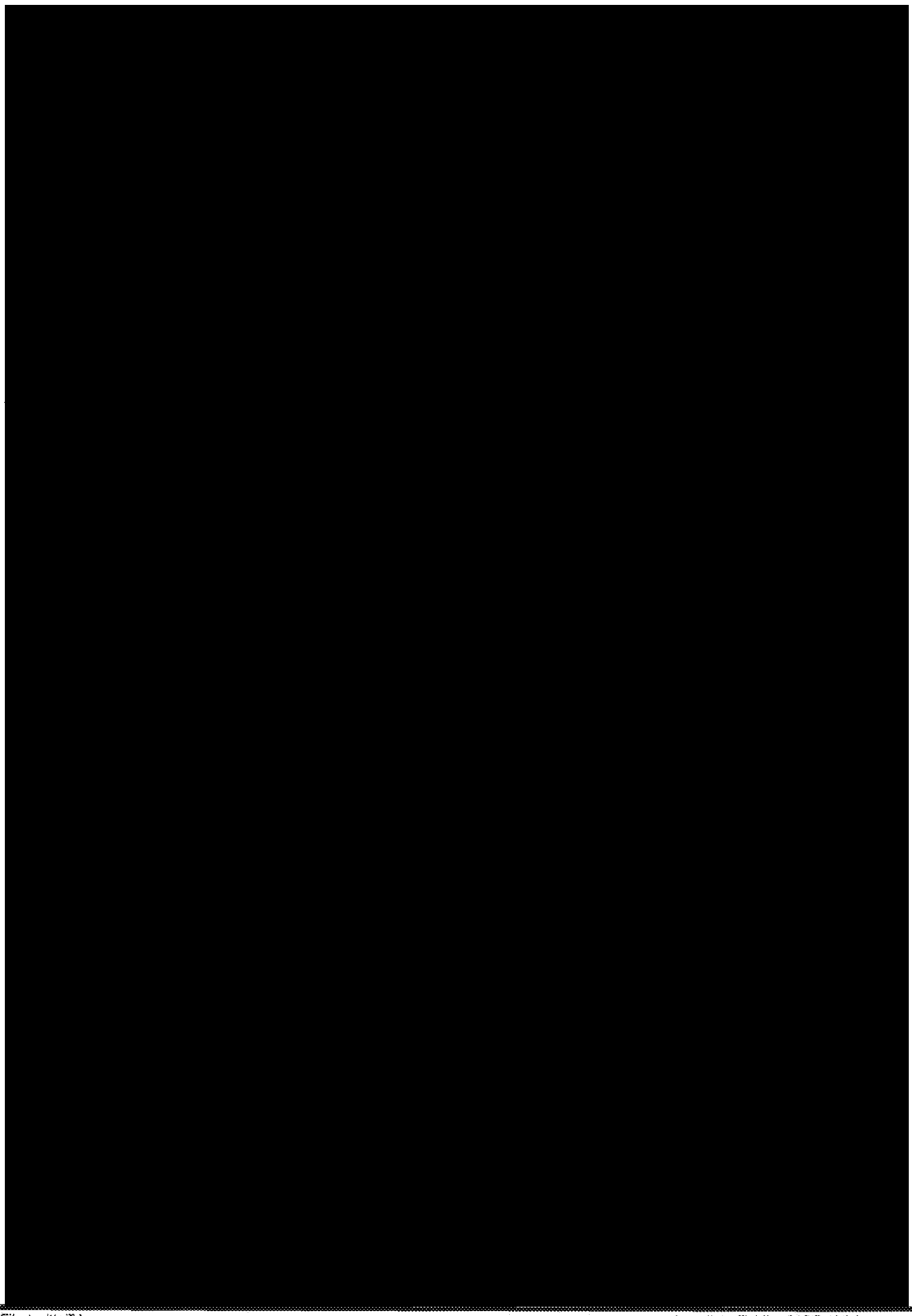

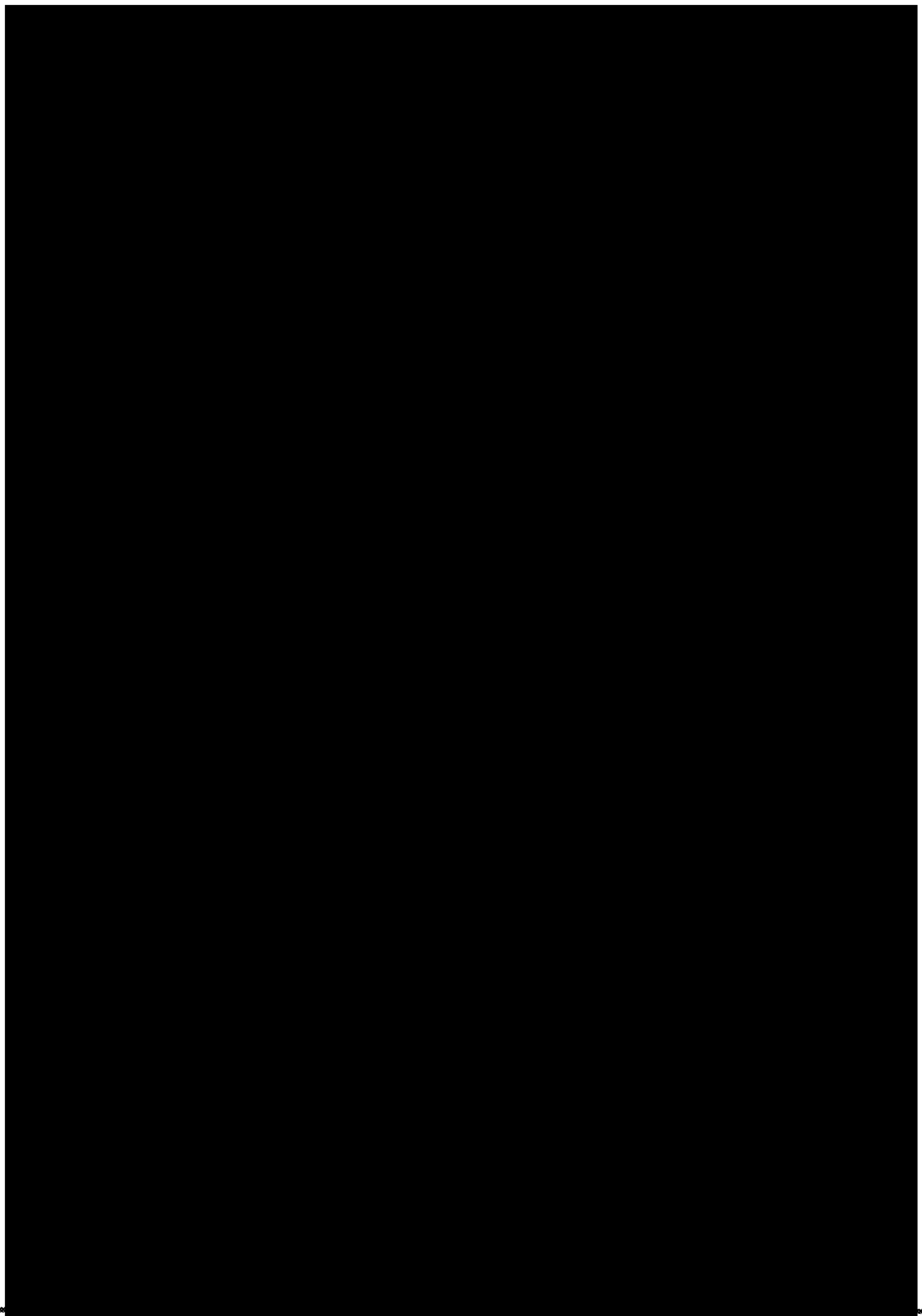

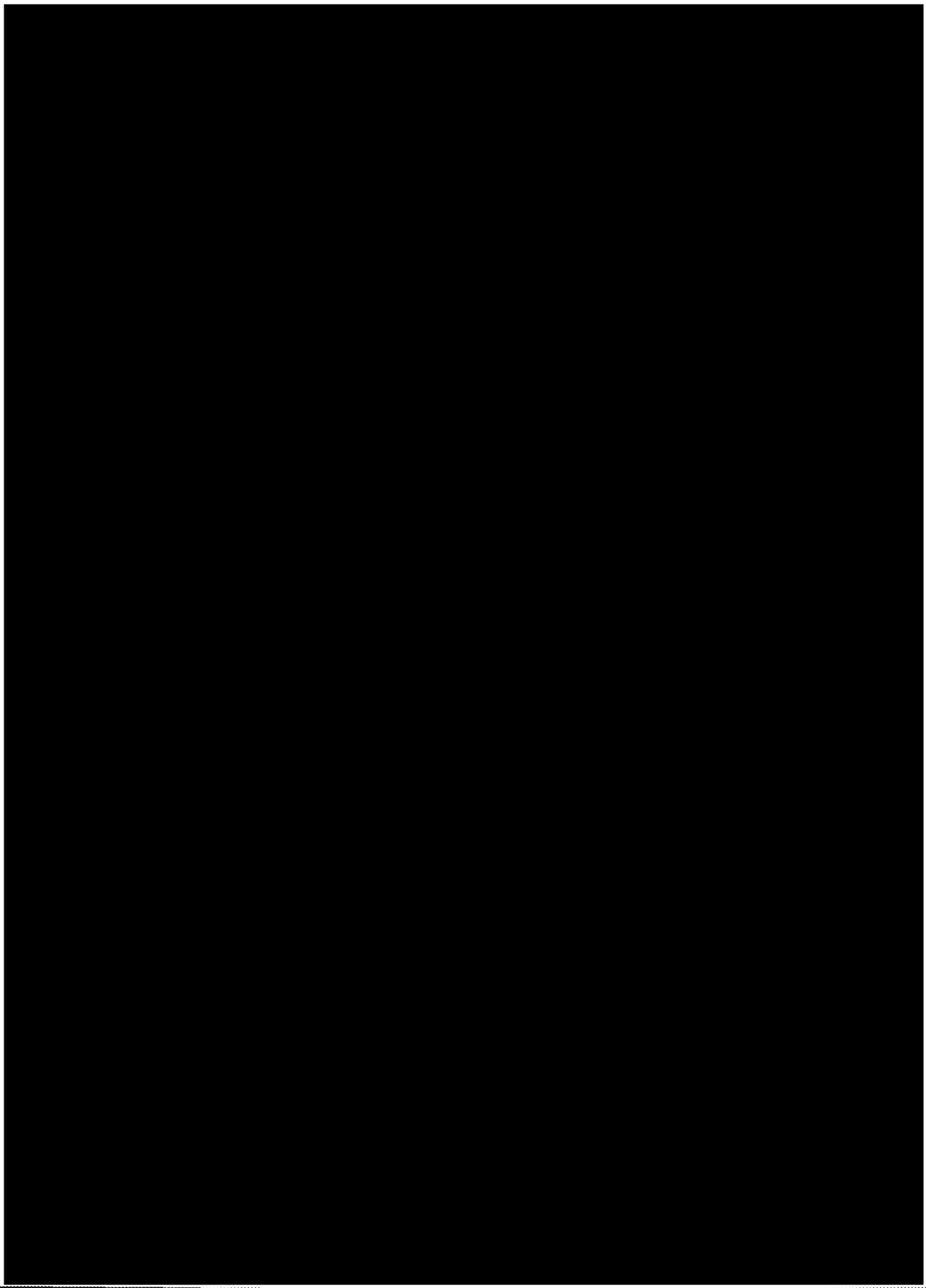

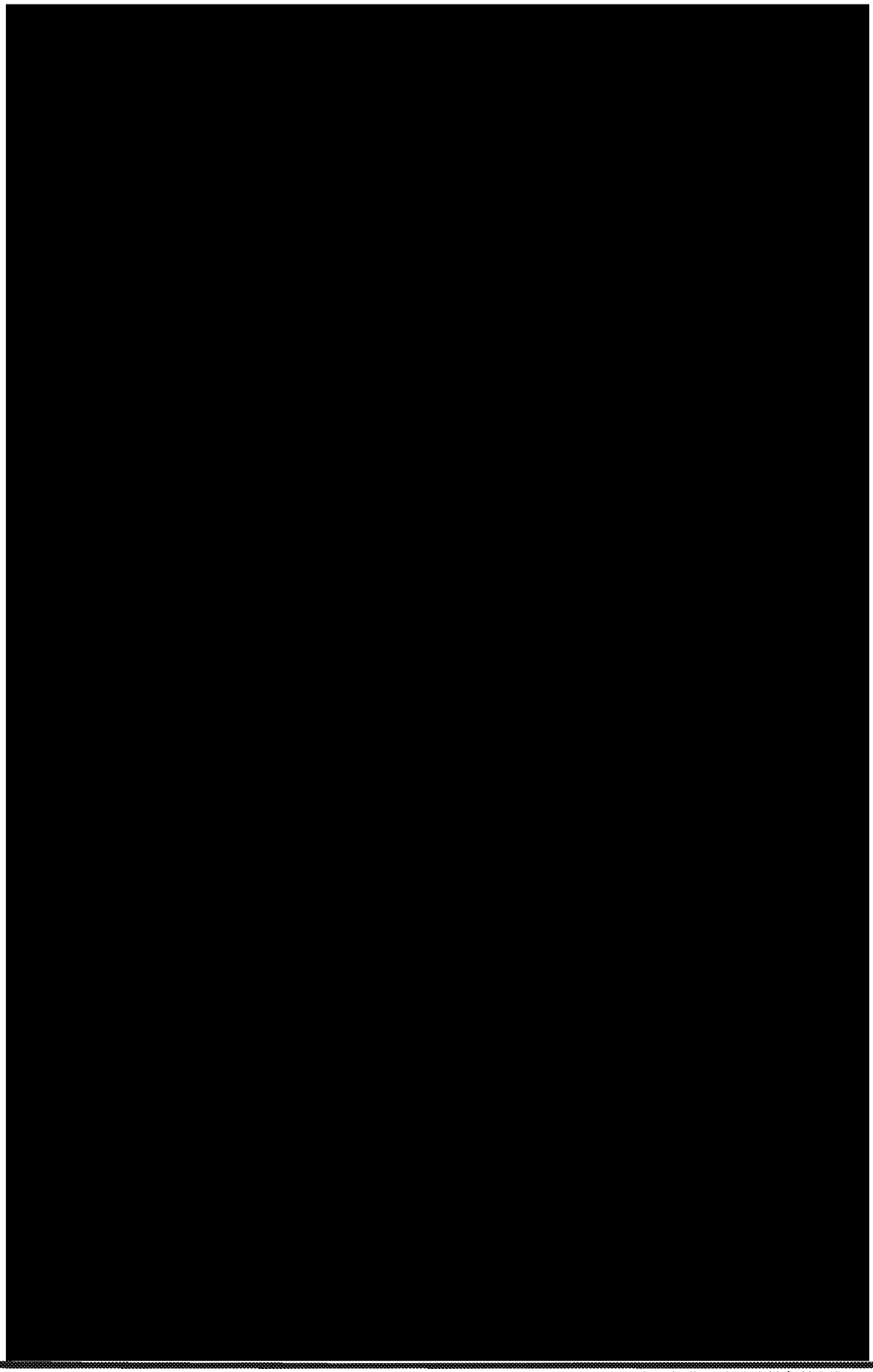

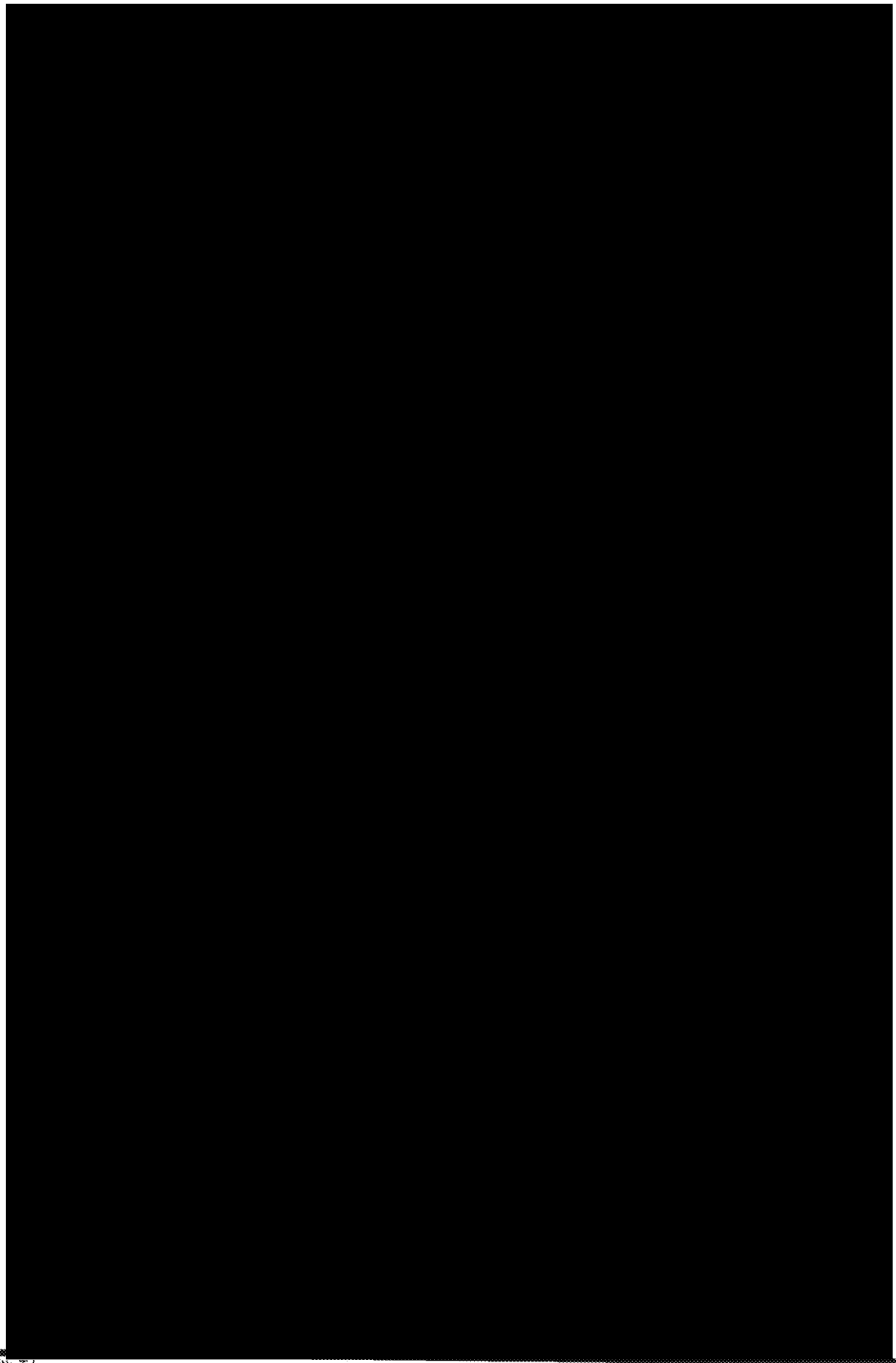

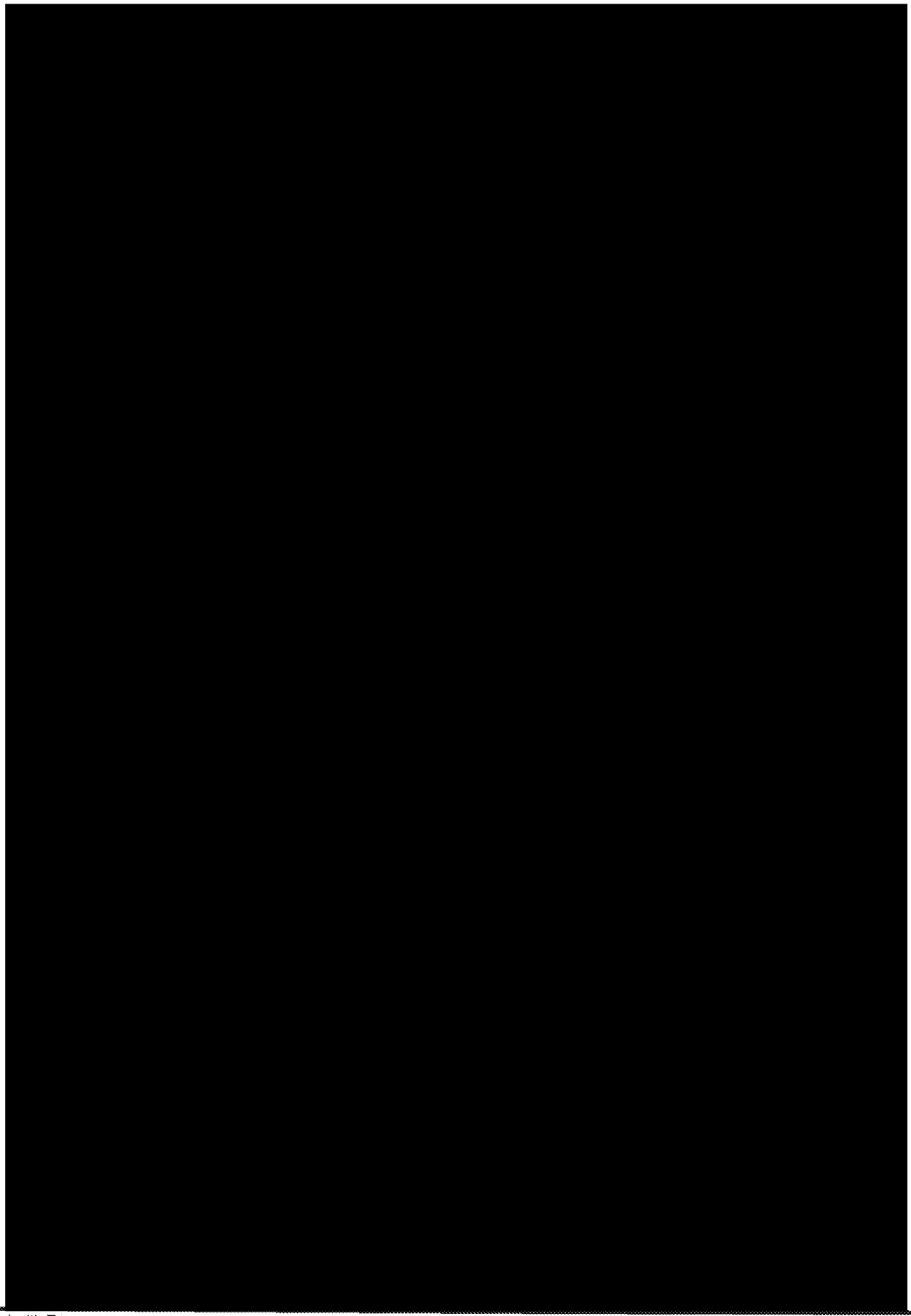

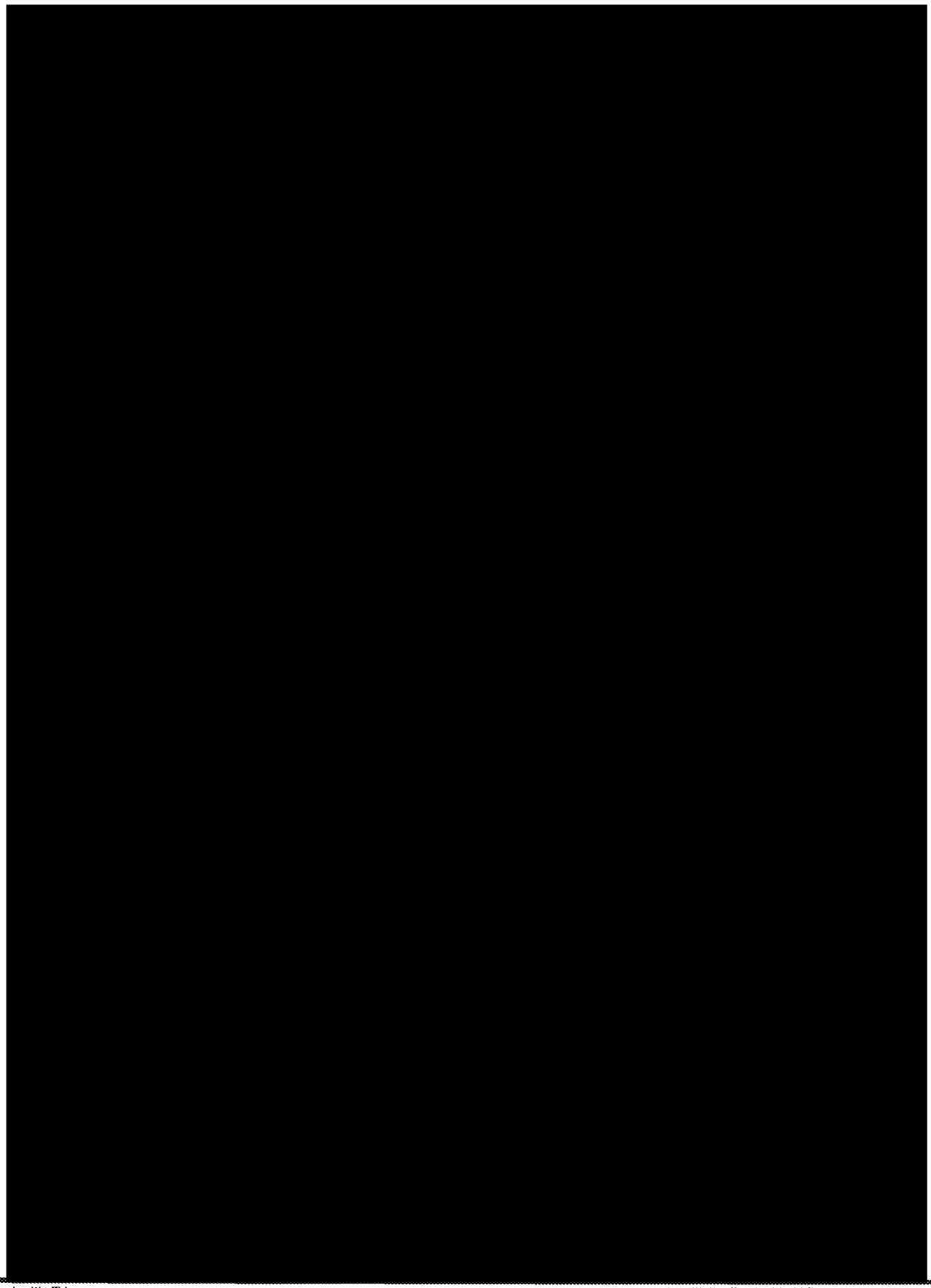

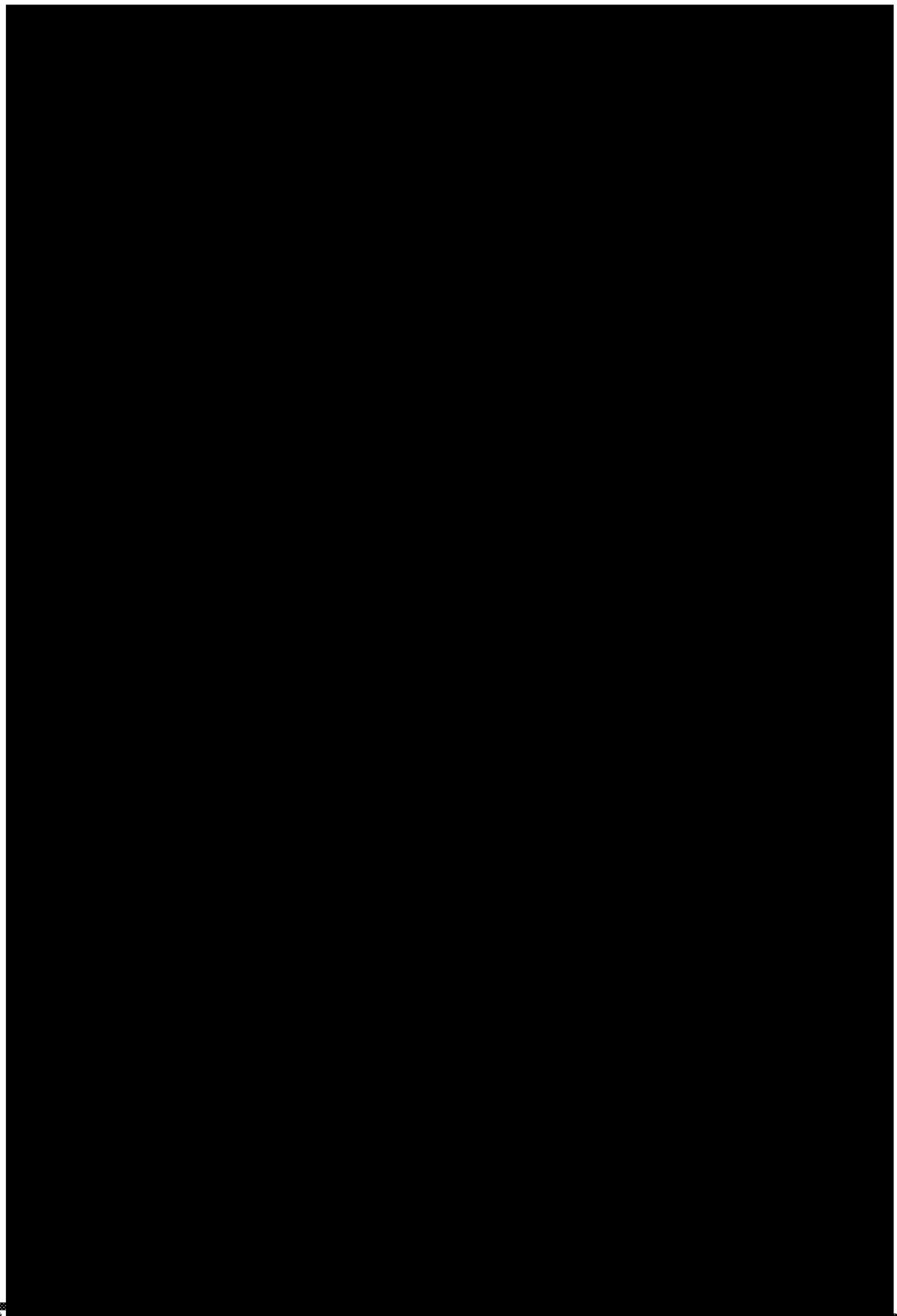

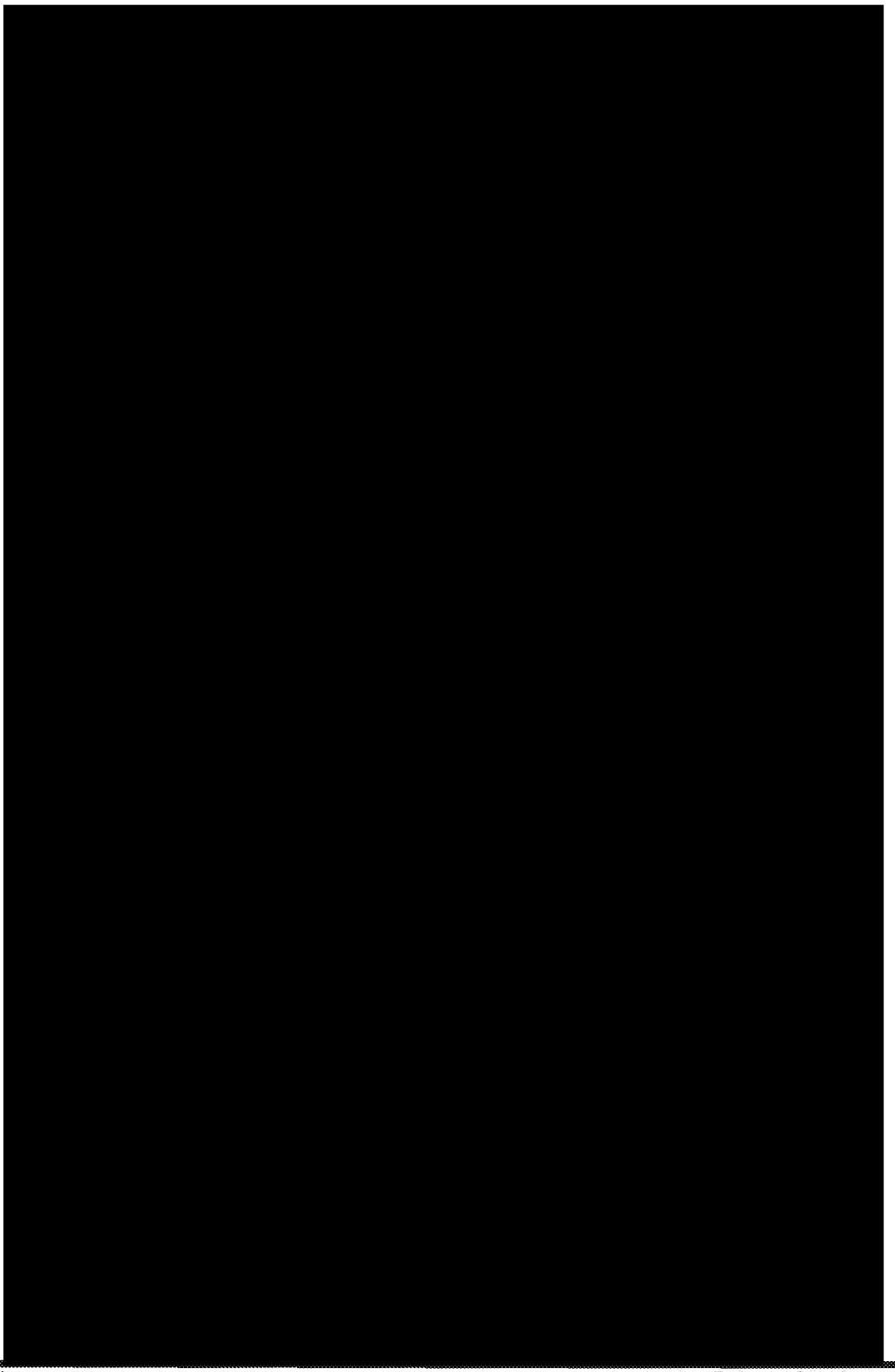

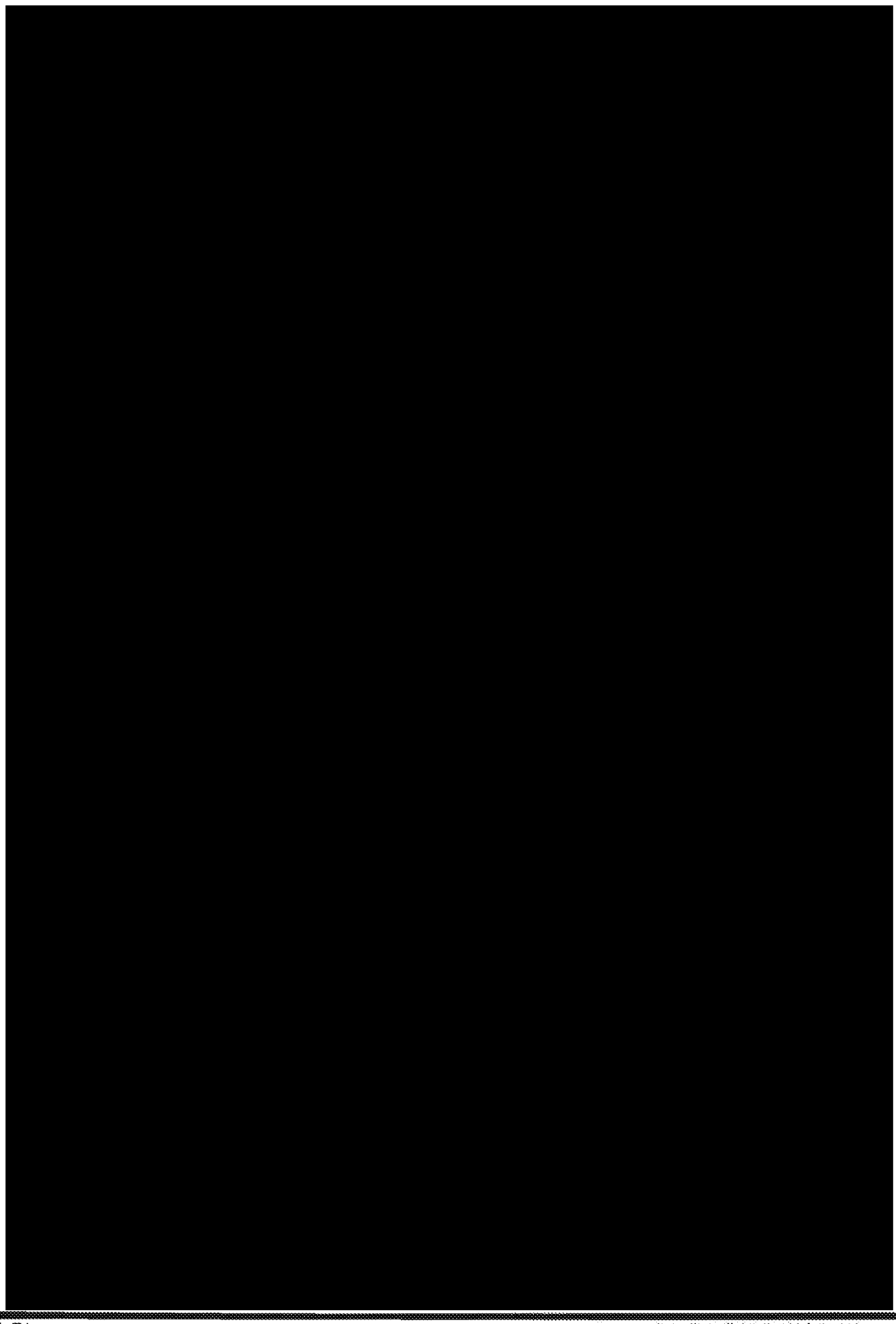

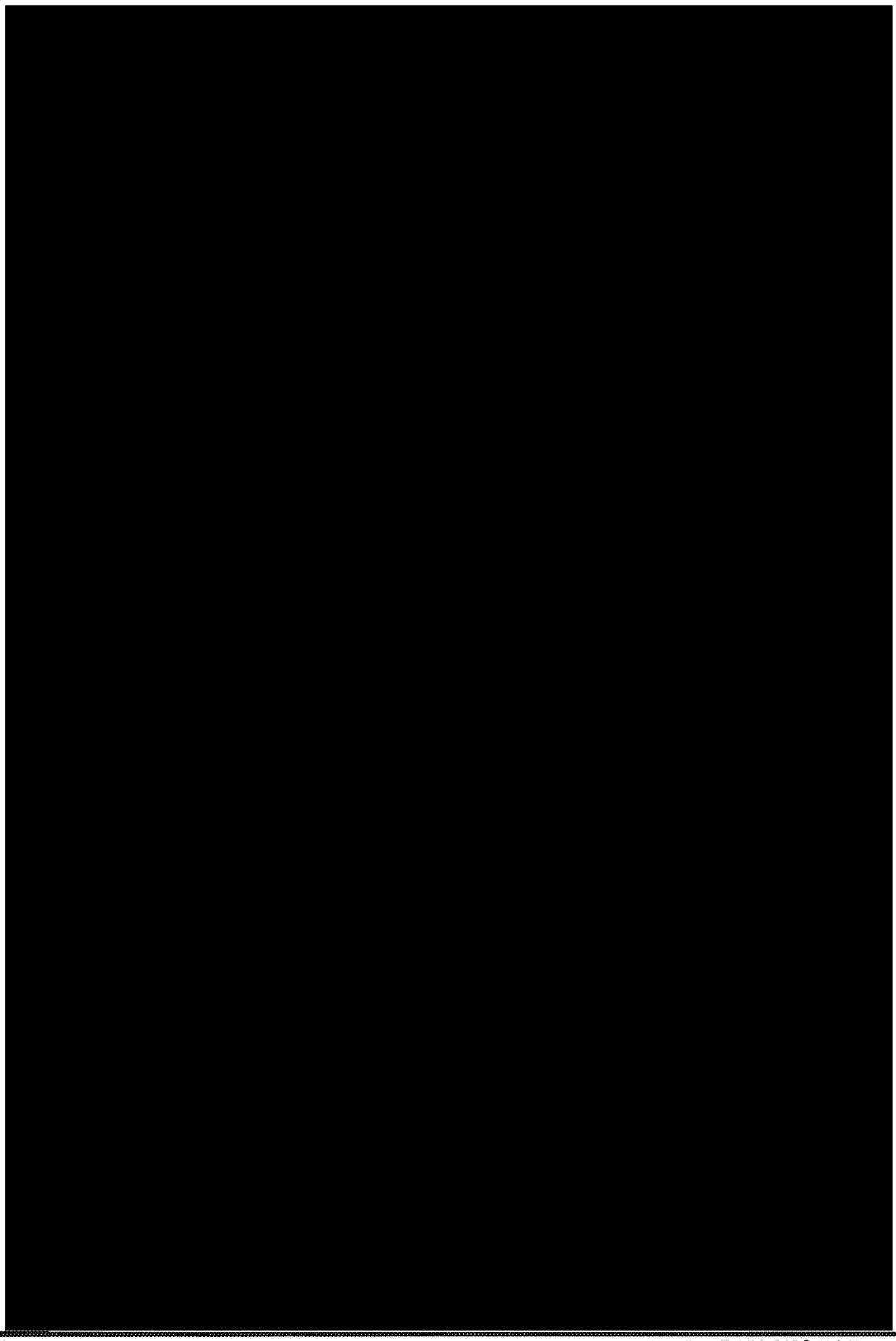

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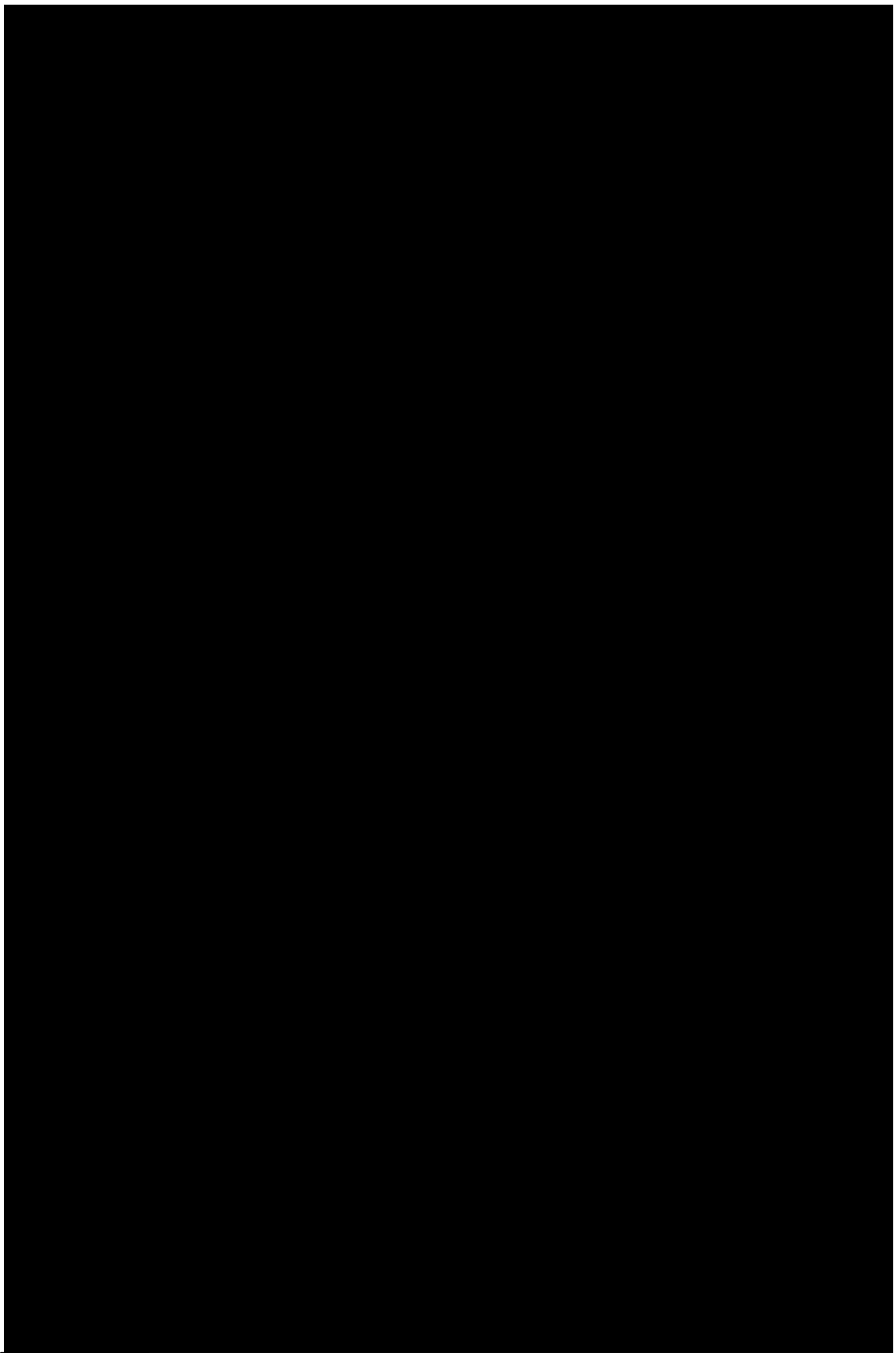

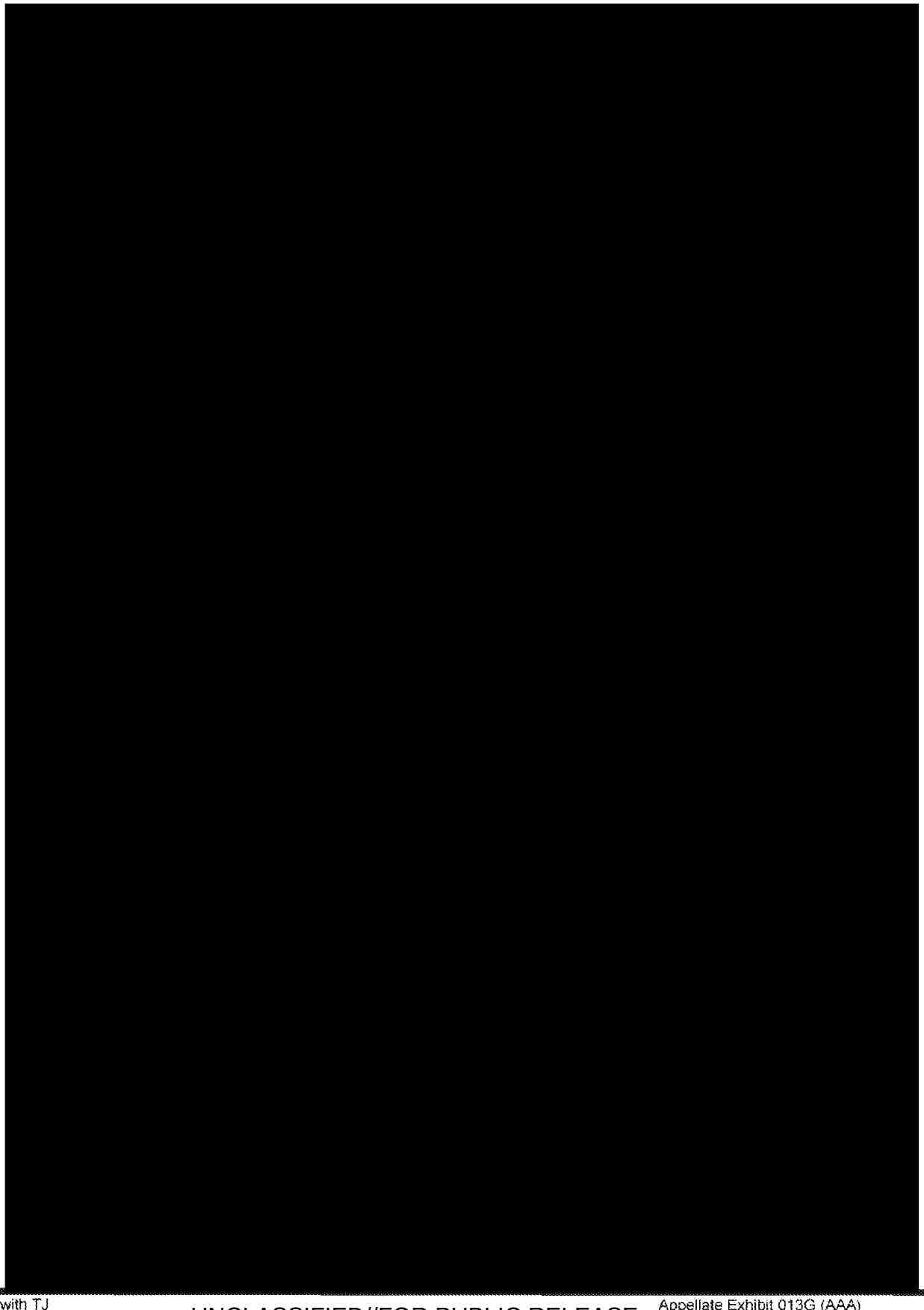

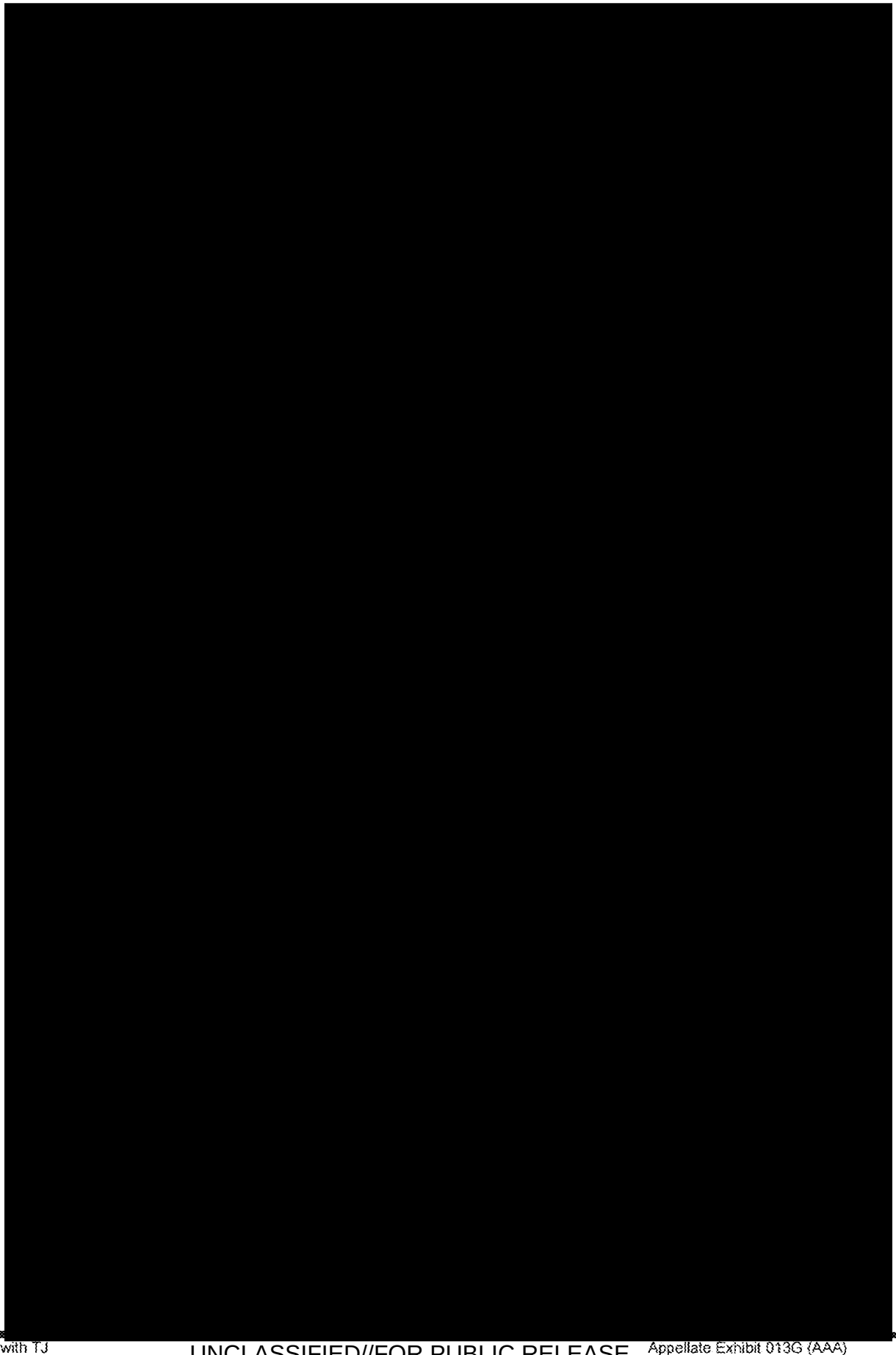

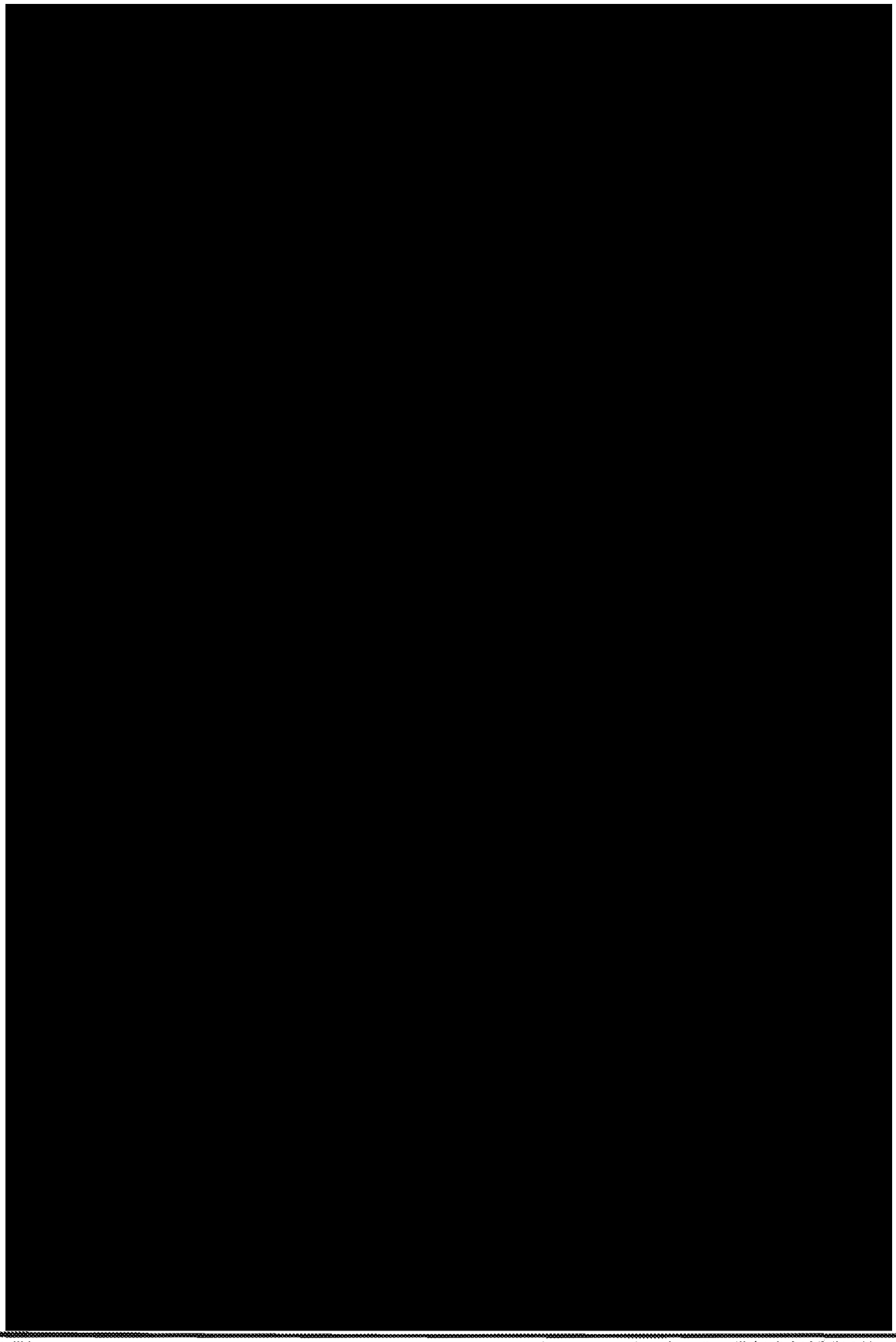

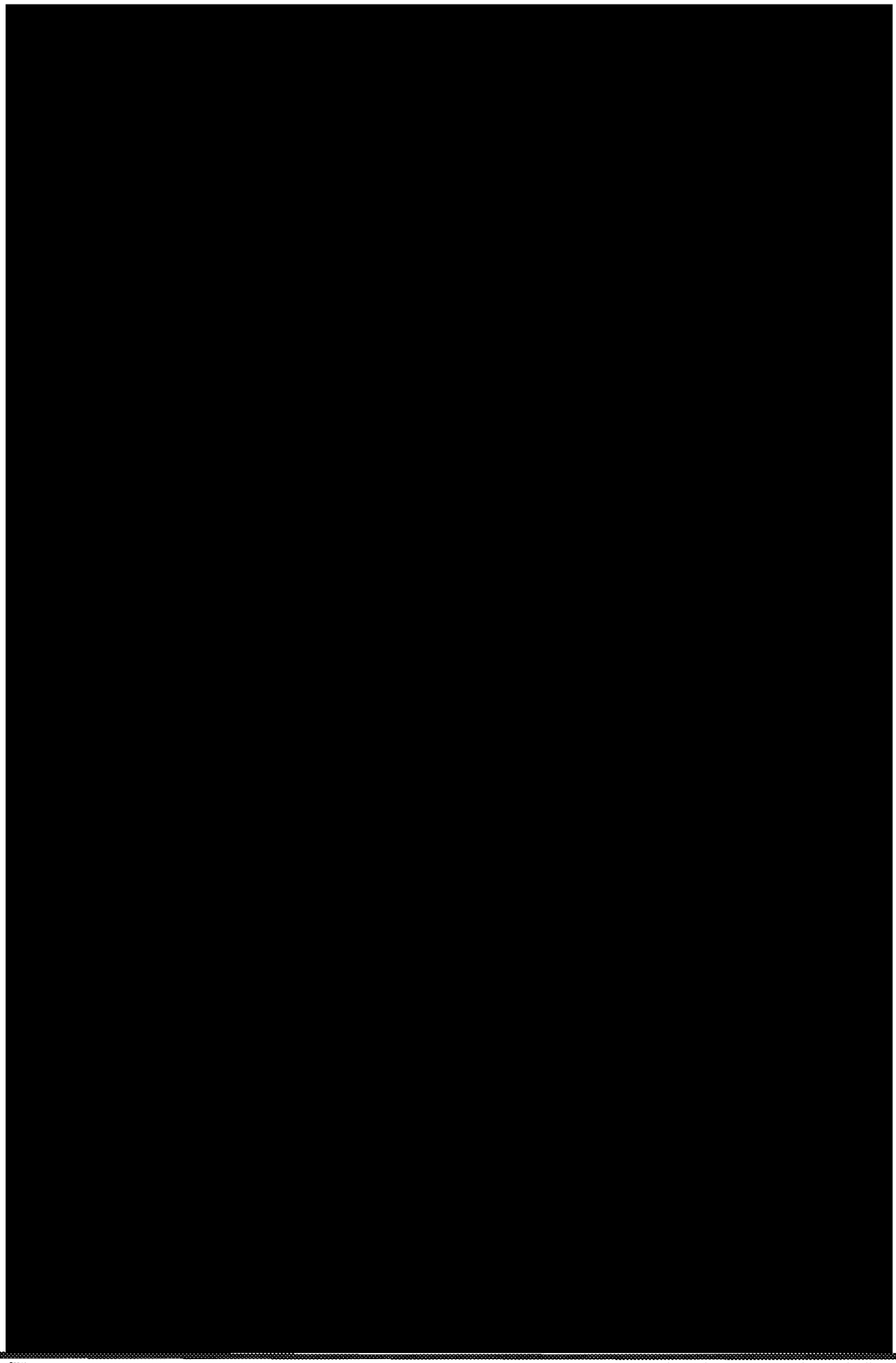

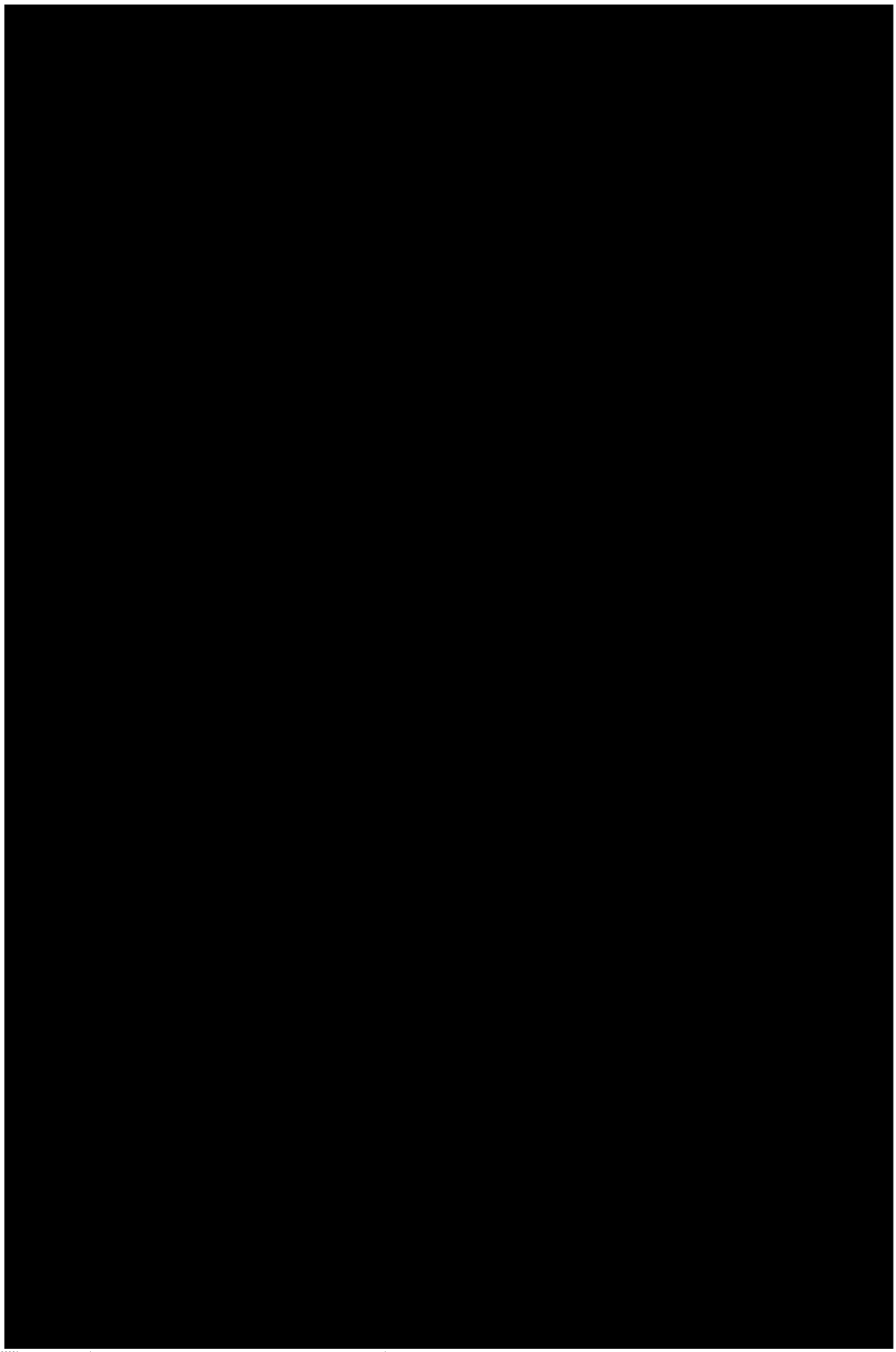

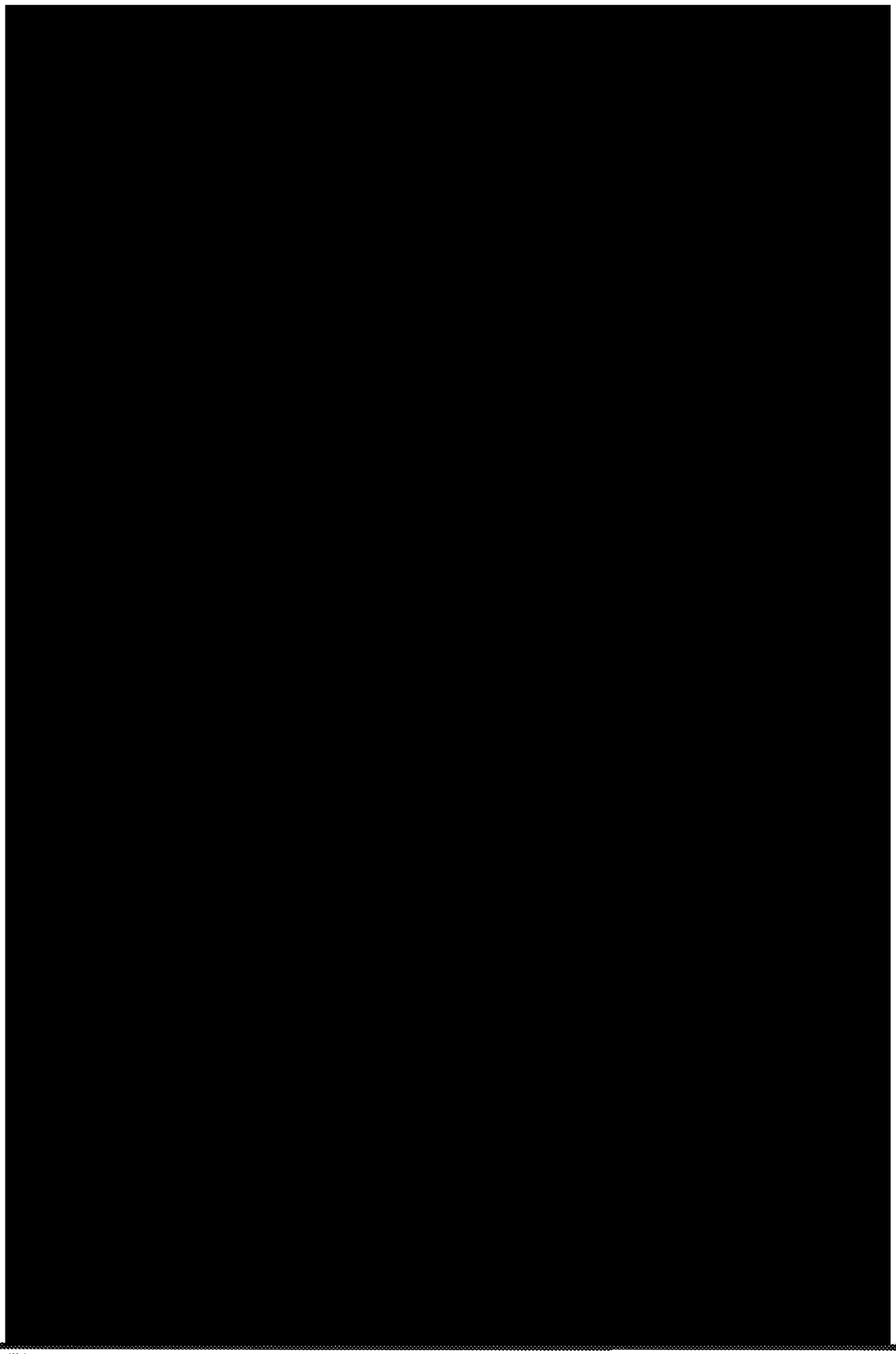

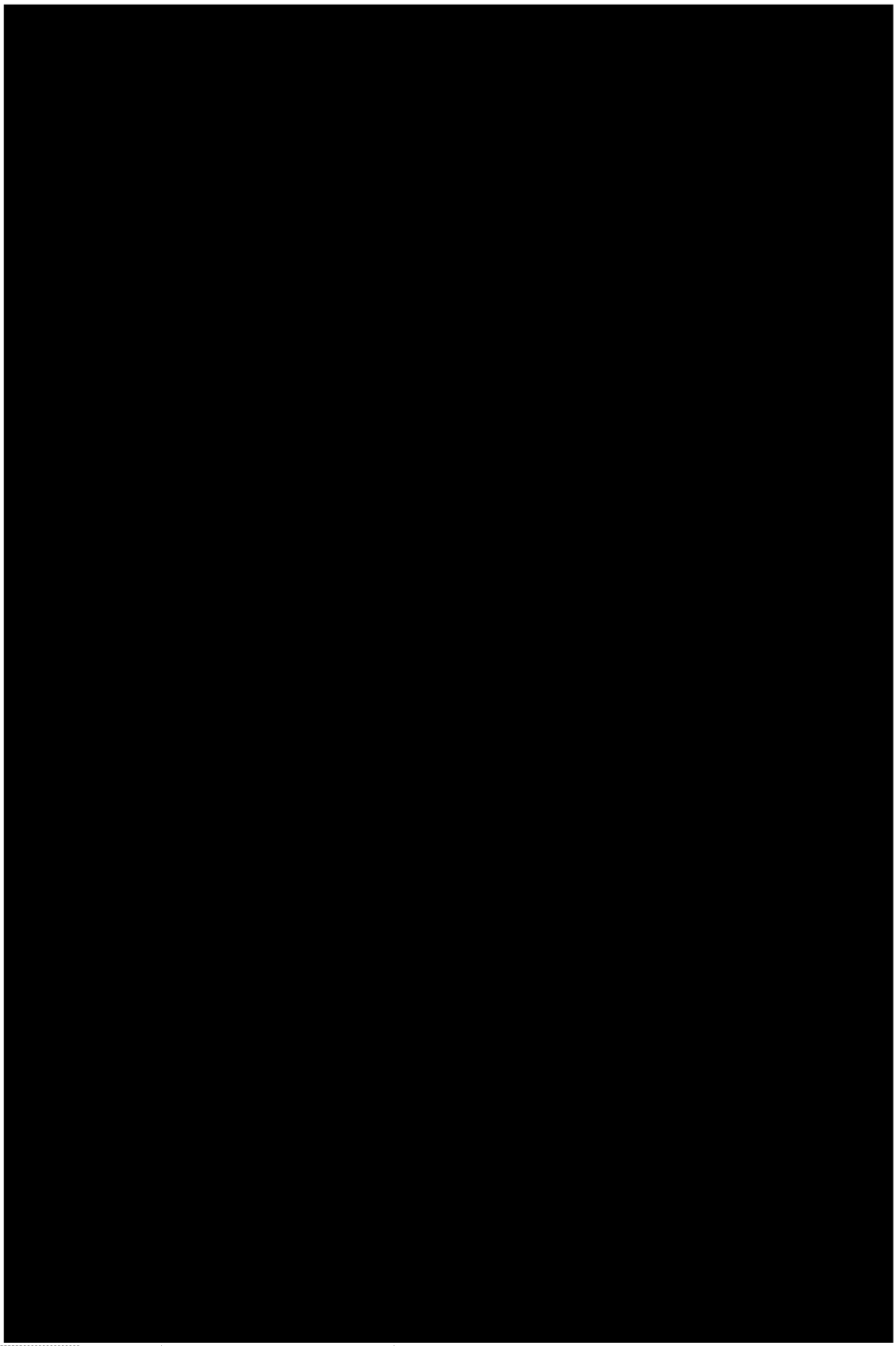

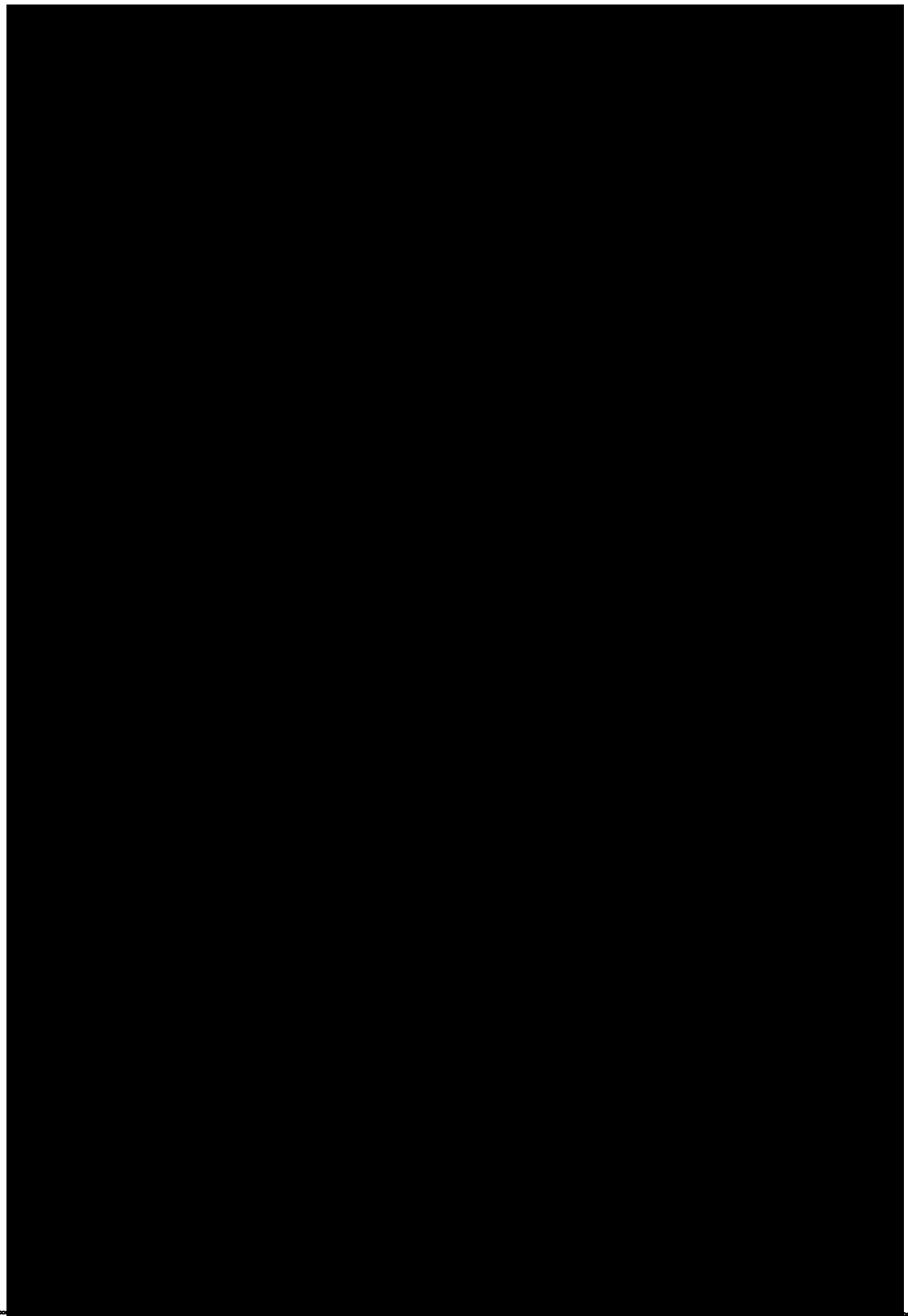

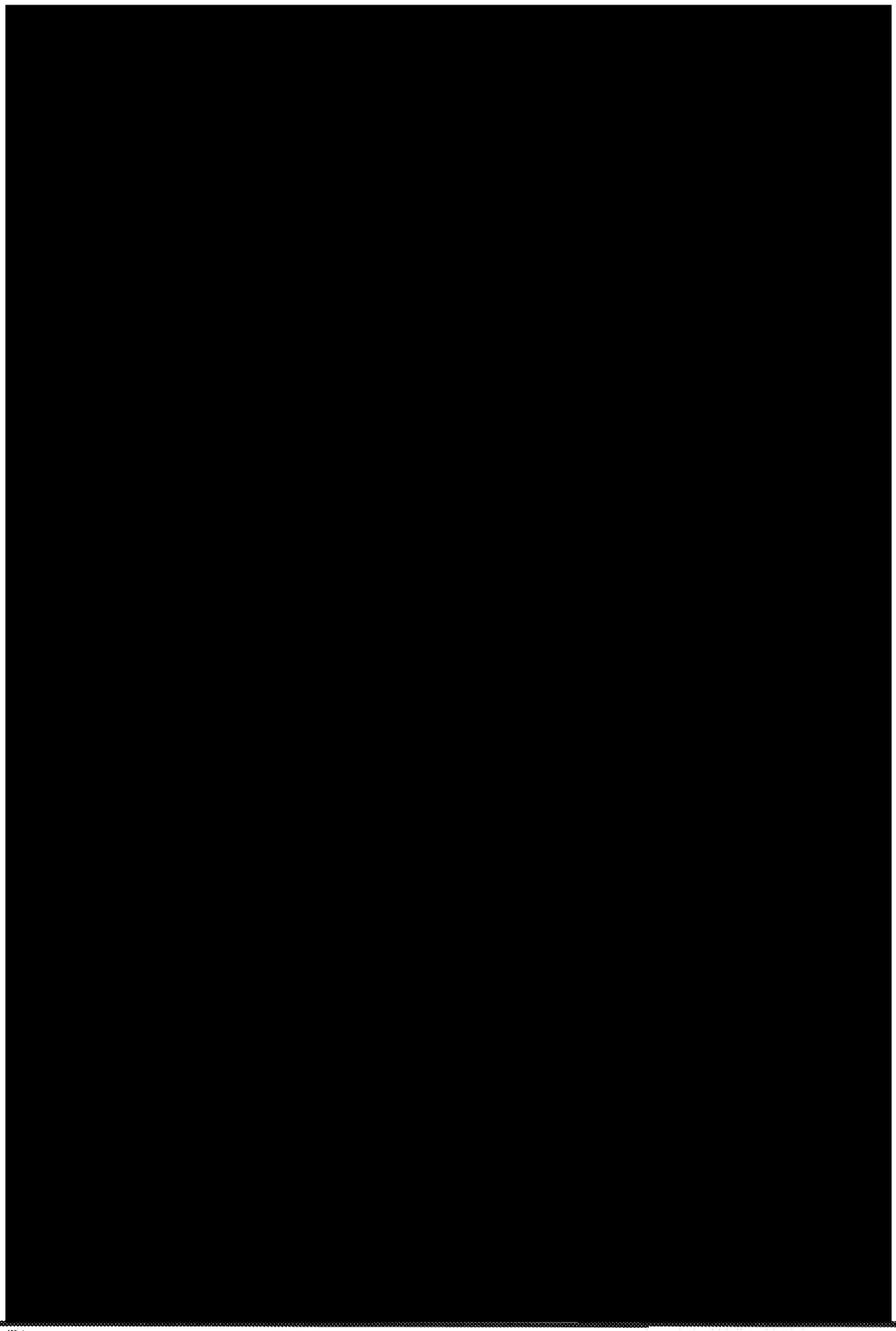

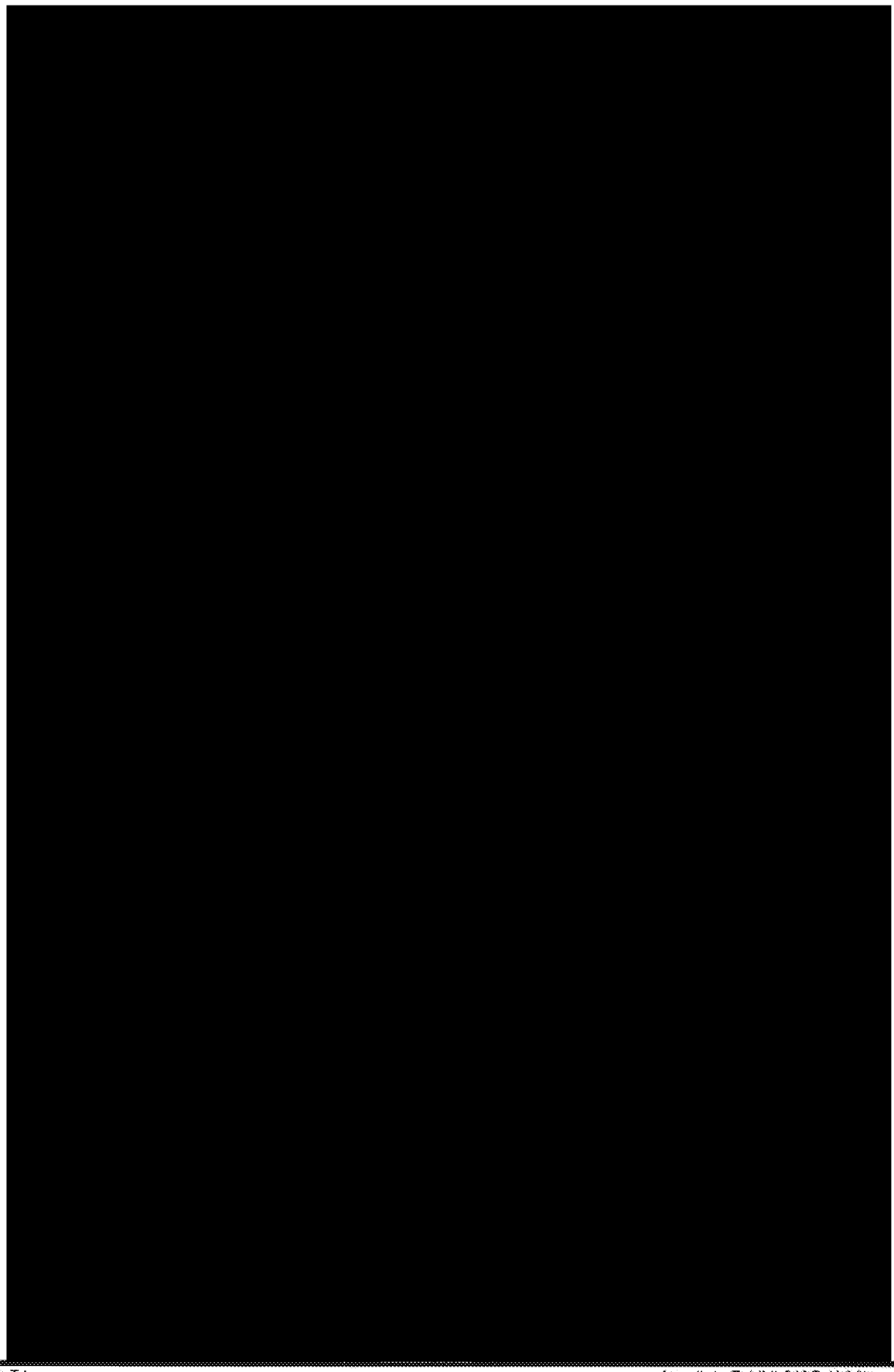

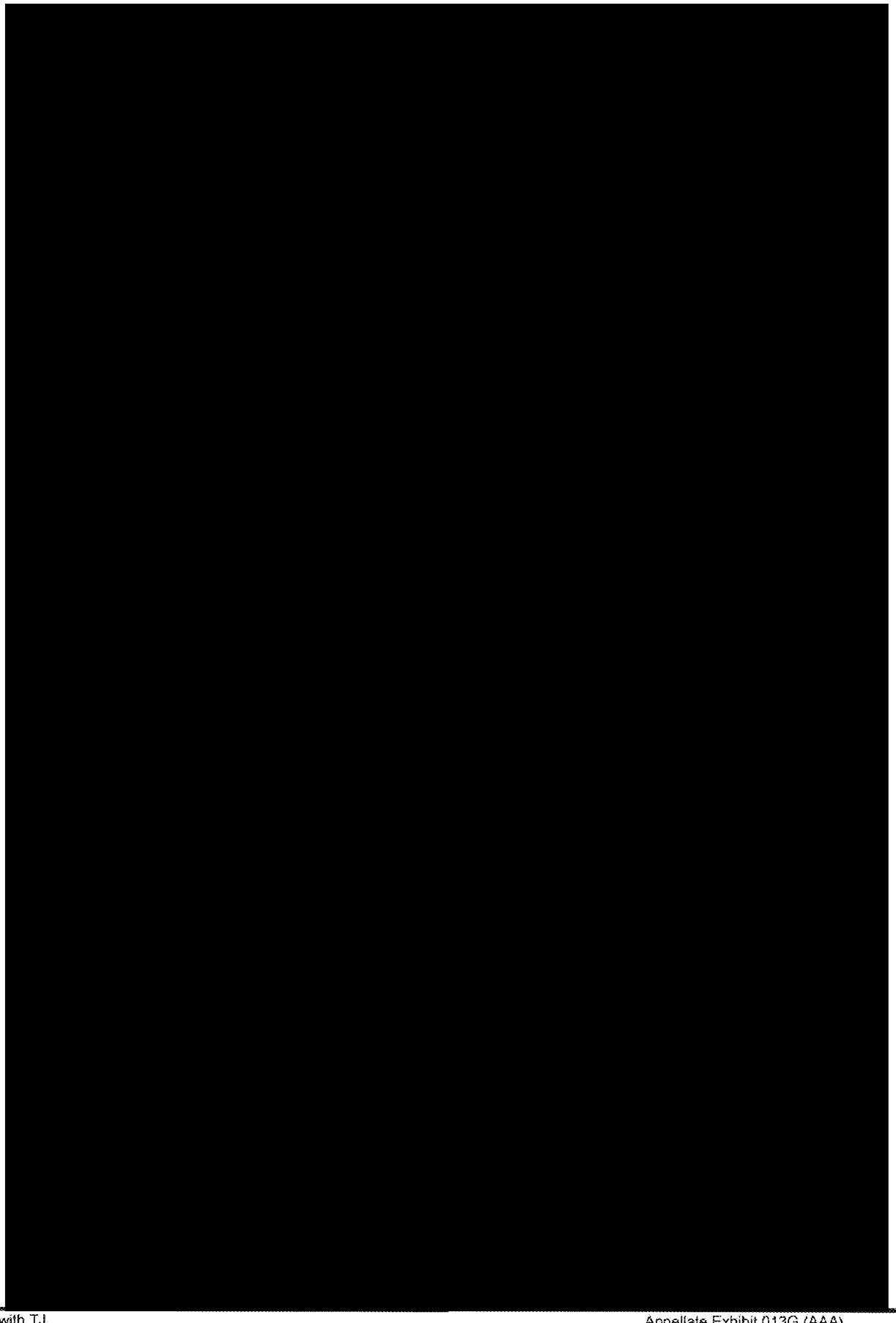

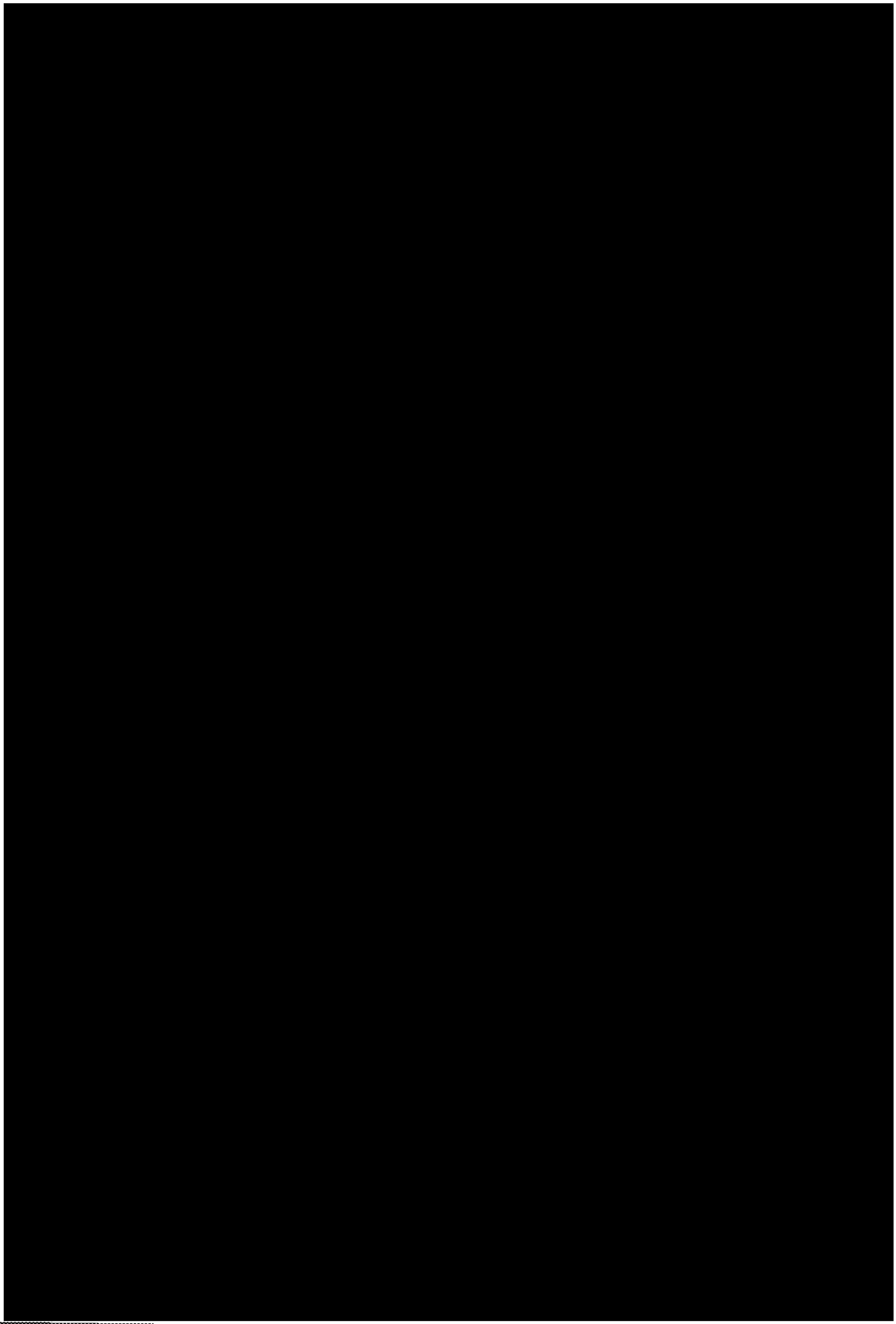

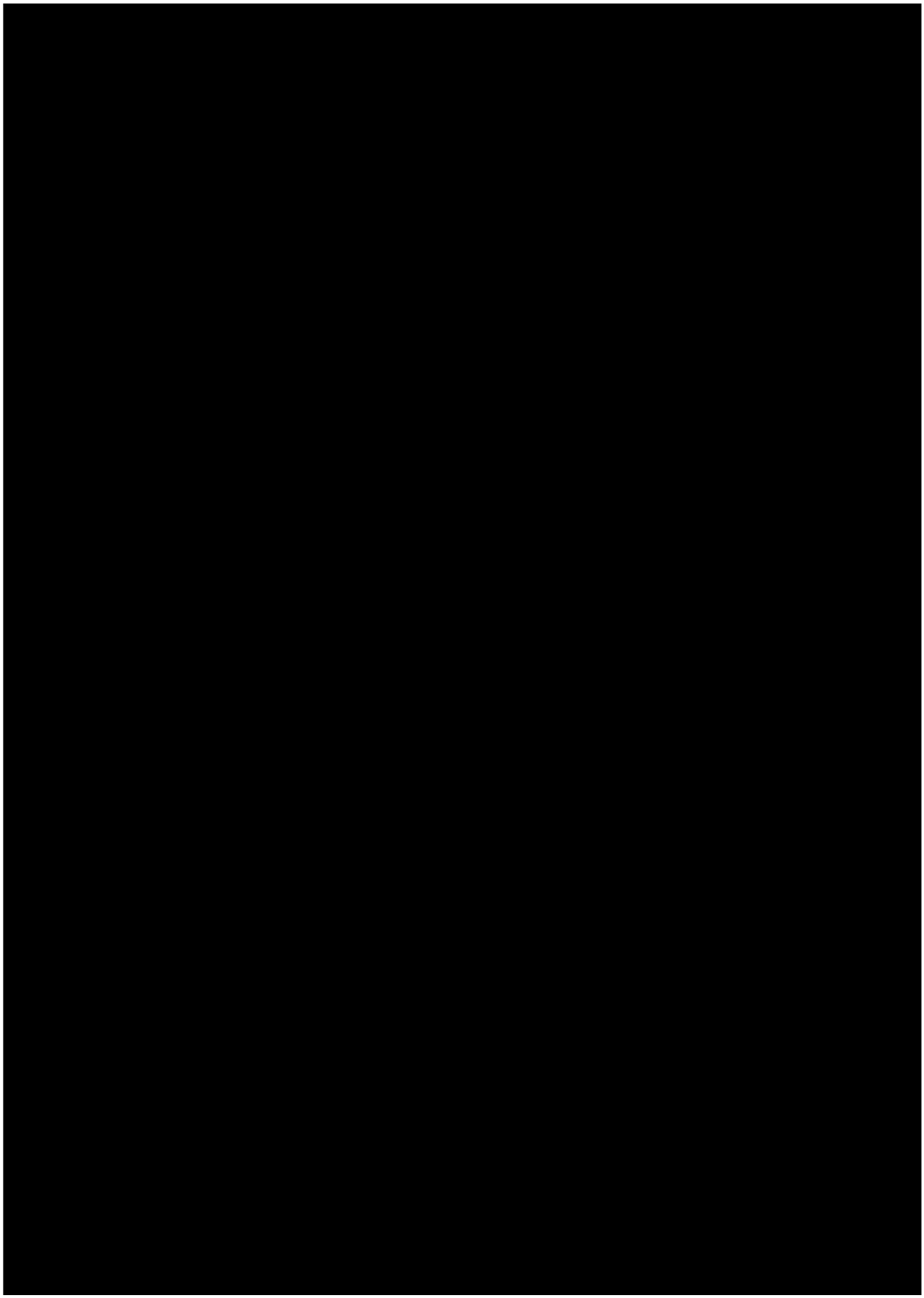

~~TOP SECRET~~ [redacted]

Guidelines on Interrogations Conducted Pursuant to the [redacted]

These Guidelines address the conduct of interrogations of persons who are detained pursuant to the authorities set forth in [redacted]

These Guidelines complement internal Directorate of Operations guidance relating to the conduct of interrogations. In the event of any inconsistency between existing DO guidance and these Guidelines, the provisions of these Guidelines shall control.

1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers and other personnel acting on behalf of CIA may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.

Standard Techniques are techniques that do not incorporate physical or substantial psychological pressure. These techniques include, but are not limited to, all lawful forms of questioning employed by US law enforcement and military interrogation personnel. Among Standard Techniques are the use of isolation, sleep deprivation not to exceed 72 hours, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee), deprivation of reading material, use of loud music or white noise (at a decibel level calculated to avoid damage to the detainee's hearing), and the use of diapers for limited periods (generally not to exceed 72 hours, [redacted]

ALL PORTIONS OF THIS DOCUMENT ARE CLASSIFIED ~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]

[redacted]

Guideline on Interrogations Conducted Pursuant to the [redacted]

Enhanced Techniques are techniques that do incorporate physical or psychological pressure beyond Standard Techniques. The use of each specific Enhanced Technique must be approved by Headquarters in advance, and may be employed only by approved interrogators for use with the specific detainee, with appropriate medical and psychological participation in the process. These techniques are, the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, the use of diapers for prolonged periods, the use of harmless insects, the water board, and such other techniques as may be specifically approved pursuant to paragraph 4 below. The use of each Enhanced Technique is subject to specific temporal, physical, and related conditions, including a competent evaluation of the medical and psychological state of the detainee.

2. Medical and Psychological Personnel

Appropriate medical and psychological personnel shall be [redacted] readily available for consultation and travel to the interrogation site during all detainee interrogations employing Standard Techniques, and appropriate medical and psychological personnel must be on site during all detainee interrogations employing Enhanced Techniques. In each case, the medical and psychological personnel shall suspend the interrogation if they determine that significant and prolonged physical or mental injury, pain, or suffering is likely to result if the interrogation is not suspended. In any such instance, the interrogation team shall immediately report the facts to Headquarters for management and legal review to determine whether the interrogation may be resumed.

3. Interrogation Personnel

The Director, DCI Counterterrorist Center shall ensure that all personnel directly engaged in the interrogation of persons detained pursuant [redacted] have been appropriately screened (from the medical, psychological, and security standpoints), have reviewed these Guidelines, have received appropriate training in their implementation, and have completed the attached Acknowledgment.

[redacted]

~~TOP SECRET~~ [redacted]

Guideline on Interrogations Conducted Pursuant to the [redacted]

4. Approvals Required

Whenever feasible, advance approval is required for the use of Standard Techniques by an interrogation team. In all instances, their use shall be documented in cable traffic. Prior approval in writing (e.g., by written memorandum or in cable traffic) from the Director, DCI Counterterrorist Center, with the concurrence of the Chief, CTC Legal Group, is required for the use of any Enhanced Technique(s), and may be provided only where D/CTC has determined that (a) the specific detainee is believed to possess information about risks to the citizens of the United States or other nations, (b) the use of the Enhanced Technique(s) is appropriate in order to obtain that information, (c) appropriate medical and psychological personnel have concluded that the use of the Enhanced Technique(s) is not expected to produce "severe physical or mental pain or suffering," and (d) the personnel authorized to employ the Enhanced Technique(s) have completed the attached Acknowledgment. Nothing in these Guidelines alters the right to act in self-defense.

5. Recordkeeping

In each interrogation session in which an Enhanced Technique is employed, a contemporaneous record shall be created setting forth the nature and duration of each such technique employed, the identities of those present, and a citation to the required Headquarters approval cable. This information, which may be in the form of a cable, shall be provided to Headquarters.

APPROVED:

George J. Tenet
Director of Central Intelligence

January 28, 2003
Date

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]

Guidelines on Interrogations Conducted Pursuant to the [redacted]

ACKNOWLEDGMENT

I, _____, acknowledge that I have read and understand and will comply with the "Guidelines on Interrogations Conducted Pursuant to [redacted]" of _____, 2003.

ACKNOWLEDGED:

_____ _____

Name Date

~~TOP SECRET~~ [redacted]

Guidelines on Confinement Conditions For CIA Detainees

These Guidelines govern the conditions of confinement for CIA Detainees, who are persons detained in detention facilities that are under the [redacted] control of CIA ("Detention Facilities"). [redacted] These Guidelines recognize that environmental and other conditions, as well as particularized considerations affecting any given Detention Facility, will vary from case to case and location to location.

1. Minimums

Due provision must be taken to protect the health and safety of all CIA Detainees, including basic levels of medical care [redacted]

2. Implementing Procedures

a. [redacted]

[redacted]

~~TOP SECRET~~ [redacted]

~~TOP SECRET~~ [redacted]

Guidelines on Confinement Conditions for CIA Detainees

[redacted]

3. Responsible CIA Officer

The Director, DCI Counterterrorist Center shall ensure (a) that, at all times, a specific Agency staff employee (the "Responsible CIA Officer") is designated as responsible for each specific Detention Facility, (b) that each Responsible CIA Officer has been provided with a copy of these Guidelines and has reviewed and signed the attached Acknowledgment, and (c) that each Responsible CIA Officer and each CIA officer participating in the questioning of individuals detained pursuant to [redacted] has been provided with a copy of the "Guidelines on Interrogation Conducted Pursuant [redacted] and has reviewed and signed the Acknowledgment attached thereto. Subject to operational and security considerations, the Responsible CIA Officer shall be present at, or visit, each Detention Facility at intervals appropriate to the circumstances.

4. [redacted]

APPROVED:

George J. Tenet

Director of Central Intelligence

11/28/03

Date

~~TOP SECRET~~ [redacted]

[redacted]

Guidelines on Confinement Conditions for CIA Detainees

ACKNOWLEDGMENT

I, _____, am the Responsible CIA Officer for the Detention Facility known as _____. By my signature below, I acknowledge that I have read and understand and will comply with the "Guidelines on Confinement Conditions for CIA Detainees" of _____, 2003.

ACKNOWLEDGED:

_____ _____

Name Date

[redacted]

~~UNCLASSIFIED~~

Connell, James G III CIV OSD OMC Defense

From: Connell, James G III CIV OSD OMC Defense
Sent: Thursday, April 26, 2012 4:38 PM
To: Chapman, Michael C Mr OSD OMC Convening Authority
Subject: DODSC/DRT ~~(U)~~

Classification: ~~UNCLASSIFIED~~

Dear Mr. Chapman,

Can you please advise on the proper procedure for requesting declassification of a document from the DODSC/DRT?

Best regards,

James Connell

~~UNCLASSIFIED~~

1

Attachment T
Page 1 of 1

~~SECRET//NOFORN~~

Connell, James G III CIV OSD OMC Defense

From: Connell, James G III CIV OSD OMC Defense
Sent: Friday, April 27, 2012 1:35 PM
To: Chapman, Michael C Mr OSD OMC Convening Authority
Subject: Guidance request ~~(S//NF)~~

Classification: ~~SECRET//NOFORN~~
ATTORNEY COMMUNICATION: DO NOT MONITOR

Dear Mr. Chapman,

As you may know, I am Learned Counsel for Ali Abdul Aziz Ali, ISN 10018. As such, I am responsible for guiding my team in compliance with applicable classification guidance. I am writing to request a copy of any and all classification guidance relating to high-value detainees, JTF-GTMO, the Rendition, Detention and Interrogation Program, or other mission-specific guidance with which I am expected to comply.

I have access to the DOD guidance dated 24 Mar 2010 and three iterations of the CIA HVD RDI guidance.

The DoD Habeas Corpus and Military Commission Legal Proceedings Security Classification/Declassification Guide, dtd 24 Mar 2010, states that, "This guide does not apply to the National Security Agency (NSA), which has established a separate process for supporting HC and MC proceedings." I specifically request a copy of the document establishing the NSA process for supporting HC and MC proceedings.

Best regards,

James G. Connell, III
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, DC 20301-1620
[redacted]

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 11 Apr 2022

~~SECRET//NOFORN~~ 1

Attachment U
Page 1 of 1

~~SECRET~~ (WITH ATTACHMENT)

Connell, James G III CIV OSD OMC Defense

From: Connell, James G III CIV OSD OMC Defense
Sent: Wednesday, April 25, 2012 3:20 PM
To: Chapman, Michael C Mr OSD OMC Convening Authority
Subject: Request for declassification review ~~(S)~~
Attachments: 2012-04-25 AE008 SECRET al Baluchi (Ali) F001 505 Notice Attachment B.pdf

Classification: ~~SECRET~~ (WITH ATTACHMENT)

Dear Mr. Chapman,

Today, I am filing a 505 notice for the attached document. I am attempting to comply with Trial Judiciary Rule of Court 11(2), which provides that a "requesting party, absent exigent circumstances, will request that the Original Classification Authority (OCA) will review the materials for declassification."

The attached document is not actually classified, as it has never been reviewed by an OCA and is not derived from material classified by an OCA. However, the CISO at the D.C. District has directed me to treat it as Secret.

I have the following specific questions:

(1) If the document is not actually classified, to what OCA shall I direct my request to review the materials for declassification?

(2) The requirement of Rule 11(2) is only triggered "[b]efore requesting a review." Rule 11(4) states that the procedures for an ex parte motion provided in that rule "will apply in all cases." I am giving a 505 notice pursuant to RMC 505(g)(1)(B) rather than seeking a "review." Indeed, I cannot find anywhere in the text of RMC 505 that provides for a "review" rather than a "hearing" (RMC 505(h)) or a "determination" (RMC 505(g)(1)(B)(ii)). In fact, the only procedure for a "review" is Rule 11(4)(a), which mandates that, "Requesting party will file an ex parte motion requesting judicial review with the Chief Clerk of the Trial Judiciary IAW MCRE 505." Is the review discussed in Rule 11(2) & (4) the same as a hearing under RMC 505(h)? Does RMC 11(4) require me to "file an ex parte motion requesting judicial review" as part of a 505 Notice?

Best regards,

DERIVED FROM: Multiple Sources
DECLASSIFY ON: 25 Apr 2022