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Without consent The government's secret experiments on humans
By all accounts, the U.S. military researchers who sent young "volunteers" into gas chambers during World War II stood by dispassionately, writing reports, while mustard gas burned the men's skin and seared their lungs. When one group of Navy men was injured and could not go on, the doctors and chemists would seal in another group. That would be followed by another, and another, until nearly 3,000 men had been gassed in chambers. The doctors did not tell the subjects what kind of vapors they were inhaling and gave little attention to tracking the sailors' injuries for the purpose of treating them. After the war, none of the men were given followup medical care. And there were no studies of their health for nearly half a century. Men who had been enveloped in high concentrations of mustard gas -- high enough in many cases to resemble battlefield conditions -- were simply ignored. Even if there were a legitimate reason to research the effects of the gas on soldiers, a National Academy of Sciences panel that recently studied the experiments could not understand why so many subjects had to be used. "It doesn't make any sense that they had to do that many men," said the study director, Constance Pechura. The scientists also were outraged by the deceptive way the Navy men were recruited for the tests -- told they would get extra leave for testing summer clothing. But perhaps the study's most disturbing finding, Pechura said, is that the ethical breaches committed by the mustard gas researchers were typical of the conduct of various military and government experiments on humans during and after World War II. The committee determined that the later experiments -- from 1950 to 1975 -- "demonstrated a well-ingrained pattern of abuse and neglect." The pattern, experts in law and medical ethics say, raises basic questions about the duties of doctors and scientists in government service, and the legal rights of volunteers in medical experiments. The military's approval for using humans in the mustard gas experiments became the basis on which the Army and the

Chemical Warfare Service authorized all other human experiments during World War II and later tests up to the mid-1950s. By 1953, in the wake of a war-crimes trial of Nazi doctors that had riveted the world's attention, the military had established rules to prevent researchers from abusing humans in experiments. But the rules often were ignored, numerous examples and documents show. From 1945 to 1962, open-air explosions of atomic bombs exposed people to radioactive fallout, including some 250,000 troops who were ordered to witness the blasts in maneuvers at close range with no protection from radiation. The Army, beginning in 1950, conducted simulated germ-warfare maneuvers, secretly spraying potentially harmful bacteria over some of the nation's largest cities and exposing thousands of people to the germs. In the late 1950s, doctors working for the Air Force fed about 100 Alaskan Eskimos and Indians radioactive drugs in an experiment to learn if American soldiers could better survive in the Arctic. Hundreds of soldiers were given the mind-altering drug LSD, and thousands were exposed to mustard gas, nerve gas and other chemicals and drugs in experiments from the early 1950s to 1975. Dr. William Halperin, a physician who served on the committee that studied the mustard gas tests, said the wartime doctors must have suffered incredible tension between knowing what had to be done and what shouldn't be done because of the Hippocratic Oath. A basic principle of the oath is that physicians should do no harm. "That's been around for thousands of years," said Halperin, who recalls reading the oath when he graduated from Harvard Medical School in 1973. He works for the National Institute of Occupational Safety and Health in Cincinnati. The tension, he said, "either led to incredible denial that there was anything adverse happening, or it led to the same sort of callousness that develops whenever someone has to do something inhumane." The idea that subjects should be asked to consent to experimentation arose in the United States as early as 1833, when William Beaumont, a U.S. Army surgeon in Michigan, wanted to study the stomach of a patient who had suffered a gunshot wound. Beaumont developed a code saying that a person's voluntary consent is necessary and that a medical experiment must be stopped when it "causes distress to the subject." Wartime documents show clearly that the mustard gas researchers were aware of the injuries they were causing to the men, many of whom were ordered into the chambers and threatened with court-martial if they refused. In a report on gas chamber experiments conducted in 1943 at the Naval Research Laboratory in Washington, the researchers wrote: "The fact that has been most obvious throughout these experiments is that when the men first begin the work they should not be told too much. If they are, it sets up a fear reaction that remains for varying lengths of time." The researchers also said "the men take any resulting casualties extremely well. Even the hospital cases, who, on a few occasions, were incapacitated for a month or so, were not upset and even volunteered for further trials." An Aug. 14, 1945, report on an experiment says, "The scrotal region was the most vulnerable area

of the body to H vapor {mustard gas} and would be the most important area in the production of casualties. It was found that ulcerated and crusted lesions of the ponoscrotal region required from three to four weeks to heal with the men at bed rest." No man was sent into the gas chamber without a medical officer's approval, the documents state. The doctors involved could have foreseen health effects among the men who were gassed. In 1928, Col. Harry L. Gilchrist, a U.S. military researcher, published one of the first studies to document long-term illnesses among World War I soldiers exposed to mustard gas. The effects were mainly respiratory, such as emphysema, asthma and bronchitis. Gilchrist published his study in open literature, including a journal, and he published more findings in 1933. It is "improbable," the institute report said, that those responsible for the World War II experiments did not know of Gilchrist's work. Who were the people who conducted the experiments? Some were part of a secret circle of Allied scientists who shared information about mustard gas experiments conducted on humans not only in the United States but also in England, Australia and Canada. Some were doctors assigned from the Navy's bureau of medicine and surgery. Others were chemists employed directly or under contract by the Navy or other branches of the service. One of the chemists who was very active in gas chamber experiments at the Naval Research Laboratory in Washington and was among the authors of reports that document injuries to Navy men, still works there. The chemist, Homer W. Carhart, declined through a laboratory spokesman The Courant's request for an interview. Carhart now heads the Naval Technology Center for Safety and Survivability. Civilian physicians and scientists also were involved in human experiments with mustard gas. For example, civilian researchers used U.S. sailors who were imprisoned at Hart's Island in New York City for tests of liquid mustard agent on men's forearms. Navy veteran Sebastian Giallella of New Jersey still has a scar on each arm from the tests. He said he was in the brig for four months, having missed his ship's departure from New York because he was visiting his mother in a hospital. He said he did, indeed, volunteer, but was 18 at the time and didn't know anything about mustard gas. "Oh man, the pain. It would sort of eat a hole in your arm. A blister would form and pus up," he said. "They didn't say it was going to hurt; if they said that, believe me I'd have run the other way." A Nov. 20, 1943, memorandum, obtained from the National Academy of Sciences' archives, indicates the researchers were pleased to have the use of "human volunteers" at the Navy prison who could be exposed to relatively large doses and "who are not occupied with important duties and studies and who are available for relatively long periods of time and at all hours of the day or night." The memo was sent via courier to the Navy's bureau of medicine and surgery in Washington and was written by Dr. Milton C. Winternitz, a physician who headed a committee on treatment of gas casualties. Like many of the civilians involved, Winternitz came from one of the nation's most prestigious schools, Yale University

School of Medicine; he was a professor there and served as dean from 1920 to 1935. Others came from top schools including the University of Pennsylvania, Johns Hopkins, Cornell and the University of Chicago. These elite scientists not only participated in the experiments but helped keep them hidden from the public. Secrecy often provided a permissive environment for abuse, the experts say. Given that the military kept experiments on humans secret in the past, some experts wonder whether such experiments are still being conducted. They say they would not be surprised. "We have to be vigilant and make sure it doesn't happen again. We can't assume it doesn't happen again," said Pechura, who as head of the study by the Institute of Medicine -- a branch of the National Academy of Sciences -- has listened to more than 250 Navy veterans tell of their experiences in the mustard gas experiments. In the end, the wartime researchers apparently didn't learn much from the experiments, she said. In a statement issued last month, the Naval Research Laboratory cited one of its 1945 reports to indicate the lab helped design a better protective suit for gas warfare in 1944, and helped develop better protective shorts -- Navy skivvies. Many of the young men harmed in the experiments had joined the Navy to be part of a great national cause and the Allied war effort -- an effort that ultimately vanquished two enemies that conducted the most gruesome human experiments known to modern medicine. Experiments by the Nazis and Japanese routinely involved the murder of human subjects and thus are in a category by themselves, said Dr. Jay Katz, who was called upon for his advice by the committee that studied the mustard gas experiments. A psychoanalyst and Yale Law School professor, he is an expert on human medical experimentation. The Nazis killed people by immersing them in tanks of icy water or by subjecting them to simulated high altitudes in a pressure chamber. Moments later, doctors would perform autopsies to determine how Luftwaffe pilots might endure extreme cold or altitudes. Heinrich Himmler, the SS chief, wanted Nazi doctors to study whether heads of Jews were different from those of non-Jews, so heads were cut off and measured. Other experiments involved giving people typhoid, malaria and a variety of poisons. The Nazis began using concentration camp prisoners when no one would volunteer for the high-altitude experiments. "First political prisoners were provided, then Jews, Gypsies and captured Russian soldiers," Katz said. The Nazis also conducted mustard gas experiments. Concentration camp prisoners were deliberately injured in experiments with the gas from 1939 to 1945 for the benefit of Hitler's war machine. Some of the people died and others suffered intense pain and injuries, according to an indictment filed against 20 Nazi doctors and three health-care professionals after the war. The doctors were charged with war crimes and crimes against humanity in one of a series of trials in Nuremberg, Germany. Fifteen of the defendants were found guilty and seven were hanged in 1948. "Interest in this case was extraordinary, both in the United States and Germany, and everywhere else," said Telford

Taylor, who as an Army brigadier general supervised the prosecution. The Nazi doctors, he said, were responsible for hundreds of thousands of murders, tortures and other atrocities. U.S. judges appointed by President Harry Truman presided over the trial, and it was conducted using U.S. legal procedures under the authority of the U.S. Army. During the trial, the judges in 1947 developed a set of principles by which the Nazis could be judged. This came to be known as the Nuremberg Code, the first authoritative pronouncement on the conduct of medical experiments on humans. Its overriding aim is to protect the health and rights of subjects of medical research. The code's first principle: "The voluntary consent of the human subject is absolutely essential." The person should give this consent without any element of force, fraud or duress, and should have a sufficient understanding of the experiment to make an "enlightened decision," the code says. But however idealistic the U.S. military appeared at Nuremberg, expediency took precedence over justice in Japan. While the Nazis were on trial, the military in 1947 allowed Japanese doctors who had killed about 3,000 people in medical experiments to go free -- in exchange for the scientific information gathered during the experiments, Katz said. Evidence suggests American prisoners of war were among those killed in biological warfare experiments. The deal with the Japanese was struck as the Cold War began to set in, and the Nuremberg Code was relegated to history almost as soon as it was written, Katz, Annas and other experts argue. Promulgation of the code, for example, did not halt the Tuskegee Syphilis Study, which did not end until 1972. For 40 years, in what scientists call the longest human experiment in history, U.S. Public Health Service doctors deliberately left 400 poor black men untreated for syphilis, said Katz, who served on a federal panel that condemned the study in 1973. Though the health service took no heed of the Nuremberg Code, the military adopted it in 1953 when Defense Secretary Charles Wilson established rules for obtaining permission to conduct chemical experiments on human volunteers. The military put its code in place through a memorandum in June 1953. Adopting the code was one thing. Following it was another. A 1975 report, prepared by the Army inspector general's office after it was revealed that soldiers had been given LSD in experiments without their knowledge, says that military researchers either ignored or followed the code depending on how they chose to interpret it. For example, a gas warfare field exercise -- Operation Top Hat -- at Fort McClellan, Ala., in September 1953 was not submitted for approval under the new code. Army Chemical Corps soldiers who participated had to decontaminate themselves after exposure to biological warfare agents, mustard gas and nerve gas, the 1975 report said. Leaders said the experiments were in the "line of duty" and therefore exempt. Some military researchers didn't even know the code existed because it initially was stamped "Top Secret." It was not declassified until 1975, when the acting secretary of the Army, Norman Augustine, suspended human experimentation with chemicals at Edgewood Arsenal in

Maryland. Cold War researchers often justified experiments using the same arguments put forth by the Nazis at Nuremberg, said Dr. Michael Grodin, a medical ethics professor at Boston University, and an expert on **human** rights in medical experimentation. Such arguments include: **human** experiments are necessary in times of heightened national security; all members of society must contribute to scientific knowledge in wartime; and the researchers were only carrying out orders of superiors. "Or the one I hear all the time," Grodin said. "Without **human** experimentation there would be no way to advance the progress of science and medicine." The issue of informed consent did not go away with the end of the Cold War. In the fall of 1990, after Iraq invaded Kuwait, the Defense Department sought a waiver of consent requirements in federal rules governing **human** experimentation with unapproved medications. The military wanted the waiver so it could administer "investigational" drugs and vaccines to soldiers without obtaining their consent. U.S. military planners were worried that Saddam Hussein would use chemical and biological warfare agents because Iraq had attacked Kurds and Iranian troops with mustard gas. The experimental drugs in question were a tablet the military wanted to give to troops as a pretreatment for nerve-gas attacks, and a vaccine to protect against botulism in biological warfare. Neither substance had been tested in controlled clinical drug trials, precisely because humans cannot be intentionally exposed to chemical or biological warfare agents to test the effectiveness of a drug. Exposure to such weapons would violate a principle of the Nuremberg Code that says no experiment should be conducted where there is a reason to believe that death or disabling injury will occur. The Defense Department said the waiver was necessary because "informed consent" was not feasible under combat conditions. Some troops might refuse and the military could not tolerate refusals because of "combat exigencies." The Food and Drug Administration approved the waiver, which prompted a lawsuit by the Public Citizen Health Research Group, a nonprofit organization, on behalf of an unnamed soldier and his wife. Military commanders decided to administer the botulism vaccine on a voluntary basis. But the nerve-gas pretreatment drug was given without consent to at least 41,650 gulf war soldiers. The war was over by the time the case went to the U.S. Court of Appeals in Washington in 1991. In a 2-1 opinion written by Judge Ruth Bader Ginsburg, President Clinton's recent appointment to the Supreme Court, the appeals court sided with the government. But health concerns have arisen. Service people who were ordered to take the nerve-gas pretreatment drug have begun coming forward to say they are suffering serious long-term side effects, according to a report last month on chemical warfare-related illnesses among gulf war veterans. It was issued by the staff of U.S. Sen. Donald W. Riegle Jr., D-Mich. The Nuremberg Code was not mentioned in the court's decision. Few cases involving the code have been heard in U.S. courts, and the Supreme Court has had occasion to consider it in only one case -- that of Army soldier James B. Stanley.

Like the Navy men during World War II, Stanley was asked to volunteer to test clothing. But without being informed, he was given LSD four times in February 1958 at the Army's chemical warfare laboratories at Aberdeen Proving Grounds in Maryland. In the experiments with LSD, a psychedelic drug that became popular on college campuses in the 1960s and 1970s, the Army wanted to find out how servicemen would perform under its influence. For example, the 1975 report shows, the Army in 1957 gave LSD to 16 members of a missile unit's radar van to see if they could perform the tracking operations involved with the equipment. Also that year, 20 soldiers were observed while doing marching drills under the influence of LSD and 28 men "were evaluated for their ability to concentrate on volleyball competition after LSD ingestion." Stanley suffered hallucinations and memory loss after the experiment. He sometimes awoke in the middle of the night and, for no reason, beat his wife and children, and later could not recall the incidents, court documents state. He was discharged from the military in 1969 and his marriage ended a year later. In 1975 he received a letter from the Army asking him to cooperate in a followup study of the "volunteers who participated" in the LSD studies of the 1950s. This was the first notification he had been given LSD. When he was denied compensation for injury by the Army, Stanley filed a lawsuit in federal court seeking money damages under the federal Tort Claims Act. The suit alleged negligence and violations of the Nuremberg Code. Court documents state the Army was aware it was breaking the law by conducting the LSD experiments and tried to avoid legal liability by covering them up. But the Supreme Court, by a 5-4 decision in 1987, barred Stanley from recovering money damages. Justice Antonin Scalia wrote the opinion and concluded that permitting Stanley to sue the Army would be a judicial intrusion upon military matters that would disrupt the service and "call into question military discipline and decision-making." Scalia said a violation of a soldiers' rights provides no justification for departing from the Feres doctrine, a judicially crafted rule that keeps service people who are injured "in the course of activity incident to service" from recovering money damages. This is the same rule under which Nathan Schnurman, a Navy veteran who was severely injured in a World War II mustard gas experiment, lost a bid for compensation in a 1980 federal court case. The four dissenting justices, led by Sandra Day O'Connor and William J. Brennan, thought what had been done to Stanley offended not only constitutional rights but basic human decency. They based their conclusions on the Nuremberg Code. The U.S. military, O'Connor said, played an instrumental role in prosecuting the Nazi doctors, and the standards developed at Nuremberg state that the voluntary consent of the subject is essential. "If this principle is violated," she said, "the very least society can do is to see that the victims are compensated." Brennan said the government "treated thousands of its citizens as though they were laboratory animals." He cited Schnurman's mustard gas case, among others, in arguing that military officials

must not be allowed the freedom to intentionally violate soldiers' rights in the name of discipline. If the majority of the court is correct, Brennan said, the decision would expose a "tragic flaw" in the Constitution. Courant researcher Leah Segal contributed to this story

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