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Perspectives on Enhanced Interrogation Techniques

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Introduction

Among the issues in the discussion and debate following the December release of the *Senate Select Committee on Intelligence (SSCI) Study of the Central Intelligence Agency's (CIA's) Detention and Interrogation (D&I) Program (SSCI Study)*¹ has been the CIA's use of Enhanced Interrogation Techniques (EITs) on certain individuals labelled "high value detainees" (HVDs).² Initially, EITs were requested by the CIA for those individuals it labelled HVDs who were thought to possess "actionable" knowledge about "imminent" terrorist threats against the United States and were resisting "non-aggressive, non-physical elicitation techniques."³ At that time, Standard Interrogation Techniques (SITs) were defined by CIA guidelines "as techniques that do not incorporate significant physical or psychological pressure. These techniques include, but are not limited to, all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel," whereas EITs "do incorporate physical or psychological pressure beyond Standard Techniques."⁴ **Appendix A** provides a partial list of CIA SITs and **Appendix B** provides a list of 10 EITs approved for use by the Director of Central Intelligence (DCI) in January 2003, with brief guidelines on their use.⁵

This report discusses views expressed on issues related to EITs by public officials, academics and commentators in a variety of sources to include the *SSCI Study*, *Minority Views* of SSCI Members,⁶ *Additional Views*,⁷ official *CIA Comments*,⁸ unofficial comments by former CIA

The use of hyperlinks to a number of references only available on sites maintained by nongovernmental entities does not constitute CRS endorsement of any organization, or any organization's policy positions.

¹ U.S. Congress, Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 113th Cong., 2nd sess., December 3, 2014, at <http://www.lawfareblog.com/released-ssci-detention-and-interrogation-study-along-minority-views-and-cias-response>. (Hereinafter *SSCI Study*)

² Office of the Inspector General, *Special Review: Counterterrorism Detention and Interrogation Activities* (September 2001-October 2003), Report no. 2003-7123-IG, May 7, 2004, p. 3, fn 4, at <http://nsarchive.gwu.edu/torturingdemocracy/documents/20040507.pdf>. The CIA's Counterterrorism Center (CTC) distinguishes detainees "according to the quality of the intelligence that they are likely to be able to provide about current terrorist threats against the United States. Senior Al-Qaida planners and operators ... fall into the category of 'high value' and are given the highest priority for capture, detention, and interrogation. CTC categorizes those individuals who are believed to have lesser direct knowledge of such threats, but to have information of intelligence value, as 'medium value' targets/detainees." (Hereinafter *IG Special Review*)

³ *IG Special Review*, pp. 12-13, "The Capture of Abu Zabaydah and the development of EITs," paragraphs 30-31.

⁴ *Ibid.*, p. 30.

⁵ Defining EITs briefly but accurately is complicated by the fact that a technique such as waterboarding may have been labelled a SIT at one point in time and later "redefined" as an EIT. What constituted SITs and how they were used is not within the scope this report. The definition of SITs and examples in **Appendix A** provide context for the larger discussion of EITs.

⁶ U.S. Congress, Senate Select Committee on Intelligence, *Minority Views of SSCI Members Senators Burr, Risch, Coats, Rubio, and Coburn, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 113th Cong., 2nd sess., December 3, 2014, at <http://www.lawfareblog.com/released-ssci-detention-and-interrogation-study-along-minority-views-and-cias-response>. (Hereinafter *SSCI Minority Views*)

⁷ U.S. Congress, Senate Select Committee on Intelligence, *Additional Views to the Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* (by Senators John D. Rockefeller, Ron Wyden, Mark Udall, Martin Heinrich, Angus King and Susan Collins), undated, at <http://www.lawfareblog.com/released-ssci-detention-and-interrogation-study-along-minority-views-and-cias-response>. (Hereinafter *Additional Views*)

⁸ *CIA Comments on the Senate Select Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program* with cover letter from John O. Brennan, Director of the Central Intelligence Agency, June 27, 2013, at <http://www.lawfareblog.com/released-ssci-detention-and-interrogation-study-along-minority-views-and-cias-response>. The cover letter, Comments and Conclusions sections are separately numbered. (Hereinafter *CIA Comments*.)

officials,⁹ the *Congressional Record*,¹⁰ and a number of press reports. Perspectives on EITs are multifaceted, and range from those who say “never again” to their future use to those who argue they are a necessary tool in an interrogator’s toolbox. This report does not purport to, nor should it be interpreted as, determining the merit of any one perspective.

Perspectives on EITs rely on facts, but, in many cases, those facts are in dispute. This report discusses the EIT program as portrayed in many official documents, but it should be noted that the *SSCI Study* disputes the accuracy of many of those facts. The *SSCI Study* argues that the CIA’s account and justifications for its use of EITs were “inaccurate representations” to the White House, National Security Council (NSC), Department of Justice (DOJ), CIA’s Office of the Inspector General (IG), Congress, and the public.¹¹ The background section should be read, therefore, with the understanding that the *SSCI Study*’s findings contradict much of what has become the public record, as portrayed primarily through declassified executive branch documents.

This report briefly summarizes what constituted EITs, provides background on their adoption and use, and discusses differing views on three questions that underpin discussion and debate of this topic:

1. Did the CIA’s use of EITs constitute torture?
2. Did the CIA’s use of EITs run counter to American values and morals?
3. Were the EITs effective in producing valuable intelligence, not otherwise obtainable through standard interrogation techniques?

Background

The U.S. government responded quickly to the terrorist attacks against the United States on September 11, 2001 (9/11), both publicly (overtly) and secretly (covertly). For example, Congress enacted the Authorization for the Use of Military Force (AUMF) on September 18, 2001, to combat those entities involved in planning and executing the attack. Through the AUMF, Congress “authorized the President to use all necessary and appropriate force against those nations, organizations, or persons he determined planned, authorized, committed, or aided the terrorist attacks that occurred on 9/11, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”¹²

The President signed a covert action Memorandum of Notification (MON) on September 17, 2001, authorizing the CIA “broad authority to render individuals who ‘pose continuing or serious threats of violence or death to U.S. persons or interests or who are planning terrorist attacks.’”¹³

⁹ George Tenet, Porter Goss, Michael Hayden, John McLaughlin, Albert Calland and Stephen Kappas, “Ex-CIA Directors: Interrogations Saved Lives,” Opinion, *Wall Street Journal*, December 10, 2014. The first three authors are former CIA Directors; the second three authors are former CIA Deputy Directors.

¹⁰ See for example, Sen. Dianne Feinstein et al., “SSCI Study of the CIA’s R&I Program,” remarks in the Senate, *Congressional Record*, daily edition, vol. 160, no. 149 (December 9, 2014), pp. S6405-S6434.

¹¹ *SSCI Study*, Finding 2, p. 2 of 19.

¹² P.L. 107-40.

¹³ *CIA Comments*, Conclusion Section, Conclusion 1, p. 1. See also *SSCI Study*, p. 11 of 499, The MON granted “the (continued...)”

The CIA recounts that “almost immediately, discussions with the NSC began that covered the legal and policy parameters for how al Qaeda and Taliban prisoners would be managed and treated by the [Department of Defense] DOD and CIA.”¹⁴ The CIA’s Detention and Interrogation (D&I) Program formally continued until 2009.¹⁵ The DOD ran its own separate intelligence-related D&I activities and operated under different authorities.

Both the CIA and DOD, operating independently, believed it appropriate to identify aggressive techniques that they could lawfully use to overcome detainee resistance to interrogation and sought legal counsel to do so.¹⁶ A 2002 memo from the DOJ to the CIA summarizes the CIA’s rationale for requesting use of EITs on Abu Zubaydah, its first al Qaeda HVD:

The interrogation team is certain that he has additional information that he refuses to divulge. Specifically, he is withholding information regarding terrorist networks in the United States or in Saudi Arabia and information regarding plans to conduct attacks within the United States or against our interests overseas. . . . It is believed Zubaydah wrote al Qaeda’s manual on resistance techniques.¹⁷

A DOJ memorandum summarizing the CIA program explained its original intent as expressed by CIA officials this way:

The [D&I] program is limited to persons whom the Director of the CIA determines to be a member or part of or supporting al Qaeda, the Taliban, or associated terrorist organizations and likely to possess information that could prevent terrorist attacks against the United States or its interests or that could help locate senior leadership of al Qaeda who are conducting its campaign of terror against the United States. . . . [F]rom March 2002 until today, the CIA has had custody of a total of 98 detainees in the program. Of those 98 detainees, the CIA has only used enhanced techniques with a total of 30. The CIA has told us that it believes many, if not all, of those 30 detainees had received training in the resistance of interrogation methods and that al Qaeda actively seeks information regarding U.S. interrogation methods in order to enhance that training. . . .

(...continued)

CIA significant discretion in determining whom to detain, the factual basis for the detention, and the length of the detention. The MON made no reference to interrogations or interrogation techniques.”

¹⁴ According to *CIA Comments*, program planning began in 2001. The capture of Abu Zubaydah in March 2002 “provided the impetus to draw upon these discussions and formally structure the program.” Conclusion Section, p. 1. The spelling of al Qaeda varies in referenced documents. The spelling “al Qaeda” is used in this report, unless it is spelled differently in a direct quote, such as this one.

¹⁵ “CIA Fact Sheet Regarding the SSCI Study on the Former Detention and Interrogation Program” states the program was ended by President Obama in 2009, based on his signing of E.O. 13491 on January 22, 2009. According to the *SSCI Study*, Finding #19, p. 15 of 19, the program “had effectively ended by 2006;” and p. 16, “The CIA last used its enhanced interrogation techniques on November 8, 2007. The CIA did not hold any detainees after April 2008.”

¹⁶ In reference to DOD requests, see for example, James T. Hill, Commander, U.S. Southern Command, “Counter-Resistance Techniques,” memorandum to the Chairman of the Joint Chiefs of Staff, October 25, 2002, and Diane E. Beaver, Staff Judge Advocate, Commander, U.S. Southern Command, “Legal Brief on Proposed Counter-Resistance Strategies,” memorandum to Michael B. Dunlavey, Commander, Joint Task Force 170, October 11, 2002. (To aid in the interrogation of detainees being held at Guantanamo Bay, Cuba.) The Secretary of Defense approved the use of “specified counter-resistance techniques” to augment techniques provided in the Army Field Manual (AFM). See Donald Rumsfeld, Secretary of Defense, “Counter-Resistance Techniques in the War on Terrorism,” memorandum to the Commander, U.S. Southern Command, April 16, 2003.

¹⁷ Jay Bybee, Assistant Attorney General, “Interrogation of al Qaeda Operative,” memorandum to John Rizzo, Acting General Counsel, CIA, August 1, 2002, p. 1. *SSCI Study* findings suggest that DOJ legal opinions were based on inaccurate representations by the CIA. See for example, finding 5, p. 4 of 19.

The program is designed to dislodge the detainee's expectations about how he will be treated in U.S. custody, to create a situation in which he feels that he is not in control, and to establish a relationship of dependence on the part of the detainee. Accordingly, the program's intended effect is psychological; it is not intended to extract information through the imposition of physical pain.¹⁸

In 2003, reflecting White House, DOJ, and NSC guidance, the Director of Central Intelligence (DCI) approved the use of EITs for the CIA, to augment techniques already in use.¹⁹ The EITs discussed in the *SSCI Study* (and in this report) were requested by the DCI for use by the CIA on a number of individuals it labelled HVDS (beginning with Abu Zubaydah) and described as withholding vital, "imminent threat" information and resisting "non-aggressive, non-physical elicitation techniques."²⁰ (For further detail on SITs and EITs, see **Appendix A** and **Appendix B**.)

The *IG Special Review* documented a number of unauthorized interrogation techniques that occurred in 2002 and 2003 that it attributed to insufficient guidance and oversight.²¹ CIA responses to the *SSCI Study*'s findings agreed that the program began poorly in terms of management and operations. Perspectives vary on how much the program improved over time.²² In his cover letter to the *CIA Comments*, CIA Director Brennan stated:

We agree with a number of the [SSCI] Study's conclusions. In particular, we agree that the Agency: Was unprepared and lacked core competencies to respond effectively to the decision made in the aftermath of the 9/11 attacks that the Agency undertake what would be an unprecedented program of detaining and interrogating suspected Al Qaeda and affiliated terrorists. This lack of preparation and competencies resulted in significant lapses in the Agency's ability to develop and monitor its initial detention and interrogation activities. These initial lapses, most of which were corrected by 2003 and have been the subject of multiple internal and external investigations, were the result of a failure of management at

¹⁸ Steven Bradbury, Principal Deputy Assistant Attorney General, "Application of the War Crimes Act, Detainee Treatment Act, and the Common Article 3 of the Geneva Conventions to Certain Techniques that may be used by the CIA in the interrogation of HV al Qaeda Detainees," memorandum to John Rizzo, Acting General Counsel, CIA, July 20, 2007, pp. 5-6. The *SSCI Study* disputes the CIA's claim that al Qaeda personnel had been trained in the use of resistance techniques. See for example, p. 410 of 499, under "Abu Zubaydah's Expertise in Interrogation Resistance Training." "A review of CIA records found no information to support these claims."

¹⁹ See *IG Special Review*, p. 23, "The Agency specifically wanted to ensure that these officials and the Committees [Congressional Intelligence Oversight Committees] continued to be aware of and approve CIA's actions. The General Counsel recalls that he spoke to and met with White House Counsel and others at the NSC, as well as DOJ's Criminal Division and Office of Legal Counsel beginning in December 2002 on the scope and breadth of the CTC's Detention and Interrogation Program."

²⁰ See *IG Special Review*, pp. 12-15, beginning under the heading "The Capture of Abu Zabaydah and the development of EITs." "The capture of senior Al-Qa'ida operative Abu Zubaydah on 27 March 2002 presented the Agency with the opportunity to obtain actionable intelligence on future threats to the United States from the most senior Al-Qaeda member in U.S. custody at that time. This accelerated CIA's development of an interrogation program." (p. 12) "The Agency then assembled a team that interrogated Abu Zubaydah using non-aggressive, non-physical elicitation techniques.... The Agency believed that Abu Zubaydah was withholding imminent threat information." (p. 13) The CIA's Counterterrorism Center (CTC), with the assistance of the Office of Technical Service (OTS), proposed techniques based on the recommendations of two psychologists with experience in the USAF's Survival, Evasion, Resistance and Escape (SERE) training program (pp. 13-15). See also p. 3, paragraph 5, for background and context.

²¹ *IG Special Review*, pp. 69-78 under "Specific Unauthorized or Undocumented Techniques." They included mock executions, blowing smoke into a detainee's face, and "hard takedowns." Hard takedowns were rough handling techniques "done for shock and psychological impact and signaled the transition to another phase of the interrogation," (pp. 77-78).

²² The *SSCI Study* disputes the degree to which CIA improved program management. See *SSCI Study*, Findings 11 and 12, pp 9-11 of 19.

multiple levels, albeit at a time when CIA management was stretched to the limit as the CIA led the U.S. Government's counterterrorism response to the 9/11 attacks against the Homeland.²³

In 2003, George Tenet, then-DCI, provided written *Interrogation Guidelines* to CIA interrogators and medical personnel.²⁴ Guidance defined "Permissible Interrogation Techniques" as both SITs and EITs unless otherwise approved by Headquarters, CIA.²⁵ SITs were defined as those techniques in accordance with, but not limited to, all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel and not incorporating significant physical or psychological pressure.²⁶ Guidance provided by the CIA Office of Medical Services (OMS) in December 2004 approved additional techniques such as shaving, stripping, hooding, isolation, white noise or loud music, continuous light or darkness, an uncomfortably cool environment, and dietary manipulation.²⁷ OMS provided goals and limits on the use of EITs.²⁸

In 2004, revelations concerning the interrogation and treatment of detainees in *military* detention centers in Iraq and elsewhere described instances in which guards and interrogators disregarded or misinterpreted guidance on the use of the military's interrogation techniques.²⁹ Domestic and international outrage prompted congressional hearings,³⁰ as well as internal and external investigations that ultimately extended to the CIA.³¹ One external investigation culminated in a closed-door hearing with DOD and CIA witnesses, focused on detainee issues, held by the SSCI on May 12, 2004. CIA Deputy Director John McLaughlin testified that the CIA program was "not authorized" to do "anything like what you have seen in those photographs [of Abu Ghraib]."³²

The Detainee Treatment Act (DTA) (P.L. 109-163), passed in January 2006, and the Supreme Court ruling on the case of *Hamdan v Rumsfeld*, issued in June 2006, focused public scrutiny largely on the DOD not the CIA.³³ The DTA required that all persons placed in DOD custody or effective control (or detained in a DOD facility) be subjected to only interrogation techniques

²³ John Brennan, cover letter to *CIA Comments*, pp. 2-3. See also *CIA Comments*, p. 5; and *CIA Comments*, Conclusion Section, Conclusion #15, p. 41.

²⁴ George Tenet, "Guidelines on Confinement Conditions for CIA Detainees," January 28, 2003, in *IG Special Review*, Appendix D; and George Tenet, "Guidelines on Interrogations Conducted Pursuant to the (redacted)," January 28, 2003, in *IG Special Review*, Appendix E. The DCI required signatures to verify interrogators had read the guidance.

²⁵ *IG Special Review*, pp. 29-30.

²⁶ For definition of SIT, see *IG Special Review*, p. 30. The *SSCI Study* found that when applied repeatedly, SITs became coercive, but were not considered as coercive as the CIA's EITs. See pp. 116-117 of 499 and **Appendix A** for more information and an example.

²⁷ CIA Office of Medical Services, "OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention," December 2004, p. 8.

²⁸ CIA Office of Medical Services, "OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention," December 2004. The *SSCI Study* documents many dissenting concerns expressed by medical officers. See for example, concerns raised on p. 87 of 499.

²⁹ See for example, Seymour Hersh, "Torture at Abu Ghraib," *The New Yorker*, May 10, 2004.

³⁰ See, for example, U.S. Congress, Senate Committee on Armed Services, Subcommittee on Personnel, *Review of Department of Defense Detention and Interrogation Policy and Operations in the Global War on Terrorism*, S.Hrg., 109-471, 109th Cong., 1st sess., July 13-14, 2005 (Washington, DC: GPO, 2005). <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg28578/pdf/CHRG-109shrg28578.pdf>

³¹ See, for example, "Justice Department Gets Tougher on Use of Torture," *Los Angeles Times*, January 1, 2005.

³² *SSCI Study*, p. 134 of 499.

³³ See for example, Dana Priest, "CIA Avoids Scrutiny of Detainee Treatment," *Washington Post*, March 3, 2005.

authorized by and listed in the *Army Field Manual* (AFM).³⁴ The DTA also prohibited the “cruel, inhuman, or degrading treatment” of any person in U.S. custody.³⁵ The Supreme Court concluded that, at a minimum, Common Article 3 of the Third Geneva Convention of 1949 (GC) applied to persons captured in the conflict with al Qaeda, and accorded to them a minimum baseline of protections.³⁶ In July 2007, President Bush issued Executive Order (E.O.) 13440, setting strict boundaries on the use of EITs that conformed with existing legal prohibitions, but stating: “On February 7, 2002, I determined for the United States that members of al Qaeda, the Taliban, and associated forces are unlawful enemy combatants who are not entitled to the protections that the Third Geneva Convention provides to prisoners of war. I hereby reaffirm that determination.”³⁷

The CIA’s D&I Program was not publicly disclosed by President Bush until September 6, 2006,³⁸ and DOJ opinions reaffirmed the legal use of specified EITs as late as July 2007, as long as they “were employed under strict conditions, including careful supervision and monitoring.”³⁹ The CIA continued to use EITs on HVDs until November 8, 2007.⁴⁰ The congressional intelligence committees included a provision in the Intelligence Authorization Acts (IAAs) for FY2008 and FY2009 to limit interrogations to only those techniques authorized by the AFM on any individual in the custody or effective control of any element of the IC but neither bill became law.⁴¹ The IAA for FY2008 passed but was vetoed. The House failed to override the veto. The House Intelligence Committee’s version of the IAA for FY2009 (H.R. 5959) passed, but the Senate took no action on either H.R. 5959 or S. 2996, the Senate Intelligence Committee’s version of the IAA for FY2009.

³⁴ FM 2-22.3 (FM 34-52), *Human Intelligence Collector Operations*, Headquarters, Department of the Army (http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm2_22x3.pdf). Though the DTA generally requires the interrogation of persons in DOD custody to be consistent with AFM requirements, an exception is made for individuals being held pursuant to U.S. criminal or immigration laws. The DTA does not require non-DOD agencies, such as non-military intelligence and law enforcement agencies, to employ AFM guidelines with respect to interrogations they conduct. See CRS Report RL33655, *Interrogation of Detainees: Requirements of the Detainee Treatment Act*, by Michael John Garcia.

³⁵ See CRS Report RL33655, *Interrogation of Detainees: Requirements of the Detainee Treatment Act*, by Michael John Garcia.

³⁶ See CRS Report R41156, *Judicial Activity Concerning Enemy Combatant Detainees: Major Court Rulings*, by Jennifer K. Elsea and Michael John Garcia.

³⁷ E.O. 13440, “Interpretation of Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency,” July 20, 2007. See also Karen De Young, “Bush Approves New CIA Methods,” *Washington Post*, July 21, 2007; and U.S. Congress, Senate Select Committee on Intelligence, *U.S. Interrogation Policy and Executive Order 13440*, S.Hrg. 110-849, 110th Cong., 1st sess., September 25, 2007 (Washington, DC: GPO, 2007).

³⁸ There was some public discussion earlier than the President’s announcement. See “President Bush Reveals the Existence of Secret Prisons,” *ABC News*, September 6, 2006. See also revelations by investigative journalist Dana Priest, “CIA Holds Terror Suspects in Secret Prisons,” *Washington Post*, November 2, 2005.

³⁹ Steven Bradbury, Principal Deputy Assistant Attorney General, “Application of the WCA, Detainee Treatment Act, and the Common Article 3 of the Geneva Conventions to Certain Techniques that may be used by the CIA in the interrogation of HV al Qaeda Detainees,” memorandum to John Rizzo, Acting General Council, CIA, July 20, 2007. Six specific EITs were included in the 2007 memo: dietary manipulation, sleep deprivation, facial holds, attention grasps, abdominal slaps and insult slaps.

⁴⁰ *SSCI Study*, Finding #19, p. 16 of 19, “The CIA last used its enhanced interrogation techniques on November 8, 2007.” *CIA Comments*, #21, p. 6, “[T]he waterboard was last used in March 2003.”

⁴¹ U.S. Congress, Senate Select Committee on Intelligence, *Report of the Senate Select Committee on Intelligence Covering the Period January 4, 2007-January 2, 2009*, S.Rept. 111-6, 111th Cong., 1st sess. (Washington, DC: GPO, March 9, 2009), p. 10.

President Barack Obama signed E.O. 13491, “Ensuring Lawful Interrogations,” on January 22, 2009—restricting the interrogation techniques used by *any* U.S. government agency to those listed in the AFM and setting Common Article 3 of the GC as a “minimum baseline.” The E.O. revoked any previous directive inconsistent with new guidance.⁴² E.O. 13491 states that:

(a) Common Article 3 Standards as a Minimum Baseline. Consistent with the ... laws regulating the treatment and interrogation of individuals detained in any armed conflict, such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.⁴³

(b) Interrogation Techniques and Interrogation-Related Treatment. Effective immediately, an individual in the custody or under the effective control of an officer, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2-22.3 (Manual). ... Nothing in this section shall preclude the Federal Bureau of Investigation, or other Federal law enforcement agencies, from continuing to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises.

(c) Interpretations of Common Article 3 and the Army Field Manual. From this day forward, unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may, in conducting interrogations, act in reliance upon Army Field Manual 2-22.3, but may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation -- including interpretations of Federal criminal laws, the Convention Against Torture, Common Article 3, Army Field Manual 2-22.3, and its predecessor document, Army Field Manual 34-52 -- issued by the Department of Justice between September 11, 2001, and January 20, 2009.⁴⁴

Perspectives on EITs and Torture

When the *SSCI Study* was made public in December 2014, Senator Dianne Feinstein, then-Chairman of the SSCI, expressed her personal belief that certain HVDs were tortured when she introduced the *SSCI Study* to the U.S. Senate. She stated: “The report released today examines the CIA’s secret overseas detention of at least 119 individuals and the use of coercive interrogation techniques, in some cases amounting to torture.”⁴⁵ Her comment addressed the question that

⁴² E.O. 13491, “Ensuring Lawful Interrogations,” January 22, 2009, §1.

⁴³ E.O. 13491, “Ensuring Lawful Interrogations,” January 22, 2009, §3.

⁴⁴ E.O. 13491, §3(b). For more on the FBI’s “rapport-based” approach, see testimony of DOJ IG Glenn Fine, in U.S. Congress, Senate Committee on the Judiciary, *Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?*, S.Hrg. 110-941, 110th Cong., 2nd sess., June 10, 2008 (Washington, DC: GPO, 2008), p. 8. See also *SSCI Study* for its perspective on FBI rapport-building techniques, and for examples such as the one in fn 1315, p. 230 of 499.

⁴⁵ Sen. Dianne Feinstein, “SSCI Study of the CIA’s R&I Program,” remarks in the Senate, *Congressional Record*, daily edition, vol. 160, no. 149 (December 9, 2014), p. S6405. See also *SSCI Study*’s “Foreword” for more of Senator’s (continued...)

dominated much of the public discussion following the publication of the *SSCI Study*: Did the CIA's use of EITs constitute torture?

The answer people gave to this question depended, in part, on their view of whether the EITs were considered individually, collectively, used within specified guidelines, and/or used outside specified guidelines.⁴⁶ It also depended on their definition of torture.

Those who argued that the EITs did not constitute torture tended to support the DOJ's reasoning⁴⁷ (i.e., that EITs were legal *if* administered within specified guidelines), and/or the view that EITs were not overly painful and did no lasting physical harm.⁴⁸ Those who argued that the EITs did constitute torture pointed to the instances where EITs were applied both inside and outside specified guidelines.⁴⁹

Defining Torture

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), was ratified by the United States in 1994. Article 1 of the CAT defines "torture" as:

(...continued)

Feinstein's perspective such as p. 4. "I also believe that the conditions of confinement and the use of authorized and unauthorized interrogation and conditioning techniques were cruel, inhuman, and degrading. I believe the evidence of this is overwhelming and incontrovertible."

⁴⁶ For more on the combined use of EITs, see CIA "Background Paper on CIA's Combined Use of Interrogation Techniques," December 30, 2004. For more on use within and outside guidelines, see Jay S. Bybee, "Interrogation of al Qaeda Operative," memorandum to John Rizzo, Acting General Counsel of the CIA DOJ/OLC, August 1, 2002, in *IG Special Review*, Appendix C, p. 1. "Our advice is based on the following facts, which you have provided to us.... If these facts were to change, this advice would not necessarily apply."

⁴⁷ See for example, Sen. Saxby Chambliss, interview by Bob Schieffer, *Face the Nation*, December 14, 2014 (<http://www.cbsnews.com/news/face-the-nation-transcripts-december-14-mccain-chambliss-and-king/>). See also Sen. Chambliss, "SSCI Study of the CIA's R&I Program," remarks in the Senate, *Congressional Record*, daily edition, vol. 160, no. 149 (December 9, 2014), p. 6419. "[A]t the end of the day the Agency did what the President directed them to do under the color of law and based upon opinions issued and updated by the Department of Justice."

⁴⁸ See for example, Michael B. Mukasey, Opinion, *Wall Street Journal*, December 16, 2014. (Mr. Mukasey was U.S. Attorney General from November 2007 to January 2009.) "It [waterboarding] was not torture, for at least two reasons. First, Navy SEALs for years have undergone waterboarding of that sort as part of their training, and they report that the procedure does not cause much physical pain at all; their splendid careers show that it also does not cause severe mental pain or suffering as defined in the law. Second, 9/11 mastermind Khalid Sheikh Mohammed ... eventually came to know the precise limits of the procedure and was seen to count the seconds by tapping his fingers until it was over. Some torture. Arguably, what broke him was sleep deprivation, but in any event he disclosed reams of valuable information. At last report, he is doing just fine."

⁴⁹ Some who believed EITs constituted torture within specified guidelines pointed to fully approved techniques, such as waterboarding (within specified guidelines for a period of time), extended sleep deprivation, and walling. See for example, Sen. Susan Collins, remarks in *Additional Views*, p. 2 of 5. "[T]he report's findings lead me to conclude that some detainees were subject to techniques that constituted torture. This inhumane and brutal treatment never should have occurred." See for example, *SSCI Study*, p. 3 of 19, Finding 3, "Beginning with the CIA's first detainee, Abu Zubaydah, and continuing with numerous others, the CIA applied its enhanced interrogation techniques with significant repetition for days or weeks at a time. Interrogation techniques such as slaps and 'wallings' ... were used in combination, frequently concurrent with sleep deprivation and nudity.... The waterboarding technique was physically harmful, inducing convulsions and vomiting.... Sleep deprivation involved keeping detainees awake for up to 180 hours, usually standing or in stress positions, at times with their hands shackled above their heads. At least five detainees experienced disturbing hallucinations during prolonged sleep deprivation ... [T]he CIA nonetheless continued the sleep deprivation."

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁵⁰

In giving its approval to U.S. ratification of CAT, the Senate's Resolution of Ratification provided additional explanation of how the United States interpreted the scope of conduct covered by CAT's definition of "torture," particularly as it related to mental pain and suffering.⁵¹ According to one of the "understandings" included in U.S. ratification materials:

in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.⁵²

In a series of legal opinions issued in the years immediately following the 9/11 attacks,⁵³ the DOJ's Office of Legal Counsel (OLC)—often charged with providing interpretive guidance to executive agencies regarding the laws which they administer—provided further elaboration regarding the Administration's interpretation of the degree of pain and suffering required to constitute the level of torture. In a memo to the White House General Counsel, torture was defined this way:

[T]orture as defined in and proscribed by Sections 2340-2340A [the CAT], covers only extreme acts. Severe pain is generally of the kind difficult for the victim to endure. Where pain is physical, it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure. Severe mental pain requires suffering not just at the moment of infliction but it also requires lasting psychological harm, such as seen in mental disorders like posttraumatic stress disorder.⁵⁴

⁵⁰ Article 1, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, June 26, 1987, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 113.

⁵¹ U.S. Congress, Senate Committee on Foreign Relations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Report to accompany Treaty Doc. 100-20, S.Exec.Rpt. 101-30, 101st Cong., 2nd sess., August 30, 1990, (Washington D.C.: GPO, 1990), p. 9, "Understandings."

⁵² *Ibid.*, p. 9, first "understanding." The definition of "torture" found in the Federal Anti-Torture Statute, 18 USC §§2340-2340A, which criminalizes acts of torture occurring outside the U.S. also reflects "Senate understandings" accompanying the CAT.

⁵³ Several CRS Reports discuss legal issues and opinions associated with D&I. See CRS Report RL32567, *Lawfulness of Interrogation Techniques under the Geneva Conventions*, by Jennifer K. Elsea; CRS Report RL32438, *U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques*, by Michael John Garcia.

⁵⁴ Jay S. Bybee, "Standards of Conduct for Interrogation under 18 USC §§2340-2340A," memorandum to Alberto Gonzales, Counsel to the President, August 1, 2002, "Conclusion," p. 46. This was superseded by another OLC memo in 2004, which found that the earlier memo erred in treating severe physical suffering as identical to severe physical (continued...)

DOJ OLC determined that provisions in the GC, the CAT, and the War Crimes Act (WCA) (1996) were not violated by the treatment of al Qaeda and Taliban.⁵⁵ The OLC also determined that al Qaeda and Taliban detainees were not prisoners of war (POWs) under the GC nor were they covered by Common Article 3.⁵⁶ President Bush accepted this determination but directed that detainees should be treated “humanely” because of “our values as a Nation.”⁵⁷

Perspectives on EITs and Values

A second question that emerged in public discussion following the publication of the *SSCI Study* was: Did the CIA’s use of EITs run counter to American values and morals?

Those who believe that the use of EITs did violate American values and morals suggested that the United States lost some of its moral high ground, damaged its image, and weakened its ability to use “soft power.”⁵⁸ President Barack Obama stated, “These techniques did significant damage to America’s standing in the world and made it harder to pursue our interests with allies and partners.”⁵⁹ Senator Collins stated, “The prohibition against torture in both U.S. law and international law is not based on an evaluation of its efficacy at eliciting information. Rather, the prohibition was put in place because torture is immoral and contrary to our values.”⁶⁰

CIA officials, and others, have taken the position that values such as national security and saving lives should be the most important priority for policymakers.⁶¹ Former Attorney General Mukasey

(...continued)

pain, and concluded that “severe physical suffering” may constitute torture under U.S. law even if such suffering does not involve “severe physical pain.” DOJ/OLC, “Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A,” December 30, 2004.

⁵⁵ Jay S. Bybee, “Interrogation of al Qaeda Operative,” memorandum in *IG Special Review*, Appendix C, p. 18, “We believe that ... there is no specific intent to inflict severe mental pain or suffering.” The GC and possibly the WCA were thought not to apply at all because of the status of the conflict and the status of detainees as “unlawful enemy combatants,” while CAT applied but wasn’t violated because there was no torture (<http://nsarchive.gwu.edu/torturingdemocracy/documents/20040507.pdf>).

⁵⁶ Alberto Gonzales, “Decision re application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban,” memorandum from to President George W. Bush, January 25, 2002. Common Article is where the obligation for humane treatment is found.

⁵⁷ President George W. Bush, “Humane Treatment of al Qaeda and Taliban Detainees,” memorandum to the Vice President, Secretary of State, Secretary of Defense, Attorney General, Chief of Staff to the President, Director of Central Intelligence, Assistant to the President for National Security Affairs, Chairman of the Joint Chiefs of Staff, February 7, 2002, p. 2, “I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees.... Of course, our values as a Nation, values that we share with many nations in the world, call for use to treat detainees humanely, including those who are not legally entitled to such treatment.”

⁵⁸ *SSCI Study*, Finding 20, p. 16 of 19, “More broadly, the program caused immeasurable damage to the United States’ public standing, as well as to the United States’ longstanding global leadership on human rights in general and the prevention of torture in particular.” According to Dr. Joseph Nye: “The resources that produce soft power for a country include its culture (when it is attractive to others), its values (when they are attractive and not undercut by inconsistent practices) and policies (when they are seen as inclusive and legitimate).” See Joseph Nye, “The U.S. can reclaim ‘smart power,’” *Los Angeles Times*, January 21, 2009.

⁵⁹ President Barack Obama, quoted by Massimo Calabresi, “Senate Torture Report Describes CIA Interrogation Program,” *Time Magazine*, December 9, 2014.

⁶⁰ Sen. Susan Collins, remarks in *Additional Views*, p. 3 of 5.

⁶¹ The *SSCI Study* disputes the CIA’s claim that EITs “saved lives.” See for example, *SSCI Study*, Finding 2, p. 2 of 19.

wrote, “Brave and serious men and women ... devised and executed a program to get intelligence from captured terrorists who refused to cooperate.”⁶² Furthermore, they have suggested that more coercive methods directed against a suspected terrorist is the right thing to do, even if it means some degree of detainee pain and suffering.⁶³ They argue EITs produce life-saving information for purposes related to national security—particularly necessary in time-sensitive situations. Several former POWs have taken this position. For example, former POW Lee Ellis argued that the United States used EITs appropriately—to get critical information that saved lives—while EITs used against Americans were used inappropriately. In his words, “What the communists did to us was torture us to say a lie, to make a statement against our government, to make propaganda for their cause to defeat our country. So to me, there’s a huge difference there.”⁶⁴ Former POW Leo Thorsness suggested that the moral perspective has to take second place to value of actionable intelligence. In his words, “In a perfect world we wouldn’t do this. But the world isn’t perfect.”⁶⁵

The “saving lives” perspective is countered by the “basic human rights” and “rule of law” perspectives offered by Senator John McCain and others. A former POW who was himself subject to torture, Senator McCain stated “I have long believed some of these practices [EITs] amounted to torture, as a reasonable person would define it.... Most of all, I know the use of torture compromises that which most distinguishes us from our enemies, our belief that all people, even captured enemies, possess basic human rights, which are protected by international conventions the U.S. not only joined, but for the most part authored.”⁶⁶ In personal remarks on the Senate floor, Senator Feinstein stated: “It’s really about American values and morals. It’s about the Constitution, the Bill of Rights, our rule of law. These values exist regardless of the circumstances in which we find ourselves. They exist in peacetime and in wartime. And if we cast aside these values when convenient, we have failed to live by the very precepts that make our nation a great one.”⁶⁷

Perspectives on EITs and Effectiveness

A third issue in the national discussion of EITs and the *SSCI Study* focused on effectiveness: Were the EITs effective in producing valuable intelligence not otherwise obtainable through standard (non-coercive) interrogation techniques?

The CIA D&I program, including both EITs and SITs, was reviewed and assessed by the *IG Special Review* in 2004.⁶⁸ The review concluded that the *overall* program was effective in

⁶² Michael B. Mukasey, Opinion, *Wall Street Journal*, December 16, 2014.

⁶³ Richard Cheney, interview by Chuck Todd, “Meet the Press,” *NBC News*, December 14, 2014.

⁶⁴ Lee Ellis, interview with the *Daily Caller*, quoted by Marc Thiessen in “Another Vietnam POW for waterboarding,” *AEI Institute*, September 4, 2012.

⁶⁵ Leo Thorsness, interview with Jon Scott, “Was the CIA really conducting torture?” *Fox News*, December 11, 2014.

⁶⁶ Sen. John McCain, “SSCI Study of the CIA’s R&I Program,” remarks in the Senate, *Congressional Record*, daily edition, vol. 160, no. 149 (December 9, 2014), p. S6411.

⁶⁷ Sen. Dianne Feinstein, “SSCI Study of the CIA’s R&I Program,” remarks in the Senate, *Congressional Record*, p. S6410.

⁶⁸ While the review is dated, it offers a number of useful evaluative criteria reflected in many of the perspectives associated with the effectiveness debate. The *SSCI Study* points out that its recommendations should have prompted the CIA to measure effectiveness in some meaningful way.

yielding useful information. In its view, intelligence (1) enabled the identification and capture of other terrorists; (2) warned of terrorist plots planned for the United States; (3) helped to verify (“vet”) information from other detainees; and (4) provided information about al Qaeda operations.⁶⁹ However, it appeared to find these criteria insufficient in themselves to justify the use of EITs. It noted that “[t]his Review did not uncover any evidence that these plots were imminent,”⁷⁰ and recommended that the CIA perform a comprehensive and independent analysis of the effectiveness of the EITs.⁷¹

The CIA has admitted its failure to perform a comprehensive and independent analysis of the effectiveness of the EITs.⁷² *CIA Comments* stated: “The internal and external studies commissioned in response to an OIG recommendation offered some useful insights, but they fell well short of the kind of systematic, comprehensive, independent assessment of program effectiveness that the Agency should be looking for.”⁷³ CIA Director John Brennan offered the following view in a statement on the effectiveness of the EITs: “We have not concluded that it was the use of EITs within that program that allowed us to obtain useful information from detainees subjected to them. The cause and effect relationship between the use of EITs and useful information subsequently provided by the detainee is, in my view, unknowable.”⁷⁴

In the absence of a comprehensive and independent analysis of EITs, perspectives varied widely on the criteria for judging effectiveness. Some viewpoints also appeared to conflate judgments on the effectiveness of EITs alone with judgments on the effectiveness of the overall interrogation program. With these caveats in mind, and based on a synthesis of written and/or verbal statements discussed in the paragraphs below, judgments offered in the public discussion regarding the effectiveness of EITs seemed to be based most frequently on their ability to accomplish *one or more* of the following:

1. Provide unique, otherwise unavailable, information;
2. Provide accurate, actionable intelligence on imminent threats;
3. Provide information that helped to verify information from other detainees;
4. Provide information concerning al Qaeda personnel and operations; and
5. Gain the cooperation of resisting detainees.

According to *SSCI Study* findings, its perspective on the effectiveness of EITs was based on its assessment of their ability to produce accurate information and/or gain the cooperation of resisting detainees: “The Committee finds, based on a review of CIA interrogation records, that the use of the CIA’s enhanced interrogation techniques was not an effective means of obtaining accurate information or gaining detainee cooperation.”⁷⁵ The *SSCI Study* determined the CIA’s

⁶⁹ *IG Special Review*, “Effectiveness” section, pp. 85-88.

⁷⁰ *Ibid.*, pp. 88-89.

⁷¹ *SSCI Study*, p. 127 of 499. The 2004 IG recommendation to evaluate EIT effectiveness is acknowledged in *CIA Comments*, p.7, but in the declassified version of the *IG Special Review*, its formal recommendations are redacted.

⁷² *SSCI Study*, p. 127 of 499. The 2004 IG recommendation to evaluate EIT effectiveness is acknowledged in *CIA Comments*, p.7, but in the declassified version of the *IG Special Review*, its formal recommendations are redacted.

⁷³ *CIA Comments*, p. 7.

⁷⁴ John Brennan, “Response to SSCI Study on the Former Detention and Interrogation Program,” December 11, 2014. Brennan reference to EIT effectiveness as “unknowable” also found in *CIA Comments*, p. 20.

⁷⁵ *SSCI Study*, Finding 1, p. 2 of 19.

claims of effectiveness were inaccurate and not based on credible measures of success.⁷⁶ The *SSCI Study* quoted a CIA document that admitted the information produced was unreliable and “in many cases... ‘just speculation.’”⁷⁷ In one finding, the *SSCI Study* summarizes the CIA’s inaccurate reporting this way:

The Committee reviewed 20 of the most frequent and prominent examples of purported counterterrorism successes that the CIA has attributed to the use of its enhanced interrogation techniques, and found them to be wrong in fundamental respects. In some cases, there was no relationship between the cited counterterrorism success and any information provided by detainees during or after the use of the CIA’s enhanced interrogation techniques.⁷⁸

Senator McCain’s perspective echoed the *SSCI Study*’s finding that detainees subjected to EITs produced unreliable intelligence. He stated, “I know from personal experience that the abuse of prisoners will produce more bad than good intelligence. I know that victims of torture will offer intentionally misleading information if they think their captors will believe it. I know they will say whatever they think their torturers want them to say if they believe it will stop their suffering.”⁷⁹

In contrast, *SSCI Minority Views*, and others, supported the CIA’s contention⁸⁰ that EITs were effective at producing valuable, actionable intelligence that saved lives, elicited cooperation, and prevented further attacks. According to the *SSCI Minority Views*: “We have no doubt that the CIA’s detention program saved lives and played a vital role in weakening al-Qa’ida while the Program was in operation.”⁸¹ *SSCI Minority Views* stated that EITs were effective because they helped verify the information from other detainees: “detainee’s information clarified or explained the significance of ... prior information.”⁸² *SSCI Minority Views* determined that the *SSCI Study*’s findings of ineffectiveness were based on faulty premises and flawed methodology⁸³—a perspective echoed by the former CIA directors.⁸⁴ Senator Saxby Chambliss, then-Vice Chairman of the SSCI, observed:

⁷⁶ *SSCI Study*, Finding 2, p. 2 of 19, “The CIA’s justification for the use of its enhanced interrogation techniques rested on inaccurate claims of their effectiveness;” and *SSCI Study*, Finding 16, p. 13 of 19, “The CIA failed to adequately evaluate the effectiveness of its enhanced interrogation techniques.”

⁷⁷ *SSCI Study*, see for example, p. 300 of 499, where *SSCI Study* quotes a CIA memo (memo title details redacted), “KSM stated that during March 2003—when he was being subjected to the CIA’s enhanced interrogation techniques—‘he may have given false information,’ and that, in many cases, the information he provided was ‘just speculation.’”

⁷⁸ *SSCI Study*, Finding 2, p. 2 of 19.

⁷⁹ Sen. John McCain, remarks in *Congressional Record*, daily edition, vol. 160, no. 149 (December 9, 2014), p. S6411.

⁸⁰ George Tenet et al., Opinion, *Wall Street Journal*, December 10, 2014. See also the *SSCI Study* (p. 172 of 499, footnote 1050) which recounts that CIA’s representations regarding the effectiveness of its EITs “asserted that the intelligence obtained from the use of the CIA’s enhanced interrogation techniques was unique, otherwise unavailable, and resulted in ‘saved lives.’”

⁸¹ *SSCI Minority Views*, “Conclusion,” p. XXVIII. See also *SSCI Minority Views*, Conclusions 1 and 2; and p. VI which suggested that effectiveness of EITs should be judged by “the qualitative value of the intelligence information obtained.”

⁸² *SSCI Minority Views*, p. VIII.

⁸³ *SSCI Minority Views*, pp. II-V. Some “analytical deficiencies” included: “inadequate context,” “inadequate objectivity,” and “poor standards of analytical tradecraft” (such as “uncited and absolute assertions”).

⁸⁴ George Tenet et al., Opinion, *Wall Street Journal*, December 10, 2014, “The staff ‘cherry picked’ its way through six million pages of documents, ignoring some data and highlighting others, to construct an argument against the program’s effectiveness.”

The [SSCI] study essentially refuses to admit that CIA detainees—especially CIA detainees subjected to enhanced interrogation techniques—provided intelligence information which helped the U.S. Government and its allies to neutralize numerous terrorist threats.... [T]his refusal does not make sense given the vast amount of information gained from these interrogations, the thousands of intelligence reports that were generated as a result of them, the capture of additional terrorists, and the disruption of the plots those captured terrorists were planning.⁸⁵

Former POW Leo Thorsness's perspective echoed the SSCI *Minority's Views* of EIT effectiveness when he stated that EITs should be in an interrogator's toolbox because the fear of EITs can make detainees cooperate.⁸⁶ When former Vice President Cheney was asked, "Did the ends justify the means?" he responded "Absolutely," adding, "[R]emember what was going on at the time.... There was every reason to believe there was going to be a follow-on attack."⁸⁷ He argued EITs produced "actionable" intelligence that was "absolutely vital in preventing another attack."⁸⁸

Additional Steps

Details associated with, and the public debate surrounding, EITs have already prompted a number of reform efforts. For example, the *CIA Comments* listed eight reforms the CIA is implementing to improve the planning, execution, and oversight of its covert operations.⁸⁹ President Obama's E.O. 13491 forced the DOJ to withdraw, update, and/or reissue a number of policy documents related to detainee detention and interrogation. A section in the IAA for FY2014 (P.L. 113-126) focused on the opinions of the DOJ/OLC concerning intelligence activities. The provision was designed to increase the committees' ability to understand and question the legal reasoning behind OLC opinions relevant to the committees' oversight functions.⁹⁰

In terms of possible future actions, a number of proposals have been offered. Most recently, Senators Dianne Feinstein and John McCain offered an amendment to the National Defense Authorization Act.⁹¹ Its provisions provide details associated with "(a) Limitation on Interrogation Techniques to Those in the Army Field Manual," and "(b) International Committee of the Red Cross Access to Detainees." The amendment was approved in the Senate on June 16, 2015, by a vote of 78-21.⁹²

⁸⁵ Sen. Saxby Chambliss, "SSCI Study of the CIA's R&I Program," remarks in the Senate, *Congressional Record*, Vol. 160, no. 149, December 9, 2015, p. S6417.

⁸⁶ Leo Thorsness, interview by Jon Scott, "Was the CIA really conducting torture?" *Fox News*, December 11, 2014.

⁸⁷ Richard Cheney, interview by Bret Baier, "Cheney defends CIA interrogation techniques, calls Senate report 'deeply flawed,'" *Fox News*, December 11, 2014.

⁸⁸ *Ibid.*

⁸⁹ Brennan cover letter p. 4 and *CIA Comments*, pp. 17-18.

⁹⁰ CRS Report R43793, *Intelligence Authorization Legislation for FY2014 and FY2015: Provisions, Status, Intelligence Community Framework*, by Anne Daugherty Miles, pp 12-13. Section 321 requires the Attorney General to provide a listing of every opinion of the OLC that has been provided to an element of the IC, whether classified or unclassified. Provisions were made for information associated with covert action "findings" and information subject to "executive privilege."

⁹¹ Senator Feinstein for Senator McCain, "amendment 1889 to amendment No. 1463," to H.R. 1735 (National Defense Authorization Act for Fiscal Year 2016), "SEC. 1040. Reaffirmation of the Prohibition on Torture," *Congressional Record*, daily edition, vol. 161, no. 91 (June 9, 2015), pp. S3911-S3912.

⁹² Recorded vote no. 209.

Appendix A. CIA Standard Interrogation Techniques (SITs)

According to the *Interrogation Guidelines* issued in January 2003 by then-DCI George Tenet, “standard interrogation techniques” were defined as techniques that did not “incorporate significant physical or psychological pressure.”⁹³ Tenet’s guidelines further stated that the techniques included, but were not limited to, “all lawful forms of questioning employed by U.S. law enforcement and military interrogation personnel.”⁹⁴ The DCI *Interrogation Guidelines* required advance approval for the use of SITs “whenever feasible,” and “in all instances, their use shall be documented in cable traffic.”⁹⁵

A list of SITs in the *IG Special Review* was not exhaustive. It identified these seven techniques as “standard:”

- isolation;
- sleep deprivation not to exceed 72 hours;⁹⁶
- reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee);
- deprivation of reading material;
- loud music or white noise (at a decibel level calculated to avoid damage to the detainee’s hearing);
- diapers for limited periods (generally not to exceed 72 hours); and
- moderate psychological pressure.⁹⁷

SSCI Study findings suggest that other techniques may have also been considered “standard” at various times.⁹⁸ For example the *SSCI Study* found that “water dousing was not characterized as a ‘standard’ technique until June 2003. In numerous cases prior to June 2003, water dousing was explicitly described in CIA cables as an ‘enhanced’ interrogation technique.”⁹⁹ The *SSCI Study* also found that DCI guidelines “allowed CIA officers a significant amount of discretion.”

⁹³ George Tenet, “Guidelines on Interrogations Conducted Pursuant to the (redacted),” January 28, 2003, in *IG Special Review*, Appendix E, p. 1.

⁹⁴ *Ibid.* The Army Field Manual, for example, prescribes lawful forms of questioning by military interrogation personnel and specifically authorizes 19 interrogation techniques. CRS Report RL33655, *Interrogation of Detainees: Requirements of the Detainee Treatment Act*, by Michael John Garcia.

⁹⁵ *Ibid.*, p. 3.

⁹⁶ *IG Special Review*, p. 30. Seventy-two hours was reduced to 48 hours in December 2003, according to the CIA General Counsel.

⁹⁷ *IG Special Review*, p. 30. All of the SITs except the “moderate psychological pressure” are also listed in the DCI *Interrogation Guidelines*, p. 1.

⁹⁸ *SSCI Study*, p. 102 of 499, fn. 590. The *SSCI Study* found that “prior to January 2003, the CIA had not yet designated any technique as a ‘standard’ technique and that the distinction between standard and enhanced interrogation techniques, which began in January 2003, was eliminated by CIA leadership in 2005.”

⁹⁹ *SSCI Study*, p. 102 of 499, fn. 590.

[DCI] guidelines allowed CIA officers a significant amount of discretion to determine who could be subjected to the CIA's "standard" interrogation techniques, when those techniques could be applied, and when it was not "feasible" to request advance approval from CIA Headquarters. Thus, consistent with the interrogation guidelines, throughout much of 2003, CIA officers (including personnel not trained in interrogation) could, at their discretion, strip a detainee naked, shackle him in the standing position for up to 72 hours, and douse the detainee repeatedly with cold water—without approval from CIA Headquarters if those officers judged CIA Headquarters approval was not "feasible." In practice, CIA personnel routinely applied these types of interrogation techniques without obtaining prior approval.¹⁰⁰

The *SSCI Study* determined that on those occasions when EITs were temporarily suspended, interrogators sometimes chose, with CIA HQ approval, to use repeated applications of the CIA's standard interrogation techniques. For example, the *SSCI Study* found that in order to avoid using an EIT, "CIA officers subjected [a particular detainee]... to 70 hours of standing sleep deprivation, two hours less than the maximum. After allowing him four hours of sleep ... was subjected to an additional 23 hours of standing sleep deprivation, followed immediately by 20 hours of seated sleep deprivation."¹⁰¹ These 'standard' techniques were coercive, but not considered to be as coercive as the CIA's 'enhanced' interrogation techniques."¹⁰²

¹⁰⁰ *SSCI Study*, p. 63 of 499.

¹⁰¹ *SSCI Study* example, p. 117 of 499.

¹⁰² *SSCI Study* example, p. 116 of 499.

Appendix B. CIA Enhanced Interrogation Techniques (EITs)

According to the *Interrogation Guidelines* issued in January 2003 by then-DCI George Tenet, “enhanced interrogation techniques” were defined as techniques that “**do** (emphasis added) incorporate significant physical or psychological pressure beyond standard techniques.”¹⁰³ DCI *Interrogation Guidelines* required:

Prior approval in writing (e.g., by written memorandum or in cable traffic) from the Director [of CIA], DCI Counterterrorism Center [CTC], with the concurrence of the Chief CTC Legal Group, is required for the use of 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 Enhanced Techniques 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 self-defense.¹⁰⁴

The *IG Special Review* provided descriptions of authorized Enhanced Interrogation Techniques in 2003:

- The *attention grasp* consists of grasping the detainee with both hands, with one hand on each side of the collar opening, in a controlled and quick motion. In the same motion as the grasp, the detainee is drawn toward the interrogator.
- 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.
- The *facial hold* is used to hold the detainee’s head immobile. The interrogator places an open palm on either side of the detainee’s face and the interrogator’s fingertips are kept well away from the detainee’s eyes.
- With the *facial or insult slap*, the fingers are slightly spread apart. The interrogator’s hand makes contact with the area between the tip of the detainee’s chin and the bottom of the corresponding earlobe.
- In *cramped confinement*, the detainee is placed in a confined space, typically a small or large box, which is usually dark. Confinement in the smaller space lasts no more than two hours and in the larger space it can last up to 18 hours.
- *Insects* placed in a confinement box involve placing a harmless insect in the box with the detainee.
- During *wall standing*, the detainee may stand about 4 to 5 feet from the wall with his feet spread to approximately shoulder width. His arms are stretched out in

¹⁰³ George Tenet, “Guidelines on Interrogations Conducted Pursuant to the (redacted),” January 28, 2003, in *IG Special Review*, Appendix E, p. 1.

¹⁰⁴ *Ibid.*, p. 3.

front of him and his fingers rest on the wall to support all his body weight. The detainee is not allowed to reposition his hands or feet.

- The application of *stress positions* may include having the detainee sit on the floor with his legs extended straight out in front of him with his arms raised above his head or kneeling on the floor while leaning back at a 45 degree angle.
- *Sleep deprivation* will not exceed 11 days at a time.
- 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.¹⁰⁵

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¹⁰⁵ *IG Special Review*, p. 15 Text Box.