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Central Intelligence Agency
Inspector General

SPECIAL REVIEW

(TS[redacted]) COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES
(SEPTEMBER 2001 – OCTOBER 2003)
(2003-7123-IG)

7 May 2004

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OFFICE OF INSPECTOR GENERAL

SPECIAL REVIEW

(TS [redacted]) COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001 - OCTOBER 2003) (2003-7123-IG)

7 May 2004

INTRODUCTION

1. [redacted]

2. (TS [redacted]) In November 2002, the Deputy Director for Operations (DDO) informed the Office of Inspector General (OIG) that the Agency had established a program in the Counterterrorist Center to detain and interrogate terrorists at sites abroad ("the CTC Program"). He also informed OIG that he had just learned of and had dispatched a team to investigate [redacted] In January 2003, the DDO informed OIG that he had received allegations that Agency personnel had used unauthorized interrogation techniques with a detainee, 'Abd Al-Rahim Al-Nashiri, at another foreign site, and requested that

OIG investigate. Separately, OIG received information that some employees were concerned that certain covert Agency activities at an overseas detention and interrogation site might involve violations of human rights. In January 2003, OIG initiated a review of Agency counterterrorism detention and interrogation activities [redacted] and the incident with Al-Nashiri.[1] This Review covers the period September 2001 to mid-October 2003.[2] [redacted]

SUMMARY

3. (TS [redacted] the DCI assigned responsibility for implementing capture and detention authority to the DDO and to the Director of the DCI Counterterrorist Center (D/CTC). When U.S. military forces began detaining individuals in Afghanistan and at Guantanamo Bay, Cuba, [redacted]

4. (TS [redacted] the Agency began to detain and interrogate directly a number of suspected terrorists. The capture and initial Agency interrogation of the first high value detainee, Abu Zubaydah,

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[1] (S [redacted] NF) Appendix A addresses the Procedures and Resources that OIG employed in conducting this Review. The Review does not address renditions conducted by the Agency or interrogations conducted jointly with [redacted] the U.S. military.

[2] (U) Appendix B is a chronology of significant events that occurred during the period of this Review.

[redacted]

in March 2002, presented the Agency with a significant dilemma.[4] The Agency was under pressure to do everything possible to prevent additional terrorist attacks. Senior Agency officials believed Abu Zubaydah was withholding information that could not be obtained through then-authorized interrogation techniques. Agency officials believed that a more robust approach was necessary to elicit threat information from Abu Zubaydah and possibly from other senior Al-Qa'ida high value detainees.

5. (TS [redacted]) The conduct of detention and interrogation activities presented new challenges for CIA. These included determining where detention and interrogation facilities could be securely located and operated, and identifying and preparing qualified personnel to manage and carry out detention and interrogation activities. With the knowledge that Al-Qa'ida personnel had been trained in the use of resistance techniques, another challenge was to identify interrogation techniques that Agency personnel could lawfully use to overcome the resistance. In this context, CTC, with the assistance of the Office of Technical Service (OTS), proposed certain more coercive physical techniques to use on Abu Zubaydah. All of these considerations took place against the backdrop of pre-September 11, 2001 CIA avoidance of interrogations and repeated U.S. policy statements condemning torture and advocating the humane treatment of political prisoners and detainees in the international community.

6. (TS [redacted]) The Office of General Counsel (OGC) took the lead in determining and documenting the legal parameters and constraints for interrogations. OGC conducted independent research

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4 (TS [redacted]) The use of "high value" or "medium value" to describe terrorist targets and detainees in this Review is based on how they have been generally categorized by CTC. CTC distinguishes targets according to the quality of the intelligence that they are believed likely to be able to provide about current terrorist threats against the United States. Senior Al-Qa'ida planners and operators, such as Abu Zubaydah and Khalid Shaykh Muhammad, 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.

and consulted extensively with Department of Justice (DoJ) and National Security Council (NSC) legal and policy staff. Working with DoJ's Office of Legal Counsel (OLC), OGC determined that in most instances relevant to the counterterrorism detention and interrogation activities [redacted] the criminal prohibition against torture, 18 U.S.C. 2340-2340B, is the controlling legal constraint on interrogations of detainees outside the United States. In August 2002, DoJ provided to the Agency a legal opinion in which it determined that 10 specific "Enhanced Interrogation Techniques" (EITs) would not violate the torture prohibition. This work provided the foundation for the policy and administrative decisions that guide the CTC Program.

7. (TS [redacted]) 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.

8. [redacted]

[redacted]

[redacted]

9. (TS [redacted] From the beginning, OGC briefed DO officers assigned to these [redacted] facilities on their legal authorities, and Agency personnel staffing these facilities documented interrogations and the condition of detainees in cables.

10. (TS [redacted] There were few instances of deviations from approved procedures [redacted] with one notable exception described in this Review. With respect to two detainees at those sites, the use and frequency of one EIT, the waterboard, went beyond the projected use of the technique as originally described to DoJ. The Agency, on 29 July 2003, secured oral DoJ concurrence that certain deviations are not significant for purposes of DoJ's legal opinions.

11. [redacted]

12. [redacted]

[redacted]

13. [redacted] there were instances of improvisation and other undocumented interrogation techniques [redacted]

14. [redacted]

15. (TS, [redacted]) Agency efforts to provide systematic, clear and timely guidance to those involved in the CTC Detention and Interrogation Program was inadequate at first but have improved considerably during the life of the Program as problems have been identified and addressed. CTC implemented training programs for interrogators and debriefers.[6] Moreover, building upon operational and legal guidance previously sent to the field, the DCI

[6] (TS, [redacted]) Before 11 September (9/11) 2001, Agency personnel sometimes used the terms *interrogation/interrogator* and *debriefing/debriefer* interchangeably. The use of these terms has since evolved and, today, CTC more clearly distinguishes their meanings. 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 can administer EITs during an interrogation of a detainee only after the field, in coordination with Headquarters, assesses the detainee as withholding information. 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.

on 28 January 2003 signed "Guidelines on Confinement Conditions for CIA Detainees" and "Guidelines on Interrogations Conducted Pursuant [redacted] The DCI Guidelines require individuals engaged in or supporting interrogations [redacted] be made aware of the guidelines and sign an acknowledgment that they have read them. The DCI Interrogation Guidelines make formal the existing CTC practice of requiring the field to obtain specific Headquarters approvals prior to the application of all EITs. Although the DCI Guidelines are an improvement over the absence of such DCI Guidelines in the past, they still leave substantial room for misinterpretation and do not cover all Agency detention and interrogation activities.

16. (TS [redacted]) The Agency's detention and interrogation of terrorists has provided intelligence that has enabled the identification and apprehension of other terrorists and warned of terrorist plots planned for the United States and around the world. The CTC Program has resulted in the issuance of thousands of individual intelligence reports and analytic products supporting the counterterrorism efforts of U.S. policymakers and military commanders.

17. (TS [redacted]) The current CTC Detention and Interrogation Program has been subject to DoJ legal review and Administration approval but diverges sharply from previous Agency policy and rules that govern interrogations by U.S. military and law enforcement officers. Officers are concerned that public revelation of the CTC Program will seriously damage Agency officers' personal reputations, as well as the reputation and effectiveness of the Agency itself.

18. (TS [redacted] recognized that detainees may be held in U.S. Government custody indefinitely if appropriate law enforcement jurisdiction is not asserted. Although there has been ongoing discussion of the issue inside the Agency and among NSC,

Defense Department, and Justice Department officials, no decisions on any "endgame" for Agency detainees have been made. Senior Agency officials see this as a policy issue for the U.S. Government rather than a CIA issue. Even with Agency initiatives to address the endgame with policymakers, some detainees who cannot be prosecuted will likely remain in CIA custody indefinitely.

19. (TS [redacted]) The Agency faces potentially serious long-term political and legal challenges as a result of the CTC Detention and Interrogation Program, particularly its use of EITs and the inability of the U.S. Government to decide what it will ultimately do with terrorists detained by the Agency.

20. (TS [redacted]) This Review makes a number of recommendations that are designed to strengthen the management and conduct of Agency detention and interrogation activities. Although the DCI Guidelines were an important step forward, they were only designed to address the CTC Program, rather than all Agency debriefing or interrogation activities. [redacted]

21. [redacted]

BACKGROUND

22. (S) The Agency has had intermittent involvement in the interrogation of individuals whose interests are opposed to those of the United States. After the Vietnam War, Agency personnel experienced in the field of interrogations left the Agency or moved to other assignments. In the early 1980s, a resurgence of interest in teaching interrogation techniques developed as one of several methods to foster foreign liaison relationships. Because of political sensitivities the then-Deputy Director of Central Intelligence (DDCI) forbade Agency officers from using the word "interrogation." The Agency then developed the Human Resource Exploitation (HRE) training program designed to train foreign liaison services on interrogation techniques.

23. (S) In 1984, OIG investigated allegations of misconduct on the part of two Agency officers who were involved in interrogations and the death of one individual [redacted] Following that investigation, the Agency took steps to ensure Agency personnel understood its policy on

interrogations, debriefings, and human rights issues. Headquarters sent officers to brief Stations and Bases and provided cable guidance to the field.

24. (S) In 1986, the Agency ended the HRE training program because of allegations of human rights abuses in Latin America. [redacted] DO Handbook [redacted] which remains in effect, explains the Agency's general interrogation policy:

[redacted]

DISCUSSION

GENESIS OF POST 9/11 AGENCY DETENTION AND INTERROGATION ACTIVITIES

25. (TS [redacted]) The statutory basis for CIA's involvement in detentions and interrogations is [redacted] the National Security Act of 1947, as amended.[7] [redacted]

26. (TS [redacted]

27. (S//NF) The DCI delegated responsibility for implementation [redacted] to the DDO and D/CTC. Over time, CTC also solicited assistance from other Agency components, including OGC, OMS, [redacted] and OTS.

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[7] (U//FOUO) DoJ takes the position that as Commander-in-Chief, the President independently has the Article II constitutional authority to order the detention and interrogation of enemy combatants to gain intelligence information.

[8] [redacted]

[9] [redacted]

[10] [redacted]

28. (TS [redacted]) To assist Agency officials in understanding the scope and implications [redacted] OGC researched, analyzed, and wrote "draft" papers on multiple legal issues. These included discussions of the [redacted] OGC shared these "draft" papers with Agency officers responsible [redacted]

29. [redacted]

THE CAPTURE OF ABU ZUBAYDAH AND DEVELOPMENT OF EITS

30. (TS [redacted]) 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-Qa'ida member in U.S. custody at that time. This accelerated CIA's development of an interrogation program [redacted]

[redacted]

[redacted]

31. (TS [redacted]) To treat the severe wounds that Abu Zubaydah suffered upon his capture, the Agency provided him intensive medical care from the outset and deferred his questioning for several weeks pending his recovery. The Agency then assembled a team that interrogated Abu Zubaydah using non-aggressive, non-physical elicitation techniques. [redacted] The Agency believed that Abu Zubaydah was withholding imminent threat information.

32. (TS [redacted]) Several months earlier, in late 2001, CIA had tasked an independent contractor psychologist, who had [redacted] experience in the U.S. Air Force's Survival, Evasion, Resistance, and Escape (SERE) training program, to research and write a paper on Al-Qa'ida's resistance to interrogation techniques.[13] This psychologist collaborated with a Department of Defense (DoD) psychologist who had [redacted] SERE experience in the U.S. Air Force and DoD to produce the paper, "Recognizing and Developing Countermeasures to Al-Qa'ida Resistance to Interrogation Techniques: A Resistance Training Perspective." Subsequently, the two psychologists developed a list of new and more aggressive EITs that they recommended for use in interrogations.

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12 [redacted]

13 (U//FOUO) The SERE training program falls under the DoD Joint Personnel Recovery Agency (JPRA). JPRA is responsible for missions to include the training for SERE and Prisoner of War and Missing In Action operational affairs including repatriation. SERE Training is offered by the U.S. Army, Navy, and Air Force to its personnel, particularly air crews and special operations forces who are of greatest risk of being captured during military operations. SERE students are taught how to survive in various terrain, evade and endure captivity, resist interrogations, and conduct themselves to prevent harm to themselves and fellow prisoners of war.

33. (TS [redacted]) CIA's OTS obtained data on the use of the proposed EITs and their potential long-term psychological effects on detainees. OTS input was based in part on information solicited from a number of psychologists and knowledgeable academics in the area of psychopathology.

34. (TS/ [redacted] OTS also solicited input from DoD/Joint Personnel Recovery Agency (JPRA) regarding techniques used in its SERE training and any subsequent psychological effects on students. DoD/JPRA concluded no long-term psychological effects resulted from use of the EITs, including the most taxing technique, the waterboard, on SERE students.[14] The OTS analysis was used by OGC in evaluating the legality of techniques.

35. (TS [redacted]) Eleven EITs were proposed for adoption in the CTC Interrogation Program. As proposed, use of EITs would be subject to a competent evaluation of the medical and psychological state of the detainee. The Agency eliminated one proposed technique—[redacted]—after learning from DoJ that this could delay the legal review. The following textbox identifies the 10 EITs the Agency described to DoJ.

14 (S) According to individuals with authoritative knowledge of the SERE program, the waterboard was used for demonstration purposes on a very small number of students in a class. Except for Navy SERE training, use of the waterboard was discontinued because of its dramatic effect on the students who were subjects.

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Enhanced Interrogation Techniques

- 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 a wall with his feet spread approximately to his shoulder width. His arms are stretched out in front of him and his fingers rest on the wall to support all of 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.

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DOJ LEGAL ANALYSIS

36. (TS[redacted]) CIA's OGC sought guidance from DoJ regarding the legal bounds of EITs vis-à-vis individuals detained [redacted] The ensuing legal opinions focus on the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (Torture Convention),[15] especially as implemented in the U.S. criminal code, 18 U.S.C. 2340-2340A.

37. (U//FOUO) The Torture Convention specifically prohibits "torture," which it defines in Article 1 as:

> 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 sanction. [Emphasis added.]

Article 4 of the Torture Convention provides that states party to the Convention are to ensure that all acts of "torture" are offenses under their criminal laws. Article 16 additionally provides that each state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to acts of torture as defined in Article 1."

[15] (U//FOUO) Adopted 10 December 1984, S. Treaty Doc. No. 100-20 (1988) 1465 U.N.T.S. 85 (entered into force 26 June 1987). The Torture Convention entered into force for the United States on 20 November 1994.

38. (U//FOUO) The Torture Convention applies to the United States only in accordance with the reservations and understandings made by the United States at the time of ratification.[16] As explained to the Senate by the Executive Branch prior to ratification:

> Article 16 is arguably broader than existing U.S. law. The phrase "cruel, inhuman or degrading treatment or punishment" is a standard formula in international instruments and is found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. To the extent the phrase has been interpreted in the context of those agreements, "cruel" and "inhuman" treatment or punishment appears to be roughly equivalent to the treatment or punishment barred in the United States by the Fifth, Eighth and Fourteenth Amendments. "Degrading" treatment or punishment, however, has been interpreted as potentially including treatment that would probably not be prohibited by the U.S. Constitution. [Citing a ruling that German refusal to recognize individual's gender change might be considered "degrading" treatment.] To make clear that the United States construes the phrase to be coextensive with its constitutional guarantees against cruel, unusual, and inhumane treatment, the following understanding is recommended:
>
> > "The United States understands the term 'cruel, inhuman or degrading treatment or punishment,' as used in Article 16 of the Convention, to mean the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."[17] [Emphasis added.]

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16 (U) Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980). The United States is not a party to the Vienna Convention on treaties, but it generally regards its provisions as customary international law.

17 (U//FOUO) S. Treaty Doc. No. 100-20, at 15-16.

39. (U//FOUO) In accordance with the Convention, the United States criminalized acts of torture in 18 U.S.C. 2340A(a), which provides as follows:

> Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

The statute adopts the Convention definition of "torture" as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control."[18] "Severe physical pain and suffering" is not further defined, but Congress added a definition of "severe mental pain or suffering:"

> [T]he prolonged mental harm caused by or resulting from–
>
> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> (B) 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;
>
> (C) the threat of imminent death; or
>
> (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality. . . .[19]

These statutory definitions are consistent with the understandings and reservations of the United States to the Torture Convention.

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[18] (U//FOUO) 18 U.S.C. 2340(1).

[19] (U//FOUO) 18 U.S.C. 2340(2).

40. (U//FOUO) DoJ has never prosecuted a violation of the torture statute, 18 U.S.C. §2340, and there is no case law construing its provisions. OGC presented the results of its research into relevant issues under U.S. and international law to DoJ's OLC in the summer of 2002 and received a preliminary summary of the elements of the torture statute from OLC in July 2002. An unclassified 1 August 2002 OLC legal memorandum set out OLC's conclusions regarding the proper interpretation of the torture statute and concluded that "Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering whether mental or physical."[20] Also, OLC stated that the acts must be of an "extreme nature" and that "certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture." Further describing the requisite level of intended pain, OLC stated:

> Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.[21]

OLC determined that a violation of Section 2340 requires that the infliction of severe pain be the defendant's "precise objective." OLC also concluded that necessity or self-defense might justify interrogation methods that would otherwise violate Section 2340A.[22] The August 2002 OLC opinion did not address whether any other provisions of U.S. law are relevant to the detention, treatment, and interrogation of detainees outside the United States.[23]

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20 (U//FOUO) Legal Memorandum, Re: Standards of Conduct for Interrogation under 18 U.S.C. 2340-2340A (1 August 2002).

21 (U//FOUO) Ibid., p. 1.

22 (U//FOUO) Ibid., p. 39.

23 (U//FOUO) OLC's analysis of the torture statute was guided in part by judicial decisions under the Torture Victims Protection Act (TVPA) 28 U.S.C. 1350, which provides a tort remedy for victims of torture. OLC noted that the courts in this context have looked at the entire course

41. (U//FOUO) A second unclassified 1 August 2002 OLC opinion addressed the international law aspects of such interrogations.[24] This opinion concluded that interrogation methods that do not violate 18 U.S.C. 2340 would not violate the Torture Convention and would not come within the jurisdiction of the International Criminal Court.

42. (TS[redacted]) In addition to the two unclassified opinions, OLC produced another legal opinion on 1 August 2002 at the request of CIA.[25] (Appendix C.) This opinion, addressed to CIA's Acting General Counsel, discussed whether the proposed use of EITs in interrogating Abu Zubaydah would violate the Title 18 prohibition on torture. The opinion concluded that use of EITs on Abu Zubaydah would not violate the torture statute because, among other things, Agency personnel: (1) would not specifically intend to inflict severe pain or suffering, and (2) would not in fact inflict severe pain or suffering.

43. (TS[redacted]) This OLC opinion was based upon specific representations by CIA concerning the manner in which EITs would be applied in the interrogation of Abu Zubaydah. For example, OLC was told that the EIT "phase" would likely last "no more than several days but could last up to thirty days." The EITs would be used on "an as-needed basis" and all would not necessarily be used. Further, the EITs were expected to be used "in some sort of escalating fashion, culminating with the waterboard though not necessarily ending with this technique." Although some of the EITs

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of conduct, although a single incident could constitute torture. OLC also noted that courts may be willing to find a wide range of physical pain can rise to the level of "severe pain and suffering." Ultimately, however, OLC concluded that the cases show that only acts "of an extreme nature have been redressed under the TVPA's civil remedy for torture." White House Counsel Memorandum at 22 - 27.

24 (U//FOUO) OLC Opinion by John C. Yoo, Deputy Assistant Attorney General, OLC (1 August 2002).

25 (TS[redacted]) Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, "Interrogation of al Qaida Operative" (1 August 2002) at 15.

might be used more than once, "that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions." With respect to the waterboard, it was explained that:

> . . . the individual is bound securely to an inclined bench . . . . The individual's feet are generally elevated. A cloth is placed over the forehead and eyes. Water is then applied to the cloth in a controlled manner. As this is done, the cloth is lowered until it covers both the nose and mouth. Once the cloth is saturated and completely covers the mouth and nose, the air flow is slightly restricted for 20 to 40 seconds due to the presence of the cloth. 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. The individual does not breathe water into his lungs. During those 20 to 40 seconds, water is continuously applied from a height of [12 to 24] inches. After this period, the cloth is lifted, and the individual is allowed to breathe unimpeded for three or four full breaths. The sensation of drowning is immediately relieved by the removal of the cloth. The procedure may then be repeated. The water is usually applied from a canteen cup or small watering can with a spout. . . . [T]his 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. [I]t is likely that this procedure would not last more than 20 minutes in any one application.

Finally, the Agency presented OLC with a psychological profile of Abu Zubaydah and with the conclusions of officials and psychologists associated with the SERE program that the use of EITs would cause no long term mental harm. OLC relied on these representations to support its conclusion that no physical harm or prolonged mental harm would result from the use on him of the EITs, including the waterboard.[26]

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26 (TS/ [redacted] 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. In retrospect, based on the OLC extracts of the OTS report, 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

44. (TS[redacted]) OGC continued to consult with DoJ as the CTC Interrogation Program and the use of EITs expanded beyond the interrogation of Abu Zubaydah. This resulted in the production of an undated and unsigned document entitled, "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel."[27] According to OGC, this analysis was fully coordinated with and drafted in substantial part by OLC. In addition to reaffirming the previous conclusions regarding the torture statute, the analysis concludes that the federal War Crimes statute, 18 U.S.C. 2441, does not apply to Al-Qa'ida because members of that group are not entitled to prisoner of war status. The analysis adds that "the [Torture] Convention permits the use of [cruel, inhuman, or degrading treatment] in exigent circumstances, such as a national emergency or war." It also states that the interrogation of Al-Qa'ida members does not violate the Fifth and Fourteenth Amendments because those provisions do not apply extraterritorially, nor does it violate the Eighth Amendment because it only applies to persons upon whom criminal sanctions have been imposed. Finally, the analysis states that a wide range of EITs and other techniques would not constitute conduct of the type that would be prohibited by the Fifth, Eighth, or Fourteenth Amendments even were they to be applicable:

> The use of the following techniques and of comparable, approved techniques does not violate any Federal statute or other law, where the CIA interrogators do not specifically intend to cause the detainee to undergo severe physical or mental pain or suffering (i.e., they act with the good faith belief that their conduct will not cause such pain or suffering): isolation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainees), deprivation of reading material, loud music or white

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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.

27 (TS[redacted]) "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel," attached to [redacted] (16 June 2003).

noise (at a decibel level calculated to avoid damage to the detainees' hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, the use of diapers, the use of harmless insects, and the water board.

According to OGC, this analysis embodies DoJ agreement that the reasoning of the classified 1 August 2002 OLC opinion extends beyond the interrogation of Abu Zubaydah and the conditions that were specified in that opinion.

NOTICE TO AND CONSULTATION WITH EXECUTIVE AND CONGRESSIONAL OFFICIALS

45. (TS[redacted]) At the same time that OLC was reviewing the legality of EITs in the summer of 2002, the Agency was consulting with NSC policy staff and senior Administration officials. The DCI briefed appropriate senior national security and legal officials on the proposed EITs. In the fall of 2002, the Agency briefed the leadership of the Congressional Intelligence Oversight Committees on the use of both standard techniques and EITs.

46. (TS[redacted]) In early 2003, CIA officials, at the urging of the General Counsel, continued to inform senior Administration officials and the leadership of the Congressional Oversight Committees of the then-current status of the CTC Program. The Agency specifically wanted to ensure that these officials and the Committees continued to be aware of and approve CIA's actions. The General Counsel recalls that he spoke 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 and briefed them on the scope and breadth of the CTC's Detention and Interrogation Program.

47. (TS[redacted]) Representatives of the DO, in the presence of the Director of Congressional Affairs and the General Counsel, continued to brief the leadership of the Intelligence Oversight Committees on the use of EITs and detentions in February

and March 2003. The General Counsel says that none of the participants expressed any concern about the techniques or the Program.

48. (TS [redacted]) On 29 July 2003, the DCI and the General Counsel provided a detailed briefing to selected NSC Principals on CIA's detention and interrogation efforts involving "high value detainees," to include the expanded use of EITs.[28] According to a Memorandum for the Record prepared by the General Counsel following that meeting, the Attorney General confirmed that DoJ approved of the expanded use of various EITs, including multiple applications of the waterboard.[29] The General Counsel said he believes everyone in attendance was aware of exactly what CIA was doing with respect to detention and interrogation, and approved of the effort. According to OGC, the senior officials were again briefed regarding the CTC Program on 16 September 2003, and the Intelligence Committee leadership was briefed again in September 2003. Again, according to OGC, none of those involved in these briefings expressed any reservations about the program.

GUIDANCE ON CAPTURE, DETENTION, AND INTERROGATION

49. (TS [redacted]) Guidance and training are fundamental to the success and integrity of any endeavor as operationally, politically, and legally complex as the Agency's Detention and Interrogation Program. Soon after 9/11, the DDO issued guidance on the standards for the capture of terrorist targets. [redacted]

50. (TS [redacted]) The DCI, in January 2003 approved formal "Guidelines on Confinement Conditions for CIA Detainees" (Appendix D) and "Guidelines on Interrogations Conducted

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28 [redacted]

29 (U//FOUO) Memorandum for the Record, [redacted] (5 August 2003).

Pursuant to [redacted] (Appendix E), which are discussed below. Prior to the DCI Guidelines, Headquarters provided guidance via informal briefings and electronic communications, to include cables from CIA Headquarters, to the field. [redacted]

51. (TS [redacted]) In November 2002, CTC initiated training courses for individuals involved in interrogations. [redacted]

52. [redacted]

53. [redacted]

[redacted]

[redacted]

54. [redacted]

55. [redacted]

56. [redacted]

DCI Confinement Guidelines

57. (TS) Before January 2003, officers assigned to manage detention facilities developed and implemented confinement condition procedures. The January 2003 DCI Guidelines govern the conditions of confinement for CIA detainees held in detention facilities

31

58. [redacted] They must review the Guidelines and sign an acknowledgment that they have done so. [redacted]

59. (TS/ [redacted]) The DCI Guidelines specify legal "minimums" and require that "due provision must be taken to protect the health and safety of all CIA detainees." The Guidelines do not require that conditions of confinement at the detention facilities conform to U.S. prison or other standards. At a minimum, however, detention facilities are to provide basic levels of medical care:

[redacted]

Further, the guidelines provide that:

[redacted]

[redacted]

DCI Interrogation Guidelines

60. (S//NF) Prior to January 2003, CTC and OGC disseminated guidance via cables, e-mail, or orally on a case-by-case basis to address requests to use specific interrogation techniques. Agency management did not require those involved in interrogations to sign an acknowledgement that they had read, understood, or agreed to comply with the guidance provided. Nor did the Agency maintain a comprehensive record of individuals who had been briefed on interrogation procedures.

61. (TS [redacted] The DCI Interrogation Guidelines require that all personnel directly engaged in the interrogation of persons detained have reviewed these Guidelines, received appropriate training in their implementation, and have completed the applicable acknowledgement.

62. (S//NF) The DCI Interrogation Guidelines define "Permissible Interrogation Techniques" and specify that "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

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32 (S//NF) See [redacted] relevant text of DO Handbook [redacted]

Techniques."[33] EITs require advance approval from Headquarters, as do standard techniques whenever feasible. The field must document the use of both standard techniques and EITs.

63. (TS/ [redacted]) The DCI Interrogation Guidelines define "standard interrogation techniques" 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. Among standard interrogation techniques are the use of isolation, sleep deprivation not to exceed 72 hours,[34] 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), the use of diapers for limited periods (generally not to exceed 72 hours, [redacted] and moderate psychological pressure. The DCI Interrogation Guidelines do not specifically prohibit improvised actions. A CTC/Legal officer has said, however, that no one may employ any technique outside specifically identified standard techniques without Headquarters approval.

64. (TS/ [redacted]) EITs include physical actions and are defined as "techniques that do incorporate physical or psychological pressure beyond Standard Techniques." Headquarters must approve the use of each specific EIT in advance. EITs may be employed only by trained and certified interrogators for use with a specific detainee and with appropriate medical and psychological monitoring of the process.[35]

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33 (S) The 10 approved EITs are described in the textbox on page 15 of this Review.

34 (TS/ [redacted]) According to the General Counsel, in late December 2003, the period for sleep deprivation was reduced to 48 hours.

35 (TS/ [redacted]) Before EITs are administered, a detainee must receive a detailed psychological assessment and physical exam. [redacted]

Medical Guidelines

65. (TS) OMS prepared draft guidelines for medical and psychological support to detainee interrogations.

(Appendix F.)

Training for Interrogations

66. (TS) In November 2002, initiated a pilot running of a two-week Interrogator Training Course designed to train, qualify, and certify individuals as Agency interrogators.[37] Several CTC officers,

[36] (U//AIUO) A 28 March 2003 Lotus Note from C/CTC/Legal advised Chief, Medical Services that the "Seventh Floor" "would need to approve the promulgation of any further formal guidelines. . . . For now, therefore, let's remain at the discussion stage. . . ."

[37]

including a former SERE instructor, designed the curriculum, which included a week of classroom instruction followed by a week of "hands-on" training in EITs. [redacted]

67. (TS [redacted] Once certified, an interrogator is deemed qualified to conduct an interrogation employing EITs. [redacted]

68. (S//NF) [redacted]

[redacted]

[redacted] Students completing the Interrogation Course are required to sign an acknowledgment that they have read, understand, and will comply with the DCI's Interrogation Guidelines.

69. (TS [redacted]) In June 2003, CTC established a debriefing course for Agency substantive experts who are involved in questioning detainees after they have undergone interrogation and have been deemed "compliant." The debriefing course was established to train non-interrogators to collect actionable intelligence from high value detainees in CIA custody. The course is intended to familiarize non-interrogators with key aspects of the Agency interrogation Program, to include the Program's goals and legal authorities, the DCI Interrogation Guidelines, and the roles and responsibilities of all who interact with a high value detainee. [redacted]

DETENTION AND INTERROGATION OPERATIONS AT [redacted]

70. [redacted]

[redacted]

[redacted]

[redacted]

71. [redacted]

72. [redacted]

73. [redacted]

[redacted]

74. (TS [redacted] psychologist/interrogators [redacted] led each interrogation of Abu Zubaydah and Al-Nashiri where EITs were used. The psychologist/interrogators conferred with [redacted] team members before each interrogation session. Psychological evaluations were performed by [redacted] psychologists. [redacted]

75. [redacted]

76. (TS [redacted] 15 November 2002. The interrogation of Al-Nashiri proceeded after [redacted] the necessary Headquarters authorization. [redacted]

[redacted]

psychologist/interrogators began Al-Nashiri's interrogation using EITs immediately upon his arrival. Al-Nashiri provided lead information on other terrorists during his first day of interrogation. On the twelfth day of interrogation, [redacted] psychologist/ interrogators administered two applications of the waterboard to Al-Nashiri during two separate interrogation sessions. Enhanced interrogation of Al-Nashiri continued through 4 December 2002, [redacted]

Videotapes of Interrogations

77. (TS [redacted]) Headquarters had intense interest in keeping abreast of all aspects of Abu Zubaydah's interrogation [redacted] including compliance with the guidance provided to the site relative to the use of EITs. Apart from this, however, and before the use of EITs; the interrogation teams [redacted] decided to videotape the interrogation sessions. One initial purpose was to ensure a record of Abu Zubaydah's medical condition and treatment should he succumb to his wounds and questions arise about the medical care provided to him by CIA. Another purpose was to assist in the preparation of the debriefing reports, although the team advised CTC/Legal that they rarely, if ever, were used for that purpose. There are 92 videotapes, 12 of which include EIT applications. An OGC attorney reviewed the videotapes in November and December 2002 to ascertain compliance with the August 2002 DoJ opinion and compare what actually happened with what was reported to Headquarters. He reported that there was no deviation from the DoJ guidance or the written record.

78. (TS [redacted]) OIG reviewed the videotapes, logs, and cables [redacted] in May 2003. OIG identified 83 waterboard applications, most of which lasted less than 10 seconds.[41] [redacted]

41 (TS [redacted]) For the purpose of this Review, a waterboard application constituted each discrete instance in which water was applied for any period of time during a session.

[redacted] OIG found 11 interrogation videotapes to be blank. Two others were blank except for one or two minutes of recording. Two others were broken and could not be reviewed. OIG compared the videotapes to [redacted] logs and cables and identified a 21-hour period of time, which included two waterboard sessions, that was not captured on the videotapes.

79. (TS [redacted] 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.

[redacted]

80. (TS [redacted] From December 2002 until [redacted] September 2003, [redacted] During this time, Headquarters issued the formal DCI Confinement Guidelines, the DCI Interrogation Guidelines, and the additional draft guidelines specifically

42 [redacted]

addressing requirements for OMS personnel. This served to strengthen the command and control exercised over the CTC Program.

Background and Detainees

81. [redacted]

82. [redacted]

83. [redacted]

[redacted]

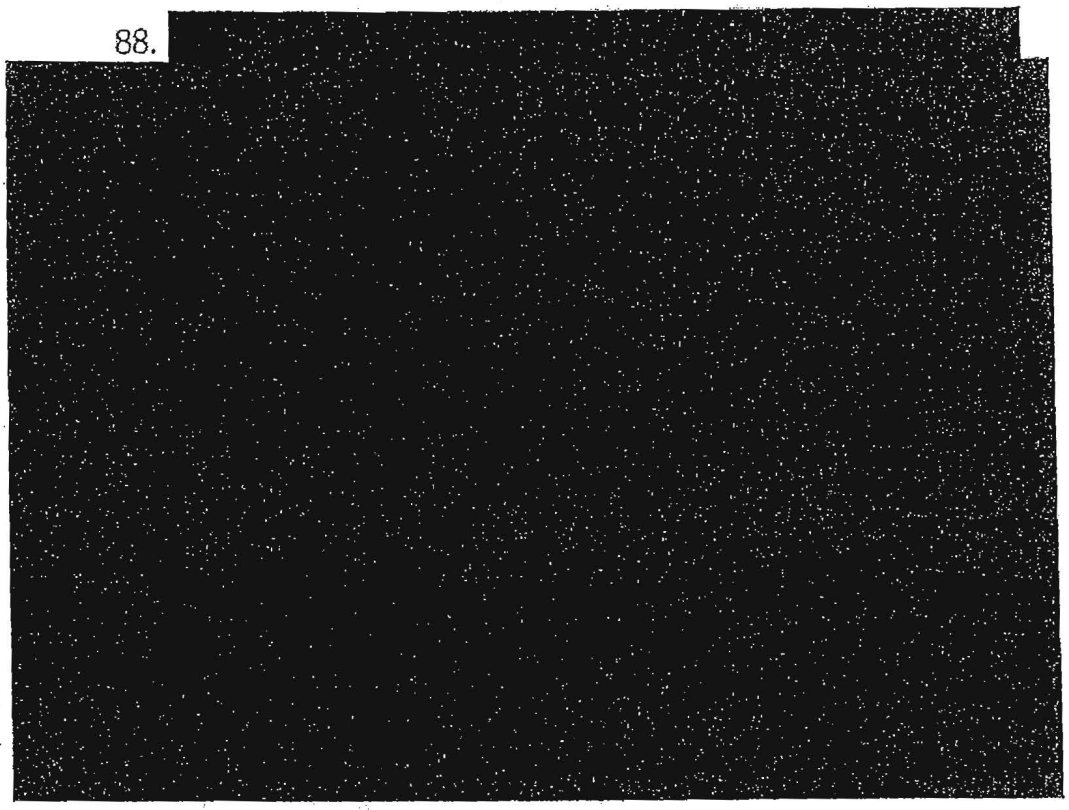
84. [redacted]

85. [redacted]

86. [redacted]

87. [redacted]

88. [redacted]



Guidance Prior to DCI Guidelines

89. (TS [redacted] the Agency was providing legal and operational briefings and cables [redacted] that contained Headquarters' guidance and discussed the torture statute and the DoJ legal opinion. CTC had also established a precedent of detailed cables between [redacted] and Headquarters regarding the interrogation and debriefing of detainees. The written guidance did not address the four standard interrogation techniques that, according to CTC/Legal, the Agency had identified as early as November 2002.[43] Agency personnel were authorized to employ standard interrogation techniques on a detainee without Headquarters' prior approval. The guidance did not specifically

[43] (S//NF) The four standard interrogation techniques were: (1) sleep deprivation not to exceed 72 hours, (2) continual use of light or darkness in a cell, (3) loud music, and (4) white noise (background hum).

address the use of props to imply a physical threat to a detainee, nor did it 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.

Specific Unauthorized or Undocumented Techniques

90. (TS, [redacted]) This Review heard allegations of the use of unauthorized techniques [redacted] The most significant, the handgun and power drill incident, discussed below, is the subject of a separate OIG investigation. In addition, individuals interviewed during the Review identified other techniques that caused concern because DoJ had not specifically approved them. These included the making of threats, blowing cigar smoke, employing certain stress positions, the use of a stiff brush on a detainee, and stepping on a detainee's ankle shackles. For all of the instances, the allegations were disputed or too ambiguous to reach any authoritative determination regarding the facts. Thus, although these allegations are illustrative of the nature of the concerns held by individuals associated with the CTC Program and the need for clear guidance, they did not warrant separate investigations or administrative action.

Handgun and Power Drill

91. (TS [redacted] interrogation team members, whose purpose it was to interrogate Al-Nashiri and debrief Abu Zubaydah, initially staffed [redacted] The interrogation team continued EITs on Al-Nashiri for two weeks in December 2002 [redacted] they assessed him to be "compliant." Subsequently, CTC officers at Headquarters [redacted] sent a [redacted] senior operations officer (the debriefer) [redacted] to debrief and assess Al-Nashiri.

92. (TS [redacted] The debriefer assessed Al-Nashiri as withholding information, at which point [redacted] reinstated [redacted] hooding, and handcuffing. 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.[44] 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.[45] 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.

93. (S//NF) The [redacted] and debriefer did not request authorization or report the use of these unauthorized techniques to Headquarters. However, in January 2003, newly arrived TDY officers [redacted] who had learned of these incidents reported them to Headquarters. OIG investigated and referred its findings to the Criminal Division of DoJ. On 11 September 2003, DoJ declined to prosecute and turned these matters over to CIA for disposition. These incidents are the subject of a separate OIG Report of Investigation.[46]

Threats

94. (TS [redacted] 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] 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

44 (S//NF) This individual was not a trained interrogator and was not authorized to use EITs.

45 (U//FOUO) Racking is a mechanical procedure used with firearms to chamber a bullet or simulate a bullet being chambered.

46 (S//NF) Unauthorized Interrogation Techniques [redacted] 29 October 2003.

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.

95. (TS [redacted] An experienced Agency interrogator reported that the [redacted] interrogators threatened Khalid Shaykh Muhammad [redacted] According to this interrogator, the [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] With respect to the report provided to him of the threats [redacted] that report did not indicate that the law had been violated.

Smoke

96. (TS [redacted] 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. This interrogator said he would not do this again based on "perceived criticism." 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.

Stress Positions

97. (TS [redacted] 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. 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.

Stiff Brush and Shackles

98. (TS [redacted] interrogator reported that he witnessed other techniques used on Al-Nashiri that the interrogator knew were not specifically approved by DoJ. These included the use of a stiff brush that was intended to induce pain on Al-Nashiri and standing on Al-Nashiri's shackles, which resulted in cuts and bruises. When questioned, an interrogator who was at [redacted] acknowledged that they used a stiff brush to bathe Al-Nashiri. He described the brush as the kind of brush one uses in a bath to remove stubborn dirt. A CTC manager who had heard of the incident 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.

Waterboard Technique

99. (TS [redacted] The Review determined that the interrogators used the waterboard on Khalid Shaykh Muhammad in a manner inconsistent with the SERE application of the waterboard and the description of the waterboard in the DoJ OLC opinion, in that the technique was used on Khalid Shaykh Muhammad a large number of times. According to the General Counsel, the Attorney

General acknowledged he is fully aware of the repetitive use of the waterboard and that CIA is well within the scope of the DoJ opinion and the authority given to CIA by that opinion. The Attorney General was informed the waterboard had been used 119 times on a single individual.

100. (TS [redacted]) Cables indicate that Agency interrogators [redacted] applied the waterboard technique to Khalid Shaykh Muhammad 183 [redacted]

47 [redacted]

[redacted]

[redacted]

101. [redacted]

[redacted]

102. [redacted]

[redacted]

48 (TS [redacted]) The OLC opinion dated 1 August 2002 states, "You have also orally informed us that it is likely that this procedure [waterboard] would not last more than 20 minutes in any one application." [redacted]

103.

104.

105.

106.

[redacted]

107. [redacted]

108. [redacted]

[redacted]

109. [redacted]

110. [redacted]

[redacted]

111. [redacted]

[redacted]

112. [redacted]

[redacted]

50 [redacted]

113. [redacted]

114. [redacted]

[redacted]

115. [redacted]

[redacted]

116. [redacted]

117. [redacted]

[redacted]

118. [redacted]

119. [redacted]

120. [redacted]

53 (TS [redacted] The first session of the interrogation course began in November 2002. See paragraphs 64-65.

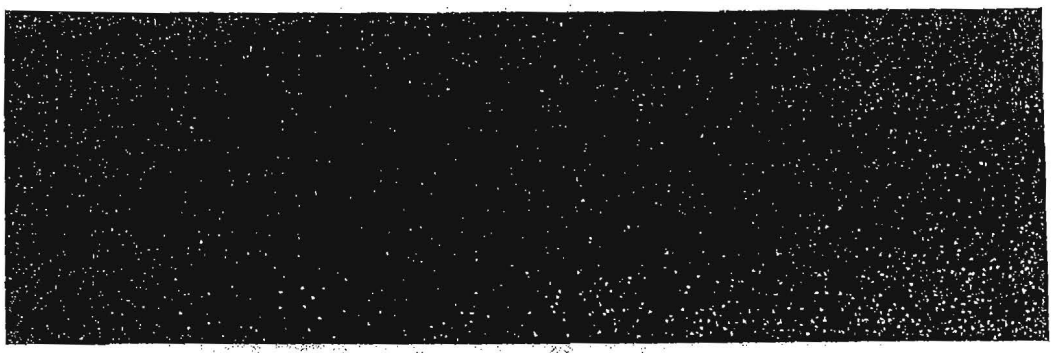
[redacted]

121. [redacted]

122. [redacted]

Interrogators are required to sign a statement certifying they have read and understand the contents of the folder. [redacted]

123. [redacted]



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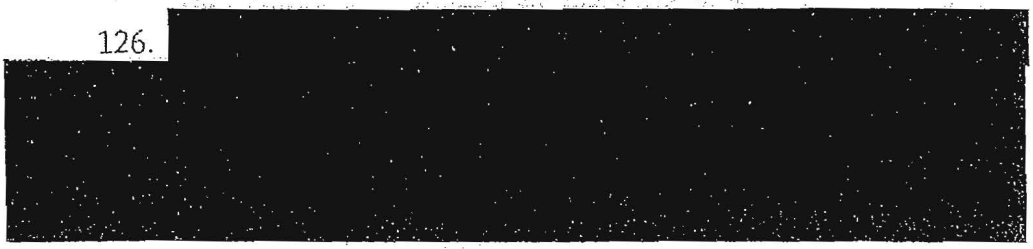
126. 

[redacted]

127. [redacted]

128. [redacted]

129. [redacted]

54 [redacted]

130. [redacted]

131. [redacted]

132. [redacted]

133. [redacted]

134. [redacted]

[redacted]

135. [redacted]

136. [redacted]

[redacted]

[redacted]

137. [redacted]

[redacted]

138. [redacted]

139. [redacted]

[redacted]

140. [redacted]

141. [redacted]

[redacted]

[redacted]

142. [redacted]

143. [redacted]

[redacted]

144. [redacted]

[redacted]

145. [redacted]

[redacted]

[redacted]

146. [redacted]

147. [redacted]

[redacted]

148. [redacted]

149. [redacted]

150. [redacted]

[redacted]

151. [redacted]

152. [redacted]

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162.

163.

Specific Unauthorized or Undocumented Techniques

164. (TS [redacted] was but one event in the early months of [redacted] Agency activity in [redacted] that involved the use of interrogation techniques that DoJ and Headquarters had not approved. Agency personnel reported a range of improvised actions that interrogators and debriefers reportedly used at that time to assist in obtaining information from detainees. The extent of these actions is illustrative of the consequences of the lack of clear guidance at that time and the Agency's insufficient attention to interrogations in [redacted]

165. (TS [redacted] OIG opened separate investigations into two incidents: [redacted] and the death of a detainee at a military base in Northeast Afghanistan (discussed further in paragraph 192). These two cases presented facts that warranted criminal investigations. Some of the techniques discussed below were used with [redacted] and will be further addressed in connection with a Report [redacted] In other cases of undocumented or unauthorized techniques, the facts are ambiguous or less serious, not warranting further investigation. Some actions discussed below were taken by employees or contractors no longer associated with the Agency. Agency management has also addressed administratively some of the actions.

Pressure Points

166. (TS [redacted] In July 2002, [redacted] operations officer, participated with another operations officer in a custodial interrogation of a detainee [redacted] reportedly used a "pressure point" technique: with both of his hands on the detainee's neck, [redacted] manipulated his fingers to restrict the detainee's carotid artery.

167. (TS [redacted] who was facing the shackled detainee, reportedly watched his eyes to the point that the detainee would nod and start to pass out; then, the [redacted] shook the detainee to wake him. This process was repeated for a total of three applications on the detainee. The [redacted] acknowledged to OIG that he laid hands on the detainee and may have made him think he was going to lose consciousness. The [redacted] also noted that he has [redacted] years of experience debriefing and interviewing people and until recently had never been instructed how to conduct interrogations.

168. (S//NF) CTC management is now aware of this reported incident, the severity of which was disputed. The use of pressure points is not, and had not been, authorized, and CTC has advised the [redacted] that such actions are not authorized.

Mock Executions

169. (TS [redacted] The debriefer who employed the handgun and power drill on Al-Nashir [redacted] advised that those actions were predicated on a technique he had participated in [redacted] The debriefer stated that when he was [redacted] between September and October 2002, [redacted] offered to fire a handgun outside the interrogation room while the debriefer was interviewing a detainee who was thought to be withholding information.[68] [redacted] staged the incident, which included screaming and yelling outside the cell by other CIA officers and [redacted] guards. When the guards moved the detainee from the interrogation room, they passed a guard who was dressed as a hooded detainee, lying motionless on the ground, and made to appear as if he had been shot to death.

[redacted]

170. (TS [redacted] The debriefer claimed he did not think he needed to report this incident because the [redacted] had openly discussed this plan [redacted] several days prior to and after the incident. When the debriefer was later [redacted] and believed he needed a non-traditional technique to induce the detainee to cooperate, he told [redacted] he wanted to wave a handgun in front of the detainee to scare him. The debriefer said he did not believe he was required to notify Headquarters of this technique, citing the earlier, unreported mock execution [redacted]

171. (TS [redacted] A senior operations officer [redacted] recounted that around September 2002, [redacted] heard that the debriefer had staged a mock execution. [redacted] was not present but understood it went badly; it was transparently a ruse and no benefit was derived from it. [redacted] observed that there is a need to be creative as long as it is not considered torture. [redacted] stated that if such a proposal were made now, it would involve a great deal of consultation. It would begin with [redacted] management and would include CTC/Legal, [redacted] and the CTC [redacted]

172. (S//NF) The [redacted] admitted staging a "mock execution" in the first days that [redacted] was open. According to the [redacted] the technique was his idea but was not effective because it came across as being staged. It was based on the concept, from SERE school, of showing something that looks real, but is not. The [redacted] recalled that a particular CTC interrogator later told him about employing a mock execution technique. The [redacted] did not know when this incident occurred or if it was successful. He viewed this technique as ineffective because it was not believable.

[redacted]

173. (TS [redacted] Four [redacted] who were interviewed admitted to either participating in one of the above-described incidents or hearing about them. [redacted] described staging a mock execution of a detainee. Reportedly, a detainee who witnessed the "body" in the aftermath of the ruse "sang like a bird."

174. (TS/ [redacted] revealed that approximately four days before his interview with OIG, the [redacted] stated he had conducted a mock execution [redacted] in October or November 2002. Reportedly, the firearm was discharged outside of the building, and it was done because the detainee reportedly possessed critical threat information. [redacted] stated that he told the [redacted] not to do it again. He stated that he has not heard of a similar act occurring [redacted] since then.

Use of Smoke

175. (TS [redacted] A CIA officer [redacted] revealed that cigarette smoke was once used as an interrogation technique in October 2002. Reportedly, at the request of [redacted] an interrogator, the officer, who does not smoke, blew the smoke from a thin cigarette/cigar in the detainee's face for about five minutes. The detainee started talking so the smoke ceased. [redacted] heard that a different officer had used smoke as an interrogation technique. OIG questioned numerous personnel who had worked [redacted] about the use of smoke as a technique. None reported any knowledge of the use of smoke as an interrogation technique.

176. (TS [redacted] admitted that he has personally used smoke inhalation techniques on detainees to make them ill to the point where they would start to "purge." After this, in a weakened state,

these detainees would then provide [redacted] with information.[70] [redacted] denied ever physically abusing detainees or knowing anyone who has.

Use of Cold

177. [redacted]

178. (TS, [redacted] 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, "[C]aution 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."

179. [redacted]

70 (S) This was substantiated in part by the CIA officer who participated in this act with the [redacted]

[redacted]

180. [redacted]

181 [redacted]

182. [redacted]

[redacted]

183. (TS/[redacted] 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] 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.

184. (TS/[redacted] In December 2002, [redacted] cable reported that a detainee was left in a cold room, shackled and naked, until he demonstrated cooperation.

185. (TS/[redacted] 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."

186. (TS[redacted] Although the DCI Guidelines do not mention cold as a technique, the September 2003 draft OMS Guidelines on Medical and Psychological Support to Detainee Interrogations specifically identify an "uncomfortably cool environment" as a standard interrogation measure. (Appendix F.) The OMS Guidelines provide detailed instructions on safe temperature ranges, including the safe temperature range when a detainee is wet or unclothed.

Water Dousing

187. (TS/[redacted] According to [redacted] and others who have worked [redacted] "water dousing" has been used [redacted] since early 2003 when [redacted] officer introduced this technique to the facility. Dousing involves laying a detainee down on a plastic sheet and pouring water over him for 10 to 15 minutes. Another officer explained that the room was maintained at 70 degrees or more; the guards used water that was at room temperature while the interrogator questioned the detainee.

188. (TS/[redacted] 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. Included in the list of requested techniques was water dousing.[72] Subsequent cables reported the use and duration of the techniques by detainee per interrogation session.[73] 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.

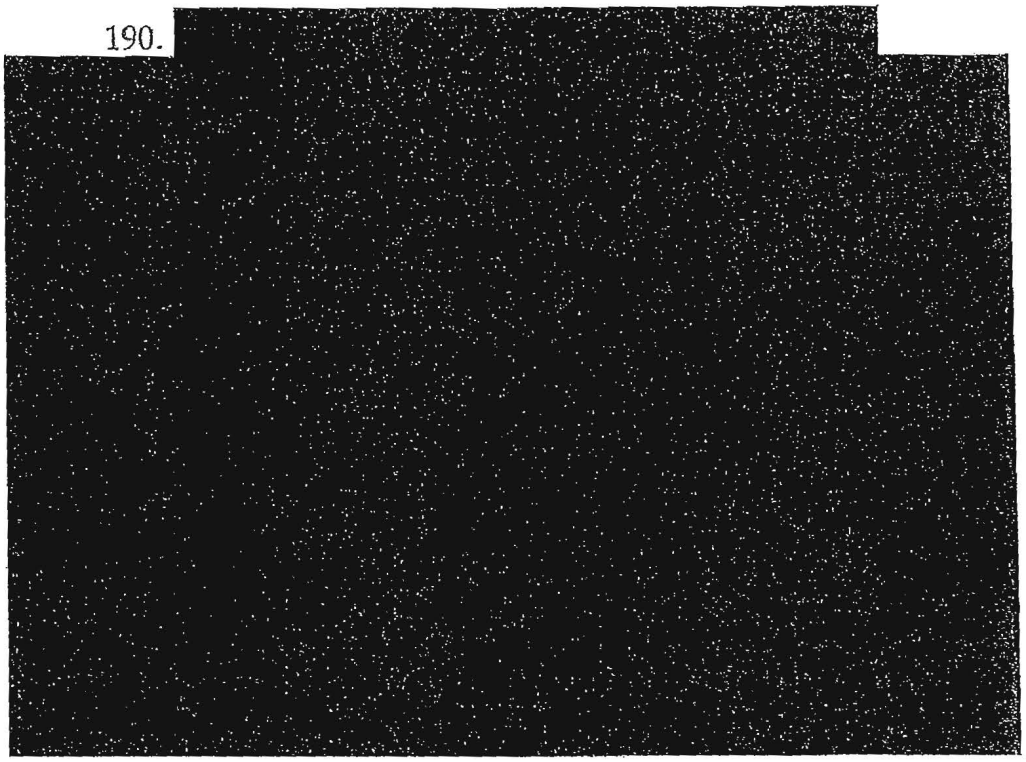
189. (TS/[redacted] The DCI Guidelines do not mention water dousing as a technique. The 4 September 2003 draft OMS Guidelines, however, identify "water dousing" as one of 12 standard measures that OMS listed, in ascending degree of intensity, as the 11th standard measure. OMS did not further address "water dousing" in its guidelines.

[redacted]

73 (TS/[redacted] reported water dousing as a technique used, but in a later paragraph used the term "cold water bath."

Hard Takedown

190. [redacted]



191. ~~(TS/~~ [redacted] According to [redacted] the 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. The act of putting a detainee into a diaper can cause abrasions if the detainee struggles because the floor of the facility is concrete. The [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

[redacted]

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."

192. (TS/ [redacted] stated that he was generally familiar with the technique of hard takedowns. He asserted that they are authorized and believed they had been used one or more times at [redacted] 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. Asked about the possibility that a detainee may have been dragged on the ground during the course of a hard takedown, [redacted] responded that he was unaware of that and did not understand the point of dragging someone along the corridor in [redacted]

Abuse [redacted] at Other Locations Outside of the CTC Program

193. (TS/ [redacted] Although not within the scope of the CTC Program, two other incidents [redacted] were reported in 2003. [redacted] As noted above, one resulted in the death of a detainee at Asadabad Base[76] [redacted]

194. (S//NF) In June 2003, the U.S. military sought an Afghan citizen who had been implicated in rocket attacks on a joint U.S. Army and CIA position in Asadabad located in Northeast Afghanistan. On 18 June 2003, this individual appeared at Asadabad Base at the urging of the local Governor. The individual was held in a detention facility guarded by U.S. soldiers from the Base. During

76 (S) For more than a year, CIA referred to Asadabad Base as [redacted]

the four days the individual was detained, an Agency independent contractor, who was a paramilitary officer, is alleged to have severely beaten the detainee with a large metal flashlight and kicked him during interrogation sessions. The detainee died in custody on 21 June; his body was turned over to a local cleric and returned to his family on the following date without an autopsy being performed. Neither the contractor nor his Agency staff supervisor had been trained or authorized to conduct interrogations. The Agency did not renew the independent contractor's contract, which was up for renewal soon after the incident. OIG is investigating this incident in concert with DoJ.[77]

195. (S//NF) In July 2003, [redacted] officer assigned to [redacted] assaulted a teacher at a religious school [redacted] This assault occurred during the course of an interview during a joint operation [redacted] The objective was to determine if anyone at the school had information about the detonation of a remote-controlled improvised explosive device that had killed eight border guards several days earlier.

196. (S//NF) A teacher being interviewed [redacted] reportedly smiled and laughed inappropriately, whereupon [redacted] used the butt stock of his rifle to strike or "buttstroke" the teacher at least twice in his torso, followed by several knee kicks to his torso. This incident was witnessed by 200 students. The teacher was reportedly not seriously injured. In response to his actions, Agency management returned the [redacted] to Headquarters. He was counseled and given a domestic assignment.

[redacted]

[redacted]

197. [redacted]

198. [redacted]

[redacted]

[redacted]

199. [redacted]

200. [redacted]

201. [redacted]

[redacted]

202. [redacted]

203. [redacted]

ANALYTICAL SUPPORT TO INTERROGATIONS

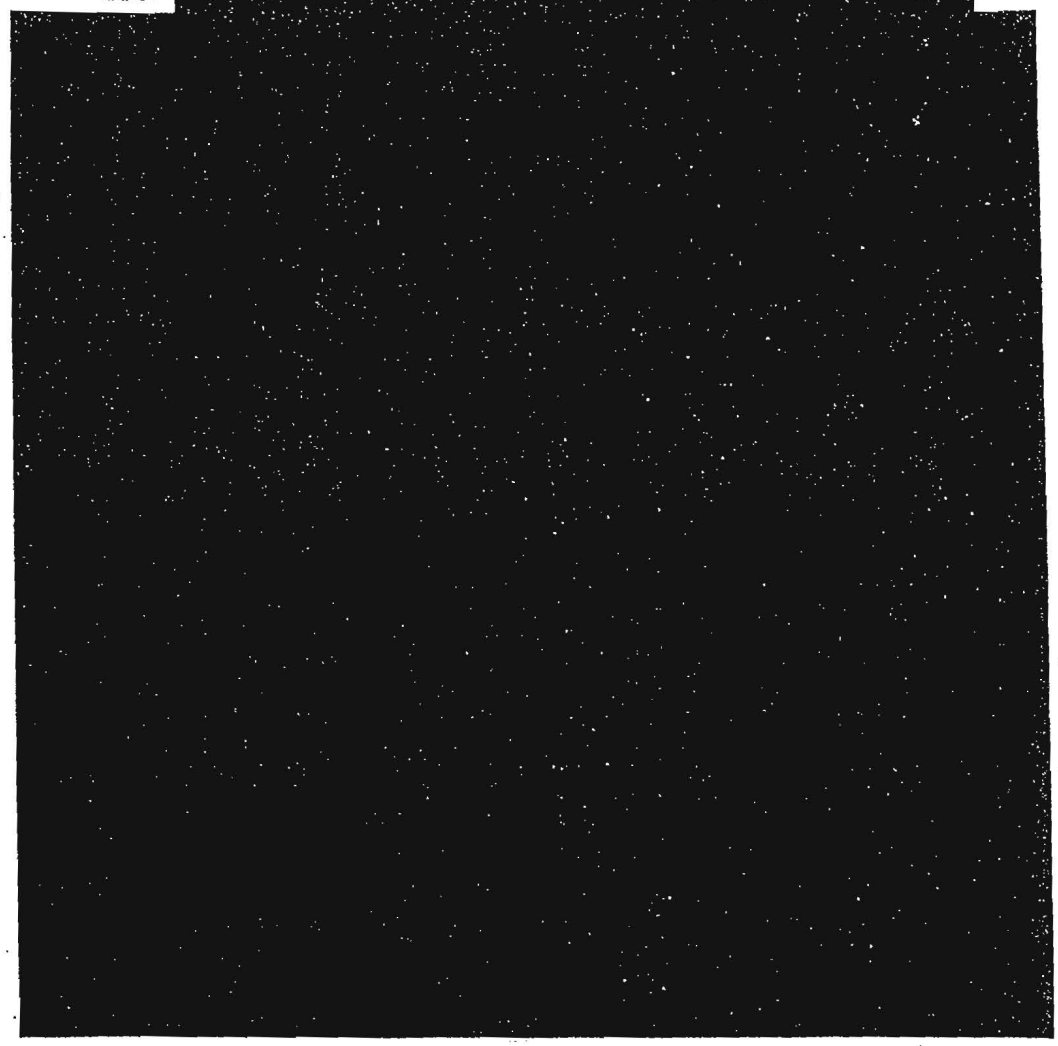
204. (TS[redacted]) Directorate of Intelligence analysts assigned to CTC provide analytical support to interrogation teams in the field. Analysts are responsible for developing requirements for the questioning of detainees as well as conducting debriefings in some cases. [redacted] Analysts, however, do not participate in the application of interrogation techniques.

205. (TS/[redacted]) According to a number of those interviewed for this Review, the Agency's intelligence on Al-Qa'ida was limited prior to the initiation of the CTC Interrogation Program. The Agency lacked adequate linguists or subject matter experts and had very little hard knowledge of what particular Al-Qa'ida leaders—who later became detainees—knew. This lack of knowledge led analysts to speculate about what a detainee "should know," vice information the analyst could objectively demonstrate the detainee did know. [redacted]

206. (TS [redacted] When a detainee did not respond to a question posed to him, the assumption at Headquarters was that the detainee was holding back and knew more; consequently, Headquarters recommended resumption of EITs.

207. [redacted]

208. [redacted]



209. (TS/) [redacted] is evidenced in the final waterboard session of Abu Zubaydah. According to a senior CTC officer, the interrogation team [redacted] considered Abu Zubaydah to be compliant and wanted to terminate EITs. [redacted] believed Abu Zubaydah continued to withhold information, [redacted] at the time it

generated substantial pressure from Headquarters to continue use of the EITs. According to this senior officer, the decision to resume use of the waterboard on Abu Zubaydah was made by senior officers of the DO [redacted] to assess Abu Zubaydah's compliance and witnessed the final waterboard session, after which, they reported back to Headquarters that the EITs were no longer needed on Abu Zubaydah.

210. [redacted]

EFFECTIVENESS

211. (TS/[redacted]) The detention of terrorists has prevented them from engaging in further terrorist activity, and their interrogation has provided intelligence that has enabled the identification and apprehension of other terrorists, warned of terrorists plots planned for the United States and around the world, and supported articles frequently used in the finished intelligence publications for senior policymakers and war fighters. In this regard, there is no doubt that the Program has been effective. Measuring the effectiveness of EITs, however, is a more subjective process and not without some concern.

212. (TS[redacted]) When the Agency began capturing terrorists, management judged the success of the effort to be getting them off the streets, [redacted]

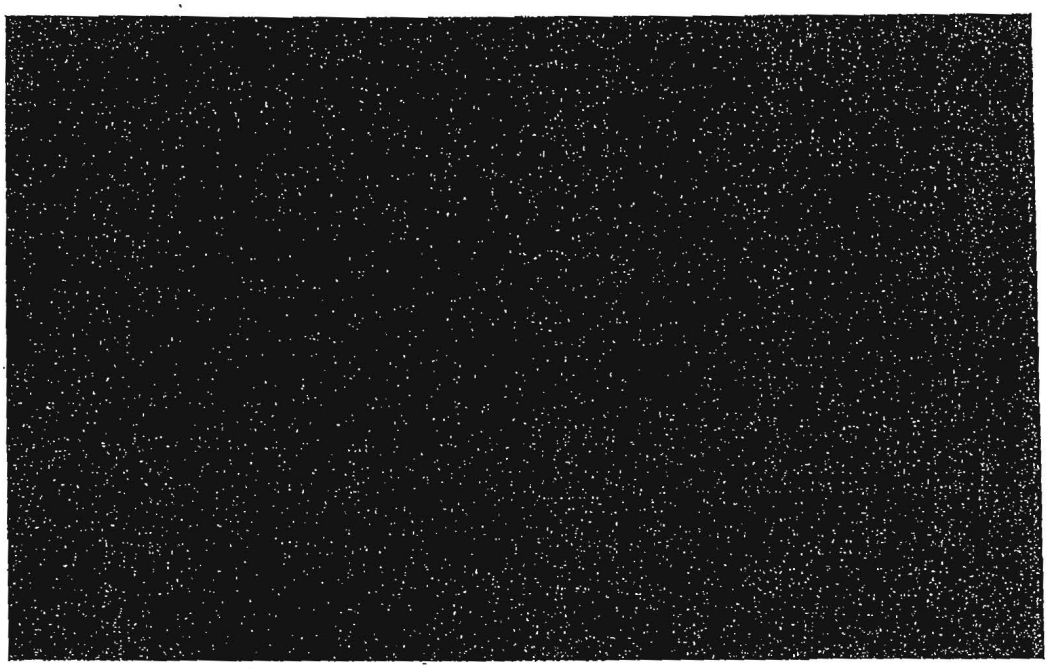
[redacted]

With the capture of terrorists who had access to much more significant, actionable information, the measure of success of the Program increasingly became the intelligence obtained from the detainees.

213. (TS [redacted]) Quantitatively, the DO has significantly increased the number of counterterrorism intelligence reports with the inclusion of information from detainees in its custody. Between 9/11 and the end of April 2003, the Agency produced over 3,000 intelligence reports from detainees. Most of the reports came from intelligence provided by the high value detainees at [redacted]

214. (TS [redacted]) CTC frequently uses the information from one detainee, as well as other sources, to vet the information of another detainee. Although lower-level detainees provide less information than the high value detainees, information from these detainees has, on many occasions, supplied the information needed to probe the high value detainees further. [redacted] the triangulation of intelligence provides a fuller knowledge of Al-Qa'ida activities than would be possible from a single detainee. For example, Mustafa Ahmad Adam al-Hawsawi, the Al-Qa'ida financier who was captured with Khalid Shaykh Muhammad, provided the Agency's first intelligence pertaining to [redacted] another participant in the 9/11 terrorist plot. [redacted] Hawsawi's information to obtain additional details about [redacted] role from Khalid Shaykh Muhammad [redacted]

215. (TS [redacted]) Detainees have provided information on Al-Qa'ida and other terrorist groups. Information of note includes: the modus operandi of Al-Qa'ida, [redacted] terrorists who are capable of mounting attacks in the United States, [redacted]



216. (TS [redacted]) Detainee information has assisted in the identification of terrorists. For example, information from Abu Zubaydah helped lead to the identification of Jose Padilla and Binyam Muhammed—operatives who had plans to detonate a uranium-topped dirty bomb in either Washington, D.C., or New York City. Riduan "Hambali" Isomuddin provided information that led to the arrest of previously unknown members of an Al-Qa'ida cell in Karachi. They were designated as pilots for an aircraft attack inside the United States. Many other detainees, including lower-level detainees such as Zubayr and Majid Khan, have provided leads to other terrorists, but probably the most prolific has been Khalid Shaykh Muhammad. He provided information that helped lead to the arrests of terrorists including Sayfullah Paracha and his son Uzair Paracha, businessmen whom Khalid Shaykh Muhammad planned to use to smuggle explosives into the United States; Saleh Almari, a sleeper operative in New York; and Majid Khan, an operative who could enter the United States easily and was tasked to research attacks [redacted] Khalid Shaykh Muhammad's information also led to the investigation and prosecution of Iyman Faris, the truck driver arrested in early 2003 in Ohio. [redacted]

217. (TS) Detainees, both planners and operatives, have also made the Agency aware of several plots planned for the United States and around the world. The plots identify plans to attack the U.S. Consulate in Karachi, Pakistan; hijack aircraft to fly into Heathrow Airport loosen track spikes in an attempt to derail a train in the United States; blow up several U.S. gas stations to create panic and havoc; hijack and fly an airplane into the tallest building in California in a west coast version of the World Trade Center attack; cut the lines of suspension bridges in New York in an effort to make them collapse; This Review did not uncover any evidence that these plots were imminent. Agency senior managers believe that lives have been saved as a result of the capture and interrogation of terrorists who were planning attacks, in particular Khalid Shaykh Muhammad, Abu Zubaydah, Hambali, and Al-Nashiri.

218. (TS) judge the reporting from detainees as one of the most important sources for finished intelligence. viewed analysts' knowledge of the terrorist target as having much more depth as a result of information from detainees and estimated that detainee reporting is used in all counterterrorism articles produced for the most senior policymakers. In an interview, the DCI

said he believes the use of EITs has proven to be extremely valuable in obtaining enormous amounts of critical threat information from detainees who had otherwise believed they were safe from any harm in the hands of Americans.

219. [redacted]

220. (TS [redacted]) Inasmuch as EITs have been used only since August 2002, and they have not all been used with every high value detainee, there is limited data on which to assess their individual effectiveness. 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. Although the waterboard is the most intrusive of the EITs, 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.

221. (TS [redacted]) Determining the effectiveness of each EIT is important in facilitating Agency management's decision as to which techniques should be used and for how long. Measuring the overall effectiveness of EITs is challenging for a number of reasons including: (1) the Agency cannot determine with any certainty the totality of the intelligence the detainee actually possesses; (2) each detainee has different fears of and tolerance for EITs; (3) the application of the same EITs by different interrogators may have

different results; and

222. (TS/) The waterboard has been used on three detainees: Abu Zubaydah, Al-Nashiri, and Khalid Shaykh Muhammad. with the belief that each of the three detainees possessed perishable information about imminent threats against the United States.

223. (TS/) Prior to the use of EITs, Abu Zubaydah provided information for intelligence reports. Interrogators applied the waterboard to Abu Zubaydah at least 83 times during August 2002. During the period between the end of the use of the waterboard and 30 April 2003, he provided information for approximately additional reports. It is not possible to say definitively that the waterboard is the reason for Abu Zubaydah's increased production, or if another factor, such as the length of detention, was the catalyst. Since the use of the waterboard, however, Abu Zubaydah has appeared to be cooperative,

224. (TS/) With respect to Al-Nashiri, reported two waterboard sessions in November 2002, after which the psychologist/interrogators determined that Al-Nashiri was compliant. However, after being moved Al-Nashiri was thought to be withholding information. Al-Nashiri subsequently received additional EITs, but not the waterboard. The Agency then determined Al-Nashiri to be "compliant." Because of the litany of

techniques used by different interrogators over a relatively short period of time, it is difficult to identify exactly why Al-Nashiri became more willing to provide information. However, following the use of EITs, he provided information about his most current operational planning and [redacted] as opposed to the historical information he provided before the use of EITs.

225. (TS [redacted]) On the other hand, Khalid Shaykh Muhammad, an accomplished resistor, provided only a few intelligence reports prior to the use of the waterboard, and analysis of that information revealed that much of it was outdated, inaccurate, or incomplete. As a means of less active resistance, at the beginning of their interrogation, detainees routinely provide information that they know is already known. Khalid Shaykh Muhammad received 183 applications of the waterboard in March 2003 [redacted]

POLICY CONSIDERATIONS AND CONCERNS REGARDING THE DETENTION AND INTERROGATION PROGRAM

226. (TS [redacted]) The EITs used by the Agency under the CTC Program are inconsistent with the public policy positions that the United States has taken regarding human rights. This divergence has been a cause of concern to some Agency personnel involved with the Program.

Policy Considerations

227. (U//FOUO) Throughout its history, the United States has been an international proponent of human rights and has voiced opposition to torture and mistreatment of prisoners by foreign countries. This position is based upon fundamental principles that are deeply embedded in the American legal structure and jurisprudence. The Fifth and Fourteenth Amendments to the U.S. Constitution, for example, require due process of law, while the Eighth Amendment bars "cruel and unusual punishments."

228. (U//FOUO) The President advised the Senate when submitting the Torture Convention for ratification that the United States would construe the requirement of Article 16 of the Convention to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture" as "roughly equivalent to" and "coextensive with the Constitutional guarantees against cruel, unusual, and inhumane treatment."[81] To this end, the United States submitted a reservation to the Torture Convention stating that the United States considers itself bound by Article 16 "only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th, 8th and/or 14th Amendments to the Constitution of the United States." Although the Torture Convention expressly provides that no exceptional circumstances whatsoever, including war or any other public emergency, and no order from a superior officer, justifies torture, no similar provision was included regarding acts of "cruel, inhuman or degrading treatment or punishment."

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81 (U//FOUO) See Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sen. Treaty Doc. 100-20, 100th Cong., 2d Sess., at 15, May 23, 1988; Senate Committee on Foreign Relations, Executive Report 101-30, August 30, 1990, at 25, 29, quoting summary and analysis submitted by President Ronald Reagan, as revised by President George H.W. Bush.

229. (U//FOUO) Annual U.S. State Department Country Reports on Human Rights Practices have repeatedly condemned harsh interrogation techniques utilized by foreign governments. For example, the 2002 Report, issued in March 2003, stated:

> [The United States] have been given greater opportunity to make good on our commitment to uphold standards of human dignity and liberty .... [N]o country is exempt from scrutiny, and all countries benefit from constant striving to identify their weaknesses and improve their performance .... [T]he Reports serve as a gauge for our international human rights efforts, pointing to areas of progress and drawing our attention to new and continuing challenges.
>
> In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal. They are not grounded exclusively in American or western values. But their protection worldwide serves a core U.S. national interest.

The State Department Report identified objectionable practices in a variety of countries including, for example, patterns of abuse of prisoners in Saudi Arabia by such means as "suspension from bars by handcuffs, and threats against family members, . . . [being] forced constantly to lie on hard floors [and] deprived of sleep .... " Other reports have criticized hooding and stripping prisoners naked.

230. (U//FOUO) In June 2003, President Bush issued a statement in observance of "United Nations International Day in Support of Victims of Torture." The statement said in part:

> The United States declares its strong solidarity with torture victims across the world. Torture anywhere is an affront to human dignity everywhere. We are committed to building a world where human rights are respected and protected by the rule of law.

> Freedom from torture is an inalienable human right . . . . Yet torture continues to be practiced around the world by rogue regimes whose cruel methods match their determination to crush the human spirit . . . .
>
> Notorious human rights abusers . . . have sought to shield their abuses from the eyes of the world by staging elaborate deceptions and denying access to international human rights monitors . . . .
>
> The United States is committed to the worldwide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment . . . .

Concerns Over Participation in the CTC Program

231. (S//NF) During the course of this Review, a number of Agency officers expressed unsolicited concern about the possibility of recrimination or legal action resulting from their participation in the CTC Program. A number of officers expressed concern that a human rights group might pursue them for activities [redacted] Additionally, they feared that the Agency would not stand behind them if this occurred.

232. (S//NF) One officer expressed concern that one day, Agency officers will wind up on some "wanted list" to appear before the World Court for war crimes stemming from activities [redacted] Another said, "Ten years from now we're going to be sorry we're doing this . . . [but] it has to be done." He expressed concern that the CTC Program will be exposed in the news media and cited particular concern about the possibility of being named in a leak.

233. [redacted]

[redacted]

234. [redacted]

235. [redacted]

ENDGAME

236. [redacted]

[redacted]

237. (TS [redacted] The number of detainees in CIA custody is relatively small by comparison with those in U.S. military custody. Nevertheless, the Agency, like the military, has an interest in the disposition of detainees and particular interest in those who, if not kept in isolation, would likely divulge information about the circumstances of their detention.

238. [redacted]

239. [redacted]

82 [redacted]

240. [redacted]

241. [redacted]

242. [redacted]

243. [redacted]

244. [redacted]

[redacted]

245. (TS) [redacted] Policymakers have given consideration to prosecution as a viable possibility, at least for certain detainees. To date, however, no decision has been made to proceed with this option.

246. [redacted]

247. [redacted]

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83 (U//FOUO) Memorandum for the Record, dated 1 August 2013, discussed meeting with the SSCI.

[redacted]

248. [redacted]

249. [redacted]

[redacted]

CONCLUSIONS

250. (TS [redacted]) The Agency's detention and interrogation of terrorists has provided intelligence that has enabled the identification and apprehension of other terrorists and warned of terrorist plots planned for the United States and around the world. The CTC Detention and Interrogation Program has resulted in the issuance of thousands of individual intelligence reports and analytic products supporting the counterterrorism efforts of U.S. policymakers and military commanders. The effectiveness of particular interrogation techniques in eliciting information that might not otherwise have been obtained cannot be so easily measured, however.

251. (TS [redacted]) After 11 September 2001, numerous Agency components and individuals invested immense time and effort to implement the CTC Program quickly, effectively, and within the law. The work of the Directorate of Operations, Counterterrorist Center (CTC), Office of General Counsel (OGC), Office of Medical Services (OMS), Office of Technical Service (OTS) [redacted] has been especially notable. In effect, they began with almost no foundation, as the Agency had discontinued virtually all involvement in interrogations after encountering difficult issues with earlier interrogation programs in Central America and the Near East. Inevitably, there also have been some problems with current activities.

252. (S//NF) OGC worked closely with DoJ to determine the legality of the measures that came to be known as enhanced interrogation techniques (EITs). OGC also consulted with White House and National Security Council officials regarding the proposed techniques. Those efforts and the resulting DoJ legal opinion of 1 August 2002 are well documented. That legal opinion 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.

253. (S//NF) The DoJ legal opinion upon which the Agency relies is based upon technical definitions of "severe" treatment and the "intent" of the interrogators, and consists of finely detailed analysis to buttress the conclusion that Agency officers properly carrying out EITs would not violate the Torture Convention's prohibition of torture, nor would they be subject to criminal prosecution under the U.S. torture statute. The opinion does not address the separate question of whether the application of standard or enhanced techniques by Agency officers is consistent with the undertaking, accepted conditionally by the United States regarding Article 16 of the Torture Convention, to prevent "cruel, inhuman or degrading treatment or punishment."

254. (TS[redacted]) Periodic efforts by the Agency to elicit reaffirmation of Administration policy and DoJ legal backing for the Agency's use of EITs—as they have actually been employed—have been well advised and successful. However, in this process, Agency officials have neither sought nor been provided a written statement of policy or a formal signed update of the DoJ legal opinion, including such important determinations as the meaning and applicability of Article 16 of the Torture Convention. In July 2003, the DCI and the General Counsel briefed senior Administration officials on the Agency's expanded use of EITs. At that time, the Attorney General affirmed that the Agency's conduct remained well within the scope of the 1 August 2002 DoJ legal opinion.

255. (TS[redacted]) A number of Agency officers of various grade levels who are involved with detention and interrogation activities are concerned that they may at some future date be vulnerable to legal action in the United States or abroad and that the U.S. Government will not stand behind them. Although the current detention and interrogation Program has been subject to DoJ legal review and Administration political approval, it diverges sharply from previous Agency policy and practice, rules that govern interrogations by U.S. military and law enforcement officers, statements of U.S. policy by the Department of State, and public

statements by very senior U.S. officials, including the President, as well as the policies expressed by Members of Congress, other Western governments, international organizations, and human rights groups. In addition, some Agency officers are aware of interrogation activities that were outside or beyond the scope of the written DoJ opinion. Officers are concerned that future public revelation of the CTC Program is inevitable and will seriously damage Agency officers' personal reputations, as well as the reputation and effectiveness of the Agency itself.

256. (TS/[redacted]) The Agency has generally provided good guidance and support to its officers who have been detaining and interrogating high value terrorists using EITs pursuant to [redacted] In particular, CTC did a commendable job in directing the interrogations of high value detainees at [redacted] At these foreign locations, Agency personnel—with one notable exception described in this Review—followed guidance and procedures and documented their activities well.

257. (TS/[redacted]) By distinction, the Agency—especially in the early months of the Program—failed to provide adequate staffing, guidance, and support to those involved with the detention and interrogation of detainees in [redacted]

258. (TS/[redacted]) Unauthorized, improvised, inhumane, and undocumented detention and interrogation techniques were used [redacted] referred to the Department of Justice (DoJ) for potential prosecution. [redacted] incident will be the

subject of a separate Report of Investigation by the Office of Inspector General. [redacted] unauthorized techniques were used in the interrogation of an individual who died at Asadabad Base while under interrogation by an Agency contractor in June 2003. Agency officers did not normally conduct interrogations at that location [redacted] the Agency officers involved lacked timely and adequate guidance, training, experience, supervision, or authorization, and did not exercise sound judgment.

259. (TS, [redacted]) The Agency failed to issue in a timely manner comprehensive written guidelines for detention and interrogation activities. Although ad hoc guidance was provided to many officers through cables and briefings in the early months of detention and interrogation activities, the DCI Confinement and Interrogation Guidelines were not issued until January 2003, several months after initiation of interrogation activity and after many of the unauthorized activities had taken place. [redacted]

260. (TS [redacted]) Such written guidance as does exist to address detentions and interrogations undertaken by Agency officers [redacted] is inadequate. The Directorate of Operations Handbook contains a single paragraph that is intended to guide officers [redacted] Neither this dated guidance nor general Agency guidelines on routine intelligence collection is adequate to instruct and protect Agency officers involved in contemporary interrogation activities. [redacted]

261. (TS [redacted]) During the interrogations of two detainees, the waterboard was used in a manner inconsistent with the written DoJ legal opinion of 1 August 2002. DoJ had stipulated that

its advice was based upon certain facts that the Agency had submitted to DoJ, observing, for example, that "... you (the Agency) have also orally informed us that although some of these techniques may be used with more than once [*sic*], that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions." One key Al-Qa'ida terrorist was subjected to the waterboard at least 183 times [redacted] and was denied sleep for a period of 180 hours. In this and another instance, the technique of application and volume of water used differed from the DoJ opinion.

262. (TS/[redacted]) OMS provided comprehensive medical attention to detainees [redacted] where EITs were employed with high value detainees, [redacted] 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 so even after being re-issued in September 2003.

263. [redacted]

264. (TS/[redacted]) Agency officers report that reliance on analytical assessments that were unsupported by credible intelligence may have resulted in the application of EITs 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.

265. [redacted]

266. (TS [redacted]) The Agency faces potentially serious long-term political and legal challenges as a result of the CTC Detention and Interrogation Program, particularly its use of EITs and the inability of the U.S. Government to decide what it will ultimately do with terrorists detained by the Agency.

RECOMMENDATIONS

1. [redacted]

[redacted]

g

2. [redacted]

3. [redacted]

[redacted]

4. [redacted]

5. [redacted]

6. [redacted]

7. [redacted]

[redacted]

8. [redacted]

9. [redacted]

10. [redacted]

Appendix A

PROCEDURES AND RESOURCES

1. (TS [redacted]) A team, led by the Deputy Inspector General, and comprising the Assistant Inspector General for Investigations, the Counsel to the Inspector General, a senior Investigations Staff Manager, three Investigators, two Inspectors, an Auditor, a Research Assistant, and a Secretary participated in this Review.

2. (TS [redacted]) OIG tasked relevant components for all information regarding the treatment and interrogation of all individuals detained by or on behalf of CIA after 9/11. Agency components provided OIG with over 38,000 pages of documents. OIG conducted over 100 interviews with individuals who possessed potentially relevant information. We interviewed senior Agency management officials, including the DCI, the Deputy Director of Central Intelligence, the Executive Director, the General Counsel, and the Deputy Director for Operations. As new information developed, OIG re-interviewed several individuals.

3. (TS [redacted]) OIG personnel made site visits to the [redacted] interrogation facilities. OIG personnel also visited [redacted] to review 92 videotapes of interrogations of Abu Zubaydah [redacted].

Appendix B

CHRONOLOGY: COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES

Date	Events in Washington	[redacted]	[redacted]
2001 Sept	[redacted] CIA/OGC begins research on interrogations issues.		
2001 Nov		[redacted]	
2002 Mar			Abu Zubaydah captured in Pakistan on 27 March 02 [redacted]
2002 Apr			[redacted]
2002 Jul	CIA briefs selected policy makers on EITs in summer 2002. CIA seeks legal opinion from DoJ for use of EITs on Abu Zubaydah.		
2002 Aug	DoJ concludes that use of 10 EITs, as described by CIA, would not violate U.S. law.		Agency initiates use of EITs on Abu Zubaydah.
2002 Sept		[redacted]	
2002 Fall	CIA briefs leadership of Congressional oversight committees.		
2002 Nov	CTC implements training program for officers assigned to the Interrogation Program.	[redacted]	Al-Nashiri captured [redacted] EITs employed on Al-Nashiri.
2002 Dec	[redacted]		[redacted] Unauthorized interrogation techniques used on Al-Nashiri in late December or early January.
2003 Jan	CIA initiates review of interrogation activities. DCI issues Confinement and Interrogation Guidelines.		
2003 Feb-Mar	CIA briefs leadership of Congressional oversight committees.		
2003 Mar		Khalid Shaykh Muhammad captured [redacted]	[redacted] EITs employed on Khalid Shaykh Muhammad.
2003 Apr	OMS disseminates draft guidelines for treatment of detainees.		
2003 Jun	DDO Capture Guidelines require that subject pose a continuing serious threat.	Abdul Wali dies after being interrogated by CIA [redacted]	
2003 Jul	Attorney General reaffirms legality.	Tenet assumes [redacted]	
2003 Sep	OMS updates guidelines for detainee treatment.		[redacted]

[redacted]

Appendix C

TOP SECRET

U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 2002

Memorandum for John Rizzo
Acting General Counsel of the Central Intelligence Agency

Interrogation of al Qaeda Operative

You have asked for this Office's views on whether certain proposed conduct would violate the prohibition against torture found at Section 2340A of title 18 of the United States Code. You have asked for this advice in the course of conducting interrogations of Abu Zubaydah. As we understand it, Zubaydah is one of the highest ranking members of the al Qaeda terrorist organization, with which the United States is currently engaged in an international armed conflict following the attacks on the World Trade Center and the Pentagon on September 11, 2001. This letter memorializes our previous oral advice, given on July 24, 2002 and July 26, 2002, that the proposed conduct would not violate this prohibition.

I.

Our advice is based upon the following facts, which you have provided to us. We also understand that you do not have any facts in your possession contrary to the facts outlined here, and this opinion is limited to these facts. If these facts were to change, this advice would not necessarily apply. Zubaydah is currently being held by the United States. 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. Zubaydah has become accustomed to a certain level of treatment and displays no signs of willingness to disclose further information. Moreover, your intelligence indicates that there is currently a level of "chatter" equal to that which preceded the September 11 attacks. In light of the information you believe Zubaydah has and the high level of threat you believe now exists, you wish to move the interrogations into what you have described as an "increased pressure phase."

As part of this increased pressure phase, 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. This phase will likely last no more than several days but could last up to thirty days. In this phase, you would like to employ ten techniques that you believe will dislocate his

expectations regarding the treatment he believes he will receive and encourage him to disclose the crucial information mentioned above. These ten techniques are: (1) attention grasp, (2) walling, (3) facial hold, (4) facial slap (insult slap), (5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) insects placed in a confinement box, and (10) the waterboard. You have informed us that the use of these techniques would be on an as-needed basis and that not all of these techniques will necessarily be used. The interrogation team would use these techniques in some combination to convince Zubaydah that the only way he can influence his surrounding environment is through cooperation. You have, however, informed us that you expect these techniques to be used in some sort of escalating fashion, culminating with the waterboard, though not necessarily ending with this technique. Moreover, you have also orally informed us that although some of these techniques may be used with more than once, that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions. You have also informed us that Zabaydah sustained a wound during his capture, which is being treated.

Based on the facts you have given us, we understand each of these techniques to be as follows. 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.

For walling, a flexible false wall will be constructed. The individual is placed with his heels touching the wall. The interrogator pulls the individual forward and then quickly and firmly pushes the individual into the wall. It is the individual's shoulder blades that hit the wall. During this motion, the head and neck are supported with a rolled hood or towel that provides a c-collar effect to help prevent whiplash. To further reduce the probability of injury, the individual is allowed to rebound from the flexible wall. You have orally informed us that 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. In part, the idea is to create a sound that will make the impact seem far worse than it is and that will be far worse than any injury that might result from the action.

The facial hold is used to hold the head immobile. One open palm is placed on either side of the individual's face. The fingertips are kept well away from the individual's eyes.

With the facial slap or insult slap, the interrogator slaps the individual's face with fingers slightly spread. The hand makes contact with the area directly between the tip of the individual's chin and the bottom of the corresponding earlobe. The interrogator invades the individual's personal space. The goal of the facial slap is not to inflict physical pain that is severe or lasting. Instead, the purpose of the facial slap is to induce shock, surprise, and/or humiliation.

Cramped confinement involves the placement of the individual in a 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. For the larger confined space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down. Confinement in the larger space can last up to eighteen hours; for the smaller space, confinement lasts for no more than two hours.

Wall standing is used to induce muscle fatigue. The individual stands about four to five feet from a wall, with his feet spread approximately to shoulder width. His arms are stretched out in front of him, with his fingers resting on the wall. His fingers support all of his body weight. The individual is not permitted to move or reposition his hands or feet.

A variety of stress positions may be used. You have informed us that these positions are not designed to produce the pain associated with contortions or twisting of the body. Rather, somewhat like walling, they are designed to produce the physical discomfort associated with muscle fatigue. Two particular stress positions are likely to be used on Zubaydah: (1) sitting on the floor with legs extended straight out in front of him with his arms raised above his head; and (2) kneeling on the floor while leaning back at a 45 degree angle. You have also orally informed us that through observing Zubaydah in captivity, you have noted that he appears to be quite flexible despite his wound.

Sleep deprivation may be used. You have indicated that your purpose in using this technique is to reduce the individual's ability to think on his feet and, through the discomfort associated with lack of sleep, to motivate him to cooperate. The effect of such sleep deprivation will generally remit after one or two nights of uninterrupted sleep. You have informed us that your research has revealed that, in rare instances, some individuals who are already predisposed to psychological problems may experience abnormal reactions to sleep deprivation. Even in those cases, however, reactions abate after the individual is permitted to sleep. Moreover, personnel with medical training are available to and will intervene in the unlikely event of an abnormal reaction. You have orally informed us that you would not deprive Zubaydah of sleep for more than eleven days at a time and that you have previously kept him awake for 72 hours, from which no mental or physical harm resulted.

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. You have orally informed us that you would in fact place a harmless insect such as a caterpillar in the box with him.

[redacted]

Finally, you would like to use a technique called the "waterboard." In this procedure, the individual is bound securely to an inclined bench, which is approximately four feet by seven feet. The individual's feet are generally elevated. A cloth is placed over the forehead and eyes. Water

is then applied to the cloth in a controlled manner. As this is done, the cloth is lowered until it covers both the nose and mouth. Once the cloth is saturated and completely covers the mouth and nose, air flow is slightly restricted for 20 to 40 seconds due to the presence of the cloth. 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. The individual does not breathe any water into his lungs. During those 20 to 40 seconds, water is continuously applied from a height of twelve to twenty-four inches. After this period, the cloth is lifted, and the individual is allowed to breathe unimpeded for three or four full breaths. The sensation of drowning is immediately relieved by the removal of the cloth. The procedure may then be repeated. The water is usually applied from a canteen cup or small watering can with a spout. 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. You have also orally informed us that it is likely that this procedure would not last more than 20 minutes in any one application.

We also understand that a medical expert with SERE experience will be present throughout this phase and that the procedures will be stopped if deemed medically necessary to prevent severe mental or physical harm to Zubaydah. As mentioned above, Zubaydah suffered an injury during his capture. You have informed us that steps will be taken to ensure that this injury is not in any way exacerbated by the use of these methods and that adequate medical attention will be given to ensure that it will heal properly.

II.

In this part, we review the context within which these procedures will be applied. You have informed us that you have taken various steps to ascertain what effect, if any, these techniques would have on Zubaydah's mental health. These same techniques, with the exception of the insect in the cramped confined space, have been used and continue to be used on some members of our military personnel during their SERE training. Because of the use of these procedures in training our own military personnel to resist interrogations, you have consulted with various individuals who have extensive experience in the use of these techniques. You have done so in order to ensure that no prolonged mental harm would result from the use of these proposed procedures.

Through your consultation with various individuals responsible for such training, you have learned that these techniques have been used as elements of a course of conduct without any reported incident of prolonged mental harm. [redacted] of the SERE school, [redacted] has reported that, during the seven-year period that he spent in those positions, there were two requests from Congress for information concerning alleged injuries resulting from the training. One of these inquiries was prompted by the temporary physical injury a trainee sustained as result of being placed in a

confinement box. The other inquiry involved claims that the SERE training caused two individuals to engage in criminal behavior, namely, felony shoplifting and downloading child pornography onto a military computer. According to this official, these claims were found to be baseless. Moreover, he has indicated that during the three and a half years he spent as [redacted] of the SERE program, he trained 10,000 students. Of those students, only two dropped out of the training following the use of these techniques. Although on rare occasions some students temporarily postponed the remainder of their training and received psychological counseling, those students were able to finish the program without any indication of subsequent mental health effects.

You have informed us that you have consulted with [redacted] who has ten years of experience with SERE training [redacted] He stated that, during those ten years, insofar as he is aware, none of the individuals who completed the program suffered any adverse mental health effects. He informed you that there was one person who did not complete the training. That person experienced an adverse mental health reaction that lasted only two hours. After those two hours, the individual's symptoms spontaneously dissipated without requiring treatment or counseling and no other symptoms were ever reported by this individual. According to the information you have provided to us, this assessment of the use of these procedures includes the use of the waterboard.

Additionally, you received a memorandum from the [redacted] which you supplied to us. [redacted] has experience with the use of all of these procedures in a course of conduct, with the exception of the insect in the confinement box and the waterboard. This memorandum confirms that the use of these procedures has not resulted in any reported instances of prolonged mental harm, and very few instances of immediate and temporary adverse psychological responses to the training. [redacted] reported that a small minority of students have had temporary adverse psychological reactions during training. Of the 26,829 students trained from 1992 through 2001 in the Air Force SERE training, 4.3 percent of those students had contact with psychology services. Of those 4.3 percent, only 3.2 percent were pulled from the program for psychological reasons. Thus, out of the students trained overall, only 0.14 percent were pulled from the program for psychological reasons. Furthermore, although [redacted] indicated that surveys of students having completed this training are not done, he expressed confidence that the training did not cause any long-term psychological impact. He based his conclusion on the debriefing of students that is done after the training. More importantly, he based this assessment on the fact that although training is required to be extremely stressful in order to be effective, very few complaints have been made regarding the training. During his tenure, in which 10,000 students were trained, no congressional complaints have been made. While there was one Inspector General complaint, it was not due to psychological concerns. Moreover, he was aware of only one letter inquiring about the long-term impact of these techniques from an individual trained

over twenty years ago. He found that it was impossible to attribute this individual's symptoms to his training. [redacted] concluded that if there are any long-term psychological effects of the United States Air Force training using the procedures outlined above they "are certainly minimal."

With respect to the waterboard, you have also orally informed us that the Navy continues to use it in training. You have informed us that your on-site psychologists, who have extensive experience with the use of the waterboard in Navy training, have not encountered any significant long-term mental health consequences from its use. Your on-site psychologists have also indicated that JPRA has likewise not reported any significant long-term mental health consequences from the use of the waterboard. You have informed us that other services ceased use of the waterboard because it was so successful as an interrogation technique, but not because of any concerns over any harm, physical or mental, caused by it. It was also reported to be almost 100 percent effective in producing cooperation among the trainees. [redacted] also indicated that he had observed the use of the waterboard in Navy training some ten to twelve times. Each time it resulted in cooperation but it did not result in any physical harm to the student.

You have also reviewed the relevant literature and found no empirical data on the effect of these techniques, with the exception of sleep deprivation. With respect to sleep deprivation, you have informed us that is not uncommon for someone to be deprived of sleep for 72 hours and still perform excellently on visual-spatial motor tasks and short-term memory tests. Although some individuals may experience hallucinations, according to the literature you surveyed, those who experience such psychotic symptoms have almost always had such episodes prior to the sleep deprivation. You have indicated the studies of lengthy sleep deprivation showed no psychosis, loosening of thoughts, flattening of emotions, delusions, or paranoid ideas. In one case, even after eleven days of deprivation, no psychosis or permanent brain damaged occurred. In fact the individual reported feeling almost back to normal after one night's sleep. Further, based on the experiences with its use in military training (where it is induced for up to 48 hours), you found that rarely, if ever, will the individual suffer harm after the sleep deprivation is discontinued. Instead, the effects remit after a few good nights of sleep.

You have taken the additional step of consulting with U.S. interrogations experts, and other individuals with oversight over the SERE training process. None of these individuals was aware of any prolonged psychological effect caused by the use of any of the above techniques either separately or as a course of conduct. Moreover, you consulted with outside psychologists who reported that they were unaware of any cases where long-term problems have occurred as a result of these techniques.

Moreover, in consulting with a number of mental health experts, you have learned that the effect of any of these procedures will be dependant on the individual's personal history, cultural history and psychological tendencies. To that end, you have informed us that you have

completed a psychological assessment of Zubadyah. This assessment is based on interviews with Zubaydah, observations of him, and information collected from other sources such as intelligence and press reports. Our understanding of Zubaydah's psychological profile, which we set forth below, is based on that assessment.

According to this assessment, Zubaydah, though only 31, rose quickly from very low level mujahedin to third or fourth man in al Qaeda. He has served as Usama Bin Laden's senior lieutenant. In that capacity, he has managed a network of training camps. He has been instrumental in the training of operatives for al Qaeda, the Egyptian Islamic Jihad, and other terrorist elements inside Pakistan and Afghanistan. He acted as the Deputy Camp Commander for al Qaeda training camp in Afghanistan, personally approving entry and graduation of all trainees during 1999-2000. From 1996 until 1999, he approved all individuals going in and out of Afghanistan to the training camps. Further, no one went in and out of Peshawar, Pakistan without his knowledge and approval. He also acted as al Qaeda's coordinator of external contacts and foreign communications. Additionally, he has acted as al Qaeda's counter-intelligence officer and has been trusted to find spies within the organization.

Zubaydah has been involved in every major terrorist operation carried out by al Qaeda. He was a planner for the Millennium plot to attack U.S. and Israeli targets during the Millennium celebrations in Jordan. Two of the central figures in this plot who were arrested have identified Zubaydah as the supporter of their cell and the plot. He also served as a planner for the Paris Embassy plot in 2001. Moreover, he was one of the planners of the September 11 attacks. Prior to his capture, he was engaged in planning future terrorist attacks against U.S. interests.

Your psychological assessment indicates that it is believed Zubaydah wrote al Qaeda's manual on resistance techniques. You also believe that his experiences in al Qaeda make him well-acquainted with and well-versed in such techniques. As part of his role in al Qaeda, Zubaydah visited individuals in prison and helped them upon their release. Through this contact and activities with other al Qaeda mujahedin, you believe that he knows many stories of capture, interrogation, and resistance to such interrogation. Additionally, he has spoken with Ayman al-Zawahiri, and you believe it is likely that the two discussed Zawahiri's experiences as a prisoner of the Russians and the Egyptians.

Zubaydah stated during interviews that he thinks of any activity outside of jihad as "silly." He has indicated that his heart and mind are devoted to serving Allah and Islam through jihad and he has stated that he has no doubts or regrets about committing himself to jihad. Zubaydah believes that the global victory of Islam is inevitable. You have informed us that he continues to express his unabated desire to kill Americans and Jews.

Your psychological assessment describes his personality as follows. He is "a highly self-directed individual who prizes his independence." He has "narcissistic features," which are evidenced in the attention he pays to his personal appearance and his "obvious 'efforts' to

demonstrate that he is really a rather 'humble and regular guy.'" He is "somewhat compulsive" in how he organizes his environment and business. He is confident, self-assured, and possesses an air of authority. While he admits to at times wrestling with how to determine who is an "innocent," he has acknowledged celebrating the destruction of the World Trade Center. He is intelligent and intellectually curious. He displays "excellent self-discipline." The assessment describes him as a perfectionist, persistent, private, and highly capable in his social interactions. He is very guarded about opening up to others and your assessment repeatedly emphasizes that he tends not to trust others easily. He is also "quick to recognize and assess the moods and motivations of others." Furthermore, he is proud of his ability to lie and deceive others successfully. Through his deception he has, among other things, prevented the location of al Qaeda safehouses and even acquired a United Nations refugee identification card.

According to your reports, Zubaydah does not have any pre-existing mental conditions or problems that would make him likely to suffer prolonged mental harm from your proposed interrogation methods. Through reading his diaries and interviewing him, you have found no history of "mood disturbance or other psychiatric pathology[,]" "thought disorder[,] . . . enduring mood or mental health problems." He is in fact "remarkably resilient and confident that he can overcome adversity." When he encounters stress or low mood, this appears to last only for a short time. He deals with stress by assessing its source, evaluating the coping resources available to him, and then taking action. Your assessment notes that he is "generally self-sufficient and relies on his understanding and application of religious and psychological principles, intelligence and discipline to avoid and overcome problems." Moreover, you have found that he has a "reliable and durable support system" in his faith, "the blessings of religious leaders, and camaraderie of like-minded mujahedin brothers." During detention, Zubaydah has managed his mood, remaining at most points "circumspect, calm, controlled, and deliberate." He has maintained this demeanor during aggressive interrogations and reductions in sleep. You describe that in an initial confrontational incident, Zubaydah showed signs of sympathetic nervous system arousal, which you think was possibly fear. Although this incident led him to disclose intelligence information, he was able to quickly regain his composure, his air of confidence, and his "strong resolve" not to reveal any information.

Overall, you summarize his primary strengths as the following: ability to focus, goal-directed discipline, intelligence, emotional resilience, street savvy, ability to organize and manage people, keen observation skills, fluid adaptability (can anticipate and adapt under duress and with minimal resources), capacity to assess and exploit the needs of others, and ability to adjust goals to emerging opportunities.

You anticipate that he will draw upon his vast knowledge of interrogation techniques to cope with the interrogation. Your assessment indicates that Zubaydah may be willing to die to protect the most important information that he holds. Nonetheless, you are of the view that his belief that Islam will ultimately dominate the world and that this victory is inevitable may provide the chance that Zubaydah will give information and rationalize it solely as a temporary

setback. Additionally, you believe he may be willing to disclose some information, particularly information he deems to not be critical, but which may ultimately be useful to us when pieced together with other intelligence information you have gained.

III.

Section 2340A makes it a criminal offense for any person "outside of the United States [to] commit[] or attempt[] to commit torture." Section 2340(1) defines torture as:

> an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody of physical control.

18 U.S.C. § 2340(1). As we outlined in our opinion on standards of conduct under Section 2340A, a violation of 2340A requires a showing that: (1) the torture occurred outside the United States; (2) the defendant acted under the color of law; (3) the victim was within the defendant's custody or control; (4) the defendant specifically intended to inflict severe pain or suffering; and (5) that the acted inflicted severe pain or suffering. *See* Memorandum for John Rizzo, Acting General Counsel for the Central Intelligence Agency, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, *Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A* at 3 (August 1, 2002) ("Section 2340A Memorandum"). You have asked us to assume that Zubayadah is being held outside the United States, Zubayadah is within U.S. custody, and the interrogators are acting under the color of law. At issue is whether the last two elements would be met by the use of the proposed procedures, namely, whether those using these procedures would have the requisite mental state and whether these procedures would inflict severe pain or suffering within the meaning of the statute.

Severe Pain or Suffering. In order for pain or suffering to rise to the level of torture, the statute requires that it be severe. As we have previously explained, this reaches only extreme acts. *See id.* at 13. Nonetheless, drawing upon cases under the Torture Victim Protection Act (TVPA), which has a definition of torture that is similar to Section 2340's definition, we found that a single event of sufficiently intense pain may fall within this prohibition. *See id.* at 26. As a result, we have analyzed each of these techniques separately. In further drawing upon those cases, we also have found that courts tend to take a totality-of-the-circumstances approach and consider an entire course of conduct to determine whether torture has occurred. *See id.* at 27. Therefore, in addition to considering each technique separately, we consider them together as a course of conduct.

Section 2340 defines torture as the infliction of severe physical or mental pain or suffering. We will consider physical pain and mental pain separately. *See* 18 U.S.C. § 2340(1). With respect to *physical* pain, we previously concluded that "severe pain" within the meaning of

Section 2340 is pain that is difficult for the individual to endure and is of an intensity akin to the pain accompanying serious physical injury. *See* Section 2340A Memorandum at 6. Drawing upon the TVPA precedent, we have noted that examples of acts inflicting severe pain that typify torture are, among other things, severe beatings with weapons such as clubs, and the burning of prisoners. *See id.* at 24. We conclude below that none of the proposed techniques inflicts such pain.

The facial hold and the attention grasp involve no physical pain. In the absence of such pain it is obvious that they cannot be said to inflict severe physical pain or suffering. The stress positions and wall standing both may result in muscle fatigue. Each involves the sustained holding of a position. In wall standing, it will be holding a position in which all of the individual's body weight is placed on his finger tips. The stress positions will likely include sitting on the floor with legs extended straight out in front and arms raised above the head, and kneeling on the floor and leaning back at a 45 degree angle. Any pain associated with muscle fatigue is not of the intensity sufficient to amount to "severe physical pain or suffering" under the statute, nor, despite its discomfort, can it be said to be difficult to endure. Moreover, you have orally informed us that no stress position will be used that could interfere with the healing of Zubaydah's wound. Therefore, we conclude that these techniques involve discomfort that falls far below the threshold of severe physical pain.

Similarly, although the confinement boxes (both small and large) are physically uncomfortable because their size restricts movement, they are not so small as to require the individual to contort his body to sit (small box) or stand (large box). You have also orally informed us that despite his wound, Zubaydah remains quite flexible, which would substantially reduce any pain associated with being placed in the box. We have no information from the medical experts you have consulted that the limited duration for which the individual is kept in the boxes causes any substantial physical pain. As a result, we do not think the use of these boxes can be said to cause pain that is of the intensity associated with serious physical injury.

The use of one of these boxes with the introduction of an insect does not alter this assessment. As we understand it, no actually harmful insect will be placed in the box. Thus, though the introduction of an insect may produce trepidation in Zubaydah (which we discuss below), it certainly does not cause physical pain.

As for sleep deprivation, it is clear that depriving someone of sleep does not involve severe physical pain within the meaning of the statute. While sleep deprivation may involve some physical discomfort, such as the fatigue or the discomfort experienced in the difficulty of keeping one's eyes open, these effects remit after the individual is permitted to sleep. Based on the facts you have provided us, we are not aware of any evidence that sleep deprivation results in severe physical pain or suffering. As a result, its use does not violate Section 2340A.

Even those techniques that involve physical contact between the interrogator and the

individual do not result in severe pain. The facial slap and walling contain precautions to ensure that no pain even approaching this level results. The slap is delivered with fingers slightly spread, which you have explained to us is designed to be less painful than a closed-hand slap. The slap is also delivered to the fleshy part of the face, further reducing any risk of physical damage or serious pain. The facial slap does not produce pain that is difficult to endure. Likewise, walling involves quickly pulling the person forward and then thrusting him against a flexible false wall. You have informed us that the sound of hitting the wall will actually be far worse than any possible injury to the individual. The use of the rolled towel around the neck also reduces any risk of injury. While it may hurt to be pushed against the wall, any pain experienced is not of the intensity associated with serious physical injury.

As we understand it, when the waterboard is used, the subject's body responds as if the subject were drowning—even though the subject may be well aware that he is in fact not drowning. You have informed us that this procedure does not inflict actual physical harm. Thus, although the subject may experience the fear or panic associated with the feeling of drowning, the waterboard does not inflict physical pain. As we explained in the Section 2340A Memorandum, "pain and suffering" as used in Section 2340 is best understood as a single concept, not distinct concepts of "pain" as distinguished from "suffering." *See* Section 2340A Memorandum at 6 n.3. The waterboard, which inflicts no pain or actual harm whatsoever, does not, in our view inflict "severe pain or suffering." Even if one were to parse the statute more finely to attempt to treat "suffering" as a distinct concept, the waterboard could not be said to inflict severe suffering. The waterboard is simply a controlled acute episode, lacking the connotation of a protracted period of time generally given to suffering.

Finally, as we discussed above, you have informed us that in determining which procedures to use and how you will use them, you have selected techniques that will not harm Zubaydah's wound. You have also indicated that numerous steps will be taken to ensure that none of these procedures in any way interferes with the proper healing of Zubaydah's wound. You have also indicated that, should it appear at any time that Zubaydah is experiencing severe pain or suffering, the medical personnel on hand will stop the use of any technique.

Even when all of these methods are considered combined in an overall course of conduct, they still would not inflict severe physical pain or suffering. As discussed above, a number of these acts result in no physical pain, others produce only physical discomfort. You have indicated that these acts will not be used with substantial repetition, so that there is no possibility that severe physical pain could arise from such repetition. Accordingly, we conclude that these acts neither separately nor as part of a course of conduct would inflict severe physical pain or suffering within the meaning of the statute.

We next consider whether the use of these techniques would inflict severe *mental* pain or suffering within the meaning of Section 2340. Section 2340 defines severe mental pain or suffering as "the prolonged mental harm caused by or resulting from" one of several predicate

acts. 18 U.S.C. § 2340(2). Those predicate acts are: (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 any of the preceding acts will be done to another person. *See* 18 U.S.C. § 2340(2)(A)-(D). As we have explained, this list of predicate acts is exclusive. *See* Section 2340A Memorandum at 8. No other acts can support a charge under Section 2340A based on the infliction of severe mental pain or suffering. *See id.* Thus, if the methods that you have described do not either in and of themselves constitute one of these acts or as a course of conduct fulfill the predicate act requirement, the prohibition has not been violated. *See id.* Before addressing these techniques, we note that it is plain that none of these procedures involves a threat to any third party, the use of any kind of drugs, or for the reasons described above, the infliction of severe physical pain. Thus, the question is whether any of these acts, separately or as a course of conduct, constitutes a threat of severe physical pain or suffering, a procedure designed to disrupt profoundly the senses, or a threat of imminent death. As we previously explained, whether an action constitutes a threat must be assessed from the standpoint of a reasonable person in the subject's position. *See id.* at 9.

No argument can be made that the attention grasp or the facial hold constitute threats of imminent death or are procedures designed to disrupt profoundly the senses or personality. In general the grasp and the facial hold will startle the subject, produce fear, or even insult him. As you have informed us, the use of these techniques is not accompanied by a specific verbal threat of severe physical pain or suffering. To the extent that these techniques could be considered a threat of severe physical pain or suffering, such a threat would have to be inferred from the acts themselves. Because these actions themselves involve no pain, neither could be interpreted by a reasonable person in Zubaydah's position to constitute a threat of severe pain or suffering. Accordingly, these two techniques are not predicate acts within the meaning of Section 2340.

The facial slap likewise falls outside the set of predicate acts. It plainly is not a threat of imminent death, under Section 2340(2)(C), or a procedure designed to disrupt profoundly the senses or personality, under Section 2340(2)(B). Though it may hurt, as discussed above, the effect is one of smarting or stinging and surprise or humiliation, but not severe pain. Nor does it alone constitute a threat of severe pain or suffering, under Section 2340(2)(A). Like the facial hold and the attention grasp, the use of this slap is not accompanied by a specific verbal threat of further escalating violence. Additionally, you have informed us that in one use this technique will typically involve at most two slaps. Certainly, the use of this slap may dislodge any expectation that Zubaydah had that he would not be touched in a physically aggressive manner. Nonetheless, this alteration in his expectations could hardly be construed by a reasonable person in his situation to be tantamount to a threat of severe physical pain or suffering. At most, this technique suggests that the circumstances of his confinement and interrogation have changed. Therefore, the facial slap is not within the statute's exclusive list of predicate acts.

Walling plainly is not a procedure calculated to disrupt profoundly the senses or personality. While walling involves what might be characterized as rough handling, it does not involve the threat of imminent death or, as discussed above, the infliction of severe physical pain. Moreover, once again we understand that use of this technique will not be accompanied by any specific verbal threat that violence will ensue absent cooperation. Thus, like the facial slap, walling can only constitute a threat of severe physical pain if a reasonable person would infer such a threat from the use of the technique itself. Walling does not in and of itself inflict severe pain or suffering. Like the facial slap, walling may alter the subject's expectation as to the treatment he believes he will receive. Nonetheless, the character of the action falls so far short of inflicting severe pain or suffering within the meaning of the statute that even if he inferred that greater aggressiveness was to follow, the type of actions that could be reasonably be anticipated would still fall below anything sufficient to inflict severe physical pain or suffering under the statute. Thus, we conclude that this technique falls outside the proscribed predicate acts.

Like walling, stress positions and wall-standing are not procedures calculated to disrupt profoundly the senses, nor are they threats of imminent death. These procedures, as discussed above, involve the use of muscle fatigue to encourage cooperation and do not themselves constitute the infliction of severe physical pain or suffering. Moreover, there is no aspect of violence to either technique that remotely suggests future severe pain or suffering from which such a threat of future harm could be inferred. They simply involve forcing the subject to remain in uncomfortable positions. While these acts may indicate to the subject that he may be placed in these positions again if he does not disclose information, the use of these techniques would not suggest to a reasonable person in the subject's position that he is being threatened with severe pain or suffering. Accordingly, we conclude that these two procedures do not constitute any of the predicate acts set forth in Section 2340(2).

As with the other techniques discussed so far, cramped confinement is not a threat of imminent death. It may be argued that, focusing in part on the fact that the boxes will be without light, placement in these boxes would constitute a procedure designed to disrupt profoundly the senses. As we explained in our recent opinion, however, to "disrupt profoundly the senses" a technique must produce an extreme effect in the subject. *See* Section 2340A Memorandum at 10–12. We have previously concluded that this requires that the procedure cause substantial interference with the individual's cognitive abilities or fundamentally alter his personality. *See id.* at 11. Moreover, the statute requires that such procedures must be calculated to produce this effect. *See id.* at 10; 18 U.S.C. § 2340(2)(B).

With respect to the small confinement box, you have informed us that he would spend at most two hours in this box. You have informed us that your purpose in using these boxes is not to interfere with his senses or his personality, but to cause him physical discomfort that will encourage him to disclose critical information. Moreover, your imposition of time limitations on the use of either of the boxes also indicates that the use of these boxes is not designed or calculated to disrupt profoundly the senses or personality. For the larger box, in which he can

both stand and sit, he may be placed in this box for up to eighteen hours at a time, while you have informed us that he will never spend more than an hour at time in the smaller box. These time limits further ensure that no profound disruption of the senses or personality, were it even possible, would result. As such, the use of the confinement boxes does not constitute a procedure calculated to disrupt profoundly the senses or personality.

Nor does the use of the boxes threaten Zubaydah with severe physical pain or suffering. While additional time spent in the boxes may be threatened, their use is not accompanied by any express threats of severe physical pain or suffering. Like the stress positions and walling, placement in the boxes is physically uncomfortable but any such discomfort does not rise to the level of severe physical pain or suffering. Accordingly, a reasonable person in the subject's position would not infer from the use of this technique that severe physical pain is the next step in his interrogator's treatment of him. Therefore, we conclude that the use of the confinement boxes does not fall within the statute's required predicate acts.

In addition to using the confinement boxes alone, you also would like to introduce an insect into one of the boxes with Zubaydah. As we understand it, you plan to inform Zubaydah that you are going to place a stinging insect into the box, but you will actually place a harmless insect in the box, such as a caterpillar. 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 to not commit a predicate act, you should not affirmatively lead him to believe that any insect is present which has a sting that could produce severe pain or suffering or even cause his death. [redacted] so long as you take either of the approaches we have described, the insect's placement in the box would not constitute a threat of severe physical pain or suffering to a reasonable person in his position. An individual placed in a box, even an individual with a fear of insects, would not reasonably feel threatened with severe physical pain or suffering if a caterpillar was placed in the box. Further, you have informed us that you are not aware that Zubaydah has any allergies to insects, and you have not informed us of any other factors that would cause a reasonable person in that same situation to believe that an unknown insect would cause him severe physical pain or death. Thus, we conclude that the placement of the insect in the confinement box with Zubaydah would not constitute a predicate act.

Sleep deprivation also clearly does not involve a threat of imminent death. Although it produces physical discomfort, it cannot be said to constitute a threat of severe physical pain or suffering from the perspective of a reasonable person in Zubaydah's position. Nor could sleep deprivation constitute a procedure calculated to disrupt profoundly the senses, so long as sleep deprivation (as you have informed us is your intent) is used for limited periods, before hallucinations or other profound disruptions of the senses would occur. To be sure, sleep deprivation may reduce the subject's ability to think on his feet. Indeed, you indicate that this is

the intended result. His mere reduced ability to evade your questions and resist answering does not, however, rise to the level of disruption required by the statute. As we explained above, a disruption within the meaning of the statute is an extreme one, substantially interfering with an individual's cognitive abilities, for example, inducing hallucinations, or driving him to engage in uncharacteristic self-destructive behavior. *See infra* 13; Section 2340A Memorandum at 11. Therefore, the limited use of sleep deprivation does not constitute one of the required predicate acts.

We find that the use of the waterboard constitutes a threat of imminent death. 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 and fulfills the predicate act requirement under the statute.

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. *See* Section 2340A Memorandum at 7. We have previously concluded that prolonged mental harm is mental harm of some lasting duration, e.g., mental harm lasting months or years. *See id.* Prolonged mental harm is not simply the stress experienced in, for example, an interrogation by state police. *See id.* Based on your research into the use of these methods at the SERE school and consultation with others with expertise in the field of psychology and interrogation, you do not anticipate that any prolonged mental harm would result from the use of the waterboard. Indeed, you have advised us that the relief is almost immediate when the cloth is removed from the nose and mouth. In the absence of prolonged mental harm, no severe mental pain or suffering would have been inflicted, and the use of these procedures would not constitute torture within the meaning of the statute.

When these acts are considered as a course of conduct, we are unsure whether these acts may constitute a threat of severe physical pain or suffering. You have indicated to us that you have not determined either the order or the precise timing for implementing these procedures. It is conceivable that these procedures could be used in a course of escalating conduct, moving incrementally and rapidly from least physically intrusive, e.g., facial hold, to the most physical contact, e.g., walling or the waterboard. As we understand it, based on his treatment so far, Zubaydah has come to expect that no physical harm will be done to him. By using these techniques in increasing intensity and in rapid succession, the goal would be to dislodge this expectation. Based on the facts you have provided to us, we cannot say definitively that the entire course of conduct 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 other suggestions that physical violence will follow—might cause a reasonable person to believe that they are faced with such a threat. Without more information, we are uncertain whether the course of conduct would constitute a predicate act under Section 2340(2).

Even if the course of conduct were thought to pose a threat of physical pain or suffering, it would nevertheless—on the facts before us—not constitute a violation of Section 2340A. Not only must the course of conduct be a predicate act, but also those who use the procedure must actually cause prolonged mental harm. Based on the information that you have provided to us, indicating that no evidence exists that this course of conduct produces any prolonged mental harm, we conclude that a course of conduct using these procedures and culminating in the waterboard would not violate Section 2340A.

Specific Intent. To violate the statute, an individual must have the specific intent to inflict severe pain or suffering. Because specific intent is an element of the offense, the absence of specific intent negates the charge of torture. As we previously opined, to have the required specific intent, an individual must expressly intend to cause such severe pain or suffering. *See* Section 2340A Memorandum at 3 *citing Carter v. United States*, 530 U.S. 255, 267 (2000). We have further found that if a defendant acts with the good faith belief that his actions will not cause such suffering, he has not acted with specific intent. *See id.* at 4 *citing South Atl. Limtd. Ptrshp. of Tenn. v. Riese*, 218 F.3d 518, 531 (4th Cir. 2002). A defendant acts in good faith when he has an honest belief that his actions will not result in severe pain or suffering. *See id. citing Cheek v. United States*, 498 U.S. 192, 202 (1991). Although an honest belief need not be reasonable, such a belief is easier to establish where there is a reasonable basis for it. *See id.* at 5. Good faith may be established by, among other things, the reliance on the advice of experts. *See id.* at 8.

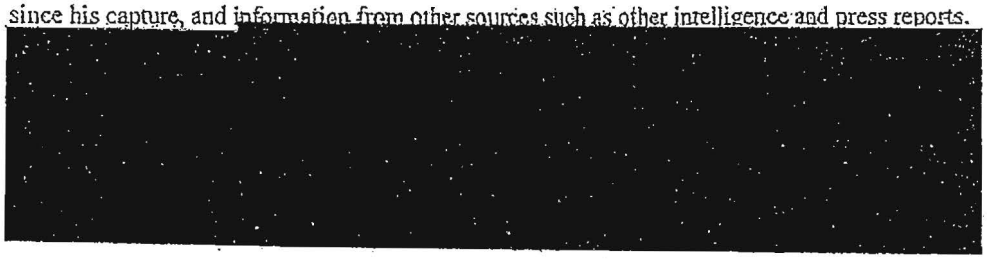
Based on the information you have provided us, we believe that those carrying out these procedures would not have the specific intent to inflict severe physical pain or suffering. The objective of these techniques is not to cause severe physical pain. First, the constant presence of personnel with medical training who have the authority to stop the interrogation should it appear it is medically necessary indicates that it is not your intent to cause severe physical pain. The personnel on site have extensive experience with these specific techniques as they are used in SERE school training. Second, you have informed us that you are taking steps to ensure that Zubaydah's injury is not worsened or his recovery impeded by the use of these techniques.

Third, as you have described them to us, the proposed techniques involving physical contact between the interrogator and Zubaydah actually contain precautions to prevent any serious physical harm to Zubaydah. In "walling," a rolled hood or towel will be used to prevent

whiplash and he will be permitted to rebound from the flexible wall to reduce the likelihood of injury. Similarly, in the "facial hold," the fingertips will be kept well away from the his eyes to ensure that there is no injury to them. The purpose of that facial hold is not injure him but to hold the head immobile. Additionally, while the stress positions and wall standing will undoubtedly result in physical discomfort by tiring the muscles, it is obvious that these positions are not intended to produce the kind of extreme pain required by the statute.

Furthermore, no specific intent to cause severe mental pain or suffering appears to be present. As we explained in our recent opinion, an individual must have the specific intent to cause prolonged mental harm in order to have the specific intent to inflict severe mental pain or suffering. *See* Section 2340A Memorandum at 8. Prolonged mental harm is substantial mental harm of a sustained duration, e.g., harm lasting months or even years after the acts were inflicted upon the prisoner. As we indicated above, a good faith belief can negate this element. Accordingly, if an individual conducting the interrogation has a good faith belief that the procedures he will apply, separately or together, would not result in prolonged mental harm, that individual lacks the requisite specific intent. This conclusion concerning specific intent is further bolstered by the due diligence that has been conducted concerning the effects of these interrogation procedures.

The mental health experts that you have consulted have indicated that the psychological impact of a course of conduct must be assessed with reference to the subject's psychological history and current mental health status. The healthier the individual, the less likely that the use of any one procedure or set of procedures as a course of conduct will result in prolonged mental harm. A comprehensive psychological profile of Zubaydah has been created. In creating this profile, your personnel drew on direct interviews, Zubaydah's diaries, observation of Zubaydah since his capture, and information from other sources such as other intelligence and press reports.



As we indicated above, you have informed us that your proposed interrogation methods have been used and continue to be used in SERE training. It is our understanding that these techniques are not used one by one in isolation, but as a full course of conduct to resemble a real interrogation. Thus, the information derived from SERE training bears both upon the impact of the use of the individual techniques and upon their use as a course of conduct. You have found that the use of these methods together or separately, including the use of the waterboard, has not resulted in any negative long-term mental health consequences. The continued use of these methods without mental health consequences to the trainees indicates that it is highly improbable

that such consequences would result here. Because you have conducted the due diligence to determine that these procedures, either alone or in combination, do not produce prolonged mental harm, we believe that you do not meet the specific intent requirement necessary to violate Section 2340A.

You have also informed us that you have reviewed the relevant literature on the subject, and consulted with outside psychologists. Your review of the literature uncovered no empirical data on the use of these procedures, with the exception of sleep deprivation for which no long-term health consequences resulted. The outside psychologists with whom you consulted indicated were unaware of any cases where long-term problems have occurred as a result of these techniques.

As described above, it appears you have conducted an extensive inquiry to ascertain what impact, if any, these procedures individually and as a course of conduct would have on Zubaydah. You have consulted with interrogation experts, including those with substantial SERE school experience, consulted with outside psychologists, completed a psychological assessment and reviewed the relevant literature on this topic. Based on this inquiry, you believe that the use of the procedures, including the waterboard, and as a course of conduct would not result in prolonged mental harm. Reliance on this information about Zubaydah and about the effect of the use of these techniques more generally demonstrates the presence of a good faith belief that no prolonged mental harm will result from using these methods in the interrogation of Zubaydah. Moreover, we think that this represents not only an honest belief but also a reasonable belief based on the information that you have supplied to us. Thus, we believe that the specific intent to inflict prolonged mental is not present, and consequently, there is no specific intent to inflict severe mental pain or suffering. Accordingly, we conclude that on the facts in this case the use of these methods separately or a course of conduct would not violate Section 2340A.

Based on the foregoing, and based on the facts that you have provided, we conclude that the interrogation procedures that you propose would not violate Section 2340A. We wish to emphasize that this is our best reading of the law; however, you should be aware that there are no cases construing this statute; just as there have been no prosecutions brought under it.

Please let us know if we can be of further assistance.

Jay S. Bybee
Assistant Attorney General

Appendix D

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]

Guidelines on Confinement Conditions for CIA Detainees

b. [redacted]

c. [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:

[redacted]

Director of Central Intelligence

1/28/03

Date

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

Appendix E

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]

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[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.

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

Guideline 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

Appendix F

DRAFT OMS GUIDELINES ON MEDICAL AND PSYCHOLOGICAL SUPPORT TO DETAINEE INTERROGATIONS

September 4, 2003

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 may be subjected to a wide range of legally sanctioned techniques, all of which are also used on U.S. military personnel in SERE training programs. These 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.

Sanctioned interrogation techniques must be specifically approved in advance by the Director, CTC in the case of each individual case. They include, in approximately ascending degree of intensity:

Standard measures (i.e., without physical or substantial psychological pressure)
- Shaving
- Stripping
- Diapering (generally for periods not greater than 72 hours)
- Hooding
- Isolation
- White noise or loud music (at a decibel level that will not damage hearing)
- Continuous light or darkness
- Uncomfortably cool environment
- Restricted diet, including reduced caloric intake (sufficient to maintain general health)
- Shackling in upright, sitting, or horizontal position
- Water Dousing
- Sleep deprivation (up to 72 hours)

Enhanced measures (with physical or psychological pressure beyond the above)
- Attention grasp
- Facial hold
- Insult (facial) slap

Abdominal slap
Prolonged diapering
Sleep deprivation (over 72 hours)
Stress positions
--on knees, body slanted forward or backward
--leaning with forehead on wall
Walling
Cramped confinement (Confinement boxes)
Waterboard

In all instances the general goal of these techniques is a psychological impact, and not some physical effect, with a specific goal of "dislocat[ing] his expectations regarding the treatment he believes he will receive...." The more physical techniques are delivered in a manner carefully limited to avoid serious physical harm. The slaps for example are designed "to induce shock, surprise, and/or humiliation" and "not to inflict physical pain that is severe or lasting." To this end they must be delivered in a specifically circumscribed manner, e.g., with fingers spread. Walling is only against a springboard designed to be loud and bouncy (and cushion the blow). All walling and most attention grasps are delivered only with the subject's head solidly supported with a towel to avoid extension-flexion injury.

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.[1] "DCI Guidelines" have been issued formalizing these responsibilities, and these should be read directly.

Whenever feasible, advance approval is required to use any measures beyond standard measures; technique-specific advanced approval is required for all "enhanced" measures and is conditional on on-site medical and psychological personnel[2] confirming from direct detainee examination that the enhanced technique(s) is not expected to produce "severe physical or mental pain or suffering." As a practical matter, the detainee's physical condition must be such that these interventions will not have lasting

[1] 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." Memorandum of August 1, 2002, p. 15.

[2] [redacted]
Unless the waterboard is being used, the medical officer can be a physician or a PA; use of the waterboard requires the presence of a physician.

effect, and his psychological state strong enough that no severe psychological harm will result.

The medical implications of the DCI guidelines are discussed below.

General intake evaluation

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. [redacted]

Vital signs and weight should be recorded, and blood work drawn [redacted]

Documented subsequent medical rechecks should be performed on a regular basis, [redacted]

Although brief, the data should reflect what was checked and include negative findings. [redacted]

Medical treatment

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. [redacted]

[redacted]

The basic diet during the period of enhanced interrogation need not be palatable, but should include adequate fluids and nutrition. Actual consumption should be monitored and recorded. Liquid Ensure (or equivalent) is a good way to assure that there is adequate nutrition. [redacted] Individuals refusing adequate liquids during this stage should have fluids administered at the earliest signs of dehydration. [redacted] If there is any question about adequacy of fluid intake, urinary output also should be monitored and recorded.

Uncomfortably cool environments

Detainees can safely be placed in uncomfortably cool environments for varying lengths of time, ranging from hours to days. [redacted]

Core body temperature falls after more than 2 hours at an ambient temperature of 10°C/50°F. At this temperature increased metabolic rate cannot compensate for heat loss. The WHO recommended minimum indoor temperature is 18°C/64°F. The "thermoneutral zone" where minimal compensatory activity is required to maintain core temperature is 20°C/68°F to 30°C/86°F. Within the thermoneutral zone, 26°C/78°F is considered optimally comfortable for lightly clothed individuals and 30°C/86°F for naked individuals. [redacted]

If there is any possibility that ambient temperatures are below the thermoneutral range, they should be monitored and the actual temperatures documented. [redacted]

At ambient temperatures below 18°C/64°F, detainees should be monitored for the development of hypothermia. [redacted]

White noise or loud music

As a practical guide, there is no permanent hearing risk for continuous, 24-hours-a-day exposures to sound at 82 dB or lower; at 84 dB for up to 18 hours a day; 90 dB for up to 8 hours, 95 dB for 4 hours, and 100 dB for 2 hours. If necessary, instruments can be provided to measure these ambient sound levels. [redacted]

Shackling

Shackling in non-stressful positions requires only monitoring for the development of pressure sores with appropriate treatment and adjustment of the shackles as required. [redacted]

[redacted]

Assuming no medical contraindications are found, extended periods (up to 72 hours) in a standing position can be approved if the hands are no higher than head level and weight is borne fully by the lower extremities. [redacted]

[redacted]

Sleep deprivation

[redacted]

The standard approval for sleep deprivation, per se (without regard to shackling position) is 72 hours. Extension of sleep deprivation beyond 72 continuous hours is considered an enhanced measure, which requires D/CTC prior approval. [redacted]

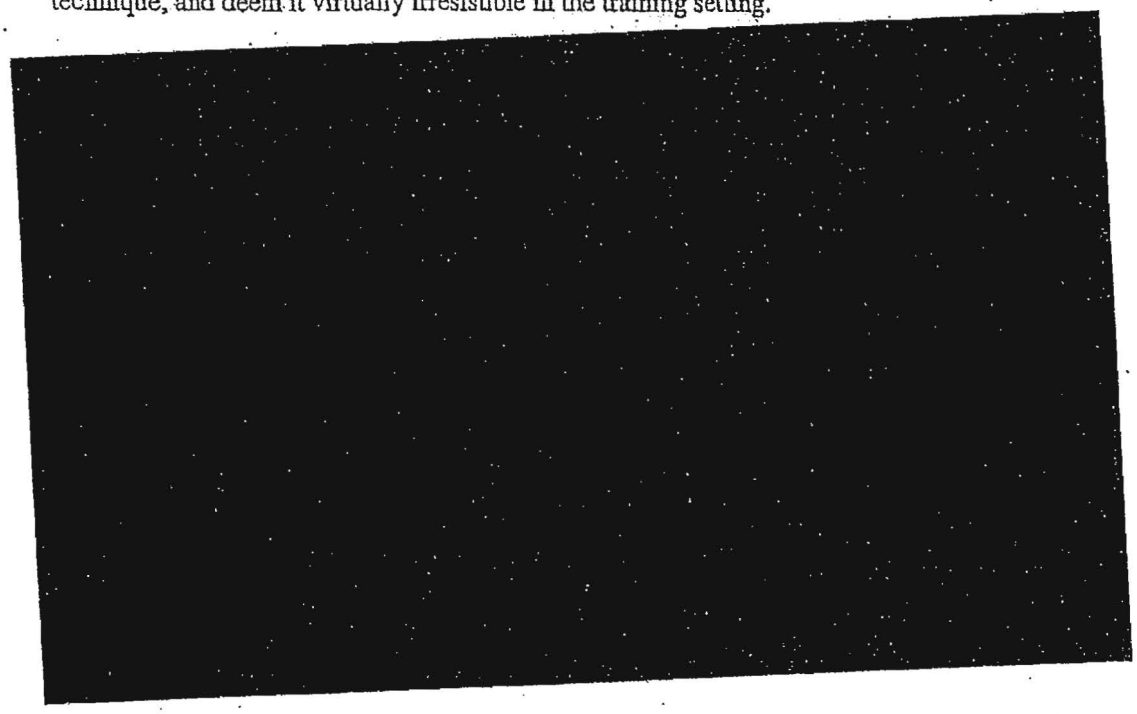
NOTE: Examinations performed during periods of sleep deprivation should include the current number of hours without sleep; and, if only a brief rest preceded this period, the specifics of the previous deprivation also should be recorded.

Cramped confinement (Confinement boxes)

Detainees can be placed in awkward boxes, specifically constructed for this purpose, [redacted] confinement in the small box is allowable up to 2 hours. Confinement in the large box is limited to 8 consecutive hours, [redacted]

Waterboard

This is by far the most traumatic of the enhanced interrogation techniques. The historical context here was limited knowledge of the use of the waterboard in SERE training (several hundred trainees experience it every year or two). In the SERE model the subject is immobilized on his back, and his forehead and eyes covered with a cloth. A stream of water is directed at the upper lip. Resistant subjects then have the cloth lowered to cover the nose and mouth, as the water continues to be applied, fully saturating the cloth, and precluding the passage of air. Relatively little water enters the mouth. The occlusion (which may be partial) lasts no more than 20 seconds. On removal of the cloth, the subject is immediately able to breathe, but continues to have water directed at the upper lip to prolong the effect. This process can continue for several minutes, and involve up to 15 canteen cups of water. Ostensibly the primary desired effect derives from the sense of suffocation resulting from the wet cloth temporarily occluding the nose and mouth, and psychological impact of the continued application of water after the cloth is removed. SERE trainees usually have only a single exposure to this technique, and never more than two; SERE trainers consider it their most effective technique, and deem it virtually irresistible in the training setting.



The SERE training program has applied the waterboard technique (single exposure) to trainees for years, and reportedly there have been thousands of applications without significant or lasting medical complications. The procedure nonetheless carries some risks, particularly when repeated a large number of times or when applied to an individual less fit than a typical SERE trainee. Several medical dimensions need to be monitored to ensure the safety of the subject.

In our limited experience, extensive sustained use of the waterboard can introduce new risks. Most seriously, for reasons of physical fatigue or psychological resignation, the subject may simply give up, allowing excessive filling of the airways and loss of consciousness. 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. Any subject who has reached this degree of compromise is not considered an appropriate candidate for the waterboard, and the physician on the scene can not approve further use of the waterboard without specific C/OMS consultation and approval.

A rigid guide to medically approved use of the waterboard in essentially healthy individuals is not possible, as safety will depend on how the water is applied and the specific response each time it is used. The following general 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.

A series (within a "session") of several relatively rapid waterboard applications is medically acceptable in all healthy subjects, so long as there is no indication of some emerging vulnerability [redacted] Several such sessions per 24 hours have been employed without apparent medical complication. The exact number of sessions cannot be prescribed, and will depend on the response to each. If more than 3 sessions of 5 or more applications are envisioned within a 24 hours period, a careful medical reassessment must be made before each later session.

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 consultation with Headquarters prior to any further aggressive use. [redacted]

NOTE: In order to best inform future medical judgments and recommendations, it is important that every application of the waterboard be thoroughly documented: 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.

[redacted]

[redacted]