# Company Man

## Thirty Years of Controversy and Crisis in the CIA

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## Excerpts from Chapter 11

## The Birth of the Enhanced Interrogation Program (2002)

…The EITs they were proposing to employ on Zubaydah were not techniques the CTC had just dreamed up; with a couple of exceptions, the U.S. military has used them for years in training exercises (called SERE, for Survival, Evasion, Resistance, and Escape) on thousands of soldiers to prepare them in case they were captured and subjected to such methods by the enemy. Further, CTC analysts, psychologists, and a couple of outside consultants had carefully culled only those EITs from the SERE menu that they believed best suited, and most likely, to break Zubaydah's resistance. Finally, the EITs would be judiciously applied, beginning with the ones that were least coercive, for a limited period of time, and would end as soon as Zubaydah demonstrated that he was no longer resisting and was ready to cooperate. They had no interest, and no intent, to employ EITs any longer or any more harshly than was absolutely necessary. While I don't remember them saying it exactly, their message was implicit: We want no part of torture. I suppose I was somewhat reassured by all of that, although I still had no idea what they specifically had in mind. It must be something extraordinary, I thought, if the CTC thought it had to lay that sort of groundwork with me first. It was consistent with a trait I had seen in CIA clandestine service officers for as long as I had dealt with them: When they are about to ask you for permission to do something really hairy, they begin by taking pains to show that they have thought through the implications and are not just compulsive, crazy cowboys. "Okay," I said, bracing myself. "Describe everything you'd like to do. In the order you'd do them. In detail, and take your time." And so they began. One at a time, the proposed EITs were spelled out…..

But over the next day or two, as I turned things over and over in my mind, I concluded that the issue was anything but easy. We were less than six months removed from 9/ 11, the nation was still in the throes of fear and dread about another catastrophic attack, intelligence reports were cascading in indicating the possible imminence of such an attack, and the CIA had in its custody and control the one guy who would likely know when, where, and by whom the next attack would be carried out. And he was taunting and mocking us about it. The Agency's singular objective, for the sake both of the country and of its own institutional existence, was to do anything and everything in its lawful power to prevent another attack from happening. At the same time, the CIA was being pilloried in Congress and the media for having been "risk averse" in the years leading up to 9/ 11— too unimaginative, too timid about dealing with the evil forces in the world. With all of that churning in my head, I couldn't shake the ultimate nightmare scenario: Another attack happens, and Zubaydah gleefully tells his CIA handlers he knew all about it and boasts that we never got him to tell us about it in time. All because at the moment of reckoning, the Agency had shied away from doing what it knew was unavoidable, what was essential, to extract that information from him. And with hundreds and perhaps thousands of Americans again lying dead on the streets or in rubble somewhere, I would know, deep down, that I was at least in part responsible. In the final analysis, I could not countenance the thought of having to live with that.

Less than a week after the CTC gave me the EIT briefing, I attended one of those "rump" sessions in George Tenet's office after the daily five o'clock meeting. The topic was whether or not to move forward with the EIT proposal (because of its sensitivity, it was something that was never discussed at the larger meeting in those early days). I cannot remember now if George knew all the details about the proposal beforehand, but in any case the CTC went over everything again. George asked me if I thought the EITs were legal. My staff had done some hurried research on the torture statute, a federal law making it a criminal offense for "any person outside the United States acting under the color of law, to commit torture." Thus, it covered anyone overseas affiliated with the CIA or acting on its behalf. The research didn't provide much in the way of guidance; the definition of torture was vaguely worded (phrases like "severe mental and physical pain and suffering"), and there had never been a prosecution under the statute, even though it had been on the books for many years. This was the moment I knew was coming. "Well," I responded, "some of the techniques seem okay, but others are very harsh, even brutal. What I can't do is sit here and tell you now if it legally constitutes torture. And if it does meet the torture threshold, it doesn't matter what the justification is, even it's being done to prevent another nine-eleven." Everybody just looked at me. Understandably, nobody in the room found that response satisfying. Finally, someone— I believe it was the CTC chief, Jose Rodriguez— broke the silence and declared, "Our people won't do anything that involves torture." "You're damn right," George interjected. I couldn't tell if their reaction was based on the law or their moral dictates, but it was exactly the right response. But by then I had decided not to just end things there. "Look," I said, "let me take this to the Justice Department, to get something definitive, something in writing. We tell them everything we want to do, every detail

about how we would conduct the EITs. And let them make the final legal call. And not just settle for a simple yes or no— we make them go on the record for every single one of the techniques, especially if it's a yes." I was punting, of course, but it was a strategic punt. The Justice Department— specifically, its Office of Legal Counsel (OLC)— has always served as the final, binding arbiter inside the Executive Branch for legal interpretation of all federal statutes and the U.S. Constitution. Over the course of my career, the CIA referred proposed operational activities to the OLC dozens of times, so while dumping the EIT proposal in the OLC's lap would dwarf all the others in terms of scope and sensitivity, it would not be a new departure for us to bring the OLC into the loop. Above all, I wanted a written OLC memo in order to give the Agency— for lack of a better term— legal cover. Something that we could keep, and wave around if necessary, in the months and years to come, when memories would fade or be conveniently altered to tack with the shifting political winds. I didn't know how the OLC was going to come down on the proposed EITs. What I did know was that, either way, there would be eventual fallout, somehow and someday. If the OLC were to rule out their use, and there was another attack, then at least the CIA wouldn't have to bear the brunt of a renewed fusillade of "risk averse" accusations. If the OLC did authorize the use of EITs, and there was no second 9/ 11 attack, then I knew that eventually and inevitably, there would be those in some parts of the government— maybe in the Bush administration, more likely in a different administration— who would charge that the EITs were not only barbaric but lapsed into criminality. An OLC legal memorandum —the Executive Branch's functional equivalent of a Supreme Court opinion— would protect the Agency and its people forevermore. It would be as good as gold, I figured confidently. Too confidently, as things would turn out.