Torture Re-Branded As "Advanced Interrogation Techniques" and Why Its Victims Can Bear Witness to What History Already Has

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Torture Re-Branded As “Advanced Interrogation Techniques” and Why Its Victims Can Bear Witness to What History Already Has

George Nicholas Zazzali
Purpose

This paper introduces a novel but necessary use of a torture victim as an expert witness and its necessity and relevance based on the victim's experience. To accomplish this, we will briefly review a comparative history of torture against some current enhanced interrogation techniques (EITs). From there, we will discuss some of the physiologic principles that come into play which disallow torture to result in true confession.

Forward

The content of this paper assumes that everyone is using the same definition of torture, understanding that it is an individual subjective analysis as to whether or not given testimony constitutes and amounts to torture.

Secondly, the content of this paper understands that it is ultimately the judge who will determine whether or not a torture victim can act as an expert witness to testify on the matter of torture. An in-depth analysis of the federal rule of evidence 702 is beyond the scope of this paper. However, albeit briefly, the rule statement of Rule 702 needs to be acknowledged, and analyzed to some extent to consider its application to the torture victim as an expert witness.

Thirdly, this writing relies on past history of torture and its known observable effects, to estimate what an expert witness – as a victim of torture – would be able to provide as testimony.

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1 As a noun, the meaning is generally accepted as the action or practice of inflicting severe pain and someone is a punishment or to force them to do or say something, or for the pleasure of the person inflicting the pain. Synonyms: infliction of pain, abuse, ill - treatment, maltreatment, persecution; sadism "acts of torture." Also used as a verb with the meaning "inflict severe pain on."
In researching this paper, it would seem that the human physiologic condition has not changed significantly from the first appearance of torture in known history. Following this, this paper briefly examines a few categories of enhanced interrogation techniques (EITs) approved for use in 2002. Then, where possible, the comparative history of torture techniques and effects are used to draw parallels by observation and argues that at a minimal, the listed modern EITs, discussed herein, approved for use, are nothing short of torture and there is no good reason to believe that torture as such, would provide “true confessions.”

In the end, anyone reading this paper would understand and conclude based on history, observation, and the more recent transparency of the EIT’s used in 2002, why an individual, such as Abu Zabaydah, subjected to enhanced interrogation, such as those techniques described in this paper, would effectively be able to give expert testimony on torture, and by the same have a better understanding as to why EITs do not produce consistently truthful confessions, but rather, amount to coercion.

Part I

The Unique Circumstances of the Torture Victim as an Expert Witness Under FRE 702

This addresses the recognition of an expert witness that has never been called or admitted. That is, the expert witness is testifying about scientific, technical or specialized knowledge and his testimony is clearly admissible under FRE 702.

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2 see page 52 of Mitchell.
3 Id; also see the listing comparisons in the body of the text below.
4 AKA “Zayn;” Mitchell p. 63
The relevance of this is simple. Torture produces unreliable information and expert testimony is an essential aid to the trier of fact because the trier of fact cannot fully appreciate the ways in which different EITs impact the truthfulness of the statements at the time they are given, or recorded in use later. While anyone would realize that torture is uncomfortable and that it hurts, they may also conclude that it would thus produce false information. However, it is only someone who has gone through it, and experienced enhanced interrogation, that can explain how it impacts them and which techniques impact them in different ways.

Under FRE 702 a torture victim would be qualified as an expert by “knowledge, skill, and experience.” Further, FRE 702 stipulates that an expert witness’ testimony would be allowed only if:

(a) the experts scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods; and,
(d) the expert has reliably applied the principles and methods to the facts of the case.

Here, a prisoner who was inflicted with EIT’s, does in fact have specialized knowledge as to the torture techniques used. The expert is not only to testify about technical knowledge, but, and this is the unusual part, he is testifying as an expert on torture based not on training or skill but based on his own personal knowledge. The torture victim’s testimony would be based on the

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5 The text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience. (See 2nd paragraph on page 79). In certain fields, experience is the predominant, if not sole, basis for great deal of reliable expert testimony. See United States v. Jones, 107 F. 3-D 1147 (6th Cir. 1997) (no abuse of discretion in admitting the testimony of handwriting examiner who had years of practical experience and extensive training, and who explained his methodology in detail); Teson v. Sears Roebuck, 946 F. Supp. 1241, 1248, 1996). Noting that here it was stated that “no one denies that an expert might draw conclusion from a set of observations based on extensive and specialized experience.”
actual enhanced interrogation techniques that were used in interrogation and corroborated with the documented use of EITs. In addition, while the torture victim testifying as an expert may be unconventional, the expert torture victim will be able to demonstrate to the trier of fact that torture inevitably will produces false confessions. In the extreme setting of torture, false confessions are the noteworthy product, consistent with well-established sound principles of human physiology. Thus, it is indisputable that the torture victim as an expert witness qualifies under FRE 702.

PART II

Here we discuss modern EITs and compare them to torture techniques that were used in the past. It appears that they are remarkably similar. However, rather than discuss in detail the entire history of torture and the ten techniques used currently for EITs, here having made some adjustments, they have been broken down into eight different types of torture realizing that the techniques often overlap. The specific physiologic effects of torture, however, are reserved for examination in the third part of this paper.

Use of Torture throughout History

History has shown that many cultures have used torture over the years. However, it has never been shown to be consistently useful to provide true confessions. In fact, an examination of the literature, repeatedly demonstrates that torture has been abandoned as a means to obtain

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6 Some authorities estimate up to thirteen EIT techniques.
confessions, and that it has never worked and is merely a form of coercion. Within this paper, the historical backdrop of torture will be the foundation to determine how EIT’s compare.

In their book, “The Big Book of Pain: Torture and Punishment through History,” Mark P. Donnelly and Daniel Diehl, recognized torture as existing throughout history, “over the millennia.” Universally, it is recognized that torture is used for one of two purposes: (1) as a means of eliciting evidence from a witness or from an accused person either before or after condemnation; (2) as part of punishment. In the brief history given here, it is anticipated that the reader will regard enhanced interrogation as a means of eliciting evidence by inflicting torture.

It would be important to recognize, that torture is a form of physical brutality. However, “the main difference between a simple act of barbarism and full-blown torture is the influence of a higher, sanctioning authority.” Throughout time religious perspectives of torture have influenced its use. Here, albeit briefly, religious/spiritual beliefs will be examined to provide a global backdrop, prior to focusing on the EITs used in any individual detainee subjected to torture, so that the reader can have some perspective in considering the importance of expert testimony from a torture victim in a given circumstance that would otherwise not be obvious.

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7 These authors previously examined cannibalism in a book entitled, “Eat Thy Neighbor,” (The History Press, 2006). In their more recent publication, the emphasized that as historians they believe that history is important as a teacher although all the lessons are not pleasant ones. In particular they make it a point to” Dr. Benjamin Franklin, who once said: “those who will not learn from the mistake of the past or doomed to repeat them.” And, it would seem that it was from this dictum that the journey into “mankind starker nature... And try to analyze the "whys" and "hows" of the subject of torture, noting that there is international disagreement as to precisely what constitutes torture. (For more information, see the authors introduction in their current publication, "Big Book of Pain.")

8 The Big Book of Pain: Torture & Punishment through History, Marc P Donnelly and Daniel Diehl, p.5.

9 id. Pages 4 through 6.

10 id. at page 4
For example, in the early Middle Ages (circa 866) the Catholic Church generally opposed the use of torture. Then, in the high Middle Ages, the Catholic church allowed torture to coerce heretics or witnesses “into confessing their errors,” sanctioned the use of torture methods. This seems to have been justified by limiting inquisitors to “stop short of danger to life or limb.” Of course, the modern church’s views regarding torture’s is drastically different and is clearly opposed to torture. 

In Judaism, torture has no presence within the halakha. However, there did once exist a system of corporal punishment in Judaism that was done away with by the Sanhedrin during the Second Temple period.

Interesting, is that since 1949, China has been governed by the Communist Party of China. According to scholarly opinion, "the great majority of China's population of 1.4+ billion" takes part in Chinese cosmological religion, its rituals and festivals of the lunar calendar, without belonging to any institutional teaching. This seems to follow the fact that, China’s current government, The Communist Party of China, has declared itself an atheist institution. The Constitution further forbids the use of religion to "engage in activities that disrupt social order, impair the health of citizens or interfere with the educational system of the state. Religious

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11 Wikipedia article on torture page 6. Low yet or yet available yet more my house and discriminate in an and the will and finishing it now he testified for an extension told me not my research is medical articles and got that when the books and bibliography puzzlement legal site and is even to 100% of the papers as long will result was the job is 111 Cal.\California-reports 1, and take my work as a is inherent in her is as you will story's essay was in the paper and you
12 id.
13 id.; Noting here that the stipulation is extremely broad and vague; also see Pope innocent IV, "Bull Ad Extirpanda," (15 May 1252).
14 id. 
16 id.
17 Religion in China – Wikipedia, p.1
18 id.
19 Id.
organizations and religious affairs are not subject to any foreign dominance.\textsuperscript{20} The Communist Party of China clearly prohibits party members from practicing religion while in office.\textsuperscript{21} With this background history of the Chinese government and its declaration as an atheist institution, the Internationale Gessellschaft fur Menshenrechte (IGFM), in its report, \textit{Common Methods of Torture and Abuse in the People’s Republic Of China}, notes that almost every detainee in China has to, or has had to, suffer being beaten and kicked.\textsuperscript{22,23}

In the Sharia Law, there is a prevalent view that torture can be permissible for the maintenance of law and order.\textsuperscript{24} This view extends to stricter jurisdictions that allow flogging for acts of public indecency and immorality.\textsuperscript{25} Other forms of sharia – derived punishments include corporal type punishments apart from the Hudud\textsuperscript{26,27}. Of the acts subject to capital punishment is apostasy\textsuperscript{28}, which may, among other factors,\textsuperscript{29} account for the resilience to interrogation in an Islamic detainee.

\begin{flushleft}
\textsuperscript{20} Quoting directly from the Wikipedia article, "Freedom of Religion in China."
\textsuperscript{21} Religion in China, supra
\textsuperscript{22} Common Methods of Torture and Abuse in the People's Republic of China, Internationale Gessellschaft fur Menshenrechte (IGFM), at the introduction.
\textsuperscript{23} id; This article would be of interest to anyone researching corporal punishment or torture because it contains multiple diagrams in a comprehensive list of strategies to induce pain and the detailed strategies that are invoked.
\textsuperscript{24} Wikipedia.org/wiki/torture p. 7
\textsuperscript{25} id at page 7
\textsuperscript{26} Hudud is an Islamic term referring to punishments which under sharia law are mandated and fixed by God. It can be noted that these punishments were rarely applied in pre-modern Islam, and their use in some modern states has been a source of controversy. It is also important to note that Hudud is not the only form of corporal punishment under sharia law. Islamic law has a prescription for retaliatory punishment analogous to the crime or monetary compensation and for other crimes it has forms of punishment left to the judge’s discretion.
\textsuperscript{27} Capital Punishment in Islam - Wikipedia
\textsuperscript{28} id
\textsuperscript{29} In his account, Mitchell describes the "Manchester Manual." The Manchester Manual is described as a set of how to instructions to resist interrogation. It was part of course materials that were stolen from the U.S. Army special forces at Fort Bragg, North Carolina, by Ali Mohammed, who was a former Egyptian military officer that enlisted in the U.S. Army special forces. Apparently, the information that he stole from the US military ended up being widely circulated in multiple languages among Islamic Jihadists. Paraphrasing Mitchell on page 11.
\end{flushleft}
CIA Enhanced Interrogation Program In 2002

In 2002, beginning with the interrogation Abu Zubaydah, the CIA approved ten EITs. Later these techniques would be used on hundreds of detainees. For the most part, these techniques were not new. Some of the techniques are described here. Where possible, history of the actual technique or its facsimile from history will be discussed. The techniques and their descriptions discussed here are not listed in any specific order of importance, but follow an account given in “Enhanced Interrogation,” by Dr. James E Mitchell, PhD.

Keep in mind, while reading the descriptions below, how the individual enhanced interrogation techniques would affect its victims on an individual basis (including the religious backgrounds described above). It should be increasingly obvious as you read thru the explanation of techniques, including those used in 2002, why a torture victim would be able testify as an expert - in a way not otherwise available. In particular, consider how culture (defined as how a given group of people live during a given time and place) would be pertinent to a given group of prisoners, with similar culture, exposed to EITs at a given time and place. As per Dr. Mitchell, who is considered an expert psychologist in the area of EITs, with 13 years and over 14,000 hours observing psychological reactions of war fighters who were attempting to withhold information during certain laboratory exercises, “The behavioral and emotional responses of both instructors and students during those exercises could be unpredictable.”30 Here the relevance and indispensability of a torture victim’s expert testimony takes hold.

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30 Mitchell page 46
To best understand the significance of a torture victim's testimony as an expert witness we will examine the unique situation of torture through a comparative history. While modern EITs have as many as thirteen techniques, here we will examine eight techniques that are well-documented for modern use: (1) waterboarding; (2) confinement; (3) sleep deprivation; (4) stress positions; (5) shackling; (6) cold temperatures; (7) noises and lights; and (8) “wallowing.” Each of the descriptions lends credibility to the necessity of torture victim’s testimony to the trier of fact to truly understand the technique describes. Clearly, while anyone can understand that torture hurts, it becomes self-evident within the description of each category listed below, why only the testimony of a torture victim can truly describe the entails of these tortures.

1) Waterboarding

The history waterboarding goes back at least until the Spanish inquisition. It was referred to as “toca” or “tortura del agua.” In this form, “Spanish water torture,” a cloth was introduced to the mouth of the victim, forcing him to ingest water, that was poured from a container, to mimic and induce a sensation of drowning.

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31 The list is based on Dr. Mitchell’s account. Where possible in the survey, a brief history is given as to the individual technique, so the reader can consider the background of the technique and understand the relevance of why an expert witness’s testimony from an individual upon which the technique has been inflicted would be valuable.
32 Mitchell and Jessen, identified as “Grayson Swigert” and “Hammond Dunbar” in the torture report, respectively, were psychologists hired by the CIA to design the enhanced interrogation program. For more info see 2017 report – noting Mitchell published his book in 2016: https://www.humanrightsfirst.org/senate-report-cia-torture/james-mitchell-and-bruce-jessen
33 so well as
34 The gross descriptions of each technique given below are from the account of Mitchell.
36 id
37 id
Multiple descriptions of water torture exist in the current literature. Here, the reader will be provided with a brief description of waterboarding, used as an EIT approved by the CIA.\textsuperscript{38}

In order to waterboard someone, the individual is bound to a flat bench with feet elevated above level of his head.\textsuperscript{39} The individual’s head is immobilized while an interrogator places a cloth over the individual’s mouth and nose pour water onto the cloth in a controlled manner.\textsuperscript{40} Hence, airflow is restricted while the waters poured\textsuperscript{41}. Thus the technique produces the sensation of drowning and suffocation.\textsuperscript{42}

2) Cramped Confinement\textsuperscript{43} and Confinement

Cramped confinement can be summarized as solitary isolation, combined with stressful positioning. 19\textsuperscript{th} century German clinicians extensively described psychopathologic reactions to solitary confinement.\textsuperscript{44} Psychiatric symptoms are easily observed in inmates exposed to periods of increase social isolation and sensory restriction resulting from solitary confinement.\textsuperscript{45} When the confinement is in a small room, with sensory deprivation and isolation that is referred to as “white torture.”\textsuperscript{46}

Apparently, there are variations used in modern day EIT. Reportedly, in one such variation, the individual is placed in a chosen confined space, with at least two configurations -

\textsuperscript{38} This was stated realizing that the best account would be given by an expert witness involved in the EIT.
\textsuperscript{39} Mitchell p 53
\textsuperscript{40} Id
\textsuperscript{41} Id
\textsuperscript{42} Mitchell pp52-53
\textsuperscript{43} Id
\textsuperscript{44} Psychopathological Effects of Solitary Confinement, Stuart Grassian, M.D. Quoting (Am J Psychiatry 140:1450-1454, 1983).
\textsuperscript{45} Id.
\textsuperscript{46} https://en.wikipedia.org/wiki/White_torture
typically being either a small or large box, which is usually dark, with or without solitary confinement and sensory deprivation. This can endure for an indefinite period of time.

Variations on this theme include adding an insect inside a confinement box, and using a container reminiscent of a coffin. There is also a so-called box container, small enough to fit a person only in a crouched position, which can be used with varying adaptations of restraints and loud noises.

3) Sleep Deprivation

Sleep deprivation speaks for itself. Here, by whatever means, the individual is not allowed to sleep. This technique can be used in combination with other enhanced interrogation techniques such as stress positions with exposure to loud noises and bright lights. According to Mitchell, sleep deprivation implemented in 2002 was not supposed to exceed eleven days at a time.

4) Stress Positions.

Typical stress positions involve the individual sitting on the floor at legs extended straight out front of him and with his arms raised above his head. There are also positions in which the individual is forced to kneel on the floor while leaning back and 45° angle. Here, given the descriptions and nature of the interrogation, only an expert testifying by way of

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47 id
48 id
49 id
50 https://www.youtube.com/watch?v=zGaG5-VL9P8
51 Mitchell p. 53
52 Mitchell p. 53
53 id.
experience would be able to account for the actual number and extent of stressful positions they were forced to have maintained.\footnote{54 For more on this see the discussion of the "The 2 Hour Rule," infra.}

5) Shackling

Shackling is a form of restraint. By definition, it is a shackle (a metal link or fetter) connected, usually by chains, to restrain a detainee. Throughout history shackles have been employed to restrain detainees and force prisoners into humiliating postures of submission.\footnote{55 Big Book of Pain p 191} Prolonged use of shackles has been known to cause permanent deformity.\footnote{56 Id.} Again, as in stress positions (or in combination with), the testimony of an expert by way of experience, would likely provide information about the specifics of being shackled, within a particular set of circumstances since the variations are truly countless.

6) Cold Temperatures

Stress caused by extreme cold temperatures have a specific physiological response that is uncomfortable.\footnote{57 Cold cell torture.com} The reason as to why cold is used as a torture device is rather straightforward. “Cold exposure” is used as torture because it causes pain yet, may or may not, leave “bruises or blood evidence or scars. It causes horrific pain...” and threatens...” the most painful death a human can endure.\footnote{58 Quoted from, http://coldcelltorture.com/} Here an expert witness testifying about “cold exposure” as form of torture, one would be able to elucidate the experience and the effects, as well as its use in combination with other techniques.

\footnote{54 For more on this see the discussion of the "The 2 Hour Rule," infra.}
\footnote{55 Big Book of Pain p 191}
\footnote{56 Id.}
\footnote{57 Cold cell torture.com}
\footnote{58 Quoted from, http://coldcelltorture.com/}
7) Noises and Lights

Use of Noises

It has been suggested that sound torture dates back to the Aztec culture. The technique could be used to psychologically distress enemies during a siege. More recent reports describe the use of loud music reaching decibel levels above 79 decibels to distress prisoners. Anecdotally, the song, "I Love You," by Barney the Purple Dinosaur, was used in Guantanamo Bay and other detention centers. It has also been reported that recordings of a baby’s cry was used to further distress prisoners locked in a confinement box. Here an expert witness would be able to attest to the experience of the technique, in addition to any of the lyrics chosen, that may have culturally offensive content.

Use of Lights

Lighting can be used to manipulate mood. Exploiting this fact, it would seem that darkness and bright lights can both be used to manipulate the mood of an individual. Darkness can thus be perceived as a sensory deprivation. Constant lighting can affect the circadian rhythm

60 Demonstration video: https://www.youtube.com/watch?v=i9QuO09z-SI
62 Id.
63 See confinement box video fn, supra
64 See torture methods, supra
65 Not to mention the residual effects including constant ringing in the ears and difficulty hearing.
66 The impact of light and colour on psychological mood: a cross-cultural study of indoor work environments, Richard Kuller
67 Id
induce sleep deprivation and possible other sequelae. Bright lights is thus an effective means to deprive an individual of sleep and disorient them.

8) “Walling”

In “walling” a detainee is pulled forward and then quickly and firmly pushed into a flexible false wall to the shoulder blades hit the wall. His head and neck are supported with a rolled towel. Interesting is that Mitchell specifically explains that “manhandling was not allowed because of the related injuries.” But given the fact that both walling and manhandling involve a fixation of the head and neck it raises the question as to whether or not “walling” of a prisoner can cause whiplash type injuries. Also the constant banging of the head against a wall can cause traumatic brain injury that may or may not be immediately apparent. Here only an experienced expert witness would be able to testify as to the subtle experiences, and symptoms, that are relevant to a given infliction of an EIT with this or similar technique.

Part III

“A New Look at the ‘Old Hat.’” – Why a torture victim’s expert testimony can illustrate and explain why current EIT’s do not provoke true confessions

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69 Mitchell p. 52
70 Id.
71 Id p. 54
72 Mitchell does not detail the injuries caused by manhandling. However, the towel around the head/neck would lead on to believe that whiplash type injury is clearly feasible. See further discussion below.
73 See further discussion of TBI infra
In an article authored by Jeffrey C. Blutinger, "Bearing Witness: Teaching the Holocaust from a Victim Centered Perspective," the fundamental problem of anyone who wants to examine destruction of individuals is described. 74 Blutinger describes a bias that exists in the narrative from tendencies in history to focus on historical actors. In evaluating enhanced interrogation, this can result in teaching the events from the perspective of the perpetrator. As described by Blutinger, "This problem of narrative is not unique to the Holocaust; it occurs whenever one is teaching the history of the oppressed. Our bias towards historical actors leads us into a false dichotomy between oppression and resistance, implicitly disparaging those who for whatever reason did not resist but who suffered and died nonetheless. Such an approach also overlooks those who try cooperate with the oppressor in order either to stay alive or better their condition, since they do not fit easily into this narrative model."75 Further, it is arguably, "deceptively simple" to solve this problem.76 It would be essential in order to fully understand any issues of surrounding an event, such as those exposed to enhanced interrogation, to include both the perpetrator – based perspective as well as that of a victim – centered perspective.77 It follows then, that testimony from a torture victim, acting as an expert witness would be necessary to avoid a victim – centered narrative remaining merely theoretical.78 This would mean that a torture victim acting as an expert witness is not only relevant, but necessary for a trier of fact to best understand the effects of enhanced interrogation. Here, no other form of fact-finding will be

74 See Bearing witness a victim centered perspective 1st paragraph
75 quote from Blutinger article 1st and 2nd pages
76 3rd paragraph of Blutinger article
77 began borrowing from the language in the Blutinger article
78 Again, borrowing from Blutinger on page 270, known physiologic principles, in pertinent scientific literature all of which is traceable through the footnotes and and Notes.
able to replace the expert testimony of the victim regarding the latent and intangible of facts of torture on an individual’s mind, body, and spirit.

Clearly, much is written and claimed about the use of torture and EITs. However, it would seem logical to take a new look at what torture is (or is not) from the eyes of an experienced expert (and yes, as suggested by Blutinger) – that is to say, a torture victim himself as an expert witness.

In part, the purpose in examining the effects of EITs, in this writing, is to bring the torture victim in as an expert, and not rely on generally accepted practices or popular belief, but rather to find the justice within the truth of the matter. The skewed view of the inflictor, (or any third party for that matter) can be re-examined after considering testimony, as only can be described by the expert witness, as to the actual cause and effect relationship of enhanced interrogation, as the true phenomena of torture may not otherwise be understood.

In the article, authored by KelloggInsight, and based on the research of Loran Nordgren, the “Hot Cold Empathy Gap” applied to torture is examined. As the article points out, the legally allowed use of EITs “blur the distinction between torture and ethical treatment.”

According to Nordgren, there are phenomenological, neurological, and psychological correlates to physical pain. Here the expert testimony from a torture victim- acting as an expert witness -would be relevant based on the infliction of torture on an actual victim. It follows that, while

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79 “What Constitutes Torture” based on the research of Loran Nordgren and published by KelloggInsight
80 Id.
81 Id.
82 The research of Nordgren also suggests that persons exposed to prior painful conditions had a lower empathy gap toward a painful condition.
83 Here, it is important to note, as was pointed out in the evaluations of the Norgren experiment, is that actual torture on individuals is considered unethical. Therefore the experiments discussed utilized techniques for brief periods of time that were otherwise considered ethical. There is also several anecdotal stories of volunteers being waterboarded – and in all cases the volunteers tolerating the infliction for merely seconds. Again, leaving only actual torture victims as the "experts" in the field by way of experience to provide testimony on any such matter.
individual phenomena of torture may be documented, the variations of the individual techniques combined may have effects (and would suggest - highly likely) that are not straightforward and accounted for by any individual known effect of an EIT.

While the effects of torture may be latent and/or intangible, a simple analysis of the human condition and physiology, would lead one to believe that there is basis for which a torture victim’s testimony can be corroborated. Regarding the techniques briefly described above, there are general categories of cause-and-effect relationships that are, again, only best described by a victim of torture (especially in a given time and place).

It would be up to the interrogator of the witness, to find where each of the categories below, would apply to any individual enhanced interrogation strategy. For the most part, the information is being presented here in a way that is simplified and easy to understand but based on relevant physiologic principles, scientific articles, and common sense. These basic principles and symptoms outlined here are important, because it would only be by interrogating a victim of torture as an expert witness to ascertain whether or not these principles come into play, as well as, identifying any effects of torture that may not have been considered previously by any outside observing party. Further, manifestation of specific symptoms, may prove useful to further support the use of a torture victim as an expert witness, for the effects and resulting manifestations of torture that overlap or do not fall within the description of any specific technique.

Below we will examine some of the effects on the body and mind when EITs are used to wear down resolve in order to illustrate why EITs amount to coercion.\textsuperscript{84}

\footnotesize{\textsuperscript{84} See table 1-1}
Why Torture Doesn’t Work and the Way the Brain Does: Neuroscience of the Torture Victim’s Experience

There is now large experimental literature involving human volunteers who willingly undergone experiments in which they were exposed to threaten anxiety. One such body of work is from Dean Mobbs and his colleagues and 2007. They examined what happens in the brain in response to predator threat. The essence of the study is that as the threat is near, the brain becomes concerned with reflexive defenses of behaviors, in anticipation of an attempted mitigation of pain, fear and anxiety. When this occurs the activity within the brain shifts to the more primitive areas of the brain, especially an area called the brainstem periaqueductal gray area. More importantly, the conscious, deliberate, and evaluative cognitive processes which take place in the frontal lobes of the brain are overridden by these mechanisms. This is because the brain system supports immediate anticipation of threat by activating the brainstem and the higher executive functions of the brain are suppressed. Here, at some point, victims of torture would clearly be compromised and not give truthful testimony to an interrogator, not only by being motivated to avoid further anguish, but by impaired reasoning ability. Within the brief descriptions below are several mechanisms that would drive the brain into a state of impaired cognition, and force confessions which are inaccurate.

Thus, an expert by way of his actual experience of torture, would be able to provide relevant and accurate testimony as to the cause and effect relationships causing the inaccuracies

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85 (See Page 143 of Why Torture Doesn’t Work; also see fn. below explain the design of the study)  
86 See Shain O’Mara page 144) (also see: “activating or principally brainstem based reflexive network that is directed towards immediate survival and it has a principal function of suppressing activity in brain areas that are unrelated to immediate survival, including brain areas concerned with directed search through memory, will, of design, leave a prisoner being tortured and capable of saying much that is useful.”
of confessions obtained thru EITs. If allowed, the torture victim as an expert witness would provide the testimony needed that resolves why torture has always been, and remains, ineffective to provide the truthful testimony it seeks to obtain.

**EITS AND THE SCIENCE BEHIND A TORTURE VICTIM’S FALSE CONFESSIONS**

After considering all of the above, the objectively reasonable person would be left with questions, not merely as to the brutality of EITs, because that would seem obvious—but rather, “How does an EIT, amount to a falsity tipping point?” Hence, the real issue becomes, “What is it, that the torture victim as an expert witness, would be able to attest to, that has not already been made obvious by observation?”

The answer is deceptively simple. In acknowledging the well-established, and accepted workings of the mind and body under stress, it becomes exceedingly convincing that EITs, when viewed from the perspective given herein, would lead anyone towards a less than accurate confession. But, in order to understand why the laws of nature push an individual from being stressed to speaking untruths, we need to dissect some of the exploits that are caused by EITs. Here, the argument for the innovational use of a torture victim testifying to his experience with EITs, to provide the fact finder to conclude that torture amounts to coercion, as history suggests, becomes obvious.

Below is an outline of some of the likely resulting phenomena of EITs, but whose effects would only be verifiable to the finder of fact by the torture victim’s expert testimony. Here, the mistake would be to believe, that any given EIT only inflicts some type of purely singular straightforward effect, and merely some stress, fear or pain. Rather, any given EIT technique can
cause one or more phenomena of importance at the same time. In addition, there is not any study that can account for the combined effects of EITs, their repeated or prolonged use, or the residual effects that may be carried from the composite use of prior EITs to each new interrogation session. Therefore, without the testimony of an expert torture victim witness, the trier of fact is left to decide on the reliability of testimony about enhanced interrogation devoid of the experience and resulting effects to the mind that can only be offered by an expert in the field.

The list of potential resulting responses to EITs provided here is not replete, and a complete list remains a matter of discovery. Here we will consider six potential effects of enhanced interrogation: (1) Anxiety; (2) Phobias including insect phobias; (3) Brain Injury; (4) Drowning; (5) Sleep Deprivation; and, (6) Loud Noise. In considering the phenomenality of EITs, one should consider how each of these principles could affect an individual’s resulting confession for its truthfulness. Moreover, it is a victim acting as an expert witness that would provide the most accurate testimony to the experience of these effects.

The single most important concept to keep at the forefront is that each of the experiences described below share two factors. The first, is that each describes an experience that cannot be quantified by the outside observer in its severity. The second, is that the response to each of the experiences below is from the most primitive aspects of the brain. This means that each of the responses below cause the brain to bypass critical thinking so the body can reflexively respond and attempt to move away from the physical or psychological discomfort from the EIT and try to recover. Moreover, as mentioned previously, severely hinder thinking from the front part of the brain, which would be required for intelligible thoughtful rapport with an interrogator. A reasonable person, thus looking at this discussion, should begin to understand how EITs compromise individuals in a variety of ways that do not allow them to think clearly, and why in
the desperation of trying to move away and recover from the extreme conditions caused by EIT's a false confession is likely to follow.

Anxiety

Anxiety is defined as “a subjective sense of unease, dread, or foreboding, and can indicate a primary psychiatric condition or can be a component of or reaction to a primary medical disease.” Regardless of the etiology, anxiety is known to affect the thinking and judgement. Consider then, the valuable testimony of the torture victim as an expert witness who would be able to explain, the various phases of EIT’s provoking anxiety leading individuals to a falsity tipping point.

Susceptibility to anxiety will vary from individual to individual, and may not be predictable. But, what does seem clear is that sleep deprivation in any form would reduce an individual’s threshold to anxiety. This reminisces of the adage, “Fatigue makes cowards of all of us.”

The nature of EIT’s is to inflict pain and anxiety to obtain a confession. The issue here becomes whether the individual’s thinking is clear and accurate, while they are experiencing the pain and anxiety. Anxiety, similar to painful phenomena, clouds the ability to think clearly and accurately in direct proportion to its level of intensity. Perhaps, this is obvious to some. However, it would be important to realize, that in addition to any common understanding the layperson may have of anxiety, there are certain aspects that are complex and can only be best understood by looking at their longer-term and cumulative effects.

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87 Harrison’s Principles of Internal Medicine, 19th ed. P.2708
It is well known that individuals subjected to torture continue to suffer psychological effects of torture for many years. At what point the stressful effects of EITs, cause more permanent disability in a person's thinking are not known. Perhaps, the most widely recognized manifestation from prolonged anxiety is posttraumatic stress disorder (PTSD). What is also clear, is that repeated exposure to anxiety provoking situations can cause a variety of symptoms short of PTSD. These symptoms can include things like clouded thinking, hypervigilance, flashbacks, inappropriate responses and inappropriate reactions to their environment, as well as sleep disturbances. Clearly a torture victim would be able to speak to these symptoms in a way that places perspective on the conversations and accuracy of any information obtained during his interrogation affected by such symptoms of anxiety. By the same, the current state of the witness, resulting from the remote trauma of the anxiety, would speak to the unrealized intensity of his anxiety at the time he made an offering of information and confessing.

**Insects and Other Phobias**

The cardinal feature of phobias are that there is a marked and persistent fear of objects and situations, exposure to which results in immediate anxiety reaction.  

88 phobias can develop after exposure to extreme traumatic events. 89 Phobias can include anxiety from any type of objects or situations such as closed spaces used in captivity. This is called claustrophobia.90 In his article, "Why Do Humans Have a Fear of Insects?" fear of insects causing an anxiety reaction is reviewed in more detail. It would seem that there is an inherent provocative effect of being exposed to an insect that humans have.91 Here, again, the idea preying on an individual's

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88 Harrison's Principles of Internal Medicine, 19th ed., Volume 2, p2712
89 Id
90 Id
91 It has been shown that individuals, some more than others, inherently fear insects.
phobia which causes anxiety would lead the victim to say whatever was necessary to stop the anxiety provoking event.

In the case of EITs, phobias were exploited, both natural phobias to insects as well as phobias that developed from their treatment as a captive. Here, as in classic anxiety, a person’s sensitivity to a particular stimulus is affected by his state of mind. But, despite the actual defined phobia, the actual incapacitating effects from the phobia that would lead a person to a false confession would not be obvious to an observer. Something that seemingly would not be a problem, such as standing in an open space, may actually cause a severe anxiety reaction, from an agoraphobia. However, this example, being amongst many scenarios, in which a conditioned form of anxiety/phobia could occur. Again regardless of the phobia, a victim of EITs would manifest, the result is a severely compromised thought processes and in order to move away from the stimulus causing the anxiety, think from the primitive part of his brain and provide information-that is not necessarily true in an attempt to move away from the stimulus causing the phobia. Therefore, testimony from an expert witness, who actually experienced torture, would provide testimony that would allow the trier of fact to best conceive the types of phobias and their effects that that would impact truthfulness of a confession.

Pain

Pain is best understood as being multidimensional. However, many of its effects can be latent, and a seemingly not so painful stimulus might have a strong effect on the person experiencing it. It can also have a cultural bias. Thus for various reasons, two people can react to the same stimulus differently. In fact, current recommendations for evaluating pain include the
use of VAS\textsuperscript{92}, to estimate an individual perception of pain\textsuperscript{93} Also pain may not always be indicative of a localized problem- for example, abdominal or back pain can be the symptom of a kidney or heart problem. This is known as “referred pain.” In the case of referred pain, it is only the individual who is experiencing the pain, that would be able to truly account for associated symptoms or effects.

The actual physiology of pain is very complex. To make this easy to understand, pain is transmitted through nerve fibers, to the brain. Within the brain, the signal is delivered to a variety of areas to decipher things like the intensity of pain, the acuity of the pain, and its location. Essentially, there is no one specific area of the brain that identifies pain. It is well established that cognition – meaning the ability to think clearly – is affected by pain. As pain worsens, thinking becomes less accurate. In the case of EITs, one can easily conceive how the victim would “roll-over” and concede to confessing something that may not be true in order to move away from a situation that is inciting pain.

Pain also has many unusual phenomena. For example, if the painful stimulus is repeated there is a phenomenon of attenuation – meaning that the pain intensity increases with repetition of the same painful stimulus. What is important to understand here is that observationally, the same individual infliction becomes more painful over time with each repetition. This type of phenomena would not be obvious to an observer, and varies considerably with the type of stimulus.

The techniques used to induce pain can include blows, such as a slap, or physical contact such as a face grab (a face grab would have its own humiliating effect that may intensify its

\textsuperscript{92} Visual Analogue Scale
\textsuperscript{93} VAS or Visual Acuity Scale to quantify pain. Features a scale of 0-10, with 10 being the most painful perception of pain.
perception as being painful). Whether the finder of fact was considering a face grab, blow, or slap, a simple description to the true effects of each would be veiled—as would the unpredictable effects of their joint use.

Also, as it needs to be reiterated in this perspective, pain that is caused by repeated inflictions needs to be viewed as potentially having a worsening painful effect with each contact. Clearly from the individual simply listening to the facts, describing an interrogation as stated, these effects are otherwise not considered, but for testimony from an expert witness torture victim.

In addition, one needs to consider the effect of state of mind and cultural bias that might make a seemingly blunt or slight trauma to have a severe painful effect. For example, lifting one’s shirt and striking them with an abdominal slap, is not likely as painful, as the same blow to an individual that has been stripped naked, and previously slapped in the same area multiple times.

Also, it would not be obvious as to why a particular position might be much more painful than it seems. Here, it would be important to consider, that many of the EITs use prolonged techniques, such as stress positions. Generally, modern medicine uses a two-hour rule, of a given position to estimate how long it will take to severely effect a given group of muscles, bones and tendons. Consider that after an individual is offered relief from a stressful position, there can be a severe effect without any visual changes in the individual body parts. Consider also, how the body may be sensitized by combining any of the above with a cold or hot environment – beyond what is reasonably tolerable.
Pain, in fact, can be perceived from the skin as being very severe without any significant visual finding. The obscure effect of painful stimuli—that is to say that it may leave no significant markings on the skin— is a phenomenon that is exploited by EITs.

Another phenomena that is well established, and particular to the totality of circumstances that EITs are inflicted, is that sleep deprivation makes one susceptible to painful conditions and in a way that causes multiple areas on the body surface to become painful. This condition is well-documented in the medical literature and is known as fibromyalgia.

If one could conceive any part of the above brief overview of pain, it is clearly plausible and probable that the depth of compromise caused by the combination of EITs in an explanatory report, would not likely result in a true account for the actual severity of the pain someone experiences with EITs. Acknowledging this, it follows that pain can never be described from the point of view of the observer. On the contrary, realizing that pain being subjected to some combination of cultural bias, and repeated physical contact with or without an increased sensitivity caused by sleep deprivation in these circumstances can only be described by the individual. Thus, an expert witness who has experienced pain through the EIT program would be able to testify to the unique effects of that pain, and allow the trier of fact to truly perceive how a confession under those circumstances, at best, would be unreliable.
The nature of brain injury is such that its effects can be cumulative. Typically brain injury occurs when there is direct trauma to the head, or when there is either a lack of oxygen or blood flow to the brain.

In the first case, where there is direct trauma to the brain, the mechanism of injury can be from almost any source. A reasonably objective person putting himself in the position of a detainee would see where many of the techniques - whether it was walling, cramped confinement, sudden awakening, transportation to and from cells, or something as simple as having been hooded abruptly, could have incurred some type of traumatic brain injury.

To illustrate the sensitivity to the brain to injury, we need to look no further than high school sports. High school sports recognize that in any contact sport, such as football, the effect of one or two moderate-severe blows to the head would be enough to have an athlete rest for a full season or perhaps in some cases end his career. There are also many documented cases, for example in car accidents, where people strike their head, have normal MRIs, and then later show effects of a brain injury while appearing completely normal to the observer or even to the skilled practitioner who examines them. One can note here that by the time a brain injury is revealed on MRI, the brain damage is significant.

Clearly in the case of an individual who is exposed to EITs, multiple opportunities to injure the head exist and the effects may not be obvious.

The second type of brain injury can occur when there is compromise to the oxygen supply to the brain. Oxygen which is carried by the blood stream, is critical always without paucity for the brain to function. Short periods where the flow of oxygen to the brain (or it could
be that there is a compromise to the oxygen supply because there is a lack of blood flow to the brain - either by position, dehydration, or anemia from bleeding or injury) can cause brain damage. One area of the brain that is particularly sensitive to lack of oxygen (hypoxia is decreased oxygen supply and anoxia which is a complete cessation of oxygen to the brain), is the temporal lobes. The temporal lobes are on each side of the brain. In part, the temporal lobes are responsible for short term memory and processing of information in responding to questions to an interrogator. Lack of oxygen to the brain affects the temporal lobes. Sometimes people will recover from brief episodes where they lack oxygen. Other times they may not and experience an accumulation of the effect from repeated insults. However, and this is the incalculable part, is that an individual who suffers from hypoxia can have injury to the brain that is not clear to anyone seeing him. In fact, this type of injury would affect his thought process and may induce him to confabulate a response to his interrogators.

Also, combinations of traumatic brain injury and hypoxic brain injury can occur from the same event. If one can conceptualize the act of waterboarding, where a person is not able to breathe for periods of time, there is the opportunity for the brain to suffer from lack of oxygen after the head is jarred from the restraining process. Also, given the positioning in a cramped confinement box, and the air circulation, there may be other, less obvious, opportunities for the brain to be compromised by lack of oxygen in conjunction with direct trauma.

An expert witness that has undergone various forms of torture to the enhanced interrogation program, would be able to speak to the situations that would invite brain injury. In particular the less obvious and cumulative effects, that would affect his testimony to a confessor would be placed into the best perspective for a trier of fact to evaluate.
Classically, drowning is defined as the lungs filling with water, and thus preventing oxygen from getting to vital organs of the body including the brain. An expert witness would be able to testify to this experience. However, the victim of waterboarding who provides expertise by way of his experience would also be able to testify as to the effects of experiencing drowning and the imminent fear of death provoked by actually not being able to breathe. Someone subjected to waterboarding, and can testify to its effects, including the experience of some form of hypoxia,\textsuperscript{94}.

To contemplate that the effect of waterboarding is essentially the same as the perception of drowning would be an error. There are other less obvious effects. 1\textsuperscript{st}, is the fact that the cardiovascular system is stressed as the patient is forced to lie in a position with his feet elevated above the level of his heart and brain. In this situation there is a tremendous stress on the cardiovascular system to maintain the appropriate blood pressure through the lowered head and the elevated limbs. This, of course is in combination with the anxiety provoked by the overall situation. However, in addition to the obvious effects of the water being poured about the face and nose in clogging the airways, is the defensive reaction from the lungs. In effect when the lung perceives that it is being flooded with water, there is a forced contraction of the airways known as a bronchospasm. When the airways are spastic, that they are in a state of tightness with dramatically narrowed caliber from the spasm of local muscle, they are closed to accepting the amount of oxygen that is needed to keep the brain. This reaction can be prolonged. In effect, in response to the sensation of drowning (from the pouring of water into the airways) the body’s

\textsuperscript{94} Hypoxia can be defined as a state where there is decreased oxygen to the brain. Anoxia is a complete cessation of oxygen to the brain. It is only an expert witness who underwent EIT that would be able to testify as to when this may have occurred by way of his experience. The exact effects of lack of oxygen to the brain are beyond the scope of this paper.
defensive response potentially can cause prolonged constriction of the airways in such a way that even when the individual is trying to breathe without the stimulus they are in fact suffering from hypoxia.

Waterboarding, in combination with the other EIT's, can thus have many latent effects on the body's physiology, that would not likely be comprehensible by an outside observer or captioned in a report. An expert witness, would be able to describe the individual effects of waterboarding, in conjunction with the other EITs in such a way that it would become blatantly obvious to a trier of fact that he suffered hypoxia and not simply anxiety or discomfort when he was waterboarded.

Sleep Deprivation\textsuperscript{95}

Sleep deprivation can be defined as affecting the normal sleep cycle. It is now clear in the medical literature that there are long and short-term effects of sleep deprivation. Short-term lack of sleep clearly affects cognition. However, chronic deprivation of sleep is much more serious consequences and in particular its long-term effects do not seem to go away with "a couple of good nights of sleep."

Throughout the EITs’ described there is a recurrent theme, that being, the prisoner was not allowed to rest. The lack of the ability for an individual to sleep, would obviously cause both the short and long-term manifestations of sleep deprivation. Here, the expert witness based on his

\textsuperscript{95} Sleep deprivation: Impact on cognitive performance, Paula Alhola1 and Päivi Polo-Kantola; The research available on sleep deprivation including its short and long-term effects is now well documented in the medical literature and well beyond the scope of this writing.
personal experience, would have specialized knowledge to describe the various different ways in which his sleep cycle was impaired.

One of the latent issues with sleep deprivation, is that the combined EITs, with techniques such as stress positions and cramped confinement, would have caused sleep deprivation in and of themselves. Also, it was recognized by the interrogators that there was a stated limitation on the amount of time that they could employ sleep deprivation. However, the expert testimony of a torture victim would bring to light the fact that sleep deprivation was occurring much more time than was directly documented or accounted for. This would be important in the expert witness’s testimony, because sleep deprivation in any form, by itself would push an individual towards the falsity tipping point that would provide the interrogators with inaccurate information and false confessions. In other words, regardless of any other technique, it is clear that sleep deprivation by itself would cause such disruption of the normal thought process, that at some point, an accurate confession would not be possible, even if the individual is not stressed or anxious or in pain at the time he had the discussion with his interrogator. Therefore, expert witness testimony would be valuable to speak to the nature of sleep deprivation and its prevalence during his captivity when he may have provided his captors with inaccurate information that was later used against him.

**Loud Noise**

As part of the captivity, it was clearly described that prisoners were exposed to loud noises. Many times, these loud noises included the repetition of the song, that may have been culturally offensive or daunting. The victim, would thus be able to testify to the daunting nature of the loud noise, or music that was incorporated into the interrogation program. From a cultural
perspective, the content of the music, or noise may have been culturally offensive to the individual’s religion or core beliefs.

One of the phenomena of the sensory systems of the body is increased sensitivity to any kind of a stimulus after a period of sensory deprivation. Here, the detainees were exposed to long periods of time with sensory deprivation, that may have lasted hours or days. If this was followed by loud noises, the effects of the loud noises on the psyche would have been augmented. Again, we can see a less than obvious harsh effect, that can only be confirmed by the expert testimony of a victim who experienced such treatment.

One of the other effects of loud noises, that is well documented, is damage to hearing. Immediately following exposure to loud noises an individual can experience severe ringing in their ears for days, as well as headaches. Also, it is clearly documented that damage to hearing is cumulative with each exposure to loud noise. It would seem, that at some point in time, repeated exposure to loud noises apart from disturbing the psyche, would actually affect the hearing ability of an individual. Given the cultural differences, language barriers, and the stress from the environment in an interrogation situation, the testimony of the expert witness who is an experienced torture victim would be able to speak to effects from loud noises in the setting of EITs that might affect a prisoner’s testimony for less obvious reasons.
Summary

As was noted earlier in this paper, many of the EIT's overlapped in technique. So, in considering the effects as described above, the importance in evaluating all of the them-individually, as well as cumulatively, given the possibility for unique combinations thereof -it is clear that only the testimony of the torture victim expert witness can account for them under the totality of the circumstances.

This variability questions the facts from the published accounts of EIT's and makes it all the more important to make the point that a torture victim has the ability to testify about the effects of torture through his “other specialized knowledge” based on his experience, especially in light of the known information cited above. Drawing on the history and known effects of torture/EITs, it would logically follow that there is no doubt as to the fallibility of confessions resulting from their infliction. In consequence, the significance of a victim’s testimony as an expert witness albeit peculiar, becomes self-evident.

In Conclusion

While the effects of EIT’s on an individual can be estimated, the actual effects remain unstated. The circumstances of an individual victim subject to torture, acting as an expert witness, would elucidate the effects of EITS on the mind and body that would otherwise remain unknown and unaccounted for. Hence, expert testimony by a bona fide torture victim in an enhanced interrogation trial is paramount to prove that EITs offers nothing different than what has already been established by history. EITs amount to coercion with inconsistent and unreliable testimony.