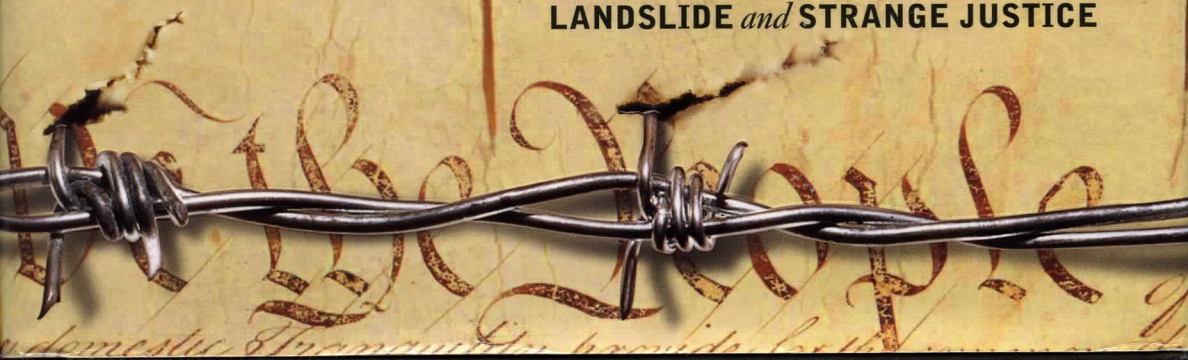


JANE MAYER

THE INSIDE STORY OF HOW
THE WAR ON TERROR TURNED INTO
A WAR ON AMERICAN IDEALS

THE
DARK
SIDE

From the bestselling coauthor of
LANDSLIDE and STRANGE JUSTICE



INSIDE THE BLACK SITES

More than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Let's put it this way: They are no longer a problem to the United States and our friends and allies.

—President George W. Bush,
State of the Union Address, January 28, 2003

John Kiriakou, a boyish-looking CIA officer, had eagerly volunteered to help fight Al Qaeda after September 11, but he had never imagined that he would see so much blood. "There was blood everywhere. It was all over him. It was all over the bed. It pooled underneath the bed. It was all over us, every time we had to move him. It was just an incredible amount of blood that he lost."

The "he" in question was the purported Al Qaeda logistics chief, Abu Zubayda, and the time and place were March 28, 2002, at a hospital bedside in the overcrowded and unlovely city of Faisalabad, Pakistan. Kiriakou, a George Washington University graduate who had been recruited into the CIA by a professor a decade earlier, was fluent in Greek and nearly fluent in Arabic. At that moment, he was poised to be the first American to talk with Zubayda, who was slipping in and out of consciousness. The accident of these circumstances placed Kiriakou precisely in the center of what another counterterrorism expert describes as one of the most critical choices facing the United States government in the war on terror. "It was right there that there was a fork in the road—they could go left or right—and it set the course."

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Zubayda was America's first "high-value detainee," the crucial test case for all that followed. His treatment would set the precedent for the abuse of U.S.-held prisoners, transforming U.S. practices starting with the CIA, but eventually spreading through the U.S. military, too. For over six months, the Agency had been stalking the footsteps of major Al Qaeda suspects, and with Zubayda's capture they believed they finally had one in custody. Lesser suspects, such as al-Libi, could be "rendered" elsewhere, but the Agency wanted to interrogate the most important ones itself.

Zubayda, whose real name was Zayn al-Abidin Muhammed Hussein, had left fingerprints all over Al Qaeda operations for years. Born in Saudi Arabia, Zubayda had migrated to the West Bank as a teenager, where he became militantly involved in the Palestinian uprising against Israel. Later, he had joined the anti-Soviet jihad in Afghanistan, where he was known to have grown personally close to Bin Laden. The Agency believed he might well know where Bin Laden and Zawahiri were hiding. By the spring of 2002, their elusiveness was rankling the White House as reports began to appear in print that Bin Laden had escaped from Tora Bora several months before. The Agency also believed he would certainly know the inside details of many Al Qaeda operations. For all of these reasons, teams of Agency and Special Forces officers had been hunting for him since September 11. "We thought if we could capture him it would deal a significant blow to the Al Qaeda leadership," Kiriakou later told ABC News.

Several weeks earlier, the Agency had gotten a lucky break in the case. On the outskirts of Pakistan's militant tribal area, along the mountainous border with Afghanistan, Pakistani intelligence officers had noticed a caravan carrying several exceptionally tall burka-clad women who turned out to be male Islamic extremists in disguise. They were bound for Faisalabad. For a bribe, their driver gave away their destination. This enabled the U.S. government to mount a major surveillance operation on their neighborhood. In the NSA's headquarters in Fort Meade, Maryland, translators and analysts among the agency's 38,000 employees pored over every fragment of electronic information vacuumed by enormously powerful eavesdropping equipment trained on the spot, until they could pinpoint what they believed was a nest of top Al Qaeda suspects.

In the predawn hours of March 28, dozens of armed CIA, FBI, and Pakistani law-enforcement and intelligence officers raided a

shambling compound on the subcontinent. Zubayda by surprise along with several other Al Qaeda followers, including one of the most important. In an attempt to escape, Zubayda fled to a neighboring house, where a gunshot was heard. Twenty-five feet to the ground, Zubayda had been shot in the thigh, stomach, and leg. He told Kiriakou that he'd never seen anyone with such injuries survive. In truth, Zubayda was taken back to the back of a pickup truck where, with the help of several other wounded suspects, he was kept alive by flashlight and resuscitation.

The raid was a triumph for the Agency. Agents call "pocket litter," the items found at a criminal scene. Zubayda left behind a computer, computer disks, phone books, and a list of contacts. Counts in Kuwait and Saudi Arabia, a personal diary—in all, there was a treasure trove of invaluable intelligence. Adding to the haul were the remnants of a bomb that had been lying on a table, along with plans for a new school, a British school in Lahore. The situation was still hot."

This scene of bomb builders and their tools, the Hollywood-style "ticking time bomb" that authorities have described in the past, was what Zubayda possessed lifesaving, and it was the justification for the use of force. Cofer Black in the first sleepless night.

Yet, on closer examination, Zubayda's argument in favor of softer methods was not toughness, it was pragmatism. The service bought the original time bomb for a small bribe to the taxi driver. The help for a much larger sum. And when it closed, "We paid \$10 million to get the information went to the ISI, Pakistan's intelligence headquarters on thirty-five acres."

shambling compound on the suburban outskirts of Faisalabad, taking Zubayda by surprise along with some twenty-five other suspected Al Qaeda followers, including one with a valid Arizona driver's license. In an attempt to escape, Zubayda leapt from the roof to that of a neighboring house, where a gun battle ensued before he dropped twenty-five feet to the ground. By the time it was over, Zubayda had been shot in the thigh, stomach, and groin. A Pakistani doctor told Kiriakou that he'd never seen anyone with such egregious injuries survive. In truth, Zubayda had nearly slipped into sepsis in the back of a pickup truck where, unrecognized, he had been piled with several other wounded suspects after the gunfight. An agent with a flashlight identified him just in time to rush him to the hospital for resuscitation.

The raid was a triumph due in part to what law-enforcement agents call "pocket litter," the incriminating detritus scattered around a criminal scene. Zubayda left behind computers, cell phones, computer disks, phone books, and two Western-style bank cards for accounts in Kuwait and Saudi Arabia. He also left behind a voluminous personal diary—in all, there were nearly 10,000 pages of potentially invaluable intelligence. Adding urgency, according to Kiriakou, were the remnants of a bomb that he and two other men had been building on a table, along with plans for what appeared to be an attack on a British school in Lahore. The soldering iron, Kiriakou said, "was still hot."

This scene of bomb builders disrupted mid-soldering is as close to the Hollywood-style "ticking time bomb" scenario as any that U.S. authorities have described in the war on terror. In the Agency's view, Zubayda possessed lifesaving, actionable intelligence. Cases like his were the justification for the new "robust" powers enumerated by Cofer Black in the first sleepless week after September 11 and authorized by President Bush's classified Memorandum of Understanding.

Yet, on closer examination, Zubayda's capture provides a strong argument in favor of softer methods. What put Zubayda in CIA custody was not toughness, it was money. The Pakistani intelligence service bought the original tip leading to his whereabouts with a small bribe to the taxi driver. Afterward, the CIA bought Pakistan's help for a much larger sum. A CIA source involved at the time disclosed, "We paid \$10 million for Abu Zubayda." He said the money went to the ISI, Pakistan's intelligence service. "They built a new headquarters on thirty-five acres they bought outside of Islamabad,

and they got themselves a helicopter. We funded the whole thing." The first big break in the war on terror confirmed what the Israeli security service had also concluded by 2001, which is that the best way to make reluctant informants talk was to give them what the Israelis referred to in Hebrew as the "three Ks": *kesef*, or money; *kavod*, respect; and *kussit*, a crude sexual term for a woman.

In the hospital, where Kiriakou was the first to speak with Zubayda, other approaches were in store. "We knew he was the biggest fish we had caught," said Kiriakou, "and he was full of information. Frankly, there were lives at stake. He had information, and we wanted to get it." The immediate questions following his capture were where to take such a high-value detainee and how much force they could use on him afterward. A special CIA interrogation squad had been training in "enhanced" techniques for a moment such as this. Kiriakou himself had been tapped to join it. But a senior figure at the Agency who had acted as his mentor, gave him pause. "Do you really want to take the risk?" he asked. He warned Kiriakou, "It's a slippery slope." He predicted that "someone's going to go too far, and then someone's going to get killed. And when that happens, there are going to be congressional investigations, and eventually people are going to go to jail. So it may not be the best career path." Kiriakou turned down the offer to become an interrogator, eventually leaving the counterterrorism unit and, finally, the Agency itself. But at the time, he supported the harshest of treatment for Zubayda. "I was so angry," he said, acknowledging an emotional current underlying the rush toward torture that is rarely admitted.

Physical and ethical complications arose immediately because of the seriousness of Zubayda's injuries. In his military hearing in Guantánamo Bay in 2007, Zubayda said he had lost a testicle and had ongoing medical complications from bullet wounds to his head and thigh. He complained that one foot was perpetually cold, requiring him to wrap it in his skullcap during the hearing and to beg for socks. He also suffered from seizures and speech problems. In his memoir, Tenet described flying a top trauma surgeon in from Johns Hopkins in Baltimore to save Zubayda's life. It was from any standpoint an extraordinary feat of medicine. But what Tenet did not describe was a discovery that the CIA made at the same time. "The mere fact that Zubayda was weakened from being in critical condition, they learned from that," said a retired senior Agency official who was involved at the time. "It broke his resistance." The CIA has adamantly denied re-

ports that it refused medical constitutional law and medical ethics. taught the CIA an important their advantage.

Zubayda's extremis also taught mind-set. According to *New York Times*, explained to Bush not long after the gathering was going poorly because of painkillers. Bush retorted, "What medication?"

Risen writes that there is speculation while the exact details of Bush's role in secrecy, Bush's gusto for playing made to Republican supporters on 9, 2002. "The other day," he said of Zubayda. He's one of the top of the and destruction on the United States anymore. He's where he belongs.

Bush also knew about, and which his top cabinet members to use specific "enhanced" interrogations value detainees. The meetings with the National Security Adviser, in which were the members of the Principals members who handled national security. Cheney, Secretary of State Powell, CIA Director Tenet, and Attorney General Ashcroft. The Agency had been blamed for the past, Tenet was eager to spread enhanced interrogations." However, irritated with Tenet's insistence the CIA already had legal clearance, a source said, "and so it was point to tails. No one was going to quit the CIA—they knew more than any of the principals were debating. They wanted to go to the limit. They say, 'We're going to do this,' and took offense at discussing such in the House. "History will not judge

ports that it refused medical care for Zubayda in violation of international law and medical ethics. But Zubayda's near-death nonetheless taught the CIA an important lesson: Pain could be manipulated to their advantage.

Zubayda's extremis also taught the Agency about President Bush's mind-set. According to *New York Times* reporter James Risen, Tenet explained to Bush not long after Zubayda's capture that intelligence gathering was going poorly because Zubayda had been sedated with painkillers. Bush retorted, "Who authorized putting him on pain medication?"

Risen writes that there is some dispute about the anecdote. But while the exact details of Bush's private conversation remain shrouded in secrecy, Bush's gusto for playing rough was evident in remarks he made to Republican supporters in Greenwich, Connecticut, on April 9, 2002. "The other day," he said, "we hauled in a guy named Abu Zubayda. He's one of the top operatives plotting and planning death and destruction on the United States. He's not plotting and planning anymore. He's where he belongs," the President said.

Bush also knew about, and approved of, White House meetings in which his top cabinet members were briefed by the CIA on its plans to use specific "enhanced" interrogation techniques on various high-value detainees. The meetings were chaired by Rice, who was then the National Security Adviser, in the Situation Room. The participants were the members of the Principals Committee, the five Bush cabinet members who handled national security matters: Vice President Cheney, Secretary of State Powell, Secretary of Defense Rumsfeld, CIA Director Tenet, and Attorney General Ashcroft. Knowing how the Agency had been blamed for ostensible "rogue" actions in the past, Tenet was eager to spread the political risk of undertaking "enhanced interrogations." However, some members of the group became irritated with Tenet's insistence upon airing the grim details. "The CIA already had legal clearance to do these things," a knowledgeable source said, "and so it was pointless for them to keep sharing the details. No one was going to question their decisions—they were the CIA—they knew more than anyone else about each case. It's not as if any of the principals were debating the policy—that was already set. They wanted to go to the limit that the law required. But Tenet would say, 'We're going to do this, this, and this.'" Ashcroft in particular took offense at discussing such distasteful matters inside the White House. "History will not judge us kindly," he reportedly warned. There

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is no indication, however, that any Bush cabinet members objected to the policy. Cheney was described as "totally pushing it," and Rice, during the early period when Zubayda was captured, was described by a knowledgeable source as "a total hard-ass." The source suggested, "She was probably reflecting what the President wanted."

Behind the tough talk, however, was a bureaucracy in disarray. Despite the CIA's sweeping new authority to create paramilitary teams to hunt, capture, or kill suspected terrorists almost anywhere in the world, at the time the CIA had virtually no trained interrogators. It had been years since the Agency had questioned hostile witnesses. The CIA had numerous polygraphers and psychological profilers, as well as agents skilled in debriefing defectors. But "after Vietnam," says an outside adviser to the CIA, "they had very little experience with interrogation. When 9/11 hit, it was fifty-two-card pick-up."

A former CIA operative involved at the time said that at first the Agency was crippled by its dearth of expertise. "It began right away, in Afghanistan, on the fly," he recalled. "They invented the program of interrogation with people who had no understanding of Al Qaeda or the Arab world. You hear all this hubbub about hanging people upside down," he said. "But the key to interrogation is knowledge, not techniques. We didn't know anything. And if you don't know anything, you can't get anything."

At the same time, the operative said, the pressure from the White House, and in particular from Vice President Cheney, was intense. Cheney and his chief of staff, I. Lewis "Scooter" Libby, were over at the CIA so often, a special reading room was set aside for them. "They were pushing us: Get information! Do NOT let us get hit again!" In Cheney's single-minded focus, he searched the CIA's archives to see what worked in the past. He was particularly impressed with the Vietnam War-era Phoenix Program. Critics, including military historians, have described it as a program of state-sanctioned torture and murder. A Pentagon-contract study later found that 97 percent of the Viet Cong it targeted were of negligible importance. But after September 11, inside the CIA the Phoenix Program served as a model. "It was completely unconventional, it was very effective, and it stayed below the radar a really long time," the former CIA operative explained admiringly.

A. B. "Buzzy" Krongard, who was Executive Director of the CIA from 2001 to 2004, said the Agency turned to "everyone we could, including our friends in Arab cultures. We reached back to the whole

alumni association." Specific techniques for handling cultures. The Agency's belief matter, much dependent on in and to other governments—Krongard said. The State Department countries for chronic human rights. Another former CIA official also consulted closely with Israel. Ited torture and other forms of more-permissive rules resulted the lesson derived from Israeli. raelis taught us that you can p it like a collar, to propel him h that the CIA would try out enough from his wounds to be

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alumni association." Specifically, the CIA asked Arab allies about which techniques for handling terror suspects worked best in Arab cultures. The Agency's belief was that interrogation was a cultural matter, much dependent on indigenous mores. "We talked to police and to other governments—Jordan, the Saudis, the Egyptians," Krongard said. The State Department regularly criticized all of these countries for chronic human rights abuses, but this was not a deterrent. Another former CIA official active at the time said the Agency also consulted closely with Israel. The Israeli Supreme Court prohibited torture and other forms of coercive interrogations in 1999 after more-permissive rules resulted in abuse. But a former CIA officer said the lesson derived from Israeli sources was less enlightened: "The Israelis taught us that you can put a towel around a guy's neck and use it like a collar, to propel him headfirst into a wall." It was a technique that the CIA would try out on Zubayda as soon as he recovered enough from his wounds to be hurt again.

The CIA knew even less about running prisons than it did about hostile interrogations, but it had to hold its prisoners somewhere beyond the reach of the American legal system, and that was the impetus for its "black site" program. Tyler Drumheller, the former Chief of European Operations at the CIA, said, "The Agency had no experience in detention. Never. But they insisted on arresting and detaining people in this program. It was a mistake, in my opinion. You can't mix intelligence and police work. But the White House was really pushing. They wanted someone to do it. The military didn't want to. So the CIA said, 'We'll try.'"

Drumheller regarded Tenet as a friend, but he also knew him well enough to see how the Director's weaknesses set the Agency on what he considered a ruinous course after September 11. "George Tenet," he said, "came out of politics, not intelligence. His whole modus operandi was to please the Principal. We got stuck with all sorts of things. This is really the legacy of a Director who never said no to anybody." Another former Agency operative who was involved in the Afghan campaign concurred. "It was a terrible mistake for George Tenet to have taken this mission on. I always objected to the CIA being a jailer," he said. "Why did this task fall to the Agency? Partly because we can work with the foreign services to set up the prisons. But really, the whole thing should have fallen to the DOD. Rumsfeld and [Stephen] Cambone fought like hell to stay out of it. They didn't

want any part of it. I like George, but he's just not a strong leader. He's a politician. He should have said, 'Find someone else. I don't want to besmirch the Agency's reputation.'"

Many inside the CIA had misgivings. "A lot of us knew this would be a can of worms," said another former operative who was involved at the time. "It was going to get a lot uglier. We warned them, it's going to become an atrocious mess." The problem from the start, he said, was that no one thought through what he called "The Disposal Plan." "What are you going to do with these people? The utility of someone [like Zubayda] is at most six months to a year. You exhaust them. Then what?" He said, "It would have been better if we had executed them."

The audacious notion of the Central Intelligence Agency secretly holding terror suspects itself outside the reach of any law was a new one, forged in the frantic weeks immediately after September 11. The expectation of a second wave of attacks was almost universal. Many, including Cofer Black, were all but certain that nuclear weapons in the hands of terrorists were a genuine threat. He told colleagues at one point that in the NSA intercepts "pearls" stood for nuclear weapons and "weddings" stood for attacks. Both were seen as so imminent, he warned a colleague not to travel to New York for the weekend. By late winter, the Agency was feverishly trying to prevent what it had convinced itself was a threat of unimaginable proportions. Under the circumstances, they felt that anything they could do to keep the terrorists out of action was fair game.

The CTC already had a list of its most wanted suspects, and as the Taliban fell and the fleeing Al Qaeda sympathizers were caught and questioned, many new names were added. Prisoners were flooding into U.S. hands in Afghanistan. There alone, the United States processed an estimated 6,000 captives. Pakistan has said it handed 500 more to the United States. Iran claims to have sent an additional 1,000 over the border to Afghanistan. With no Afghan tradition of taking prisoners alive, the prison facilities were primitive and inadequate. Scores of those captured by the Northern Alliance along with Lindh, for instance, simply suffocated to death in airless shipping containers, a horror show that shocked human rights groups.

Some inside the Agency argued that the CIA would be better off killing Al Qaeda members. The operations chief at the CTC wanted to send teams of assassination squads around the globe to hunt and kill top terror suspects, one by one. The plan got as far as training a

covert paramilitary assassin in Box Top." But the concept of done as too challenging logical reasons, too, many in the Qaeda suspects alive for ques

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covert paramilitary assassin team under the code name "Operation Box Top." But the concept of a global hit squad was reportedly abandoned as too challenging logistically, ethically, and legally. For tactical reasons, too, many in the Agency preferred to keep valuable Al Qaeda suspects alive for questioning.

The issue of where to put CIA prisoners was vexing from the start. "Originally," a former top Agency official disclosed, "they had plans to put the detainees on a ship" sailing in international waters. "That way they'd never have to put them on trial. They could manipulate the legal process. It was going to be like the Flying Dutchman—they'd just sail forever." He disclosed that the CIA covertly used merchant marine vessels for such secret missions.

The idea of perpetually circumnavigating the globe, however, proved impractical. Other options considered by the Agency included an attempt to convince an unspecified African country, believed to be Zambia, to take the prisoners. At first the country agreed, a CIA source said. But evidently, when it figured out what sorts of prisoners were in question, the country backed out. "Finally," he recalled, "someone at the White House said, 'What about Guantánamo?'"

By January 2002, the U.S. military had established a prison camp at the U.S. base in Guantánamo Bay, Cuba, for the "illegal enemy combatants" it was capturing in Afghanistan and elsewhere. The White House lawyers had picked the location because of its unique legal status. Leased in perpetuity to the United States by the pre-Castro Cuban government in 1903, it was arguably under U.S. control but not under U.S. law. This rare set of circumstances allowed the executive branch to hold and interrogate foreign prisoners there in any manner it deemed necessary, beyond meddling from Congress and courts. Or so the White House hoped.

Early on, the CIA sent scouts to check out Guantánamo as a location for its high-value detainees, but the Agency reportedly turned against it as too visible. The site was aswarm with U.S. military and law-enforcement personnel. Visiting CIA officers reported back that Camp X-Ray, as the prison was called, was "a goat fuck." (Later, the CIA set up its own private prison on the island, separate from the main military encampment, but it was hastily closed when the Supreme Court ruled that the prisoners there were in fact covered by U.S. law.)

What the Agency was seeking for its most valuable prisoners was total isolation, total secrecy, and total control. An Agency source close to Tenet recalled the quest as a puzzle. "Where else in the world

the suspect. His destination was available only on a "need-to-know" basis. The CIA's "high-value detainee" program was extraordinarily compartmentalized in order to maximize secrecy, even to a degree unusual for the spy agency. Internal communications dealing with the program were segregated into a separate cable channel with its own encryption codes. Typical of this high level of secrecy, the Agency went to extraordinary lengths to cover its tracks in the transport of Zubayda. Rather than flying him directly from Pakistan to the intended "black site," a well-informed source said the Agency flew him around the world for three days. The CIA rotated the pilots so that none would know the whole itinerary. Before the final destination was reached, landings were made on several continents, including Latin America. Finally, after this dizzying trek, the CIA installed Zubayda ^{THAT} in a new facility in Thailand. ^{PERSON} The Thai government's only stipulation was that there must be absolutely no publicity about its cooperation. If the operation could be kept completely covered up, however, the CIA could have the run of the Thai facility. It boasted, among other features, subterranean cells.

Before Zubayda left Pakistan, Kiriakou managed to draw him out in English. Zubayda refused to speak Arabic under the circumstances, because it would defile what he called "God's language." To his surprise, Kiriakou found the terrorist to be "a friendly guy" who was "willing to talk. It's funny to say," he noted, "but we never exchanged a harsh word." He said Zubayda openly admitted his role in the September 11 attacks and claimed to regret having killed so many Americans. Zubayda expressed an all-consuming hatred for Israel, however, which he claimed justified the mass murders. If released, Zubayda admitted, he would commit more of them, killing every American and Jew that he could, adding sheepishly, "It's nothing personal. You're a nice guy. It's just who I am." Such sentiments convinced Kiriakou that terrorists such as Zubayda were unlike enemies of the past and so needed to be treated differently. "They hate us more than they love life," he said. Kiriakou also believed that while he was willing to be chatty, Zubayda was "unwilling to give us actionable intelligence." It would take the special CIA interrogation team, Kiriakou believed, "to get him to open up."

First, however, another matter had to be dealt with. "What can we do with him?" the Agency needed to know. "They had to figure out if he had any due-process rights," said John Radsan, the law professor who worked in the CIA General Counsel's Office at the time but who

was not directly involved. In his memoir, Tenet notes, "Despite what Hollywood might have you believe, in situations like this you don't call in the tough guys; you call in the lawyers."

Shortly after Zubayda's capture, John Yoo was summoned to the White House again. Gathered in Gonzales's second-floor corner office in the West Wing along with the White House Counsel were the familiar members of the War Council—Addington, Flanigan, and Haynes. They tossed around ideas about exactly what sorts of pain could be inflicted on Zubayda. The CIA had sent a wish list of "stress techniques" it wanted to use. They, too, saw themselves as justified in pushing the edges of the law to save the country from mortal enemies. As usual, Gonzales barely spoke. But Flanigan said later, "Everyone was focused on trying to avoid torture, staying within the line, while doing everything possible to save American lives."

From most points of view, torture would never have been an option. Torture and degrading treatment were clearly prohibited by two bodies of international law, and by domestic law as well. In addition to the Geneva Conventions, the United States took the lead in drafting and ratifying the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provided international law's first explicit definition of torture. "The CAT" is about as categorical a piece of legislation as is possible to write. It bans torture absolutely. It stresses that there are "no circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency," that could be "invoked as a justification of torture" or "other acts of cruel, inhumane or degrading treatment" used to get prisoners to divulge information. The language in the Convention Against Torture is plain and clear. It defines torture as "severe pain or suffering, whether physical or mental."

The treaty had been a logical cause for America to lead. It reflected ideals of the European Enlightenment that had coursed through America's history since its founding. John Adams, Benjamin Franklin, and Thomas Jefferson, among other founders of the country, greatly admired the eighteenth-century Italian philosopher Cesare Beccaria's work *On Crime and Punishments*, weaving his notions of justice into the Bill of Rights. These were the origins of the Fifth and Eighth Amendment prohibitions against compelling criminal suspects to testify against themselves, or subjecting them to "cruel and unusual punishments."

To blur this bright legal line, the White House lawyers turned not to law but to language. The soft spot in the CAT, as they saw it, was

the definition of torture. It is the Bush Administration described the word as hoped to exert on captives as "robust" that the President would encourage "enhanced" interrogations, "robust interrogations." The redefinition of the word was by John Ashcroft, then Attorney General, and Dick Cheney to describe "waterboarding" asphyxiation that had been common in the United States at least since the Vietnam War at the same time insisting, "We are using conservative language column by column." The locutions begin as bland but become crimes. As their meanings become more of horror. In the past century, the phrases that sent a chill through the word in the news . . . is *waterboarding*. Latin for 'twist,' means anything of excruciating physical or mental. *waterboarding* is a means of torture.

The Bush Administration's corrupting impact on the public was visible to have a national conversation. CIA officials denied they were aware of details of the CIA's secret program. They had the means to argue otherwise. They have openly asked Congress for a public discussion of the morality of the interrogations, but instead it chose to classify the memos.

On August 1, 2002, in an executive order but signed by Assistant Attorney General, the Bush Administration defined the crime of torture to be "any act that results in death or serious physical injury, such as organ failure, or mental suffering, they are of a nature to cause psychological harm" and "be of a duration of months or years." This last bit of suffering had to span, stretched across years, added in 1988 at the urging of

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the definition of torture. It might be banned, but what if the Bush Administration described the psychic stress and physical duress they hoped to exert on captives as something else? Among the euphemisms that the President would employ in the years to follow were "enhanced" interrogations, "robust" interrogations, and "special" interrogations. The redefinition of commonly understood crimes enabled Cheney to describe "waterboarding," a process of partial drowning and asphyxiation that had been classified as a criminal form of torture in the United States at least since 1901, as "a no-brainer for me," while at the same time insisting, "We don't torture." As William Safire, the conservative language columnist at the *New York Times*, wrote, "Some locutions begin as bland bureaucratic euphemisms to conceal great crimes. As their meanings become clear, these collocations gain an aura of horror. In the past century, the *final solution* and *ethnic cleansing* were phrases that sent a chill through our lexicon. In this young century, the word in the news . . . is *waterboarding*. If the word *torture*, rooted in the Latin for 'twist,' means anything (and it means the deliberate infliction of excruciating physical or mental pain to punish or coerce), then *waterboarding* is a means of torture."

The Bush Administration's corruption of language had a curiously corrupting impact on the public debate, as well. It was all but impossible to have a national conversation about torture if top administration officials denied they were engaged in it. Without access to the details of the CIA's secret program, neither Congress nor the public had the means to argue otherwise. The Bush Administration could have openly asked Congress for greater authority, or engaged the public in a discussion of the morality and efficacy of "enhanced" interrogations, but instead it chose a path of tricky legalisms adopted in classified memos.

On August 1, 2002, in an infamous memo written largely by Yoo but signed by Assistant Attorney General Jay S. Bybee, the OLC redefined the crime of torture to make it all but impossible to commit. They argued that torture required the intent to inflict suffering "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Mental suffering, they wrote, had to "result in significant psychological harm" and "be of significant duration, e.g., lasting for months or years." This last bit, about the amount of time that the suffering had to span, stretched a reservation to the CAT that the Senate added in 1988 at the urging of the first President Bush, requiring the

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mental pain to be "prolonged" to qualify as torture. But to say that the psychological torment had to last "for months or years," according to Martin Lederman, the Georgetown professor and former lawyer at the OLC, was "simply made of whole cloth. Well, not even. There's no cloth there at all. It is completely unsupported by, and contrary to, the plain words and structure of the statute." But he astutely pointed out that it was tailor-made to decriminalize waterboarding, which few victims could withstand for more than a minute. Anything less than this new definition, Yoo and Bybee argued, would not be prohibited by the anti-torture statutes.

The Bush legal team provided seven examples of prohibited abuse, such as "electric shocks to genitalia, or threats to do so." But what of electric shocks to less-sensitive parts of the body? This was not addressed. The authors wrote, "There is [a] significant range of acts that though they might constitute cruel, inhuman, or degrading treatment or punishment fail to rise to the level of torture."

The memo was studded with additional loopholes. To qualify as torture, the infliction of pain had to be the "precise objective" of the abuse, rather than a by-product. An interrogator could know that his actions would cause pain, but "if causing such harm is not the objective, he lacks the requisite specific intent" to be found guilty of torture.

If all else failed, Yoo and Bybee advised, the President could argue that torture was legal because he authorized it. The commander in chief, according to the OLC, had inherent powers to order any interrogation technique he chose. Under this interpretation, U.S. laws and treaties banning torture—despite having been signed into law by earlier presidents—were deemed unconstitutional and therefore null. By this logic, the President was literally above the law. It made the President so omnipotent, as former Supreme Court Justice Robert Jackson wrote in striking down similar claims to inherent power asserted by Harry Truman, the president's "power either has no beginning or it has no end."

The memo was accompanied by a still-secret classified list, specifying permitted CIA interrogation techniques, including waterboarding.

When the torture memo leaked into the public domain in 2004, it was widely and vehemently condemned. Harold Koh, the dean of Yale Law School, described it as "perhaps the most clearly erroneous legal opinion I have ever read." Even Ruth Wedgwood, a conservative supporter of the Bush Administration's tough anti-terror program,

called it a relic of the Dark Ages. Law was treated like a beast."

Yoo, however, was undeterred. In a reasonable voice he argued that the administration's position was a necessary protection. "Why is it so hard for people to understand that a category of behavior not covered by the Geneva Convention were pirates? What were slave raiders? Half of any nation. Historically, people were not given protection of the law for their trial or imprisonment. If you were a pirate, you didn't deserve the protection of the law. It often bolstered seemingly unpresidential historic precedents, argued that way, too." He said, "They were

Yoo also argued that the Constitution gave the president powers to override laws banning torture. As Yoo explained, "the president's defense. As Yoo explained, 'tie the president's hands in restraints.' He continued, 'It's the president's job to protect the nation. They can't prevent the president from

Yoo expanded on this theory in a lecture at Notre Dame's Center for Ethics and Public Life professor Doug Cassel. If the president is so absolute, Cassel asked, could not the president order the killing of the child of the person's child? Yoo responded that whether a law, rather than a treaty, was involved, doing so, Yoo wouldn't rule out the possibility of straining the President from barbarism. The president thinks he needs to do

The only way to block a president from ordering the killing of the child of the person's child is to impeach him. He went on to say that he would not vote for Yoo in the 2004 election, along with many Democrats to Gonzales's nomination. He said that the debate is over. He said that the debate has had its referendum."

His declaration of victory was widely reported. The *New York Times* ran a front-page story. The Department's Office of Professional Responsibility investigated the Bush Administration's secret

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called it a relic of the Dark Ages, like "the 14th century, when an outlaw was treated like a beast."

Yoo, however, was undeterred by his critics. In a soft, eminently reasonable voice he argued that terror suspects deserved no legal protection. "Why is it so hard for people to understand that there is a category of behavior not covered by the legal system?" he asked. "What were pirates? What were slave traders? They weren't fighting on behalf of any nation. Historically, there were people so bad that they were not given protection of the laws. There were no specific provisions for their trial or imprisonment. If you were an illegal combatant, you didn't deserve the protection of the laws of war." Yoo, who often bolstered seemingly unprecedented positions by citing dubious historic precedents, argued that "the Lincoln assassins were treated this way, too." He said, "They were tried in a military court, and executed."

Yoo also argued that the Constitution granted the president plenary powers to override laws banning torture when he was acting in the nation's defense. As Yoo explained it, Congress doesn't have the power to "tie the president's hands in regard to torture as an interrogation technique." He continued, "It's the core of the commander in chief function. They can't prevent the president from ordering torture."

Yoo expanded on this theory when questioned about it by the director of Notre Dame's Center for Civil and Human Rights, law school professor Doug Cassel. If the president's right to torture was so absolute, Cassel asked, could no law stop him from "crushing the testicles of the person's child"? Yoo responded, "No treaty." Pressed on whether a law, rather than a treaty, could prohibit the President from doing so, Yoo wouldn't rule out the possibility that no law could restrain the President from barbarism. "I think it depends on why the president thinks he needs to do that," he said.

The only way to block a president from torturing, Yoo argued, was to impeach him. He went on to suggest that President Bush's victory in the 2004 election, along with the relatively mild challenge from Democrats to Gonzales's nomination as Attorney General, was "proof that the debate is over." He said, "The issue is dying out. The public has had its referendum."

His declaration of victory may have been premature. In 2008, the *New York Times* ran a front-page story revealing that the Justice Department's Office of Professional Responsibility was investigating the Bush Administration's secret embrace of waterboarding and other

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interrogation methods widely denounced as torture. The office was trying to determine if Yoo's torture memos fell below the professional standards required of the Justice Department's Office of Legal Counsel, an office renowned for its probity and political independence.

Yoo has been singled out for his lead role in justifying torture. Former Attorney General John Ashcroft derided him, for instance, as "Dr. Yes." But many other Bush Administration officials were involved as well. Michael Chertoff, who was the head of the Justice Department's Criminal Division when Zubayda was caught, downplayed his role during his 2005 confirmation hearings to become Secretary of Homeland Security, claiming that his only part had been to warn the CIA that it "better be very careful" because "you are dealing in the area where there is potential criminality." But according to a top CIA official directly involved at the time, as well as a former top Justice Department official involved in a secondhand way, Chertoff was consulted extensively about detainees' treatment. The former senior Agency official said with disgust, "Chertoff, and Gonzales, and all these other guys act like they know nothing about this now, but they were all in the room. They're moonwalking backwards so fast, Michael Jackson would be proud of them." The source alleged that "Chertoff was on the phone" with the CIA's general counsel, Scott Muller, "almost every day. Sometimes several times a day. He had to advise them at every turn about what was criminal."

The former Justice Department lawyer who was involved on these issues with the Bush White House said that Chertoff spoke frequently with William Haynes, the Pentagon's General Counsel, about where to draw the line on military interrogations as well. In his confirmation hearings, however, Chertoff said he had played a very limited role, and he criticized the torture memo, saying, "I do not believe that definition is a sufficiently comprehensive definition of torture."

The Bush legal team, as former *New York Times* columnist Anthony Lewis observed, spent an extraordinary amount of effort figuring out how to steer top administration officials around criminal conduct. Their "memos," Lewis wrote, "read like the advice of a mob lawyer to a Mafia don on how to skirt the law and stay out of prison. Avoiding prosecution is literally a theme of the memoranda." Behind these contortions was the reality that the White House lawyers, like criminal litigators, were using their skills to provide rationales for a path their clients had already taken. The secrecy surrounding Zubayda's handling makes it difficult to know for certain, but it appears that in

May, June, and July—in other words, the torture memo provided legal cover to treat him in ways that were clearly illegal.

In September 2006, President Bush announced publicly that the CIA had run a secret operation along rules of its own making, and defended the harsh treatment of detainees. "Zubayda had more information than he stopped talking," Bush said. "The CIA has a set of procedures. . . . The CIA has authorized methods extensively used by the military."

FBI agents, who were the ones who interrogated him, before the CIA interrogation. They thought that what he said about him was disgraceful, disastrous.

Two of the FBI agents questioned him on the edge of Islamic terrorism. One was an émigré to America who, having been an Arabic speaker and also a Muslim, who had worked on terrorism cases. But colleagues said he was doggedly and at times brilliantly. He was brimming with anger at the CIA. He resented, blaming their FBI behavior, the laws and red tape that they put on themselves.

Both believed it was making a "rapport-building" technique. They had cables describing Zubayda as a "high-value" New York and Washington, D.C. planner, "Mukhtar," who was a "high-value" target. This tidbit, later trumpeted as a significant breakthrough, actually was received but inadequately processed. The attacks. The 9/11 Commission.

During this early period, the CIA associate whose physical description was provided led to the arrest of a man in May 2002, at O'Hare International Airport, on charges that he planned to

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May, June, and July—in other words, months before the infamous torture memo provided legal cover—the CIA had already begun to treat him in ways that were deeply troubling.

In September 2006, President Bush admitted for the first time in public that the CIA had run a secret global detention and interrogation operation along rules of its own making. At the time, Bush specifically defended the harsh treatment of Zubayda in particular. “. . . We knew that Zubayda had more information that could save innocent lives, but he stopped talking,” Bush said. “. . . And so the CIA used an alternative set of procedures. . . . The Department of Justice reviewed the authorized methods extensively and determined them to be lawful.”

FBI agents, who were the first to question Zubayda at the black site, before the CIA interrogation team arrived, saw it rather differently. They thought that what they glimpsed of the CIA's treatment of him was disgraceful, disastrously counterproductive, and criminal.

Two of the FBI agents questioning Zubayda had extensive knowledge of Islamic terrorism. One was Ali Soufan, a passionate young émigré to America who, having been born in Lebanon, was a native Arabic speaker and also a Muslim. The other agent was Steve Gaudin, who had worked on terrorism cases all over the world. Neither would comment. But colleagues said that both had been tracking Al Qaeda doggedly and at times brilliantly before September 11. Both were brimming with anger at the intelligence failure that the attacks represented, blaming their FBI bosses, the CIA, the politicians in Washington, the laws and red tape, and really, when they were honest, also themselves.

Both believed it was making progress using the traditional FBI “rapport-building” techniques of questioning. They sent back early cables describing Zubayda as revealing inside details of the attacks on New York and Washington, including the nickname of its central planner, “Mukhtar,” who was identified as Khalid Sheikh Mohammed. This tidbit, later trumpeted by the Bush Administration as a significant breakthrough, actually only confirmed information previously received but inadequately processed by the CIA in the months before the attacks. The 9/11 Commission report documents this.

During this early period, Zubayda also described an Al Qaeda associate whose physical description matched that of Jose Padilla. The information led to the arrest of the slow-witted American gang member in May 2002, at O'Hare International Airport in Chicago, on charges that he planned to detonate a radiological “dirty bomb.”

NO CHARGES!

Abu Zubayda disclosed Padilla's role accidentally, apparently. While making small talk, he described an Al Qaeda associate he said had just visited the U.S. embassy in Pakistan. That scrap was enough for authorities to find and arrest Padilla.

These early revelations were greeted with excitement by Tenet, until he was told they were extracted not by his officers but by the rival team at the FBI. Tenet, according to an account given by Ron Suskind, was under extraordinary pressure from Bush to produce breakthrough intelligence from Zubayda, whose capture the President had sold to the country as a major coup.

"AZ," an informed source said of Zubayda, "was talking a lot." The FBI agents believed they were getting "phenomenal" information. In a matter of days, a CIA team arrived and took over, freezing out the FBI. The apparent leader of the CIA team was a former military psychologist named James Mitchell, whom the intelligence agency had hired on a contract. Oddly, given the Agency's own dearth of experience in the area of interrogating Islamic extremists, he had no background in the Middle East or in Islamic terrorism. He spoke no Arabic and he knew next to nothing about the Muslim religion. He was himself a devout Mormon. But others present said he seemed to think he had all the answers about how to deal with Zubayda. Mitchell announced that the suspect had to be treated "like a dog in a cage," informed sources said. "He said it was like an experiment, when you apply electric shocks to a caged dog, after a while, he's so diminished, he can't resist."

The FBI agents, with their traditions of working within the U.S. criminal legal framework, were appalled. They argued that Zubayda was not a dog, he was a human being.

Mitchell, according to the informed sources, retorted, "Science is science."

Horried, the agents demanded to know if he had ever read anything about the Middle East. Had he ever worked with Islamic extremists? They reported back to their bosses at the FBI that the psychologist had admitted he hadn't but had argued that it made no difference.

According to the version of events that circulated through the FBI, what happened next was that Zubayda completely shut down. After ten to fifteen days, the FBI agents had to be brought back in, at which point he began talking again. But, FBI sources claimed, they were once again expelled on orders from Washington, because President Bush had chosen the CIA as the lead agency. Mitchell then reappeared.

By then, as a source described that the interrogators needed ing to one version of events, v cials to have Mitchell arrested

Fearful that they would be what Mitchell proposed doing the following days, reports of rungs of the FBI, causing the personnel from participating use of these controversial met many of its most experienced interrogations of the most va with no great interest in pros play by the rules.

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Mitchell, a retired military to put on contract in such an ica's war on terror. He had, pertise in fighting Islamic t interrogator. Indeed, accordi rogator, Mitchell had not eve extensive experience in design toring torture techniques tha elsewhere in the civilized wo sultant to the CIA for an und ogist assigned to a secretive r other personnel at high risk taught these potential captiv treme forms of abuse should t hands of a dishonorable enem acronym for Survival, Evasion it was that by subjecting U world could mete out, but d trolled setting, the soldiers c increasing their chances of re torture in real life. Psycholog

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By then, as a source described him, he was "desperate." He announced that the interrogators needed to get tougher. The FBI agents, according to one version of events, were so appalled they urged top FBI officials to have Mitchell arrested. //

Fearful that they would be implicated, and adamantly opposed to what Mitchell proposed doing, the FBI agents picked up and left. In the following days, reports of deliberate prisoner abuse reached the top rungs of the FBI, causing the Director, Mueller, to bar the Bureau's personnel from participating in the CIA's coercive interrogations. The use of these controversial methods thus deprived the United States of many of its most experienced terrorism experts. It also abandoned the interrogations of the most valuable suspects to intelligence officials with no great interest in prosecuting them, lessening the incentive to play by the rules.

Before the FBI agents left, they relayed to their bosses an interesting exchange about torture they said they had with Mitchell. "We don't do that," they said they had protested. "It's what our enemies do!" Mitchell, they said, denied that he was using torture. Instead, he referred oddly to its being all about countering "resistance."

Mitchell, a retired military psychologist, would seem an odd choice to put on contract in such an immensely sensitive position in America's war on terror. He had, as the FBI discerned, no particular expertise in fighting Islamic terrorism. He also had never been an interrogator. Indeed, according to one colleague who was an interrogator, Mitchell had not even observed an interrogation. But he had extensive experience in designing, testing, implementing, and monitoring torture techniques that were illegal in the United States and elsewhere in the civilized world. Before signing on as a private consultant to the CIA for an undisclosed fee, he had worked as a psychologist assigned to a secretive military training program for pilots and other personnel at high risk of getting captured by enemy forces. It taught these potential captives how to resist torture and other extreme forms of abuse should they have the misfortune to fall into the hands of a dishonorable enemy. The program is known as SERE, an acronym for Survival, Evasion, Resistance, Escape. The theory behind it was that by subjecting U.S. soldiers to the worst treatment the world could mete out, but doing so in a limited and carefully controlled setting, the soldiers could inoculate themselves emotionally, increasing their chances of resisting should they ever be subjected to torture in real life. Psychologists such as Mitchell helped select and

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train the personnel, then calibrated the torment so that it would be safe but effective.

As such, SERE was a repository of the world's knowledge about torture, the military equivalent, in a sense, of the lethal specimens of obsolete plagues kept in the deep-freeze laboratories of the Centers for Disease Control. SERE was a defensive program, meant to protect American soldiers from torture. But in the CIA's hands after September 11, critics close to the program said, it was "reverse-engineered" into a blueprint for abuse. Mitchell, his partner John Bruce Jessen, and other SERE personnel were by many accounts instrumental to this process, training interrogators and helping to design the harsh CIA protocol for questioning high-value detainees that came to be known as "The Program."

Reached for comment, Mitchell declined to discuss his role. "If that was true," he said about working with the CIA, "I couldn't say anything about it." While he said he couldn't discuss his work on any particular cases, he also stressed that "I don't have anything to hide." The press office at the CIA also declined to publicly confirm Mitchell's relationship with the Agency but said that the Agency's interrogation program was lawful and had produced vital intelligence. In response to a story on *Vanity Fair* magazine's Web site, Mitchell and Jessen released a prepared statement saying, "We are proud of the work we have done for our country. The advice we have provided, and the actions we have taken have been legal and ethical. We resolutely oppose torture. Under no circumstances have we ever endorsed, nor would we endorse, the use of interrogation methods designed to do physical or psychological harm."

The SERE program was a strange choice for the government to pick if it was seeking to learn how to get the truth from detainees. It was founded during the Cold War in an effort to re-create, and therefore understand, the mistreatment that had led thirty-six captured U.S. airmen to give stunningly false confessions during the Korean War.

The most infamous was the confession of the U.S. pilot Frank Schwable in 1953. After the war, U.S. authorities pored over Schwable's experience, hoping to understand how he had been coerced into telling such egregious lies. They discovered that the North Koreans had used a deliberate program of physical and psychological torture. While the physical abuse was bad, Schwable and other former captives described the psychological abuse as worse. It began with two weeks of isolation in which, Schwable said, "your judgment becomes warped . . . You get

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a feeling of utter, hopeless despair. It was followed by humiliation, including a gambit in which guards barked and growled at Schwable, who was caged, making him feel like a dog. Naked, unbathed, and unshaved, he was demeaned in every way, kept under constant surveillance, forced even to defecate in front of his captors.

Later, in explaining how he broke down and agreed to give his infamous false confession, he noted that he had been spared the ghastly physical torment inflicted on some of his fellow soldiers. But in an eye-opening statement, he suggested that his psychological ordeal may have been worse. "Mine was a more subtle kind of torment," he said. "That kind is a little harder, I am afraid, for the people to understand." Instead of battle scars, all he could point to was the "slow, quiet, and diabolical" destruction of his mind.

Inside the military and CIA, Schwable's account was greeted with alarm. From the start of the Cold War, the CIA had been obsessively studying Stalin's show trials, trying to fathom what secret methods the Communists used to produce such convincing false statements from Soviet political prisoners. In an era when terms like "brainwashing" were current, and Richard Condon's *The Manchurian Candidate* was a bestseller, the CIA secretly tried to match the Communists' methodology, experimenting itself with a variety of psychological and chemical approaches to mind control.

In 2007, the CIA's declassification of long-held secret documents, known as "the Family Jewels," shed new light on the Cold War-era drug experiments. The papers documented experiments on rats and monkeys, as well as the infamous case of Frank R. Olson, an Agency employee who leaped (or some say was pushed) to his death from a hotel window in 1953, nine days after he was unwittingly drugged with LSD. The CIA experimented with substances such as sodium pentothal, as well as hypnosis and electroshock treatment. But most of this in-house research resulted in little more than lawsuits.

There was, however, one promising avenue of research into how to render human subjects pliant. It focused on the surprisingly powerful effects of psychological manipulations, such as extreme sensory deprivation. Many of these behavioral experiments were outsourced to brilliant research scientists at top universities in the United States and Canada. No one produced more significant breakthroughs than Donald Hebb, a psychologist at McGill. According to Alfred McCoy, a history professor at the University of Wisconsin, Madison, who has written extensively on the CIA's experiments in coercing subjects, the

Agency learned from Hebb that "if subjects are confined without light, odors, sound, or any fixed references of time and place, very deep breakdowns can be provoked."

Hebb found that in as few as forty-eight hours some subjects suspended in water tanks—or confined in air-conditioned isolated rooms wearing blacked-out goggles, gloves, and earmuffs—regressed to semi-psychotic states. "I had no idea what a potentially vicious weapon this could be," Hebb admitted in an interview.

To extract confessions—and false confessions were the focus of the Agency's research—the CIA concentrated on two discoveries in particular: "self-inflicted pain," a Soviet technique in which merely being forced to stand for long periods of time proved unbearable, and "sensory deprivation." An advantage of the latter technique, McCoy said, was that subjects became so desperate for human interaction that "they bond with the interrogator like a father, or like a drowning man having a lifesaver thrown at him. If you deprive people of all their senses, they'll turn to you like their daddy."

The CIA gathered all it learned about coercive interrogations in what's regarded as the bible of psychological torture, the 1963 KUBARK Manual, and its companion, the 1983 Human Resource Exploitation Training Manual. These classified documents were never meant to be read by the public, but they were divulged in 1997, after a protracted Freedom of Information lawsuit waged by the *Baltimore Sun*. Their publication stirred recriminations and promises from the Agency to abandon all such morally and ethically offensive human experimentation. McCoy noted that by then the Agency had already discontinued most such work. "After the Cold War, we put away those tools. There was bipartisan reform. We backed away from those dark days," he said.

But after September 11, he said, "under the pressure of the war on terror, they didn't just bring back the old psychological techniques—they perfected them."

During the years that the CIA's mind-control experiments were dormant, however, similar research continued in the military's SERE program. After the Vietnam War, the program was expanded from training Air Force pilots, such as those who had been captured by the North Koreans, to include Special Forces and other elite personnel in the Army and the Navy. By 2001, the flagship program on how to resist torture was run at the Army's John F. Kennedy Special Warfare Center and School at Fort Bragg, North Carolina. Most details of the

curriculum were classified. Part of SERE courses; one, Level 1, trainees endured days of physical punishment, including waterboarding and exposure to agonizing sound and temperature extremes, among others.

A small number of psychologists were involved in the SERE programs. The superiors monitored their progress at frequent intervals, and they documented their behavior and medical status. By analyzing blood samples, scientists could pinpoint trainees' level of cortisol, a stress hormone. Psychologists pinpoint what trainees were thinking.

In general, the best way to break a person down, learned, was to create an environment where they were therefore hooded; their eyes were closed; they starved for extended periods; they were subjected to harsh conditions; they were enemy captors. Research in social psychology for "self-regulation"—the ability to control behavior—could be substantiated. If, for instance, a prisoner was subjected to enemy interrogators, the prisoner was deprived of sleep or was

Many of the program's officers were former soldiers. But "some of the former soldiers," a source said, got carried away. "They were in roles, week after week," he said. "There is no scientific basis for the methods work better than others." Some of the SERE psychologists were one to talk "you have to hurt them." Special Forces can be heady. The source recalled that he felt personally unfulfilled. He had the opportunity to kill

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curriculum were classified. But sources said there were several levels of SERE courses; one, Level C, included a grueling exercise in which trainees endured days of physical and psychological hardship inside a mock prisoner-of-war camp. Trainees were subjected to simulated torture, including waterboarding, sleep deprivation, isolation, bombardment with agonizing sounds, sexual and religious humiliation, and temperature extremes, among other "challenges," as they were called.

A small number of psychologists and other clinicians oversaw the SERE programs. The supervisors discreetly checked on trainees' progress at frequent intervals, keeping extensive charts and records of their behavior and medical status. Numerous experiments aimed at documenting trainees' stress levels were conducted by SERE-affiliated scientists. By analyzing blood and saliva, they charted fluctuations in trainees' level of cortisol, a stress hormone. The data helped the psychologists pinpoint what treatment inspired maximum anxiety.

In general, the best way to stimulate acute anxiety, SERE scientists learned, was to create an environment of radical uncertainty. Trainees were therefore hooded; their sleep patterns were disrupted; they were starved for extended periods; they were stripped of their clothes; and they were subjected to harsh interrogations by officials impersonating enemy captors. Research in social psychology showed that a person's capacity for "self-regulation"—the ability to moderate or control his own behavior—could be substantially undermined in situations of high anxiety. If, for instance, a prisoner of war was trying to avoid revealing secrets to enemy interrogators, he was much less likely to succeed if he was deprived of sleep or was struggling to ignore intense pain.

Many of the program's officials were careful and dedicated public servants. But "some of the folks" associated with the program, an inside source said, got carried away. "They'd play these very aggressive roles, week after week," he said. "It can be very seductive." Although there is no scientific basis for believing that coercive interrogation methods work better than less aggressive ones, the source said that some of the SERE psychologists he knew believed that to get someone to talk "you have to hurt that person." The warrior culture of the Special Forces can be heady and contagious for those working as support staff. The source recalled one SERE psychologist confiding that he felt personally unfulfilled because, unlike the soldiers, he'd never had the opportunity to kill anyone.

Retired Army Colonel Patrick Lang, who was both a Special Forces officer and a Defense Intelligence Agency expert on the Middle East,

said that he had attended a SERE school in both the captive role and that of the interrogator, and had found the experience disconcerting: "Once, I was on the other side of the exercise, acting as interrogator," he said. "If you did too much of that stuff, you could really get to like it. You can manipulate people. And most people like power. I've seen some of these doctors and psychologists and psychiatrists who really think they know how to do this. But it's very easy to go too far."

"The idea in SERE," the inside source said, "is to poke and find out what gets an emotional rise out of someone. The underlying theory is that if I can control your emotions, then I can manipulate you. It ties in to sadism," he said. He described Mitchell, whom he knew professionally, as someone who in his opinion enjoyed the work a little too much. "He likes getting reactions out of people. He's interested in being seen as someone who has power over other people's minds," he said.

It's not yet possible to pinpoint exactly how and when the CIA first turned to the SERE program for advice on how to interrogate its own captives. But a well-informed and reliable source who worked closely with the intelligence community after September 11 said that as the Agency struggled to design an interrogation and detention program on the fly, it turned to psychologists in its own scientific division for advice about what might work to "break" terror suspects. Leery about what they saw as potentially unethical and illegal uses of science, many of the Agency's own scientists recoiled. He said their reaction was "Don't even think about this!" They thought officers could be prosecuted." Like the senior CIA officer who advised Kiriakou not to get involved as an interrogator, many in-house scientists sensed a boundary that the U.S. government shouldn't cross. Some top CIA officers, including R. Scott Shumate, the chief operational psychologist for the CTC from 2001 until 2003, left the Agency, apparently in disagreement over what he believed was a misuse of the SERE techniques. At the CIA, Shumate had reported directly to Cofer Black. Shumate then went to the Pentagon, where he became head of the Behavioral Sciences Directorate within the Counterintelligence Field Activity. He declined to comment, but associates described him as upset in particular about the treatment of Zubayda.

Top counterterrorism officials at the Agency were determined, however, to press on with the coercive techniques. At some point, the source said, a CIA officer who could not be identified, whom a colleague at the

Agency described as "a noble" who was "in charge of" the former SERE school psychology and been sidelined from eager to get involved. "Mike" with the intelligence community were wimps, he said they were clean-cut, polite Mormons. They were prepared to do what psychologists," he said, "because justification for doing what a man to tell them that they c

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Agency described as "a nobody—a pocket-protector-wearing Joe Molecule" who was "in charge of the shrinks on the science side," turned to the former SERE school psychologists. Having retired from the military and been sidelined from the war on terror, Mitchell and Jessen were eager to get involved. "Mike knew these guys," the source working with the intelligence community recounted, "and when his colleagues were wimps, he said they would fit the bill. They were good-looking, clean-cut, polite Mormons. The pressure was on to take the gloves off. They were prepared to do whatever it takes." The Agency turned to psychologists," he said, "because they wanted some kind of psychological justification for doing what they were doing. They wanted a theoretician to tell them that they could go hard but not seem like brutes."

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On March 29, 2002, the day after Zubayda was captured, Mitchell reportedly closed a private consulting firm he'd opened just a few months before. Called Knowledge Works, LLC, the venture was launched with another former SERE psychologist, John Chin. Mitchell's main corporate base became a second-floor suite of offices behind a locked door in Spokane, Washington, doing business under the name Mitchell, Jessen & Associates, not far from the Air Force's SERE school program.

Soon, the former SERE psychologists were training CIA interrogators and advising the CIA on implementing a program that one knowledgeable source describes as "a Clockwork Orange kind of approach." As psychologists, they were unusually well-equipped to understand the human psyche. Jonathan Moreno, a professor of biomedical ethics at the University of Virginia and a scholar of state-sponsored experiments on humans, noted, "If you know how to help people who are stressed, then you also know how to stress people in order to get them to talk." A scientific source close to the situation said, "They took good knowledge and used it in a bad way."

Central to Mitchell's thinking, associates said, was the work of one of America's best-known and most successful psychologists, Martin Seligman, the former president of the American Psychological Association and an esteemed professor in the Department of Psychology at the University of Pennsylvania. It was Seligman's experiments with dogs to which Mitchell had referred when defending his approaches to the FBI. In the 1960s, Seligman and colleagues at the University of Pennsylvania pioneered work on a theory he called "Learned Helplessness." He did experiments with dogs in which he used elec-

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tric shocks to destroy their will to escape from a cage. By shocking a dog repeatedly and randomly, he discovered, he could brutalize it emotionally into a state of complete passivity. The dog had learned helplessness. It could no longer recognize an opportunity to escape, or else was too afraid to take it.

In the spring of 2002, the period during which the CIA was probing what it could do to Zubayda, Seligman was invited by the CIA to speak at the Navy's SERE school in San Diego. Among the organizers was Kirk Hubbard, Director of Behavioral Sciences Research at the CIA until 2005. Neither Hubbard nor Seligman would comment on the special briefing. But in an e-mail Seligman acknowledged that he spoke for three hours. Seligman emphasized that his talk was aimed at helping American soldiers "resist torture," not inflict it. But whether Seligman wanted his discoveries applied as they were or not, Mitchell cited the uses of Learned Helplessness in handling human detainees. According to Steve Kleinman, a reserve Air Force colonel and an experienced interrogator who has known Mitchell professionally for years, "Learned Helplessness was his whole paradigm." Mitchell, he said, "draws a diagram showing what he says is the whole cycle. It starts with isolation. Then they eliminate the prisoner's ability to forecast the future—when their next meal is—when they can go to the bathroom. It creates dread and dependency. It was the KGB model. But the KGB used it to turn people who had turned against the state to confess falsely. The KGB wasn't after intelligence." Kleinman had been a SERE instructor himself, and in his view, the reverse-engineering of the science was morally, legally, and tactically wrong. He described the CIA's reliance on Mitchell as "surreal."

Asked about his theories, Mitchell noted that Seligman was "a brilliant man" and that his experiments were "good science." But through a lawyer, he disputed that Learned Helplessness was the model he used for the CIA interrogation program. Nevertheless, soon after he arrived in the CIA's black site in Thailand, Abu Zubayda found himself naked in a small cage, like a dog.

The extraordinary secrecy surrounding the CIA's program makes it hard to describe with certainty what happened next to Zubayda. But a closely held investigative report written by the International Committee for the Red Cross for the detaining authority, the CIA, which shared it with the President and the Secretary of State, in 2007 described the treatment regime that he underwent, categorically, as

"torture" and warned that the highest officials in the U.S. executed, sources familiar with and only outside group to highly prized detainees. They the outside world for five years them. While the ICRC would which it does not share with iar with the report say that prolonged spans of time in a

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"torture" and warned that the abuse constituted war crimes, placing the highest officials in the U.S. government in jeopardy of being prosecuted, sources familiar with the report said. The ICRC was the first and only outside group to gain access to the CIA's fourteen most highly prized detainees. They were held in complete isolation from the outside world for five years before the relief group got to speak to them. While the ICRC would neither confirm nor deny the details, which it does not share with the public or press, other sources familiar with the report say that Abu Zubayda described being kept for prolonged spans of time in a cage that he called "a tiny coffin."

He recounted that the worst treatment he received didn't start until some weeks after he was captured. He believed he was held in one place for six weeks, then moved to a second for two more, and then finally to a third place, where the rough treatment began. His tormentors, he and the other detainees said, never used the word "torture." Instead, they talked about doing "hard time." The credibility of his account is impossible to gauge. He clearly had political and self-serving reasons to exaggerate his mistreatment, and U.S. officials repeatedly stressed that Al Qaeda members were trained to invent accusations of torture. But interestingly, both the timetable he supplied and the euphemisms for torture he described dovetail with the legal maneuvering taking place at the same time in Washington. Additionally, the details of The Program, as described by the detainees, not only are consistent with each other's accounts, despite the fact that they had no occasion to compare notes, they also echo uncannily the ostensible mock torture of the SERE program.

Zubayda's "hard time" began when he was locked into the "tiny coffin" for hours on end, which he described as excruciatingly painful. It was too small for him to stand or stretch out, so small he said he had to double up his limbs in a fetal position. Because of his recently healed injuries, he described this position as particularly agonizing, since it caused his wounds to reopen. He described the box as black, both inside and out, and said that it was covered in towels, which he thought was an effort to constrict the flow of air inside. While locked in the dark interior, he had no way of knowing when, if ever, he would be let out. But he related that most of the sessions lasted less than a day at a time, and were started and stopped during the course of one week. A source familiar with Zubayda's account described the tiny coffin box as "unbearable, most terrible." Article 21 of the Third Geneva Con-

vention—which applies to all prisoners of war—specifically prohibits such forms of cruelty, which are classified as “close confinement.”

A CIA source with access to the cable traffic concerning Zubayda's interrogation confirmed Zubayda's account, saying he was put “in a dog crate—a little cage. They made him stay in it overnight.” He said, “They tried it a few times—it was before they got waterboarding authority” from the Justice Department. This suggests that the painful confinement took place prior to the completion of the OLC's torture memo. But interestingly, the CIA source related, “It didn't work.” He said, “It pissed him off. He just got more uncooperative.” Given that the CIA was awaiting authority to go harder, it seems clear that the lesson learned in Washington from this early experiment was that more force, not less, was needed.

Zubayda told the ICRC that the cell in which he was isolated during this period looked out directly at the “tiny coffin” and another slightly larger cage. These two boxes loomed large in his imagination, even when he was not confined in them, blocking his line of sight as an omnipresent threat.

One unconfirmed account described the CIA interrogation team as building a coffin in which they reportedly threatened to bury Zubayda alive. Mock burials and threats of death are universally regarded as forms of torture. But it may be that the report was referring to the “tiny coffin,” rather than a real one. In either case, Zubayda was not literally buried in it, but he was confined in it in a manner that would have been considered a grave breach of the Geneva Conventions had the United States still observed it.

According to this account, in keeping with the Learned Helplessness theory, the CIA interrogators also announced that they planned to become Zubayda's “God.” They reportedly took his clothing as punishment, and reduced his human interaction to a single daily visit in which they would say simply, “You know what I want,” and then leave.

Accurately or not, Bush Administration officials later described the abuses at Abu Ghraib and Guantánamo as the unauthorized actions of a few ill-trained personnel. By contrast, CIA officials have never denied that the treatment of the high-value detainees was expressly approved by President Bush. The program was closely monitored by CIA lawyers and supervised by the Agency's director and his subordinates in the Counterterrorist Center. Tenet, through a spokesman, denied that he personally reviewed daily dossiers describing the interrogations under way in the black prison sites, as some Agency officials

have stated. But according to cer, “Every single plan was dra mitted for approval to the high of the CIA. Any change in the treatment was added—was sig top CIA lawyer, when asked v were aware of the harrowing sites, said, “I'm afraid so. You adult supervision. But you wou

Kiriakou made the interro “Mother, May I?” He said, “It v tor to decide ‘I'm going to slap one of these, though they're m Deputy Director for Operation James Pavitt. “Before you could cable saying, ‘He's uncooperati permission would come, saying in the belly with an open hand hours.’” The program, Kiriakou was, however, no known instan to use more force.

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have stated. But according to a deeply involved former Agency officer, "Every single plan was drawn up by interrogators, and then submitted for approval to the highest possible level, meaning the director of the CIA. Any change in the plan—even if an extra day of a certain treatment was added—was signed off on by the Director." A former top CIA lawyer, when asked whether senior administration officials were aware of the harrowing treatment going on inside the black sites, said, "I'm afraid so. You might have thought there was some adult supervision. But you would have been wrong."

Kiriakou made the interrogations sound almost like a game of "Mother, May I?" He said, "It was not up to the individual interrogator to decide 'I'm going to slap him' or 'I'm going to shake him.' Each one of these, though they're minor, had to have the approval of the Deputy Director for Operations," who during most of this period was James Pavitt. "Before you could lay a hand on him, you had to send a cable saying, 'He's uncooperative. Request permission to do X.' And permission would come, saying 'You're allowed to slap him one time in the belly with an open hand . . . or keep him awake for forty-eight hours.'" The program, Kiriakou said, was "extremely deliberate." There was, however, no known instance of the supervisors denying a request to use more force.

The system, which grew to include many more than the top fourteen most-prized prisoners, was remarkable for its mechanistic aura. "It's one of the most sophisticated, refined programs of torture ever," said an outside expert familiar with the protocol. "At every stage, there was a rigid attention to detail. Procedure was adhered to almost to the letter. There was top-down quality control and such a set routine, you get to the point where you know what each detainee is going to say because you've heard it all before. It was almost automated. People were utterly dehumanized. People fell apart. It was the intentional and systematic infliction of great pain, masquerading as a legal process. It was just chilling."

Among the CIA's fourteen highest-value detainees, eleven evidently told the ICRC that they were kept completely naked for prolonged periods of time, including Zubayda. Most said they were doused repeatedly with cold water and kept in frigid temperatures, sometimes, such as in the case of Khalid Sheikh Mohammed, for at least a month.

Sexual humiliation was a regular feature of the SERE program. In addition, the notion that Arabs were particularly vulnerable to it became an article of faith among many conservatives in Washington.

who were influenced by a book that obtained something of a cult status, *The Arab Mind* by Raphael Patai, a study of Arab culture and psychology first published in 1973. A cultural anthropologist, Patai included a twenty-five-page chapter on Arabs and sex, depicting the culture as crippled by shame and repression. "The segregation of the sexes, the veiling of the women . . . and all the other minute rules that govern and restrict contact between men and women, have the effect of making sex a prime mental preoccupation in the Arab world," Patai wrote. Homosexual activity, "or any indication of homosexual leanings, as with all other expressions of sexuality, is never given any publicity. These are private affairs and remain in private." Bush Administration foreign-policy intellectuals soon held two articles of faith about Arabs, as a source put it, "one, that Arabs only understand force, and two, that the biggest weakness of Arabs is shame and humiliation." Both ideas became mainstays of the interrogation program.

Unexpectedly, perhaps, the most excruciating of the physical treatments for detainees was among the slowest and least dramatic—"long-time standing," the stress position mastered by the Communists that had been studied and copied in the behavioral experiments of the CIA. The detainees told the ICRC that it became extremely painful over time. They described not just standing, but being kept up on their tiptoes with their arms extended out and up over their heads, attached by shackles on their wrists and ankles, for what they described as eight hours at a stretch. During the entire period, they said they were kept stark naked and often cold. This process was repeated every day for two or three months in some cases. Some told the ICRC about having wounds in both their wrists and ankles where the shackles had cut through their skin. "For many, many hours, they were kept there, hurting like crazy," a source familiar with the ICRC report said. "They felt like worms, too, naked, exposed, in front of the world."

In addition to keeping a prisoner awake, the simple act of remaining upright can over time cause significant physical damage. McCoy, the historian, noted in his 2006 book *A Question of Torture* that the Soviets found that making a victim stand for eighteen to twenty-four hours can produce "excruciating pain, as ankles double in size, skin becomes tense and intensely painful, blisters erupt oozing watery serum, heart rates soar, kidneys shut down, and delusions deepen."

One detainee who claimed that he was subjected to stress standing was Tawfiq Bin Attash, also known as Khallad, who was alleged to be one of the masterminds of the attack on the USS *Cole* and involved in

the planning of the East African difficult technique for him, below the knee following an injury a prosthesis, but he told the ICRC forced to stand in this stress position prosthesis away, so that he had to rely by his arms.

Zubayda also said his interrogation with the details, but not present, naming the SERE module on him. They hit him, and he collapsed.

Six of the fourteen high-value detainees against the walls, according to sources. Zubayda described being thrust against the wall. In the beginning, he said, he was wrapped around his neck. This was ascribed to Israeli advice. Later, he became more technically proficient, something akin to a dog collar, around prisoners' necks. Evidently, the collar enabling the handler to have better control, during which he'd been seen. He said he found himself waking up released from it, he said, he discovered walls in plywood, apparently to reduce the hazard of torture is a subject's injury. The CIA kept a physician on hand who could boast truthfully that none of the detainees were killed.

Eleven out of the fourteen also experienced deprivation regimes. It is unclear for any given stretch, but in Iraq, techniques keeping prisoners awake for long periods. The CIA's high-value detainees saw them intermittently for up to three months by bright lights and eardrum-shaking noise day for weeks on end. The noise was loud, in the case of Abu Zubayda, he described, a tape resembling the sound of the SERE program, scientists discovered.

the planning of the East African embassy bombings. It was an acutely difficult technique for him, because he had had one leg amputated below the knee following an injury in the Afghan-Soviet War. He had a prosthesis, but he told the ICRC that during the period that he was forced to stand in this stress position, the American captors took his prosthesis away, so that he had to balance himself on one foot, or hang by his arms.

Zubayda also said his interrogators beat him. A source familiar with the details, but not present at the time, said, "They started running the SERE module on him. He had shrapnel in his abdomen. They hit him, and he collapsed."

Six of the fourteen high-value detainees said they were slammed against the walls, according to sources familiar with the ICRC report. Zubayda described being thrust headfirst against a bare concrete wall. In the beginning, he said, he was propelled just by a towel that was wrapped around his neck. This was the method that a top CIA officer ascribed to Israeli advice. Later, however, the interrogators apparently became more technically proficient. Zubayda reported that they used something akin to a dog collar, a thick plastic strip that encircled the prisoners' necks. Evidently, the collar could be attached to a lead, enabling the handler to have better leverage. After one of the early sessions, during which he'd been smashed into the concrete, Zubayda said he found himself waking up in the coffin box. When he was released from it, he said, he discovered that his captors had covered the walls in plywood, apparently to cushion the blows. The occupational hazard of torture is a subject's injury or death. To guard against these, the CIA kept a physician on hand at all times. As a result, the Agency could boast truthfully that none of its fourteen most valued prisoners were killed.

Eleven out of the fourteen also described being subjected to sleep-deprivation regimes. It is unclear how long detainees were kept awake for any given stretch, but in Iraq there were reports of U.S. authorities keeping prisoners awake for as long as ninety-six hours. Some of the CIA's high-value detainees said they were deprived of sleep intermittently for up to three months. They described being bombarded by bright lights and eardrum-shattering sounds twenty-four hours a day for weeks on end. The noise ranged from the Red Hot Chili Peppers, in the case of Abu Zubayda, to rap, chants, and, in one prisoner's description, a tape resembling the soundtrack from a horror movie. In the SERE program, scientists discovered that "noise stress" was often

more difficult for trainees to endure than anything else, including waterboarding. SERE personnel found that the most stress-inducing sound for many was a recording of babies crying inconsolably. Evidently, the interrogators brought a certain twisted humor to their DJ duties, searching for sounds they believed would be particularly insufferable. Among their choices were the "meow"s from cat-food commercials, Yoko Ono singing, and Eminem rapping about America.

The effects of sleep deprivation, however, were well known to be serious. Menachem Begin, the Israeli Prime Minister from 1977 to 1982, who was tortured by the KGB as a young man, described it as so difficult to withstand that it led quickly to false confessions. In his book *White Nights: The Story of a Prisoner in Russia*, he wrote, "In the head of the interrogated prisoner, a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep. Anyone who has experienced this desire knows that not even hunger and thirst are comparable with it.

"I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them. He did not promise them their liberty; he did not promise them food to sate themselves. He promised them—if they signed—uninterrupted sleep! And, having signed, there was nothing in the world that could move them to risk again such nights and such days."

A former CIA officer, knowledgeable and supportive of the terrorist interrogation program, said simply, "Sleep deprivation works. Your electrolyte balance changes. You lose all balance and ability to think rationally. Stuff comes out." But even in the Middle Ages, when it was called *tormentum insomniae*, professional torturers eschewed sleep deprivation, recognizing that the illusions and delusions it caused were more apt to produce false confessions than real ones. Historically, it was the favored choice only of witch hunters, who believed it accurately revealed evidence of pacts with the devil. For decades, it was defined in the United States as an illegal form of torture. An American Bar Association report, published in 1930 and cited in a later U.S. Supreme Court decision, said, "It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired." But it became American policy in 2001, and continues to be.

In February 2008, the Bush Administration acknowledged publicly for the first time that it had in fact, as had been previously reported, used what is often considered the most notorious of the U.S.

interrogation tactics—waterboarding—on suspects, including Zubayda. Torturer Michael Hayden said U.S. soldiers waterboarded Khalid Sheikh Mohamad in 2002 and 2003. The nonprofit Human Rights Watch, in its editorial pages, including that which called for the Justice Department to release a list of top administration officials who had used the technique; it's illegal," the *Los Angeles Times* wrote.

As recently as 1983, the Justice Department had called waterboarding as a crime. Testimony from the Bush Administration, acting on the advice of the CIA, however, that in the view of the CIA, "it is not torture if 'subject to strict controls.'" Laying out the theories for the first time in public, he calmly explained that it was "distressing or uncomfortable, even painful, but it does not involve severe physical pain, and it does not constitute severe physical suffering."

The Bush Administration's lack of acknowledgment of waterboarding was anything but innovative and encyclopedic book *The Torture Code* the practice running from the 19th century in Nazi Germany, the French Revolution, Latin American dictatorships, and the 2008 presidential campaign, John McCain's interview with the *New York Times* in which presidential candidates equivocated on the issue is that it was used in the Spanish Civil War, genocide in Cambodia, and the 1970s against Buddhist monks today. It is a complicated procedure. It is not.

Sometime in the summer of 2008, the United States has never disclosed the names of the employees whose identities remain secret. No person ever to be waterboarded in the United States. The first and only person to be waterboarded in the United States happened came from Kiriakou, a former CIA operative. In view he gave ABC News in December 2008 a firsthand witness. He said he learned

interrogation tactics—waterboarding—on three high-value terror suspects, including Zubayda. Testifying before Congress, CIA Director Michael Hayden said U.S. government officials had also waterboarded Khalid Sheikh Mohammed and Abd al-Rahim al-Nashiri in 2002 and 2003. The nonprofit group Human Rights Watch and some editorial pages, including that of the *Los Angeles Times*, immediately called for the Justice Department to launch a criminal investigation of top administration officials for authorizing war crimes. “It’s torture; it’s illegal,” the *Los Angeles Times* editorial proclaimed.

As recently as 1983, the Justice Department had in fact prosecuted waterboarding as a crime. Testifying before Congress on behalf of the Bush Administration, acting OLC Director Steven Bradbury argued, however, that in the view of the Bush legal team waterboarding was not torture if “subject to strict safeguards, limitations and conditions.” Laying out the theories of OLC’s secret legal memos for the first time in public, he calmly explained that “something can be quite distressing or uncomfortable, even frightening, [but] if it doesn’t involve severe physical pain, and it doesn’t last very long, it may not constitute severe physical suffering. That would be the analysis.”

The Bush Administration’s legal arguments were novel, but the use of waterboarding was anything but new. Darius Rejali, in his authoritative and encyclopedic book *Torture and Democracy*, traces variations of the practice running from the Dark Ages on up through the Gestapo in Nazi Germany, the French in the Battle of Algiers, and various Latin American dictatorships, to name just a few. In the midst of the 2008 presidential campaign, John McCain cited this history in an interview with the *New York Times*. As some of his fellow Republican presidential candidates equivocated, he told the paper, “All I can say is that it was used in the Spanish Inquisition, it was used in Pol Pot’s genocide in Cambodia, and there are reports that it is being used against Buddhist monks today [in Myanmar].” He added, “It is not a complicated procedure. It is torture.”

Sometime in the summer of 2002, in a prison whose location the United States has never disclosed, in the hands of U.S. government employees whose identities remain a secret, Zubayda became the first person ever to be waterboarded at the command of the President of the United States. The first and most detailed public account of what happened came from Kiriakou, the former CIA officer, in the interview he gave ABC News in December 2007. But Kiriakou was not a firsthand witness. He said he learned about it from internal CIA com-

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munications. The version he heard, though, was sharply different from Zubayda's.

Kiriakou maintained that Zubayda was waterboarded only once, after he resisted giving his captors actionable intelligence. "He was able to withstand it for quite some time, by which I mean thirty to thirty-five seconds," Kiriakou said. He noted that he and several colleagues at the Agency had practiced waterboarding each other "to see what it felt like," and that none had lasted more than ten or fifteen seconds. He said he had lasted only five seconds himself. "It's a wholly unpleasant experience," he said. "It's a violent thing to go through. It's not pretty to watch. You're strapped down, your head is immobilized, and it's almost like being shocked. You're gagging, and shouting."

According to the CIA version that Kiriakou heard, almost immediately after being waterboarded, Zubayda announced that "Allah had visited him in the night, and told him to cooperate." Right away, Kiriakou suggested, Zubayda started to give the Agency valuable intelligence that led to the "disruption of dozens of attacks," all of which were planned for outside of the United States. "I think he just didn't want to go through it again," said Kiriakou. He noted, "It was considered a big victory inside the CIA."

Indeed, the harsh SERE-like interrogation methods were described to the top officials back in Washington as unalloyed successes. Mitchell was, according to associates, regarded as a hero. By the summer of 2002, he and Jessen were often seen inside the bull pen of the CTC back in Langley, where one former officer remembers them having permanently assigned seats and desks. Rumors of their brilliant results rippled through the rest of the intelligence community. These miraculous breakthroughs were being reported by the practitioners themselves. But only those who participated in the program had access to what went on in it, which made it difficult for anyone outside to evaluate it. Not until Porter Goss became CIA director in 2004 was the program's effectiveness given any independent review. Then the reviewers' report was kept secret, but the verdict was reportedly mixed. "The fact that there was no effective peer review is one of the reasons they got away with it," Philip Zelikow, who served as Executive Director of the 9/11 Commission and later as an aide to Secretary of State Condoleezza Rice, later said. "The program and their claims were never subjected to any independent analysis. They always went back to the same people who were running the program at the Agency to ask if it was working, and they always said it was."

In contrast to the CIA version, he was merely waterboarded once. He was familiar with the report, that he had been waterboarded three times in a single week, often twice a day, and he was waterboarded three times.

His descriptions were consistent with those of other detainees who were waterboarded. He has been put through the process of waterboarding many times. The waterboarding was done in a room with a hard floor. He was strapped down to a hard surface, placed on his back, and his head was elevated. Cloths were put on his eyes and nose. They all felt as if they were drowning. He was then brought back up and given water to drink.

The description was remarkably similar to the description of the U.S. SERE schools. There, a "subject" is strapped to a board and his head is held down. His feet, hands, legs, chest, and head are all held down. They would tell the subject that he was drowning. He would shake his boots. Up to two gallons of water would be poured down his throat from two cups, one in each hand, aimed right for the spot between the lips. This way, both mouth and nose are blocked, creating a terrible drowning sensation. The process has been called "simulated drowning." A former master instructor at the SERE schools said that he had overseen hundreds of waterboardings. He had been waterboarded himself, and he could describe the process accurately to anyone who asked. He related anything. It's slow-motion. You can't even contemplate the inevitability of death. A person goes into hysterics on the first drop. Every drop. You start to choke, and as you gasp, your gag reflex kicks in, and you start to choke, and then you stop. The water doesn't stop until the instructor says stop. And then, for that second, the person has a second to puke and spit up everything. They have an opportunity to determine if they are doing it right with the process." Nance had no idea if it was right and wrong for U.S. soldiers to

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In contrast to the CIA version, Zubayda claimed that he was not merely waterboarded once. He told the ICRC, according to those familiar with the report, that the CIA waterboarded him at least ten times in a single week, often twice a day. On one day, he claimed, he was waterboarded three times.

His descriptions were consistent with those of the other two high-value detainees who were waterboarded, both of whom claimed to have been put through the procedure multiple times. They all said the waterboarding was done in a very precise way. They were strapped down to a hard surface, placed in leather cuffs, and their feet were elevated. Cloths were put on their faces and water was poured on it. They all felt as if they were drowning. They described being tipped down, then brought back up again, and then tipped down again.

The description was remarkably close to the drill practiced in the U.S. SERE schools. There, a "strapdown" team would lay a partially naked subject on a board and buckle him into leather straps at the feet, hands, legs, chest, and head, so that nothing could move at all. They would tell the subject that when he wanted to "talk," he should shake his boots. Up to two gallons of water were poured in a steady stream from two cups, one in each hand of the interrogator. It was aimed right for the spot between the mouth and nose, above the upper lip. This way, both mouth and nose were filled with water, causing a terrible drowning sensation and gag reflex. In the press, the process has been called "simulated drowning." But Malcolm Nance, a former master instructor at the Navy SERE school who estimated that he had overseen hundreds of waterboarding sessions, as well as having been waterboarded himself, argued that the media didn't really explain the process accurately to the American public. "It's not simulated anything. It's slow-motion suffocation with enough time to contemplate the inevitability of blackout and expiration—usually the person goes into hysterics on the board," he said. "You can feel every drop. Every drop. You start to panic. And as you panic, you start gasping, and as you gasp, your gag reflex is overridden by water. And then you start to choke, and then you start to drown more. Because the water doesn't stop until the interrogator wants to ask you a question. And then, for that second, the water will continue, and you'll get a second to puke and spit up everything that you have, and then you'll have an opportunity to determine whether you're willing to continue with the process." Nance had no doubt that waterboarding was torture, and wrong for U.S. soldiers to use on captives. "Our waterboarders are

professional. When the water hits you, you think, 'Oh shit, this is a whole new level of Bad.'"

"Waterboarding works," the former CIA officer who also touted sleep deprivation said. "Drowning is a baseline fear. So is falling. People dream about it. It's human nature. Suffocation is a very scary thing. When you're waterboarded, you're inverted, so it exacerbates the fear. It's not painful, but it scares the shit out of you." (He was waterboarded himself in a training course.) While he had no sympathy for the detainees, the officer was deeply concerned about the impact that these methods had on his colleagues who inflicted them. Experts on torture, such as Rejali, often write of the corrosive and corrupting effect that such animalistic behavior has on discipline, professionalism, and morale. The former officer said that during the "enhanced" interrogations, officers worked in teams, watching each other behind two-way mirrors. Even with this group support, he said, a friend of his who had helped to waterboard Khalid Sheikh Mohammed "has horrible nightmares." He went on, "When you cross over that line of darkness, it's hard to come back. You lose your soul. You can do your best to justify it, but it's well outside the norm. You can't go to that dark a place without it changing you." He said of his friend, "He's a good guy. It really haunts him. You are inflicting something really evil and horrible on somebody."

Without access to solid evidence, it's hard to know which version of Zubayda's treatment was more accurate—the thirty-second waterboarding triumph described by the CIA, or his own account of prolonged and repeated abuse, as told to the ICRC. It's also nearly impossible to settle competing claims about how much valuable intelligence he and other detainees really supplied. Until 2005, an invaluable trove of such documentary evidence existed for the world to see. From the start of Zubayda's capture, the CIA videotaped hundreds of hours of his interrogation, including his waterboarding. The Agency also videotaped the waterboarding of a second high-value detainee, captured later in 2002. Abd al-Rahim al-Nashiri. Top Agency officials have suggested they did so to protect themselves, in case a detainee died, against accusations of carelessness, an explanation that seems less plausible than that they hoped to share the tapes with intelligence experts who were unable to be in the room. The CIA operatives who were involved, however, grew increasingly uneasy that their actions were potentially visible to the entire world. Although the Agency insisted that the Program was legally and politically de-

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fensible, it withheld these tapes from both the 9/11 Commission and a federal court judge in the Moussaoui case. And in 2005, on orders from the head of the Clandestine Services, the Agency destroyed them.

The CIA has said that the tapes were the only existing record of what went on in the interrogation chambers—no verbatim transcripts were made. What the tapes would have shown, and why they were destroyed, would become the focus of a criminal investigation by the Justice Department in 2007. But long before then, Zubayda's behavior on film and off had become the talk of the CTC. As one former CIA officer put it, and another confirmed, "He spent all of his time masturbating like a monkey in the zoo. He went at it so much, at some point I heard he injured himself. They had to intervene. He didn't care that they were watching him. I guess he was bored, and mad."

Another source said, "He masturbated constantly. A couple of guards were worried about it. He wasn't brazen about it—he wasn't facing the camera. He'd do it at night, facing the wall, but it was rigged so there was no place for him to not be seen. This was closed circuit. He complained to the interrogator that he would never have the chance to feel a woman's touch again, and lament that he would never have children. He freaked though, at one point, because there was blood in his ejaculate. He saved it for the doctors in a tissue, to show them in the morning. The doctor said not to worry."

Top Bush Administration officials, including the President, have repeatedly argued that the "enhanced" interrogation techniques used on Abu Zubayda yielded valuable results that justified the costs to America's moral authority. In his 2006 defense of "alternative procedures" for high-value detainees, President Bush cited three "vital" pieces of "the puzzle" supplied by Zubayda because of these new methods.

The first was that "Zubayda disclosed Khalid Sheikh Mohammed" as "the mastermind behind the 9/11 attacks, and used the alias Mukhtar."

The second was that "Abu Zubaydah provided information that helped stop a terrorist attack being planned for inside the United States." Bush added dramatically, "Based on the information he provided, the operatives were detained—one while traveling to the United States."

Bush's third claim was this: "The information Zubaydah provided helped lead to the capture of Ramsi bin al Shibh. And together these two terrorists provided information that helped in the planning and execution of the operation that captured Khalid Sheikh Mohammed,"

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The first claim appears undermined by the 9/11 Commission report. As mentioned earlier, it established authoritatively that in the summer before Al Qaeda attacked, the CIA had already received several reports that Khalid Sheikh Mohammed was involved in terrorist planning against the United States, and specifically, on August 28, 2001, the Agency received a cable reporting that KSM's nickname was "Mukhtar." The Commission noted, "No one made the connection" necessary to unravel the plot in time. Therefore, the information Zubayda gave the Agency on this was redundant. Moreover, Zubayda reportedly told interrogators this before he was harshly treated.

The second claim, regarding the detained terrorist on his way to attack the United States, is generally understood to be a reference to Jose Padilla. Yet it has been widely reported, and undisputed, that Zubayda told interrogators about this, too, prior to being harshly treated.

The third claim, concerning the capture of Ramsi Bin Al Shibh, also seems dubious. It is false that Zubayda alerted authorities to Bin Al Shibh's role in Al Qaeda's September 11 plot, initiating the search for him. There were numerous published reports on Bin Al Shibh—Atta's former roommate in Hamburg—before Zubayda's capture. The Associated Press, the *Washington Post*, and the *Daily News*, among others, all carried stories on this prior to Zubayda's capture.

Moreover, two months before Zubayda was captured, Attorney General John Ashcroft played a "martyrdom" video from Bin Al Shibh at a press conference that he said had been recovered from Mohammad Atef's house after an air strike.

If President Bush meant only that Zubayda provided the information that led to Bin Al Shibh's capture, the picture is less clear, but there is still a major contradiction. Bin Al Shibh was not captured until almost a half a year after Zubayda, on September 11, 2002. The time lag makes it seem far more likely that, as Ron Suskind reported, the key information about Bin Al Shibh's location came not from Zubayda but from an Al Jazeera reporter, who indirectly passed it on to the Emir of Qatar in the summer of 2002.

On April 19, 2002, Al Jazeera correspondent Yousri Fouda, a London-based Egyptian, was given a rare, embargoed interview with Bin Al Shibh and Khalid Sheikh Mohammed, who were together at a safe house in Karachi. On camera they openly took credit for the 9/11 attacks—criminally implicating themselves convincingly enough for any jury in the world to convict them. Fouda said he was astounded not only by the frankness of their boastful confessions but also by

their seeming imperviousness permitted him to reveal that and Mohammed walked out in June 2002, Fouda told his able interviews, which he was on the attacks. Among those man Sheikh Hamad bin Thaqat al-Qatari. Unknown to Fouda, the coup right away. In mid-June CIA with great excitement that us an amazing gift . . . In other Tenet had all the details of Fouda, including the probable location they resided. Soon after, the Shibh's suspected apartment in the Al Jazeera interview to him apparently led to Bin Al Shibh other suspects, on September

Both President Bush, in Tenet, in his memoir, curious roles played by Al Jazeera and the President, claimed that "it Bin Al Shibh." One explanation sensitive foreign intelligence Zubayda did in fact help in situation they already had learned the President and the Director of the CIA misleadingly exaggerated they authorized.

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A former top Bush Administration mind-set, said, "They were listening to the welcoming of other views. It

their seeming imperviousness to the danger of being caught. They permitted him to reveal that they were hiding in the Karachi area, and Mohammed walked out into the open street with him as he left. In June 2002, Fouda told his bosses at Al Jazeera about the remarkable interviews, which he was preparing for a first-anniversary report on the attacks. Among those Fouda confided in was Al Jazeera chairman Sheikh Hamad bin Thamer al-Thani, a cousin of the Emir of Qatar. Unknown to Fouda, the Emir told the CIA all about Fouda's coup right away. In mid-June, Tenet reportedly told his staff at the CIA with great excitement that "my friend the Emir" [of Qatar] "gave us an amazing gift . . . In other words, the fat fuck came through." Tenet had all the details of Fouda's meetings with the terrorists, including the probable location of the building and even the floor where they resided. Soon after, the NSA reportedly pinpointed Bin Al Shibh's suspected apartment by successfully matching his voice from the Al Jazeera interview to his satellite phone. This bit of wizardry apparently led to Bin Al Shibh's capture, along with a number of other suspects, on September 11, 2002.

Both President Bush, in his major address on the subject, and Tenet, in his memoir, curiously omitted any mention of the decisive roles played by Al Jazeera and the Emir of Qatar. Tenet instead, like the President, claimed that "interrogating Abu Zubayda led to Ramsi Bin Al Shibh." One explanation may be that they were protecting a sensitive foreign intelligence source—the Emir. It is also likely that Zubayda did in fact help in some small way to amplify the information they already had learned. But, whatever their motives, it appears the President and the Director of Central Intelligence gave the public misleadingly exaggerated accounts of the effectiveness of the abuse they authorized.

Some might impute dishonest motives to them. But it seems more likely that they fooled not just the public, but also themselves. In the same way that Cheney continued to insist, despite all evidence to the contrary, that Al Qaeda and Saddam Hussein had collaborated on weapons of mass destruction, top Bush Administration officials accepted only the facts that supported their preconceptions. In their use of coercion, they even had a means of manufacturing more such self-justifying evidence.

A former top Bush Administration lawyer, reflecting on the mind-set, said, "They were living in a fantasyland. They were just not welcoming of other views. It was almost like instead of arriving at an

opinion, they were writing briefs—one-sided adversarial arguments. If you're sure you're right, you only want to hear what confirms what you think."

The CIA was caught in the middle between its dogmatic political bosses on one side, and the messy, contradictory, nuanced, and often elusive real-world facts on the other, just as it had been in the run-up to the war in Iraq. Under the pressure, Tenet's instinct, as was almost always true, appears again to have been to please the White House under the pressure. Suskind, for instance, reports that the intelligence agency had doubts about Zubayda's value early on, but that Tenet was so anxious not to disappoint Bush, he couldn't quite admit this. "I said he was important," Bush reportedly told Tenet at one of their daily meetings. "You're not going to let me lose face on this, are you?" "No sir, Mr. President," Tenet replied.

To Daniel Coleman, who was back in Washington working on another FBI fusion team helping the CIA to decipher Zubayda's diaries, the terror suspect's marginal value came as no surprise. The diaries were a huge disappointment. Instead of operational intelligence, they contained hundreds of pages of nearly incoherent blather. Zubayda, he said, wrote in three different voices, giving himself three different names, "Hani 1, 2, and 3," each apparently reflecting himself at a different age. There was poetry. There were religious musings. And there was enough sexual content for a CIA briefer to say that all she had learned from the diary was, "Men are pigs."

Coleman suspected that a head wound Zubayda had received during the Afghan war may have rendered him mentally defective. "He had a schizophrenic personality," Coleman said. "They made more of him than he was." There was no way, Coleman believed, that Bin Laden would have entrusted him with major secrets. "They thought he was a big shot, but he was just a hotel clerk," Coleman said. "They thought they knew who he was, but they didn't."

Rather than accepting Zubayda's limitations, Coleman believed, the Agency had tortured him into telling them what they wanted to hear. Zubayda gave up a few useful tidbits, according to the 9/11 Commission, including the name of an Al Qaeda recruiter who was soon captured. Foes of coercion often argue that it doesn't work. Experts suggest this is misleading. Torture works in several ways. It can intimidate enemies, it can elicit false confessions, and it can produce true confessions. Setting aside the moral issues, the problem is recognizing what's true. Zubayda, for instance, reportedly confessed to

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dozens of half-hatched or entirely imaginary plots to blow up American banks, supermarkets, malls, the Statue of Liberty, the Golden Gate Bridge, the Brooklyn Bridge, and nuclear power plants. Federal law-enforcement officials were dispatched to unlikely locations across the country in an effort to follow these false leads.

"The Agency was putting on a show for the top political people—for the White House—in the daily briefing," Coleman asserted. "Who knows if they really got any intelligence. There's nothing in the way of intelligence that I've seen from the program. It was about face time, and sounding good."

After initially supporting the tormenting of Zubayda, Kiriakou, too, had second thoughts. "At the time, I thought waterboarding was something we needed to do," he said. "But as September 11 passed, I think I've changed my mind. Waterboarding is probably something that we shouldn't be in the business of doing," he concluded, "because as Americans, we're better than that."

For Cofer Black, who had been so anxious to take the gloves off, the new willingness to take more aggressive measures did not seem to bring with it significant career advancement. A colleague said that Black failed to notice in the spring of 2002 that the Bush White House was shifting its focus to the coming war in Iraq. He also overlooked growing jealousy from rivals at the Agency. Black's counterterrorism operation had exploded in size. It rankled some that he seemed intent on spreading his staff's reach globally, even if it meant replicating many of the stations that already existed. Among those whom his expanding empire threatened, according to two sources, was his old friend from their Africa days together, his boss James Pavitt, the head of the entire Operations Division.

"Cofer thought he was at the center of the most important mission," a colleague said. "He was acting wilder and wilder. He said no one could take any money from CTC for Iraq. So he had all this money from Congress, but he wouldn't share it." Instead, the colleague said, Black insisted that he needed more funding and hundreds—even thousands—more people on his staff, and that if he didn't get this, "people were going to die." Everyone expected Black to be dramatic, but this was considered a bit over the top. "He was just fussing and fussing," a colleague recalled. He seemed to divide the world between those who supported his grandiose plans and enemies. "Hey, dude, are you with me or against us?" he asked a startled friend who had assumed that in the Agency they were all on the same side.

The friend said that Black sincerely believed the terrorism situation was so dire, Western civilization hung in the balance. It wasn't an act. His wife told the friend that when Black came home, he would turn off the lights and just sit there in the dark with a glass of something to drink and a cigar, lost in apocalyptic gloom.

Tenet, however, could see the wind shifting in the White House. To staff the coming war in Iraq, essential personnel would have to be taken out of Afghanistan and the fight against Al Qaeda. Tenet could have resisted, as many of his counterterrorism experts wanted. "George had some long nights," John Brennan, his former deputy, said. But again, Tenet sided with his bosses. An assistant, who declined to be named, explained that "Cofer's a terrific field commander—but it was felt at this point that someone a little further from the battlefield, and a bit more of a manager, was needed."

The first clear sign that Black was in trouble came when Tenet assigned three young stars at the Agency to conduct a management study of the CTC. Inevitably, they found flaws. They reported many duplication problems. Black protested, but the office politics were clear. The final blow came when Tenet—in a classic ploy—told Black he had a new assignment for him. Tenet explained that the Agency had a new priority, which he wanted Black to be in charge of: responding to the newly formed 9/11 Commission. Black was deeply upset and hurt, a friend recounted, accusing Tenet of firing him. But Tenet insisted he was not, he just needed Black to spend all of his time preparing for what would inevitably be a grueling investigation.

Tenet appointed Jose Rodriguez Jr., a friend of Pavitt's, to become the new head of the CTC. Other than serving for less than a year as Black's deputy, Rodriguez had no experience or expertise in Islamic extremism. He had spent most of his career in the Directorate of Operations and had a somewhat blemished reputation. The CIA had reprimanded him after he had tried to protect a childhood friend who had become a drug lord, after the friend had been arrested on narcotics charges. Some in the Agency said it sidelined Rodriguez's career, although Rodriguez denies this. It wasn't an auspicious appointment. But a young officer critical of what he saw as Pavitt's tendency toward cronyism, scoffed, "In the Bush Administration, loyalty is the new competence."

By May of 2002, just as his people were taking custody of Zubayda and the tough program he had dreamed of was coming to life, Black left the CTC. Soon after, he retired from the CIA after twenty-eight

years. First, he went to the Deputy Secretary of State R. him appointed the coordinator years later, he moved to the private security firm Blackw raised some eyebrows and fed spector General. During Black of Blackwater contractors. Th ter its largest private security forth looked somewhat incest In the private sector, Black ne ism policy, taking a post as the unsuccessful campaign for th in 2007. The echoes of his th to "double Guantánamo" rath however, the influence of the C ready reached the island.

years. First, he went to the State Department, where his friend, Deputy Secretary of State Richard Armitage, succeeded in getting him appointed the coordinator for counterterrorism. A little over two years later, he moved to the private sector, joining the controversial private security firm Blackwater USA as vice chairman. The move raised some eyebrows and fed into an investigation by the CIA's Inspector General. During Black's tenure, the CTC had hired a number of Blackwater contractors. The State Department, too, gave Blackwater its largest private security contract. The lucrative deals back and forth looked somewhat incestuous, but no wrongdoing was charged. In the private sector, Black nonetheless kept a hand in counterterrorism policy, taking a post as the top terrorism adviser to Mitt Romney's unsuccessful campaign for the Republican presidential nomination in 2007. The echoes of his thinking could be heard in Romney's call to "double Guantánamo" rather than close it down. Long before this, however, the influence of the CIA's extraordinary new methods had already reached the island.

*Black
Romney*

THE EXPERIMENT

We're a nation of law. We adhere to laws. We have laws on the books. You might look at these laws, and that might provide comfort for you.

—President George W. Bush, after being asked if torture was justified, on June 10, 2004

1115: Told detainee a dog is held in higher esteem . . . Began teaching detainee lessons such as stay, come, and bark, to elevate his status to that of a dog. Detainee became agitated . . .

1300: Dog tricks continue . . . Interrogator showed photos of 9-11 victims and told detainee he should bark happy for these people. Interrogator showed photos of Al Qaeda terrorist and told detainee he should growl at these people. A towel was placed on detainee's head like a burka, and interrogator proceeded to give detainee dance lessons.

—Day 28, December 20, 2002,
Interrogation log of Mohammed al-Qahtani

As the first anniversary of September 11 approached and the White House braced for what was considered to be the very real threat of a second major attack on America, frustration practically radiated from the military's prison camp in Guantánamo Bay, Cuba. It had been three-quarters of a year since the first orange-jumpsuit-clad detainees had been unloaded from the war zone in Afghanistan, and the U.S. government had learned almost nothing of importance. In some cases, the government had learned literally

nothing at all. When White House officials reviewed the prisoners' files, they had been told that, for the detainees, there were no details other than just an assigned prisoner number.

The detainees had been described as "among the most dangerous on the face of the earth." They were "on the back" of a military plane, in the phrase of General Richard Myers. They were all "unlawful combatants" under the Geneva Convention.

The Geneva Conventions, and with them the rules formerly required for each prisoner, were an ominous blank slate. In Afghanistan, the prisoners, but Michael Gearty, at the time, described the process as

The CIA, concerned by the information coming from the island, in the words of a senior intelligence analyst, who had been studying Islamic extremism, to find out who was now retired, declined to take part in this sensitive, early recruitment. But after he left the Agency, spending several hours with the detainees, chosen in a random sample of one-third of the prisoners, he found that many of the captives at the time, meaning they had no connection to terrorism whatsoever. His findings suggested, one of the things he knew little or nothing.

"I wanted to speak to them," he recalled in an interview. "I thought the people he believed, were honest with me. They were not fighting some very nasty stuff." Many of them were in a dragnet. They were not fighting, they should not have been there."

One man was a rich Kuwaiti, a different part of the world even than the country he chose was Afghanistan.

nothing at all. When White House staff members had asked to see the prisoners' files, they had been astounded to discover that for some detainees, there were no details of any sort. Not even a name. There was just an assigned prisoner number and a silently uncooperative detainee.

The detainees had been described by Secretary of Defense Rumsfeld as "among the most dangerous, best-trained, and vicious killers on the face of the earth." They would "gnaw through hydraulic lines in the back" of a military plane "to bring it down," in the memorable phrase of General Richard Myers, the Chairman of the Joint Chiefs of Staff. They were all "unlawful combatants," Rumsfeld had declared as they arrived on the island on January 11, 2002, with "no rights under the Geneva Convention." But the decision to sweep away the Geneva Conventions, and with them the Article 5 status hearings formerly required for each prisoner of war, had left the government with an ominous blank slate. In Afghanistan, the military had tried to sort the prisoners, but Michael Gelles, a Navy psychologist involved at the time, described the process as "pure chaos."

The CIA, concerned by the paucity of valuable information emanating from the island, in the late summer of 2002 dispatched a senior intelligence analyst, who was fluent in Arabic and expert on Islamic extremism, to find out what the problem was. The officer, who is now retired, declined to be identified. The report he wrote up from this sensitive, early reconnaissance mission is classified top secret. But after he left the Agency, he described what he found. After spending several hours with each of about two dozen Arabic-speaking detainees, chosen in a random sampling, he concluded that an estimated one-third of the prison camp's population of more than 600 captives at the time, meaning more than 200 individuals, had no connection to terrorism whatsoever. If the intelligence haul was meager, his findings suggested, one reason was that many of the detainees knew little or nothing.

"I wanted to speak to them with no interpreter, just one-on-one," he recalled in an interview. "I just wanted to hear their stories." Some, he believed, were honest with him, others not. Some were involved in "some very nasty stuff." Many, he felt sure, "were just caught in a dragnet. They were not fighters, they were not doing jihad. They should not have been there."

One man was a rich Kuwaiti businessman who took a trip to a different part of the world every year to do charity work. In 2001, the country he chose was Afghanistan. "He wasn't a jihadi, but I told him

he should have been arrested for stupidity," the CIA officer recalled. The man was furious with the United States for rounding him up. He mentioned that every year up until then, he had bought himself a new Cadillac, but when he was released, he said, he would never buy another American car. He was switching to Mercedeses.

There was also the pitiful tale of an Iraqi Shiite who had fled from Saddam Hussein. He had escaped to Iran, where he worked in a shoe factory. He was working there alongside many Afghan immigrants when the Iranians expelled them all to Afghanistan. The Taliban then jailed him as an American "spy" for having supported the U.S.-backed opposition to Saddam Hussein. After September 11, when the United States defeated his Taliban jailers, he fled to Pakistan. But, for a \$5,000 bounty, the Pakistanis arrested him as a foreign terror suspect and turned him over to U.S. officials, who in turn shipped him to Guantánamo. There, in Guantánamo along with him, was the Taliban member who had accused him of being a U.S. sympathizer. "I could barely keep a straight face, listening to him," the CIA officer recalled.

Beneath the dark tales of human folly and bad luck, he feared, was a potentially toxic political problem. "I was very concerned about the system," he said. By imprisoning innocent Muslims indefinitely, outside the reach of any legal review, he said, "I thought we were going to lose a whole damn generation" in the Arab world. Instead of helping the war on terror, Guantánamo was making the world more dangerous. He said he spoke with Major General Michael Dunlavey, the top military commander in Guantánamo at the time. The CIA officer was further disconcerted to learn that the general agreed with him that easily a third of the Guantánamo detainees were mistakes. Later, Dunlavey raised his estimate to fully half the population. There were mental cases and a few teenagers. One was so demented, he was eating his own feces. When Dunlavey, a reservist who was also a judge in the Court of Common Pleas in Erie, Pennsylvania, took command of the base in March of 2002, he had been so dismayed, he'd personally confronted military officials in Afghanistan about sending too many "Mickey Mouse" prisoners. But he was reportedly told to "please shut up and go home."

A later study undertaken by a team of law students and attorneys at Seton Hall University Law School bolstered the CIA officer's anecdotal impressions. After reviewing 517 of the Guantánamo detainees' cases in depth, they concluded that only 8 percent were alleged to have associated with Al Qaeda. Fifty-five percent were not alleged to

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have engaged in any hostile act against the United States at all, and the remainder were charged with dubious wrongdoing, including having tried to flee U.S. bombs. The overwhelming majority—all but 5 percent—had been captured by non-U.S. players, many of whom were bounty hunters.

After completing his survey in Guantánamo, the CIA officer wrote up a detailed report describing his findings. He mentioned specific detainees by name, so there was no confusion about whom the United States was wrongly holding. He made clear that he believed that the United States was committing war crimes by holding and questioning innocent people in such inhumane ways.

The CIA analyst's troubling report soon reached the highest-ranking national security lawyer in the White House, Rice's legal counsel, John Bellinger. Immediately distressed, he called the author and brought him in to brief the top terrorism expert on the National Security Council at the time, General John Gordon. The findings were hard to dismiss. The report wasn't written by a bleeding-heart human rights group; it was written by a tough and highly experienced CIA analyst whose career had been spent fighting terrorists. Gordon, too, became alarmed.

Bellinger was in a political minority in the White House, however. His concern for international law and world opinion was ridiculed by the hard-line lawyers of the so-called War Council. Addington particularly disdained Bellinger, according to several sources who watched their constant skirmishes. Addington was a sectarian purist, instinctively challenging and excluding anyone less extreme, and Bellinger epitomized the art of compromise that Addington deplored. Bellinger had discovered it was always 5-1, with himself outnumbered by Addington, Gonzales, Yoo, Haynes, and whichever lawyer was sent by the CIA. Nonetheless, he thought that if they were making mistakes in Guantánamo, potentially incarcerating the wrong people, it couldn't be ignored.

Bellinger asked to see Gonzales about it. The White House Counsel was supposed to be overseeing legal issues involving the detainees. Bellinger mentioned that he thought the question of who was being held in Guantánamo called for a second look.

On the day of the appointed meeting in the early fall of 2002, Bellinger brought Gordon with him. The presence of the retired four-star general, who had also worked as Deputy Director of the CIA, underscored the point that the message was not just being delivered

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by a squishy scion of the Washington establishment. As they walked into Gonzales's upstairs office at the back of the West Wing, however, they were surprised to find the President's lawyer flanked by Addington and Flanigan. Neither had any official national security role, and no one had warned Bellinger that they would be there. But they did all the talking.

"No, there will be no review. The President has determined that they are ALL enemy combatants. We are not going to revisit it!"

Addington said, according to two sources.

"This is a violation of basic notions of American fairness," Gordon and Bellinger argued back. "Isn't that what we're about as a country?"

Addington's response was adamant and imperious. "We are not second-guessing the President's decision. These are 'enemy combatants.' Please use that phrase," he said. "They've all been through a screening process. There's nothing to talk about." The President had made a group-status identification, as far as he was concerned. To Addington, it was a matter of presidential power, not a question of individual guilt or innocence.

Gonzales, as usual, didn't say much. A fellow White House lawyer later related that he studied Gonzales's silences intently for the first few months that they worked together, trying to determine if he was "one of those people who don't talk, because they're so smart they know it all, or one of those people who keep their mouths shut because they haven't got a clue." The lawyer concluded, "He was the latter."

Bellinger left the meeting fuming. He'd been ambushed. He and Gordon had argued that the American public understands that wars are confusing and exceptional things happen. "But the American public will expect some due process," they said. They had gotten nowhere. Rice, at this point, had ceded issues involving detainee policy to the lawyers, so she was of little help. Her deputy, Stephen Hadley, was mildly sympathetic but did nothing about it. The report was sent to the Pentagon. There was even less interest over there. Rumsfeld's disdain for detainee issues became legendary inside the administration.

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