

**TORTURING DEMOCRACY
ANNOTATED TRANSCRIPT**

***Produced by Washington Media Associates
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*Produced by Sherry Jones
Co-Producer Carey Murphy
Narrated by Peter Coyote
Edited by Penny Trams and Foster Wiley*

**The Fifth, Eighth and Fourteenth Amendments to the
Constitution of the United States prohibit cruel, inhumane or
degrading treatment.¹**

NARRATOR: The attacks were unprecedented in their daring – and their destructiveness. When the President heard the first reports in a Florida elementary school, the Vice President had already been rushed to the bunker beneath the White House. There, he watched the second tower fall.

President GEORGE W. BUSH: “Tonight we are a country awakened to danger and called to defend freedom. Our grief has turned to anger and anger to resolution. Whether we bring our enemies to justice or bring justice to our enemies, justice will be done.”

NARRATOR: In the White House, the fear of a second attack was palpable. The tone - aggressive.

Vice President DICK CHENEY (September 16, 2001): “We also have to work sort of, the dark side, if you will. We have to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies if we’re going to be successful. That’s the world these folks operate in.”

RICHARD SHIFFRIN – Deputy General Counsel, Intelligence, Department of Defense (1998-2003): When 9/11 happens, new, radical, revolutionary, even strange ideas are brought to the fore. 9/11 created or contributed to what became a perfect storm.

¹ U.S. reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Congressional Record S17486-01. October 27, 1990.
That the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

NARRATOR: At the eye of the storm was Vice President Dick Cheney.

RICHARD SHIFFRIN: When photos went up in the executive branch offices, in the past it had been, like in the Department of Defense, it would be the President, the Secretary of Defense. In this administration, it was the President and the Vice President and then the Secretary of Defense.

NARRATOR: Richard Shiffrin was a top civilian lawyer in the Pentagon at the time.

RICHARD SHIFFRIN: The Vice President is not in the chain of command -- in the military chain of command. The Secretary of Defense reports directly to the President. But the Vice President clearly took on a role that was, at least, untraditional from recent history.

NARRATOR: In that role, the Vice President and his long-time legal adviser, David Addington, would press their shared belief in unfettered presidential power.

Addington convened a group of like-minded political appointees:² White House Counsel Alberto Gonzales, who had been the President's legal arm since their days together in Texas³; Gonzales' White House deputy, Tim Flanigan; William "Jim" Haynes, Addington's protégé who was now the Pentagon's General Counsel; and John Yoo, whom a colleague called a "godsend."⁴ Yoo's post in the Justice Department meant that within the executive branch, legal opinions he penned had the weight of law.⁵

² The Plum Book. 2000. (The Plum Book is "used to identify presidential appointed positions within the Federal Government.") Available [here](#).

Gonzales (Presidential Appointment)... Flanigan (Presidential Appointment, Senate Confirmation)... Yoo (Non-career Appointment)... Haynes (Presidential Appointment, Senate Confirmation).

³ White House Bio of Alberto Gonzales.

Prior to serving in the White House, he served as a Justice of the Supreme Court of Texas. Before his appointment to the Texas Supreme Court in 1999, he served as Texas' 100th Secretary of State from December 2, 1997 to January 10, 1999. Among his many duties as Secretary of State, Gonzales was a senior advisor to then Governor Bush, chief elections officer, and the Governor's lead liaison on Mexico and border issues. Prior to his appointment as Secretary of State, Gonzales was the General Counsel to Governor Bush for three years.

⁴ The Terror Presidency: Law and Judgment Inside the Bush Administration. Goldsmith, Jack. 2007. p. 98.

For a White House deeply concerned by terrorism and facing unprecedented array of legal barriers to action, Yoo was a godsend.

⁵ a. War by Other Means. Yoo, John. 2006. p. 19:

[The OLC] exists to interpret the Constitution and federal law for the Executive branch...

b. "Guidelines for the President's Legal Advisors." American Constitution Society. May 2006.
Within the executive branch, OLC's legal interpretations are controlling and executive branch action must conform to it (unless overridden by the Attorney General or President, a rare event).

The five lawyers met behind closed doors in the White House or the Pentagon – and called themselves the “War Council.”⁶

NARRATOR: Two weeks to the day after the terrorist attacks, they launched their legal revolution. A radical opinion asserted that Congress could not:

“place any limits on the President’s determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the President alone to make.”⁷

NARRATOR: Impatience with the rule of law – and the firm conviction that the commander in chief had the authority to ignore it – would become a hallmark of the war on terror.

(WAR IN AFGHANISTAN)

President BUSH (October 7, 2001): “More than two weeks ago, I gave Taliban leaders a series of clear and specific demands. None of these demands were met and now the Taliban will pay a price.”

NARRATOR: The assault on the Taliban in Afghanistan was built around American air power – and U.S. agents on the ground calling in the shots. But as Osama bin Laden and al Qaeda disappeared into the rugged mountains on the Afghan/Pakistan border, the Pentagon increasingly relied on bounty hunters.⁸

⁶ The Terror Presidency: Law and Judgment Inside the Bush Administration. Goldsmith, Jack. 2007. p.22.

The “War Council,” as the group called itself, included the White House Counsel, Alberto Gonzales; the Vice President’s Counsel, David Addington; Haynes; Gonzales’s first deputy (and former OLC head under George H.W. Bush), Tim Flanigan; and Yoo.

⁷ [The President’s Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them. Yoo, John. September, 25 2001.](#)

In both the War Powers Resolution and the Joint Resolution, Congress has recognized the President’s authority to use force in circumstances such as those created by the September 11 incidents. Neither statute, however, can place any limits on the President’s determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the President alone to make.

⁸ Los Angeles Times. “Search for Bin Laden Will Use U.S. Gadgetry, Afghan Hunters” Hendren, John. November 20, 2001.

Pentagon strategists are mapping out a plan to hunt down Osama bin Laden and Taliban leaders in a manner that spares U.S. soldiers the perils of a cave-by-cave search, relying instead on American air power, opposition fighters and bounty hunters. Military planners said Monday that there is virtually no chance that they will risk exposing U.S. special operations forces to underground confrontations that could prove deadly, when new technologies and willing allies can

Tens of thousands of leaflets promising “enough money to take care of your family (and) your village for the rest of your life”⁹ were dropped by psychological ops teams.

Javed Ibrahim Paracha: “Where is Arab? Where is Arab? Where is Arab? You get thousand dollar for one Arab. Thirty thousand, forty thousand, sixty thousand. And helicopter loud speaker announcing these things.”

NARRATOR: Any Arab in the region was at risk of being turned in as a terrorist.

SHAFIQ RASUL – Detainee #086: As soon as we were handed over to the U.S. military, they tied our hands behind our back and put sacks over our heads.

NARRATOR: Twenty-four-year old Shafiq Rasul¹⁰ was among hundreds of men who had been rounded up by a warlord in northern Afghanistan.

SHAFIQ RASUL – Detainee #086: We couldn't see what was going on. We couldn't see anything around. We didn't know where they were taking us. We didn't know what was happening. They kept shouting things like we were the ones responsible for 9/11. We killed members of their family, and they were going to take their revenge out on us. And they had rifles in their hands and they could have shot us at any time.

Words of Mohamed Mazouz – Detainee #294:¹¹ “We were hauled like animals, one drawing the other in its walk.”¹²

Words of Jumah al-Dossari – Detainee #261:¹³ “They started making us run towards the unknown. The prisoners started shouting and crying because of their

do the job. Instead, military strategists plan to use thermal and gas imaging to find gatherings of cave-dwellers.

⁹ Seton Hall University. Report On Guantanamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data. Denbeaux, Mark. Available [here](#).

¹⁰ CagePrisoners, Profile of Shafiq Rasul. Available [here](#).
Shafiq Rasul was born on 15 April 1977 in Dudley, a small town in the West Midlands in England.

¹¹ [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006”](#)

¹² La Gazette du Maroc. “Les Américains pissaient sur le Coran et abusait de nous sexuellement.” Najib, Abdelhak. April 11, 2005. Available [here](#). Translation [here](#).
We reached at night. We were hauled like animals, one drawing the other in its walk.

¹³ [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006”](#)
Jumah al Dossari, Detainee #261 (Listed as “JUMA MOHAMMED ABDUL LATIF AL DOSARI,”)

*severe pain. There were many young people with us, and the soldiers increased their insults and beatings.”*¹⁴

Moazzam Begg - Detainee #558:¹⁵ *“Over the noise and the din of the engines, the screaming of the soldiers. Profanity, swearing, the flashes that could be made out even despite wearing a black hood over my head. Trophy pictures being taken.”*

NARRATOR: In Washington, the question of what to do with the captives grew urgent. And the Vice President grew impatient. While he led a ceremony marking Veteran’s Day, behind the scenes, his legal counsel crafted a plan that would deny the prisoners’ access to America’s civilian – and military – justice.

Major General THOMAS ROMIG – Judge Advocate General, U.S. Army (2001-05): Veteran’s weekend I got a phone call from Jim Haynes and it was, “We have a small group working on a document. We would like for you to come up and review the document.”

NARRATOR: General Tom Romig was one of the top military JAGs pushed to the side – from the beginning.¹⁶

General THOMAS ROMIG: Some of the things they were initially talking about were very draconian. There were issues about how many members of the panel did it take to convict, and then sentence, to death.

NARRATOR: General Romig convened an urgent meeting of senior military lawyers to war game how to respond to a far-reaching military order.

General THOMAS ROMIG: We had hoped we could make a difference in changing a number of things. We didn’t.

NARRATOR: They didn’t, in part, because the Vice President had convened a meeting of his own to finalize the plan. David Addington and other lawyers from the War Council were there. The military lawyers were not.¹⁷

¹⁴ Amnesty International. “USA: Days of adverse hardship in US detention camps – Testimony of Guantánamo detainee Jumah al-Dossari.” December 16, 2005. p.5. Available [here](#).

¹⁵ [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006”](#)
Moazzam Begg, Detainee #558 (Listed as “MOAZZAN BEGG”)

¹⁶ [WMA interview with Major General Thomas Romig. November 19, 2007.](#)

¹⁷ New York Times. “After Terror, a Secret Rewriting of Military Law.” Golden, Tim. October 24, 2004. *In fact, while the military lawyers were pulling together their response, they were unaware that senior administration officials were already at the White House putting finishing touches on the plan. At a meeting that Saturday in the Roosevelt Room, Mr. Cheney led a discussion among*

Within forty-eight hours, Cheney took the four-page order to the weekly lunch he and President Bush privately shared. Less than two hours later, it was signed by the commander in chief.¹⁸

The President, it said, had the unilateral power to declare that all prisoners were war criminals.¹⁹ And, further, they:

“shall not be privileged to seek any remedy...in any court of the United States ... (or) any international tribunal.”²⁰

Attorney General Ashcroft, Mr. Haynes of the Defense Department, the White House lawyers and a few other aides.

¹⁸ Washington Post. “A Different Understanding with the President.” Gellman, Barton & Becker, Jo. June 24, 2007.

In less than an hour, the document traversed a West Wing circuit that gave its words the power of command. It changed hands four times, according to witnesses, with emphatic instructions to bypass staff review. When it returned to the Oval Office, in a blue portfolio embossed with the presidential seal, Bush pulled a felt-tip pen from his pocket and signed without sitting down.

¹⁹ a. [“Military Order of November 13, 2001 – Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism.” Bush, George W.](#)

The term “individual subject to this order” shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order

b. New York Times. Editorial. Alberto Gonzales. November 30, 2001. Available [here](#).

Like presidents before him, President Bush has invoked his power to establish military commissions to try enemy belligerents who commit war crimes... The order covers only foreign enemy war criminals; it does not cover United States citizens or even enemy soldiers abiding by the laws of war. Under the order, the president will refer to military commissions only noncitizens who are members or active supporters of Al Qaeda or other international terrorist organizations targeting the United States. The president must determine that it would be in the interests of the United States that these people be tried by military commission, and they must be chargeable with offenses against the international laws of war, like targeting civilians or hiding in civilian populations and refusing to bear arms openly. Enemy war criminals are not entitled to the same procedural protections as people who violate our domestic laws.

²⁰ [“Military Order of November 13, 2001 – Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism.” Bush, George W.](#)

“The individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.”

NARRATOR: They could be held indefinitely – and would be tried, if at all, in a new process with new rules. Conviction could mean:

*“...life imprisonment or death.”*²¹

NARRATOR: Pentagon General Counsel Haynes said it would be the “Nuremberg of our time.”²²

RICHARD SHIFFRIN: They viewed this as accomplishing what Nuremberg accomplished for the losers in World War II, and that is the legal imprimatur on imposing the death penalty. There would be maybe dozens of people - Bin Laden on down - who would be captured and who would qualify for the death penalty. We couldn’t execute them without some sort of system.

Vice President CHENEY (November 14, 2001): “We think it’s the appropriate way to go. We think it guarantees that we’ll have the kind of treatment of these individuals that we believe they deserve.”

RICHARD SHIFFRIN: That, of course, was premised on the idea that everyone we captured and detained really was a bad person. As it turns out, a large percentage of them were merely shepherds.

(AFGHANISTAN)

NARRATOR: Historically, the military has carried out battlefield interrogations – and operated according to strict, bright line rules.

The U.S. Army Field Manual on Interrogation defines torture as “the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure.”²³

²¹ [“Military Order of November 13, 2001 – Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism.” Bush, George W.](#)

“Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.”

²² The Nation. “Rigged Trials at Gitmo.” Tuttle, Ross. February 20, 2008.

When asked if he thought the men at Guantánamo could receive a fair trial, Davis provided the following account of an August 2005 meeting he had with Pentagon general counsel William Haynes—the man who now oversees the tribunal process for the Defense Department. “[Haynes] said these trials will be the Nuremberg of our time,” recalled Davis, referring to the Nazi tribunals in 1945, considered the model of procedural rights in the prosecution of war crimes.

²³ [US Army Field Manual “FM 34-52 Intelligence Interrogation” \(1992 Edition\). Page “1-8”.](#)

NARRATOR: In the days after 9/11, President Bush had ordered the Central Intelligence Agency to capture or kill al Qaeda operatives around the world.²⁴ In the chaos of Afghanistan, agents took their pick of the prisoners.

CIA Agent: “These are terrorists?”

Prisoner: “Yes, these are terrorists I believe.”

CIA Agent: “These men are terrorists. All these men are terrorists. I think you're a terrorist. You come here to Afghanistan to kill people.”

Colonel STEVEN KLEINMAN – Senior Intelligence Officer, U.S. Air Force (1985-2008): We’re in the middle of a global war on terror and commanders have information needs that need to be answered now. In fact, better yet, they should have been answered yesterday.

NARRATOR: Colonel Steve Kleinman is a veteran Air Force interrogator who served in both Iraq wars.

Colonel STEVEN KLEINMAN: At some point when we realized interrogation was going to be very important after 9/11, the agency apparently looked within its capabilities, its personnel, and found that they didn’t have a real, formal, structured interrogation capability.

NARRATOR: Hobbled by its lack of experience in dealing with this new enemy, the CIA scrambled. For interrogation advice, they turned to Arab countries the U.S. had long accused of torture.²⁵ Private contractors were hired. And someone pulled the CIA’s old “bible of interrogation” off the shelf. The manual – code-named KUBARK - was an artifact of the Cold War.²⁶

Torture is defined as the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure. Examples of physical torture include...

²⁴ New York Times. December 15, 2002. Risen, James & Johnston, David. “Hunt For Al Qaeda; Bush Has Widened Authority ff C.I.A. To Kill Terrorists”

Mr. Bush issued a presidential finding last year, after the Sept. 11 attacks on New York and Washington, providing the basic executive and legal authority for the C.I.A. to either kill or capture terrorist leaders.

²⁵ a. New York Times. “Interrogation Methods Are Criticized.” Shane, Scott & Mazzetti, Mark. May 30, 2007. Available [here](#).

b. Washington Independent. “CIA Largely in the Dark on Interrogation Tactics.” Ackerman, Spencer. January 28, 2008.

Despite having nearly no off-the-shelf experience, the CIA was tasked by President Bush to come up with a robust interrogation program for the most important al-Qaeda captives. So the agency turned to its partners for assistance in designing its interrogation regimen: Israel, Egypt, Saudi Arabia -- all countries cited by the State Department for using torture -- among others.

²⁶ [Kubark Counterintelligence Interrogation. July 1963.](#)

(KOREAN WAR)

NARRATOR: During the Korean War, American prisoners were tortured by their communist captors.²⁷

Newsreel announcer: “Confiscated films show the Red press conferences....”

NARRATOR: Thirty-six of them - airmen shot out of the sky – were kept isolated, and tortured psychologically.

Newsreel announcer: Statements broadcast by the Communist propaganda machine throughout the world.”

NARRATOR: They confessed to elaborate conspiracies.

(Sync from newsreel): “Our two outboard wing bombs were germ bombs we dropped on....” “The thing I forgot to mention about the germ bombs....”

Colonel STEVEN KLEINMAN: Very well educated, committed people, committed to a cause, suddenly appearing in a trial and making these wild allegations about their role in some insurgent group within the Soviet Union, their role as recruited assets of the CIA when we knew that they weren't. So it scared a lot of people. How -- what method were they using to get people to do these things?

NARRATOR: It was a propaganda coup for the North Koreans - until the war ended, and the POWs were released.²⁸

²⁷ a. The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals. Mayer, Jane. 2008. P. 158.

[The SERE program] 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. air-men to give stunningly false confessions during the Korean War.

b. Guantanamo and the Abuse of Presidential Power. Margulies, Joseph. 2006. p.112.

Thirty-six American airmen, shot from the sky during the Korean War, falsely confessed to bombing civilian targets with bacteriological weapons...

²⁸ Washington Post. October 27, 1953.

The United States declared today that Russians directed a Communist torture center where false confessions of germ warfare were wrung from United States fliers in Korea -- even after the armistice. ... Dr. Mayo said an interrogation center known as "Pak's Palace" near Pyongyang, North Korea, was staffed by Chinese and North Koreans but directed by Soviet personnel. "Many of our fliers were interrogated there by Soviet personnel," the Minnesota surgeon said. He told of a Kansas flier who refused to write a confession despite 180 hours of questioning directed by Russians. Dr. Mayo said United States fliers were reduced to a level lower than that of animals, and that the tortures were designed to be more terrible than medieval methods.

American POW: “All this information given in this so-called confession was entirely without basis. It was wrung out of me by torture, both mentally and physically.”

NARRATOR: One pilot, trying to explain what happened to him, described a “slow, quiet and diabolical poisoning”²⁹ of the mind. But poisoning his mind left no physical scars.

Newsreel announcer: “Out of the bitter prisoner of war lessons learned in Korea comes the School for Survival at Stead Air Force Base in Nevada.”

NARRATOR: The US military created a secret program to inoculate troops at highest risk of capture. They were trained in “Survival, Evasion, Resistance and Escape” – called “SERE” – using harsh methods copied from the Communists.³⁰

Newsreel announcer: “The prisoner is subjected, sometimes for hours, to machine gun questioning....”

NARRATOR: The CIA also studied the communist techniques that had produced the false confessions - and concluded that prolonged isolation and deprivation “reduced prisoners to animals.”³¹

Newsreel announcer: “Rigorous training for young Americans who must face an implacable foe and not break on the rack of physical and mental torture.”

NARRATOR: Those secret studies led to KUBARK - which the CIA itself later set aside amidst Congressional investigations into the legality of the interrogation methods.³²

²⁹ Associated Press/New York Times. February 25, 1954. “Ex-POW Describes Red Brainwashing.” *Colonel Schwable, who has repudiated his confession, said he was “morally broken” by the Red tactics, that he existed in “a world of fancy that is beyond the power of description.” The system, he said, involved a “slow, quiet and diabolical poisoning” of the mind.*

³⁰ a. [WMA interview with Malcolm Nance, Chief of Training, US Navy SERE \(1997-2001\). November 15, 2007.](#)

b. [WMA interview with Colonel Steven Kleinman. November 2, 2007.](#)

³¹ [“Communist Control Techniques: An Analysis of the Methods Used by Communist State Police in the Arrest, Interrogation, and Indoctrination of Persons Regarded as ‘Enemies of State’.” Wolff, Harold & Lawrence Hinkle Jr. April 2, 1956. p 22.](#)

He follows the orders of the guard with the docility of a trained animal. Indeed, the guards say that such prisoners are “reduced to animals”.

³² a. National Security Archive, Electronic Briefing Book No. 122. “Prisoner Abuse: Patterns From The Past.” Available [here](#).

The KUBARK manual includes a detailed section on “The Coercive Counterintelligence Interrogation of Resistant Sources,” with concrete assessments on employing “Threats and Fear,” “Pain,” and “Debility.” The language of the 1983 “Exploitation” manual drew heavily on the language of the earlier manual...

(KANDAHAR AIR BASE)

NARRATOR: But in 2001, at an American prison camp in Afghanistan, KUBARK would be revived.³³

MOAZZAM BEGG – Detainee #558: In Kandahar, it seemed to be an initiation ceremony almost, a pre-cursor to something a lot more intensive.

NARRATOR: Moazzam Begg, a British citizen, had been seized by Pakistani officers who burst into the Islamabad apartment where he and his family were living.³⁴

MOAZZAM BEGG – Detainee #558: It's almost like a conveyor where you can hear sounds of other prisoners screaming, being screamed at, dogs barking.

NARRATOR: KUBARK'S menu of coercive interrogation techniques instructed that prisoners be "cut off from the known" and "plunged into the strange."³⁵

b. Baltimore Sun. "Torture was taught by CIA; Declassified manual details the methods used in Honduras; Agency denials refuted." Cohn, Gary. January 27, 1997.

The CIA also declassified a Vietnam-era training manual called "KUBARK Counterintelligence Interrogation -- July 1963," which also taught torture and is believed by intelligence sources to have been a basis for the 1983 manual... The 1983 manual was altered between 1984 and early 1985 to discourage torture after a furor was raised in Congress and the press about CIA training techniques being used in Central America.

³³ a. Guantanamo and the Abuse of Presidential Power. Margulies, Joseph. 2006. p. 33-38. Available [here](#).

[Shafiq] Rasul has described some of the KUBARK methods used against him at the base... "We didn't know the time. We know the dates we know because we counted for ourselves... Sometimes the prayer call would be played five times a day, but then it would be stopped again" The combined effect of these physical, environmental, and emotional manipulations is to "enhance" the "unsettling effect" of the tricks and ruses described in the KUBARK manual.

b. [WMA interview with Shafiq Rasul, Guantanamo Detainee #086. October 23, 2007.](#)

c. Washington Post. "Iraq Tactics Have Long History With U.S. Interrogators." Pincus, Walter. June 6, 2004.

A CIA handbook [KUBARK] on coercive interrogation methods, produced 40 years ago during the Vietnam War, shows that techniques such as those used in Iraq, Afghanistan and Guantanamo Bay, Cuba, have a long history with U.S. intelligence and were based on research and field experience...

³⁴ Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar. Begg, Moazzam. 2006. Available [here](#).

³⁵ [Kubark Counterintelligence Interrogation. July 1963. p. 86.](#)

If, through the cooperation of a liaison service or by unilateral means, arrangements have been made for the confinement of a resistant source, the circumstances of detention are arranged to enhance within the subject his feelings of being cut off from the known and the reassuring, and of being plunged into the strange.

MOAZZAM BEGG – Detainee #558: If you can't see anything, you're going to be terrified. It's the dark that humans are afraid of, not the light. Somebody puts a black bag over your head and you hear the sound of a gun, "ch ch," you think, "My head is going to be blown off." And that did happen. I heard that sort of "ch ch" sound several times.

If the Americans are doing it, and they're not accountable, then who's going to come to your rescue?

(WASHINGTON)

NARRATOR: In Washington, top officials were contemplating interrogations of unprecedented harshness.

Common Article 3 of the Geneva Conventions specifically bans all "violence to life and person", including "cruel treatment and torture... and outrages upon personal dignity, in particular humiliating and degrading treatment." ³⁶

NARRATOR: A violation of Geneva's Article 3 ban on torture is a war crime under U.S. law. ³⁷

MARTIN LEDERMAN – Legal Adviser, Department of Justice (1994-2002): The prohibition in the Geneva Conventions against cruel treatment turns out to have been probably the most important of the legal restrictions that the Bush administration had to deal with.

NARRATION: Martin Lederman was a senior adviser in the Justice Department at the beginning of the Bush Administration.

MARTIN LEDERMAN: In this administration, President Bush has, by all accounts, been quite forthright in that he's asked his lawyers not to give him the best view of the law, but instead, to push the envelope. The metaphor that they've used is to go as

³⁶ Convention (III) Relative to the Treatment of Prisoners of War. Geneva. August 12, 1949. Available [here](#).

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment

³⁷ 18 U.S. Code § 2441 [War Crimes Act of 1996]

*Definition.— As used in this section the term "war crime" means any conduct—
(3) which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict*

close to the legal line as possible without going over. So the metaphor they've come up with is to "get chalk on one's spikes." This was the message that went out from the White House.

NARRATOR: On January 9th, 2002, in the first of a series of opinions that would provide legal cover for coercive interrogations, John Yoo began to push the envelope.

"Customary international law of armed conflict in no way binds the President or the US Armed Forces concerning the detention or trial of members of al Qaeda and the Taliban." ³⁸

NARRATOR: In other words, the President has the power to suspend - or simply ignore - the fundamental laws of war. That includes Geneva and its guarantees of basic human rights to prisoners and civilians alike.

RICHARD ARMITAGE – Deputy Secretary of State (2001-05): Our views were well known in this matter. We were not on board.

NARRATOR: Richard Armitage served three combat tours in Vietnam.

RICHARD ARMITAGE: For the most part, the Department of State was left out of this discussion, I think precisely because we'd have no part of it.

NARRATOR: The State Department's top lawyer called John Yoo's legal reasoning "seriously flawed" ³⁹ - and warned that if heading to the dark side meant violating Geneva:

"This raises a risk of future criminal prosecution for US civilian and military leadership and their advisers, by other parties to the Geneva Conventions." ⁴⁰

³⁸ ["Memorandum for William J. Haynes, Jr. General Counsel, Department of Defense – Application of Treaties and Laws to al Qaeda and Taliban Detainees. \[DRAFT\]."](#) Yoo, John. January 9, 2002. p. 34.

Regardless of its substance, however, customary international law cannot bind the executive branch under the Constitution because it is not federal law. ...As a result, any customary international law of armed conflict in no way binds, as a legal matter, the President or the US Armed Forces concerning the detention or trial of members of al Qaeda and the Taliban.

³⁹ ["Your Draft Memorandum of January 9th."](#) Taft, William H. IV. January 11, 2002.

They suggest that both the most important factual assumptions on which your draft is based and its legal analysis are seriously flawed.

⁴⁰ ["Your Draft Memorandum of January 9th."](#) Taft, William H. IV. January 11, 2002.

The conclusion that the Geneva Conventions do not apply could be the basis for actions that otherwise would violate the Convention, including conduct that would constitute a grave breach. This raises a risk of future criminal prosecution for U.S. civilian and military leadership and their advisers, by other parties to the Geneva Conventions.

NARRATOR: That is, if officials - including President Bush – were accused of torture or inhumane treatment, they could be prosecuted for war crimes.

(AFGHANISTAN)

NARRATOR: While the clash escalated in Washington, in Afghanistan, most every Arab captured by – or sold to – the United States was being readied for a trip halfway around the world. ⁴¹

SHAFIQ RASUL – Detainee #086: The soldiers just grab you, pick you up and basically drag you to the plane. They put gloves on our hands, taped the gloves to our hands so you can't take them off. And they put handcuffs on. They went round our waist, down to our feet, shackled our feet together.

Words of Mohamed Mazouz – Detainee #294: ⁴² *“They had destroyed all our senses: Neither to see, neither to hear, neither to speak, neither to feel, nor to move our fingers.”* ⁴³

Words of Ahmed Errachidi – Detainee #590: ⁴⁴ *“A guard hissed: From now on, we dictate your food, your water, your sleep and your shit. You have no life. That whisper lived with me for five years. It became louder and louder in my ears.”* ⁴⁵

NARRATOR: The photographs of shackled and blindfolded prisoners provoked alarm – and an urgent letter from Amnesty International reminding Secretary of Defense Rumsfeld that:

⁴¹ The Guantanamo Files: The Stories of the 759 Detainees in America's Illegal Prison. Worthington, Andy. 2007. Page 100.

⁴² [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006”](#)

Mohamed Mazouz, Detainee #294 (Listed as “MOHAMMED MIZOUZ”)

⁴³ LGM (La Gazette du Maroc). “Les Américains Pissaient Sur le Coran et Abusaient de Nous Sexuellement” Najib, Abdelhak. 11 April 2005. Available [here](#). Translation [here](#).

We also wore gloves linked on the hands to prevent us from moving. In short, they had destroyed all our senses: Neither to see, neither to hear, neither to speak, neither to feel, nor to move our fingers.

⁴⁴ [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006.”](#)

Ahmed Errachidi, Detainee #590 (Listed as “AHMED RASHIDI”)

⁴⁵ The Times (UK). “The London Chef Who was Forsaken for Five Years in Guantanamo.” O'Neill, Sean. June 16, 2007.

As he was being marched on to a flight to Cuba, a guard hissed in his ear: “From now on, we dictate your food, your water, your sleep and your shit. You have no life.” Mr Errachidi said: “That whisper lived with me for five years, it became louder and louder in my ears.”

*“The term ‘cruel, inhuman or degrading treatment’ should be interpreted...to extend the widest possible protection against abuses...including the holding of a detained or imprisoned person in conditions which deprive him...of the use of any of his natural senses.”*⁴⁶

(Press Conference, Department of Defense - January 11, 2002):

Q: *How do you respond to charges – hooding, shaving, chaining, perhaps even...”*

Secretary Rumsfeld: *“What are the words?”*

Q: *“Hooding, shaving, chaining, perhaps even tranquilizing some of these people – violating their civil rights.”*

Secretary Rumsfeld: *“Uh, that – uh- that’s not correct.”*

Q: *“That you’ve done it?”*

Secretary Rumsfeld: *“That it’s a violation of their rights. It simply isn’t.”*

NARRATOR: Whether or not they agreed, the Administration had its first public warning: The war on terror was pushing the edge of international law.

(GUANTANAMO)

NARRATOR: The prison camp at Guantanamo – the “legal equivalent of outer space,”⁴⁷ one official called it - would push even closer to that edge.

Words of Asif Iqbal - Detainee #087:⁴⁸ *“When I had the goggles as well as the shackles removed, I thought I was hallucinating. I could just see a series of cages with people wearing orange.”*⁴⁹

⁴⁶ [Amnesty Letter to Donald Rumsfeld. Khan, Irene. January 7, 2002.](#)

⁴⁷ Wall Street Journal. “Lawyers Question Holding Suspected Terrorists Without Offering Legal Case Against Them.” Bravin, Jess. July 3, 2002.

Fenced off from Castro's Cuba, it is the 'legal equivalent of outer space,' one official said -- in contrast to bases on U.S. territories in the Pacific, which were ruled out as prison sites because they fall under the purview of the often-liberal Ninth U.S. Circuit Court of Appeals.

⁴⁸ [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006”](#)

Asif Iqbal, Detainee #87

⁴⁹ [“Composite Statement: Detention in Afghanistan and Guantanamo Bay.” 26 July 2004. Rasul, Shafiq, Asif Iqbal & Rhuheh Ahmed. p.24.](#)

64. Asif states that ‘on the first night after I arrived from Afghanistan at Camp XRay I weighed 120 pounds, I am normally 165 pounds. When I was placed in the cage I had the goggles as well as the shackles removed and I thought I was hallucinating. I could just see a series of cages with people wearing orange.

NARRATOR: In many Arab countries, orange is the color worn by prisoners condemned to die. ⁵⁰

They were, Secretary Rumsfeld said, the “most dangerous, best trained, vicious killers on the face of the earth.” ⁵¹ Interrogators assumed they were in custody because they should be.

SHAFIQ RASUL – Detainee #086: They'd say if you don't admit to being a member of al-Qaeda, if you don't admit to meeting Osama bin Laden, that if you - if you don't care what happens to yourself, we can do whatever we want to your family, we can deport them back to their home countries, Pakistan, and the Pakistani government can do whatever they want.

NARRATOR: They were held in isolation and secrecy - locked into a system of punishment before any evidence of guilt was established.

SHAFIQ RASUL – Detainee #086: You start losing hope, you think you're going to spend the rest of your life here.

(WASHINGTON)

NARRATOR: In Washington, Secretary of State Colin Powell – the most experienced military man among the President's top advisers – stepped up his defense of Geneva's half century of war-fighting rules.

RICHARD ARMITAGE: We were trying to wrestle with how to fight both an enemy and an idea, and I think came up with a wrongheaded solution - opting out of Geneva. We, after all, want our soldiers, should they be unfortunate enough to be captured, to be treated in a proper way. And yet, we weren't willing to afford that to others. That seems a little counter-intuitive to me. It did at the time, and it does now.

NARRATOR: Before the Secretary of State could make his case to the President personally, he was undermined by the Vice President. In a blunt memo written by

⁵⁰ [Memo from Staff Judge Advocate to Commander JTF-160 Re: "Initial Observations From ICRC Concerning Treatment of Detainees" January 21, 2002.](#)

Red/orange colored clothing - In their culture, red clothing is a sign that someone is about to be put to death.

***Issues for the Commander - Should we continue not to tell them what is going on and keep them scared? ICRC says that they are very scared. What are the benefits of keeping them scared vs. telling them what is happening? What additional problems are caused when they are this scared? These detainees are not thinking logically. What would be the harm in telling them what is happening? The detainees think they are being taken to be shot.*

⁵¹ Transcript of Secretary Rumsfeld Media Availability en route to Guantanamo Bay, Cuba. January 27, 2002. Available [here](#).

Cheney's counsel, David Addington – but delivered by White House Counsel Alberto Gonzales⁵² – Bush was advised that the war on terror:

*“renders obsolete Geneva’s strict limitations on questioning of enemy prisoners”.*⁵³

NARRATOR: And in an argument that could have been written by a criminal defense lawyer, the President was told that opting out of the Geneva Conventions:

*“substantially reduces the threat of domestic criminal prosecution under the War Crimes Act.”*⁵⁴

RICHARD ARMITAGE: If you were twisting yourselves into knots because you're fearful that you may be avoiding some war crimes, then you're probably tripping too closely to the edge.

Colonel LAWRENCE WILKERSON – Chief of Staff to Secretary of State (2002-05): Addington, clearly, was the brainpower behind this, and I think they felt like their flexibility within what they had designed was such that there wouldn't be any fear of repercussions, legal repercussions.

⁵² a. Washington Post. “Pushing the Envelope on Presidential Power.” Gellman, Barton & Becker, Jo. June 25, 2007. Available [here](#).

David S. Addington, Cheney's general counsel, set the new legal agenda in a blunt memorandum shortly after the CIA delegation returned to Langley. Geneva's "strict limits on questioning of enemy prisoners," he wrote on Jan. 25, 2002, hobbled efforts "to quickly obtain information from captured terrorists."

b. The New Yorker. “The Hidden Power.” Mayer, Jane. July 3, 2006. Available [here](#).
In a January 25, 2002, legal memorandum, Administration lawyers dismissed the Geneva Conventions as "obsolete," "quaint," and irrelevant to the war on terror. The memo was signed by Gonzales, but the Administration lawyer said he believed that "Addington and Flanigan were behind it.

⁵³ [“Memorandum for the President – Decision RE the Application of the Geneva Convention on Prisoners of War to the Conflict With Al Qaeda and the Taliban.” Gonzales, Alberto R. January 25, 2002.](#)

The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians, and the need to try terrorists for war crimes such as wantonly killing civilians. In my judgment, this new paradigm renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip (i.e. advances of monthly pay), athletic uniforms, and scientific instruments.

⁵⁴ [“Memorandum for the President – Decision RE the Application of the Geneva Convention on Prisoners of War to the Conflict With Al Qaeda and the Taliban.” Gonzales, Alberto R. January 25, 2002.](#)

Positive: Substantially Reduces the Threat of Domestic Criminal Prosecution under the War Crimes Act... That statute, enacted in 1996, prohibits the commission of a “war crime,” by or against a U.S. person, including U.S. officials.

NARRATOR: Colonel Larry Wilkerson, a 31-year military veteran, had long been an aide to General Colin Powell.

Colonel LAWRENCE WILKERSON: They had a vision, they were ruthless in carrying it out, and they executed it very well.

President BUSH (January 28, 2002): “We’re discussing all the legal ramifications of how we characterize the actions at Guantanamo Bay. A couple of things we agree on. One, they will not be treated as prisoners of war. They’re illegal combatants. Secondly, they will be treated humanely. And then we’ll, I’ll figure out – I’ll listen to all the legalisms and announce my decision when I make it.”

General THOMAS ROMIG: There were a number of things that people were ready to jettison because these were different times. That’s a dangerous thing because then you can always have the excuse to jettison the law, the procedures, the due process, the Conventions, whatever you want, when it’s convenient.

NARRATOR: On February 7th, 2002 – for the first time in history - President Bush declared that the United States would not be constrained by Geneva’s prohibitions against cruel and inhumane treatment.⁵⁵ None of the prisoners in U.S. custody would be protected by the laws of war.

(BAGRAM)

NARRATOR: In a far corner of the U.S. military base at Bagram in Afghanistan, a former Soviet machine shop had been converted into a prison. There, Moazzam Begg would be interrogated by American agents using tactics that had been refined in the prison camps of Stalin’s Soviet Union.⁵⁶

MOAZZAM BEGG – Detainee #558: The hands would be placed right above the head, and tied or shackled to the top of the door, which was the entrance to the cage.

Dramatization based on

⁵⁵ [Presidential Memorandum. Bush, George W. February 7, 2002.](#)

I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to “armed conflict not of an international character

⁵⁶ [“Communist Control Techniques: An Analysis of the Methods Used by Communist State Police in the Arrest, Interrogation, and Indoctrination of Persons Regarded as ‘Enemies of State’.” Wolff, Harold & Lawrence Hinkle Jr. April 2, 1956. p. 32.](#)

If the prisoner is known to have a wife and children for whom he cares deeply, the interrogator may threaten harm to them... requiring the prisoner to stand throughout the interrogation session or to maintain some other physical position which becomes painful...

US Army investigation ⁵⁷

MOAZZAM BEGG – Detainee #558: I saw people who literally were no longer able to physically sustain that position and just hung off limp. The entire weight of their body being held by their wrists.

CLIVE STAFFORD SMITH - Director, *Reprieve*, Legal Rights NGO: That goes back to the Middle Ages. It was called *strappado* by the Spanish Inquisition.

NARRATOR: Clive Stafford Smith has represented more than forty prisoners in U.S. custody during the war on terror, including Moazzam Begg.

CLIVE STAFFORD SMITH: And it basically dislocates your shoulders slowly and very painfully.

NARRATOR: After one interrogation, Begg was dragged into a cell and hog-tied, his hands cuffed behind his back and chained to his ankles ⁵⁸ – and left that way overnight.

Dramatization based on *Enemy Combatant by Moazzam Begg* ⁵⁹

MOAZZAM BEGG – Detainee #558: I would be interrogated at any given time of the day or night, unannounced. An interrogator would walk in and tell me to get up. The guard would make sure I would be seated or standing, depending on how long I'd been in either position.

NARRATOR: A floodlight was aimed into his cell twenty-four hours a day. ⁶⁰

MOAZZAM BEGG – Detainee #558: You want to fall asleep. You want to do anything in order that you can just lie down in the corner no matter how hard the floor is, how cold it is, no matter how uncomfortable sleep would be with shackles on your arms and legs.

⁵⁷ New York Times. "In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths" Golden, Tim. May 20, 2005. Available [here](#).

⁵⁸ a. *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar*. 2006. Begg, Moazzam. p 157.

b. [WMA interview with Moazzam Begg. October 23, 2007.](#)

⁵⁹ a. Written statement to the Combatant Status Review Tribunal. Begg, Moazzam. July 12, 2004.

b. Interviews with NCIS on December 15 & 16, 2004

⁶⁰ *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar*. 2006. Begg, Moazzam. p 139.

NARRATOR: Depriving a prisoner of sleep also has a name from the Middle Ages – “*tormentum insomniae*.”⁶¹

MOAZZAM BEGG – Detainee #558: It goes beyond being scared now. You just want to sleep. They produced pictures of my wife, my children, and waved these pictures in front of me, asking me if I knew what had happened to my wife and kids that night. If I thought they were safe, if I thought I’d ever see them again. If I really cared about them so much, I would tell them everything.

NARRATOR: A woman began to scream in a nearby cell. Threats against a prisoner’s family were called “second degree torture”⁶² during the Spanish Inquisition – and were commonly used by the Soviet KGB.⁶³

For two days and two nights, he heard the woman he thought might be his wife being tortured.

MOAZZAM BEGG – Detainee #558: If there’s any point in my life that I wanted to kill somebody, it was this point. And if I could have got those shackles around their necks, I would have done so and got out to the next room just to stop what’s happening.

NARRATOR: During the eleven months Moazzam Begg was imprisoned in Bagram, at least two men in U.S. custody there died.⁶⁴

⁶¹ New York Times. “What’s in a Word? Torture.” Hochschild, Adam. May 23, 2004.
“Sleep management.” This apparently benign term -- doctors use it in discussing insomnia -- disguises a form of torture that has long been popular because it requires no special equipment and leaves no marks on the body. Widely used in the Middle Ages on suspected witches by inquisitors, it was called the tormentum insomniae.

⁶² [WMA interview with Clive Stafford Smith. October 24, 2007.](#)

⁶³ a. [“Communist Control Techniques: An Analysis of the Methods Used by Communist State Police in the Arrest, Interrogation, and Indoctrination of Persons Regarded as ‘Enemies of State’.” Wolff, Harold & Lawrence Hinkle Jr. April 2, 1956. p.38.](#)

If the prisoner is known to have a wife and children for whom he cares deeply, the interrogator may threaten harm to them if the prisoner does not cooperate, and promise to protect and help them if he does.

b. Physicians for Human Rights/Human Rights First. “Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality.” August 2007. p.31. Available [here](#).

Threats against a prisoner or a prisoner’s family’s health and wellbeing were a common interrogation method employed by Soviet police in the 1930s.

⁶⁴ “2 Died After '02 Beatings by U.S. Soldiers.” White, Josh. March 12, 2005.

Two detainees held at the U.S. detention facility in Bagram, Afghanistan, died within a week of each other in December 2002 after military police guards and military intelligence interrogators brutally beat them and left them chained to the ceiling in standing positions, according to Army documents obtained by a human rights group.

In Guantanamo, he was locked into a 6-by-8 foot cage where he would spend the next two years, in isolation. His nightmares were filled with the screams of a woman.

The 1994 U.S. Torture Statute defines torture as an “act committed by a person...specifically intended to inflict severe physical or mental pain or suffering...upon another person within his custody or physical control.” ⁶⁵

NARRATOR: In March 2002, U.S. intelligence teams, backed by more than one hundred police officers, had moved in on a suspected al Qaeda safe house in Faisalabad, Pakistan. ⁶⁶

Malik Mohammed Khalid, Police Inspector: “He said, ‘Allah Akbar,’ three times. ‘I am ready to be a martyr. Kill me.’”

NARRATOR: Abu Zubaydah – alleged to be a major figure in al Qaeda – was severely wounded, but taken alive. ⁶⁷

President BUSH (April 9, 2002): “We hauled in a guy named Abu Zubaydah. He’s one of the top operatives plotting and planning death and destruction on the United States. He’s not plottin’ and plannin’ anymore. He’s where he belongs.”

NARRATOR: The man FBI officials called al Qaeda’s “travel agent”- and so a minor figure ⁶⁸ - had disappeared into the spider web of secret CIA prisons spread across the globe.

⁶⁵ 18 US Code § 2340 [The 1994 “Torture Act.”] Available [here](#).

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

⁶⁶ Time Magazine. “Anatomy of a Raid.” McGirk, Tim. April 8, 2002.

On March 27 Tsadiqui Hussain, the lean and weary police chief of Faisalabad, Pakistan, was told by superiors that his officers were needed for some routine arrests. Hussain didn't think much of it. Faisalabad, in the center of Punjab province, is a humming mill town, and illegal immigrants are always turning up there in search of work. But shortly after midnight, some unexpected visitors came striding into Hussain's colonial-era office. They were members of Pakistani military intelligence, accompanied by American CIA and FBI personnel wearing bulletproof vests. This was hardly routine ... ‘At 3 a.m., more than 100 police crept up to Shabaz Cottage. In case the suspects escaped, Hussain also mounted 40 police checkpoints on all the main roads in Faisalabad; each had Zubaydah's photo.

⁶⁷ The One Percent Doctrine. Suskind, Ron. 2006. p. 88.

⁶⁸ The One Percent Doctrine. Suskind, Ron. 2006. p. 100:

This guy was insane, certifiable, split personality.’ [FBI Agent Dan] Coleman told a top official at FBI after a few days reviewing the Zubaydah haul. ‘That’s why they let him fly all over the world doing meet and greet. That’s why people used his name on all sorts of calls and e-mails. He was like a travel agent, the guy who booked your flights. You can see from what he writes how burdened he is with all these logistics...

MARTIN LEDERMAN: The White House and the Vice President's office were, in 2002, urging the CIA to engage in a detention and interrogation program – something they apparently had not ever done before – and to use techniques that appeared on their face to violate several different legal restrictions. The CIA quite understandably said, “We're not going to do that, unless we are given some assurance by lawyers within the Justice Department that this is lawful.”

NARRATOR: The agency insisted on what one official called a “golden shield.”⁶⁹

On August 1st, 2002, they got it - in an opinion requested by the White House and delivered by John Yoo's office in the Justice Department.⁷⁰ The Vice President's lawyer had framed the core premise⁷¹ :

“Congress can no more interfere with the President's conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield.”⁷²

⁶⁹ The Terror Presidency: Law and Judgment Inside the Bush Administration. Goldsmith, Jack. 2007. p.144.

CIA interrogators and their supervisors, under pressure to get information about the next attack, viewed the opinion as a “golden shield,” as one CIA official later called it, that provided enormous comfort.

⁷⁰ [“Memorandum for Alberto R. Gonzales, Counsel to the President – Re: Standards of Conduct for Interrogation under U.S.C. 2340 – 2340A.” Bybee, Jay S. August 1, 2002.](#)

You [Alberto Gonzales] have asked for our Office's [of Legal Counsel] views regarding the standards of conduct under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by sections 2340-2340A of title 18 of the United States Code.

⁷¹ Washington Post. “Gonzales Helped Set the Course for Detainees.” Smith, Jeffrey & Eggen, Dan. January 5, 2005.

Gonzales's involvement in the crafting of the torture memo, and his work on two presidential orders on detainee policy that provoked controversy or judicial censure during Bush's first term, is expected to take center stage at Senate Judiciary Committee hearings tomorrow on Gonzales's nomination to become attorney general. The outlines of Gonzales's actions are known, but new details emerged in interviews with colleagues and other officials, some of whom spoke only on the condition of anonymity because they were involved in confidential government policy deliberations. On at least two of the most controversial policies endorsed by Gonzales, officials familiar with the events say the impetus for action came from Addington -- another reflection of Cheney's outsize influence with the president and the rest of the government.

⁷² [“Memorandum for Alberto R. Gonzales, Counsel to the President – Re: Standards of Conduct for Interrogation under U.S.C. 2340 – 2340A.” Bybee, Jay S. August 1, 2002.](#)

Congress can no more interfere with the President's conduct of the interrogation of enemy combatants than it can dictate strategic or tactical decisions on the battlefield. Just as statutes that order the President to conduct warfare in a certain manner or for specific goals would be unconstitutional, so too are laws that prevent the President from gaining the intelligence he believes necessary to prevent attacks upon the United States.

NARRATOR: That is, any attempt by Congress to interfere with a Presidential order - even if it crossed the line into torture - would be unconstitutional. And any interrogation would be legal unless it caused pain that was:

*“equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”*⁷³

Colonel LAWRENCE WILKERSON: If you define torture as organ damage, death or almost death, then you can stand up and say that you don't do torture. And I think that's what they were doing.

NARRATOR: In secret White House meetings chaired by National Security Advisor Condoleezza Rice, a committee of top officials that included Vice President Cheney, Defense Secretary Rumsfeld and CIA director George Tenet, reviewed – and approved – the specifics of harsh interrogations.⁷⁴

Many of the proposed techniques were based on the military's secret “SERE” training - “Survival, Evasion, Resistance and Escape” – for Americans at risk of capture by torture regimes.⁷⁵

⁷³ [“Memorandum for Alberto R. Gonzales, Counsel to the President – Re: Standards of Conduct for Interrogation under U.S.C. 2340 – 2340A.” Bybee, Jay S. August 1, 2002.](#)

We conclude that for an act to constitute torture as defined in section 2340, it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

⁷⁴ a. Washington Post. “Top Officials Knew in 2002 of Harsh Interrogations.” Warrick, Joby. September 25, 2008.

Top White House officials were told in early 2002 about harsh measures used by the CIA to extract information from suspected al-Qaeda terrorists in the agency's secret prisons, according to an account given to congressional investigators by the office of Secretary of State Condoleezza Rice... The written accounts specifically name former attorney general John D. Ashcroft and former defense secretary Donald H. Rumsfeld as participants in the discussions, according to copies of the statements released by committee officials in advance of a hearing scheduled for today...

b. ABC News. “Sources: Top Bush Advisors Approved 'Enhanced Interrogation.’” Greenburg, Jan Crawford. April 9, 2008.

In dozens of top-secret talks and meetings in the White House, the most senior Bush administration officials discussed and approved specific details of how high-value al Qaeda suspects would be interrogated by the Central Intelligence Agency, sources tell ABC News. ... At the time, the Principals Committee included Vice President Cheney, former National Security Advisor Condoleezza Rice, Defense Secretary Donald Rumsfeld and Secretary of State Colin Powell, as well as CIA Director George Tenet and Attorney General John Ashcroft.

⁷⁵ ABC News. “Sources: Top Bush Advisors Approved 'Enhanced Interrogation.’” Greenburg, Jan Crawford. April 9, 2008.

The so-called Principals who participated in the meetings also approved the use of "combined" interrogation techniques -- using different techniques during interrogations, instead of using one method at a time -- on terrorist suspects who proved difficult to break, sources said. Highly placed sources said a handful of top advisers signed off on how the CIA would interrogate top al

MALCOLM NANCE – Chief of Training, US Navy SERE (1997-2001): The simulated captivity is supposed to expose students to - well, it's a stock phrase that we all, every instructor memorizes: "A totalitarian evil nation with a complete disregard for human rights and the Geneva Convention."

NARRATOR: Malcolm Nance is a 20-year veteran of the military intelligence community.

MALCOLM NANCE: And if you can endure a "totalitarian evil nation with a complete disregard for human rights and the Geneva Convention," you can pretty much endure everything.

RICHARD ARMITAGE: My particular class was ambushed. We heard a lot of shooting outside the truck, some strange fellows with accents and strange uniforms with stars on their caps pulled us out of the back of the truck, started slapping us around. And the next thing I knew, we were in a prison camp.

NARRATOR: Like Richard Armitage, SERE trainees are slapped, hooded, their sleep disrupted. Under the constant watch of physicians and psychologists, they are stripped, exposed to temperature extremes, sexually humiliated.

And some officers at the Navy's SERE school were subjected to what has been known since the Spanish Inquisition as the "water torture."⁷⁶ During World War II and Vietnam, it was prosecuted by the U.S. as a war crime.⁷⁷

Qaeda suspects -- whether they would be slapped, pushed, deprived of sleep or subjected to simulated drowning, called waterboarding.

⁷⁶ a. [WMA interview with Malcolm Nance, Chief of Training, US Navy SERE \(1997-2001\). November 15, 2007.](#)

b. [WMA interview with Colonel Steven Kleinman. November 2, 2007.](#)

c. [WMA interview with Richard Armitage, Deputy Secretary of State \(2001-05\). January 8, 2008.](#)

⁷⁷ Washington Post. "Waterboarding Used to Be a Crime." Wallach, Evan. November 4, 2007.
After Japan surrendered, the United States organized and participated in the International Military Tribunal for the Far East, generally called the Tokyo War Crimes Trials. Leading members of Japan's military and government elite were charged, among their many other crimes, with torturing Allied military personnel and civilians. The principal proof upon which their torture convictions were based was conduct that we would now call waterboarding. In this case from the tribunal's records, the victim was a prisoner in the Japanese-occupied Dutch East Indies: "A towel was fixed under the chin and down over the face. Then many buckets of water were poured into the towel so that the water gradually reached the mouth and rising further eventually also the nostrils, which resulted in his becoming unconscious and collapsing like a person drowned. This procedure was sometimes repeated 5-6 times in succession.

RICHARD ARMITAGE: I was put on an incline. My legs were like that and my back went down. A wet towel was put over my nose and mouth. It was completely soaked. But I could still breathe. And then a question would be asked and I would not answer it. Water would slowly be poured in this, and the next time I took a breath, I'd be drawing in water.

MALCOLM NANCE: 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 that 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.

RICHARD ARMITAGE: I did realize the people doing this were actually on my side. But the sensation to me was one of total helplessness. And I've had a lot of sensations in my life, but helplessness was not generally one of them. But the sensation was enormously unpleasant and frightening.

NARRATOR: In 2002, at a secret jail in Thailand, contractors whose expertise was in the Army's SERE torture resistance training – not interrogation⁷⁸ - led the CIA'S mental demolition of Abu Zubaydah.⁷⁹ He was confined in a cage called a "dog box" – so small he could not stand.⁸⁰ The Red Hot Chili Peppers were blasted at full volume for hours on end.⁸¹

⁷⁸ Salon.com "The CIA's torture teachers." Benjamin, Mark. June 21, 2007. Available [here](#).
Mitchell and Jessen have worked as contractors for the CIA since 9/11. Both were previously affiliated with the military's SERE program, which at its main school at Fort Bragg puts elite special operations forces through brutal mock interrogations, from sensory deprivation to simulated drowning.

⁷⁹ a. Vanity Fair. "Rorschach and Awe." Eban, Katherine. July 17, 2007.
Two psychologists in particular played a central role: James Elmer Mitchell, who was attached to the C.I.A. team that eventually arrived in Thailand, and his colleague Bruce Jessen. Neither served on the task force or are A.P.A. members. Both worked in a classified military training program known as sere—for Survival, Evasion, Resistance, Escape—which trains soldiers to endure captivity in enemy hands. Mitchell and Jessen reverse-engineered the tactics inflicted on sere trainees for use on detainees in the global war on terror, according to psychologists and others with direct knowledge of their activities.

b. [WMA interview with Colonel Steven Kleinman. November 2, 2007.](#)

⁸⁰ New Yorker. "The Black Sites." Mayer, Jane. August 13, 2007. Available [here](#).
Nevertheless, the SERE experts' theories were apparently put into practice with Zubaydah's interrogation. Zubaydah told the Red Cross that he was not only waterboarded, as has been previously reported; he was also kept for a prolonged period in a cage, known as a "dog box," which was so small that he could not stand.

⁸¹ New York Times. "At a Secret Interrogation, Dispute Flared Over Tactics." Johnston, David. September 10, 2006.
At other times, the interrogators piped in deafening blasts of music by groups like the Red Hot Chili Peppers.

Colonel STEVEN KLEINMAN: If our purpose was, as interrogators, to do what the KGB was doing much of during the show trials – and that is to force somebody to comply and to create propaganda - then they're great. They'd be perfect. But that's not what we're after. We're after intelligence information which is true.

NARRATOR: Abu Zubaydah was stripped naked, held in frigid cells, doused with cold water.⁸² Video cameras recorded him 24 hours a day.⁸³

Colonel STEVEN KLEINMAN: Did the CIA not understand the difference between SERE resistance training and interrogation for intelligence purposes? And if they didn't, I find that shocking.

NARRATOR: The agency was on tenuous legal ground, as well – and so insisted on high-level authorization for each new step, including one of the harshest SERE

⁸² ABCNews. "CIA's Harsh Interrogation Techniques Described." Ross, Brian & Espisito, Richard. November 18, 2005.

The CIA sources described a list of six "Enhanced Interrogation Techniques" instituted in mid-March 2002 and used, they said, on a dozen top al Qaeda targets incarcerated in isolation at secret locations on military bases in regions from Asia to Eastern Europe... 4. Long Time Standing: This technique is described as among the most effective. Prisoners are forced to stand, handcuffed and with their feet shackled to an eye bolt in the floor for more than 40 hours. Exhaustion and sleep deprivation are effective in yielding confessions. 5. The Cold Cell: The prisoner is left to stand naked in a cell kept near 50 degrees. Throughout the time in the cell the prisoner is doused with cold water.

⁸³ New York Times. "Tapes by C.I.A. Lived and Died to Save Image." Shane, Scott & Mazzetti, Scott. December 30, 2007.

So in the spring of 2002, even as the intelligence officers flew in a surgeon from Johns Hopkins Hospital to treat Abu Zubaydah, who had been shot three times during his capture in Pakistan, they set up video cameras to record his every moment: asleep in his cell, having his bandages changed, being interrogated. In fact, current and former intelligence officials say, the agency's every action in the prolonged drama of the interrogation videotapes was prompted in part by worry about how its conduct might be perceived — by Congress, by prosecutors, by the American public and by Muslims worldwide.

techniques: Waterboarding.⁸⁴ It was the newly-coined term for the centuries-old water torture.⁸⁵

MALCOLM NANCE: There's no simulation here. It's controlled drowning. Water is entering your system. It can overload your ability to gag it out.

**Waterboarding demonstration
Provided by Amnesty International⁸⁶**

RICHARD ARMITAGE: There is no question in my mind - there's no question in any reasonable human being, there shouldn't be, that this is torture. I'm ashamed that we're even having this discussion.

NARRATOR: Though the Administration would later admit that Abu Zubaydah was one of three prisoners who were waterboarded, hundreds of hours of videotape of his interrogation had been destroyed.⁸⁷ And that meant any evidence of the water torture – a felony under US law – had been destroyed as well.⁸⁸

⁸⁴ a. New York Times. "C.I.A. Destroyed 2 Tapes Showing Interrogations." Mazetti, Mark. December 7, 2007. Available [here](#).

"The C.I.A. has said that the Justice Department and other elements of the executive branch reviewed and approved the use of a set of harsh techniques before they were used on any prisoners, and that the Justice Department issued a classified legal opinion in August 2002 that provided explicit authorization for their use... Some of the harshest techniques, including waterboarding, which induces a feeling of drowning and near-suffocation, were used on several of the first Qaeda operatives captured by the C.I.A., including Abu Zubaydah."

b. Testimony of General Michael Hayden, CIA Director, before the House Intelligence Committee. February 7, 2008.

⁸⁵ New York Times. "Waterboarding." Safire, William. May 9, 2008.

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, final solution and ethnic cleansing were phrases that sent a chill through our lexicon. In this young century, the word in the news — though not yet in most dictionaries — that causes much wincing during debate is the verbal noun 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 predecessor terms for its various forms are water torture, water cure and water treatment.

⁸⁶ Amnesty International. "The Making of the Stuff of Life." April 22, 2008. Available [here](#).

During the making of The Stuff of Life, the "detainee" underwent waterboarding. Though he always had the ability to stop (something real detainees do not have) it was important to the filmmakers that this film is authentic. It is not a dramatisation.

⁸⁷ New York Times. "C.I.A. Was Urged to Keep Interrogation Videotapes." Mazzetti, Mark. December 8, 2007. Available [here](#).

White House and Justice Department officials, along with senior members of Congress, advised the Central Intelligence Agency in 2003 against a plan to destroy hundreds of hours of videotapes showing the interrogations of two operatives of Al Qaeda, government officials said Friday. The chief of the agency's clandestine service nevertheless ordered their destruction in November 2005, taking the step without notifying even the C.I.A.'s own top lawyer, John A. Rizzo, who was

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NARRATOR: On August 4th, 2001, a 26-year-old Saudi named Mohamed al-Qahtani flew from London to Orlando, Florida with \$2800 in his pocket – but no return ticket. A suspicious immigration officer refused him entry.⁸⁹

Colonel BRITAIN MALLOW – Commander, Criminal Investigation Task Force (2002-05): Mohamed Qahtani had been detained at a U.S. border station in Florida.

NARRATOR: Colonel Britt Mallow headed a special Pentagon task force of the military's criminal investigators.

Colonel BRITAIN MALLOW: When he was first captured, information was developed that indicated that he was, in fact, the same person that had been turned away at the border.

NARRATOR: And that meant al-Qahtani might be the “20th hijacker” - recruited for the team that would overpower passengers on United 93.

angry at the decision, the officials said... Current and former intelligence officials say the videotapes showed severe interrogation techniques used on two Qaeda operatives, Abu Zubaydah and Abd al-Rahim al-Nashiri, who were among the first three terror suspects to be detained and interrogated by the C.I.A. in secret prisons after the Sept. 11 attacks.

⁸⁸ a. [Filing in the US Court of Appeals for the District of Columbia Circuit. Zayn al Abidin Muhammad Husayn \[Abu Zubaydah\] v. Robert M. Gates.](#)

58. Waterboarding is torture, and a felony under the federal torture statute. 18 USC 234018; 18 USC 2340 et seq. This is an absolute standard, and not dependant on circumstances.

b. 18 US Code § 2340.

Definitions... As used in this chapter— (1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control; (2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from— (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (a) Offense.— Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

⁸⁹ WMA Interview with Jose Melendez Perez. July 30, 2004, for “9/11: for the Record”

I said, "I'm going to ask you [al-Qahtani] these questions and you will provide me with the answers." He said, "Yes." But when I asked the first question, he said, "I won't answer." So that gave me the grounds – legally grounds – to deny entry to this person. So we put him back on a plane to Dubai – first to London, London to Dubai, and when he was – he was in the jet way before he got in the aircraft, he said – turned around to me and said, "I'll be back." But in a very, very arrogant manner.

As the first anniversary of the 9/11 attacks approached, demands from Washington for “actionable intelligence” from al-Qahtani - in custody at Guantanamo – escalated.

In September, the Pentagon announced⁹⁰ that Major General Geoffrey Miller – a career Army artillery officer⁹¹ – would run both the detention and intelligence operations at the prison camp. “When I showed up at Guantanamo,” he later acknowledged, “I had never before witnessed” an interrogation.⁹²

Colonel BRITAIN MALLOW: If you look at some of the people that were put in charge of Guantanamo, they had very little experience with intelligence. They had very little experience with detention operations. They had very little experience with interrogations. And yet these were the ones that were making the decisions and were put under the pressure to make those decisions without a lot of good information.

NARRATOR: On September 25th, that pressure intensified when lawyers from the War Council – David Addington and the Pentagon’s Jim Haynes arrived - from Washington, along with the CIA’s top lawyer⁹³ – all of them well aware of al-Qahtani.

⁹⁰ US Department of Defense News Release. “General Officer and Flag Officer Assignments.” September 20, 2002.

Army Chief of Staff Eric K. Shinseki announced today the following assignments: .. Army Maj. Gen. Geoffrey D. Miller is being assigned as commander, Joint Task Force - Guantanamo, Guantanamo Bay, Cuba. Miller is currently serving as assistant chief of staff, C-3 and J-3, United Nations Command and Combined Forces Command, U.S. Forces Korea and deputy commanding general, Eighth U.S. Army, Korea.

⁹¹ a. Associated Press. “U.S. offers incentives to detainees at Guantanamo.” Daigle, Katy. December 7, 2002.

Guantanamo is Miller's 24th deployment and follows an assignment in Seoul, South Korea. He has focused his career in artillery and infantry, though even after a few hundred parachute jumps, he could always do one more.

b. Biography of Geoffrey D. Miller, Major General, United States Army.
MILITARY SCHOOLS ATTENDED :Field Artillery Officer Basic Course...
Jun 96 Jul 98 Commanding General, XVIII Airborne Corps Artillery, Fort Bragg, North Carolina

⁹² [Summarized witness statement of Major General Geoffrey D. Miller \(taken by Lieutenant General Randall Schmidt for the Schmidt-Furlow investigation\). March 18, 2005. p. 45.](#)

I have seen several hundred interrogations now. When I showed up at GTMO I had never before witnessed one.

⁹³ The Terror Presidency: Law and Judgment Inside the Bush Administration. Goldsmith, Jack. 2007. p.98.

On September 26, 2002... I visited the forty-five-square-mile American naval base at Guantanamo Bay... Jim Haynes assistant called to say that a spot had opened up on the plane Haynes was taking to Cuba. On the plane, I was introduced to several to many important legal players in the administration, including David Addington...

The secret August “torture memo” – providing legal cover for harsh interrogations - was, figuratively at least, in their pockets. In addition to its narrow definition of illegal physical torture, the memo also argued that:

*“For purely mental pain or suffering to amount to torture...it must result in significant psychological harm of significant duration... lasting for months or even years.”*⁹⁴

NARRATOR: A week after the lawyers’ visit, a senior CIA official instructed Guantanamo officers on various SERE-derived tactics. According to minutes of the briefing, he told them complying with laws against torture:

*“is basically subject to perception. If the detainee dies, you’re doing it wrong.”*⁹⁵

NARRATOR: Nine days later, the outgoing commander of Guantanamo’s interrogation corps – who would later testify that his “marching orders” came from the President of the United States⁹⁶ – officially requested authority to use harsh methods⁹⁷:

⁹⁴ [“Memorandum for Alberto R. Gonzales, Counsel to the President – Re: Standards of Conduct for Interrogation under 18 U.S.C. 2340 – 2340A.”](#) Bybee, Jay S. August 1, 2002.

For purely mental pain or suffering to amount to torture under section 2340, it must result in significant physiological harm of significant duration e.g. lasting for months or even years. We conclude that the mental harm also must result from one of the predicate acts listed in the statute, namely: threats of imminent death; threats of the infliction of the kind of pain that would amount to physical pain.

⁹⁵ [Guantanamo Meeting Minutes. October 2, 2002.](#)

Under the torture convention, torture has been prohibited by international law, but the language of the statutes is written vaguely...It is basically subject to perception. If the detainee dies, you’re doing it wrong.

⁹⁶ Summarized Witness Statement of MG (Retired) Mike Dunlavey. March 17, 2005.

The SECDEF said he wanted a product and he wanted intelligence now. He told me what he wanted; not how to do it. Initially, I was told that I would answer to the SECDEF and USSOUTHCOM. I did not have to deal with USCENTCOM. Their mission had nothing to do with my mission. Everything had to go up to USSOUTHCOM then to JCS. The directions changed and I got my marching orders from the President of the United States. I was told by the SECDEF that he wanted me back in Washington DC every week to brief him.

⁹⁷ [“Army Regulation 15-6: Final Report Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility.”](#) Lt. Gen. Mark Schmidt. April 1, 2005.

On 11 Oct 2002, Major General Michael E. Dunlavey, the Commander of Joint Task Force (JTF) 170, the intelligence task force at GTMO, requested that the CDR USSOUTHCOM, GEN James T. Hill, approve 19 counter resistance techniques that were not specifically listed in FM 34-52. The techniques were broken down into Categories I, II, and III, with the third category containing the most aggressive techniques... On 23 Nov 02 interrogators initiated the first Special Interrogation Plan. The interrogation plan was designed to counter resistance techniques of the subject of the first Special Interrogation Plan. [Known to be Qahtani] The memo authorizing the techniques for this interrogation was signed by SECDEF on 2 Dec 02.

“such as those used in US military interrogation resistance training or by other US government agencies.”⁹⁸

NARRATOR: He listed some of the same SERE tactics the CIA had turned into a blueprint for torture, including:

the “use of a wet towel and dripping water to induce the misperception of suffocation” and “scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family.”⁹⁹

NARRATOR: On December 2nd, 2002, Secretary of Defense Rumsfeld signed off on an “Action Memo” prepared by his General Counsel, Jim Haynes, approving fifteen of the proposed interrogation techniques. Many of them defied the military’s own definitions of cruel and inhumane treatment.¹⁰⁰ Al-Qahtani could be kept in isolation, stripped nude, kept awake and interrogated for twenty hours at a time. Phobias such as fear of dogs could be exploited, as could painful stress positions – keeping him standing for up to four hours.¹⁰¹

The Secretary, who works at a standup desk, added a handwritten note.

⁹⁸ [Memorandum for Commander, Joint Task Force 170. Pfifer, Jerald \(LTC\). October 11, 2002.](#)
Category III Techniques. Techniques in this category may only be used by submitting a request through the Director... These techniques are required for a very small percentage of the most uncooperative detainees (less than 3%)... The following techniques and other aversive techniques, such as those used in US military interrogation resistance training or by other US government agencies, may be utilized in a carefully coordinated manner to help interrogate exceptionally resistant detainees.

⁹⁹ ["Request for Approval of Counter-Resistance Strategies." Phifer, LTC Jerald. October 11, 2002.](#)
Category 3 Techniques... are required for a very small percentage of the most uncooperative detainees... Any of these techniques that require more than light grabbing, poking, or pushing will be administered only by individuals specifically trained in their safe application... The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family.. use of a wet towel and dripping water to induce the misperception of suffocation.

¹⁰⁰ ["Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues." Mora, Alberto. July 7, 2004.](#)
15 Jan 03 ... My memo: (a) stated that the majority of the proposed category II and all of the category III techniques were violative of domestic and international legal norms in that they constituted, at a minimum, cruel and unusual treatment and, at worst, torture

¹⁰¹ [Action Memo for Secretary of Defense. William J Haynes II. November 27, 2002.](#)
*The Commander of USSOUTHCOM has forwarded a request by Commander of Joint Task Force 170 (now JTF GTMO) for approval of counter-resistance techniques to aid in the interrogation of detainees at Guantanamo. (Tab A) – [Dunlavy Memo]
The request contains three categories of counter-resistance techniques, with the first category the least aggressive and the third category the most aggressive (Tab B) [The Pfifer memo]*

Note: In preparing the “Action Memo” for Secretary Rumsfeld, Jim Haynes attaches the original October 11 memos from Dunlavy/Pfifer as tabs A and B.

"I stand for 8-10 hours a day. Why is standing limited to 4 hours?" ¹⁰²

Colonel LAWRENCE WILKERSON: It just showed an incredible naivete, and I think this is more the case, an incredible hubris. No one sat down, not John Yoo, not David Addington, not Dick Cheney, not Donald Rumsfeld, and said, "What's the cumulative effect of allowing all these things to be done?" What if you were to do twelve of these things repeatedly over a 45-day period in the dark with no exposure to the light, no sleep, hypothermic temperature conditions, hanging by your wrist from the wall sometimes. That's not torture? I don't think anyone ever sat down and thought about that. If they did, they condoned it.

The Uniform Code of Military Justice prohibits U.S. Armed Forces from engaging in cruelty, oppression or maltreatment of prisoners, assaulting prisoners and communicating a threat to wrongfully injure a detainee. ¹⁰³

(GUANTANAMO)

NARRATOR: Mohamed al-Qahtani - detainee #063 - had already been in solitary confinement for months.

According to FBI agents who saw him, he:

"was evidencing behavior consistent with extreme psychological trauma, talking to non-existent people, reporting hearing voices..." ¹⁰⁴

¹⁰² ["Action Memo – Counter-Resistance Techniques." Haynes, William J., Jr. 27 November 2002.](#)

With the permission of the GIC, Interrogation Section, the interrogator may use the following techniques... (1) The use of stress positions (like standing) for a maximum of four hours.

RUMSFELD HAND-WRITTEN NOTE: "However, I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

¹⁰³ Uniform Code of Military Justice.

ART. 93. CRUELTY AND MALTREATMENT

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct...

ART. 128. ASSAULT

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct...

ART. 134. GENERAL ARTICLE

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

¹⁰⁴ ["FBI Special Agent Report." July 14, 2004.](#)

**Dramatization based on
Schmidt-Furlow report, Dept. of Defense** ¹⁰⁵

NARRATOR: Now, his interrogations would intensify. An hourly log – leaked from Guantanamo - narrates the harsh details.

He is forced to wear a woman's bra. A thong is draped over his head – sexually taunting and humiliating – a Muslim man.

A leash is tied around his neck.

1115: Began teaching the detainee lessons such as stay, come, and bark to elevate his social status up to that of a dog. Detainee became very agitated.

1300: Dog tricks continued and detainee stated he should be treated like a man.
¹⁰⁶

NARRATOR: Nine hours later, while women are in the interrogation booth, he is stripped naked.

2200: After approximately five minutes of nudity the detainee ceased to resist.... He stated that he did not like the females viewing his naked body. ¹⁰⁷

Dr. MICHAEL GELLES – Chief Psychologist, Naval Criminal Investigative Service (1991-2006): The majority of, many of these military interrogators were very young. They were 18, 19, 20 – kids who were kids, who essentially were serving their country.

NARRATOR: Mike Gelles feared what he called “force drift” at the off-shore prison – that abusive tactics approved for al-Qahtani’s interrogation would spread.

By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end.)

¹⁰⁵ [Executive Summary of Department of Defense “Schmidt-Furlow Report.” 2005.](#)

¹⁰⁶ [Qahtani Interrogation Log. November 23, 2002 – January 11, 2003. p. 47.](#)

¹⁰⁷ [Interrogation Log: Detainee 063. November 23, 2002 – January 11, 2003. p. 47-49.](#)

2200: The detainee was stripped searched. Initially he was attempting to resist the guards. After approximately five minutes of nudity the detainee ceased to resist. He would only stare at the wall with GREAT focus. His eyes were squinted and stuck on one point on the wall directly in front of him. He later stated that he knew there was nothing he could do with so many guards around him, so why should he resist. He stated that he did not like the females viewing his naked body while being searched and if felt he could have done something about it then he would have.

Dr. MICHAEL GELLES: Here we had all these alleged terrorists in Guantanamo Bay, and we weren't getting the intelligence that leadership thought we should be getting. So it was time now to begin to think about, how were we going to expedite this process, ticking time bomb - all this shapes the context.

Colonel BRITTAIN MALLOW: My top agent strongly, strongly believed that we could not be a part in any way to anything that might be seen as illegal or improper. I sent out, by email, instructions to our agents. "If you see something that you think is wrong, we want you to report it to us immediately. But we want you to disengage."

NARRATOR: While Colonel Mallow was ordering his investigators to stand down, General Geoffrey Miller – just five weeks after taking charge – put forward a Standard Operating Procedure for his interrogators, based on SERE.

"JTF GTMO 'SERE' Interrogation Standard Operating Procedure" ¹⁰⁸

NARRATOR: This order has never before been shown in its entirety.

"These tactics and techniques are used at SERE school to "break" SERE detainees. The same tactics and techniques can be used to break real detainees during interrogation." ¹⁰⁹

Colonel BRITTAIN MALLOW: General Miller wasn't an expert in detention operations, in intelligence operations, and especially not in interrogation. So he relied on the experts that he surrounded himself with.

NARRATOR: They were mostly from the CIA's equivalent in the Pentagon – the Defense Intelligence Agency, or DIA. ¹¹⁰

Colonel BRITTAIN MALLOW: They were telling him these aggressive ways of getting at it were the best. We offered an alternative. And General Miller basically said, "If

¹⁰⁸ ["JTF GTMO 'SERE' Interrogation Standard Operating Procedure." Lt. Col. Moss, Ted K. December 10, 2002.](#)

¹⁰⁹ ["JTF GTMO 'SERE' Interrogation Standard Operating Procedure." Lt. Col. Moss, Ted K. December 10, 2002.](#)

...the interrogation techniques used at U.S. Military SERE schools are appropriate for use in real-world interrogations. These tactics and techniques are used at SERE school to "break" SERE detainees. The same tactics and techniques can be used to break real detainees during interrogation operations.

¹¹⁰ Torture Team. Phillippe Sands. 2008. p. 61

The Interrogation Control Element (ICE) was the body that oversaw all the military interrogations at Guantanamo, under the DIA." The ICE Chief, Dave Becker, told an Army investigation that many of the aggressive interrogation techniques requested in October 2002, were "a direct result if the pressure we felt from Washington to obtain intelligence and the lack of policy guidance being issued by Washington.

you're not going to help us in this, if you're not going to participate in this, if you don't want to be on our team, you're out of here."

Dr. MICHAEL GELLES: I wondered how informed those who were making these decisions truly were. I always wondered about a lot of the agendas that were being worked – how political was this?

(WASHINGTON)

NARRATOR: In Washington, a blunt lesson in the politics of harsh interrogations was unfolding. On December 17th, 2002, the head of the Naval Criminal Investigative Service took the troubling reports he had received to the Navy's top civilian lawyer. ¹¹¹

ALBERTO MORA – General Counsel, U.S. Navy (2001-06): He came to me and without prior warning or announcement said that his people down in Guantanamo had reported to him that detainees were being abused.

NARRATOR: One of Alberto Mora's great uncles had been imprisoned in a Nazi concentration camp; another was tortured before he was hanged.

ALBERTO MORA: He felt that the abuse was serious, that it most probably violated American law and certainly violated American values, that his men were upset at being associated with this, and did I want to know more.

Dr. MICHAEL GELLES: It was everything that he didn't believe in. And he sat there, still, listening, didn't ask a question for minutes. We all finished. And that's then when I remember him saying, "This is not right."

NARRATOR: Mora was shown the action memo Rumsfeld had approved – and portions of al-Qahtani's interrogation log. For forty-eight of fifty-four consecutive days, the prisoner would be questioned from 4 AM until midnight.

0400: Detainee was told to stand and loud music was played to keep detainee awake. Was told he can go to sleep when he tells the truth. ¹¹²

NARRATOR: Doctors kept his body functioning well enough for the interrogation to continue. ¹¹³

07 December 2002

2000: Corpsman checks vitals and finds the detainee's pulse is unusually slow.

¹¹¹ ["Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues." Mora, Alberto. July 7, 2004. p. 2-3.](#)

¹¹² [Interrogation Log: Detainee 063. November 23, 2002 – January 11, 2003. p. 23.](#)

¹¹³ [Interrogation Log: Detainee 063. November 23, 2002 – January 11, 2003. p. 17-18.](#)

2050: Heartbeat is regular but very slow – 35 bpm. ¹¹⁴

NARRATOR: Medically close to death, al-Qahtani was rushed to the hospital where he was revived and then, less than two days later, released.

09 December 2002

1800: Detainee is hooded, shackled and restrained in a litter for transport to Camp X-Ray.

1830: Detainee arrives at Camp X-Ray and is returned to interrogation booth. ¹¹⁵

ALBERTO MORA: I was horrified. I was stupefied. I was astonished that this could have taken place, that Secretary Rumsfeld himself would have been asked, much less gotten involved, in these kinds of matters.

NARRATOR: He took his concerns to the author of the “Action Memo,” Rumsfeld’s top lawyer, Jim Haynes. ¹¹⁶

ALBERTO MORA: I told him, “Jim, this could be torture.” And he instantaneously responded, “No it’s not.” And I said, “Think through a little bit more carefully as to each of these techniques. Light and auditory stimulus deprivation -- what does that mean? You put them in a completely dark room for an hour, a day, a week, a month, until the person goes blind? Until madness sets in? Phobia techniques. What is that? The rats, the bats, the snake, a coffin. When and how?”

When I left, I was convinced that he would be picking up the phone, calling the Secretary, and saying, “Boss, I made a mistake, we need to reel back something that we need to think through a little more carefully.”

President BUSH: “Join us in the countdown.. 5, 4, 3, 2, 1”

NARRATOR: Mora left Washington for the holidays, certain his intervention would succeed. ¹¹⁷ He did not yet fully grasp that the abuses at Guantanamo were not the result of a lawyer’s mistake – but of policy set at the highest levels.

¹¹⁴ [Interrogation Log: Detainee 063. November 23, 2002 – January 11, 2003. p. 27.](#)

¹¹⁵ [Interrogation Log: Detainee 063. November 23, 2002 – January 11, 2003.](#)

¹¹⁶ [“Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues.” Mora, Alberto. July 7, 2004. p. 2-3.](#)

¹¹⁷ [“Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues.” Mora, Alberto. July 7, 2004. p. 6-7.](#)

(AFRICA)

NARRATOR: In the Gambia in west Africa – far from Washington and the battlefield in Afghanistan – the great-grandson of a former prime minister of Jordan had been arrested when he arrived from London on a business trip.

Bisher al-Rawi was held by Gambian authorities for a month until December 8th, 2002.

BISHER AL-RAWI – Detainee #906: Two Gambian agents, they sort of stand me up, and we start walking. And boom, two big guys grab me and start dragging me.

NARRATOR: The “two big guys” were Americans. Al-Rawi had been swept up in a covert CIA program to nab suspects and move them to countries where they would be interrogated outside the law. Like hundreds of men abducted in so-called “extraordinary renditions,” al-Rawi was “good to go” in just twenty minutes.¹¹⁸

Dramatization based on Report of the Council of Europe¹¹⁹

NARRATOR: Trussed like an animal and surrounded by American agents, he was loaded onto a Gulfstream jet¹²⁰ bound for one of the CIA’s secret “black sites.” “Throughout the entire flight, I was on the verge of screaming. I was terrified.”

(KABUL, AFGHANISTAN)

NARRATOR: Near Kabul in Afghanistan, in the dead of winter, al-Rawi was thrown into an unheated underground cell.¹²¹

¹¹⁸ [Council of Europe: Committee on Legal Affairs and Human Rights. “Report on ‘Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.’” Marty, Dick. June 7, 2006.](#)

The “security check” used by the CIA to prepare a detainee for transport on a rendition plane was described to us by one source in the American intelligence community as a “twenty-minute takeout”⁶². His explanation was that within a very short space of time, a detainee is transformed into a state of almost total immobility and sensory deprivation. “The CIA can do three of these guys in an hour. In twenty minutes they’re good to go.

¹¹⁹ [Council of Europe: Committee on Legal Affairs and Human Rights. “Report on ‘Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.’” Marty, Dick. June 7, 2006.](#)

¹²⁰ Times Online. “Londoner was victim of secret CIA rendition.” Grimston, Jack. October 26, 2006. *Newly revealed flight logs of a CIA Gulfstream executive jet — detailed in a book to be published this week — indicate that it was used in April 2002 to transport Martin Mubanga, a Londoner now aged 33, to Guantanamo after he was captured in Zambia. [...] On December 8, 2002 the same plane was used to render two British residents arrested in Gambia, west Africa, to a CIA prison in Afghanistan, from where they were also taken to Guantanamo.*

**Dramatization based on
Report of the Council of Europe¹²²**

NARRATOR: Unknown numbers of men - some who ended up in Guantanamo, others who have since disappeared – were held in what they themselves called the “prison of darkness.”

Words of Binyam Mohamed - Detainee # 1458:¹²³ *“They hung me up. I was allowed a few hours of sleep on the second day, then hung up again...this time for two days. My wrists and hands had gone numb. After a while I felt pretty much dead. I didn’t feel I existed at all.”*¹²⁴

NARRATOR: The occasional beam from a guard’s flashlight was all that pierced the dark and frigid cells.

BISHER AL-RAWI – Detainee #906: You do not know what you're losing, you know, not being able to see. You have to use your senses, all of them. It was a very, very difficult place to handle.

NARRATOR: It was, one prisoner said, “as if you were inside a tomb.” Except for the sound. Speakers in every cell blasted non-stop, around the clock, for days that turned into weeks.

¹²¹ [Council of Europe: Committee on Legal Affairs and Human Rights. “Report on ‘Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.’” Marty, Dick. June 7, 2006.](#)

172. On 5 December 2002, after 27 days, Wahab was released and returned to the United Kingdom. Some days afterwards, on a Sunday, Bisher Al-Rawi and Jamil El-Banna were flown to Afghanistan in a military jet with over 40 seats.... 173. At Kabul, they were taken in less than 15 minutes to the prison identified as the ‘Dark Prison’. The description of the inhuman detention conditions in this prison [155], which is an important link in the CIA ‘spider’s web’, corresponds in many details to that given by other victims of ‘renditions’ who went there.... [155]« Diabolical » loud music round the clock, total absence of light, rotten food, no possibility to wash or use a toilet, uncomfortable handcuffing and leg shackling, cold cell, inadequate clothing, prisoners frequently beaten and trampled on.

¹²² [Council of Europe: Committee on Legal Affairs and Human Rights. “Report on ‘Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states.’” Marty, Dick. June 7, 2006.](#)

¹²³ [“List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006.” Department of Defense.](#)

Binyam Mohamed, Detainee #1458 (Listed as “MOHAMMED AHMED BINYAM”)

¹²⁴ Confidential memo re: Binyam Mohammed al Habashi. Clive Stafford Smith. August 1, 2005. p. 20. *They hung me up. I was allowed a few hours of sleep on the second day, then hung up again this time for two days. My legs had swollen. My wrists and hands had gone numb. I got food only once all this time. After a while, I felt pretty much dead. I didn’t feel I existed at all.*

BRENT MICKUM – Attorney, Spriggs & Hollingsworth: We're talking about never essentially being allowed to ever fall asleep soundly.

NARRATOR: Brent Mickum was Bisher al-Rawi's *pro bono* American attorney.

BRENT MICKUM: So that, you know, you get to the point where you will say anything to try and be allowed to get some sleep. And what everyone has told me, they have no idea what they may have said. I mean, you're just not lucid. They could ask, you know, did you assassinate George Bush? And they would say, "Yeah."

NARRATOR: When he arrived in the light and heat of Guantanamo, al-Rawi assured other prisoners that the worst was over.

BISHER AL-RAWI – Detainee #906: That hope, that human hope, natural hope that gosh, you know, maybe it's gonna get better. Unfortunately, unfortunately, every time you think it's gonna get better, it was getting worse.

NARRATOR: In early January, 2003, in a move guaranteed to be reported straight to the Vice President's office, and so at considerable risk to his career – Alberto Mora drafted a memo calling the tactics still being used at Guantanamo:

"at a minimum, cruel and unusual treatment and, at worst, torture." ¹²⁵

NARRATOR: On January 15th, he told Jim Haynes that if the interrogations were not halted, he would sign the memo – exposing the Administration's policy. ¹²⁶

ALBERTO MORA: Jim pushed the memorandum back at me in its envelope and said, "I don't know what you're trying to accomplish with this," which was an astonishing comment. And then he said, "Well, I'm happy to inform you that the Secretary is considering rescinding his authorities." So I said, "Considering?" And then he said, "I know, I know. Let me get back to you."

NARRATOR: To defuse the growing rebellion inside the Pentagon, Rumsfeld did suspend approval of the harshest tactics. ¹²⁷ And he asked the military's top lawyers to

¹²⁵ ["Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues." Mora, Alberto. July 7, 2004. p. 14.](#)

¹²⁶ ["Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues." Mora, Alberto. July 7, 2004. p. 15.](#)

¹²⁷ ["Memorandum for Commander USSOUTHCOM." Rumsfeld, Donald. January 15, 2003.](#)
My December 2, 2002 approval of the use of all /category II techniques and one Category III technique during interrogations at Guantanamo is rescinded...

weigh in on interrogations ¹²⁸ – a year after the first prisoners had arrived at Guantanamo.

General THOMAS ROMIG: We only had one conversation with Mr. Rumsfeld. He came in and gave us a pep talk. And basically said this is so important, and what you're doing will -- will affect the United States for years to come. And it was a -- I thought it a little strange that we were getting a pep talk on something like this. Maybe it was an attempt to get us to do what they wanted to do politically.

NARRATOR: In fact, Jim Haynes had already turned to the War Council's reliable scribe, John Yoo. And Yoo wrote an 81-page legal opinion expanding the still secret "torture" memo. He now added, for example, that the President had the authority to approve tactics that could include drugging a prisoner, as long as the drugs did not:

"create a profound disruption...substantially interfering with his cognitive abilities or fundamentally altering his personality." ¹²⁹

NARRATOR: And, that to violate US law against maiming:

"cutting, biting, slitting..."

NARRATOR: Must be specific:

"to the body part the statute specifies ...the nose, ear, lip, tongue, eye or limb."
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¹²⁸ ["Memorandum for Commander USSOUTHCOM." Rumsfeld, Donald. January 15, 2003.](#)

(U) Establish a working group within the Department of Defense to assess the legal, policy, and operational issues related to the interrogations of detainees held by the US Armed Forces in the War on Terrorism.

¹²⁹ ["Military Interrogation of Alien Unlawful Combatants Held Outside the United States" Yoo, John. March 14, 2003. p. 42.](#)

For drugs or procedures to rise to the level of "disrupt[ing] profoundly the senses or personality," they must produce an extreme effect. And by requiring that they be "calculated" to produce such an effect, the statute requires that the defendant has consciously designed the acts to produce such an effect... Moreover, disruption of the senses or personality alone is insufficient to fall within the scope of this subsection; instead, that disruption must be profound...By requiring that the procedures and the drugs create a profound disruption, the statute requires more than that the acts "forcibly separate" or "rend" the senses or personality. Those acts must penetrate to the core of an individual's ability to perceive the world around him, substantially interfering with his cognitive abilities, or fundamentally alter his personality.

¹³⁰ ["Military Interrogation of Alien Unlawful Combatants Held Outside the United States" Yoo, John. March 14, 2003.](#)

Another criminal statute applicable in the special maritime and territorial jurisdiction is -18 U.S.C. § 114. Section 114 makes it a crime for an individual (1) "with the intent to torture (as defined in section 2340), maim, or disfigure" to (2) "cut[], bite[], or slit[] the nose, ear, or lip, or cut[] out or disable[] the tongue, or put[] out or destroy[] an eye, -or cut[] off or disable[] a limb or any member of another person."... the defendant's method of maiming must be one of the types

NARRATOR: Alberto Mora asked John Yoo to meet him in the Pentagon. ¹³¹

ALBERTO MORA: As he was talking, I was becoming more concerned and more alarmed, and ultimately I asked him the question, “Well, John, does this mean the President has the authority to order torture?” And he said, “Yes.”

NARRATOR: John Yoo’s memo pushed even further, opining that anyone prosecuted for following the President’s orders would be legally protected. ¹³²

General THOMAS ROMIG: There isn’t a court internationally or in the United States that would support that theory if you’ve committed an act of torture or war crime, but because you believe you are operating under the umbrella of a presidential war powers, the commander in chief war powers, you’re immune. The commander-in-chief doesn’t have the power to make that which is illegal under the law of war, legal.

NARRATOR: But Jim Haynes ordered a report based on John Yoo’s assertions.

ALBERTO MORA: Jim Haynes invited me to speak to him privately as to my thoughts. I said, “If I were you, I’d put this in a desk drawer. I’d never, never let it see the light of day again. Just let it go away.”

General THOMAS ROMIG: I was told, that, you know, we’re not going to go forward on it, everything’s on hold, you’ve been listened to, and many of those techniques that were at the extreme end are -- are now out the window.

ALBERTO MORA: We thought we had won. The word from Guantanamo was that the abuse of prisoners had stopped.

the statute specifies – i.e. cutting, biting, slitting, cutting out, disabling, or putting out – and the injury must be to a body part the statute specifies –i.e. the nose, ear, lip, tongue, eye, or limb.

¹³¹ [“Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues.” Mora, Alberto. July 7, 2004.](#)

Mr. Yoo glibly defended the provisions of his memo, but it was a defense of provisions that I regarded as erroneous. Asked whether the President could order the application of torture, Mr. Yoo responded, “Yes.” When I questioned this, he stated that his job was to state what the law was, and also stated that my contrary view represented an expression of legal policy that perhaps the administration may wish to discuss and adopt, but was not the law

¹³² [“Military Interrogation of Alien Unlawful Combatants Held Outside the United States.” Yoo, John. March 14, 2003. p. 80.](#)

If a government defendant were to harm an enemy combatant during an interrogation in a manner that might arguably violate a criminal prohibition, he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network. In that case, we believe that he’ could argue that the executive branch’s constitutional authority to protect the nation from attack justified his actions.

NARRATOR: In fact, they had lost. And they had been deceived. The top military lawyers would not find out for more than a year that in April, 2003,¹³³ Rumsfeld had secretly given the go-ahead to use 24 harsh interrogation techniques at Guantanamo.¹³⁴

(GUANTANAMO)

NARRATOR: General Miller was briefed. Interrogators at the prison camp had their own “golden shield” – immunity from prosecution, in advance.

Colonel STUART COUCH - Senior Prosecutor, Office of Military Commissions (2003-06): I looked down the hall. And I heard this head-banger music blaring out. And I could see what appeared to be, like strobe light coming out of the doorway.

NARRATOR: Colonel Stuart Couch, a military prosecutor who had gone through SERE training as a Marine, visited the prison camp to hear evidence on a case he'd been assigned.

Colonel STUART COUCH: And so I walked down the hallway and the door was open. And I saw a detainee sitting on the floor. He was shackled. And the room was blacked out with exception of the strobe light. And he was just, he was rocking back and forth.

Dramatization based on Inspector General report, Dept. of Justice¹³⁵

Colonel STUART COUCH: It looked, for all the world, like an experience that I had gone through in SERE School. You know, the strobe lights, the heavy metal music. I mean, that was right out of the SERE school playbook. There was an Air Force attorney that was accompanying me, giving me the tour. And I just said, “Did you see that?” And he goes, “Well, yeah.” And I said, “You know, I got a problem with that.” And he goes, “Well, that’s approved.”

¹³³ [“Working Group Report on Detainee Interrogations in the Global War on Terror...” April 4, 2003.](#)

¹³⁴ [“Memorandum for the Inspector General, Department of the Navy -- Statement for the Record: Office of General Counsel Involvement in Interrogation Issues.” Mora, Alberto. July 7, 2004. P. 15](#)
[I] called Air Force Deputy General Counsel Dan Ramos to advise him that I had heard references to the report in televised congressional hearings on the Abu Ghraib scandal. Mr. Ramos informed me that it in fact had been signed out and briefed to SOUTHCOM Commander GEN Hill and JTF-GTMO Commander MGEN Miller in March or April 2003.

¹³⁵ [“A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq.” Office of the Inspector General. May 2008.](#)

NARRATOR: Colonel Couch was not the only one troubled by the tactics Secretary Rumsfeld had approved. FBI agents at the prison camp were keeping what they called a “war crimes” file ¹³⁶ - noting what they witnessed.

“I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defecated on themselves, and had been left there for 18, 24 hours or more.”

“On another occasion... the temperature in the unventilated room (was) probably well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night.” ¹³⁷

“A detainee... said a female interrogator, after not getting cooperation from him, called four guards into the room. While the guards held him, she... embraced the detainee from behind and put her hand on his genitals... and she wiped [what he thought was menstrual] blood from her body on his face and head.” ¹³⁸

SHAFIQ RASUL – Detainee #086: We were basically shackled to the floor sitting like this, shackled to the floor, and you'd be sitting there freezing. It seemed like it was an experiment just to see to what extent they could take a human.

MALCOLM NANCE: We have re-created our enemy's methodologies in Guantanamo. It will hurt us for decades to come. Decades. Our people will all be subjected to these tactics, because we have authorized them for the world now. How it got to Guantanamo is a crime and somebody needs to figure out who did it, how they did it, who authorized them to do it, and shut it down. Because our servicemen will suffer for years.

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¹³⁶ [“A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq.” Office of the Inspector General. May 2008. Page 167.](#)

Some agents who served at GTMO told the OIG that they were told that they should write up any potential “war crimes” allegations in an FD-302 for inclusion in the “war crimes” case files in the FBI office at GTMO.

¹³⁷ a. Executive [Summary of Department of Defense “Schmidt-Furlow Report.”](#)

b. [FBI Email. August 2, 2004.](#)

¹³⁸ [FBI Interview Transcript. April 21, 2003.](#)

[Redacted] said that has found all the interrogators to be liars. He does not trust any of them. He gave an example of the behavior of Americans. A detainee returned from an interrogation with blood on his face and head. He said a female interrogator, after not getting cooperation from him, called four guards into the room. While the guards held him, she removed her blouse, embraced the detainee from behind and put her hand on his genitals. The interrogator was on her menstrual period and she wiped blood from her body on his face and head. He said he asked one guard “Why do you hate me?” The guard responded, “If I could, I would kill you.”

(IRAQ)

President BUSH: “My fellow citizens, at this hour American and coalition forces are in the early stages of military operations to disarm Iraq, to free its people and to defend the world from grave danger.”

NARRATOR: Three months after President Bush declared the end of major combat operations in Iraq, a potent guerrilla resistance rose across broad swaths of the country. Demands for real-time, battlefield intelligence grew urgent. The “gloves are coming off,”¹³⁹ interrogators were told in August, 2003. Prisoners needed to be broken.

One interrogator suggested:

*“...a baseline interrogation technique that at a minimum allows for physical contact resembling that used by SERE instructors. Sleep deprivation. Fear of dogs and snakes appear to work nicely. I firmly agree that the gloves need to come off.”*¹⁴⁰

NARRATOR: In late August – on orders from the Secretary of Defense – Major General Geoffrey Miller traveled to Baghdad, and told the general in charge of U.S. prison operations he was there to “gitmoize” the interrogations.¹⁴¹ Rumsfeld arrived, too, and toured the American prison installed in what had been the heart of darkness during Saddam Hussein’s regime – Abu Ghraib.¹⁴²

¹³⁹ [ICE Email. August 14, 2003. Pages 6623.](#)

The gloves are coming off gentleman regarding these detainees... Col Boltz has made it clear that we want these individuals broken.

¹⁴⁰ [ICE Email. August 14, 2003. Pages 6622.](#)

Today’s enemy, particularly those in SWA, understand force, not psychological mind games or Incentives. I would propose a baseline interrogation technique that at a minimum allows for physical contact resembling that used by SERE instructors... Sleep deprivation, white noise, and a litany of harsher fear-up approaches... Fear of dogs and snakes appear to work nicely. I firmly agree that the gloves need to come off.

¹⁴¹ [“Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others.” Karpinski, Janis Gen. October 26, 2005](#)

MG Miller ultimately selected Abu Ghraib to be the focus of his efforts, and he told me that he was going to make Abu Ghraib “the interrogation center for all of Iraq”; he was going to GITMOIZE the operation and planned to use the MPs to assist the interrogators by setting the conditions for effective interrogations to take place.

¹⁴² Washington Post. September 7, 2003. Priest, Dana. ‘U.S. Struggling to Identify Enemy’

Rumsfeld, on the last day of his trip here, also toured a massive grave site of Mahawil in Hilla, where the remains of 3,000 people have been recovered. Rumsfeld also visited the Baghdad Central Penitentiary, formerly known as Abu Ghraib, and walked through a chamber where 6,000 people were executed.

Eight days later, interrogation techniques that mirror¹⁴³ those Rumsfeld had authorized in Guantanamo were authorized for Iraq.¹⁴⁴

NARRATOR: These are exclusive photographs of a prisoner at Abu Ghraib – and hand-written instructions taped outside his cell. He will be deprived of sleep, kept in stress positions, interrogated in the middle of the night. It is clear evidence of treatment that violates the Geneva Conventions - even as the Administration claimed Geneva was being honored in Iraq.

(GUANTANAMO)

NARRATOR: Behind the razor wire at Guantanamo, detainee #760¹⁴⁵ - Mohamedou Slahi - had become another focus of intense attention in Washington.

Colonel STUART COUCH: Slahi just jumped off the pages. This guy is one of the most serious guys we've got in Guantanamo.

NARRATOR: Colonel Stuart Couch had been assigned to prosecute Mohamedou Slahi.

Colonel STUART COUCH: I did see information from other, from a high-value detainee that indicated he knew at least three of the hijackers that were integral to the 9/11 attack. That's what got my attention. That's what got the attention of just anybody that was familiar with Slahi's case.

¹⁴³ [Memorandum for the Commander US Southern Command. Rumsfeld, Donald. April 16, 2003. Page 2.](#)

I approve the use of specific counter-resistance techniques... The techniques I authorize are those lettered A-X, set out in Tab A... Use of these techniques is limited to interrogations of unlawful combatants held at Guantanamo Bay, Cuba...

A. Direct: Asking straight forward questions...

B. Incentive/Removal of Incentive...

E. Fear Up Harsh: Significantly increase the fear level in a detainee...

I. Pride and Ego Down...

J. Futility: Invoking the feeling of futility of a detainee...

¹⁴⁴ [Memorandum For Commander, U.S. Central Command. Sanchez, Ricardo Gen. September 14, 2003.](#)

A. Direct: Asking straight forward questions...

B. Incentive/Removal of Incentive...

E. Fear Up Harsh: Significantly increase the fear level in a detainee..

I. Pride and Ego Down...

J. Futility: Invoking the feeling of futility of a detainee...

¹⁴⁵ [Department of Defense. "List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006"](#)

Detainee # 760 "SLAHI, MOHAMEDOU OULD"

NARRATOR: Throughout the summer and fall of 2003, Slahi was the subject of a “special interrogation plan” approved by Secretary Rumsfeld.¹⁴⁶

**Dramatization based on
Schmidt-Furlow report, Dept. of Defense**¹⁴⁷

NARRATOR: His diary describes what happened.

SLAHI DIARY: *“I was very hurting for my hands were locked to the floor and I could not stand. Mary was touching me with her sexual parts all over and talking dirty. I am not willing to talk in details about that ugly happen.”*¹⁴⁸

NARRATOR: Intelligence information from Slahi’s interrogation suddenly began to flood Stu Couch’s desk.

SLAHI DIARY: *“I’ve been so long in segregation. ...I had been counting the holes of the cage I was in. They are about four thousand one hundred holes.”*¹⁴⁹

Colonel STUART COUCH: I’ve got in the back of my mind what I had seen on that first trip. And I’m thinking, okay, why is he being this prolific? What’s going on? You know, is it physical coercion?

¹⁴⁶ [“A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq”. Office of the Inspector General. May 2008.](#)

Secretary Rumsfeld approved the interrogation plan for Slahi on August 13, 2003. The movement plan for Slahi was amended, however, to utilize a several-hour boat ride rather than a helicopter to deceive Slahi. According to the Church Report, on August 25, 2003, Slahi was removed from his cell in Camp Delta, fitted with blackout goggles, and taken on a disorienting boat ride during which he was permitted to hear pre-planned deceptive conversations among other passengers. He was then placed in isolation in Camp Echo. Church Report at 160. The extent to which the harsher elements of the interrogation plan approved by Secretary Rumsfeld for Slahi were ever implemented is not clear to us. The Church Report states that the special interrogation plan was implemented in early September 2003 and Slahi soon began providing useful information. Church Report at 160.

¹⁴⁷ a. [Executive Summary of Department of Defense “Schmidt-Furlow Report” \(2005\).](#)

b. Diary of Slahi, Mohammedou. Guantanamo Detainee #760.

¹⁴⁸ Diary of Slahi, Mohammedou. Guantanamo Detainee #760. Pages 129-131.

I was very hurting for my hands were locked on the floor and I could not stand. ...Mary was touching me with her sexual parts all over and talking dirty. ...she was going to bring next day a big-breasted friend of her and both of them were going to have fun with me. ...I am not willing to talk in details about that ugly happen.

¹⁴⁹ Diary of Slahi, Mohammedou. Guantanamo Detainee #760. Pages 185.

I’ve been so long in segregation. ...I had been counting the holes of the cage I was in, they are about four thousand one hundred holes.

NARRATOR: Besides the physical coercion, an interrogator posing as a Navy captain sent by the White House told Slahi that his family was “in danger” if he didn’t cooperate,¹⁵⁰ that his mother had been imprisoned – and implied she might be raped in custody.¹⁵¹

Colonel STUART COUCH: If you tell me that Slahi gave up information because you told him, and showed him in a letter, that you’re bringing his mother to Guantanamo and that she could be abused by men, is anything that he tells you from that point, you know, is that credible?

SLAHI DIARY: *“If you are ready to buy I am selling,’ I said.¹⁵² I tried my best to make myself look as bad as I could and that exact way you can make your interrogator happy.”¹⁵³*

NARRATOR: Slahi’s interrogation, Colonel Couch concluded, had been “morally repugnant.”¹⁵⁴ He refused to prosecute.

Colonel STUART COUCH: God means what he says. And we were created in his image, and we owe each other a certain level of dignity -- a certain level of respect. And that’s just a line we can’t cross. If we compromise our own ideals as a nation, then

¹⁵⁰ [Executive Summary of Department of Defense “Schmidt-Furlow Report”](#)

On 2 Aug 03, the Special Team Chief, while impersonating a USN Captain from the White House, told the subject of the second special interrogation that he had a letter indicating that the subject of the second special interrogation’s family had been captured by the United States and that they were in danger. He went on to tell the subject of the second special interrogation that if he wanted to help his family he should tell them everything they wanted to know.

¹⁵¹ [Executive Summary of Department of Defense “Schmidt-Furlow Report”](#)

On 2 Aug 03 the Special Team Chief presented himself to the subject of the second special interrogation [Slahi] dressed as a Captain in the USN and indicated he was from the White House in an effort to convince the subject of the second special interrogation that he needed to cooperate with his interrogators. The Special Team Chief presented a letter to the subject of the second special interrogation, which indicated that because of the subject of the second special interrogation’s lack of cooperation, U.S. authorities in conjunction with authorities from the country of origin of the subject of the second Special Interrogation Plan would interrogate the mother of the subject of the second Special Interrogation Plan. The letter further indicated that if his mother was uncooperative she would be detained and transferred to U.S. custody at GTMO for long term detention.

¹⁵² Diary of Slahi, Mohammedou. Guantanamo Detainee #760. Pages 188.
If you are ready to buy I am selling.

¹⁵³ Diary of Slahi, Mohammedou. Guantanamo Detainee #760. Page 179.
I answered all the questions he asked me with incriminating answers. I tried my best to make myself look as bad as I could and that exact way you can make your interrogator happy.

¹⁵⁴ WMA interview with Colonel Stuart Couch. October 9, 2007.
And as I stated in a document that I gave the chief prosecutor, I find the techniques that were used with this detainee to be morally repugnant, and for that reason alone, I’m not going to have any further participation in his prosecution.

these guys have accomplished much more than driving airplanes into the World Trade Center and into the Pentagon.

(ABU GHRAIB)

NARRATOR: When the abuse of prisoners at Abu Ghraib was exposed in April, 2004,¹⁵⁵ the administration tried to direct attention away from the question of torture. Blame was pointed toward the young MPs.

President BUSH: (April 30, 2004) “I share a deep disgust that those prisoners were treated the way they were treated. Their treatment does not reflect the nature of the American people. That’s not the way we do things in America. And so I, uh, I didn’t like it one bit.”

NARRATOR: But, there are the photographs. Images that portray tactics earlier approved by the chain of command – and covered by legal opinions initiated in the White House.

In the aftermath of Abu Ghraib, the military reasserted its ban on the harsh methods prohibited by its Army Field Manual on Interrogation.

The secret Justice Department memos that provided legal cover by trying to define torture out of existence had been withdrawn.¹⁵⁶

Then, In December, 2004, the newly-re-elected President nominated one of the War Council’s five lawyers, Alberto Gonzales, to be Attorney General of the United States.

(Confirmation hearings - January 6, 2005)

Senator Richard Durbin (D-IL): “Can U.S. personnel legally engage in torture under any circumstances?”

Alberto Gonzales: “I suppose without -- I don't believe so, but I'd want to get back to you on that and make sure that I don't provide a misleading answer.”

NARRATOR: But mislead he did. Soon after Gonzales was sworn in, the Justice Department secretly issued a new legal opinion¹⁵⁷ renewing the CIA’s “golden shield” to use the harsh tactics the President called “alternative interrogation techniques.”

¹⁵⁵ a. CBS 60 Minutes II. “Abuse Of Iraqi POWs By GIs Probed: 60 Minutes II Has Exclusive Report On Alleged Mistreatment.” April 28, 2004.

b. The New Yorker. “Torture at Abu Ghraib American soldiers brutalized Iraqis. How far up does the responsibility go?” Hersh, Seymour.

¹⁵⁶ The Terror Presidency: Law and Judgment Inside the Bush Administration. Goldsmith, Jack. 2007. Page 159-160.

¹⁵⁷ New York Times. “Secret U.S. Endorsement of Severe Interrogations.” October 4, 2007. Shane, Johnston & Risen, James.

(GUANTANAMO)

NARRATOR: It had been more than three years since the first prisoners arrived in Guantanamo.

Vice President CHENEY: “They’ve got a brand new facility down at Guantanamo. We spent a lot of money to build it. They’re very well treated down there. They’re living the tropics. They’re well fed. They’ve got everything they could possibly want. There isn’t any other nation in the world that would treat people who were determined to kill Americans the way we’re treating these people.”

CLIVE STAFFORD SMITH: None of them been charged with a crime, none of them been convicted of a crime, for the most part aren’t guilty of a crime, and yet they’re being held in these maximum security prisons, which, if I made you do it for a week it would drive you crazy. And we pretend like this is civilized, and it is utterly uncivilized.

NARRATOR: After two years of interrogations with no end in sight, Bisher al-Rawi refused to be questioned again. He was labeled “non-compliant”¹⁵⁸ and moved to Camp Five, where prisoners were confined alone at least twenty-two hours a day. They were not in solitary confinement, the Pentagon insisted, but simply held in “single-occupancy cells.”¹⁵⁹

When the Justice Department publicly declared torture “abhorrent” in a legal opinion in December 2004, the Bush administration appeared to have abandoned its assertion of nearly unlimited presidential authority to order brutal interrogations. But soon after Alberto R. Gonzales’s arrival as attorney general in February 2005, the Justice Department issued another opinion, this one in secret. It was a very different document, according to officials briefed on it, an expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency. The new opinion, the officials said, for the first time provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures. Mr. Gonzales approved the legal memorandum on “combined effects” over the objections of James B. Comey, the deputy attorney general, who was leaving his job after bruising clashes with the White House. Disagreeing with what he viewed as the opinion’s overreaching legal reasoning, Mr. Comey told colleagues at the department that they would all be “ashamed” when the world eventually learned of it.

¹⁵⁸ Guardian. “After five years of torture, Bisher is slowly slipping into madness.” Mickum, Brent. January 9, 2007.

Bisher’s world is a cell 6ft by 8ft in Camp V, where alleged “non-compliant” prisoners are incarcerated. After all these years and hundreds of interrogations, Bisher finally refused to be interrogated further. Despite the fact that Guantánamo officials have publicly proclaimed that prisoners are no longer required to participate in interrogations, Bisher is deemed to be non-compliant and hence is tortured daily.

¹⁵⁹ New York Times. “Detainees’ Mental Health is Latest Legal Battle.” Glaberson, William. April 26, 2008.

Pentagon officials say that Guantanamo holds dangerous men humanely and that there is no unusual quantity of mental illness there. Guantanamo, a military spokeswoman said, does not have solitary confinement, only “single-occupancy cells.”

BISHER AL-RAWI – Detainee #906: They just leave you there in a cell, concrete cell, with nothing. And you're shivering, like you can take it for an hour or two, maybe a day, you sleep and you're shivering. And the pictures don't show you what the authorities are actually doing there.

NARRATOR: Al-Rawi was held in a cell that was lit 24 hours a day. At times the air conditioning was turned off and he was left to swelter in the tropical heat; at others, it was set to blow frigid air and, as punishment, his jumpsuit was taken away.¹⁶⁰

**Dramatization based on
Testimony of Bisher al-Rawi¹⁶¹**

NARRATOR: After a year in solitary, al Rawi began incessantly pacing back and forth in the tiny cell, talking to himself, laughing maniacally.

BISHER AL-RAWI – Detainee #906: You push him, you deprive him of his senses. You deprive him of his -- of life. And then the point could come when he will just flip. And then your mind will just say, that is it. I'm finished. I'm done.

NARRATOR: His lawyers feared al-Rawi was slipping into a madness that would be permanent. If that happened, it would be the terrible proof that, even by the Administration's narrow definition, he had been mentally tortured.

(WASHINGTON)

President BUSH (September 15, 2006): "This debate is occurring because of the Supreme Court's ruling that said that we must conduct ourselves under the Common Article 3 of the Geneva Convention. And that common Article 3 says there will be no outrages upon human dignity. It's very vague. What does that mean – 'outrages upon human dignity?' That's a statement that is wide open to interpretation."

NARRATOR: In 2006, the Supreme Court ruled that Guantanamo's detainees were entitled to the protections of the Geneva Conventions. One Justice warned that "violations of Common Article 3 are considered 'war crimes.'"¹⁶²

¹⁶⁰ Guardian. "After five years of torture, Bisher is slowly slipping into madness." Mickum, Brent. January 9, 2007.

While in isolation he has, in addition to the temperature extremes, been subjected to other sensory torments. His cell is frequently unbearably cold because the air conditioning is turned up to the maximum. Sometimes his captors take his orange jump suit and sheet, leaving him only in his shorts. For a week at a time, Bisher constantly shivers and is unable to sleep because of the extreme cold.

¹⁶¹ ["Declaration of Bisher al-Rawi" in Jamil El-Banna et al. v. Robert M. Gates. May 24, 2007.](#)

¹⁶² "Opinion of Associate Justice Anthony Kennedy in Hamdan v. Rumsfeld et al." June 29, 2006.

White House announcer (October 17, 2006): “Ladies and gentlemen, the President of the United States and the Vice President of the United States.”

NARRATOR: But just weeks before the mid-term elections, stampeded by the threat of looking weak on terrorism, Congress once again bowed to the Administration’s “policy of cruelty.”

President BUSH: “It is a rare occasion when a President can sign a bill he knows will save American lives. I have that privilege this morning.”

NARRATOR: The new law stripped the courts of the power to hear cases based on Geneva.¹⁶³ And, in a provision that had been pushed hard by the Vice President,¹⁶⁴ it granted retroactive immunity to U.S. officials who might have carried out – or ordered – torture.

(GUANTANAMO)

NARRATOR: In March, 2004, after 832 days in U.S. custody, Shafiq Rasul had been flown home from Guantanamo. British authorities released him without charge.

In January 2005, Moazzam Begg was released. He had been in U.S. custody, without being charged, for more than one thousand days.

“By Act of Congress, moreover, violations of Common Article 3 are considered “war crimes,” punishable as federal offenses, when committed by or against United States nationals and military personnel. See 18 U. S. C. §2441..”

¹⁶³ Military Commissions Act of 2006.

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS... (a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

¹⁶⁴ Washington Post. “Pushing the Envelope on Presidential Power. “Gelman, Bart & Becker, Jo. June 26, 2007.

The Military Commissions Act, passed by strong majorities of the Senate and House on Sept. 28 and 29, 2006, gave “the office of the vice president almost everything it wanted,” said Yoo, who maintained his contact with Addington after returning to a tenured position at Berkeley. The new law withstood its first Supreme Court challenge on April 2. It exempts CIA case officers and other government employees from prosecution for past war crimes or torture. Once again, an apparently technical provision held great importance to Cheney and his allies. Without repealing the War Crimes Act, which imposes criminal penalties for grave breaches of Geneva’s humane-treatment standards, Congress said the president, not the Supreme Court, has final authority to decide what the standards mean -- and whether they even apply.

On March 30th, 2007, Bisher al-Rawi was once again trussed like an animal and hustled aboard a plane. This time, he was headed home. He had been in U.S. custody four years, 4 months and 22 days.

BISHER AL-RAWI – Detainee #906: The things that are buried in your mind, they stick with you - you just can't forget it. You can't. It just stays with you and it hurts you every day, every time you remember it.

NARRATOR: At least five hundred men have been freed from the off-shore prison – with no explanation for their years behind bars. More than two hundred fifty are still held there, most of them in solitary confinement.¹⁶⁵

Mohamedou Slahi is one who remains. In his seventh year at Guantanamo, no charges have been filed against him.

In 2006, Abu Zubaydah was transferred from a CIA black site to the island prison. After almost seven years in U.S. custody, no charges have been filed against him.

In May, 2008, without explanation, the Pentagon dropped all charges against Mohamed al-Qahtani. He is, according to his lawyer, “paranoid,” “incoherent,” “cracked.” He remains in U.S. custody.

On June 12th, 2008, the Supreme Court once again rebuked the Administration, ruling that Guantanamo’s prisoners have the constitutional right to challenge their detention.

None of the prisoners will be automatically – or quickly - released. But the White House will now have to publicly defend their treatment – and its practices - in U.S. federal courts.

Words of Fawzi al-Odah – Detainee #232:¹⁶⁶ *“I have become an old man here. Death in this situation is better than being alive and staying here without hope.”*

¹⁶⁵ Miami Herald. “Web Extra | A prison camps primer.” February 6, 2008. Available [here](#).

Camp 5: ... It houses 100 prisoners considered of greatest intelligence value, each in a single cell with toilet and fixed sleeping shelf under constant monitor by guards who peer through their windows. Each detainee gets all of his meals slid through a slot in the metal door, and up to two hours of exercise a day in a 20-by-10-foot recreation yard encircled by a chain-linked fence. Current detainee population: About 80. Camp 6: ... Captives at Camp 6 eat every meal and spend at least 22 hours a day inside single-occupancy 6.8-by-12-foot cells furnished with a stainless steel sink and toilet, a bunk and a steel desk with a slot to serve as a Koran holder. A common recreation yard was subdivided into five chain-link-fence-style cages, separating them from each other for up to two hours in the enclosures.... Current detainee population: About 100.

¹⁶⁶ [Department of Defense. “List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006”](#)

Fawzi al Odah, Detainee #232 (Listed as “FOUZI KHALID ABDULLAH AL AWDA”)