

## **We Fact-Checked 5 Horrifying Details in 'The Report,' the New Movie About Post-9/11 Torture**

**Did a DoJ official really claim that if the president wanted to crush a child's testicles, no treaty could stop him?**

by [Jesse Hicks](#)

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In the aftermath of the September 11, 2001 attacks, the Central Intelligence Agency created an archipelago of “black sites” around the world. The secret campuses were for conducting “enhanced interrogation”—that is, officially sanctioned torture—on suspected terrorists. “We also have to work sort of the dark side, if you will,” Vice President Dick Cheney [told the public](#) at the time. “We’re going to spend time in the shadows in the intelligence world.”

In 2005, the CIA destroyed more than 90 videotapes of detainee interrogations. The move sparked a Senate investigation into whether the CIA had engaged in, and covered up, illegal activity.

In *The Report*, a VICE-produced film out on November 15, Adam Driver plays Daniel Jones, a dogged investigator for the Senate Select Committee on Intelligence trying to uncover what happened and who should be held responsible.

The film covers more than a decade of political jousting, condensing the process of Jones’ creation of the still-classified, 6,700-plus page report. High-stakes arguments are intercut with scenes of what happened behind closed doors in those dark sites. (After years of wrangling, a 500-page [executive summary](#) was [released to the public](#), detailing [egregious physical abuse](#).)

There are some moments in the film—for instance, a PowerPoint of stick-figures getting tortured that would be funny if it weren’t so disturbing—that raise the question: How closely does this docu-drama hew to reality? Here are a few answers.

**The psychologists who designed the “enhanced interrogation” techniques were shockingly inept. How accurate was that depiction of them?**

John “Bruce” Jessen and [James Mitchell](#) were [military contractors and psychologists](#) who had helped the U.S. Air Force train American soldiers to [resist and cope with torture](#) as part of its Survival, Evasion, Resistance, and Escape (SERE) school. The CIA hired them to develop an interrogation program for suspected terrorists, but the two had no experience with interrogation. (In *The Report*, the Jessen character cops to this, saying he’s only done “simulations.”) They also had no specialized knowledge of Al-Qaeda or terrorism, not did they have any regional, cultural, or linguistic understanding relevant to questioning detainees. So yes, inept.

“They were not interrogators, and they did not have any expertise in interrogation,” said Francesca Laguardia, associate professor of justice studies at Montclair State University. “By this measure, I would say they were not qualified at all.”

The pair essentially reverse-engineered SERE, claiming they could make subjects confess by breaking their will to resist. “Mitchell and Jessen claimed to be experts on ‘[learned helplessness](#)’, a state in which someone has been tortured to the point where all resistance is gone,” Laguardia said. “But

learned helplessness doesn't guarantee honesty—to the contrary, it's generally so extreme that people will say whatever they think their interrogators want to hear.”

One example of this is when Abu Zubayda, a high-profile detainee, responds to waterboarding by [pouring out terrorist plots](#), all of which were fake. The man himself wasn't even the “high-value” figure interrogators had believed. Others falsely confessed to being al-Qaeda members.

Mitchell and Jessen knew that the techniques they advocated were designed to produce false confessions—that's the essential teaching of the SERE program—yet they persevered with the claim that they would produce useful information. They were paid \$81 million [for their “expertise.”](#)

The CIA dubbed Mitchell and Jessen the architects of enhanced interrogation, though [the men say](#) the agency was ultimately in charge; they also [claim](#) to have tried to leave the program several times. Mitchell later faced an [ethics complaint](#) related to their work, which was dismissed, and went on to [write a book](#) defending their techniques. The pair have been [called to testify](#) in a case before a military tribunal at the Guantánamo Bay Detention Facility (GTMO); if they appear, it will be the first time they've publicly testified in court about their actions.

### **Was there really a PowerPoint presentation offered by Mitchell and Jessen outlining all of their torture techniques?**

One of *The Report*'s more bleakly bureaucratic scenes features Mitchell and Jessen pitching their program to the CIA, using a slide deck that contains stick figures in compromising positions and explaining how to induce “debility, dependency, and dread” in detainees. In a presentation thick with euphemism—but, they promise, based in science—they detail their techniques, including slaps, cramped confinement, sleep deprivation, mock burials, waterboarding, and more. The CIA reps, to their (fictional) credit, look dubious.

The scene in the film amalgamates [several presentations](#) given by Mitchell, Jessen, and their colleagues to different branches of the government. According to [Nathaniel Raymond](#), a human rights investigator who consulted on *The Report*, the actual slides were simplified to convey their points while appearing on screen for just a few seconds. Many of the actual [declassified slides](#) are available for perusal. They don't include stick figures, but are still disturbing enough.

### **Who is John Yoo? Did he really claim that if the president wanted to crush a child's testicles, no treaty could stop him?**

In the film, John Yoo first appears with a group of OLC lawyers, leading them on a careful legalistic parsing of terms like “torture” and “severe pain or suffering.” Showing off his work, he declares, “If the president deemed it necessary to crush the testicles of a child to stop a plane from crashing into a building—to save American lives—there's no law or treaty that could stop him. I can make the same argument for gouging out a prisoner's eyes or dousing him with acid.” He goes on to say that if those actions provide unique intelligence that saves lives and don't “cause lasting harm” (a phrase he's already redefined into meaninglessness), it's legal for the president to order it.

Between 2001 and 2003, Yoo served as the expert on foreign policy and national security in the Office of Legal Counsel (OLC) at the Department of Justice. The OLC crafts legal opinions that guide and constrain the executive branch. Yoo, a lawyer, wrote or co-wrote most of what became known as the “[torture memos](#),” arguing for the legality of the “enhanced interrogation techniques” pitched by Mitchell and Jessen.

If the government wanted cover for torture, Yoo was the right man for the job—even if it required convoluted legal reasoning to get there. “Before his appointment, he was already known for his strong views concerning executive war powers,” said [Jamie Mayerfeld](#), professor of political science at the University of Washington. “John Yoo's [torture memos](#) express a number of radical views, and they provided the legal foundation of the Bush administration's torture program.”

Yoo's memos, which were never intended to become public, were later repudiated by the head of the OLC. Soon after Barack Obama took office, he issued [an executive order](#) revoking all of Yoo's post-9/11 legal advice.

It's unlikely that the testicle-crushing question actually came up while Yoo worked in the OLC. But in a 2005 debate with Doug Cassel, then the director of Notre Dame Law School's Center for Civil and Human Rights, Yoo [indicated](#) that, yes, if a president believes it's necessary to the war effort to torture someone by crushing the testicles of their child, they have that authority.

Yoo is currently a [law professor](#) at the University of California, Berkeley.

### **What happened to Khalid Sheikh Mohammed?**

Khalid Sheik Mohammed (known as KSM) appears in *The Report* as what one TV talking head calls “the mastermind of 9/11.” He resists being broken down by waterboarding, revealing only things investigators already know. Mitchell orders [the waterboarding](#) to continue (along with an unapproved technique called “[rectal rehydration](#)”), and KSM coughs up details of a nonexistent plot to blow up gas stations and start forest fires in Montana.

KSM, captured in 2003 [thanks to an informant](#) and almost immediately [subjected to brutality](#), is still in United States custody at GTMO, awaiting trial for helping to plan the 9/11 attacks. After 9/11, [the Bush administration](#) established an ad-hoc legal system for prosecuting terror suspects through military commissions; KSM is [supposed to be tried](#) within that system starting in January, 2021.

But because of numerous legal challenges, the trial may not even happen. “The military commission system has been bogged down in innumerable delays,” Mayerfeld said, “largely because the government does not want the defense to talk about the torture inflicted on the defendants, but also because the whole military commission process has become [something of a shambles](#).”

And in case it wasn't clear, that torture likely yielded nothing useful to interrogators. “It is worth noting that Mohammed himself may never have broken under torture,” Laguardia said. “It appears he purposefully and successfully misled his interrogators, and offered truthful information only when he was sure his interrogators had already obtained that information elsewhere.” He also [said he'd lied](#) after being abused. President Bush [later acknowledged](#) he'd approved KSM's waterboarding, claiming it led to useful information.

### **Did the Obama White House try to suppress the report?**

Much of *The Report* follows the efforts to make the document public, over the objections of the CIA—which even went so far as to [spy on](#) members of the Senate Intelligence Committee. Some viewers might be surprised to see President Obama's administration pressuring the Senate and running interference for the CIA; “The [enhanced interrogations] the CIA did—that is not our mess,” says Obama's chief of staff at one point in the film.

But while Obama officially ended the program just days after taking office—and, much later, [bluntly admitted](#) “we tortured some folks”—[he also](#) opposed the creation of an independent inquiry, didn’t order [criminal investigations](#), and blocked suits for victims seeking damages. And, as covered in the film, [he supported](#) a [redaction process](#) that gave the CIA outside influence over what information would become public. As one character puts it to CIA director John Brennan, “You’ll hold the pen.” His administration publicly backed the release of the report, while behind closed doors Secretary of State John Kerry made a call implying that making it public would [endanger American lives](#).

Ultimately, while the 500-page [executive summary](#) was released, the Obama administration stymied efforts to make the full report public. Before leaving office, Obama moved to [preserve the report](#) as part of his presidential papers, which can’t be viewed by the public until at least 2028 (with the CIA having the right to claim the report shouldn’t be declassified even then). Since then, Richard Burr, the Republican chair of the Senate Intelligence Committee, has [tried to round up](#) all the existing copies of the torture report.

### **Was anyone held accountable for any of this?**

Thanks to a wealth of horrifying imagery, the abuses at Abu Ghraib prison, [revealed in 2004](#), became the visible face of [torture committed](#) in the name of the War on Terror. (It may not be a coincidence that the CIA destroyed its interrogation tapes the following year.) But even in that case, only the lowest-level perpetrators faced any consequences. Eleven U.S. soldiers were prosecuted and punished in the military court system, but various hurdles—unsympathetic judges, deep-pocketed corporate defendants, and legal doctrines that prevent lawsuits against government officials—mean that even 15 years later, there haven’t been a lot of people held [accountable](#).

Mitchell and Jessen were sued by the ACLU on behalf of three torture victims. Because they were private citizens and thus [not protected](#) in the same way as U.S. officials, the suit slowly crept forward. On the eve of their day in court, they [settled under undisclosed terms](#), avoiding a trial that would possibly have exposed more of their culpability. ([Similar cases](#) have been filed against private U.S. military contractors, with at least one still [making its way through](#) the courts.)

“As far as I know, no CIA officials and none of the architects of the CIA torture program have been criminally prosecuted, much less punished,” Mayerfeld said. It’s never been established how many people were subject to the program; Human Rights Watch estimates that [100 people died during interrogation](#)—including Gul Rahman, a suspected al-Qaeda operative who [froze to death](#) after being beaten, doused in cold water, and left chained to the floor of his cell overnight. For the first time, in September 2019, a U.S. court said that [“enhanced interrogation techniques” are torture](#).

Gina Haspel, who [ran a black site](#) in Thailand in 2002 and was among those who ordered the [interrogation tapes destroyed](#), setting off the Senate investigation, is currently director of the CIA.

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