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The NACDL Q&A

Defending the Rule of Law

Mohamedou Ould Slahi and lawyers Nancy Hollander and Theresa Duncan discuss his detention at Guantánamo and the work that still needs to be done.



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From 2011 to 2014, I served as one of four defense counsel — with Janice Bassil, J.W. Carney Jr., and John E. Oh — in *United States v. Tarek Mehanna*, a terrorism case in Boston. A terrorist is “a person who uses unlawful violence and intimidation, especially against civilians, in the pursuit of political aims.”¹ Due process feels wholly redefined when a defendant is accused of *conspiring* to commit terrorist offenses — meaning that no violence or intimidation took place, but the defendant conspired with others to commit it. Since the government need only prove a single overt act in furtherance of a conspiracy, that “overt act” could be as simple as receiving a phone call or being in a chat forum with a “known associate” of Al-Qaeda. In *Mehanna*, the U.S. Attorney’s Office seemed to be chasing a model of

anticipatory prosecution — incarcerate before someone struck. And we were not privy to all of the evidence, much of it withheld as “classified.” The government then paradoxically dumped over a dozen hard drives in our office weeks before trial, with most of the evidence requiring a translator because it was in Arabic. The government had long ago searched and analyzed that data, a task that would take many eyes and many years. So how were we supposed to fulfill our duties?

Memories of the Boston case came back to me as I watched *The Mauritanian*, the story of Mohamedou Ould Slahi’s imprisonment at Guantánamo and the tenacity of his attorneys, Nancy Hollander and Theresa Duncan. We talk here about a vast range of subjects, which all center on the larger question of what any one of us owes the other in society. The government and military apparatus tell us that it owes us safety to guarantee that a 9/11 or any event like it will never happen again. Defense lawyers owe their clients a duty to zealously represent their best interests, but their access to evidence is severely curtailed when the government feels that the case involves national security. Clients owe themselves, their loved ones, and the world the right to speak the truth, which torture tactics obfuscate.

All the players in this system believe that we all owe each other the right to live with basic human dignity, and that is what is so confounding about cases like this. Here, the U.S. government held a man for 16 years, without filing formal charges against him and without any additional evidence gathered in those years that would result in a criminal indictment. For seven months of that time,

BY SEJAL H. PATEL

Mohamedou Ould Slahi was tortured into making a false confession, which it seems the government did not even use in the habeas case he finally won in 2010. Notably, Mohamedou was *never* prosecuted by the U.S. government. His “case” was the habeas case that he brought.

An award-winning film,² *The Mauritanian* asks us to consider whether we have sacrificed our democracy in the name of preserving it.

Sejal Patel (SP): Mohamedou, Nancy and Teri, thank you so much for taking the time to speak with me. The movie begins with a scene in Mauritania, two months after September 11th. There is a joyful community gathering that involves music, dance, drumming, and celebration. This mirth is then offset by Mohamedou’s last hug with his mother before local authorities ask him to come in for questioning. Tell us about Mauritania, which is in northwest Africa and borders the Sahara Desert.

Mohamedou Ould Slahi (MOS): Mauritania is a country of about four million, with several ethnicities of African, Berber, Arab, and other descents. It gained its independence peacefully in 1960 from the French. Mauritania traditionally is a tribal and caste society. In spite of some government efforts to do away with the tribal system, it’s still alive and well.

Teri Duncan (TD): Mauritania was unlike any country I had ever visited. There is no Western influence there — no Starbucks, KFC, or other American business. Mauritania was fascinating in that sense, and it took me some time to adjust. I’ve now been there three times, and what struck me the most was the warmth of the people. The first time I visited (in 2014), I met with Mohamedou’s family. I stayed in a lovely B&B run by a French woman, and Mohamedou’s family took care of me. For my second visit in 2016, just after Mohamedou’s release, Nancy and I stayed in a hotel in Nouakchott. Mohamedou’s village was less than an hour from there. The country borders the Atlantic Ocean on the Western side and the Sahara Desert to the north. As I am from New Mexico, I loved the climate, and there were camels everywhere. I also was introduced to Mauritanian foods — salad, rice, and typical North African foods. Mohamedou’s family bought melahfas for me and Nancy, which is the traditional dress. While Mohamedou was in

Guantánamo, his oldest brother died, and I remember the time I was able to spend with him before his passing. I was vegetarian, so Mohamedou’s family had prepared a special meal for me of rice with fish in the middle. You were supposed to make rice balls, which I prepared like a three-year-old. Mohamedou’s brother made the rice balls for me and gently passed them over. I remember feeling so welcomed by him and the others.

SP: What was it like for Mohamedou to return to his home after so many years in detention?

TD: He was very much in shock. It was overwhelming to come from Guantánamo, which was so isolated and quiet, to not only coming home but also being a national celebrity. When he would come to our hotel, everyone wanted autographs and photos. Mohamedou is so gracious and kind that he always responded to the crowds, but he was exhausted for the first month back. Nancy and I spent a lot of time setting him up — his office, social media presence, getting him online, and so on. I saw a very subdued Mohamedou in those weeks because he was so overwhelmed. He wasn’t married then; he met his wife later.

SP: Who was there to receive him?

TD: His two nephews, who were his champions outside of Guantánamo for all of their adult lives. Some human rights activists also helped him when he returned. His family found him an apartment in an undisclosed location. He also had a cellphone for the first time, which he figured out himself because he’s so brilliant.

SP: I noticed that his book, originally called *The Guantánamo Diaries*, and now republished as *The Mauritanian*, is in English. But Mohamedou did not speak English when he was detained in 2002.

TD: He didn’t. He spoke Arabic, French, and German when he was taken in. He learned English at Guantánamo. While there, he also learned Spanish from Puerto Rican guards. And he learned Turkish from a television channel he watched while in custody. I was embarrassed because I live in New Mexico

and still can only speak the most rudimentary Spanish.

SP: Mohamedou, tell us about your mother, who passed in 2013, and other members of your family, like your father, who we know from the film was a camel herder.

MOS: I didn’t know how much my mother loved me before I was captured. I didn’t know about the real pain she went through until I got my first born, Ahmed. I can’t imagine the pain if the police came to me and forcibly took away my innocent child without any kind of process. My mother acted as the bad cop in my family, as opposed to my father who never once scolded me. My father’s attitude can be summarized in a Hadith that I love so much:

I served the Prophet (ﷺ) at Medina for 10 years. I was a boy. Every work that I did was not according to the desire of my master, but he never said to me: Fie, nor did he say to me: Why did you do this? or Why did you not do this?

SP: After Mohamedou was detained in Mauritania, he was sent to Jordan, then to Bagram Air Base in Afghanistan, and then to Guantánamo. What were the differences in how the guards treated him in each of those three places? What are the rules around interrogations in those countries?

TD: Mohamedou was the least mistreated in Jordan. The Jordanians did abuse and hit him, but he heard others around him screaming and being tortured. In Bagram, the guards were horribly abusive. They dragged Mohamedou down stairs, knowing he had sciatica, and they hit him. It wasn’t great at Guantánamo at first but was like Bagram in that they were disrespectful and mistreated him. It wasn’t until 2003 that the torture began. Mohamedou talks about what a shock that was because Jordan had a reputation of civil rights and human rights violations, and he thought that being in American custody would be better because Americans did not torture.

MOS: The interrogators were running the show, and the guards’ attitude is a reflection of the interrogators’ plan of interrogation.

SP: It seemed that Mohamedou was not assigned counsel when he arrived at

Guantánamo. Was that the common practice? And if it was, how did attorneys even begin representing detainees in the first place?

TD: It's true that Guantánamo detainees were not assigned lawyers. The Center for Constitutional Rights (CCR) started representing detainees in around 2002. They spearheaded the effort. By 2005, CCR was a clearinghouse for lawyers. If I want a Gitmo case, they assigned it. Mohamedou was assigned first to another lawyer, and then a friend asked Nancy to take the case in 2005. Then we found out that he had been assigned counsel already, and we agreed to partner with that lawyer. That lawyer then dropped off at some point. By the time any of us were representing Mohamedou, though, he had already filed two habeas petitions on his own. None of this was court-appointed. All of our hours, travel, and expenses were paid for by the firm. I am deeply grateful to them for that support.

Nancy Hollander (NH): So am I!

SP: Amnesty International declared that the detainees' indefinite detention without trial and torture tactics in interrogations constituted major breaches of human rights. President Bush had reduced the number of detainees by 500. President Obama had promised to shut Guantánamo down, but he only managed to further reduce the number of detainees. President Trump signed an executive order to keep the camp open indefinitely. And President Biden promised last month that he would shut it down. Given this historical backdrop, can you tell us how the camp was ever allowed to continue its practices given that the United States is a signatory to several treaties that condemn the sorts of human rights violations that took place at Guantánamo?

NH: Yes, the United States is a signatory to the Geneva Conventions, the

Convention Against Torture, and others. But this is hardly the first time the United States violated treaties. It made 500 treaties with Native Americans and either violated or refused to sign every one.

NH and TD: Here are the five categories of detainees at Guantánamo now: (1) seven people charged in the Military Commissions (what some call the "kangaroo courts"); (2) two people convicted; (3) three people proposed for trials; (4) 28 people who have had or have been provided with Periodic Review Board hearings (which Obama set up to assess whether that person posed a serious threat to security), of which six have been cleared for release; and (5) people who are no threat but have not been released for myriad reasons (of which there are still 22 of the 28 mentioned in #4).

TD: One thing I will credit Obama with — there was a scramble at the end to get people out. That was a small plus on a negative scale of things.

SP: Are those tactics employed on Mohamedou are still being used?

MOS: As long as there's no proper access and checks on the government, we have to assume the government has something to hide. "Democracy Dies in Darkness."

TD: After Obama was elected, torture was no longer allowed, as far as I know.

NH: I will add that solitary confinement is a form of torture, and Mohamedou was in solitary for a good part of his time in Guantánamo.

SP: Nancy and Teri, can you share with us what it was like to visit Mohamedou at Guantánamo?

TD: We talked a lot, especially in those times when we were just waiting. Mohamedou tried to teach me the theory of relativity. I would get it, then forget

it. We talked about religion and our family and friends. We played cards and just hung out. It was interesting when Mohamedou was released because he knew my family as well as I did. When we visited, we were locked in and had to bang on the door for them to let you out. It was even a pain to go to the bathroom. We watched movies a couple of times together, though we couldn't bring our laptops in. We would stop at McDonald's — which is shown in the film — or at the commissary to pick up food and tea for our meetings.

NH: He always decided what I should eat when we shared the food they brought or what he had saved. We both looked at the "mystery" meat and laughed but did not eat any of it. I bought him white tea, which he especially liked.

SP: And Mohamedou, what was it like for you to visit with your attorneys? For our client, attorney visits were the only opportunity for him to sit face-to-face with someone who cared about his well-being.

MOS: It was something I always looked forward to. They brought me tea, food and, if possible, movies. They became my family because I wasn't permitted any visitations.

SP: What were the guards like? It seemed from the movie that some were kind, others were cruel, and yet others were somewhere in between. How much did any of you know about their personal lives — their names, their families, their feelings about the job?

MOS: Guards are human beings, and they act as such. As you described, some of them became my friends, and some did their job when they were asked to torture me. The big lesson is that a human can act very badly when not restrained by the rule of law.

TD: Early on, I think guards wanted to go to Guantánamo. It was their way to participate in the war on terror. Later, people went just because they were assigned to that detail. People really liked it because it's beautiful there. The guards had their own housing area. Guantánamo is basically like a town in Kansas but dropped in the middle of Cuba. It had housing, motels/ hotels, a big grocery store, McDonald's, Subway,

Guantánamo is a detention camp established in 2002 by George W. Bush after the 9/11 attacks. Prior to creation of the camp, Guantanamo served as a U.S. Naval Base. The Guantanamo Prison Camp is located on the Guantanamo Naval Base. The base continues to function. Many people, military and civilian, are in Guantanamo and have nothing to do with the prison.



and KFC. Guards rotated through there every so often. We mostly interacted with the escorts. We were never allowed to be on the prison side without an escort. When I went there frequently to prepare for the hearing, I came to know the escorts and their personal lives. The guards were always really easy to deal with because of who Mohamedou is. It was striking how much he cared about them and how much they cared about him. The interactions were always kind. Mohamedou is such a warm and empathetic human being. If you're at all open, you can't help but like him.

For example, Steve Wood guarded Mohamedou shortly after the torture

stopped. He and Mohamedou bonded over *The Big Lebowski*. They grew really close, and Steve wrote a letter of support when Mohamedou had his periodic review. Since then, they have stayed as brothers. The documentary film *My Brother's Keeper* is about Mohamedou's relationship with Steve. Steve has been out to Mauritania twice to visit Mohamedou, and they remain very close friends.

SP: NACDL hosted a panel discussion about the movie in March 2021.³ Mohamedou, you said that you are working through the effects of your

time at Guantánamo with a mental health specialist. I thank you for your courage in speaking about what happened to you. In the movie, we see you in a small cell, painted green in the interior, with trap doors near your waist and your shoulders so that the guards could put you inside cuffed, then have you extend your arms and body through the trap doors so that they could remove the apparatus from the outside. How did the guards treat you when you went through this process — multiple times a day, I imagine?

MOS: Gen. Dr. Steve Xenakis is a friend of Nancy's, and he volunteered to help me when I was released. The treatment by guards depended on what the interrogators ordered. It went between very rough and gentle.

SP: Other than providing the Qu'ran and a prayer mat, did the officials at Guantánamo allow you to have any personal possessions?

MOS: Yes. I had movies, books, and a laptop that were cleared by JTF.⁴

TD: Toward the end, Mohamedou was allowed to keep books, but that was difficult early on. He tried getting books from the library, and we tried to send him books. That worked for a minute, then stopped working. The International Committee of the Red Cross (ICRC) also provided him with pictures of his family. They worked as a communication system with detainees, sending letters and pictures back and forth. The ICRC was an observer, per treaties and international practice, and they would go in to monitor prisons. But the government would sometimes hide detainees from the ICRC. For example, they went into Jordanian prisons, but the Jordanian authorities hid Mohamedou. At Guantánamo, the guards hid Mohamedou from ICRC for a year. They later started bringing him letters and facilitating video calls.

SP: I found that the filmmakers really conveyed the horror of what you went through during those interrogations. They determined somewhere along the way that the real emotional manipulation tool that they could employ was to talk about your mother. How did they know this?

MOS: What they show in the film is accurate, but the film is less than three



Photo courtesy of Theresa Duncan

Nancy Hollander (in green), Theresa Duncan, Mohamedou Ould Slahi, investigator Chris Chang, and Mohamedou's nephew Fall share a meal in Mauritania.

hours, and the mistreatment stretched over many months. I don't know how they knew that about my mother, but they were professionals and there were many of them.

SP: So much of what makes you special, Mohamedou, is your resilience and ability to forgive those who hurt you. What inspires that in you?

MOS: "Today I decided to forgive you. Not because you apologized, or because you acknowledged the pain that you caused me, but because my soul deserves peace." ~ Najwa Zebian

SP: It struck me throughout the film how many tactics the government used to dehumanize detainees. It would seem that someone advised them on how to do this — like referring to people by numbers and not names, wearing masks, offering rewards for cooperation, and taking away possessions that mattered to detainees. Did the government consult with psychiatrists on how to break someone down such that they would comply, even when there is solid scientific evidence suggesting that the veracity of confessions obtained through these tactics is suspect at best?

MOS: Doctors, including health professionals, were part of the interrogation team. When the U.S. government introduced torture, they opened the

door wide for interpretation because the interrogator wants results, and he keeps going farther and farther until he gets them. There's a name for this in psychology, but I don't remember it.

TD: As reported by National Public Radio, Bruce Jessen and James Mitchell were the two psychologists who were paid over \$80 million by the CIA to develop "enhanced interrogation" techniques, also known as "torture."⁵ I believe that they were considered to be responsible for what happened not only at Guantánamo but also at the CIA black sites. Not everyone the government captured went to Guantánamo. The CIA also operated unacknowledged black operations or black projects where they detained "enemy combatants." We later learned that there was a psychologist on site at Guantánamo. There is an FBI report on Guantánamo that had a footnote stating that a guard or interrogator asked a staff psychologist about whether auditory hallucinations were normal. There is a lot of literature around torture as an interrogation technique. The government insists that they obtained good intel from the torture. But a lot of research and U.S. Supreme Court precedent supports the idea that coerced confessions are inherently unreliable.

NH: The CIA has admitted that it got no actionable intelligence from the black sites. And I know of none from Guantánamo. We also learned from Mohamedou's medical records that his

interrogators knew what would hurt him the most because they had obviously read them also.

SP: Nancy and Teri, can you tell us how you are and are not like the portrayal of you in the film?

TD: The character who portrayed me was not like me, but I do understand why her character became the way she was. She was a proxy for the audience, a regular person that people could relate to. The filmmakers liked the idea of me quitting, but then I told them that they could not use my name if they used that story line. So our compromise was that Nancy would (fictionally) fire me. That's not at all what happened, but it was good for the dramatic tension in the film. In reality, I had represented the defendants in the Oklahoma City bombing trial, and even as a young lawyer, I wasn't shocked to find out that there was harmful evidence against my client. But I did support the filmmakers' decision to portray me as if I was uncomfortable about that, even though I was not. The filmmakers were very good about staying in communication with us. Nancy and I were allowed to review the script and the movie and fix things.

NH: As for my character, Jodie always says her Nancy is meaner than I am. I agree, but some of my friends think she nailed it. However, I would never have threatened to leave if a client did not write his story, and Mohamedou had already started writing his book before we got to Guantánamo. Jodie has said that she wanted to create the necessary arc for the film — to make me mean at first and softer later. The scene where I (Jodie) say that I just don't want him to be alone, really happened for the six years between the time we won his habeas case and when he got out. Teri and I took turns visiting him about every two months just to make sure he was OK and give him some company. Although we were filing motions and reading discovery during that time, nothing was happening in his case.

SP: Mohamedou befriends someone he called "Marseilles" during their time outdoors, separated by fences and opaque green screens. I understand from the panel discussion that Marseilles was a composite of several people, but tell us what that friendship meant to you in that time.

MOS: I guess sharing the same fate was something to bond over. That said, it was very hard to make friends among detainees because they were suffering a lot. I ended up happier without knowing what was happening to others.

SP: We later learn about Marseilles' alleged suicide, and there is a poignant prayer scene in the film where you honor your friend. How did losing fellow detainees affect you?

MOS: I remember grieving more than once over co-detainees who went in total silence. I would hear about it through rumors, and I would pray for their souls. It was somber, to say the least.

SP: Nancy and Teri, you traveled to Virginia many times in this matter to review documents. Tell us about what those trips were like. How many hours were you allowed to view documents in a single sitting, and did you feel like you had enough time to review everything presented to you?

TD: We were able to work there for as long as we wanted. There was a period where the facility was open 24 hours a day. We went to this one secure facility for all Guantánamo cases. As the junior lawyer on the case, I did a lot of work in going through those documents and tracking people down. We did feel that we had enough time to review everything.

NH: Teri also did a lot of the drafting of pleadings, and she argued the case on appeal. She and I were co-counsel throughout.

SP: Lt. Col. Stuart Couch initially prosecuted the case against Mohamedou, and he had a close relationship with one of the 9/11 victims. He later decided to resign because he could not abide by the government's interrogation tactics. What did he say about his reasons for leaving the team?

NH: We first learned of this when we read Jess Braven's article, "The Conscience of the Colonel," in *The Wall Street Journal*. The movie, for obvious reasons, moves the time around. After we read this article, at some point I called him and met with him briefly when I went to a talk he gave. At that time, he said he was willing to continue to prosecute Mohamedou if

they found untainted evidence. But as time went on, Stu realized that Mohamedou was innocent.

SP: Do you know if Benedict Cumberbatch was able to meet with the real Lt. Crouch in preparing for the film?

NH: The film flew Stu and his wife to London to meet with Benedict.

SP: Teri, you reference how difficult it was back then to represent someone who was associated with 9/11 in any way, even if by accusation only. Can you tell us more about what sorts of pressures you felt from the public or in personal relationships?

TD: The scene where I say I'm not welcome home for Thanksgiving is not entirely true, but there is a kernel of truth to it. I have a family member in the military who spent time in Afghanistan and Iraq. He said he would not be in the same room as me when he found out that I was representing Mohamedou. I didn't care because I'm not a fan of his, but for my family, that meant no more joint Christmases and Thanksgivings. I understood that he reflected the mentality of the military. They did things they knew they shouldn't have done. To acknowledge habeas rights is to acknowledge a person's humanity and force the military to question what they did. They didn't want to go there.

SP: Mohamedou, you thanked Nancy and Teri for their bravery in representing you. Can you say more about that?

MOS: There was a very hostile environment in Gitmo toward the lawyers. Personnel was deployed to spy and report on lawyers. I was told that my lawyers were "Jewish" in a very clear attempt to play on the sad and bloody conflict in the Middle East to disrupt justice and drive a wedge between me and my lawyers. I was also told on more than one occasion that lawyers were "immoral" people. I found these tactics to be silly, racist and cynical, to say the least, but many of the detainees I spoke to repeated some of the "concerns" the JTF had. This is all crazy, and even writing about it is crazy.

SP: There is work still to be done in these matters. Talk about the hopes you have

for the coming years — related to Guantánamo itself — and what, if anything, the detainees should be owed.

MOS: Clear apology, reparation, and open court trials for war criminals. I love the Arabic poem that says, "He who tries to repair a blatant wrong, with a subtle apology, is very wrong indeed."

NH: I still have a client in Guantánamo who is facing the death penalty if he is convicted. My hope is to lock the door. First, the six who have been cleared should get out and go home or where they will be safe and can be with their families. There is no reason that this cannot happen relatively quickly if Biden has the political will to set up the necessary bureaucracy and get it started. Next, the 22 who have never been charged should get to leave. As for those who are awaiting trial or charges, arrangements need to be made to resolve their cases in a way that provides them due process.

TD: There are still a handful of detainees represented in habeas proceedings, and some military commissions are ongoing. I think the push now has been what it's always been — bring people who are charged to the federal courts or release who you can release. And then, close Guantánamo.

SP: For all criminal defense lawyers handling big cases, we learn something about ourselves and the rule of law in our work. What would you say, Nancy and Teri, to any lawyer considering a matter that involves an unpopular or difficult issue?

TD: I share Nancy's view that we defend the rule of law and not the actions of individuals. When I worked on the Oklahoma City case, I learned that everyone is entitled to a defense and that it's not my job to decide whether my client was innocent or guilty. I'd also say that the most powerful thing I've learned is Bryan Stevenson's message that we are all more than the worst thing we ever did. To me, the world feels safer and more understandable than it did before I was a criminal defense lawyer. Looking in from the outside, I would hear horrible stories about crimes. Then, I got to know the people who did those horrible things — to recognize their humanity. The last death penalty trial I handled was for a client named John McClusky. He killed two elderly people who were traveling through New Mexico. When I met him, he

acted like a tough and angry person. He and I worked together for four years and got to know one another. By the end of the case, I knew the good in him. For example, when he saw that people were being released from Guantánamo, he would call me and ask if that was my client. He knew I cared about Mohamedou, and he grew to care about him too.

NH: I agree with everything Teri says here. I am glad that Jodie says she is defending the rule of law. A friend wrote to me and said, “I cannot believe you got ‘rule of law’ into a Hollywood movie!” It is important for people to understand what the “rule of law” means. And the language Jodie uses when speaking with the reporter comes right out of an op-ed I wrote for *The New York Times* in 2010.

SP: And Mohamedou, you now have a beautiful life ahead of you — rich with love from your community, your spouse, and your sweet son, Ahmed. Tell us what plans you have for yourself in the coming years.

MOS: I want to travel the world and work toward democracy and human rights in my part of the world.

Editor’s Note: This conversation has been edited and condensed. *The Mauritanian* is streaming on multiple platforms, including Amazon Prime Video and Apple TV. It is also available on Blu-ray and DVD.

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Notes

1. <https://www.lexico.com/en/definition/terrorist>.

2. Winner of the Golden Globe award for best Supporting Actress (Jodie Foster); nominated for the Golden Globe for Best Actor (Tahar Rahim); and nominated for five British Academy of Film and Television Arts (BAFTA) awards (Best Actor, Best Film, Best British Film, Best Cinematography, and Best Adapted Screenplay).

3. A recording of the panel can be found at www.nacdl.org/Media/TheMauritanianAPanelDiscussion.

4. JTF is Joint Task Force Guantánamo, which operates the detention camp.

5. <https://www.npr.org/sections/thetwo-way/2017/08/17/544183178/psychologists-behind-cia-enhanced-interrogation-program-settle-detainees-lawsuit>. ■

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