



Harry Kreisler: Welcome to a “Conversation With History.” I’m Harry Kreisler of the Institute of International Studies. Our guest is Jane Mayer who is a staff writer for the New Yorker and who’s just published *The Dark Side: How the War on Terror Turned into a War on American Ideals*. Jane, welcome to Berkeley.

Jane Mayer: Thanks so much. Great to be with you.

HK: Where were you born and raised?

JM: I was born in New York City and raised in New York City, and into a family of historians, so for this program it’s relevant, and I’ve dedicated the book to my grandfather, who is a historian.

HK: And I want to ask you about that, but first, tell me what did your parents do and how did it affect your thinking about the world?

JM: Well, my dad is a composer and he writes modern music, and my mom is a painter. And how did it affect my view of the world? Well, my father’s family were the Lehman [sp?] family of bankers and philanthropists and they were in public life, there was Governor Lehman. And so, there was kind of a liberal tradition in my family of politics. My dad was in World War II, also, he was in intelligence, so I had an interest in intelligence.

HK: And so, was there a lot of discussion of politics around the dinner table?

JM: There was some discussion of politics, and the arts, and it was a freewheeling, interesting family with a great sense of humor, and maybe kind of an interest in the underdog. I’ve always disliked bullies and maybe because my parents don’t like bullies.

HK: Talk about the influence of your grandfather. As you said, you’ve dedicated your book to your parents and your grandparents, and your grandfather was Allan Evans, the historian. The bulk of his work was on what, on the American Revolution, or...?

Conversation with Jane Mayer – August 8, 2008

JM: No, all the way through – a lot about the Civil War, and he wrote many biographies of famous figures in American history, and he won several Pulitzer Prizes, and he was the great man in our family. And so, I guess we revered history in my family, and grew up reading a lot of it and talking about it a lot.

HK: So, in your relationship did you wind up having that history bee put in your bonnet by your grandfather?

JM: Yeah, I guess so. He also was a newspaper man, so I was brought up thinking it was a really fun life to be a writer, work on a newspaper, cover the living history, and maybe write books of history, and it was something I just got interested in at an early age.

HK: Where were you educated?

JM: I went to private school in New York, to Fieldston School, and then I went to a boarding school in England called Beadells [sp?], and then I went to Yale University and did history, and then to Oxford.

HK: Any professors stand out in your mind as helping to shape your thinking?

JM: Yeah. I mean, I think the course that made the biggest impact on me at Yale was by David Bryan [sp?] Davis, an American historian who did American intellectual history. I just loved it, though I kind of wish I could go back now and do it all over again. But that was a fantastic course, and he talked about the power of ideas, and my grandfather's view of history was that individuals have tremendous impact. He didn't believe in the idea of Marxian forces that were creating history. He really believed that individuals could shape history, and in this book I think one of the things that really interested me was the personalities of the people that ran our government, and what an impact just a couple of people had. So [overlap] important to me.

HK: And one other thing I want to pursue with you – what led you to journalism? Why did you choose not to be a historian?

JM: You know, I went to graduate school in history at Oxford and was on my way to doing a Ph.D. and just completely flubbed out. I got lost in the library, I didn't know what to read. It was a lot easier just to do assignments for Time Magazine in London where I was, some of the time, and I just thought, well, you know – it just made more sense to me. So, I took a job with the Washington Star when they offered it to me and became a city reporter, and I think that's when I really started to understand what I wanted to do.

HK: And this particular topic, it seems to flow out of your past, all that you've just told us, but was there one thing in particular that led you to focus on The Dark Side?

JM: It's funny because I don't have a history of knowing much about torture, other than having had an older brother who [laughs] beat me up.

HK: [laughs]

JM: But you know, I didn't bring any kind of expertise to this. This subject completely grabbed me. I didn't really choose it so much as it felt like it chose me. I had a longstanding interest that flows through the other books in power and abuses of power, and again, as I said, I've always been interested in questions of – and people who are bullies, and ethics, and what people do with power, and an interest in civil liberties, too. And so, this flowed directly out of that. In fact, one of the things that's interesting to me is that many of the same characters are – the first book I did was about the Iran/Contra affair. It had a big impact on some of the characters in this book, and the second book I did was about Clarence Thomas, and his clerks are some of the key figures in this book. So, it's kind of the same cast of characters.

HK: So, in a way, it's about working through the conservative movement.

JM: It is. It was, and this is finally a moment when the people whose rise I had been covering got ultimate power and the brakes came off, and this is what they did.

HK: Your book, which I recommend to our audience – you can't do justice to your book in an hour interview, but the subtitle is "The Inside Story of How the War on Terror Turned Into a War on American Ideals," and you really work through that problem, and I want to try to do that in this issue. So, the first issue becomes the 9/11 attack, and I want to touch on something that you point out, which is there was no sense of accountability for who was responsible for 9/11 happening in the American government. And you quote a British diplomat – or a diplomat as saying this was very important, this was a very major mistake. Talk a little about that.

JM: Yeah, he was very interesting. I can't name him, he didn't want to be named, but he's an ambassador to the United States, and he said that he was so struck after 9/11 that they didn't really ever do the kind of fact finding and blame laying that you would expect, he thought, in his country anyway. And the problem with that, he said, was that if you don't really diagnose the problem you may come up with the wrong medicine, and he felt that they never really figured out, why did we get hit in the first place. And so, I take a look in the first chapter, how did we get hit in 9/11 and what kinds of solutions did we come up [with], and do they fit the problem.

HK: And the election, and the Bush administration, and the people around Bush, are key in all of this because once you have the attack you have the leadership of Cheney and his deputy adding to – and Rumsfeld, and these were characters from this previous era that you were just talking about.

JM: Right. Their roots really go back almost to Watergate, basically, and Rumsfeld and Cheney in particular, they are really savvy players of Washington. They understand power, they understand the

levers of power so much more than the President does. And so, they really get how to make things move in Washington and go their way.

HK: And you mentioned Watergate, and this is very important because Nixon resigns, Ford comes in and he brings around him Cheney and Rumsfeld. And so, these are men whose formative experience in the executive branch comes at a time when the presidency really has imploded.

JM: Exactly. And they really feel humiliated, and they feel that the curbs that are being put on the presidency are going to hurt the power of the presidency and hurt America. So, they've been chafing over these issues ever since Watergate, really, particularly Cheney, and itching to sort of get rid of the post-Watergate reforms. So, 9/11 happens and they have that opportunity. And what are we talking about? In the post-Watergate reforms congressional oversight was put on the intelligence community, and suddenly the CIA had brakes put on it and had to report to Congress. There's the Freedom of Information Act that opens up the government, so people can see into it a little bit more. There's the FISA Law, so you can't have warrantless wiretapping as the kind that took place during Watergate. All these things are sort of tying the president's hands to make the president more accountable and keep them from being abuses of power. Cheney was really unhappy with all of these.

HK: And you mentioned the Iran/Contra debacle and the report to which Cheney attached a minority report.

JM: Right.

HK: What was his focus there which has become so important in our understanding what he did?

JM: And it's so interesting because it was the most idiosyncratic lesson that Cheney took from Iran/Contra. Everybody else in the world, practically, thought that it was the President, Reagan, who overstepped, but in Cheney's view it was Congress' fault for impeding the President's right to make foreign policy. And so, he draws this really eccentric conclusion and later he talks about how he's very proud of that report. They basically see Congress as kind of illegitimate. Cheney was a member of Congress but he didn't really like Congress, and particularly when he went over and became Secretary of Defense, people said he described congressmen as gnats, annoying little gnats. And so, he wanted to have free reign in the executive branch.

HK: Now the other characters that we have to talk about in this unfolding drama or tragedy is the President and his relationship to Cheney, because one of the things you say that Cheney really learned from his period in the Ford administration is the power of controlling what documents get to the president, what he knows, and in fact, in a way, that it was important that the president have deniability.

JM: Well, you know, the President famously describes himself as the decider, but the question is, what is he deciding between. And Cheney had a canner, and I think more clever understanding of power, which is if you can control what options are given to the president, you can control almost everything. So, Cheney's lawyer, David Addington, who you've mentioned also, had the last in box before documents went to the President, and he'd sometimes just slash things with a red pen and rewrite stuff before it got to the President. So, the President didn't get to see anything until it had been sort of filtered out by the Vice President.

HK: Now the other person in this drama that we have to mention is Tennant, and I want to draw on something that you say, which was that Tennant was a political operator, the head of the CIA. He was not a man who came out of intelligence but rather came out of the Congress where he had been on the staff that had supervised the intelligence agency. That had an impact on all of this. Right?

JM: He is a very political character and he came out of a world where you get ahead by pleasing the boss. So, when he comes in to be the Director of Intelligence, he really wants to please the boss, and the boss is the President. So, you see him as kind of a weak character who is telling the President wants to hear instead of what he doesn't want to hear, which is sometimes really the role of top advisors.

HK: Before we talk about what this group of individuals did there's an important characterization or point that you make that we have to bring out. None of these key figures were lawyers, and that was, in a way, unique in the history of national security because it has been lawyers and bankers who have made U.S. foreign policy.

JM: It is interesting and different, certainly from recent administrations. The President's not a lawyer, the Vice President's not a lawyer, Rumsfeld was not a lawyer, Condi Rice, National Security Advisor at the time, was not a lawyer, and Colin Powell is not a lawyer. So, when it came to 9/11 and the top people wanted to know what they could do legally they really didn't know this firsthand, so they had to ask other people. There was kind of a vacuum of knowledge there.

HK: Although Addington was a lawyer, but he had a very narrow view of what he wanted to do.

JM: But it empowered Addington amazingly because he filled this vacuum. Cheney turned to him – basically the President and Cheney wanted to do everything possible under the law and they had to ask lawyers what's possible. So, the lawyers became the people who made the policy. They defined the outer limits of what could be done.

HK: When we talk about – later on we're going to talk about the heroes in your book because there are heroes in the government and among civil liberty lawyers, and international lawyers in the community. But one of the lawyers – I believe his name was Ratner – makes the point, when things began to leak out – he said, "I remember some of what they're doing," and he went on his shelf and

found a book that had been produced by the Heritage Foundation in the early '80s. Talk a little about that because there was a plan which was being...

JM: There was a plan before 9/11, and it's not that there was a conspiracy to implement these programs but there was an agenda that Cheney had, and that the conservative movement had. So, when the Military Commission's order comes out, giving so much power to the executive to try people all on its own, that's when Michael Ratner, who's at the Center for Constitutional Rights, goes to his shelf and he says, you know, "This rings a bell" and he pulls down Mandate for Change, which was this humongous, phonebook-sized book that was in the Reagan administration of kind of a wish list of Republican conservative ideas, and there are many of the ideas that seem to be being implemented in America at this point. So, there was an agenda, and what happened was 9/11 empowered the people who were running the government to implement an agenda that probably never would have been able to be passed in a more democratic way before 9/11.

HK: Now what was the goal here? I think at some point one of the lawyers on the outside fighting all of this says that they wanted to put the terrorists who they had captured in a no man's land where there was no law. Explain that to us.

JM: Well, there are part of a conservative movement that has been suspicious of the rights of defendants. Some of them didn't even like the Miranda warning. They're very suspicious of international law. They had many questions about the idea of international rights, to begin with. And so, when they talked about what they wanted to do with suspects in the war on terror, they wanted to take them outside of domestic law, outside of criminal law, they're not going to call them criminals, take them outside of international law, too, so they're not going to be prisoners of war covered by the Geneva Conventions. They're going to be a whole new class of people. And this is actually where I came into this story, to tell you the truth, because I heard John Yoo, Berkeley professor, talking in a very tiny group at American Enterprise Institute in Washington, and he was talking about how there's a certain class of people who really don't have rights, and he was talking about terror suspects and saying, what is it people don't understand about the fact that there're some people so bad they don't deserve any particular rights. And when I heard him say this I just thought, as someone who's been interested in American history and in civil liberties, it was a really frightening concept, that there'd be people for whom there's no due process and that America would cast a whole category, a whole population of people, outside of any law.

HK: And there was a name for them. They were the enemy combatant...

JM: Illegal enemy combatants. Right.

HK: And you point out – and I want to walk you through this – in this strategy that they were adopting, previously either the terrorists were covered in the Geneva Conventions, because as you point out, there're many categories of people who come under international law, whether they're saboteurs, or whatever, not just soldiers on the one hand, and that when they weren't covered they

were covered by domestic law. So, if they weren't a terrorist under international law they would be covered by the...

JM: Well, that's the difference. I mean, when I spoke with John Yoo about this, and others in the administration, they said that this decision to not treat terrorists of prisoners of war, they pointed out, had been made earlier in the Reagan era, when there was a decision not to treat the PLO particularly as covered by international law and by the Geneva Conventions. But what they didn't say was at that point, terrorists were treated as criminals, so they had the rights of ordinary criminals. This was a really radical departure, which was to say that there's a certain class of suspect, kind of human being, that's not covered by any law, not domestic, not international. They can make up their own rules in the executive branch about how to treat these people.

HK: And there's another important choice that was made here that I think really affects everything, and you do a beautiful job of explaining it, and that is the idea that the primary concern after 9/11 is intelligence and preemption, it's not bringing to justice people who have committed crimes of terrorism against the United States.

JM: Right. And it's understandable, in a way. They don't want to wait for terrorists to commit heinous acts and blow up innocent people in order to stop them, or bring them to justice afterwards. They want to stop them before this happens, so they want to preempt the crime. But they get you into the territory of thought crimes, and locking up people before they commit a crime is a complicated notion and a challenge to the justice system that we have, because basically you need to have proof of guilt, usually, in order to convict someone. So, they decide to kind of create these rules so that they can preempt crimes, and it creates all kinds of legal problems for them.

HK: And I think that what follows next, it seems – so, what do you do then, if you've reached the conclusions that they reach? You basically rely on torture and you rely on rendition. So, let's talk about this. What sort of practices did they wind up getting involved in? And I want to say as an aside here that you do an amazing job of walking us through the case histories of some of the people who were either rendered or tortured. So, torture – what sort of things did we wind up doing under the memo that John Yoo had written?

JM: I think what you sort of have to understand is the lead role in the war on terror, in the very beginning, was given to the CIA. The CIA, unlike the United States military and unlike the FBI, didn't have any history of interrogating people much. They don't take prisoners before this, and suddenly they were given the role of jailers of the terror suspects, and they didn't really know how to interrogate people, and they had no rules at this point. So, they had to try to figure out how to make people talk, and they wanted to do it fast, and so they sought advice. They called Arab allies for advice and said, "What makes your people talk," and so they asked some of the more tyrannical governments around the world and got some advice about using harsh methods, and that's what'll work. They also went to a military program for advice that was a very unlikely source of expertise on how to interrogate people. It was a military program that's based on Communist torture methods,

that teaches American soldiers how to withstand them if they're taken captive. So, they got advice on Communist torture methods that had been used around the world that were studied by the U.S. military.

HK: And they were studied to help our soldiers adapt if they were ever captured in a Communist country...

JM: It was a defensive program.

HK: Immunization.

JM: It was a defensive program run so that if our people were ever subjected to the most heinous, immoral kinds of interrogation methods they might be able to survive it, or at least hold out for a while, and what they wound up doing instead was copying those methods at the CIA. They put advisors from that military program on their payroll and had them design what we started doing in our own interrogation program. So, basically we were copying the methods of the people that we had labeled the "evil empire" and of states that we considered torture states and enemy states. And so, it became this ironic thing where they turned everything upside down and we started copying what we had considered the worst examples of treatment in the world. So, those are some of the places they went. They also, believe it or not, went to the TV show "24" to get some ideas, which is just a fantasy show on Fox television. It's written by a Berkeley graduate named Joel Surnow who...

HK: We seem to be producing a lot of individuals...

JM: Yes, you do. You've got some very key players coming out of the – for a university that's known for its hippie, left wing radicals, you've actually got some of the more powerful conservative players in this program. So, Joel Surnow was the creator of the show "24" with its swaggering hero, Jack Bauer, who uses torture every week to make terror suspects on the show talk. And down in Guantanamo, when they ran out of ideas about how to interrogate people, according to Diane Beaver, the top lawyer down there, they would watch "24" and they'd say, "Hey, let's try this. It worked for Jack Bauer. Let's see if it works for us." So, basically you've got this Hollywood fantasy dictating policy for the United States military there, too. So, this is where they turned for their ideas. It's really not so surprising that they ran into some problems, because they weren't going to the wisest people. The wisest people, the people who really understand interrogation in this country are the FBI and the U.S. military, and they will tell you in a minute, you can't torture people. You're going to get unreliable information and as they'll say, the consequences for our own country are going to be just unimaginable.

HK: And this is an important road we have to go down. The FBI had come to understand A) what makes people talk, and it's not torture, and B) they were very scrupulous about their interrogation processes because they knew they had to take their case to the criminal justice system. And so, you do a discussion – I want to bring this out – that namely, in the case of one person who we captured,

Abu Zubaydah, we essentially moved from an FBI interrogation that was working to a CIA interrogation that became a disaster.

JM: Literally. I mean, literally there was a custody struggle over this particular detainee. He was the first major al-Qaeda figure that the United States Government got custody of, and the FBI was questioning him there first. I think it was in Afghanistan. They thought they were getting really good information out of him, and I describe in detail, what they were learning from him. They thought they actually stopped one of the – an operation that was in motion that would have wound up with American lives lost, and then they learned it from talking to him, and also offering him something he wanted. He wanted his family to be able to come to America. So, it's interesting for somebody so anti-American but that's really what he wanted. The CIA swooped in instead, they grabbed this guy, they wanted to show him that – they wanted to prove that much harsher methods would work. That's what they thought. They thought it was going too slowly with the FBI. And so, they renditioned him away to Egypt where he was brutalized and – are we talking about Abu Zubaydah, or are we talking about – I'm talking about Ibn al-Shaykh al-Libi, actually.

HK: Right. But yeah, we were talking about Abu Zuba...

JM: Well, Zubaydah is a whole other – okay, we'll talk about Abu Zubaydah. All right. There's a custody battle over Abu Zubaydah, too, and at that point – it's much similar. It starts in the same way, the FBI's talking to him, they think they're getting good information, the CIA's impatient. The CIA was in a hurry and they came in, they took him away, and they wound up treating him in ways that were so – just so shocking to the FBI, the FBI wanted to have the CIA officers arrested at that point. The FBI communicated back to FBI headquarters, they thought the CIA needed to be – these officers should be arrested, and when they couldn't get any satisfaction, they then withdrew on the war on terror, and pretty much from the top of the FBI down an order came down, don't participate in this, it's legally questionable.

HK: But you started to talk about another case where somebody was rendered, and I want to explain to our audience what that is. So, basically you seize the person and move him to a country where anything goes, in order to get information out of him.

JM: Right. The critics will say that rendition is a program where the CIA would pick up a suspect, take them in a private Gulfstream jet and deposit them someplace else in the world where they can use harsh methods that we can't use in the United States, and it was a program that actually began in the Clinton administration but it grew exponentially during these years, and it became, according to critics, much less careful. So, they actually wound up renditioning a couple of people who were innocent, just because they were mistaken identity cases. And so, in that particular case I was talking about, which is about a man named Ibn al-Shaykh al-Libi, he was renditioned to Egypt and when he was there he fabricated what he thought his interrogators wanted to hear to make the pain stop, and what he thought they wanted to hear was that there were weapons of mass destruction in Iraq. This was before the war. And he also told them that there were links between al-Qaeda and Saddam

Hussein, which there were not, but he told them this because he could tell that's what they wanted to hear. And this information was transmitted back to the White House where President Bush spoke about it in speeches, and Colin Powell, who was then Secretary of State, actually used this information in probably the most important speech before the war, which was the address to the United Nations. And you can look at the speech and you can see the details he's talking about that came from this detainee. A year later, the detainee retracted it all, he recanted, and they said, "Why?" and he said, "I had to say something. They were killing me." But by then we'd invaded Iraq, and later, of course, it turned out there were no weapons of mass destruction and there were no links between Saddam Hussein and al-Qaeda. But you can make people say what you want them to say by torturing them, and in fact, this program that was studying torture in the military was a program that was studying false confessions. Most of those Communist torture techniques were used to get false confessions for propaganda purposes out of people. And so, it's a completely dubious approach if you want to reach the truth.

HK: There's a theme that's running throughout this. That is that this policy, which was immoral and illegal, was also stupid because it didn't work. We had Stephen Holmes on our program and in his book he quotes Aristotle, and as far back as Aristotle it was known that – and Aristotle wrote that torture doesn't work, because either a person will not say anything or they'll make it up.

JM: Exactly. Right. I mean, it's been long known. So, why did they go this route? That is actually one of the questions I've had about this, and I have to say that I think it mattered that they, again, were not lawyers, did not know the Constitution, at the top of our government. They were also – Bush and Cheney famously were not military people, so they did not really know that much about the Geneva Conventions or the ethos that permeates the American military about the difference between how to fight an honorable war and a dishonorable one. They really were not that familiar with this. And I think there's a certain amount of vengeance that was in the air, you have to think, after 9/11. They were panicked after 9/11, they felt they dropped the ball, and they were angry. And there's a statement from Colin Powell saying that when he looked at Bush in some of those early meetings, Bush looked like a man who wanted to kill someone. There was a certain amount of blood lust, which you can understand, but it may have led us in the wrong direction.

HK: We should mention – because in the news as we do this interview in early August, there's a lot coming out about the anthrax attack, and that occurred after 9/11. And so, it helped move the agenda toward the war in Iraq, but also this sense of not knowing what's going on and where the next attack would come.

JM: I mean, when I interviewed people inside the White House at that point, they say you just can't imagine how scary it was, and the anthrax attacks that took place in the months immediately after 9/11, they were certain were from foreign sources probably allied with al-Qaeda, and they were certain that we were going to get hit again in some big way. And in particular, Cheney thought at one point that he, himself, was exposed to some kind of weapon of destruction, anthrax or something else, because an alarm went off inside the White House, very sensitive sensor, and it

turned out to be a false alarm, but there was a period there where Cheney thought that he might be facing a fatal attack. And so, for the people who were in charge of the government this was really personal, it wasn't just political. They felt that their lives might be hanging in the balance, and they felt that the whole country's existence was in their hands. So, the feeling of panic was tremendous at that point.

HK: When one reads your book, and as you go through this account of all the things that were done by the Bush administration which turned against our tradition and values, things that George Washington knew and told his soldiers, one is left with the question, Holmes' comment to Watson, you know, why didn't the dog bark. But you're saying it did bark, it just wasn't loud. So, there was resistance to this, first among the international lawyers and civil liberties lawyers, out in the universities and in practice, but also among – in the military, the JAGs and the people who knew international law and whose job it was to help maintain our commitment to international law. Talk about that.

JM: Well, you're right. There was resistance, interior resistance inside the administration. I suppose what's interesting is that we didn't know about so much at the time, and part of what I tried to tell in this book was about that hidden war of resistance. It's almost like a second front in the war on terror, and I mean, I think it's very important for people to know, mainly because there're an awful lot of very courageous and admirable characters in it.

HK: Many of them conservatives.

JM: Many of them are conservatives, and I think it shows that even in times of great terror there are people who will stand up and do the right thing, which is a lesson that's wonderful to know. But at the same time, why didn't they speak out more? There're some people who've said, well, if they were so courageous why didn't they take this public? And you have to remember the time again. The lawyers that stood up first who were outside the government, civil liberties lawyers, they were ostracized incredibly in the beginning of this. The ACLU did not want to get involved in this, even, in the very beginning. It was such a horrible attack on America that anybody who was seen as somehow defending terrorists was in political danger. I mean, I'm at the New Yorker and Susan Sontag wrote a piece, I remember, that even just questioned whether America had done anything in its foreign policy that might have somehow contributed to the terrorists having this mindset. She was just obliterated by critics, and it was a dangerous time to speak up, I think, and very hard. And so, this little handful of lawyers that formed to start being the nucleus of defense for the Guantanamo lawyers, they're especially courageous, and one of them was, believe it or not, in a major corporate law firm in Washington, a guy named Tom Wilner, and his law firm – it was such a fight among the partners' committee that he wanted to get involved in this. People were crying, he said, and he had to offer to resign, and he was an important partner to the firm. You have to remember what the times were like, and I think that it explains something about it. But inside there was resistance, and...

HK: Goldsmith, Mora, among others.

JM: Well, it starts really with the lawyers for the military, as you said, the JAGs, judge advocate generals. And they are kind of double experts. They're lawyers and they understand the military, and they tell the White House, as soon as that military commission order comes out, November 13, 2001, this is bad, you've got to fix this, because you're basically creating kangaroo courts. And they actually are proud of the court-martial system they've got because it's an honorable and fair system, and they don't want the military dishonored by hanging people without giving them basic rights. So, the White House, once it's faced with this dissent, basically cuts the JAGs out of the process and pretty much keeps them at a distance, and in particular, Cheney and his lawyer, David Addington, tried to make these decisions without telling most of the people who would object. More and more you see it's a minute clique of people who are really defining these policies.

HK: And that is Addington, Yoo, Flanigan, Haynes...

JM: Gonzales, Alberto Gonzales who's the White House counsel, too. And they're working hand in hand with the Vice President.

HK: So, when they meet initial resistance, then they go covert.

JM: They do, basically, and they excommunicate people who raise questions. So, the top lawyer at the State Department, Will Taft, raises questions and he's cut out of the process. And basically the military commission's order was signed by the President without the Secretary of State, Colin Powell, or Condoleezza Rice, the National Security Advisor, even knowing about it. They learn about it in the media. I mean, it's really amazing what a kind of little coup took place inside the White House.

HK: Yeah, well, that's what I – yeah. It's a push.

JM: It is, basically. And more and more – I mean, the top lawyer on the National Security Council, John Bellinger, is one of the people who is excommunicated because he's seen as squishy or soft, because he kind of thinks that maybe the Geneva Conventions are not all bad, and anybody who thought that was cut out of the process. So, a very extreme view takes hold.

HK: Now where is the loyal opposition? Where is the Congress, the Democratic Party?

JM: I mean, really – but if you can imagine that the ACLU is afraid to weigh in, you're really not going to see the Democratic Congress weigh in. I mean, you're not going to see any politicians, and you don't see them for a long time, and when they test the waters – one senator, Richard Durbin, steps in, in 2004, after those Abu Ghraib photos are published, and makes a statement critical of Guantanamo, and he is just absolutely clobbered for it, and called un-American and anti-patriotic, and he winds up having to apologize in tears on the floor of the Senate. And there's another long

pause before anybody steps up to this. Finally – it’s interesting because I’m in Washington, following these things at the time, and I and other people following it realize there’s pretty much only one person who’s going to be able to have sort of the right resume and the moral stature to take on the subject of torture, and the community of opposition is trying to beg him to get involved, and that’s John McCain. And John McCain – he takes a while to step into this, actually. He’s lobbied by a number of people who want him to get in, and he does, finally, and he changes the political equation. He comes out, and he’s been tortured himself as a POW in Vietnam, he’s a conservative Republican, a war hero, and he finally says that torture is anathema to America, and he says, in that wonderful, eloquent statement, it’s not about them, it’s about us. It’s not that we love terrorists, it’s that we’re a country that’s founded on human rights, and inalienable rights, and on civilized practices, not barbarian practices.

HK: Now if we look at the media there are examples of individual reporters, you, Lawrence Wright, Steve Cole, some people at the Washington Post, the woman who wrote on...

JM: Diana Priest [sp?]. Fabulous reporter.

HK: Right. But again, the media fails, not individual reporters but the collective wisdom of the media. Is that fair? Am I being fair here?

JM: I guess I’m – and maybe I’m too biased but I really feel that the media did a much better job than it’s been given credit for. Early on there’s a female reporter in Afghanistan, Carlotta Gaul, who starts writing stories for the New York Times about kind of atrocious behavior of detainees and some of those stories make it onto the front page. A lot of them are deep-sixed though. I mean, you can see that the editors are nervous, and in fact, there’s some information in this book about how the editors, at first – they didn’t really believe it. A lot of people did not believe what the detainees were saying about how they were being mistreated, and including even some of the liberal lawyers representing them. When those pictures of Abu Ghraib came out, Michael Ratner, who’s one of the most left-wing, liberal lawyers in the country, said it was only then that he really believed what his clients were telling him, because it seemed so un-American to imagine that they were being tortured and tormented in this way, where they were sexually humiliated and stripped, and it just didn’t sound right to most people. It took a while – I think there was just a kind of collective disbelief and maybe almost an unwillingness to think about this, too. We were told during the time by the government that we were being kept safe and I think a lot of people just didn’t want to know the details. So, I have to say, I think the American public is just as implicated in this as the press, and the Congress, and anybody else.

HK: Let’s go back to this discussion of your background and the way you personally were sensitized to American tradition, and history, and values, and so on. Was our fear so great that generally we all forgot what we stood for? Because the fact of the matter is, the separation of powers, the idea of our founding fathers, was to correct error.

JM: Exactly.

HK: And what you're chronicling is a series of errors that just got worse and worse because wherever there was a correction built into the system it didn't function.

JM: I'm so glad you brought that up because people don't understand that the separation of powers is not just some kind of academic exercise, and Stephen Holmes writes beautifully about this in his book, The Matador's Cape. It is to have a competition of ideas so that we don't make mistakes, so that if somebody does make a mistake somebody else can correct it fast and say, you know, that's not a good idea. When you take away all of those competing ideas and you give one branch of government all the power to run as far as they want to go – mistakes were made. And this whole experiment really proved, I think, the brilliance of the founding fathers in understanding that without some competition of ideas that the product could be really flawed. So, you wind up, for instance, with innocent people being caught up in this, and being renditioned, as we talked about earlier, thrown in dungeons for months and there's no process to kind of second guess and take a second look at this, nobody else is saying, what's the problem, what's going on there. The CIA actually thought – many of the people in the CIA thought they had an innocent person who they renditioned to Afghanistan – Khaled al-Masri is his name, he's a German citizen – and they had a bad feeling about it from the start. They kept him for five months anyway because there was no mechanism, no check on their power.

HK: And actually, in that particular case, there was an intervention by an individual in the CIA to make sure he continued to be held. Right?

JM: That's right. There was a zealous person running the rendition unit, a woman whose name I can't reveal here, unfortunately, the CIA asked me not to, but she was just adamant that she didn't like the feel of this guy. And again, we have a system of justice that's not supposed to be about what your hunches are about someone, it's supposed to be a little more scientific. It's based on evidence that we put people away, not on just "I don't like the feel of him." She didn't like the feel of him, they kept him locked up. Finally a couple of the lawyers in the CIA went to Tenet about this man. One of the top CIA officers told me he would come in every day and he'd say, "Is that man still locked up in the salt pit?" And there was a kind of growing worry. They had to go behind this woman's back, go to Tenet's office and bring this problem to him. And Tenet was like, "Are you telling me that we have renditioned an innocent person?" And he's saying, "Oh god, I hope we haven't used these so-called alternative methods on him." But you know, the man lost 70 pounds, he was really sick, and I interviewed him later, after all this. They did release him and in a most extraordinary way. I mean, you cannot make up some of these stories, but I saw him a couple years later and had a cup of coffee with him, and he's one of the few detainees I got to meet with face to face, and you know, it's so different if you can see somebody. And he started to cry when I was having coffee with him, his eyes sort of welled up, and this was years later. He became very red-eyed and he had to excuse himself and go out and smoke a cigarette. This thing was so painful, he

couldn't talk about it, still. I was just trying to get some details about what he went through. It was just so horrific for him, still.

HK: When they released him, they dumped him at a border, or something?

JM: They did dump him at a border with a picnic lunch and they told him to start walking. And he thought he was going to be shot in the back and he didn't dare turn around, he starts walking, and up ahead there's a border and he can cross it and eventually gets to where he can take a flight home. By then his whole family had left, abandoned his house. They gave him some money, too, and they kind of joked around about, "Well, you know, he never would've made this much money any other way," in five months that he was being held, and so they're kind of cavalier about the whole thing. But people who are close to this – some of the people in the CIA who were close to this were really upset, too, and didn't want to have anything to do with it. A lot of good people left the CIA over these kinds of things.

HK: We began this interview and you mentioned that a diplomat had commented on the fact that there was no accountability for why things went wrong at the time of the 9/11 attack and our understanding that it was coming. What about now? In other words, we have books like yours coming out now, and making an extraordinary contribution to our understanding, but do we need a truth commission? Do we need a select committee, whether somebody is impeached or not, to sort of do a rendering of this that is official?

JM: Well, I'm not a politician, so I'm not in an advocacy position, I'm a reporter covering all of these events, but as a reporter I really would like to know what the record is here. So many documents are still secret, and so many details of this program are still secret. I mean, people died in this program. Nobody's been prosecuted. There've been a number of homicides but nobody in any senior level has taken any responsibility for it, and there've been recommendations that people be prosecuted that have been sent to the Justice Department. The Justice Department's not acted on any of them. I feel that the American public is probably owed some kind of accounting, some full account of what happened, because this government was acting in our name, doing these things, and they've told us it was necessary and it had to be done, but I think it's worth knowing if that's really true.

HK: I'm curious, as a writer and a journalist what kept you going as you uncovered this? Because the time, the energy, but what you were uncovering, must have been a very difficult task to confront.

JM: You know, I think it probably sounds awful but I really enjoyed reporting on this because it fulfilled what a reporter should do, and I felt I had a really useful role to play, and I knew what it was, which was I wanted the public to understand what the government was doing and do everything I could to get the story. And I wasn't alone in that. What really was heartening was there were all these people who were trying to fix what they thought was wrong, and they were so passionate about it that it affected me. People in the FBI, like a former agent named Dan Coleman

who said to me that we can't do this or we're going to lose our soul. It made me realize this is a really serious problem, it's not just some kind of game, it's not just "get the Bush administration," this is really, truly about what our country's about, and what our history means, and what our values are. So, I don't think there could be anything more interesting or important for a reporter like me, so I just feel I was lucky to be able to cover this.

HK: And as you probed the story, I guess there must've been a real sense of "wow" as you found people who were willing to...

JM: Oh, my god! I couldn't believe some of the things that I was learning. I didn't think that this was possible, some of these things, that we would have the extraordinary rendition program, I couldn't believe that we had a sleek, private Gulfstream jet that the CIA was flying around the world, snatching people off the streets, with agents wearing masks, no names – no one knows who they are, still – throwing people into dungeons forever. It seemed like a Robert Ludlum novel, or something, not something real. And when I discovered the SERE program that we talked about earlier, I couldn't believe there's actually a curriculum for torture that the United States studied and then decided to apply as a policy ourselves. It seemed unthinkable. And then some of the things that happened behind the scenes where you've got these top lawyers in the Justice Department who are finally trying to push the government back into following the laws, and they want to get rid of John Yoo's torture memo and write something else that's more moderate, and that they think could withstand legal scrutiny, and just their effort to do that, they felt so intimidated by Cheney's office that they were talking in codes to each other. They couldn't use the word "torture," they thought. They thought they were being wiretapped. These are the top lawyers in the U.S. Justice Department. It was an extraordinary time. I guess the thing is, it still is. It hasn't really ended. These policies are still all on the books, and the statutes still stand, and the Bush administration is still in power.

HK: We should mention, also, the New Yorker because some of the best writing during this period, Seymour Hersh, yours, Lawrence Wright, and others. So, what was it about that environment, that you were given free reign and...?

JM: Well, part of it is we were up against really long odds in getting these stories. This is an incredibly secretive government, and very hard to get your hands on documents, and it's a very intimidating environment in Washington, hard to get people to talk to you. So, it takes a lot of time. And New Yorker gives its writers and reporters time to dig and dig and dig, and with that time you can get these stories. But increasingly – and it's something I think people should think about – newspapers have shorter and shorter stories, they have less and less money to report. You're not going to get this kind of information if people don't have the time and the luxury to really dig. And we have fantastic editors, I have to say. David Remnick was completely supportive and he is just a courageous and bright editor, and I have an editor named Dan Zalevsky, who I adore, who just backed me to the hilt on these stories. And so, I had a really supportive environment to be working in.

Conversation with Jane Mayer – August 8, 2008

HK: One final question, and let's go back to the beginning of the interview. Did you have a sense that you were carrying the torch of the values that you got from your parents and your grandparents?

JM: I think so. I really do. And what I want to say is, you know, people sometimes say, "How could you be so anti-American?" To me, this is how you cherish America. It's dissenting in a way that's meant to try to correct what's wrong, and I really care about the country's history and values. And so, I hope I carry on my grandfather's legacy.

HK: Jane, on that note, I want to thank you very much. I want to show your book one more time, The Dark Side, and I want to say to our audience that this hour could not do justice to what you've accomplished here. Thank you.

JM: Thank you very much. Good to be with you.

HK: And thank you very much for joining us for this "Conversation With History."

[End of Interview]