

Exhibit 35

2014 Rizzo Book

PPING STORY." —THE NEW YORK TIMES BOOK REVIEW

took "a total shot in the dark" and sent his résumé to the Central Intelligence Agency. More than thirty years later, after serving under eleven CIA directors and presidents, he would become a notorious public figure in post-9/11 America, serving as the point person answering for the Iran-contra scandal and the policies that govern waterboarding and other "enhanced interrogation techniques." Rizzo witnessed and participated in virtually all the significant events of the CIA's modern history.

For more than three decades, *Company Man* is the most authoritative insider account ever written—a groundbreaking, timely, and remarkably candid history of the CIA's intelligence.

"RIZZO HAD THE CORLEONE FAMILY LAWYER IN *THE GODFATHER*, AND HE GOT TO GET THE FLAVOR OF WHAT RIZZO HAD SEEN AND HEARD." —MICHAEL MUKASEY, NEW YORK TIMES BESTSELLING AUTHOR OF *BODY OF LIES*

"THE CONCLUSION YOU DRAW, RIZZO'S BOOK MAKES AN IMPORTANT CONTRIBUTION TO HISTORY AND THE DEBATE OVER INTERROGATION. . . . IT'S A TAILOR-MADE FOR CIA BUFFS." —MATT APUZZO, ASSOCIATED PRESS

"THIS IS SIMPLY THE MOST REVEALING INSIDER ACCOUNT TO DATE OF THE CIA DURING ITS MOST HISTORIC—AND CONTROVERSIAL—ERA. AND THERE'S HUMOR IN EVERY CHAPTER. FRANKLY, I OFTEN FOUND MYSELF WISHING THE CIA'S PREPUBLICATION CENSORS SIGNED OFF ON SOME OF IT." —JAMES M. HANNA, PRIEST, COAUTHOR OF *TOP SECRET AMERICA*

RIZZO had a thirty-four-year career as a lawyer at the CIA, including seven years as the Agency's chief legal officer. Since leaving the CIA, he has served as senior counsel at the Washington, D.C., law firm Steptoe & Johnson.

Company Man
John Rizzo

Company Man

THIRTY YEARS OF
CONTROVERSY AND
CRISIS IN THE CIA

John Rizzo

"EMPHATICALLY A BOOK FOR ANYONE WHO CARES ABOUT THE SECURITY OF THIS COUNTRY."

—MICHAEL MUKASEY, *THE WALL STREET JOURNAL*

1014

ISBN 978-1-4516-7394-4 \$17.00 U.S./\$20.00 Can.



PRINTED IN THE U.S.A.



MEET THE AUTHORS, WATCH VIDEOS AND MORE AT
SimonandSchuster.com

COVER DESIGN BY ERIC WHITE

Contents

Acronyms	xi
Introduction: The Tale of the “Torture” Tapes	1
1: Entering the Secret Club (1975–1976)	31
2: Not Your Everyday Legal Issues (1977–1980)	55
3: Enter William Casey and a Whole New Ball Game (1981–1984)	77
4: The Calm Before the Storm (1985)	91
5: The Wheels Come Off (1986)	101
6: Reality TV: The Iran-Contra Hearings (1987)	115
7: The Iran-Contra Hangover (1988–1992)	129
8: Dealing with Devils (1993–1996)	137
9: Bin Laden Bursts Out (1997–2001)	155
10: The Attacks and the Response (September 2001–January 2002)	171
11: The Birth of the Enhanced Interrogation Program (2002)	181
12: Trouble on the EIT Front, and the Valerie Plame Diversion (2003–2004)	203
13: Enter Porter Goss (2005)	217
14: An Offer I Couldn’t Refuse (2006)	233
15: Out of the Shadows and Into the Spotlight (2007)	251
16: A Failed Nomination, and the End of a Program (2007–2008)	269
17: The Arrival of Obama, and a Long Goodbye (2009)	279
Postscript	293
Epilogue: Lessons Learned and a Look Forward	297
Acknowledgments	303
Index	309

CHAPTER 10

The Attacks and the Response (September 2001–January 2002)

When the news first broke on that sunny Tuesday morning of September 11, 2001, I and thousands of other employees at the CIA's Langley headquarters were just settling in for another day at the office. Like the rest of the country, we watched our office TVs with unbelieving shock and horror as the World Trade Center towers collapsed. Many of us were aware of the increasingly ominous intelligence reports during the previous two years about a possible attack, but no one had envisioned this particular nightmare scenario. Yet everyone in the building who had been privy to those reports, myself included, immediately realized that this had to be an Al Qaeda operation.

And then came the news that another passenger jet had hit the Pentagon, just a few miles away from the Agency. Shortly after that, word came that yet another hijacked plane was still in the air, perhaps headed for the Washington metropolitan area. We watched as TV reporters, just as shaken and bewildered as everyone else, began excitedly speculating about its potential target. Perhaps the White House, they said. Perhaps the Capitol. Or perhaps CIA Headquarters.

It is an indelible memory, yet impossible to describe adequately, what it was like for us at Langley as we stared out our office windows—in my case, on the top floor of the original headquarters building—toward the skies. From my perch, I could look across the courtyard toward the new headquarters building and see dozens of my colleagues at their windows, looking out.

A few minutes later, an urgent message appeared on every office computer screen at the Agency: "Immediate Evacuation." There would be

exceptions to that edict, of course. Everyone involved on the counter-terrorist account stayed at his post. George Tenet took a handful of his top aides to a separate, small building—the CIA’s printing plant—on the headquarters campus. General Counsel Bob McNamara was included in that small group, but I was not. Still, I decided to stay where I was. It was a decision made on strictly practical grounds. I could see from my office window, and from the windows in the Office of Public Affairs across the hall, that the roads to the main exit gates were already grid-locked. I could also see hundreds of employees spilling out of the two buildings and heading—most walking, some running—toward their cars in the vast parking lots encircling the buildings. It would take me hours to get off the compound and home, I figured. So I decided the hell with it. I closed the door to my office suite, ignored the blaring recorded voice on the hallway intercom repeating the evacuation order, and hunkered down at my desk. I wanted to do something, anything, that might be productive. My first move was to follow any lawyer’s natural instinct. I took out a blank yellow legal pad. Focus, I told myself. Focus.

I knew that two things were bound to happen to the Agency in the immediate postmortems (for once, in the literal sense of that term) of this catastrophe. There would be investigations and recriminations directed at the CIA, demanding answers on how we could have let this happen. All the previous controversies I had been involved in during my Agency career would pale by comparison. But there was nothing to be done about that. Besides, for now, that was totally beside the point.

The other thing was that the White House would order the Agency to develop and undertake a full-scale assault on Al Qaeda, to employ all means necessary to prevent any further attacks on the homeland. So I poised my pen on the legal pad and began scribbling a laundry list of potential covert actions the CIA could undertake in the weeks and months ahead. Things we had never done before in my career. On that unimaginable morning, I let my imagination run wild.

I didn’t keep any personal files on covert-action programs in my office, so I had to rely on memory to establish a baseline on what authority we already had to act against Al Qaeda. The spate of Clinton MONs in 1998 and 1999—which were still on the books—were confusing and contradictory, and in any case were woefully insufficient now. They permitted us to kill bin Laden and his close associates, maybe, but the authorities

were honeycombed with conditions and caveats. I tried to remember the terms of the proposed MON that Tenet had ordered up and presented to the new Bush administration in the early months of 2001. It was more aggressive and less ambiguous than the Clinton MONs, giving clear direction to the CIA to take lethal action against bin Laden. Yet even that seemed not to go far enough. Not on the morning of 9/11.

I scribbled down a new formulation: “Lethal action against members of Al Qaeda and any affiliated groups,” or words to that effect. We would hunt down and kill anyone in Al Qaeda, or acting under its direction or influence, involved in the 9/11 attacks or actively planning attacks on the homeland or on U.S. citizens anywhere.

But then I wondered, was that all that we could do? Covert-action programs were never conceived to be primarily instruments of national vengeance, at least during my long career. They are supposed to be forward-looking documents, combating ongoing or future threats to the United States. Killing Al Qaeda leaders or operatives was one thing, but a dead man can’t give you his intentions or plans. Even if we had the capacity and capability to kill them all—which I doubted—was that smart? Was that enough? Maybe, I thought, we should retain the option to take terrorists alive, not just to take them out of circulation but to get them to tell us about what their confederates still at large might be plotting.

I scribbled down the phrase “capture, detain and question” on my legal pad. I was totally winging it now. The CIA, in my experience, never had a program to hold people against their will. I had no idea where we might hold them (although it surely would not be anywhere inside the United States) or what sort of facility they would be held in. The manner in which we would question them did not cross my mind.

I made a few other notes to myself about what to include in any new program—language authorizing the CIA to call upon the services and personnel of all other federal agencies as well as foreign governments, things like that. It was early afternoon by then, and I decided it was time to go home to be with my wife and family. The unaccounted-for plane, United Flight 93, had just been reported as having crashed in a field in Shanksville, Pennsylvania. The carnage, at least for that day, seemed to be over. My trip home to Georgetown didn’t take very long, but it seemed to last forever.

Over the next few days, John Bellinger, the legal advisor to the National

Security Council staff, convened a series of marathon sessions, attended by senior lawyers from the White House and the national security community, to hash out the terms of the new MON. Bob McNamara went to some of the sessions, and I went to others. Less than a week after the 9/11 attacks, President Bush signed off on the final version. Multiple pages in length, it was the most comprehensive, most ambitious, most aggressive, and most risky Finding or MON I was ever involved in. One short paragraph authorized the capture and detention of Al Qaeda terrorists, another authorized taking lethal action against them. The language was simple and stark.

When the MON was delivered to the intelligence committees a day later, Republicans and Democrats alike had the same reaction: Is this enough? Is this everything you guys need to protect the country? As far as I was concerned, there was nothing else we possibly could have included; we had filled the entire covert-action tool kit, including tools we had never before used.

As far as I know, the MON remains in effect to this day.

In mid-October, Bob McNamara told me he was stepping down from his position as general counsel to accept a position in the private sector. It was not entirely a surprise to me, since Bob had been signaling for several months that he was exploring outside opportunities. Once 9/11 happened, however, I assumed he would postpone his plans for a while. Still, I understood Bob's decision—he had been in office for nearly four grueling years, and the pace and pressure were surely going to become even more relentless for years to come.

And so, when Bob departed in mid-November 2001, I became acting general counsel. It was not an unfamiliar position for me, having filled in for a few weeks at a time during the previous several years when the incumbent GC was out of town or in the interregnum between outgoing and incoming GCs. This would be no ordinary interregnum, of course. Workers were still sifting through rubble at Ground Zero and the Pentagon. The attempted "Shoe Bomber" attack on another U.S. passenger jet, as well as the murderous, unsolved "anthrax letter" incidents in D.C. and Florida, were keeping the nation in the grip of dread and fear. Meanwhile, the most high-stakes, high-risk covert-action program in CIA history was just getting under way. So, yes, I had been "acting" on previous

occasions, but never in circumstances remotely resembling these. To be the chief legal advisor at the CIA at that point of history was at once intoxicating and frightening.

What's more, I had the distinct impression that this time I could be in the hot seat for a while. In the months before 9/11, when Bob McNamara was making no secret of his plans to leave, I discerned no move by the White House to identify a replacement. Once Bob was gone, I still didn't. One day early on, I asked John Moseman, Tenet's chief of staff and by now my close friend, if he knew of any talk about a new general counsel. Based on past experience, I knew that the process could take months—a candidate would have to be interviewed by the director, cleared by the White House political office, undergo a thorough background security investigation, be formally nominated by the president, and confirmed by the Senate.

"The White House hasn't said anything about it to George, and George hasn't said anything about it to the White House," John replied. "So just sit tight. No one's in any hurry."

"Have fun," he added with a mordant chuckle.

In 1996, shortly after he became deputy CIA director, George Tenet had begun convening biweekly meetings with the CTC so that he could be kept personally abreast of world terrorism developments. In the wake of the 1998 African embassy bombings, George had started holding these sessions on a weekly basis. A few days after 9/11, they morphed into a daily ritual that was officially called "the CTC Update" but soon came to be known around the building as "the five o'clock." It was no longer a mere briefing forum—it became the command bunker in the CIA's war on Al Qaeda, with George wielding the marshal's baton.

Each day at the appointed hour, a group of about thirty-five of us would gather around the oblong polished oak table in the director's conference room to review and discuss the daily developments in the Agency's full-throttle campaign against Al Qaeda. On one side of the table sat George, along with his deputy, John McLaughlin, Executive Director Buzzy Krongard (a spectacularly successful and colorful investment banker whom George had recruited a couple of years before), Deputy Director for Operations Jim Pavitt, and Deputy Director of Intelligence Jami Miscik. Several other senior officials—the directors of public and

congressional affairs, the CIA comptroller, the acting general counsel, and a few other high-level straphangers—filled out that side of the table.

Across the table were arrayed the CIA's true warriors in this new, post-9/11 war. Each day about twenty officers from the Counterterrorist Center (CTC) and the Near East (NE) and Special Activities (SAD) divisions would troop in, sit down, and, for about an hour or so, basically scare the bejesus out of the rest of us with up-to-the-minute updates on the latest intelligence coming in on Al Qaeda plans, capabilities, and threats. Their presentation also included descriptions of what our people were doing, or proposed to do, in response.

The maestro of the group was the CTC chief, Cofer Black. An imposing presence with the physique of a retired NFL tight end, Cofer had a face and slicked-back, receding hairline that together reminded some of us of a late-career Jack Nicholson. Also, like most of Nicholson's screen characters, he spoke in a staccato, world-weary cadence liberally sprinkled with dark, cynical humor. But the dramatic image he presented was not an affectation—Cofer was a bona fide, hard-bitten product of the CIA's clandestine world, having spent years in hotspots and hellholes where he consistently performed with bravery and verve. In 1994, for instance, he had been the key CIA operative in orchestrating the capture in Sudan and rendition to France of the legendary terrorist fugitive Carlos the Jackal. In the post-9/11 literature, Cofer has been famously cited as having supposedly exhorted his troops to bring him "bin Laden's head in a box." I never heard him say that, either at the five o'clock meeting or elsewhere, but having gotten to know him well over the years, it rings true to me as the quintessential Cofer quote.

Cofer typically would lead off the meeting with the intelligence "headlines," then turn things over to the working-level operatives and analysts lined up in a row down the table from him. One would describe the most recent reports on threats to the homeland. The next would update Al Qaeda efforts to acquire biological and chemical weapons (which reliably elicited the most head-shaking and muttering from the rest of us). After that, a CTC analyst tracking intelligence on the possible location of bin Laden and his top commanders would give the latest update. The next two guys, from the CTC and the SAD, would describe the progress of the paramilitary war in Afghanistan. At the end of the row, the CTC's financial operations whiz, a thin, pale figure always wearing an impec-

cably tailored black suit, would quietly and methodically catalogue all the unprecedented ways in which he was detecting and disrupting Al Qaeda's international money flow.

One by one, these officers would crisply make their presentations. Some of them were only in their twenties; few were older than fifty. Their preternatural calm and the thoroughness with which these rank-and file employees delivered their daily digests of danger and derring-do were a constant source of wonder to me. Watching them perform, I would think to myself: If the American people could only see this, they would be so proud and reassured.

Shirt-sleeved, tie askew, and chomping an unlit cigar beyond recognition, George Tenet would lean forward and listen eagerly, alternately cross-examining and encouraging the briefers at every turn. Occasionally, he would interrupt and bark out terse orders: That piece of new threat information you just gave me? Get it to the FBI pronto. That foot-dragging you're getting from the Pakistanis (or the Yemenis, the Saudis, and so on)? I'll get on the phone tonight and ream them out personally. George was hands-on all the way in those daily sessions.

As the months went on, these daily meetings acquired a certain cachet. Other than a couple of FBI and NSA employees who were on detail to the CTC, no one from outside the Agency was allowed to regularly attend. High-level officials from around the Executive Branch would quietly lobby to get into them, convinced that it meant entrée to some shadowy inner sanctum. In most cases, the Agency would resist those blandishments from outsiders (there was a blanket ban on anyone from a foreign intelligence service getting in, for instance), but on occasion George would allow a visiting U.S. government colleague to attend—I remember the NSA director, Mike Hayden, and the White House homeland security advisor, Fran Townsend, sitting in a few times in those early years.

Ironically, however, the really sexy, sensitive stuff was not bandied about at the five o'clock meetings. For something that was extraordinarily closely held, there would be a "rump" session of sorts scheduled immediately after the five o'clock meeting. These would be held in George's office, with only a handful of people in attendance. I had an open invitation to sit in on all of them.

One such "rump" session, in those frantic first months after 9/11, sticks out in my mind. The subject was a nascent CTC plan for CIA officers with

COMPANY MAN

weaponized, unmanned aerial vehicles (UAVs) targeting the prey, from thousands of feet up, in their lairs on the Afghan frontier. But in late 2001, drone technology was still a work in progress; it was not yet certain that it would be lethally effective. True, I was fully aware that the MON that I helped prepare clearly sanctioned lethal actions against the Al Qaeda network. But those were only lawyers' antiseptic words on a page.

Instead, as the fateful year of 2001 turned into 2002, my energies and priorities were being directed to a separate and what proved to be a far more legally perilous area: the CIA's detention and interrogation of high-value Al Qaeda operatives.

From the outset, the top two names of the Agency's post-9/11 "most wanted" list were Osama bin Laden and his alter ego, Ayman al-Zawahiri. Technically, I suppose, they were wanted dead or alive, but I remember no one in the know at the CIA who seriously thought that either of them, if ever cornered, would allow himself to be taken into custody. Nonetheless, the Agency's preferred strategy for the next rung of high-value Al Qaeda targets (HVTs) was to capture them, not blow them away. It was these guys who were the most knowledgeable about the ongoing plots, about who was going to carry out the next wave of attacks, and about exactly where and when they would take place. And in late 2001 and on into 2002, there was every reason to believe Al Qaeda was planning more attacks. The experts at the CIA were convinced of that, and most of the still shell-shocked American public expected it. That same public, and their elected representatives, demanded that the government prevent it from happening, whatever that took.

To the CIA, that meant not only taking bin Laden's key henchmen out of circulation, but getting them to talk.

The first task for the Agency, accordingly, was to figure out where to put these HVTs, if and when we captured them (at which point, in the strange, new post-9/11 alphabet-soup terminology, they would morph into high-value detainees—HVDs). Defense Secretary Donald Rumsfeld put down a marker early on to George Tenet: The DOD wouldn't play the role of jailer for the CIA. No one was sure exactly why Rumsfeld felt that way—the DOD was busily turning the Guantánamo Bay Naval Base into a detention facility, after all—but Rumsfeld was obdurate and implacable.

The Attacks and the Response (September 2001–January 2002)

The CTC told George, at one of the earliest "five o'clocks," that this was just as well: For the big fish we're after, we didn't want them mixing with the Al Qaeda foot soldiers who were rapidly filling up Gitmo. They needed to be held somewhere where no one but we could get access to them, the CTC said, where no one but we knew where they were. And foreign governments couldn't be relied on to hold them for us either, the CTC advised—who knew what might happen to them then? They could get killed, they could be let go. If we were going to get into this, the CTC recommended to George, the CIA needed absolute control over these HVDs.

And so, with George's go-ahead, the Agency began casting about for its own incarceration site. I soon found myself sitting in George's office, where terms like "deserted island" and "mystery ship" were being thrown around. Only in retrospect is it remarkable to me that such a fateful decision was made with so little hesitation. In those days, hesitation simply was not an option, not with some senior Al Qaeda operative about to fall into our lap any minute, and not with another attack on the homeland possibly just around the corner. Still, I do remember feeling a vague, inchoate sense of trepidation at the time. Jeez, I thought to myself, the CIA has never in my experience built and run a prison. Before long, another new term was thus introduced into the Agency dialogue: "black site."

By early 2002, the first such black site was in place. Just in time, because its first guest was about to arrive.