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# 9/11 and the Butterfly Effect

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9/11 and the Butterfly Effect

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By

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Politics

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*"It has been said that something as small as the flutter of a butterfly's wing can ultimately cause a typhoon halfway around the world."*

- Chaos Theory (The Butterfly Effect, 2004)

September 11, 2001, is a date that has forever changed the landscape and fabric of American society as we know it. On this date, 19 radical Islamists set in motion a series of events so profound in their violence and hatred, that they would ultimately shape the future of policy within the United States for decades to come. When the proverbial dust would come to settle following the tragic events of 9/11, our nation and the ways we travel, conduct business, communicate and effectively live our lives would be forever altered. By analyzing the effects of September 11, 2001 upon the laws and policies which would come to follow, one can begin to see a clearer picture of the full scale in which 9/11 came to impact our lives outside of the images played on our television screens that morning.

Before an analysis of the full impact of 9/11 can be completed, it is first important to understand the cases in our past that may be similar and potentially able to offer some critical lessons. Although the most significant terror attack on U.S. soil to date is September 11th, the World Trade Center bombing in 1993 and the Oklahoma City Bombing in 1995 also provide key information on how we respond to these types of events. Immediately following these events a greatly increased focus was placed upon terrorism prevention and preparedness by the general population and the United States government. In 1998, the Hart-Rudman Commission, also known as The U.S. Commission on National Security/ 21st Century (USCNS/21), met to review the national security requirements of the United States as the nation moved into the 21st century. Chaired by U.S. Senator Gary Hart (CO) and Warren Bruce Rudman (NH), the USCNS/21 was

charged with the task "to analyze the emerging international security environment; to develop a US national security strategy appropriate to that environment; and to assess the various security institutions for their current relevance to the effective and efficient implementation of that strategy, and to recommend adjustments as necessary" (Smith, 1/27/12). The report issued from the Hart-Rudman Commission came in three distinct phases focusing on various key topics, the final report delivering the commission's recommendations for change on January 31, 2001. In this final phase of the report, the commission warned of a direct attack against Americans on American soil within the next 25 years, little did they know what they near future held in store.

### **The Birth of the Department of Homeland Security**

Prior to the events of September 11, 2001, the Federal Bureau of Investigation (FBI) played a pivotal role in Homeland Security and served as the primary organization over domestic terrorism and intelligence. After the events of 9/11, the President and his staff were pressed to form a singular agency which could help facilitate communication and cooperation across various agencies to more efficiently respond to natural disasters, man-made accidents, and terrorist attacks. On November 25, 2002, the Homeland Security Act would be signed into law by President Bush, creating the Department of Homeland Security (DHS) and signifying the largest reorganization of government since the creation of the Department of Defense 50 years prior. Under the direction of the newly appointed DHS Secretary, Tom Ridge, the Department of Homeland Security would officially open its doors on January 24, 2003, and would begin absorbing subsidiary agencies on March 1. During the restructuring that occurred as a result of the formation of the Department of Homeland Security, agencies like the U.S. Coast Guard, U.S. Secret Service, Federal Emergency Management Agency, and the National Communication

System would come to now be housed under the control and oversight of the Department of Homeland Security (Smith, 1/27/12).

As the United States government was being reorganized and the DHS was being created in the wake of the 9/11 terror attacks, it quickly became clear that the premier focus of the Bush Administration and the Department of Homeland Security would be combating this new terrorist threat. Contemporary Homeland Security policy is rooted in the National Security Act of 1947, which sought to bring together elements of foreign policy, the armed forces, and the intelligence community to address issues in a world that was quickly shifting from WWII into the Cold War era. As homeland and national security began evolving in the months and years after the events of 9/11, it became clear that homeland security under the new DHS could mean any number of things. By establishing the core approach and focus of homeland security- be it terrorism, all hazards, natural disasters, national security, etc. - you can begin to gain an understanding on what the administration and department views as important. For those within government, a struggle exists in representing the various needs of the Department of Homeland Security, reminiscent of the proverb of the blind men and the elephant. Each office and sub-agency of the Department of Homeland Security has a specific list of threats and needs which they must fight for attention and funding for at the federal level. Although the creation of the Department of Homeland Security came as a direct result of the terror attacks of 9/11, is placing our primary focus and resources on terrorism the smartest plan of action when homeland security in and of itself is a continuously evolving social construct that is shaped by ever-changing social processes.

As homeland security continues to grow and evolve within our political structure, it is imperative that it remains as an element of national security used to aid the government in

protecting the territory, sovereignty, infrastructure, and population of the United States, not as a tool to suppress the people and curtail civil liberties. Former Chairman of the Joint Chiefs of Staff, William Crowe, warned of this potential for abuse known as "Security Uber Alles" when he stated that, "the real danger lies not with what the terrorist can do to us, but what we can do to ourselves when we are spooked" (Smith, 2/13/12). When an event as profound and traumatic as 9/11 occurs, it can become very easy for the government to justify violating various civil liberties under the banner of homeland security, ushering in the concept of "Security Uber Alles". A recent line can be drawn to the days of WWII when the U.S. government utilized internment camps to hold Japanese-Americans as prisoners. This type of behavior by the federal government can only come through the complicit approval of the population, willing to sacrifice their own freedoms and rights in the name of what they think is increased security. It is this willingness to do anything in the name of security that leads to the policy changes and laws that have been created since 9/11.

### **The Bush Doctrine**

What would come to be a mainstay in the vernacular of this decade, the "Bush Doctrine" defined the policy aims of the Bush administration in a language that detailed its strategic response to terrorism and the 9/11 attacks. At the West Point graduation in 2002, President Bush spoke to graduates on the need to preempt growing threats by stating that our military "must be ready to strike at a moment's notice in any dark corner of the world." President Bush's State of the Union address in January of 2002 spoke of certain "non-negotiable demands of human dignity" which would be the basis for reform among Arab nations; rule of law, respect for women, equal justice and religious tolerance (Gerson). Similar calls for reforms were echoed in

the National Security Strategy of 2002, when President Bush cited international economic development as a key response to combating terrorism at the source by stating, “poverty, weak institutions and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders.” Although it has faced substantial criticism since the beginning, the Bush Doctrine is founded in a response to legitimate historical events such as continued regional instability in the Middle East, and seeks to protect Americans from violence by countering hatred with hope for a better life. As the Obama administration came to power, they slowly adopted the policies of the Bush Doctrine and shaped them into their own policies for combating the terrorist threat, both at home and abroad.

Under the Bush Administration, a flood of new laws and policies washed over the nation that would forever transform the lives of its citizens. One of the first laws to be passed was known as the 2001 Authorization for the Use of Military Force (AUMF). Passed on September 14, 2001, the AUMF granted the President with the ability to use all "necessary and appropriate force" in the pursuit of justice against those who perpetrated the September 11th attacks. In the days immediately preceding the attacks of September 11th, the Authorization for the Use of Military Force Act along with Article 2- Section 3- Clause 4 of the United States Constitution provided President Bush with the legal opportunity to send our armed forces in search of Osama bin Laden and his cohorts around the globe.

Supplemental to the Authorization for the Use of Military Force, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act was signed into law by President Bush on October 26, 2001. Colloquially known as the USA PATRIOT Act or the Patriot Act for short, this piece of legislation would rise to levels of infamy for the changes it would initiate. The USA PATRIOT Act was a direct response

by the United States federal government to the attacks of 9/11 and provided greater authority to federal officials to intercept communications for foreign and domestic purposes, among other features (Doyle). Collecting and tracking communications is specifically regulated under federal communications privacy laws in a three tiered system. At the top of the tiered structure is Title III of the Omnibus Crime and Control and Safe Streets Act of 1968, which prohibits electronic eavesdropping except in serious criminal cases until after a specific court authorization has been obtained. Next comes 18 U.S.C. 2701-2709, the federal statute which provides protection over telephone and email records held in third party storage, but permits law enforcement access with appropriate court orders in connection to any criminal investigation. Trace and trap devices as well as pen registers are covered in 18 U.S.C. 3121-3127, and are available to law enforcement based on government certification, not court order, because they simply record the identity of the participants in the conversation (Doyle). All three levels of privacy communications laws were impacted through the implementation of the USA PATRIOT Act as terrorism and computer crimes were include to Title III's predicate offense list, stored voice mails were deemed to be like e-mails rather than conversations, and pen register and trap and trace devices are authorized for use against electronic communications like email, as well as access to stored email correspondence and other records.

Under the USA PATRIOT Act, not only was the domestic spying capability of the federal government expanded, but the restrictions on foreign intelligence collection were reduced as well. Signed by President Jimmy Carter in 1978, the Foreign Intelligence Surveillance Act outlines the procedures for the collection of foreign intelligence information between foreign powers and their actors (Smith 1/31/12). This intelligence collection was allowed to occur within the United States for a period of up to a year, provided that a U.S. citizen wasn't under



investigation. If a U.S. citizen is to come under investigation at any time, judicial authorization from the secretive Foreign Intelligence Surveillance Court must be sought 72 hours prior. The USA PATRIOT Act amended the Foreign Intelligence Surveillance Act by permitting “roving” surveillance, expanding the size of the FISA court from 7 judges to 11, and by providing for the implementation of FISA surveillance when collecting intelligence is a significant, not sole reason (Doyle). FISA was further amended in 2004 to include the “lone wolf” provision through 50 U.S.C. 1801(b)(1)(C), which provided for FISA surveillance on a single actor without first finding a connection between the “lone wolf” and an outside entity (Bazan).

Aside from its implications upon foreign and domestic surveillance, the USA PATRIOT Act also sought to impact other areas like money laundering, forfeiture, crime, and border security. In fact, the act actually created new federal crimes for offenses like terror attacks on mass transportation centers, biological weapons attacks, harboring terrorists, providing material support, and for fraudulent charitable solicitation (Doyle). In addition to the creation of new crimes, the USA PATRIOT act also created new penalties specifically related to terrorism. Adding to the new laws and penalties established under the USA PATRIOT Act, a number of other procedural changes were instituted including the authorization of “sneak and peek” search warrants, the expansion of Posse Comitatus Act exceptions, increased rewards for information related in active terrorism cases, and clarification on the application of federal criminal law on American installations overseas (Doyle).

Since the introduction of the USA PATRIOT Act, policy makers have come under fire from harsh critics over the bounds of the USA PATRIOT Act. Critics argue that the change in procedure and regulations surrounding the use of electronic surveillance provided through the USA PATRIOT Act has in turn deeply affected the civil liberties and privacy of American

citizens. Organizations like the American Civil Liberties Union (ACLU) have already filed numerous lawsuits against the federal government and the Justice Department for alleged abuses that have occurred under the USA PATRIOT Act. These lawsuits have not come without merit as numerous examples of abuses under the USA PATRIOT Act have been documented such as the wrongful arrest of Brandon Mayfield in 2004 after his fingerprint was mistakenly matched by the FBI with one found at the scene of the 2004 Madrid bombings. After being released from FBI custody for two weeks, Mayfield was then told that his home had been secretly searched under the provisions created in the USA PATRIOT ACT (Abramson). A year earlier, University of Idaho student Sami al-Hussayen was arrested and prosecuted under section 805 of the USA PATRIOT Act for working as a web master for the Islamic Assembly of North America. While in his role of maintaining the website and supplying links to speeches by Muslim scholars, al-Hussayen was detained and accused of providing “expert advice and assistance” to a terrorist organization, a claim which was ultimately found to be false according to a jury of his peers (Abramson).

### **Guantanamo Bay and the Detainment of Enemy Combatants**

With the newly acquired tools of the Authorization for the Use of Military Force Act, the Bush administration set into motion a plan for locating, detaining, and interrogating the individuals responsible for the 9/11 terror attacks. After both the United Nations and the North Atlantic Treaty Organization (NATO) members recognized the 9/11 terror attacks as being “armed attacks” consistent with the understanding and definition of the UN Charter and Treaty, the only question left centered around the legal status of the perpetrators. In an interview conducted for Frontline PBS on July 14, 2005, former Associate White House Counsel under the

Bush Administration, Bradford Berenson, stated that the debate over the status and treatment of detained Al Qaeda and Taliban personnel began within the administration just weeks after the 9/11 terror attacks had transpired;

*“So the following comundrum occurred to all of us, most of whom had no background at all in these issues, which is this: When you capture a suspected Al Qaeda terrorist, what do you do with him? You can't kill him once you have him in custody and he's been captured. That would be a violation of international law. You can't let him go because he's far too dangerous and potentially far too valuable as a source of intelligence. And you can't, in many cases, try him in the ordinary civilian court system. So what do you do with this person?” (Frontline)*

An answer to this question would come from hundreds of years of legal decisions and cases surrounding international armed conflict. When detaining “enemy combatants” during an ongoing armed conflict, a distinction must be made as to the classification status of each prisoner. This concept of “enemy combatants” and their legal status was first domestically established by the Supreme Court of the United States decision in *Ex Parte Quirin*, 317 U.S. 37-38 (1942), which held that “citizens who associate themselves with the military arm of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts are enemy belligerents within the meaning of the Hague Convention and the law of war” (Supreme Court of the United States). Under the umbrella of “enemy combatants”, there rests a further distinction on the status of war time prisoners- lawful and unlawful combatants. Through the protection of Article 4 of the 1949 Geneva Convention (III) Relative to the Treatment of Prisoners of War, lawful combatants receive Prisoner of War (POW) status and legal protection

provided that they meet the correct criteria- wearing uniforms or insignias that clearly distinguish combatants from civilians, openly bearing arms, and not only acknowledging and following the laws of war individually, but also as part of a larger unit. Unlawful combatants are identified as being individuals who engage in war by violating the rules and customs of engagement. This disregard for the customs and laws of war is seen as an unacceptable threat to civilian life and subsequently means that the unlawful combatant is entitled to fewer protections under international law. After being advised by the U.S. Justice Department on the application of laws and treaties to Al Qaeda and Taliban detainees, President Bush determined that both Al Qaeda and Taliban detainees meet the qualifications of unlawful combatant status. Captured Al Qaeda operatives are principally deemed to be unlawful combatants by virtue of their membership in a non-state actor terrorist organization, while their Taliban counterparts failed to satisfy the qualifications for prisoner of war status under Article 4 of the Geneva Convention (III) (Department of Justice). According to a memorandum from General Counsel of the Department of Defense, William J. Haynes II, even though Al Qaeda and Taliban operatives have been deemed to be unlawful combatants, “the United States armed forces are treating, and will continue to treat, all enemy combatants humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949. Among many other things, this means that they receive: three meals a day that meet Muslim dietary laws; medical care; clothing and shoes; shelter; showers; soap and toilet articles; the opportunity to worship; the means to send mail and receive mail, subject to security screening; and the ability to receive packages of food and clothing, also subject to security screening” (Masters).

While debating and deciphering the legal status of detained combatants, the United States government announced in December of 2001 that high-value detainees would be held at the Guantanamo Bay Detention Camp, also known as GITMO, within the Guantanamo Bay Naval Base. Located on an American Naval base in the Southeast of Cuba, Guantanamo Bay Detention Camp was established by the Bush administration in 2002 to specifically house high-value prisoners captured from the war on terror. Guantanamo Bay seemed to be an ideal location for housing these individuals because of the tight security already provided by the military base, as well as the isolated but relatively close proximity to the United States. Bush administration officials like Bradford Berenson have also acknowledge that the thought inside the administration at the time was that Guantanamo Bay was outside of the territory of the United States, and as such would help avoid legal ambiguities (Frontline).

On January 11, 2002, the first 20 detainees of what would eventually turn out to be 779 individuals in total arrived at Guantanamo Bay's Camp X-Ray (Washington Post). At its peak in May of 2003, Guantanamo Bay was home to 680 individuals deemed to be some of the worst in the world. As the various camps in Guantanamo Bay began filling with inmates, reports of the conditions within the camps as well of the treatment of prisoners began to surface. Upon their release from Guantanamo Bay Detention Center, former detainees like the now famous "Tipton Three" recanted horrific stories of their treatment while in U.S. custody at GITMO and outside of the detention facility as well. In a composite statement drafted by the lawyer of Shafiq Rasul, Asif Iqbal and Rihel Ahmed, the former GITMO prisoners spoke of their experiences being physically beaten, verbally threatened, religious persecuted, deprived of sleep and adequate food, and mentally broken down (Rasul, Iqbal, and Ahmed). Conditions inside Guantanamo Bay seemed to dramatically deteriorate further under the direction of Major General Geoffery Miller

after he arrived at the detention facility in late 2002 to serve as the Commander of the Joint Task Force Guantanamo. After former Defense Secretary Donald Rumsfeld granted military intelligence control over all facets of Guantanamo Bay, General Miller established a protocol for hooding prisoners or keeping them naked for more than 30 days, short-shackling (being restrained in a squatting position), the use of temperature changes, forced shaving of inmates heads and beards, threatening with attack dogs, prolonged isolation for months on end, and constantly moving inmates to new cells every few hours (Rasul, Iqbal, and Ahmed). In addition to the acts already mentioned, Guantanamo Bay inmates have spoken on the humiliating and painful body cavity searches they endured while at GITMO which bordered rape, and other physical and sexual abuses they encountered while in U.S. custody. These abuses lead to severe mental breakdowns and the significant “deterioration in the psychological health of a large number of detainees” as noted by a public statement released by the Red Cross on October 9, 2003 (Washington Post).

Over a year after the opening of the Guantanamo Bay Detention Center, the Supreme Court of the United States agreed to hear a case challenging detainee’s ability to use the federal court system. Arguments surrounding the Guantanamo detentions began before the Supreme Court on April 20, 2004 and concluded two months later on June 28, 2004. After the evidence and arguments of *Rasul v. Bush*, the Supreme Court of the United States reached a 6-3 decision, stating that detainees imprisoned without charge at GITMO were entitled to access to the U.S. federal court system where they could contest their detainment (Welsh). Only days after the Supreme Court ruling in *Rasul v. Bush*, the Pentagon establishes special military tribunals known as Combatant Status Review Tribunals (CSRTs) to evaluate and determine each detainee’s status as an “enemy combatant”. Combatant Status Review Tribunals, which consist

of a three judge panel hearing evidence and questioning directed by three officers, began a few weeks later followed by the first military commission (Washington Post). By March 2005, the CSRTs were complete, resulting in 38 of the 558 detainees being deemed no longer enemy combatants and further eligible for release. As the end of 2005 was drawing near, two critical pieces of legislation passed through the congress which would further seek to expand the powers of the Bush Administration in prosecuting and detaining enemy combatants. Initially named after the South Carolina Senator who sponsored the amendment, Lindsey Graham, the Graham Amendment stripped detainees of the right to file habeas corpus petitions, and would go on to being included in the 2006 National Defense Authorization Act under section 1405 (U.S. Congress). Following on the heels of the Graham Amendment, President Bush would go on to sign into law the Detainee Treatment Act. Part of the Department of Defense Appropriations Act of 2006, the Detainee Treatment Act of 2005 strictly prohibits “cruel, inhuman, or degrading treatment or punishment” of detainees being held at GITMO (Masters).

2006 proved to be a trying year for those in the Bush Administration, in relation to Guantanamo Bay, as it began with a UN report recommending the closure of GITMO (Office of the High Commissioner for Human Rights). Following the UN report, a number of suicides, attempted suicides, and hunger strikes took place among detainees at Guantanamo Bay. Shortly after the triple suicide pact conducted by Mani Shaman Turki al-Habardi al-Utaybi, Yasser Talal al-Zahrani and Ali Abdullah Ahmed, the Supreme Court of the United States ruled that the CSRTs in place at Guantanamo Bay violated both domestic and international law, and that the provisions of the Geneva Conventions apply to the detainees as well. On October 17, 2006, President Bush signed into law the controversial Military Commissions Act (MCA), which critics attacked as an unconstitutional suspension of habeas corpus while also providing the Bush

Administration with a broad, new definition of enemy combatants and the tools necessary to protect the individuals charged with interrogating them. This would come to be challenged at the Supreme Court in *Boumediene v. Bush/Al Odah v. Bush*, where on June 12, 2008; the Supreme Court would rule that Guantanamo Bay detainees should have the ability to dispute their detention through habeas corpus petitions in the federal courts (*Rasul*, *Iqbal*, and *Ahmed*). CSRTs and the subsequent sentencing of guilty detainees would continue through the end of the Bush Administration in January of 2009.

### **The Torture Memos, Enhanced Interrogation Techniques, Extraordinary Rendition, & Targeted Killings**

Defined in Article 1 of the 1984 Convention Against Torture, international law states that torture is any;

*“act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (Office of the United Nations High Commissioner for Human Rights)*



U.S. officials would ratify this treaty in 1994, but would not recognize the treaty's addendum on the definition of torture, referencing their own definition outlawing "cruel and unusual punishment" found in the Eighth Amendment of the U.S. Bill of Rights'.

As the United States regrouped in the weeks and months following the events of 9/11, it became clear that the U.S. was faced against an unconventional force that employed tactics contrary to those commonly accepted under rules of engagement. It soon became apparent that the United States government would have to employ the use of very focused techniques and practices when detaining, transporting, and interrogating these extremely dangerous individuals. Instructions for the interrogation of detainees would soon be provided through a series of memos drafted from the Department of Justice under the Bush Administration. Popularly referred to as the "Torture Memos", this collection of three documents was drafted by former Deputy Assistant Attorney General of the United States, John Yoo. The three legal memoranda; "Standards of Conduct for Interrogation under 18 U.S.C. sections 2340-2340A," "Interrogation of al Qaeda Operative", and an untitled letter from John Yoo to Alberto Gonzales, were further signed by Assistant Attorney General Jay Bybee and forwarded to CIA officials, Department of Defense leadership, and the Bush Administration (American Civil Liberties Union).

"Standards of Conduct for Interrogation under 18 U.S.C sections 2340-2340A" was delivered to former Counsel to the President, Alberto Gonzales, in August of 2002 and authorized the employment of specific interrogation methods stating that severe mental pain was not equal to torture under U.S. interpretations of the law. Centered on the interrogation of Abu Zubaydah, "Interrogation of al Qaeda Operative", comes from the CIA and seeks the legal advice of the Justice Department. In the memo, the Office of Legal Council (OLC) authorizes the CIA to use "enhanced interrogation techniques" (EIT's). Within the memo, the Office of Legal

Council clearly identifies 10 techniques which are available for implementation through the legal advice provided by the Justice Department. Enhanced interrogation techniques approved in the memo include attention grasps, walling, facial holds, facial slaps/insult slaps, cramped confinement, wall standing, stress positions, sleep deprivation, insects placed in a confinement box, and the waterboard (U.S. Department of Justice). Approved enhanced interrogation techniques are developed from a number of various sources; however most are derived from the SERE program. Standing for survival, evasion, resistance and escape, SERE tactics are designed to help an individual be both mentally and physically prepared for anything they may encounter in the field. None of the methods identified in the memo as E.I.T.'s, individually or together, for any duration, would be considered torture at any time according to the opinions of the Justice Department. SERE Professionals are still required to be present at any session featuring enhanced interrogation techniques to oversee the correct and lawful implementation of the techniques. In interrogations employing E.I.T.'s, as indicated in the memo, the CIA documented "the nature and duration of each such technique employed "and "the identities of those present."

A final component of the "Torture Memos" was an untitled letter from former Justice Department lawyer, John Yoo, to former United States Attorney General Alberto Gonzales, answering his request as to whether the use of alternative interrogation methods would be in violation of the UN Convention Against Torture, and if they could be the basis for criminal charges against the interrogator. This memo is often viewed as the primary torture memo of the Bush Administration, because it defines the Department of Justice's interpretation of torture and in the process builds a foundation for the following torture memos. A definition for torture, and subsequent standards of conduct for interrogations, in US law can be found in 18-USC Section 23-40, and focuses on the need for pain experience to be severe. This definition falls short of

being complete as it lacks any explanation of what severe or painful suffering is exactly. Yoo explains to Alberto Gonzales that the interrogator inflicting this level of pain must possess significant intent to cause severe or painful suffering and also notes the need for “prolonged mental harm” to be possible as a result of the technique (U.S. Department of Justice). Under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture under any and all circumstances is prohibited. The United Nations Convention Against Torture also makes a distinction between acts deemed to be torture, and actions which may constitute “cruel, inhuman or degrading treatment”. Under Article 16 of the United Nations Convention Against Torture, acts which may fall short of the legal requirements for torture may still be viewed as cruel, inhuman, and degrading punishment. It was further indicated in the memo that CIA interrogators could potentially be subject to judicial review for their interrogations.

As the approval for the use of Enhanced Interrogation Techniques was delivered to CIA officials by the Bush administration, it became clear that distinctions amongst the implementation and desired effect of such techniques must be further developed. Interrogation techniques were divided into three categories, designed to achieve a specific outcome. The first category of techniques was designed to wear detainees into a “dependant state” and included sleep deprivation, prolonged nudity and dietary manipulation. Category two techniques- abdominal slaps, attention slaps, facial slaps, and facial holds- are designed to “correct, startle, or achieve another enabling objective.” Coercive techniques are the most severe and are designed to place the detainee in increased physical and psychological distress. Coercive interrogation techniques include walling, confinement with insects, cramped confinement, stress positions, water dousing, wall standing, and waterboarding. Waterboarding is an interrogation technique

designed to simulate drowning and induce fear and panic into the detainee. As explained in the memorandum regarding the interrogation of an Al Qaeda operative, there are very detailed instructions regarding the implementation of the waterboard. Waterboarding is only officially approved for use under three circumstances; there is significant intelligence to suggest that an attack is imminent, it can prevent, disrupt or delay an attack, or other methods have failed and are unlikely to provide information in time of attack. If one of these qualifications is met, waterboarding may only be allowed 5 non-consecutive days out of 30, with a maximum of two sessions being allowed in a 24 hour period. Each waterboarding session is to be no more than two hours in length, with the actual technique lasting no more than 40 seconds at a given time. When employing this interrogation technique, subjects are restrained on a bed angled downwards at 10-15 degrees. Subject's faces are then covered by a cloth and water is poured over the subject's mouth and nose, causing the sensation of drowning in the subject. Should subjects attempt to resist the technique by moving their head or holding their breath, interrogators may cup the subject's mouth and nose to direct the flow of water. In addition to guidelines directing the appropriate incline angle of the bed and height from which to administer the water, the memo also requires that both a Physician and Psychologist be present at all times (U.S. Department of Justice).

Bush administration policies would gain further attention as more information on the practices being carried out in secret would eventually come to light. One of those practices employed by the US government, and the CIA specifically is known as extraordinary rendition. Utilized by the United States since the Reagan Era, extraordinary rendition is the apprehension and extra judicial transfer of a person from one state to another. Initially, the practice of extraordinary rendition was used by the Reagan and other following administrations as a means

to bring terror suspects to trial. The practice of extraordinary rendition has evolved under the Bush administration, taking on a much different tone as it was employed in the “War on Terror”. In her paper on extraordinary rendition and disappearances in the “War on Terror”, Margaret Satterthwaite comments on the evolution of rendition by stating that “rendition to justice had become rendition to torture, or extraordinary rendition” (Satterthwaite, 3).

One of the most famous examples of extraordinary rendition in recent history is that of Egyptian Cleric, Abu Omar (Whitlock). In 2002, Abu Omar was living in Milan, Italy, under political asylum with his wife when he was kidnapped off the streets by masked men one day. Abu Omar was eventually transported to Egypt, the country he had fled from for being an opponent of the Mubarak regime, and released into the custody of the Egyptians. While in the custody of the Egyptians, Abu Omar alleges that he was falsely accused and tortured countless times, including electric shock to the genitals and rape. In 2004, Abu Omar’s detention would be downgraded to house arrest for a short time until picked back up by Egyptian security forces. Finally, on February 7, 2007, Abu Omar would be released from custody after suffering both extraordinary and erroneous rendition.

A key component to the facilitation of practices like enhanced interrogation techniques and extraordinary rendition is the operation of a global “black site” network. Black sites are the names of an unknown number of covert prisons operated by the CIA around the world. First announced to the general public by the Washington Post and Human Rights Watch in 2005, a picture began to emerge of a vast network in place being used to transport, detain, and interrogate individuals all over the globe. It is now known that black sites are, or have operated in countries such as Afghanistan, Iraq, Jordan, Pakistan, Qatar, Thailand, Uzbekistan, UK, Yemen, South Africa, Poland, Israel, Egypt, and Romania (Frontline). Black sites are commonly

used as holding areas for detainees transferring around the globe, as well as for alleged interrogations by individuals whom U.S. laws do not apply to. Also being utilized as a pseudo-“black site” is an unknown number of U.S. Naval vessels. It is estimated that as many as 17 vessels have served as floating prisons since 2001, with the USS Bataan and USS Peleliu being known to have housed prisoners (Campbell, and Norton-Taylor). Individuals brought to the floating prisons would be interrogated on board the vessel and then further rendered to another nation.

After the arrival of 14 High Value Detainees to Guantanamo Bay Detention Center, the International Committee of the Red Cross (ICRC) was granted access to the detainees they didn't even know were in the custody of the United States. While with the 14 HVDs, the ICRC collected information from them about their arrest, transfer, and treatment while under the custody of the United States. Through their meetings with the 14 detainees, the ICRC workers learned of a system being supported and operated by the CIA and federal government designed to undermine human dignity while instilling a sense of futility among detainees through severe physical and mental pain and suffering (ICRC). 12 of the 14 detainees alleged physical and psychological abuses from continuous solitary confinement, incommunicado detention, waterboarding, beatings, sleep deprivation, exposure, and deprivation of solid foods. ICRC officials would come to state that the circumstances presented by the 14 HVDs equaled the arbitrary deprivation of liberty and enforced disappearances. Various recommendations were made by the ICRC including urging the United States to end practices of undisclosed detention and furthermore ensuring that all persons are held in accordance with the rules and principles of accepted international law.

Another policy which began under the Bush Administration to help combat the global war on terror was the implementation of “targeted killings”. Although extremely similar to the concept of assassinations, a distinction is drawn between the statuses of the target. Targeted killings feature premeditated acts of lethal force by states at times of peace or conflict, directed towards an unlawful combatant. Although there remains a ban on peace time assassinations from 1976, targeted killings are supported by the 2001 AUMF and further reaffirmed in the 2012 NDAA (Masters). The United States has also drawn on Article 51 of the UN Charter, the right to self defense, to bolster legal support for the practice. Given the global nature of the war on terror, the practice of targeted killings as justified through Article 51 of the UN Charter may include killing individuals who are planning attacks both in and out of declared theaters of war.

One aspect of the “targeted killings” policy which flies in uncertain legal air, is unmanned aerial vehicles (UAV). Often referred to as Drones, UAVs have opened up a new chapter in warfare and the rules of engagement. Possessing both intelligence and weaponry capabilities, these unmanned planes are intended to serve as a surgical strike tool against “personalities only” (Rohde). Although initially implemented by the Bush administration, the Obama administration has grown the UAV program exponentially, ordering 4x the amount of drone strikes of the Bush administration. During the first two years of drone strikes under the Obama administration, an average of one drone strike every 2 days occurred compared to that of one every 40 days under the Bush administration. Based solely on reported media accounts, it is estimated that the 295 drone strikes have occurred since 2009, claiming between 1500-2300 militant deaths. Unclear statistics on the number of civilian deaths leave questions as to the success of the UAV program.

Questions over the impact of the drone strikes have begun to circulate, especially in reference to the ongoing insurgency in Pakistan. On average, it is suggested that only one out of seven drone strikes against militant leaders actually achieves its objectives, most killed by drone strikes are low level fighters and civilians it seems (Bergen, and Tiedemann). In addition to the inability to strike militant leaders on a consistent basis, it has also become clear that the two largest potential individual targets for a drone strike, Usama bin Laden and Ayman al-Zawahiri, haven't been targeted at all, except for al-Zawahiri who hasn't been targeted since 2006.

Complimentary to the drone strikes, kill/capture missions are gaining attention after their recent success in locating and killing former Al Qaeda leader Usama bin Laden. Directed by the Joint Special Operation Command, teams of Special Forces operators are used as a surgically precise tool to locate and kill/capture some of the worst individuals in the world. Since Obama has assumed office the number of kill/capture missions has also grown impressively, from 675 missions in 2009 to 1879 missions through Aug 2011. Pentagon officials have stated that between 84-86 percent of the kill/capture night raids have experienced no violence, while NATO officials have seen targets successfully killed or captured 50-60% of the time. These two tools of targeted killings are quickly making their claim on the future of military engagements.

### **Obama-Bush Doctrine**

*"It will be the policy of the United States to promote reform across the region, and to support transitions to democracy."*

*-Barak Obama, May 19, 2011*



After his inauguration in 2009, many expected President Barak Obama to come in and begin undoing all of the work of the Bush administration. Though the Obama administration would make significant changes to Bush administration policies in the months and years to come, what has been most interesting to witness in the development of President Obama has been the similarities in their policies.

As Obama has grown and evolved as a wartime President, his stance on force and its application has been reminiscent of that found just a few years prior under the Bush administration. In his 2009 Nobel Acceptance Speech, Obama stated that “there will be times when nations, acting individually or in concert, will find the use of force not only necessary by morally justified.” Action behind these words has been seen from the Obama administration as US Forces have been sent into Afghanistan, Iraq, and Libya as well as on commando raids in Pakistan, Somalia, and on the high seas (Rohde). Obama’s administration on foreign policy strategy focuses on increased drone strikes, multilateralism, and a light U.S. military presence in places like Libya, Pakistan, and Yemen, compared to the substantially heavier approach taken by the Bush administration.

As one of the most controversial laws passed under the Bush administration, the USA PATRIOT Act came before the Obama administration for its Sunset provision vote on May 26, 2011. In a move that surprised many on either side of the ideological spectrum, President Obama voted to extend several key provisions of the USA PATRIOT Act (Cohen). Section 206 of the USA PATRIOT Act, approved by the Obama administration, focuses on the use of roving wiretaps while Section 215 allows for FBI officials to apply for FISA court access. Known as the “lone wolf” provision, Section 6001 of the Intelligence Reform and Terrorist Prevention Act of 2004 was also extended under the Obama Administration.

A point of uncertainty for both administrations, Guantanamo Bay Detention Center would come to be changed under the Obama administration. On January 22, 2009, President Obama would enact Executive Orders 13491, 13492, and 13493. These executive orders titled “Ensuring Lawful Interrogation”, “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closing of Detention Facilities” and “Review of Detention Policy Options”, would go on to lay the framework for the rest of the Obama administration’s plans with GITMO. One of the primary concerns of the Obama administration in regards to Guantanamo Bay was revamping the military tribunal system already in place. A January 2010 Department of Justice led task force found that under the laws of war according to the Obama administration, 50 out of 196 detainees at GITMO should be held there indefinitely, without a trial. The first conviction in the revamped, Obama administration military tribunal system came in July of 2010, immediately followed by many more. Preparing for the indefinite detention of dozens of individuals, President Obama formally created an indefinite detention system at Guantanamo Bay. A month after the creation of the new indefinite detention system at GITMO, U.S. Attorney General Eric Holder announced that Khalid Sheikh Mohammed and his four conspirators would be tried in military commissions, not federal court. Currently, more than 169 detainees remain at the Guantanamo Bay Detention Center under the Obama Administration (Scheinkman, Andrew, McLean, Tse).

### **Border/Port/Air Security**

In the Post-9/11 United States, an incredible emphasis on securing our national boundaries to a level commensurate with threats from abroad is competing with the facilitation

of legitimate cross-border travel and commerce. This task grows considerably harder when taking into account the 3,987m shared Canadian border and the 1,933m shared border with Mexico. While Canada suggests a complete lack of protection, there are a few hundred miles of pedestrian and vehicle fencing on the US/Mexico border (Beaver). To help address this challenge, the 2003 DHS Border and Transportation Security (BTS) Directorate was created, establishing the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection.

A clear need to secure our boundaries more efficiently has presented itself out of the very real threat of infiltration by those who wish to do harm against us. One of the proposed ways to more efficiently screen individuals crossing the border is through the use of the Automated Targeting System. The Department of Homeland Security computerized system is designed to analyze a large volume of data related to every individual who crosses the border. Individuals are assigned a rating which helps determine if the individual may be placed within a risk group of terrorist or other criminals (Landfried). Unfortunately the Automate Targeting System cannot help directly combat the growing intensity of narco-terrorism occurring just over the border. In an effort to increase security and stability along our southern border, the number of Border Patrol agents in the Southwest border has increased from 9,100 in 2001, to over 18,000 in 2011 (DHS). In addition to the increase in manpower, the Department of Homeland Security has also deployed dual detection canine teams, non-intrusive inspection systems, mobile surveillance systems, radiation portal monitors, unmanned aerial systems, fixed and rotary wing aircraft, and license plate readers to help increase all of its security and efficiency efforts at our borders (DHS). Signs of progress over the past two and a half years have shown a 75% increase in

currency seizures, 31% increase in drug seizures, and a 64% increase in weapons seizures (DHS).

Often overlooked by the general public, but extremely important for many reasons, port security is experiencing much needed renovations to improve and better secure our port facilities. Since the 9/11 attacks, funding for port security has increased by more than 700% from the approximately \$259 million they were budgeted in 2001 (CPB.gov). In a 2004 speech by Tom Ridge, a series of new security initiatives “designed to strengthen port protections through increased international cooperation, new technology and the necessary funding needed to meet these new security enhancements, at strategic ports located around the world.” One of the new security initiatives announced by Ridge is the Container Security Initiative (Zellen). Led by the Bureau of Customs and Border Protection, the Container Security Initiative is designed to identify “high-risk” containers and conduct pre-screenings of “high-risk” containers at foreign CSI ports before they are bound for the United States. New, “tamper-evident” containers will also indicate if cargo has been tampered with after security screening overseas.

Airport Security has been at the forefront of public attention and scrutiny since the terror attacks of 9/11 occurred. Immediately following the 9/11 attacks, the Transportation Security Administration was created out of the Aviation and Transportation Security Act on November 19, 2001 (TSA). The Transportation Safety Administration was then tasked with providing for the safety and security of air travelers as they moved around the nation and world. To provide for security at 30,000 ft in the air, the TSA has adopted a number of policies which helps maintain that security. One of the most hotly contested policies of the TSA is centered on the use of full body scanners. Initially designed to help identify hidden objects on an individual’s person, full body scanners creates an image of a person’s nude body through their clothes. Although quicker

than a strip search, many see this as an illegal and unreasonable search and have referred it to the courts for further clarification.

Another policy employed by the TSA to ensure security is their flagging protocols; Selectee and No Fly List. In recent years, flagging protocols like the TSA No Fly List have come under increasing pressure as their vulnerabilities are exposed. Issues of people incorrectly being denied flights as well as No Fly List members who are dead have caused serious reservations over the legitimacy of the program. Though initially consisting of only 16 people before 9/11, it is currently estimated that over 10,000 individuals are now placed on the No Fly List (Tarabay).

### **Societal Impacts Post-9/11**

One of the largest societal impacts arising from 9/11 is the concept of the CNN Effect and Mass-Mediated Terrorism. Through the last decades of technological growth, terror organizations like Al Qaeda have not only improved their technological capabilities, but have also become experts in the “Theater of Terror” (Weimann, 3).

*“We recognized that sport is the modern religion of the Western world. We knew that the people in England and America would switch their television sets from any program about the plight of the Palestinians if there was a sporting event on another channel. So we decided to use their Olympics, the most sacred ceremony of this religion, to make the world pay attention to us. We offered up human sacrifices to your gods of sport and television. And they answered our prayers.*

*From Munich onwards, nobody could ignore the Palestinians or their cause.”*

*-1972 Munich Olympic Games Terrorist*

Terror attacks are typically coordinated to capture media attention by factoring in variables like method, target, timing, and scope. In reference to the attacks of September 11, 2001, it is clearly understood that the targets were selected because of their symbolism on American wealth and power, much like the explanation found in the quote above from one of the Munich Olympic terrorist. Knowing the type of thought and attention that is given to coordinating an event like 9/11, one would assume that the media would resist playing into their trap of providing them with a platform capable of reaching millions. However, the reality of the situation is that in regards to media, bleeding stories sell the best and attract the most viewers, effectively serving as the “oxygen of terrorism” as stated by Margret Thatcher.

September 11, 2001, is a day that forever changed and impacted this nation. Following the worst terror attacks in our nation’s history, the citizens of this nation showed the absolute best parts of humanity and simultaneously the lowest depths of ignorance and hate. Immediately in the days following 9/11, an incredible sense of solidarity and pride for our nation was felt no matter what part of the country you were in. It seemed as though every home had an American flag hanging from their porch in unison. This level of Patriotism can be a truly beautiful thing, however, it can also be the means by which to persecute and attack others different from yourself. As sentiments of patriotism began giving way to a mentality that you’re either with us, or against us, it became clear the true impact these events had on our lives and psyche.

Americans quickly began moving down a slippery slope getting ever closer to crossing the proverbial line. As news stories from around the nation began being broadcast, the immense pride once felt for our nation turned into sadness and frustration as story after story was told of racism and discrimination against people who appeared to be of Middle Eastern descent. This ignorance would come to be described as Islamophobia, or the fear of Islam. Islamophobia

would eventually transform in to a much darker figure, Misoislamia. Misoislamia is the hatred of Islam and would come to show our absolute worst sides as countless people were beaten, victimized, persecuted, and even killed out of pure ignorance and evil. This is what happens when 9/11 starts to become about something much more than planes and towers.

*But perhaps that's all in keeping with the political history of our country where other marginalized groups have received much worse treatment. One thinks immediately of the genocide of native peoples, or the enslavement of African Americans. Perhaps it is simply our turn as Muslim Americans to suffer, and through that suffering to prove our worthiness as Americans.*  
*(Hussain, 4)*

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