**DCJ 715 Brief 5: Counter-terrorism measures afoul of human rights and the rule of law**

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February 18th, 2022

**Abstract**

This paper reviews counter-terrorism measures that went afoul of human rights and the rule of law. Counter-terrorism measures taken by the United States war on terror in the years following the 911 Islamic terrorist attack provide the case study for the report. The research revealed that the Bush administration created a team of lawyers to redefine torture to mean something vastly different from the accepted version used by the world. The legal team also wrote memos justifying the use of enhanced interrogation techniques. In addition, the protections of the Geneva Convention were removed by asserting that military combatants were not soldiers. The primary purpose of the re-definitions was to circumvent international law and accountability. Additionally, over classifying materials to avoid scrutiny was also extensively used. Furthermore, the media was used to desensitize the American public towards human rights violations via torture.

*Keywords*: counter-terrorism, human rights

**The United States adopted a measure to counter-terrorism created new definitions for words to avoid conflict with human rights obligations. For example, during the George Bush administration, the word torture was defined as causing excruciating pain experienced in end-of-life organ failure (Fontas, 2010). The Bush definition was contradictory to The U.N. Convention against torture, article 1, which describes torture as severe pain or suffering in physical or mental form. Under 18 U.S.C. 2340, the definition is further defined with verbiage prohibiting even the threat of pain or suffering (Vicaro, 2011). Furthermore, the Geneva Convention of 1949 laid a strict rule against torture and degrading inhuman treatment of prisoners of war (Fontas, 2010).**

**An example of how the new definition of torture was used in counter-terrorism can be found in the case of Abu Zubayda. As a senior member of Al Qaeda, he was undoubtedly a terrorist. After his capture in 2002, he was relocated to a C.I.A. black site in Thailand. After his arrival, he was forced into a small box that did not stand, lay down, or sit up completely. For long periods, the air circulation was stopped to increase the heat in the box. His treatment caused his gunshot wounds to break open (Fontas, 2010).**

**Furthermore, psychologist James Mitchell proposed methods for the sole purpose of dehumanizing Abu to the point of reducing him to a caged dog. Of note was the response by President Bush to his senior advisors regarding Abu’s use of pain medications. After finding out that Abu was allowed pain medications, he wanted to know who had authorized them because he did not wish Abu to have pain relief (Fontas, 2010).**

**The worst of Abu's treatment was in the form of waterboarding. He received 83 different waterboarding sessions. Waterboarding consisted of the participant being strapped down on a table. Soldiers placed a cloth over his face, and then water was poured over his face to simulate a drowning sensation. These sessions induced vomiting and involuntary urination. Because the straps impacted his wounds, he experienced extreme pain. From Abu’s experience, it is evident that he received a form of interrogation that subjected him to severe pain and humiliation, causing long-term mental health issues (Fontas, 2010).**

**The Bush administration did not define Abu’s interrogation experience as torture due to the new definition of the term. Under the newly defined torture requirements, Abu did not experience pain to the threshold set by the Bush administration. Additionally, The Bush administration did not consider Abu to fall under the protection of the Geneva Convention because they considered Abu to be a military combatant and not a prisoner of war. In addition, The Bush administration did not consider Afghanistan to be a valid participant of the Geneva Convention because Afghanistan was labeled a failed state (Fontas, 2010).**

**The Bush administration assembled a legal team to support their new view to circumvent the conflict between the United States and the various international laws. This team consisted of John Yoo, Alberto Gonzales, Jim Haynes, and Tim Flanigan. They effectively made their arguments and enabled the many human rights violations that occurred during the war on terror. The strongest opponent to the views of this team was William Howard Taft IV. He strongly argued that the U.S. president could face war crimes to treat detainees. His perspective was dismissed and could be considered invalid as no member of the Bush administration faced legal consequences (Fontas, 2010).**

**John Yoo wrote two memos that authorized several interrogation techniques on military combatants. They included stress positions, sleep deprivation, the use of insects while the participant was caged in a confined space, tight confinement, slaps to the face, and of course, waterboarding. None of these were considered torture by the Bush administration (Fontas, 2010).**

**There is no question that the measures taken by the Bush administration bent and twisted the rule of law to its breaking point. It would also seem that the issue of human rights was thrown right out of the window for the sake of counter-terrorism. The measures taken in the case study of Abu Zubayda led the groundwork for later human rights violations, such as Abu Ghraib prison (*Abu Ghraib prison scandal*, 2008).**

**U.S. Soldiers following the guidelines of the Yoo memos for the proper administration of torture, also known as enhanced interrogation techniques, came afoul of the world opinion in April of 2004. In this case, U.S. Soldiers believing that their captives were subhuman, entertained themselves by forcing the prisoners to pose in humiliating sexual positions and other inhumane situations. Unfortunately, some of the photos being taken for posterity’s sake leaked to the public. There was an immediate outcry. Of course, the blame was placed on a few bad apples and not leadership. This assertion was made by President George Bush (*Abu Ghraib prison scandal*, 2008).**

**A report created by Major General Antonio Taguba blamed the issues at the prison on a lack of sufficient manning, overcrowding, and insufficient resources. According to the report, these deficiencies significantly contributed to the lack of accountability for the poor treatment of the detainees. The investigator was not allowed to dig deeper into the Department of Defense leadership role in this event (*Abu Ghraib prison scandal*, 2008).**

**In the Abu Ghraib prison scandal, several counter-terrorism measures violated international law and human rights. Treating detainees as subhuman, humiliating them, and photographing them in these positions undermined the war on terror efforts. Terror groups have used these very images in recruiting. Not only did these measures create new terrorist recruits, but they also harmed the image and reputation of the United States. Further evidence revealed that these measures created distrust and hatred toward the United States (*Abu Ghraib prison scandal*, 2008; *Human rights, terrorism, and counter-terrorism*, 2008).**

**Another measure that the United States took to counter-terrorism was the controversial step of classifying a considerable amount of information. This step limited access by the American media. The effect was to suppress the media's check on government actions/activities and, therefore, the citizenry. With the support of congressional hawks, the Bush administration initiated a series of actions to consolidate power and take aggressive steps that violated human rights. The event that comes to mind is the pretenses for going to war with Iraq. With the new tools that the Bush administration had given themselves, such as increased power and reduction of American oversight and disinformation via the media, it was simple to push a false agenda for war (Nacos & Bloch-Elkon, 2018).**

**Iraq did not cooperate with Al Qaeda and had nothing to do with the 9/11 terrorist attack. However, for reasons beyond the scope of this paper, the Bush administration invaded Iraq and removed Saddam Hussein from power. With limited access to classified materials, the media could not critique the compiled evidence (Nacos & Bloch-Elkon, 2018).**

**Because of the heart-wrenching attack on 9/11, the public was less inclined to examine human rights violations critically. The news mouthpiece of the Bush administration, Fox News had its pundits support the war and garnered support for human rights violations. Bill O’Reilly argued that the Geneva Convention did not protect uniformed combatants on his show. Fox News successfully groomed the right-wing audience for the necessity of human rights violations in the form of torture or dehumanization of prisoners taken on the field of battle. This narrative was pushed by other pundits and continues today (Nacos & Bloch-Elkon, 2018).**

**In America, not only did right-wing news outlets groom audiences, but the entertainment industry followed course. The most notable was the T.V. series 24, with Jack Bauer torturing suspects. American audiences were programmed to believe that torture was not only practical and necessary but was also patriotic. Many movies and T.V. shows followed suit. What would have been acceptable before 911 was now par for the course (Nacos & Bloch-Elkon, 2018).**

**Right-wing propaganda via the media continues to desensitize its audience to human rights violations and the rule of law. Consider that although Republican voters have high confidence in the validity of Fox News content, they remain the most uninformed members of American society. It would be within reason to say they are also the most misinformed (Mills, 2017).**

**Surprisingly, most Americans do not support the use of torture. The problem is that those who support it surround themselves with an echo chamber of like-minded persons. They also mistakenly believe that most of the American public support them. Often these views are validated by poorly worded surveys. If a survey is vaguely worded, it is likely to return a positive opinion for the question being asked. The validity of these types of surveys that proponents of torture in the position of power rely on is highly questionable (Gronke et al., 2010).**

**In conclusion, several measures implemented to counter terrorism have violated human rights and international law. A country must respect the rule of law by avoiding redefining words such as torture in contradiction to the global understanding of the word. It is also bad policy to create black sites that operate in countries known for human rights abuses and a complete disregard for the rule of law. Allowing oversight of prisons to become so weak as to allow abuses and dehumanization of prisoners must be avoided. Furthermore, removing checks on the Executive branch erodes credibility and respect. The media must be left alone to do its job of checking on power and informing the public with as little bias as possible.**

**References**

*Abu Ghraib prison scandal*. (2008). The Center for Public Integrity. <https://publicintegrity.org/politics/abu-ghraib-prison-scandal-2/>

Fontas, J. P. (2010). The Bush Administration Torture Policy: Origins and Consequences. *Inquiries Journal/Student Pulse*, *2*(08). <http://www.inquiriesjournal.com/a?id=276>

Gronke, P., Rejali, D., Drenguis, D., Hicks, J., Miller, P., & Nakayama, B. (2010). U.S. Public Opinion on Torture, 2001–2009. *P.S.: Political Science &amp; Politics*, *43*(3), 437-444. <https://doi.org/10.1017/S1049096510000697>

*Human rights, terrorism, and counter-terrorism*. (2008). New York: United Nations Retrieved from <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

Mills, C. E. (2017). Framing Ferguson: Fox News and the construction of U.S. racism. *Race & Class*, *58*(4), 39-56. <https://doi.org/10.1177/0306396816685030>

Nacos, B. L., & Bloch-Elkon, Y. (2018). U.S. Media and Post-9/11 Human Rights Violations in the Name of Counterterrorism [Article]. *Human Rights Review*, *19*(2), 193-210. <https://doi.org/10.1007/s12142-018-0498-2>

Vicaro, M. P. (2011). A liberal use of "torture": pain, personhood, and precedent in the U.S. federal definition of torture. *Rhetoric & Public Affairs*, *14*(3), 401-426. <https://doi.org/http://dx.doi.org/10.1353/rap.2011.0015>