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September 20, 2001: Tom Ridge Named Homeland Security Secretary

President Bush announces the new cabinet-level Office of Homeland Security, to be led by Pennsylvania Governor Tom Ridge. [ASSOCIATED PRESS, 8/19/2002] Accepting the post, Ridge says, "Liberty is the most precious gift we offer our citizens." Responding to this comment, the Village Voice opines, "Could Tom Ridge have said anything scarier or more telling as he accepted the post of homeland security czar? Trying to strike the bell of liberty, he sounds its death knell, depicting government not as the agent of the people's will, but as an imperious power with the authority to give us our democratic freedoms. Which means, of course, that it can also take them away." [VILLAGE VOICE, 9/11/2002] In November 2002, Ridge will become secretary of a new Homeland Security Department (see November 25, 2002).

Entity Tags: US Department of Homeland Security, Tom

Ridge, George W. Bush

Timeline Tags: Complete 911 Timeline

Category Tags: Other Legal Changes, Impositions on Rights and Freedoms

September 21, 2001: Justice Department Closes Immigration Proceedings to Public, Cites Need for Blanket Secrecy

Michael Creppy, the chief US immigration judge—actually an executive branch official in the Justice Department, the title of "judge" notwithstanding—orders

that all deportation hearings be closed to the public, the press, and even family members. Creppy also prohibits immigration court administrators from listing the detainees' names or cases on public dockets. The reason is not because there is reason to believe any particular detainee is a suspected terrorist. Instead, the administration asserts inational security demands blanket secrecy because



Tom Ridge. [Source: US State Department1

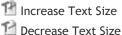


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administration asserts, national security admands stained secrety secuase terrorist cells might read about the deportation hearings in the press, piece together bits and pieces of information, and in doing so deduce valuable information about the government's investigation into the 9/11 attacks and terrorism in general. In 2007, author Charlie Savage will write: "Thus, the public would just have to trust that the government had arrested and deported the right people, even though their names were kept a secret and the decision to expel them from the country was made behind closed doors. By invoking the chance that the enemy might detect a pattern in otherwise harmless information, the government would be justified in withholding everything. The implication of its theory was that the public had no right to know anything, no matter how innocuous, because any tidbit of trivial information could potentially be stitched together with other minor bits of information to conceivably provide some useful insight for terrorists." In separate proceedings, the Detroit Free Press and several New Jersey media organizations will challenge the Justice Department's decision in court (see August 26, 2002 and October 2, 2002). [SAVAGE, 2007, PP. 94] Entity Tags: Charlie Savage, US Department of Justice, Michael Creppy Category Tags: Impositions on Rights and Freedoms, Court Procedures and Verdicts, Detainments in US, Government Acting in Secret

September 21, 2001: Yoo: Fourth Amendment Irrelevant in Protecting US from Terror Attacks



In a memo, responding to a request from Deputy White House Counsel Timothy E. Flanigan, Justice Department lawyer John C. Yoo provides legal advice on "the legality of the use of military force to prevent or deter terrorist activity inside the United States." He addresses the question of how the Fourth Amendment to the US Constitution applies to the use of "deadly force" by the military "in a manner that endangered the lives of United States citizens." The Fourth Amendment requires the government to have some objective suspicion of criminal activity before it can infringe on an individual's liberties, such as the right to privacy or the freedom of movement. Yoo writes that in light of highly destructive terrorist attacks, "the government may be justified in taking measures which in less troubled conditions could be seen as infringements of individual liberties." If the president determines the threat of terrorism high enough to deploy the military inside US territory, then, Yoo writes, "we think that the Fourth Amendment should be no more relevant than it would be in cases of invasion or insurrection." [NEW YORK TIMES, 10/24/2004] A month later, the Justice Department will issue a similar memo (see October 23, 2001).

Entity Tags: John C. Yoo, Timothy E. Flanigan, US Department of Justice

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Gov't Violations of Prisoner Rights

Shortly Before September 23, 2001: White House Sets Up Interagency Group to Decide How to Prosecute Terrorists



Less than two weeks after 9/11, White House counsel Alberto Gonzales sets up an interagency group to design a strategy for prosecuting terrorists, and specifically asks it to suggest military commissions as one viable option for prosecution of suspected terrorists.

<u>Membership</u> - The initial participants include Gonzales; White House lawyer Timothy Flanigan; Pentagon general counsel William Haynes; the vice president's chief counsel, David Addington; National Security Council lawyer John Bellinger; and State Department lawyer Pierre-Richard Prosper, a former career prosecutor

who now serves as State's ambassador at large for war crimes issues and who will head the group.

<u>Various Options</u> - The group spends a month in a windowless conference room at State, bringing in experts from around the government, including military lawyers and Justice Department lawyers. The Justice Department advocates regular trials in civilian courts, such as the trials of the 1993 World Trade Center bombers (see February 26, 1993). However, many in the group object, noting that terrorist trials in regular courthouses on US soil pose security risks. The military lawyers propose courts-martial, which can take place anywhere in the world and would have

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military protection. A third option, military commissions, would offer the security of courts-martial without the established rules of evidence and procedure courtsmartial have; setting up such a system might offer more flexibility in trying suspected terrorists, but many in the group wonder if President Bush would require Congressional authorization. Prosper will later recall, "We were going to go after the people responsible for the attacks, and the operating assumption was that we would capture a significant number of al-Qaeda operatives." In addition to the use of military commissions, the group begins to work out three other options: ordinary criminal trials, military courts-martial, and tribunals with a mixed membership of civilians and military personnel. The option of a criminal trial by an ordinary federal court is quickly brushed aside for logistical reasons. according to Prosper. "The towers were still smoking, literally. I remember asking: Can the federal courts in New York handle this? It wasn't a legal question so much as it was logistical. You had 300 al-Qaeda members, potentially. And did we want to put the judges and juries in harm's way?" Despite the interagency group's willingness to study the option of military commissions, lawyers at the White House, according to reporter Tim Golden, grow impatient with the group. Some of its members are seen to have "cold feet." [NEW YORK TIMES, 10/24/2004; SAVAGE, 2007, PP.

<u>Parallel Process at White House</u> - Unbeknownst to Prosper's group, the White House is crafting its own version of military commissions or tribunals (see Late October 2001). When President Bush issues his executive order creating military tribunals (see November 13, 2001), Prosper and his group will first learn about it by watching the nightly news. [SAVAGE, 2007, PP. 138]

Entity Tags: US Department of Justice, US Department of State, William J. Haynes, Timothy E. Flanigan, Pierre-Richard Prosper, John Bellinger, Beth Nolan, Alberto R. Gonzales, Scott McClellan, Jay S. Bybee, John Ashcroft, David S. Addington Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Court Procedures and Verdicts, Expansion of Presidential Power, Gov't Violations of Prisoner Rights

September 25, 2001: Justice Department Lawyer Asserts There Is No Limit to President's Authority to Wage War





John Yoo. [Source: University of California, Berkelev]

In a secret 15-page memo to Deputy White House Counsel Timothy Flanigan, Justice Department lawyer John Yoo, a deputy in the Office of Legal Counsel, reasons that it is "beyond question that the president has the plenary constitutional power to take such military actions as he deems necessary and appropriate to respond to the terrorist attacks" of 9/11. Those actions can be extensive. "The president may deploy military force preemptively against terrorist organizations or the states that harbor or support them," Yoo writes, "whether or not they can be linked to the specific terrorist incidents of Sept. 11.... Force can be used both to retaliate for those attacks, and to prevent and deter future assaults on the nation. Military actions need not be limited to those individuals, groups, or states that participated in

the attacks on the World Trade Center and the Pentagon." The memo is solicited and overseen by White House lawyers.

Power Derives from Constitution, Congressional Authorization for War - This power of the president, Yoo states, rests both on the US Congress' Joint Resolution of September 14 (see September 14-18, 2001) and on the War Powers Resolution of 1973. "Neither statute, however, can place any limits on the president's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the president alone to make." (Most experts believe that the Constitution strictly limits the president's power to declare and conduct war—see 1787).

<u>Power More Extensive than Congress Authorized</u> - Yoo argues further that the September 14 resolution does not represent the limits to the president's authority. "We think it beyond question" that Congress cannot "place any limits

on the president's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the president alone to make." Congress's "Joint Resolution is somewhat narrower than the president's constitutional authority," Yoo writes, as it "does not reach other terrorist individuals, groups, or states which cannot be determined to have links to the September 11 attacks." The president's broad power can be used against selected individuals suspected of posing a danger to the US, even though it may be "difficult to establish, by the standards of criminal law or even lower legal standards, that particular individuals or groups have been or may be implicated in attacks on the United States." Yoo concludes: "[W]e do not think that the difficulty or impossibility of establishing proof to a criminal law standard (or of making evidence public) bars the president from taking such military measures as, in his best judgment, he thinks necessary or appropriate to defend the United States from terrorist attacks. In the exercise of his plenary power to use military force, the president's decisions are for him alone and are unreviewable." <u>'Unenumerated' Presidential Powers</u> - Yoo even asserts that the president has more power than his memo claims: "[T]he president's powers include inherent executive powers that are unenumerated in the Constitution," including but not limited to the power to take the country to war without Congressional input. [US DEPARTMENT OF JUSTICE, 9/25/2001; SAVAGE, 2007, PP. 121-122]

<u>Memo Remains Secret for Three Years</u> - The contents of this memo are not disclosed until mid-December 2004. [NEWSWEEK, 12/18/2004; NEWSWEEK, 12/27/2004] Entity Tags: John C. Yoo, Bush administration (43), US Department of Justice, Office of Legal Counsel (DOJ), Timothy E. Flanigan

Timeline Tags: Torture of US Captives, Complete 911 Timeline, Events Leading to Iraq Invasion

Category Tags: Expansion of Presidential Power

September 25, 2001: Justice Department: US Can Conduct Warrantless Surveillance against Citizens



John Yoo, a deputy assistant attorney general in the Department of Justice (DOJ) Office of Legal Counsel (OLC), issues a legal opinion that says the US can conduct electronic surveillance against its citizens without probable cause or warrants. According to the memo, the opinion was drafted in response to questions about whether it would be constitutional to amend the Foreign Intelligence Surveillance Act (FISA) to state that searches may be approved when foreign intelligence collection is "a purpose" of the search, rather than "the purpose." Yoo finds this would be constitutional, but goes further. He asserts that FISA is potentially in conflict with the Constitution, stating, "FISA itself is not required by the Constitution, nor is it necessarily the case that its current standards match exactly to Fourth Amendment standards." Citing Vernonia School Dist. 47J v. Acton, in which the Supreme Court found that warrantless searches of students were permissible, Yoo argues that "reasonableness" and "special needs" are also the standards according to which warrantless monitoring of the private communications of US persons is permissible. According to Yoo, the Fourth Amendment requirement for probable cause and warrants prior to conducting a search pertain primarily to criminal investigations, and in any case cannot be construed to restrict presidential responsibility and authority concerning national security. Yoo further argues that in the context of the post-9/11 world, with the threat posed by terrorism and the military nature of the fight against terrorism, warrantless monitoring of communications is reasonable. Some information indicates the NSA began a broad program involving domestic surveillance prior to the 9/11 attacks, which contradicts the claim that the program began after, and in response to, the attacks (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001). [US DEPARTMENT OF JUSTICE, 9/25/2001 A; AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 A; NEW YORK TIMES, 3/2/2009; INSPECTORS GENERAL, 7/10/2009]

Yoo Memo Used to Support Legality of Warrantless Surveillance - Yoo's memo will be cited to justify the legality of the warrantless domestic surveillance program authorized by President Bush in October 2001 (see October 4, 2001). NSA Director General Michael Havden, in public remarks on January 23, 2006, will refer to a

presidential authorization for monitoring domestic calls having been given prior to "early October 2001." Hayden will also say, "The lawfulness of the actual authorization was reviewed by lawyers at the Department of Justice and the White House and was approved by the attorney general." The various post-9/11 NSA surveillance activities authorized by Bush will come to be referred to as the President's Surveillance Program (PSP), and the first memo directly supporting the program's legality will be issued by Yoo on November 2, 2001, after the program has been initiated (see November 2, 2001). Many constitutional authorities will reject Yoo's legal rationale. [MICHAEL HAYDEN, 1/23/2006]

Yoo Memo Kept Secret from Bush Officials Who Might Object - According to a report by Barton Gellman and Jo Becker in the Washington Post, the memo's "authors kept it secret from officials who were likely to object," including ranking White House national security counsel John Bellinger, who reports to National Security Adviser Condoleezza Rice. Bellinger's deputy, Bryan Cunningham, will tell the Post that Bellinger would have recommended having the program vetted by the Foreign Intelligence Surveillance Court, which oversees surveillance under FISA. Gellman and Becker quote a "senior government lawyer" as saying that Vice President Dick Cheney's attorney, David Addington, had "open contempt" for Bellinger, and write that "more than once he accused Bellinger, to his face, of selling out presidential authority for good 'public relations' or bureaucratic consensus." [WASHINGTON POST, 6/24/2007]

Entity Tags: US Department of Justice, John Bellinger, National Security Agency, Bryan Cunningham, Condoleezza Rice, David S. Addington, Foreign Intelligence Surveillance Act, Foreign Intelligence Surveillance Court, Office of Legal Counsel (DOJ), John C. Yoo, George W. Bush, Richard ("Dick") Cheney

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind, Other Surveillance

September 26, 2001: White House Press Secretary Warns Americans to 'Watch What They Say'





Bill Maher. [Source: HBO publicity photo]

White House Press Secretary Ari Fleischer warns, "There are reminders to all Americans that they need to watch what they say, watch what they do." [ASSOCIATED PRESS, 9/26/2001] Fleischer was responding to comments made by Bill Maher, the host of the discussion/comedy show Politically Incorrect. Maher said the hijackers were not cowards but that it was cowardly for the US to launch cruise missiles on targets thousands of miles away. [NEW YORK TIMES, 9/28/2001] Many advertisers and affiliate stations pull their support of the show in response. [WASHINGTON POST, 9/29/2001] ABC cancels Maher's show at the end of its season because of the controversy. [TORONTO STAR, 6/26/2002] Several journalists are fired around the same time for criticizing Bush. Fleischer's comments and the general chill

on free speech are widely criticized by major newspapers (for instance, [NEW YORK TIMES, 9/29/2001; WASHINGTON POST, 9/29/2001; DALLAS MORNING NEWS, 10/4/2001]).

Entity Tags: Bill Maher, Ari Fleischer

Category Tags: Freedom of Speech / Religion, Media Involvement and Responses

Late September 2001: Administration Lawyers Formulate More Aggressive, 'Flexible' Approach to Terror Threats





Bradford Berenson. [Source: PBS]

In the weeks following 9/11, government lawyers begin to formulate a legal response to the newly perceived threat of terrorism. Four related issues are at hand: forceful prevention, detention, prosecution, and interrogation. What degree of force can the government employ to prevent acts of terrorism or apprehend suspected terrorists? How and where can it best detain terrorists if captured? How can it best bring them to trial? And how can it best obtain information from them on terrorist organizations and plots? These questions are handled in a new atmosphere that is more tolerant towards flexible interpretations of the law. Bradford Berenson, an associate White House counsel at this time, later recalls: "Legally, the watchword became 'forward-

leaning' by which everybody meant: 'We want to be aggressive. We want to take risks.'" [NEW YORK TIMES, 10/24/2004] This attitude is seemingly in line with the president's thinking. Counterterrorism "tsar" Richard Clarke will later recall President Bush saying, "I don't care what the international lawyers say. We are going to kick some ass" (see (9:00 p.m.-10:00 p.m.) September 11, 2001). [CLARKE, 2004, PP. 23-24] At the center of legal reconstruction work are Alberto R. Gonzales, the White House counsel, his deputy Timothy E. Flanigan, and David S. Addington, legal counsel to Vice President Cheney. [NEW YORK TIMES, 12/19/2004] They will find a helpful hand in the Justice Department's Office of Legal Counsel (OLC), most notably its head, Assistant Attorney General Jay S. Bybee [LOS ANGELES TIMES, 6/10/2004] and his deputies John C. Yoo [NEW YORK TIMES, 8/15/2004] and Patrick F. Philbin. Most of the top government lawyers dwell in fairly conservative circles, with many being a member of the Federalist Society, a conservative legal fraternity. Some have clerked for conservative Supreme Court Justices Antonin Scalia and Clarence Thomas, whose ruling effectively lead to the presidency being awarded to George W. Bush after the 2000 presidential election. [NEW YORK TIMES, 10/24/2004] Others worked for Judge Lawrence H. Silberman, who set up secret contacts with the Iranian government under President Reagan leading to the Iran-Contra scandal, and who advised on pursuing allegations of sexual misconduct by President Clinton. [INTER PRESS SERVICE, 2/6/2004]

Entity Tags: Patrick F. Philbin, Richard A. Clarke, John C. Yoo, Joan Claybrook, Alberto R. Gonzales, Bradford Berenson, Jay S. Bybee, Alan M. Dershowitz, Rena Steinzor Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Gov't Violations of Prisoner Rights

Late September, 2001: NSA Wiretapping Program Begins at This Time, According to Conservative Author



According to author Ronald Kessler's November 2007 book The Terrorist Watch, the NSA's domestic surveillance program begins around two weeks after the 9/11 attacks, when President Bush meets with NSA director Michael Hayden and other NSA officials in the Oval Office. According to chief of staff Andrew Card, in attendance, Bush asks, "What tools do we need to fight the war on terror?" Hayden suggests revamping NSA guidelines to allow the agency to wiretap domestic phone calls and intercept e-mails to and from terror suspects if one end of the communication is overseas. Kessler gives the following rather lurid example: "Thus, if [Osama] bin Laden were calling the US to order the detonation of a nuclear device, and the person he called began making overseas calls, NSA could listen in to those calls as well as to bin Laden's original call." Kessler is a chief correspondent for the extremist conservative Web site NewsMax; his assertion is disputed by evidence suggesting that the domestic surveillance program began well before the 9/11 attacks (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001). [KESSLER, 2007, PP. 130]

Entity Tags: National Security Agency, Andrew Card, Michael Hayden, Ronald Kessler, George W. Bush

Category Tags: Privacy, Impositions on Rights and Freedoms, Government Acting in Secret, NSA Wiretapping / Stellar Wind

October 2001: NSA Creates Massive Database of US Citizens' Phone Calls





Former AT&T employee Mark Klein. [Source: PBS]

The National Security Agency, as part of its huge, covert, and possibly illegal wiretapping program directed at US citizens (see Spring 2001 and After September 11, 2001), begins collecting telephone records of tens of millions of Americans, using data provided by telecommunications firms such as AT&T, Verizon, and BellSouth (see February 5, 2006). The media will not report on this database until May 2006 (see May 11, 2006). The program collects information on US citizens not suspected of any crime or any terrorist connections. Although informed sources say the NSA is not listening to or recording actual conversations, the agency is using the data to analyze calling patterns in an effort to detect terrorist activity. "It's the largest database ever assembled in the world,"

says one anonymous source. The NSA intends "to create a database of every call ever made." As a result, the NSA has detailed records of the phone activities of tens of millions of US citizens, from local calls to family and friends to international calls. The three telecommunications companies are working with the NSA in part under the Communications Assistance Act for Law Enforcement (CALEA) (see January 1, 1995 and June 13, 2006) and in part under contract to the agency.

Surveillance Much More Extensive Than Acknowledged - The wiretapping program, which features electronic surveillance of US citizens without court warrants or judicial oversight, is far more extensive than anything the White House or the NSA has ever publicly acknowledged. President Bush will repeatedly insist that the NSA focuses exclusively on monitoring international calls where one of the call participants is a known terrorist suspect or has a connection to terrorist groups (see December 17, 2005 and May 11, 2006), and he and other officials always insist that domestic calls are not monitored. This will be proven false. The NSA has become expert at "data mining," sifting through reams of information in search of patterns. The warrantless wiretapping database is one source of information for the NSA's data mining. As long as the NSA does not collect "personal identifiers"—names, Social Security numbers, street addresses, and the like—such data mining is legal. But the actual efficacy of the wiretapping program in learning about terrorists and possibly preventing terrorist attacks is unclear at best. And many wonder if the NSA is not repeating its activities from the 1950s and 1960s, when it conducted "Operation Shamrock" (see 1945-1975), a 20-year program of warrantless wiretaps of international phone calls at the behest of the CIA and other intelligence agencies. Operation Shamrock, among other things, led to the 1978 passage of the Foreign Intelligence Surveillance Act (see 1978). [USA TODAY, 5/11/2006] In May 2006, former NSA director Bobby Ray Inman will say, "[T]his activity is not authorized" (see May 12, 2006). [DEMOCRACY NOW!, 5/12/2006] Secret Data Mining Center - In May 2006, retired AT&T technician Mark Klein, a 22year veteran of the firm, will file a court affidavit saying that he saw the firm construct a secret data-mining center in its San Francisco switching center that would let the NSA monitor domestic and international communications (see January 2003). And former AT&T workers say that, as early as 2002, AT&T has maintained a secret area in its Bridgeton, Missouri, facility that is likely being used for NSA surveillance (see Late 2002-Early 2003).

<u>Domestic Surveillance Possibly Began Before 9/11</u> - Though Bush officials admit to beginning surveillance of US citizens only after the 9/11 attacks, some evidence indicates that the domestic surveillance program began some time before 9/11 (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001).

Entity Tags: Terrorist Surveillance Program, Verizon Communications, Mark Klein, George W. Bush, AT&T, BellSouth, Central Intelligence Agency, Communications Assistance for Law Enforcement Act (CALEA), Foreign Intelligence Surveillance Act, Qwest, National Security Agency

Category Tags: Privacy, Impositions on Rights and Freedoms, Government Acting in

Secret, Government Classification, NSA Wiretapping / Stellar Wind

October 1, 2001: Hayden Briefs Intelligence Committee, Does **Not Mention Wiretapping Program**



NSA Director Michael Hayden briefs the House Intelligence Committee on the NSA's efforts to combat terrorism. Though the NSA is already working on a domestic wiretapping program to spy, without warrants, on US citizens (see Early 2002), Hayden does not mention the program to the committee members, but merely discusses the ramifications of President Reagan's Executive Order 12333 (see December 4, 1981 and September 13, 2001) on NSA functions. He does not mention that Reagan's executive order forbids warrantless surveillance of US citizens "unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power." On October 11, committee member Nancy Pelosi (D-CA) will write to Hayden expressing her concerns about the warrantless nature of the NSA wiretaps (see October 11, 2001). [WASHINGTON POST, 1/4/2006] Entity Tags: National Security Agency, House Intelligence Committee, Michael Hayden, Nancy Pelosi, Terrorist Surveillance Program, Ronald Reagan Category Tags: Privacy, Impositions on Rights and Freedoms, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind

October 2, 2001: Patriot Act Is Introduced to Congress



The "anti-terrorism" Patriot Act is introduced in Congress. The act is technically known as The USA PATRIOT Act, which stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001." [US CONGRESS, 10/2/2001] The legislation was ready four days after the 9/11 attacks, in what Attorney General John Ashcroft called a "full-blown legislative proposal" ready to submit to Congress. The proposal is actually a revamping and enlargement of the Clinton-era antiterrorism legislation first proposed after the Oklahoma City terrorist bombing (see April 25, 1996). [ROBERTS, 2008, PP. 36] Sen. Russell Feingold Entity Tags: US Congress, USA Patriot Act, John Ashcroft Category Tags: Patriot Act



will ultimately be the only senator to vote against the Patriot Act. [Source: Publicity photo1

October 2-4, 2001: Senators Daschle and Leahy Raise Concerns about Newly Introduced Patriot Act



The "anti-terrorism" Patriot Act is introduced in Congress on October 2, 2001 (see October 2, 2001), but it is not well received by all. [US CONGRESS, 10/2/2001] One day later. Senate Majority Leader and future anthrax target Tom Daschle (D-SD) says he doubts the Senate will take up this bill in the one week timetable the administration wants. As head of the Senate, Daschle has great power to block or slow passage of the bill. Attorney General John Ashcroft accuses Senate Democrats of dragging their feet. [WASHINGTON POST, 10/3/2001] On October 4, Senate Judiciary Committee Chairman and future anthrax target Patrick Leahy (D-VT) accuses the Bush administration of reneging on an agreement on the bill. Leahy is in a key position to block or slow the bill. Some warn that "lawmakers are overlooking constitutional flaws in their rush to meet the administration's timetable." Two days later, Ashcroft complains about "the rather slow pace...over his request for law enforcement powers... Hard feelings remain." [WASHINGTON POST, 10/4/2001] The anthrax letters to Daschle and Leahy are sent out between October 6-9 as difficulties in passing the Patriot Act continue (see October 6-9, 2001). Entity Tags: John Ashcroft, Tom Daschle, USA Patriot Act, Patrick J. Leahy Timeline Tags: 2001 Anthrax Attacks

Category Tags: Patriot Act

October 4, 2001: Bush Authorizes NSA Domestic Spying



President Bush issues a directive authorizing the National Security Agency (NSA) to operate a warrantless domestic surveillance program. Author/journalist Jane Mayer will report in 2011, "[O]n October 4, 2001, Bush authorized the policy, and it became operational by October 6th," and, "[t]he new policy, which lawyers in the Justice Department justified by citing President Bush's executive authority as commander in chief, contravened a century of constitutional case law." Mayer will interview NSA whistleblower Thomas Drake for her article and quote him as saying that, following the October 4 directive, "strange things were happening. Equipment was being moved. People were coming to me and saying, 'We're now targeting our own country!" Bush's directive is based on a legal opinion drafted by Department of Justice Office of Legal Counsel Deputy Attorney General John Yoo (see September 25, 2001). [NEW YORKER, 5/23/2011] Conflicting Information regarding Date of First Authorization - The existence of the NSA's domestic surveillance program will first be made public in December 2005, following reporting by the New York Times that will cite "[n]early a dozen current and former officials" (see December 15, 2005). The Times article will state that in 2002, "[m]onths after the Sept. 11 attacks," Bush signed an executive order authorizing the NSA to monitor domestic phone calls, including those of US citizens and permanent residents, if one end of the call was outside the country. The Times article also mentions an NSA "'special collection program' [that] began soon after the Sept. 11 attacks, as it looked for new tools to attack terrorism." The difference between the October 4, 2001 directive and the 2002 executive order referred to by the Times is unclear. [NEW YORK TIMES, 12/16/2005] Other Sources for October Directive - Other sources, including Bush, NSA Director General Michael Hayden, and the inspectors general of five separate agencies, will later refer to a presidential order having been given in "October," or "weeks" after the 9/11 attacks, and say that, subsequent to this order, international calls of US persons are targeted for content-monitoring. Following the publication of the Times article, Bush will say in a December 17, 2005 radio address: "In the weeks following the terrorist attacks on our nation, I authorized the National Security Agency, consistent with US law and the Constitution, to intercept the international communications of people with known links to al-Qaeda and related terrorist organizations. Before we intercept these communications, the government must have information that establishes a clear link to these terrorist networks" (see December 17, 2005). This presidential authorization was based on a legal opinion drafted by Department of Justice Office of Legal Counsel attorney John Yoo (see October 18, 2001). [WHITEHOUSE(.GOV), 12/17/2005] Hayden, in public remarks on January 23, 2006, will refer to a presidential authorization for monitoring domestic calls having been given prior to "early October 2001," which is when he "gathered key members of the NSA workforce... [and] introduced [the NSA's] new operational authority to them." Hayden will also say, "The lawfulness of the actual authorization was reviewed by lawyers at the Department of Justice and the White House and was approved by the attorney general," and that "the three most senior and experienced lawyers in NSA... supported the lawfulness of this program." [MICHAEL HAYDEN, 1/23/2006] In a July 10, 2009 jointly-issued report, the inspectors general of the Department of Defense, Department of Justice, CIA, NSA, and Office of the Director of National Intelligence will refer to the "President's Surveillance Program" (PSP) and "the program's inception in October 2001." The report will say: "One of the activities authorized as part of the PSP was the interception of the content of communications into and out of the United States where there was a reasonable basis to conclude that one party to the communication was a member of al-Qaeda or related terrorist organizations.... The attorney general subsequently publicly acknowledged the fact that other intelligence activities were also authorized under the same presidential authorization, but the details of those activities remain classified." [INSPECTORS GENERAL, 7/10/2009] Citing "a senior administration official," the Washington Post will report on January 4, 2006: "The secret NSA program... was authorized in October 2001.... The president and senior aides have publicly discussed various

aspects of the program, but neither the White House, the NSA, nor the office of the director of national intelligence would say what day the president authorized it." [WASHINGTON POST, 1/4/2006]

Entity Tags: US Department of Justice, Thomas Drake, US Department of Defense, Office of Legal Counsel (DOJ), Office of the Director of National Intelligence, Michael Hayden, National Security Agency, George W. Bush, Central Intelligence Agency, John C. Yoo, Jane Mayer

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind

October 4, 2001: Justice Department Issues Secret Opinion Regarding Interrogation Techniques



The Justice Department's John Yoo, an official in the Office of Legal Counsel (OLC), issues a secret opinion regarding legal statutes governing the use of certain

interrogation techniques. The opinion will not be made public; its existence will not be revealed until October 18, 2007, when future OLC head Steven Bradbury will note its existence as part of an American Civil Liberties Union (ACLU) lawsuit. [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: US Department of Justice, American Civil Liberties Union, John C. Yoo, Office of Legal Counsel (DOJ), Steven Bradbury

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

October 5, 2001: Bush Moves to Restrict Information Provided to Congress



In a memo to the Secretaries of State, Treasury, and Defense, and to the Attorney General, the Director of Central Intelligence, and the Director of the FBI, President Bush mandates that they strictly control and oversee information from their departments disclosed to members of Congress. In order to "protect military operational security, intelligence sources and methods, and sensitive law enforcement investigations," Bush orders, "your departments should adhere to the following procedures when providing briefings to the Congress relating to the information we have or the actions we plan to take: (i) Only you or officers expressly designated by you may brief Members of Congress regarding classified or sensitive law enforcement information; and (ii) The only Members of Congress whom you or your expressly designated officers may brief regarding classified or sensitive law enforcement information are the Speaker of the House, the House Minority Leader, the Senate Majority and Minority Leaders, and the Chairs and Ranking Members of the Intelligence Committees in the House and Senate." [GEORGE W. BUSH, 10/5/2001] In 2006, the Congressional Research Service (CRS) will conclude that the Bush administration is in violation of the law by refusing to inform any other members of Congress aside from the so-called "Gang of Eight" about the NSA warrantless wiretapping program (see January 18, 2006). Entity Tags: "Gang of Eight", Senate Intelligence Committee, George W. Bush Category Tags: Impositions on Rights and Freedoms, Government Acting in Secret, Government Classification, Other Surveillance

October 7, 2001: Bush Asserts Unilateral Authority to Take US to War



President Bush sends a letter to Congress informing legislators that he has ordered US armed forces into combat against the Taliban (see October 7, 2001). Bush does not rely on Congress's Authorization for Use of Military Force (AUMF—see September 14-18, 2001), but instead asserts his unilateral authority as president to take the country into war. "I have taken these actions pursuant to my constitutional authority to conduct US foreign relations as commander in chief and chief executive," he writes (see 1787). His letter goes on to express his appreciation to Congress for its "support" in his decision to begin a war against a foreign entity. [SAVAGE, 2007, PP. 127-128] Entity Tags: Taliban, George W. Bush

Category Tage: Evnancion of Precidential Dower

October 9, 2001: Sen. Feingold Blocks Vote on Patriot Act



On October 9, 2001, Senator Russ Feingold (D-WI) blocks an attempt to rush the Patriot Act to a vote with little debate and no opportunity for amendments. He criticizes the bill as a threat to civil liberties. [ASSOCIATED PRESS, 10/10/2001] One day earlier, in the story "Cracks in Bipartisanship Start to Show," the Washington Post reported, "Congress has lost some of the shock-induced unity with which it first responded to the [9/11] attacks." [WASHINGTON POST, 10/8/2001] Also on October 9, identical anthrax letters are postmarked in Trenton, New Jersey, with lethal doses

to Senators Tom Daschle and Patrick Leahy. Inside both letters are the words, "Death to America, Death to Israel, Allah is Great" (see October 15, 2001).

[ASSOCIATED PRESS, 8/7/2008]

Entity Tags: Russell D. Feingold, USA Patriot Act

Timeline Tags: 2001 Anthrax Attacks

Category Tags: Patriot Act

October 11, 2001: Pelosi Questions Warrantless Wiretaps of NSA





Nancy Pelosi. [Source: US Congress]

House Minority Leader Nancy Pelosi (D-CA) writes to NSA Director Michael Hayden questioning the nature and extent of the apparently illegal warrantless wiretapping of US citizens by the agency. Pelosi and other members of the House Intelligence Committee were briefed on October 1, 2001, by Hayden, whose agency began conducting surveillance against US citizens after the 9/11 attacks (see After September 11, 2001). Pelosi will release the letter on January 6, 2006, three weeks after the New York Times revealed that the NSA had been conducting electronic surveillance of US citizens without warrants since at least 2002 (see December 15, 2005.) Pelosi's office will also release Hayden's response, but almost the entire letter from Hayden is redacted.

Letter to Hayden - Pelosi writes in part, "[Y]ou indicated [in the briefing] that you had been operating since the September 11 attacks with an expansive view of your authorities with respect to the conduct of electronic surveillance under the Foreign Intelligence Surveillance Act and related statutes, orders, regulations, and guidelines.... For several reasons, including what I consider to be an overly broad interpretation of President Bush's directive of October 5 on sharing with Congress 'classified or sensitive law enforcement information' it has not been possible to get answers to my questions. Without those answers, the concerns I have about what you said on the First can not be resolved, and I wanted to bring them to your attention directly. You indicated that you were treating as a matter of first impression, [redacted] being of foreign intelligence interest. As a result, you were forwarding the intercepts, and any information [redacted] without first receiving a request for that identifying information to the Federal Bureau of Investigation. Although I may be persuaded by the strength of your analysis [redacted] | believe you have a much more difficult case to make [redacted] Therefore, I am concerned whether, and to what extent, the National Security Agency has received specific presidential authorization for the operations you are conducting. Until I understand better the legal analysis regarding the sufficiency of the authority which underlies your decision on the appropriate way to proceed on this matter, I will continue to be concerned." The only portion of Hayden's October 18 reply regarding Pelosi's concerns that has not been redacted reads, "In my briefing, I was attempting to emphasize that I used my authorities to adjust NSA's collection and reporting." In January 2006, an NSA official will say that Pelosi's concerns were adequately addressed in Hayden's reply, and in a private briefing shortly thereafter. [WASHINGTON POST, 1/4/2006; NANCY PELOSI, 1/6/2006] Pelosi Unaware of Pre-9/11 Surveillance - Though Bush officials eventually admit to beginning surveillance of US citizens only after the 9/11 attacks, that assertion is disputed by evidence suggesting that the domestic surveillance program began well before 9/11 (see Late 1999, February 27, 2000, December 2000, February 2004

ZUU1, February ZUU1, Spring ZUU1, and July ZUU1). Pelosi is apparently unaware of any of this.

Entity Tags: Michael Hayden, House Intelligence Committee, Nancy Pelosi Category Tags: Privacy, Impositions on Rights and Freedoms, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind

October 11, 2001: Graves Sworn in as US Attorney for Missouri





(,com)]

Todd Graves is sworn in as the US Attorney for the Western District of Missouri. [TALKING POINTS MEMO, 2011] Graves is an experienced prosecutor. He was sponsored by his home-state senator, Christopher "Kit" Bond, as is usually the case with prosecutors considered for appointments to US Attorney positions. There are 93 US Attorneys serving in the 50 states as well as in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. All US Attorneys are appointed by the president with the

advice and consent of the Senate, and serve under the supervision of the Office of the Attorney General in the Justice Department. They are the chief law enforcement officers for their districts. They serve at the pleasure of the president and can be terminated for any reason at any time. Typically, US Attorneys serve a four-year term, though they often serve for longer unless they leave or there is a change in presidential administrations. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008]

Entity Tags: Todd P. Graves

Category Tags: 2006 US Attorney Firings

October 11, 2001: Attorney General Ashcroft Takes Over All Terrorist Prosecutions



It is reported that Attorney General John Ashcroft and his Justice Department is assuming control of all terrorism-related prosecutions from the US Attorney's office in New York, which has had a highly successful record of accomplishment in prosecuting cases connected to bin Laden. 15 of the 22 suspects listed on a most wanted terrorism list a month after 9/11 had already been indicted by the New York office in recent years. A former federal prosecutor says of the New York office, "For eight years, they have developed an expertise in these prosecutions and the complex facts that surround these groups. If ever there was a case where you'd want to play to your strength, this is it." [NEW YORK TIMES, 10/11/2001] A grand jury in the New York district began investigating the 9/11 attacks one week after 9/11. But media accounts of this grand jury's activity stop by late October 2001 and there appears to be no other grand jury taking its place (see September 18, 2001).

Entity Tags: US Department of Justice, Osama bin Laden Timeline Tags: Complete 911 Timeline, 9/11 Timeline

Category Tags: Other Legal Changes, Gov't Violations of Prisoner Rights

October 12, 2001: Ashcroft Urges Agencies to Deny FOIA Requests



Attorney General John Ashcroft encourages federal agencies to deny requests for information under the Freedom of Information Act (FOIA). In a memo to all government departments and agencies, he states, "When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions." This is a dramatic shift from the Clinton administration, which instructed federal officials to grant all information requests, using a "presumption of disclosure," unless there was "foreseeable harm" in doing so. [WASHINGTON POST, 12/2/2002; SAVAGE, 2007, PP. 96] The New York Times notes that while the new policy was announced after 9/11, "it had been planned well before the attacks." [NEW YORK TIMES, 1/3/2003] In 2007, author Charlie Savage will write that Ashcroft turns the Clinton policy of foreseeable harm "on its head." He will write: "Reviving a Reagan-era policy aimed at undermining the Freedom of Information Act, Ashcroft instructed the government to reject FOIA requests if it was at all possible to do so, under any legal reason for withholding documents—even if the information sought was harmless. And he promised to back up any decision to reject a FOIA request in

court. The Ashcroft policy quickly discouraged the release of information to the public because few people were willing to go to the trouble and expense of an inevitable lawsuit." [SAVAGE, 2007, PP. 96]

Entity Tags: Charlie Savage, Bush administration (43), Freedom of Information Act, John Ashcroft

Category Tags: Impositions on Rights and Freedoms, Media Freedoms, Expansion of Presidential Power, Government Classification

October 15, 2001-February 22, 2004: Waiter Who Served Atta Lunch Is Imprisoned for Five Months, Government Attempts to Keep Court Case Secret



Mohamed Kamel Bellahouel is arrested and held for five months after investigators discover he worked at a restaurant where Mohamed Atta and Marwan Alshehhi sometimes ate lunch in South Florida. In a sworn statement, Michael Rolince, head of the FBI's International Terrorism Operations Section, says, "It is likely that Bellahouel would have waited on both Atta and Alshehhi since Bellahouel had worked at the restaurant for 10 months, and both Atta and Alshehhi were frequent patrons during shifts that Bellahouel worked." Rolince also alleges Bellahouel may have waited on a third hijacker, Saeed Alghamdi, and says that a cinema employee claims Bellahouel saw a film with a fourth hijacker, Ahmed Alnami. However, Bellahouel, who denies going to the cinema with Alnami, has trouble gaining access to the evidence used against him. His attorney comments, "They won't call it secret evidence and they won't call it classified, but they won't give it to you, either." He is held in prison without bond and without charge from October 15, 2001 to March 1, 2002. After he is released, US authorities attempt to deport him, as he entered the US as a student, but then dropped out of college and started work, marrying a US citizen in June 2001. His attorney says the problem is that he is a Muslim. "If he were a Catholic coming from Venezuela or Colombia, they would have let him adjust his immigration status." Bellahouel sues the government over his incarceration, but the case is shrouded in secrecy and the press only learns the case is ongoing due to a court error. [MIAMI DAILY BUSINESS REVIEW, 3/14/2003] For example, a journalist, who does not event know Bellahouel's name, attempts to attend a hearing in March 2003. But the court is closed. After some effort, the reporter finally finds the name in the electronic docket. When he tells a court official Bellahouel's name is on the docket, the official replies, "Is it? We'll have to fix that, too," and the name disappears. [REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, 12/2004] In February 2004 the Supreme Court declines an appeal from Bellahouel to have an open hearing, and media organizations are prevented from accessing sealed court proceedings. [NEW YORK TIMES, 1/5/2004; CNN, 2/23/2004] Entity Tags: Marwan Alshehhi, Michael Rolince, Ahmed Alnami, Mohamed Kamel Bellahouel, Saeed Alghamdi, Mohamed Atta

Presidential Power, Gov't Violations of Prisoner Rights

Timeline Tags: Complete 911 Timeline, 9/11 Timeline



October 18, 2001: NSA Director Replies to Congressional Letter concerning NSA Post-9/11 Surveillance Expansion NSA Director Michael Hayden responds to an October 11 letter from

NSA Director Michael Hayden responds to an October 11 letter from Representative Nancy Pelosi (see October 11, 2001), expressing concerns about the NSA's post-9/11 surveillance expansion (see After September 11, 2001) that Hayden outlined for the House Intelligence Committee on October 1 (see October 1, 2001), and asking whether the president authorized it. The substance of Hayden's October 18 reply will be redacted, except for this statement: "In my briefing, I was attempting to emphasize that I used my authorities to adjust NSA's collection and reporting." [NANCY PELOSI, 1/6/2006] A January 4, 2006 report in the Washington Post will cite "intelligence official close to Hayden" as saying that "[Hayden's] appearance on Oct. 1, 2001, before the House committee had been to discuss Executive Order 12333, and not the new NSA program," and that "Pelosi's concerns had been answered in writing and again several weeks later during a private briefing." [WASHINGTON POST, 1/4/2006] In a January 23, 2006 public briefing, Hayden will say "September 2001, Lasked to undate the Congress on what NSA.

Category Tags: Detainments in US, Impositions on Rights and Freedoms, Expansion of

had been doing, and I briefed the entire House Intelligence Committee on the 1st of October on what we had done under our previously existing authorities," and, "These decisions were easily within my authorities as the director of NSA under and [sic] executive order; known as Executive Order 12333." [MICHAEL HAYDEN, 1/23/2006]

Nature of Hayden's EO 12333 Surveillance Program - The full scope of Hayden's surveillance program is unclear, but some sources indicate it includes the wholesale collection and data-mining of phone records provided by telecom companies and placement of pen registers (call trackers) on domestic phone numbers (see After September 11, 2001, October 11, 2001, After September 11, 2001, Late September, 2001, October 2001), and October 31, 2001). Some sources indicate the NSA began large-scale domestic surveillance activities prior to the 9/11 attacks (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001).

Entity Tags: Michael Hayden, House Intelligence Committee, Nancy Pelosi, National Security Agency

Category Tags: Impositions on Rights and Freedoms, Privacy, NSA Wiretapping / Stellar Wind, Other Surveillance

October 18, 2001: Iglesias Sworn in as US Attorney for New Mexico





David Iglesias. [Source: Troy Pages /

David Iglesias is sworn in as the US Attorney for New Mexico. He is the first Hispanic US Attorney for the state. He is a former JAG (judge advocate general) officer for the US Navy, and his defense of two Marines accused of assaulting a fellow officer later became the inspiration for the movie *A Few Good Men*. [CBS NEWS, 2007; TALKING POINTS MEMO, 2011] Iglesias will later point out that the main character in the movie, a crusading JAG officer played by Tom Cruise, "was based on a composite of the three of us JAGs assigned to the case." [IGLESIAS AND SEAY, 5/2008, PP. 31] Iglesias served in the US Navy's Judge Advocate

General Corps (JAG) from 1984 through 1988, and continues to serve as a Navy JAG officer in the Naval Reserves. He spent three years as an assistant in the New Mexico Attorney General's office, then became Assistant City Attorney in Albuquerque from 1991 through 1994. He served in a variety of federal and state legal positions until 2001, when he entered private practice. He ran unsuccessfully as the Republican candidate for New Mexico's attorney general in 1998, and received the active support of Senator Pete Domenici (R-NM). Iglesias will tell the Justice Department that he considered Domenici his mentor and someone who might lend assistance if he continued to pursue a political career. Iglesias joined Heather Wilson (R-NM) at campaign events in 1998, when Wilson won a seat in the House of Representatives. In 2000, Iglesias headed a New Mexico group called "Lawyers for Bush." After the election, Iglesias submitted his name for the US Attorney position for New Mexico, and again received Domenici's support for the job. In 2004, Iglesias will be asked by the White House to become the director of the Executive Office of US Attorneys, and later an assistant secretary in the Department of Homeland Security. Iglesias will turn down these offers. He will also be considered for US Attorney positions in New York and Washington, DC. There are 93 US Attorneys serving in the 50 states as well as in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. All US Attorneys are appointed by the president with the advice and consent of the Senate, and serve under the supervision of the Office of the Attorney General in the Justice Department. They are the chief law enforcement officers for their districts. They serve at the pleasure of the president and can be terminated for any reason at any time. Typically, US Attorneys serve a four-year term, though they often serve for longer unless they leave or there is a change in presidential administrations. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008] Entity Tags: Judge Advocate General Corps, David C. Iglesias, US Department of the Navy, US Department of Justice, Pietro V. ("Pete") Domenici, Heather A. Wilson Category Tags: 2006 US Attorney Firings

October 18, 2001: Paul Wolfowitz Issues Memo Urging Secrecy



Among Detense Department Staff

Deputy Defense Secretary Paul Wolfowitz issues a memorandum to senior officials throughout the Defense Department stating that, following President Bush's declaration of a national emergency on September 14, Defense Department employees should exercise great caution whenever discussing information relating to their department's work. The memo instructs: "Do not conduct any workrelated conversations in common areas, public places, while commuting, or over unsecured electronic circuits. Classified information may be discussed only in authorized spaces and with persons having a specific need to know and the proper security clearance. Unclassified information may likewise require protection because it can often be compiled to reveal sensitive conclusions. Much of the information we use to conduct [the department]'s operations must be withheld from public release because of its sensitivity. If in doubt, do not release or discuss official information except with other [Defense Department] personnel." According to the memo, "the security of information critical to the national security will remain at risk for an indefinite period." [US DEPARTMENT OF DEFENSE, 10/18/2001; WASHINGTON TIMES, 10/23/2001]

Entity Tags: US Department of Defense, Paul Wolfowitz

Timeline Tags: Complete 911 Timeline Category Tags: Government Acting in Secret

October 20, 2001: Report Finds None Arrested in Terrorism Investigation Connected to 9/11







Mohammed Azmath, left, and Syed Gul Mohammad Shah/ Ayub Ali Khan, right. [Source: Associated Press]

The New York Times reports that, although 830 people have been arrested in the 9/11 terrorism investigation (a number that eventually exceeds between 1,200 and 2,000 (see November 5, 2001), there is no evidence that anyone now in custody was a conspirator in the 9/11 attacks. Furthermore, "none of the nearly 100 people still being sought by the [FBI] is seen as a major suspect." Of all the people arrested, only four, Zacarias Moussaoui, Ayub Ali Khan,

Mohammed Azmath, and Nabil al-Marabh, are likely connected to al-Qaeda. [NEW YORK TIMES, 10/21/2001] Three of those are later cleared of ties to al-Qaeda. After being kept in solitary confinement for more than eight months without seeing a judge or being assigned a lawyer, al-Marabh pleads guilty to the minor charge of entering the United States illegally (see September 3, 2002) and is deported to Syria (see January 2004). There is considerable evidence al-Marabh did have ties to al-Qaeda and even the 9/11 plot (see September 2000; January 2001-Summer 2001; January 2001-Summer 2001; Spring 2001; Early September 2001). [WASHINGTON POST, 6/12/2002; CANADIAN BROADCASTING CORPORATION, 8/27/2002] On September 12, 2002, after a year in solitary confinement and four months before he was able to contact a lawyer, Mohammed Azmath pleads guilty to one count of credit card fraud, and is released with time served. Ayub Ali Khan, whose real name is apparently Syed Gul Mohammad Shah, is given a longer sentence for credit card fraud, but is released and deported by the end of 2002. [VILLAGE VOICE, 9/25/2002; NEW YORK TIMES, 12/31/2002] By December 2002, only 6 are known to still be in custody, and none have been charged with any terrorist acts (see December 11, 2002). On September 24, 2001, Newsweek reported that "the FBI has privately estimated that more than 1,000 individuals-most of them foreign nationals-with suspected terrorist ties are currently living in the United States." INEWSWEEK,

Entity Tags: Nabil al-Marabh, Al-Qaeda, Mohammed Azmath, Syed Gul Mohammad

Shah, Zacarias Moussaoui, Federal Bureau of Investigation

Timeline Tags: Complete 911 Timeline, 9/11 Timeline

Category Tags: Detainments in US, Impositions on Rights and Freedoms, Expansion of

Presidential Power, Gov't Violations of Prisoner Rights

October 23, 2001: Justice Department Memo Says Bush Has Power to Order Military Strikes inside US



John Yoo, a deputy assistant attorney general in the Justice Department's Office of Legal Counsel, and OLC special counsel Robert Delahunty issue a joint memo to White House counsel Alberto Gonzales. The memo claims that President Bush has sweeping extraconstitutional powers to order military strikes inside the US if he says the strikes are against suspected terrorist targets. In the days following the 9/11 attacks, Gonzales asked if Bush could legally order the military to combat potential terrorist activity within the US. The memo is first revealed to exist seven years later (see April 2, 2008) after future OLC head Steven Bradbury acknowledges its existence to the American Civil Liberties Union; it will be released two months after the Bush administration leaves the White House (see March 2, 2009). [US DEPARTMENT OF JUSTICE, 10/23/2001]; AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]; NEW YORK TIMES, 3/2/2009]

Granting Extraordinary, Extraconstitutional Authority to Order Military Actions inside US - Yoo and Delahunty's memo goes far past the stationing of troops to keep watch at airports and around sensitive locations. Instead, the memo says that Bush can order the military to conduct "raids on terrorist cells" inside the US, and even to seize property. "The law has recognized that force (including deadly force) may be legitimately used in self-defense," they write. In 2009, Reuters will write, "The US military could have kicked in doors to raid a suspected terrorist cell in the United States without a warrant" under the findings of the OLC memo. "We do not think that a military commander carrying out a raid on a terrorist cell would be required to demonstrate probable cause or to obtain a warrant," Yoo and Delahunty write. [US DEPARTMENT OF JUSTICE, 10/23/2001] [IN NEW YORK TIMES, 3/2/2009; REUTERS, 3/2/2009] The memo reasons that since 9/11, US soil can be legally construed as being a battlefield, and Congress has no power to restrict the president's authority to confront enemy tactics on a battlefield. [SAVAGE, 2007, PP. 1311]

No Constitutional or Other Legal Protections - "[H]owever well suited the warrant and probable cause requirements may be as applied to criminal investigations or to other law enforcement activities, they are unsuited to the demands of wartime and the military necessity to successfully prosecute a war against an enemy. [Rather,] the Fourth Amendment does not apply to domestic military operations designed to deter and prevent foreign terrorist attacks." Any objections based on the Fourth Amendment's ban on unreasonable search and seizures would be invalid since whatever possible infringement on privacy would be trumped by the need to protect the nation from injury by deadly force. The president is "free from the constraints of the Fourth Amendment." The Posse Comitatus Act, which bars the military from operating inside the US for law enforcement purposes, is also moot, the memo says, because the troops would be acting in a national security function, not as law enforcement. [US DEPARTMENT OF JUSTICE, 10/23/2001]; AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]; NEW YORK TIMES, 3/2/2009; REUTERS, 3/2/2009;

ARS TECHNICA, 3/2/20091 There are virtually no restrictions on the president's ability to use the military because, Yoo and Delahunty write, the nation is in a "state of armed conflict." The scale of violence, they argue, is unprecedented and "legal and constitutional rules" governing law enforcement, even Constitutional restrictions, no longer apply. The US military can be used for "targeting and destroying" hijacked airplanes, they write, or "attacking civilian targets, such as apartment buildings, offices, or ships where suspected terrorists were thought to be." The memo says, "Military action might encompass making arrests, seizing documents or other property, searching persons or places or keeping them under surveillance, intercepting electronic or wireless communications, setting up roadblocks, interviewing witnesses, or searching for suspects." [NEWSWEEK, 3/2/2009] Yoo writes that the Justice Department's criminal division "concurs in our conclusion" that federal criminal laws do not apply to the military during wartime. The criminal division is headed by Michael Chertoff, who will become head of the Department of Homeland Security. [WASHINGTON POST, 4/4/2008] Sweeping Away Constitutional Rights - Civil litigator Glenn Greenwald will later note that the memo gives legal authorization for President Bush to deploy the US military within LIS horders to turn it against foreign nationals and LIS citizens

alike, and to render the Constitution's limits on power irrelevant and non-functional. Greenwald will write, "It was nothing less than an explicit decree that, when it comes to presidential power, the Bill of Rights was suspended, even on US soil and as applied to US citizens."

Justifying Military Surveillance - Greenwald will note that the memo also justifies the administration's program of military surveillance against US citizens: "[I]t wasn't only a decree that existed in theory; this secret proclamation that the Fourth Amendment was inapplicable to what the document calls 'domestic military operations' was, among other things, the basis on which Bush ordered the NSA, an arm of the US military, to turn inwards and begin spying—in secret and with no oversight—on the electronic communications (telephone calls and emails) of US citizens on US soil" (see December 15, 2005 and Spring 2004). "If this isn't the unadorned face of warped authoritarian extremism," Greenwald will ask, "what is?" [SALON, 3/3/2009] If the president decides to use the military's spy agency to collect "battlefield intelligence" on US soil, no law enacted by Congress can regulate how he goes about collecting that information, including requiring him to get judicial warrants under the Foreign Intelligence Surveillance Act (FISA). In 2007, Yoo will say in an interview: "I think there's a law greater than FISA, which is the Constitution, and part of the Constitution is the president's commander in chief power. Congress can't take away the president's powers in running war." [SAVAGE, 2007, PP. 131; PBS FRONTLINE, 5/15/2007] Cheney and Addington will push the NSA to monitor all calls and e-mails, including those beginning and ending on US soil, but the NSA will balk. Domestic eavesdropping without warrants "could be done and should be done," Cheney and Addington argue, but the NSA's lawyers are fearful of the legal repercussions that might follow once their illegal eavesdropping is exposed, with or without the Justice Department's authorization. The NSA and the White House eventually reach a compromise where the agency will monitor communications going in and out of the US, but will continue to seek warrants for purely domestic communications (see Spring 2001, After September 11, 2001, and October 2001). [SAVAGE, 2007, PP. 131]

<u>Military Use Considered</u> - In 2009, a former Bush administration lawyer will tell a reporter that the memo "gave rise to the Justice Department discussing with the Defense Department whether the military could be used to arrest people and detain people inside the United States. That was considered but rejected on at least one occasion." The lawyer will not give any indication of when this will happen, or to whom. Under the proposal, the suspects would be held by the military as "enemy combatants." The proposal will be opposed by the Justice Department's criminal division and other government lawyers and will ultimately be rejected; instead, the suspects will be arrested under criminal statutes. [LOS ANGELES TIMES, 3/3/2009]

Entity Tags: Steven Bradbury, US Department of Homeland Security, US Department of Defense, Robert J. Delahunty, Office of Legal Counsel (DOJ), Bush administration (43), Michael Chertoff, Alberto R. Gonzales, National Security Agency, American Civil Liberties Union, Glenn Greenwald, George W. Bush, US Department of Justice, John C. Yoo

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Government Acting in Secret, Government Classification

October 23, 2001: Justice Department: Bush Can Suspend First Amendment Freedoms



The Justice Department's John Yoo and Robert Delahunty issue a memo to White House counsel Alberto Gonzales claiming President Bush has sweeping powers in wartime that essentially void large portions of the Constitution. The memo, which says that Bush can order military operations inside the US (see October 23, 2001), also says that Bush can suspend First Amendment freedoms: "First Amendment speech and press rights may also be subordinated to the overriding need to wage war successfully." It adds that "the current campaign against terrorism may require even broader exercises of federal power domestically." [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 [AMERICAN CIVIL LIBERTIES UNION [PDF]], 1/28/2009 [AMERICAN CIVIL LIBERTIES UNION [PDF]]

Entity Tags: John C. Yoo, George W. Bush, Robert J. Delahunty, US Department of Justice, Alberto R. Gonzales

Category Tags: Impositions on Rights and Freedoms. Media Freedoms. Expansion of

Presidential Power, Other Legal Changes, Government Acting in Secret, Government Classification

October 24, 2001: House and Senate Pass Patriot Act Without Reading It



The House of Representatives passes the final version of the Patriot Act and other previously unpopular Bush administration projects: Alaska oil drilling, \$25 billion in tax cuts for corporations, taps into Social Security funds, and cuts in education. [CNN, 10/25/2001] Republican Congressman Ron Paul states: "It's my understanding the bill wasn't printed before the vote—at least I couldn't get it. They played all kinds of games, kept the House in session all night, and it was a very complicated bill. Maybe a handful of staffers actually read it, but the bill definitely was not available to members before the vote." It is later found that only two copies of the bill were made available in the hours before its passage, and most House members admit they voted for the act without actually reading it first. [INSIGHT, 11/9/2001] Two days later, the Senate will pass the final version of the Patriot Act. Anthrax targets Senators Tom Daschle and Patrick Leahy (see October 15, 2001) now support the bill. President Bush signs it into law the same day (see October 26, 2001). [FOX NEWS, 10/26/2001]

Entity Tags: Tom Daschle, Patrick J. Leahy, Ron Paul

Timeline Tags: 2001 Anthrax Attacks Category Tags: Patriot Act, Taxation

October 24, 2001: New York Prosecutor Patrick Fitzgerald Confirmed as US Attorney for Northern Illinois



Patrick J. Fitzgerald is confirmed as US Attorney for the Northern District of Illinois, centering in Chicago. Senator Peter Fitzgerald (R-IL—no relation to Patrick Fitzgerald) nominated Fitzgerald for the position because he felt Fitzgerald, a native New Yorker and veteran prosecutor with no ties to Chicago, would be less likely to become corrupted by what he thought to be the "Chicago Democrat machine." Fitzgerald had come highly recommended by, among others, Louis Freeh, then the director of the FBI. White House political chief Karl Rove later says that he did not oppose Fitzgerald's nomination, though he was somewhat disturbed by Senator Fitzgerald's insistence on the nomination. Rove will recall: "Senator Fitzgerald's attitude was: 'I'm not going to submit multiple names. I will take only one name, and this is all that is going to be acceptable.' And we asked him to submit multiple names, and we also asked him to think about people from within the districts. Our predilection was to have people from within the district selected. We thought it, you know, encouraged a civic-minded attitude among lawyers. It made certain that you had some fresh blood that would flow in. If you pick people from outside the district, they tend to be career prosecutors. And Senator Fitzgerald was particularly unimpressed by this. He said that, in Chicago, the politics in Chicago were such that no US Attorney from Chicago could exist without being subverted by the political influence peddlers in Chicago, that they would be bought off by the big law firms and the Chicago Democrat machine. And so he was going to only provide us one name for each, the Northern District and the Southern District. Following my very effective telephone conversation with him, he responded by going out and announcing to the press that the president was nominating his two names from the Northern and Southern Districts." Rove will say that he did not oppose Fitzgerald's nomination, and it would not have been proper for him to do so: "That wasn't mine—once that conversation was over, it wasn't mine to have an opinion. I believe the president has a right to appoint. And that means that senators have, by tradition, the right to recommend. But they are usurping a presidential right when they go out and name the nominee before the president has even had a chance to evaluate multiple names and settle on who he wants and do the necessary staff work to arrive at it. Fortunately, Senator Fitzgerald recommended two good names, and both of them worked out. But it was an unusual process that involved, in my opinion, a congressional usurpation of a presidential power." Senator Fitzgerald will later say that Rove told him the selection of Patrick Fitzgerald "ticked off the [Illinois Republican] base," a statement Rove will call "inaccurate.... I chalk it up to an

overactive imagination." Rove will go on to imply, without directly saying, that US Attorney Fitzgerald prosecutes Governor George Ryan (R-IL) as something of a political favor to Senator Fitzgerald, as the governor and the senator are political rivals within the Illinois Republican Party. Experienced in prosecuting high-profile terrorism cases (see January 1996), Fitzgerald will go on to chair the terrorism subcommittee of the Attorney General's Advisory Committee (AGAC) and later become special counsel for the Lewis Libby leak investigation (see December 30, 2003). [THE AMERICAN LAWYER, 12/11/2008; US HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY, 7/7/2009

Entity Tags: Patrick J. Fitzgerald, George Ryan, Louis J. Freeh, Peter Fitzgerald, Karl C. Rove

Category Tags: 2006 US Attorney Firings

October 24, 2001: McKay Sworn in as US Attorney for Western Washington State





Seattle

John McKay is sworn in as the US Attorney for the Western District of Washington State. McKay has little or no experience as a prosecutor; most of his legal career has been spent in private practice, except for a brief stint as a special assistant to then-FBI Director William Sessions. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008; TALKING POINTS MEMO, 2011] McKay was president of the Congressionally established Legal Services Corporation in Washington, DC, a private non-profit corporation

designed to ensure low-income citizens receive adequate legal representation. He was a White House Fellow in 1989-1990, where he worked with Sessions. [US DEPARTMENT OF JUSTICE, 12/14/2006] There are 93 US Attorneys serving in the 50 states as well as in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. All US Attorneys are appointed by the president with the advice and consent of the Senate, and serve under the supervision of the Office of the Attorney General in the Justice Department. They are the chief law enforcement officers for their districts. They serve at the pleasure of the president and can be terminated for

any reason at any time. Typically, US Attorneys serve a four-year term, though they often serve for longer unless they leave or there is a change in presidential administrations. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008] Entity Tags: US Department of Justice, William S. Sessions, Legal Services Corporation, John L. McKay

Category Tags: 2006 US Attorney Firings

October 25, 2001 and November 14, 2001: Senior Lawmakers Briefed on NSA Wiretapping Program



Vice President Dick Cheney summons the chairmen and ranking members of the Senate and House Intelligence Committees to the White House for a classified briefing on the secret NSA warrantless wiretapping program (see Early 2002). Cheney makes it clear to the lawmakers that he is merely informing them about the program, and not seeking their approval. [WASHINGTON POST, 12/18/2005] Officials later say that under any of the previous presidents, such a meeting of this import would involve the president. But the four lawmakers are hustled away from the Oval Office. Instead, "[w]e met in the vice president's office," Bob Graham (D-FL), the chairman of the Senate Intelligence Committee, later recalls. President Bush has already told Graham that "the vice president should be your point of contact in the White House." Cheney, according to the president, "has the portfolio for intelligence activities." [WASHINGTON POST, 6/24/2007] The leaders are briefed by Cheney, CIA Director George Tenet, and NSA Director Michael Hayden. The Congressional leaders will later mostly refuse to comment publicly about what they do and do not learn about the program, even after it is revealed to the public (see December 15, 2005). In 2003, when Senator John D. Rockefeller ascends to the Democratic leadership of the Senate committee, and is himself briefed on the program, he will write to Cheney expressing his concerns over it (see July 17, 2003). [NEW YORK TIMES, 12/15/2005]

No Discussion about Expanding' NSA Wiretapping - In December 2005, after the program is revealed to the public, one of the Congressmen present at the briefings, Graham, the then-chairman of the Senate Intelligence Committee, will

discuss his knowledge of the program. In contradiction to the characterizations of Bush and other White House officials, Graham will say that he recalls "no discussion about expanding [NSA eavesdropping] to include conversations of US citizens or conversations that originated or ended in the United States," and knew nothing of Bush's intention to ignore the Foreign Intelligence Surveillance Court (also known as the FISA court). "I came out of the room with the full sense that we were dealing with a change in technology but not policy," Graham will recall, using new methodologies to intercept overseas calls that passed through US switches. He thought that NSA eavesdropping would continue to be limited to "calls that initiated outside the United States, had a destination outside the United States but that transferred through a US-based communications system." Instead, Graham will say, it now seems that Bush decided to go "beyond foreign communications to using this as a pretext for listening to US citizens' communications. There was no discussion of anything like that in the meeting with Cheney." A senior intelligence official, who refuses to reveal his identity but says he is speaking with the permission of the White House, will accuse Graham of "misremembering the briefings," which he will call "very, very comprehensive." The official will refuse to discuss the briefings in any but the most general terms, but will say they were intended "to make sure the Hill knows this program in its entirety, in order to never, ever be faced with the circumstance that someone says, 'I was briefed on this but I had no idea that—' and you can fill in the rest." Graham will characterize the official's description as saying: "[W]e held a briefing to say that nothing is different.... Why would we have a meeting in the vice president's office to talk about a change and then tell the members of Congress there is no change?" House Minority Leader Nancy Pelosi (D-CA), who was also present at the meeting as the ranking Democrat on the House Intelligence Committee, will say the briefing described "President Bush's decision to provide authority to the National Security Agency to conduct unspecified activities." She will note that she "expressed my strong concerns" but did not go into detail. [WASHINGTON POST, 12/18/2005]

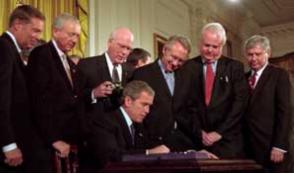
Lawmakers Unaware of Pre-9/11 Surveillance - Though Bush officials eventually admit to beginning surveillance of US citizens only after the 9/11 attacks, that assertion is disputed by evidence suggesting that the domestic surveillance program began well before 9/11 (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001). In the briefing, Cheney informs the lawmakers of none of this.

Entity Tags: Richard ("Dick") Cheney, Senate Intelligence Committee, Nancy Pelosi, John D. Rockefeller, House Intelligence Committee, Daniel Robert ("Bob") Graham, George J. Tenet, George W. Bush, Michael Hayden, National Security Agency Category Tags: Privacy, Impositions on Rights and Freedoms, NSA Wiretapping / Stellar Wind

October 26, 2001: USA Patriot Act Becomes Law

President Bush signs the USA Patriot Act (see October 2, 2001) into law. The act's provisions include:

■ 1) Non-citizens can be detained and deported if they provide "assistance" for lawful activities of any group the government chooses to call a terrorist organization. Under this provision the secretary of state can designate any group that has President Bush signs the Patriot Act into law. [Source: ever engaged in violent activity as a terrorist organization.



White House?

Representative Patsy Mink (D-HI) notes that in theory supporters of Greenpeace could now be convicted for supporting terrorism. [SAN FRANCISCO CHRONICLE, 11/12/2001]

■ 2) Immigrants can be detained indefinitely, even if they are found not to have any links to terrorism. They can be detained indefinitely for immigration violations or if the attorney general decides their activities pose a danger to national

security. They need never be given a trial or even a hearing on their status. [SAN FRANCISCO CHRONICLE, 9/8/2002]

- 3) Internet service providers can be ordered to reveal the websites and e-mail addresses that a suspect has communicated to or visited. The FBI need only inform a judge that the information is relevant to an investigation. [VILLAGE VOICE, 11/26/2001: SAN FRANCISCO CHRONICLE, 9/8/2002]
- 4) The act "lays the foundation for a domestic intelligence-gathering system of unprecedented scale and technological prowess." [WASHINGTON POST, 11/4/2001] It allows the government to access confidential credit reports, school records, and other records, without consent or notification. [SAN FRANCISCO CHRONICLE, 9/8/2002] All of this information can now be given to the CIA, in violation of the CIA's mandate prohibiting it from spying within the US. [VILLAGE VOICE, 11/26/2001]
- 5) Financial institutions are encouraged to disclose possible violations of law or "suspicious activities" by any client. The institution is prohibited from notifying the person involved that it made such a report. The term "suspicious" is not defined, so it is up to the financial institutions to determine when to send such a report.
- 6) Federal agents can easily obtain warrants to review a library patron's reading and computer habits (see January 2002). [VILLAGE VOICE, 2/22/2002] Section 215 allows the FBI to ask the Foreign Intelligence Surveillance Court (FISC) for an order to obtain documents relating to counterterrorism investigations without meeting the usual standard of legal "probable cause" that a crime may have been committed. Senator Russ Feingold (D-WI—see October 9, 2001) says that Section 215 can allow the FBI to "go on a fishing expedition and collect information on virtually anyone." Librarians will make Section 215 the centerpiece of their objections to the Patriot Act, arguing that the government can now "sweep up vast amounts of information about people who are not suspected of a crime." In 2005, one librarian will say, "It reminds me of the Red Scare of the 1950s." However, some FBI officials find it easier to use provisions of Section 505, which expands the usage of so-called "national security letters" (see November 28, 2001). [ROBERTS, 2008, PP. 39-40]
- 7) The government can refuse to reveal how evidence is collected against a suspected terrorist defendant. [TAMPA TRIBUNE, 4/6/2003] Passes with No Public Debate - The law passes without public debate. [VILLAGE VOICE, 11/9/2001; VILLAGE VOICE, 11/26/2001] Even though it ultimately took six weeks to pass the law, there were no hearings or congressional debates. [SALON, 3/24/2003] Congressman Barney Frank (D-MA) says: "This was the least democratic process for debating questions fundamental to democracy I have ever seen. A bill drafted by a handful of people in secret, subject to no committee process, comes before us immune from amendment" (see October 2-4, 2001 and October 24, 2001). [VILLAGE VOICE, 11/9/2001] Only 66 congresspeople, and one senator, Feingold, vote against it. Few in Congress are able to read summaries, let alone the fine print, before voting on it. [LOS ANGELES TIMES, 10/30/2001] Feingold says, "The new law goes into a lot of areas that have nothing to do with terrorism and have a lot to do with the government and the FBI having a wish list of things they want to do." [VILLAGE VOICE, 11/9/2001] Supporters of the act point out that some of its provisions will expire in four years, but in fact most provisions will not expire. [CHICAGO TRIBUNE, 11/1/2001] Mounting Opposition - One year later, criticism of the law will grow. [SAN FRANCISCO CHRONICLE, 9/8/2002] Dozens of cities will later pass resolutions criticizing the Patriot Act (see January 12, 2003).

Entity Tags: George W. Bush, USA Patriot Act, Foreign Intelligence Surveillance Court, US Congress, Patsy Mink, Russell D. Feingold, Barney Frank

Timeline Tags: Complete 911 Timeline

Category Tags: Patriot Act, Citizenship Rights

October 26, 2001: Latina Appeals Court Judge Acknowledges Ethnic, Gender Diversity Brings Different Viewpoints to Bench



Appeals Court Judge Sonia Sotomayor delivers a lecture at the University of California at Berkeley School of Law. Sotomayor, whose parents are Puerto Rican, speaks on the subject of Hispanics in the judiciary and her own experience as a Latina (Hispanic woman) jurist. After noting the tremendous cultural and ethnic diversity among Hispanics, and citing the ascension of increasing numbers of

Hispanics and women to the judiciary, Sotomayor addresses the issue of judges acting without regard for their ethnic heritage or gender. "[J]udges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law," she says, and notes that while she tries to aspire to that goal: "I wonder whether achieving that goal is possible in all or even in most cases. And I wonder whether by ignoring our differences as women or men of color we do a disservice both to the law and society. Whatever the reasons why we may have different perspectives, either as some theorists suggest because of our cultural experiences or as others postulate because we have basic differences in logic and reasoning, are in many respects a small part of a larger practical question we as women and minority judges in society in general must address. I accept the thesis... that in any group of human beings there is a diversity of opinion because there is both a diversity of experiences and of thought.... I further accept that our experiences as women and people of color affect our decisions. The aspiration to impartiality is just that—it's an aspiration because it denies the fact that we are by our experiences making different choices than others." She adds: "Justice [Sandra Day] O'Connor has often been cited as saying that a wise old man and wise old woman will reach the same conclusion in deciding cases.... I am also not so sure that I agree with the statement. First... there can never be a universal definition of wise. Second, I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life. Let us not forget that wise men like Oliver Wendell Holmes and Justice [Benjamin] Cardozo voted on cases which upheld both sex and race discrimination in our society. Until 1972, no Supreme Court case ever upheld the claim of a woman in a gender discrimination case. I... believe that we should not be so myopic as to believe that others of different experiences or backgrounds are incapable of understanding the values and needs of people from a different group. Many are so capable.... However, to understand takes time and effort, something that not all people are willing to give. For others, their experiences limit their ability to understand the experiences of others. Other simply do not care. Hence, one must accept the proposition that a difference there will be by the presence of women and people of color on the bench." [NATIONAL COUNCIL OF LA RAZA LAW JOURNAL, 10/2001; ABC NEWS, 10/26/2001 A; NEW YORK TIMES, 5/14/2009] After Sotomayor is nominated to the Supreme Court (see May 26, 2009), many critics will use this speech to accuse her of racism (see May 26, 2009, May 26, 2009, May 26, 2009, May 27, 2009, May 28, 2009, and June 3, 2009).

Entity Tags: University of California at Berkeley School of Law, Sonia Sotomayor, US Supreme Court

Category Tags: Sotomayor Nomination

Before October 31, 2001: NSA Official Reports Domestic Surveillance to Congress



A senior NSA official, having learned of the NSA's post-9/11 domestic surveillance program and believing it to be illegal, takes his concerns to a staff member of the House Intelligence Committee. In a 2012 interview for *Democracy Now!*, William Binney, a former NSA technical director who served in the NSA for 36 years, will say that some of his staff had been recruited to work on the new program and told him of some of the things that were being done, which he believed were illegal. Binney will tell co-host Juan Gonzalez: "I immediately went to the Intelligence Committee, because... the intelligence committees were formed to have oversight over the intelligence community to make sure they didn't monitor US citizens.... And the member of the staff that I went to went to Porter Goss, who was chairman of that committee at the time, and he referred her to General Hayden for any further. When it was the job of that committee to do the oversight on all this domestic spying, they weren't doing it." Soon after this, Binney retires from the NSA, due to his belief the NSA is violating the Constitution (see October 31, 2001). [DEMOCRACY NOW!, 4/20/2012]

Entity Tags: Jane Mayer, House Intelligence Committee, William Binney, Michael Hayden, National Security Agency

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Database Programs NSA Wiretanning / Stellar Wind

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Late October 2001: White House Lawyers and OLC Work in Secret to Draft Military Commissions Procedures for Trying Terror Suspects



White House lawyers have become impatient with the interagency group's (see Shortly Before September 23, 2001) less than full endorsement of the use of military commissions to try suspected terrorists. By late October, Timothy E. Flanigan takes the task of designing a strategy for prosecuting terrorists away from the group and proceeds to focus on military commissions as the only preferable option. The White House lawyers now work more in secret, excluding

many agencies and most of the government's experts in military and international law, but together with the lawyers of the Office of Legal Counsel (OLC), with the intention of drafting a presidential military order. [NEW YORK TIMES, 10/24/2004] There is a remarkable secrecy surrounding the drafting process (see November 11-13, 2001). Both Attorney General John D. Ashcroft and his deputy, Larry D. Thompson, are closely consulted. But the head of the Justice Department's Criminal Division, Michael Chertoff is kept out of the loop. Secretary of Defense Donald H. Rumsfeld is informed through his general counsel, William J. Haynes. Other Pentagon experts, however, are excluded. [NEW YORK TIMES, 10/24/2004] When the order is signed (see November 13, 2001), many express surprise. "That came like a bolt from the blue," a former Pentagon official says. "Neither I nor anyone I knew had any insight, any advance knowledge, or any opportunity to comment on the president's military order." [GUARDIAN, 6/9/2004] "I can't tell you how compartmented things were," retired Rear Adm. Donald J. Guter, the Navy's Judge Advocate General, later recalls. "This was a closed administration." [NEW YORK TIMES, 10/24/2004]

Entity Tags: Larry D. Thompson, John Ashcroft, Michael Chertoff, Donald J. Guter, Donald Rumsfeld, William J. Haynes

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power,

Detainments in US, Gov't Violations of Prisoner Rights

Late October 2001 - March 2002: US Attorney 'Pushy' with Justice Department over Investigation of Colleague





Thomas Wales. [Source:

Newly appointed US Attorney John McKay of the Western District of Washington State (see October 24, 2001) begins investigating the murder of Thomas C. Wales, an Assistant US Attorney (AUSA) in the office. Wales, a popular AUSA and a strong advocate of gun control, was murdered three weeks before McKay took office, when someone shot and killed him through his basement window. Associate Deputy Attorney General David Margolis had recused the office from investigating the crime, because, McKay will later state, the Justice Department (DOJ)

had no confidence in the prosecutor initially assigned to the case. Moreover, as the case was a likely candidate for a death penalty prosecution, he will tell a reporter that the office is recused because "[y]ou couldn't have Tom's friends in the office making those kinds of decisions."

Begins Pressuring Justice Department - Shortly after taking office, McKay begins pressuring Deputy Attorney General (DAG) Larry Thompson to replace the prosecutor on the Wales case. McKay will recall having several "tense conversations" with Principal Associate Deputy Attorney General Christopher Wray concerning this issue. In March 2002, the DOJ assigns a more experienced prosecutor to the case. The DOJ sends no additional manpower to Seattle to help with the case, and initially offers a \$25,000 reward for information leading to the conviction of the killer, an amount FBI Special Agent Charles Mandigo will later call "insultingly small." (After McKay's intervention, the DOJ later raises the reward to \$1 million.) McKay later says that while he is not directly involved in the investigation, he pushed hard for the DOJ to commit more resources to the investigation, and felt it was his responsibility to act as a conduit between the Seattle FBI office and the DOJ regarding resources for the case. He will say that while he was assertive, he remained professional and appropriate in his conduct;

mistake was that I assumed 'recusal' was 'recusal'," he will say. "I had erred in assuming that I was completely recused from even asking questions about the allocation of resources. I assumed it would have the highest priority within the Department of Justice. I once worked at the FBI for a year, and during that time an agent was killed in Las Vegas. They deploy like crazy when an agent is killed. Agents got off the airplane that night from DC to investigate. The director of the

FBI flew out. That was not the reaction we were getting from the Department of Justice after Tom Wales was killed. Over 2002, I decided that really it should be my job to advocate for appropriate resources to be devoted to the Wales case." Speculation as to Politicization of Investigation - Many involved in the investigation believe that the Wales murder is a low priority for the DOJ because his liberal politics clash with the rightward tilt of the senior officials appointed by the Bush administration.

Aggressive but Appropriate - A 2008 Justice Department investigation of the 2006 US Attorney firings (see September 29, 2008) will find no reason to dispute McKay's recollection of events. Both Thompson and Wray will describe McKay as being aggressive about making sure the investigation has adequate resources. Thompson will recall no tension between himself and McKay, though he will recall some of his then-staff members complaining about McKay's pressure and demands for resources. Thompson will admit to becoming irritated with McKay on occasion, but will emphasize that McKay conducted himself in an appropriate manner at all times. It was "not new in the annals of the Department of Justice [that] a DAG got aggravated with a US Attorney," he will say. He will not recall discussing the matter with Kyle Sampson, the chief of staff to Attorney General Alberto Gonzales and the architect of the plan to fire the US Attorneys (see November 15, 2006). Wray will recall that some in the DOJ considered McKay to be "high maintenance," in regard to the Wales investigation and with other issues. While some in the DAG's office informally discussed McKay's behavior among themselves, Wray will recall, no formal review of his conduct was ever undertaken. Wray will also not recall any discussions with Sampson, though he will say he kept Gonzales's office apprised of the events surrounding the Wales investigation. Margolis will recall McKay being somewhat emotional about the Wales case and extremely pushy, he found his conduct entirely justifiable considering the situation. Margolis will say that he doubts Sampson would have listed McKay for removal because of his interactions with Thompson. [NEW YORKER, 8/6/2007; US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008] Remains Unsolved - The Wales murder will remain unsolved. [NEW YORKER, 8/6/2007] Entity Tags: D. Kyle Sampson, Bush administration (43), Alberto R. Gonzales, Christopher Wray, Charles Mandigo, US Department of Justice, Federal Bureau of Investigation, John L. McKay, Thomas C. Wales, David Margolis, Larry D. Thompson Category Tags: 2006 US Attorney Firings

Late October 2001: White House Readies Military Commissions Order; Commissions Will Usurp Power from Legislative, Judicial Branches into Executive



Deputy White House counsel Timothy Flanigan presents his subordinate, associate counsel Bradford Berenson, with a draft presidential order he has written establishing military tribunals for suspected terrorists. The draft order declares that President Bush is invoking his wartime powers as commander in chief to establish a system of military tribunals, sometimes called military commissions. Commissions More 'Flexible' - In the White House's view, military tribunals offer several advantages over either civilian court trials or military courts-martial, as is being discussed in the interagency working group on prosecuting terrorists at the State Department (see Shortly Before September 23, 2001). Civilian trials would be subject to public scrutiny and media spectacle, and would pose a problem of security risks. Military courts-martial are quite rigid in their procedures and rules of evidence. Military commissions, as envisioned by Flanigan and the two other White House lawyers who put together the scheme—Berenson and David Addington, the chief counsel for Vice President Cheney—would offer more "flexibility" for the use of evidence gathered either under battlefield conditions or in interrogations, evidence that might not meet the standards of either a court-

martial or a civilian trial. And, as author Charlie Savage will later note, "commissions enhanced presidential power by concentrating the process in the executive branch alone."

<u>A 'Relic'</u> - Savage will explain: "Under normal trials, Congress defines a crime and sets the sentence for it; the executive branch investigates and prosecutes people who are accused of committing the crime; and the judicial branch runs the trial, decides whether to admit evidence, determines whether the defendant is guilty or innocent, and hears any appeal. With a military commission, all these powers were collapsed into the hands of the armed forces and, ultimately, their commander in chief. Although fairly common in nineteenth-century conflicts, military commissions were a relic: They had not been used by the United States since World War II."

Support from Justice Department Lawyer - Their work will be bolstered when Justice Department lawyer Patrick Philbin issues a secret memo declaring that the president has the inherent authority to order military commissions (see November 6, 2001). Flanigan, Berenson, and Addington never inform the interagency working group of their own work, although they made use of the working group's research. Flanigan, Berenson, and Addington cite Philbin's memo as the definitive word on the president's authority. When President Bush announces the order establishing the commissions (see November 13, 2001), the order abruptly short-circuits the interagency working group and renders its work irrelevant. [SAVAGE, 2007, PP. 134-135] Entity Tags: Patrick F. Philbin, Bush administration (43), Bradford Berenson, Charlie Savage, George W. Bush, US Department of State, David S. Addington, Richard ("Dick") Cheney, Timothy E. Flanigan

Category Tags: Expansion of Presidential Power

October 31, 2001: Senior NSA Official Retires in Protest over Domestic Surveillance



Concerned that NSA post-9/11 surveillance operations violated the US Constitution, a senior NSA official reports on the program to House Intelligence Committee staff (see Before October 31, 2001), then retires. William Binney, a crypto-mathematician, had served in the NSA for 36 years. In 1997 he was made technical director of the World Geopolitical and Military Analysis Reporting Group, a 6000-employee unit that focused on signals intelligence (SIGINT) reporting and analysis. In the last part of his NSA career, Binney focused on dealing with the NSA's problem of information overload, co-founding the Signals Intelligence Automation Research Center (SARC) and leading a 20-member team to develop a data-mining and analysis program called ThinThread. This program made it possible to "correlate data from financial transactions, travel records, Web searches, GPS equipment, and any other 'attributes' that an analyst might find useful," and "could chart relationships among people in real time." Unlike the NSA's existing centralized data processing systems, ThinThread was able to identify useful or useless data as it was collected, reducing the overload problem. However, though it targeted foreign communications, ThinThread also intercepted those of Americans, and "continued documenting signals when a trail crossed into the US." Binney incorporated measures to protect privacy, but NSA lawyers still considered the program too invasive, according to a 2011 article by Jane Mayer based on interviews with Binney and another NSA whistleblower, Thomas Drake. In 1999. NSA Director General Michael Hayden decided to fund a rival program. Trailblazer, which would be developed by defense contractors (see Late 1999). Trailblazer will be abandoned in 2006 as unworkable, after costing \$1.2 billion (see January 2006). [NEW YORKER, 5/23/2011; WIRED NEWS, 2/15/2012; DEMOCRACY NOW!, 4/20/2012] In 2002, three NSA whistleblowers—Edward Loomis, J. Kirk Wiebe, and Binney—will ask the Pentagon to investigate the NSA for wasting "millions and millions of dollars" on Trailblazer. [NATION, 3/26/2013]

<u>Post-9/11 NSA Surveillance Expansion</u> - Binney will tell Mayer that, after the 9/11 attacks, his people began coming to him, saying things like: "They're getting billing records on US citizens! They're putting pen registers [call logs] on everyone in the country!" James Bamford will interview Binney in 2012 and write, "At the outset the program recorded 320 million calls a day, [Binney] says, which represented about 73 to 80 percent of the total volume of the agency's worldwide

intercepts. Dinney has not been personally read in to this domestic surveillance program, but some members of his SARC team have, as their knowledge of ThinThread code was needed to set it up. Binney became convinced elements of ThinThread were being used, but without privacy protections, meaning US persons could be targeted. Soon after learning these things, Binney takes his concerns to the House Intelligence Committee (see Before October 31, 2001), and retires on October 31. He will tell Mayer, "I couldn't be an accessory to subverting the Constitution." Other sources support Binney's account of this NSA data-mining and monitoring program (see After September 11, 2001, October 11, 2001, After September 11, 2001, Late September, 2001, and October 2001). However, the claim that NSA domestic surveillance was initiated only after, and in response to, 9/11 is contradicted by information indicating that domestic monitoring programs and activities were established and conducted prior to 9/11 (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001). [NEW YORKER, 5/23/2011; WIRED NEWS, 2/15/2012; DEMOCRACY NOW!, 4/20/2012]

ThinThread 'Would Likely Have Prevented 9/11' - Despite ThinThread's capacity to collect actionable intelligence, Hayden vetoed the idea of deploying the system three weeks before 9/11, in August 2001. According to the Loomis, Wiebe, and Binney, this decision "left the NSA without a system to analyze the trillions of bits of foreign SIGINT flowing over the Internet at warp speed, as ThinThread could do." During the summer of 2001, when "the system was blinking red," according to CIA Director George Tenet, the NSA "failed to detect critical phone and e-mail communications that could have tipped US intelligence to al-Qaeda's plans to attack." [NATION, 3/26/2013]

Entity Tags: Edward Loomis, World Geopolitical and Military Analysis Reporting Group, J. Kirk Wiebe, William Binney, Thomas Drake, House Intelligence Committee, James Bamford, Trailblazer, Jane Mayer, National Security Agency, Signals Intelligence Automation Research Center, Michael Hayden, Thinthread

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Government Acting in Secret, Database Programs, NSA Wiretapping / Stellar Wind

October 31, 2001: New Regulation Allows Eavesdropping on Attorney-Client Conversations



The Justice Department issues a regulation that allows eavesdropping on attorney-client conversations in federal prisons wherever there is "reasonable suspicion... to believe that a particular inmate may use communications with attorneys to further or facilitate acts of terrorism." The regulation requires written notice to the inmate and attorney, "except in the case of prior court authorization." Officials no longer have to show probable cause or get a court order. The Los Angeles Times says the new policy is "sharply criticized by a broad array of lawyers and lawmakers." [LOS ANGELES TIMES, 11/10/2001; SAN FRANCISCO CHRONICLE, 11/12/2001]

Entity Tags: US Department of Justice Timeline Tags: Complete 911 Timeline

Category Tags: Other Legal Changes, Gov't Violations of Prisoner Rights

November 1, 2001: Bush Limits Access to Former Presidential Papers



George W. Bush signs Executive Order 13233 which limits public access to papers of all presidents since 1980. A 1978 law provided for the release of presidential papers 12 years after the president leaves office, so Ronald Reagan's papers would have been released next year. Reagan issued an order in 1989 that called for disclosure of most of his official papers 12 years after he left office but under the new executive order the papers can be kept secret even if the president in question wants them released. President Bush's father was vice president during the Reagan administration. [SEATTLE POST-INTELLIGENCER, 11/8/2001] The Guardian notes that now Bush's "personal papers detailing the decision-making process in the current war on terrorism could remain secret in perpetuity." [GUARDIAN, 11/2/2001] In March 2001, Bush signed a temporary order delaying the release of these papers for 90 days, and then signed for another 90 day delay before signing this order making the change permanent (see January 20, 2001). [NEW YORK TIMES, 1/3/2003]

<u>'Executive Fiat'</u> - Bush's executive order radically reforms the PRA and unilaterally imposes limitations never contemplated by Congress. Bush is, according to former Nixon White House counsel John Dean, "in essence... repealing an act of Congress and imposing a new law by executive fiat." If not overturned by Congress or lawsuits, the executive order mandates the following, according to Dean:

- Former presidents can keep their papers sealed indefinitely.
- Vice presidents have the power to invoke executive privilege, an authority limited to the president since 1969.
- The burden shifts from a presumption to release presidential documents unless good cause exists to keep them sealed, to the opposite, where an applicant must show good cause why a set of documents should be unsealed.
- Any request to release a former president's papers must be approved by both the former president and the current incumbent. Either one's objection keeps the papers sealed.
- "Representatives of former presidents" may invoke executive privilege after a former president's death. Dean will write, "Although there is no constitutional basis whatsoever for this, under Bush's order such a right can be passed from generation to generation, to friends, anyone."

Tom Connors of the Society of American Archivists will say, "What seems to be coming out of the [Bush-Cheney] administration is the idea that public information is a dangerous thing." Historian Hugh Davis Graham, who will, before his death, take part in a lawsuit to overturn the order, will observe, "George W. Bush has a fetish for secrecy. And unless this executive order is overturned, it will be a victory for secrecy in government—a victory so total that it would make [former president Richard] Nixon jealous in his grave." Dean will add, "Bush and Cheney assumed office planning to take total and absolute control of executive branch information. The truth will be what they say it is. They will decide what the public should know and when, if ever." [DEAN, 2004, PP. 89-92]

Entity Tags: Society of American Archivists, Bush administration (43), Tom Connors, George Herbert Walker Bush, Ronald Reagan, George W. Bush, John Dean, Hugh Davis Graham

Category Tags: Expansion of Presidential Power, Other Legal Changes, Impositions on Rights and Freedoms, Government Acting in Secret, Government Classification

November 1, 2001: FBI Alerts Business Community About Terrorist Threat, but Not Elected Officials



The FBI alerts InfraGard members (see 1996-2008) of a potential terrorist threat to bridges in California. Officials of Enron are also notified. However, the FBI does not immediately notify California governor Gray Davis, who learns of the threat from his brother, Barry Davis, an employee of the financial firm Morgan Stanley. Davis's press secretary, Steve Maviglio, later recalls: "[Governor Davis] said his brother talked to him before the FBI. And the governor got a lot of grief for releasing the information. In his defense, he said, 'I was on the phone with my brother, who is an investment banker. And if he knows, why shouldn't the public know?'... You'd think an elected official would be the first to know, not the last." [PROGRESSIVE, 2/7/2008]

Entity Tags: Enron Corporation, Barry Davis, Steve Maviglio, InfraGard, Gray Davis, Federal Bureau of Investigation

Category Tags: Privacy, Impositions on Rights and Freedoms, Other Surveillance

November 2, 2001: DOJ Issues Legal Opinion Directly Supporting Warrantless Domestic Surveillance



John Yoo, the Justice Department's (DOJ) Office of Legal Counsel (OLC) deputy assistant attorney general, sends a classified memo to Attorney General John Ashcroft justifying warrantless surveillance of US persons. The National Security Agency (NSA)'s domestic surveillance authorized by President Bush (see October 4, 2001, Early 2002, and December 15, 2005) will come to be publicly referred to as the President's Surveillance Program (PSP). This is not the first Yoo memo supporting warrantless surveillance (see September 25, 2001), but a 2009 report on the PSP jointly issued by the inspectors general (IGs) of the Department of Defense (DDD), DOJ, CIA, National Security Agency (NSA), and Office of the Director of National Intelligence (DDNI) will refer to it as "It the first OI Continon

directly supporting the legality of the PSP." The IGs' report will quote from and comment on the memo, noting that "deficiencies in Yoo's memorandum identified by his successors in the Office of Legal Counsel and the Office of the Deputy Attorney General later became critical to DOJ's decision to reassess the legality of the program in 2003." According to the IGs' report, Yoo asserts that warrantless surveillance is constitutional as long as it is "reasonable" under the Fourth Amendment, which only protects against "unreasonable searches and siezures." On this point, the IGs' report will note that Yoo's successors were troubled by his failure to discuss the Supreme Court's decision in Youngstown Sheet & Tube Co. v. Sawyer (1952), which found the president's wartime authority to be limited. His memo does acknowledge that the Foreign Intelligence Surveillance Act (FISA) "purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence," but asserts that it is only a "safe harbor for electronic surveillance" because it cannot "restrict the president's ability to engage in warrantless searches that protect the national security." Yoo also writes that Congress has not "made a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless searches in the national security area." The IGs' report will state that Yoo's successors considered this problematic because Yoo has omitted discussion of the fact that FISA explicitly authorizes the president to conduct warrantless surveillance during the first 15 days following a declaration of war by Congress, which they considered an expression of Congress's intent to restrict warrantless surveillance to a limited period of time and specific circumstances. The IGs' report will also state that Yoo's memo discusses "the legal rationale for Other Intelligence Activities authorized as part of the PSP," and that Yoo concludes, "[W]e do not believe that Congress may restrict the president's inherent constitutional powers, which allow him to gather intelligence necessary to defend the nation from direct attack." The IGs' report will say that "Yoo's discussion of some of the Other Intelligence Activities did not accurately describe the scope of these activities," and that Yoo's successors considered his discussion of these other activities to be "insufficient and presenting a serious impediment to recertification of the program as to form and legality." [INSPECTORS GENERAL, 7/10/2009, PP. PP. 11-13]

Memo's Existence Revealed by ACLU Lawsuit - On December 15, 2005, the New York Times will report that Bush authorized an NSA warrantless domestic surveillance program after the 9/11 attacks (see December 15, 2005). The American Civil Liberties Union (ACLU) will request records pertaining to the program under the Freedom of Information Act (FOIA) and then sue the Justice Department for the release of records. The existence of Yoo's November 2 memo will first be revealed in an October 19, 2007 deposition filed by then head of the OLC Steven Bradbury in response to the ACLU lawsuit, which says that it "[concerns] the legality of certain communications intelligence activities." After the 2009 release of the IGs' report the ACLU will notify the court and the government will agree to reprocess four OLC memos, including Yoo's November 2 memo. This memo and a May 6, 2004 memo by Yoo's OLC successor Jack Goldsmith that disputes many of Yoo's conclusions will be released in heavily redacted form on March 18, 2011. [ACLU.ORG, 2/7/2006; UNITED STATES DISTRICT COURT OF

Constitutional Experts Dispute Yoo's Legal Rationale - Numerous authorities on the law will question or reject the legal bases for warrantless domestic surveillance. In 2003, Yoo will leave the OLC. Goldsmith will begin a review of the PSP, after which he will conclude it is probably illegal in some respects and protest, within the executive branch, its continuation (see Late 2003-Early 2004 and December 2003-June 2004). Following the public disclosure of its existence, a January 5, 2006 report by the Congressional Research Service will find it to be of dubious legality (see January 5, 2006). On January 19, 2006, the DOJ will issue a 42-page white paper laying out the legal bases for the program (see January 19, 2006). These bases will be reviewed and rejected by 14 constitutional scholars and former government officials in a joint letter to Congress on February 2, 2006. [AL [PDF], 2/2/2006 The American Bar Association will adopt a resolution on February 13, 2006 that rejects DOJ's arguments and calls on Congress to investigate the program. [DELEGATES, 2/13/2006 To August 17, 2006, in the case ACLU v. NSA, US district judge Appa Diago Toulog will reject the government's investigate of the

DC, 10/19/2007; AMERICAN CIVIL LIBERTIES UNION, 3/19/2011]

uistrict juuge Ailila piggs raytoi witt reject the government s ilivocation or the "state secrets privilege" and its argument that plaintiffs' lack standing due to their being unable to prove they were surveilled, and will rule that warrantless surveillance is in violation of "the separation of powers doctrine, the Administrative Procedures Act, the First and Fourth Amendments to the United States Constitution, the FISA, and Title III" (see August 17, 2006). Taylor's ruling will be overturned on appeal, on the grounds that the plaintiffs lack standing as they cannot prove that surveillance has occurred. In another case, Al Haramain v. Barack Obama, the government will make the same arguments, but US district judge Vaughn Walker will reject these and conclude in 2010 that illegal surveillance occurred (see March 31, 2010). [AL-HARAMAIN V. OBAMA, 3/31/2010] Entity Tags: Steven Bradbury, Vaughn Walker, Ronald Dworkin, George W. Bush, John C. Yoo, American Bar Association, Office of Legal Counsel (DOJ), American Civil Liberties Union, John Ashcroft, Anna Diggs Taylor, US Department of Justice Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind

November 2, 2001: Chiara, Bogden Sworn in as US Attorneys





[Source: MLive (.com)]

Margaret Chiara and Daniel Bogden are sworn in as US Attorneys for the Western District of Michigan and Nevada, respectively. Bogden served for five years in the Air Force's Judge Advocate General's Office before moving on to become a prosecutor in Reno, Nevada. He became an Margaret Assistant US Attorney in Nevada in 1990. He was recommended for the US Attorney position by Senator John Ensign (R-NV). Chiara was unanimously confirmed by the US Senate and is Michigan's first female US Attorney. She has extensive experience as a prosecutor, and before her selection as US Attorney, was the policy and planning director for

the Michigan Supreme Court. She will serve on three subcommittees of the Attorney General's Advisory Committee (AGAC): Native American Issues, Management and Budget, and US Attorneys' Offices Outreach. Chiara replaces Interim US Attorney Phillip Green, who becomes First Assistant US Attorney. Joan Meyer, formerly the First Assistant, becomes a line assistant. Meyer will later be appointed Criminal Chief of the office. These personnel decisions will impact later events in Chiara's office. Chiara will successfully prosecute Michigan's first deathpenalty case since 1938, will increase felony prosecutions and convictions in her district by 15 percent, and will develop a widely used attorney training and mentoring program. [CBS NEWS, 2007; US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008; ATLANTIC MONTHLY, 4/2009; TALKING POINTS MEMO, 2011] There are 93 US Attorneys serving in the 50 states as well as in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. All US Attorneys are appointed by the president with the advice and consent of the Senate, and serve under the supervision of the Office of the Attorney General in the Justice Department. They are the chief law enforcement officers for their districts. They serve at the pleasure of the president and can be terminated for any reason at any time. Typically, US Attorneys serve a four-year term, though they often serve for longer unless they leave or there is a change in presidential administrations. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008] Entity Tags: US Department of Justice, Margaret M. Chiara, Daniel G. Bogden

Category Tags: 2006 US Attorney Firings

November 5, 2001: More Than 1,000 People Reportedly in Secret



The Justice Department announces that it has put 1,182 people into secret custody since 9/11. Most all of them are from the Middle East or South Asia. [NEW YORK TIMES, 8/3/2002] After this it stops releasing new numbers, but human rights groups believe the total number could be as high as 2,000. [INDEPENDENT, 2/26/2002] Apparently this is roughly the peak for secret arrests, and eventually most of the prisoners are released, and none are charged with any terrorist acts (see July 3. 2002; December 11, 2002). Their names will still not have been revealed (see August 2, 2002).

Entity Tags: US Department of Justice

Timeline Tags: Torture of US Captives, Complete 911 Timeline, 9/11 Timeline Category Tags: Detainments in US, Gov't Violations of Prisoner Rights

November 5, 2001: Justice Department Says Deputy Attorney General Has Power to Approve Wiretaps



John Yoo, a lawyer with the Justice Department's Office of Legal Counsel (OLC), writes a legal opinion that claims the attorney general, under Executive Order 12333 (see December 4, 1981), can grant the deputy attorney general the legal authority to approve the use of surveillance techniques for which a warrant would be required for law enforcement purposes. [US DEPARTMENT OF JUSTICE, 11/5/2001; AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 1

Entity Tags: Office of Legal Counsel (DOJ), US Department of Justice, John C. Yoo Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Other Surveillance

November 6, 2001: Justice Department Official Argues that President Has Power to Establish Military Commissions without Congressional Involvement



Patrick Philbin, an attorney with the Justice Department's Office of Legal Counsel, writes a lengthy and detailed memo arguing that the president may establish so-called "military commissions" for the trial and disposition of terror suspects without involvement in the US criminal justice system. Furthermore, Philbin opines, the president may do so without the approval or even the knowledge of Congress. [US DEPARTMENT OF JUSTICE, 11/6/2001]. AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 [Philbin's central argument is that 9/11 was an act of war, not a crime, and therefore the attacks triggered the president's full array of war powers, including the inherent authority to create military commissions. Philbin cites a 1942 case where then-President Roosevelt created a military commission to try eight Nazi saboteurs captured inside the US during the first year of America's involvement in World War II (see 1942); even though the Supreme Court backed Roosevelt, he felt unsure of the legality of such commissions, and did not use them in later trials of captured saboteurs. Since World War II, the laws of war have undergone drastic revisions, with Congress enacting the Uniform Code of Military Justice (UCMJ), which said that if military commissions were ever to be used again, they should use, as much as is practical, the same procedures and

defendant rights as are found in military courts-martial. The Senate had also ratified the 1949 Geneva Conventions, which granted all wartime prisoners the right to a fair trial. Philbin's memo ignores everything except the 1942 military commissions, and argues that if the president has the inherent and exclusive right to set up military commissions, as the Supreme Court had found, then Congress has no authority to restrict that right. [SAVAGE, 2007, PP. 136-137]

Entity Tags: Office of Legal Counsel (DOJ), Geneva Conventions, George W. Bush, Patrick F. Philbin, US Department of Justice

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

November 9, 2001: Pentagon Counsel Ignores Lawyer's Recommendations for Military Commissions Order





William J. Haynes, Defense Secretary Donald Rumsfeld's general counsel, shows a draft of a presidential order establishing military commissions to Colonel Lawrence J. Morris, a judge advocate general (JAG) attorney with strong experience in military justice and the laws of war. Morris heads a Pentagon legal team that has so far been excluded from the discussion on how suspected terrorists should be prosecuted. Col. Morris is given just 30 minutes to read the draft but is not allowed to keep a copy or even take notes. The next day, the Army's Judge Advocate General, Major General Thomas J. Romig, hastily convenes a meeting of Pentagon lawyers to prepare suggestions for improvement, with an eye on bringing the order closer to

William J. Haynes. [Source: US Defense Department] existing military legal standards. The final order, however, includes none of the lawyer's recommendations. "They hadn't changed a thing," a military official will later recall. [NEW YORK

TIMES, 10/24/2004; SAVAGE, 2007, PP. 138]

Entity Tags: Lawrence J. Morris, William J. Haynes

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power,

Other Legal Changes, Gov't Violations of Prisoner Rights

November 9, 2001: Ashcroft to Put Justice Department on 'Wartime Footing'



Attorney General John Ashcroft announces that the Justice Department is now on what he calls a "wartime footing." The agency is revamping its priorities to refocus its efforts on battling terrorism. According to Ashcroft, a plan, which he intends to submit to Congress, mandates a reorganization of the Justice Department, as well as component agencies such as the FBI and the Immigration and Naturalization Service (INS), both of which will be overhauled to take a more aggressive stance in the effort to ward off terrorism. The plan will take five years to fully implement. Ashcroft is reticent about the details of the plans, but some proposals include:

- Allowing federal prison authorities to eavesdrop on prisoners conferring with their attorneys, effectively voiding the attorney-client privilege, if those prisoners are considered to be a threat to national security;
- Redirecting 10 percent of the Justice Department's budget, or about \$2.5 billion, to counterterrorism efforts:
- Restructuring the INS to focus on identifying, deporting, and prosecuting illegal aliens, with a special focus on potential terrorists.

The eavesdropping privilege causes an immediate stir among civil libertarians and Constitutional scholars. Justice Department spokeswoman Mindy Tucker notes that the order has already been published in the Federal Register and is, essentially, the law. Information gathered by authorities during such eavesdropping sessions would not be used in criminal prosecutions of the suspects, Tucker promises. "The team that listens is not involved in the criminal proceedings," she says. "There's a firewall there." Senator Patrick Leahy (D-VT), chairman of the Senate Judiciary Committee, says he agrees with the general idea of refocusing the agency on terrorism, but suggests Ashcroft's plan be reviewed by an existing commission that is now examining the FBI's counterintelligence operations. That commission is headed by former FBI Director William Webster. Leahy's fellow senator, Charles Grassley (R-IA), says: "As with any reorganization, the devil will be in the details. I hope for new accountability measures, not just structural changes." Ashcroft says: "Defending our nation and defending the citizens of America against terrorist attacks is now our first and overriding priority. To fulfill this mission, we are devoting all the resources necessary to eliminate terrorist networks, to prevent terrorist attacks, and to bring to justice all those who kill Americans in the name of murderous ideologies." [NEW YORK TIMES, 11/3/2001; RICH, 2006, PP. 35] "It is amazing to me that Ashcroft is essentially trying to dismantle the bureau," says a former FBI executive director. "They don't know their history and they are not listening to people who do." [HARPER'S, 12/4/2001]

Entity Tags: Federal Bureau of Investigation, Mindy Tucker, John Ashcroft, US Immigration and Naturalization Service, Patrick J. Leahy, Charles Grassley, US Department of Justice, William H. Webster

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Surveillance, Gov't Violations of Prisoner Rights

November 10, 2001: Army JAG's Suggestions for Military Commissions Ignored



The Army's Judge Advocate General, Major General Thomas J. Romig, hastily meets with JAG lawyers Colonel Lawrence Morris and Brigadier General Scott Black to prepare suggestions for improving a draft presidential order establishing military commissions (see Late October 2001 and November 9, 2001), with an eye on bringing the order closer to existing military legal standards. The order is

modeled on a single world war II military commission (see 1942), and ignores the body of relevant law that came after that commission, including the Uniform Code of Military Justice and the Geneva Conventions (see November 6, 2001). In their view, the Bush administration seems determined to ignore 60 years of law and go back to a rough system of justice that, Romig will later say, "was going to be perceived as unfair because it was unnecessarily archaic." The three work through the Veterans' Day weekend on a number of suggestions that would bring the order closer to existing military legal standards. The final order, however, will include none of the lawyer's recommendations. "They hadn't changed a thing," a military official will later recall. [NEW YORK TIMES, 10/24/2004; SAVAGE, 2007, PP. 137-138]
Entity Tags: Thomas J. Romig, Lawrence J. Morris, Scott Black, Bush administration (43)

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Gov't Violations of Prisoner Rights

November 10, 2001: Cheney and Selected Lawyers Finalize Draft of Presidential Order Establishing Military Commissions



Vice President Cheney leads a meeting at the White House to put the finishing touches on a draft presidential order establishing military commissions (see Late October 2001 and November 9, 2001). The meeting includes Attorney General John Ashcroft, Defense Department chief counsel William J. Haynes, and several White House lawyers, but leaves out senior officials of the State Department and the National Security Council. Cheney has decided to tell neither National Security Adviser Condoleezza Rice nor Secretary of State Colin Powell about the order until it has already been signed. Cheney has also told no one in the interagency working group ostensibly formulating the administration's approach to prosecuting terrorists (see Shortly Before September 23, 2001). Ashcroft angrily dissents from Cheney's plan to give the White House sole authority over the commissions, and invokes his authority as the nation's top law enforcement official to demand that the Justice Department be given a say in the decision. Cheney overrules Ashcroft's objections. He will discuss the draft with President Bush over lunch a few days later (see November 11-13, 2001). [NEW YORK TIMES, 10/24/2004; SAVAGE, 2007, PP. 138] Entity Tags: William J. Haynes, Colin Powell, George W. Bush, John Ashcroft, Condoleezza Rice, Richard ("Dick") Cheney

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Detainments in US, Gov't Violations of Prisoner Rights, Government Acting in Secret

November 11-13, 2001: Cheney Presents Torture Memo to Bush in Private; Dodges Procedure, Law



At a private lunch meeting, Vice President Cheney presents President Bush with a four-page memo, written in strict secrecy by lawyer John Yoo of the Justice Department's Office of Legal Counsel (see November 6-10, 2001), and a draft executive order that establishes military commissions for the trial of suspected terrorists (see November 10, 2001). The legal brief mandates that foreign terrorism suspects held in US custody have no access to any courts whatsoever, civil, criminal, military, domestic, or foreign. They can be detained indefinitely without charges. If they are to be tried, they can be tried in closed "military commissions." [WHITE HOUSE, 11/13/2001; SAVAGE, 2007, PP. 138; WASHINGTON POST, 6/24/2007] Military Commissions Suitable to 'Unitary Executive' Agenda - According to author Craig Unger, military commissions are a key element of Cheney's drive towards a "unitary executive," the accretion of governmental powers to the presidency at the expense of the legislative and judicial branches. Federal trials for terror suspects would put them under all the legal procedures provided under the US judicial system, an unacceptable alternative. Military courts-martial would give them the rights granted by the Geneva Conventions. Military commissions, however, are essentially tribunals operating outside of both civilian and military law. Defendants have few rights. Secret evidence can be admitted without being disclosed to the defendants. Hearsay and coerced testimony are admissible. Prisoners can be held indefinitely. [UNGER, 2007, PP. 221-222] No Bureaucratic Footprints - After Bush peruses the memo and the draft order,

Cheney takes them back with him to his office. After leaving Bush, Cheney takes extraordinary steps to ensure that no evidence of his involvement remains. The order passes from Cheney to his chief counsel David Addington, and then to associate White House counsel Bradford Berenson. At Berenson, the provenance of the order breaks, as no one tells him of its origin. Berenson rushes the order to deputy staff secretary Stuart Bowen with instructions to prepare it for signature immediately, without advance distribution to Bush's top advisers. Bowen objects, saying that he had handled thousands of presidential documents without ever sidestepping the strict procedures governing coordination and review. Bowen relents only after being subjected to what he will later recall as "rapid, urgent persuasion" that Bush is standing by to sign and that the order is too sensitive to delay. Berenson will later say he understood that "someone had briefed" Bush "and gone over it" already. "I don't know who that was." When it is returned to Bush's office later in the day, Bush signs it immediately (see November 13, 2001). Virtually no one else has seen the text of the memo. The Cheney/Yoo proposal has become a military order from the commander in chief.

<u>Dodging Proper Channels</u> - The government has had an interagency working group, headed by Pierre Prosper, the ambassador at large for war crimes, working on the same question (see Shortly Before September 23, 2001). But Cheney and Addington have refused to have any contact with Prosper's group; one of Cheney's team later says, "The interagency [group] was just constipated." Cheney leapfrogged over Prosper's group with their own proposal, performing an adroit bureaucratic move that puts their proposal in place without any oversight whatsoever, and cutting Prosper's group entirely out of the process. When the news of the order is broadcast on CNN, Secretary of State Colin Powell demands, "What the hell just happened?" An angry Condoleezza Rice, the president's national security adviser, sends an aide to find out. Virtually no one, even witnesses to the presidential signing, know that Cheney promulgated the order. In 2007, Washington Post reporters Barton Gellman and Jo Becker will call the episode "a defining moment in Cheney's tenure" as vice president. Cheney has little Constitutional power, but his deft behind-the-scenes manuevering and skilled bureaucratic gamesmanship enable him to pull off coups like this one, often leaving even the highest White House officials none the wiser. "[H]e has found a ready patron in George W. Bush for edge-of-the-envelope views on executive supremacy that previous presidents did not assert," the reporters write. [WHITE HOUSE, 11/13/2001; UNGER, 2007, PP. 221-222; WASHINGTON POST, 6/24/2007] Quiet Contravening of US Law - Six years later, Unger will observe that few inside or outside Washington realize that Cheney has, within a matter of days, contravened and discarded two centuries of American law. He has given the president, in the words of former Justice Department lawyer Bruce Fein, "the functions of judge, jury, and prosecutor in the trial of war crimes [and] the authority to detain American citizens as enemy combatants indefinitely... a frightening power indistinguishable from King Louis XIV's execrated lettres de cachet that occasioned the storming of the Bastille." [UNGER, 2007, PP. 223-224] Entity Tags: Stuart W. Bowen, Office of Legal Counsel (DOJ), Richard ("Dick") Cheney, US Department of Justice, John C. Yoo, David S. Addington, George W. Bush, Barton Gellman, Bradford Berenson, Jo Becker, Bruce Fein, Condoleezza Rice, Craig Unger, Colin Powell, Pierre-Richard Prosper Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power,

Detainments in US, Gov't Violations of Prisoner Rights, Government Acting in Secret

November 13, 2001: President Bush Authorizes Military Tribunals for Alleged Terrorists



President Bush issues a three-page executive order authorizing the creation of military commissions to try non-citizens alleged to be involved in international terrorism (see November 10, 2001). The president will decide which defendants will be tried by military commissions. Defense Secretary Rumsfeld will appoint each panel and set its rules and procedures, including the level of proof needed for a conviction. A two-thirds vote is needed to convict a defendant and impose a sentence, including life imprisonment or death. Only the president or the secretary of defense has the authority to overturn a decision. There is no provision for an appeal to US civil courts. foreign courts. or international tribunals. Nor does

the order specify how many judges are to preside on a tribunal or what qualifications they must have. [US DEPARTMENT OF DEFENSE, 11/13/2001; WASHINGTON POST, 11/14/2001; NEW YORK TIMES, 10/24/2004]

Questionable Rule of Evidence Adopted - The order also adopts a rule of evidence stemming from the 1942 Supreme Court case of *United States v. Quirin* that says evidence shall be admitted "as would... have probative value to a reasonable person." This rule, according to Judge Evan J. Wallach, "was repeatedly used [in World War II and in the post-war tribunals] to admit evidence of a quality or obtained in a manner which would make it inadmissible under the rules of evidence in both courts of the United States or courts-martial conducted by the armed forces of the United States." [WALLACH, 9/29/2004] Evidence derived from torture, for example, could theoretically be admitted. It should be noted that the order is unprecedented among presidential directives in that it takes away some individuals' most basic rights, while claiming to have the power of law, with the US Congress not having been so much as consulted.

Specifics Left to Rumsfeld - Bush's executive order contains few specifics about how the commissions will actually function. Bush will delegate that task to

Rumsfeld, although, as with the order itself, White House lawyers will actually make the decision to put Rumsfeld in charge, and Bush will merely sign off on the decision (see March 21, 2002). [SAVAGE, 2007, PP. 138]

Dispute over Trial Procedures - During the next few years, lawyers will battle over the exact proceedings of the trials before military commissions, with many of the military lawyers arguing for more rights for the defendants and with Defense Department chief counsel William J. Haynes, and Justice Department and White House lawyers (including White House counsel Alberto Gonzales, vice presidential counsel David Addington, and Gonzales' deputy Timothy Flanigan) taking a more restrictive line. [NEW YORK TIMES, 10/24/2004]

Out of the Loop - Both National Security Adviser Condoleezza Rice and Secretary of State Colin Powell were left outside of the circle during the drafting of this directive (see November 6, 2001 and November 9, 2001). Rice is reportedly angry about not being informed. [NEW YORK TIMES, 10/24/2004]

Serious 'Process Failure' - National Security Council legal adviser John Bellinger will later call the authorization a "process failure" with serious long-term consequences (see February 2009).

Entity Tags: George W. Bush, John Bellinger, Donald Rumsfeld, Colin Powell, Condoleezza Rice, David S. Addington, Alberto R. Gonzales, William J. Haynes, Timothy E. Flanigan

Timeline Tags: Torture of US Captives

Category Tags: Detainments Outside US, Gov't Violations of Prisoner Rights

November 14, 2001: Charlton Sworn In as US Attorney for Arizona





Charlton. [Source: Crooks

Paul Charlton is sworn in as the US Attorney for Arizona. [CBS NEWS, 2007; TALKING POINTS MEMO, 2011] An experienced prosecutor, Charlton was recommended for the position by Senators Jon Kyl (R-AZ) and John McCain (R-AZ). He began as an interim US Attorney, and was reappointed to the position after 120 days by the federal district court, as the law provides. President Bush nominated him for the position in July 2001, and he was confirmed by the Senate. He will go on to chair and Liars the Border and Immigration Subcommittee of the Attorney General's Advisory Committee (AGAC), replacing US Attorney David Iglesias of New

Mexico (see October 18, 2001). He will also create a program to protect crime victims, praised by the Justice Department as a "model program" in 2006. He and his staff will consistently be ranked in the top three US Attorneys' offices in number and quality of prosecutions and convictions, and have notably high rates of convictions in the targeted areas of drugs, weapons, and immigration crimes. Charlton will also establish the Anti-Terrorism Advisory Council (ATAC), which will successfully improve communications and coordination between numerous law enforcement agencies. There are 93 US Attorneys serving in the 50 states as well as in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. All US Attorneys are appointed by the president with the advice and consent of the

the Justice Department. They are the chief law enforcement officers for their districts. They serve at the pleasure of the president, and can be terminated for any reason at any time. Typically, US Attorneys serve a four-year term, though they often serve for longer unless they leave or there is a change in presidential administrations. [IGLESIAS AND SEAY, 5/2008, PP. 119; US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008]

Entity Tags: John McCain, David C. Iglesias, US Department of Justice, Paul K.

Charlton, Anti-Terrorism Advisory Council, Jon Kyl

Category Tags: 2006 US Attorney Firings

November 15, 2001: Military Commissions Order Creates Conflict among Administration Supporters, Critics



President Bush's order to establish military tribunals, or commissions, to try suspected terrorists (see November 13, 2001) is defended by Vice President Cheney, who tells reporters that the suspects subjected to such tribunals "don't deserve to be treated as prisoners of war. They don't deserve the same guarantees and safeguards we use for an American citizen." Law professor Douglas Kmiec agrees. "This is the answer for what we're dealing with: unlawful belligerents who do not come within our constitutional structure," he says. "The president's order is not extraordinary when one places it in the context of historic military campaigns." Civil libertarians and administration critics disagree. Representative John Conyers (D-MI) says military commissions are based on the "thinnest legal precedents" and would "antagonize our allies and alienate the many legal immigrants in this country." Law professor Anne-Marie Slaughter notes: "President Bush has said this is a war to bring terrorists to justice. So the real question is, what's justice? That requires a fair trial and proof beyond a reasonable doubt, and that is not the aim of a military tribunal." A better option, she says, would be convening an international war crimes tribunal. And law professor Joshua Rosenkranz says: "There is a natural temptation to hunker down whenever we are in crisis. But there is a danger that this hysteria-driven effort to protect to ourselves is weakening the foundations of our democracy." [USA TODAY,

Entity Tags: Richard ("Dick") Cheney, Anne-Marie Slaughter, Douglas Kmiec, Joshua Rosenkranz, John Conyers, George W. Bush

Category Tags: Impositions on Rights and Freedoms, Gov't Violations of Prisoner Rights

Mid-November, 2001: Departure of US Attorney Will Impact Ongoing Prosecutions



Mary Jo White, the US Attorney for Southern New York, announces that she will be leaving her position by the end of the year. According to a media report, this will impact how a number of ongoing investigations continue, including White's probe into the last-minute pardons issued by President Clinton. Other investigations by White's office involve allegations against Senator Hillary Clinton (D-NY) and Senator Robert Torricelli (D-NJ), as well as an investigation into Osama bin Laden's role in the September 11, 2001 attacks. It is uncertain how those probes will fare. But, says White's former deputy, Matthew Fishbein, White "may want some resolution before her term ends." Regardless, Fishbein adds, "[T]his is an office where US Attorneys come and go and the work continues." White is almost the only US Attorney to retain her seat after President Bush took office in January 2001 (see January 2001). Attorney General John Ashcroft put an assistant in charge of the 9/11 investigation, and that investigation seems to be producing little new information. [HOUSTON CHRONICLE, 11/23/2001]

Entity Tags: Matthew Fishbein, Hillary Clinton, Mary Jo White, Robert Torricelli, William Jefferson ("Bill") Clinton, John Ashcroft

Category Tags: 2006 US Attorney Firings

November 19, 2001: Center for National Security Studies Criticizes Military Commission



Scorching criticism of President Bush's Executive Order (see November 13, 2001) comes from the Center for National Security Studies, which says it "violates separation of powers as the creation of military commissions has not been

authorized by the Congress and is outside the president's constitutional powers." The order is also an "unconstitutional attempt to suspend the writ of habeas corpus." [CENTER FOR NATIONAL SECURITY STUDIES, 11/19/2001] Law professor Kathleen Clark similarly states: "These military tribunals are troubling in many respects, particularly in their denial of basic due process protection for defendants. But even apart from this question of civil liberties, this presidential order is unconstitutional because the president lacks the authority under the constitution and statutory law to create this kind of court." [CENTER FOR DEMOCRACY AND TECHNOLOGY, 11/19/2001]

Entity Tags: Kathleen Clark, Center for National Security Studies

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Detainments in US, Expansion of

Presidential Power, Gov't Violations of Prisoner Rights

November 20, 2001: Justice Department Issues Secret Memo Regarding Geneva Conventions, War Crimes Act



Justice Department lawyer John Yoo, an official with the Office of Legal Counsel (OLC), issues a classified memo to White House counsel Alberto Gonzales. The contents of the memo will remain secret, but its existence will be revealed in a June 2007 deposition filed in the course of an American Civil Liberties Union (ACLU) lawsuit. The memo is known to cover the War Crimes Act, the Hague Convention, the Geneva Conventions, the federal criminal code, and detainee treatment. [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: Robert J. Delahunty, American Civil Liberties Union, Office of Legal Counsel (DOJ), John C. Yoo, US Department of Justice

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

November 28, 2001: FBI Warns Field Officers Not to Abuse National Security Letters



The newly adopted USA Patriot Act (see October 26, 2001) allows FBI field offices to issue, without court orders, so-called "national security letters," or NSLs, that require recipients—telecommunications firms, employers, libraries, anyone—to provide detailed information on their clients, employees, and patrons. The FBI's Office of General Counsel warns each field office of the potential for abuse inherent in such powerful and relatively unrestricted instruments, writing in part: "NSLs are powerful investigative tools in that they can compel the production of substantial amounts of relevant information. However, they must be used judiciously.... In deciding whether or not to re-authorize the broadened authority, Congress certainly will examine the manner in which the FBI exercised it. Executive Order 12333 and the FCIG [Attorney General Guidelines for FBI Foreign Intelligence Collection and Counterintelligence Investigations] require that the FB[I] accomplish its investigations through the 'least intrusive' means. Supervisors should keep this in mind when deciding whether or not a particular use of NSL authority is appropriate. The greater availability of NSLs does not mean that they should be used in every case." This warning not to overuse NSLs is not always heeded (see February 2005 and Before Mid-March, 2007). [WIRED NEWS, 7/10/2007] Entity Tags: Federal Bureau of Investigation, Office of General Counsel (FBI), USA

Category Tags: Impositions on Rights and Freedoms, Government Acting in Secret, Government Classification, National Security Letters

Late November, 2001: Former FBI Director, Officials Say Ashcroft's Anti-Terrorism Policies Violate 'Common Sense' Law Enforcement Procedures



Former FBI director William Webster and eight former FBI officials publicly criticize Attorney General John Ashcroft's post-9/11 policies (see Spring 2001, September 12, 2001, October 9, 2001, October 11, 2001, and November 9, 2001). The criticisms come less over Ashcroft's civil liberties abrogations and more

because Asherore's poticies violate tay emoreciment common sense. By captaining suspected low-level terrorists in public sweeps, the Justice Department and the FBI lose the ability to track those suspects to their superiors in their organizations and groups. (None of the 900 or so suspects rounded up in the Ashcroft sweeps will be charged with any 9/11-related crimes—see October 20, 2001 and November 5, 2001.) [RICH, 2006, PP. 35-36] Webster says that long-term surveillance and undercover operations are much more effective than mass arrests. [HARPER'S, 12/4/2001] The former FBI officials also ridicule Ashcroft's idea of interviewing 5,000 Middle Eastern men (none of whom will ever be convicted of a terrorism-related crime). Kenneth Walton, who founded the FBI's first Joint Terrorism Task Force, says: "It's the Perry Mason school of law enforcement, where you put them in there and they confess. Well, it just doesn't work that way. You say, 'Tell me everything you know,' and they give you the recipe to Mom's chicken soup.... It is ridiculous." Most of those "invited" to interview never showed up, the officials note, and those who did merely answered "yes" or "no" to rote questions. [TIME, 11/29/2001; RICH, 2006, PP. 35-361 Many local police officers are reluctant to participate in Ashcroft's public sweeps. Eugene, Oregon police spokeswoman Pam Alejandere tells reporters, "Give us some legitimate reason to talk to the people—other than that they're from the Middle East—and we'll be glad to." [TIME, 11/29/2001] Entity Tags: William H. Webster, John Ashcroft, Pam Alejandere, Kenneth Walton, Federal Bureau of Investigation

Category Tags: Impositions on Rights and Freedoms, Detainments in US, Other Surveillance, Gov't Violations of Prisoner Rights

Late 2001: NSA Domestic Wiretapping Ties Up FBI with Bad Leads



The National Security Agency begins sending data—consisting of telephone numbers, e-mail addresses, and names—to the FBI that was obtained through surveillance of international communications originating within the US (see After September 11, 2001 and October 2001). The NSA sends so much data, in fact, that hundreds of agents are needed to investigate the thousands of tips per month that the data is generating. However, virtually all of this information leads to dead ends and/or innocent people. FBI officials repeatedly complain that the unfiltered information is bogging down the bureau: according to over a dozen current and former law enforcement and counterterrorism officials, the flood of tips provide them and their colleagues with very few real leads against terrorism suspect. Instead, the NSA data diverts agents from more productive work. Some FBI officials view the NSA data as pointless and likely illegal intrusions on citizens' privacy. Initially, FBI director Robert Mueller asks senior administration officials "whether the program had a proper legal foundation," but eventually defers to Justice Department legal opinions. One former FBI agent will later recall, "We'd chase a number, find it's a schoolteacher with no indication they've ever been involved in international terrorism—case closed. After you get a thousand numbers and not one is turning up anything, you get some frustration." A former senior prosecutor will add, "It affected the FBI in the sense that they had to devote so many resources to tracking every single one of these leads, and, in my experience, they were all dry leads. A trained investigator never would have devoted the resources to take those leads to the next level, but after 9/11, you had to." Former NSA director Bobby Ray Inman says that the problem between the FBI and the NSA may stem in part from their very different approaches. Signals intelligence, the technical term for the NSA's communications intercepts, rarely produces "the complete information you're going to get from a document or a witness" in a traditional FBI investigation, he says. And many FBI officials are uncomfortable with the NSA's domestic operations, since by law the NSA is precluded from operating inside US borders except under very specific circumstances. [NEW YORK TIMES, 1/17/2006]

Entity Tags: Federal Bureau of Investigation, National Security Agency, Bobby Ray Inman, Robert S. Mueller III

Timeline Tags: Complete 911 Timeline

Category Tags: NSA Wiretapping / Stellar Wind, Database Programs

December 6, 2001: Ashcroft Says People Nostalgic Over



'Phantoms of Lost Liberty' 'Aid Terrorists'

Attorney General Ashcroft says, "To those who pit Americans against immigrants, citizens against non-citizens, to those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists for they erode our national unity and diminish our resolve. They give ammunition to America's enemies and pause to America's friends. They encourage people of good will to remain silent in the face of evil." [CNN, 12/7/2001] Entity Tags: John Ashcroft

Category Tags: Impositions on Rights and Freedoms, Gov't Violations of Prisoner Rights

December 6, 2001: Ashcroft Prohibits FBI from Checking Gun Purchase Records of 9/11 Suspects



It is reported that in the wake of 9/11, Attorney General John Ashcroft has prevented the FBI from investigating gun-purchase records to discover if any of the hundreds arrested or suspected since 9/11 had bought any guns. The White House supports him, saying they have no intention of changing the law to clarify the FBI's ability to search gun-purchase records. [CNN, 12/6/2001; NEW YORK TIMES, 12/6/2001] A spokesman for The International Association of Chiefs of Police, the largest group of law enforcement executives in the US, says, "This is absurd and unconscionable. The decision has no rational basis in public safety. It sounds to me like it was made for narrow political reasons based on a right-to-bear-arms mentality." [NEW YORK TIMES, 12/6/2001] There were reports that the 9/11 hijackers on at least Flight 11 and Flight 93 used guns in the hijacking (see (8:20 a.m.) September 11, 2001 and 9:27 a.m. September 11, 2001).

Entity Tags: John Ashcroft, Federal Bureau of Investigation, International Association of Chiefs of Police

Timeline Tags: Complete 911 Timeline Category Tags: Other Legal Changes, Privacy

December 10, 2001: Campus Newsletter Slams Ashcroft's 'Phantoms of Lost Liberty' Assertion



The editors of the University of Maine newspaper, the Maine Campus, angrily respond to Attorney General John Ashcroft's excoriation of civil libertarians who "scare peace-loving people with phantoms of lost liberty" (see December 6, 2001). The editors write, "The only reason why we lost liberty, you jack_ss, is because you took it away from us!" [ROBERTS, 2008, PP. 30] Entity Tags: Maine Campus, University of Maine, John Ashcroft Category Tags: Impositions on Rights and Freedoms, Media Involvement and Responses

December 13, 2001: Bush Administration Invokes 'National Interest' in Refusing to Turn Over Documents to Congress



The Bush administration solves the dilemma surrounding a request by Congressman Dan Burton (R-IN) for documents from the Clinton administration (see Early September, 2001) by placing secrecy and executive privilege above a chance to potentially attack Clinton. Burton has tucked the request for the Clinton documents in with another request on a far more serious matter, possible malfeasance by an FBI office. President Bush instructs Attorney General John Ashcroft not to turn over the documents on either case, explaining that turning over the documents would violate the "national interest" by giving Congress documents related to "prosecutorial decision making." Burton, the Republican and Democratic members of the House Government Reform Committee, and editorial writers and commentators around the country criticize the administration over the refusal to turn over the documents, particularly the FBI information. The White House adds fuel to the controversy by claiming, both on this day and in a January 2002 letter from White House counsel Alberto Gonzales, that the refusal is consistent with long-standing Justice Department policy (see January 10, 2002). The committee will secure an opinion from eminent Constitutional scholar Professor Charles Tiefer, who will show that the White House's argument is flatly wrong. [DEAN, 2004, PP. 85-88]

'Your Guy's Acting Like a King' - An infuriated Burton confronts a lower-level Justice Department official sent to testify about the government's position:

"We've got a dictatorial president and a Justice Department that does not want Congress involved. Your guy's acting like he's king." In his official comments, Burton accuses the Bush administration of setting a "terrible, terrible precedent" in the name of executive power. "This is not a monarchy," Burton says. "The legislative branch has oversight responsibilities to make sure there is no corruption in the executive branch." In the Senate, Charles Grassley (R-IA) agrees with Burton. "Anything that limits legitimate Congressional oversight is worrisome," he says. "This move needs to be carefully scrutinized, particularly in an atmosphere where Congress is giving the Justice Department additional powers and authority." <u>Politics over Principles</u> - But the storm of Congressional criticism will have little lasting effect. In 2007, author Charlie Savage will write: "[P]olitics defeated... principles. Most Republicans were unwilling to challenge Bush, and many Democrats opposed Burton's probes of the Clinton campaign fund-raising, so few members of either party were interested in fighting the White House about it. And because Bush's first invocation of [executive privilege] was done in part to protect Clinton and the Democrats, the gesture seemed principled rather than selfserving. It was tactically brilliant." [SAVAGE, 2007, PP. 98]

Administration Later Turns Over Documents - After the media controversy, the administration quietly, and without public acknowledgment, will provide the FBI material to the committee. The committee's final report on the FBI investigation will conclude with six pages of withering criticism of the administration's fallacious claim to executive privilege. However, as former Nixon White House counsel John Dean will note in 2004, the criticism from the committee is essentially meaningless to the White House, because it will garner no attention from the media and thereby cost the administration no political capital. And while some observers cannot understand why the administration would take such a hardline stand on an issue that lacks any implications for national security, the public interest, or the protection of ongoing criminal investigations, Dean will write that "it makes absolute sense if the administration's aim is total information control." He adds: "Accordingly, its policy remains to employ executive privilege aggressively, as long as the political price is not too high. If this administration is given a second term, there will be no price too high to expand this presidential privilege, enabling the executive branch to remain completely unaccountable." [DEAN, 2004, PP. 85-88]

<u>Court Upholds Bush Actions</u> - In 2003, a district court will uphold the Bush administration's refusal to turn over the documents to Burton's committee (see March 28, 2003).

Entity Tags: John Dean, House Committee on Government Reform, Dan Burton, Clinton administration, Bush administration (43), Charles Tiefer, Charlie Savage, Federal Bureau of Investigation, George W. Bush

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Government Acting in Secret, Government Classification

December 20, 2001: Republican Lobbyist Named US Attorney for New Jersey



Chris Christie, a New Jersey Republican lawyer with no experience as a prosecutor or in criminal law, is confirmed as US Attorney for New Jersey. Christie was a controversial choice. A source for the New York Times told a reporter in August that "[e]verybody in the game wants Christie," referring to the New Jersey Republican Party, "and everybody not in the game is looking for a rational alternative." Christie was also favored by the Bush administration. Republican operative and fundraiser William Palatucci will later boast that he was able to use his influence with White House political chief Karl Rove to push Christie ahead of others in the nomination process, a claim Rove will later deny. Christie was once a lobbyist for Palatucci's law firm Dughi, Hewit & Palatucci. State Senator Joseph M. Kyrillos (R-NJ) said of Christie: "There's a lot of good feeling for Chris at the White House. He's worked very hard for the president and has been recommended by virtually all the key leaders from state government and political circles." Former US Attorney for New Jersey Robert J. Del Tufo, a Democrat, said of the nomination: "The best of all possible worlds would be if the decision were made on nonpolitical grounds. Maybe I'm living on Mars, but I think it's so important to the nublic to have the percention that people are being chosen on the basis of

the public to have the perception that people are being chosen on the basis of

merit." [NEW YORK TIMES, 8/26/2001; NEW YORK TIMES, 3/29/2007; US HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY, 7/7/2009 ♣; NEW JERSEY STAR-LEDGER, 8/26/2009; YAHOO! NEWS, 5/23/2010]

Entity Tags: New Jersey Republican Party, Christopher J. ("Chris") Christie, Karl C. Rove, William Palatucci, Joseph M. Kyrillos, Robert J. Del Tufo, New York Times Category Tags: 2006 US Attorney Firings

December 21, 2001: Justice Department Issues Secret Memo Regarding Applicability of Uniform Code of Military Justice During 'Undeclared War'



The Justice Department's John Yoo sends a classified memo to the Defense Department's general counsel, William Haynes. The contents will not be made public, but the American Civil Liberties Union (ACLU) will eventually learn that the memo concerns possible criminal charges to be brought against an American citizen who is suspected of being a member of either al-Qaeda or the Taliban. The ACLU believes the memo discusses the laws mandating that US military personnel must adhere to the Uniform Code of Military Justice, and how those laws may not apply to military personnel during a so-called "undeclared war." [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009

Entity Tags: US Department of Justice, American Civil Liberties Union, Office of Legal Counsel (DOJ), John C. Yoo

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Government Acting in Secret, Government Classification

December 28, 2001: Justice Department Lawyers Claim Courts Have No Jurisdiction over Guantanamo Detainees



Deputy Assistant Attorney Generals Patrick Philbin and John Yoo send a memorandum to Pentagon General Counsel William J. Haynes offering the legal opinion that US courts do not have jurisdiction to review the detention of foreign prisoners at Guantanamo Bay. Therefore detentions of persons there cannot be challenged in a US court of law. The memo is endorsed by the Department of Defense and White House legal counsel Alberto Gonzales. [NEWSWEEK, 5/24/2004] The memo addresses "the question whether a federal district court would properly have jurisdiction to entertain a petition for a writ of habeas corpus filed on behalf of an alien detained at the US naval base at Guantanamo Bay, Cuba." The conclusion of Philbin and Yoo is that it cannot, based primarily on their interpretation of a decision by the US Supreme Court in the 1950 Eisentrager case, in which the Supreme Court determined that no habeas petition should be honored if the prisoners concerned are seized, tried, and held in territory that is outside of the sovereignty of the US and outside the territorial jurisdiction of any court of the US. Both conditions apply to Guantanamo according to Philbin and Yoo. Approvingly, they quote the US Attorney General in 1929, who stated that Guantanamo is "a mere governmental outpost beyond our borders." A number of cases, quoted by the authors, "demonstrate that the United States has consistently taken the position that [Guantanamo Bay] remains foreign territory, not subject to US sovereignty." Guantanamo is indeed land leased from the state

of Cuba, and therefore in terms of legal possession and formal sovereignty still part of Cuba. But Philbin and Yoo acknowledge a problem with the other condition: namely that the territory is outside the US's jurisdiction. They claim with certainty that Guantanamo "is also outside the 'territorial jurisdiction of any court of the United States.'" However, the Supreme Court should not have made a distinction between jurisdiction and sovereignty here; the wording of the decision is really, Philbin and Yoo believe, an inaccurate reflection of its intent: "an arguable imprecision in the Supreme Court's language." For that reason, they call for caution. "A non-frivolous argument might be constructed, however, that [Guantanamo Bay], while not be part of sovereign territory of the United States, is within the territorial jurisdiction of a federal court." [US DEPARTMENT OF JUSTICE, 12/28/2001]

Entity Tags: John C. Yoo, Alberto R. Gonzales, Patrick F. Philbin, William J. Haynes Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Other Legal Changes, Detainments Outside US. Gov't Violations of Prisoner Rights

Late December 2001 - 2002: Justice Department Official Fired, Investigated, Harassed over Lindh E-Mails





Jesselyn Radack. [Source: Whistleblower (.org)]

Justice Department legal ethics adviser Jesselyn Radack is subjected to intensive harassment and scrutiny by her employer after she consulted with a Criminal Division lawyer over the John Walker Lindh ("American Taliban") case (see December 7, 2001). Suddenly Fired - After Radack contradicts the department's story on Lindh and his supposed failure to request legal counsel, she is suddenly fired when an unscheduled performance evaluation gives her poor ratings. Less than a year before, her performance evaluation had earned her a promotion and a merit bonus.

<u>Leaks E-Mails to Reporter, Lindh Case Derailed</u> -When she learns that the Justice Department has failed to turn over a number of e-mails concerning

Lindh to a federal judge as requested, Radack turns over the e-mails to reporter Michael Isikoff of Newsweek. "I wasn't in my mind saying, 'Gee, I want to be a whistle-blower,'" she will later say. "I was just trying to correct the wrong, just trying to set something straight." The resulting article prompts questions about the Justice Department's honesty in discussing the Lindh case, and prompts a surprising turn of events: the department announces that it will end the Lindh case rather than hold an evidence-suppression hearing that would have probed the facts surrounding his interrogations. The government drops the worst of the charges against Lindh, and he pleads guilty to lesser charges (see July 15, 2002) and October 4, 2002).

Unspecified Allegations of 'Criminal' Behavior, Secret Reports Alleging Unfitness -As for Radack, even though the e-mails she released are not classified and she has broken no laws in making them public, the Bush administration wanted that information kept secret. She loses her job at a private law firm after the administration informs the firm that she is a "criminal" who cannot be trusted. She is subjected to a yearlong criminal investigation by the Justice Department; no charges are ever filed. "My attorneys asked what I was being investigated for and never got an answer," Radack will later say. "There is no law against leaking. This was nonclassified stuff. I think they were just trying to get me to slip into making a false statement. Beyond that, it never seemed like they were really going to bring charges. This was just to harass me." The administration files a secret report with the bar associations in the states she is licensed to practice law, alleging that she is unfit to practice law and recommending "discipline" against her. Because the report is secret, Radack finds it difficult to challenge the unspecified charges. (Most of the complaints against her will eventually be dismissed.)

No-Fly List - And Radack is placed on the administration's "no-fly" list, ostensibly reserved for suspected terrorists and other criminals, forcing her to endure intensive and invasive searches every time she attempts to board an airplane.

Making an Example - In 2007, reporter and author Charlie Savage will note that Radack gained no protection from the various whistleblower protection laws on the books, mostly because those laws have no enforcement mechanisms and rely "on the willingness of high-ranking executive branch officials to obey a statute." Savage will observe: "The whistleblower laws did nothing to help Radack when the Bush-Cheney administration decided to make an example of her, sending a clear warning to other officials who might be inclined to bring secret executive branch wrongdoing to light. And Radack would not be the last." [REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, 6/2003; SAVAGE, 2007, PP. 107-110]

Entity Tags: Michael Isikoff, Jesselyn Radack, Charlie Savage, Bush administration (43), John Walker Lindh, US Department of Justice

Category Tags: Impositions on Rights and Freedoms, Government Acting in Secret, Media Involvement and Responses

2002: US Attorney for New Mexico Does Well in First Performance Review



David Iglesias, the newly installed US Attorney for New Mexico (see October 18, 2001), does well in his first Evaluation and Review Staff (EARS) evaluation by the Justice Department. His evaluation states: "The United States Attorney was well respected by the client agencies, judiciary, and [his office] staff. He provided good leadership... and was appropriately engaged in the operations of the office." The EARS report contains no criticisms or concerns about his performance. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008] A follow-up report lauds Iglesias and his office for effectively implementing the department's national priorities, praises their work on the Anti-Terrorism Advisory Council, and compliments Iglesias on pursuing white-collar corruption, fraud, drugs, and firearms cases. The report concludes: "In addition to pursuing national priorities, the district priorities you have set illustrate your district's firm grasp on its issues and crime problems. The complex issues arising from the Indian Country in your district present challenges which you have met with vigor.... The management principles applied in your district promote high quality work from your personnel, allow for flexibility, yet ensure that cases are being handled appropriately." [US HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY, 5/21/2007]

Entity Tags: US Department of Justice, David C. Iglesias

Category Tags: 2006 US Attorney Firings

2002: US Agencies Evade Law by Using Private Database on US Citizens



The FBI and Defense Department begin paying ChoicePoint, a private data-collection company, for access to its data-searching system. Neither agency is legally permitted to keep database records on US citizens, but they are effectively able to circumvent this law by contracting the task to ChoicePoint. Both agencies have steadily expanded their relationship with the company. Exactly what kind of data is being accessed and the legality of doing so remain murky. [GOVERNMENT EXECUTIVE, 11/11/2005]

Entity Tags: US Department of Defense, ChoicePoint, Federal Bureau of Investigation

Timeline Tags: Complete 911 Timeline Category Tags: Database Programs

2002: Cheney Tells CIA Not to Brief Assassination and Capture Program to Congress



Vice President Dick Cheney tells the CIA not to brief Congress about an agency program to kill and capture al-Qaeda leaders (see Shortly After September 17, 2001). Two reasons will be given for withholding the information. One is that the program never becomes operational. [NEW YORK TIMES, 7/12/2009; NEW YORK TIMES, 7/14/2009; WASHINGTON POST, 8/20/2009; NEW YORK TIMES, 8/20/2009] The other is that the agency already has legal authority to kill al-Qaeda leaders (see September 17, 2001). [NEW YORK TIMES, 8/20/2009] According to the New York Times, Cheney's instruction to keep the program secret suggests "that the Bush administration had put a high priority on the program and its secrecy." [NEW YORK TIMES, 7/12/2009] The fact that the program is never briefed to Congress until it is cancelled in 2009 (see June 24, 2009) will cause controversy after it becomes public knowledge, and the House Intelligence Committee will investigate whether it was a breach of the law (see Before August 20, 2009). The law is apparently unclear on whether this program should be briefed, as it requires the president to make sure the House and Senate intelligence committees "are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity." However, such briefings should be done "to the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." House Intelligence Committee member Peter Hoekstra (R-MI) will later say that Congress would have approved of the program only in what the New York Times calls "the angry and panicky days after 9/11, on 9/12," but not later, after fears and tempers had begun to cool. [NEW YORK TIMES, 7/12/2009]

Entity Tags: House Intelligence Committee, Peter Hoekstra, Central Intelligence

Agency, Richard ("Dick") Cheney, Senate Intelligence Committee

Timeline Tags: Complete 911 Timeline

Category Tags: Expansion of Presidential Power, Other Legal Changes, Government

Acting in Secret

2002-2004: Texas Republicans Redraw State Electoral Districts, Critics Claim Map Gerrymandered



For 13 years, Texas Republicans have complained that Texas Democrats have "gerrymandered" the state's electoral district to give Democrats an undue representation in the state's US House delegation (see 1990 - 1991 and 2000-2002). Now, with Republicans in control of both houses of the state legislature, they decide to redistrict the state to favor Republican representation in Congress. In 2002, Democrats hold a 17-15 edge in US Representatives. The decision is unusual inasmuch as states usually only redraw their district boundaries once a decade, in concurrence with the federal census. Democrats wage a bitter battle against the Republican redistricting efforts, even fleeing the state for a time to prevent the legislature from reaching a quorum (see May 12-15, 2003), but Republicans, led by House Majority Leader Tom DeLay (R-TX), eventually win out, and the Texas legislature enacts a new redistricting plan, Plan 1347C, that concentrates large numbers of Democrats, including minority voters, in a relatively small number of districts and gives Republicans a majority of prospective voters in a much larger number of more sparsely populated districts. In the November 2004 elections, the plan works as envisioned: Republicans have a 21-11 majority in the US Congressional delegation, and obtain a 58 percent to 41 percent edge in statewide voting results. Even before the elections, a number of organizations and individuals file a lawsuit challenging the legality of the redistricting map under the Voting Rights Act (VRA—see August 6, 1965, 1970, 1975, April 22, 1980, and June 29, 1989), charging that the plan unlawfully dilutes racial minority voting strength and is designed to maximize partisan advantage at the voting booths, in essence gerrymandering the state's electoral districts. A district court finds the redistricting plan is essentially legal, but the Supreme Court vacates that decision and remands the case for reconsideration; the court

again finds in favor of the plaintiffs, affirming the map as lawful, IAUSTIN AMERICAN-STATESMAN, 5/14/2003; WASHINGTON POST, 12/2/2005; FINDLAW, 6/28/2006; OYEZ (.ORG), 2012] That decision will be substantially affirmed by the Supreme Court (see June 28, 2006). DeLay says that President Bush, the former governor of Texas, is squarely behind the redistricting efforts. After a Congressional leadership breakfast in May 2003, DeLay says he spoke briefly with Bush: "As I was walking out, I said, you know, that redistricting is ongoing. And he said, 'Well, good, I'd like to see that happen.'" [DALLAS MORNING NEWS, 5/14/2003] During the battle over the redistricting, Texas Democrats insist that the new districts will not only illegally protect Republican majorities, but will dilute the impact of votes from outside cities and suburban areas. US Representative Max Sandlin (D-TX) tells a reporter: "This plan doesn't just destroy Democratic representation... it destroys rural representation. East Texas has had tremendous battles with Dallas over water rights. It is absolutely ridiculous to have a Dallas Congress member represent East Texans concerning water rights. And you can go issue by issue." Republicans from rural districts say they have no such worries. [AUSTIN AMERICAN-STATESMAN, 5/14/2003] Entity Tags: Tom DeLay, Texas Republican Party, George W. Bush, Max Sandlin, Voting Rights Act of 1965, Texas Democratic Party

Category Tags: Voting Rights, Court Procedures and Verdicts, Election, Voting Laws and Issues

2002 and After: Millions of Americans Assigned Terrorism Risk Scores without Their Knowledge



The US Department of Homeland Security (DHS)'s Automated Targeting System begins assigning terrorism risk scores to American and foreign citizens crossing US borders. The scores, generated by government computers, are supposed to approximate the risk that the travelers are terrorists or criminals. They are reportedly based on analysis of travelers' "travel records and other data, including items such as where they are from, how they paid for tickets, their

motor venicle records, past one-way travet, seating preference and what kind of meal they ordered," according to the Associated Press. The government plans to keep these scores on file for 40 years. Travelers are not permitted to challenge, or even see, their risk scores. DHS says the program is "one of the most advanced targeting systems in the world" and insists that without this data the nation's ability to identify security threats "would be critically impaired." [ASSOCIATED PRESS, 11/30/2006; ASSOCIATED PRESS, 12/1/2006] Critics of the initiative say the program violates the appropriations bill for the agency which prohibits "assigning risk to passengers whose names are not on government watch lists." [ASSOCIATED PRESS, 12/7/2006]

Entity Tags: US Department of Homeland Security, Automated Targeting System Category Tags: Privacy, Airport and Immigration Security, Citizenship Rights

Early 2002: Bush Signs Executive Order Allowing NSA to Spy on US Citizens; Spying Began before 9/11



Sometime in early 2002, President Bush signs a secret executive order authorizing the National Security Agency (NSA) to wiretap phone conversations and read emails to and from US citizens. The order extends an operation set into motion at least as early as October 2001 to begin wiretapping US citizens' phones in a response to the 9/11 attacks. When the program is revealed by the US media in late 2005 (see December 15, 2005), Bush and his officials will say the program is completely legal, though it ignores the requirements of the Foreign Intelligence Surveillance Act (FISA) that requires the government to obtain court-issued warrants to mount surveillance against US citizens. They will insist that only those suspected of having ties to al-Qaeda are monitored, and only when those individuals make or receive international communications. [NEW YORK TIMES, 12/15/2005; WASHINGTON POST, 12/22/2005; NEWSWEEK, 12/22/2008] Bush's order authorizes the NSA to monitor international telephone conversations and international emails of hundreds, and perhaps thousands, of US citizens without court warrants, in an effort to track what officials call "dirty numbers" linked to al-Qaeda. When the program is finally revealed by the New York Times over three years later (see December 15, 2005), officials will say that the NSA still seeks warrants to monitor domestic communications. But there is little evidence of this (see, for example, Spring 2001). The presidential order is a radical shift in US surveillance and intelligence-gathering policies, and a major realignment for the NSA, which is mandated to only conduct surveillance abroad. Some officials believe that the NSA's domestic eavesdropping crosses constitutional limits on legal searches. "This is really a sea change," a former senior official who specializes in national security law will say in December 2005. "It's almost a mainstay of this country that the NSA only does foreign searches." [NEW YORK TIMES, 12/15/2005] Some sources indicate that NSA domestic surveillance activities, such as data-mining, the use of information concerning US persons intercepted in foreign call monitoring, and possibly direct surveillance of US persons, took place prior to 9/11 (see Late 1999, February 27, 2000, December 2000, February 2001, February 2001, Spring 2001, and July 2001).

Entity Tags: George W. Bush, Al-Qaeda, Foreign Intelligence Surveillance Court, National Security Agency

Category Tags: Impositions on Rights and Freedoms, Privacy, Patriot Act, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind

January 2002: Cheney Lies about GAO Records Request



Vice President Dick Cheney continues to battle the General Accounting Office (GAO)'s request for the records of his energy task force (see January 29, 2001 and April 17, 2001 and After) in the broadcast media (see July 26, 2001). On Fox News, he reiterates his insistence that he will not turn over any records from the task force unless compelled to do so by the courts, and says indignantly, "They've demanded of me that I give Henry Waxman [the California Democratic representative who originated the demand for task force records] a list of everybody I met with, of everything that was discussed, any advice that was revealed, notes and memos of these meetings." Cheney is lying. The GAO only asked for the minutes from the meetings and the names of the participants (see July 31, 2001 and February 22, 2002), and soon the GAO will scale back its request

to nothing more than the names and schedules of the participants and the meetings, not the contents of the meetings themselves. Four years later, when the court case has long been settled in Cheney's favor (see February 7, 2003), Cheney will still mischaracterize the issue as an improper demand from Congress for an executive branch official to disclose the contents of private conversations and meetings, and therefore destroy "the ability of the president and the vice president to receive unvarnished advice." Former Justice Department official Bruce Fein will call the argument "bogus, specious, [and] absurd." [DUBOSE AND BERNSTEIN, 2006, PP. 12-13] GAO officials call Cheney's statement a "critical and highly material misrepresentation" of the facts. [NATIONAL REVIEW, 2/20/2002] Entity Tags: General Accounting Office, Richard ("Dick") Cheney, Bruce Fein, National

Energy Policy Development Group Timeline Tags: US Environmental Record Category Tags: Expansion of Presidential Power

January 2002: Study Finds Agents Have Sought Records From 220 Libraries



The Patriot Act permits federal agents to secretly obtain information from booksellers and librarians about customers' and patrons' reading, internet and book-buying habits, merely by alleging that the records are relevant to an antiterrorism investigation. The act prohibits librarians and booksellers from revealing these requests, so they cannot be challenged in court (see October 2, 2001).

[NEWSDAY, 9/16/2002] A University of Illinois study now concludes that federal agents have sought records from about 220 libraries nationwide since September 2001. [MIAMI HERALD, 9/1/2002] The Justice Department refuses to say how many times it has invoked this Patriot Act provision (see June 13, 2002). [OBSERVER, 3/16/2003] But Assistant Attorney General Daniel Bryant says that people who borrow or buy books surrender their right of privacy. [SAN FRANCISCO CHRONICLE, 3/10/2003] Some libraries and bookstores unhappy with the law begin to fight back in a number of ways. Some libraries have posted signs warning that the government may be monitoring their users' reading habits. [REUTERS, 3/11/2003] Thousands of libraries are destroying records so agents have nothing to seize. [NEW YORK TIMES, 4/7/2003] Many librarians polled say they would break the law and deny orders to disclose reading records. [SAN FRANCISCO CHRONICLE, 3/10/2003]

Entity Tags: Daniel Bryant, US Department of Justice, USA Patriot Act Category Tags: Patriot Act

January 9, 2002: Justice Department Sends Memo Regarding Review of Terrorist Surveillance Program



The Justice Department's Patrick Philbin sends a classified memo to Attorney General John Ashcroft. The memo's contents will not be divulged, but the American Civil Liberties Union (ACLU) will later learn that it regards Ashcroft's review of the Terrorist Surveillance Program (TSP-see March 2002). [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 [All The memo contains a legal review by Ashcroft of President Bush's order authorizing the TSP, the Bush administration's name for its warrantless wiretapping program. The review is requested before one of the 45day reauthorizations by the president as required by law. [PROPUBLICA, 4/16/2009] Entity Tags: US Department of Justice, Patrick F. Philbin, Terrorist Surveillance Program, American Civil Liberties Union, John Ashcroft

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Government Acting in Secret, Government Classification, NSA Wiretapping / Stellar Wind, Other Surveillance

January 9, 2002: Cummins Sworn in as US Attorney for Eastern **Arkansas**





H.E. "Bud" Cummins III is sworn in as the US Attorney for the Eastern District of Arkansas. [TALKING POINTS MEMO, 2011] He actually took office on December 20, 2001. Cummins is not an experienced prosecutor, but is primarily a private law practitioner. He has clerked for several judges, Bud Cummins. and was the senior legal counsel for Governor Mike Huckabee (R-AR)

[Source: Arkansas Times] between 1997 and 1998. In 2000, he served as a counsel for the Bush-Arkansas Times] Cheney presidential campaign. He was recommended for the position of US Attorney by Senator Tim Hutchinson (R-AR). [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008] There are 93 US Attorneys serving in the 50 states as well as in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. All US Attorneys are appointed by the president with the advice and consent of the Senate, and serve under the supervision of the Office of the Attorney General in the Justice Department. They are the chief law enforcement officers for their districts. They serve at the pleasure of the president, and can be terminated for any reason at any time. Typically, US Attorneys serve a four-year term, though they often serve for longer unless they leave or there is a change in presidential administrations. [US DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, 9/29/2008]

Entity Tags: Tim Hutchinson, H.E. ("Bud") Cummins III, US Department of Justice, Mike Huckabee

Category Tags: 2006 US Attorney Firings

January 9, 2002: Yoo Memo Says US Not Bound by International



Laws in War on Terror

John Yoo, a neoconservative lawyer in the Justice Department's Office of Legal Counsel serving as deputy assistant attorney general, writes a classified memo to senior Pentagon counsel William J. Haynes, titled "Application of Treaties and Law to al-Qaeda and Taliban Detainees." [NEW YORK TIMES, 5/21/2004]

Yoo: Geneva Conventions Do Not Apply in War on Terror - Yoo's memo, written in conjunction with fellow Justice Department lawyer Robert Delahunty, echoes arguments by another Justice Department lawyer, Patrick Philbin, two months earlier (see November 6, 2001). Yoo states that, in his view, the laws of war, including the Geneva Conventions, do not apply to captured Taliban or al-Qaeda prisoners, nor do they apply to the military commissions set up to try such prisoners.

Geneva Superseded by Presidential Authority - Yoo's memo goes even farther, arguing that no international laws apply to the US whatsoever, because they do not have any status under US federal law. "As a result," Yoo and Delahunty write, "any customary international law of armed conflict in no way binds, as a legal matter, the president or the US armed forces concerning the detention or trial of members of al-Qaeda and the Taliban." In essence, Yoo and Delahunty argue that President Bush and the US military have carte blanche to conduct the global war on terrorism in any manner they see fit, without the restrictions of law or treaty. However, the memo says that while the US need not follow the rules of war, it can and should prosecute al-Qaeda and Taliban detainees for violating those same laws—a legal double standard that provokes sharp criticism when the memo comes to light in May 2004 (see May 21, 2004). Yoo and Delahunty write that while this double standard may seem "at first glance, counter-intuitive," such expansive legal powers are a product of the president's constitutional authority "to prosecute the war effectively." The memo continues, "Restricting the president's plenary power over military operations (including the treatment of prisoners)" would be "constitutionally dubious." [MOTHER JONES, 1/9/2002; US DEPARTMENT OF JUSTICE, 6/9/2002 A; NEWSWEEK, 5/21/2004; NEW YORK TIMES, 5/21/2004]

Overriding International Legal Concerns - Yoo warns in the memo that international law experts may not accept his reasoning, as there is no legal precedent giving any country the right to unilaterally ignore its commitment to Geneva or any other such treaty, but Yoo writes that Bush, by invoking "the president's commander in chief and chief executive powers to prosecute the war effectively," can simply override any objections. "Importing customary international law notions concerning armed conflict would represent a direct infringement on the president's discretion as commander in chief and chief executive to determine how best to conduct the nation's military affairs." [SAVAGE, 2007, PP. 146] The essence of Yoo's argument, a Bush official later says, is that the law "applies to them, but it doesn't apply to us." [NEWSWEEK, 5/21/2004] Navy general counsel Alberto Mora later says of the memo that it "espoused an extreme and virtually unlimited theory of the extent of the president's commander-in-chief

autnority." [SAVAGE, 2007, PP. 181]

White House Approval - White House counsel and future Attorney General Alberto Gonzales agrees (see January 25, 2002), saying, "In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions." [MOTHER JONES, 1/9/2002] Spark for Prisoner Abuses - Many observers believe that Yoo's memo is the spark for the torture and prisoner abuses later reported from Iraq's Abu Ghraib prison (see Evening November 7, 2003), Guantanamo Bay (see December 28, 2001), and other clandestine prisoner detention centers (see March 2, 2007). The rationale is that since Afghanistan is what Yoo considers a "failed state," with no recognizable sovereignity, its militias do not have any status under any international treaties. [NEWSWEEK, 5/21/2004; NEWSWEEK, 5/24/2004]

<u>Resistance from Inside, Outside Government</u> - Within days, the State Department will vehemently protest the memo, but to no practical effect (see January 25, 2002).

Entity Tags: Patrick F. Philbin, Robert J. Delahunty, US Department of Justice, Office of Legal Counsel (DOJ), Taliban, John C. Yoo, Colin Powell, Geneva Conventions, Al-Qaeda, George W. Bush, Alberto Mora, US Department of State, Alberto R. Gonzales, William J. Haynes

Timeline Tags: Torture of US Captives, Complete 911 Timeline

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Gov't Violations of Prisoner Rights

January 10, 2002: Gonzales Falsely Claims Refusal to Provide Documents to Congress is Long-Standing Policy



White House counsel Alberto Gonzales issues a letter stating that the administration's refusal to turn over documents about possible FBI malfeasance to Dan Burton (R-IN), the chairman of the House Government Reform Committee, is consistent with long-standing Justice Department policy. Gonzales's assertion will be disputed by the Committee, based on an assessment by law Professor Charles Tiefer of the University of Baltimore (see December 13, 2001). [DEAN, 2004, PP. 87] Entity Tags: Federal Bureau of Investigation, Alberto R. Gonzales, Dan Burton, US Department of Justice, Bush administration (43)

Category Tags: Expansion of Presidential Power, Impositions on Rights and Freedoms, Government Acting in Secret, Government Classification

January 11, 2002: Justice Department Sends Secret Memo on Geneva Conventions to White House



Justice Department lawyer John Yoo sends a classified memo to White House counsel Alberto Gonzales. The contents of the memo will remain secret, but the American Civil Liberties Union (ACLU) will later learn that the memo is about the Geneva Conventions. [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009 🍂

Entity Tags: US Department of Justice, Alberto R. Gonzales, American Civil Liberties Union, John C. Yoo, Office of Legal Counsel (DOJ)

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

January 11, 2002: OLC Sends Memo Regarding Authority of Government Officials, Agencies in Interpreting Treaties and International Law



Jay Bybee, the chief of the Justice Department's Office of Legal Counsel (OLC), sends a classified memo to White House counsel Alberto Gonzales. The contents will never be divulged, but the American Civil Liberties Union (ACLU) will later learn that it regards the authority of the OLC, the attorney general, the Justice Department, and the State Department in interpreting treaties and international law. [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: American Civil Liberties Union, Alberto R. Gonzales, US Department of State, US Department of Justice, Office of Legal Counsel (DOJ), Jay S. Bybee Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Government Acting in Secret, Government Classification

January 11, 2002: First Prisoners Transferred to Guantanamo Bay





An aerial shot of Camp X-Ray. [Source: Public domain]

The US prison camp at Guantanamo receives its first 20 prisoners from the Afghan battlefield. [REUTERS, 1/11/2002] The prisoners are flown on a C-141 Starlifter cargo plane, escorted during the final leg of the journey by a Navy assault helicopter and a naval patrol boat. The prisoners, hooded, shackled, wearing blackout goggles and orange jumpsuits, and possibly drugged, are escorted one by one off the plane by scores of Marines in full battle gear. They are interred in what reporter

Charlie Savage will later call "kennel-like outdoor cages" in the makeshift containment facility dubbed Camp X-Ray. [GUARDIAN, 1/11/2002; SAVAGE, 2007, PP. 142-143]

<u>Leaked Photos of Transfer Cause International Outcry</u> - Pictures of prisoners being transferred in conditions clearly in violation of international law are later leaked, prompting an outcry. But rather than investigating the inhumane transfer, the Pentagon will begin investigating how the pictures were leaked. [ASSOCIATED PRESS, 11/9/2002]

Guantanamo Chosen to Keep Prisoners out of US Jurisdiction - The prisoners are sent to this base—leased by Cuba to the US—because it is on foreign territory and therefore beyond the jurisdiction of US law (see December 28, 2001). [GLOBE AND MAIL, 9/5/2002] It was once a coaling station used by the US Navy, and in recent years had been used by Coast Guard helicopters searching for drug runners and refugees trying to make it across the Florida Straits to US soil. In 1998, the Clinton administration had briefly considered and then rejected a plan to bring some prisoners from Kosovo to Guantanamo. Guantanamo was chosen as an interim prison for Afghanis who survived the uprising at Mazar-e Sharif prison (see 11:25 a.m. November 25, 2001) by an interagency working group (see Shortly Before September 23, 2001), who considered and rejected facilities in Germany and other European countries. Group leader Pierre-Richard Prosper will later recall: "We looked at our military bases in Europe and ruled that out because (a), we'd have to get approval from a European government, and (b), we'd have to deal with the European Court of Human Rights and we didn't know how they'd react. We didn't want to lose control over it and have it become a European process because it was on European soil. And so we kept looking around and around, and basically someone said, 'What about Guantanamo?'" The base may well have not been the final choice of Prosper's group; it was still researching a Clinton-era attempt to house Haitian and Cuban refugees there that had been challenged in court when Rumsfeld unilaterally made the decision to begin transferring prisoners to the naval base. [SAVAGE, 2007, PP. 143-144]

No Geneva Convention Strictures Apply to 'Unlawful Combatants' - Rumsfeld, acting on the advice of the Justice Department's Office of Legal Counsel, publicly declares the detainees "unlawful combatants" and thereby not entitled to the rights of the Geneva Conventions. "Unlawful combatants do not have any rights under the Geneva Convention," Rumsfeld says. Though, according to Rumsfeld, the government will "for the most part treat them in a manner that is reasonably consistent with the Geneva Conventions, to the extent they are appropriate." [REUTERS, 1/11/2002] There is no reason to feel sorry for these detainees, says Gen. Richard B. Myers, chairman of the Joint Chiefs of Staff. He states, "These are people who would gnaw through hydraulic lines at the back of a C-17 to bring it

down." INEW YORK TIMES, 6/21/20041

<u>British Officials: 'Scandalous'</u> - Senior British officials privately call the treatment of prisoners "scandalous," and one calls the refusal to follow the Geneva Convention "not benchmarks of a civilized society." [GUARDIAN, 6/13/2002]

Entity Tags: US Department of the Navy, United States, US Department of Defense, Pierre-Richard Prosper, Richard B. Myers, Clinton administration, Donald Rumsfeld, Charlie Savage, Guantanamo Bay Naval Base, Office of Legal Counsel (DOJ), Geneva Conventions

Timeline Tags: Torture of US Captives, Complete 911 Timeline

Category Tags: Detainments Outside US, Gov't Violations of Prisoner Rights

January 11, 2002: State Department's Chief Legal Adviser Calls Yoo's Torture Memo 'Seriously Flawed'





William Howard Taft IV. [Source:

William Howard Taft IV, the State Department's chief legal adviser, responds to John Yoo's January 9,2002, memo (see January 9, 2002) saying that Yoo's analysis is "seriously flawed." Taft writes: "In previous conflicts, the United States has dealt with tens of thousands of detainees without repudiating its obligations under the [Geneva] Conventions. I have no doubt we can do so here, where a relative handful of persons is involved." [NEWSWEEK, 5/24/2004] Applying the Geneva Conventions, according to Taft, would demonstrate that the United States "bases its conduct on its international legal obligations and the rule of law, not just on its policy preferences." Taft ends with

a scorching criticism. "Your position is, at this point, erroneous in its substance and untenable in practice. Your conclusions are as wrong as they are incomplete.

Let's talk." [LE MONDE (PARIS), 10/25/2004]

Entity Tags: William Howard Taft IV, John C. Yoo

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power,

Gov't Violations of Prisoner Rights

January 14, 2002: Justice Department Sends Secret Memo to State Department Claiming War Crimes Act Precludes Prosecution of Enemy Combatants



Justice Department lawyers John Yoo and Robert Delahunty send a classified memo to the chief legal adviser for the State Department, William Howard Taft IV. The contents of the memo will remain secret, but the American Civil Liberties Union (ACLU) will later learn that the memo concerns the Justice Department's interpretation of the War Crimes Act. According to Yoo and Delahunty, the War Crimes Act does not allow the prosecution of accused al-Qaeda and Taliban suspects. Yoo will cite this memo in a 2003 memo concerning the military interrogation of so-called enemy combatants (see March 14, 2003). [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: Office of Legal Counsel (DOJ), American Civil Liberties Union, John C. Yoo, William Howard Taft IV, US Department of Justice, War Crimes Act, US Department of State

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

Mid-January 2002: Poindexter Begins Information Awareness Office





Vice Admiral John Poindexter testifying before Congress in the Iran Contra hearings in 1987. [Source: Associated Press]

Vice Admiral John Poindexter begins running a shadowy new government agency called the Information Awareness Office. [NEW YORK TIMES, 2/13/2002; FEDERAL COMPUTER WEEK, 10/17/2002] Poindexter. formerly President Reagan's National Security Adviser, is known for his five felony convictions of lying to Congress, destroying documents, and obstructing Congress in its investigation of his role in the mid-1980s Iran-Contra affair. Later his convictions were overturned on a technicality. [LOS ANGELES TIMES, 11/17/2002] Far from apologizing, Poindexter said it was his duty to lie to Congress. [NEWSDAY, 12/1/2002] The New York Times notes that his new agency "is developing technologies to give federal officials instant access to vast new surveillance and information-analysis systems." The new office is part of DARPA, the Defense Advanced Research Projects Agency. Poindexter was also known for his

controversial role in shifting control of computer security to the military in the 1980s. Says Marc Rotenberg, former counsel for the Senate Judiciary Committee, "It took three administrations and both political parties over a decade to correct those mistakes." [NEW YORK TIMES, 2/13/2002] Surprisingly, Poindexter's appointment is little noticed until later in 2002 when the Total Information Awareness program is revealed (see March 2002; November 9, 2002). Incidentally, several others involved in the Iran-Contra affair also find jobs in the Bush Administration, including Elliott Abrams, John Negroponte, and Otto Reich. [OBSERVER, 12/8/2002] Entity Tags: Total Information Awareness, Defense Advanced Research Projects Agency, John Poindexter

Timeline Tags: Iran-Contra Affair Category Tags: Database Programs

January 18-25, 2002: President Bush Ignores Advice from Senior Cabinet and Military Officials, Decides Geneva Conventions Do Not Apply to Taliban



Siding with the Pentagon and Justice Department against the State Department, President Bush declares the Geneva Conventions invalid with regard to conflicts with al-Qaeda and the Taliban. Secretary of State Colin Powell urges Bush to reconsider, saying that while Geneva does not apply to al-Qaeda terrorists, making such a decision for the Taliban-the putative government of Afghanistan-is a different matter. Such a decision could put US troops at risk. Both Defense Secretary Donald Rumsfeld and Joint Chiefs chairman General Richard B. Myers support Powell's position. Yet another voice carries more weight with Bush: John Yoo, a deputy in the Justice Department's Office of Legal Counsel (OLC—see October 23, 2001). Yoo says that Afghanistan is a "failed state" without a functional government, and Taliban fighters are not members of an army as such, but members of a "militant, terrorist-like group" (see January 9, 2002). White House counsel Alberto Gonzales agrees with Yoo in a January 25 memo, calling Yoo's opinion "definitive." The Gonzales memo concludes that the "new kind of war" Bush wants to fight should not be equated with Geneva's "quaint" privileges granted to prisoners of war, or the "strict limitations" they impose on interrogations (see January 25, 2002). Military lawyers dispute the idea that Geneva limits interrogations to recitals of name, rank, and serial number, but their objections are ignored. For an OLC lawyer to override the judgment of senior Cabinet officials is unprecedented. OLC lawyers usually render opinions on questions that have already been deliberated by the legal staffs of the agencies involved. But, perhaps because OLC lawyers like Yoo give Bush the legal opinions he wants, Bush grants that agency the first and last say in matters such as these. "OLC was definitely running the show legally, and John Yoo in particular," a former Pentagon lawyer will recall. "Even though he was quite young, he exercised disproportionate authority because of his personality and his strong opinions." Yoo is also very close to senior officials in the office of the vice president and in the Pentagon's legal office. [LEDGER (LAKELAND FL), 10/24/2004]

Undermining, Cutting out Top Advisers - Cheney deliberately cuts out the

president's national security counsel, John Bellinger, because, as the Washington Post will later report, Cheney's top adviser, David Addington, holds Bellinger in "open contempt" and does not trust him to adequately push for expanded presidential authority (see January 18-25, 2002). Cheney and his office will also move to exclude Secretary of State Colin Powell from the decision-making process, and, when the media learns of the decision, will manage to shift some of the blame onto Powell (see January 25, 2002). [WASHINGTON POST, 6/24/2007] Final Decision - Bush will make his formal final declaration three weeks later (see February 7, 2002).

Entity Tags: US Department of Defense, US Department of Justice, Richard B. Myers, US Department of State, Taliban, Office of Legal Counsel (DOJ), John C. Yoo, Alberto R. Gonzales, Richard ("Dick") Cheney, Colin Powell, Al-Qaeda, Condoleezza Rice, Donald Rumsfeld, John Bellinger, George W. Bush, Geneva Conventions, David S. Addington

Timeline Tags: Torture of US Captives

Category Tags: Expansion of Presidential Power, Impositions on Rights and Freedoms, Gov't Violations of Prisoner Rights

January 18-25, 2002: White House National Security Counsel Cut out of Decision-Making Process Regarding Abandonment of Geneva Conventions



John Bellinger, the White House's chief national security counsel, sends his supervisor, National Security Adviser Condoleezza Rice, what he thinks is a private memo with a blunt warning about the legality of the proposal to ignore the Geneva Conventions in interrogating terror suspects (see January 18-25, 2002). The proposal, Bellinger writes, will place Bush in direct breach of international law and threaten the most fundamental cooperation from allied governments. Faxes from other governments, even Britain, have been pouring into the State Department warning that they cannot turn over suspects to the US if the Bush administration withdraws from accepted legal norms. The Bellinger memo quickly finds its way into Vice President Cheney's office, to Bellinger's chagrin; Cheney is reportedly "concerned" about Belliger's advice. Bellinger does not know until now that any documents prepared for Rice are always "routed outside the formal process" to Cheney. The reverse does not apply. Bellinger is unaware of just how systematically he is being cut out of the decision-making process. [LEDGER (LAKELAND FL), 10/24/2004; WASHINGTON POST, 6/24/2007]

Entity Tags: Condoleezza Rice, Bush administration (43), John Bellinger, US Department of State, Geneva Conventions, Richard ("Dick") Cheney

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Government Acting in Secret, Gov't Violations of Prisoner Rights

January 22, 2002: Justice Department Memo Argues that Fighters Captured in Afghanistan Should Have Only Limited Rights



Jay Bybee, the head of the Justice Department's Office of Legal Counsel (OLC), and OLC lawyer John Yoo send a memo to White House counsel Alberto Gonzales and Defense Department chief counsel William Haynes. Known as the "Treaties and Laws Memorandum," the document addresses the treatment of detainees captured in Afghanistan, and their eventual incarceration at Guantanamo and possible trial by military commissions. The memo asserts that the Geneva Conventions do not apply to al-Qaeda detainees, and the president has the

authority to deny Taliban members POW status. The document goes on to assert that the president is not bound by international laws such as the Geneva Conventions because they are neither treaties nor federal laws. [US DEPARTMENT OF JUSTICE, 1/22/2002]; AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: Office of Legal Counsel (DOJ), John C. Yoo, Jay S. Bybee, US Department of Justice

Timeline Tags: Torture of US Captives, War in Afghanistan

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Detainments Outside US, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

January 22, 2002: Senators Request GAO Assessment of Bush Energy Policy



Senator Carl Levin (D-MI), the chairman of the investigations subcommittee of the Senate Governmental Affairs Committee, and fellow senators Byron Dorgan (D-ND), Ernest Hollings (D-SC), and Joseph Lieberman (D-CT) ask the General Accounting Office (GAO) to evaluate the process by which the Bush administration's energy policy has been developed (see May 16, 2001). The senators' request is apparently in support of the GAO's long-blocked investigation of Vice President Cheney's energy task force (see January 29, 2001). [GENERAL ACCOUNTING OFFICE, 8/25/2003]

Entity Tags: Carl Levin, Bush administration (43), Byron L. Dorgan, General Accounting Office, Joseph Lieberman, National Energy Policy Development Group, Ernest F. Hollings

Timeline Tags: US Environmental Record Category Tags: Expansion of Presidential Power

January 24, 2002: Justice Department Sends Secret Memo on International Law to White House



Justice Department lawyer John Yoo sends a classified memo to White House counsel Alberto Gonzales. The contents of the memo remain secret, but the American Civil Liberties Union (ACLU) will later learn that the memo regards the application of international law to the United States (see January 22, 2002). [AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: US Department of Justice, American Civil Liberties Union, Office of Legal Counsel (DOJ), John C. Yoo

Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

January 24-26, 2002: Office of Legal Counsel Sends Secret Memos on Geneva Conventions, POWs to White House and Deputy Attorney General



John Yoo, a lawyer in the Justice Department's Office of Legal Counsel (OLC), sends a classified memo to White House counsel Alberto Gonzales. The contents of the memo will remain secret, but the American Civil Liberties Union (ACLU) will later learn that the memo is about the Geneva Conventions and is applicable to prisoners of war. Yoo's boss, OLC head Jay Bybee, sends another secret memo about the Geneva Conventions to Deputy Attorney General Larry Thompson.

[AMERICAN CIVIL LIBERTIES UNION [PDF], 1/28/2009]

Entity Tags: Jay S. Bybee, American Civil Liberties Union, Geneva Conventions, US Department of Justice, John C. Yoo, Office of Legal Counsel (DOJ), Larry D. Thompson Category Tags: Impositions on Rights and Freedoms, Expansion of Presidential Power, Other Legal Changes, Gov't Violations of Prisoner Rights, Government Acting in Secret, Government Classification

January 25, 2002: Gonzales Recommends Retaining Decision to



Declare War on Terror Exempt from Geneva Conventions

White House lawyer Alberto Gonzales completes a draft memorandum to the president advising him not to reconsider his decision (see January 18-25, 2002) declaring Taliban and al-Qaeda fighters ineligible for prisoner of war status as Colin Powell has apparently recommended. [US DEPARTMENT OF JUSTICE, 1/25/2004]; NEWSWEEK, 5/24/2004] The memo recommends that President Bush accept a recent Office of Legal Counsel (OLC) memo saying that the president has the authority to set aside the Geneva Conventions as the basis of his policy (see January 9, 2002). [SAVAGE, 2007, PP. 146]

Geneva No Longer Applies, Says Gonzales - Gonzales writes to Bush that Powell "has asked that you conclude that GPW [Third Geneva Convention] does apply to both al-Qaeda and the Taliban. I understand, however, that he would agree that al-Qaeda and the Taliban fighters could be determined not to be prisoners of war (POWs) but only on a case-by-case basis following individual hearings before a

military board." Powell believes that US troops will be put at risk if the US renounces the Geneva Conventions in relation to the Taliban. Rumsfeld and his chairman of the Joint Chiefs of Staff, Gen. Richard B. Myers, allegedly agree with Powell's argument. [NEW YORK TIMES, 10/24/2004] But Gonzales says that he agrees with the Justice Department's Office of Legal Counsel, which has determined that the president had the authority to make this declaration on the premise that "the war against terrorism is a new kind of war" and "not the traditional clash between nations adhering to the laws of war that formed the backdrop for GPW [Geneva Convention on the treatment of prisoners of war]." Gonzales thus states, "In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions." [NEWSWEEK, 5/24/2004] Gonzales also says that by declaring the war in Afghanistan exempt from the Geneva Conventions, the president would "[s]ubstantially [reduce] the threat of domestic criminal prosecution under the War Crimes Act [of 1996]" (see August 21, 1996). The president and other officials in the administration would then be protected from any future "prosecutors and independent counsels who may in the future decide to pursue unwarranted charges." [NEW YORK TIMES, 5/21/2004; NEWSWEEK, 5/24/2004]

Memo Actually Written by Cheney's Lawyer - Though the memo is released under Gonzales's signature, many inside the White House do not believe the memo was written by him; it has an unorthodox format and a subtly mocking tone that does not go with Gonzales's usual style. A White House lawyer with direct knowledge of the memo later says it was written by Cheney's chief lawyer, David Addington. Deputy White House counsel Timothy Flanigan passed it to Gonzales, who signed it as "my judgment" and sent it to Bush. Addington's memo quotes Bush's own words: "the war against terrorism is a new kind of war." [WASHINGTON POST, 6/24/2007] Powell 'Hits the Roof' over Memo - When Powell reads the memo (see January 26, 2002), he reportedly "hit[s] the roof" and immediately arranges for a meeting with the president (see January 25, 2002). [NEWSWEEK, 5/24/2004] Entity Tags: George W. Bush, Office of Legal Counsel (DOJ), Geneva Conventions,

Entity Tags: George W. Bush, Office of Legal Counsel (DOJ), Geneva Conventions, Alberto R. Gonzales, Colin Powell, David S. Addington, Al-Qaeda, Taliban, Richard B. Myers

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Detainments Outside US, Gov't Violations of Prisoner Rights

January 25, 2002: Powell, State Department Sidelined in Decision to Abandon Geneva Conventions in Interrogations



Secretary of State Colin Powell asks for a meeting with President Bush, hoping to dissuade him from abandoning the Geneva Conventions in the interrogation procedures involving terror suspects (see January 18-25, 2002). Powell is unaware that he and the State Department have been deliberately cut out of the decision-making process by the Office of the Vice President.

Memo Released to Undermine Powell - Before Powell can meet with the president, White House counsel Alberto Gonzales releases a memo that paints Geneva as "quaint" (see January 25, 2002) to the administration, in an attempt to anticipate and undermine Powell's objections. Following up on the argument that the Geneva Conventions are "quaint," Vice President Cheney's chief counsel, David Addington, portrays Powell as a defender of "obsolete" rules devised for an earlier time. If Bush follows Powell's lead, Addington warns, US forces would be obliged to provide athletic gear and commissary privileges to captured terrorists. State Department lawyer David Bowker later says that Powell never argued that al-Qaeda and Taliban detainees deserve the full privileges of prisoners of war; while each captive deserves a status review under Geneva, he believes few will qualify because the suspects do not wear uniforms on the battlefield or obey a lawful chain of command. Bowker recalls, "We said, 'If you give legal process and you follow the rules, you're going to reach substantially the same result and the courts will defer to you." The upshot of Bush's decision to go with Gonzales's opinion over Powell's has the effect of relegating the State Department to the sidelines. A senior administration official will later recall: "State was cut out of a lot of this activity from February of 2002 on. These were treaties that we were dealing with; they are meant to know about that." State's senior legal adviser, William H. Taft

IV, is shunned by the lawyers who dominated the detainee policy, officials say; some Bush conservatives privately call Taft too "squishy and suspect" to adequately fight terrorists, according to a former White House official. "People did not take him very seriously." [LEDGER (LAKELAND FL), 10/24/2004; WASHINGTON POST, 6/24/2007]

Memo Prompts Media Criticism of Powell - As Gonzales's memo begins to circulate around the government, Addington says to White House lawyer Timothy Flanigan, "It'll leak in 10 minutes." He is correct: on January 26, the conservative Washington Times prints a front-page article that features administration sources accusing Powell of "bowing to pressure from the political left" and advocating that terrorists be given "all sorts of amenities, including exercise rooms and canteens." The article implies that Powell is soft on the nation's enemies. Addington blames the State Department for leaking the memo, and says that the leak proves Taft cannot be trusted. Taft later recalls, "I was off the team." Addington had marked him as an enemy, Taft will recall, but Taft had no idea he was at war. "Which, of course, is why you're ripe for the taking, isn't it?" he adds. [ALBERTO R. GONZALES, 1/25/2002]; WASHINGTON POST, 6/24/2007] Entity Tags: Timothy E. Flanigan, Geneva Conventions, David S. Addington, David Bowker, Colin Powell, Alberto R. Gonzales, Al-Qaeda, George W. Bush, Taliban, William Howard Taft IV, US Department of State, Office of the Vice President, Washington Times

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Detainments Outside US, Gov't

Violations of Prisoner Rights

January 25, 2002: Cheney's Lawyer Questions 'Limits' of Geneva Conventions on Prisoner Interrogations, Writes Memo for Bush that Allows Geneva to be Sidestepped



David Addington, the chief counsel for Vice President Cheney, writes that the Geneva Conventions' "strict limits on questioning of enemy prisoners" cripple US efforts "to quickly obtain information from captured terrorists" (see January 18-25, 2002). Cheney is now grappling with the fundamental concept of how much pain and suffering US personnel can inflict on an enemy to make him divulge information. Addington worries that US personnel, including perhaps even Cheney, might someday face criminal charges of torture and abuse of prisoners. Geneva forbids not only torture but the use of "violence," "cruel treatment" or "humiliating and degrading treatment" against a detainee "at any time and in any place whatsoever." Such actions constitute felonies under the 1996 War Crimes

Act. Addington decides that the best defense for any such charge will combine a broad presidential directive mandating general humane treatment for detainees, and an assertion of unrestricted authority to make exceptions. Bush will issue such a directive, which uses Addington's words verbatim, two weeks later (see February 7, 2002). [WASHINGTON POST, 6/25/2007]

Entity Tags: Richard ("Dick") Cheney, David S. Addington, Geneva Conventions Category Tags: Impositions on Rights and Freedoms, Detainments in US, Government Acting in Secret, Government Classification, Gov't Violations of Prisoner Rights

January 25, 2002: Yoo Memo Draws Fire from State Department and Others



Two weeks after Justice Department lawyers John Yoo and Robert Delahunty write a memo saying that the US should not be bound by international laws covering warfare and torture (see January 9, 2002), White House counsel Alberto Gonzales concurs (see January 25, 2002), saying: "In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions." [MOTHER JONES, 1/9/2002] But others inside and outside the administration strongly disagree. Many will later point to Yoo and Delahunty's memo as providing the "spark" for the torture and prisoner abuses reported from Iraq's Abu Ghraib prison (see Evening November 7, 2003), Guantanamo Bay (see December 28, 2001), and other clandestine prisoner detention centers (see March 2, 2007). Human Rights Watch director Kenneth Roth will call the memo a "maliciously ideological or deceptive" document that ignores

US obligations under multiple international agreements. "You can't pick or choose what laws you're going to follow," Roth will observe. "These political lawyers set the nation on a course that permitted the abusive interrogation techniques" disclosed in later months. Scott Horton, president of the International League for Human Rights, agrees. When you read the memo, Horton says, "the first thing that comes to mind is that this is not a lofty statement of policy on behalf of the United States. You get the impression very quickly that it is some very clever criminal defense lawyers trying to figure out how to weave and bob around the law and avoid its applications." Two days later, the State Department, whose lawyers are "horrified" by the Yoo memo, vehemently disagrees with its position (see January 11, 2002). Three weeks later, State again criticizes the memo (see February 2, 2002). State senior counsel William Howard Taft IV points out that the US depends itself on the even observations of international law, and that following Yoo's recommendations may undermine attempts to prosecute detainees under that same body of law. Secretary of State Colin Powell "hit[s] the roof" when he reads Gonzales's response to the Yoo memo, warning that adopting such a legal practice "will reverse over a century of US policy and practice" and have "a high cost in terms of negative international reaction" (see January 26, 2002). The Bush administration will give in a bit to Powell's position, announcing that it will allow Geneva to apply to the Afghan war—but not to Taliban and al-Qaeda prisoners. State Department lawyers call it a "hollow" victory for Powell, leaving the administration's position essentially unchanged. [NEWSWEEK, 5/21/2004; NEWSWEEK,

Entity Tags: Robert J. Delahunty, Human Rights Watch, Colin Powell, Alberto R. Gonzales, International League for Human Rights, John C. Yoo, Kenneth Roth, William Howard Taft IV, Scott Horton, US Department of State

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Detainments in US, Gov't

Violations of Prisoner Rights

January 26, 2002: Powell Disputes Decision to Ignore Geneva Conventions



US Secretary of State Colin Powell responds to Alberto Gonzales' January 25 draft memo to the president (see January 25, 2002). He argues that it does not provide the president with a balanced view on the issue of whether or not to apply the Geneva Conventions to the conflict in Afghanistan. Powell lists several problems that could potentially result from exempting the conflict from the Conventions as Gonzales recommends. For example, he notes that it would "reverse over a century of US policy and practice in supporting the Geneva conventions and undermine the protections of the law of war for our troops, both in this specific conflict and in general." The decision will furthermore have "a high cost in terms of negative international reaction." It will "undermine public support among critical allies, making military cooperation more difficult to sustain," and other states would "likely have legal problems with extradition or other forms of cooperation in law enforcement, including in bringing terrorists to justice." But perhaps most ominously, Powell charges that the proposed decision "may provoke some individual foreign prosecutors to investigate and prosecute our officials and troops" and "make us more vulnerable to domestic and legal challenge." The end of the memo consists of several rebuttals to points that Gonzales made in his memo. [US DEPARTMENT OF STATE, 1/26/2004]; NEW YORK TIMES, 5/21/2004; NEWSWEEK, 5/24/20041

Entity Tags: Geneva Conventions, Alberto R. Gonzales, Colin Powell

Timeline Tags: Torture of US Captives

Category Tags: Impositions on Rights and Freedoms, Detainments Outside US, Gov't

Violations of Prisoner Rights

January 27, 2002: Cheney and Bush Working to Expand Power of Presidency



Vice President Cheney gives one of the first public indications that he and his office have a keen and active interest in expanding the power of the presidency (see January 21, 2001). Interviewed by ABC's Cokie Roberts, Cheney openly discusses his interest in reversing the restraints placed on the presidency after

Watergate and the Vietnam War. He calls the restraints "unwise compromises" that serve to "weaken the presidency and the vice presidency." His job, he explains, is to reverse the "erosion of [presidential] powers and the ability of the president of the United States to do his job." Cheney says he has laid out his case to President Bush, who agrees with his rationale and his agenda. "One of the things that I feel an obligation on—and I know the president does, too, because we talked about it—is to pass on our offices in better shape than we found them to our successors." [SAVAGE, 2007, PP. 75-76]

Entity Tags: George W. Bush, Richard ("Dick") Cheney, Cokie Roberts

Category Tags: Expansion of Presidential Power

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