EXPLOITING POWER: THE ASSAULT ON FUNDAMENTAL RIGHTS IN THE POST 9/11 WORLD

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This paper deals explicitly with the actions taken and the laws created by the United States government in the wake of September 11th and how these actions infringe on the civil rights of US citizens, immigrants, and foreign nationals in a discriminatory manner. These accusations are based on three main events: First, immediately after September 11th over one thousand immigrants of Arab or Muslim background were indiscriminately taken into custody and held in breach of their civil rights. Second, since the attacks, three US citizens have been captured in connection with terrorist groups. Based on their legal fates, there is a clear discrepancy in how the government has chosen to treat them. This inconsistency can only be explained by their race, religion, and socio-economic background. Lastly, since the beginning of the war in Afghanistan there have been over 700 prisoners sent to and held at a makeshift prison in Guantanamo Bay, Cuba. The methods of qualifying their legal status, the methods used to gather the detainees, and the treatment they are receiving there are in clear violation of both the Geneva Conventions and international human rights standards. Throughout this essay the theme of discriminatory action, based on race and religion, will be woven into all three of these events and will demonstrate how the US government has both deliberately allowed these methods to occur and done little to abate them.

On September 11th, 2001, the United States experienced a tragedy that would echo throughout the world and resonate unforgettably with all Americans. The combination of an attack on their own soil, perpetrated by foreign nationals from inside their own borders, would have a drastic effect on how the citizens of the U.S., as well as the power structure of the government, would view both current race relations and the legal system that allowed such a travesty to unfold. Under the direction of the Bush administration, a variety of actions were undertaken to fully investigate how this travesty occurred and attempt to prevent it from happening again. With these goals in mind, Congress passed the U.S.A. Patriot Act (the Act), which was closely followed by a series of Executive Orders

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issued by President Bush which were intended to accompany the Act. These acts of legislation and Executive power were meant to provide law enforcement agencies the tools they needed to quickly capture those responsible for the atrocities committed on September 11th as well as seek out those intending to cause harm to the U.S. in the future.

However, as the shock of September 11th has begun to fade, there has been growing sentiment and substantial proof that the legislation, and more importantly the actions taken in order to make the U.S. a safer society, has greatly violated the civil rights of U.S. citizens, foreign immigrants, and foreign nationals. These accusations are based on the rights set out in both domestic and international law documents. Most notably, there is significant proof that these actions are being taken in a discriminatory manner, both domestically and abroad.

These assertions of discriminatory violations are based on three manifestations of the legislative and legal stance that the Bush administration has taken in order to combat the "war on terror." First, in the wake of September 11th, over one thousand immigrants of Arab or Muslim background were arrested and kept in custody for unnecessarily lengthy periods of time based on minor immigration violations. The way in which the government selected and dealt with these immigrants constitutes clear violations of their constitutional rights. Second, since September 11th, three U.S. citizens have been captured in connection to terrorist activity, two abroad and one domestically. Their personal legal situations have developed in notably different ways, not only demonstrating a clear violation of Constitutional rights but also raising the concern that this difference is based on ethnicity. Until recently, two of these men have been imprisoned in an incommunicado fashion, while the third has been granted the full benefits of the U.S. courts and Constitution. Lastly, since armed conflict began in Afghanistan, a military detention center has been established at the American naval base in Guantanamo Bay, Cuba. The manner in which over 700 Muslim or Arab men are being detained there, with neither charge nor trial, has violated both U.S. and international law based on the Geneva Conventions. The U.S. government has justified its actions based on the passage of the Act and the accompanying Executive Orders and by further emphasizing the notion that these are emergency powers essential for the protection of national security. Yet, this administration has gone far beyond the scope of protection under a cloak of secrecy and haphazardly began to deconstruct the freedoms and human rights that have made this country worth protecting.

At the root of these violations is President George W. Bush and his abuses of the Executive powers. Bush has formulated a legal environment that has successfully disabled the checks and balances system between

the three branches of government by means of administering by decree. These actions have resulted in leading the US government more towards a system of dictatorship rather than democracy. Bush is accomplishing this level of authority by enacting the powers of Executive Orders and interim regulations. These Executive Orders are issued by the President without approval from Congress and are difficult to attack in the form of Judicial Review. A 2002 report issued by the Center for Constitutional Rights (CCR) states, "…through such mechanisms, the Executive Branch usurps the powers constitutionally accorded to Congress, and thereby upsets the balance of power among the branches of government."[1] As will be discussed later, these powers have been abused in such a way as to achieve the indefinite detention of immigrants, the use of the classification 'enemy combatant,' and the establishment of military tribunals to try foreign nationals involved in terrorist activity. CCR states,

> The Executive has taken on the most fundamental role of the Judicial Branch, and has encroached upon the responsibilities of the Legislative Branch, which is constitutionally granted sole authority to create "tribunals inferior to the Supreme Court." Indeed, the degree to which the Order concentrates power in the hands of the Executive is breathtaking: it gives the President the power to decide who will be tried under the system, to create the rules by which trial will proceed, to appoint those who will serve as judge, prosecutor, and defense attorney, to set penalties once guilt is determined (including execution), and to decide all appeals.[2]

Indeed in a time of crisis, emergency action must be taken. It has not been uncommon in the past that during war time the President exercises certain powers in order to ensure the protection of national security; however, those exercised powers must be kept in check and monitored by the judicial branch in order to protect the sanctity of civil liberties.

Bush's actions have also included steps to keep the complex contents of the Act private, effectively making the powers of the legislation largely misunderstood. Bush exerted intense pressure on Congress to fulfill their patriotic duty and pass the Act with deliberate speed. Bush took advantage of this country's legislative bodies at an extremely vulnerable moment, giving them almost no time to examine the details of what they were voting on. Subsequently, it was passed into law on October 26, 2001, moving through the Senate in a 98-1 vote and passed in the House with a 357-66 vote (Electronic Privacy Information Center (EPIC)). The public, as well as most legislators, took little notice of what the Act actually contained and were satisfied with the notion that it was necessary to protect the country and punish those who had committed the atrocities of September 11th. There was little heed paid to the fact that the massive 340 page document consisted of a conglomeration of mostly previously proposed laws that had been rejected in the past on the grounds that

they were unconstitutional or unjust instead of new laws created in response to the current threat. However, with the dismay created by the attacks, the will to question these previously shelved items was diminished.

Only in January of 2004 was there been any substantial legislative and judicial resistance to the Act. In Los Angeles, a Federal Circuit Court judge ruled part of the Act unconstitutional because it violated the First Amendment. The case, involving the giving of expert advice to groups considered "terrorist organizations," ruled in favor of the plaintiff on the grounds that the law was "impermissibly vague" and expanded the definition of domestic terrorism beyond a normal reach.[3]

Further political distaste for the Act has come from Capital Hill, with congressional critics gaining momentum as the implications of the Act are finally reaching the mainstream press. Senators Dick Durbin and Larry Craig, as well as Representative C.L. Otter have introduced a bill entitled the Security and Freedom Ensured Act, commonly known as SAFE. This bill is designed to roll back many sections of the Act, but as of now it has not had any Congressional hearings. Notably, as a preemptive move, the Bush administration stated on January 29th of 2004 that it would veto the bill in any form it was presented.[4] This unequivocal repression of the Congressional voice clearly reaffirms the authoritarian way in which the Bush administration is managing the U.S. government.

Selective Detention of Immigrants

A glaring example of the blatant disregard exhibited by the Executive branch towards both Congress and the Supreme Court are the methods and lack of justification for detaining over one-thousand immigrants indefinitely without the protections of Due Process, resulting from what the administration deemed a "security measure," in the months following September 11th. The legal justification came directly from the President without the consent or review of Congress or the courts. On September 20th, 2001, an interim regulation was put into action by Attorney General John Ashcroft allowing for the detention by the Immigration and Naturalization Service (INS) of suspect immigrants for forty-eight hours without charge. However, it went further to include a clause that allowed for the detention of an immigrant for a "reasonable period of time" in the event of "emergency or extraordinary circumstance" without charge, a seemingly undefined and dangerously open ended passage.[5] A month later, the Act was passed by Congress, which in Section 412 states that the Attorney General may not detain an immigrant suspected of terrorist activity for more than seven days without charge.[6] Section 412 reverses the September 20th interim regulation, however, this reversal has never been enforced and the INS continues to follow the previous protocol. On

the grounds of the regulation, the INS was able to arrest and take into custody an unprecedented number of immigrants in the months following September 11th. The majority of those detained were brought in on immigration violations, such as overstaying a visa, working on a tourist visa, or not taking enough courses to fulfill a student visa. The length of detention without formal charge ranged from several to 119 days. 317 people were charged after the allotted 48 hour period.[7] Yet, not one of those taken into custody has ever been charged with a crime connected to terrorism.

This form of detention clearly violates the Due Process clause as stated in the 5th Amendment. This clause, a pillar of the U.S. judicial system, ensures that a person brought into custody will be charged with a crime, given a fair trial, and will not be detained without just cause. In the U.S., the legal system is heavily based on the rulings of previously decided cases, and the strongest precedent is set by the Supreme Court. In most legal proceedings, to undue or override a Supreme Court ruling involves a further Supreme Court case. Only months before September 11th, the Supreme Court ruled in the case of *Zadvydas v. Davis*, which established that "the Due Process clause of the Constitution applies to all persons physically located within the borders of the United States, including deportable immigrants."[8] This precedent clearly articulates that it is illegal *per se* to hold anyone, even non-citizens being charged with a crime, without granting them the rights of Due Process. The methods and manner of detention of those collected in the wake of September 11th deliberately defies the Supreme Court ruling enforced in the *Zadvydas* case, and this violation is being facilitated with the blessing and political clout of the Executive branch.

Although the 14th Amendment explicitly provides for the equal treatment of all persons under the law, the logic and methods of detention being applied to those mentioned above have not pertained equally to all immigrants in the U.S. It is apparent that the government has carried out its sweeps in a racially motivated manner that specifically targets and persecutes men of Arab or Muslim backgrounds. This lack of equality is highlighted in a report released by Amnesty International (AI) in March of 2002. The report states, "while many thousands of people who overstay their visas or commit similar violations are not detained, those picked up in the 9.11 sweeps are almost exclusively males from Muslim or Middle Eastern countries."[9] This discriminatory sentiment is echoed by Lucas Guttentag, director of the American Civil Liberties Union's Immigrant Rights Project.

> Generally in the past, when immigration violations like overstaying your visa or working without authorization were enforced, it was without detention. Usually no bond was required, and anyone who agreed to leave the country voluntarily was allowed to leave

> promptly. Now there is strict enforcement in a selective and discriminatory way against people from the Middle East who are denied bond and detained for lengthy periods, even after they agreed to leave.[10]

Therefore, the process that the INS and FBI have followed is essentially racial profiling on a grand scale. They have selected an ethnicity and racial background, combined it with an age and gender stereotype, and attached it directly to the characteristics of a terrorist. Joan Fitzpatrick, writing for the *European Journal of International Law* (EJIL) corroborates the negative impact of racially profiling Arabs and Muslims by stating,

> Many enforcement measures adopted in the aftermath of the September 11th attacks have targeted non-citizens, despite the fact that nationality is a poor predicator of involvement in a terrorist group. Ethnicity and religion, conjoined with alienage, have exposed particular groups of non-citizens to differential application of harsh enforcement measures.[11]

While those that participated in the September 11th attacks fit this category, it is irresponsible and preposterous to accuse others fitting the description of similar acts based on no solid evidence.

Historically speaking, the September 11th sweeps are not the first time that this type of racially motivated mass detention has occurred. The unpredicted massive attack by the Japanese on Pearl Harbor in 1941 led to the full-scale round up and detention of Japanese Americans and Japanese immigrants on the western coast of the U.S. The detentions had no basis in illegal activity connected to the war. While their imprisonment is now seen as a glaring scar on the history of the U.S., and reparations and apologies have been made over time, the methods of reasoning used in 1941 are clearly being revisited and applied to Arabs and Muslims today. Even though the Civil Liberties Act of 1988 deemed the Japanese Internment Camps a "fundamental injustice" and made the written promise to "discourage the occurrence of similar injustices and violations of civil liberties in the future," the Bush administration feels the need to conduct the anti-terrorism campaign by using the same tools of preventative and racially selective detention.[12] While the Japanese interment existed on a much larger scale, detaining 110,000 people, it is the principle of punishing a large group of people for the crimes of only a few of its members that is significantly disturbing and against the ethics of law.

The violations associated with the September 11th detentions have gone far from unnoticed on a national level, and in January of 2004 the American Civil Liberties Union (ACLU) released a report to accompany a formal

complaint to the United Nations (UN), thereby bringing the subject to the attention of the international community. The report contains the stories of nine men, either deported on immigration violations or still being held in the U.S. Their stories clearly reveal the absolute abuse and neglect for civil and human rights shown by the U.S. government. In demonstrating the severity of these cases it is essential to relate examples of such here.

> - **Sadek Awaed**, a 31 year old Egyptian national has lived in the U.S. since 1991 and has sought political asylum, on grounds that he cannot return to Egypt because of his former association with a Muslim group. He states that he "was recruited to attend Brotherhood meetings but found the group's extremism disturbing." When he voluntarily left the organization he was subjected to torture. His asylum petition was under review when he was arrested during a traffic stop. When asked if he was Middle Eastern, the officer responded "Got you, motherfucker!" He was detained for 15 months with no knowledge of the reason for his detention. Only after a pro bono legal organization took up his case one year later, did he find out that the notification of his overstayed visa, the reason for being held, had been sent to the wrong address. He has never seen a judge and both a motion to reopen his case and an appeal have been denied. He is still in custody, 20 months after his arrest.[13]
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> -**Anser Mehmood**, is a 44 year old Pakistani man who operated a trucking company. Based on a tip that he had refused to deliver packages to Washington D.C. on September 11th, a claim now proven false, FBI agents came to his house with no warrant and proceeded to search. However, after two hours, finding nothing, they informed the family that the wife must be taken into custody because her brothers were believed to have committed credit card fraud. When the wife stated her child was too sick to be left, the agents responded that "we have to take somebody from the house." Mehmood was taken and brutally assaulted by the guards at the holding facility, breaking his hand and cutting his face, while being held in full body shackles. He was later informed that he was a "World Trade Center suspect." He was then detained for four months in solitary confinement. He was prevented from contacting a lawyer for two weeks and could not see his wife for three months. After eight months he was charged with working on an invalid Social Security card and deported, unable to enter the U.S. for ten years.[14]

These stories represent only a fraction of the hundreds of men who were subjected to similar treatment. Clearly, had these men been of another race or religion, their immigration violations would not have been seen as

threatening and they would not have received similar treatment. The disparity and selective enforcement of the law again affirms the violations of the 14th amendment.

Even those inside the government have put forth the notion that these detentions were irrational and unnecessary. In June of 2003, the Office of the Inspector General released a report on the detentions, classifying them as "haphazard" and "indiscriminate." The report further states that,

> Even in the hectic aftermath of the September 11th attacks, we believe the FBI should have taken more care to distinguish between those aliens who it actually suspected of having a connection to terrorism as opposed to aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism. [15]

A supplemental report by the same department was issued after interrogation tapes, previously thought destroyed, were found to show substantial abuse on the part of officers, corroborating many formally disregarded prisoner stories.[16]

In a related situation, the case of the "Lackawanna Six" provides evidence that the government is leaning on suspected terrorists in order to extract the information or admission of guilt they seek. The "Six" is made up of six men of Yemen ancestry, five of whom are U.S. born. In 2001, on a trip abroad, these men stopped in Afghanistan and ended up attending an al Qaeda training camp after being recruited by a preacher insisting that they must have jihad training to "save their souls."[17] They then returned to New York and resumed their lives. Granted, this participation in such a camp is and will be viewed in a negative context by law enforcement officials; however, it was their subsequent trials that raised concern. They were taken into custody under the accusation that they were a "sleeper cell" waiting to carryout a terrorist attack at a future date. Since their trial, lead prosecutor Michael Battle has stated that the government had no evidence that the defendants had any intent of participating in a violent attack. Clearly, their convictions came not from evidence, but their forced confessions. Patrick Brown, defense attorney for one of the six, states that the man he represented confessed after prosecutors raised the prospect of his client being declared an enemy combatant. This would lead to clear consequences of indefinite detention with no access to a lawyer. Governmental prosecutors further threaten to charge treason, carrying the punishment of death. Fearing a "legal black hole," all six men confessed to the charge of providing material support to a terrorist organization with sentences ranging from six to nine years.[18]

It is understood that if these mass seizures and arrests been based on substantial evidence to suggest that these men were involved in terrorist

activity, the fact that they were all of similar ethnic and religious backgrounds would not now be such a point of concern. However, it is clear in the aftermath of their imprisonment that none of them ever had any direct connection to hostile terrorist activity and not a single one has ever been charged with a crime relating to terrorism. Still, many were subjected to summary judgment style deportation; while others suffered financial, physical, and emotional hardship, all under the government supervised violation of their constitutional rights.

The Rights of an American Terrorist

By examining two strikingly similar cases, the extent to which the government has used ethnicity and socio-economic status as influential factors in dictating the legal fate of U.S. citizens captured abroad is revealed. Two months after September 11th, with the onset of the American war in Afghanistan, a prison uprising exposed and lead to the capture of two U.S. citizens fighting alongside the Taliban and al Qaeda fighters. John Walker Lindh, a white 20 year old from California, and Yaser Hamdi, a 22 year old Louisiana born man of Saudi Arabian ancestry, were taken into custody within weeks of each other following a bloody prison altercation.[19] In retrospect, it can be seen that they had essentially followed the same path immediately leading up to their capture and thereby have committed the same crimes, yet, their similarities end there. The way in which their individual legal situations are being dealt with by the U.S. government has lead to the creation of a puzzling and disturbing duality that uncovers both a glaring inconsistency and makes a strong case that the reasons for the disparity in their legal fates is based on their ethnicity and socio-economic background rather than factual evidence.

Prior to joining the Taliban, both Lindh and Hamdi attended al Qaeda training camps where they each met with high ranking members, including Osama bin Laden. It is understood that once Lindh joined with the Taliban he received training in the operation of rocket propelled grenade launchers and other explosives, and that he continued to fight alongside the Taliban and al Qaeda following the attacks of September 11th, fully aware of who had orchestrated them. He likewise continued to fight past the onset of military action by the U.S.[20] In an extremely similar manner, quoting a Defense administration official, Michael Mobbs, Hamdi had "traveled to Afghanistan in 2001, affiliated himself with a Taliban military unit, received weapons training, and remained with the unit after the terrorist attacks of September 11th, 2001, as well as after the initiation of U.S. military actions…"[21] Both men were detained in a Northern Alliance prison until a massive uprising sent the area into chaos. During the upheaval, a CIA agent was killed, Lindh was wounded and hospitalized, and Hamdi temporarily escaped but was recaptured and turned over to U.S. forces.[22]

From this point forward, Lindh and Hamdi were subjected to highly different treatment by the U.S. military and would never again cross paths.

Lindh was found in a hospital by a CIA agent and a CNN film crew, who made his situation as an "American Taliban" public. Conversely, while Hamdi revealed his U.S. citizenship to the U.S. military that held him, his claims were not believed and he was subsequently shipped off with hundreds of others to Guantanamo Bay, Cuba. It took the U.S. government a startling four months to establish Hamdi as a citizen, at which point he was brought into the U.S. classified as an "enemy combatant" and held in a naval brig in Virginia.[23] Under the interpretation of the Bush administration, classifying Hamdi as an enemy combatant summarily denied him all of his Constitutional rights pertaining to legal counsel and trial. This classification further revoked his rights to recourse as a POW under the Geneva Convention. Since his return to the U.S. he has been held incommunicado, without charge or trial, and first met with a lawyer on February 11th of 2004, more than two years after his capture.

During this same time period, Lindh returned to the US and was immediately introduced into the criminal court system. His alleged crimes included nine felony counts, such as conspiring to kill Americans, aiding a terrorist group, and a variety of other weapons charges. Lindh's father, an attorney, put a high priced legal defense team at the disposal of his son and his court proceedings went underway within a month of his return. By July of 2002, Lindh had successfully plea bargained his way to a twenty year sentence, excluding the charges that would have earned him a life sentence. The conditions of his plea bargain hinged on him corroborating with several law enforcement agencies by providing a full disclosure of any information he was aware of and testifying at any necessary future trials dealing with terrorism. He is currently serving his sentence at a prison in Northern California that was specifically selected to put him closer to his family.[24]

Clearly, based on these events there exists very serious and unreasonable differences in how the government treated these two men. The question must be raised, how can two these two nearly identical cases be dealt with in such a haphazard manner? An examination of their socio-economic background provides a possible starting point for answering this question.

Lindh was raised in an affluent Northern California town, attended a good high school, played sports, and in general lead an all American childhood. When his story hit the news, his family and friends sprung quickly to his defense, releasing clean cut pictures of him from high school, asserting claims of brainwashing, and having his father release quotes such as "John loves America."[25] Further, Lindh promptly altered his looks, shaving his beard, dropping his Muslim name, and eliminating the Middle Eastern

accent that he had acquired over the last several years. Even at his trial, Lindh was allowed to give a substantial statement defending his actions and asking for forgiveness. In his statement he writes, "I understand why so many Americans were angry when I was first discovered in Afghanistan. I realize that many still are but I hope that with time and understanding, those feelings will change." He goes on to make the plea that "I made a mistake by joining the Taliban."[26] The ability of Lindh to both publicly apologize and have his crimes explained in court has gained him substantial ground in the public opinion. As will be seen, unlike Lindh, Hamdi is being held in a secluded fashion that only aggravates his negative and mysterious public image, without the benefit of having his crimes judged based on fact.

It is indisputable that Hamdi did not receive any of the same privileges as Lindh; moreover he has been kept in nearly complete silence. The government offers legal critics little choice in this situation but to blame their differences on the only actual characteristic that separates them, race. The only person who has actively protested on his behalf is his father. A strong signal of how the media helped Lindh and has done little to aid Hamdi is demonstrated by the fact that through extensive research no mention of Hamdi's father's profession, any other family members, or general facts about his life could be located. The only gatherable information available was simply that he is poor. Hamdi's father made several legal efforts to gain proper rights for his son, seeking a writ of *habeas corpus*, and each time was categorically denied with little media attention. There have been no clean cut pictures released, no questions of where he went wrong, and frankly little sympathy given to the fact that a U.S. citizen was being denied access to his fundamental rights. He has not been given the vocal recourse granted to Lindh, that of pleading his case with the public and apologizing.

There is one additional U.S. citizen being held as an enemy combatant within the borders of the U.S., and while his case does not match up factually to Lindh and Hamdi, the circumstances of his case are equally bizarre and raise a similar question of why he is being held in such a fashion. Here again the government leaves little critical recourse to explain his detention other than on the grounds of race, religion and monetary background. On May 8th 2002, Jose Padilla, a mid-twenties Puerto Rican born in New York, was taken into custody in Chicago's O'Hare airport by way of a material witness warrant. One week later, the New York court that had issued the warrant appointed a lawyer to serve as Padilla's counsel. However, on June 9th, President Bush issued an Executive Order that declared Padilla an enemy combatant, thereby removing his appointed lawyer and putting him into the custody of the military where he has since been detained at a military brig in South Carolina[27].

In his memorandum ordering Padilla to be declared an enemy combatant, President Bush asserts that Padilla had "engaged in conduct that constituted hostile and war-like acts" and "presented a … grave danger to the national security of the United States."[28] Officials claim that during 2001 and 2002, Padilla met with "senior al Qaeda operatives" and received weapons training pertaining to building a radioactive or "dirty bomb."[29] U.S. law enforcement officials tailed him back from Pakistan, at which time he was taken into custody in Chicago, far from any battlefield. Padilla was never accused of participating in war related acts in the manner in which Hamdi and Lindh were involved. However, there has been no substantial evidence released or directly referred to in order to corroborate these claims. Many of those working in the White House have referred to Padilla as a "small fish" and that he had no connection to any U.S. al Qaeda cells. Even Deputy Defense Secretary, Paul Wolfowitz, in discussing the supposed bomb plot with CBS News stated, "I don't think there was actually a plot beyond some fairly loose talk."[30]

The few facts that are known of Padilla's past paint a grim picture. He comes from an extremely poor background, spending most of his life in Chicago where he had a gang affiliation, a fact that the media has firmly embraced. He served time in multiple states for various crimes and has essentially led the life of a delinquent. All that is known about his family is that he has a brother in jail and a homeless sister, leaving literally no one to defend his name in the media or seek legal action on his behalf.[31] Based on the events of his life, he may be far from a law abiding citizen or even innocent of the charges being alleged, however, neither of these justifications can be used as ample grounds to hold Padilla incommunicado, as has been the case since June of 2002.

The cases of Padilla and Hamdi are interconnected when their unusual plights as U.S. citizens are considered by a greater audience. The judicial branch of the government has only recently began to flex its powers of judicial review over the Executive branch and brought their cases into court. In October of 2003, the Supreme Court agreed to hear the case of Hamdi, while in December, the 2nd Circuit Court of Appeals in New York examined the circumstances of the Padilla case and ruled that it was outside of the jurisdiction of the Executive branch to detain a U.S. citizen without the authorization of an act of Congress. That ruling, which required Padilla to either be released or charged in criminal courts within 30 days, was delayed by a Federal court until the matter is reconciled in the Supreme Court. Indeed, the High Court agreed to hear the case, and in January of 2004, a motion was filed that will expedite and combine the circumstances of both the Padilla and Hamdi cases into a Supreme Court ruling that will join the spring docket. Legal experts forecast that these decisions will be landmark cases, changing the face of civil rights or preserving the values of the Constitution.

Prior to furthering the argument that the rights of these men are being violated with the undertones of ethnic discrimination, it is necessary to fully examine the Constitutional impact that the treatment and detention of these men has had in a civil rights discourse. The most glaring violations occur when the rights guaranteed by the 6th amendment are applied to their personal situation. Under these protections, both men should have been ineligible for incarceration unless formal charges had been alleged, with a clear explanation of said charges, the right to an attorney, the ability to examine and refute evidence against them, and the guarantee to a timely and expeditious trial.[32] Even when the continued incarceration of a citizen is ordered directly by the Executive branch, as is the case with Hamdi and Padilla, the writ of *habeas corpus* demands that the detention be subject to judicial review.[33] The government has done little to deny these charges, rather works to justify them.

The administration's theory of enemy combatants in the U.S. relies on a 1942 precedent that involved eight German men, one claiming to be a U.S. citizen, who made landfall in a submarine on U.S. soil with hostile intentions. The case, known as *Ex parte Quirin*, established that a U.S. citizen can be held without counsel for the length of time in which the conflict exists. However, it further established that the detainee has the right of appeal in a federal court. The men were part of the German Marine Infantry, wearing uniforms when they landed and had received orders from German military commanders. To clarify further, the U.S. was directly involved in a declared war with the country from which these men hailed.[34] It must also be noted how the court treated the nationality of the supposed U.S. citizen. In the court transcript it states, "The Government, however, takes the position that on attaining his majority he elected to maintain German allegiance and citizenship or in any case that he has by his conduct renounced or abandoned his United States citizenship."[35] By virtue of this statement the court largely disqualifies that he is in fact a citizen, an action that the government has not imposed on either Padilla or Hamdi.

Additionally, two other major differences separate and weaken the precedent set by *Quirin*. One, the enemy whom the U.S. is fighting is unclear and ill defined. We are not in a declared war with either of the countries that these men hail from, and only one is part of a debatably "established military." Second, the infinite detention of these men is being supported on the basis that they may be held until hostilities in the "war on terror" have ceased. With no clearly defined enemy, country, or particular goal in mind, we can speculate that the said conflict could continue for an immeasurable amount of time, conceivably forever.

Lastly, two more recent legal precedents conflict with the old wartime precedent of *Quirin*. The aforementioned case of *Zadvydas v. Davis* is extremely pertinent here, asserting in plain language that to hold a U.S. citizen incommunicado is against the law. The 2001 case reaffirmed the principle that a citizen cannot be denied his rights of Due Process as long as his detention occurs within the boundaries of the U.S. Therefore the confinement of Hamdi and Padilla is an obvious disobedience of this legal standard. Second, in 1971 Congress passed Title 18, Section 4001(a) of the U.S. Code, a law that specifically states that "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." President Bush is unmistakably in violation of this law which is designed to limit the domestic powers of the Executive branch. The 1971 law is further supported by Article 1, Section 9 of the Constitution which asserts that the power to suspend the writ of habeas corpus afforded by the 5th Amendment, allowing someone to seek a fair trial, cannot be suspended by the Executive and that power lies solely with Congress. These two items combine to establish a far more applicable and powerful precedent than *Quirin.* In the spring of 2004, the Supreme Court will have to decide whether this assertion is true.[36]

With the recent rise of judicial and public interest in the cases of Padilla and Hamdi, the Bush administration has received great pressure to alleviate the level of violations to the civil rights of these men. A major step towards that goal was accomplished on February 11th, 2004 when Hamdi spoke to his lawyer for the first time. Likewise, on February 14th, Padilla was granted the right to meet with a lawyer, but as of Spring 2004 has yet to do so. Hamdi waited two and a half years for this meeting, the result of which his lawyer Frank Dunham describes by saying, "we were not able to talk about anything substantive."[37] While a lawyer visitation was a positive move, the reason for the negative sentiment on the part of Dunham is a result of a subsequent intrusion on their civil rights guaranteed in the Constitution. This breach is epitomized by the fact that both men were granted access to a lawyer under the condition that the military may monitor all conversations and severely limit the time that they are allowed to meet. This qualification infringes drastically on the attorney-client privilege granted by the 6th Amendment. The legal justification for this violation is granted explicitly in the Patriot Act. The privacy that is associated with the attorney-client privilege is fundamental to the importance of actually having a lawyer; however, if sensitive information with potential use to the prosecution cannot be discussed, the effectiveness of the meetings is rendered useless.

It is apparent by the government's actions that Padilla and Hamdi have both been 'accused' of a crime, but never charged. By further analyzing the situation, the question remains as to why Lindh was brought up on charges in criminal court, while Padilla and Hamdi were not. Hamdi's

charges would logically fall under a similar category to those crimes perpetrated by Lindh, such as conspiring to kill Americans or providing support to a terrorist organization. Padilla, not caught on a battle field, has seen his name become synonymous with the term "dirty bomb," the crime which the media and government have associated him with since his detention. If in fact he had plans to carry out such an act, it is a prosecutable crime, punishable to the fullest extent of the law.

Yet their supposed crimes have stood as nothing more than accusations, clearly weak support for indefinite detention. To date, the government has demonstrated every type of legal maneuvering possible to delay the progression of their cases. Such motives are based on the "preservation of national security" and the desire to gain "valuable information" from these supposedly connected men. However, Lindh is explicitly being used for the purpose of gaining information and this is precisely the trump card that pardoned him from a life sentence. Here, two questions remain: Is national security worth destroying the rights of its own citizens; Would these men be a threat if they were given trial, found guilty, and put in a maximum security prison? Lindh is acting as a material witness from behind bars and his imprisonment is legally justified. With that precedent set, it is therefore clear that only racially and religiously motivated reasons are preventing criminal trials from taking place. The Supreme Court will take up these questions in the near future, ensuring the rights of these embattled citizens or reaffirming their eradication.

Prisoners Abroad - Guantanamo Bay

The theories and interpretations applied to Hamdi and Padilla concerning the use of the enemy combatant classification have also been utilized in the cases of foreign nationals caught abroad, who have subsequently been detained at the naval base in Guantanamo Bay, Cuba (Gitmo). The legal reasoning utilized for their detention violates both domestic and international law, and further, the treatment of these men being held incommunicado for an indefinite period of time has raised serious concerns. In January of 2002, the first captured prisoners from Afghanistan stepped foot onto a large section of Cuba that has been leased by the U.S. since 1903. Know as "Camp X-Ray" for the first few months, it eventually developed into "Camp Delta," a full functioning prison. Currently there are roughly 700 detainees present at Gitmo, and construction is already under way to increase the capacity to over 1000. The names and reasons for detention of all those at Gitmo remain classified and shrouded in secrecy by the government. Many of those detained have been there from the beginning, captured in Afghanistan during the armed conflict with the Taliban. The 700 people detained there make up a range of 42 nationalities, including Australian, Swedish, British, and Canadian. While most were arrested in Afghanistan, several others have been taken into

custody in such places as Bosnia, Gambia and Zambia.[38] The one characteristic aligning all of them is their Middle Eastern ancestry and belief in Islam. The indiscriminate manner in which they have been collected and held, many long past the point of necessity, is an egregious violation of the rules of war and general human ethics.

The vague conditions in which these men are held raises concern about the legal reasoning utilized to hold them. Furthermore, the measures of secrecy raise alarm about the possibility of inhumane treatment. The men at Gitmo are held in solitary confinement, many for as long as twenty three hours a day, without charge against them, access to a lawyer or any type of trial to determine their status. President Bush demonstrates the administration's indiscriminate attitude towards the detainees by describing those being held there with the term "bad people," while Defense Secretary Donald Rumsfeld does little more to give specific definitions of their crimes by justifying their detention with the statement that they are "hard core, well trained terrorists" and "among the most dangerous, best trained vicious killers on the face of the earth."[39] Yet, to date, over seventy-five prisoners have been released, deemed to be fully innocent. Those seventy-five include three juveniles, one of whom, Muhammad Ismail Agha, was thirteen when he was detained. Once back in Afghanistan as a free man, he explains that he was looking for work when he was arrested by an Afghani militia and turned over to U.S. forces. He was detained for a total of fourteen months, the first ten of which he was kept from contacting his family, who had been borrowing large sums of money in order to find their son.[40] His story is not an isolated event; John Sifton of Human Rights Watch has done extensive research as to the stories of those released from Gitmo. He states, "many of them were the most extreme cases of mistaken identity, simply the wrong guys: a farmer, a taxi driver and all his passengers…with no connection to the Taliban or terrorism. Several were victims of bounty hunters, who were paid dollars after abducting "terrorists" and denouncing them to the U.S. military."[41] As more detainees are released, the true nature of these possible abductions will be revealed, pointing to the U.S. military as the clear culprit in an indiscriminate campaign of blatant kidnapping.

The most extreme example of the U.S. abuse of detention powers occurred outside of the battle zone, involving two brothers and their capture in Gambia. Wa-hab and Bisher al-Rawi, the former being a British citizen and the latter retaining his Iraqi citizenship intentionally, had lived in England for many years and then traveled to Gambia in order to start a business with their new invention, a mobile plant to process the main crop of Gambia, peanuts. When they arrived, the brothers, along with two other men were taken into custody. After being moved to an air force base in Afghanistan, the men were held for months, subjected to random interrogation and told that they were being accused of setting up a terrorist

training camp, a fact highly improbable due to the small size of Gambia and that it is a major tourist destination. Eventually, Wa-hab and another business partner were released under pressure from the British government. However, Bisher and the other partner, both Iraqi citizens, were sent without trial on the basis of "secret evidence" to Gitmo and remain there to this day.[42] They were caught outside of a battlefield, participating in non-hostile acts, yet the U.S. abducted them without satisfying any burden of proof. These stories represent only a fraction of the stories of those being held or those already released, raising the question of how many more were detained on incorrect information or are still being held long past a relevant or legal time period, with no access to legal recourse.

The treatment of detainees also raises some serious concerns. Amnesty International has made strong assertions that the handling of prisoners has been inhumane and a violation of human rights. Most are held in tiny cells that are not protected from the tropical elements, are given little or no time to exercise, and are often unnecessarily shackled. Possibly the most serious but least visible damage inflicted on these prisoners is in the form of psychological damage. Without any access to the outside world, their families, or to their lawyers, and having no understanding of their crime or how long they will be held, their environment exerts serious psychological effects on the prisoners. As of September 2003, there had been seventy-two attempted or successful suicides. That number encompasses one-tenth of the inmate population. However, forty of those attempts have not been officially counted because they are being classified by the on site doctor as suffering from "manipulative self-injurious behavior." This "condition" has been denounced by outside experts as "not a psychiatric classification," an obvious attempt to mask the rate of suicide occurring in the prison.[43]

Beyond the questions of mistaken identity and indiscriminate detention, the greater problem of the legality of their indefinite imprisonment must be posed on an international scale. There is a great deal of controversy over the classification of those being held at Gitmo as enemy combatants instead of prisoners of war. The difference is substantial and clearly outlined by the Geneva Conventions. The way in which the U.S. has classified its detainees, as well as the methods it is using to further detain them, plainly violates several principles of the Geneva Conventions. A major issue that must be addressed in order to preempt these accusations is the stance that the U.S. fully rejects the validity of international law being applied in the domestic sphere. While the U.S. is a signatory member of the majority of the Geneva Conventions, and has pushed to see them enforced onto other countries, its strong stance of protecting the infallibility of the Constitution and national sovereignty has led the

US to be placed in a position of both hypocritical action and an attitude of personal exceptionalism.

Prior to defining the violations committed at Gitmo, the prisoners must be separated into two groups, Taliban fighters and members of al Qaeda. Under Article 4 of Geneva III, to be classified as a prisoner of war a person must be a member of the armed forces involved in the conflict, wearing uniforms, follow the laws of war, and carry arms openly. Under this set of characteristics, members of the Taliban, as part of a government regulated army, fall under this category. However, members of al Qaeda fail to fulfill the necessary qualifications by committing acts such as targeting civilians, being unidentifiable by way of a uniform, and operating independent of a chain of command.[44] Under this line of reasoning, the U.S. has violated the rights of those in the Taliban by revoking their POW status, yet, has followed the protocol for members of al Qaeda. Still, there are greater issues of trial and hearing that apply to both classifications, as well as the issues surrounding those prisoners who fall into neither category, such as the aforementioned whose rights have been disregarded.

Under Article 5 of Geneva III, when a person is detained in a situation similar to those being held at Gitmo, where the possibility of one's actions or affiliation is in question, that person is to be treated as a POW until such time that their status can be determined by a competent tribunal, at which point he or she may be deemed an enemy combatant if they fail the tests laid out in Article 4.[45] The Bush administration has entirely disregarded this requirement, classifying them as a group rather than on an individual basis without a hearing. Further, this failure to offer trials and options to refute accusations has clearly slowed the process of seeking out and removing the aforementioned cases of "mistaken identity." Additionally, and possibly more important than the international statute, is a U.S. law entitled "Captured Persons: Determination of Eligibility for Enemy Prisoner of War Status." This law, put into action in 1995, and now deeply buried under red tape, states that "a person who has committed a belligerent act…shall be treated as an Enemy Prisoner of War until such time as his status has been determined by a tribunal." It further clarifies that the detainee has the right to present and have access to evidence levied against him.[46] While historically the U.S. has been adamant about denying international law entry into domestic issues, it has bypassed and violated its own domestic law by holding these detainees without competent trial to determine their status.

The final element of the Gitmo situation deals with the military tribunals established to charge and try several of the prisoners being detained. The design and legal guidelines used to create these tribunals are in blatant contradiction with the established legal methods and ethics enforced in the U.S. and by intention will function outside judicial and

congressional oversight. These diversions from the normal legal system are entirely premeditated on the part of the Executive and will be utilized in order to gain easier convictions of terrorist suspects and keep outside interference to an absolute minimum. In November of 2001, President Bush issued an Executive Order to establish that the use of military tribunals will be designated for trying terrorists. As a report from the ABA describes, "by this order…the president grants himself the power to turn any non-U.S. citizen who he suspects to be a terrorist over to the Secretary of Defense to be tried by a military commission..."[47] Since then there has been great speculation and apprehension to using this legal process to determine the fates of suspected terrorists. Six detainees have recently been selected as the first to be tried in such tribunals, most of whom are citizens of countries closely allied with the U.S., such as Britain and Australia, raising concerns as to the real motives for selecting these men first. While they have been informed that they will face a tribunal within months, they have not been charged with a crime and only two of them have just recently been given access to a lawyer.[48]

Under the military commissions, little of the customary constitutionally mandated legal rights are protected. The Executive branch controls all facets of the trial, selecting the panel of military officers who serve as judge and jury, as well as selecting the prosecuting and defending attorneys, all of whom are military officers. The trials will be held behind closed doors, and in several ways closed to the defendant. Under the rules designed by Donald Rumsfeld and other legal advisors, the standard rules of evidence and burden of proof do not apply. A defendant is guilty until proven innocent, confessions given under duress, such as at Gitmo, are admissible, and the prosecution may introduce secret evidence that the defendant will not be able to hear or challenge. Further, the tribunals do not grant the defendant the right of appeal, short of appealing directly to the President, who in fact is responsible for placing them on trial in the first place. Under the Uniform Code of Military Justice, military convicts are allowed to appeal to U.S. civilian courts; yet, the design of these new courts specifically prevents this rule from permeating the tribunal system.[49] A major point of international concern is that these tribunals carry with them the prospect of the death penalty. Looked down upon by most countries, and especially the UN, the possibility of being sentenced to death without appeal has had a chilling effect on the international community as to the assurances of human rights that the U.S. is providing for their citizens.

The infringements on the ethics of U.S. law, and thereby civil rights, are so severe that many of those chosen to participate in carrying out the tribunals have protested against the orders that they are asked to fulfill. This demonstrates that the resistance to the tribunals is not solely limited to liberal civil rights groups, but rather includes some of the top military

lawyers in the country. The first set of attorneys chosen to represent those put on trial expressed such strong reservations that they were "reassigned," and those that were ordered to replace them have expressed similar problems, claiming that the tribunals conflict with their sworn legal ethics. In response to this conflict and their concern for the rights of those on trial, these lawyers are planning on filing a lawsuit in federal court. Other groups, such as the Military Law Committee, National Association of Criminal Defense Lawyers, and the American Bar Association have taken a strong stand against the tribunals, claiming that it will be impossible to provide a fair trial and the rights of Due Process will be put in great jeopardy.[50] Navy Lieutenant Commander Charles Swift, an appointed defense lawyer for the tribunal, stated in a *New York Times* article, "if you put all the powers to prosecute, try and execute a sentence in one person's hands (the Executive), that is the absolute antithesis of the checks and balances system…"[51]

On the heels of this recent criticism, current legal developments have brought the Gitmo issue to the forefront of U.S. legal debate. In November, the Supreme Court agreed to hear a class action case being brought on behalf of all those detained at Gitmo under the claim that those imprisoned there have a right of appeal in U.S. courts. This case will be another watershed case decided in the spring that could eliminate the military tribunals. In a subsequent case, brought on behalf of a Libyan man named Falen Gherebi, the 9th Circuit Court of Appeals ruled that he had the right to a lawyer and to be heard in a U.S. court. Pending a Supreme Court decision, this action was blocked by the Bush administration, even blocking Gherebi from being notified of his victory. Gherebi has not received legal counsel and is not one of the six chosen to be heard in the military tribunals.[52]

Lastly, in an announcement made on February 14th of 2004, Defense Secretary Rumsfeld stated that those at Gitmo will be subjected to annual reviews of their detention. This announcement was made after continued criticism of the administration's policy and when analyzed can be seen to be little more than a symbolic attempt at appeasement. The review panels have yet to be defined, but they will consist of military personnel that will make their recommendations directly to Rumsfeld. While the panel has a voice, the final judgment will be given to Rumsfeld. By placing the final decision in the hands of Rumsfeld, who openly condemns those held at Gitmo as "vicious killers," the reviews will change practically nothing in terms of how the system stands currently, placing most the power to decide in the hands of Rumsfeld and Bush. The announcement stated that it is undecided if those being reviewed will be given access to lawyers, leaving open the possibility that these men would have to attempt to negotiate their release on their own, being given no prior time to prepare

an argument.[53] The review board will serve to do little for the inmates, who must now put their faith in a positive Supreme Court verdict.

Manooher Mofidi and Amy Eckert, writing for the *Cornell International Law Journal*, state a powerful maxim, "The rules of war were designed to provide order in a violent world," going on to declare further that one of the tasks of law is to "prevent inflamed passions and emotions from running amok."[54] The events of September 11th were truly a monumental and devastating occurrence. The US government has every right to pursue and punish those responsible for such a horrendous act against humanity. The enemy that perpetrated this act is a novel and unclear force, existing outside the normal realms of warfare and law, acting in a manner that is inconsistent with previous adversarial opponents. The methods employed by the U.S. as well as the international community must change and adapt to deal with this threat and protect the lives and interests of innocent civilian populations everywhere. However, this goal must be pursued with clearly laid out guidelines that ensure and protect the human and civil rights of both foreign nationals and U.S. citizens alike.

The U.S. is built on a foundation of equality and freedom from undue control and infringement by the government. The U.S. Constitution is an authoritative document that provides those living in the U.S., citizen and immigrants alike, with a fully encompassing set of rights, protecting the basic principles of life and liberty. Likewise, the international community has assembled a variety of documents that outline the course of action by which all countries seeking a peaceful society should abide. The actions taken by the U.S. in the wake of September 11th have put in jeopardy both the U.S. Constitution and the validity of international law. Under the Bush administration, the rule of law has been set aside under the justification of emergency war time powers and by doing so has cast a shadow onto how the country treats embattled minorities as well as how it chooses to respect the ideology of the Constitution. By indiscriminately arresting over one thousand immigrants, based largely on their race and religion, by detaining U.S. citizens on U.S. soil without access to fundamental Constitutional rights, and by imprisoning over 700 foreign nationals in an incommunicado status on foreign soil, these actions combine to present the case that the U.S. has abandoned its own legal principles and is acting as a military power. The U.S. currently seeks only to destroy its enemies and protect its citizens with no regard for the ramifications of its actions.

Vice President Dick Cheney has said, "Somebody who comes into the United States illegally, who conducts a terrorist operation…does not deserve the safeguards of the American criminal justice system." Further asserting that the President's order to establish military tribunals

"guarantees that we'll have the kind of treatment of these individuals that we believe they deserve."[55] This line of reasoning is against all that the U.S. legal system stands for and sets a dangerous precedent. If the U.S. changes its legal morals on the grounds of revenge, all that those principles stand for is lost. At the Nuremberg trials following World War II, the lead prosecutor was Supreme Court Justice Robert Jackson. In his opening statement, he brought forth an eternal notion of law which should be applied today. In reference to the men on trial he stated,

> It may be that these men of troubled conscience, whose only wish is that the world forget them, do not regard a trial as a favor. But they do have a fair opportunity to defend themselves, a favor which these men, when in power, rarely extended to their fellow countrymen. Despite the fact that public opinion already condemns their acts, we agree that here they must be given a presumption of innocence and we accept the burden of proving criminal acts…[56]

This principle of equality and fair treatment, even in the face of terrible acts or enflamed public opinion, is an essential part of what the U.S. judicial system represents. As a country, the U.S. must emerge from this tragedy and take its place as the most powerful country in the world by setting an example moving forward with humanitarian and law based actions to end terrorism, both domestically and abroad, while still respecting the fundamental principles of human and civil rights, applied equally to both friend and foe.

Endnotes

[1] "The State of Civil Liberties: One Year Later." The Center for Constitutional Rights (CCR). September 2002: pg 8-12. [Online] http://www.ccr-ny.org/v2/search/results.asp.

[2] Ibid.

[3] Lichtblau, Eric. "Citing Free Speech, Judge Voids Part of Anti Terror Act." *New York Times*. 27 Jan 2004. [Online] www.nytimes.com/200401/27/politics/27PATR.html.

[4] Mears, Bill. "Court keeps Gitmo detainee from seeing Lawyer." cnn.com. 5 Feb, 2004. http://www.cnn.com/2004/LAW/02/03/enemy.combatant.ap/index.html.

[5] Chang, Nancy. Silencing Political Dissent. New York: Seven Stories Press, 2002, 72

[6] Ibid.

[7] "Amnesty International's Concerns regarding Post September 11th Detentions in the USA (report)." Amnesty International (AI). March 2002.

[8] "The State of Civil Liberties: One Year Later." The Center for Constitutional Rights (CCR). September 2002: pg 8-12. [Online] http://www.ccr-ny.org/v2/search/results.asp

[9] "Amnesty International's Concerns regarding Post September 11th Detentions in the USA (report)." Amnesty International (AI). March 2002.

[10] Chang, Nancy. Silencing Political Dissent. New York: Seven Stories Press, 2002, 43

[11] Fitzpatrick, Joan. "Speaking Law to Power: The war against terrorism and Human Rights." *The European Journal of International Law* (EJIL). v14 Fall 2003, 255.

[12] Chang, Nancy. Silencing Political Dissent. New York: Seven Stories Press, 2002, 41

[13] "America's Disappeared (report)." American Civil Liberties Union (ACLU). Jan 2004, 12

[14] Ibid. 18

[15] Ibid. 2

[16] Ibid. 4

[17] Powell, Michael. "No Choice but Guilty." *Washington Post*. 29 July, 2003: pg A01

[18] Ibid.

[19] "The Lindh Deal: A Victory for Law." Center for International Human Rights (CIHR): Northwestern Law. 17 July 2002. [Online] www.law.northwestern.edu/depts/clinic/ihr/display_details.cfm

[20] Cloud, John. "U.S. v. Lindh, Round 1." *Time Magazine*. 4 Feb, 2002, 34

[21] "U.S. Nationals Detained as Unlawful Combatants." *The American Journal of Law*. v97 Jan 2003, 197

[22] Saporito, Bill. "Taliban From the Bayou: Yaser Hamdi." *Time Magazine*. 15 April, 2002: pg 46.

[23] "U.S. Nationals Detained as Unlawful Combatants." *The American Journal of Law*. v97 Jan 2003, 196

[24] "The Lindh Deal: A Victory for Law." Center for International Human Rights (CIHR): Northwestern Law. 17 July 2002. [Online] www.law.northwestern.edu/depts/clinic/ihr/display_details.cfm

[25] Harvey, Miles. "The Bad Guy." *Mother Jones Magazine*. March/April 2003. [Online] http://www.motherjones.com/commentary/notebook/2003/03/ma_293_01.

[26] Walker Lindh, John. "Prepared Statement of John Walker Lindh to the Court." findlaw.com. 4 Oct, 2002. [Online] http://news.findlaw.com/hdocs/docs/lindh/lindh100402statment.html

[27] "U.S. Nationals Detained as Unlawful Combatants." *The American Journal of Law*. v97 Jan 2003, 199

[28] Ibid.
[29] Harvey, Miles. "The Bad Guy." *Mother Jones Magazine*. March/April 2003. [Online] http://www.motherjones.com/commentary/notebook/2003/03/ma_293_01.html
[30] Levendosky, Charles. "Only Tyrants Imprison Citizens without Trial." *First Amendment Cyber Tribune* (FACT). 28 Sept, 2003. [Online] http://fact.trib.com/1st.lev.habeaspadilla.html
[31] Harvey, Miles. "The Bad Guy." *Mother Jones Magazine*. March/April 2003. [Online] http://www.motherjones.com/commentary/notebook/2003/03/ma_293_01.html

[32] "The State of Civil Liberties: One Year Later." The Center for Constitutional Rights (CCR). September 2002: pg 8-12. [Online] http://www.ccr-ny.org/v2/search/results.asp
[33] "Anti-terrorism and Preservation of Due Process." American Bar Association (ABA). 18 Feb, 2004. [Online] http://www.abanet.org/poladv/priorities/enemy.html
[34] "U.S. Nationals Detained as Unlawful Combatants." *The American Journal of Law*. v97 Jan 2003, 200
[35]"Ex Parte Quirin." findlaw.com. 31 July, 1942. [Online] http://caselaw.lp.findlaw.com/scripts/
[36] Levendosky, Charles. "Only Tyrants Imprison Citizens without Trial." *First Amendment Cyber Tribune* (FACT). 28 Sept, 2003. [Online] http://fact.trib.com/1st.lev.habeaspadilla.html
[37] "Lawyer, Alleged Combatant Meet." *Los Angles Times*. 11 Feb, 2004. pg A22.
[38] Rose, David. "Guantanamo Bay on Trial". *Vanity Fair*, January 2004, 133
[39] "Guantanamo Bay: A Human Rights Scandal." Amnesty International (AI). 25 July 2002. [Online] http://web.amnesty.org/pages/guantanamobay-index-eng
[40] Gall, Carlotta.'Freed Afghan, 15, Recalls a year at Guantanamo." *New York Times*. 11 Feb, 2004: pg A3.
[41] Rose, David. "Guantanamo Bay on Trial". *Vanity Fair*, January 2004, 134
[42] Ibid.
[43] Ibid. 90
[44] Eckert, Amy, and Mofidi, Manooher. "Unlawful Combatants or Prisoners of War: the Law of Politics and Labels." *Cornell International Law Journal*. v36 Spring 2003, 59
[45] Ibid.
[46] Rose, David. "Guantanamo Bay on Trial". *Vanity Fair*, January 2004, 135

[47] Massimino, Elisa. "What's Wrong with Military Trials of Terrorist Suspects?" American Bar Association (ABA). [Online] http://www.abanet.org/leadership/recommendations03/109.pdf
[48] "Al Qaeda Suspect Sues U.S. Officials." *Los Angles Times*. 23 Jan, 2004: pg A35.
[49] Rose, David. "Guantanamo Bay on Trial". *Vanity Fair*, January 2004, 134
[50] "Anti-terrorism and Preservation of Due Process." American Bar Association (ABA). 18 Feb, 2004. [Online] http://www.abanet.org/poladv/priorities/enemy.html
[51] "Lawyer Says Tribunals Raise Concerns." *New York Times*. 1 Feb, 2004. [Online]www.nytimes.com/aponline/international/AP-Guantanamo-Tribunals.html
[52] Ibid.
[53] "Guantanamo Prisoners to Get Reviews." *Los Angles Times*. 14 Feb, 2004: pg A29.
[54] Eckert, Amy, and Mofidi, Manooher. "Unlawful Combatants or Prisoners of War: the Law of Politics and Labels." *Cornell International Law Journal*. v36 Spring 2003: pg 59.
[55] Massimino, Elisa. "What's Wrong with Military Trials of Terrorist Suspects?" American Bar Association (ABA). [Online] http://www.abanet.org/leadership/recommendations03/109.pdf
[56] "The Nuremberg Trials - Justice Jackson's Opening Statement for the Prosecution." University of Missouri Kansas City School of Law. [Online] http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/Jackson.html

Works Cited

"A Question of Freedom." *The Economist*. March 6 2003, [Online] http://economist.com/displaystory.cfm?story_id=1622177

"Ability of Detainees in Cuba to Obtain Federal Habeas Corpus Review." *The American Journal of International Law.* v.96 April 2002: pg. 481-482.

"Al Qaeda Suspect Sues U.S. Officials." *Los Angles Times*. 23 Jan, 2004: pg A35.

"America's Disappeared (report)." American Civil Liberties Union (ACLU). Jan 2004: 1-21

"Amnesty International's Concerns regarding Post September 11th Detentions in the USA (report)." Amnesty International (AI). March 2002.

"Anti-terrorism and Preservation of Due Process." American Bar Association (ABA). 18 Feb, 2004. [Online] http://www.abanet.org/poladv/priorities/enemy.html

"Bush Admin. Pushes Court on Guantanamo Bay." findlaw.com. 28 Jan, 2004. [Online] www.news.findlaw.com

Chang, Nancy. Silencing Political Dissent. New York: Seven Stories Press, 2002.

Cloud, John. "U.S. v. Lindh, Round 1." *Time Magazine*. 4 Feb, 2002: pg 34-35.

Cole, David. "The USA Patriot Act and the American Response to Terror (panel discussion)." *American Criminal Law Review*. v 39 i4. Fall 2002: pg 1501-1533.

"Domestic Security: Release Order Delayed." *New York Times*. 23 Jan, 2004: pg 15.

Eckert, Amy, and Mofidi, Manooher. "Unlawful Combatants or Prisoners of War: the Law of Politics and Labels." *Cornell International Law Journal*. v36 Spring 2003: pg 59.

"Enemy Combatant meets Lawyer." *Los Angles Times*. 15 Feb, 2004: pg A28.

"Ex Parte Quirin." findlaw.com. 31 July, 1942. [Online] http://caselaw.lp.findlaw.com/scripts/

Fitzpatrick, Joan. "Speaking Law to Power: The war against terrorism and Human Rights." *The European Journal of International Law* (EJIL). v14 Fall 2003: pg. 241-264.

Gall, Carlotta. 'Freed Afghan, 15, Recalls a year at Guantanamo." *New York Times*. 11 Feb, 2004: pg A3.

"Guantanamo Bay: A Human Rights Scandal." Amnesty International (AI). 25 July 2002. [Online] http://web.amnesty.org/pages/guantanamobay-index-eng

"Guantanamo Prisoners to Get Reviews." *Los Angles Times*. 14 Feb, 2004: pg A29.

Harvey, Miles. "The Bad Guy." *Mother Jones Magazine*. March/April 2003. [Online] http://www.motherjones.com/commentary/notebook/2003/03/ma_293_01.html

"How the Patriot Act Permits Indefinite Detention of Immigrants who are not Terrorists." American Civil Liberties Union (ACLU). 23 Oct. 2001. [Online] http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12126&c=207

"Lawyer, Alleged Combatant Meet." *Los Angles Times*. 11 Feb, 2004. pg A22.

"Lawyer Says Tribunals Raise Concerns." *New York Times*. 1 Feb, 2004. [Online] www.nytimes.com/aponline/international/AP-Guantanamo-Tribunals.html

Levendosky, Charles. "Only Tyrants Imprison Citizens without Trial." *First Amendment Cyber Tribune* (FACT). 28 Sept, 2003. [Online] http://fact.trib.com/1st.lev.habeaspadilla.html

Lichtblau, Eric. "Citing Free Speech, Judge Voids Part of Anti Terror Act." *New York Times*. 27 Jan 2004. [Online] www.nytimes.com/2004/01/27/politics/27PATR.html

Massimino, Elisa. "What's Wrong with Military Trials of Terrorist Suspects?" American Bar Association (ABA). [Online] http://www.abanet.org/leadership/recommendations03/109.pdf

Mears, Bill. "Court keeps Gitmo detainee from seeing Lawyer." cnn.com. 5 Feb, 2004. http://www.cnn.com/2004/LAW/02/03/enemy.combatant.ap/index.html

Powell, Michael. "No Choice but Guilty." *Washington Post*. 29 July, 2003: pg A01

Prothero, Mitchell. "John Walker Lindh gets 20 Years." *United Press International*, 4 October, 2002. [Online] Expanded Academic ASAP Database.

Ramirez, Deborah, Hoopes, Jennifer and Quinlan, Tara. "Defining Racial Profiling in a Post 9/11 World." *American Criminal Law Review*. v40 Summer 2003: pg 1195-1220.

Rose, David. "Guantanamo Bay on Trial". *Vanity Fair*, January 2004: 88-92, 132-136.

Saporito, Bill. "Taliban From the Bayou: Yaser Hamdi." *Time Magazine*. 15 April, 2002: pg 46.

Shepardson, David. "ACLU suit attacks Patriot Act." *Detroit News*. 30 July 2003.[Online] http://www.detnews.com/2003/politics/0307/30/a01-231568.htm

"The Lindh Deal: A Victory for Law." Center for International Human Rights (CIHR): Northwestern Law. 17 July 2002. [Online] www.law.northwestern.edu/depts/clinic/ihr/display_details.cfm

"The Nuremberg Trials - Justice Jackson's Opening Statement for the Prosecution." University of Missouri Kansas City School of Law. [Online] http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/Jackson.html

"The State of Civil Liberties: One Year Later." The Center for Constitutional Rights (CCR). September 2002: pg 8-12. [Online] http://www.ccr-ny.org/v2/search/results.asp

"The USA Patriot Act." Electronic Privacy Information Center (EPIC). [Online] http://www.epic.org/privacy/terrorism/usapatriot/

"U.S Detention of Aliens in the Aftermath of September 11th." *The American Journal of International Law*. v96 April 2002: pg 470-475.

"U.S. frees 3 teens at Guantanamo Bay." cnn.com. 29 Jan 2004. [Online] http://www.cnn.com/2004/WORLD/americas/01/29/gitmo.teens/index.html

"U.S. Nationals Detained as Unlawful Combatants." *The American Journal of Law*. v97 Jan 2003: pg 196-200.

Walker Lindh, John. "Prepared Statement of John Walker Lindh to the Court." findlaw.com. 4 Oct, 2002. [Online] http://news.findlaw.com/hdocs/docs/lindh/lindh100402statment.html