

PRESIDENTIAL DECISIONS TO INTERN AND DETAIN
UNCHARGED PERSONS: A COMPARISON OF THE FRANKLIN D.
ROOSEVELT AND THE GEORGE W. BUSH ADMINISTRATIONS

A Senior Honors Thesis

by

CHRISTOPHER A. WOODRUFF

Submitted to the Office of Honors Programs
& Academic Scholarships
Texas A&M University
In partial fulfillment of the requirements of the

UNIVERSITY UNDERGRADUATE
RESEARCH FELLOWS

April 2006

Majors: International Studies and Spanish

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ABSTRACT

Presidential Decisions to Intern and Detain Uncharged Persons: A
Comparison of the Franklin D. Roosevelt and the George W. Bush
Administrations (April 2006)

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The purpose of this study is to investigate the internment and detainment policies used by Presidents Franklin D. Roosevelt and George W. Bush as methods for protecting the United States from attack during World War II and the War on Terror. This study comes from a desire to better understand Bush's decision to use indefinite detainment as a tool in the War on Terror, and in looking for an historical precedent, Roosevelt's internment of Japanese Americans appeared to possess many similar characteristics. Therefore, through direct comparison and analysis of historical and legal sources, this

research highlights major similarities and differences that existed between the two episodes.

Roosevelt's Executive Order 9066 affected the lives of over 120,000 people and over 70,000 U.S. citizens. Decades of anti-Asian sentiment, the public hysteria that erupted following Pearl Harbor, and the racially-biased suspicions of disloyalty, all played a role in Roosevelt's ultimate decision to give the Secretary of War the authority to evacuate and incarcerate the ethnic Japanese population on the West Coast. Similarly, Bush responded to the September 11 attacks by advocating the need for indefinite detainment of hundreds of terrorism suspects, both U.S. citizen and non citizen. He also issued the Military Order of November 13, 2001, which gave substantial power to the Secretary of Defense to detain, charge, and try suspects, but did not require that they be charged.

Through analysis of initial FBI arrests, public opinion trends, prisoner treatment, and Supreme Court cases, this research allows its readers to consider the thesis that Roosevelt's and Bush's actions represent a pattern of presidential decisions that might conflict with human and constitutional rights.

To my grandparents, Mildred and James Nobles and Mary Louise and W.B.

Woodruff, who have always shown me the importance of history.

TABLE OF CONTENTS

	Page
ABSTRACT.....	iii
DEDICATION.....	v
TABLE OF CONTENTS.....	vi

SECTIONS

INTRODUCTION.....	1
CRISIS.....	2
INITIAL RESPONSE.....	4
SUPPORT FOR INTERNMENT/DETAINMENT.....	12
JUSTIFICATION FOR PRESIDENTIAL ACTION.....	29
PRESIDENTIAL ORDERS.....	47
SUBSEQUENT ORDERS AND THEIR EFFECTS.....	54
SUPREME COURT DECISIONS.....	75
CONCLUSION.....	83

REFERENCES.....	89
CURRICULUM VITA.....	96

INTRODUCTION¹

Throughout the course of U.S. history, few episodes have tested the resolve of a nation as severely as World War II and the War on Terror. In each, the U.S. was caught by surprise and ushered, unprepared, into indefinite conflict with ruthless enemies. These tests, however, have not been limited to the capabilities of U.S. armed forces meeting others on the battlefield, but instead have challenged the ideas and principles upon which this nation was founded. Belief in life, liberty, and the pursuit of happiness, has been an American creed since 1776, yet even great leaders have been forced to sacrifice these values in the face of extreme circumstances. Presidents Franklin D. Roosevelt and George W. Bush were both charged with responding to unprecedented crises, and although each faced unique challenges from different situations, this thesis will attempt to draw comparisons between the policies enacted by each in order to secure the country. Of particular interest are the detainment programs set up by both Roosevelt and Bush after the attack on Pearl Harbor and September 11. While most historians have deemed FDR's internment of Japanese Americans as an injustice, judgment awaits Bush's detainment of terrorism suspects in locations such as Guantanamo Bay, Cuba.

¹ This thesis follows the style and format of the *MLA Handbook*.

CRISIS

On the morning of December 7, 1941, warplanes took off from the Imperial Japanese carrier fleet in the Pacific Ocean and attacked the U.S. naval base at Pearl Harbor, Hawaii. This sneak attack caught the U.S. Pacific fleet unprepared, killing 2,388 people, and inflicting a debilitating blow against US naval power in the Pacific. The effects of this crisis were immediately felt on the mainland as well, as historian Roger Daniels noted, “despite decades of propaganda and apprehension about a Pacific war, the reality, the dawn attack at Pearl Harbor . . . came as a stunning surprise to most Americans.” To a public struggling to come out of an economic depression, this shock might have been devastating, but instead America overcame its initial shock and “entered the war with perhaps more unity than has existed before or since.”²

Almost sixty years later, on September 11, 2001, al Qaeda terrorists hijacked four commercial airliners on the East Coast, crashing two of them into the World Trade Center in New York City, one into the Pentagon building in Arlington, Virginia, and the

² Roger Daniels, *Concentration Camps, North America: Japanese in the United States and Canada during World War II* (Malabar, Florida: Krieger Pub., 1993) 32.

final plane crashed into a field in Pennsylvania. In all, there were 3,047 victims, and yet again the American people had cause to unite in unprecedented form. The 9/11 attacks caught the nation completely off guard, and although the 9/11 Commission has since reported that U.S. intelligence agencies failed to recognize warning signs of the impending attack, few people worldwide had ever dreamed of such a successful terrorist attack.

INITIAL RESPONSE

As an immediate response to the Pearl Harbor attack, and to the U.S. entrance into World War II, the Justice Department began rounding up all suspicious “enemy aliens.” On December 7 and 8, 1941, President Roosevelt issued proclamations nos. 2525, 2526, and 2527, which subjected all Japanese, German, and Italian aliens in the U.S. to arrest and detention.³ These proclamations were quickly executed by the Federal Bureau of Investigation, which apprehended 1,717 aliens within twenty-four hours of the attack (1,212 of those were of Japanese ancestry). The need for these operations had been foreseen when on September 6, 1939, Roosevelt “designated the FBI as the primary agency to investigate matters relating to espionage, sabotage, and violation of neutrality regulations.”⁴ Thus began the FBI’s investigations into the lives of aliens, ultimately facilitating their timely arrests in the wake of December 7.

Additionally, Congress had passed the *Smith Act* in June of 1940 and it required every alien over fourteen years old to register and be fingerprinted, so by December of

³ John Joel Culley, “Enemy Alien Control in the United States during World War II: A Survey,” *Alien Justice: Wartime Internment in Australia and North America*, in Kay Saunders and Roger Daniels eds. (St. Lucia, Queensland: Univ. of Queensland Press, 2000) 141.

⁴ Culley, *Alien Justice* 141, 139.

that same year the Justice Department had registered over five million aliens. However, despite extensive pre-war intelligence planning, “as early as 8 December 1941,” General Counsel of the Immigration and Naturalization Service Edward J. Ennis noted, “the FBI was turning many aliens over to the INS without a written statement showing good cause for detention.”⁵ Others also expressed concerns about the “haphazardness of the indiscriminate pickups,” and in fact, Assistant Attorney General James Rowe Jr. admitted that “we picked up too many . . . some of this stuff they were charged on was as silly as hell.”⁶ Nevertheless, feeling as though the safety of the nation depended on them, the FBI continued to pursue potential saboteurs and used an “ABC” system to classify its suspects. “A” suspects “were aliens who led cultural organizations,” “B” “were slightly less suspicious aliens,” and “C” “consisted of Japanese language teachers and Buddhist priests.”⁷ In general, community and religious leaders, language instructors, and donors to pro-Japanese organizations were the targets of the initial arrests. In all, over 5,000 first generation “Issei” and second generation “Nisei” were

⁵ Culley, *Alien Justice* 143.

⁶ Michi Nishiura Weglyn, *Years of Infamy: The Untold Story of America's Concentration Camps* (Seattle: Univ. of Washington Press, 1996) 46.

⁷ Wendy Ng, *Japanese American Internment during World War II: A History and Reference Guide* (London: Greenwood Press, 2002) 14.

interrogated by the FBI despite intelligence reports stating that only a tiny portion of the Japanese American population was considered a threat.⁸ In fact, Curtis B. Munson's secret report on the West Coast Japanese population, made during November 1941 in consultation with both the FBI and Naval Intelligence, stated that the "Intelligence Services . . . believe that only 50 to 60" Japanese in each Naval District can be classified as "really dangerous."⁹ Therefore, given the existence of only three Naval Districts on the West Coast (11th, 12th, & 13th), the fact that over 5,000 Issei and Nisei were interrogated is evidence that officers were caught up in the anti-Japanese hysteria known as the "yellow peril," which quickly swept over California, Oregon, and Washington, pushing aside good sense and reason.

Alternatively, Attorney General Francis Biddle attempted to dispel any notion that arrests had been made on the basis of nationality alone, as he announced that there would be a system in place to consider each individual case on its own merits.¹⁰

Established by the Justice Department, the program alluded to by Biddle was called the

⁸ Weglyn, *Years of Infamy* 46.

⁹ Curtis B. Munson, "Report on Japanese on the West Coast of the United States," *Hearings, Joint Committee on the Investigation of the Pearl Harbor Attack*, 79th Cong., 1st sess., S. Con. Res. 27, part 6 (Washington: GPO, 1946) 2686.

¹⁰ Culley, *Alien Justice* 141.

Alien Enemy Control Unit (AECU). It was operated from Washington D.C., but every federal district throughout the country had its own Alien Enemy Hearing Board.

According to historian John Joel Culley,

An FBI field office initiated the process by submitting its dossier on an individual alien to a US Attorney who considered the evidence and forwarded a request to the AECU for a presidential warrant of apprehension. After review, the AECU could issue a warrant which the FBI executed, and the case moved to the local Alien Enemy Hearing Board where the second phase of the program began.¹¹

From there, the aliens would appear before a board of local civilian community members, representatives of the US Attorney's office, and representatives of the FBI. Head of the AECU, Edward J. Ennis was bold enough to assert that "every doubt . . . must be resolved against him [the alien] and in favour of the Government."¹² Therefore, what might have seemed like an objective evaluation of facts actually was tainted by biased attitudes and the need for expediency, as the aliens were not even allowed to

¹¹ Culley, *Alien Justice* 142.

¹² Culley, *Alien Justice* 142.

confront the government's evidence against them. What's more, the system was quickly overwhelmed by the sheer number of suspects, and as the Army continued its urging for the Justice Department to comply with its push towards complete removal of all Japanese aliens from strategic West Coast areas, many suspects were taken into INS custody never to receive a hearing.¹³

After the 9/11 attacks, the Justice Department responded in a similar way as it had following Pearl Harbor. The FBI took the lead in investigating the attacks themselves and in searching for accomplices or other terrorists preparing additional strikes. According to the Department of Justice's April 2003 report entitled *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, more than 1,200 citizens and aliens were detained at least for questioning within two months of the attacks.¹⁴ Attorney General John Ashcroft articulated his view of the mission facing the

¹³ Culley, *Alien Justice* 143.

¹⁴ United States, Dept. of Justice, Office of the Inspector Gen., *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks* (Washington: GPO, 2003) 1.

Department of Justice in a September 17, 2001 memo, where he stated that the Department would prevent future terrorism by detaining violators who “have been identified as persons who participate in, or lend support to, terrorist activities. Federal law enforcement agencies and the United States Attorneys’ Offices will use every available law enforcement tool to incapacitate these individuals and their organizations.” The investigation that ensued was known as the Pentagon/Twin Towers Bombings investigation, or PENTTBOM, and it would eventually incorporate elements of federal, state, and local law enforcement agencies in order handle the more than 96,000 leads that poured into FBI headquarters after the attacks.¹⁵

Through cooperation from the airlines, the names and nationalities of the hijackers were passed on to the FBI, and much like in 1941, because the attackers were aliens, the INS came to play a major role in the detention of potential suspects. In all, 762 aliens were arrested by the FBI as either persons “of interest” or “persons of high interest,” and delivered to INS custody on charges of immigration violations. However, Inspector General Glenn A. Fine admitted in his report that the procedures used to make arrests when pursuing leads during PENTTBOM investigations were at times arbitrary,

¹⁵ United States, *The September 11 Detainees* 12.

as “the FBI interpreted and applied the term ‘of interest to the September 11 investigation’ quite broadly.” In fact, the report explained that “no distinction generally was made between the subjects of the lead and many other individuals encountered at the scene ‘incidentally,’ because the FBI wanted to be certain that no terrorist was inadvertently set free.”

The FBI’s caution can be appreciated, but at what cost? The large number of detainees soon slowed the complex multi-agency processing system, leading to delays in due process. Further reflecting the Department’s caution, the FBI insisted that all arrested suspects be initially denied bond. This meant that the detainees had no ability to request a bond re-determination hearing until after being served their INS “Notice to Appear” document that outlined the charges against them, and this document could only be issued upon criminal clearance of each suspect by the FBI. The Inspector General admitted that despite efforts to complete the detainee clearance process in a timely manner, “the FBI took, on average, 80 days to clear a Sept. 11 detainee,” and as he later concludes, “these delays affected the detainees’ ability to obtain legal counsel and postponed the detainees’ opportunity to seek a bond re-determination hearing.”

Additionally, the most alarming criticism of the Department’s handling of detainees was

the evidence suggesting “a pattern of physical and verbal abuse by some correctional officers,” and the conclusion reached by Inspector General Fine that “certain conditions of confinement were unduly harsh, such as illuminating the detainees’ cells for twenty-four hours a day.”¹⁶ Ultimately, the majority of those arrested were found to be in violation of immigration law, and either removed from the United States, allowed to depart voluntarily, or released from INS custody.

¹⁶ United States, *The September 11 Detainees* 5, 16, 26, 188-89, 197.

SUPPORT FOR INTERNMENT/DETAINMENT

Late 1941 and early 1942 were chaotic and stressful times for Americans, but those on the West Coast particularly had to live with the fear of a foreign invasion. Eventually, this turmoil led U.S. leaders to make a series of decisions that ultimately led to President Roosevelt's Executive Order 9066.

Many influential events, however, preceded this order. First, public opinion had an enormous impact on eventual decisions toward internment, and much of the public's fears were spawned through the releases of two governmental reports. The Roberts Report, headed by Supreme Court Justice Owen J. Roberts, was the result of the official government committee of inquiry into the attacks, and the Knox Report, led by Navy Secretary Frank Knox, was the work of the Navy's own fact-finding commission. Both emphasized that the attack on Pearl Harbor had been aided by successful Japanese American treachery on the Hawaiian Islands. Thus, their statures allowed them to command public attention and opinion, and inspired newspapermen like William Randolph Hearst to sensationalize public fears into the hysteria known as the "yellow peril." It is interesting to note that the Roberts Report even went so far as to blame the Constitution, implying that it had "seriously inhibited" the work of the FBI in its

counterespionage activities.¹⁷ Like falling dominoes, prominent leaders continued to build the paranoia, all the way to the point when Earl Warren, California's Attorney General, issued his popular conspiracy theory: "I believe that we are just being lulled into a false sense of security and that the only reason we haven't had a disaster in California is because it has been timed for a different date. Our day of reckoning is bound to come in that regard."¹⁸ Additionally, Warren, who later became Chief Justice of the U.S. Supreme Court, played up suspicions that Japanese Americans were well organized and had intentionally "infiltrated themselves into every strategic spot" in California's coastal and valley counties.¹⁹ Public outcry soon called for steps to be taken in order to secure the homeland from the perceived threat, and on February 4, 1942, the Office of Facts and Figures released the results of the previous week's public opinion poll, in which "between 23 and 43 percent" of respondents believed that "further action was necessary" on the part of the government for dealing with the Japanese Americans.²⁰

One example of the public's stance can be seen in the testimony of the all-white Western

¹⁷ Daniels, *Concentration Camps* 49.

¹⁸ Daniels, *Concentration Camps* 76.

¹⁹ Weglyn, *Years of Infamy* 37.

²⁰ Greg Robinson, *By Order of the President: FDR and the Internment of Japanese Americans*, (Cambridge, Massachusetts: Harvard University Press, 2001) 101.

Growers Protective Association, who, feeling that their long association with Japanese in agriculture made them especially knowledgeable, declared that “no individual Japanese, or . . . American citizen of Japanese parentage, can be judged as to his loyalty solely by past experience.”²¹ These views were dutifully represented by elected representatives in Washington, D.C., where they were passed on to the War Department. On January 16, 1942, California Congressman Leland Ford urged War Secretary Stimson to have “all Japanese, whether citizen or not . . . placed in inland concentration camps.” Ford continued by suggesting that in order to test loyalty, “any Japanese willing to go to a concentration camp was a patriot; therefore it followed that unwillingness to go was proof of disloyalty to the United States.”²² This kind of reverse-psychological approach mirrored Warren’s conspiracy theory, and as backward as it may seem now, it made perfect sense then.

Second, there were those who pleaded with the public for tolerance, to consider each person’s loyalty individually, and to give the Japanese at the very least the same benefit of the doubt given to German and Italian aliens.²³ The most important

²¹ Daniels, *Concentration Camps* 77.

²² Daniels, *Concentration Camps* 46-47.

²³ Daniels, *Concentration Camps* 78.

organization representing their interests was the Japanese American Citizens League (JACL), and just as the name implies, only U.S. citizens were allowed membership. In anticipation of the government and public backlash, the JACL wired a message to Roosevelt immediately after Pearl Harbor affirming their loyalty. The Nisei also established direct communication with the FBI in Los Angeles, and called on younger Japanese generations to report any suspicious behavior by their elders.²⁴ The JACL leadership realized the likelihood that the government would act against their constituents, but they had little choice other than to hold onto the hopes expressed by Mike Masoka when he wrote the JACL creed in 1940; part of which is quoted here:

I am firm in my belief that American sportsmanship and attitude of fair play will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics. Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her, I pledge myself to do honor to her at all times and all places; to support her constitution; to obey her laws; to respect her flag; to defend her against all enemies, foreign and domestic; to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, in the hope that I may become a better American in a greater America.²⁵

²⁴ Daniels, *Concentration Camps* 41.

²⁵ Daniels, *Concentration Camps* 25.

Nevertheless, historian Roger Daniels opined that the counsel for the Southern California Branch of the American Civil Liberties Union, A.L. Wirin, voiced the strongest opinion in favor of respecting the Japanese Americans' rights by insisting that even in wartime, "there must be a point beyond which there may be no abridgement of civil liberties and we feel that whatever emergency, that persons must be judged, so long as we have a Bill of Rights, because of what they do as persons."²⁶ Unfortunately, even these eloquent declarations did little to stem the racial hatred that ignited after Pearl Harbor.

Despite these public pleas, the best case made on behalf of America's Japanese population was in a secret report by a special agent of the State Department, Curtis B. Munson, completed in October and November of 1941. He was charged with collecting intelligence for a loyalty assessment on the Japanese living on the West Coast, to be submitted to President Roosevelt. During his investigation, Munson spent a week in each of the three Naval Districts, and he noted that he received the "full cooperation of the Naval and Army Intelligence and the FBI."²⁷ In fact, Munson bragged on the Navy

²⁶ Daniels, *Concentration Camps* 78.

²⁷ Munson, *Hearings* 2682.

for its extensive ten to fifteen years of research into the possibility of a Japanese uprising, and it is interesting that given full access to such a wealth of information and intelligence, Munson reported that everything presented to him was “on the whole, fairly clear and opinion toward the problem exceedingly uniform.”²⁸ Therefore, his conclusion that “there will be no armed uprising of Japanese” was based on unvarying opinions held by U.S. intelligence services and consistent information encountered throughout his investigation.²⁹ Nevertheless, it is clear that the Army and the President likely paid most of their attention to Munson’s brief assessments of threats posed by a miniscule minority of the Japanese population, rather than to the big picture offered:

There are still Japanese in the United States who will tie dynamite around their waist and make a human bomb out of themselves. We grant this, but today they are few. . . . There will be the odd case of fanatical sabotage by some Japanese ‘crackpot.’ . . . We are wide open to sabotage on this Coast and as far inland as the mountains, and while this one fact goes unrectified I cannot unqualifiedly state that there is no danger from the Japanese living in the United States which otherwise I would be willing to state.³⁰

²⁸ Munson, *Hearings* 2682.

²⁹ Munson, *Hearings* 2686.

³⁰ Munson, *Hearings* 2685-87.

Even with these admissions, Munson's thesis clearly proposed that despite the probable sabotage attempts by Imperial Japanese agents and the unpredictability of a few ultra-radical Japanese living in the U.S., the population as a whole would be loyal and in no way posed a greater threat than any other racial group with which the U.S. might go to war.

It is important to note that Munson's report was classified, unavailable for public consideration, and thus allowed other official government publications like the Roberts Report to exist unrivaled in the public arena. Nevertheless, the events of December 7 clearly altered the viewpoint from which Roosevelt and his advisers analyzed the implications and applicability of Munson's work, so in order to reemphasize his assertions he traveled to Hawaii after the attacks to expand his study. The supplemental investigation produced two more reports entitled "Report and Suggestions Regarding Handling Japanese Question on the Coast" and "Report on Hawaiian Islands" that were completed on December 20. The immediate concern was a statement made by Secretary Knox following Pearl Harbor that received enormous publicity. Knox was quoted as saying, "I think the most effective Fifth Column work of the entire war was done in Hawaii with the possible exception of Norway," to which Munson responded that the

Secretary's words created the "wrong impression." Contrary to Knox, Munson doubted that "outside of sabotage, organized and paid for by the Imperial Japanese Government beforehand, that there was any large disloyal element of the Japanese population which went into action as a Fifth Column." As with the West Coast investigation, Munson again received the full cooperation of every U.S. intelligence agency, and this time he was also aided by British Intelligence. Through these connections, he reached many similar conclusions as he had in his first report, including that the islands' second-generation Nisei citizens were approximated at 98 percent loyal, and out of the entire alien population only fifty or sixty persons were deemed "sinister" by a private FBI estimate. In fact, Munson turned the tables by declaring that "the real danger of racial trouble comes from the defense workers who have been imported from the mainland," because, he explained, "to them every Japanese is a 'Yellow Peril' and to be treated accordingly." Therefore, after interviews, observation, and unrestricted access to intelligence information, the President's reporter bravely stood by his November conclusions that there would be no racial uprising either in Hawaii or on the West Coast by Japanese Americans.

His confidence on this issue led Munson to also propose a number of suggestions for how the government might best lead the nation away from mass racism. The number one suggestion was that someone from “high government authority” (the President or Vice President) should encourage the loyal Japanese through a statement of praise that would also outline public attitude toward them.³¹ Roger Daniels agreed with Munson’s idea in his essay “Incarcerating Japanese-Americans: An Atrocity Revisited,” by saying, “only the President himself might have been heard above the patriotic racist roar, but he was silent.” In fact, claimed Daniels, “Franklin Roosevelt was not prepared either to risk rupturing war-time unity by taking an unpopular stand,” or “to oppose the political pressures for incarceration” that began to build from within his own government in December and early January.³² As was evidenced by Roosevelt’s actions or lack thereof, many if not all of Munson’s findings were ignored, and the sexier political decision to indulge calls for “revenge” against Japanese Americans was made.³³ Also intriguing was that, “with amazing aplomb, the Army, whose own intelligence service had been an integral part of the investigative teamwork, was to maintain baldly throughout that the

³¹ Munson, *Hearings* 2688, 2692, 2695-96, 2689.

³² Roger Daniels, “Incarcerating Japanese-Americans: An Atrocity Revisited,” *Alien Justice* 173.

³³ Daniels, *Alien Justice* 175.

loyalties of this group were ‘unknown.’”³⁴ The Army’s ability to take this stance was obviously permitted by the fact that the Munson Report was kept a secret, and to Weglyn this was a prime example of “how executive officers of the Republic are able to mislead public opinion by keeping hidden facts which are precisely the opposite of what the public is told—information vital to the opinions they hold.”³⁵

Much like the reaction to Japan’s attack on Pearl Harbor, the immediate and overwhelming public suspicion after the 9/11 attacks fell on people of the same or similar ethnic and religious backgrounds as the hijackers. Anonymous tips were commonly called in to the FBI by people simply suspicious of their Arab or Muslim neighbors. Anti-Arab behavior was nothing new in the U.S.; it had been well documented since the 1970s. Rooted in well-known events like the Iran hostage crisis in 1979, the hijacking of the Italian cruise liner the *Achille Lauro* by the Palestinian Liberation Organization in 1985, and the Persian Gulf War in 1991, Americans held the stereotype of the Muslim “terrorist” long before September 11. According to the Human

³⁴ Weglyn, *Years of Infamy* 40.

³⁵ Weglyn, *Years of Infamy* 52.

Rights Watch study entitled “We are not the Enemy,” the 1973 Arab-Israeli war and oil embargo was a major starting point for “increased prejudice and discrimination” against Arab communities.³⁶ From that point forward, the association of terrorism with Arabs led to a predictable trend in the U.S. that usually included violent backlashes, known as “hate crimes,” directed at Arabs, Muslims, and all those perceived to be Arab or Muslim; usually including Sikhs and South Asians. Therefore, to experts the wave of violence that spread after 9/11 was no surprise, but it nonetheless was “unique” in its “severity and extent.”³⁷

These hate crimes ranged from physical attacks and murders, to religious violence and vandalism, and to general discrimination and distrust. For example, both Los Angeles County and Chicago officials “reported fifteen times the number of anti-Arab and anti-Muslim crimes in 2001 compared to the preceding year.” This statistic is incredible because though it accounts for the entire year, the bulk of these crimes were all committed within the three months immediately after 9/11. Also, these crimes were

³⁶ “‘We are not the Enemy:’ Hate Crimes Against Arabs, Muslims, and those Perceived to be Arab or Muslim after September 11,” *Human Rights Watch*, vol. 14, no. 6 (G), Nov. 2002, New York City, 14 Feb. 2006 <<http://hrw.org/reports/2002/usahate/>> 11.

³⁷ “We are not the Enemy” 3.

not distinct to any one section of the country, but were an epidemic that encompassed every state. On the night of September 12 assailants fired on the Islamic Center of Irving, Texas, on November 16 someone threw rocks through two windows of the United Muslim Masjid in Waterbury, Connecticut, and on December 29 vandals severely damaged the interior of the Islamic Foundation of Central Ohio, in Columbus. All in all, the FBI reported a “seventeen fold increase in anti-Muslim crimes nationwide during 2001,” and the Human Rights Watch group reported a “700 percent” increase in anti-Muslim activities after the attacks.³⁸

In order to ease tensions and reassure both American Muslims and non-Muslims, President Bush sponsored an elaborate campaign demonstrating American goodwill and respect for Islam. Bush not only visited with prominent Muslim leaders, but on November 19, 2001, he hosted the “first ever Iftar—or breaking-of-the-fast—dinner at the White House,” which concluded the annual Islamic celebration of Ramadan.³⁹ Also unprecedented were the efforts made by state and local leaders and law enforcement to

³⁸ “We are not the Enemy” 3, 23, and Human Rights Watch in Emily Liu, “Muslim American Concerns and Struggles Post 9/11,” *Ithaca College Journal of Race, Culture, Gender, and Ethnicity* 2 (2005) 38.

³⁹ “The Global War on Terrorism: The First 100 Days,” The White House, Dec. 2001, 31 Jan. 2006 <<http://www.whitehouse.gov/news/releases/2001/12/100dayreport.html>> 19.

discourage those who wished to participate in or incite hate-fueled violence. The city of Seattle, for example, passed a resolution that decried hate crimes.⁴⁰ In addition, the mayor created an Arab advisory council, and the police department gave hate crime presentations to the people of eleven area mosques, as well as providing them with contact numbers to be used when reporting hate crimes.⁴¹ Taking a similar approach, San Francisco's district attorney's office launched a tolerance and anti-hate crime campaign two weeks prior to the first anniversary of 9/11. The slogan for the campaign, which featured posters clad with persons likely to be perceived as Arab or Muslim, was "We Are Not The Enemy."⁴² (The significance of these actions by the cities of Seattle and San Francisco is much greater if one considers that during WWII both cities were epicenters for the hate against Japanese Americans. The Army's Western Defense Commander, Lieutenant General John L. DeWitt was stationed in the San Francisco area, at the Presidio, and Bainbridge Island, Washington, located near Seattle, was the object of Exclusion Order No. 1, issued on March 24, 1942.) Nevertheless, the best

⁴⁰ Seattle City Council, "A Resolution to Promote Racial Justice and Denounce Hate in the City of Seattle," *Resolution 30399*, 17 Sept. 2001, Seattle, Washington, 23 Feb. 2006
<<http://www.cityofseattle.net/civilrights/documents/steinbrueck%20resolution.pdf>>.

⁴¹ "We are not the Enemy" 36.

⁴² "We are not the Enemy" 26.

example of successful efforts to combat backlash attacks was in Dearborn, Michigan, where only two accounts of 9/11-related violence were reported in a city with over 30,000 Arab-Americans.⁴³ Largely attributed to the strong working relationship established between Arab community leaders and the Dearborn police before 9/11, this served as a great testament to the benefits of pre-attack preparations and readiness.

Most important, however, were the federal government's and the President's uncompromising condemnations of reprisal crimes perpetrated by Americans against perceived Arabs and Muslims. On September 15, 2001, the U.S. House of Representatives passed a resolution condemning hate crimes committed against Arabs, Muslims, and South Asians. The U.S. Senate responded in kind with its own resolution calling for the end of hate crimes carried out against Sikhs. Still, as if taking a page out of the Munson Report's list of suggestions for how to best deal with anti-Japanese sentiment, on September 17, President Bush made this public announcement: "Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind, and they should be ashamed of that kind of behavior." Further reinforcing Munson's theory, Raed

⁴³ "We are not the Enemy" 24.

Tayeh, Director of American Muslims for Global Peace and Justice, and Deepa Iyer, of South Asian American Leaders of Tomorrow, both opined that “public statements embracing the millions of law-abiding Arabs and Muslims as part of American society and communicating that hate crimes would not be tolerated were among the most effective measures that countered and contained September 11-related violence.”⁴⁴

Unfortunately, however, veiled by these high-profile acts of solidarity and understanding, there still were elements of resentment and distrust within the American public. For example, Secretary of Energy Spencer Abraham, as part of his recognition of Americans for acts of goodwill after 9/11, honored a church for starting a program to escort Muslim women who wear the hijab, and he also praised “a citizen who created a fund to assist low-income Muslim victims of hate-inspired vandalism.”⁴⁵ Surely, these types of programs would not have been necessary in an America free of hate and ignorance, but in reality those two conditions did exist. In fact, a 2004 survey conducted through Cornell University, illustrated that the fear of impending terrorist attacks and ignorance of the Muslim culture, went along with supporting restrictions on the civil

⁴⁴ “We are not the Enemy” 25.

⁴⁵ “The Global War on Terrorism” 19-20.

liberties of Muslim Americans.⁴⁶ Specifically, the percent of respondents who feared a terrorist attack would happen within the following year fell from 90 percent in November 2002 to 37 percent in November 2004, but as of the latter year, “44 percent of all respondents agreed that at least one form of restriction should be placed on Muslim American civil liberties.” This statistic was coupled with the fact that only 54 percent of Americans surveyed knew both that Muslims refer to God as “Allah” and that their holy book is the Koran; however, 47 percent felt confident enough to respond that “Islam is more likely to encourage violence compared to other religions.”⁴⁷

The magnitude of these numbers was yet further proof that the government’s outward stance had not been very successful in swaying a large proportion of the public, and it also strengthened the claim, brought by many Arab Americans, that mixed messages were being sent by the U.S. government during this time. Official statements exhorted the public to not “view Muslims or Arabs differently than anyone else,” but they were followed up by the arrests and detentions of at least 1,200 persons of “almost

⁴⁶ Erik C. Nisbet, and James Shanahan, “MSRG Special Report: Restrictions on Civil Liberties, Views of Islam, & Muslim Americans,” *The Media & Society Research Group*, Cornell University, Dec. 2004, 6 Jan. 2006 <<http://www.comm.cornell.edu/msrg/report1a.pdf>> 1.

⁴⁷ Nisbet, and Shanahan 1, 4-5.

exclusively Arab, Muslim, or South Asian heritage because of ‘possible’ links to terrorism.”⁴⁸ Additionally, Brooklyn College Professor Moustafa Bayoumi added: “as President Bush proclaims that the nation is ready to fight for freedom in the rest of the world, almost half of the American public seems prepared to curtail the freedom of their neighbors here at home.”⁴⁹ Also in reaction to the survey results reported above, Hisham Rifaey, a former president of the Muslim Students Association at the University of Rochester, decided that Muslim Americans needed to “take a greater responsibility to prove to non Muslims that they are average Americans and not violent people,” especially since it appeared to him that the public was going to generalize their actions anyway.⁵⁰ This was a very ominous suggestion because it mirrored the advice given by the JACL to its members during their struggle to avoid internment in the midst of the volatile anti-Japanese movement that swept over America after Pearl Harbor. Like the Nisei, however, Rifaey learned from experience (the FBI questioned his friends about his loyalty) that his birth in the U.S. meant little in the face of persistent public fears and negative opinions of Arabs and Muslims.

⁴⁸ “We are not the Enemy” 27.

⁴⁹ Liu, “Muslim American Concerns and Struggles Post 9/11” 35.

⁵⁰ Liu, “Muslim American Concerns and Struggles Post 9/11” 36.

JUSTIFICATION FOR PRESIDENTIAL ACTION

Undeniably, public opinion has played a large role in shaping presidential policies. When both Roosevelt and Bush found themselves at the head of a nation desperate for revenge against its enemies, they, along with teams of advisers, had to deliberate and decide on a course of action. At the end of deliberations, both Presidents essentially signed their names into history by issuing controversial orders that not only tested the limits of executive power, but also tested the strength of the Constitution's bedrock principles contained in the Bill of Rights.

After Pearl Harbor some of the highest-ranking government and military officials became engaged in inter-departmental collaboration and debate over the best solution for dealing with the ethnic Japanese population on the West Coast. Of course, President Roosevelt would have the final say, but Army Lieutenant General John L. DeWitt, head of the Western Defense Command, quickly became the central figure in the decision-making process. Interestingly, DeWitt's career leading up to his final appointment in 1939 as commander of the Presidio in San Francisco, had very little to do with actual combat operations. He worked mostly as a supply officer, and finally as quartermaster

general in 1930. Nevertheless, his judgment of “military necessity” on the West Coast weighed heavily in Roosevelt’s ultimate decision to authorize internment. There were, however, several other men in addition to DeWitt, who, acting from their particular posts, played significant parts in the events following Pearl Harbor.

An account of the meetings, discussions, and policies will proceed, but first of all, it must be noted that the attack against Pearl Harbor was only one in a long line of Imperial Japanese naval victories in the Pacific. Simultaneously with the Pearl Harbor bombing, the Japanese struck against Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands. The following week was filled with victories over Allied forces in Thailand, Guam, and off the Malay Peninsula. Therefore, it is easy to understand the extreme sense of urgency felt by commanders on the West Coast, who feared a possible mainland invasion.

Along with the mentioned Public Proclamations issued on December 7th and 8th by the President, according to DeWitt’s *Final Report: Japanese Evacuation from the West Coast 1942*, Attorney General Francis Biddle also was given “the authority to declare prohibited zones, to which enemy aliens were denied admittance or from which

they could be excluded in any case where national security required.”⁵¹ Also mentioned earlier, it was during this time that over one thousand enemy aliens, pre-judged by intelligence services as “dangerous,” were arrested and assigned to Department of Justice facilities. In spite of these arrests, during the closing weeks of December, General DeWitt “requested that the War Department induce the Department of Justice to take vigorous action along the Pacific Coast.” He based this request on his suspicion that “unauthorized radio communications,” emanating from the coast, were contributing to attacks on American shipping by enemy submarines.⁵² The legitimacy of this suspicion was tested by the FBI, and contrary to DeWitt’s claims, “no identifiable cases of such signaling were substantiated.”⁵³ Furthermore, as included in the JACL’s statement to the 1980 U.S. House of Representatives hearings to establish a commission on wartime relocation and internment of civilians, “in a meeting with General DeWitt

⁵¹ John L. DeWitt, *Final Report: Japanese Evacuation from the West Coast 1942*, Office of the Commanding General, Headquarters Western Defense Command and Fourth Army, Presidio of San Francisco, CA (Washington: GPO, 1943) 1.

⁵² DeWitt, *Final Report* 1, 2.

⁵³ The Commission on Wartime Relocation and Internment of Civilians, “Personal Justice Denied,” *Hearings*, Japanese American Evacuation Redress, Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary U.S. Senate, 98th Cong., 1st sess., S. 1520 (Washington: GPO, 1984) 31.

and his staff on January 9, 1942, the Chief of the Federal Communication Commission's Radio Intelligence Division reported that 'there had been no illegitimate radio transmission or signaling from the Japanese or other coastal residents.'"⁵⁴ In fact, the first hostile ship-to-shore attack documented by DeWitt did not take place until February 23, 1942, when an enemy submarine shelled Goleta, near Santa Barbara, California, targeting "vital oil installations."⁵⁵ Nevertheless, in late January 1942 a far-reaching agreement was struck between the War Department, the Attorney General, the FBI, and the Office of the Provost Marshal General, in which most notably the Attorney General designated 99 prohibited zones and 2 restricted zones in California, the Justice Department committed to enemy alien registration through finger printing and photographing, and new rules on searches and seizures were implemented. The prohibited and restricted zones were generally small and placed along coastal areas, thereby displacing only a small number of aliens (U.S. citizens were not affected by this program), who were usually able to move to other locations within the same cities.⁵⁶

⁵⁴ "Statement of the Japanese American Citizens League," *Hearings*, Commission on Wartime Relocation and Internment of Civilians, Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary House of Rep., 96th Cong., 2nd sess., H.R. 5499 (Washington: GPO, 1980) 63.

⁵⁵ DeWitt, *Final Report* 14.

⁵⁶ DeWitt, *Final Report* 3, 4.

Conversely, the new search and seizure program was much less accommodating. The rules negated the need for any type of warrant before searching someone's home in "emergency" situations, with the only requirement being that the home was occupied solely by aliens. Enemy "contraband" was sought in these searches, and DeWitt cited a case to help prove his point, where the FBI made a "spot raid" in Monterey, California on February 12, 1942, and "found more than 60,000 rounds of ammunition and many rifles, shotguns and maps of all kinds."⁵⁷ Again, however, in "Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians," it was explained that "the FBI did confiscate arms and contraband from some ethnic Japanese, but most were items normally in the possession of any law-abiding civilian, and the FBI concluded that these searches uncovered no dangerous persons that 'we could not otherwise know about.'"⁵⁸

Aside from the FBI's initial roundup of suspected subversives, few plans had been made for a large-scale forced evacuation, and this fact did not escape DeWitt. In a January 5 memo to Assistant Attorney General James Rowe, Jr., DeWitt advocated

⁵⁷ DeWitt, *Final Report* 3, 4, 7.

⁵⁸ "Personal Justice Denied" 31.

“careful advanced planning to provide against such economic and social dislocations as might ensue from any necessary mass evacuation.”⁵⁹ Thus, as early as January 5, General DeWitt was considering mass evacuations, and at this indication, Attorney General Biddle began his subtle defiance of such plans. In the meantime, however, DeWitt had requested that Biddle create additional prohibited zones in Arizona, Oregon, and Washington, but on February 9, Biddle notified Secretary of War Stimson that he would not support this second request. In a letter, Biddle said:

Your recommendation of prohibited areas for Oregon and Washington include the cities of Portland, Seattle and Tacoma and therefore contemplate a mass evacuation of many thousands. . . . No reasons were given for this mass evacuation. . . . The proclamations directing the Department of Justice to apprehend, and where necessary, evacuate alien enemies, do not, of course, include American citizens of Japanese race. If they have to be evacuated, I believe that this would have to be done as a military necessity in the particular areas. Such action, therefore, should in my opinion, be taken by the War Department and not by the Department of Justice.⁶⁰

From this point on, a clear difference in opinion existed between these two cabinet-level departments, as both felt it was best that the other handled the logistics of any further evacuation policies. However, once it became clear that Biddle was not

⁵⁹ DeWitt, *Final Report* 6.

⁶⁰ DeWitt, *Final Report* 6, 7.

going to act, Provost Marshal General Allen W. Gullion began a campaign to transfer the “responsibility for conduct of the enemy alien program from the Department of Justice to the War Department.” Acting with initiative, on December 26, 1941, Gullion pressed DeWitt in a phone conversation to call for the incarceration of all Japanese in the Los Angeles area, but DeWitt, “who would blow hot and cold,” was, on that day, opposed. His response to Gullion was: “I’m very doubtful that it would be common sense procedure to try and intern 117,000 Japanese in this theater. . . . An American citizen, after all, is an American citizen. And while they may not be loyal, I think we can weed the disloyal out of the loyal and lock them up if necessary.”⁶¹ Both offices sensed the competition heating up, as each sent a representative to meet personally with DeWitt in San Francisco. The Attorney General’s office sent James Rowe, Jr., and the Provost Marshal General’s office sent Major Karl R Bendetsen, chief of the Aliens Division. Daniels wrote that Rowe, Jr. “exercised a moderating influence on the cautious General De Witt, who often seemed to be the creature of the last strong personality with whom he had contact.” Bendetsen, on the other hand, represented Gullion’s hard-line desire for complete “exclusion of the Japanese on the West Coast.”

⁶¹ Daniels, *Concentration Camps* 40.

According to Daniels, the military's side won, because "Bendetsen soon became the voice of General De Witt." However, in a further grasp for power, "Gullion arranged with De Witt that the West Coast commander go out of normal channels and deal directly with the Provost Marshal" on alien affairs, which resulted in taking Army Chief of Staff George C. Marshall virtually out of the evacuation planning process during the months of January and February.⁶²

The effects of this bureaucratic power grab were amazing. In a few days DeWitt's entire attitude reversed to mirror that of Gullion. He declared, "I don't want to go after this thing piece meal. I want to do it on a mass basis."⁶³ DeWitt, now firmly entrenched in the idea of evacuation, kept building his case for military necessity. One of his most questionable arguments dealt with his lack of faith in anyone's ability to gauge the loyalty of the Japanese, which he communicated in his *Final Report*:

While it is believed that some were loyal, it was known that many were not. It was impossible to establish the identity of the loyal and the disloyal with any degree of safety. It was not there was insufficient time

⁶² Daniels, *Concentration Camps* 44.

⁶³ Daniels, *Concentration Camps* 45.

in which to make such a determination; it was simply a matter of facing the realities that a positive determination could not be made, that an exact separation of the ‘sheep from the goats’ was unfeasible.⁶⁴

This claim is outrageous in many regards. It completely contradicts his December 26, 1941 comments to Gullion as reported above, it goes against the findings of Curtis B. Munson, and it would also discredit the government’s use of loyalty questionnaires inside the internment camps as decisive tools in ascertaining internee loyalties.

Additionally, if as DeWitt said, there was no issue of time, then, wondered the JACL, “why weren’t individual charges and trials given to suspected disloyal persons of Japanese ancestry? The courts were in operation . . . why weren’t they used?”⁶⁵ Along with the JACL, Biddle, Rowe, Jr., and Edward Ennis of the Alien Enemy Control Unit, FBI Director J. Edgar Hoover also felt as though mass evacuation was unnecessary. Hoover was quoted as saying, “the necessity for mass evacuation is based primarily upon public and political pressure rather than on factual data.”⁶⁶ Nevertheless, the

⁶⁴ DeWitt, *Final Report* 8.

⁶⁵ “Statement of the Japanese American Citizens League” 55.

⁶⁶ Ng, *Japanese American* 20.

lobbying persisted despite the criticisms of several presidential advisers, and those who had the ear of DeWitt continued to be the most powerful in shaping alien policies.

After the 9/11 attacks, the U.S. government also scrambled in desperation to respond. Prominent national figures in the Departments of Defense, Justice, and State played leading roles in the ensuing debate over the nation's terrorism policy. Most notable were Secretary of Defense Donald Rumsfeld, Attorney General John Ashcroft, and Secretary of State Colin Powell, who once the enemy had been identified, led their departments in aggressive attempts to influence President Bush's course of action. In so doing, they helped usher the U.S. into unprecedented legal and moral debates because, unlike WWII, the enemies were not official state actors, and thus many of the old rules of conduct in war were supposedly inadequate.

Central to publicized U.S. aims was the investigation, capture, and prosecution of all those responsible for or involved in the 9/11 attacks, and this created the need for revamped legal and judicial procedures. The often repeated goal of President Bush was

to pursue the terrorists in order to “drive them out and bring them to justice.”⁶⁷ Seizing on this opportunity, White House Counsel Alberto Gonzales became another central figure in the policy debate, and throughout the process, his opinions, although sometimes contrary to those of cabinet officials, appeared to be favored by the President.

The government acted quickly to give Bush expanded executive powers. The nation was in a state of fear and unease, and recognizing this Bush proclaimed a national emergency on September 14, 2001, called the Declaration of National Emergency by Reason of Certain Terrorist Attacks (Proc. 7463). Contrasting WWII, however, there was no congressional declaration of war. Instead, on September 14 Congress passed Senate Joint Resolution 23, in accordance with the War Powers Act of 1973. Article I, Section 8 of the Constitution reserves the right to declare wars to Congress, but during the Cold War years the United States became involved in undeclared wars in Korea and Vietnam. For those reasons and for the concern of Congress over its apparent “erosion” in authority to control the nation’s entrance into wars, it passed the War Powers Resolution (over President Nixon’s veto) on November 7, 1973. It stated that:

⁶⁷ “Presidential Address to the Nation,” The White House, 7 Oct. 2001, 14 March 2006
<<http://www.whitehouse.gov/news/releases/2001/10/>>.

The President's powers as Commander-in-Chief to introduce U.S. forces into hostilities or imminent hostilities are exercised only pursuant to (1) a declaration of war; (2) specific statutory authorization; or (3) a national emergency created by an attack on the United States or its forces. It requires the President in every possible instance to consult with Congress before introducing American armed forces into hostilities or imminent hostilities unless there has been a declaration of war or other specific congressional authorization.⁶⁸

Therefore, on September 14, the resolution titled "Authorization for Use of Military Force," passed by votes in the Senate and the House of 98-0 and 420-1. Included in the language was authorization for the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks," and to intervene "in order to prevent any future acts of international terrorism against the United States."⁶⁹ Clearly, the nation rallied around its leader with vital bi-partisan support during this extreme time of uncertainty.

Bush's surge in executive power continued its acceleration when on September 17 he issued a document called a "presidential finding" which "gave the Central

⁶⁸ Richard F. Grimmett, "War Powers Resolution: Presidential Compliance," *CRS Issue Brief for Congress*, 8 Jan. 2002, CRS Web, 31 Jan. 2006 <http://www.globalsecurity.org/military/library/report/crs/IB81050_020108.pdf> 1, 2.

⁶⁹ Grimmett, "War Powers Resolution" 2.

Intelligence Agency broad authorization to disrupt terrorist activity, including permission to kill, capture and detain members of al Qaeda anywhere in the world.”⁷⁰

The characteristics of this finding, along with its preceding and following policies, illustrate the lengths to which Bush was willing to go in pursuit of al Qaeda, and they also demonstrate some very integral differences between WWII and the War on Terror.

Rather than facing an easily defined and located enemy such as Imperial Japan, Bush faced dangerous men often hiding among rural populations or in remote cave complexes.

And, more importantly for this thesis, rather than feeling threatened by military invasion and domestic espionage, after the initial sweep of arrests, Bush viewed and spoke of his enemies as kinds of international criminals who were simply evading arrest. On October 10, 2001, Bush said: “Terrorists try to operate in the shadows. They try to hide. But we’re going to shine the light of justice on them.”⁷¹ Therefore, rather than a military barrage, “President Bush launched the first offensive in the war on terrorism on September 23 by signing an Executive Order freezing the U.S.-based assets of those individuals and organizations involved with terrorism.” In all, 196 countries and

⁷⁰ Dana Priest, “CIA Holds Terror Suspects in Secret Prisons,” *Washington Post*, 2 Nov. 2005
<<http://www.washingtonpost.com>>.

⁷¹ “The Global War on Terrorism” 13.

jurisdictions supported the financial war on terror, which froze assets worldwide and helped strain 39 entities designated as terrorist organizations by the State Department at the request of Attorney General Ashcroft.⁷²

Military operations were being planned, and in a September 25 memo from Deputy Assistant Attorney General John C. Yoo to Timothy Flanigan, the Deputy Counsel to the President, Yoo declared that Bush had constitutional authority to strike militarily against terrorists worldwide. According to Yoo, the Senate's Joint Resolution gave only narrow authorization to attack those nations or people that were involved in 9/11; however, it was Yoo's opinion that "the President's broad constitutional power to use military force to defend the Nation, recognized by the Joint Resolution itself, would allow the President to take whatever actions he deems appropriate to pre-empt or respond to terrorist threats from new quarters." Yoo continued, "In the exercise of his plenary power to use military force, the President's decisions are for him alone and are unreviewable."⁷³ This demonstrated a bold attitude taken by the executive toward

⁷² "The Global War on Terrorism" 9, 13.

⁷³ John C. Yoo, "September 25, 2001 Memorandum Opinion for Timothy Flanigan, the Deputy Counsel to the President," *The Torture Papers: The Road to Abu Ghraib*, Karen J. Greenberg and Joshua L. Dratel, eds. (Cambridge: Cambridge Univ. Press, 2005) 23, 24.

legislative and judicial oversight, and it showed the inkling of anti-terror policies that would later extend well beyond the confines of simply responding to the 9/11 attacks.

Moving swiftly on the advice of Yoo and others, and at the urgings of a nation thirsting for retaliation, Bush launched Operation Enduring Freedom, which included assaults on and the invasion of Afghanistan. In his presidential address to the nation on that same day, he explained that the attacks were “against al Qaeda terrorist training camps and military installations of the Taliban regime,” and that they were “carefully targeted actions . . . designed to disrupt the use of Afghanistan as a terrorist base of operations.” Bush also acknowledged the fear felt by many Americans, but he offered words of assurance as only a Commander-in-Chief could, by saying: “We will not waiver; we will not tire; we will not falter; and we will not fail. Peace and freedom will prevail.” Mirroring Yoo’s memo, he warned, “today we focus on Afghanistan, but the battle is broader.”⁷⁴ With that, U.S. military involvement in the War on Terror had begun, and completely dissimilar to WWII, there was no foreseeable end because, as

⁷⁴ “Presidential Address.”

Bush and Secretary of Defense Rumsfeld have reiterated, “the enemy is not a nation—the enemy is terrorist networks that threaten the way of life of all peaceful people.”⁷⁵

Next on the Bush agenda was to augment the investigatory powers of U.S. law enforcement through expanding the reach of the Department of Justice. The reasoning was that the new threats had rendered many of the old laws and tools inadequate, creating the need for updated, expanded replacements. Therefore, (much like the policies agreed upon by several branches of the government and enacted by Attorney General Biddle in early 1942 to lessen the legal constraints on the FBI) on October 26, 2001, with an overwhelming endorsement by Congress, Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act). Upon signing, the President praised the bill, that it took “account of the new realities and dangers posed by modern terrorists.”⁷⁶ The Justice Department promoted the act as part of the “national commitment to the protection of civil rights and civil liberties,” but civil rights activists were not convinced, as they were quick to criticize Congress and the President for

⁷⁵ “The Global War on Terrorism” 11.

⁷⁶ “Report from the Field: The USA PATRIOT Act at Work,” U.S. Justice Dept., July 2004
<http://www.lifeandliberty.gov/docs/071304_report_from_the_field.pdf> 1.

passing something that allowed for such intrusions into personal privacy.⁷⁷ Where the government insisted in the act's usefulness for preventing future terrorist attacks, its critics cautioned that its expanded search and surveillance powers, along with the limiting or removing of judicial oversight during investigations, were excessive, unnecessary, and might "do more to expose us to terrorist attacks than protect us."⁷⁸ In fact, in the introduction for *America's Disappeared: Secret Imprisonment, Detainees, and the "War on Terror,"* Rachel Meeropol, an attorney at the Center for Constitutional Rights, worried that fear and pressure applied by Ashcroft essentially led Congress to pass the revolutionary expansion of executive powers in such little time and with "little public debate or discussion." She continued that the act "was passed by a Congress that had been evacuated from anthrax-contaminated offices" and that lived through "continuous alerts of more terrorist attacks." She concluded that the "USA PATRIOT Act was sold to a Congress and a public eager to do anything necessary to stop terrorism."⁷⁹

⁷⁷ "Report from the Field" 1.

⁷⁸ Rachel Meeropol, ed., *America's Disappeared: Secret Imprisonment, Detainees, and the "War on Terror,"* (New York: Seven Stories Press, 2005) 15, 17.

⁷⁹ Meeropol, *America's Disappeared* 15, 15, 17.

Despite these concerns, the act and all of its provisions were put into place, and as of May 5, 2004, the Department of Justice had “charged 310 defendants with criminal offenses as a result of terrorism investigations,” with 179 convictions having been handed down.⁸⁰ Therefore, the oft-publicized importance of the PATRIOT Act’s successes and those of its related policies gave continual credence to Bush’s most hard-line advisers, and as the war raged around the globe, new issues began to rise as prisoners and other casualties accumulated, prompting further debate and policy implementation.

⁸⁰ “Report from the Field” 1.

PRESIDENTIAL ORDERS

In early February 1942, President Roosevelt was becoming increasingly convinced of the necessity for decisive action concerning the “Japanese question” on the West Coast. Public opinion continued to reflect the hateful views of powerful news media outlets like the *Los Angeles Times*, whose columnist W.H. Anderson deemed “Japanese Americans as ‘vipers’ loyal to Japan, who posed a ‘potential and menacing’ danger to the country,” and California Governor Culbert Olson echoed this view on January 27, when he commented that, “since the publication of the Roberts Report” the people of California “feel that they are living in the midst of enemies.”⁸¹ Additionally, the pressure being applied by U.S. military leaders began to wear on Attorney General Biddle, who began preparing for the real possibility of a mass evacuation order and or suspension of the writ of habeas corpus. According to author Greg Robinson, one possible explanation for Biddle’s shrinking opposition was that he “preferred to demonstrate his willingness to cooperate in the relocation of aliens in order to better persuade the President not to evacuate citizens as well.” Therefore, it appeared that Biddle had become convinced that some type of evacuation would occur, and in answer

⁸¹ Robinson, *By Order of the President* 96.

to a Senate committee's questions on February 5, he opined that a mass removal "could be constitutionally carried out by the army in case of military necessity."⁸² Indications suggest that Biddle still believed that a military necessity had not been established, and somewhat ironically, he was joined in this belief by Secretary of War Stimson.

Nevertheless, as of February 9, Stimson had decided to approve De Witt's and Bendetsen's evacuation plan that included American citizens, despite being "wary of the constitutional implications of the policy" and feeling "doubts as to whether national security justified such an extreme step."⁸³

Given the state of public and military opinions, and with mounting congressional pressure, especially from West Coast politicians, Roosevelt felt compelled to act.

Guided by a draft prepared by Gullion and others, on February 19, 1942, Roosevelt issued Executive Order 9066. The order authorized the Secretary of War to prescribe military areas and to provide for "protection against espionage and against sabotage to

⁸² Robinson, *By Order of the President* 100, 103.

⁸³ Robinson, *By Order of the President* 105.

national-defense material.”⁸⁴ It continued that the Secretary of War might designate military commanders to:

prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary.⁸⁵

Robinson quickly pointed out that through this order Roosevelt assumed that the Japanese ancestry of over 100,000 people “made them so likely to engage in subversive activities” that they should be “collectively deported from the excluded area.” Further, he noted that “no other American citizens, regardless of ethnic background, were subjected to such treatment.”⁸⁶ Most importantly for this research, however, was the “unprecedented assertion of executive power” contained within the order. Robinson contended that:

the President imposed military rule on civilians without a declaration of martial law, and he sentenced a segment of the population to internal

⁸⁴ United States, The President, “Executive Order 9066” 19 Feb. 1942, 12 Oct. 2005 <www.ourdocuments.gov>.

⁸⁵ “Executive Order 9066.”

⁸⁶ Robinson, *By Order of the President* 108.

exile (and ultimately forced incarceration) under armed guard, notwithstanding that the writ of habeas corpus had not been suspended by Congress (to whom such power was reserved by the Constitution). More importantly, Executive Order 9066 was unprecedented in the extent of its racially defined infringement of the basic rights of American citizens.⁸⁷

Therefore, the order's infringements and the controversy surrounding them are the factors that have allowed for a comparison to be made between E.O. 9066 and the eventual military orders of President Bush with regards to treatment of terrorism suspects.

By early November 2001, the fighting in Afghanistan and in other areas abroad was producing hundreds of foreign prisoners. Sticking to his theme of pursuing the war as a way to bring terrorists to justice and as a way to deal with such a large burden of prisoners, President Bush issued his Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism. As Commander-in-Chief, Bush claimed far-reaching powers and privileges to his office that were unprecedented in American history and thus untested constitutionally. Some of the more notable and controversial lines from this order were:

Section 1. Findings.

⁸⁷ Robinson, *By Order of the President* 109.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

Section 2. Definition and Policy.

(a) The term “individual subject to this order” shall mean any individual who is not a United States citizen with respect to whom I determine

Section 3. Detention Authority of the Secretary of Defense. Any individual subject to this order shall be

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

Section 4. Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.

(c) . . . rules for the conduct of the proceedings of military commissions . . . shall at a minimum provide for

(8) submission of the record of the trial, including any conviction or sentence, for review and final decision by me or by the Secretary of Defense if so designated by me for that purpose.⁸⁸

The effects of this order were felt all over the world, but this thesis is focused primarily on its impact on the terrorism suspects held at the U.S. naval base at Guantanamo Bay, Cuba, who began arriving to the facility known as Camp X-Ray on January 16, 2002.

Barbara Olshansky, the Assistant Legal Director of the Center for Constitutional Rights,

⁸⁸ United States, The President, “Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism,” 13 Nov. 2001

<<http://www.access.gpo.gov/index.html>>.

was particularly alarmed by many of the provisions contained in the November 13 order. She specifically pointed out that in the case of a military commission proceeding, Bush had given himself the power to “conduct the entire process, including executions in secret, without any accountability to Congress, the courts, or the American public.” Additionally, Olshansky wondered why the order’s detention provisions completely contrasted those of Congress’ USA PATRIOT Act. She noted that whereas the Act required that “non-citizens who are detained by the government be charged with a crime or immigration violation within seven days of their detention,” the military order included no time limitations for “informing those detained of the charges against them,” nor any avenues for judicial review.⁸⁹ In fact, the November 13 order explicitly stated that those subject to it “shall not be privileged to seek any remedy or maintain any proceeding . . . in any court of the United States, or any state thereof, any court of any foreign nation, or any international tribunal.”⁹⁰ Ultimately, Olshansky was left to consider Bush’s order as a “blatant and profound example of unlawful Presidential overreaching” that called into question the nation’s credibility as a democracy for its

⁸⁹ Barbara Olshansky, *Secret Trials and Executions: Military Tribunals and the Threat to Democracy* (New York: Seven Stories Press, 2002) 12, 22.

⁹⁰ “Military Order of November 13, 2001.”

apparent willingness to relinquish “constitutional rights and breach international standards of basic human rights in the pursuit of punishing suspected enemies.”⁹¹

⁹¹ Olshansky, *Secret Trials and Executions* 32, 34.

SUBSEQUENT ORDERS AND THEIR EFFECTS

President Roosevelt was less than three months removed from his post-Pearl Harbor declaration, “We will not under any threat, or in face of any danger, surrender the guarantees of liberty our forefathers framed for us in the Bill of Rights,” when he set in motion the evacuation process with E.O. 9066. And, although the order did not specifically focus on any one ethnic group, Biddle’s statement in a February 20, 1942 memo for the President revealed the document’s true intent: “The order is not limited to aliens but includes citizens so that it can be exercised with respect to Japanese irrespective of their citizenship.”⁹² Also on February 20, Lieutenant General De Witt was designated as Commander of the Western Defense Command, which comprised the Pacific states, among others. His first major action in accordance with E.O. 9066 came on March 2, when he delivered Public Proclamation No. 1. This proclamation, the first of many, established that the geographical location of the region along the Pacific Coast subjected it to the imminent threat of enemy attack and or espionage and sabotage, thus creating a state of “military necessity” whereby Military Areas and Zones would need to be established. It continued that “such persons or classes of persons as the situation

⁹² Weglyn, *Years of Infamy* 69-71.

may require' would, by subsequent proclamation, be excluded from certain of these areas, but might be permitted to enter or remain in certain others."⁹³ Finally, Public Proclamation No. 1 designated southern Arizona and the entire U.S. Pacific Coast as Military Area No. 1, and Military Area No. 2 encompassed the rest of the coastal states and of Arizona. Roosevelt then issued Executive Order 9102, which established the War Relocation Authority (WRA). The job of this department would be to handle all aspects of the removal and relocation of the persons designated under Executive Order 9066. Equally vital to the success of any such programs, however, was the congressional mandate received in the form of the Act of March 21, 1942. It provided misdemeanor penalties including fines, imprisonment, or both for persons who knowingly violated military or Executive orders. In a sense, this was the backbone of the whole internment issue because it allowed the Supreme Court, in its eventual decisions, to look upon the whole evacuation process as having been well-evaluated and approved of by the President, the Congress, and the Military.

At the same time, De Witt began issuing a series of Civilian Exclusion Orders. Building off of the supplied reasoning of Public Proclamation No. 1, these orders put

⁹³ *Hirabayashi v. United States*, No. 870, Supreme Ct. of the US, 21 June 1943.

curfews into place for “all persons of Japanese ancestry, both alien and non-alien,” living within the affected areas, and also required that a member of each ethnic Japanese family report to a Civil Control Station for registration.⁹⁴ Additional proclamations and orders progressively constricted the movement and lifestyles of Japanese Americans, until finally groups of evacuees were being squeezed into crude Reception and Relocation Centers. It is true that De Witt and Milton S. Eisenhower, the first Director of the WRA, attempted a short-term program of voluntary resettlement of the Japanese into more inland states, but as the congressional report “Personal Justice Denied” recounted, the governors and officials of the mountain states “objected to California using the interior states as a ‘dumping ground’ for a California ‘problem.’”⁹⁵ With that, the program of resettlement was replaced with relocation, and by late March, the first group of Japanese American evacuees from the Las Angeles area had arrived at the Manzanar Reception Center. In this way, the evacuation process proceeded gradually, as old race tracks and fair grounds were transformed for temporary housing and the ten major Relocation Centers or “internment camps” were built.

⁹⁴ *Hirabayashi v. United States*.

⁹⁵ “Personal Justice Denied” 34.

On the individual level, it was not uncommon for Japanese American families to receive notice of their impending evacuation with only a few days to make arrangements for their estate. Well recorded by John Tateishi in his oral history, the similar stories of countless Japanese Americans revealed the hardships endured during these tragic days and months. Mary Tsukamoto, who was interned at the Jerome camp in Arkansas, remembered: “We left early in the morning on May 29. Two days earlier we sold our car for eight hundred dollars, which was just about giving it away.” Emi Somekawa, along with her family, started out at the Portland Assembly Center. “We lived in a horse stall from May to September, and my son was born in a horse stall.”⁹⁶ In general, these WRA and Wartime Civilian Control Administration facilities were characterized by their frequent use of tar paper and chicken wire for construction, and their separation of large barracks into family rooms of “no more than 20 by 24 feet,” no matter the size of the family.⁹⁷ Additionally, all camps, though operated through the civilian WRA, were ringed by barbed wire and watch towers manned by armed military guards. This final characteristic helped lead to at least three shooting deaths of internees: one at Topaz, in

⁹⁶ John Tateishi, *And Justice for All* (New York: Random House, 1984) 9, 147, 148.

⁹⁷ “Personal Justice Denied” 35.

Utah, and two at Manzanar, in California. “Camp living was not without its discontentment,” noted Ng, and “tensions erupted from time to time.”⁹⁸ Secretary of the Interior Harold Ickes said this of the camps in 1946: “We gave the fancy name of ‘relocation centers’ to these dust bowls, but they were concentration camps nonetheless.”⁹⁹

In spite of all the pre-evacuation arguments of military necessity and those that would later be made before the Supreme Court, two impeccable objections remained. The first and most obvious dealt with the highly dense Japanese population on the Hawaiian Islands. At the time of Pearl Harbor, 37.3 percent of the islands’ population was ethnic Japanese, and although this did raise a concern within the government, ultimately only 1 percent of the Hawaiian Japanese was ever incarcerated.¹⁰⁰ This led the JACL, in their congressional testimony, to inquire: “if, as DeWitt stated, ‘there is no way to determine their loyalty,’ it is even more curious that the Japanese Americans in Hawaii were not similarly subjected to wholesale and indiscriminate incarceration,” especially given that “Hawaii was 3,000 miles closer to the enemy and in far greater

⁹⁸ Ng, *Japanese American* 45, 46.

⁹⁹ “Statement of the Japanese American Citizens League” 67.

¹⁰⁰ Ng, *Japanese American* 23, and “Statement of the Japanese American Citizens League” 64.

danger of invasion and sabotage.”¹⁰¹ Needless to say, the government’s explanation that Hawaiian internment didn’t take place because of the economic necessity of Japanese workers wasn’t satisfying in several regards. Secondly, and most damaging, was that even Congress has held that after the Allied naval victory at Midway in June of 1942, “the possibility of serious Japanese attack was no longer credible.”¹⁰² This is particularly disturbing because as of June 1, 1942, only “a little more than 17,000 persons of Japanese ancestry” resided in the “government concentration camps.”¹⁰³ By the end of the war that number reached 120,313 persons, “76,000 of whom were American citizens.” More than anything, these are the issues that have led historians and other civic leaders to the conclusion reached by the JACL, that: “The evacuation was racially, politically and economically motivated,” and “under the guise of national defense, evacuation became an end in itself, a fortuitous wartime opportunity to rid the western states’ of their Japanese populations.”¹⁰⁴

¹⁰¹ “Statement of the Japanese American Citizens League” 64.

¹⁰² “Personal Justice Denied” 36.

¹⁰³ “Statement of the Japanese American Citizens League” 64.

¹⁰⁴ “Statement of the Japanese American Citizens League” 66, 64.

Eventually, the orders that created the need for the camps were rescinded on December 17, 1944, suspiciously one day before the Supreme Court handed down its decision in the *Ex Parte Endo* case, which freed all admittedly loyal internees. Nevertheless, this painful period in U.S. history did not officially end until the Tule Lake camp closed in March of 1946.

In January 2002, as Camp X-Ray's wire-cage holding cells filled with detainees from abroad, discussions within the Bush administration focused on appropriate prisoner treatment and legal classification. As a primary designation, Bush used the term "enemy combatant" quite broadly to cover many of those detained by the U.S., both citizens and non-citizens. According to Tennessee Congresswoman Marsha Blackburn, the Department of Defense defined an enemy combatant as: "an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy

forces.”¹⁰⁵ It is also clear that Bush reserved the right to himself to designate detainees as enemy combatants, and those so designated could be held indefinitely without charges and without access to legal counsel. On top of the “enemy combatant” classification, a debate erupted between Bush’s advisers over the proper application of the Geneva Conventions with regards to the al Qaeda and Taliban detainees. Additionally, Bush had his legal advisers opining on the jurisdictional question of whether or not Guantanamo Bay detainees might be successful in their attempts to petition writs of habeas corpus from U.S. courts. Finally, the third major debate, although related to the application of Geneva rights, centered on determining proper and acceptable interrogation tactics to be used on the most resistant detainees. Thus, the year following the 9/11 attacks was characterized by the consideration and implementation of unprecedented policies, which were followed by intense debate and scrutiny.

The U.S. military and its allies were making steady progress in the Afghan theatre in early 2002, on their way to removing the Taliban from power. Therefore, attention turned to the two most urgent objectives in the war—to find Osama bin Laden,

¹⁰⁵ Marsha Blackburn, “Guantanamo Bay Detainee Facility Review,” *Blackburn Journal*, 25 June 2005: Representative Marsha Blackburn, U.S. House of Representatives, 4 Nov. 2005 <www.house.gov/blackburn/press/june_30_05.shtml>.

al Qaeda's leader, and to prevent the "next" terrorist attack against the U.S. As a casualty to this new focus, it would appear that Bush's oft-repeated intention to bring the terrorists to justice was temporarily put on hold, as their capture, detention, and interrogation was more of a priority. In fact, it wasn't until July 2003 that Bush deemed the first six detainees eligible for Military Tribunals. Meanwhile, Washington's policy makers were working to come up with legal justifications for whether or not it was proper to apply the Geneva Conventions' provisions to the prisoners, often called "the worst of the worst" by Major General Geoffrey Miller (Commander of detainee operation at Guantanamo as of November 2002).¹⁰⁶ This process of policy decision making was best represented by a series of governmental memos, originating from advisers in several different cabinet-level departments. The first record of these discussions is a January 9, 2002 draft memo from John Yoo, Deputy Assistant Attorney General, and Robert J. Delahunty, Special Counsel, to William J. Haynes II, General Counsel of the Department of Defense. In the memo, Yoo and Delahunty set out their contention that neither al Qaeda members nor Taliban militia fighters were protected by the War Crimes Act (WCA) enacted by Congress in 1996, which incorporated the four

¹⁰⁶ Erik Saar and Viveca Novak, *Inside the Wire* (New York: Penguin Press, 2005) 154.

1949 Geneva Conventions. These conventions were generally used as guidelines for the treatment of non-combatants, such as prisoners of war (POWs), but Yoo and Delahunty responded that, “it seems to us overwhelmingly likely that an armed conflict between a Nation State [the U.S.] and a transnational terrorist organization [al Qaeda], or between a Nation State and a failed state [Afghanistan] harboring and supporting a transnational terrorist organization, could not have been within the contemplation of the drafters.”

Therefore, it was their conclusion that neither party, al Qaeda or the Taliban, nor the conflict being led by the U.S. against them, fell under the protections of any U.S.-ratified international treaties governing the laws of armed conflict.¹⁰⁷ Swift action was taken in response to these conclusions, as Secretary of Defense Rumsfeld wrote a memo for the Chairman of the Joint Chiefs of Staff on January 19, which directed the Chairman that “Al Qaeda and Taliban individuals under the control of the Department of Defense are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949.”

The memo continued that detainees should still be treated “humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the

¹⁰⁷ John Yoo and Robert J. Delahunty, “Memorandum: Application of Treaties and Laws to al Qaeda and Taliban Detainees,” 9 Jan. 2002, 31 Jan. 2006 <www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/> 10, 1.

principles of the Geneva Conventions of 1949.”¹⁰⁸ Like an ominous reminder of the subjectivity involved in determining “military necessity” during WWII, Rumsfeld’s January 19 memo was simply the first of many that suggested military necessity would influence the quality of treatment given to terrorism detainees.

It was unclear exactly when President Bush made his decision on the application of the Geneva Conventions to the War on Terror, but Rumsfeld’s January 19 memo gave a good indication of the President’s leaning. Nevertheless, the debate raged on with two additional memos taking the stance against application of Geneva and the other international treaties. On January 22, both Alberto Gonzales, Counsel to the President, and Haynes II received an updated version of Yoo’s and Delahunty’s draft memo. Echoing the earlier expressed sentiments, this memo no doubt influenced Gonzales when he addressed a draft memo to the President on January 25. From the beginning, this memo revealed that Bush had already made his decision that Geneva would not apply and al Qaeda and Taliban detainees were not to be given POW status. Additionally, Gonzales framed his remarks in the form of a defense of Bush’s decision, because, as he noted to Bush, “The Secretary of State has requested that you reconsider that

¹⁰⁸ Donald Rumsfeld, “Memorandum: Status of Taliban and Al Qaida,” 19 Jan. 2002.

decision.”¹⁰⁹ Specifically, Secretary of State Powell was asking that the President apply the POW protections provided by the Geneva Conventions to both al Qaeda and the Taliban, at least until individual hearings were held to determine the final status of each detainee. Gonzales concluded his memo with an effort to present the President with an objective look at the positive and negative sides of his decision to not apply Geneva’s provisions, but it resulted in a very subjective analysis that seemed to make excuses for U.S. actions rather than give legal or moral backing. In his “Positive” section, Gonzales supported Bush’s decision for reasons including: The Geneva Conventions’ prohibitions of “outrages against personal dignity” and “inhuman treatment” were left “undefined,” which would make it “difficult to predict with confidence what actions might be deemed to constitute violations.” Further, the “difficulty in predicting the “motives of prosecutors” in the future made Bush’s decision the safest for reducing the “threat of domestic prosecution” of government officials under the War Crimes Act. In addition, the “Negative” section promoted Bush’s decision despite the admissions that it would “provoke widespread condemnation,” it might “encourage other countries to look for

¹⁰⁹ Alberto Gonzales, “Memorandum: Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban,” 25 Jan. 2002, *The Torture Papers* 118.

‘loopholes’ in future conflicts,” and it “could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat.”¹¹⁰ Consequently, Secretary Powell, who stood out as the lead opposition to the presidential administration’s plans much like Attorney General Biddle in the 1940s, constructed a memo in response to Gonzales’ the following day.

“I am concerned that the draft does not squarely present to the President the options that are available to him,” wrote Powell on January 26. “Nor does it identify the significant pros and cons of each option.” Along with pointing out several significant flaws and inaccuracies in Gonzales’ draft, Powell pushed for Bush to apply the Geneva Accords to the conflict if for no other reason than to preserve “U.S. credibility and moral authority by taking the high ground.”¹¹¹ Overall, Powell presented an argument that took not only the U.S. image abroad into consideration but also the well-being of captured U.S. soldiers and the ability of the U.S. to garner international support.

President Bush disagreed with Powell. On February 7, he declared that although he would apply Geneva’s provisions to the conflict with the Taliban, neither the Taliban

¹¹⁰ Gonzales, *The Torture Papers* 119, 120.

¹¹¹ Colin L. Powell, “Memorandum: Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan,” 26 Jan. 2002, *The Torture Papers* 122, 123.

detainees nor those of al Qaeda qualified for POW status. This meant that, just as Rumsfeld's memo foretold, the U.S. military would "continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva," but without Geneva's legal guarantees.¹¹²

Now that the U.S. government had settled on a designation that imparted very few rights on its subjects, it became essential that the detainees be prohibited from access to the U.S. court system where they might challenge their detention through writs of habeas corpus. Therefore, concurrently with the talks about Geneva, the Bush administration gathered support for its claim that the naval base at Guantanamo Bay, Cuba laid outside U.S. judicial reach. On December 28, 2001, Patrick F. Philbin, Deputy Assistant Attorney General, along with Yoo had written a memo for Haynes II, of the Defense Department, in which they addressed the possibility that a U.S. district court might allow a habeas petition to proceed. They concluded that "the great weight of legal authority indicates that a federal district court could not properly exercise habeas

¹¹² George W. Bush, "Memorandum: Human Treatment of al Qaeda and Taliban Detainees," 7 Feb. 2002, *The Torture Papers* 134, 135.

jurisdiction over an alien detained” at Guantanamo, but they were not confident enough to completely disregard it as a possibility. The basis for their opinion came from the Supreme Court’s 1950 ruling in *Johnson v. Eisentrager*, which held that “federal courts did not have authority to entertain an application for habeas relief filed by an enemy alien who had been seized and held at all relevant times outside the territory of the United States.” However, the wording of the 1903 lease agreement with Cuba that granted the U.S. “complete jurisdiction and control over and within” the naval base worried the Justice Department because it might open the door to those who would argue that “complete jurisdiction” was sufficient for habeas jurisdiction.¹¹³

Despite these uncertainties, Bush and Rumsfeld proceeded according to the plan laid out by the President’s November 13 order for a system of military tribunals to hear the cases against those detainees accused of violations of the laws of war. Accordingly, on March 21, 2002, Rumsfeld issued Military Commission Order No. 1 to set out the “procedures for Trials by Military Commissions of Certain Non-United States Citizens

¹¹³ Patrick F. Philbin, and John C. Yoo, “Memorandum: Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba” 28 Dec. 2001, *The Torture Papers* 29, 31-33.

in the War Against Terrorism.”¹¹⁴ Essentially, it was a detailed breakdown of the commissions’ procedures, personnel, and conduct, but no one would even be declared eligible for trial by one of these commissions for more than a year after the order’s issuance.

Critics attacked the Military Commission order. Barbara Olshansky claimed that the protections provided by the commission rules for defendants were “subject to change at any time by either the President or the Secretary of Defense,” and the rules were also “unenforceable.”¹¹⁵ Section 10 of the rules stated:

This Order is not intended to and does not create any right, benefit, or other privilege, substantive or procedural, enforceable by any party, against the United States. . . . Failure to meet a time period specified in this Order or supplementary regulations or instructions issued under Section 7(A), shall not create a right to relief for the Accused or any other person.¹¹⁶

¹¹⁴ Donald Rumsfeld, “Department of Defense Military Commission Order No. 1,” 21 March 2002 <www.defense.gov>.

¹¹⁵ Olshansky, *Secret Trials and Executions* 13.

¹¹⁶ Rumsfeld, “Department of Defense Military Commission Order No. 1.”

Therefore, Olshansky concluded that the protections for those charged and tried would be both “unstable and ultimately unenforceable.”¹¹⁷

No doubt, the most criticized and controversial aspects of Bush’s detention program have been its indefinite nature without plans for criminal prosecution or release, and the treatment of detainees, particularly during interrogations. Christophe Girod, the senior Red Cross official in Washington, wrote: “The open-endedness of the situation and its impact on the mental health of the population has become a major problem.” Citing 32 suicide attempts by 21 detainees in an 18 month time period helped sustain his analysis, even though Major General Miller retorted, “We don’t want the enemy combatants here to stay one day longer than is necessary.”¹¹⁸

As of June 2005 approximately 520 detainees remained incarcerated at Guantanamo, but approximately 234 had departed from the naval base, with 149 gaining full release and 83 transferred to the control of their home government. Congresswoman Blackburn found out that the majority of those 83 were subsequently released, and at

¹¹⁷ Olshansky, *Secret Trials and Executions* 13.

¹¹⁸ Neil A. Lewis, “Red Cross Criticizes Indefinite Detention in Guantánamo Bay,” *New York Times*, 10 Oct. 2003, 2 April 2006 <www.nytimes.com>.

least 12 had since been found rejoining the fight against coalition forces.¹¹⁹ In response, “If these men are the ‘worst of the worst,’ how come many were never charged with any crime, by any country, asked critic Michael Ratner. “And why did it take so long to determine that they were not terrorists?” He suggested that “these were men who, had there been a fair hearing before some form of tribunal, would have been freed long ago.”¹²⁰

Upon their arrival, according to former U.S. intelligence soldier at Guantanamo Army Sergeant Erik Saar, detainees “were immediately thrown into interrogation booths for sessions that could last up to two days.” Saar’s book gives a detailed account of his six-month tour of duty, from December 2002 to June 2003, at the base commonly known at “Gitmo,” where he criticized the command structure for the base’s unprofessional atmosphere. One of the interesting practices Saar noticed was that in Camp Delta (the permanent facility that replaced Camp X-Ray in April 2002) the word “prisoner” was never used, only “detainee.” “To call them prisoners would be too close to calling them POWs,” said Saar, “which would be akin to saying they were protected by international

¹¹⁹ Blackburn, “Guantanamo Bay Detainee Facility Review.”

¹²⁰ Michael Ratner, “The Guantánamo Prisoners,” *America’s Disappeared* 38, 40.

law.”¹²¹ This practice was remarkably similar to the use of “non-alien” instead of “U.S. citizen” in the Civilian Exclusion Orders of General De Witt in 1942 in order to deflect the notion that “non-alien” deserved equal constitutional rights as U.S. citizens. Additionally, Saar served as the translator for several interrogations in which his conscience suggested that mistreatment of detainees was taking place. The most notable of these involved a female interrogator applying red ink to her hand and then causing the detainee to believe that she was wiping menstrual blood on his face. Her expressed intent had been to “put up a barrier between him and his God,” by making him feel unclean and unworthy. This was apparently accomplished as Saar described the look of “intense loathing” on the prisoner’s face accompanied by screaming. What they had done “was the antithesis of what the United States is supposed to be about,” Saar proclaimed. “We cashed in our principles in the hope of obtaining a piece of information. And it didn’t even fucking work.”¹²²

In December 2002, near the time Sergeant Saar arrived at Gitmo, the debate over proper interrogation techniques heated up. In response to initial requests from Major

¹²¹ Saar, *Inside the Wire* 118, 40, 131, 132, 162.

¹²² Saar, *Inside the Wire* 227, 222, 224, 229, 228.

General Michael B. Dunlavey, Commander of Joint Task Force 170 at Gitmo, Secretary Rumsfeld issued a list of “approved” counter-resistance strategies, some of which exceeded the Army’s, *Field Manual 34-52 Intelligence Interrogation*, which strictly forbade the use of “force” in interrogations.¹²³ Specifically, these newly approved tactics were for use at Gitmo only, and they included the “use of 20-hour interrogations,” “removal of clothing,” and “inducing stress by use of detainee’s fears (e.g. dogs).”¹²⁴ These techniques, however, were short-lived as Rumsfeld rescinded his earlier order on January 15, 2003, leaving only the more harmless tactics still available for use.

The publicity received by these memoranda and many more like them set off a firestorm of negative news reports and public opinion. Many have joined Karen J. Greenberg in her accusation that the whole line of new policies put forth in the government memos was a “carefully constructed anticipation of objections at the domestic and international levels,” but the “general consensus was that Americans could not possibly be involved in such tactics.”¹²⁵ Nevertheless, Americans were in fact

¹²³ United States, Dept. of the Army, *FM 34-52 Intelligence Interrogation* (Washington: GPO, 1992) <www.fas.org/irp/offdocs/direct.htm> 1-7.

¹²⁴ Saar, *Inside the Wire* 281.

¹²⁵ Greenberg, *The Torture Papers* xvii, xviii.

involved and responsible, and as of today, Camp Delta and the other detainment facilities remain fully operational. The detainee population is above 400, and the Department of Defense has yet to successfully complete even one of its military tribunals charging detainees with violations of the laws of war.

SUPREME COURT DECISIONS

There can be no surprise that along with such unprecedented and controversial policies enacted, each of the relevant time periods included Supreme Court challenges to the constitutionality of executive actions. With regards to Japanese internment, four petitions reached the highest court for consideration on their merits, and in 2004, three major cases against President Bush's detention policies were decided by the court. Although there was only partial success on the part of those interned/detained, their cases are most important to this research for their ability to show a pattern of presidential excess during times of crisis, and of the court's recognition and adjustment, over time, to this tendency by way of checking executive power.

Beginning with the WWII era, there were four major cases, with two decided on June 21, 1943 and the other two on December 18, 1944. The suits brought by Kiyoshi Hirabayashi and Minoru Yasui were deemed companion cases, and because of their similarities, an analysis of *Hirabayashi v. U.S.* will suffice. Mr. Hirabayashi was an American citizen of Japanese ancestry, who quite purposely violated General De Witt's curfew order and a Civilian Exclusion Order for his home area in the state of Washington. These violations led to his conviction and sentencing, as provided for by

the Congressional Act of March 21, 1942, to two three month prison terms to be served concurrently. Therefore, the questions brought before the Supreme Court were whether the curfew order and or the exclusion order were unconstitutional delegations of power from Congress to the military commander, and “whether the restriction unconstitutionally discriminated between citizens of Japanese ancestry and those of other ancestries in violation of the Fifth Amendment.” In answer to these questions, the court unanimously found that it was “within the constitutional power of Congress and the executive arm of the Government to prescribe this curfew order” as a wartime measure to protect against espionage and sabotage, and the court continued that “in time of war residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.” It was also put forth that the “war power of the national government is ‘the power to wage war successfully,’” which extended to all areas and was “not restricted to the winning of victories in the field.”¹²⁶

All of these reasons led to the unanimous affirmation of the curfew order and of Hirabayashi’s conviction for violating it. Additionally, the court avoided even addressing the exclusion order by reasoning that his “sentences on the two counts are to

¹²⁶ Hirabayashi v. U.S.

run concurrently and conviction on the second [the curfew conviction] is sufficient to sustain the sentence.” Interestingly, in a somewhat reluctant concurring opinion, Justice Murphy warned of executive excess when he wrote the following: “We give great deference to the judgment of Congress and the military authorities as to what is necessary in the effective prosecution of the war, but we can never forget that there are constitutional boundaries which it is our duty to uphold.”¹²⁷

Moving forward to December 18, 1944, the Supreme Court ruled in another pair of related internment cases. The significant and controlling difference between these two cases was that whereas “Fred” Toyosaburo Korematsu had challenged the exclusion orders by failing to report to an assembly center, Mitsuye Endo challenged her internment from within the camps. This difference, although minor, proved deciding. In *Ex Parte Endo*, Ms. Endo was granted her full liberty, as the court ruled unanimously that “whatever power the War Relocation Authority may have to detain other classes of citizens, it has no authority to subject citizens who are concededly loyal to its leave procedure.”¹²⁸ Nevertheless, although her petition for a writ of habeas corpus was

¹²⁷ *Hirabayashi v. U.S.*

¹²⁸ *Ex Parte Endo*, No. 70, Supreme Ct. of the US, 18 Dec. 1944.

eventually successful, she had been incarcerated for over two years before the Supreme Court granted her relief. In *Korematsu v. U.S.*, the court reached a 6-3 decision against Mr. Korematsu upholding his lower-court convictions. Justice Black wrote the court's opinion and he included: "Korematsu was not excluded from the Military Area because of hostility to him or his race," but rather because authorities "decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily" and because Congress placed its confidence and authority in the military to make these judgments.¹²⁹ Somewhat ironically, Justice Roberts, the author of the famous Roberts Report which had aided the formation of anti-Asian hysteria after Pearl Harbor, dissented from the court's decision. Additionally, Justices Murphy and Jackson dissented, with Murphy again offering powerful words:

No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry. It is merely that the loyalties of this group 'were unknown and time was of the essence.' Yet nearly four months elapsed after Pearl Harbor before the first exclusion order was issued; nearly eight months went by until the last order was issued; and the last of these 'subversive' persons was not actually removed until almost eleven months had elapsed. Leisure and deliberation seem to have been more of the essence than speed. And the fact that conditions were

¹²⁹ *Korematsu v. United States*, No. 22, Supreme Ct. of the US, 18 Dec. 1944.

not such as to warrant a declaration of martial law adds strength to the belief that the factors of time and military necessity were not as urgent as they have been represented to be.¹³⁰

To date, the War on Terror has seen three major Supreme Court decisions handed down in response to challenges of President Bush's detention powers over enemy combatants. All three were decided on June 28, 2004, and with the exception of *Rumsfeld v. Padilla*, they were resounding defeats for the President's administration. Padilla, a U.S. citizen, was arrested by federal agents as he stepped off an airplane in Chicago, in connection with a grand jury investigation into the 9/11 attacks. President Bush then issued an order to Rumsfeld that designated Padilla as an enemy combatant, which affected Padilla's transfer to military detention in a naval brig in South Carolina. As a citizen, he filed a petition that alleged his "military detention violates the Constitution." The district court agreed with the government that the "President has authority as Commander in Chief to detain as enemy combatants citizens captured on American soil during a time of war;" however, the appeals court disagreed, "holding that the President lacks authority to detain Padilla militarily."¹³¹ This laid the ground for a

¹³⁰ *Korematsu v. United States*.

¹³¹ *Rumsfeld v. Padilla*, No. 03-1027, Supreme Ct. of the US, 28 June 2004.

Supreme Court confrontation, but because of a jurisdictional problem with Rumsfeld being named the respondent of Padilla's petition rather than Commander Melanie Marr of the naval brig, the court wasn't able to address the overarching constitutional question.

Nevertheless, in the cases of *Hamdi v. Rumsfeld* and *Rasul v. Bush*, the justices did respond directly to the issues presented. The Hamdi case centered on whether Mr. Hamdi, an American citizen captured on a battlefield in Afghanistan and deemed an enemy combatant, had the right to a "meaningful" inquiry into the factual basis for his detention. His father had submitted a petition for a writ of habeas corpus on his behalf, contending that the government was violating his Fifth and Fourteenth Amendment rights by holding him without a trial. In a 6-3 decision, the court held Hamdi's citizenship and the fact that he was being held on American territory (the naval brig in Charleston, South Carolina) gave him the right to a "meaningful opportunity to contest the factual basis" for his detention.¹³² Again, as in Justice Murphy's concurring opinion in *Hirabayashi v. U.S.* and his dissenting opinion in *Korematsu v. U.S.*, the idea that in wartime the other branches of government can operate unchecked was refuted. In this

¹³² *Hamdi v. Rumsfeld*, No. 03-6696, Supreme Ct. of the US, 28 June 2004.

instance, Justice Sandra Day O'Connor declared, "A state of war is not a blank check for the president when it comes to the rights of the nation's citizens," and particularly in challenging times "we must preserve our commitment at home to the principles for which we fight abroad." *New York Times* reporter Anthony Lewis added: "The justices did what they have often shied away from doing: said no to the argument that the title commander-in-chief means that the president can do whatever he says is necessary to win a war."¹³³

The court also decided 6-3 in favor of the petitioners in *Rasul v. Bush*, which involved a total of 14 petitioners, all captured in hostilities abroad, and all held at Guantanamo Bay. The petitioners uniformly claimed to have never engaged in hostilities against the U.S. and to have never been terrorists. This claim was coupled with the fact that they had never been allowed to consult with legal counsel nor provided access to courts or tribunals. To their habeas requests, the court gave an unprecedented ruling that the Guantanamo Bay naval base does not lie beyond U.S. district courts' jurisdictions by virtue of the fact that the U.S. operates complete jurisdiction over the

¹³³ Anthony Lewis, "The Court v. Bush," *New York Times*, 29 June 2004.

region, regardless of Cuba's "ultimate sovereignty."¹³⁴ This confirmed the U.S. Justice Department's fears from their December 2001 memo, as detainees held at Gitmo were consequently allowed to challenge their detentions in U.S. courts.

¹³⁴ Rasul v. Bush, No. 03-334, Supreme Ct. of the US. 28 June 2004.

CONCLUSION

This essay has illustrated significant ties existing between two separate historical periods. Both Presidents Roosevelt and Bush used detainment in their attempts to prevent future attacks, and the significant linkage was that both approved programs in which detainees were held uncharged and without adequate access to trials. There are other similarities, of which there is no better example than the attacks that ushered the U.S. into each turbulent era. On December 7, 1941, the Japanese attacked Pearl Harbor in complete surprise killing 2,338 people which, until the September 11 attacks, represented the largest loss of life in one single enemy attack against U.S. territory in history. Consequently, the 9/11 hijackers killed a total of 3,047 people when they crashed four commercial jetliners in the eastern U.S. in 2001. In both cases, the initial government response was aggressive FBI arrests and interrogations. Also, the shared public sentiment towards supporting the limitation of civil liberties for Japanese Americans in the 1940s and for Muslim and Arab Americans between 2001 and 2004 proved that any critique of the government's actions would be incomplete without also discussing the feelings of the general public.

Concerning these two historical episodes, there are clearly important differences, but it was the aim of this thesis to investigate the possibility that in spite of these distinctions, President Roosevelt's internment of Japanese Americans might have served as an historical precedent to President Bush's detainment of terrorist suspects. One of these vital distinctions was that Bush's Military Order specifically targeted non-U.S. citizens, who were for the most part combat prisoners, not citizens of minority descent. Nevertheless, the "legal black hole" in which Guantanamo Bay detainees found themselves was disturbingly similar to that encountered by Japanese American internees 60 years earlier. Specifically, claims to habeas corpus rights united these two historical episodes by virtue of the fact that in each case the government pressed its rights to protect the nation even if it meant using means that ignored constitutional and international civil liberties protections.

The connection is summed up in Fred Korematsu's brief of amicus curiae, written in 2003, which supported the petitioners Khaled A. F. Al Odah, Shafiq Rasul, and Yasir Esam Hamdi, in their claims against the government. Through the recounting of six examples in U.S. history when civil liberties were at their most constrained, Korematsu championed the idea that "only by understanding the errors of the past can

we do better in the present.” His argument began, “history teaches that, in time of war, we have often sacrificed fundamental freedoms unnecessarily,” and “courts, which are not immune to the demands of public opinion, have too often deferred to exaggerated claims of military necessity and failed to insist that measures curtailing constitutional rights be carefully justified and narrowly tailored.” Additionally, he recalled his own experiences during WWII when more than 120,000 Japanese Americans were interned, and he stressed that “no charges were brought against these individuals; there were no hearings; they did not know where they were going, how long they would be detained, what conditions they would face, or what fate would await them.” Then, to make the connection, Korematsu urged that, “To avoid a repetition of past mistakes, this court should closely scrutinize the government’s claims of “military necessity” in these cases to ensure that civil liberties are not unnecessarily restricted.”¹³⁵ Surely, Mr. Korematsu was pleased by the court’s 2004 decisions in both the Hamdi and Rasul cases.

Perhaps the most important relationship to look for has not yet had the opportunity to fully develop. The peaceful resettlement and successful assimilation of

¹³⁵ Geoffrey R. Stone, et al., “Brief of Amicus Curiae Fred Korematsu In Support of Petitioners,” Nos. 03-343, 03-334, Supreme Ct. of the US, 3 Oct. 2003 (On Petitions for Writs of Certiorari to the United States Courts of Appeals for the District of Columbia Circuit and the Fourth Circuit) 3, 4, 12, 13, 18.

the Japanese American population following their incarceration was no small feat and involved thousands of human beings demonstrating tremendous self-discipline in swallowing, what must have been, unbelievable feelings of bitterness and betrayal. To be sure, the words of President Truman, upon presenting a citation to a Nisei regiment on July 15, 1946, were true when he told them: “You fought not only the enemy, but you fought prejudice—and you have won. Keep up that fight, and we will continue to win—to make this great Republic stand for just what the Constitution says it stands for: the welfare of all the people all the time.”¹³⁶ Therefore, the question now becomes: How will the more than 10,000 terrorism suspects detained or interrogated worldwide affect society as a whole? Will they reintegrate peacefully and try to forget the injustices the way the Japanese Americans did, or will violence and terror be spawned from their hate-inspiring detentions? Along with the more than 200 Guantanamo Bay detainees who have already been released apparently after the U.S. government reached the conclusion that they no longer or never did pose a threat to U.S. interests, Michael Ratner cited U.S. intelligence reports that suggested “at least 59 individuals from Afghanistan and

¹³⁶ Harry S. Truman, “Remarks Upon Presenting a Citation to a Nisei Regiment,” *Public Papers of the Presidents of the United States* (Washington: GPO, 1962) 171.

Pakistan were captured and shipped off to Guantánamo despite not fitting the screening criteria for such a transfer.” Because of this, a military official who served as an interrogator observed, “If they weren’t terrorists before, they certainly could be now.”¹³⁷ Former Gitmo interrogation translator Erik Saar also noticed signs that indicated a smooth transition after the War on Terror might be extremely difficult. With regards to Islamic Fundamentalism, he recalled, “many detainees had arrived as fervent believers; most of the rest had turned in that direction with their imprisonment.” Saar noted that those detainees released from Gitmo “were given no apologies upon their release and no money to compensate them for the loss of a year of their lives or to help get them on their way again.”¹³⁸ Therefore, whether issues of distrust or even outright hatred, it seems clear that the U.S. has failed, at least in the short run, to win the War on Terror and also to win the battle of public sentiment that will surely help decide how long this war will endure.

One thing is for sure, the longer President Bush maintains his current detainment policy, the better chance his legacy will mirror and possibly even overshadow that of

¹³⁷ Ratner, “The Guantánamo Prisoners,” 39.

¹³⁸ Saar and Novak, *Inside the Wire* 181, 208.

President Roosevelt for internment programs that violated constitutional civil liberties protections. The issue then, no matter how idealistic it may sound, is that the sworn duty of the President has always been to “preserve, protect and defend the Constitution,” not the shores of California or the buildings of New York City. Thus, until policies are prioritized according to this historic oath, rights violations will likely continue.

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