



“Head-On Into Peril”: Connecting 9/11 and Law Enforcement Abuses in Portland

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“When 9/11 occurred, our folks did not quibble about whether there was danger ahead for them[, t]hey ran head-on into peril,” wrote FBI Deputy Director David Bowdich in early June during the first weeks of protest over the extrajudicial killings of George Floyd and other Black Americans. Bowdich’s mention of 9/11 compared protests of systemic racism across the United States by U.S. citizens, to the terrorist attacks on the World Trade Center and Pentagon by al-Qaeda, a transnational terror organization. His reference to “our folks” analogized our military forces sent to Afghanistan – ostensibly to fight terrorism – with the patchwork of untrained federal officials given generic military uniforms and munitions and instructed to counter the protestors. And “running head-on into peril” is an unmistakable comparison between the federal government’s suppression of protest, and war.

The treatment of protestors as combatants to be battled, a framing echoed by Attorney General Bill Barr and President Donald Trump, should surprise no one. While the militarization of the police began long before 9/11, the hasty passage of the PATRIOT Act meant that major constitutional threats (such as Section 213’s authorization of warrantless searches by law enforcement in some situations) escaped sufficient national (and judicial) scrutiny. In the post-9/11 era, the National Guard and private contractors have been deployed alongside, and in some cases instead of, local law enforcement to monitor communities of color, such as in the aftermath of Hurricane Katrina. Long before military-grade munitions were used on peaceful protestors in Lafayette Square, weapons and tanks flooded police departments that considered themselves the domestic counterparts of the military sent abroad in the “War on Terror.” Instead of being part of their communities, police departments have acted as an oppositional – even occupying – force, simulating wartime roles. It was no accident that people of color (primarily Black and Latino Americans, and Muslims around the world) were the primary targets of both military and police agencies post-9/11 – allowing the militarization of law enforcement to largely escape censure from the majority even as it became entrenched in American society.

While American police were militarized, elements of the federal response in Portland that have so horrified the nation became core features of – rather than aberrations from – post-9/11 counterterrorism, immigration, asylum and refugee policies. These shifts began with President Clinton’s “War on Drugs,” escalated under President Bush’s “War on Terror,” and became normalized under President Obama. The Trump administration’s response to the Portland protests and its manifestly bigoted, discriminatory “Muslim ban” policies, along with the more

general destruction of asylum rights, among others, has predictably woven together different threads of post-9/11 national security policies (with widely disparate impacts at home and abroad) into a single ugly tapestry.

Unidentified Forces

The anonymity of the federal officials deployed by the Trump administration recalls the (mostly still) nameless and faceless CIA officials who kidnapped, tortured, and killed detainees with impunity between 2002 and 2007. The report of the Senate Select Committee on Intelligence analyzing the CIA's rendition, detention, and interrogation program details these abuses. For example, the report outlines how:

security officers wore all black uniforms, including boots, gloves, balaclavas, and goggles to keep [prisoners] from identifying the officers, as well as to prevent [detainees] 'from seeing the security guard as an individual who [they] may attempt to establish a relationship or dialogue with.' (quoting a redacted source in fn. 111).

Congress not only fully funded the CIA's rendition and torture program, but Nancy Pelosi and other prominent members were reportedly given a "virtual tour" of the first of many secret prisons in which detainees were held and tortured, and were certainly briefed extensively on the use of torture techniques. Counsel representing tortured detainees more than a decade after the end of the rendition program are still fighting to learn the identities of key CIA and military witnesses and perpetrators.

Meanwhile, Blackwater and other private security contractors in Iraq – on the U.S. payroll – indiscriminately tortured and massacred Iraqi civilians alongside the U.S. military. Despite the war crimes committed by security contractors in Iraq, after the devastation of Hurricane Katrina in 2005, Blackwater employees were contracted by the Department of Homeland Security (created in 2002 to "protect the homeland") to "secure" New Orleans against its own residents. "Armed as they would be in Iraq, with automatic rifles, guns strapped to legs, and pockets overflowing with ammo ... [driving] around in SUVs and unmarked cars with no license plates," the anonymous Blackwater forces worked with the Louisiana National Guard. Several Blackwater employees interviewed by Jeremy Scahill stated that they were authorized to use lethal force "if necessary." At the time, human rights advocates such as Michael Ratner, president of the Center for Constitutional Rights, decried the "vigilantism" of this massive deployment of government and government funded military forces in Louisiana, but were ignored. U.S. Customs and Border Protection agents have also long used the same tactics along the U.S. border with Mexico, using unmarked vans, targeting people of color, and even employing private contractors – most recently to enforce the Trump administration's much maligned "zero tolerance" and family separation policies.

It was inevitable that the tactics employed by CIA, federal forces, and private contractors would be adopted by local police departments. Following the unrest over the police killing of Freddie Gray in 2015, officials in "unmarked uniforms" swept up and detained protestors en masse. On a daily basis, in most large American cities, it has become common for "[p]lainclothes police squads [to] ride around in unmarked vehicles looking for citizens to tackle or throw against a

wall, then search for guns or drugs.” Unsurprisingly, the vast majority of those victimized by these plainclothes “jump out boys” are people of color, especially Black Americans. The same big-city police departments stocking up on military gear from federal authorities and rejecting accountability also embraced “Countering Violent Extremism” programs and methodologies during the Obama administration. The FBI and militarized police departments targeted Muslim communities for surveillance, entrapment, and scapegoating, despite constitutional concerns, all while ignoring the rise of right-wing extremist groups.

Detention Without Due Process

Detention and interrogation without charges or access to counsel is perhaps one of the most infamous features of post-9/11 U.S. policies. Under the pretext of protecting the homeland, Immigration and Customs Enforcement (ICE) officers routinely used indefinite detention in abusive conditions (including of mothers and children) without access to counsel during the Bush and Obama administrations.

This particular crisis has intensified during the Trump administration. Outside the United States, hundreds of Muslim, non-citizen detainees were held by the CIA at black sites and by the military in Afghanistan and Iraq, tortured, and interrogated relentlessly without lawyers present. No charges were filed against the detainees accused of involvement in 9/11 until 2008, over five years after they were detained, and after years of incommunicado detention. Even now, prosecutors fight to use statements obtained through torture in efforts to convict, and execute, the 9/11 defendants who made those statements. For this reason, the Department of Justice still claims that the Constitution does not apply at Guantánamo Bay, territory under the legal jurisdiction of the United States.

Yet the Constitution was shockingly easy to suspend for U.S. citizens on U.S. soil as well. One early ignominious example was that of José Padilla, who was arrested in Chicago in 2002, detained incommunicado in a Navy brig in South Carolina, and tortured. The Bush administration claimed the ability to detain Padilla indefinitely as an “enemy combatant” who had allegedly planned to detonate a “dirty bomb” within the United States, and denied that Padilla was due any Sixth Amendment rights until charges were filed. The administration then refused to file charges against Padilla for over three years. Padilla was finally transferred to civilian custody for trial in 2006 after a protracted legal battle, but no evidence of a “dirty bomb plot” was ever produced by the prosecution.

Many rights groups, including the civil libertarian Cato Institute, protested the suspension of Padilla’s constitutional rights at the time. However, current critics of the Portland tactics, including Lawfare’s Benjamin Wittes, defended the Bush administration by dismissing Padilla as “a genuine thug who had allegedly developed high-level Al Qaeda contacts and had been sent here to conduct operations.” Wittes counseled in favor of preventative detention and against releasing suspects until charges could be brought against them, writing that “this country has never embraced that theory in fighting foreign powers, nor could it.”

In a single sentence, Wittes thereby transformed Padilla from a U.S. citizen suspected of criminal activities, to an enemy combatant for a “foreign power,” and sought to place him beyond the

reach of the Constitution on U.S. soil. There are glaring links between this logic – stripping a racialized, othered U.S. citizen of ordinary constitutional rights, as applied to Padilla – and the attempts to cast racialized victims of police brutality and protestors as “outsider” threats to America. Such links are made all the more apparent by Wittes’ usage of the racially-charged term “thug” to describe Padilla. Trump himself used the term to deride protestors calling for racial justice in May.

In 2020, Trump seeks (without basis) to designate “Antifa” a terror group, and U.S. citizen protestors into its combatant-members, all on U.S. soil. If history is guide, the endgame of such a move would be to characterize protestors as combatants and place them beyond constitutional protections from excessive force, indefinite detention, and other mistreatment. Citizenship should never be a factor in excusing government violations of fundamental human rights. But it should be a hard lesson that the federal government’s militarized violence in Portland and elsewhere, is shocking to the majority of the country now precisely because it is being committed primarily against citizen, many of whom are white. For Black Americans, Muslims, other minorities, asylum-seekers, and the advocates who fight for them, rather than an aberration, these abuses represent a continuation of decades of rule of law degradation by the United States – all in the name of national security.