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On January 22, 2009, his first full day in office, President Barack Obama signed four executive orders relating to Guantánamo and related interrogation policies in order to fulfill a longstanding campaign promise in the *"interest of justice."* A constitutional law professor, he quickly moved to reestablish the rule of law, setting a clear boundary between the Bush and Obama administrations. Subsequently, he asked Congress to fund that closure.

There were three distinct issues involved—compliance with the Geneva Conventions, release of prisoners inappropriately held, and trial of those accused of crimes. To handle the matter, President Obama appointed two loyalists during the campaign. Gregory Craig was appointed White House coordinator for Guantánamo, and Vets of Obama organizer Phillip Carter was nominated for Deputy Assistant Secretary of Defense to effect changes. However, he also appointed former officials in the Clinton administration, namely Eric Holder as Attorney General and Leon Panetta as Director of the Central Intelligence Agency. But infighting delayed key decisions.

Rather than exercising mastery of details and answering critics, the issue was left to quiet deliberation inside the administration with occasional leaks about possible steps toward resolution that were not immediately followed up. In May, President Obama delivered a major address that gave the impression that he understood the complexity and sensitivity of the issues but not how to implement them. Then in November, the public learned that responsibility on the

issues was delegated to Attorney General Eric Holder without firm presidential guidance.

Geneva Conventions. One executive order issued on January 22 insisted on “*conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions*”

and asked for a report on compliance within thirty days. No such order was issued to the military operating in Afghanistan, Iraq, or Pakistan. Bush had countermanded General Tommy Franks’s order to observe the Geneva Conventions after American troops first left for Afghanistan. One result was Abu Ghraib, another the abuse at Guantánamo.

The compliance report submitted within thirty days by Admiral Patrick Walsh only looked at Article 3, ignoring hundreds of other articles and scores of relevant treaties. One recommendation of the report was to allow those in solitary confinement to talk to one another during their two-hour daily recreation periods. But solitary confinement, except as a punishment for an infraction of prison rules, is banned by the Third Geneva Convention. In effect, the Pentagon defied President Obama, who in turn swallowed their medicine by claiming full compliance during his Nobel Peace Prize acceptance speech in December.

Indeed, reports of an increase in abuse of prisoners from the day Obama became president represented further defiance. Obama needed Pentagon support to exit from Iraq and increase troop strength for what he called the “*war of necessity*” in Afghanistan, and he was nonconfrontational toward the Pentagon on the treatment of prisoners. Instead, they checkmated him.

Leon Panetta, meanwhile, indicated that he would continue the extraordinary rendition policy that captured suspected terrorists, flew them to secret locations, and interrogated them, further indicating that there would be no sharp break with the previous administration's record of blatant war crimes.

Just before taking office, Obama's expressed policy was to look forward, not backward. But not looking backward really meant looking away. Most war crimes continued as before at Guantánamo and on the battlefield.

President Obama, presumably on the urging of Greg Craig, released the "torture memos" to prove how far the country had lost its "*moral bearings*" during the Bush years but only after heated divisions within the White House. One reason for the release was presumably to counter repeated criticisms from former Vice President Dick Cheney. But the infighting apparently was over Obama's refusal to release information that might potentially be exculpatory for the prisoners on the basis of "national security" and "state secrets," the same justifications used by Bush to frustrate court action.

In May, Obama reversed his previous decision to comply with a court order to release "torture photographs," on advice from the military that the effect would be adverse to how American troops abroad would be perceived, an example of his pragmatic humanism in which people come before principles. He oddly failed to cite the obvious—that the Geneva Conventions bans display of prisoners.

Another move was a sudden release by the Department of Justice of more text from a censored 2004 report on CIA torture and twenty related documents as well as an announcement that an official would investigate whether CIA interrogations conducted under the Bush administration warranted prosecutions for violating federal laws banning torture. Both moves, regarded by civil libertarians as too nuanced, upset CIA Director Leon Panetta so much that some at the White House were then reportedly considering who would be his successor.

The record of the Bush administration went far beyond torture to violate more than two hundred war crimes in four categories—unprovoked aggression, misconduct on the battlefield, mistreatment of prisoners, and maladministration of Iraq. In January, before Obama took office, Representative John Conyers introduced legislation for a truth commission. But the proposed bill was not referred to a subcommittee for deliberation until mid-2009, and there was no White House support.

In late August, with Congress in recess, several decisions were announced. A new High Value Detainee Interrogation Group, established within the Federal Bureau of Investigation but reporting to the National Security Council, was designed to cut the Central Intelligence Agency and its contractors out of the process of questioning terrorists under the extraordinary rendition program. Instead, the Army Field Manual would be followed.

Regarding the culpability of the Bush administration for war crimes, Attorney General Holder merely relegated the matter to an investigation, thereby punting the issue indefinitely. The investigation would determine whether some CIA personnel or others engaged in unlawful torture before Bush administration attorneys wrote legal memoranda justifying harsh treatment. And an investigation also was to rule on whether the legal memos constituted improper legal advice, which might be grounds for disbarment in the states where the lawyers now practiced.

More outrage from Cheney and others followed the announcement about investigations of possible wrongdoing.

President Obama's search for a middle ground impressed neither rightist politicians nor leftist activists. Although he reassured no one regarding whether members of Bush's administration might be tried as war criminals. And violations of the Geneva Conventions continued.

Resettlement. During the Bush administration, many of those at Guantánamo had been released because they were not terrorists. Instead, bounty hunters cashed in on an order from Washington to round up as many suspects as possible and to send them to Guantánamo in a show of decisiveness and strength. Some were treated kindly upon arrival in their home countries, but some were arrested and even tortured, so some had been sent to third countries, notably six Uighurs (refugees from China who happened to be in Afghanistan) to Albania. At least 60 inmates were ordered released before Obama took office. They were, in effect, refugees.

Greg Craig then quietly sought to release two Uighurs to Virginia, where there is a community of Uighurs. When word leaked out from unknown sources about the impending transfer, hysterical reactions began. Republicans and right-wing pundits falsely claimed that all at Guantánamo were terrorists, hoping to embarrass Obama. During deliberations on funding to close Guantánamo, members of Congress asked for a full resettlement plan, which did not exist, as Craig had hoped that a quiet transfer would be successful, and then more could be granted asylum in the United States. Accordingly, Democrats and Republicans denied authorization of funds to close Guantánamo and required advance notification to Congress of any prisoner transferred out of Guantánamo. Cowardly right-wing politicians and pundits even professed to be afraid of transferring those at Guantánamo to maximum security prisons, presuming that terrorists on the outside would try to spring them loose from a confinement from

which no criminal has ever escaped.

The Department of State, meanwhile, had been finding countries where the innocent prisoners could be resettled. Some indeed returned to Britain and France, and Palau accepted some of the Uighurs. There were promises from other European countries to accept a few, but the numbers fell short, and courts demonstrated displeasure that those ordered released were still being held.

Trials. A second executive order signed by President Obama on January 22 asked for a plan within six months on how to try prisoners at Guantánamo deemed terrorists. Civil libertarians insisted that those not released should be tried in civilian courts, while Obama in May held out for finding a way to reform military commissions and keep some prisoners indefinitely.

Six months later, the deadline was extended, awaiting Congressional passage of a revised Military Commissions Act that would provide more guarantees for the rights of defendants along the lines requested by the Obama administration. In September, President Obama announced a part of the new policy, which repudiated what he had said as a candidate: Based on the Authorization for the Use of Military Force Resolution of 2001, dangerous prisoners who might be found not guilty in trials would be held indefinitely.

In November, after Obama quietly signed the Military Commissions Act of 2009, the new

policy was promulgated by Attorney General Eric Holder, who claimed that he consulted no one in the administration, including Obama, before his announcement. The five who reportedly conspired on the 9/11 attack would be tried in New York federal court, while five allegedly committing crimes abroad would be tried by military commissions in accordance with the Military Commissions Act of 2009, which was slipped into the military appropriation bill. In other words, some terrorists were viewed as committing civilian crimes at civilian targets in the United States, whereas those engaged in attacks abroad were to be tried by military commissions.

Greg Craig resigned on the day when Holder made his announcement. Phillip Carter resigned shortly thereafter. They had been overruled. Their usefulness to the Obama administration had ended.

Overall, President Obama tried to find a balance between high ideals and pragmatism. Consistent with his preference for nonconfrontational conflict resolution, the disposition of Guantánamo elicited favorable world opinion immediately but remains a domestic albatross around his neck. A boundary was fixed behavior civil and military action. The “war on terror” was clearly over as a military concept. But that left Obama responsible by default for continuing the misconduct began by George W. Bush, both in the treatment of prisoners and in their less than speedy trials.

A war crimes ambassador, appointed in October, was assigned to press other countries for their misdeeds, and they in turn have pointed out that the United States pursues a double standard. President Obama's competence and campaign promises were called into question by the entire saga.