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The Clinton Administration's Development and Implementation of Rendition (1993–2001)

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ABSTRACT

A firestorm of protest greeted revelations of the rendition program when it was made public during the George W. Bush administration. The operational and political basis for the rendition initiative, however, had been established years before George W. Bush became president and was viewed as 'a new art form' by the Clinton administration. Despite significant efforts to distinguish between the two administrations, the evolution of the rendition initiative during the 1990s reveals far greater continuity than has been widely acknowledged. This paper examines the manner in which the Clinton administration utilized rendition in its own war on terror, years before George W. Bush came to power, with little public scrutiny or outrage.

ARTICLE HISTORY

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Since the onset of the War on Terror as announced by President George W. Bush in 2001, a great deal of scrutiny has focused on the policies and tactics that have been employed by the United States. Of these, none has been more contentious than the policy of transferring individuals from one country to another without an extradition order, in a process known as rendition, or in certain cases, extraordinary rendition. The policy received widespread condemnation when enacted in the years following the attacks of 11 September 2001 and was criticized as being in contravention of the principles and freedoms that the United States claimed to be defending in its global struggle. Unbeknown to many, however, the policy of rendition did not begin under the George W. Bush administration. This article reveals the extent to which many of its practices were developed during the administration of Bill Clinton, which institutionalized the procedure during the 1990s as it addressed the growing threat from radical terrorist organizations, particularly in the Middle East. The foreign policy of the Clinton administration has thus far gone largely under-examined and its enactment of its own "war on terrorism" has not been revealed in sufficient detail. This has ensured that U.S. counterterrorism strategy in the 1990s remains something of mystery, further enhancing an orthodox caricature of the administration as lacking focus on international affairs and the growing threat posed by terrorist organizations. This article challenges this interpretation of the era to reveal the extent to which the Clinton administration was developing a practice

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that was deliberately designed to target key individuals in what it viewed as a productive and effective strategy to dismantle terrorist cells one suspect at a time.

The article utilizes discourse analysis to consider presidential statements and official documents to examine how the Clinton administration developed its rendition program, and how that evolved to resemble what later became referred to as “extraordinary rendition.” A deconstruction approach has been adopted to provide a more accurate analysis of the Clinton administration’s rendition program. This has been adopted partly due to availability of sources and through a desire to draw on the administration’s own words and policy documentation rather than third party interpretations. This enables the analysis to provide a more accurate understanding of both rhetoric and strategy. It also ensures that a full and detailed appreciation of the program’s rationale, instigation, and development can be constructed, free of political or moral perspectives, or the distorting influence of hindsight. Once this is revealed, the continuity of the rendition initiative from Clinton to Bush becomes apparent.

The concept of continuity between these two very different administrations is one that few have been prepared to consider. Indeed, distinctions have been deliberately and repeatedly focused on by academics and politicians alike. During the 2000 presidential campaign, Governor George W. Bush pledged a reversal of the Clinton–Gore strategy of nation building and foreign overseas intervention, and he largely adhered to this pledge for the first nine months of his administration. In September 2001, however, international relations took center-stage following the attacks in New York and Washington, and it served the Bush administration to highlight differences with its predecessor as it sought to shift responsibility for the security lapses that had allowed the attacks to occur. This process began when smoke was still billowing across the Potomac and over downtown Manhattan. Once the reverends Jerry Falwell and Pat Robertson had finished assigning blame for the attacks on homosexuals and abortionists, the accusations for blame quickly found focus on budgetary cuts and codes of conduct allegedly imposed on the Central Intelligence Agency (CIA) by the Clinton administration.¹ Republican Congressman Dana Rohrabacher blamed President Clinton for “letting the Taliban go, over and over again,” while Rush Limbaugh urged that Bill Clinton “be held culpable for not doing enough when he was commander-in-chief.”²

The Bush administration’s style, its political stance, and forthright demeanor had already marked it in contrast to the former Clinton White House, but the attacks further exacerbated the extent to which the past had suddenly become a foreign country. Democrat Senator Bob Kerrey lamented that President Clinton had erred in his response to previous attacks and “should have treated them as an attack on the United States.”³ Robert Patterson accused the Clinton administration of “gross negligence and dereliction of duty to the safety of our country, which the president was sworn to defend.”⁴ Finally, Sean Hannity concluded that, “Had Clinton and Gore understood the importance of national security, it’s quite possible that 9/11 could have been avoided.”⁵ The Clinton administration, however, had come to power when the threat from terrorism did not warrant serious attention from either politicians or the general public. Despite this, it made a series of policy decisions designed to redefine national counterterrorism strategy, and in its eight years in office addressed a series of challenges from those intent on inflicting harm on the United States.

The Clinton White House was confronted by acts of political violence including the bombing of the World Trade Center, the crashing of an aircraft into the White House, the killing of CIA employees, plans to bomb the Lincoln and Holland Tunnels in New York, the

destruction of the Alfred P. Murrah building in Oklahoma City, and attempts to launch coordinated strikes to coincide with the Millennium Eve celebrations. Internationally, American citizens and institutions were targeted in attacks on the Khobar Towers complex in Saudi Arabia, the U.S. embassies in Kenya and Tanzania, and on the U.S.S. *Cole* in Yemen. To date, the efforts of the Clinton administration to address these challenges have been misunderstood, causing a false narrative to emerge in regard to its policies. U.S. counterterrorism policy, and the development of rendition during the 1990s, were designed for a specific political age—after the end of the Cold War, but before the attack on the homeland in September 2001. An appreciation of these policy initiatives can help provide a more accurate appreciation of the evolving counterterrorism strategy of the United States in the years prior to the attacks of 11 September 2001. Furthermore, a detailed appreciation of the rendition initiative reveals the true extent of continuity between the Clinton and Bush administrations as they fought an ongoing War on Terror.

Theoretical Basis

Although too little attention has been paid so far to the Clinton administration's efforts to combat international terrorism in general, or its development of rendition in particular, this is not to suggest that nothing has been written on the subject. The orthodox narrative, however, is of an administration that paid scant attention to foreign affairs, and which was too busy fighting potential removal from office to initiate any meaningful policies in its second term. Partly as a result, critics have lamented the Clinton administration's time in office as a decade of lost opportunities and confused initiatives, during which the United States allowed a growing threat to develop that struck with deadly results only nine months after it left office.⁶ This has been exacerbated by an inability of former Clinton administration officials to explain their counterterrorism initiatives adequately in their memoirs. Accordingly, studies of the Clinton White House to date have failed to consider the evolution of counterterrorism policy in general, or its development of rendition in particular, ensuring that the administration's efforts remain misunderstood and their lasting impact under-appreciated.

To date there is no single defining work on counterterrorism strategy as devised by the Clinton White House, and only a small number of books produced on the administration's foreign policies in general. Two have attempted to address Clinton's time in office through the prism of foreign policy, but neither focus on its counterterrorism strategy or development of rendition. John Dumbrell's *Clinton's Foreign Policy: Between the Bushes 1992–2000* attempts to cover eight years' of foreign policy in only 171 pages and concentrates on incidents rather than on the development and implementation of policy, least of all counterterrorism strategy.⁷ The text's breadth ensures a lack of depth in this vital policy area. William G. Hyland's *Clinton's World: Remaking American Foreign Policy* similarly focuses on incidents, ensuring that it too fails to address issues of counterterrorism or rendition in an adequate fashion.⁸ A small number of writers have examined foreign policy incidents in the Clinton era, most notably Ryan Hendrickson in *Clinton's Wars* and David Halberstam in *War in a Time of Peace*. Again, however, these concern themselves with incidents and fail to adequately focus upon the developing threat of terrorism in the 1990s, or the Clinton administration's tactics with which to address it.⁹ Campbell and Rockman dedicate a lonely chapter to foreign policy in their two highly critical assessments of the administration, *The Clinton Presidency: First Appraisals* and *The Clinton Legacy*, and neither acknowledge any positive

impact of the Clinton administration in the area of counterterrorism, or account for its utilization of rendition.¹⁰

A series of memoirs have been produced by former members of the Clinton administration's national security team, including Warren Christopher's *Chances of a Lifetime*, Madeleine Albright's *Madame Secretary*, and Anthony Lake's *Six Nightmares*.¹¹ All, however, serve merely to defend their decisions in office, with little considering given to the wider implications for the time period in which events occurred. Nancy Soderberg's *Superpower Myth* is excellent, but suffers from overt partisanship and fails to address the utilization of rendition as a tool in the administration's counterterrorism strategy.¹² Perhaps the most important book to emerge that addresses the development of counterterrorism strategy during this time period is Richard A. Clarke's *Against all Enemies*.¹³ Written after Clarke departed the federal government, the text is an essential guide for appreciating the continuity of policy from administration to administration. One further book of note that addressed Clinton's foreign escapades was Richard T. Sale's *Clinton's Secret Wars*, which examined the use of force by the administration, although not the development of U.S. counterterrorism strategy, or rendition in particular.¹⁴

Whereas material is available that addresses the Clinton administration's overall policies, academic articles on the U.S. rendition program have been slow to consider its evolution prior to 11 September 2001 (9/11). Instead, research has tended to fall into one of two categories. The first focus entirely on the program after 9/11 and draw on legal and humanitarian arguments to critique the Bush administration. Examples include David Weissbrodt and Amy Bergquist's "Extraordinary Rendition: A Human Rights Analysis," Ingrid Detter Frankopan's "Extraordinary Rendition and the Law of War," and D. A. Jeremy Telman's "Intolerable Abuses: Rendition for Torture and the State Secrets Privilege."¹⁵ A second group make an effort to place the post-9/11 events in a broad historical context, but fail to focus on the vital development of the program under Clinton, effectively sweeping this era under an historical rug. Such articles include Alan W. Clarke's "Rendition to Torture: A Critical Legal History," Monica Hakimi's "The Council of Europe Addresses CIA Rendition and Detention Program," Louis Fisher's "Extraordinary Rendition: The Price of Secrecy," and William G. Weaver and Robert M. Pallitto's, "'Extraordinary Rendition' and Presidential Fiat."¹⁶

This article addresses this gap in the literature as it currently stands. The Clinton administration's development of rendition as a tool of U.S. counterterrorism strategy has not figured significantly in any appreciation of how the nation addressed the growing dangers, or in any consideration of the development of policy after the attacks of 2001. The article addresses this omission through a discourse analysis appropriately drawing from an extensive range of available materials. The passage of time has enabled an extensive range of primary sources to emerge from the Clinton Presidential Library in Little Rock, Arkansas, including speeches, statements, and official documents from the National Security Council that have been recently de-classified. A consideration of this material reveals the extent to which the Clinton administration developed a rendition program as part of its evolving counterterrorism strategy between 1993 and 2001 in a concerted effort to decimate and decapitate terrorist organizations. This article will consider the changing definition of rendition, and its use throughout history, before evaluating its development and evolution during the Clinton administration.

Defining and Initiating Rendition

Rendition has been an evolving concept, and has meant different things to different people. In 2004 it was defined as the being the “return of a fugitive from one state to the state where the fugitive is accused or was convicted of a crime.”¹⁷ In 2007 CIA Director Michael V. Hayden defined rendition as “taking a person to some other country,” a definition that excluded the purpose of such activity.¹⁸ Amnesty International, however, described rendition as being “the transfer of individuals from one country to another, by means that bypass all judicial and administrative due process.”¹⁹ By 2009, “extraordinary rendition” was defined in *Black’s Law Dictionary* as the “transfer, without formal charges, trial, or court approval, of a person suspected of being a terrorist or supporter of a terrorist group to a foreign nation for imprisonment and interrogation on behalf of the transferring nation.”²⁰ During the George W. Bush presidency, rendition, along with “enhanced interrogation” techniques, was viewed as evidence of an administration that was content to outsource processes that would be legally problematic in the United States.²¹

The concept of “rendering” an individual to justice, however, is not unique to the United States, nor to the War on Terror. Individuals as varied as Emperor Napoleon, Adolf Eichmann, and Carlos the Jackal were all rendered to justice against their will in extra-judicial processes.²² The United States has “rendered” individuals from overseas to stand trial in American courts since the nineteenth century, a process that has twice been upheld by the Supreme Court.²³ The legal justification for rendition, and the “extension of American law enforcement powers to foreign states” were reinforced and sanctioned in two opinions drafted by Assistant Attorney General William Barr in 1989. Traditionally, its implementation has been utilized when the United States faced challenges “apprehending suspects in foreign countries with which it had no bilateral extradition treaty, in which an extradition treaty was suspended due to a break in diplomatic relations, or in which there was virtually no law enforcement.”²⁴

During the 1980s, the Reagan administration attempted to render the hijackers of the *Achille Lauro*, but was thwarted when Sicilian authorities insisted the suspects stand trial in Italy. In 1986 President Reagan authorized a rendition operation to apprehend the suspects in the 1983 bombing of the U.S. Marine barracks in Beirut. Finally, *Operation Goldenrod* successfully lured Fawaz Yunis aboard a yacht off the Cypriot coast, which then sailed into international waters. He was then apprehended by the Federal Bureau of Investigation (FBI) and flown to Washington where he was sentenced to thirty years for his role in the hijacking of Royal Jordanian Flight-402 at Beirut International Airport on 11 June 1985.²⁵

At this time the U.S. utilization of rendition amounted to an enhanced form of extradition, a process that brought suspects to the United States to stand trial with full legal protections and Miranda Rights. In December 2005, Secretary of State Condoleezza Rice acknowledged that the United States had engaged in this practice for decades, as a way “to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice.” She noted that the practice of rendition was “a vital tool in combating transnational terrorism,” and that its utilization was “not unique to the United States, or to the current administration.”²⁶ What was not addressed by Secretary Rice, however, was the policy’s development under the former administration of Bill Clinton.

The Clinton Administration's Development of Rendition

Due to the covert nature of the policy, little mention was made of rendition in public documentation during the eight years of the Clinton administration. References to the initiative, however, can be found in the administration's final National Security Strategy, in de-classified Presidential Decision Directives, as well as in congressional testimony, enabling an appreciation of the scope and focus of rendition during the Clinton administration. The Clinton administration's final National Security Strategy, released in December 2000, acknowledged that since it came to power in 1993, "a dozen terrorist fugitives [had] been apprehended overseas and rendered, formally or informally, to the United States to answer for their crimes."²⁷ Among these were the suspected perpetrators of the World Trade Center bombing, and the shooting at the CIA headquarters, both of which occurred in the first weeks of Clinton's tenure at the White House.

In September 1998, the Senate Judiciary Committee quizzed FBI Director Louis Freeh regarding the administration's rendition policy. He revealed that in the decade prior to 1998, the United States had "successfully returned thirteen suspected international terrorists to stand trial in the United States for acts or planned acts of terrorism against US Citizens." Freeh noted that the majority of these had been "accomplished with the cooperation of the foreign government in whose jurisdiction the terrorist suspect was located." He explained that the rendition process was "governed by Presidential Decision Directive (PDD)-77, which sets explicit requirements for initiating this method for returning terrorists to stand trial in the United States."²⁸ Despite the public setting of this testimony, Freeh's comments on rendition received little attention.

The rendition initiative was also addressed in Presidential Decision Directives 39 and 62 issued by the Clinton administration in 1995 and 1998, respectively. Signed in the aftermath of the Oklahoma City bombing, PDD-39 *US Policy on Counterterrorism*, stated explicitly that "When terrorists wanted for violation of US law are at large overseas, their return for prosecution shall be a matter of the highest priority and shall be a continuing central issue in bilateral relations with any state that harbors or assists them." The directive insisted that legal methods of extradition were to be pursued when possible, but that if foreign assistance was not forthcoming the administration would "take appropriate measures to induce cooperation." Lest there be no misunderstanding as to the determination of the Clinton administration in this regard, the document stressed that the return of suspects "by force may be effected without the cooperation of the host government."²⁹

Three years later, in May 1998, the Clinton administration issued PDD-62. Using language that revealed an essential continuity with the subsequent administration of George W. Bush, the directive stated unequivocally that foreign terrorists "who pose a credible threat to United States and its citizens will be subject to pre-emption and disruption abroad, consistent with US laws." To build on existing policies, and ensure the continued protection of the American people, the directive established "an integrated program to increase our effectiveness in countering these threats and to prepare to manage the consequences of attacks against US citizens or infrastructure." The document insisted that all such efforts would be "carried out in full compliance with applicable law and existing procedures governing the activities of the agencies involved." The very first raft of policy directives to be addressed in PDD-62 were those relating to the "apprehension, extradition, rendition and prosecution" of terrorists.

PDD-62 revealed the Clinton administration's long-term aspiration, of "zero tolerance for international terrorism," an ambition that would "guide bilateral and multilateral efforts to eliminate sanctuaries, penalize states that sponsor terrorism, and assist friendly states victimized by terrorism." The White House believed that this required a multi-agency approach, and ordered the Intelligence Community to "maintain collection and capabilities to support apprehensions," while the Pentagon was ordered to "provide non-reimbursable transportation in support of renditions to the extent permitted by law." The directive specifically tasked the Justice Department with identifying "the highest priority pending foreign terrorist apprehensions" while the FBI, working with the CIA and the State Department, was required to "develop plans for their rendition."

The Clinton administration directed the Justice Department to coordinate with the State Department to pursue extradition and rendition initiatives, insisting that "foreign terrorists who violate US laws will be apprehended and tried, no matter where they hide and no matter how long it takes." The State Department was assigned as the lead agency in efforts to "support forces to obtain the extradition or other rendition of indicted terrorists," on the understanding that "all programs and activities conducted abroad will be implemented in full compliance with existing Chief of Mission authorities." The department was directed to ensure that foreign nations were under made aware that "action against those that threaten or have attacked US interests" was expected and that their full cooperation was now expected in regard to their "apprehension, prosecution, extradition or rendition."³⁰

PDD-62 lauded the fact that the Clinton administration's counterterrorism policies had "led to substantial success," including "an increased rate of rendition, apprehensions and convictions of terrorists."³¹ From March 1993 to October 1999, the rendition initiative resulted in a steady flow of high-profile suspects to the United States to stand trial, as the process became "a boom industry for the CIA."³² The most prominent of these was Ramzi Yousef, who had been arrested by Pakistani intelligence in Islamabad and handed over to U.S. authorities in February 1995.³³ Upon being rendered to the United States he was tried in the Southern District of New York, and jailed for life for his involvement in the 1993 World Trade Center bombing.³⁴

New York City is central to any appreciation of the U.S. battle with terrorism in the late twentieth century: Manhattan's World Trade Center was attacked in the first days of the Clinton administration and destroyed shortly after it departed the White House. New York was also the location that suspected terrorists were brought to stand trial. As former chairman of the Joint Chiefs, General Shelton, revealed, the CIA used a specific judge in the city for rendition cases who would "make the initial ruling as to whether or not there was a valid case against that prisoner, how long he could be held, and whether or not he was going to be granted bail under law."³⁵

Extraordinary rendition during the Clinton administration

The Clinton administration's rendition initiative began as a practice intended to facilitate the judicial process, by bringing individuals to stand trial in the United States. In 1996, the Clinton administration noted that since coming to power three years earlier, "more terrorists [had] been arrested and extradited to the United States than during the totality of the previous three administrations."³⁶ In the words of Clinton's second term national security adviser, Samuel Berger, rendition had become "a new art form (see [Table 1](#))."³⁷ As the 1990s

Table 1. Extraditions and renditions to the United States (1993–2001).

Date	Format	Individual	Regarding	From
March 1993	Extradition	Mahmoud Aby Halima	World Trade Center bombing, Feb. 1993	Not Declared
July 1993	Rendition	Mohammed Ali Rezaq	Egyptair-648 hijacking, Nov. 1985	Nigeria
Feb. 1995	Extradition	Ramzi Ahmed Yousef	World Trade Center bombing, Feb. 1993	Pakistan
April 1995	Rendition	Abdul Hakim Murad	Far East bomb plot, Jan. 1995	Philippines
Aug. 1995	Extradition	Eyad Mohamoud Ismail Najim	World Trade Center bombing, Feb. 1993	Jordan
Dec. 1995	Rendition	Wali Khan Amin Shah	Far East bomb plot, Jan. 1995.	Not Declared
Sept. 1996	Rendition	Tsutomu Shirosaki	Jakarta embassy attack, May 1986	Not Declared
June 1997	Rendition	Mir Aimal Kansi	CIA shooting, Jan. 1993	Afghanistan
June 1998	Rendition	Mohammed Rashid	Pan Am bombing, Aug. 1982	Not Declared
Aug. 1998	Rendition	Mohammed Rashed Daoud Al-Owhali	Embassy attack in Kenya, Aug. 1998	Kenya
Aug. 1998	Rendition	Mohammed Sadeek Odeh	Embassy attack in Kenya, Aug. 1998	Kenya
Dec. 1998	Extradition	Mamdouh Mahmud Salim	East Africa bombings, Aug. 1998	Germany
Oct. 1999	Rendition	Khalfan Khamis Mohamed	Embassy attack in Tanzania, Aug. 1998	South Africa
Sept. 2001	Rendition	Zayd Hassan Abd al-Latif Masud al Safarini	Pan Am Flight-73 hijacking, 1986	Not Declared

progressed, however, concerns regarding terrorism increased and, partly as a result, the practice of rendition evolved to incorporate the transportation of individuals between other countries, to face local justice, which was often severe. This marked the point at which the Clinton-era concept of “rendition to justice” began its transition to what became “extraordinary rendition.” Terrorists were detained and delivered for trial in a third country in a process that was deliberately designed to be covert: “These operations were kept secret so that the country in which the terrorists was found, or the one he was delivered to, or both, were protected from charges that they were acting as lackeys of the United States.”³⁸

It was during this stage in the evolution of the rendition program that Egypt became a vital part of the process. A key ally of the United States in the Middle East, Egypt had become the second largest recipient of U.S. foreign aid by the 1990s. Despite this, the nation had a poor reputation in regard to human rights. Ruled by Hosni Mubarak since 1981, tales that emerged from Egyptian prisons make awkward reading for those who suggest that rendition only became “extraordinary” once the Clinton administration left the White House. Mubarak came to power following the assassination of his predecessor, President Sadat, and had also been the intended target of political murder. He was, therefore, particularly eager to bring those responsible for his predecessor’s murder to justice. Rendition, therefore, served both countries: “It served American purposes to get these people arrested, and Egyptian purposes to get these people back, where they could be interrogated.”³⁹

This arrangement resulted in the first extraordinary rendition of the era. Talaat Fouad Qassem, a key leader and spokesman of the Egyptian armed Islamist group, al-Gamaa al-Islamiya, had been tried and sentenced to death in absentia for his role in the assassination of President Sadat in October 1981. Croatian police picked him up in Zagreb in September 1995. He was subsequently questioned by U.S. authorities aboard a ship in the Adriatic Sea, before being turned over to Egyptian authorities.⁴⁰ Three years later, in 1998, U.S. intelligence officers guided Albanian authorities to five members of the Egyptian Islamic Jihad, who were subsequently flown to Egypt, tortured, and executed.

American laws stipulate that individuals who are rendered must not be tortured, but it was apparent from the start of the process in 1995 that Egypt was not compliant with this aspect of the policy. Former CIA employee, Bob Baer, who worked for the agency in the Middle East during the 1990s, insisted that the countries in the region had varying reputations: “If you want a serious interrogation, you send a prisoner to Jordan. If you want them

to be tortured, you send them to Syria. If you want someone to disappear—never to see them again—you send them to Egypt.”⁴¹

Long before the attacks of September 2001, there was no greater target for a potential rendition operation during the Clinton administration than Osama bin Laden. CIA Director George Tenet wrote of his hopes that bin Laden could have been rendered to justice, explaining that if a “tribe had been able to find [bin Laden] and spirit him away, they were going to literally roll him up in a rug, take him to the desert, and hide him away.” The CIA then planned to “exfiltrate” him to face justice in the United States.⁴² As President Clinton’s first term national security advisor Anthony Lake observed, however, “If you bring [bin Laden] here and don’t tell anybody, then you’ve got a constitutional problem, if we just hold him in the slammer and nobody ever knows. You can’t do that, really. Or, you could bring him here and put him on trial and since we don’t have the goods on him, we lose. That’s unattractive.”⁴³ Notwithstanding the challenges involved, Tenet noted that more than fifty Al Qaeda terrorists were dealt with in this manner between 1996 and 2001, in an effort to “break the organization brick by brick.”⁴⁴

Internal Debate and Bureaucratic Resistance

Although the Clinton administration was not the first in U.S. history to initiate rendition operations, it was the first to utilize the practice in a systematic manner. It was immediately recognized, however, that whatever benefits may accrue from the initiative, it raised important questions pertaining to the rights of individuals under international law. Lloyd Cutler, the White House Counsel, cautioned President Clinton and recommended the idea be vetoed. Vice President Al Gore, however, adopted a more pragmatic view: “Of course it’s a violation of international law,” he exclaimed when asked for his perspective, “that’s why it’s a covert action. The guy was a terrorist. Go grab his ass.”⁴⁵ Such statements challenge the widely held belief that the Clinton administration had a less-than-robust approach to counterterrorism. Even Clinton’s usually soft-spoken and politically reserved Secretary of State, Warren Christopher, embraced the rendition policy when he observed that “fanatics would plan attacks in one country, execute them in another, and flee to a third when the deed was done.”⁴⁶ Rendition, therefore, presented the United States with a seemingly simple solution to a complex legal problem.

Despite the support that rendition received at the highest levels of the government, the Clinton administration continued to face bureaucratic challenges from the Pentagon and the CIA, which claimed to lack the necessary resources to enact the initiative. In a series of incidents that reveal insubordination and an effort to mislead on a systematic scale, members of the military and the CIA briefed reporters and members of Congress that the administration prevented them from apprehending war criminals and terrorists. As chairman of the Counterterrorism Security Group, Richard Clarke, revealed, “the White House wanted action. The senior military did not and made it almost impossible for the president to overcome their objections. President Clinton approved every snatch that he was asked to review.”⁴⁷ Having written on the challenges of instigating U.S. foreign policy within the federal bureaucracy, Morton Halperin was well placed to observe the challenges faced by the Clinton administration. Working at the Pentagon, the National Security Council, and finally as director of Policy Planning at the State Department, Halperin noted that the federal government “continued to do nothing about the split between the CIA, which is supposed to deal with

these groups abroad, and the FBI, which is supposed to deal with them at home, which nobody's dealing with the full range of threats and possibilities."⁴⁸

It has been noted that the second phase of the Clinton administration's rendition strategy "was begun in desperation" due to the constraints placed on the CIA by the Justice Department and the State Department. These restrictions had the effect of turning the CIA "into voyeurs. We knew where these people were, but we couldn't capture them because we had nowhere to take them." With limited domestic legal options, the CIA and the Clinton administration "had to come up with a third party."⁴⁹ The enhanced rendition initiative was introduced to "dismantle these terrorist cells overseas. We wanted to get suspects off the streets and grab their papers. The interrogation part wasn't important."⁵⁰ Only after 11 September 2001 did the process evolve to incorporate the transportation of suspects to covert locations for detention and torture. During the Clinton administration the rendition initiative was overseen by the White House and the CIA. Every operation was considered and researched, ensuring that those who were "rendered" had previously been tried and convicted in absentia, often for treason or murder. This was a strategy pursued out of "expedience—not out of thinking it was the best policy."⁵¹

Although rendition evolved during the Clinton administration to a point where it resembled what came to be known subsequently as extraordinary rendition, the new enhanced policy only became official on 17 September 2001 when President George W. Bush authorized the CIA to kill, capture, or detain members of Al Qaeda anywhere in the world. This decision released the agency from its previous requirement to seek a case-by-case approval for rendition practices.⁵² The shift in emphasis between the Clinton and Bush administrations, referred to as the "New Paradigm" by White House Counsel Alberto Gonzales, was acknowledged by Cofer Black, who was then in charge of counterterrorism at the CIA. In a statement to the House and Senate Intelligence Committees on 26 September 2002 he declared, "all you need to know is that there was a 'before 9/11' and there was an 'after 9/11.' After 9/11, the gloves came off."⁵³ During the George W. Bush administration, rendition was expanded to dispatch "individuals to countries not for the purpose of trial, but rather to gather intelligence about future wrongdoing through unlawful detentions and coercive interrogation."⁵⁴ Intriguingly, however, despite having been referenced as a policy initiative in the Clinton administration's final National Security Strategies (NSS) document, rendition was not mentioned in either of the NSS issued by the George W. Bush administration.

Conclusion

Between 1993 and 2001 the United States implemented a program of rendition, conducted by a Democrat president, with the tacit agreement of America's allies, against perpetrators of international terrorism. This went under-reported in the press, and all-but-ignored by the American people, as attention instead focused on the president's inappropriate relationship with Monica Lewinsky. This lack of interest in international terrorism changed forever on 11 September 2001. No longer would presidential decisions in this area go unnoticed, and what began as a targeted policy, "aimed at a small, discrete set of suspects—people against whom there were outstanding foreign arrest warrants," was expanded to cover suspects wanted for interrogation, rather than to face justice.⁵⁵

In its utilization of rendition, the Clinton administration addressed the challenge of fighting an enemy that struck unexpectedly in one country, and then retreated to a third nation,

thereby escaping justice for their actions. The ease in international travel that enabled this was an example of what the Clinton administration recognized as being the down-side to the age of globalization. In utilizing rendition, the administration turned this on its head, making the increasing ease of international travel a tool in its arsenal against international terrorists. The Clinton administration formalized the concept of rendition within Presidential Decision Directives 62 and 69 as a tool to be utilized against those who sought to evade justice. The political, ethical, and legal debate surrounding the practice that initially divided the Clinton administration eventually came to divide global opinion once its practice was expanded and made public during the presidency of George W. Bush.

The rendition initiative revealed the contradictions between the values the United States claimed to be defending and the methods utilized in the process, as its utilization became “the day-to-day stuff” of counterterrorism strategy during the Clinton administration.⁵⁶ It began as a “surgical application of American law in an unusually expansive sense of jurisdiction,” however, “its over-use gave it a bad name,” as it became “torture airways.”⁵⁷ During the 1990s, however, its covert practice, targeted implementation, and apparent success ensured it was viewed by those in the know as a “new art form” that was systematically destroying terrorist organizations “brick by brick.”⁵⁸

Notes

1. Falwell and Robertson quoted in Joe Klein, “Closework: Why We Couldn’t See What Was Right in Front of Us,” *New Yorker*, 1 October 2001, pp. 44–49.
2. Rohrabacher and Limbaugh, quoted in John F. Harris, “Conservatives Sound Refrain: It’s Clinton’s Fault,” *The Washington Post*, 7 October 2001, p. A15.
3. Kerrey, quoted in *ibid.*
4. Robert B. Patterson, Jr., *Dereliction of Duty* (Washington, DC: Regnery Publishing, 2003), p. 132.
5. Sean Hannity, *Deliver Us from Evil: Defeating Terrorism, Despotism, and Liberalism* (New York: Regan Books, 2004), p. 128.
6. For critical analysis of the Clinton administration’s foreign policy initiatives, see William G. Hyland, *Clinton’s World: Remaking American Foreign Policy* (Westport, CT: Praeger Publishers, 1999); Linda B. Miller, “The Clinton Years: Reinventing Foreign Policy,” *International Affairs* 70 (4) (1994), pp. 621–634; Michael Mandelbaum, “Foreign Policy as Social Work,” *Foreign Affairs* 75(1) (1996), 16–32; Joshua Muravchik, “Carrying a Small Stick,” *National Review*, September 2, 1996, pp. 57–62; William G. Hyland, “A Mediocre Record,” *Foreign Policy* 101 (Winter 1995–1996), pp. 69–74; Richard H. Ullman, “A Late Recovery,” *Foreign Policy* 101 (Winter 1995–1996), pp. 75–79.
7. John Dumbrell, *Clinton’s Foreign Policy: Between the Bushes 1992–2000* (Abingdon, Oxon: Routledge, 2009).
8. William G. Hyland, *Clinton’s World: Remaking American Foreign Policy* (Westport, CT: Praeger, 1999).
9. See Ryan Hendrickson, *Clinton’s Wars* (Nashville, TN: Vanderbilt University Press, 2002); and David Halberstam, *War in a Time of Peace* (New York: Random House, 2001).
10. Colin Campbell and Bert A. Rockman, eds., *The Clinton Presidency: First Appraisals* (Chatham, NJ: Chatham House, 1995); Colin Campbell and Bert A. Rockman, eds., *The Clinton Legacy* (New York: Chatham House, 2000).
11. See Warren Christopher, *Chances of a Lifetime* (New York: Scribner, 2001); Madeleine Albright, *Madame Secretary* (New York: Miramax, 2003); and Anthony Lake, *Six Nightmares* (Boston: Little, Brown, 2000). See also, Bill Clinton, *My Life* (New York: Knopf, 2004).
12. Nancy Soderberg, *Superpower Myth* (New York: Wiley, 2005).
13. Richard A. Clarke, *Against all Enemies* (New York: Free Press, 2004).

14. Richard T. Sale, *Clinton's Secret Wars* (New York: St. Martin's Press, 2009).
15. See David Weissbrodt and Amy Bergquist, "Extraordinary Rendition: A Human Rights Analysis," *Harvard Human Rights Journal* 19 (2006), pp. 123–160; Ingrid Detter Frankopan, "Extraordinary Rendition and the Law of War," *North Carolina Journal of International Law* 33(4) (2008), pp. 657–692; D. A. Jeremy Telman, "Intolerable Abuses: Rendition for Torture and the State Secrets Privilege," *Alabama Law Review* 63(6) (2011–2012), pp. 429–498.
16. See Alan W. Clarke, "Rendition to Torture: A Critical Legal History," *Rutgers Law Review* 62 (1) (2009), pp. 1–74; Monica Hakimi, "The Council of Europe Addresses CIA Rendition and Detention Program," *The American Journal of International Law* 101(2) (April 2007), pp. 442–452, Louis Fisher, "Extraordinary Rendition: The Price of Secrecy," *American University Law Review* 57(5) (June 2008), pp. 1405–1451; William G. Weaver and Robert M. Pallitto, "'Extraordinary Rendition' and Presidential Fiat," *Presidential Studies Quarterly* 36(1) (2006), pp. 102–116.
17. Bryan A. Garner, ed., *Black's Law Dictionary*, 8th ed. (St. Paul, MN: Thomson West, 2004), p. 1322.
18. Michael V. Hayden, interview with Charlie Rose, 24 October 2007, quoted in Elaine Pasquini, "Activists Protest Torture Flights, Demand Jeppesen Stop Facilitating CIA Renditions," *Washington Report on Middle East Affairs* 27(3) (2008), 50–51.
19. Statement submitted for the record by Amnesty International USA, "Extraordinary Rendition in US Counter-Terrorism Policy: The Impact on Transatlantic Relations," Joint Hearing Before the Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe of the Committee on Foreign Affairs, House of Representatives, One Hundred Tenth Congress First Session, 17 April 2007, Serial No. 110–28.
20. Bryan A. Garner, ed., *Black's Law Dictionary*, 9th ed. (St. Paul, MN: Thomson West, 2009), p. 1409.
21. See David Weissbrodt and Amy Bergquist, "Extraordinary Rendition and the Torture Convention," *Virginia Journal of International Law* 46(4) (2007), pp. 585–650; Margaret Satterthwaite, "Rendered Meaningless: Extraordinary Rendition and the Rule of Law," *George Washington Law Review* 75(5–6) (2007), pp. 1333–1420.
22. For a history of rendition, see Norman MacKenzie, "An Extraordinary Rendition," *History Today* 60(5) (2010), 38–40. For more on Eichmann case, see Leila Nadya Sadat, "Ghost Prisoners and Black Sites: Extraordinary Rendition Under International Law," *Case Western Reserve Journal of International Law* 37(2) (2006), 323–324.
23. This occurred in the cases of *United States v. Alvarez-Machain*, 504 U.S.655 (1992), and *Ker v. People*, 110 Ill. 627 (1884).
24. Richard Downing, "The Domestic and International Legal Implications of the Abduction of Criminals from Foreign Soil," *Stanford Journal of International Law* 26(2) (1990), pp. 573–575.
25. John K. Cooley, "Ending CIA Rendition of Terror Suspects," *Christian Science Monitor* 98 (158) (12 July 2006), p. 9; Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (New York: Penguin Press, 2008).
26. Secretary of State Condoleezza Rice, Remarks Upon Her Departure for Europe, Andrews Air Force Base, 5 December 2005, in Yonah Alexander and Michael B. Kraft, eds., *Evolution of US Counterterrorism Policy*, Volume 2 (Westport, CT: Praeger Security International, 2008), pp. 449–442.
27. *A National Security Strategy for a Global Age* (Washington, DC: US Government Printing Office, December 2000), p. 23.
28. US Counterterrorism Policy: Hearing Before the Senate Judiciary Committee, 106th Cong. (September 1998) (statement by Louis J. Freeh, Director of Federal Bureau of Investigation). Available at https://fas.org/irp/congress/1998_hr/98090302_npo.html (accessed 22 June 2017). This was a misstatement, as he was referring to a presidential directive issued by the George H. W. Bush White House, the correct reference of which was NSD-77, which remains classified as of 2018. The Clinton administration never released a document designated PDD-77.
29. Presidential Decision Directive-39, "US Policy on Counterterrorism," 21 June 1995.
30. Presidential Decision Directive-62, "Protection Against Unconventional Threats to the Homeland and Americans Overseas," 22 May 1998.

31. Ibid.
32. Daniel Benjamin and Steven Simon, *The Age of Sacred Terror* (New York: Random House, 2002), p. 251.
33. Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan and Bin Laden, from the Soviet Invasion to September 10, 2001* (London: Penguin Books, 2004), pp. 272–275.
34. John K. Cooley, “Ending CIA Rendition of Terror Suspects,” *Christian Science Monitor* 98(158) (12 July 2006), p. 9.
35. Hugh Shelton, *Without Hesitation: The Odyssey of an American Warrior* (New York: St. Martin’s Press, 2010), 277.
36. *A National Security Strategy of Engagement and Enlargement* (Washington, DC: US Government Printing Office, February 1996), p. 16.
37. Berger, quoted in Barton Gellman, “Broad Effort Launched after Attacks,” *The Washington Post*, 19 December 2001, p. A1.
38. Benjamin and Simon, *The Age of Sacred Terror*, p. 251.
39. Jane Mayer, “Outsourcing Torture: The Secret History of America’s ‘Extraordinary Rendition’ Program,” *New Yorker* 81(1) (14 February 2005), 106–123.
40. Anthony Shadid, “America Prepares the War on Terror,” *Boston Globe*, 7 October 2001; Kareem Fahim, “The Invisible Men,” *Village Voice*, 6 April 2004, 37.
41. Stephen Grey, “America’s Gulag,” *New Statesman* 17 (807), 17 May 2004.
42. George Tenet, *At the Centre of the Storm: My Years at the CIA* (New York: Harper Collins, 2007), p. 113.
43. Lake, quoted in Russell L. Riley, *Inside the Clinton White House: An Oral History* (Oxford: Oxford University Press, 2016), p. 246.
44. Tenet, quoted in Gellman, “Broad Effort Launched after ’98 Attacks,” p. A1.
45. Sale, *Clinton’s Secret Wars*, p. 291.
46. Loch K. Johnson, *Secret Agencies: U.S. Intelligence in a Hostile World* (New Haven, CT: Yale University Press, 1996), p. 231.
47. Richard A. Clarke, *Against All Enemies: Inside America’s War on Terror* (London: Simon & Schuster, 2004), p. 145.
48. Author’s Interview with Morton Halperin, 5 July 2017.
49. Scheuer, quoted in Mayer, “Outsourcing Torture,” pp. 106–123.
50. Peter Bergen, “The Body Snatchers,” *Mother Jones* 33(2) (March/April 2008), pp. 58–61.
51. Mayer, “Outsourcing Torture,” pp. 106–123.
52. Dana Priest, “Foreign Network at Front of CIA’s Terror Fights,” *The Washington Post*, 18 November 2005; Douglas Jehl and David Johnston, “Rule Change Lets CIA Freely Send Suspects Abroad,” *New York Times*, 6 March 2005.
53. Mayer, “Outsourcing Torture,” pp. 106–123.
54. Jules Lobel, “Extraordinary Rendition and the Constitution: The Case of Maher Arar,” *The Review of Litigation* 28(2) (Symposium 2008), pp. 479–500.
55. Mayer, “Outsourcing Torture,” pp. 106–123.
56. Benjamin and Simon, *The Age of Sacred Terror*, p. 252.
57. Author’s interview with J. F. O. McAllister, 26 July 2017.
58. Gellman, “Broad Effort Launched after ’98 Attacks,” p. A1.