

**Case 2: Padilla**

John Mueller

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In March 2002, early in George W. Bush's War on Terror, the CIA managed to capture in Pakistan al-Qaeda's Abu Zubaydah. By April 9, Bush was trumpeting him as "chief of operations" for the group and "one of the top operatives plotting and planning death and destruction in the United States." The capture was, he claimed, an important step in his effort "to secure the world and this civilization as we know it from these evil people." The al-Qaeda hunters at the CIA, however, concluded that Zubaydah was not only "insane," "certifiable," and "mentally defective," but a low-level operative who served as the terrorist group's expendable "greeter" or "hotel clerk," hardly somebody anyone would trust with major secrets. When this information was conveyed to Bush, he said to CIA Director George Tenet, "I said he was important. You're not going let me lose face on this, are you?" "No sir, Mr. President," was the reply.<sup>1</sup>

Captured injured, Zubaydah was carefully and meticulously nursed back to health to permit his captors productively to torture him. He proved to have little knowledge of much of anything, though under duress he did suggest that al-Qaeda's target list included shopping malls, banks, supermarkets, water systems, nuclear plants, apartment buildings, the Statue of Liberty, and the Brooklyn Bridge.<sup>2</sup>

Zubaydah did come up with at least one name: Jose Padilla, a converted Muslim American who had spent time at al-Qaeda camps in 2000 and had met with Zubaydah to discuss the potential for setting off a nuclear weapon or a dirty bomb in the United States. Spotted in Pakistan, Padilla was arrested on May 8 when he returned to the United States.<sup>3</sup>

Padilla may have harbored plans to do violence on his return to the United States, and al-Qaeda may have been seeking to use its singular American recruit to hit the far enemy somehow. However, as Allison Barbo makes clear, although he was dedicated to the cause and violence-prone, it seems highly unlikely that the slow-witted Padilla could ever gain the skills necessary to put together a dirty bomb—or a clean one for that matter.

Padilla lived in something of a legal limbo for years, presumably due in part to the fact that at least some of the evidence against him from Zubaydah could not be used in court because it was obtained through torture. Eventually, after a lengthy trial in 2007, he was convicted of "conspiring to murder, kidnap and maim" people overseas.

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<sup>1</sup> Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11*. New York: Simon & Schuster, 2006, 99-100. Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*. New York: Doubleday, 2008, 178-79.

<sup>2</sup> Suskind, *One Percent*, 100, 111, 115, 121. Mayer, *Dark Side*, 179.

<sup>3</sup> Suskind, *One Percent*, 117. Mayer, *Dark Side*, 155-56.

It is often claimed that Zubaydah's torture led to "actionable intelligence."<sup>4</sup> The warnings that apparently led to the posting of guards at least at some of the members of the vast array of targets the operative spewed out while undergoing "enhanced interrogation" seem, at least on the record, to have been the extent of the "action." It appears that he spilled the information about the pathetic Padilla before he was tortured.<sup>5</sup>

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<sup>4</sup> John Kiriakou, *The Reluctant Spy: My Secret Life in the CIA's War on Terror*. New York: Bantam, 188.

<sup>5</sup> Mayer, *Dark Side*, 155-56, 176.

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### 1. Overview

Jose Padilla, a U.S. citizen, was arrested on May 8, 2002 at the O'Hare Airport in Chicago. He was returning from Pakistan after an international trip and had over ten thousand dollars cash, a cell phone with phone numbers to al-Qaeda members, and e-mail address contact information for al-Qaeda members. The government's cause for arrest was information they had concerning Padilla's involvement with al-Qaeda operatives and with a plot to release a radiation dispersal device, or "dirty bomb," in the United States. Padilla was held as a material witness pursuant to a New York warrant from the attacks of September 11, 2001.

Padilla spent a month in detainment as a material witness before his status changed. Then, President Bush issued an order to Secretary of Defense Donald Rumsfeld and, on June 9, 2002, Padilla was classified as a detainee with the status of an enemy combatant rather than a material witness. When his defense lawyer, Donna Newman, received the phone call from a fellow defense attorney that her client had attracted the attention of the President and been classified as an enemy combatant, she was incredulous, saying, "I had no idea what he was talking about. I thought he was making a joke."<sup>1</sup> The timing of the presidential order was crucial for the federal government to maintain control over Padilla's case. This presidential order came only two days prior to District Court Judge Michael Mukasey's scheduled ruling on the validity of Padilla's detainment as a material witness.

The change of Padilla's status from a material witness to an enemy combatant put him under the control of the Department of Defense, and this led to his transfer from a civilian prison to a military brig in South Carolina. Padilla was transferred without any notification to his attorney or family. The U.S. Court of Appeals for the Second Circuit legitimized Padilla's detention as an enemy combatant. Their decision was based on four supporting reasons: (1) Padilla was "closely associated with al-Qaeda," a designation for loosely knit insurgent groups sharing common ideals and tactics, "with which the United States is at war"; (2) he had engaged in "war-like acts, including conduct in preparation for acts of international terrorism"; (3) he had intelligence that could assist the United States in warding off future terrorist attacks; and (4) he was a continuing threat to American security.<sup>2</sup> His arrest was followed by years of detainment; because of his prolonged imprisonment, many domestic issues were raised on the legitimacy of the federal government's ability to detain accused terrorists.

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<sup>1</sup> Greg Sargent, "Jose Padilla: Overdue Process," *Mother Jones*, June 2006.

<sup>2</sup> White House Memorandum to the Secretary of Defense,  
<http://f11.findlaw.com/news.findlaw.com/hdocs/docs/padilla/padillabush60902det.pdf>

About a year and a half later, on December 18, 2003, the Second Circuit ordered Padilla's release from military custody within thirty days. This ruling also stipulated that the government could try Padilla in civilian courts. The Bush administration threatened to appeal the ruling to the Supreme Court and on January 22, of the following year, the Second Circuit suspended its ruling. Padilla's first meeting with lawyers came a year and nine months after his classification as an enemy combatant. On March 3, 2004 Padilla met with his defense attorney, Donna Newman.

Padilla sued the federal government on the grounds that he was being denied his right of habeas corpus. The Supreme Court ruled in a narrow 5-4 decision that Padilla's case had been filed incorrectly.<sup>3</sup> The Court ruled that his appeal should have been filed in federal court in Charleston, South Carolina rather than New York because he was being held in a South Carolina Navy brig. This procedural complication left the merits of the case undecided. On October 25, 2005, Padilla appealed that ruling, and the Bush administration was given a November 28th deadline for filing arguments.

However, this appeal process abruptly halted when Padilla was formally indicted on November 22, 2005. The official charge issued by the government was conspiring with Islamic terrorist groups. The timing of Padilla's indictment was called into question during his subsequent trial. The defense attorney claimed the timing was critical because the government was unwilling to let the judicial branch rule on the legality of Padilla's detainment. If the Second Circuit had conducted the retrial, Padilla's detainment may have been overturned as an illegal deprivation of habeas corpus. Regarding the timing of Padilla's formal indictment, his defense attorney commented that, "...the [Bush] administration is seeking to avoid a Supreme Court showdown over the issue."<sup>4</sup>

On January 4, 2006 the Supreme Court granted authorization for Padilla's transfer to Miami to face criminal charges. This order overruled the Fourth Circuit, which was to conduct Padilla's second appeal. On April 3, 2006, the Supreme Court dismissed Padilla's third appeal. In October, Padilla claimed that he was tortured during his imprisonment, and moved to dismiss his federal criminal charges. On January 22, 2007, a federal hearing was conducted to determine Padilla's mental competency. Allegations that military torture made Padilla incompetent for trial were debated. On February 22, 2007, Angela Hegarty, Padilla's defense psychiatrist, testified that Padilla was mentally unfit for trial. She cited his, "facial tic, problems with social contact, lack of concentration and a form of Stockholm syndrome."<sup>5</sup> However, discrepancies with her testimony nullified it, and Padilla was determined mentally competent for trial.

Padilla's criminal trial in federal court began on May 15, 2007. He pled not guilty to all three of his charges. The charges were conspiracy to murder

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<sup>3</sup> *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

<sup>4</sup> Fred Barbash, "Padilla's Lawyers Suggest Indictment Helps Government Avoid Court Fight," *Washington Post*, November 22, 2005.

<sup>5</sup> "Padilla 'Not Fit to Stand Trial,'" *BBC*, February 22, 2007. Stockholm syndrome is a psychological phenomenon where prisoners empathize with their captors, even to the point of defending their captors. "Understanding Stockholm Syndrome," Federal Bureau of Investigation Law Enforcement Newsletter, July 2007, Volume 76, Number 7.

maim and kidnap, conspiracy to materially aid terrorists, and providing material support to terrorists. These charges fell under Title 18 of the United States Code sections 371 and 2339.<sup>6</sup> Combined, the charges held a maximum sentence of life imprisonment.

The criminal proceedings lasted three months; the prosecution rested its case on July 13, 2007. The jury delivered its verdict after only a day and a half of deliberation. On August 16, 2007, that court announced that Padilla was guilty of “conspiring to murder, kidnap and maim” people overseas.<sup>7</sup> On January 22, 2008, Padilla was sentenced to seventeen years and four months in prison. His mother was relieved, as the ruling was less than the maximum sentence. “You have to understand that the government was asking for 30 years to life sentence in prison. We have a chance to appeal, and in the appeal we’re gonna do better.”<sup>8</sup>

On June 12, 2009, Padilla filed a civil suit against John Yoo, a U.S. Department of Justice lawyer and chief legal theorist under the Bush administration. Yoo authored legal documents legitimizing various methods of interrogation that some deemed torturous. In response to accusations that the executive branch overstepping its power, Yoo responded that, “We are used to a peacetime system in which Congress enacts the laws, the president enforces them, and the courts interpret them. In wartime, the gravity shifts to the executive branch.”<sup>9</sup>

## 2. Nature of the adversary

Jose Padilla was born in New York City on October 18, 1970. He moved to Chicago at the age of four. His youth was riddled with juvenile charges. Padilla was arrested five times between 1985 and 1991. He eventually joined a violent gang, the Maniac Latin Disciples, or the Latin Kings. He graduated from high school, but was a poor student. Court records indicate Padilla held hourly jobs at Taco Bell and a local golf course. He was described by neighbor Nelly Ojeda as “...a very nice person ... a very sweet person . . . I have nothing bad to say about him . . . nothing at all.”<sup>10</sup> However, his repeated violent offenses and intense gang inclusion contrast strongly with that opinion.

Padilla served his first prison term in 1991 for a shooting incident resulting from road rage. He then served a probation sentence for aggravated assault in 1993.<sup>11</sup> Padilla was convicted of manslaughter after fatally kicking a gang member. While incarcerated, Padilla physically attacked a deputy.<sup>12</sup>

Also during that jail term, he converted to Islam, marking his turning point from domestic criminal activity to international terrorist interests. He rejected his Puerto Rican name and took on the Muslim name, Abdullah al-Muhajir, or

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<sup>6</sup> 18 U.S.C. §§ 371, 2339(a) (2002).

<sup>7</sup> Abby Goodnough and Scott Shane, “Padilla is Guilty on all Charges in Terror Trial,” *New York Times*, August 17, 2007.

<sup>8</sup> “Padilla Given Long Jail Sentence,” *BBC*, January 23, 2008.

<sup>9</sup> Bob Egelko, “9/11: Five Years Later Bush Continues to Wield Power,” *San Francisco Chronicle*, September 10, 2006.

<sup>10</sup> “‘Dirty Bomb’ Suspect’s Criminal Record,” *CNN*, June 11, 2002.

<sup>11</sup> “Profile: Jose Padilla,” *BBC*, 17 August 2007.

<sup>12</sup> “‘Dirty Bomb’ Suspect’s Criminal Record,” *CNN*.

“Abdullah the immigrant.”<sup>13</sup> Padilla met other Islamic converts; one was also eventually charged with conspiracy. Padilla’s new identity signaled strong association to the Muslim faith.<sup>14</sup> Prior to changing his name to Abdullah al-Muhajir, Padilla had gone by many different aliases. Padilla’s personal insecurities and desperate need to belong are evident in his alias-donning tendencies. Padilla was indubitably psychologically imbalanced and prone to aggressive violence. No conclusive evidence was available as to whether or not Padilla was ever suicidal.

One of Padilla’s mentors was Adham Amin Hassoun, a Palestinian activist in Florida. Padilla and Hassoun reportedly attended the Masjid Al-Iman mosque together in Fort Lauderdale.<sup>15</sup> Hassoun opened a branch of the Benevolence International Foundation (BIF) in Plantation, Florida. This office was within five minutes of Padilla’s job at Taco Bell. The group’s extremist views influenced the malleable Padilla. The U.S. government now designates BIF as a terrorist organization. BIF’s front is an Islamic charity organization. The U.S. and United Nations have revealed conclusive evidence that BIF serves as a front for money laundering for al-Qaeda.<sup>16</sup> Hassoun was convicted of many charges, ranging from providing material support to terrorists to perjury, and other offenses concerning weapons and assault.<sup>17</sup> Hassoun’s colleague, Kifah Wael Jayyousi was also charged and convicted during the trial.

Padilla left the U.S. in 1998 to travel abroad and study Arabic. He spent a year and a half in Cairo, then went on a hajj, or religious pilgrimage, in March of 2000 to Saudi Arabia. During this trip he met an al-Qaeda recruiter. After this initial meeting, Padilla was sent to the infamous Al Farouq terrorist training camp in Afghanistan from September to October of 2000. During those two months, he received technical training on the “AK-47, G-3, M-16, Uzi and other machine guns...topography; communications; camouflage; clandestine surveillance; explosives, including C-4 plastic explosives, dynamite and mines; as well as physical fitness and religious training.”<sup>18</sup>

Padilla admitted to this training during U.S. interrogations. However, no conclusive evidence was found as to his actual capabilities or proficiency at any of these technical tactics.

His lack of technical education and his poor performance during high school suggests that his actual proficiency was questionable. While he received bomb-making training from al-Qaeda, the technical complexities of such an intricate and detailed task reasonably outreached his mental capacity. Even tasking him with

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<sup>13</sup> “Padilla Gets 17 Years in Conspiracy Case,” *New York Times*, January 23, 2008.

<sup>14</sup> His conversion to radical Islam during incarceration was not uncommon. Recently, American prisons have been even called, “terrorist breeding grounds.” Theodore Dalrymple, “Islam’s Captive Audience,” *The Claremont Institute*, April 5, 2010.

<sup>15</sup> Susan Candiotti, “Feds Arrest Man Linked to ‘Dirty Bomb’ Suspect,” *CNN*, January 25, 2007.

<sup>16</sup> “UN List of Affiliates of al-Qaeda and the Taliban,” United Nations, October 17, 2007.

<sup>17</sup> “Two Defendants Charged in Florida with Providing Material Support to Terrorists,” United States Department of Justice.

<sup>18</sup> Steven Emerson, *Jihad Incorporated: A Guide to Islam in the U.S.* Amherst, New York: Prometheus Books, 2006, 72.

identifying vulnerable radiological materials would be a difficult stretch considering his meager intellectual and employment history.

During 2001 Padilla met with Abu Zabaydah, an al-Qaeda operative, and received explosive training in Lahore, Pakistan. Padilla was probably recruited by al-Qaeda because of his disgruntled attitude towards the U.S., his adherence to radical Islam, and his extremely high malleability. Al-Qaeda was attractive to Padilla because, as with his membership in the Latin Kings, the organization provided the inclusive in-group identity he sought to maintain throughout his life.

### **3. Motivation**

Padilla's motivation stemmed from personal grievances rather than abstract anger with American culture. While religious conversion was Padilla's first step toward terrorist involvement, his personal history and malleable character were likely stronger factors. Padilla strived for group involvement and acceptance his entire life. A comment by Brian Jenkins of the RAND Corporation is applicable to Padilla's pathway to terrorism: "few of America's accused terrorists seem to have arrived at jihadism through a process of profound spiritual discernment. We have no metric for measuring faith, but the attraction of the jihadists' extremist ideology for these individuals appears to have had more to do with participating in action than with religious instruction."<sup>19</sup> Padilla's motivation was personal; it derived from his insecure need for inclusion and from his imprisonment frustrations.

### **4. Goals**

Padilla voiced no intended goals, nor did the federal investigation discover any overall objective goals. His arrest was preemptive. Once again, Jenkins: "Most of the plots could be described as more aspirational than operational."<sup>20</sup>

### **5. Plans for Violence**

Padilla's first plan for violence with al-Qaeda involved bombing apartment buildings with natural gas. His second plan was to create a dirty bomb by wrapping uranium with explosives to detonate in U.S. high-rise buildings.<sup>21</sup>

The likelihood of success of such plans is undeterminable due to lack of relevant information. Details of Padilla's admitted plot were revealed during his interrogations, and this information has not been made public. Consequently, dirty bomb accusations were dismissed because the information was obtained through interrogations, making it impermissible. While determining the exact effectiveness of the plot is unfeasible, Padilla's poor education and intellectual background did not present an encouraging outcome for al-Qaeda. His brief technical training could not reverse a lifetime of unintelligence. Padilla's inexperience correlates to Michael Kenney's commentary on preemptive terrorist arrests. "Terrorists' poor tradecraft provides alert law enforcers with critical leads

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<sup>19</sup> Brian Michael Jenkins, *Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States Since September 11, 2001*. Santa Monica, CA: RAND Corporation, 2010, 23.

<sup>20</sup> Jenkins, *Would-Be Warriors*, 20.

<sup>21</sup> Emerson, *Jihad*, 73.

they can use to identify their attackers, unravel their plots, and—sometimes—disrupt their operations before they cause additional harm.”<sup>22</sup>

Abu Zubaydah, a captured al-Qaeda lieutenant, cooperated with American officials and surrendered information regarding Padilla’s training in Afghanistan. Zubaydah reported working with Padilla at a terrorist training camp. He stated that Padilla had been assigned the job of finding useful radioactive material within America. That material would then be incorporated into a dirty bomb.<sup>23</sup>

## 6. Role of informants

Padilla was accosted without the use of any U.S. informants. Presumably the testimony of Abu Zubaydah was important.

## 7. Connections

As Jenkins stated of Padilla, “there is no question of his al-Qaeda connection.”<sup>24</sup> Padilla was connected to many influential al-Qaeda operatives. He was chosen by 9/11 master planner Khalid Shaikh Mohammed (KSM) in March of 2002 for involvement on a plot within the United States that involved detonating a radiological dirty bomb in three high-rise buildings. Padilla also met with Mohammed Atef, another al-Qaeda military commander in early 2001. Atef financially supported Padilla, even funding a trip for him and his wife to Egypt. Padilla also received money from Ammar Al Baluchi and KSM, and further training under Ammar al Baluchi.<sup>25</sup> In Pakistan Padilla had produced the most incriminating evidence of his trial: a fingerprinted al-Qaeda document which, it was claimed, served as an application.<sup>26</sup>

Padilla’s value to al-Qaeda is undeterminable. His unintelligence may have been countered by his willingness to please those he considered superior. His background as a U.S. citizen and familiarity with the nation added to his value in the terrorists’ eyes. His propensity for violence was another factor contributing to Padilla’s attractiveness.

## 8. Relation to the Muslim community

Padilla was not an active participant of the Muslim community in America. After his conversion, he maintained relationships with only a few members of the community. He largely remained an outlier from the Muslim community until he traveled internationally and attended the terrorist training camp in Pakistan. Padilla’s social marginalization continued even after his religious conversion, which contributed in major ways to his radicalization. It has been argued that “[t]he creation of robust Muslim-American communities may serve as a preventative measure against radicalization by reducing social isolation of individuals who may be at risk of becoming radicalized. The stronger such

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<sup>22</sup> Michael Kenney, “‘Dumb’ Yet Deadly: Local Knowledge and Poor Tradecraft Among Islamist Militants in Britain and Spain,” *Studies in Conflict & Terrorism*, October 2010.

<sup>23</sup> “Backgrounder: Jose Padilla,” *IntelWire*, April 2004.

<sup>24</sup> Jenkins, *Would-Be Warriors*, 27.

<sup>25</sup> Emerson, *Jihad*, 73.

<sup>26</sup> James Jay Carafano, *Backgrounder: U.S. Thwarts 19 Terrorist Attacks Against America Since 9/11*, Heritage Foundation 13 November 2007



communities are, in terms of social networks, educational programs, and provision of social services, the more likely they are to identify individuals who are prone to radicalization and intervene appropriately.”<sup>27</sup> Had Padilla been embraced by a peaceful Muslim community and found group inclusion there, his international travel may not have led to such extremist ties.

### **9. Depiction by the authorities**

Most U.S. authorities involved in Padilla’s case depicted him as a threatening terrorist capable of detonating a dirty bomb to devastating effect. In May of 2002, Attorney General John Ashcroft announced that the government had thwarted a dirty bomb plot, and that Padilla had been extensively involved. Padilla’s classification as an enemy combatant further demonized him. The Authorization for Use of Military Force (AUMF) significantly expanded Presidential power over detainees. This expansion of power was justified by concerns for protecting homeland security, stemming from the terrorist attacks of September 11, 2001. The AUMF reasoned that the attacks “. . . render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad.”<sup>28</sup>

A month after Padilla’s formal indictment, the U.S. Court of Appeals for the Fourth Circuit expressed its opinion on the matter. Circuit Judge J. Michael Luttig wrote the opinion, and it starkly contrasted with the executive branch’s view of the case. Luttig’s opinion criticized Padilla’s treatment for two reasons. The first was that Padilla was detained for such a prolonged period of time without indictment. The second criticism was that the Bush administration convinced a Florida grand jury to issue Padilla’s indictment conveniently a few days before his retrial in appellate court. Luttig stated that the administration thus compromised its credibility before the courts.<sup>29</sup> The timely indictment was viewed as demeaning to the judicial system by side-stepping adjudicatory authority on Padilla’s prolonged detainment.

On April 3, 2006, Padilla’s third appeal attempt was rejected by the Supreme Court. Chief Justice John Roberts stated that he and the other justices would be monitoring Padilla’s trial to make sure that he received the protections, “guaranteed to all federal criminal defendants.”<sup>30</sup> The Supreme Court’s role in the case was less biased than the Bush administration’s role.

### **10. Coverage by the media**

Media coverage of Padilla’s arrest, indictment and trial falls under one of two staggeringly different viewpoints. On the one hand, conservative media sources and supporters of the Bush administration portrayed Padilla as a menacing terror threat bent on detonating a dirty bomb and killing innocent

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<sup>27</sup> Charles Kurzman, Ebrahim Moosa and David Schanzer, “Anti-Terror Lessons of Muslim-Americans,” National Institute of Justice, January 6, 2010.

<sup>28</sup> “Authorization for Use of Military Force,” Public Law 107-40, September 18, 2001.

<sup>29</sup> Michael McGough, “How Do You Solve a Problem Like Padilla?” *Pittsburgh Post-Gazette*, January 2, 2006.

<sup>30</sup> “Judge Roberts, Meet Jose Padilla,” *St. Petersburg Times*, September 25, 2005.

American civilians. On the other, civil rights organizations and liberal media sources depicted Padilla as a tortured victim of the overbearing rights-abolishing administration.

During the initial media coverage of Padilla's arrest, the dirty bomb plot was sensationalized in the media. His arrest was only eight months after September 11th and the nation was still fascinated by alarmist publicity of suspected terrorist arrests. Although Padilla was originally arrested for plotting to detonate a dirty bomb, charges corresponding to that arrest never surfaced. No reference to a dirty bomb was used during his lengthy criminal trial. Nonetheless, "dirty bomb" was widespread during media coverage. Bruce Schneier, an expert on security and intelligence commented in 2006 on Padilla's plot to release a dirty bomb: "it seems that the charges were severely overstated."<sup>31</sup>

In addition to media commentary that the dirty bomb threat was inflated, discrepancies over Padilla's classification and detainment as an enemy combatant emerged. Conservative sources continued to emphasize his role as a threatening terrorist, while liberal media sources expressed outrage at Padilla's status and imprisonment. *Mother Jones*, a liberal media publication, described Padilla's experience after being named an enemy combatant, "[a] military plane whisked him to a Navy brig in South Carolina—and into a legal black hole where he would be held indefinitely without being charged with a crime."<sup>32</sup>

Donna Newman was Padilla's primary defense attorney. The liberal media reflected her frustrations with the administration's use of power concerning enemy combatants. "This is just another example of the strategy that the administration is using...rather than proceed with a trial—Mr. Padilla's version of the events would be heard at a public trial—the government has taken the cause of secrecy and determined what and when they will release information without giving Mr. Padilla an opportunity to be heard."<sup>33</sup>

The liberal media emphasized Padilla's alleged torture as grotesque human rights abuses. The *Christian Science Monitor* reported that, "Padilla's cell measured nine feet by seven feet. The windows were covered over... He had no pillow. No sheet. No clock. No calendar. No radio. No television. No telephone calls. No visitors. Even Padilla's lawyer was prevented from seeing him for nearly two years."<sup>34</sup> Not only did the media claim human rights abuses, but news also circulated about violations of basic constitutional rights. It was claimed that LSD and PCP drugs were used during his imprisonment to break Padilla's determination to remain silent. If true, his right against forceful self-incrimination would have been clearly violated. Documents and memorandums from the Naval Consolidated Brig in Charleston, South Carolina, were leaked in October of 2008. These documents included information regarding officers' concerns over the ill treatment of their prisoners. Padilla was mentioned as being incarcerated in

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<sup>31</sup> Bruce Schneier, *Beyond Fear, Thinking Sensibly About Security in an Uncertain World*. New York: Copernicus, 2003, 165.

<sup>32</sup> Sargent, "Jose Padilla."

<sup>33</sup> "Attorney: U.S. Won't Give Padilla Forum to Defend Himself," CNN Justice, June 1, 2004.

<sup>34</sup> Warren Richey, "U.S. Government Broke Padilla Through Intense Isolation," *Christian Science Monitor*, August 14, 2007.

similar conditions to fellow prisoner, Yasser Hamdi, who underwent harsh isolation and lack of stimuli.

### **11. Policing costs**

The policing costs of Padilla were immense. Padilla spent nearly six years in prison before even beginning his seventeen-year sentence. Twenty-three incarcerated years would cost over \$600,000, according to fiscal year 2007-2008 Florida inmate statistics.<sup>35</sup> That estimate is considerably low since it excludes any special medical necessities or treatments. Padilla's detainment warranted many more expenses as skilled interrogators paid him frequent visits. The extensive investigative work on Padilla prior to and after his arrest furnished exorbitant additional costs. Finally, Padilla's court costs were extremely expensive because of the multiple appeals and lengthy proceedings.

### **12. Relevance of the internet**

There is no conclusive information that Padilla used the internet to facilitate his recruitment to al-Qaeda, although it is very plausible that the internet assisted his communication with terrorists. There is evidence that Padilla used the internet to research a "nuclear improvised bomb."<sup>36</sup> It is doubtful that his internet self-training was effective.

The internet also played a role in Padilla's case by serving as a medium by which the opposing views on his case voiced their opinions. Some praised the government for foiling a terrorist plot before its execution, and they adamantly supported harsh sentencing. Others were appalled by the Bush administration's suspension of habeas corpus, amongst other rights and liberties.

### **13. Are we safer?**

As a result of Padilla's arrest and imprisonment, the general public is safer. Padilla's violent and aggressive history posed a threat to society, even without his association with al-Qaeda. That Padilla could have fabricated and set off a radiologically laced bomb is highly doubtful, but his personal insecurities, his desire for inclusion, and his violent tendencies made him a prime candidate for a less technical terrorist plan. If Padilla had not been apprehended, his involvement with al-Qaeda would have increased and he could have been an easily manipulated tool to cause harm according to their agenda.

Imprisoning Padilla may have improved safety, but the media outrage at his improper treatment instigated contrasting effects to that safety. Resentment for detainment without charges, claims of civil liberties' encroachment, and disgust at alleged racist government actions undoubtedly provided motivation for other borderline extremists. Additionally, the trial and sentencing only planted more resentment in Padilla, a man already prone to violent behavior. His release from the ADX Florence "Supermax" prison in Colorado is projected for March 28, 2021. He will be fifty-one years old and may be enraged at the American judicial system. Padilla's extreme frustration coupled with his aggressive history and

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<sup>35</sup> *Cost of Imprisonment*, Florida Department of Corrections, June 2009.

<sup>36</sup> Emerson, *Jihad*, 73.

possible disillusionment from alleged torture poses a threat to American safety upon his release.

#### 14. Conclusions

Jessica Stern explains that efficient terrorist organizations excel at creating the terrorist “product.” Padilla effectively fits the mold of a terrorist “product”: he was a well-manipulated follower with an extremely impressionable mindset and a propensity for violence. Stern characterizes terrorists as targeting non-combatants and using violence for dramatic purposes. Padilla would have no hesitation to contribute to dramatic violent attacks on civilians; he independently acted with dramatic violence on civilians prior to his terrorist involvement.<sup>37</sup>

Jose Padilla’s conviction of “conspiring to murder, kidnap and maim” adequately fit his criminal activity and propensity for aggressive violence. Had Padilla not been arrested, he likely would have continued with his violent tendencies. His involvement with al-Qaeda may have amplified any independent meager acts he would have committed into better executed plans of attack.

The five years between Padilla’s initial arrest and final sentencing were riddled with controversy. The main discrepancy was whether or not Padilla and other detainees could be categorized as enemy combatants. If so, it was debated whether or not it was constitutional for the President to use the Authorization for the Use of Military Force to suspend the writ of habeas corpus for enemy combatants. Further controversy ensued when documents describing instances of mistreatment and torture were leaked. Padilla’s mental incompetency was his strongest line of defense at the final trial, but discrepancies in the testifying psychologist’s reports lead the jury to dismiss those claims.

The U.S. is safer with the incarceration of Padilla. His extensive al-Qaeda involvement posed a threat to the American public. However, Padilla’s extensive detainment without respect to his right of habeas corpus and with allegations of severe interrogation tactics detract from the efficiency of the administration’s investigation, and may serve as motivation to more radical terrorists.

Many lessons can be drawn from Padilla’s experience in the American judicial system. The executive branch must maintain a better balance of power with its judicial counterpart. The Bush administration strongly angered many unbiased judicial officials with its executive orders and control on Padilla’s case. Also, the administration did a haphazard and untimely job of detailing legitimacy for detainment. Padilla spent years as a detainee without any formal charges, which arguably violated his right as a U.S. citizen.

The administration also learned valuable lessons regarding its interrogation techniques. Because Padilla’s most valuable confessions were obtained during severe interrogation, they were inadmissible in court. Had the administration allowed the courts to try Padilla in civilian court, or had it used acceptable forms of questioning, his incriminating dirty bomb evidence would have produced a much harsher sentence. Jose Padilla’s role as an early case of modern jihadist terrorism served as a learning experience for the Bush administration and for the judicial system.

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<sup>37</sup> Jessica Stern, *Terror in the Name of God*. New York: Harper Collins, 2003.