



Non-State Actors in Asymmetric Conflict
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My PURM project involved research at the Center for Ethics and Rule of Law (CERL), a non-partisan institute based at Penn Law School, under the mentorship of Law Professor Claire Finkelstein. This research project focused on studying United States counterterrorism policy following the September 11th attacks and means by which the United States can use law and prosecutions to achieve its counterterrorism goals. In researching the immediate response of the Bush Administration to the September 11th attacks, we found that the Office of Legal Counsel, a division of the Department of Justice, went beyond its statutory authority by approving Enhanced Interrogation Techniques (EITs) and greatly magnifying executive power in a way that is not consistent with the laws of the United States. In particular, following the September 11th attacks, the Office of Legal Counsel issued classified opinions which were not advisory in nature, were confirmatory to practices the executive branch was already engaged in, and discussed topics that were already under adjudication by Article III courts. The Department of Justice and the Attorney General have historically stated that opinions that fit these three criteria violate the positive law of the United States and unjustifiably stretch the authority of the Department of Justice beyond its original mandate.

Our research led us to conclude that the United States would be more effective in combatting terrorism by using Article III courts to justify its counterterrorism policies rather than using the Office of Legal Counsel to bypass Article III court adjudication. Furthermore, Article III courts can be effective venues to prosecute sponsors of terrorism and combat terrorist financing. By adopting a counterterrorism policy which favors Article III court adjudication, the United States can reaffirm its commitment to Rule of Law values and present a better image of the country abroad. Different stages of the research conducted were presented on a radio show in May regarding legal impediments to prosecuting state sponsors of terrorism due to foreign sovereign immunity, two briefings at the Pentagon during July regarding interrogation and terrorist financing, and a conference held by CERL during the academic year about using law to fight terror.