Index

9/11 Commission, 2, 109, 112–113 9/11 Commission Report, The, 1, 2, 3, 85, 113

A

A and Others v. the Home Secretary, 131 Abu Ghraib, 3, 32, 124, 149n.2, 150n.3, 152, 162–163, 168 Abu Hamza, Sheikh, 147 Abu Jihad, 62 Advisory Committee on the Internment of Rebels, 125 Afghanistan, 10, 31–32, 54, 62, 63, 149, 152, 154-155 Algeria, 167, 168, 171, 172 al-Harethi, Qaed Salim sinan, 64 al-Qaida, 54, 55, 60, 62, 106, 130, 152, 155, 163 al-Sadeq, Abdallah, 134 al-Shahwani, Mohammed Abdullah, 135 Amnesty International, 120, 121, 129

Anti-terrorism, Crime, and Security Act of 2001 (ATCSA), 128–131, 140, 144 Part IV, 129-130 Application Registration Cards (ARCs), 141 Arar, Maher, 153n.24 Argentina, 62, 64 Arrigo, Jean, 166n.79 Article 16 See United Nations Convention Against Torture assassination ban (United States), 7, 59, 60, 61, 64; see also targeted killing, Ashcroft, John, 98 attorney general (United States), 11-12, 18, 19, 22, 23, 34-35, 36, 51, 52, 57, 58, 70, 71, 72, 73, 74, 173; see also Attorney General's Guidelines for criminal or national security investigations; Attorney General's Guidelines on crimes, racketeering, and terrorism enterprise Asylum, Immigration, and Nationality Act of 2002, 147

Attorney General's Guidelines for criminal or national security investigations, 83, 90 Attorney General's Guidelines on crimes, racketeering, and terrorism enterprise, 95–96, 97, 98, 99 Auld, Jim, 120 Aussaresses, Paul, 167 Authorization for Use of Military Force (AUMF), 41

B

Bach, Lord, 124 Bagram air base, 152 Ballykinler, 126 Barder, Sir Brian, 131 Beck, Adrian, 141 bin Laden, Osama, 60, 64 biometric identification (bId), 85, 86-91 impermissible demands for, 89-91 passports and, 88–89 permissible demands for, 87-89 Blair, Tony, 137 Blunkett, David, 129, 139–140 Bowden, Mark, 61 British Intelligence Centre, 120 British Irish Rights Watch, 135 Bush, George W., 54

C Cahill, Joe, 126–127 Cambone, Stephen, 153n.25 Campaign for Nuclear Disarmament (CND), 144 Central Intelligence Agency (CIA), 37, 60, 107, 150 Charter 88, 139, 140, 141 Chavez v. Martinez, 161–162, 163, 176 Chile, 62 Churchill, Sir Winston, 140 Clarke, Charles, 129 Classified Information Procedures Act (CIPA), 15, 19, 44, 46, 53, 55–56 coercive interrogations, 11–13, 31–35, 119–125; see also highly coercive interrogations; torture, coercive interrogations and admissibility in U.S. trials, 13 Congressional power and oversight, 32, 33 emergency exception, 13, 33 executive powers, 32, 33 individual remedies, 13 probable cause and, 12 U.S. treaty and statutory commitments, 11, 33-34 Collins, Michael, 125 Colombia, 61 Colville of Culross, Viscount, 128 Combatant Status Review Tribunal, 41 Compton, Sir Edmund, 121 Compton Report, 121 Congress, 9–10, 12, 13, 32, 33, 36, 42, 49, 51, 52, 61, 65, 76, 81-82, 94, 95, 109, 111-114, 115–116, 150n.6, 151, 154, 158 - 160

Coughlin, Con, 135 courts-martial, 19, 54, 55, 56, 57, 58 *Crawford v. Washington*, 57 Criminal Justice and Public Order Act of 1994, 145 "cruel, inhuman, or degrading treatment," 11, 33, 34, 154, 156–157, 159–160, 163–164, 171, 175n.108, 176; see also torture, coercive interrogation and; highly coercive interrogation (HCI)

D

Data Protection Act of 1998, 136 Death on the Rock, 133 Defence of the Realm Act, 125 Defense Advanced Research Projects Agency (DARPA), 76, 77 Department of Defense, 12, 17, 31, 32, 36, 37, 41, 49, 50, 54, 57, 77, 150, 151, 152 Department of Homeland Security, 85, 88, 116 Department of Homeland Security Inspector General, 116 Department of Justice, 12, 30, 32, 36, 93, 96, 103, 105–106, 114, 115, 116, 151; see also Federal Bureau of Investigation (FBI) Department of Justice Inspector General, 114, 115, 116 deprivation of food and water, 120, 124, 150, 154, 157, 176

deprivation of light, 150 deprivation of medical treatment, 150, 152, 154, 161, 162, 163, 176 deprivation of sleep, 120, 124, 154, 157, 161, 162, 164, 168, 172, 174, 176 Diplock Commission, 127 Diplock, Lord, 127 Dirty War, 134 distinctions based on group membership See profiling Dublin Easter Uprising (1916), 125, 126 Dubs, Lord, 128 due process, 11, 17, 33, 36, 41-42, 50, 160-162, 175

E

Egypt, 150, 153 Eighth Amendment (U.S. Constitution), 13, 33, 34, 38, 160–161, 174–175 Ellsberg, Daniel, 83 Emergency Powers Act (1973), 126, 127–128 Escobar, Pablo, 61 European Commission on Human Rights, 122–123 European Convention on Human Rights, 121, 122, 129, 133, 135, 138, 146 European Court of Human Rights (ECHR), 119, 123–124, 133, 157–158, 160, 163, 165 Executive Order 12333, 60

executive power, counterterrorism and, 1–3, 5–10, 32, 33, 35, 38, 42, 45, 60–61, 65, 74, 111, 114–117, 154, 176, extraordinary measures, 109 - 117defined, 109 effectiveness of, 109, 111 oversight and review, 109-116 Congressional, 109, 111–114, 115 - 116executive, 111, 114-117 judicial, 109-110 nonpartisan congressional commission, 111-114, 115 transparency, 109–110

F

Farrakhan, Louis, 147 Faulkner, Brian, 119n.3, 126 Federal Bureau of Investigation (FBI), 27, 37, 83, 94-96, 98, 106, 115, 116 Ferrers, Earl, 142 Fifth Amendment (U.S. Constitution), 13, 17, 33, 34, 38, 39, 50, 160, 161n.56, 174–175 First Amendment (U.S. Constitution), 93, 97, 98, 104 Foreign Intelligence Surveillance Act (FISA), 22, 69, 71, 72, 73, 104 Foreign Intelligence Surveillance (FISA) Courts, 18, 24, 51–52, 77, 82

Fourteenth Amendment (U.S. Constitution), 13, 33, 34, 38, 160, 161, 162, 174–175 Fourth Amendment (U.S. Constitution), 69, 80, 83 France, 97, 167, 168, 171 Frongoch internment camp, 125, 126

G

Gardiner, Lord, 122 General Accountability Office (GAO), 2, 113, 115–116 General Security Service (GSS), Israel, 158, 165, 177 Geneva Conventions, 11, 14, 17, 19, 20, 31, 33, 42, 43, 49, 50, 56, 62, 124, 151n.11, 153, 154–155, 172, 173–174, 175 Gibraltar, 133 Ginsburg, Ruth Bader, 162 Giorgio, Jerry, 166–167 Girdwood Park, 126 Guantanamo Bay, 41, 53, 54, 151; see also coercive interrogation Guatemala, 64 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, 103, 105 - 106

Η

habeas corpus, 6, 17, 41, 48, 49–50, 131 *Hamdi v. Rumsfeld*, 41, 42 Headquarters Mobile Support Unit (HMSU), 132 Heath, Edward, 122, 124, 126n.41 Heseltine, Sir Michael, 133 highly coercive interrogation (HCI), 12, 13, 35–39, 171–177 admissibility in U.S. trials, 39 defined, 175-176 due process and, 173-174, 175 emergency exception, 38-39 executive powers, 35, 38, 176 guidelines, 12, 36–37, 171–177 individual remedies, 39 judicial determinations and, 37 non-U.S. persons, 38-39 probable cause, 35–36 treaty obligations, 172, 173, 176 Hogg, Douglas, 134 home secretary, 129-130, 131, 143, 144, 147 hooding, 120, 124–125, 150, 154, 157, 158, 161, 162, 168, 172, 174, 175 Hoon, Geoff, 124-125 House Armed Services Committee, 12 House Intelligence Committee, 12, 23, 29, 36, 61, 73, 111, 114 House Judiciary Committee, 12, 27,95 House of Commons, 129, 141 House of Lords, 129, 131 Hughes, Simon, 142 Human Rights Act (1998), 131, 138, 146 Human Rights Derogation Order, 129

Hussein, Saddam, 135, 174

Ι

identification of individuals, 85-91 access to sensitive resources and locations, 87–89 biometric identification (bId), 85, 86-91 impermissible demands for, 89-91 passports and, 88–89 permissible demands for, 87-89 false identification, 85 nonfederal agencies and, 87, 88, 89, 90 Immigration Act of 1971, 129n.57, 147 Immigration and Asylum Act of 1999, 147 Immigration and Nationality Act of 2002, 147 Immigration Law Practitioners Association, 131 indefinite detention, 14–18, 41-52, 125-131, 154 access to attorney, 14, 16, 44, 46, 47, 48 administrative detention without trial, 44-45 compensation and, 15, 44 Congressional powers and, 42, 49, 51, 52 detention hearings, 14-15, 16, 44, 47 due process and, 17, 41, 50 enemy combatant status, 41

executive power and, 42 international law and, 48 judicial jurisdiction and, 48 judicial warrants and, 18, 46, 51 non-U.S. persons, 15–16, 18, 41, 43, 47-48 outside United States, 15–16, 18, 43; see also indefinite detention, zones of active combat and probable cause, 14, 45, 47, 48 special advocate and, 16, 44, 46, 47, 130 speedy trial and, 15, 44, 45, 46, 48 trial jurisdiction, 16 treaty obligations and, 17 U.S. national security law and, 43 U.S. persons, 14, 41, 42–47 within the United States, 14, 18, 42–47 zones of active combat and, 16-18, 42, 49-51 zone of active combat, defined, 50 information collection, 3, 75–84, 136 - 139Congress and, 76, 81–82 individualized data and, 82 - 83judicial authorization and warrants, 77, 81–82 Nixon administration, 83 pattern recognition and, 75, 76, 77, 78–80 oversight, 81-82 required security concerning delivery, 84

transactions and, 76 Inland Revenue, 139 Inspector General Act of 1978 (IG Act), 115 inspectors general (IGs), 114-117 intercepted communications, 69 - 74Fourth Amendment (U.S. Constitution), 69 non-content information, 73 - 74non-U.S. persons, 69, 71–73 probable cause, 70, 71, 72 unintended acquisitions, 73 U.S. persons and, 69–74 within the United States, 69, 70 - 73Intelligence Company, 132 Intelligence and Security Committee (ISC), 143 International Covenant on Civil and Political Rights (ICCPR), 61, 156 Iran, 63 Iraq, 3, 10, 31, 32, 63, 64, 124–125, 135, 151, 154–155; see also Abu Ghraib Iraqi National Accord (INA), 135 Iraqi Special Security Organization, 136 Ireland v. United Kingdom, 123, 157-158, 165 Ireland, Republic of, 122 Irish National Liberation Army (INLA), 132 Irish Republican Army (IRA), 5, 119, 122, 123, 126, 127, 157 - 158

Irish Republican Brotherhood, 125

Israel, 62, 97, 158, 163, 165, 170; see also General Security Services

J

Japanese-American internment, 104 Jordan, 135, 150, 153

K

Kennedy, Anthony, 161, 162

L

Lambert, Brian Adam, 134 Landau Commission, 158 Lawrence Inquiry, 144 laws of war, 42, 53, 56–58, 65 Liberty (civil rights organization), 139, 140, 141 Libya, 60 Lieberman, Joseph, 112 Local Government Finance Act of 1992, 136n.95

M

MacPherson, Sir William, 144 Magilligan, 126 Major, John, 140 Martinez, Oliverio, 161–162 Massachusetts Bay Colony, 9 Massu, Jacques, 167 Mathews v. Eldridge, 17, 50 Maudling, Reginald, 121 Maze Prison, 132 McCain, John, 112 McDonnell, Mick, 126 McGuffin, John, 121 McVeigh, Timothy, 5 Militant Islamic Group (MIG), 134-135 military commissions, 53–58 access to attorney, 55 federal courts and, 55, 56 national security secrets and, 56, 58 non-U.S. persons and, 57 right to appeal, 55 right to confrontation, 53, 57 rules of evidence, 53, 54-55 zones of active combat, 54, 56, 57 Miller, Geoffrey D., 151n.11 Mohammed, Khalid Shaikh, 150n.7 Morocco, 153 Moussaoui, Zacharias, 54–55

N

National Audit Office (NAO), 139 National Liberation Front (FLN), Algeria, 168 national origin profiling, 104 National Security Letters, 25, 76, 82, 83, 84 nationality profiling, 101, 102–103, 105–108 Nelson, Brian, 135 New York Police Department (NYPD), 166–167 Northern Ireland *See United Kingdom, counterterrorism policy*

0

Official Secrets Act, 147 Operation Demetrius, 126–127

P

Padilla v. Rumsfeld, 42 Pakistan, 63 Palestinian Authority, 63 Parker of Waddington, Lord, 121 Parker Report, 122 pattern recognition, 75, 76, 77, 78 - 80Pentagon Papers, 83 Performance and Innovation Unit (PIU), 137–138 Phoenix Program, 64 Philippines, 166 Pipes, Daniel, 147 Plutarch, 1 Police and Criminal Evidence Act (PACE), 144–145 political profiling, 104 President's Foreign Intelligence Advisory Board (PFIAB), 112, 113 Prevention of Terrorism (Temporary Provisions) Act of 1989, 145

prisoner of war status, 17, 49, 50, 155, 174 Privacy Act of 1974, 78, 80, 98, 99 Privacy International, 140 probable cause, 12, 14, 16, 22, 35-36, 37, 43, 45, 47, 48, 70, 71, 72 profiling, 101-108, 144-148 acts of terrorism and, 104, 105 national security exceptions and, 103-104 national origin profiling, 104 nationality profiling, 101, 102-103, 105-108 political profiling, 104 racial profiling, 101–102, 103, 144, 146 religious profiling, 104 undercover agents and, 106 U.S. persons, 103, 105–107 lawfully admitted aliens, 105-106, 107 Provisional Irish Republican Army (PIRA), 126, 132, 133 psychological coercion, 120, 150, 153, 154, 168, 174–176

Q

Qaddafi, Muammar, 60, 134–135

R

Race Relations (Amendment) Act of 2000, 146 racial profiling, 101–102, 103, 144

Rasul v. Bush, 41 Reagan, Ronald, 60 Regional Holding Centres (United Kingdom), 121, 126 Ballykinler, 126 Girdwood Park, 126 Magilligan, 126 **Regulation of Investigatory** Powers Act of 2000, 138n.15, 143 - 144Rehnquist, William, 162 religious profiling, 104 rendition See transfer of individuals Report of the Technology and Privacy Advisory Committee, 77 Review of the Northern Ireland (Emergency Provisions) Acts 1978 and 1987, 128 Royal Ulster Constabulary (RUC), 120, 122–124, 132, 134Royal Ulster Constabulary (RUC) Force Order, 122–123 Rumsfeld, Donald, 154–155

S

Sampson, Sir Colin, 132 Saudi Arabia, 101, 102, 153, 167 Scalia, Antonin, 162 Secret Intelligence Service (SIS), 134–135, 147–148 secretary of state (United States), 11, 15, 34, 35, 47, 173 Secretary of State for the Home Department v. Rehman, 131 Security Service Act of 1989, 142 - 143Security Service Act of 1996, 143 Security Service (MI5), 134, 135, 139, 142–144, 147–148 Senate Armed Services Committee, 12, 35, 150n.6, 151, 154 Senate Intelligence Committee, 12, 23, 29, 36, 61, 73, 111, 114 Senate Judiciary Committee, 12, 27,95 Senate Select Committee on Intelligence, 94 Shayler, David, 135, 147–148 Shipman, Harold, 138 Somalia, 63 Soviet Union, 164n.71 Special Air Service (SAS), 132, 133 Special Branch (SB), 142 Special Immigration Appeals Commission (SIAC), 130 - 131"the Squad," 125-126 Sri Lanka, 166 Stalker, John, 132 State Department, 159 Statute Law Revision Act of 1927, 140 Steele, Frank, 123, 127 Stevens, John Paul, 161–162 Stevens, Sir John, 134 Stevens Inquiry, 134 Sudan, 63 Supreme Court (United States), 3, 10, 41, 42, 50, 57, 73, 80, 161–162, 176

surveillance of religious and political meetings, 45, 93-99, 142 - 144authorization, 95-96, 98 costs of, 94 meetings of organizations that advocate group hatred, 95, 97 meetings of organizations that advocate political violence, 94, 95, 97 oversight, 96 public meetings, 96, 97 reasonable basis, 95 records of monitoring, 98–99 Syria, 63

T

Taguba, Antonio, 152 Taguba Report, 153, 155n.28, 169 targeted killing, 59-68, 132-135 Article 51 (UN Charter), 60 authorization, 65 Congress and, 65 counterterrorism and, 59-60 covert military operations, 61, 66 executive power and, 60–61, 65 international law, 61, 64, 66 of known terrorists, 63–64 self-defense and, 60, 61-62, 66 standards, 65 transparency, 65, 67–68 U.S. persons, 65, 66 within United States, 65, 66

zones of active combat and, 62-63 Taylor, Peter, 123 templates See pattern recognition Tenet, George, 153n.25 Terrorism Act of 2000, 128–129 Thomas, Clarence, 162 Thompson, Larry, 153n.24 Title III, 22, 70–71 Title 10 (U.S. Code), 19, 56, 57 Title 18 (U.S. Code), 14, 43, 83 Title 28 (U.S. Code), 17, 41, 49-50 Title 50 (U.S. Code), 23, 73 Tomlinson, Richard, 147–148 torture, coercive interrogations and, 149–177; see also highly coercive interrogations; coercive interrogation Congress, 154, 158–160 due process clauses, 160-162 evaluating efficacy of, 164-171 anecdotal evidence, 166-167 empirical evidence, 164–165 methodological problems, 167 - 169theoretical literature, 165 - 166executive branch, 154 illegal combatants, 155 indefinite detention, 154 international law, 155-158; see also Geneva Conventions obtaining strategic information and, 179, 170, 177 ticking bomb scenario, 169-170, 177 transfer of individuals, 150, 153, 159, 163 treaty obligations, 171

U.S. definition of, 158 U.S. interrogation practices, analysis of, 150, 153–154, 162–164 water boarding, 150n.7 transfer of individuals, 11–12, 34–35, 150, 153, 159, 163, 173 requests for information and, 12, 34, 35 torture and, 11–12 Tunisia, 62 "Tunworth," 134–135

U

Ulster Defence Regiment, 134 United Kingdom counterterrorism policy, 4-5, 7-8, 96, 97, 119-148, 163 coercive interrogation and internment, 119-125 identification of individuals. 139-142 asylum seekers, 141 national ID card, 139-142 "no2id campaign," 141-142 indefinite detention, 125-131 Irish terrorism and, 125–128 War on Terror and, 128-131 information collection, 136-139 profiling, 144-148 grounds for suspicion, 145 immigration policy and, 146-147 racial profiling and institutional racism, 144, 146

surveillance of religious and political meetings, 142–144 interception of communications, 144 targeted killing and, 132–135 British Army, 132, 133, 134 foreign leaders, 134–135 loyalist paramilitaries, 134 United Nations Charter, 60, 62 United Nations Committee against Torture, 158, 163 United Nations Convention against Torture, 11, 12, 31, 33, 34, 35, 39, 155–157, 158-162, 163-164, 172, 173, U.S. Senate Reservation and, 33, 34, 158-160 Universal Declaration of Human Rights, 121 Urban, Mark, 132–133, 135 U.S. Special Forces and, 61 USA PATRIOT Act, 5, 7, 76, 111, 112, 113, 115

V

Vienna Convention, 155n.30 Vietnam, 64 Vietnam War, 164n.71

W

wall-standing, 120, 151, 157, 175 War Powers Resolution, 6 Winthrop, John, 9

Y

Yemen, 10, 62, 63, 64, 67

Ζ

zones of active combat, 9–10, 16–18, 42, 49–51, 54, 56, 57, 62–63