



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

September 11 and the Downward Arc of American Thought **by Joseph Margulies**

Days after the thwarted Christmas bombing, the Rasmussen Group took a poll. They asked whether the failed bomber, Umar Farouk Abdulmutallab, should be tried in civilian or military court. Seventy-one percent said military.

They also asked whether he should be waterboarded to extract information about his connection to terrorism. In a sign of the times, 58 percent of respondents said yes, even though he had already confessed.

By themselves, the numbers are alarming but not surprising. Other recent polls have consistently shown substantial support for torture and considerable skepticism about the use of civilian courts to prosecute terror suspects. And this despite the empirical proof: after eight years, there is no evidence that information secured by torture could not have been secured by lawful means, and despite the hysteria, we have successfully prosecuted terrorists in civilian courts for many years with no complications.

But this particular poll reveals something more important than the stubborn persistence of mythology. After all, as recently as late 2007, a *New York Times*/CBS News poll found that a third of all Americans, and 40 percent of Republicans, still believed Saddam Hussein was personally involved in 9/11. The more significant fact about the most recent poll is what it reveals about the arc of American thought since 9/11.

On December 22, 2001, only 100 days after 9/11, Richard Reid — another al Qaeda operative — tried to blow himself up aboard a transcontinental flight, this one from Paris to Miami. Like Abdulmutallab, Reid was restrained by flight attendants and fellow passengers, who noticed him trying to light a fuse in his shoe.

Like Abdulmutallab, Reid promptly confessed. He was quickly indicted, pled guilty in federal district court, and was sentenced to life in prison. At his sentencing, Judge William Young told Reid, “You are not an enemy combatant, you are a terrorist.... You are not a soldier in any army, you are a terrorist. To call you a soldier gives you far too much stature.” Today he is confined at the super-maximum security prison in Florence, Colorado.

But Reid's attempt, though it came at a time when 9/11 cast a much darker shadow across the American psyche, occurred before the Bush administration began to waterboard prisoners, when "enhanced interrogation techniques" were just a glimmer in the eyes of CIA contractors, when the torture memos had not been written, and when military commissions were just plans on a drawing board.

Because waterboarding had not yet entered the cultural conversation, it apparently never occurred to pollsters to ask whether Reid should be strapped to an inclined board with water poured up his nose and down his throat to induce the perception of imminent drowning.

Likewise, because the first halting attempt by the Bush administration to prosecute detainees before military commissions did not begin until mid-2003, no one thought to ask whether Reid should be shuttled into some alternative legal universe, contrived to convict.

The American public took for granted, in other words, that events would run their normal course: he would be prosecuted, tried, convicted, and sentenced as a terrorist — just like hundreds before. Nothing remarkable, nothing complicated.

And this was entirely consistent with our cultural expectations. A poll conducted by *Investor's Business Daily* on November 14, 2001, barely two months after 9/11, asked Americans whether they could ever envision a scenario in which they supported government-sanctioned torture. Two-thirds said no.

But now, having introduced waterboarding, "enhanced interrogations," and military commissions into the cultural conversation as an appropriate response to terror, it is perfectly natural to wonder whether we should use these tools on this new occasion.

In fact, there is apparently an expectation among some Americans that these tools *must* be used; former Vice President Cheney no doubt spoke for many when he took President Obama to task for invoking the machinery of justice, even though the Bush administration had responded in precisely the same way in the shoe-bomber case.

In other words, in a remarkably short period of time we have normalized a cultural willingness to do what a few years ago would have been literally inconceivable. And the polling numbers show just how conceivable it has become.

This may be the lasting lesson of the Christmas attack: the striking similarity in the two events, contrasted with the remarkable difference in the American reaction, reveals just how much we have changed as a nation since 9/11. In this New Year's season, it is not a change we should celebrate.

Joseph Margulies is a law professor at Northwestern University and the author of [Guantánamo and the Abuse of Presidential Power](#). He is writing a book on American thought since 9/11. He was a speaker at at The Future of Freedom Foundation's [2007 and 2008 conferences](#) "Restoring the Republic: Foreign Policy and Civil Liberties."

This article was originally published in January 2010.