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THE INTERACTIONS OF NGOs AND MNCs: ACLU V. JEPPESEN

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Introduction

In the era of powerful business, governments have taken the route of privatizing many of their operations. It is common knowledge that state and local governments sometimes use private services to provide basic community needs such as maintaining public parks, or even traditionally public functions like municipal utilities. While there is established protocol for privatization in domestic affairs, the same cannot be said for high level foreign affairs. One operation the federal government has allowed more private industry involvement in has been the intelligence community's extraordinary rendition of people abroad, or to put it candidly, kidnapping foreign citizens without the use of established channels (Naftali 2005). While the government can be held accountable for its participation via the people's will and the democratic process, corporations have had a divergent path to accountability. Non-Governmental Organizations (NGO) have targeted the figurative wallets of Multi-National Corporations (MNC) as well as their shareholder value through a variety of strategies as demonstrated by the American Civil Liberties Union's campaign against Boeing and Jeppesen.

Background

In order to understand the ACLU's purpose in suing Jeppesen, there needs to be some background laid as to their failure in forcing the government to stop renditions. Despite the policy going on for a decade, they lacked the leverage and the willingness of the judiciary to stop this behavior, and needed a new avenue to continue their fight.

The First US Rendition

While extradition has long been used between sovereign countries to hold criminal individuals responsible for their actions, rendition is a fairly new concept in the United States

(Findlaw). Rendition is the kidnapping and transfer of an individual across jurisdictions. The first instance of rendition used by the US was authorized by President Reagan to capture Fawaz Yunis, who hijacked a plane with American citizens onboard. This mimicked the rendition by Israel on perpetrators of the Holocaust. The goal of the Reagan administration only extended to bringing these suspects back to US soil to stand trial (Naftali 2005). However, in the course of two short decades, the United States' actions would be exposed as going beyond international norms and shock the conscience of the world.

The next shifting point in American rendition policy took place during the Clinton Administration. The World Trade Center bombing hit a nerve within the White House, who asked for indictments against Bin Laden and authorization to use any means necessary to bring him and other terrorists to stand trial in America. However, the CIA took an alternative route to avoid due process, and extraordinary rendition was born. Instead of having public trials in the United States, the CIA transferred them to third party governments. There were multiple instances of the CIA's operations in Albania and Croatia, where suspects were kidnapped, taken to Egypt, and tortured until suspects would confess (Mayer 2005). Even with this new policy, this was an operation with limited scope, where only a small number of targets faced this treatment (Fact Sheet Extraordinary Rendition).

Extraordinary Rendition and Jeppesen's involvement

The storm that led to the following interaction between Jeppesen, and the ACLU took place during the Bush Administration. After the tragedy of 9/11 the administration was content with letting anger percolate into the intelligence community's policies and tactics. As Jane Mayer outlined in her 2005 article, the treatment of detainees was brutal, and expanded its scope

to include anyone suspected of terrorism, even if the evidence was lacking. While much of the public advocacy in favor of these procedures focuses on obtaining actionable intel as quickly as possible to save lives, the founder of the program during the Clinton Administration has claimed that “the interrogation part wasn’t important” and that the real goal was to dismantle terrorist cells by taking them off the streets (Bergen et al. 2008). In fact, top experts in the field confirm that these methods simply do not work in providing actionable intel. Unfortunately, the intelligence community also made numerous errors, some of mistaken identity, and some of bad intelligence. Eventually, the Obama Administration shut down the extraordinary rendition program’s ability to to torture suspects (Horowitz and Cammarano 2013).

By no means was this program an isolated action by the United States government. The Open Society Foundation has used public documents to find at least 136 individuals transferred through the program with the participation of at least 54 governments (Horowitz and Cammarano 2013). Investigative reports have revealed that intelligence agencies across the world seem to have cooperated without the consent of their bureaucracies or domestic law enforcement. The CIA executed an extraordinary rendition of Hassan Mustafa Osama Nasr by grabbing him off the streets of Milan and transported him to Cairo in February 2003, with the probable cooperation of their intelligence services against the wishes of law enforcement. Investigations by Italian authorities resulted in multiple charges for a handful of CIA operatives for their role in the abduction (Naftali 2005). These undercover relationships permeated into the private industry, with The Rendition Project exposing thousands of private flights over the years to have some evidence linking them to the CIA’s renditions (Cobain and Ball 2013).

Throughout this time period, civil liberty organizations and advocates for the victims had begun their fight, albeit an unsuccessful one, against the government to halt the policy. The government would either deny or cover up, as demonstrated by President Bush's infamous "We don't torture" line. By 2005, there were whispers of Boeing's involvement, and the ACLU quickly promised to pursue Boeing if there was proof of involvement. A Spanish newspaper found evidence of CIA planes flying into local airports and had logistical services provided by Jeppesen, on Boeing aircraft (Gatti 2007). A Jeppesen employee came forward to quote the managing director of Jeppesen's International Trip Planning as saying, "We do all of the extraordinary rendition flights—you know, the torture flights"(Mayer 2006). After more details exposing Jeppesen's involvement in extraordinary renditions broke into the public sphere, the ACLU sued them on behalf of three victims imprisoned in objectively horrendous conditions in third-world countries with long records of human rights abuses (Romero 2007).

The Parties involved

The ACLU

The ACLU was founded in 1920, when civil liberties' advocacy was still in its infancy. Their stated mission took on the historic legacy of discrimination in the United States: to expand the promise of the Bill of Rights to all. They have supported groups all over the spectrum so long as the issue encompasses a key civil liberty. Their key philosophy is that once the government has enough power to violate one person's rights, it can use that power against everyone, which makes it incumbent upon them to nip violations in the bud. The ACLU is a nonprofit and nonpartisan organization that takes no government funding. They have two main strategies to ensure that civil liberties are protected. The first is to litigate in any situation where there is a

party whose civil rights are being violated. The second is to lobby legislative bodies to uphold civil liberties (About the ACLU). Their role in this interaction is that of the NGO trying to catalyze reform. They opposed the inhumane treatment of detainees involved in extraordinary rendition, and saw the opportunity to further that aim via this interaction.

Boeing and Jeppesen

Jeppesen is a subsidiary of Boeing Commercial Aviation Services, which is a unit of Boeing Commercial Airplanes. It is headquartered in Colorado and operates around the world. They were opened over 80 years ago and currently are in the navigation industry. They have almost 50 locations around the world in their corporation. According to their website, they also do pilot training and operations management systems, with multiple subsections dedicated to different industries like business, commercial, or military aviation. On almost every one of their pages their commitment to the customer is reiterated as being a core value. Some of the other Jeppesen values they espouse that are relevant to the interaction at hand are: “We value integrity and live it by speaking the truth with respect and doing the right thing”, “We value accountability and are committed to excellence”, and “We value excellence and take action before problems occur”. Jeppesen also has a page dedicated to their parent company Boeing, which labels it as the “world's leading aerospace company and the largest manufacturer of commercial jetliners and military aircraft combined. Boeing has customers in more than 90 countries around the world and is one of the largest U.S. exporters in terms of sales.” In every respect, both Boeing and their subsidiary Jeppesen are multi-national corporations that maintain control of operations throughout the world (About Us Jeppesen).

Jeppesen's involvement in the conflict stem from the allegations that they knowingly provided logistical services to flights where suspects' human rights were going to be violated and made a handsome profit by doing so (Gatti 2007). The accusations and evidence do not point to Jeppesen officials or employees participating in torture or abduction of suspects, but only to their knowledge of the CIA's actions and their material support. Much of what Boeing or Jeppesen records might have to say or reveal about their participation has been limited by the invocation of the state secrets' privilege.

Department of Justice

The Department of Justice is the legal wing of the federal government. Its attorney general is appointed by the President, and their actions typically reflect the priorities of the current administration. Their stated purpose is "To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans" (About DOJ). The Department of Justice decided to intervene to stop the ACLU's lawsuit to stop any potentially harmful information to national security from being revealed. They asked the Court to dismiss the case via the State Secrets privilege (Myers 2008).

The Events of the Interaction

The Domestic Fight

While the story of this interaction would ideally start from the moment the plaintiffs were kidnapped, there is little to no information available on their abduction, transfer, detention, or status. Instead, this chapter will have to begin with the ACLU naming Jeppesen as a defendant in

their lawsuit for having “ played a direct and fundamental role in the planning and execution of the rendition flights, and knew or should have known that our plaintiffs, and many others like them, were placed on the flights shackled and blindfolded and were being taken to countries where torture awaited them”. The ACLU was able to confirm that the three plaintiffs in the lawsuit: Binyam Mohamed, Abu Elkassim Britel, and Ahmed Agiza, were all being held in foreign prisons or Guantanamo where they were being tortured outside the jurisdiction of the United States (Romero 2007). Furthermore, with the statements attributed to Jeppesen’s executive as facilitating these flights, the ACLU had a direct link (Mayer 2006).

In May 2007, the action was filed. A running theme throughout the proceedings was that the legal system was slow to react to the crisis unfolding before it. Little activity in the trial took place as both sides took extended periods of time to file, refile, and counter-file. The Bush Justice Department decided that it would not be in the interest of the government to have their policies revealed, and invoked the state secrets privilege to ask the district court to dismiss the case (Mohamed et al. 2011).

Almost a year after the case was initially filed, the judge bought into the government’s argument and dismissed the case in its entirety, rather than exclude the offending evidence. This was February 2008, and the ACLU was put on its heels. Other NGOs stepped in to try and swing momentum in favor of the victims. CAIR and other organizations put on a protest in front of the Boeing shareholder meeting in Chicago to attract the media’s attention to the issue (CAIR Press Center 2008). In the midst of the buzz, the case continued on. By June 2008, the ACLU had appealed the district court’s decision to the 9th Circuit Court of Appeals. After 8 months passed, the appellate court heard arguments. The difference however, was that the Obama administration

had just taken office. While President Obama had run on transparency and justice for those unfairly treated during extraordinary rendition, his Department of Justice continued the Bush era precedent to dismiss the case in its entirety (Mohamed et al. 2011). From the perspective of the observer, it is perplexing to find the motivations behind President Obama's decision to continue the cover up of torture done by Americans. He had nothing to lose, as he had not authorized the unlawful acts. In fact, he may have been perceived as advocating human rights. The interest of justice would also suggest that every victim should have their day in court.

And for a brief moment, it seemed certain that they would have their day. The panel of three judges decided that the government had acted improperly, and that the privilege would only apply to certain documents or evidence. The case would move forward, albeit with evidentiary caveats. The plaintiffs could utilize information in the public sphere in the trial (Zamani 2009). The celebration was short-lived. Within 2 months, the government appealed the decision to the circuit court, asking them to hear it en banc (where all judges of the appellate court are on the panel). This type of hearing is quite rare, but the court agreed to hear the case in October of 2009 (Mohamed et al. 2011).

By the end of the year, the Court was re-hearing the arguments presented by both sides. The case was stalled for 9 months until the full appellate court made its decision in September 2010. They rejected the ACLU's argument, and upheld the District Court's decision to dismiss the case (Mitchell 2010). In May 2011, the fight to have a public trial in the United States was over, as the US Supreme Court refused to hear any appeals (Mohamed et al. 2011).

The International Sphere

Simultaneously to the very public attempts to hold US entities accountable, there were investigations into European participation in the program. These were wide-ranging, and had massive implications. The US government tried to suppress what came out just as it did with the ACLU, but certain European governments and organizations remained steadfast. One piece of evidence that the US attempted to coerce the UK into covering up during these investigations were the so-called “seven paragraphs”. The US claimed that it would damage intelligence sharing and pose a risk to national security. By 2010, “seven paragraphs” outlining America’s torture policies were exposed to the public after a ruling by the UK’s high court. In fact, the report stated that the United States used “cruel, inhuman and degrading treatment” in its operations (The Guardian 2010). After learning what the seven paragraphs held, an obvious question comes to mind. Not one of the seven paragraphs gave up intelligence sources or methods. Rather, the only revelation was a confirmation of torture by American operatives. There were no risks to national security in the document. So, why is the US government using state secrets privileges improperly to protect itself from accountability, rather than the national security interest it continues to claim? Until there is a significant shift in policy, it is likely that the world will never truly know the extent of America’s culpability.

After the US Supreme Court refused to hear the ACLU’s appeal in May 2011, they began searching for other avenues to attack the extraordinary rendition program. The ACLU filed a petition with the Inter-American Commission on Human Rights to force an apology and acknowledgement of the plaintiffs’ detention and mistreatment (Corbacho 2011). While the exposure of extraordinary rendition goes on with the work of NGOs such as The Rendition Project, the issue has become less salient and received less coverage in the past 5 years.

Tactics Used

As mentioned above, the NGOs sought to keep corporations from profiting off of torture and inhumane treatment (Romero 2007). In every action against Boeing, there were clear goals to striking at their profits and stock value. The first and most direct action was the lawsuit filed by the ACLU against Jeppesen. This was a unique technique being tested for the first time. The ACLU lawyers had found a loophole by which they could sue Jeppesen using the Alien Tort Statute for harms inflicted while avoiding immunity for the defendants (Sebok 2007). Before the Department of Justice interfered to invoke the State Secrets' privilege, it was within the realm of possibility that the corporations would be held liable. With the State Secrets' privilege, the District Court had to make a decision as to whether the case could go forward, and that decision was fought back and forth without any further trial proceedings (Myers 2008). This action was filed by the ACLU in 2007, and continued being fought from court to court until the Supreme Court refused to hear their appeal in 2011 which meant that the case was dismissed (Supreme Court Denies Request 2011).

The second clear tactic was an all out media assault to shame the company and the government for how they treated the detainees and to pressure them into changing via public opinion. This was demonstrated by how the ACLU would hold press conferences and send out press statements at every stage of litigation and highlight every lurid detail and story the media would churn out. The epitome of this was after Romero's 2007 statement, in which he outlined why they would sue Jeppesen. Multiple media stories were published within a few days with the story along with other details of how extraordinary rendition was used. As a result of the

controversies surrounding the litigation, there was a bill introduced in Congress to restrict when the states secrets privilege could be used (Myers 2008).

The last identified tactic was a protest at Boeing's shareholder meeting in Chicago. This is another shaming tactic, but aimed at the shareholders rather than the executives of the corporation. The protest was organized by the Coalition to Ground Torture Flights, with key coalition members being Amnesty International and the Council on American-Islamic Relations (CAIR Press Center 2008). While the stated goal was to "educate" shareholders, it is likely that the real intention was to cause a disruption in Boeing's stock prices or shareholder confidence.

Effects on Boeing and Jeppesen

The clearest way to analyze the effect on Boeing and Jeppesen would be to track any changes in stock prices with each action the NGOs took to attack the companies. An alternative would also be to test the behavior and policies of the company after the incident to see if there were any significant revisions or improvements in transparency.

Beginning with stock prices, I marked the starting point as where Boeing and Jeppesen prices held when their involvement began leaking, which was in 2005 as noted above. Jeppesen is owned by Boeing and is classified as private, so there are no stock prices available. As such, the Boeing stock prices were the best tool to determine how stock prices and profits were hit. At the beginning of 2015, the price of a Boeing stock was \$51.77. From here, I looked at each of the major events or publications I found related to the role of the company in the extradition.

In February 2015, the first major article regarding the US government's policies was revealed by Jane Mayer at the New Yorker. No major change was found in the trend of Boeing stock at the time. Naftali also had a July 2005 publication in Slate Magazine about extraordinary

rendition. The price of a single Boeing stock hovered at \$60 and actually rose to about \$65 during July and remained constantly in that range for the rest of the year (Google Finance). This makes sense, as Boeing's name and brand was not mentioned. The sole target of these articles was the US government, which continued having major issues of its own at the time.

In the next year, the only major event to be tracked was Mayer's article towards the end of October 2006 exposing Jeppesen as a collaborator to these torture flights. This had a very unexpected result. For the entire month prior, Boeing prices had been falling (approximately \$5 over the period of one month), but after the article it made a huge gain of almost \$10 over the next two weeks (Google Finance). The logical expectation would be to see a drop, but that was not the case. How could a company who had just been exposed as being partner to human rights violations make such strides so quickly? Based on the time period, it is possible that the 2006 mid-term elections must have had some outside effect, given that Boeing is a defense company. Unfortunately, there were no resources that could readily explain the movement in stock prices.

To this point, these were all just media stories painting Boeing or the government in a bad light. The next year provides us with more concrete actions against the company taken by the ACLU. The company started the year at about \$90 a share, and by early May was hovering at \$93-94 per share. As seen in Romero's 2007 statement, the ACLU filed the lawsuit against the company in late May 2007, which would be the only relevant event of the year. This time, there was a slight downward shift in Boeing's stocks for the month of June (drop of \$4), before rebounding in July to the tune of about \$8 (Google Finance). Again, it was hard to make a solid determination that this trend was actually affected by the ACLU. There were over ten times in that year that there was a substantial (at least \$3) shift in the stock.

In 2008, it is well known that the financial crisis hit just about every corner of the stock market hard. Boeing was no exception. The entire year was a downward slide from their starting price in the upper \$80s range that ended in the low \$40s (Google Finance). I tracked two major events from that year in the stock prices that might hurt their stock price. Both took place in April, the first being a Mother Jones exclusive on the perspective of a victim of extraordinary rendition, and the other being the CAIR organized rally in front of a Boeing stockholder meeting. Without a doubt, the CAIR event was meant to affect stock prices by damaging stockholder confidence. Again, the results defied logic. The month of April actually showed growth for Boeing in a year that crashed the markets.

The last period I observed was between 2009 and 2010. The ACLU gained an important victory in February 2009 when a three judge panel allowed for the case to move forward. The government appealed that ruling and had it overturned by the end of the year. Looking at the prices, there was a short term period where there was a downward turn during February, but a quick rebound during March and April (Google Finance). While there was about a \$10 drop, it only lasted for two to three weeks. There was a fairly constant rise in Boeing's shares until mid 2010.

Based off the above observations, it is hard to make any sort of conclusions as to what the actions by the ACLU actually did to Boeing's stock prices. There are too many variables in play, and fluctuation at so many points that any one of the actions taken by the ACLU cannot be isolated and shown to have any substantive long term effect. There were no demonstrable changes to the power and value of Boeing stocks, revenue, and profits.

In terms of a behavioral change, Jeppesen had a page dedicated to their service to local communities in tandem with NGOs. Looking into the details of their service, I found that the community service articles began in December of 2012 with the latest coming in July 2015.. While it could be that the potential end of the world scared them into being good people looking to spread happiness, the more likely cause would be the public relations nightmare in the five years prior. After reading the different stories, it seems that almost all of their events had a nice public relations touch to them, such as providing scholarships or playing with kids. It is unclear why their last event is in July 2015, but it notes that Jeppesen and Boeing employees teamed up for a Global Day of Service (Jeppesen Community). The multinational corporation clearly put effort into rehabilitating their image. However, some of their tendencies have not changed whatsoever. I emailed Boeing spokespersons for comment, and they sent back a very cryptic and opaque response. The exact text of the email was “Najib, we aren’t in position to answer your questions “ (Blecher 2017). There was no greeting, closing, or signature. Despite asking for anything other than how the company perceived what the ACLU did and their progress since, the spokesperson gave no answer. The government only invoked the state secrets’ privilege to prevent any national security issues from coming out, not to muzzle the company from discussing action taken against them, or steps they have taken to promote ethical values. Clearly, the company is still not a fan of transparency or students fishing for information.

Just to make sure I had my due diligence done on the company's activities, I looked through a variety of current stories on the companies to find any activities that might relate to the interaction at hand. Eventually, I landed on a news website that claimed to have damaging information on Boeing and Jeppesen for having engaged in the CIA’s arm dealing in the Middle

East. One of the well known accusations against American intelligence agencies is that they peddle weapons to catalyze instability. The news article by New Eastern Outlook, an outlet based in Moscow, claimed that Boeing and Jeppesen were flying in these weapons on behalf of the CIA (Kamens 2016). Admittedly, this story seemed somewhat speculative, but if there is even a grain of truth in them, Boeing would not have taken much of a lesson from the ACLU's lawsuit.

Lastly, in terms of policies, Boeing and Jeppesen have many documents on their page dedicated to corporate governance and conduct of Boeing employees and management. Every manager and employee code of conduct has a few lines dedicated to complying with the law and reporting unethical behavior. This includes reporting to proper authorities outside Boeing (Boeing Corporate Governance). The policy seems to meet all the common-sense criteria needed to promote transparency within the company, but it is impossible to evaluate its effectiveness without access to the inner workings of the company. The only questionable issue is that there is no mention of protection for whistleblowers, which could be harmful, given that many employees may fear retaliation if they report problems to superiors or the authorities.

Conclusion

In an interaction purely independent of any party except the MNC and their NGO counterpart, strategies that the ACLU used in their campaign against Boeing might have driven their stock value down and forced them to disclose their records and settle with the plaintiffs. However, given that the government saw a national security interest in covering up the intelligence community's colossal mishaps in their torture programs, they intervened to put a halt to the ACLU's most effective tactic: the lawsuit. The ACLU's backbone has always been litigation, and without it at their behest, the campaign turned into the ineffective ceremonial

gestures, asking the same Obama administration that invoked the state secrets' privilege to block transparency to put an end to extraordinary rendition. In the end, the ACLU failed to hold Boeing and its subsidiary Jeppesen accountable in any meaningful way. Regardless of the governmental policy implications, one theme continues to ring true. The big corporations will not change their behavior until they find it in their own monetary interest to do so.

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