

Case Study:

Media Reports on the Authorisation and Use of torture by US forces in the War on Terror

Contents:

U.S. bypasses law in fight against terrorism

International Herald Tribune March 12, 2002

UN finds evidence of Uzbek torture

International Herald Tribune December 7-8, 2002

Guantánamo detainee says in letter that he was tortured

International Herald Tribune October 2-3, 2004

Bush's housebroken lawyers (editorial)

International Herald Tribune December 31, 2004 / January 1-2, 2005

U.S. Justice Department tightens rules on torture

International Herald Tribune January 3, 2005

Outsourcing torture (commentary by Bob Herbert)

International Herald Tribune February 12-13, 2005

America's pals, the torturers (commentary by Bob Herbert)

International Herald Tribune February 19-20, 2005

Tortured by mistake (commentary by Bob Herbert)

International Herald Tribune February 26-27, 2005

CIA given free reign to move prisoners

International Herald Tribune March 7, 2005

Exporting detainees (commentary by ex-CIA officer Michael Scheuer)

International Herald Tribune March 12-13, 2005

On court, U.S. focus shifts to shielding top aides

International Herald Tribune September 9, 2002

Largely partisan vote confirms Gonzales as attorney general

International Herald Tribune February 5-6, 2005

n.b. the *International Herald Tribune* is a wholly-owned subsidiary of the *New York Times* – the Paper of Record in the United States of America

International Herald Tribune
 Tuesday, March 12, 2002

U.S. bypasses law in fight against terrorism

By Rajiv Chandrasekaran
 and Peter Finn

The Washington Post

JAKARTA: Since Sept. 11, the U.S. government has secretly transported dozens of people suspected of links to terrorists to countries other than the United States, bypassing extradition procedures and legal formalities, according to Western diplomats and intelligence sources.

The suspects have been taken to countries, including Egypt and Jordan, whose intelligence services have close ties to the CIA and where they can be subjected to interrogation tactics — including torture and threats to their families — that are illegal in the United States, the sources said. In some cases, U.S. intelligence agents remain closely involved in the interrogation, the sources said.

"After Sept. 11, these sorts of movements have been

occurring all the time," a U.S. diplomat said. "It allows us to get information from terrorists in a way we can't do on U.S. soil."

One such suspect is Mohammed Saad Iqbal Madni, who arrived in Jakarta from Pakistan in mid-November. He told acquaintances that he had come to Indonesia to disburse an inheritance to his late father's second wife. But instead of writing a check and leaving, he settled into a small boarding house in a crowded, lower-middle-class neighborhood, where he visited the local mosque and spent hours on end watching television at a friend's house.

Iqbal, 24, betrayed little about his life in Pakistan, except to hand out business cards identifying him as a Koran reader for an Islamic radio station.

In early January, however, the CIA informed Indonesia's State Intelligence Agency that Iqbal was an Al Qaeda operative who had worked with Richard Reid, the Briton charged with trying to detonate ex-

plosives in his shoes on an American Airlines flight from Paris to Miami on Dec. 22, according to Indonesian officials and foreign diplomats.

They said the CIA provided information about Iqbal's whereabouts and urged Indonesia to apprehend him. A few days later, the Egyptian government formally asked Indonesia to extradite Iqbal, who carried an Egyptian as well as a Pakistani passport, a senior Indonesian official said.

The Egyptian request alleged Iqbal was wanted in connection with terrorism, he said. It did not specify the crime, he continued, but Indonesian officials were told the charges were unrelated to the Reid case.

By Jan. 9, Iqbal was in the hands of Indonesian intelligence agents. Two days later — without a court hearing or a lawyer — he was hustled aboard an un-

See **SUSPECTS**, Page 6

Even when the media reports on 'our' use of torture, the criticism is usually softened (i)

In paragraph 1, the article explains the government has been "bypassing legal formalities". This is much nicer than saying "the U.S. government has acted illegally". (There is a word for these "legal formalities": it's called *The Law*.) Likewise, in paragraph 3, the reason that "we can't [torture people] on U.S. soil" is because it's against the law and the U.S. constitution (cruel and unusual punishment).

In paragraph 2, the phrase "remain closely involved in the interrogations" is also much nicer than "actively participate in torturing".

Note that the only case cited does not illustrate the practice of "bypassing extradition procedures" and "bypassing legal formalities".

SUSPECTS: U.S. secretly sends those linked to terror to 3d countries

From Page 1

marked, U.S.-registered Gulfstream V jet parked at a military airport in Jakarta and flown to Egypt, the Indonesian officials said.

U.S. officials would not comment on evidence linking Iqbal to Reid, but Western diplomats in Jakarta said Iqbal's name appeared on Al Qaeda documents discovered by U.S. intelligence agents in Afghanistan. Indonesian officials said U.S. officials did not detail Iqbal's alleged involvement with terrorism other than to say that he was connected to Reid and, as a consequence, that he was highly sought by the U.S. government.

Iqbal remains in custody in Egypt, intelligence sources said. They said he has been questioned by U.S. agents but there was no word on his legal status, a situation that resembles that of other Islamic activists taken into custody in cooperation with the CIA.

U.S. involvement in seizing terrorism suspects in third countries and shipping them with few or no legal proceed-

ings to the United States or other countries — known as "rendition" — is not new.

In recent years, U.S. agents, working with Egyptian intelligence and local authorities in Africa, Central Asia and the Balkans, have sent dozens of suspected Islamic extremists to Cairo or taken them to the United States, according to U.S. officials, Egyptian lawyers and human rights groups. It is also the step U.S. authorities are urging Pakistan to take with the chief suspect in the kidnapping and killing of the Wall Street Journal reporter Daniel Pearl.

In 1998, U.S. agents spirited Tahaat Fouad Qassem, 38, a reputed leader of the Islamic Group, an Egyptian extremist organization, to Egypt after he was picked up in Croatia while traveling to Bosnia from Denmark, where he had been granted political asylum. Qassem was allegedly an associate of Ayman Zawahiri, the No. 2 man in Al Qaeda, Osama bin Laden's network. Egyptian lawyers said he was questioned aboard a U.S. ship off the Croatian coast before he was taken to Cairo, where a military

tribunal had already sentenced him to death in absentia. Egyptian officials have refused to discuss his case.

U.S. intelligence officers are also believed to have participated in the 1998 seizure in Azerbaijan of three members of Egypt's other main underground group, Egyptian Islamic Jihad, according to testimony provided to their attorneys in Cairo.

Also in 1998, CIA officers working with Albanian police seized five members of Egyptian Islamic Jihad who were allegedly planning to bomb the U.S. Embassy in Tirana.

After three days of interrogation, the five men were flown to Egypt aboard a plane that was chartered by the CIA; two were put to death. The five were among 13 suspects known to have been picked up in the Balkans with U.S. involvement and taken to Egypt for trial.

In October, a Yemeni microbiology student wanted in the bombing of the U.S. destroyer Cole was flown from Pakistan to Jordan on a U.S.-registered Gulfstream jet after Pakistan's intelligence agency surrendered him to U.S.

authorities at the Karachi airport. Pakistani government sources said. The handing over of the shackled and blindfolded student, Jamil Qasim Saeed Mohammed, who was alleged to be an operative of Al Qaeda, occurred in the middle of the night at a remote corner of the airport without extradition or deportation procedures, the sources said.

U.S. forces seized five Algerians and a Yemeni in Bosnia on Jan. 19 and flew them to a detention camp at the U.S. naval base in Guantanamo Bay, Cuba, after they were ordered released by the Bosnian Supreme Court for lack of evidence, and despite an injunction from the Bosnian Human Rights Chamber that four of them be allowed to remain in the country pending further proceedings. The Human Rights Chamber, created under the U.S.-brokered Dayton peace accords that ended the 1992-95 war, was designed to protect human rights and due process.

Between 1993 and 1999, terrorism suspects also were rendered to the United States from Nigeria, the Philippines, Kenya and South Africa in operations

acknowledged by U.S. officials. Dozens of other covert renditions, often with Egyptian cooperation, were also conducted, U.S. officials said. The details of most of these operations, which often ignored local and international extradition laws, remain closely guarded.

Even when local intelligence agents are involved, diplomats said it was preferable to render a suspect secretly because it prevented lengthy court battles and minimized publicity that could tip off the detainee's associates. Rendering suspects to a third country, particularly Muslim nations such as Egypt or Jordan, also helps to defuse domestic political concerns in predominantly Muslim nations such as Indonesia, the diplomats said.

Sending a suspect directly to the United States, the diplomats said, could prompt objections from government officials who fear that any publicity of such an action would lead to a backlash from fundamentalist Islamic groups.

In Iqbal's case, Indonesian government officials told local media that he had been sent to Egypt because of visa

violations.

A senior Indonesian government official said that disclosing the U.S. role would have exposed President Megawati Sukarnoputri to criticism from Muslim-oriented political parties in her governing coalition. "We can't be seen to be cooperating too closely with the United States," the official said.

The official said an extradition request from Egypt and the discovery of Iqbal's visa infraction provided political cover to comply with the CIA's request. "This was a U.S. deal all along," the senior official said. "Egypt just provided the formalities."

Indonesian officials believe Iqbal, who arrived in Jakarta on Nov. 17, came to the vast Southeast Asian archipelago not to plan an attack but to seek refuge as the Taliban neared collapse and Al Qaeda leaders sought to flee Afghanistan. Western officials said they did not have a full picture of what Iqbal was doing in Indonesia and they could not rule out the possibility that he was engaged in terrorist activities.

Iqbal had lived in Jakarta as a teenager while his late father, who also was an expert Koran reader, taught at the Arab Language Institute. Shortly after Iqbal arrived in November, he returned to his old neighborhood, a district in east Jakarta with narrow, winding streets and open sewers. There he met up with one of his father's former students, Mohammed Rizard, who helped him get a room at a nearby boarding house.

Rizard, a printer, said Iqbal often would spend afternoons at his house, watching television and singing Indian karaoke tunes. Although Iqbal said he came to Indonesia to distribute an inheritance to his father's second wife, he appeared to be in no hurry to perform the task, Rizard said.

"He was taking it easy," Rizard said. "He was more interested in talking about girls and singing karaoke."

Rizard said he never discussed politics with Iqbal or inquired about his life in Pakistan. "He never talked about Jihad or America," Rizard said. Rizard also said he rifled through Iqbal's suitcase and "found nothing suspicious."

Despite criticism from some U.S. officials as well as from neighboring Singapore and Malaysia that Indonesia is not moving aggressively enough against suspected terrorists — particularly members of Jemaah Islamiah, a militant Muslim group with bases in Indonesia, Singapore and Malaysia that is alleged to be affiliated with Al Qaeda — officials in Jakarta quickly point to Iqbal's rendition as proof they are cooperating, albeit quietly, in the global fight against terrorism.

"The CIA asked us to find this guy and hand him over," the senior Indonesian official said. "We did what they wanted."

UN finds evidence of Uzbek torture

The Associated Press

TASHKENT, Uzbekistan: A United Nations envoy said Friday after an inspection of Uzbekistan's prisons that he had found signs of systematic torture and had been denied full access to two of the most notorious jails.

Theo van Boven, who was allowed to visit Uzbekistan only after intense Western pressure, said a "high official" had refused to let him visit the jail at the National Security Service, the country's intelligence agency.

He also said only two hours were allowed for his visit to the remote Zhaslyk prison in northwestern Uzbekistan, far shorter than the six hours he requested.

Uzbekistan's international profile has grown since it became a key ally in the U.S.-led war on terrorism, providing a base for operations in neighboring Afghanistan.

Without a reminder that, under the policy of 'Rendition', the US government sends people to key allies to be tortured, readers will not understand the implications of the report: that the United Nations has found evidence that this "key ally in the U.S.-led war on terrorism" has been torturing prisoners

International Herald Tribune
Saturday-Sunday, December 7-8, 2002

Guantánamo detainee says in letter that he was tortured

By Lizette Alvarez

LONDON: A British detainee being held at the Guantánamo Naval Base in Cuba claimed in a declassified letter released on Friday that he had been the victim of "vindictive torture and death threats" since January 2002.

In his letter, Moazzam Begg, 36, said he had been held in solitary confinement since February 8, 2003 and claimed to have been a partial "witness" to the murder of two detainees at the American air base at Bagram in Afghanistan.

The four-page letter, postmarked July 12 and addressed to U.S. Forces Admin-

istration at Guantánamo Bay and copied to his lawyers, among others, was released Friday by Begg's defense team, which recently received it.

It appears to be the first uncensored, declassified letter written by a detainee at Guantánamo who is not facing a military tribunal, said one of his U.S. lawyers, Clive Stafford-Smith.

"Why they let this through is beyond me," Stafford-Smith said.

Lawyers who visit Guantánamo Naval Base to talk to their clients are barred from discussing details or allegations of torture, Clive Stafford-Smith said. Correspondence from detainees is routinely censored, he added.

In the letter, Begg says that he was abducted from Pakistan and taken to Afghanistan in January 2002. He said he was innocent and had never been a Qaeda member.

His U.S. lawyers said they planned to go to court Monday to ask for his release and repatriation to Britain and to demand that documents relating to his alleged torture and abuse be declassified.

They will also ask that the government disregard any statements of Begg's obtained under duress.

Begg said in his letter: "During several interviews, particularly — though exclusively — in Afghanistan, I was subjected to pernicious threats of torture,

actual vindictive torture and death threats — among other coercively employed interrogation techniques.

"Interviews were conducted in an environment of generated fear, resonant with terrifying screams of fellow detainees facing similar methods.

"In this atmosphere of severe antipathy towards detainees was the compounded use of racially and religiously prejudiced taunts.

"This culminated, in my opinion, with the deaths of two fellow detainees at the hands of US military personnel, to which I myself was partially witness."

In an unrelated matter, Scotland Yard charged three men on Friday under its

anti-terrorist law, a week after their arrest on allegations that they sought to buy and deliver radioactive material to build a dirty bomb.

The men were arrested after the News of the World orchestrated an undercover sting and then tipped off the police. The newspaper wrote that one of its reporters, posing as a Muslim extremist, met with the three men and assured them he could serve as the middle man in the purchase of a kilogram of radioactive red mercury. The newspaper said the men were planning to supply the material to a man in Saudi Arabia, dubbed "Mr. Big in Saudi Arabia," by the paper on Sunday.

The New York Times

Editorial observer ■ By Andrew Rosenthal

Bush's housebroken lawyers

The most obvious victims of the brutal treatment of prisoners at American military jails are the men, women and children who have been humiliated, sexually assaulted, beaten, tortured and even killed. But the Bush administration's assault on the Geneva Conventions has also caused collateral damage — in this case, to the legal offices of the executive branch and the military.

Once charged with giving unvarnished advice about whether political policies remained within the law, the Bush administration has turned its legal counsels into the sort of cynical corporate lawyers who figure out how to make something illegal seem kosher — or at least how to minimize the danger of being held to account.

This upheaval has been particularly vivid at the Pentagon, where the usual balance between civilian and military authority has been stood on its head. The system of civilian control of the military recognizes that soldiers' attention must be fixed on winning battles and staying alive, and that war's fog can sometimes obscure the rule of law. Civilian bosses are supposed to provide cool-headed restraint.

Now America has to count on the military to step up when the civilians get out of control.

When Defense Secretary Donald Rumsfeld approved the initial list of interrogation methods for Guantánamo Bay in late 2002 — methods that clearly violated the Geneva Conventions and antitorture statutes — there were no protests from the legal counsels working for the secretary of defense, the attorney general, the president, the Central Intelligence Agency or any of the civilian secretaries of the armed services.

That's not surprising, because some of those very

officials were instrumental in devising the Strangelovian logic that lay behind Rumsfeld's order. Their legal briefs dutifully argued that the president could suspend the Geneva Conventions when he chose, that he could even sanction torture, which could be redefined so narrowly that it could seem legal.

It took an internal protest by uniformed lawyers from the navy to force the Pentagon to review the Guantánamo rules and restrict them a bit. But the military lawyers' concerns were largely shoved aside by a team of civilian lawyers, led by Mary Walker, the air force general counsel. The group reaffirmed the notion that Bush could choose when to apply the Geneva Conventions.

That principle was originally aimed at the supposed members of Al Qaeda held at Guantánamo, but it was quickly exported to Iraq and led, inexorably, to the horrors at Abu Ghraib and other recently disclosed crimes by American soldiers against Iraqi and Afghan prisoners.

If it had not been for a group of uniformed lawyers, the nation might never have learned of the memo on torture and detention. In May 2003, soon after Walker's group produced its rationalization for prisoner abuse, a half-dozen military lawyers went to Scott Horton, who was the chairman of the human rights committee of the City Bar Association in New York.

That led to a bar report on the administration's policies — a report that was published around the same time the Abu Ghraib atrocities came into public view. Meanwhile, the Justice Department official who signed the memo on torturing prisoners, Jay By-

bee, was elevated by Bush to the federal bench.

This month, several former high-ranking military lawyers came out publicly against the nomination of the White House counsel, Alberto Gonzales, to be attorney general.

They noted that it was Gonzales who had supervised the legal assault on the Geneva Conventions. Jeh Johnson, a New York lawyer who was general counsel for the secretary of the air force under President Clinton, calls this shift "a revolution."

"One view of the law and government is that good things can actually come out of the legal system and that there is broad benefit in the rule of law," Johnson said. "The other is a more cynical approach that says that lawyers are simply an instrument of policy — get me a legal opinion that permits me to do X."

"Sometimes a lawyer has to say,

"You just can't do this."

Normally, the civilian policy makers would have asked the military lawyers to draft the rules for a military prison in wartime. The lawyers for the service secretaries not supposed to meddle in rules of engagement or military justice. But the civilian policy makers knew that the military lawyers would never sanction tossing the Geneva Conventions aside.

Some Senate Democrats have said they plan to question Gonzales about this mess during his confirmation hearings. But given the feckless state of congressional oversight on this issue, there's not a lot of hope in that.

Andrew Rosenthal is the deputy editorial page editor of The New York Times.

Military lawyers would never sanction tossing the Geneva Conventions aside.

International Herald Tribune | 3
Monday, January 3, 2005

U.S. Justice Department tightens rules on torture

By Neil A. Lewis

WASHINGTON: The Justice Department has broadened its definition of torture, significantly retreating from a memorandum in August 2002 that defined torture extremely narrowly and said President George W. Bush could ignore domestic and international prohibitions against torture in the name of national security.

The new definition was in a memorandum posted on the department's Web site late Thursday night with no public announcement. It comes one week before the Senate Judiciary Committee is set to question Alberto Gonzales, the White House counsel and nominee for attorney general, about his role in formulating legal policies that critics have said led to abuses at Abu Ghraib prison in Iraq and at the U.S. naval base at Guantánamo Bay, Cuba.

The new memorandum, first report-

ed in The Wall Street Journal and The Washington Post, largely dismisses the August 2002 definition, especially the part that asserted that mistreatment rose to the level of torture only if it pro-

The memorandum largely dismisses the August 2002 definition of torture.

duced severe pain equivalent to that associated with organ failure or death. The new memorandum also rejects the earlier assertion that torture may be said to occur only if the interrogator meant to cause the harm that resulted.

"Torture is abhorrent both to American law and values and to international norms," said the new memorandum, written by Daniel Levin, the acting as-

sistant attorney general in charge of the Office of Legal Counsel, which had produced the earlier definition.

Gonzales, who will go before the Senate committee for confirmation hearings, served as a supervisor and coordinator inside the administration as lawyers drafted new approaches on the limits of coercive techniques in interrogations and the scope of the president's authority in fighting a war against terrorists.

A memorandum in January 2002 to Bush that Gonzales signed sided with the Justice Department, saying that the Geneva Conventions did not bind the United States in its treatment of detainees captured in Afghanistan.

The August 2002 Justice Department memorandum and a later memorandum from an administration legal task force with similar conclusions were widely denounced in Congress and by human rights groups as corner-

stones in the approach to detainees that led to abuses at Abu Ghraib and at the detention center in Guantánamo.

The political effect of the new memorandum on Gonzales's appearance before the committee was unclear. He has been expected to assert, as he has before, that neither he nor Bush condoned torture. But the change could underline what had been the undisputed policy of the administration at least until June.

Michael Ratner, the president of the Center for Constitutional Rights, which has sued the administration, said Friday that the redefinition "makes it clear that the earlier one was not just some intellectual theorizing by some lawyers about what was possible."

The International Committee of the Red Cross has said in private messages to the U.S. government that U.S. personnel have engaged in torture of detainees, both in Iraq and at Guantánamo.

The New York Times

Bob Herbert

Outsourcing torture

Maher Arar is a 34-year-old native of Syria who emigrated to Canada as a teenager. On Sept. 26, 2002, as he was returning from a family vacation in Tunisia, he was seized by American authorities at Kennedy Airport in New York, where he was changing planes.

Arar, a Canadian citizen, was not charged with a crime. But, as Jane Mayer tells us in a deeply disturbing article in the current issue of *The New Yorker*, he "was placed in handcuffs and leg irons by plainclothes officials and transferred to an executive jet."

In an instant, Arar was swept into an increasingly common nightmare, courtesy of the United States of America. The plane that took off with him from Kennedy "flew to Washington, continued to Portland, Maine, stopped in Rome, Italy, then landed in Amman, Jordan."

Any rights Arar might have thought he had, either as a Canadian citizen or a human being, had been left behind. At times during the trip, Arar heard the pilots and crew identify themselves in radio communications as members of "the Special Removal Unit." He was being taken, on the orders of the U.S. government, to Syria, where he would be tortured.

The title of Mayer's article is "Outsourcing Torture." It's a detailed account of the frightening and extremely secretive U.S. program known as "extraordinary rendition." This is one of the great euphemisms of our time. Extraordinary rendition is the name that's been given to the policy of seizing individuals without even the semblance of due process and sending them off to be interrogated by regimes known to

practice torture. In terms of bad behavior, it stands side by side with contract killings.

Our henchmen in places like Syria, Egypt, Morocco, Uzbekistan and Jordan are torturing terror suspects at the behest of a nation — the United States — that just went through a national election in which the issue of moral values was supposed to have been decisive. How in the world did we become a country in which gays' getting married is considered an abomination, but torture is O.K.?

As Mayer pointed out: "Terrorism suspects in Europe, Africa, Asia and the Middle East have often been abducted by hooded or masked American agents, then forced onto a Gulfstream V jet, like the one described by Arar. Upon arriving in foreign countries, rendered suspects often vanish. Detainees are not provided with lawyers, and many families are not informed of their whereabouts."

Arar was seized because his name had turned up on a watch list of terror suspects. He was reported to have been a co-worker of a man in Canada whose brother was a suspected terrorist. "Although he initially tried to assert his innocence, he eventually confessed to anything his tormentors wanted him to say," Mayer wrote.

The confession under torture was worthless. Syrian officials reported back to the United States that they could find no links between Arar and terrorism. He was released in October 2003 without ever being charged and is now back in Canada.

Barbara Olshansky is the assistant legal director of the Center for Constitutional Rights, which is representing Arar in a lawsuit against the United States. I asked her to describe Arar's physical and emotional state following his release from custody.

She sounded shaken by the memory. "He's not a big guy," she said. "He had lost more than 40 pounds. His pallor was terrible, and his eyes were sunken. He looked like someone who was kind of dead inside."

Any government that commits, condones, promotes or fosters torture is a malignant force in the world. And those who refuse to raise their voices against something as clearly evil as torture are enablers, if not collaborators.

There is a widespread notion in the United States that everybody seized by the government in its so-called war on terror is in fact somehow connected to terrorist activity. That is just wildly wrong.

Tony Blair knows a little about that sort of thing. Just on Wednesday, the British prime minister formally apologized to 11 people who were wrongfully convicted and imprisoned for bombings in England by the Irish Republican Army three decades ago.

Jettisoning the rule of law to permit such acts of evil as kidnapping and torture is not a defensible policy for a civilized nation. It's wrong. And nothing good can come from it.

**Terrorism suspects
have often been
abducted by masked
American agents.**

E-mail: bobherb@nytimes.com

Bob Herbert

America's pals, the torturers

The United States has long purported to be outraged over Syria's bad behavior, the latest flash point being the possible Syrian involvement in the assassination of the former Lebanese prime minister, Rafik Hariri.

From the U.S. perspective, Syria is led by a gangster regime that has, among other things, sponsored terrorism, aided the insurgency in Iraq and engaged in torture. So here's the question: If Syria is such a bad actor — and it is — why would the Bush administration seize a Canadian citizen at Kennedy Airport in New York, put him on an executive jet, fly him in shackles to the Middle East, and then hand him over to the Syrians, who promptly tortured him?

The administration is trying to have it both ways in its so-called war on terror. It claims to be fighting for freedom, democracy and the rule of law, and it condemns barbaric behavior whenever it is committed by someone else. At the same time, it is engaged in its own barbaric behavior, while going out of its way to keep that behavior concealed from the American public and the world at large.

The man grabbed at Kennedy Airport and thrown by U.S. officials into a Syrian nightmare was Maher Arar, a 34-year-old native of Syria who emigrated to Canada as a teenager. No one, not even the Syrians who tortured him, have been able to present any evidence linking him to terrorism.

He was taken into custody on the afternoon of Sept. 26, 2002, and was not released until Oct. 5, 2003. He was never charged, and when he wasn't being brutalized, he spent much of his time in an unlit, rat-infested cell that reminded him of a grave.

Government officials know that this kind of activity is not just wrong but reprehensible, which is why they won't admit publicly to the policy that per-

mits them to kidnap individuals like Arar and send them off to regimes known to engage in torture. The policy is known as extraordinary rendition, which is an extreme variation of a little-known but longstanding legal principle called rendition. Rendition most commonly refers to the extrajudicial transfer of individuals from a foreign country to the United States for the purpose of answering criminal charges.

Think, for example, of a drug kingpin who is abducted in Colombia and brought to the United States to stand

It's as if a cop picked up a suspect on the street and handed him over to the Mafia to extract a confession.

trial for trafficking. The defendant is said to have been "rendered" to justice in the United States.

The courts in the United States have tended to overlook the circumstances surrounding the seizure of such suspects. But upon arrival in the United States, the normal rules of due process in criminal proceedings kick in, and the suspect is entitled to a fair trial.

In extraordinary rendition there are no rules. The person seized, presumably a terror suspect, is thrust into a highly secret zone of utter lawlessness, with no rights whatever. The entire point of this atrocious exercise is to transfer the suspect to a regime skilled in the art of torture. It's as if a cop picked up a suspect on the street and handed him over to the Mafia to extract a confession. One's guilt or innocence is not relevant. No legal defense is permitted. If a mistake is made, too bad.

U.S. officials knew what they were doing when they gave the signal to ship Arar to Syria. As far back as 1996, the State Department had this to say in a report about human rights in Syria:

"Former prisoners and detainees have reported that torture methods include electrical shocks; pulling out fingernails; the forced insertion of objects into the rectum; beatings, sometimes while the victim is suspended from the ceiling; hyperextension of the spine; and the use of a chair that bends backwards to asphyxiate the victim or fracture the spine."

According to the State Department, torture was most likely to occur at one of the many detention centers run by the Syrian security forces, "particularly while the authorities are trying to extract a confession or information about an alleged crime or alleged accomplices."

Extraordinary rendition is antithetical to everything Americans are supposed to believe in. It violates American law. It violates international law. And it is a profound violation of America's own most fundamental moral imperative — that there are limits to the way Americans treat other human beings, even in a time of war and great fear.

E-mail: bobherb@nytimes.com

Bob Herbert

Tortured by mistake

OTTAWA

If John Ashcroft was right, then I was staring into the malevolent, duplicitous eyes of pure evil, the eyes of a man with the mass murder of Americans on his mind. But all I could really see was a polite, unassuming, neatly dressed guy who looked like a suburban Little League coach.

If Ashcroft was right, then Maher Arar should have been in a U.S. prison, not talking to me in an office in downtown Ottawa. But there he was, a 34-year-old man who now wears a perpetually sad expression, talking about his recent experiences — a real-life story with the hideous aura of a hallucination. Arar's 3-year-old son, Houd, loudly crunched potato chips while his father was being interviewed.

"I still have nightmares about being in Syria, being beaten, being in jail," said Arar. "They feel very real. When I wake up, I feel very relieved to find myself in my room."

In the fall of 2002 Arar, a Canadian citizen, suddenly found himself caught up in the cruel mockery of justice that the Bush administration has substituted for the rule of law in the post-Sept. 11 world. While attempting to change planes at New York's Kennedy Airport on his way home to Canada from a family vacation in Tunisia, he was seized by U.S. authorities, interrogated and thrown into jail. He was not charged with anything, and he never would be charged with anything, but his life would be ruined.

Arar was surreptitiously flown out of the United States to Jordan and then driven to Syria, where he was kept like a nocturnal animal in an unlit, underground, rat-infested cell that was the size of a grave. From time to time he was tortured.

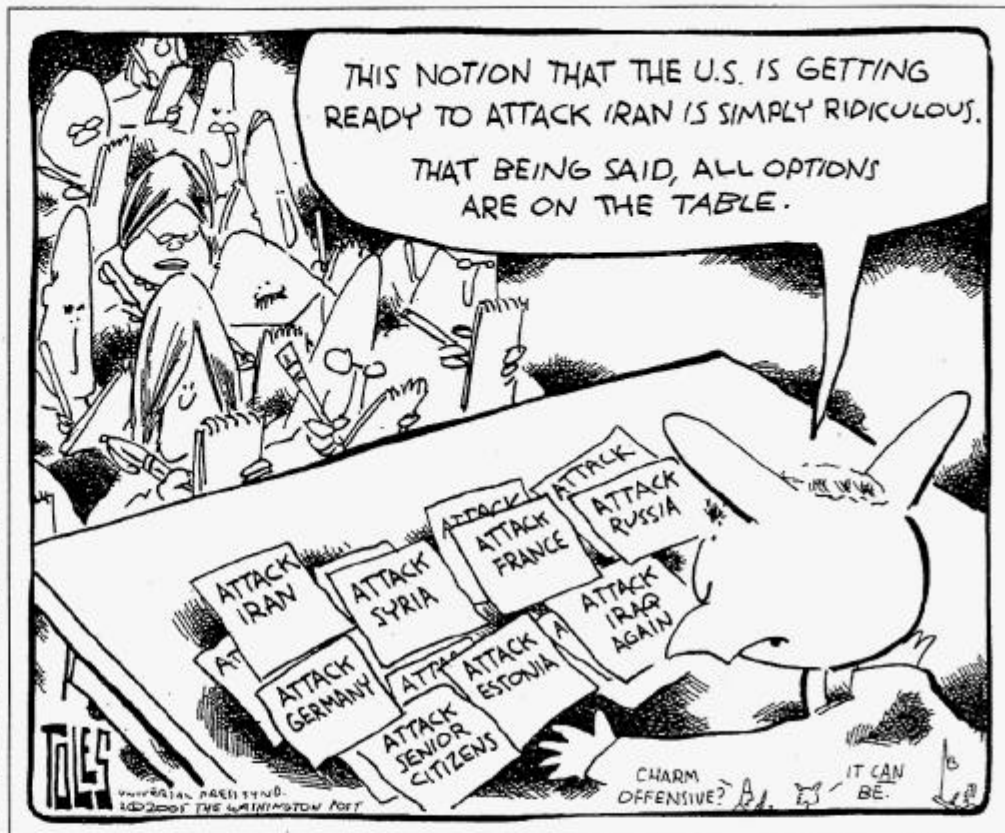
He wept. He begged not to be beaten anymore. He signed whatever confessions he was told to sign. He prayed.

Among the worst moments, he said, were the times he could hear babies crying in a nearby cell where women were imprisoned. He recalled hearing one woman pleading with a guard for several days for milk for her child.

He could hear other prisoners screaming as they were tortured.

"I used to ask God to help them," he said.

The Justice Department has alleged, without disclosing any evidence whatsoever, that Arar is a member of, or somehow linked to, Al Qaeda. If that's so, how can the administration possibly allow him to roam free? The Syrians, who tortured him, have con-



cluded that Arar is not linked in any way to terrorism.

And the Royal Canadian Mounted Police, a sometimes-clownish outfit that seems to have helped set this entire fiasco in motion by forwarding bad information to U.S. authorities, is being criticized heavily in Canada for failing to follow its own rules on the handling and dissemination of raw classified information.

Official documents in Canada suggest that Arar was never the target of a terror investigation there. One former Canadian official, commenting on the Arar case, was quoted in a local newspaper as saying "accidents will happen" in the war on terror.

Whatever may have happened in Canada, nothing can excuse the behavior of the United States in this episode. Arar was deliberately dispatched by U.S. officials to Syria, a country that — as they knew — practices torture. And if Canadian officials had not intervened, he most likely would not have been heard from again.

Arar is the most visible victim of the reprehensible U.S. policy known as extraordinary rendition, in

which individuals are abducted by U.S. authorities and transferred, without any legal rights whatever, to a regime skilled in the art of torture. The fact that some of the people swallowed up by this policy may in fact have been hard-core terrorists does not make it any less repugnant.

Arar, who is married and also has an 8-year-old daughter, said the pain from some of the beatings he endured lasted for six months.

"It was so scary," he said. "After a while I became like an animal."

A lawsuit on Arar's behalf has been filed against the United States by the Center for Constitutional Rights in New York. Barbara Olshansky, a lawyer with the center, noted Thursday that the government is arguing that none of Arar's claims can even be adjudicated because they "would involve the revelation of state secrets."

This is a government that feels it is answerable to no one.

E-mail: bobherb@nytimes.com

CIA given free rein to move prisoners

'Rendition' made easier by Bush

By Douglas Jehl and David Johnston

WASHINGTON: The Bush administration's secret program to transfer scores of suspected terrorists to foreign countries to be imprisoned and interrogated has been carried out by the Central Intelligence Agency, under broad authority that has allowed the agency to act without case-by-case approval from the White House or the State or Justice Departments, according to current and former government officials.

The unusually expansive authority for the CIA to operate independently since the September 2001 attacks was provided by the White House under a still-classified directive signed by President George W. Bush within days of the attacks at the World Trade Center and the Pentagon, the officials said.

The process, known as rendition, has been central to the government's efforts to disrupt terrorism, but it has been bitterly criticized by human rights groups on grounds that the practice violated the Bush administration's public pledge to provide safeguards against torture.

In providing a detailed description of the program, a senior U.S. official said it had been aimed only at those suspected of having knowledge of terrorist operations. The official said the CIA had gone to great lengths to ensure that the suspects were detained under humane conditions and not subjected to torture.

The official would not discuss any legal directive under which the agency operated, but said that the "CIA has existing authorities to lawfully conduct these operations."

The official declined to be identified but agreed to discuss the program to rebut assertions that the United States used the program to send people secretly to other countries for the purpose of torture.

The transfers were portrayed as an alternative to what American officials have said is the costly, manpower-intensive process of housing them in the United States or in American-run facilities in other countries.

In recent weeks, several former detainees have described being subjected to coercive interrogation techniques and brutal treatment during months spent in detention under the program in Egypt and other countries. The official would not discuss specific cases, but did not dispute that prisoners had been mistreated in some instances. The official said none had died.

The official said the CIA's inspector general was reviewing the rendition program as one of at least a half-dozen inquiries under way within the agency into possible misconduct involving the detention, interrogation and rendition of suspected terrorists.

In public, the Bush administration has refused to confirm that the rendition program exists, saying, in response to questions about it, only that the United States did not hand over people to face torture.

The official declined to say how many prisoners had been transferred as part of the program. But former government officials say that, since the Sept. 11 attacks, the CIA has flown 100 to 150 suspected terrorists to other countries, including Egypt, Syria, Saudi Arabia, Jordan and Pakistan.

Each of those countries has been identified by the State Department as habitually using torture in its prisons. But the official said that guidelines enforced within the CIA required that no transfer take place before the receiving country provided assurances that the prisoner would be treated humanely, and that U.S. personnel were assigned to monitor compliance with those promises.

"We get assurances, we check on those assurances, and we double-check on these assurances to make sure that people are being handled properly in respect to human rights," the official said. The official said that compliance had been "very high" but added, "Nothing is 100 percent, unless we're sitting there staring at them 24 hours a day."

It has long been known that the CIA has held a small group of high-ranking Qaeda leaders in secret sites overseas, and that the U.S. military continues to detain hundreds of suspected terrorists in Guantánamo Bay, Cuba, and in Afghanistan. The rendition program was intended to augment those operations, according to former government officials, by allowing the United States to gain intelligence from the interrogations of the prisoners, most of whom were sent to their countries of birth or citizenship.

Before the Sept. 11 attacks, the CIA was authorized by presidential directives to carry out renditions, but under rules much more restrictive than those now in place. In most instances in the past, the transfers of individual prisoners required review and approval by interagency groups led by the White House. Such transfers were usually authorized to move prisoners to the United States or to other countries to face criminal charges.

As part of its broad new latitude, current and former government officials say, the CIA has been authorized to transfer prisoners to other countries solely for the purposes of detention and interrogation. The covert transfers by the CIA have faced criticism, in part because of the former prisoners' accounts in which they say they were beaten, shackled, subjected to electric shocks and otherwise mistreated during their long detentions in foreign prisons before being released without being charged.

The New York Times

Even when the media reports on 'our' use of torture, the criticism is usually softened (ii)

This article (from the *International Herald Tribune*), appeared **three years after** the *Washington Post* article (reprinted in the *IHT*— see the previous page) announcing Rendition

As you read this article:

1. Despite evidence from a number of reliable sources (including the earlier article) that this policy authorises the use of torture, the headline refers to "mov(ing)" and not to "torturing" prisoners
2. In paragraph 1, the article describes 'Rendition' as a programme under which "suspected terrorists" are imprisoned and "interrogated"
3. The only time the article uses the word "torture" is in charges by other groups and categorical denials by the US administration
4. Later in the article (paragraph 4), a Senior US official specifies that the policy is applied to those "suspected of having knowledge of" terrorists. How "suspected of" & "having knowledge of" are defined is comfortingly vague.
5. The legal and moral implications of this policy (described as "...central to the government's efforts to disrupt terrorism") are not considered by the writers
6. If the use of torture is *not* the objective, why are the countries to which prisoners are "moved" only those that practice torture?
7. Nowhere are we reminded (from paragraph 2 of previous article) that "US intelligence agents remain closely involved [a nice euphemism meaning 'active participants'] in the interrogation"
8. The assertion (in paragraph 14) that "most... prisoners... were sent to their countries of birth or citizenship subtly reminds the reader of their Arabic 'otherness'"

8
+
9
10
11
12
13
14
15
16

CIA ■ By Michael Scheuer

Exporting detainees

WASHINGTON

As Congress and the news media wail about the Central Intelligence Agency's "rendition" program — its practice of turning suspected terrorists over for detainment and questioning in third countries — it is time to focus on the real issue at hand. A good starting place is Page 127 of the tablets on which are inscribed the scripture handed down by the 9/11 commission.

Here we find a description of a 1998 conversation between U.S. National Security Director Samuel Berger and his counterterrorism chief, Richard Clarke, about the capture of Abu Hajer al Iraqi, the "most important bin Laden lieutenant captured thus far." According to the report, Clarke commented to Berger "with satisfaction that August and September had brought the 'greatest number of terrorist arrests in a short period of time that we have ever arranged or facilitated.'" Part and parcel of this success, the men make clear, were the renditions of captured Qaeda terrorists.

Neither Clarke nor Berger were CIA officers. They were senior White House officials who — in consultation with President Bill Clinton — set America's policy on Al Qaeda from 1993 to 2001.

They told the CIA what to do, and decided how it should pursue, capture and detain terrorists. They knew that Abu Hajer al Iraqi was being brought to the United States for trial, and they knew — and approved — of the rendition of his compatriots to Egypt and elsewhere. Having failed to find a legal means to keep all the detainees in American custody, they preferred to let other countries do America's dirty work.

Why does this matter? Because it makes clear that in dealing with detainees in 1998, and today as well, the CIA is following orders from the president and his National Security Council advisers. Likewise, in 1998 and today, the agency is executing operations under those orders only after they are approved by a vast cohort of lawyers at the security council, the Justice Department and the CIA itself.

I know this because, as head of the CIA's bin Laden desk, I started the Qaeda detainee/rendition program and ran it for 40 months. And in my 22 years at the agency I never saw a set of operations that was more closely scrutinized by the director of central intelligence, the National Security Council and the congressional intelligence committees. Nor did I ever see one that was more blessed (plagued?) by the expert guidance of lawyers.



For now, the beginning of wisdom is to acknowledge that the non-CIA staff members mentioned above knew that taking detainees to Egypt or elsewhere might yield treatment not consonant with United States legal practice. How did they know?

Well, several senior CIA officers, myself included, were confident that common sense would elude that bunch, and so we told them — again and again and again. Each time a decision to do a rendition was made, we reminded the lawyers and policy makers that Egypt was Egypt, and that Jimmy Stewart never starred in a movie called "Mr. Smith Goes to Cairo."

They usually listened, nodded, and then inserted a legal nicety by insisting that each country to which the agency delivered a detainee would have to pledge it would treat him according to the rules of its own legal system. So as the hounding of the CIA and the calls for its officers' blood continue, a few things must be made clear — all the more so if the government is really considering the renditions of many detainees now held at Guantánamo Bay, Cuba.

First, the agency is peculiarly an instrument of the executive branch. Renditions were called for, authorized and legally vetted not just by the National Security Council and the Justice Department, but also by the presidents — both Clinton and George W. Bush.

In my mind, these men and women made the right decision — America is better protected because of

renditions — but it would have been better if they had not lacked the bureaucratic and moral courage to work with Congress to find ways to bring all detainees to America.

Second, the rendition program has been a tremendous success. Dozens of senior Qaeda fighters are today behind bars, no longer able to plot or participate in attacks. Detainee operations also netted an untold number of computers and documents that increased our knowledge of Al Qaeda's makeup and plans.

Third, if mistakes were made, like the alleged cases of innocent detainees, they should be corrected, but the CIA officers who followed orders should not be punished. Perfection is never attainable in the fog of war, and any errors should not distract from the overwhelming success of the program.

All Americans owe a debt of gratitude to the men and women of the agency who executed these presidentially requested and approved operations, often at the risk of their lives.

Unfortunately, rather than receiving thanks, the CIA officers are again learning the usual lesson: to follow orders, make America safer and prepare to be abandoned and prosecuted when the policy makers refuse to defend their own decisions.

Michael Scheuer is the author of "Imperial Hubris: Why the West Is Losing the War on Terror."

1. Written by someone who was in a position to know (the CIA officer responsible for the Rendition programme), the essay clearly states that the policy was "authorised [...] by the National Security Council, the Justice Department and by presidents Clinton and Bush" (paragraphs 10 and 14)

2. Although this self-serving essay argues in favour of the policy of 'Rendition', it never refers directly to torture, but uses only the vague phrase "let[ting] other countries do America's dirty work". Any reader not already aware that detainees are tortured under this programme could read this essay and still not know it.

3. Scheuer acknowledges that it was well known that individuals 'rendered' to other countries would be subject to torture (paragraph 8) — although this admission is disguised behind the assurance that "each country to which the agency (the CIA) delivered a detainee would have to pledge it would treat him according to the rules of its own legal system". To appreciate the implications of this nice-sounding phrase, the reader of this essay would have to be aware that "the rules of [the] legal system" in these countries do permit torture

4. Dismissing evidence that innocents have been 'rendered' ("if mistakes were made", paragraph 13), he argues that CIA agents should not be held accountable ("punished") because the programme is authorised by the president

On court, U.S. focus shifts to shielding top aides

By Elizabeth Becker

The New York Times

WASHINGTON: The Bush administration is shifting its emphasis in seeking exemptions for Americans from the jurisdiction of the International Criminal Court, telling European allies that a major reason is to protect the country's top leaders from being indicted, arrested or hauled before the court on war crimes charges, administration officials say.

In most of their public utterances, administration officials have said that they feared American soldiers might be subject to politically motivated charges. But in private discussions with allies, officials say, they are now stressing deep concerns about the vulnerability of top civilian leaders to international legal action.

As an example, a senior official pointed to the legal actions brought against former Secretary of State Henry Kissinger in Chilean and American courts. The actions were brought by people who accuse Kissinger of aiding in the

1973 Chilean coup and in the ensuing 17-year dictatorship of General Augusto Pinochet.

"The soldiers are like the capillaries, the top public officials — President Bush, Secretary Rumsfeld, Secretary Powell — they are at the heart of our concern," the senior official said. "Henry Kissinger, that's what they really care about."

"They don't really care about the Lieutenant Calleys of the future," added the official, referring to William Calley, who was given a life sentence by a U.S. military jury for the 1968 My Lai massacre in Vietnam, but then paroled.

Officially, the White House on Friday repeated what its spokesmen have said in public speeches and statements: that their primary concern is that American soldiers, and not public officials, would be brought before the court on politically motivated charges.

But they also said that the notion of protecting top officials has always been part of their opposition to the court, which was established this year to pro-

secute those charged with genocide and crimes against humanity.

"We do not make the distinction between ranks here," said Sean McCormack, a spokesman for the National Security Council. "Our concern is politicized prosecutions of everyone — our servicemen and women and government officials."

America is concerned over the vulnerability of civilian leaders to international legal action.

State Department officials also acknowledged the concern about protecting top American officials and pointed to a speech in May by Mark Grossman, undersecretary of state for political affairs, who said the administration "must ensure that our soldiers and government officials are not exposed to the prospect of politicized prosecution and investigations."

Using this new argument about se-

nior officials has been persuasive, the senior Bush administration official said, and the government has won initial agreement from two European allies to sign an exemption saying all American soldiers, officials and civilians are outside the reach of the court.

The administration is pressing hard to persuade all countries that are party to the court to sign accords to exempt Americans from the court's jurisdiction. The court is the first permanent international body to be able to try people charged with genocide and other crimes against humanity.

Human rights groups that monitor the court debate say that the administration has been reluctant to acknowledge its concern over anyone but the common soldier.

"They weren't explicit about this, but everyone knew they were nervous about Pinochet and Henry Kissinger," said Elisa Massimino, of the Lawyers Committee for Human Rights.

There were hints of the administration's current emphasis three years ago

in an article by John Bolton, undersecretary for arms control and international security and the administration's point man for the court.

"The main concern should be for the president, the cabinet officers who comprise the National Security Council, and other civilian and military leaders responsible for our defense and foreign policy," he wrote in the magazine *National Interest*. "They are the potential targets of the politically unaccountable prosecutor created in Rome," referring to the Rome treaty that created the court.

The European Union, which strongly supports the court, is trying to find a compromise with the United States that neither undermines the court nor alliances at a time when the administration is also pressing Europe to support its campaign against terrorism and any action against Iraq.

"We always figured that the Kissinger precedent was behind this outrageous position," said a senior diplomat whose country is a strong supporter of the court. "But it has taken some time for the Americans to admit it."

Largely partisan vote confirms Gonzales as attorney general

By Eric Lichtblau

WASHINGTON: Alberto Gonzales, a longtime adviser to President George W. Bush who rose from poverty to shape the White House's aggressive response to the Sept. 11 attacks, has won confirmation as the first Hispanic U.S. attorney general, despite protests from Senate Democrats over his record on torture.

The Senate approved his nomination Thursday on a largely party-line vote of 60 to 36, with six Democrats crossing the aisle to vote with Republicans.

The vote, with much stronger opposition than many lawmakers had predicted when Gonzales was nominated for the post in November, reflected the deep divisions between Republicans and Democrats over the Bush administration's counterterrorism policies and whether those policies had led to the abuse of prisoners in Iraq and elsewhere.

Vice President Dick Cheney swore in the soft-spoken Gonzales, 49, as attorney general in a small ceremony at the Roosevelt Room at the White House shortly after the Senate vote.

Bush, who was traveling, also called to congratulate his friend and senior adviser. "The president knows that Judge Gonzales will make an outstanding attorney general," said Erin Healy, a White House spokeswoman.

But after three days of rancorous debate over Gonzales's nomination, Democrats characterized the vote as a strong statement of opposition to the Bush administration's aggressive policies on the detention and treatment of prisoners in the campaign on terrorism. With all but six of 41 Democrats present on Thursday voting to oppose Gonzales, he received even fewer votes from Democrats than

did John Ashcroft in his 2001 confirmation vote for attorney general. Eight Democrats voted for Ashcroft in his 58-to-42 confirmation, which was the closest vote for the post since 1925.

The six Democratic senators voting to confirm were Mary Landrieu of Louisiana, Joe Lieberman of Connecticut, Bill Nelson of Florida, Ben Nelson of Nebraska, Mark Pryor of Arkansas and Ken Salazar of Colorado.

As the chief U.S. law enforcement officer, Gonzales, a Harvard Law School graduate who served for the last four years as White House counsel to Bush, takes control of a Justice Department facing widespread uncertainty over the administration's antiterrorism policies.

He becomes the chief lobbyist in the effort to persuade Congress to extend key provisions of the USA Patriot Act that are set to expire at the end of 2005.

The initiative is one of the White House's top legislative priorities, but many Democrats and some Republicans have pushed to curtail the sweeping powers granted to the federal government in the legislation, which was passed weeks after the Sept. 11 attacks.

He also will have to grapple with a series of court decisions from the Supreme Court and lower appellate courts that have cast doubt on the administration's powers to imprison foreign prisoners at Guantánamo Bay and other terror suspects.

After Bush tapped Gonzales as his attorney general less than two months ago, several major Democratic leaders voiced initial support for him as attorney general, calling him a man of intellect and integrity.

But support for Gonzales clearly waned after his confirmation hearing last month, as Democrats accused him of being evasive and "stonewalling" in

his answers about the Bush administration's policies on the treatment of foreign prisoners in Iraq, Afghanistan and Guantánamo Bay, and his role in developing them.

Even some Republican leaders who supported his nomination said they thought his performance was lacking in some respects and probably hurt his cause.

Senator Edward Kennedy, Democrat of Massachusetts, who has been one of Gonzales's toughest critics, said it was "a sad day for the Senate" to confirm "a person who was at the heart of the policy on torture that has so shamed America in the eyes of the whole world and has so flagrantly violated the values

we preach to the world."

He and other Democrats focused their attacks on two legal opinions linked to Gonzales: a 2002 memo that he drafted calling some provisions of the Geneva conventions "quaint" and "obsolete," and a Justice Department memo written to Gonzales that same year that gave a very narrow definition of torture and a broad reading of presidential power to detain enemies.

The administration has disavowed that Justice Department opinion in favor of a broader definition of torture, but Democrats said the legal interpretations showed Gonzales to be too much of a loyalist to Bush to be an independent attorney general because of his re-

fusal to question legal policies that were later deemed excessive.

Republicans were clearly exasperated by the attacks.

Senator Orrin Hatch, Republican of Utah, the former chairman of the judiciary committee, noted that some of his colleagues had said they would oppose confirmation because Gonzales did not have the proper respect for the law.

Grimacing, Hatch said, "Give me a break."

Gonzales's Republican defenders accused Democrats of distortions of the nominee's record and said he was being unfairly tarnished for policies that were often outside his control.

The New York Times

Note that, before reminding the reader of Gonzales's role in draughting these policies, the article quotes President Bush's praise of Gonzales as "an outstanding attorney general" (paragraph 5) and "several major Democratic leaders" who called Gonzales "a man of intelligence and integrity" (paragraph 12). Only after these accolades, is the reader reminded (albeit very subtly) of Gonzales's role in draughting policies widely agreed to be contrary to the Geneva Convention on the lawful treatment of prisoners.

Note that the only reference to Gonzales's testimony during the confirmation hearings describes his performance ("evasive", "stonewalling", "lacking in some respects"), rather than his answers to these charges or his replies to any of the questions put to him.

Also note that the only response of Republican senators to the serious allegations against the new Attorney General (paragraph 20) reported in the article is "Give me a break".

Considering his role in draughting the policies on 'Rendition' and the treatment of foreign prisoners in Iraq, Afghanistan and Guantánamo Bay (paragraph 13), after reading the previous article (*On court, U.S. focus shifts to shielding top aides* the International Herald Tribune), do you suspect that the new Attorney General may be one of the "top aides" the administration want to protect from "frivolous", "capricious" or "malicious" prosecutions?