

WHEN WILL WE STOP FIGHTING TERROR WITH TORTURE? March 1, 2005

Ever since the disaster of 9/11, the U.S. Government has been detaining individuals whom it suspects of involvement with terrorism. In this country and abroad, it has held the vast majority of them for many months and even years without charging them, much less giving them the right to defend themselves. So Ahmed Omar Abu Ali should consider himself lucky. This bright young American, who graduated as valedictorian from the Islamic Saudi Academy in Alexandria, Virginia in 1999, has just been indicted for his alleged involvement in an Al Qaeda plot to assassinate President Bush.

Since the Islamic Academy has been suspected of breeding jihadist sentiment and since Abu Ali travelled to Saudi Arabia in 2002 in order to study, he could be guilty as charged. But prosecutors face two major hurdles in building a case against him. One is that their star witness was killed by Saudi authorities seventeen months ago. The other is that during the twenty months in which he was held without charge by Saudi authorities (who have just now turned him over to the U.S.), he may have been tortured—with full knowledge of American officials. He claims that he was whipped for three straight days, held for months in solitary confinement, and deprived of food—all of which the Justice Department calls “utter fabrication.”

If he was tortured, as his parents allege in a lawsuit on which a federal judge has ruled at least partly in their favor, nothing that he said in Saudi detention can be held against him, and nothing said against him by any other detainee who may have been tortured in Saudi Arabia can stand up in an American court. That is just one of the many prices we pay for trying to fight terrorism with torture.

Besides crippling our prosecution of would-be terrorists, the covert practice of outsourcing torture—exquisitely termed “extraordinary rendition” --has exposed the U.S. Government to

ugly lawsuits. The Center for Constitutional Rights in New York has just filed suit on behalf of a Syrian-born Canadian engineer named Maher Arar, who was seized by American officials at Kennedy airport in September 2002 because one of his co-workers happened to be the brother of a suspected terrorist. Without ever being charged with any crime, he was sent by U.S. government orders to Syria, where he was buried alive in a windowless underground cell and tortured beyond his capacity to describe the pain—at which point he told his torturers anything they wanted to hear. Miraculously, he survived his ordeal and was released in October 2003 by the Syrians, who found nothing to link him with terrorism. Will he get his day in court? Good luck. Our government says that Mr. Arar’s claims cannot be adjudicated because they “would involve the revelation of state secrets.”

But it is no secret that ever since 9/11, we have authorized the torture of terrorist suspects around the world—even while solemnly denying it. On January 27 of this year, President Bush told the New York Times that “torture is never acceptable, nor do we hand over people to countries that do torture.” The second part of this statement concisely restates a U.S. policy established by law in 1998. Yet according to Scott Horton, an expert on international law who helped to write a report on renditions that was issued by N.Y.U. and the New York City Bar Association, the U.S. government since 2001 has delivered 150 people to countries that “do torture.” The last thing our government wants is for this particular state secret to be examined in open court.

Nor does our government want us to know anything like the whole truth about Guantanamo Bay, Cuba, where about 550 detainees remain directly under American control and subject to interrogation techniques that the Red Cross has called “tantamount to torture.” According to FBI documents, Guantanamo prisoners have been beaten, strangled, burned in the ear with lit cigarettes, and chained by hand and foot to the floor with no food, water, or access to a toilet for 24 hours or more. The FBI documents also indicate that authorization for these practices came from Defense

Secretary Donald Rumsfeld, who was so shocked by the scandal of Abu Ghraib that he offered to resign his post but who was persuaded to remain by President Bush.

The president himself has coined—or at any rate minted—the key phrase used to justify the abuse of detainees: “enemy combatant.” During the Congressional hearings that led to her confirmation as Secretary of State, Condoleezza Rice insisted that enemy combatants do not deserve the protections of the Geneva Convention. Strangely enough, no one called her on the assumption that underlies this claim. In classifying anyone as an “enemy combatant” who can be held indefinitely without trial or charge and has no right to be treated humanely, the Bush administration has pulverized a bedrock principle of American law: the presumption of innocence. Our indefinite detention of suspects is founded on a presumption of their guilt, and the chief purpose of our “techniques of interrogation” is to confirm that presumption by compelling them to say what their interrogators want to hear. All of this re-confirms the wisdom of another basic principle of American justice: no one may be compelled to testify against himself. No testimony obtained by torture—or by means “tantamount to torture”—could stand the light of an American court.

Where does this leave us? Along with a new Attorney General who has argued that terrorism suspects captured abroad are entitled to no more in our custody than the right to bare survival, we now have a Secretary of State who condones torture and a Secretary of Defense who has authorized it, and we have a president who warmly supports all three of them. What we don’t have is a single shred of evidence that torture has gained us anything at all in the war against terrorism, or has brought us anything more than disgrace and resentment around the world. At the very least, it has seriously damaged—if not mortally wounded—our moral authority, our capacity to speak for open, honest governance and respect for human rights.

Edmund Burke famously declared that the only thing necessary for the triumph of evil is for good men to do nothing. Now that the torturers have done their worst, it is time for good men and women to act. Two bills coming down the legislative pipeline can help us do so. One would require a full and independent investigation of prisoner abuse at all U.S. run detention centers; the other would ban all outsourcing of torture. If you share my conviction that nothing—not even the war against terrorism—can justify U.S. involvement in torture, then I urge you to tell your senators and representatives that they must do everything possible to stop it.