

More evidence of US government's torture by proxy

By Joseph Kay
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Over the past year, mounting evidence has surfaced on Washington's systematic use of torture against prisoners in Guantanamo Bay and Iraq. Another aspect of this policy is the transfer of prisoners by the CIA and other US government agencies to countries where they will be subject to torture. Known as "extraordinary rendition," the practice is complemented by the CIA's own highly secret detention facilities around the world, which are operated outside of any legal framework.

In an article in the February 14 issue of *The New Yorker*, "Outsourcing Torture," journalist Jane Mayer documents the increased use of rendition since 2001. Mayer notes that while before September 11 rendition was carried out on a limited basis, over the past four years it has come "to include a wide and ill-defined population the Administration terms 'illegal enemy combatants.'" One estimate is that 150 people have been rendered since 2001.

Both the international Convention Against Torture (CAT), ratified by the US in 1994, and domestic US law passed subsequent to that treaty prohibit the transfer of prisoners to countries where there is "substantial grounds for believing" they will be tortured. However, in 1995 President Clinton signed a presidential directive authorizing the CIA to render prisoners, and the agency has used the "substantial grounds" clause as a loophole to ignore legal constraints.

The CIA's use of torture—both directly and by proxy—is an open secret. The *New York Times* reported in May 2004 that after the attacks of September 2001, the Justice Department and the CIA established a set of rules for the treatment of CIA prisoners. Included in the list of acceptable methods was "water boarding," a notorious technique used by interrogators in which a prisoner's head is repeatedly submerged in water to convince him that he will drown if he does not speak.

The *Washington Post* reported in December 2004 that the agency was using a particular Gulfstream 5 turbojet, with authorization to land in US military bases worldwide, for transporting prisoners to different countries.

The Bush administration's February 7, 2002, policy memorandum announcing that Taliban and Al Qaeda prisoners would not be granted POW status under the Geneva Conventions states that the "United States Armed Forces" must

treat prisoners humanely only "to the extent appropriate and consistent with military necessity." It says nothing about the CIA. In his confirmation hearings before the Senate, Attorney General Alberto Gonzales stated that the CIA is not prohibited from using cruel and inhumane methods, so long as it is done outside of the US.

The White House and its congressional allies have blocked legislation in the Senate that would ban the CIA from torturing foreign prisoners. [See "White House blocked Senate ban on torture"]. An effort in the House to specifically outlaw rendition has also failed.

It was the CIA that made the request that ended in the now infamous "torture memo," signed by then Assistant Attorney General Jay Bybee, which defined torture so narrowly as to allow the widest range of methods. Bybee signed another as yet unreleased memo dated March 13, 2002, entitled "Re: The President's Power as Commander in Chief to Transfer Captured Terrorists to the Control and Custody of Foreign Nations." Judging from the contents of the memos written around the same time, there can be little doubt that this memo argued that the president as commander in chief has the authority to override international law and order renditions to countries that practice torture as part of the "war on terror."

One of the most favored countries for the CIA's rendition program has been Egypt, a close US ally whose intelligence agency is notorious for its brutal treatment of prisoners. Mayer quotes Michael Scheuer, a former CIA counter-terrorism expert and author of the recent book, *Imperial Hubris*, as noting that some of the early Al Qaeda suspects that the CIA was interested in interrogating were also Egyptian and had been involved in the assassination of the Egyptian leader Anwar Sadat. "It served American purposes to get these people arrested," Scheuer noted, "and Egyptian purposes to get these people back, where they could be interrogated."

Mayer writes, "The partnership between the American and the Egyptian intelligence services was extraordinarily close: the Americans could give the Egyptian interrogators questions they wanted put to detainees in the morning, Scherer said, and get answers by the evening."

Other countries to which prisoners have been sent include Syria, Saudi Arabia, Uzbekistan and other dictatorships known

for practicing torture.

One of the early cases of rendition was the 1998 arrest in Albania of Shawki Salama Attiya, a suspected member of Al Qaeda, and four others, all of whom were sent to Egypt. According to Mayer, "Attiya later alleged that he suffered electrical shocks to his genitals, was hung from his limbs, and was kept in a cell in filthy water up to his knees." Similar techniques would later be revealed in the photographs taken at the Abu Ghraib prison in Iraq.

In her article, Mayer interviewed Dan Coleman, a former FBI agent who worked with the CIA on terrorism-related cases. He said that, while the policy of rendition was bad before September 11, "afterward, it really went out of control." Torture "has become bureaucratized."

"Coleman," writes Mayer, "said that since September 11 the CIA 'has seemed to think it's operating under different rules, that it has extralegal abilities outside the US.' Agents, he said, have 'told me that they have their own enormous office of general counsel that rarely tells them no. Whatever they do is all right. It all takes place overseas.'"

The CIA has been encouraged by the administration to regard its actions as above the law. In addition to the Bybee memo on torture, administration lawyers have sought to undermine any legal protection for prisoners held by the United States, including the Geneva Conventions. Alongside Mayer's article, *The New Yorker* posted on its web site previously unreleased memos that document the contempt held by Justice Department and White House lawyers for international and domestic legal constraints.

One of the lawyers closely involved in the administration's attack on legal constraints was John Yoo, the former deputy assistant attorney general. In an interview with Mayer, Yoo revealed the thinking of the administration and the CIA. "Why is it so hard for people to understand that there is a category of behavior [terrorism] not covered in the legal system?" Yoo asked. He stated that Congress does not have the power to "tie the President's hand in regard to torture as an interrogation technique.... It's the core of the Commander-in-Chief function. They can't prevent the President from ordering torture."

In recent months, several cases of rendition have come to light, in part because the US has been forced to release some individuals who obviously had no connection with terrorist activities.

One case detailed by Mayer sheds light on one of the main purposes of the rendition program. Ibn al-Sheikh al-Libi, a suspected bin Laden associate who had been running a training camp in Afghanistan, was captured a few months after September 11.

Citing an interview with former FBI official Jack Cloonan, Mayer reports that the CIA then rendered Libi to Egypt. "He was seen boarding a plane in Afghanistan, restrained by handcuffs and ankle cuffs, his mouth covered by duct tape.... After Libi was taken to Egypt, the FBI lost track of him."

The information obtained by the CIA from Egyptian authorities was critical, not because it helped in the supposed "war on terrorism," but because it helped the US in its manufactured case for war against Iraq. In his speech before the UN in February 2003, Secretary of State Colin Powell presented the "evidence" that the US had regarding the supposed existence of Iraqi weapons of mass destruction and ties between the Hussein regime and Al Qaeda.

"In his speech," writes Mayer, "Powell did not refer to Libi by name, but he announced to the world that 'a senior terrorist operative' who 'was responsible for one of Al Qaeda's training camps in Afghanistan' had told US authorities that Saddam Hussein had offered to train two Al Qaeda operatives in the use of 'chemical or biological weapons.'"

According to a *Newsweek* report from last summer, the source for Powell's comments was Libi, even though Libi was in no position to know anything about supposed ties between Al Qaeda and Hussein, and he later recanted. Mayer quotes the response of Coleman to the revelations: "Administration officials were always pushing us to come up with links [between Iraq and Al Qaeda], but there weren't any. The reason they got bad information is that they beat it out of him."

Another case is that of Mhaled el-Masri, a German citizen born in Lebanon. According to a January 14 article in the British *Guardian* newspaper, Masri was seized while in Macedonia in January 2004. He was "held incommunicado for weeks [by Macedonian police] without charge, then beaten, stripped, shackled and blindfolded and flown to a jail in Afghanistan, run by Afghans but controlled by Americans."

Canadian citizen Maher Arar faced a similar situation. Arar, who had no ties to any terrorist organization, was captured in New York in September 2002 and sent to Syria, where he was tortured.

Australian citizen Mamdouh Habib was recently released from Guantanamo Bay, where he was held without charges for nearly three years. Habib was arrested in Pakistan in October 2001, just before the beginning of the US war against Afghanistan. In Pakistan, he was beaten by US interrogators, before being sent to Egypt, where he was held and tortured for six months.

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