

Bush-Cheney 'Torture-by-Proxy' Policy Under Growing Exposure

by Edward Spannaus

The Bush-Cheney Administration's policies of direct torture, and what has been termed torture-by-proxy, are likely to dominate upcoming pre-trial proceedings, growing out of the Feb. 22 indictment against a U.S. citizen who had been detained by Saudi authorities for 20 months, at the request of the United States.

These bizarre developments in the case of Ahmed Omar Abu-Ali, who was charged with engaging in a conspiracy to assassinate President Bush, come as increasing attention is being focussed on the practice of "extraordinary rendition"—in which the U.S. government, specifically the Department of Defense, "outsources" interrogation and torture to certain countries which the State Department has otherwise regularly cited for human rights violations.

Three other notable examples of this practice—among what legal experts consider to be at least 150 such cases—which have drawn significant attention in recent weeks, are the following:

Mamdouh Habib: Habib is a 49-year-old Egyptian-born Australian citizen who was arrested in Pakistan in October 2001, and subjected to brutal physical torture, including electrical shocks, while in U.S. custody in Pakistan, Egypt, and Afghanistan, as a result of which he uttered false confessions. Habib was then taken to Guantanamo in May 2002, where he was subjected to psychological torture, including threats to his family, and sexual and religious humiliation by female interrogators. His "confessions" extracted under torture in the other countries, were also used by the interrogators at Guantanamo. Habib was freed in January and sent back to Australia, where he was reunited with his wife and four children.

Maher Arar: A 34-year-old Canadian citizen and engineer, Arar was detained at JFK Airport in New York in September 2002. After being jailed and interrogated, he was shackled and put on an executive jet, on which the American crew called themselves the "Special Removal Unit." He was taken to Jordan, then to Syria, where he was tortured, and kept in a rat-infested, grave-like underground cell. After months of vicious torture and interrogation, the Syrians concluded that Arar had no links to terrorism, which they have stated publicly. Arar was finally released in October 2003, with no charges having been brought against him, and he now lives again, with his nightmares, in Canada.

Khaled al-Masri: Al-Masri is a 41-year-old Lebanese-born German citizen, who was abducted in Macedonia in December 2003, and taken by Americans to an unknown prison location, which he believed to be in Kabul, Afghanistan. While he was at the prison, where he was regularly beaten, there were a number of men he thinks were American, including a doctor. After he had begun a hunger strike, and was in his 35th day, a prison guard told him, "The Americans don't care if you live or die." After five months of such treatment, he was released.

On Jan. 9, 2005, the *Sunday New York Times* published a lengthy account of this case, based on interviews with al-Masri and with German officials investigating the case, who stated that they believed al-Masri's account. *Newsweek* magazine reports in its current issue that it has obtained flight plans filed with German aviation authorities, of a Boeing 737 operated by an apparent CIA-front company in the United States, which conform to al-Masri's account. *Newsweek* also said that German Interior Minister Otto Shily recently visited CIA Director Porter Goss to discuss the case, and asked for an apology from the United States.

Pentagon or CIA?

The *modus operandi* in these and a number of other cases, is remarkably similar, in that suspects are taken aboard one of two identified planes—a Gulfstream executive jet, and a Boeing 737—owned by the same fictitious front-company, Premier Executive Transport Services, and flown to third countries for interrogation. A number of news sources have diligently tracked the comings and goings of these planes, especially the Gulfstream jet, which included frequent stops at Dulles Airport near Washington, D.C., and also Guantanamo. While most news organizations assume that it is the CIA which is operating these mystery flights, the *Chicago Tribune* reported on Jan. 8 that the executive jet is actually operated by the military's Joint Special Operations Command (JSOC), headquartered at Fort Bragg.

The above-cited *Newsweek* article also reports that the CIA thinks that it is being exposed to legal peril by the White House. Late last year, then-White House Counsel Alberto Gonzales repudiated the most infamous of the Justice Department "torture memos," which had been drafted in response to a CIA request for legal guidance on the handling of detainees.

Today, *Newsweek* notes, the Agency has dozens of detainees in its secret prison network that it doesn't know what to do with. A retired CIA official says that when the CIA had asked the White House in 2002 for legal guidance on how to dispose of these detainees, the answer was always, "We'll worry about that later."

To *EIR*'s knowledge, the entire "CIA" secret-detention operation has actually been conducted under the ultimate authority of Donald Rumsfeld's Defense Department, which has been designated the lead agency in the Administration's "Global War on Terrorism." Hanging the Agency out to dry, is perfectly consistent with Rumsfeld's drive to sideline the CIA and to have the military take over running all clandestine and covert operations.

The Abu-Ali Case

Although Ahmed Abu-Ali was not abducted and flown to Saudi Arabia by U.S. agents (he was arrested there in June 2003, while taking university exams), his case is in other respects quite similar to the "rendition" cases. However, because he is an American citizen, his family had access to the U.S. Federal court system, and as a consequence, the case had become a growing dilemma and embarrassment for the Bush Administration.

In July 2004, Abu-Ali's parents filed a *habeas corpus* petition in Federal court in Washington. Judge John Bates, a conservative Republican who had worked for special prosecutor Kenneth Starr in the campaign against President Bill Clinton, said in a December ruling that the family had provided evidence that Abu-Ali was being held in Saudi Arabia at the behest of the U.S. government, "to avoid constitutional scrutiny by United States court," and Judge Bates pointedly warned that "a citizen cannot be so easily separated from his constitutional rights."

Judge Bates further ruled that Abu-Ali's parents "have presented some un rebutted evidence, that Abu Ali's detention is at the behest and ongoing direction of the United States." Specifically, he stated, the family had introduced some evidence that the U.S. government had initiated the arrest of Abu Ali, that the U.S. had interrogated him, and that "Abu Ali has been subjected to torture with the knowledge of the United States.

Despite the government's demands, the judge refused to dismiss the *habeas* petition, and instead he authorized discovery of evidence concerning the U.S. government's role in Abu-Ali's detention.

At the end of January, under massive pressure, the State Department issued a formal *démarche* to Saudi Arabia, demanding that they either indict Abu-Ali or return him to the United States. On Feb. 11, the Justice Department again asked the judge to dismiss the case, claiming that their evidence, and even their legal arguments, must be kept secret. "This is about as close to a state-secrets shutdown as you can get," Bates said in court, challenging the government: "How able

is the court to resolve a matter fairly when it's only able to hear from you?"

On Feb. 21, the *Washington Post* ran an editorial called "Injustice, In Secret," blasting the Justice Department for seeking dismissal of the *habeas* petition, based on "not merely secret evidence but also on secret legal arguments." It concluded: "It should be unthinkable that the courts would resolve this matter without hearing from both sides on key legal questions. It should have been unthinkable for the government to propose such a step."

A Justice Department Diversion

It was under these pressures, that Abu-Ali was flown back to the United States from Saudi Arabia, and was taken to Federal court in Alexandria, Virginia, on Feb. 22, where the indictment was made public, charging him with engaging in a conspiracy to assassinate President Bush.

During the entire time that Abu-Ali was being held and tortured in Saudi Arabia, the U.S. government had never raised any such allegation. A number of those familiar with the case told *EIR* that no one had ever heard anything of the alleged "assassination plot" until the indictment was issued. In fact, to the contrary, the U.S. government had asserted on a number of occasions that it had no legal interest in the Saudi detention of Abu-Ali.

"The government is just trying to put out as much sensational stuff as they can, to divert attention from the case," attorney Morton Sklar said, referring to the *habeas corpus* proceeding.

David Cole, another attorney in the *habeas* case, told the *New York Times*, "I suspect it's no coincidence that this man sat in detention for 20 months until a federal judge in the United States was threatening to require the American government to disclose its arrangements with the Saudi government for holding him."

The indictment carries charges that could result in an 80-year prison sentence. If the government ends up taking the case to trial, indications are that its case will depend heavily, if not solely, on evidence obtained from Abu-Ali or co-conspirators while in Saudi custody, where they were reportedly tortured. But, as attorney Cole told *EIR*, it is well-established in U.S. law "that evidence obtained through coercion is inadmissible, no matter who committed the coercion," because it is known to be unreliable.

There are a number of reports that there were sharp disputes within the Justice Department as to whether to even bring the indictment in this case. But those who prevailed, may be hoping that they will never have to actually take the case to trial. It is typical of the way the Bush-Cheney Administration's Justice Department operates, to bring such heavy charges, with such lengthy sentences, in the hopes that the defendants will falsely plead guilty, rather than face the possibility of spending the rest of their lives in prison.