

Matt Yglesias

Jan 4th, 2010 at 3:35 pm

Strange Libertarians

I expect to disagree with Cato Institute personnel about matters related to taxes and environmental regulation, but it's really remarkable that a libertarian organization's Vice President for Legal Affairs and director of its Center for Constitutional Studies has [such a cavalier attitude](#) toward civil liberties:

So how did Obama treat the Christmas Day bomber al-Qaeda sent us? The way his mentor, Franklin Roosevelt, treated the German saboteurs who landed on our shores? **No — Abdulmutallab was “lawyered up,” read his Miranda rights, and encouraged to talk through his lawyer, like any common criminal.** Some say that approach — like calling him “the underwear bomber” — reduces a terrorist's stature. That's fine for the playground (as if the terrorists were seeking simply to join the community of nations). This is the real world.

I suppose this is better than the suggestion than the view that we should be [emulating Roosevelt's treatment of Americans of Japanese ancestry](#) but it certainly doesn't sound like [“Individual Liberty, Free Markets, and Peace”](#) to me.

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82 Responses to “Strange Libertarians”

1. *Says* Says:

[January 4th, 2010 at 3:39 pm](#)

What do Miranda rights have to do with protecting wealth? Nothing. So why should Cato care.

2. *DTM* Says:

[January 4th, 2010 at 3:41 pm](#)

This isn't a playground—it is a television show!

Anyway, I really don't get why people think it is being oh-so-sophisticated to dismiss straightforward analysis of what the terrorists are trying to achieve, in order to deny them the same.

3. *wiley* Says:

[January 4th, 2010 at 3:43 pm](#)

“Lawyered up”? This term has caught on. Whatever is to be gained by mocking our laws?

4. *Notorious P.A.T.* Says:
[January 4th, 2010 at 3:51 pm](#)

“Lawyered up”? This term has caught on. Whatever is to be gained by mocking our laws?

I am completely, totally certain that these civil liberties-deniers, if they were arrested, would waive their right to a lawyer. After all, the innocent have nothing to hide, right?

5. *Courtney H* Says:
[January 4th, 2010 at 3:53 pm](#)

Lawyering up...except for the fact that he has been chatting ever since he was placed under arrest. What a bunch of spineless cowards. As long as the enemy is THEM, these guys are all for racial/ethnic profiling, strip searches, torture, internment camps, and genocide.

6. *whiskey* Says:
[January 4th, 2010 at 3:56 pm](#)

This isn't the first time Roger Pilon has gone off the reservation. See: http://www.cato.org/pub_display.php?pub_id=9119

7. *Anthony Damiani* Says:
[January 4th, 2010 at 3:56 pm](#)

the enemy is THEM

Yes.

8. *Glenn* Says:
[January 4th, 2010 at 3:58 pm](#)

I cannot imagine what someone thinks would be achieved by treating this guy not as a criminal but as a combatant. Is there any question that he will be convicted? I mean, for God's sake, there was a plane full of witnesses, not to mention (I'm sure) a ton of forensic evidence (from his hands, clothes, etc). Christ, didn't he basically confess to the flight attendant? So, there's really no question he will be punished, probably by death — unless he provides some extremely useful information in a plea bargain. So what does trying him outside the criminal justice system accomplish? Torture? I mean, that's what we're talking about, isn't it? This Cato clown wants Abdulmutallab to be tortured. So just say so.

9. *James Gary* Says:
[January 4th, 2010 at 4:01 pm](#)

I cannot imagine what someone thinks would be achieved by treating this guy not as a criminal but as a combatant.

Possibly they hope to paint the present administration as “soft on terror.” Just a guess. 😊

10. *Kenny B.* Says:
[January 4th, 2010 at 4:02 pm](#)

A little tangential, but I think one of the most overlooked aspects of the “post 9/11” changes in the world is an increased activism of regular citizens when something goes awry. For instance, this panty-bomber was brought down by passengers on the plane. Basically, as soon as it becomes clear you're

going to attack, the wrath of the masses will likely fall on you.

As long as most people don't engage in preemptive attacking of "funny-looking" people (which they generally don't seem to do, but which legalized profiling would encourage), it seems to me like the most important security development. If you're unsure about the extent to which this changed mass consciousness helps our safety, just try to leave a suspicious package on a train.

11. *Pithlord* Says:

[January 4th, 2010 at 4:04 pm](#)

Keep bugging your Cato friends about this, Matt. Pilon should be working somewhere else. It's not like fraidy cats who want to get rid of the Constitution because of the remote chance of being killed in a terrorist attack lack voices.

12. *brewmn* Says:

[January 4th, 2010 at 4:08 pm](#)

Libertarians are Republicans. Full stop.

13. *Al* Says:

[January 4th, 2010 at 4:11 pm](#)

Pilon is exactly right. Abdulmutallab was talking – providing us intelligence – until he was Mirandized and given a lawyer. Now, the Obama Administration has wasted our opportunity to interrogate him.

It's a shame, because he might have provided us with some useful intelligence. But we'll never know, because the left-wing fetish of "civil liberties" for enemy combatant terrorists has deprived us of that opportunity. But of course, the Left Wing doesn't actually care about protecting us from terrorists – they only care about protecting the terrorists.

14. *Al* Says:

[January 4th, 2010 at 4:12 pm](#)

I cannot imagine what someone thinks would be achieved by treating this guy not as a criminal but as a combatant.

I cannot imagine what someone thinks would be achieved by treating this guy as a criminal, rather than a combatant.

15. *John I* Says:

[January 4th, 2010 at 4:15 pm](#)

As long as most people don't engage in preemptive attacking of "funny-looking" people (which they generally don't seem to do

Well unfortunately they sometimes [do](#).

16. *K* Says:

[January 4th, 2010 at 4:16 pm](#)

Libertarians are a diverse population. There are public-choice libertarians, paleolibertarians, etc. Pilon's a summary-execution libertarian.

17. *Rob Mac* Says:

[January 4th, 2010 at 4:18 pm](#)

Al has brilliantly seen through me, finally. I only care about protecting terrorists. That's me, to a T, left winger that I am.

Al, what the left cares about is protecting civil rights and the constitution. To bedwetting conservatives, these are easily dispensed with anytime some boogey man says "boo!"

brewmn, I've always heard it said that libertarians are Republicans who smoke pot.

18. *wiley* Says:

[January 4th, 2010 at 4:20 pm](#)

So is it just assumed that "treating someone like a combatant" means flouting the laws that apply to the treatment of combatants"?

How is that Patriot Act doing? Can the president still call anyone an "enemy combatant"?

19. *rmwarnick* Says:

[January 4th, 2010 at 4:20 pm](#)

I encourage people to read up on the incredible [Operation Pastorius](#), the June 1942 plan to land German saboteurs on Long Island.

It was a high-stakes competition between incompetent Americans and Germans, capped by a complete travesty of justice.

20. *UserGoogol* Says:

[January 4th, 2010 at 4:23 pm](#)

There's definitely people at Cato who seem sincere about their support of civil liberties, (Julian Sanchez, say) but the libertarian-conservative alliance runs deep, so you do get people like this sometimes.

21. *N* Says:

[January 4th, 2010 at 4:24 pm](#)

Good old libertarians. They pompously proclaim their ideological purity at the same time they consistently compromise those same principles as MY's post illustrates.

Libertarians are a joke. When they don't like the score, they simply move the goal-posts.

22. *Glaivester* Says:

[January 4th, 2010 at 4:29 pm](#)

I think that someone else here made a brilliant point. "The right to remain silent" doesn't mean we can't interrogate him, it just means that the results of any interrogation not following the standard rules can't be used against him at his trial (it can still be used against anyone else). Unless we think that we can't convict him based on what we already know, why is this a problem?

23. *Capital "L" Libertarian* Says:

[January 4th, 2010 at 4:29 pm](#)

Libertarians are Republicans. Full stop.

Go fuck yourself and die, brewmn. Full stop.

24. *iluvcapra* Says:

[January 4th, 2010 at 4:30 pm](#)

Libertarians are Republicans. Full stop.

Libertarians are Republicans who have an intellectual bent and have social contact with non-ignorant liberals and Democrats, and want to be able to blame someone else when the Republicans screw up. You can only really be a Republican at this juncture by either completely dissociating yourself with the national movement, by surrounding yourself with people who will never challenge you, or by being ignorant. Calling oneself a libertarian accomplishes the first and can aid in the second.

Libertarians really shouldn't kid themselves about this. Only the most foolish among them write-in Ron Paul, the rest, like all intelligent voters in a non-runoff ballot, pull the lever for the "least-undesireable."

25. *Jimo* Says:

[January 4th, 2010 at 4:34 pm](#)

Somehow, I don't remember Roosevelt sending German prisoners to kangaroo courts as those proposed by the Bush Administration — no right to an attorney, no right to know the charges against you, no right to know the evidence introduced against you let alone question it, no right to present your own conflicting evidence, etc. Bush proposed no "military tribunal" at least as established under statute and operating under U.S. and international law (hence the slapdown by the U.S. Supreme Court, which Cato is also giving the raspberry). The label attached to something does not change the substantive nature of the thing.

26. *Thom* Says:

[January 4th, 2010 at 4:34 pm](#)

Ha ha. Stupid libertarians! Libertarians are stupid! Go liberals!

27. *Barry* Says:

[January 4th, 2010 at 4:44 pm](#)

Al Says:

"Pilon is exactly right. Abdulmutallab was talking – providing us intelligence – until he was Mirandized and given a lawyer. Now, the Obama Administration has wasted our opportunity to interrogate him."

D*mn, Al, why didn't you tell us that you had inside information?

Oh, right – you don't

28. *Julian Fischer* Says:

[January 4th, 2010 at 4:49 pm](#)

I cannot imagine what someone thinks would be achieved by treating this guy as a criminal, rather than a combatant.

Al,

You weren't always so tendentious!

We don't want terrorists to enjoy the prestige or the glamor that comes with being designated as a warrior (or with being treated as a martyr.) It's something terrorists can exploit for propaganda and recruitment purposes.

This isn't airy speculation, either. Terrorists in the past have demonstrated how much they prize the symbolic value of titles like "soldier" and "warrior". They've killed themselves over this issue. Remember Bobby Sands? After his apprehension, this IRA killer and his colleagues literally *starved themselves to death* rather than wear the prison-uniform of a common criminal. It was their sole demand. Why do you think they did that?

29. Al Says:

[January 4th, 2010 at 4:51 pm](#)

*D*mn, Al, why didn't you tell us that you had inside information?*

I don't. Got that from the newspaper.

30. Al Says:

[January 4th, 2010 at 4:53 pm](#)

We don't want terrorists to enjoy the prestige or the glamor that comes with being designated as a warrior (or with being treated as a martyr.) It's something terrorists can exploit for propaganda and recruitment purposes.

Being waterboarded is a recruitment tool for them? OK!

31. claremont Says:

[January 4th, 2010 at 4:53 pm](#)

He's a crappy libertarian if he believes this, and CATO is failing at their role by employing him.

If he doesn't believe that detainees should get lawyers or trials, he would fit right in over at the Obama administration, maybe he can write some papers defending the continued operation of Bagram, the lack of trials for Guantanamo prisoners etc.

32. LaFollette Progressive Says:

[January 4th, 2010 at 5:03 pm](#)

"I cannot imagine what someone thinks would be achieved by treating this guy as a criminal, rather than a combatant."

Possibly because he committed a crime on American soil and was detained by law enforcement, rather than being captured on a battlefield and detained by the military.

And I suppose it's not even worth pointing out that treating someone as an "enemy combatant" means that he only has to give his name, rank, and serial number, we are bound by treaty obligations to return him to his home country after the cessation of hostilities, and we are not allowed to subject him to coercive interrogation.

Which is why, you may recall, your fave President ever went to a great deal of trouble to create a cute little authoritarian system in which to arbitrarily detain people without treating them as either criminals

OR combatants.

33. *Njorl* Says:

[January 4th, 2010 at 5:07 pm](#)

If his lawyer is any good, he has convinced the guy that he was caught in the act of a capital crime, and will face certain execution if he does not comply completely.

Just what exactly do people think his lawyer will do? Arrange bail? Get him off on a technicality? Tell him to clam up until they promise complete immunity for information?

The only thing the lawyer will do is try to get as much leniency for his client as he can by bartering every last scrap of intelligence the guy has. The lawyer has no interest at all in having his client hold back. Old intelligence is intrinsically less valuable.

By all accounts the guy is spilling it all. If he were left alone and unadvised, he might decide to be a martyr.

34. *Al* Says:

[January 4th, 2010 at 5:12 pm](#)

Possibly because he committed a crime on American soil and was detained by law enforcement, rather than being captured on a battlefield and detained by the military.

This doesn't tell us what is achieved by treating him as a criminal.

If we treated him as a combatant, we achieve the possibility of effectively interrogating him, which was thrown away by the Obama Administration.

35. *fostert* Says:

[January 4th, 2010 at 5:15 pm](#)

This is certainly a case where Miranda doesn't make much difference. A suspect can refuse to talk before he's Mirandized and he can refuse after. He can also talk before being Mirandized, and he can talk after. Miranda only applies to self incrimination, anything he says about co-conspirators is admissible in court regardless. This is a case requiring no confession of guilt because the evidence against him so ridiculously solid. So it really doesn't matter. Except for the lawyer part, which in this case is helpful. Any lawyer who represents this guy knows damn well he'll be convicted. So a good lawyer will encourage him to talk in exchange for taking the death penalty off the table. Without a lawyer present, Abdulmutallab may not be aware of the advantages of giving up other conspirators. The lawyer will make it clear that the more he talks, the better it will be for him. The only real problem here is that Abdulmutallab probably doesn't have much information that we don't already know. He could name some al-Qaeda leaders in Yemen, but we already know who they are and already are trying to kill them. But the lawyer doesn't know which information the US already knows, so he'll just say "tell them everything you know, some of it might help you."

36. *pseudonymous in nc* Says:

[January 4th, 2010 at 5:16 pm](#)

What's funny here is that Al, a lawyer, is employing his (sadly declined) legal bullshitting skills to argue that legal protections and access to legal counsel are overrated.

Let's see him try that for the area of law for which he bills.

37. *DTM* Says:

[January 4th, 2010 at 5:17 pm](#)

Got that from the newspaper.

Link?

38. *Al* Says:

[January 4th, 2010 at 5:19 pm](#)

And I suppose it's not even worth pointing out that treating someone as an "enemy combatant" means that he only has to give his name, rank, and serial number, we are bound by treaty obligations to return him to his home country after the cessation of hostilities, and we are not allowed to subject him to coercive interrogation.

BTW, this is false. "Enemy combatant" is not that same thing as a prisoner of war. The above would be true only if he were a POW, which he wouldn't be (since he is an unlawful combatant).

39. *cleek* Says:

[January 4th, 2010 at 5:20 pm](#)

wingnuts, for partisan advantage, pretend to forget that there are all kinds of incentives for defendants to cooperate with the prosecution.

i am shocked.

have they not watched any TV in the past 60 years? i'd bet there hasn't been a night since the dawn of TV that you couldn't find at least one cop show in which this was a central premise.

40. *Al* Says:

[January 4th, 2010 at 5:28 pm](#)

Link?

He restricted his cooperation after he got the lawyer: [link](#)

He was apparently providing us all kinds of good info – until he stopped cooperating: [link](#)

41. *Al* Says:

[January 4th, 2010 at 5:31 pm](#)

BTW, fostert would make some good points – except that everything he says can be done without his lawyer. He doesn't need a lawyer to tell him that cooperation helps him avoid the death penalty (I am not sure he is eligible for the death penalty anyway).

And the empiracle evidence is that he was cooperating before he got the lawyer, and he isn't cooperating any more. So regardless of what fostert says might theoretically be true – in reality, it isn't the case.

42. *iluvcapra* Says:

[January 4th, 2010 at 5:31 pm](#)

This doesn't tell us what is achieved by treating him as a criminal.

What's obtained, which smarter folks at Cato might tell you in an unguarded moment, is the restraint of the state from forcing an individual to give up his rights. I mean, the police are the same people who pull you over for speeding and collect your taxes. Maybe we should send people to Guantanamo if they try to bring weed in over the Canadian border? That would "achieve" a lot if you did it to the right people or often enough. I bet you'd get a lot of names that way.

Being waterboarded is a recruitment tool for them? OK!

Yeah it is, because we break our own laws to do it. "The US are the phonies, at least Al Qaeda *believes in* what its fighting for." People who join Al Qaeda don't want to be waterboarded, they just wanna be on the side that isn't a two-faced hypocrite that throws away its cherished legal system whenever it may "achieve" more. To someone in Yemen or Iraq, waterboarding is proof that liberal democracy is a corrupt failure. This isn't true, but what we gain from torturing people really doesn't seem to compensate what we lose.

43. *DTM* Says:

[January 4th, 2010 at 5:32 pm](#)

There is no category of person under international law that we are allowed to subject to "coercive interrogation" where that means subjecting them to cruel treatment, outrages upon personal dignity, torture, or other inhumane treatment. Threatening them with lawful sanctions if convicted of crimes is, of course, allowed.

Otherwise, in order to detain an unlawful combatant you have to give them a status hearing by a competent tribunal, and in order to punish them you have to give them a fair and regular trial.

44. *fostert* Says:

[January 4th, 2010 at 5:34 pm](#)

"If we treated him as a combatant, we achieve the possibility of effectively interrogating him"

You obviously have never faced a real interrogation. I have, and I can assure you, it's effective. I got picked up in New Zealand on suspicion of international methamphetamine smuggling. They take that very seriously there. I went through four hours of intense interrogation and was then let free. But it was a scary four hours facing 30 years in prison. I had to recount every action of the previous three days, and I had to do it a few dozen times. There is no way I could have gotten away with lies. They had me so confused and scared, I could barely keep the truth straight. They caught every single inconsistency, and they verified every fact. When it was all over, I said to them: "you guys are good, there's no way I could have lied through that." Their reply: "we know."

45. *Stefan* Says:

[January 4th, 2010 at 5:36 pm](#)

Being waterboarded is a recruitment tool for them? OK!

Actually, it is. It allows them to say to young Muslim men "our enemies are so evil they torture us, therefore we must fight them." It's also commonly accepted that many Islamist terrorists were radicalized by the torture they experienced in Egyptian and Saudi prisons.

Put it this way: if it came out that large numbers of American soldiers had been tortured by their captors, would that be a recruitment tool for the US? Absolutely. People would be climbing over each other to go on TV to denounce the aggressive interrogat...excuse me, torture, and demand that the interrogato...excuse me, torturers be brought to justice.

46. *Al* Says:

[January 4th, 2010 at 5:36 pm](#)

There is no category of person under international law that we are allowed to subject to “coercive interrogation” where that means subjecting them to cruel treatment, outrages upon personal dignity, torture, or other inhumane treatment.

Of course, this means that coercive interrogation IS, in fact, permitted, subject to those restrictions. In other words, waterboarding – which, under careful restrictions, does not implicate any of those things – is permitted.

47. *DTM* Says:

[January 4th, 2010 at 5:37 pm](#)

He restricted his cooperation after he got the lawyer

OK, good—that isn’t what you have claimed, as I suspected.

48. *Stefan* Says:

[January 4th, 2010 at 5:40 pm](#)

This doesn’t tell us what is achieved by treating him as a criminal.

Trial, conviction, life imprisonment, plus the opprobrium of being treated as a common criminal no better than a gang-banger or kidnapper or drug dealer.

49. *DTM* Says:

[January 4th, 2010 at 5:40 pm](#)

waterboarding – which, under careful restrictions, does not implicate any of those things

That is utter nonsense, but I would be happy to have that proposition tested in a competent court. How about you?

50. *fostert* Says:

[January 4th, 2010 at 5:46 pm](#)

“He doesn’t need a lawyer to tell him that cooperation helps him avoid the death penalty.”

Maybe, but probably not. It is doubtful he knows the intricacies of our criminal justice system. His lawyer does.

“(I am not sure he is eligible for the death penalty anyway)”

You may be right about that, I’m not sure, either. But there’s always something to bargain with. Nicer facilities, halal food, an imam of his choice.

“And the empiracle evidence is that he was cooperating before he got the lawyer, and he isn’t cooperating any more.”

I’d like to see that empirical evidence. All I’ve seen so far is unsubstantiated claims by right wingers. I have yet to see any evidence at all. I still can’t even find out when he was Mirandized. I would assume it was almost immediate, which means he did talk after that. But again, I can’t find a time and date for it. Do you have a link to a credible news source? Like something other than WorldNetDaily or the

National Review.

51. *DTM* Says:

[January 4th, 2010 at 5:50 pm](#)

fostert,

Al is relying on this line in a Washington Post article to support his hyperbole:

Abdulmutallab remains in a Detroit area prison and, after initial debriefings by the FBI, has restricted his cooperation since securing a defense attorney, according to federal officials.

That line, of course, doesn't actually support his hyperbole.

52. *hello* Says:

[January 4th, 2010 at 5:50 pm](#)

Miranda rights are anti-libertarian because Miranda rights are granted by the government. Libertarians want a society where we have corporate arbitration for courts. This society would have court costs that are 750% higher, and would result in corporations having all power. That is not just a hypothesis; it is a basic fact based on the fact that the arbitrations around now are like that today. Libertarians are the same as GOPers; they just want to maintain power for those with power at the expense of the weak.

53. *Al* Says:

[January 4th, 2010 at 5:57 pm](#)

It is doubtful he knows the intricacies of our criminal justice system. His lawyer does.

As do any persons interrogating him without a lawyer (like, say, the CIA). I suppose there is a small chance that he might believe "his lawyer" more than a CIA interrogator. But that seems unlikely to me.

I'd like to see that empirical evidence.

Cited in the link above. He stopped cooperating once given a lawyer.

54. *W Action* Says:

[January 4th, 2010 at 5:59 pm](#)

Don't bother with anything Al says here...ever. He's not only a troll but a dishonorable liar. After all his lies, I should know better than to think he ever has an honest point, but I was curious and clicked on one of his links above. Of course it didn't say what he said it did, because Al is a liar.

55. *zosima* Says:

[January 4th, 2010 at 6:05 pm](#)

Common mistake. They're not "Libertarians" they're "Libertarians*" A lot of people miss the asterisk.

56. *brewmn* Says:

[January 4th, 2010 at 6:10 pm](#)

"Go fuck yourself and die, brewmn. Full stop."

The truth hurts, doesn't it, douchebag?

I have yet to see someone who ostentatiously trumpets their libertarianism who isn't primarily Republican in their political orientation. Prove yourself the exception, Capital "L" Libertarian.

57. [cleek](#) Says:

[January 4th, 2010 at 6:16 pm](#)

Al, or another numskull with the same nom-de-troll, is one of two primary reasons [this](#) exists. the other was called "Charlie".

life's too short to sift out such bullshit, especially when you can tell your computer to do it for you.

58. [Al](#) Says:

[January 4th, 2010 at 6:29 pm](#)

that isn't what you have claimed

It is exactly what I claimed.

59. [Flynn](#) Says:

[January 4th, 2010 at 6:34 pm](#)

What's all this talk about the death penalty? As far as I know, he didn't kill anyone, and I don't think we execute folks in the United States for attempted murder, even attempted mass murder. There are laws on the books allowing executions for treason and espionage, but if we actually tried to enforce them, they might run up against recent Supreme Court cases restricting the death penalty to murders (e.g., rape, even of a child, can no longer be punished with death, see *Kennedy v. Louisiana* (2008)).

Is there some capital crime in the U.S. Code for "attempted terrorist murder" or something like that? I would appreciate a citation from anyone who knows. Otherwise, I'll remain pretty confident that the maximum penalty available is life imprisonment, which of course is no trivial sanction.

60. [joe from Lowell](#) Says:

[January 4th, 2010 at 6:53 pm](#)

The Cato Institute couldn't find "the real world" with both hands and a flashlight.

61. [Pete](#) Says:

[January 4th, 2010 at 6:55 pm](#)

Al.

1. The UN Convention Against Torture, which the US is a signatory to, prohibits a myriad of techniques, including waterboarding. Moreover, the same treaty, which was signed into US law by Ronald Reagan, does not make a distinction between uniformed soldiers, nonuniformed terrorists, stateless actors, and regular civilians. Torture is against US and International Law. Full Stop. At the time of this treaty, Reagan understood that the Soviet's well documented human rights abuses would look more glaring as long as the US took the high road and did not employ the same policies. (Yes, Reagan didn't have a problem with South Africa torturing black prisoners, but despite being a flaming hypocrite, Reagan at least knew how to frame a debate).

2. Richard Reid was tried in civilian court for the exact same crime. Any attempt to throw this new guy

into a military tribunal would get tossed by the Supreme Court as a violation of equal protection under the law. Seriously, how could you try two people in different court systems for the exact same crime.

3. If waterboarding or other forms of physical interrogation aren't "torture", then why are people so hopped up to use it here? Moreover, if the techniques are really that effective while somehow not being torture, should local police forces ALSO be allowed to use them?

4. Remember when torture was only going to be used in Jack Bauer "the bomb is going off in an hour" scenarios? Now, people are calling for torturing each and every suspect we pick up. What a sick country we have become.

62. *joe from Lowell* Says:
[January 4th, 2010 at 6:55 pm](#)

That "lawyered up" suspect has spilled his guts, ratted out his accomplices, and provided actionable intelligence to the FBI.

But really, we should send him off to be waterboarded until he tells us where Saddam hid the WMDs for his golfing buddy Osama.

Idiots.

63. *tomemos* Says:
[January 4th, 2010 at 7:08 pm](#)

"waterboarding – which, under careful restrictions, does not implicate any of those things – is permitted."

Then we owe one hell of an apology to the families of the WWII Japanese soldiers we executed for doing that. Or were their "restrictions" just not quite careful enough?

64. *Ed* Says:
[January 4th, 2010 at 7:08 pm](#)

General Motors shareholders get intimidated by Obama and his thugs to give up their rightful property, while we give foreign psychos like the Christmas Bomber the full protection of an American citizen.

This country is going down the toilet. Makes me wonder if we will even survive another 10 years as a country, we certainly won't if we have a "double dip" recession. Obama is truly clueless.

65. *Anthony* Says:
[January 4th, 2010 at 7:10 pm](#)

As do any persons interrogating him without a lawyer (like, say, the CIA).

Just think about what Al is saying. We don't need anyone to protect an accused's rights, because the government and interrogators will always do it themselves!

66. *Jeffrey Davis* Says:
[January 4th, 2010 at 7:34 pm](#)

This doesn't tell us what is achieved by treating him as a criminal.

We punish a wrong-doer in accordance with our ideals.

67. *joe from Lowell* Says:

[January 4th, 2010 at 7:38 pm](#)

We get to not go to hell.

Hey, I'm a Catholic. Not going to hell is a core value for me.

68. *wiley* Says:

[January 4th, 2010 at 7:52 pm](#)

The guy gets lawfully convicted, goes to prison, and is forever known as “the failed underpants bomber”. Sounds perfect to me.

69. *fostert* Says:

[January 4th, 2010 at 8:22 pm](#)

“Is there some capital crime in the U.S. Code for “attempted terrorist murder” or something like that? I would appreciate a citation from anyone who knows.”

From Section 702 of the Antiterrorism and Effective Death Penalty Act of 1996:

“for attempt or conspiracy — imprisonment for a maximum term ranging from 5 years to life depending upon the maximum penalty for the crime which is the object of the attempt or conspiracy.”

So, there apparently is no death penalty for an attempt, as this law is still in effect. So whatever bargaining happens here will involve the conditions of his imprisonment.

70. *Mike K* Says:

[January 4th, 2010 at 10:07 pm](#)

So as I understand it, 9/11 was a spike in the NYC murder rate and KSM should be Mirandized and charged with 3,000 counts of capital murder. Is that right? Or is he a belligerent who, contrary to the Geneva Conventions, fails to carry arms openly, wears no insignia, is not subject to a chain of command and disciplinary control, targets civilians? Which is it, guys?

The 20th Hijacker, Mesoui wrapping the courts up for 3 years and then pled guilty, which is good thing because they might not have been able to get a conviction.

71. *Tyro* Says:

[January 4th, 2010 at 10:23 pm](#)

You know, Mike K, this has been an issue which has been kicked around for many years since September 11th. If you can't understand the arguments around the issue by now, you're not going to understand them.

72. *Mike K* Says:

[January 4th, 2010 at 10:52 pm](#)

Tyro,

I understand them all too well. You wish to treat al Qaeda operators as criminals who should be rehabilitated in US prisons having been extended all the rights we give full citizens.

I would treat them as combatants operating without the color of law. They have no rights other than

those given by Congress and the President acting as the CinC. FDR had it right, military commissions that act under military laws, that questioning should be done, not to reach convictions, but to prevent further terror acts. Indefinite confinement, yes, Summary execution, perhaps. Aggressive questioning, yes. Torture, perhaps. Even Alan Dershowitz agrees with many of these positions. Folks here refuse to believe they are at war.

Now, answer the question is KSM a murderer or a combatant?

73. *Tyro* Says:

[January 4th, 2010 at 10:56 pm](#)

I understand them all too well.

No, obviously, you don't, because you vomitted the typical straw-man talking points of the early '00s, showing that you're stuck in that mode and haven't bothered to educate yourself, believing that mindless repetition of the bush-era talking points forced down the throats of republican cultists and pro-Bush fanatics will suffice.

74. *joe from Lowell* Says:

[January 4th, 2010 at 11:59 pm](#)

KSM is a war criminal.

War.

Criminal.

He was also captured overseas, in an operation by the military and CIA, as opposed to here, where our criminal courts operate.

If they want to hold a war crimes trial for the top 9/11 plotters, or the "regularly constituted tribunals" Geneva describes, it wouldn't bother me.

I would treat them as combatants operating without the color of law. They have no rights other than those given by Congress and the President acting as the CinC.

You don't have even the foggiest understanding of what you're talking about.

75. *joe from Lowell* Says:

[January 5th, 2010 at 12:03 am](#)

The fact that you would ask *Now, answer the question is KSM a murderer or a combatant?* as if it's some kind of unanswerable conversation ender, demonstrates that *you can't understand the arguments around the issue by now.*

I mean, seriously? In 2010, you don't know enough about this to know the answer to that? Hell, I know the answer, the rebuttal your side can make, my side's reply to that, and the most common right-wing reply to *that*.

Tell you what, if Tyro is here tomorrow, we'll role-play the rest of this argument, so you can catch up.

76. *Kolohe* Says:

[January 5th, 2010 at 12:45 am](#)

This isn't the first time Roger Pilon has gone off the reservation. See: http://www.cato.org/pub_display.php?pub_id=9119

I figured this was going to be Pilon when MattY didn't mention him by name in the post. Because then it would be easier for people to see that, whenever Pilon opens his mouth lately, most libertarians, and for that matter most Cato fellows like Sanchez, Wilkinson, and Balko, are all like "WTF dude?"

77. *b-psycho* Says:
[January 5th, 2010 at 7:21 am](#)

Matt: Note that you never see that kind of crap on the Center for a Stateless Society website. You want to see commentary by people who are consistently anti-state (and not just fancy talking corporate shells), check that out sometime.

78. *C* Says:
[January 5th, 2010 at 8:32 am](#)

The funny thing about the whole "war criminal" argument: we haven't officially been at war since WWII.

79. *rea* Says:
[January 5th, 2010 at 11:41 am](#)

KSM should be Mirandized and charged with 3,000 counts of capital murder. Is that right? Or is he a belligerent who, contrary to the Geneva Conventions, fails to carry arms openly, wears no insignia, is not subject to a chain of command and disciplinary control, targets civilians?

Only countries can be belligerents; KSM (and his organization) is not a county; therefore, he is not a belligerent.

Why are you so insistent on elevating the status of KSM and his ilk?

80. *joe from Lowell* Says:
[January 5th, 2010 at 12:10 pm](#)

C Says:
January 5th, 2010 at 8:32 am
The funny thing about the whole "war criminal" argument: we haven't officially been at war since WWII.

So? Was there an officially-declared war when Yugoslavia broke up? How about when the Indonesian army slaughtered the East Timorese?

Only countries can be belligerents

False. The very first war our country declared and fought, after the War of Independence, was against a non-state actor, the Barbary Pirates.

81. *Ryan* Says:
[January 5th, 2010 at 12:38 pm](#)

Even Alan Dershowitz agrees with many of these positions.

“Even Alan Dershowitz”. Extremely funny. I bet Mark Furman agrees with you, too! Who cares?

82. *agk* Says:

[January 5th, 2010 at 2:45 pm](#)

I get the feeling that this underpants fellow would not be called a “combatant” were he not a foreigner and a Muslim. He may have had radical sympathies, but judging a crime more or less harshly based on the motivations of the criminal in question opens the way to a road that nobody should want to go down.

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