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The domestic war on terror

Torturing Alberto

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A mixed inheritance for America's next attorney-general

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Long time no see

THE war on terror, Alberto Gonzales told members of the Senate on January 6th, would be his top priority as America's next attorney-general. How effective has the Justice Department been under John Ashcroft in fighting terrorism at home?

To conservatives and the department itself, this is an easy question to answer. No act of terrorism has occurred on American soil since the attacks on September 11th 2001. Polls show Americans feeling ever safer. According to the department's own tally, it has charged 375 people with crimes in "terrorism-related" investigations since September 11th—and 195 have been convicted or pleaded guilty. Yet critics insist that the department is overcounting; and that it has overreached its powers.

Few people dispute the Justice Department's decision after September 11th to shift its focus away from prosecuting terrorists after the fact to breaking up terror plots in advance. To this end, it has marshalled an arsenal of legal weapons to put terrorists behind bars. So far most controversy has

centred on Mr Ashcroft's tour de force, the USA Patriot Act, which was rushed through Congress after the attacks. This dissolved the wall between the intelligence and criminal arms of an investigation. It also boosted the government's powers of surveillance sufficiently to provoke protests from civil-liberties groups about "sneak-and-peek searches" (though America is still less intrusive than many governments in Europe).

Less noticed has been the department's aggressive use of existing legislation. According to its own tally, 113 of the cases and 57 of the convictions and guilty pleas were linked to a 1996 law which prohibits people knowingly providing "material support or resources" to terrorists. This law has worked well to lock up some plotters. For instance, Iyman Faris, a Pakistani immigrant, pleaded guilty in October 2003 to talking to al-Qaeda about destroying the Brooklyn Bridge, and was sentenced to 20 years. Another Pakistani, Mohammed Junaid Babar, pleaded guilty in June to conspiring to smuggle night-vision goggles and money to al-Qaeda.

But the material-support law's vagueness leaves it open to abuse. The prime example is the collapse of the government's case against an alleged Detroit sleeper-cell last year. The government had to ask the court to "void" the two terror convictions, because its lead prosecutor had withheld evidence that may have helped the defence. Suddenly, a case that Mr Ashcroft had defied a judge's gag order to brag about became a series of blunders. A sketch found in a defendant's apartment that supposedly showed an American airbase in Turkey seemed more likely to be the doodling of a mentally ill Yemeni man; videos that the government said were "casing" American tourist sites turned out to be harmless holiday snaps.

The Justice Department also dusted off a 1984 law that allows a "material witness" to a trial to be locked up if he poses a danger or seems likely to flee. Dozens of people have been detained under this provision. Even though the 2nd Circuit Court of Appeals has ruled that the new use of the statute is perfectly legal, civil libertarians have protested that this is simply a ruse for the government to hold people indefinitely without charging them.

The department has relied most heavily on immigration law, with dragnets pulling in plenty of suspects. However, none of the several thousand foreign nationals rounded up since September 11th on immigration violations has been convicted of a terror crime—except for the two people in Detroit whose convictions were later voided.

What about those impressive numbers for overall convictions? Critics say they are pumped up. "The vast majority are not convictions of anything related to terrorism," says David Cole of Georgetown Law School. A study by the Transactional Records Access Clearinghouse, a data-gathering group, of all "terrorism-related" cases in the two years after September 11th found that the median sentence for convictions was 14 days—hardly what you would expect for a terror crime. The Justice Department has disputed this study, but its own caginess about its classification system has not helped its cause.

Critics point out that most of the best-known terror convictions have been plea-bargains—a hint, they say, that the government is on thin ice legally. For instance, how could James Ujaama, a Seattle man charged with trying to set up a terrorist training camp in Oregon, get away with just a two-year prison term?

Others insist that defendants would never have brought plea-bargains if they had known the limits to the government's right to declare foreign nationals "enemy combatants" with no recourse to the American courts. The Supreme Court gave them the right to challenge that status last year. The prospect of rotting away in jail without ever being charged with a crime may have weighed on the minds of terror defendants. The "Lackawanna Six", a group of Arab-Americans from upstate New York who went to an al-Qaeda training camp before September 11th but otherwise showed little appetite for *jihād*, all pleaded guilty and got lengthy sentences.

Mr Gonzales will probably fight terror much as his predecessor did, though with less bombast. "There will be no mid-course correction," insists Viet Dinh, a former Justice Department official. But Mr Gonzales will also have fewer weapons. The removal of the enemy-combatant status may make plea-bargains harder; and several provisions of the Patriot Act are due to expire at the end of this year. Mr Gonzales will have to persuade Congress that they are worth keeping.

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