

US military trial to censor testimony on CIA torture

By Naomi Spencer
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The US military trial of five Guantanamo Bay detainees will censor testimony describing torture at the hands of military and intelligence personnel, the judge overseeing the case has ruled.

Citing “national security,” Army Colonel James Pohl ordered that all details surrounding the capture, rendition, detention, and interrogations of Khalid Shaikh Mohammed and four others accused of involvement in the September 11, 2001 attacks be kept secret from the public and the media.

In his ruling, quietly issued December 6 and made public late December 12, Pohl stated that “enhanced interrogation techniques that were applied to the accused ... including descriptions of the techniques as applied, the duration, frequency, sequencing and limitations of those techniques” are to be classified. This includes, “without limitation, observations and experiences of the accused.” Pohl also ruled that no mention of those issues could be made in legal papers presented to the court.

In an April filing, prosecutors representing the Obama administration had pressed for all information regarding events at CIA black sites as well as at Guantanamo to remain classified. The administration hailed the ruling.

The order epitomizes the complete illegality, of the military commissions. While evidence obtained through torture may be introduced into the courtroom, no evidence of the torture itself is permitted. The only material that the US government deems suitable for the public is that which was admitted, or fabricated, under extreme pain and threats of death. While trying the accused of war crimes, the government is concerned that its own war crimes not be exposed.

Beyond the immediate issue of torture, moreover, the White House is no doubt sensitive to the fact that

testimony may expose links between the activities of Al Qaeda and the US intelligence agencies.

Pohl also approved the continued use of a 40-second audio delay in the transmission of the court proceedings. This will prevent any unexpected mention of the abuse from reaching either spectators seated behind soundproof glass at the US Naval base in Cuba or reporters in the press room at Fort Meade, Maryland. “The broadcast may be suspended whenever it is reasonably believed that any person in the courtroom has made or is about to make a statement or offer testimony disclosing classified information,” the order reads.

Defense lawyers, the American Civil Liberties Union and media organizations condemned the decision. “The government wanted to ensure that the American public would never hear the defendants’ accounts of illegal CIA torture, rendition and detention, and the military judge has gone along with that shameful plan,” ACLU National Security Project Director Hina Shamsi stated, adding that the organization would appeal the decision.

The Pentagon applauded Pohl’s ruling. Army Lieutenant Colonel Todd Breausseale, a spokesman for the Pentagon, told the press, “He has done what all courts do to responsibly handle national security information while also ensuring both that the accused will receive a fair trial and that the proceedings will be as open and public as possible.”

Some elements of US abuse are already public knowledge. For example, Khalid Shaikh Mohammed, the alleged “mastermind” of the September 11 plot, was subjected to waterboarding at least 183 times. Waterboarding, a procedure that simulates drowning, is widely acknowledged to be a form of torture. The CIA also employed sensory deprivation, beatings, stress positions, forced nudity, food deprivation, and threats

against family members including children of detainees. Such abuse has been documented by human rights groups as being ubiquitous in US-run prisons throughout the world.

The other defendants—Ramzi bin al Shibh, Walid bin Attash, Mustafa Ahmed Hawsawi, and Ammar al Baluchi (also known as Ali Abdul Aziz Ali)—are accused of helping to coordinate and finance the September 11 attacks. All face the death penalty. Throughout most of the pre-trial hearings, the defendants have refused to appear because to do so would lend an appearance of credibility to the proceedings.

Lieutenant Commander Kevin Bogucki, the defense lawyer for Ramzi bin al Shibh, said that the government is attempting to create a new category for evidence—“presumptive classification”—to prevent the accused from relating their experiences. “His exposure to the conduct is not an exposure to secret information,” Bogucki said of his client. “This is the problem with trying to classify his memories and experiences... What if I can conclusively prove my client’s innocence? To release him from Gitmo would be to lose control over the information. Would they hold my client for 25 more years until the classification expires?”

A nearly simultaneous ruling by the European Court of Human Rights casts a harsh light on the practices that the White House is eager to obscure. On December 13, the court found that Macedonia had participated with the CIA in the rendition and torture of a German citizen.

Khaled el-Masri was abducted by Macedonian border guards in 2003, held incommunicado for more than three weeks, then turned over to CIA agents on January 23, 2004. He was severely beaten by men in masks, stripped naked and sodomized with an object, shackled and hooded, then forcibly tranquilized and chained to the floor of a chartered jet. He was flown to Afghanistan and subjected to horrendous physical and mental abuse for four months. (The full account can be found in the court’s ruling: PDF)

In the decade since el-Masri’s rendition, none of the 13 CIA operatives implicated in the case have been arrested. Neither the Obama administration nor its predecessor under George Bush has ever issued a comment on the case. The government has invoked

“national security” and “state secrets” to block any redress through US courts. The Obama administration simply ignored a 2008 petition filed in the Inter-American Commission on Human Rights by the ACLU on behalf of el-Masri.

In fact, the European court ruling is the first time that “extraordinary rendition” has been formally recognized as tantamount to torture. “It is an historic ruling that puts the United States to shame for its failure to even acknowledge, let alone compensate, its torture victims,” commented Amrit Singh of the Open Society Justice Initiative, which represented el-Masri. The court ordered Macedonia to pay 60,000 Euros (\$78,000) to the torture victim.

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