

US rushes military show trial for alleged 9/11 conspirators

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Five persons alleged to have participated in the September 11, 2001 terrorist attacks on New York City and Washington, including the alleged 9/11 mastermind Khaled Shaikh Mohammed, made their first appearances today before a Military Commission in Guantánamo Bay, Cuba on war crimes charges. Prosecutors, who are asking for the death penalty, have sought a mid-September trial, on the anniversary of the 9/11 attacks and just seven weeks before the US presidential election.

The sudden rush to trial stands in contrast to the five long years the prisoners have been held incommunicado. During that time they had no access to legal counsel or any other semblance of due process. Most, if not all, were tortured. Now, with trial just three months away, defense lawyers, who have just recently been assembled and allowed to meet with the prisoners, are expected to somehow mount a defense.

Political considerations fully govern both the timing of and methods used in this trial. A show trial that places details of the 9/11 attacks front and center in an election year is designed to muzzle any domestic challenge to the US “war on terrorism,” the principal ideological cover for US policies of aggressive war and implementation of a national surveillance state.

The US government also sees a terrorist trial spectacle as a means to bring pressure on its overseas allies to buttress what remains of the unpopular and flagging military efforts in Iraq and Afghanistan.

The trials are also designed to legitimize the use of waterboarding, to which Shaikh Mohammed was subjected, and other torture techniques. The intended message will be that torture should be allowed because its use could uncover heinous plots such as 9/11. Moreover, Bush, Cheney, Rumsfeld and the others at the highest echelons of the American state who authorized it therefore should not be criminally prosecuted.

A military judge recently ordered that the government’s most prominent spokesman for the commissions, Air Force Brigadier General Thomas Hartmann, be removed from any

role in a separate military commission pending against Salim Ahmed Hamdan, who is alleged to have been Osama Bin Laden’s driver, precisely because of evidence that such naked political calculations controlled the commission’s decisions. Hartmann also serves as the legal advisor to Susan Crawford, the “convening authority” in charge of the commissions.

Civilian defense lawyers for the five 9/11 defendants filed a 20-page legal brief objecting to the Pentagon’s rush to trial. Army Major Jon Jackson, the military lawyer for defendant Mustafa al-Hawsawi, who is accused of helping to finance the 9/11 attacks, had unsuccessfully sought to delay al-Hawsawi’s arraignment on this same basis.

Jackson said he had only met his client twice, that he had “been barred from discussing those meetings with his assistant defense counsel, Navy Lt. Gretchen Sosbee, because the military has not yet given her security clearance,” that he “has not received any potential evidence against al-Hawsawi supporting charges that ‘allege a complex conspiracy spanning several years.’” Jackson said that he and the other defense lawyers have had no place to store their work, discuss classified material or prepare for their case while in Cuba.

The presiding trial judge, Marine Colonel Ralph Kohlman, cut short such arguments, ordering attorneys to be seated when they persisted in trying to argue the point.

Defense lawyers also appealed to the Court of Military Commission review to halt the arraignment of the defendants on these charges, apparently unsuccessfully. Defense lawyers asked that trial not go forward “until the most rudimentary building blocks necessary to afford a defense are in place.”

Shaikh Mohammed told the presiding military judge today that he and his co-defendants were tortured following their capture by US forces and that the proceeding “is inquisition, it is not trial.” “I’m looking to be martyr for long time,” he said.

First Shaikh Mohammed and then the other defendants asked and were granted permission by Kohlman to represent

themselves without counsel. According to the Associated Press, one defendant said he had barely been allowed to meet with his lawyer anyway and described him as “a signboard” hung up so the government could say, “Hey, we give these people lawyers.”

The head of the ACLU, Anthony Romero, attributed these developments to a government attempt to eliminate effective legal representation. “It hardly comes as any surprise that after holding individuals in solitary confinement for five years and subjecting them to torture, these detainees would reject the legal system and offers to represent them,” he said.

Romero continued: “It is highly suspect that the government changed its protocols for the interaction of the defendants on the very day they were arraigned. For several years they’ve been held separately without communication and yet, on the day of their arraignment, they were allowed to interact with the obvious goal of allowing them to present a unified rejection of legal representation.”

Even apart from the government’s failure to give attorneys for the accused adequate time to prepare a defense, the tribunal grossly denies the defendants even the rudiments of a fair trial.

For example, evidence obtained by torture is not barred. General Hartmann, the legal advisor to Susan Crawford, who oversees the military commissions, has repeatedly emphasized that trial judges may decide to admit statements from interrogations that involved waterboarding, if they find that is merely “coercion” rather than torture.

Coerced statements may be used as evidence if the judge determines they are “reliable” and “probative” and that their use is “in the best interest of justice.” Similarly, hearsay evidence is permitted. For example, investigators will be permitted to testify as to what they claim witnesses said. No opportunity will be given to cross-examine the underlying witnesses.

Hartmann said that defendants will get only 30 days to challenge such evidence after receiving notice of the prosecution’s intention to introduce it.

Much trial evidence is supposedly sensitive material that will be withheld from public view. This is designed to hide the use of torture to the extent possible as well as to keep the defendants from testifying to possible links between their activities and US intelligence operatives, some of whom likely had advance notice of the 9/11 attacks.

The convening authority, Susan Crawford, last week threw out charges against a sixth defendant, Mohammad al-Qahtani, the alleged “20th hijacker.” That decision illustrates the rotten nature of the whole commission edifice.

An FBI investigation of possible war crimes by US personnel documented the abuse to which al-Qahtani was subjected. This included prolonged restraint, sleep

deprivation, sensory overload, use of dogs, and exposure to extreme temperatures. Al-Qahtani was interrogated for up to 20 hours a day for 48 days, made to wear women’s underwear, and leashed like a dog.

Al-Qahtani’s lawyer, Lieutenant Colonel Bryan Broyles, told the *Wall Street Journal* the government had no evidence against him other than that obtained through such methods. However, al-Qahtani can still be held indefinitely as an enemy combatant, and the military prosecution may decide to file new charges.

The ACLU and other organizations roundly criticized today’s arraignment of the defendants. The ACLU’s Romero said: “The government has had over six years to build its case and is giving the defense just three short months to prepare for trial—all in an effort to steamroll the process to meet an arbitrary court date clearly designed to influence the elections. This is a direct assault on the fundamental concepts of American justice and due process.”

Families of 9/11 victims also expressed their outrage today.

Patricia Perry, mother of New York City Police Officer John William Perry, said, “Like others who mourn family members killed on 9/11, I wish for justice and accountability for my son. But secretive proceedings tainted by the use of torture are outside the system of justice on which the honor of this nation depends.”

Valerie Lucznikowski, who lost her nephew, Adam Arias, on 9/11, said, “I lost someone I dearly loved on September 11, and have waited too long to see those responsible brought to justice. But these special military tribunals that are stained by politics and deny detainees the basic American principle of due process smack of revenge rather than justice, and mock our legal system and those we lost.”



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