

9/11 guilty pleas expose Guantánamo kangaroo court

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Washington's plans to stage a 9/11 show trial at its Guantánamo Bay prison camp were thrown into disarray Monday when it was revealed that the five defendants are seeking to enter immediate guilty pleas and forego any further legal proceedings.

The judge in the so-called military commission convened to hear the case, Army Col. Stephen Henley, announced in the pretrial hearing that the tribunal had received a letter more than a month ago in which the five defendants had affirmed that they "had decided that they wished to withdraw all motions ... and wished to enter pleas in what was termed confessions in this case."

The US government is seeking the death penalty against all five men, who have been held incommunicado for close to seven years, subjected to torture and denied the basic rights afforded to defendants in either civilian trials or a military court martial.

They are being prosecuted for war crimes in what amounts to a drumhead military tribunal, set up under the Military Commissions Act passed by the US Congress in 2006. The legislation set up a kangaroo court system in which defendants can be prosecuted on secret evidence, as well as hearsay evidence and confessions extracted through torture. The defense attorneys and military officers appointed by the Pentagon are denied access to much of the evidence as well as to witnesses for the prosecution. A number of the officers assigned to the commissions have resigned in protest, denouncing the system as a travesty of justice designed to rubber stamp the prosecution's indictments.

The US government had hoped to use the case against the five as a means of justifying its "global war on terrorism" and blunting the international condemnation of its use of torture, extraordinary rendition and detention without trial, methods with which the name Guantánamo has become synonymous.

Instead, the defendants' plea has threatened to deprive Washington of its show trial and has underscored the ramshackle character of the military commission system

created to try them in which basic questions of legal procedure are being made up as the proceedings go along.

Addressing the court in English Monday, Khalid Sheikh Mohammed, the alleged chief organizer of the terrorist attacks on New York and Washington on September 11, 2001, told the judge: "We don't want to waste our time with motions. All of you are paid by the US government. I'm not trusting any American... I do not distinguish between the judge and my attorney and [US President George W.] Bush and the CIA who tortured me."

The CIA has acknowledged that after his capture in Pakistan, it subjected Sheikh Mohammed to "waterboarding," an interrogation method in which water is poured through a cloth over the mouth of a restrained prisoner, producing the effects of drowning. The technique has been prosecuted by the US military as torture and has been deemed a war crime when used against American prisoners of war.

The other defendants—Ramzi Binalshibh, Mustafa Ahmed al-Hawsawi, Tawfiq bin Attash and Ammar al-Baluchi—were also tortured while held by the CIA for years in secret prisons.

A sixth defendant, Mohammed al-Qahtani, dubbed the "20th hijacker," was dropped from the case last May without explanation. The Pentagon dismissed the war crimes charges against him in an apparent attempt to sidestep legal challenges based on the interrogation methods to which he was subjected, documented in his case by an 84-page "torture log" that was leaked to the media.

Nonetheless, Pentagon chief military prosecutor for the Guantánamo trials, Col. Lawrence Morris, said last month that he was filing new charges against Qahtani, a Saudi national who was blocked from entering the US at the Orlando, Florida airport in August 2001.

The attempt by the defendants to enter a guilty plea underscored the farcical character of the military commissions system.

Colonel Henley found himself compelled to acknowledge that it was by no means clear whether the Congressional

legislation setting up the commissions allowed defendants facing the death penalty to enter pre-trial guilty pleas without the evidence first being heard by a jury composed of 12 US military officers.

Henley asked for the military prosecutors to prepare a briefing on whether he could accept the guilty pleas without the decision of a jury and for the defense attorneys to file a response by January 4.

Henley also said that he could not accept guilty pleas from two of the defendants because of outstanding motions about their mental competency to represent themselves in the trial. Binalshibh, charged with acting as a liaison between the al-Qaeda leadership and the 9/11 hijackers, is being administered psychotropic drugs by his jailers at Guantánamo, while an attorney for Hawsawi had requested a mental competency hearing.

After a break in the proceedings, the other three defendants said that they would withhold their guilty pleas until there was a ruling on the status of Binalshibh and Hawsawi. Sources close to the defense said that the decision was apparently taken because of concern that their pleas would not result in the death penalty.

In a June 5 hearing, when the defendants were first formally charged before the military commission, Mohammed said that he would welcome “martyrdom.”

The decision to file the joint guilty pleas, in an apparent attempt to seek the death penalty, was taken after the military authorities allowed the five men, who are being held at a secret facility within the Guantánamo prison complex, to meet together without their lawyers. Their letter to the judge announcing their wish to drop all challenges to the military charges and plead guilty was drafted following a meeting held on November 4, the day of the US election.

Some of the defense attorneys suggested that the other defendants were coerced by Mohammed into entering the plea, a charge that they denied in Monday’s hearing.

The American Civil Liberties Union, which is observing the trial in Guantánamo, issued a statement denouncing the proceedings as a “debacle.”

“No one should be surprised that a system that allows for serial torture and abuse and holds detainees for years without charging them or granting them access to attorneys has led the defendants to capitulate and seek to plead guilty,” said the ACLU. “It’s abundantly clear that a coerced guilty plea resulting from years of torture and abuse would never have been accepted in a legitimate court and should not be accepted here. Anyone who believes that this is a victory for American justice is sadly mistaken. History will show that any guilty pleas in these proceedings were the result of an inhumane, unjust process designed to achieve a foregone conclusion.”

Dianne Marie Amann, a professor at University of California at Davis, who is also observing the proceedings on behalf of the National Institute of Military Justice, commented: “The fact that the judge and the prosecution and the defense clearly don’t know the consequences of a guilty plea shows the sorry state of these commissions.”

The timing of the case raises the prospect that either the pleas will not be heard until after Bush has left office, or that an incoming President Barack Obama will be left with making the final decision on executing those sentenced by the military commission.

Tom Durkin, a civilian attorney for Binalshibh, charged that the proceedings were being conducted with definite political motives. “This show trial is nothing more than an effort to blackmail” Obama, he said.

The Democratic president-elect has repeatedly vowed that he would move swiftly to close down the Guantánamo prison camp, thereby removing a source of international condemnation of US lawlessness. Far from clear, however, is what the incoming administration intends to do with those detained there and what policy it will take in regard to preventive detention; that is the holding of individuals designated as “enemy combatants” without charges or trials. (See “Obama and Guantánamo”)

Time magazine points out that the military is preparing to announce a number of new military commission trials before Obama takes office. They have already set a January 26 trial date—six days after Obama enters the White House—for Omar Khadr, a Canadian youth who was captured by US military forces in Afghanistan when he was 15. He would be the first child to be tried as a war criminal in American history.

“After years during which prisoners were held without trial, the question is whether this surge in prosecutions and publicity is a case of due process finally starting to work—or a hurried effort designed to tie Obama’s hands as he tries to shut” Guantánamo, *Time* comments. “Once they are under way, Obama could find it politically and legally difficult to stop the controversial proceedings or shift them out of Guantánamo.”

The unstated political premise here is that the Democratic president-elect has, on the one hand, embraced the “global war on terrorism” and, on the other, is loathe entering into any political confrontation with either the military or the political right.



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