

Obama restarts military commission trials

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In a terse three paragraph statement released Friday, President Barack Obama announced his decision to resume military commission trials for 13 Guantánamo Bay inmates. The trials will start after Congress authorizes minor changes to the Military Commissions Act of 2006, which gave legal sanction to the tribunal system that former president George W. Bush had first put in place by executive fiat at the end of 2001. The move is part of a broader effort by the Obama administration to carry on, under slightly altered parameters, the major anti-democratic initiatives of the Bush administration in “the war on terror.”

Obama outlined five changes. First, “statements that have been obtained from detainees using cruel, inhuman and degrading interrogation methods will no longer be admitted as evidence at trial.” Obama did not explain whether this change would invalidate all confessions, or how the accused could prove, in a military court, that they were tortured. It is all but certain that every one of the remaining 240 Guantánamo prisoners have been tortured. Legal experts told the *New York Times* that “convictions may be nearly impossible without the detainees’ confessions.”

Obama also said the use of hearsay will be limited “so that the burden will no longer be on the party who objects to hearsay to disprove its reliability.” White House officials have acknowledged that the central legal motivation for resuscitating the military tribunal system was to maintain the use of hearsay evidence, which is not accepted in civilian courts and which constitutes the overwhelming bulk of the evidence against the accused. Hearsay is third party testimony of witnesses who cannot be cross examined. In the context of “terror” trials, it very likely includes the words of secret agents and perhaps foreign interrogators who carried out torture. Obama is attempting to qualify the use of such evidence by requiring government attorneys make a case for its reliability, rather than forcing defendants to prove its unreliability, as was the case in the Bush tribunal system.

Obama also said that the accused would “have greater latitude” in choosing defenders from among US military lawyers, that they might be protected from retaliation for refusing to incriminate themselves in court proceedings, and finally that “military commission judges may establish the jurisdiction of their own courts.” The specific nature and application of these changes was not explained.

Military tribunal trials for the 13 were already underway when a January 20 executive order from Obama temporarily suspended proceedings. The order’s May 20 expiration propelled the administration to create a slightly altered tribunal system to try the detainees. The administration also confronts a January closure

deadline for the prison at Guantánamo Bay.

It is not clear how many of the remaining 240 or so Guantánamo inmates the new rules might affect. Washington’s efforts to find other states willing to accept the prisoners have so far been met with limited success. After a week of Republican terror-baiting, Obama has quietly distanced himself from his oft-stated intention of trying some Guantánamo inmates in US courts. Trial in civilian courts would very likely make public new revelations of torture and abuse committed by the US military and Central Intelligence Agency, expose the hearsay nature of the evidence against the accused and result in the dismissal of charges.

But the implications of Obama’s moves go far beyond the prisoners of Guantánamo. White House officials told the *Wall Street Journal* that the new commissions would be used not only for current Guantánamo inmates “but possibly also from some captured in future counterterrorism operations.” Thus, contrary to his claim, Obama’s new proposals are not about “winding down” Guantánamo, or cleaning up the legal mess created by Bush.

Obama’s central preoccupation is to develop a system which can secure guilty verdicts when necessary and which at the same time might avoid the legal challenges, disarray, and incompetence that characterized the Bush tribunal system. According to the *Wall Street Journal*, “Officials have said that in at least 50 cases, the prisoners are viewed as too dangerous to set free but the government lacks sufficient evidence to prosecute.” Since 2001, only three military tribunal cases—out of nearly 800 prisoners held at Guantánamo—reached the verdict stage.

Senator Lindsey Graham, a South Carolina Republican, has said that White House Counsel Greg Craig is considering changes to the tribunal system in conjunction with the establishment of a “National Security Court” that could authorize indefinite detention for prisoners the executive branch or military declares “dangerous,” but against whom evidence is too scant to try in court. This is the prototype of a permanent “Star Chamber” instrument in the hands of the executive, which would ultimately be used against its domestic political opponents.

According to media accounts, Obama has chosen John Murphy, a naval reservist and an assistant US attorney in New Orleans, to lead the prosecutions. It was Murphy who, under the Bush administration, prosecuted Salim Hamdan, Osama bin Laden’s driver. In Hamdan’s sentencing, Murphy attempted to appeal to the basest instincts of the all-military jury, calling the menial servant “a hardened Al Qaeda member” and demanding the jurors “deliver a sentence that will absolutely keep our society safe from him. ... Your sentence should say the United States will hunt you down and give you a harsh but appropriate sentence if you provide

material support for terrorism.” Murphy showed graphic images of the destruction from the 9/11 terrorist attacks, saying, “Your sentence will be their justice. Your work is our justice, and you shouldn’t flinch from it.” A handpicked test run of the military commission trials under the Bush administration, Hamdan was sentenced to less than six years jail time (See “Guantánamo trial sentence stuns Bush administration”).

Obama’s statement Friday was preceded by another round of leaks from “senior administration officials” “who spoke on condition of anonymity” and other unnamed sources “familiar with the matter,” this time to the Associated Press and the *Wall Street Journal*. Over the past two weeks, there has been a steady stream of press leaks regarding the proposed changes to the military commissions from White House officials to leading media organs, including the *New York Times* and *Washington Post*. This was an effort to gauge support for the changes among the military-intelligence community and top Republicans. The approach has paid dividends. In conjunction with Obama’s attempt to suppress photographs of US military personnel torturing, killing, and raping prisoners, the White House has won plaudits from the right.

Graham said “I agree with the president and our military commanders that now is the time to start over and strengthen our detention policies. I applaud the president’s actions today.” Senator Joe Lieberman, a Connecticut war hawk and independent, said that Obama “has reinforced that we are at war, and that the laws of war should apply to these prisoners.” Senate Republican leader Mitch McConnell of Kentucky called it “an encouraging development.”

Other Republicans gloated. Last year’s Republican presidential nominee, Senator John McCain, hinted at Obama’s about-face. “I am pleased that President Obama has now adopted this view,” he said. Ari Fleischer, a former Bush administration press secretary, asked that Obama now “acknowledge his campaign criticisms were wrong.”

During his campaign for the presidency Obama falsely presented himself as an opponent of the Guantánamo prison camp and the military commission trials, winning the praise and support of liberal organizations. These groups disregarded the fact that Obama’s was never a principled opposition. He allowed so much in Friday’s statement, pointing out that his criticisms over the Bush tribunal system hinged on its failure “to ensure swift and certain justice against those detainees that we were holding at the time.” Innocence or guilt is a matter of little purchase on Obama.

Rights groups quickly condemned the decision, all in very similar terms. “There’s no detainee at Guantánamo who cannot be tried and shouldn’t be tried in the regular federal courts system. Even with the proposed modifications, this will not cure the commissions or provide them with legitimacy,” said Jonathan Hafetz, an attorney for the American Civil Liberties Union. Elisa Massimino, executive director of Human Rights First said that “tinkering with the machinery of military commissions will not remove the taint of Guantánamo from future prosecutions.” Rob Freer, a researcher for Amnesty International, concurred, saying “no amount of tinkering with their rules can fix this discredited system.”

The democratic rights groups have not yet understood that

Obama’s “tinkering” is not a mistaken stab at a legal solution. Obama is intent on preserving the quasi-dictatorial powers of the presidency. These methods, in the final analysis, are the necessary result not of “the war on terror,” but of the militarism of US society that rises out of a far deeper social crisis. The military commissions, like torture, arise inexorably from the policy of aggressive war, which Washington has embraced to offset the accelerating decline of American capitalism.

But in his spite for those opposed to the abuses of democratic rights, Obama matches his predecessor.

Obama’s first sentence—“Military commissions have a long tradition in the United States”—is a cynical distortion. Historically, military tribunals were used in clearly defined ways during major wars: the Revolutionary War, the War of 1812, the Civil War, and World War Two. Their use ended with the conclusion of hostilities. Obama, like Bush before him, seeks to create a perpetual system of executive branch justice linked to the bogus war on terror, which Washington’s military and diplomatic strategists openly declare will drag on for decades. Prisoners who enter this justice system may never leave.

Obama’s statement came on the heels of House approval of a new supplemental war spending bill for the effort to subjugate Iraq, Afghanistan and Pakistan. The Democratic-controlled House approved a \$97-billion package by a 368 to 60 margin, with only 51 Democrats voting in opposition.

In a bow before the minority Republicans, the bill excluded \$80 million Obama had requested to close down Guantánamo. Democratic lawmakers fear that they will be accused of “bringing terrorists” to the US. For good measure, the House added a ban on the transfer of detainees to “American soil” until two months after Obama has presented a plan for their relocation.

Washington and the US media celebrated this latest example of “bipartisanship.” The Senate will vote on a similar bill next week.



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