

Pre-trial Hearing of 1st Obama Military Commission Tries Child Soldier

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The pre-trial hearing for the first Military Tribunal in Obama's presidency began last week, following the delayed release of the new manual for Military Commissions. The government's justification for trying Omar Khadr by Military Commission is that, in its view, his alleged murder of a US soldier via a hand grenade was a violation of the law of war. According to Lt. Col. David Frakt, under the Military Commission rules, "A detainee may be convicted of murder in violation of the law of war even if they did not actually violate the law of war."

The hearing is moving forward despite weak evidence that Khadr actually threw the grenade that killed an Army sergeant, signs that he was mistreated while in US custody, and his youth at the time of the alleged crime. Khadr was only 15 years old. Now 23, he has spent more than one-third of his life in US custody.

The big question is, why force a conviction by using a legal concoction that is inherently unfair, in which the prosecution and the presiding judge and jury are drawn from the same government agency, and in which the defendants—unlike their counterparts in a military court martial or a civilian trial—are not entitled to the same access to evidence that the government has.

The prosecution has called several witnesses to support its case. However, the government's eyewitness to the alleged crime initially reported that the perpetrator died after throwing the grenade, then changed the record years later. The defense is expected to show a photo taken at the time the grenade was thrown, of a pile of rubble under which US soldiers later found Khadr's bullet-ridden body face down.

Other prosecution witnesses, such as former interrogators, supported the government's position that Khadr's interrogations were friendly and his treatment humane, and that, therefore, Khadr's admissions that he threw the grenade are credible. However, nearly all the witnesses have inadvertently provided pieces of testimony that supports Khadr's defense attorneys' claim that all evidence against their client is tainted and should be discarded.

For example, Khadr's interrogators at Guantánamo informed him that if he cooperated by telling his interrogators whatever they wanted to hear, he would go home to Canada more quickly. Descriptions of their friendly gestures—to a boy who otherwise was alone and lonely in his cell—such as friendly conversations and treats they brought him, can also be viewed as bribes to Khadr for telling them what they wanted to hear. And although none has admitted that Khadr was tortured, the medic at Bagram prison who changed the dressings on Khadr's wounds twice daily admitted that one day he found Khadr hooded and hung by chains to the outside of his cell door with his wrists above eye level. He lifted Khadr's hood and found he was crying, yet the medic did not support a defense attorney's suggestion that Khadr's hanging in that way would have been painful, given recent surgeries to repair the bullet wound in his shoulder.

Col. Patrick Parrish, the presiding military judge, has refused the defense counsels' request that they be allowed to question all of Khadr's interrogators. However, Parrish did permit testimony of at least two of the witnesses the defense team selected. Joshua Claus, the Army specialist who conducted virtually all of Khadr's interrogations at Bagram, testified on Wednesday. Claus was responsible for the violent homicides at Bagram of two detainees: Habibullah and Dilawar. Former Army Specialist Damien Corsetti, who conducted Khadr's first interrogation at Bagram, also testified this week. In Corsetti's opinion, Khadr was abused at Bagram in 2002, and he admitted that he participated in the abuse. For example, Corsetti used a false story about a gang rape and death of another detainee in order to frighten Khadr into cooperating with him. Read about it [here](#) [1].



On May 6, the Pentagon barred Carol Rosenberg of the Miami Herald and three Canadian journalists covering the tribunal for naming Claus, even though Claus's name has appeared in news reports since 2005, when he was convicted of abusing Bagram detainees. Read the story [here](#) [2].

Khadr's Military Commission is scheduled to begin in July. However, senior Obama administration officials and both the prosecution and defense teams are interested in a plea deal.

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[1] <http://www.miamiherald.com/2010/05/07/1617479/interrogator-i-used-false-rape.html>

[2] <http://www.miamiherald.com/2010/05/07/1617475/4-reporters-barred-from-trials.html#ixzz0nFwh6iMC>