

WHY DROP CHARGES AGAINST AL-QAHTANI?

The AP reports that charges against Mohammed al-Qahtani have been dropped, suggesting that charges were dropped because he was tortured.

The Pentagon has dropped charges against a Saudi at Guantanamo who was alleged to have been the so-called "20th hijacker" in the Sept. 11 attacks, his U.S. military defense lawyer said Monday.

Mohammed al-Qahtani was one of six men charged by the military in February with murder and war crimes for their alleged roles in the 2001 attacks. Authorities say al-Qahtani missed out on taking part in the attacks because he was denied entry to the U.S. by an immigration agent.

But in reviewing the case, the convening authority for military commissions, Susan Crawford, decided to dismiss the charges against al-Qahtani and proceed with the arraignment for the other five, said Army Lt. Col. Bryan Broyles, the Saudi's military lawyer.

[snip]

Officials previously said al-Qahtani had been subjected to a harsh interrogation authorized by former Defense Secretary Donald H. Rumsfeld.

But that's not right. After all, the remaining 5 detainees were also tortured. Heck, the government has even admitted to water-boarding Khalid Sheikh Mohammed. But he's still going to get a show trial.

I would suggest that two things contributed to al-Qahtani's charges being dropped. First, the disqualification of Thomas Hartmann last week may be related. As I suggested in my post on the

disqualification, Judge Allred made clear that the charges against Hamdan could go forward because those charges were finalized before Hartmann came on the scene. But the charges in which Hartmann was directly involved—notably of the group of high value detainees that until Friday included al-Qahtani—would be affected. The government is now going to have to prove that those 65 detainees would have been charged even without Hartmann making decisions about whether to include evidence gained by torture.

Note that Allred's decision is dated May 9, Friday, the same day Susan Crawford decided to drop charges against al-Qahtani, so if this was a response to the Hartmann disqualification, it was a very quick response.

But there's another reason why the charges against al-Qahtani were dropped while KSM will still be charged: evidence that the torture against al-Qahtani didn't reveal anything. I've not yet read Phillippe Sands' book which details this at more length, but his interview with Bill Moyers on Friday makes this clear:

PHILIPPE SANDS: Well, I remember that very well. And I appreciated very much everything that Representative Franks had to say. But I've described that to my friends in London as a sort of Monty Python moment in the hearing. Because he alleged that there had been three individuals water boarded. They had been water boarded for no more than one minute each. And they had spilled the beans. And I was sitting there watching him and thinking, well, that's new information. I've never heard that before. Where on earth does that come from? Counterintuitively, I can't imagine how a waterboarding of one minute is suddenly going to produce useful information. We don't even know if it is useful. But also, imagine the scene. You've got guys there with stopwatches. We're gonna waterboard him

for one minute, and then we will stop. And in that one minute, everything will come up. I don't know where he got all that from. I thought he sounded as though he made up on the spot. We don't have any objective evidence that any of these interrogation techniques have produced any useful information. KSM, you've referred to, has owned up to virtually everything under the sun that has happened that is bad for the United States in the last five years. And I find that counterintuitive to common sense. I would say I don't have actual information on KSM. I do have actual information on detainee 063. I spent time, as I describe in the book, with the head of Mohammed al-Qahtani's Exploitation Team. And the bottom line of it was, contrary to what the administration said, they got nothing out of him.

BILL MOYERS: There's another witness who appeared this week when you did, David Rivkin, a lawyer, lots of government experience, lots of experience in the law. And he directly challenged you in his testimony.

DAVID RIVKIN: "I think that it is a moral copout to argue that coercive techniques did not work. Because if they don't work, there would be nothing to debate. Coercive techniques do work. There's plenty of evidence to that effect."

PHILIPPE SANDS: Look, Bill, I've spent 20 years during courtroom work as a litigating lawyer. I like to see evidence on things. I like arguments to be based on evidence. David Rivkin is unable to provide any evidence. I have honed in on the interrogation of one man, detainee 063. The administration has publicly declared they got a mass of

information out of him that related to all sorts of extraordinarily important things to protect the Americans.

I then spoke to the people who were involved in his actual interrogation and the head of his Exploitation Team. That's not what they told me. If the evidence I had been given had been different, then I would reach possibly a different conclusion. Not as to the legality or the utility of torture, but what do we do in the face of evidence that it works? But there isn't evidence that it works.

[snip]

PHILIPPE SANDS: So take Diane Beaver. I had written a previous book where I treated her legal advice. She had been the person down at the bottom who'd signed off on aggressive interrogation. I didn't like her legal advice at all. I thought it was really bad advice and wrong advice. And I was rather uncomplimentary, perhaps even rude about it, in my last book. And then I met her. And she explained to me the circumstances in which she found herself. I don't think it justifies what happened. But she described to me the pressure she felt herself under, the anniversary of 9/11 coming up.

This man, detainee 063, al-Qahtani, present and caught. Tremendous pressure coming from the upper echelons of the administration. She described to me a visit that the administration has never talked about in which the three most important lawyers in the administration, Mr. Gonzales, who's the president's lawyer, Mr. Addington, who is the vice president's lawyer, and Mr. Haynes, who is Secretary Rumsfeld's lawyer— came down to Guantanamo at the end of September, talked to them about

interrogations and other issues, watched an interrogation, and left with the message, do whatever needs to be done. Now, put yourself in Diane Beaver's situation. You're getting a signal from the main man at the top of the administration: do whatever needs to be done. That takes the lid off and opens the door.

[snip]

PHILIPPE SANDS: You've got different camps who are struggling down at Guantanamo. And I think it would be wrong in any way to give the sense that there was unanimity to move towards abuse or that there was even strong support towards moving towards abuse. There was a strong body of belief down at Guantanamo amongst the military community, amongst the military lawyers, with the FBI, with the Naval Criminal Investigation Service, that this is a bad thing. Abuse doesn't work, abuse undermines authority, abuse undermines morale. We are going to stop it. Initially, they weren't successful. But once the abuse began, a backlash followed. And the folks down at Guantanamo identified a man in Washington who was the general counsel of the Navy, a man by the name of Alberto Mora, who truly is a heroic individual, in my view, who intervened very courageously, no personal advantage, directly with Jim Haynes, and said, "This must stop. If it doesn't stop, I'm going to reduce this into writing, and I'm going to cause a big fuss." And eventually, it did stop. But only after 54 days of abusive interrogation of Mohammed al-Qahtani, and not before the door had been opened, and the dogs had slipped their leash.
[my emphasis]

Now, as the AP reminds us, al-Qahtani recanted the confession he signed after all this torture.

Al-Qahtani last fall recanted a confession he said he made after he was tortured and humiliated at Guantanamo.

Which, given that there are members of the Exploitation Team stating that "they got nothing" from al-Qahtani, suggests a key piece of evidence against al-Qahtani (his own confession) would be unusable. That means that, unlike KSM and the others, they probably don't have enough evidence untainted by torture to try al-Qahtani (and possibly, the removal of Hartmann eliminated the one person who wanted to try anyway).

Just as important, look at how quickly al-Qahtani's torture would introduce actions of top Bush Administration lawyers. Al-Qahtani was tortured because Alberto Gonzales and David Addington and Jim Haynes flew down to Gitmo and pushed Diane Beaver to write a memo authorizing torture. Al-Qahtani's torture can be directly traced to Gonzales and Addington and Haynes and Rummy (and, thanks to Sands' book, it's all conveniently in one place). And that torture produced nothing.

They can't try al-Qahtani because they have insufficient untainted evidence, but more importantly, they can't try al-Qahtani because doing so will become a trial of Beaver and Haynes and Rummy, and doing so will expose that these people authorized torture even though it doesn't work.

Update: Via email, here's a statement from Center for Constitutional Rights, which is representing al-Qahtani:

The government is finally admitting what we have been saying all along, that the government's claims against our client were based on unreliable evidence obtained through torture at Guantanamo. Using torture to string together a web

of so-called evidence is illegal, immoral and cannot be the basis for a fair trial.

Mr. al Qahtani never made a single statement that was not extracted through torture or the threat of torture. The unconscionable techniques used on him are well-documented and were authorized directly by the White House. His torture log is a shameful window onto the depravity of this administration and the depths to which they have been willing to sink.

Mr. al Qahtani should be returned to the custody of the Saudi government, where they have a system in place to maintain custody of any former Guantanamo detainee who presents a danger, as well as a strong rehabilitation program supervising those that are released.

The Military Commissions are sham political show trials designed to do nothing but obtain convictions for the government. Col. Moe Davis testified to that effect in the Hamdan proceedings, and the presiding judge removed the legal advisor to the Commissions, Col. Hartmann, just this week for undue political influence. The Military Commissions allow secret evidence, hearsay evidence, and evidence obtained through torture, which violates every international and domestic legal principle of due process and fair trials. They are designed to hide the criminal conduct of U.S. personnel and to obtain nothing but convictions.

The White House will face the same legal and moral questions with any trial under this system.

We call on the government to send Mr. al Qahtani to Saudi Arabia, where he belongs, and end the failed experiment

█ that is Guantanamo. [my emphasis]