

OBAMA TO GIT-MO BETTER MILITARY TRIBUNALS



graphic by twolf

The GOP squeals and Obama greases their detainee wheel. On May 1st, the New York Times warned that President Obama was contemplating reinstating the tyrannical Bush/Cheney military tribunals for Gitmo detainees.

Yes, the same Barack Obama that forcefully pronounced to the American public during the election:

By any measure our system of trying detainees has been an enormous failure,

Not to mention declaring that as President he would:

reject the Military Commissions Act.

That was then, this is now. And now, today, it is seems nearly confirmed that military commissions will be back. From Peter Finn at the Washington Post:

The Obama administration is preparing to revive the system of military commissions established at Guantanamo Bay, Cuba, under new rules that would offer terrorism suspects greater legal protections, government officials said.

The rules would block the use of evidence obtained from coercive interrogations, tighten the admissibility of hearsay testimony and allow detainees greater freedom to choose their attorneys, said the officials, who spoke on the condition of anonymity because they were not

authorized to speak publicly.

...

Officials said yesterday that the Obama administration will seek a 90-day extension of the suspension as early as next week. It would subsequently restart the commissions on American soil, probably at military bases, according to a lawyer briefed on the plan.

To be clear, the Administration indicates that Obama has not given the final sign off on the plan, and the ACLU has already sworn to fight any such plan. One thing is for certain, however, Obama is not contemplating this move in order to give the detainees so tried the equivalent level of due process and justice that would be afforded by American courts, else he would simply use American courts as he stated was his intention while campaigning for votes.

No, you can safely bet that the idea is to use evidence and restrict rights in order to obtain convictions and severity of sentences that would be less likely with traditional due process and fundamental fairness. Not that the original iteration of the tribunals produced particularly good results as a mere three convictions have been produced out of a known total of 779 detainees since the inception of Gitmo. One area clearly in play to obtain the desired easier convictions under Obama's tribunals would be allowance of hearsay evidence:

Under the administration's rule changes, hearsay evidence would be admissible if a judge determines it is reliable, officials said. That provision would allow the government to introduce some intelligence material that would ordinarily be barred in federal court or military courts martial, the officials said.

Really there are two forces at work here, the desire to make easier the prosecution of the

remaining detainees whose cases are problematic and filled with pratfalls because of the torture and rendition programs, and the desire to appease the right wing shrieking howlers that are apoplectic over the thought of actually trying criminals in American courts. It is easy to see that these twin forces are making it hard for Obama to stick to the rational morality of his campaign positions and promises; what is not understandable is why he feels he must shunt his ideals and promises aside.

First off, the goal of any *appropriate* prosecution, whether criminal, quasi-criminal or other, is to provide a fair and just trial with due process, to protect the innocent and convict the guilty, and to provide a transparent forum so that the public as a whole can see that justice is being served and done. That is most definitely not what this plan is about. Although clearly the Obama Administration has sought to make some improvements around the edges, it is still nothing but lipstick on the Bush pig. Let's look at some of the problem areas:

The rules would "*block the use of evidence obtained from coercive interrogations*". All evidence from coercive interrogations or just some evidence from coercive interrogations? Will the ban be on any coerced statements and fruits thereof, or only those that came from that particular defendant? Will coerced statements from others be allowed, and if so to what degree? What about the fruit of coercion? Once you have tortured an individual, how do you not term any information obtained while he is still detained subsequent to that torture to not be the product of coercion? The reliance on "clean teams" and/or regular interrogators subsequent to torture to sanitize the proceedings is a joke. It is crystal clear that the Obama Administration is desirous of sliding in a lot of evidence this way, it is why they have fallen back onto the tribunals.

The rules would "*tighten the admissibility of hearsay testimony*". Well, as stated above, this

is not the case in the least; in fact, the rules are specifically designed to allow for wide ranging admissibility of hearsay. Again, that is the whole purpose here. The use of "hearsay" here is going to be designed to protect sources and means, conceal identities of the agents of torture and rendition and allow for selective use of classified information without challenge. In short it is nothing but a scam to deny the defendant the opportunity to confront and cross-examine his accusers and the evidence propounded against him; the very principle that is the bedrock of minimal due process and fundamental fairness.

The rules would *"allow detainees greater freedom to choose their attorneys"*. You've got to be kidding me. Seriously? What a load of dung. The Obama Administration has proved themselves every bit as obstreperous in relation to allowing effective assistance of acceptable counsel to the detainees as the Bush/Cheney crew was, witness the dogged determination to remove Kuebler in the Khadr case. How, pray tell, are detainees that have been locked up in the hell hole of Guantanamo for five plus years, tortured, isolated, feared up, egoed down, repeatedly told that any lawyer they speak to is an imperial American spy out to get them etc. going to meaningfully participate in obtaining counsel of their choice? And that is before you get to the fact that the US government has extremely narrow acceptability criteria for attorneys that are even able to be contemplated for participation in the tribunals. Quite frankly, the cynic would presume that this is simply Orwellian cover for prejudicing detainees by reshuffling some of the attorneys, military lawyers and JAG types that have proved to be a remarkable thorn in the side of the American government's plans for convenient justice. And said cynic would almost certainly be right.

So, to wind this toward a conclusion, this Obama gussied up swine of military commissions is a pig that ain't gonna fly. It is a patina of change on that which is not. And it is a sham;

because there is no need for it, traditional criminal courts are situated to handle these matters just fine once you get past the Republican hysterical shrieking. Traditional courts have handled Zacharias Moussaoui, Jose Padilla, the Blind Sheik Abdel-Rahman, John Walker Lindh and numerous others. Criminal courts have the CIPA process to deal with classified information in a professional and equitable manner. Have there been errors and problems in some of the cases to date; yes, absolutely, but almost all were the fault of malicious and unethical prosecutors, not the inability of the system to handle the matters. Lastly, traditional courts have at least the appearance of neutrality, a concept that simply is absent in the tribunals run by the American military out of the Pentagon.

The bottom line is that no matter how you shine it up, military tribunals are wrong, convey the wrong message to the rest of the world and are nothing but a lazy dodge by an American government complicit in an eight year litany of wrongful acts. President Obama should stop the madness right here and now, try the detainees in a just system for the world to see and start reclaiming the high ground.