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Don't Forget Guantánamo

by Andy Worthington

At first glance, this might seem to be an unnecessary headline, given that Barack Obama has been president for only two weeks and that one of his first acts was to sign a presidential order declaring that the notorious “war on terror” prison at Guantánamo Bay will be [closed within a year](#).

However, I believe it is appropriate, not only because such sweeping statements encourage the general public to believe that the closure of Guantánamo is a *fait accompli*, but also because it has already become apparent that issuing a presidential order is not the same as immediately addressing the human-rights abuses that have dogged the prison’s history, and that, sadly, continue to this day.

The dissent of a military judge

Last week, the mainstream media picked up on the first manifestation of dissent from within the Pentagon, when Army Col. James L. Pohl, the judge in the scheduled trial by military commission of the Saudi prisoner [Abdul Rahim al-Nashiri](#), refused to halt the case. One of 14 “high-value detainees” transferred to Guantánamo from secret CIA prisons in September 2006, al-Nashiri faces the death penalty for his alleged involvement in the terrorist attack on the USS *Cole* in 2000. His arraignment was scheduled for February 9.

On his first day in office, President Obama asked all the military commission judges to [suspend proceedings](#) for four months, so that the new administration could study the cases and decide whether or not to proceed with the much-criticized trial system, conceived in the office of the vice president in November 2001, which Barack Obama has opposed since voting against the Military Commissions Act in the fall of 2006. This was the legislation that revived the commissions after the Supreme Court ruled them illegal in June 2006, and Obama’s request was the first manifestation of his [long-stated promise](#) to repeal the Military Commissions Act and to move those scheduled to face a trial by military commission to the U.S. mainland, to be tried in a federal court or a military court-martial.

Although several judges immediately responded to the president's call to suspend commission proceedings, Col. Pohl, newly appointed to the position of chief judge, said that "the request to delay the arraignment is not reasonable," argued that it was important for the case to go ahead because "the public interest in a speedy trial will be harmed by the delay in the arraignment," and, according to the [New York Times](#), at times "took a contentious tone that seemed to challenge the Obama administration."

To be honest, this was not an act of major insurrection, as was clear from Col. Pohl's written opinion, in which [he explained](#) that he was simply following the law as it currently stands. "The Commission is unaware of how conducting an arraignment would preclude any option by the administration," he wrote. "Congress passed the Military Commissions Act, which remains in effect. The Commission is bound by the law as it currently exists, not as it may change in the future."

The uncertain role of the Pentagon and the CIA

Col. Pohl's opinion does, however, touch on some generally uncomfortable questions about the White House's relationship with the Pentagon that have not yet been adequately addressed. Robert Gates, retained by Obama as U.S. defense secretary, may have demonstrated that he was in line with the thinking of his new boss when he [refuted claims](#) in a recent — and [much-criticized](#)— Pentagon statement, which alleged that 61 former Guantánamo prisoners had "returned to the battlefield," but critics of Obama's presidential orders have pointed out that the other orders, which, on the face of them, ban torture outright, require the CIA to close its secret prisons, and compel all U.S. personnel to abide by the non-coercive interrogation techniques contained in the Army Field Manual, actually contain loopholes that could be exploited to continue some of the previous administration's most egregious human rights abuses.

These involve a [little-noticed appendix](#) to the Army Field Manual, which appears to preserve restricted access to the use of the "enhanced interrogation techniques" at the heart of the Bush administration's disturbing attempts to legalize the use of torture, and [provisions for the CIA](#) to run a scaled-down version of the "extraordinary rendition" program and to maintain "facilities used only to hold people on a short-term, transitory basis." How much the inclusion of these loopholes in the presidential orders was influenced by the Pentagon or by the CIA is as yet unknown, but their existence indicates that the struggle to ensure that America is, genuinely, a country that does not torture, is not yet over.

The continuing role of Susan Crawford

When it comes to the commissions, the most disturbing knock-on effect of Col. Pohl's dissent was the realization that the person best placed to deal with his decision is not the president, but Susan Crawford, the commissions' convening authority. Crawford, the senior

Pentagon official responsible for approving charges and referring cases to trial, can, if she wishes, withdraw the charges without consulting Col. Pohl. Whether she will do so or not is unknown, but her continued influence on the commissions is a clear sign that little has so far changed with the removal of the Bush administration from the White House.

Crawford [caused a major shock](#) in the days before Barack Obama's inauguration when she admitted that, in May last year, she had refused to press charges against [Mohammed al-Qahtani](#), a Saudi prisoner regarded as a proposed 9/11 hijacker, because his interrogations in Guantánamo "met the legal definition of torture." This was the first admission by a senior Pentagon official that torture had taken place under the Bush administration, and it led immediately to calls for those who approved the torture to be prosecuted under the terms of the UN Convention Against Torture, to which the United States is a signatory.

However, although Crawford's confession appeared to indicate that she had had a change of heart, it is likely that she had an ulterior motive — either to hint that a new policy of "preventive detention" should be instigated for prisoners like al-Qahtani who cannot be prosecuted, or, perhaps, to shield herself from allegations of complicity in torture if, by some miracle, a special prosecutor is appointed to investigate the Bush administration for war crimes.

Simply put, the reason for doubting that Crawford's conversion to the anti-torture camp was as straightforward as it seems is the same reason that her continued involvement in the commissions demonstrates that Obama still has much to do to put clear water between himself and the previous administration. As I explained in a detailed article last October, "[The Dark Heart of the Guantánamo Trials](#)," Crawford, though appointed to a supposedly impartial role as the commissions' convening authority, is actually a protégée of former Vice President Dick Cheney and a good friend of his chief of staff David Addington, the prime architects of the disturbingly innovative and extra-legal approach to detention, interrogation, and prosecution that was implemented in the "war on terror."

Reinstating the Geneva Conventions

These developments are disturbing enough, but a more significant reason for believing that Guantánamo should remain in the public eye involves not what is happening in the Pentagon, but what is happening at Guantánamo itself. Although Barack Obama stated, in his presidential order relating to the prison's closure, that Robert Gates was required to ensure that the remaining prisoners at Guantánamo are held in conditions that comply with the Geneva Conventions regarding the humane treatment of prisoners, he gave the defense secretary 30 days to undertake a review of the current conditions in the prison.

Even at the time, it was clear that this time frame was a luxury that the prisoners could ill afford. As the [seventh anniversary](#) of Guantánamo's opening approached (on January 11), dozens of prisoners embarked on a hunger strike to protest their continued detention without charge or

trial. A week before Obama signed his presidential order, the media reported that [42 prisoners](#) in total were on hunger strike, although Gitanjali Gutierrez, a lawyer with the Center for Constitutional Rights, who had just returned from Guantánamo, suggested that the true total was even higher, and that over 70 of the remaining 242 prisoners were refusing to eat.

Binyam Mohamed and the hunger strikes

After an initial flurry of activity, the mainstream media moved on from the hunger strike story, but news from Guantánamo at the weekend confirms that it remains as prevalent as it was three weeks ago. Lt. Col. Yvonne Bradley, the military defense attorney for the British resident [Binyam Mohamed](#), explained in an email that she had visited Mohamed last week, and he had told her that “at least 50 people are on a hunger strike with about 42 people being force fed and the remainder being threatened with force feeding.”

One of the more notable victims of “extraordinary rendition” and torture in the “war on terror,” Mohamed was flown to Morocco by the CIA for 18 months of torture and then rendered to the CIA’s own “Dark Prison” near Kabul, Afghanistan, where he endured several months’ more torture until he made a false confession about being involved with al-Qaeda and plotting to detonate a radioactive “dirty bomb” in New York. Throughout last year, his lawyers were engaged in court cases on both sides of the Atlantic in an attempt to secure access to classified evidence revealing the extent of his torture, and their efforts were apparently so successful that Mohamed was told in December that he would [soon be released](#).

However, as he explained in a letter dated December 29, but only cleared by the military censors a fortnight later, he embarked on a hunger strike because “It is a cruel tactic of delay to suspend my travel till the last days of this administration while I should have been home a long time ago.”

When Lt. Col. Bradley saw him last week, she was shocked at his appearance. He was, she wrote, “nothing but skin and bones,” adding, “The real worry is that he comes out in a coffin.” She also noted that his hunger strike had resulted in health complications. In her email, she wrote, “He reported that on 13 January, he fainted from his weak condition and was administered several bags of IV solution. Unfortunately, he had other complications from the IV solution as liquid built up in his knees, which caused panic and a scare among the JTF [Joint Task Force] medical staff.”

Mohamed’s frail state was so alarming that, as the [Guardian](#) reported on Saturday, “frantic preparations” were being made by the British government to bring him back to the UK this week. For those who have been following Mohamed’s story for the last three and a half years, since his lawyers first [publicized the story](#) of his rendition and torture in August 2005, this is reassuring news, but it is disturbing to realize that, even while “close to death” (as the *Guardian* also reported), Mohamed is more fortunate than the other prisoners on hunger strike.

When Lt. Col. Bradley saw Mohamed last week, he explained that he was being fed “voluntarily.” This came as a relief to Bradley, who noted, “I am sure he is incapable of putting up much of a resistance if he did not want to be tube fed and would sustain great injury if he was beaten and forcibly removed from his cell,” but as Mohamed also explained, he had “witness[ed] other detainees being beaten and forcibly extracted from their cells to be tube fed.”

Force feeding and forced cell extractions

As Binyam Mohamed prepares to leave Guantánamo, these other men have no such escape route. And while the rest of us await Robert Gates’ review — and note with interest that President Obama has [appointed a new commander](#) for the prison, Rear Adm. Thomas H. Copeman III, who went to the same school as Obama in Hawaii — the bitter truth as I write these words is that Guantánamo is still being run as if the Bush administration remains in control.

For the hunger strikers — who are exercising the only power they have in a place that has been dedicated to isolating and dehumanizing them for seven years — their force feeding is both illegal and, arguably, a form of torture in itself. Twice a day they are strapped into a restraint chair, using 16 separate straps so that they cannot move, and force fed through a tube inserted through their nose and into their stomach. As Mohamed’s lawyer, Clive Stafford Smith, [has explained](#),

Medical ethics tell us that you cannot force-feed a mentally competent hunger striker, as he has the right to complain about his mistreatment, even unto death. But the Pentagon knows that a prisoner starving himself to death would be abysmal PR, so they force-feed [them]. As if that were not enough, when Gen. Bantz J. Craddock headed up the U.S. Southern Command, he announced that soldiers had started making hunger strikes less “convenient.” Rather than leave a feeding tube in place, they insert and remove it twice a day. Have you ever pushed a 43-inch tube up your nostril and down into your throat?

It is, as Stafford Smith has explained [elsewhere](#), “excruciatingly painful.” In addition, as Binyam Mohamed noted, those who refuse to leave their cells to be force fed voluntarily are “beaten and forcibly extracted from their cells,” another hideous procedure that is part of the very fabric of Guantánamo, carried out by teams of five heavily armored guards, responsible for quelling even the most minor infringements of the rules, who, over the years, have been responsible for attacks so severe that prisoners have ended up with broken limbs.

This is, I’m sure you’ll agree, a far cry from the “humane treatment of prisoners” required by the Geneva Conventions, and it is crucial, therefore, that those concerned with the treatment of the prisoners at Guantánamo maintain the pressure on the new president to demonstrate that he is keeping to his word.

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This article was originally published in February 2009.