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U.S. Military Jury Condemns Terrorist's Torture and Urges Clemency

Seven senior officers rebuked the government's treatment of an admitted terrorist in a handwritten letter from the jury room at Guantánamo Bay.



By Carol Rosenberg

GUANTÁNAMO BAY, Cuba — In a stark rebuke of the torture carried out by the C.I.A. after the Sept. 11 attacks, seven senior military officers who heard graphic descriptions last week of the brutal treatment of a terrorist while in the agency's custody wrote a letter calling it "a stain on the moral fiber of America."

The officers, all but one member of an eight-member jury, condemned the U.S. government's conduct in a clemency letter on behalf of Majid Khan, a suburban Baltimore high school graduate turned Qaeda courier.

They had been brought to the U.S. Navy base at Guantánamo Bay to sentence Mr. Khan, who had earlier pleaded guilty to terrorism charges. They issued a sentence of 26 years, about the lowest term possible according to the instructions of the court.

At the behest of Mr. Khan's lawyer, they then took the prerogative available in military justice of writing a letter to a senior official who will review the case, urging clemency.

Before sentencing, Mr. Khan spent two hours describing in grisly detail the violence that C.I.A. agents and operatives inflicted on him in dungeonlike conditions in prisons in

Pakistan, Afghanistan and a third country, including sexual abuse and mind-numbing isolation, often in the dark while he was nude and shackled.

“Mr. Khan was subjected to physical and psychological abuse well beyond approved enhanced interrogation techniques, instead being closer to torture performed by the most abusive regimes in modern history,” according to the letter, which was obtained by The New York Times.

The panel also responded to Mr. Khan’s claim that after his capture in Pakistan in March 2003, he told interrogators everything, but “the more I cooperated, the more I was tortured,” and so he subsequently made up lies to try to mollify his captors.

“This abuse was of no practical value in terms of intelligence, or any other tangible benefit to U.S. interests,” the letter said. “Instead, it is a stain on the moral fiber of America; the treatment of Mr. Khan in the hands of U.S. personnel should be a source of shame for the U.S. government.”

In his testimony on Thursday night, Mr. Khan became the first former prisoner of the C.I.A.’s so-called black sites to publicly describe in detail the violence and cruelty that U.S. agents used to extract information and to discipline suspected terrorists in the clandestine overseas prison program that was set up after the attacks on Sept. 11, 2001.

In doing so, Mr. Khan also provided a preview of the kind of information that might emerge in the death penalty trial of the five men accused of plotting the Sept. 11 attacks, a process that has been bogged down in pretrial hearings for nearly a decade partly because of secrecy surrounding their torture by the C.I.A.

The agency declined to comment on the substance of Mr. Khan’s descriptions of the black sites, which prosecutors did not seek to rebut. It said only that its detention and interrogation program, which ran the black sites, ended in 2009.

More than 100 suspected terrorists disappeared into the C.I.A.’s clandestine overseas prison network after Sept. 11, 2001. The agency used “enhanced interrogation techniques” such as waterboarding, sleep deprivation and violence to try to have prisoners divulge Al Qaeda’s plans and the whereabouts of leaders and sleeper cells, but with no immediate plans to put its captives on trial.

President George W. Bush disclosed the existence of the C.I.A. program in September 2006, with the transfer of Mr. Khan and 13 other so-called high-value detainees to Guantánamo. President Barack Obama ordered the program shut down entirely after taking office in 2009.

Mr. Khan, 41, was held without access to either the International Red Cross, the authority entrusted under the Geneva Conventions to visit war prisoners, or to a lawyer until after he was transferred to Guantánamo Bay. He pleaded guilty in February 2012 to terrorism crimes, including delivering \$50,000 from Al Qaeda to an allied extremist group in Southeast Asia, Jemaah Islamiyah, that was used to fund a deadly bombing of a Marriott hotel in

Jakarta, Indonesia, five months after his capture. Eleven people were killed, and dozens more were injured.

The clock on his prison sentence began ticking with his guilty plea in 2012, meaning the panel's 26-year sentence would end in 2038.

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But Mr. Khan, who has cooperated with the U.S. government, helping federal and military prosecutors build cases, has a deal that was kept secret from the jury that could end his sentence in February or in 2025 at the latest.

Under the military commission system that was set up after Sept. 11, even defendants who plead guilty and make a deal with the government must have a jury sentencing hearing. This was the case for Mr. Khan, whose sentencing was delayed by nearly a decade to give him time to work with government investigators and win favor in the form of early release from a jury sentence.

The clemency letter also condemned the legal framework that held Mr. Khan without charge for nine years and denied him access to a lawyer for the first four and half as “complete disregard for the foundational concepts upon which the Constitution was founded” and “an affront to American values and concept of justice.”

29 Oct 21

From: Panel ICO U.S. vs. Khan
To: Convening Authority

The panel members listed below recommend clemency in the case of Majid Shoukat Khan.

Mr. Khan committed serious crimes against the U.S. and partner nations. He has plead guilty to these crimes and taken responsibility for his actions. Further, he has expressed remorse for the impact of the victims and their families.

Clemency is recommended with the following justification:

1) Mr. Khan has been held without the basic due process under the U.S. Constitution. Specifically, he was held without charge or legal representation for nine years until 2012, and held without final sentencing until October 2021. Although designated an "alien unprivileged enemy belligerent," and not technically afforded the rights of U.S. citizens, the complete disregard for the foundational concepts upon which the Constitution was founded is an affront to American values and concept of justice.

2) Mr. Khan was subjected to physical and psychological abuse well-beyond approved

The Handwritten Document

This letter was drafted in the deliberation room recommending clemency for Majid Khan. Seven members of Mr. Khan's eight-officer jury signed it, using their panel numbers. The jury was drawn from a pool of 20 active-duty officers who were brought to Guantánamo Bay on Oct. 27.

Although it is rarely done, a military defense lawyer can ask a panel for letters endorsing mercy, such as a reduction of a sentence, for a service member who is convicted at a court-martial.

But this was the first time the request was made of a sentencing jury at Guantánamo, where accused terrorists are being tried by military commission. A clemency recommendation is not binding, but it could send a powerful message to the convening authority of military commissions, the senior Pentagon official overseeing the war court, whose role is to review a completed case and an accompanying clemency petition from defense lawyers to decide whether to shorten a sentence. An Army colonel, Jeffrey D. Wood of the Arkansas National Guard, currently fills that role as a civilian.

In closing arguments, Mr. Khan’s military lawyer, Maj. Michael J. Lyness of the Army, asked the panel for a minimum sentence and then to consider drafting a letter recommending clemency.

The lead prosecutor, Col. Walter H. Foster IV of the Army, asked the panel to issue a harsh sentence. He conceded that Mr. Khan received “extremely rough treatment” in C.I.A. custody but said he was “still alive,” which was “a luxury” that the victims of Qaeda attacks did not have.

The jury foreman, a Navy captain, said in court that he took up the defense request and drafted the clemency letter by hand, and all but one officer on the sentencing jury signed it, using their panel member numbers because jurors are granted anonymity at the national security court at Guantánamo.

Ian C. Moss, a former Marine who is a civilian lawyer on Mr. Khan’s defense team, called the letter “an extraordinary rebuke.”

“Part of what makes the clemency letter so powerful is that, given the jury members’ seniority, it stands to reason that their military careers have been impacted in direct and likely personal ways by the past two decades of war,” he said.

At no point did the jurors suggest that any of Mr. Khan’s treatment was illegal. Their letter noted that Mr. Khan, who never attained U.S. citizenship, was held as an “alien unprivileged enemy belligerent,” a status that made him eligible for trial by military commission and “not technically afforded the rights of U.S. citizens.”

But, the officers noted, Mr. Khan pleaded guilty, owned his actions and “expressed remorse for the impact of the victims and their families. Clemency is recommended.”

Sentencing was delayed for nearly a decade after his guilty plea to give Mr. Khan time and opportunity to cooperate with federal and military prosecutors, so far behind the scenes, in federal and military terrorism cases. In the intervening years, prosecutors and defense lawyers clashed in court filings over who would be called to testify about Mr. Khan’s abuse in C.I.A. custody, and how.

In exchange for the reduced sentence, Mr. Khan and his legal team agreed to drop their effort to call witnesses to testify about his torture, much of it most likely classified, as long as he could tell his story to the jury.

The jurors were also sympathetic to Mr. Khan’s account of being drawn to radical Islam in 2001 at age 21, after the death of his mother, and being recruited to Al Qaeda after the Sept. 11 attacks. “A vulnerable target for extremist recruiting, he fell to influences furthering Islamic radical philosophies, just as many others have in recent years,” the letter said. “Now at the age of 41 with a daughter he has never seen, he is remorseful and not a threat for future extremism.”

The panel was provided with nine letters of support for Mr. Khan from family members, including his father and several siblings — American citizens who live in the United States — as well as his wife, Rabia, and daughter, Manaal, who were born in Pakistan and live there.