

Torture Taints the Case of Guantánamo Prisoner Mohamed Jawad

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Theme: [Crimes against Humanity](#), [Law and Justice](#)



In a [previous article](#), I reported at length on an extraordinary declaration submitted to a Washington D.C. court on January 13 for the [habeas corpus review](#) of [Mohamed Jawad](#), an Afghan prisoner at Guantánamo. The declaration, by Lt. Col. Darrel Vandeveld, a former prosecutor in Guantánamo's Military Commission trial system, who [resigned in September 2008](#), was enormously significant, as it traced how Vandeveld changed from being a "true believer to someone who felt truly deceived."

Over the course of the declaration, Vandeveld revealed how, during his 16-month service, he encountered a "chaotic" prosecution office in complete disarray, which was both unwilling and unable to compile plausible evidence and to provide exculpatory evidence to the defense teams.

He also revealed how, step by step, both by accident and through a commendable diligence, he learned that Jawad, who faced a trial by Military Commission for allegedly attacking two US soldiers and a translator with a grenade, was only 16 or 17 at the time of the attack, was tricked into joining an insurgent group, was drugged at the time of the attack, was threatened with torture in Afghan custody until he made a false confession (or had a false confession made out in his name), was one of four prisoners in total who apparently confessed to the crime (although the others could not be traced), and was subjected to serious physical and psychological abuse in the US prison at Bagram airbase and at Guantánamo, including a two-week period when he was moved from cell to cell 112 times to prevent him from sleeping, under what was euphemistically termed the "frequent flier

program.”

As torture has recently hit the headlines with the admission of Susan J. Crawford, the senior Pentagon official overseeing the Commissions, that the Saudi prisoner Mohammed al-Qahtani was [tortured in Guantánamo](#), and that, as a result, she decided to drop his case, it is clear to me that tough questions need to be asked about why the policy of prolonged sleep deprivation, which was part of the standard operating procedure (according to an officer who provided testimony in Jawad’s case), and to which, according to a former interrogator, [over a hundred prisoners](#) in Guantánamo were subjected, does not also count as torture.

Although many medical reports have concluded that sleep deprivation is a form of torture, one of the most powerful descriptions was made by Menachem Begin, the former Israeli prime minister, who was tortured by the KGB. In his book, *White Nights: The Story of a Prisoner in Russia*, [he wrote](#):

In the head of the interrogated prisoner, a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep ... Anyone who has experienced this desire knows that not even hunger and thirst are comparable with it. I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them. He did not promise them their liberty; he did not promise them food to sate themselves. He promised them — if they signed — uninterrupted sleep! And, having signed, there was nothing in the world that could move them to risk again such nights and such days.

Without Vandeveld’s persistence, little if any of Mohamed Jawad’s true story would have come to light, and his detailed testimony serves not only as a comprehensive condemnation of the Military Commissions, but also as confirmation that the administration effectively has no case against Jawad, and that not only should his trial be scrapped, but the judge in his habeas case should order his immediate release from Guantánamo.

In spite of this, the [Washington Post](#) reported that the Commissions’ chief prosecutor, Col. Lawrence Morris, responded dismissively — even insultingly — to Vandeveld’s detailed report. In an email, Morris claimed that Vandeveld “was disappointed when I did not choose him to become a team leader, and he asked to resign shortly thereafter, never having raised an ethical concern during the 9 months I supervised him. I relied on his representations to me about Jawad and other cases I entrusted to him (which included his advocacy of a 40-year sentence for Mr. Jawad the week before he departed).”

His words provoked a terse response from Vandeveld, who said, simply, “I wouldn’t believe a word he says.”

The submission of Lt. Col. Vandeveld’s declaration was not the only activity in Jawad’s case on January 13. Elsewhere in the capital, the question of torture once more surfaced when the Military Commissions appeal court (hastily convened in the summer of 2007 after two judges, Col. Peter Brownback and Capt. Keith Allred, [temporarily derailed](#) the entire Commission process) met to consider the government’s contention that a statement made by Jawad to US interrogators in December 2002, in which he apparently admitted to the grenade attack, just hours after the statement in Afghan custody that was extracted through threats of torture, should be reinstated.

Two months ago, Jawad's judge, Col. Stephen Henley, ruled that his [confession in Afghan custody](#) could not be used because he "accepted the accused's account of how he was threatened, while armed senior Afghan officials allied with US forces watched his interrogation," and because he believed Jawad's account of an interrogator telling him, "You will be killed if you do not confess to the grenade attack. We will arrest your family and kill them if you do not confess."

Last month, Henley also [prevented the use of Jawad's second confession](#), explaining that he had concluded that "the effect of the death threats which produced the accused's first confession to the Afghan police had not dissipated by the second confession to the US. In other words, the subsequent confession was itself the product of the preceding death threats." As the [Associated Press](#) described it, Henley noted that the US Special Forces soldiers "had used techniques to maintain 'the shock and fearful state' associated with his arrest by Afghan police, including blindfolding him and placing a hood over his head."

This seems pretty clear-cut to me, but as the government knows no shame (Lt. Col. Vandeveld memorably described some of the prosecutors as having "an obdurate and credibility-destroying pursuit of laughable legal positions"), Navy Cmdr. Arthur L. Gaston III was wheeled out in court to claim, "This was a separate and distinct interrogation," even though it had been well established that it involved blindfolding and hooding, and took place only hours after the Afghan authorities had threatened to kill Jawad and his family.

The three judges — a civilian, Frank J. Williams, the Chief Judge of the Rhode Island Supreme Court, Air Force Col. David R. Francis, and Navy Capt. Daniel E. O'Toole — did not make an immediate decision, but, as Maj. David Frakt, Jawad's military defense attorney, explained to me in an email, "They were what we call a 'hot bench,' asking many, many questions. It appeared to me that they were a bit tougher, or certainly, a bit more skeptical of the government's position."

He added, "The government counsel had an uphill battle, because they had lost at the trial court and had to convince the court that the trial judge had erred under an 'abuse of discretion' standard, which would require the judges to find that Judge Henley's findings were 'clearly erroneous.'" This, of course, was a tall order, as Henley's ruling was not delivered lightly.

Maj. Frakt also explained, "The government's position was that a statement can't be considered to be obtained by torture unless there was torture used in the specific interrogation session in which the suspect confessed. The court seemed very skeptical that the effects of torture could never carry over to a subsequent interrogation." As the Associated Press pointed out, the judges "questioned whether they could ignore the fact that Jawad was tortured into his first confession," and Capt. O'Toole asked, "Can we admit coerced statements that are not voluntary? That's the basic question."

David Brennan, a colleague of Maj. Frakt, and a Professor of International Law at Western State University, who also attended the hearing, had further comments. He explained that the judges, who were "well-versed in the Jawad case and the issues ... appeared reluctant to accept the government's suggestion that Congress could legislate away the constitutional protections attendant to an interrogation."

He also reinforced what appeared to be a prevailing belief that the judges were particularly exercised by the timing of the second confession, noting that they "were unwilling to accept

the government's far-fetched scenario that Mr. Jawad's interrogation by US military forces shortly after the one by Afghani officials that was undeniably the product of torture was miraculously untainted by the lingering effects of that patently illegal treatment of a prisoner."

Although the court did not set a date for announcing its verdict, Maj. Frakt was confident that the judges would uphold Col. Henley's ruling, leaving the case "eviscerated," as Lt. Col. Vandeveld explained when Henley ruled out the use of the statement. "I am confident that Judge Henley's ruling will be affirmed," Maj. Frakt wrote in his email, "but it is appalling that the Bush administration continues to take these outrageous legal positions right up until the bitter end. The government's oral argument was essentially the last gasps of a regime in its death throes."

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press, distributed by Macmillan in the US, and available from Amazon — click on the following for the [US](#) and the [UK](#)). To receive new articles in your inbox, please subscribe to my [RSS feed](#).

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