

Torture v terrorism defines legal battle to execute 9/11 Five

On the 18th anniversary of the twin towers attacks, the prime suspects are still held on Cuba. They are old men now

JOSH GLANCY



Guantanamo Bay

In a custom-built courtroom in southeast Cuba, five ailing, rickety men in chains shuffle into view under heavy guard. At the front of the group is perhaps the most notorious terrorist alive.

He is wearing a long, flowing shalwar kameez, a turban, a camouflage jacket and a scarf with the Palestinian flag on it. His beard is dyed bright red. This is Khaled Sheikh Mohammed, the alleged mastermind of 9/11.

Mohammed, or "KSM", as he is known, is accused of organising the worst terrorist attack on American soil. Nearly 3,000 people died on September 11, 2001, when three hijacked planes were flown into buildings in New York and Washington, and a fourth crashed en route to its target.

Unsurprisingly, the US government is seeking the death penalty. Yet as the 18th anniversary of the attacks is marked this week with a ceremony at ground zero in New York, Mohammed and his co-conspirators still have not been put on trial.

Behind KSM, in shackles, sit the four other defendants. Two are Yemeni: Walid Bin Attash, who is alleged to have run an al-Qaeda camp in Afghanistan where two of the hijackers were trained, and Ramzi bin al-Shibh, who is accused of helping organise the attacks.

Then comes Ammar al-Baluchi, KSM's nephew, who allegedly helped fund and facilitate the hijackers' flight school training, and finally Mustafa al-Hawsawi, a Saudi national accused of providing cash and credit cards for the hijackers.

In a building constructed at great expense to try the "9/11 Five", the military court at Guantanamo Bay is in its eighth year of pre-trial proceedings and inching towards justice at an agonising pace. It will be the trial of the century, if and when it happens.

The five were captured during raids in 2002 and 2003. So why has it taken so long? The way al-Hawsawi sits down is the first clue: as he enters the room, he places a special cushion on his seat. He is still in pain from being sodomised during his prolonged torture, conducted at CIA black sites during the war on terror, his lawyers assert.

What happened at those sites, where the rules of war were discarded in the hunt for information and revenge, created a legal morass for America. Arguments over what evidence is admissible and what is classified seem endless.

"There's been an extraordinary effort to keep the details secret, to protect the people who committed the torture," said David Niven, who is leading KSM's defence. "The five men are on trial, but we're on trial too. The American system writ large is on trial. We either have a government of laws or we don't."

As of this year, the case has a new judge, its third: Colonel Shane Cohen of the US air force. Cohen is determined to bring the case to its conclusion. And this month he even set a provisional date for the trial: January 2021.

For Kathleen Viganio, whose husband, Joseph, a detective, and brother-in-law, John, a fireman, died in the 9/11 attacks, a trial cannot come soon enough.

"I am relieved a date has finally been set," she said. "I only hope this is not a long, drawn-out trial. I am looking for a



Prisoners praying at Guantanamo Bay. Left, detainees waiting at Camp X-Ray

guilty verdict. I would like to live in peace but there is evil in this world. These men and people like them took our peace through terrorism. A guilty verdict would bring a measure of satisfaction."

Other families feel differently. Jessica Murphy was five years old when her father, Brian, a trader at the broker Cantor Fitzgerald, was killed in the World Trade Center. She visited Guantanamo with her sister, Leila.

"I do want to see a trial happen but I am sceptical that it will happen any time soon," she said. "My hope for a trial would be to hold the perpetrators of 9/11 accountable and also to hold the government accountable, and see that the US upholds the values it claims to stand for."

What makes the proceedings at Guantanamo fascinating is that on this small, dusty, iguana-infested patch of Cuba, America is wrestling with its soul. Is it the exceptional nation, ruled by laws, that it believes itself to be? Or a country like any other, willing to exercise its power without restraint when necessary?

"What happened back then undermined basic values and core principles that gave the United States moral authority," said Walter Ruiz, the lead counsel for al-Hawsawi. "How can we talk to other nations about human rights unless we reckon with what was done here?"

The entire Guantanamo base is haunted by the war on terror. The secretary of defence, Donald Rumsfeld, decreed in 2002 that it would host a detention centre for "the worst of the worst". One can still visit Camp X-Ray, made famous by photos of kneeling men in orange jumpsuits, now closed and overgrown with weeds. It too is caught up in a wrangle as the Pentagon's plans to raze it are held up by accusations of "erasing" the history of torture.

Forty prisoners are still held in Guantanamo Bay, down from a high of 660. They are known colloquially as "forever prisoners". Most will never stand trial.

Attempts during the Obama era to close the prison and parcel out the prisoners around the world are long

forgotten. In January 2018, Donald Trump decreed that the prison should stay open, and even suggested more terrorists could be sent there. Commanders were told to plan for the centre to be open 25 more years, at a cost of \$450m (£365m) a year.

This means preparations are being made for prisoners' end-of-life care. As they pass into late middle age, with no hope of release, arthritis, diabetes and cancer are becoming factors. The prison will eventually resemble a hospice.

Whether from lethal injection or old age, the 9/11 Five will probably die at Guantanamo. If they are executed, it would be a landmark in US legal history.

"It will be a low-water mark in American jurisprudence if the government is allowed to execute these men under these conditions," said Niven.

Ed Ryan, the counsel for the prosecution, sees it differently. "A nation was attacked and its people murdered," he said in July's court session. "Our client, this nation, deserves a reckoning. The people deserve justice."

There are any number of potential hurdles to the 2021 trial date. Some are practical. Conditions in Guantanamo are a problem. The military zone is primarily a naval base that dates back to shortly after the Spanish-American War in 1898 and is much like many others of its kind; it has a McDonald's, an outdoor cinema, a radio station and a girl scout's camp.

But the barbed-wire-wrapped "Camp Justice", where the legal proceedings are held, is a different matter. There is a shortage of rooms and lavatories. Reporters are grudgingly allowed to visit but housed in makeshift tents. These keep out the island's infamous "banana rats" – but are not suitable for lengthy stays.

"I can't wait to hear where everyone is going to stay," said James Connell, the lead counsel for al-Baluchi. "Most people

look around Guantanamo and say, 'It sure doesn't look like this place is ready for trial!'"

The real question, though, is what evidence is going to be admissible. Any confessions extracted under CIA torture are generally agreed to be inadmissible. In his years at the black sites, between 2003 and 2006, KSM was waterboarded 183 times. Al-Hawsawi has had surgery for damage caused by rectal examinations and rectal rehydration – which Ruiz describes as sodomy – while in CIA custody.

The men also faced long periods being deprived of sleep, doused in freezing water and subjected to noise torture.

But then the government brought in FBI interrogators, described as "clean teams", untainted by torture, who extracted fresh confessions from the suspects. The prosecution lawyers argue this evidence is valid. The defence argues it was all part of the same prolonged interrogation. "It was a unitary effort," said Connell. "They were one team – one fight the whole time."

The prosecution claims this is all part of a delaying tactic. It is common in death-penalty trials for the defence to drag out proceedings for as long as possi-

ble, because each year their client stays alive is a victory.

"Capital defence counsel never want to get to trial. So they go on these 'deep-sea fishing expeditions'," said Clayton Trivett, counsel for the prosecution, during July's proceedings.

For Trivett, the issue of torture pales in comparison with the 9/11 attacks. "[The defence] are going to be able to present as part of the defendants' background what happened to them," he said.

"We're not going to oppose that. We believe when it's being weighted it's like a feather to an anvil of what these people are responsible for. We will defend until the end the US government's need to put in place an interrogation programme to stop the slaughter of 3,200 people."

For Jessica Murphy, preparing this week to mark the 18th anniversary of the death of her father, nothing that happens in Guantanamo can truly affect what happened that day. "It's an emotional time of year, every year," she said.

"I've never known a world without 9/11. So, no, it wouldn't ultimately change anything. It wouldn't bring back our father or any other victims."

@JoshGlancy

Israeli leader and his British host take a last bow

ANSHEL PFEFFER



Last Thursday, two prime ministers met in Downing Street. The host, Boris Johnson, had failed the previous night to win the two-thirds of parliament's votes necessary to call an early election. His guest, Benjamin Netanyahu, succeeded three months earlier in dissolving the Knesset, and in 10 days faces an election he regrets having called. Bibi may have whispered to Boris during their short meeting: "Be careful what you wish for."

There was a curious symmetry to the meeting. Both have built improbable careers on their skills as showmen; both face intense political pressure; neither may be in office by the end of the year. In Wakefield later that day, Johnson made a political speech that used uniformed police officers as a backdrop. Netanyahu has recently been rapped by

Israel's central elections committee for doing the same with Israeli soldiers.

In November 2017, there was a moment of embarrassment when Netanyahu arrived at No 10 for a meeting with Theresa May, only to have to wait for half a minute by the door, which remained closed. Since then, protocol has been changed and the British prime minister now walks out to meet him, not just by the door, but a few yards down the street, as he emerges from his car.

The true story behind last week's brief visit, however, was that Netanyahu wasn't in London to see Johnson. The 24-hour visit had been decided on Tuesday night, between Netanyahu and Mark Esper, the US secretary of defence, who was in town. On Wednesday morning, almost as an afterthought, the Israelis got in touch with the prime minister's office to let them know Netanyahu was coming and to ask whether Johnson had time to meet.

The urgency for Netanyahu in meeting the new American defence

secretary is due to his fear that President Donald Trump, having taken Israel's side for the past 2½ years on the Iranian issue and pulled out of the nuclear agreement signed in 2015 by Barack Obama's administration, may now be changing tack.

"No one can predict what Trump will do," said a senior Israeli official, close to Netanyahu's thinking. "We can't rule out him meeting [the Iranian president Hassan] Rouhani at the United Nations general assembly in New York."

Since the surprise arrival of Iran's foreign minister,

Mohammad Jawad Zarif, at the G7 summit in Biarritz two weeks ago, Netanyahu has been carrying out a marathon of phone conversations with senior US administration officials, warning of the dangers of engaging diplomatically with Iran. His meeting last Thursday with Esper was his first chance to make his case in person. He would have come to London even if a meeting with Johnson had not been possible at such short notice. But it was a bonus.

Both prime ministers view each other as potential allies. Both have a certain affinity

with Trump and belong to the very small circle of world leaders whom the American leader seems to admire and trust. Johnson would like Netanyahu's help in urging the administration to grant Britain a preferential trade agreement as soon it leaves the EU. But they are split over Iran.

In May last year, as foreign secretary, Johnson flew to Washington to urge the Trump administration to stick to the Iran deal, of which Britain is a signatory. At the time he couldn't get an audience with the president, so instead went on Trump's favourite breakfast show, Fox and Friends, to argue his case. He failed, however, and Trump announced, in a speech that could have been written by Netanyahu, that America was pulling out of the deal.

Their differences on Iran don't seem to have marred the relationship. In his meetings in London, Netanyahu was flanked by senior air force officers, bearing details of the movements of Iran's proxies and the Iranian tanker that

Britain recently held in Gibraltar and that is now – despite Iranian assurances – offloading oil to the Syrian regime. The officers' presence was also a reminder that relations between the UK and Israel are, as Netanyahu said, "at an all-time high". Israeli F-15 fighter-jets are currently flying out of RAF Waddington, in the first joint exercise between the two countries' air forces. But relations could take a sudden downturn.

One name that went unmentioned was that of the leader of the opposition, Jeremy Corbyn, a stalwart of anti-Israel demonstrations.

Both leaders are facing uphill battles to remain in office. This was Netanyahu's last visit abroad before the Israeli elections and perhaps his last ever as prime minister. At least one Israeli official wondered if Netanyahu, who has met five British prime ministers in Downing Street, would ever return – and, if Corbyn replaces Johnson, whether any Israeli prime minister will be there for quite a while.



Boris Johnson meeting Benjamin Netanyahu last Thursday

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