

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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GUANTANAMO BAY -- When I first met [Omar Khadr](#), the youngest detainee at [Guantanamo Bay](#), he was somewhere in the awkward gap between boy and man. He was broad-shouldered and lanky, but his face looked like a child's covered with acne. It was April 2006, and at that point the 19-year-old Canadian national had already been sitting in Guantanamo for nearly four years. This Thursday, his trial finally began.

Khadr's story is a long one, illustrating what has gone so terribly wrong with the justice system here in Guantanamo Bay. He was captured after a day-long firefight in an Afghan compound, during which someone threw a grenade that killed U.S. Army Sgt. 1st Class Christopher Speer. Almost everyone inside that compound was killed, and only 15-year-old Khadr was pulled from the rubble, with severe injuries to his eye, bullet holes in his back, and gaping chest wounds. First in Afghanistan and later at Gitmo, he has been ill-treated. Even if he is convicted now, the Supreme Court may well overturn the decision on appeal. He is a child raised to adulthood in an unjust prison. And if convicted, he could be sentenced to spend the rest of his life behind bars.

From the beginning, Khadr has bounced from one dangerous outpost of America's military judicial system to another. After the firefight in Afghanistan in 2002, Khadr was taken to Bagram Air Base. There, in addition to receiving medical treatment, he was hooded, forced into painful stress positions, threatened with rape, and confronted with barking dogs. We know this because Khadr's interrogators, including one convicted of abuse of another detainee, described the tactics they employed on Khadr and other detainees under oath during the pre-trial hearings.

After several months of such treatment, Khadr was transferred to Guantanamo, where he says the abusive interrogations continued. He did not meet with a lawyer until 2004, a full two years after he was taken into U.S. custody. In 2005, Khadr was charged under the first set of military commissions authorized by then-President George W. Bush. After the Supreme Court ruled that the military commissions system was illegal under both military justice law and the Geneva Conventions, the charges against Khadr were dismissed. However, not long thereafter, the military commissions were revised and Khadr was charged again.

I first met Khadr in 2006, when I was working for the chief defense counsel in the Office of Military Commissions and was at Guantanamo observing military commission proceedings. Khadr was not my client, but his lawyers were unable to travel that week and asked me to deliver a letter to him.

Khadr and I talked for a couple of hours. At the time, he seemed very frustrated. He reiterated the usual detainee complaints about his conditions, but he also seemed curiously disaffected, as if he was only going through the motions of complaining. He was discouraged by the lack of legal process and hinted that he was ready to give up his legal battle altogether. I knew that it was in Khadr's best interest to retain counsel, so I talked to him about the importance of working with lawyers. I was also Canadian, I told him, hoping that we might form a more personal connection. I went on to explain why I chose to work on behalf of detainees: I thought the system was illegal and that it was important to speak out against it. Khadr laughed with me when I said that I would get in trouble if he fired his lawyers immediately after meeting with me. We ended our meeting on a light note.

Not long after our meeting, he actually did fire his lawyers, American civilian attorneys working pro bono on his behalf. I have heard of many detainees in Guantanamo doing the same; I have even been fired by a frustrated client myself. It is the one decision that these prisoners are allowed to make. All others -- when to wake up, when to sleep, when to exercise, when to be interrogated -- are made for them. A Guantanamo detainee cannot even refuse to eat, since if he skips more than three meals he will be force-fed. (Last month, Khadr fired his third set of civilian lawyers. Now, as his trial for murder begins, Khadr is being defended by a single military lawyer who has been on the case less than a year.)

Khadr's trial was about to begin in January 2009, when the newly-inaugurated President Barack Obama ordered a stay of all military commission proceedings. Many believed that Obama would scrap the military commission system altogether, but that May, he announced his plan to revive an improved version of them. The resulting legislation did have better rules limiting the admission of

hearsay and evidence obtained through coercion. So Khadr was charged yet again -- this time with murder, attempted murder in violation of the laws of war, conspiracy, providing material support for terrorism, and spying. A military judge ruled this week that almost all of the statements Khadr made to interrogators were reliable, including those made following a threat of rape, and would be admissible at trial.

And so Khadr remains at Guantanamo, in largely the same predicament that he has been in for years -- trapped on a legal road to nowhere. Khadr is essentially being tried for being the enemy. Battlefield killings by irregular fighters have not historically been considered war crimes. But the legal theory underlying the prosecution's case seems to be this: U.S. forces can attack the enemy, but, if enemy fighters like Khadr shoot at U.S. soldiers, they are committing a war crime. If he's convicted, the United States could end up regretting its argument: Setting such a standard could implicate CIA officers and other non-uniformed U.S. personnel who either intentionally or inadvertently take part in combat operations.

That's not the only reason Khadr's trial should never take place. The military commission system, despite revisions, is still flawed and untested. Khadr will surely appeal any conviction, and the Supreme Court may well take issue with how his case proceeded. Khadr was never housed separately from adult detainees, the judge and lawyers have no special training on child soldier issues, and the military commission rules do not allow the jury to take into account Khadr's juvenile status when judging his guilt or innocence. And while it is not illegal to prosecute someone who was 15 at the time of an alleged offense, after eight years of detention, many of them abusive, it may be immoral.

I saw Khadr again last September. I was visiting a client in Guantanamo -- my last visit before I left the Office of Military Commissions to work for Human Rights Watch. The guards left the cell doors open that day, and I passed Khadr's cell on my way by. Khadr saw me and asked his lawyer if I was the Canadian lawyer he had met before. At the lunch break, we were able to wave and say hello, again through the open cell doors.

Khadr had aged, but still had a boyish face, partially hidden behind a full beard. His eyes were still bright as his face broke out into a smile. Weeks later, I wrote him a letter. I had been in Canada meeting with members of a Human Rights Watch committee who were deeply concerned about Khadr's treatment. I wrote to Khadr about the meeting and reminded him that people all over the world are following his case and hoping that, sometime soon, either the U.S. or Canadian governments will do the right thing and stop his trial.

Now, months later, I am at Guantanamo again to observe Khadr's trial. I wonder whether there is any of the boy left in him, or if when he enters the courtroom we will only see a man, raised in Guantanamo. On the first day of trial, as I sat in gallery of the courtroom, Khadr turned back, caught my eye, and smiled.

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