

GITMO JUDGE: RAPE THREATS ARE OKAY IF THEY DON'T WORK

Here's what the military judge in the Omar Khadr trial, Colonel Patrick Parrish, said to justify admitting Khadr's own confessions as evidence. (h/t Carol Rosenberg, whose story on this ruling is here)

There is no credible evidence the accused was ever tortured as that term is defined under M.C.R.E.304(b)(3), even using a liberal interpretation considering the accused's age. While Interrogator #1 [Joshua Claus] told the accused a story about the rape of an Afghan youth in an American prison, there is no evidence that story caused the accused to make any incriminating statements then or in the future. In fact, the credible evidence is that the accused started to make incriminating statements only after he learned the Americans found the videotape at the compound where the firefight took place which shows the accused and others making improvised explosives and placing them along the roadside at night. No statement offered against the accused was derived from, the product of, or connect to any story Interrogator #1 told to the accused.

Now, here's what MCRE304(b)(3) says (PDF 206ff):

(3) Torture. For the purpose of determining whether a statement must be excluded under section (a) of this rule, "torture" is defined as an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incident to lawful sanctions) upon another person

within the actor's custody or physical control. "Severe mental pain or suffering" is defined as the prolonged mental harm caused by or resulting from:

The first definition of treatment that could cause prolonged mental harm is:

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

So Parrish is saying that the implied threat of rape does not constitute the "threatened infliction of severe physical pain or suffering." And that's even ignoring the part of Joshua Claus' story—as told by Spencer—where the fictional youth raped in an American prison died as a result.

"I told him a fictitious story we had invented when we were there," Interrogator #1 said. It was something "three or four" interrogators at Bagram came up with after learning that Afghans were "terrified of getting raped and general homosexuality, things of that nature." The story went like this:

Interrogator #1 would tell the detainee, "I know you're lying about something." And so, for an instruction about the consequences of lying, Khadr learned that lying "not so seriously" wouldn't land him in a place like "Cuba" — meaning, presumably, Guantanamo Bay — but in an American prison instead. And this one time, a "poor little 20-year-old kid" sent from Afghanistan ended up in an American prison for lying to an American. "A bunch of big black guys and big Nazis noticed the little Afghan didn't speak their language, and prayed five times a day — he's Muslim," Interrogator #1 said. Although the fictitious inmates were criminals,

“they’re still patriotic,” and the guards “can’t be everywhere at once.”

“So this one unfortunate time, he’s in the shower by himself, and these four big black guys show up – and it’s terrible something would happen – but they caught him in the shower and raped him. And it’s terrible that these things happen, the kid got hurt and ended up dying,” Interrogator #1 said. [my emphasis]

So the guy running the Kangaroo Court for this child soldier has decided that rape threats do not constitute a threat of severe pain or suffering.

Mind you, as I alluded to here and made explicit by Parrish’s ruling, Gitmo rules say specifically you can use information so long as the information itself was not collected using torture. Which is why Parrish is so careful to argue that Khadr’s confessions have nothing to do with that threat of severe pain or suffering that Parrish seems to think is no big deal, because then everything’s admissible!

In other words, the logic of Parrish’s ruling is that the use of rape threats as an interrogation tactic is no big deal, provided that it was an ineffective interrogation tactic.