

# OBAMA ADMINISTRATION TRIES TO GET OUT OF ITS KHADR PROBLEM

Add this to the list of things I might laugh about if it weren't so damned sad and awful. The Administration has now realized trying a Canadian accused of murder for killing someone in an active battlefield as a teenager exposes the Gitmo show trials as a kangaroo court. But they don't know whether they have the authority to intervene to stop it.

Administration officials would speak only anonymously about deliberations on whether to try to abort the trial. But their view about the need to improve the system's perceived credibility – so allies will cooperate by providing evidence or extraditing defendants – was echoed by Kenneth L. Wainstein, assistant attorney general for national security in the Bush administration.

"It is important for the government to be able to proceed through a trial, to do so in a transparent way, and have the world see that this is a fair process with strong safeguards and full due process," he said. "The sooner that happens, the better."

[snip]

Administration officials have discussed whether senior civilian leaders at the Pentagon or elsewhere could get involved, helping to revive plea negotiations or even directing Admiral MacDonald to make a more attractive offer. (Admiral MacDonald did not respond to an interview request.)

A similar high-level intervention would

clearly be allowed in the regular court system, where the attorney general supervises prosecutions. But tribunal rules insulate commission officials.

A provision in the Military Commissions Act prohibits “unlawful command influence,” defined as attempting “to coerce, or, by any unauthorized means, influence” the judgment or actions of prosecutors or the convening authority. Officials are debating what that means.

But it seems there are at least two things complicating this picture (I’ll think of more after I drink more coffee).

First, in discussions of Khadr’s potential plea deal, no one seems to admit that the plea deals themselves discredit the military commissions. The press reacted little more favorably to Ibrahim al Qosi’s pretend 14 year sentence that everyone knew was actually two years than they have to the rulings in the Khadr case admitting rape threat tainted evidence. The kabuki quality of the plea deal was one of the reasons Khadr cited for firing his lawyers and rejecting the plea deal they were offering him (they were offering him 30 pretend years and 5 real ones). So a sweeter plea deal, without fixing the whole double secret sentence business, won’t do all that much to restore the credibility of the military commissions.

Also, it seems like the Administration has one other option (and I hope the Canucks will expand on this in comments). After all, our government has transferred every other western detainee back to his home country. There have been discussions with Canada about doing the same. Why not make Omar Khadr Stephen Harper’s problem? Nothing in the military commissions would preclude the Administration from engaging in foreign policy, would it?

Of course, that would require the courage to stand up to the screeching fear-mongers who

would attack the Obama Administration for making the same kind of deals that the Bush Administration made.

But international credibility doesn't come for free. If the Administration is serious about winning international credibility for our kangaroo court, it is going to have to be willing to make the case for credibility itself. And right now, it still seems to be hoping for some gimmick to get out of its Khadr problem.