

WILL GUANTANAMO JUDGE REVEAL IDENTITY OF MONDAY'S "BIG BROTHER" CENSOR?

Carol Rosenberg in the Miami Herald and Peter Finn in the Washington Post recount a very strange sequence of events during yesterday's proceedings in the Guantanamo military commission that is attempting once again to "try" the group of five prisoners that includes Khalid Sheik Mohammed for their conspiracy in bringing about the 9/11 attacks. As Rosenberg recounts, the judge was enraged when a portion of the proceedings was censored by someone outside the courtroom. The judge appeared to have no knowledge beforehand that anyone besides himself or his security officer could control the censoring process:

Someone else besides the judge and security officer sitting inside the maximum-security court here can impose censorship on what the public can see and hear at the Sept. 11 trial, it was disclosed Monday

The role of an outside censor became clear when the audio turned to white noise during a discussion of a motion about the CIA's black sites.

Confusion ensued. A military escort advised reporters that the episode was a glitch, a technical error. A few minutes later, the public was once again allowed to listen into the proceedings and Army Col. James Pohl, the judge, made clear that neither he nor his security officer was responsible for the censorship episode.

"If some external body is turning the commission off based on their own views of what things ought to be, with no

reasonable explanation,” the judge announced, “then we are going to have a little meeting about who turns that light on or off.”

Finn described the event as the action of an “invisible hand”:

Who controls what the public and reporters can see and hear at the military commissions at Guantanamo Bay, Cuba? Is there an invisible hand, unknown to even the military judge, that can switch off audio and video feeds?

Finn gives more details of the proceedings as the button was pushed:

David Nevin, one of Mohammed’s civilian attorneys, was discussing a defense motion to preserve any evidence from the secret overseas prisons where the defendants were held by the CIA. The motion had been declassified, but Nevin had barely gotten a sentence out when the audio feed to the media centers on base and at Fort Meade was smothered in white noise. Then the video of the courtroom was cut.

When the feeds were restored several minutes later, Judge James Pohl, an Army colonel, seemed perplexed as to not only why Nevin was censored but by whom. Pohl said he did not cut off the feed, and it did not appear that the court security officer who sits beside him did, either.

Rosenberg informs us that the judge was very upset:

But to court observer Phyllis Rodriguez, the judge appeared “furious” and “livid” when he realized that that outsiders had their finger on the censorship switch of his courtroom.

“It’s a ‘whoa moment’ for the court,” said Human Rights Watch observer Laura Pitter. “Even the judge doesn’t know that someone else has control over the censorship button?”

Both articles point to DOJ attorney Joanna Baltes offering to explain to Pohl in secret session how the censorship came about and it appears that Pohl intends to disclose who pushed the button if, as Finn states, “what happened could be explained in public”.

The event also upset the attorneys. As Finn reports, it prompted further concerns:

Nevin and other defense attorneys said they wanted to know whether there was some mysterious entity monitoring the proceedings – and whether that entity might be listening to communications between the lawyers and their clients.

Just who is responsible for this censoring? And, as Nevin speculates, is this same “invisible hand” also an “invisible ear” listening to his discussions with his clients?

This episode is yet another example of the folly of not trying these defendants in federal court. The military commission rules are an ever-changing mess where nobody, now apparently including the presiding judge, knows what is appropriate and what is not or even who determines what constitutes secret information. In a federal court, there never is a question that the judge controls all aspects of the proceedings.

Iran’s PressTV was highly entertained by the episode, citing both the “invisible hand” phrase and putting “open” into scare quotes in their lede paragraph about the session and its unexpected censoring:

During defense arguments in an “open” session of the US military trial of

Guantanamo inmates, an 'invisible hand' suddenly cut off the audio-visual feed to the media, even mystifying the military judge.

It would appear that PressTV was laughing uncontrollably over this, as they attributed quotes from Finn's Washington Post article to the New York Times, which, at the time of this writing, has not reported on the event.

At any rate, I will provide an update if an explanation from Pohl is forthcoming. That is, if I'm not too busy laughing at the irony of Iran being able to ridicule the US about censorship less than 24 hours after arresting a number of journalists for "consorting with hostile foreign news media".

Update: The short answer to the question in the headline appears to be "no". From tweets by Carol Rosenberg "Pohl on who controls button: "We're getting to a line here of what's public and what's security. ... I'm not sure what witnesses to call."" and "Judge Pohl made clear that whoever hit the censorship button yesterday should not have, but did not clarify or describe who did it." and also "#KSM attorney Nevin is asking for "courtesy" of understanding who's listening in on hearings. Private talks between lawyer and client too."

Update 2: More tweets from Carol Rosenberg lift the veil just a bit: "Now the Justice Dept secrecy expert, Joanna Baltes, has given judge and defense lawyers a piece of paper that says OCA reviews the feed." and "OCA= Original Classification Authority, as in for example the CIA on interrogation techniques and black site program."