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Hearings May Consider Torture:

The specter of military torture entered pretrial debate over how to proceed in the trial of a Yemeni captive

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GUANTANAMO BAY NAVY BASE, Cuba -- A U.S. Army colonel presiding over four war-crimes cases here acknowledged on Wednesday that upcoming trials may have to weigh whether torture was used to gather testimony against alleged al Qaeda conspirators.

"My personal belief is torture is not good," said Army Col. Peter Brownback at pretrial hearings for Yemeni captive Ali Hamza al Bahlul, an alleged al Qaeda propagandist. Bahlul, 37, attended part of the proceedings despite earlier declaring a boycott.

Brownback debated the definition of torture with Army Maj. Tom Fleener, Bahlul's defense attorney, and both agreed one instance would be "poking a person in the eye with a red-hot needle."

No such specific allegation has emerged at Guantanamo. But a Pentagon spokeswoman, Air Force Maj. Jane Boomer, said after the hearing that Military Commissions rules that protect information for national security reasons do not specifically ban evidence gained through torture.

"Hypothetically, is it possible? Do the rules allow for it?," she said. "Yes."

Earlier, in court, Fleener, a Wyoming federal public defender in civilian life, put the presiding officer on notice: "I believe there was evidence that Mr. Al Bahlul was tortured. It's going to be an issue that's going to come up."

With the U.S. Supreme Court set to hear arguments March 28 on the commissions' legitimacy, the Bahlul trial is emerging as a showcase for war-crimes trial controversies.

Bahlul again refused his military lawyer, citing the "scar on the psyche" of the American people, caused by the Sept. 11, 2001, attacks.

"Because I'm from al Qaeda, and my counsel is American, and the psychological conflict is ongoing," he said, "it would be difficult to envision real impartiality."

He also echoed U.S. legal criticisms that portions of the trial could be held in secrecy -- including a confession, he said, "yielded under torture."

Defense Secretary Donald Rumsfeld issued, then repealed, interrogation regulations that some senior Pentagon insiders saw as abusive. FBI agents, in internal e-mails, described detainees shackled to the floor, naked, left to urinate on themselves and blasted with icy temperatures and mind-numbing music -- in order to break their will during interrogations.

Bahlul showed his contempt for the process by refusing to stand when the military judge entered the chambers. But he addressed Brownback as "your honor," even as he dominated much of the hearing, his third since 2004.

The slight Yemeni with shaved head and wispy mustache is charged with conspiracy to attack civilians and commit murder, and allegedly made al Qaeda recruiting videos, including one "glorifying" the USS Cole attack in 2000.

"I am from al Qaeda, but I have no relationship with the events of Sept. 11," he declared in Arabic.

Afterward, Marine Col. Dwight Sullivan, the chief defense counsel, said the torture issue looms over the trials.

"It's not an abstract question," he said. In one case, Sullivan said, a lawyer has filed an affidavit asserting that interrogators in Morocco repeatedly cut his client's genitalia to extract a confession.

Moreover, he said, if interrogators are allowed to testify about confessions, commission law allows for "evidence extracted by torture."

American Bar Association observer Neal Sonnett, a Miami attorney, said talks about the admissibility of evidence gained through torture show that "rules are being developed on the fly."

Air Force Col. Moe Davis, the chief prosecutor, said Tuesday that he was not aware of any torture-derived evidence emerging in any of the 10 ongoing prosecutions.