

#### Secret court proposals compared to superinjunctions

The government's plan to establish a new generation of secret courts has sparked fresh controversy after it emerged that the fact that a hearing is to be held behind closed doors may itself be kept secret.

During House of Lords debates, it was disclosed that a government application for a court to sit in secret – with the public, the media and even the claimant and their lawyers being excluded – could itself remain completely secret under the proposals.

The admission drew immediate comparisons with so-called superinjunctions which not only prevent the media from publishing information said to be confidential or private, but also ban publication of the fact that the injunction exists.

The secrecy proposals, contained in the government's Justice and Security Bill, allow government ministers to apply for special courtroom measures known as closed material procedure (CMP) whenever the government or its intelligence agencies are being sued in the UK courts.

Ministers say the measures are needed to prevent intelligence material handed over by friendly governments being disclosed in open court.

Many lawyers and human rights activists deny that such wide-ranging secrecy is necessary, and point out that once the bill becomes law, the public will be prevented from learning about the UK government's involvement in human rights abuses, such as the torture of Binyam Mohamed, the decision to consign British citizens to Guantánamo and the existence of the last Labour government's secret torture policy.

Lady Stowell of Beeston, a government whip in the Lords, told peers: "As to whether the press should be notified at the point of application for a CMP, it may well be informed, but it will not be informed if the issue is related to national security."

Asked by Lord Falconer of Thoroton, the former lord chancellor, for clarification that it was the government's intention "that there will be certain circumstances when even the fact of an application ... is to be kept secret", Stowell replied that not all CMP applications would necessarily be kept secret, but that "if the knowledge that the application has been made could give rise to concern about national security, it would not be made public." ...

Clare Algar of Reprieve ... said: "This is reminiscent of superinjunctions in its excessive secrecy. Yet instead of merely covering up footballers' indiscretions, these courts could be used to sweep serious state human rights abuses, such as torture, under the carpet. If this bill passes, it will badly damage centuries of British legal tradition and make it far harder for the citizen to hold the state to account."

The Ministry of Justice said those making allegations against the government, and MI5 or MI6, would still be able to do so in public, and their claims were more likely to result in trials – albeit partly in secret – rather than being settled out of court. The media could report on the courts' decisions.

A spokesman said: "Nothing currently heard in open will go into closed session. These measures have no impact on claims that the government, or the security and intelligence agencies, have been directly involved in wrongdoing."

(Ian Cobain – [The Guardian](#) – 19/08/12)

**Lawyer for 9/11 supremo: "this is not a trial"**

A US Army officer representing one of Guantanamo Bay's most notorious prisoners has spoken out against the secretive nature of the Military Commissions system, insisting it risks becoming little more than a "show game" to execute suspects, denying them and the American people the right to a fair trial.

Captain Jason Wright was appointed by the military to represent Khalid Sheikh Mohammed who is charged along with four others with conspiring and executing the 9/11 attacks. Yet, the officer revealed to *The Independent*, rafts of vital evidence – including the three and half years his client spent at secret "black" sites – have been deemed classified.

It was only through a Freedom of Information request that redacted files were released showing that Mohammed had been subjected to waterboarding 183 times, kept awake for seven days straight and had his family's lives threatened.

While the accused face the death penalty if convicted, they are likely to be detained indefinitely even if they are acquitted, a situation Capt Wright likened to torture.

"This is not a trial. It is an attempt to legitimise a death threat," he said. It can never be fair to bring a man to the brink of death and back with waterboarding and then do it a final 184th time – but this time it will have full state sanction. The bottom line is, torture denies justice. If you believe fundamentally that America is better than that, then this is a struggle for the soul of America.

... Despite Barack Obama's promise to close the detention facility, 167 inmates – all Muslims – remain... About half of those still incarcerated have been cleared but not released.

(Terri Judd - *The Independent* - 15/08/12)