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Tainted Justice

If the Obama administration wants to demonstrate that it is practical and just to try some terrorism suspects in military tribunals instead of federal courts, it is off to a very poor start.

Justice Department and Pentagon officials have chosen a troubling case for the first trial under the revisions that were adopted to the Military Commissions Act in 2009 — a Toronto-born Guantánamo Bay detainee named Omar Khadr. Mr. Khadr, 23, has been in detention since he was 15, when he allegedly threw a hand grenade during a firefight in Afghanistan that fatally wounded Sgt. First Class Christopher Speer.

Mr. Khadr was not a mere bystander. He was indoctrinated into armed conflict by his father, a member of Osama bin Laden's circle who was killed by Pakistani forces in 2003. But if his trial goes forward this summer as scheduled, he will be the first person in decades to be tried by a Western nation for war crimes allegedly committed as a child.

That has drawn justified criticism from United Nations officials and civil liberties and human rights groups. The conditions of Mr. Khadr's imprisonment have been in clear violation of the Geneva Conventions and international accords on the treatment of children.

During a recent pretrial hearing at Guantánamo, it emerged that his initial questioning at Afghanistan's Bagram prison occurred while he was sedated for pain and shackled to a stretcher following his hospitalization for severe wounds suffered in the fighting.

His first interrogator, identified at the hearing only as Interrogator One, was an Army sergeant later convicted of detainee abuse in another case. He used threats of rape and death to frighten the teenaged Omar Khadr into talking. Another witness recalled seeing him hooded and handcuffed to his cell with his arms held painfully above his shoulders. When the hood was removed, he testified, he could see that the teenager was crying.

In January, the Supreme Court of Canada condemned the questioning of Mr. Khadr by a Canadian official who then shared the results with American prosecutors. The ruling cited Mr. Khadr's lack of access to counsel and his inclusion in the military's notorious "frequent flier" program, which used sleep deprivation to elicit statements about serious criminal charges.

A ruling from the military judge on the admissibility of Mr. Khadr's statements is not expected for several weeks. But there's already a bad lingering taste from the hearing, which began just hours after Defense Secretary Robert Gates formally approved a new set of rules for the tribunals and before Mr. Khadr's lawyers or the judge had a chance to review them. The rules are an improvement over those that governed the Bush commissions, but they have flaws, including the use of hearsay.

During the hearing, the Pentagon barred four reporters from covering any military commission because they printed the name of Interrogator One, even though it has been public for years and is readily available on the Internet. The administration needs to restore the reporters' credentials.

It also needs to press forward with negotiations on a plea deal. The evidence that Mr. Khadr threw the deadly hand grenade is not clear-cut. Even if it were, it would be impossible to overlook his abuse in custody, and status as a juvenile,

which deprived him of mature judgment.

After Mr. Khadr's eight-year ordeal, it would be no disrespect to Sergeant Speer to return Mr. Khadr to his home country under terms designed to protect public safety and strive for his rehabilitation.