International Journal of Law and Psychiatry 64 (2019) 34–39

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry

journal homepage: www.elsevier.com/locate/ijlawpsy

Forensic mental health evaluations in the Guantánamo military commissions system: An analysis of all detainee cases from inception to 2018

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A B S T R A C T

Even though the Bush Administration opened the Guantánamo Bay detention facility in 2002 in response to the September 11, 2001 attacks in the United States, little remains known about how forensic mental health evaluations relate to the process of detainees who are charged before military commissions. This article discusses the laws governing Guantánamo's military commissions system and mental health evaluations. Notably, the US government initially treated detainees as "unlawful enemy combatants" who were not protected under the US Constitution and the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment, allowing for the use of "enhanced interrogation techniques." In subsequent legal documents, however, the US government has excluded evidence obtained through torture, as defined by the US Constitution and the United Nations Convention Against Torture. Using open-source document analysis, this article describes the reasons and outcomes of all forensic mental health evaluations from Guantánamo's opening to 2018. Only thirty of 779 detainees (~3.85%) have ever had charges referred against them to the military commissions, and only nine detainees (~1.16%) have ever received forensic mental health evaluations pertaining to their case. Of these nine detainees, six have alleged mental torture while in US custody. This paper shows that leaders in the United States and Europe should consider whether counterterrorism policies that supersede traditional health and human rights complicate the ability of future governments to prosecute cases when successive leaders change laws, a pertinent consideration as North American and European states grapple with the return of foreign fighters.

1. Introduction

This article describes how forensic mental health evaluations fit within the legal process of all cases that have been processed through Guantánamo's military commissions system from 2006 to October 2018. The United States Congress (2006) passed the *Military Commissions Act of 2006* (also known as "MCA 2006") so that these commissions at Guantánamo could try any "unlawful enemy combatant" for war crimes. Since the passage of this act, only one study (Aggarwal, 2015) has examined how mental health has been invoked in detainee cases before the military commissions system. This study is now dated since the American government passed new laws and statutes in 2016. Moreover, that study took a random sample of cases rather than examining all cases comprehensively. The Department of Defense (DoD) has hosted an open-source website (https://www.mc.mil/home.aspx) with motions from prosecution and defense teams, legal rulings, and court transcripts for all detainees, permitting researchers to trace how cases evolve once the government files criminal charges. This article is laid out as follows: Section 2 discusses the laws governing the military commissions system and mental health evaluations, Section 3 presents the methodology of how documents were retrieved from the DoD website, Section 4 presents results on which cases have used forensic mental health evaluations and for what reasons, and a final section is devoted to discussion. This paper addresses a topic of timely interest by analyzing non-state militants who are processed through an entirely different legal and mental health system outside of the civilian sector, with lessons for countries now struggling to process militants from the Islamic State who have returned to North America and the European Union (Wright, 2018; Boutin et al., 2016).

2. Laws for military commissions and mental health evaluations at Guantánamo

Federal laws and statutes clarify the process for forensic mental health evaluations at Guantánamo. MCA 2006 defines the purpose of mental health evaluations: "It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts" (United States Congress, 2006, p. 17). A detainee must prove that any mental disorder, if present, limited his responsibility for a criminal act: "The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence" (United States Congress, 2006, p. 17). A judge orders the military commission to ascertain whether the detainee met this burden of

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https://doi.org/10.1016/j.ijlp.2019.01.003
Received 16 October 2018; Received in revised form 5 December 2018; Accepted 14 January 2019
Available online 29 January 2019
0160-2527/

defense: “The military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused— (1) guilty; (2) not guilty; or (3) subject to subsection (d), not guilty by reason of lack of mental responsibility” (United States Congress, 2006, p. 17). The last charge only exists “if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established” (United States Congress, 2006, p. 17).

In 2006, the DoD published a document known as the *Rules for Military Commissions* (RMC) to detail legal standards for evaluating this last charge of a detainee's lack of mental responsibility. Under Rule 504, a military commission can be convened by an official known as a “convening authority” such as the Secretary of Defense or an individual whom the Secretary designates (Department of Defense, 2006). Under Rule 706 – titled “Inquiry into the mental capacity or mental responsibility of the accused” – a commission member, military judge, or attorney either from the prosecution or defense team can apply for a mental examination (Department of Defense, 2006). A “706 Board” (as they are known) must consist “of one or more persons” and “[e]ach member of the board shall be either a physician or a clinical psychologist” (Department of Defense, 2006, p. II-56). The 706 Board must answer four questions:

A) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? (The term “severe mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)
B) What is the clinical psychiatric diagnosis?
C) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?
D) Is the accused presently suffering from a mental disease or defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense?” (Department of Defense, 2006, pp. II-56-57).

The board's conclusions are circulated to the official who ordered the examination, the detainee's confinement official for security purposes, all participating attorneys, the convening authority, and, if charges have been referred, to the military judge. The full report is released only to the defense team and medical personnel caring for the detainee to protect the detainee's confidentiality, unless authorized by the convening authority or a military judge (Department of Defense, 2006). Rule 909 allows the convening authority to hospitalize or treat the detainee if he is found incompetent and to reconvene the commission upon the restoration of competency. The convening authority can also override a determination of incompetence to continue the trial: “In making this determination, the military judge is not bound by the rules of evidence except with respect to privileges” (Department of Defense, 2006, p. II-93). The process for forensic mental health evaluations is unchanged in subsequent legislation and policy documents such as MCA 2009 (United States Congress, 2009), 2011's *Regulation for Trial by Military Commission* (Department of Defense, 2011a), 2016's *Military Commission Trial Judiciary Rules of Court* (Department of Defense, 2016a), and 2016's *Manual for Military Commissions United States* (Department of Defense, 2016b).

Notably, the DOD has not publicized information on how forensic mental health evaluations are completed in practice. For example, there is no public knowledge on who selects the members of the 706 Board, how the precise number is determined, and whether this number changes by case or by availability when the military commissions are in active session. The type of information that evaluators can access is currently not public knowledge despite concerns from journalists and human rights advocates that military clinicians shared detainee medical information with interrogators to exploit ailments (Slevin & Stephens, 2004). It is also not known whether these experts work independently on separate evaluations that are aggregated into one report or if they produce a single report collaboratively. Nor is it publicly known how interpreters are selected when detainees speak foreign languages, what the qualifications of the interpreters are, and whether they are government employees or independent contractors.

In contrast to prior documents, the *Manual for Military Commissions United States* (Department of Defense, 2016b) specifies legal standards for the relevance and admissibility of evidence, as well as the admission of expert witness testimony. The military judge possesses sole discretion to scrutinize the qualifications of expert witnesses and standards for the admissibility of evidence: “Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, the admissibility of evidence, an application for a continuance, whether to protect the identity of a witness… shall be determined by the military judge” (Department of Defense, 2016a, b, p. III-2). The military judge also makes decisions about the condition of facts and the probative value of evidence: “When the probative value of evidence depends upon the fulfillment of a condition of fact, the military judge shall admit the evidence upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge” (Department of Defense, 2016a, b, p. III-2). The manual excludes evidence obtained through torture: “No statement, obtained by the use of torture, or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd)), whether or not under color of law, shall be admissible in a trial by military commission, except against a person accused of torture” (Department of Defense, 2016a, b, p. III-7-8). The manual defines the term “torture, or by cruel, inhuman, or degrading treatment” to be “cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984, without geographical limitation” (Department of Defense, 2016a, b, p. III-10). The manual conspicuously returns to a definition of torture that the Bush Administration tried to change in originally permitting “enhanced interrogation techniques.” Whether statements made during “enhanced interrogation techniques” can be excluded as evidence obtained through torture becomes a significant point of contention in detainee cases, as we shall see ahead.

3. Methodology for document search and retrieval

All legal documents were retrieved from Guantánamo's Office of Military Commissions website (https://www.mc.mil/CASES.aspx) which allows users to search for information by individual cases. All cases are searchable whether or not charges are active or inactive and whether cases are on appeal or completed. The website was searched from July through October 2018.

3.1. Inclusion criteria for the dataset

All cases that have gone through the military commissions process since its inception in 2006 were included in this study as long as any request by any party was made for a detainee to receive a mental health evaluation. Cases without any request for a mental health evaluation were excluded, which represents the majority of cases: of the 779 men detained at Guantánamo since its opening in January 2002, the Bush Administration has released 532, the Obama Administration released 197, the Trump Administration released 1, and 9 have died in custody, leaving 40 in detention as of August 2018: of these remaining 40, 26 have not been charged with a crime or cleared for release (American Civil Liberties Union, 2018).

3.2. Search method to identify cases

To determine whether or not a case had a mental health evaluation, the terms "mental," "psychological," "psychologist," "psychiatric," "psychiatrist," and "706" [for "706 Board"] were entered in the search field for every single case. To ensure that all cases with a mental health evaluation were analyzed, cases that were not identified with the above search terms were also searched manually, leading to no unidentified cases. In cases with a forensic mental health evaluation, each document pertaining to a mental health evaluation was downloaded and read in entirety.

3.3. Data extraction and analysis

Data were extracted into a spreadsheet and classified according to whether a mental health evaluation was being requested for one of four reasons according to the legal texts covered in section two. The four reasons for the evaluation were to determine if: (1) the accused suffered a mental disease or defect at the time of the alleged criminal conduct ("criminal responsibility"), (2) the accused could not presently understand the nature of the legal proceedings or cooperate in his defense due to a mental disease or defect ("defense participation"), (3) the accused is requesting a mitigation in sentencing due to the presence of a mental disease or defect ("mitigate sentencing"), or (4) the accused is alleging physical or mental torture in US custody ("mental torture").

In cases where forensic mental health evaluations were requested, additional variables were extracted such as date of birth, nationality, all legal charges, reason for the mental health evaluation, psychiatric diagnoses (if declassified), and the current status of the case to provide context. All documents on mental health evaluations are cited in the bibliography with Internet links for independent scholarly verification.

4. Results

4.1. All cases before the military commissions with a request for a forensic evaluation

Table 1 lists all cases before the military commissions system and whether or not mental health evaluations were requested. Cases appear in alphabetical order with the Arabic definite article ("al" or "el") recorded before the transliterated family name, as is the scholarly convention in Middle Eastern Studies (International Journal of Middle Eastern Studies, 2018). Of the twenty-six cases in which thirty detainees have ever been charged, nine (34.6%) have had requests for forensic mental health evaluations. In 2014, the military commissions separated Ramzi bin al Shibh's case from the other individuals accused of committing the 9/11 attacks under the case *United States v. Khalid Shaikh Mohammad* et al. based on concerns that he was not competent to stand trial, until the military judge ruled that his mental health evaluation would not introduce undue delays (Department of Defense, 2014c). His case has since been included with the other four.

4.2. Demographics of detainees with forensic mental health evaluations

Table 2 lists all forensic mental health evaluations that have been ordered by reason for the evaluation, from the start of Guantánamo's military commissions system through October 2018. At the time that charges were referred, the detainees ranged in age from their twenties through fifties: Omar Khadr (b. 1986) was the youngest and Ibrahim Ahmed Mahmoud al Qosi was the oldest (b. 1960). The nationality profile of Afghans, Saudis, Sudanese, and Yemenis fits the demographic backgrounds of foreign fighters who have traditionally fought for Al Qaeda and the Taliban (Bergen, 2002). The sole exception is Khadr who was born in Canada and received Canadian citizenship, but whose parents moved at different times during his childhood to Canada, Pakistan, and Afghanistan (The Canadian Press, 2015).

Table 1
All cases in Guantánamo's military commissions since inception (n = 26).

Case: United States v. …	Mental health evaluation requested?
Ali Hamza Ahmad Suliman al Bahlul	No
Sufyian Barhoumi	No
Ahmed Mohammed Ahmed Haza al Darbi	Yes
Ahmed Khalfan Ghailani	No
Abdul Ghani	No
Salim Ahmed Hamdan	Yes
Mohammed Hashim	No
David Hicks	No
Abd al Hadi al-Iraqi	No
Mohammed Jawad	Yes
Mohammed Kamin	Yes
Faiz Mohammed Ahmed Al Kandari	No
Omar Ahmed Khadr	Yes
Majid Shoukat Khan	No
Khalid Shaikh Mohammad et al.	Yes
Binyam Ahmed Muhammad	No
Noor Uthman Muhammed	Yes
Abd al-Rahim Hussein Muhammed Abdu Al-Nashiri	Yes
Obaidullah	No
Jabran Said Bin Al Qahtani	No
Ibrahim Ahmed Mahmoud al Qosi	Yes
Fouad Mahmoud Hasan Al Rabia	No
Tarek Mahmoud El Sawah	No
Ghassan Abdullah al Sharbi	No
Ramzi bin al Shibh	No
Abdul Zahir	No

4.3. Most common charges against detainees with legal definitions

All detainees were charged with at least two offenses. The most prevalent charge was conspiracy (6 detainees). The Department of Defense (2016b) specifies this offense as:

> "Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death" (p. IV-23).

The second most prevalent charge was providing material support for terrorism (5 detainees). The Department of Defense (2016b) specifies this offense as:

> "Any person subject to this chapter who provides material support or resources,
> knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24) of this section), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished" (p. IV-20).

Comparatively, only 3 detainees were charged with terrorism, which the Department of Defense (2016b) specifies as:

> "Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other

Table 2
Characteristics of all mental health evaluations at Guantánamo[a].

Total number of detainees	$N = 9$
Age when charges were referred	
20–29	2
30–39	2
40–49	4
50–59	1
Nationality	
Afghan	2
Canadian	1
Saudi	2
Sudanese	2
Yemen	2
Most common criminal charges[b]	
Conspiracy	6
Providing material support for terrorism	5
Murder in violation of the laws of war	3
Attempted murder in violation of the laws of war	3
Attacking civilians	3
Attacking civilian objects	3
Terrorism	3
Reasons for the forensic evaluation	
Determine mental torture in US custody	6
Assess defense participation	2
Mitigate sentencing	1
Determine criminal responsibility at the time of the alleged offense	0
Outcome of the forensic evaluation	
Not done	4
Sealed	3
No diagnosis found	1
Clear diagnosis offered	1
Outcome of the trial	
Detainee found guilty	3
Detainee's charges were dismissed	2
Detainee's conviction was overturned	2
Trial still proceeding	2

[a] This table was created from information in Department of Defense (2007a, 2007b, 2008a, 2008b, 2008c, 2008d, 2009a, 2009b, 2009c, 2009d, 2009e, 2009f, 2010a, 2010b, 2010c, 2010d, 2010e, 2010f, 2011b, 2011c, 2011d, 2011e, 2012a, 2012b, 2013a, 2013b, 2013c, 2014a, 2014b, 2014c, 2015a, 2015b, 2017, 2018) and United States Federal Court of Appeals (2012) which can be found in the References section of the paper.

[b] Detainees can be charged with more than one offense, so the total number of charges exceeds 9.

> punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death" (p. IV-19).

4.4. Reasons for forensic mental health evaluations

Of the 9 detainees who have had forensic mental health evaluations, none were to determine whether the accused suffered a mental disease or defect at the time of the alleged criminal conduct. The rest of the reasons are as follows:

Ahmed Mohammed Ahmed Haza al Darbi's (b. 1975) legal team requested a mental health evaluation to suppress statements made in US custody due to mental torture (Department of Defense, 2008a). He pled guilty (Department of Defense, 2014a) and was released (Department of Defense, 2018) without the evaluation being performed (Department of Defense, 2017).

Salim Ahmed Hamdan's (b. 1968) legal team requested a mental health evaluation to determine whether he could understand the nature of legal proceedings or cooperate in his defense due to a mental disease or defect (Department of Defense, 2008b). His mental health evaluation is sealed (Department of Defense, 2008c). He was convicted of the charge of providing material support for terrorism, but the United States Federal Court of Appeals (2012) overturned the conviction.

Mohammed Jawad's (b. 1985) legal team requested a mental health evaluation to determine whether he could understand the nature of his legal proceedings or cooperate in his defense due to mental torture while in US custody (Department of Defense, 2008d). The Department of Defense (2009b) dismissed his charges without prejudice before the evaluation was complete.

Mohammed Kamin's (b. 1978) legal team requested a mental health evaluation to determine whether he could understand the nature of his legal proceedings or cooperate in his defense due to mental torture while in US custody (Department of Defense, 2009d). The 706 Board found that he exhibited no diagnosis, either at the time of the alleged criminal act or at the time of his evaluation (Department of Defense, 2009e). The Department of Defense (2009f) dismissed his charges without prejudice.

Omar Khadr (b. 1986)'s legal team requested a mental health evaluation to determine whether he could understand the nature of his legal proceedings or cooperate in his defense due to the presence of a mental disease or defect (Department of Defense, 2010a). His evaluation from experts retained by his legal team was not released, but court documents indicate that his diagnoses were disputed (Department of Defense, 2010b). He pled guilty to all charges and served the remainder of his sentence in Canada (Department of Defense, 2010c).

Ramzi bin al Shibh's (b. 1972) legal team requested a mental health evaluation to determine whether he could understand the nature of his legal proceedings or cooperate in his defense due to the presence of a mental disease or defect (Department of Defense, 2013b). He refused to attend his 706 Board hearing, so he could not be diagnosed (Department of Defense, 2014b). His trial is underway.

Noor Uthman Muhammed's (b. 1962) legal team requested a mental health evaluation to mitigate sentencing (Department of Defense, 2011b). His evaluation is sealed (Department of Defense, 2011c). His guilty plea and conviction were voided after his attorneys successfully argued that Guantánamo's military commissions system did not have the legal jurisdiction to try his stated offenses (Department of Defense, 2015a).

Abd al-Rahim Hussein Muhammed Abdu Al-Nashiri's (b. 1965) prosecutors requested a mental health evaluation to determine his capacity to stand trial (Department of Defense, 2012a, b). The 706 Board diagnosed him with Posttraumatic Stress Disorder; Major Depressive Disorder; and Narcissistic, Antisocial, and Histrionic Personality Disorder Traits (Department of Defense, 2013c). After reports surfaced that Al-Nashiri may have experienced mental torture in US custody, his legal team successfully motioned in 2015 for the government to order a magnetic resonance image (MRI) of his brain to assess any extent of trauma for the purposes of mitigating sentencing (Department of Defense, 2015b). His trial is underway and his MRI has not yet been completed.

Ibrahim Ahmed Mahmoud al Qosi's (b. 1960) legal team requested a mental health evaluation to determine whether he was tortured in American custody (Department of Defense, 2010f). His evaluation was not performed as part of a confidential plea agreement whereby he was sentenced on the basis of his charges and released to Sudan (Department of Defense, 2011d).

In summary, 6 of 9 detainees have had mental health evaluations to assess for mental torture while in US custody in some capacity that pertains to their cases.

5. Discussion

This is the first study to document the reasons and outcomes of all forensic mental health evaluations that have proceeded through Guantánamo's military commissions system since the Bush Administration opened the detention facility. Only thirty of 779 detainees (~3.85%) have ever had charges referred against them, and only nine detainees (~1.16%) have ever received forensic mental health evaluations pertaining to their case. This contrasts with the last published statistic from 2006 when ~11% of detainees accessed mental

health services for direct treatment (Kennedy, Malone, & Franks, 2009).

These forensic mental health evaluations demonstrate the complications in processing cases for an American government that initially invoked a state of emergency to create new laws and institutions for the War on Terror, only to revert to existing domestic and international laws. The Bush Administration permitted "enhanced interrogation techniques" for use with detainees who were deemed ineligible for protections under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment (Bybee, 2002). However, latter documents such as the *Detainee Treatment Act of 2005* and the *Manual for Military Commissions United States* have outlawed evidence obtained through treatment that has traditionally been prohibited by the United States Constitution and the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment (Department of Defense, 2016b). Notably, six of nine evaluations have been ordered after allegations that detainees experienced mental torture while in US custody. From this perspective, it is worth asking: What is achieved by making mental health assessments publicly available? Does such availability prevent a future resort to enhanced interrogation techniques that would qualify as torture or does it have little impact as long as such techniques are used to gain intelligence? At one extreme, perhaps President Bush (2010) did not anticipate that Guantánamo's legal system would eventually extend medicolegal protections as historically enshrined in American and international laws to detainees. At another extreme, perhaps enhanced interrogation techniques were employed with the primary purpose of extracting intelligence, with only a secondary concern over how information obtained under such conditions could jeopardize the prosecution's position in future legal cases. It remains to be seen whether such forensic evidence will be of value in any future legal claims that detainees raise against the violations of their rights.

This paper's findings prove that contemporary foreign policies regarding counterterrorism can exert a direct influence on medicolegal systems, with implications for the United States and Europe. President Donald Trump has vowed to reintroduce "enhanced interrogation techniques" at Guantánamo, triggering human rights concerns from social and behavioral scientists (Aggarwal, 2017). In October 2018, his administration announced its decision to detain known and suspected militants from the Islamic State at Guantánamo (The White House, 2018). While his administration may perceive political and intelligence benefits with this strategy, extant laws at Guantánamo would need to be changed in order to admit into evidence any statements made after the application of "enhanced interrogation techniques" in detainee legal cases. In Europe, human rights organizations have criticized the British and Dutch governments for preventing citizens who traveled abroad to fight for militant groups in Iraq and Syria from returning home, as these individuals no longer enjoy rights to a fair trial or access to basic health care (European Parliamentary Research Service, 2018). Officials in these countries would benefit from considering whether future leaders would overturn their counterterrorism policies, which could introduce medicolegal complications for governments that wish to prosecute cases in the future.

Perhaps unexpectedly, an analysis of these cases shows that the forensic mental health system at Guantánamo may actually protect the rights of detainees. Social theorists have long criticized mental health professionals for acting as agents of the state to pathologize and justify the sequestration of undesirable populations (Foucault, 1975). For example, interviews with detainee attorneys such as Mohammed Kamin's have raised concerns that Guantánamo's 706 Board would make diagnoses without adequate mental health evaluations (Aggarwal, 2009). The evidence in this paper suggests otherwise, as Mohammed Kamin was found not to have a mental diagnosis upon the 706 Board's direct examination (Department of Defense, 2009e) and Ramzi bin al Shibh was not diagnosed after refusing to attend his 706 Board hearing (Department of Defense, 2014b). Moreover, the evaluations of three detainees remain sealed for privacy. Although Guantánamo has long faced criticisms from American officials and human rights organizations for its conditions of confinement (Senate Select Committee on Intelligence, 2014), the forensic mental health process may safeguard medicolegal protections, perhaps to avoid obstacles in prosecuting cases before the military commissions system.

5.1. Strengths and limitations

This paper has key strengths and limitations. First, the US government has invoked national security to prevent the release of uncontrolled information about Guantánamo (Hafetz, 2005). This has led to an incomplete picture about its forensic mental health system. For example, Wikileaks released risk assessments of over 700 detainees which were thought to be conducted by forensic mental health professionals, but the Department of Justice has expressed a willingness to prosecute researchers and attorneys who access this classified information even if it is in the public domain (Shane and Weiser, 2011; Shane & Weiser, 2011). For this reason, the data here rest on open-source documents. Nonetheless, the search methods are transparent and reproducible, with Internet addresses available for each document to enable independent scholarly verification. Second, the laws at Guantánamo have changed since the facility was opened to house known and suspected militants in the War on Terror. A strength of this study is its comparison of previous with current laws to show how Guantánamo acts as a unique medicolegal system. Third, despite the availability of information on the process of forensic mental health evaluations, little is known about how such evaluations occur in practice. The process of constituting each 706 Board is classified, as its membership. For this reason, it is not known how forensic evaluators working with the government actually conduct their work. Similarly, little is known about forensic mental health evaluators who work for defense teams at Guantánamo because they prefer not to speak or write on the record to avoid retaliation (Aggarwal, 2009, 2015). Those who have done so have criticized the use of mental health knowledge and practice in the War on Terror for intelligence purposes with detainees (Xenakis, 2014), but not discussed the work of conducting forensic evaluations. How forensic evaluators actually do their work at Guantánamo is a topic that requires further exploration. A final limitation is that not all cases before the military commissions have been completed. Two trials are still under way. The attorneys for extant cases may still request forensic mental health evaluations, as could any new detainees who are transferred to Guantánamo. Still, this limitation could be expected with a cross-sectional study, and the methodology presented here allows for data to be updated in the future. Despite these limitations, this is the first known study to document all forensic mental health evaluations for detainees whose cases have come before Guantánamo's military commissions system, paving the way for work in other jurisdictions that have legal and mental health documents available for open-source data analysis.

There is no conflict of interest to declare for this study. There is no funding to declare for this study. There are also no acknowledgements.

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