

Courtroom secrecy is growing in U.S.

Terrorism prosecutions going too far, some fear

BY MIKE ROBINSON
The Associated Press

CHICAGO — Witnesses testified under assumed names, the public was barred from the courtroom and part of the hearing was held in the judge's chambers, with defense lawyers shut out.

"I don't know what took place back there," grumbled Michael Deutsch, chief defense lawyer for Muhammad Salah, a Chicago man charged with laundering hundreds of thousands of dollars to pay for killings, bombings and other acts of terrorism by the Palestinian militant group Hamas.

Court secrecy is getting tighter across the nation as the government wages war on terrorism, lawyers say.

In Maryland, a federal judge dismissed a lawsuit filed by a German man, Khaled al-Masri, who claimed to have been illegally detained and tortured in overseas prisons run by the CIA. After receiving a secret written CIA briefing, the judge ruled that going ahead with the civil trial would expose state secrets.

The New York Civil Liberties Union is asking an appeals court to order a federal judge in Albany to unseal his decision refusing to throw out charges against alleged money launderers Yassin Aref and Mohammed Hossain. They say they may have been targets of a warrantless wiretap. The judge's decision came two hours after the government submitted a secret court document.

Such secret procedures, once rare in American courts, have become more common since the Sept. 11 terrorist attacks. Prosecutors say they need secrecy to protect undercover agents, informants and witnesses from terrorist reprisals and to keep critical information pipe-

lines from being shut down.

But defense lawyers say the right of defendants to confront their accusers, guaranteed by the Sixth Amendment to the Constitution, is being worn away under the guise of national security.

"It's critical to the functioning of a healthy democracy that people know what the government is doing in their name," said David Cole, a professor at the Georgetown University Law Center.

But former federal prosecutor Andrew McCarthy, who sent the blind Egyptian sheik Omar Abdel-Rahman to prison for plotting to blow up New York landmarks, scoffed at the notion that the public has a right to know what is going on in terrorism investigations.

"In point of fact, the public doesn't have a right to know a large variety of information maintained by the government, particularly its investigators, its intelligence services, and that presumption doesn't change just because someone is charged with a crime," McCarthy said.

So-called ex parte hearings — from which one side is barred — are legal under the Classified Information Procedures Act, passed three decades ago to combat a practice known as "graymail," in which defendants charged with spying would try to force the government to drop the charges by threatening to expose U.S. secrets on the witness stand.

Lawyers say the law was meant to let judges sort out the classified information behind closed doors and determine what the defense genuinely needed to make public. If the judge concludes that the defendant cannot get a fair trial without spilling secrets, the government can decide whether to go forward or drop the case.

But critics say the law is now being overused.

"This has gotten to the crisis point," said professor Jonathan Turley of George Washington University Law School in the nation's capital. "We are turning our courts into something like military tribunals where the evidence is entirely up to the prose-

cutor."

In the Salah case, U.S. District Judge Amy St. Eve ruled Thursday that prosecutors may use statements that the defendant, a Palestinian who once worked as a Chicago public school teacher, gave to Israeli intelligence a dozen years ago.

Salah claimed that after his 1993 arrest in Israel, he was stripped naked, made to sit in an uncomfortable children's chair for long periods, forced to listen to blaring music, slapped and left with a foul-smelling hood over his head.

Two of his interrogators, testifying under the code names Haim and Nadav, denied that they tortured Salah. Before the hearing, they asked for permission to wear "light disguise," but the judge said no.

Federal marshals barred the media and the public from the courtroom. Some testimony came in St. Eve's chambers with defense lawyers excluded.

The judge issued two versions of her 138-page opinion. One was complete but classified. The other, public version had a number of white spaces where material was deleted for national security reasons.

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