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Judges force the disclosure of secret intelligence, and deliver a damning assessment of British spies' complicity in torture

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SINCE the beginning of the so-called war on terror, many Britons have been appalled by the dirty tactics employed by American intelligence. Though British freedoms have been eroded—most infamously through detention without charge—torture itself has been thought off limits since the prime minister of the day gave assurances in 1972 that British forces would never use it to aid interrogations. No one got waterboarded in Ian Fleming's "Goldfinger".

Slowly and painfully, many are beginning to reshape their view of MI5 and MI6, Britain's home- and foreign-intelligence services. Evidence is building that, in their pursuit of intelligence on Islamic extremists, British spies have been complicit in torture, even if they have avoided turning the thumbscrews themselves. An appeals-court judgment on February 10th has added fuel to the fire.

The case concerned Binyam Mohamed, an Ethiopian-born British resident who spent the best part of seven years imprisoned in Pakistan, Morocco, Afghanistan and Guantánamo Bay, before being released without charge last year. In 2008 Mr Mohamed applied to see evidence held by Britain supporting his claims that confessions he had made during his imprisonment were extracted under torture. The Foreign Office resisted publishing even a judicial summary of that evidence on the grounds that the information had been provided by American intelligence agencies, which did not intend it to be made public. The three judges ruled that the information must be published anyway.

A seven-paragraph summary of intelligence which now appears on the Foreign Office website shows that Mr. Mohamed was shackled, deprived of sleep and told that he would be "disappeared" unless he co-operated. The tactics constituted "at the very least cruel, inhuman

and degrading treatment” by the American authorities, the summary said. Though British agents did not carry out the abuse themselves, the evidence suggests they knew the extent of Mr Mohamed’s maltreatment before one of their number flew out to ask the broken man a few questions of their own.

That was awkward enough. But it has emerged that an earlier draft of the judgment contained much more sweeping criticism of MI5. Lord Neuberger, the Master of the Rolls and one of the three-member panel that made the ruling, watered down his opinion at the request of the Foreign Office’s counsel, Jonathan Sumption. Mr. Sumption’s letter to the court suggests that Lord Neuberger’s original opinion said MI5 operated under a “culture of suppression” in its dealings with the government, such that the court should distrust any official assurance based on its advice. Lord Neuberger believed MI5’s problems were systemic, the letter implied.

The judge has admitted that he was “overhasty” in tempering his criticisms. The court has set a deadline of February 12th for other parties to express their views on whether the original draft should prevail. But as the spooks well know, once a secret is out it is hard to cover it up again.

British spies now face a separate worry about their relations with American intelligence. The “secrets” published this week contain nothing that is damaging to anyone’s national security: names and other details were omitted. In any case, most of the material had been disclosed by an American court in November, in a separate case. Nonetheless, they were not Britain’s beans to spill. David Miliband, the foreign secretary, warned that the case had caused “a great deal of concern” in America. The White House confirmed that the judgment “will complicate the confidentiality of our intelligence-sharing relationship with the UK, and it will have to factor into our decision-making”. This could well be boilerplate. But spies may think twice now before passing on information.

Mr Miliband has tried to soothe the Americans by saying that the court would have ruled differently had the information not already been aired in America. That is uncertain. In his ruling Igor Judge, the Lord Chief Justice, held that the principle of confidentiality between intelligence agencies was “not absolute”. Sir Anthony May, sitting with him, wrote that “a real risk of serious damage to national security, of whatever degree, should not automatically trump a public interest in open justice”.

This case leaves a bitter residue, as cover-up upon cover-up is revealed. It was bad that the government tried to conceal the facts, worse that its counsel intervened to alter a court ruling. It now faces the possibility that its own spies are lying to it.