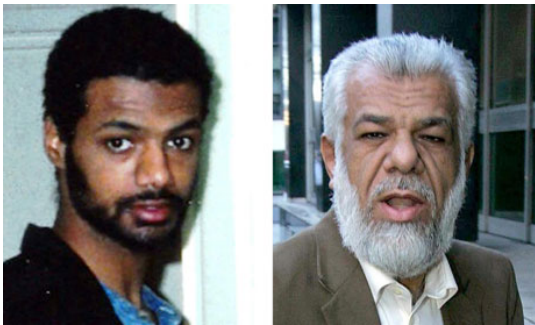


By Owen Bowcott

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Binyam Mohamed and Jamil el-Banna, two of the former Guantánamo Bay detainees at the centre of the secret evidence case. Photograph: Press Association

The supreme court has outlawed the use of secret evidence in court by the intelligence services to conceal allegations that detainees were tortured.

The decision will be seen as a significant victory for open justice, but the panel of nine judges pointed out that parliament could change the law to permit such "closed material procedures" in future.

The appeal was brought by lawyers for [MI5](#) seeking to overturn an earlier appeal court ruling that prevented the service from suppressing accusations British suspects had been ill-treated at [Guantánamo Bay](#) and other foreign holding centres.

The case arose originally out of claims by Bisher al-Rawi, Binyam Mohamed, Jamil el-Banna, Richard Belmar, Omar Deghayes and Martin Mubanga that MI5 and [MI6](#) aided and abetted their unlawful imprisonment and extraordinary rendition.

The five, who deny involvement in terrorism, launched actions for compensation for abuse and wrongful imprisonment.

The Guardian, on behalf of a number of media organisations, had intervened in the case to argue in favour of open justice.

In the judgment, which runs to nearly 120 pages, all of the judges rejected the security service's main submission that a court has a common law power to order a closed material procedure as an alternative to the more conventional public interest immunity (PII) certificate. Such a power, they argued, would contravene fundamental and long-established principles of open and natural justice.

The court was divided on the security service's secondary submission that a court has a common law power to order a closed material procedure as an add-on to a conventional PII in certain exceptional cases.

Giving his judgment, Lord Dyson said: "There are certain features of a common law trial which are fundamental to our system of justice, both criminal and civil.

"First, subject to certain established and limited exceptions, trials should be conducted and judgments given in public. The importance of the open justice principle emphasised many times.

"The open justice principle is not a mere procedural rule. It is a fundamental law principle.

"Secondly, trials are conducted on the principle of natural justice." To allow a "closed procedure" in such an ill-defined way could, he warned, "be the thin end of the wedge".

"This would be a big step for the law to take in view of the fundamental principles at stake. In my view this is a matter for parliament and not the courts."

