

**IN THE UNITED STATES MILITARY COMMISSION
AT GUANTANAMO BAY NAVAL BASE, CUBA**

UNITED STATES OF AMERICA)	DEFENSE MOTION TO DISMISS:
)	UNFAIR PRETRIAL PUBLICITY
vs.)	&
)	UNLAWFUL COMMAND
IBRAHIM AHMED MAHMOUD AL QOSI)	INFLUENCE

1. **Timing:** This motion is filed in a timely manner, as the Defense gave written notice of its intent to file the same on 15 September 2004.

2. **Relief Sought:** The Defense requests that the Commission dismiss the charge against Mr. al Qosi.

A “full and fair trial” requires a panel whose partiality cannot be questioned. Here, with the pervasive impact of unfair pretrial publicity, statements of prejudgment from senior civilian and military leaders, and a selection process that amounts to unlawful command influence, Mr. al Qosi will be denied his due process right to that “full and fair trial.” Lacking any other effective remedy, the Commission should dismiss the charge against him.

3. **Facts:**

A. On 18 September 2001, after the terrible attacks of 11 September 2001, Congress authorized the President to:

use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.¹

B. Soon thereafter, the President issued an Executive Order allowing indefinite detention of individuals suspected of being members of, or having some connection with, the organization known as al Qaeda.²

C. Mr. al Qosi, who is not and has never been a member of al Qaeda, was detained in Pakistan in December 2001 and shortly thereafter transferred to the control of United

¹ Joint Resolution 12, Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001).

² Presidents Military Order of Nov. 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 3 C.F.R. 918 (2002)(hereinafter “PMO, 13 Nov 01”).

States' authorities. Since then, under the Executive Order, Mr. al Qosi has remained in detention at Guantanamo Bay, Cuba.

D. On 3 June 2003, the President designated Mr. al Qosi for trial by military commission. Not until February 2004, however, was Mr. al Qosi appointed defense counsel to represent him.

E. On 28 June 2004, the Government referred a charge of conspiracy against Mr. al Qosi. The Government has charged that, from 1989 to 2001, Mr. al Qosi was a member of the organization known as "al Qaida," and that during that period of time conspired with others to engage in illegal activities, including "terrorism," allegedly "in the context of and associated with armed conflict."

F. To choose the members who would serve as members of these military commissions, members who would decide all matters of law and fact, Department of Defense Military Commission Order No.1 (21 March 2002) provides that "[e]ach member and alternative member shall be a commissioned officer of the United States armed forces."³

G. Rather than a "fair cross section" (the United States constitutional standard for jury selection) or the "best qualified" (the standard under Article 25 of the Uniform Code of Military Justice), the members of this Commission were limited to those in the "grade of O-4 or above," with a top secret security clearance, preferably with "combat or operational experience," and "command experience."⁴

H. Though the Appointing Authority had the opportunity to widen the pool of potential members, he did not.

I. Unfortunately, during the period that Mr. al Qosi has been detained at Guantanamo Bay, Cuba, he has been cast as a "terrorist" and "killer" by the top civilian leadership of the United States military, and others in the United States military and government:⁵

a. The President: On 28 January 2002, the President referred to the Guantánamo detainees as "killers -- these are killers," in explaining that he would not grant Guantánamo detainees prisoner of war status, added: "These are killers. These are terrorists." In the State of the Union address of 29 January 2002, the President stated: "Terrorists who once occupied Afghanistan now occupy cells at Guantánamo Bay." On 20 March 2002, discussing his proposed military commissions, President Bush said: "Remember, these are -- the ones in Guantánamo Bay are killers. They don't share the same values we share."

³ Order No. 1, at ¶(4)(A)(3).

⁴ Memorandum for Secretaries of the Military Departments from DOD General Counsel, dtd 20 Dec 02.

⁵ The following quotes, which the Defense does not expect the Government to contend are not accurate, are nevertheless catalogued and cited in MEMORANDUM TO THE UNITED STATES GOVERNMENT ON THE RIGHTS OF PEOPLE IN UNITED STATES CUSTODY AT GUANTÁNAMO BAY, Amnesty International (April 15, 2002), available at <http://web.amnesty.org/library/Index/ENGAMR510532002> (last visited 12 October 2004).

b. Secretary of Defense: On 20 January 2002, the Secretary of Defense described the Guantánamo detainees as “hard-core, well-trained terrorists,” and again on 27 January as “among the most dangerous, best-trained, vicious killers on the face of the earth.” On 8 February the Secretary of Defense said that the treatment of all those held in Camp X-Ray, which at the time was where Mr. al Qosi was being held, would be “consistent with the principles of fairness, freedom and justice that our nation was founded on, the principles that they obviously abhor and which they sought to attack and destroy.” On 23 February, discussing the prospect for returning the Guantánamo detainees to their countries of origin, the Secretary of Defense said: “[W]e prefer to only give them back to countries that have an interest in prosecuting people that ought to be prosecuted, rather than simply turning them loose, putting them back on the street, and having them go get into more airplanes and fly into the Pentagon and the World Trade Center.”

c. Attorney General: On 20 January 2002, Attorney General John Ashcroft, asked about the Guantánamo Bay detainees, said: “These people are terrorists... This is part of the conspiracy where innocent women and children, innocent Americans, were destroyed not as an act of conventional war, but in the context of what I consider to be war criminality.” Defending the treatment of the Camp X-Ray detainees, he stated: “They are terrorists. They are uniquely dangerous.”

d. Government Officials: United States Senator James Inhofe, after visiting Guantánamo Bay in January 2002, commented to the media afterwards that the conditions of detention were “better than they deserve. We’re dealing with terrorists here.” Another Congressman, Representative John Mica, displayed similar sentiment when he said he thought conditions were “too good for the bastards.”

e. Military Leaders: Rear Admiral John Stufflebeem, has said: “These are the worst of the worst, and if let out on the street, they will go back to the proclivity of trying to kill Americans and others. So that is well established.”

J. Unfortunately, repetition of these statements has not been limited—temporally or geographically. From the time the statements were made (early 2002), until today, these statements have been repeated in news stories hundreds of times.⁶

K. These stories have had an international tone, published throughout the United States, from coast to coast and on all major news networks, but also in Australia, England and have been picked up and re-published in dozens more—all accessible on the Internet.⁷

⁶ See Attachment B: Sampling of Media Stories. This sampling is but a small portion of the hundreds of documents referencing these statements. To the extent the Government response to this motion disputes the statements, or the pervasiveness of the “bad” press, the Defense will supplement with a more voluminous attachment.

⁷ See Attachment B.

L. During the initial voir dire sessions in the initial cases (Hicks, Hamden), though complete questioning has yet to take place, these characterizations seem to have taken hold.

M. For example, Lt Col ██████ acknowledges that he has been exposed to discussions about the Guantanamo detainees in various media (the Internet, the Early Bird), and that he has referred to detainees as a group as “terrorists.” Undoubtedly, all members of the panel have heard the characterizations noted above.

N. Furthermore, the process of trying the Guantánamo detainees by military commission, and the process of this Commission to date, has been subject to overwhelmingly “bad” press.

O. With the translation difficulties, and ever-evolving rules of procedure, the August hearings in this matter resulted in the Commission process being described by observers and the media as a “farce,” “confused,” “grappling with a bad system that was needless imposed,” and “chaotic.”⁸

4. Legal Analysis:

SOURCES OF LAW

The United States Constitution, the Uniform Code of Military Justice, international treaties and agreements, and customary international law, all bind this Commission as it decides issues of law. Rather than distinct from these sources of law, “Commission Law” is a subset (or amalgamation) of all of them. The Defense has prepared a “Memorandum of Points & Authorities,” (Attachment A) that in specific detail provides the legal reasoning why each of those sources of law bind this Commission and why the Commission need reference them in order to ensure a “full and fair trial” in this matter. With that Memorandum as a background, we turn to the specific issue presented here.

LAW – SPECIFIC PRINCIPLES

One basic aspect of due process is that accused’s are entitled to have their cases adjudged by fair and impartial panels whose evaluation is based solely upon the evidence, and not upon prejudice.⁹ This prejudice can occur when command influence is allowed to infect the process—unlawful command influence can take many forms and it can affect one or more aspects of the trial process.¹⁰

⁸ See Attachment B (Human Rights Watch analysis); see also, e.g. *Tribunal struggles with first hearings ; Several missteps raise concerns about future terror suspects' cases*, USA Today, 30 Aug 04, pg. A.12; *The Nation: Trials and Errors at Guantanamo; Military tribunal's first week trying suspects is marked by confusion and inexperience*, Los Angeles Times, 29 Aug 04, pg. A.1.

⁹ *United States v. Simpson*, 58 M.J. 368, 372 (C.A.A.F. 2003)(citing *Chandler v. Florida*, 449 U.S. 560, 574 (1981); *Wainwright v. Witt*, 469 U.S. 412, 423 (1985); *Reynolds v. United States*, 98 U.S. 145, 154-57 (1878)).

¹⁰ *Simpson*, 55 M.J. 674, 689 (A.C.C.A. 2001), aff’d *United States v. Simpson*, 58 M.J. 368, 372 (C.A.A.F. 2003).

Unfair Pretrial Publicity: In fact, the right to trial by fair and impartial members (or a professional military judge) is the cornerstone of the military justice system—and any justice system for that matter.¹¹ Unfair pretrial publicity, actual or presumed, can deny an accused this right to trial by fair and impartial members. It does so actually when panel members have such fixed opinions that they could not judge impartially the guilt of the accused.¹² It is presumed to have done so when the pretrial publicity (1) is prejudicial, (2) is inflammatory, and (3) has saturated the community.¹³

In both cases, it is important to analyze the potential effect of prejudicial publicity free from the protestations of panel members that their views have not been or will not be influenced. As the Court of Military Appeals noted in the notable case of *United States v. Calley*:¹⁴

The difficulty is that sometimes the impact of the quantity and character of pretrial publicity is so patently profound that the juror's personal belief in his impartiality is not sufficient to overcome the likelihood of bias, as assessed by the court. ... Our task, therefore, is not merely to ascertain that there was widespread publicity adverse to the accused, but to judge whether it was of a kind that inevitably had to influence the court members against the accused, irrespective of their good-faith disclaimers that they could, and would, determine his guilt from the evidence presented to them in open court, fairly and impartially.

Federal courts have likewise held that the protestations of jury members should not rule the issue when the “bad” publicity was overwhelming:

Where media or other community reaction to a crime or a defendant engenders an atmosphere so hostile and pervasive as to preclude a rational trial process, a court reviewing for constitutional error will presume prejudice to the defendant without reference to an examination of the attitudes of those who served as the defendant's jurors.¹⁵

And further, it is important to analyze whether those with the “mantle of command” have “orchestrate[d] pretrial publicity with the intent to influence the results in a particular case or series of cases.”¹⁶ Even if not consciously orchestrated, the effect of command-generated publicity can substantially undermine the public's confidence in the integrity of the court proceedings.¹⁷

¹¹ *United States v. Dowty*, 60 M.J. 163 (C.A.A.F. 2004); *United States v. Roland*, 50 M.J. 66, 68 (C.A.A.F. 1999); *United States v. Hilow*, 32 M.J. 439, 442-443 (C.M.A. 1991).

¹² *Simpson*, 58 M.J. at 372.

¹³ *Simpson*, 58 M.J. at 372.

¹⁴ 48 C.M.R. 19 (C.M.A. 1973).

¹⁵ *Rock v. Zimmerman*, 959 F.2d 1237, 1252 (3rd Cir. 1992)(citing *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965); *Rideau v. Louisiana*, 373 U.S. 723 (1963)).

¹⁶ *Simpson*, 55 M.J. at 687.

¹⁷ *United States v. Hilow*, 32 M.J. 439, 442-443 (C.M.A. 1991)

Unlawful Command Influence (UCI): UCI tears at the heart of a military-justice system as it offends basic notions of due process—it is the “mortal enemy of military justice.”¹⁸ It is “pernicious and an anathema to the fairness of military justice.”¹⁹ Article 37 of the UCMJ, prohibits it by providing that:

No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercises of its or his functions in the conduct of the proceedings. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case. . . .²⁰

The importance of this prohibition is reflected in the Court of Appeals for the Armed Forces’ (CAAF) observation that “a prime motivation for establishing a civilian Court of Military Appeals was to erect a further bulwark against impermissible command influence.”²¹

In *United States v. Biagase*,²² CAAF laid out a mechanism for evaluating UCI claims. First, the Defense must “show facts which, if true, constitute unlawful command influence” and that “the alleged unlawful command influence has a logical connection to the court-martial, in terms of its potential to cause unfairness in the proceedings.”²³ The quantum of proof at this stage is “low ... some evidence” of unlawful command influence.”²⁴

Once the Defense reaches this low plateau, the burden shifts to the Government to prove, beyond a reasonable doubt, (1) that the predicate facts do not exist; or (2) that the facts do not constitute unlawful command influence; or (3) that the unlawful command influence will not prejudice the proceedings or did not affect the findings and sentence.²⁵

Much like prejudicially unfair pretrial publicity, especially that which is command generated, UCI is concerned with two types: actual and apparent.²⁶ In fact, when the UCMJ was first enacted, Congress acknowledged the need to address both actual and

¹⁸ *United States v. Thomas*, 22 M.J. 388, 393-94 (C.M.A. 1986).

¹⁹ *United States v. Gore*, 60 M.J. 178 (C.A.A.F. 2004).

²⁰ 10 U.S.C. §837.

²¹ *Gore*, 60 M.J. 178 (quoting *United States v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986)).

²² 50 M.J. 143 (C.A.A.F. 1999).

²³ *Biagase*, 50 M.J. at 150.

²⁴ *Biagase*, 50 M.J. at 150 (quoting *United States v. Ayala*, 43 M.J. 296, 300 (C.A.A.F. 1995)).

²⁵ *Simpson*, 58 M.J. at 373 (quoting *Biagase*, 50 M.J. at 151).

²⁶ See *Simpson*, 58 M.J. at 374 (quoting *United States v. Stoneman*, 57 M.J. 35, 42-43 (C.A.A.F. 2002)).

apparent UCI.²⁷ Actual UCI, discussed above, does not necessarily mean “intentional.”²⁸ In a general sense, the underlying question for actual UCI is “whether the convening authority has been brought into the deliberation room.”²⁹

But even if there is no actual UCI, “there may be a question whether the influence of command placed an intolerable strain on public perception of the military justice system.”³⁰ Apparent UCI focuses not on the effect of UCI on the accused’s case, but instead asks “whether a reasonable member of the public, if aware of all the facts, would have a loss of confidence in the military justice system and believe it to be unfair.”³¹ Thus, even if a case was not actually affected by UCI, it may appear to have been and may require a remedy.

While courts have available to them a wide variety of tools to ameliorate the evils of UCI, dismissal with prejudice of a prosecution infected with it is always a possibility.³²

UCI -- Article 25: A fertile ground for actions that amount to UCI is found in the area of member selection. Panels cannot be stacked or packed to increase the likelihood of a particular result. That is a UCI.³³ Improper court stacking occurs by inclusion or exclusion on an inappropriate basis.³⁴

The Sixth Amendment guarantees to criminal defendants the right to trial by a jury composed of a fair cross section of the community.³⁵ Arguably, the constitution allows the military more flexibility in choosing panel members—dispensing with the “fair cross section” requirement and replacing it with the standards of Article 25.

Article 25(d)(2) of the UCMJ requires selection of members who are the “best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament.”³⁶ In *United States v. White*,³⁷ CAAF noted that strict compliance with this statutory provision was required in order to satisfy constitutional requirements:

Because the panel selection process in the military deviates significantly from the impartial selection process guaranteed in civilian trials by the Sixth Amendment, strict compliance with the formalities and constraints

²⁷ See *United States v. Cruz*, 20 M.J. 873, 880 (A.C.M.R. 1985)(en banc), *rev'd on other grounds*, 25 M.J. 326 (C.M.A. 1987); Captain Teresa K. Hollingsworth, *Unlawful Command Influence*, 39 A.F.L. Rev. 261 (1996).

²⁸ See Captain Teresa K. Hollingsworth, *Unlawful Command Influence*, 39 A.F.L. Rev. 261 (1996).

²⁹ *United States v. Allen*, 31 M.J. 576, 590 (C.M.R. 1990)(citing *United States v. Grady*, 15 M.J. 275 (C.M.A. 1982)).

³⁰ *Stoneman*, 57 M.J. at 43.

³¹ *Allen*, 31 M.J. at 590.

³² *Gore*, 60 M.J. 178.

³³ *United States v. Upshaw*, 49 M.J. 111 (C.A.A.F. 1998).

³⁴ 49 M.J. at 113.

³⁵ See *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975)(noting that the exclusion of “identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial.”)

³⁶ See *Dowty*, 60 M.J. 163.

³⁷ 48 M.J. 251, 258 (C.A.A.F. 1998).

of Article 25 is a matter of critical importance to ensure that there is neither the actuality or the appearance of improper influence.

Furthermore, when addressing UCI in the context of court stacking, it is important to analyze “[t]he motive of the convening authority in the systemic inclusion or exclusion”³⁸ If at the end of that analysis the conclusion is that the members were deliberately selected to achieve a particular outcome, their selection violates Article 25(d)(2) and, more importantly, denies an accused his right to a fair and impartial panel whose evaluation is based solely upon the evidence, and not upon prejudice.

ARGUMENT

General Bad Publicity: Given that these Commissions are the first of their kind in some 50 years, they were bound to engender a substantial amount of publicity. And they have. But little of it has been positive as the Commission to date has been racked with problems. Even a cursory review of the public, international press coverage of the Commission procedures to date demonstrates the negative perception the public holds about this process. The Commissions are seen as unjust, unfair, confused, chaotic, and a farce. The public confidence in the Commission process has already been undermined.

This has to have an effect on the panel that will sit in judgment of Mr. al Qosi. Added to the general “bad” press the Commissions is receiving, comments of senior civilian and military leaders have worked to actually prejudge the members against Mr. al Qosi. These comments have characterized people in Mr. al Qosi’s position—all Guantanamo Bay detainees—as vicious killers and hard-core, well trained terrorists.

Effect of Bad Publicity: Because of this unfair pretrial publicity, Mr. al Qosi’s right to a “fair and impartial” panel, and more broadly to a “full and fair trial,” has been irretrievably lost. Certainly characterizing him in the world press as a vicious killer and hard-core, well trained terrorist, and then trying him for conspiring to engage in terrorism, prejudices him. More than that, in light of the terrible attacks of 11 September, characterizing anyone in general as a “terrorist” or “killer” and then linking them to al Qaeda, simply works to implicitly tie that person to those attacks—in this day and age, little could be more inflammatory than making, intentional or not, that connection. And this prejudicial and inflammatory pretrial publicity is unlimited to geographic or temporal scope—the coverage is international, it is on-going, and it has saturated the world community.

UCI: Here, the chain-of-command runs directly from the senior military and civilian leadership who have mischaracterized Mr. al Qosi as a member of a class of persons who are “terrorists” and “killers,” to the members of this Commission. These members were chosen because, given their service records, they would be more “familiar” with facts about the United States’ “war on terror” and the military component to it. To say that these comments have had no influence is to close one’s eyes to reality. Members will be

³⁸ *Simpson*, 55 M.J. at 692 (citing *United States v. Smith*, 22 M.J. 242, 249 (C.M.A. 1988)).

influenced, and as a matter of human nature this is not surprising (and does not indicate any bad motive on the part of any member).

What it does indicate, however, are facts that would lead “a reasonable member of the public” to lose confidence in the Commissions and to believe them to be unfair. What it does indicate is that the protections of Article 37 are in jeopardy by the overwhelming influence of these mischaracterizations. What it does indicate is that the selection criteria “deviate significantly” from an impartial selection process that meets basic constitutional requirements.

The Defense has met the low threshold to present a valid UCI claim and the burden shifts to the Government to disprove it beyond a reasonable doubt. When they fail to do so, dismissal will be the appropriate remedy.

Remedy: Dismissal is absolutely a remedy in instances of unfair pretrial publicity and UCI.³⁹ Traditionally, courts have been reluctant to impose this ultimate remedy and often seek less drastic forms of relief to cure the denial of an accused’s right to a “full and fair” trial. These remedies include change of venue, continuance, and additional preemptory challenges.⁴⁰ None of these remedies are available to cure the deficiencies in this instance.

There is no American, military venue in which unfair pretrial publicity and UCI would not continue to permeate. The media attention to the plight of the detainees subject to military commission is of world-wide scope and of continuing intensity. This country’s top military and civilian leadership have fed the fallacious perception that all of those detained in Guantanamo Bay are vicious killers and hard-core, well trained terrorists.

Nor can simply voir dire cure defects. With all due respect,⁴¹ the amount of unfair pretrial publicity and UCI present here is so overwhelming as to render a panel member's protestations that his or her views have not been or will not be influenced legally meaningless. In this regard, the language of *Calley* bears repeating: the widespread publicity adverse to the accused “inevitably had to influence the court members against the accused, irrespective of their good-faith disclaimers that they could, and would, determine his guilt from the evidence presented to them in open court, fairly and impartially.”⁴²

³⁹ See *supra* note 32 (discussing *Gore*, 60 M.J. 178).

⁴⁰ *Simpson*, 58 M.J. at 373.

⁴¹ Even having to make this argument to the Commission as a whole further emphasizes the problems with its structure. Because the Commission as a whole decides all matters of “fact and law,” Mr. al Qosi’s defense counsels, who are making detailed legal arguments, may be seen by the non-legal members of the panel as attacking their integrity or honor. Nothing could be farther from the truth and the structure of court-martial proceedings (by separating the functions of finder of law and finders of fact) removes this potential. In essence, this antiquated “fact and law” structure of the Commission, is automatically prejudicial to the accused and is but another of a long list of reasons why proceeding with a regularly constituted court-martial is the more appropriate (and legally defensible) course of action.

⁴² 48 C.M.R. 19 (C.M.A. 1973).

In the normal case, if a “good-faith disclaimer” were enough to prevent a removal of a member for cause, an accused was still protected by his or her right to exercise preemptory challenges. In the Commissions this right, this guard against a panel that is perceived not to be “full and fair,” structurally does not exist. Thus, in the circumstances of this case, the Commission has no mechanism to ensure that Mr. al Qosi receives a “full and fair” trial.

Thus, the Commission is left with the only effective remedy—dismissal. While the mechanisms exist in the court-martial context to ameliorate the negative effects of unfair pretrial publicity and UCI, structurally there are no such remedies that this Commission can impose other than dismissal.

CONCLUSION

The Defense requests that the Commission dismiss the charge against Mr. al Qosi.

5. Attachments:

- A. Memorandum of Points & Authorities, Applicable Law
- B. Sampling of Media Stories

6. Oral Argument:

The Defense hereby requests oral argument before the Military Commission on this motion. Oral argument is necessary under the President’s Military Order of 13 November 2001 to provide for a “full and fair” trial.

7. Legal Authority:

Joint Resolution 12, Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001).
Presidents Military Order of Nov. 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 3 C.F.R. 918 (2002)(hereinafter “PMO, 13 Nov 01”).
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Reynolds v. United States, 98 U.S. 145, 154-57 (1878)).
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United States v. Roland, 50 M.J. 66, 68 (C.A.A.F. 1999)
United States v. Hilow, 32 M.J. 439, 442-443 (C.M.A. 1991).

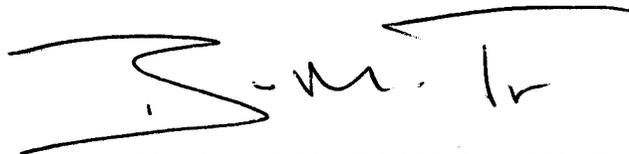
48 C.M.R. 19 (C.M.A. 1973).
Rock v. Zimmerman, 959 F.2d 1237, 1252 (3rd Cir. 1992)(citing *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965); *Rideau v. Louisiana*, 373 U.S. 723 (1963)).
United States v. Hilow, 32 M.J. 439, 442-443 (C.M.A. 1991)
United States v. Thomas, 22 M.J. 388, 393-94 (C.M.A. 1986).
United States v. Gore, 60 M.J. 178 (C.A.A.F. 2004).
10 U.S.C. §837.
50 M.J. 143 (C.A.A.F. 1999).
United States v. Cruz, 20 M.J. 873, 880 (A.C.M.R. 1985)(en banc), *rev'd on other grounds*, 25 M.J. 326 (C.M.A. 1987)
Captain Teresa K. Hollingsworth, *Unlawful Command Influence*, 39 A.F.L. Rev. 261 (1996).
United States v. Allen, 31 M.J. 576, 590 (C.M.R. 1990)(citing *United States v. Grady*, 15 M.J. 275 (C.M.A. 1982)).
United States v. Upshaw, 49 M.J. 111 (C.A.A.F. 1998).
49 M.J. at 113.
Taylor v. Louisiana, 419 U.S. 522, 530 (1975)
48 M.J. 251, 258 (C.A.A.F. 1998).
48 C.M.R. 19 (C.M.A. 1973)

8. Witnesses:

- a. Any witnesses that might be determined as necessary after the Defense receives and reviews the government's response.

- b. Any witness the commission desires to summon to testify on the matters herein.


SHARON A. SHAFFER, Lt Col, USAF
Defense Counsel


BRIAN M. THOMPSON, Capt, USAF
Assistant Defense Counsel

CERTIFICATE OF SERVICE

I hereby certify that on 19 OCT 2004, I sent this Defense Motion to Dismiss: Unfair Pretrial Publicity & Unlawful Command Influence to the Presiding Officer, the legal assistant to the Presiding Officer, and the prosecutor via e-mail.

A handwritten signature in black ink, appearing to read "B. M. Thompson", is written over a horizontal line.

BRIAN M. THOMPSON, Capt, USAF
Assistant Defense Counsel

**IN THE UNITED STATES MILITARY COMMISSION
AT GUANTÁNAMO BAY NAVAL BASE, CUBA**

UNITED STATES OF AMERICA

v

IBRAHIM AHMED MAHMOUD AL QOSI

**DEFENSE MEMORANDUM
OF POINTS & AUTHORITIES
[APPLICABLE LAW]**

The basic legal principles that bind this Commission are varied, yet familiar—the United States Constitution, the Uniform Code of Military Justice, international treaties and international customary law. Even at a most basic level, this Commission is guided by the fundamental requirement, the basic notion, that every person charged with a crime is entitled to “due process.”

SOURCES OF LAW

1. **Commission Law:** Nascent “Commission Law” in fact already demands that the rules, procedures, and decisions of the Commissions comport with basic notions of “due process.” The President has ordered that these Military Commissions are to be run to, at a minimum, provide for “a full and fair trial.”¹ As the Supreme Court has often noted, having a right to a “full and fair trial” is the equivalent of having the right to “due process.”² The terms are essentially interchangeable.

2. **Constitutional Law:** Though “due process” is deeply rooted in American constitutional jurisprudence, its historic origins long predate the adoption of the United States Constitution. The origins of due process can be traced to England in 1215, when the king promised nobles that “no free man” would suffer restraint “except by the lawful judgment of his peers or by the law of the land.”³ The Supreme Court in fact long ago recognized that due process is not a uniquely American value.⁴

3. But due process is an American value and the United States Constitution protects every accused’s right to it. Just as the Constitution protects the “due process” rights of

¹ President’s Military Order of Nov. 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terror, 3 C.F.R. 918 (2002)(hereinafter PMO, 13 Nov 01) at §4(c)(2).

² See, e.g., *Miller v. French*, 530 U.S. 327, 350 (2000).

³ Magna Carta, ch. 39, quoted in William Sharp McKechnie, *Magna Carta - A Commentary on the Great Charter of King John* 375 (2d rev. ed. 1914); see *Den v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276 (1855) (linking passage to Fifth Amendment’s Due Process Clause); cf. R.H. Helmholz, *NATURAL HUMAN RIGHTS: THE PERSPECTIVE OF THE IUS COMMUNE*, 52 *Cath. U. L. Rev.* 301, 316-18 (2003) (identifying sources of human rights, including right to due process, in earlier writings of medieval canonists).

⁴ *Ingraham v. Wright*, 430 U.S. 651, 674 (1976); see also *In re Oliver*, 333 U.S. 257, 266-71 (1948) (decrying the secrecy of the English Star Chamber, the Spanish Inquisition, and the French *lettres de cachet* in affirming that due process guarantees a right to public proceedings).

those accused of crimes in the United States, it likewise protects the “due process” rights of those accused of crimes who are being held at Guantánamo Bay, Cuba. Constitutional protections extend to non-citizens as well as citizens, regardless of whether their presence in an area of United States jurisdiction was “unlawful, involuntary, or transitory.”⁵ In the Guantánamo Bay detainee cases, the United States Supreme Court recently reaffirmed this principle in holding that the detention of persons such as Mr. al Qosi implicates “due process” concerns: “Petitioner’s allegations ... unquestionably describe ‘custody in violation of the Constitution or laws or treaties of the United States.’”⁶

4. In fact, in finding this to be the law, the Supreme Court approved a century’s worth of jurisprudence by holding that “the Government may act only as the Constitution authorizes, whether the actions in question are foreign or domestic.”⁷ Though the Court held that all constitutional provisions do not automatically apply extraterritorially (outside the United States), it did establish a high standard for determining that a constitutional protection does not apply:

For *Ross* and the *Insular Cases* do stand for an important proposition, one which seems to me a wise and necessary gloss on our Constitution. The proposition is, of course, not that the Constitution “does not apply” overseas, but that there are provisions in the Constitution which do not necessarily apply in all circumstances in every foreign place. In other words, it seems to me that the basic teaching of *Ross* and the *Insular Cases* is that there is no rigid and abstract rule that Congress, as a condition precedent to exercising power over Americans overseas, must exercise it subject to all the guarantees of the Constitution, no matter what the conditions and considerations are that would make adherence to a specific guarantee altogether impracticable and anomalous.⁸

5. Essentially, therefore, before a constitutional protection can be determined not to apply to a Guantánamo Bay detainee, the Government must establish and the Commission must find that application of “conditions and considerations” render application of that “specific guarantee altogether impracticable and anomalous.”

6. While in the area of immigration the Supreme Court has permitted limitations on constitutional rights, it has never extended that permission to criminal prosecutions. The Supreme Court made this clear over one hundred years ago, in *Wong Wing v. United States*.⁹ There, after noting that unequal treatment in violation of the constitutional protection of the Fifth Amendment was permissible in deportation matters, the Court held that that permission ceased once the federal government attempted to impose criminal punishment: where Congress “sees fit to ... subject ... the persons of such aliens to

⁵ *Matthews v. Diaz*, 426 U.S. 67, 77 (1976).

⁶ *Rasul v. Bush*, 542 U.S. ___, 124 S.Ct. 2686, 2698 n.15 (2004).

⁷ *United States v. Verdugo-Urquidez*, 494 U.S. 259, 278 (1990)(Kennedy, J., concurring)(citing with approval in *Rasul*, 124 S.Ct. at 2698 n.15).

⁸ *Verdugo-Urquidez*, 494 U.S. at 278 (quoting *Reid v. Covert*, 354 U.S. 1, 74 (1957)(Harlan, J., concurring)).

⁹ 163 U.S. 228 (1896).

infamous punishment,” the ability to discriminate came to an end as: “even aliens shall not be held to answer for a capital or other infamous crime” without the protections afforded citizens under the Fifth Amendment.¹⁰ Since *Wong*, the Supreme Court has repeatedly reaffirmed and expanded upon the principle that the federal government may provide less than full constitutional protection to non-citizens in the immigration and foreign affairs areas, but may not punish non-citizens under different constitutional procedures.¹¹

7. Absent a governmental showing that for some reason they do not, all the constitutional protections enjoyed by those accused of crimes in the United States apply to Mr. al Qosi. These rights include, at a minimum, the prohibition against double jeopardy and self-incrimination, the right to confront witnesses, to a speedy and public trial in front of any impartial jury, notice of charges, the right to compel witnesses, and the right to effective assistance of counsel.¹² In fact, the fact that this Commission in developing rules and procedures has already codified some of these protections demonstrates that the rest should apply.

8. **International Law**: Furthermore, because the Constitution is alive in Guantánamo Bay, international treaties to which the United States is a party likewise apply. The Supremacy Clause of the United States Constitution provides that:

all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹³

9. There are many such treaties applicable here to which the United States is a party. These include the Geneva Conventions III and IV,¹⁴ the International Covenant on Civil and Political Rights [ICCPR], and the Convention Against Torture and Other Cruel,

¹⁰ 163 U.S. at 237-38.

¹¹ See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (citing *Wong Wing* for the rule that, in the context of “punitive measures ... all persons within the territory of the United States are entitled to the protection of the Constitution”) (internal quotation and citation omitted). See also *Chan Gun v. United States*, 9 App. D.C. 290, 298 (D.C. Cir. 1896) (citing *Wong Wing* for the proposition that “[w]hen . . . the enactment goes beyond arrest and necessary detention for the purpose of deportation and undertakes also to punish the alien for his violation of the law, the judicial power will intervene and see that due provision shall have been made, to that extent, for a regular judicial trial as in all cases of crime”); *Rodriguez-Silva v. INS*, 242 F.3d 243, 247 (5th Cir. 2001) (noting that although the federal government has wide latitude to set “criteria for the naturalization of aliens or for their admission to or exclusion or removal from the United States,” it is settled that “an alien may not be punished criminally without the same process of law that would be due a citizen of the United States.”) (citing *Wong Wing*).

¹² U.S. Const., Amend. V-VI. These rights will be the subject of this, as well as many other, motions the Defense intends on filing with the Commission.

¹³ U.S. Const., Art. VI, cl. 2.

¹⁴ Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3317 [Geneva III]; Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516 [Geneva IV].

Inhuman or Degrading Treatment or Punishment [CAT].¹⁵ Further, many international agreements to which the United States is not a party, announce principles of “customary international law” that are binding on the United States. As particularly relevant here, Article 75 of Protocol I of the Geneva Conventions¹⁶ details many fundamental trial rights to which accuseds are entitled. In fact, the United States has long recognized that this provision does announce customary international law that the United States is bound to follow.

10. Further, two pieces of executive action show that international law applies in these Commissions context. First, in an Executive Order dated 10 December 1998,¹⁷ the President specifically noted United States obligations under the ICCPR, CAT, and the Convention on the Elimination of All Forms of Racial Discrimination [CERD],¹⁸ and set United States foreign policy to fully “respect and implement” its obligations under international law. Second, the Preamble to the Rules for Courts-Martial (also an Executive Order) detail at various points the applicability of international law.¹⁹ In fact, Part I, ¶2(b)(2), expressly makes military commissions subject to international law:

Subject to any applicable rule of international law or to any regulations prescribed by the President or by other competent authority, military commissions ... shall be guided by the appropriate principles of law and rules of procedure and evidence prescribed for courts-martial.

11. The Defense concedes that there is some debate among scholars whether, as a matter of law, the provisions of all the treaties that the United States is a party to are “self-executing.” In other words, whether adoption of the treaty automatically renders the treaty provisions the “law of the land,” (self-executing) or whether the treaty provisions only become the “law of the land” when Congress incorporates them in legislation (not self-executing). The better weight of argument and authority weighs in favor of finding that all the treaties that may have some application to this matter are “self-executing” and therefore entitled to automatic application.²⁰

12. But even if the Commission were somehow to be convinced that the applicable treaties are not “self-executing,” they still must be given persuasive effect consistent with basic canons of constitutional interpretation. As a matter of constitutional interpretation, treaties (international law) should be read to be consistent with domestic law whenever possible. As Chief Justice John Marshall’s classic statement in *Murray v. The Schooner Charming Betsy* notes: statutes enacted by Congress “ought never to be

¹⁵ The President signed the treaty on April 19, 1988, and the Senate gave its advice and consent to ratification with certain conditions on October 27, 1990. Pub. L. No. 103-36, 2340, 108 Stat 463 (1994).

¹⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1978, 1125 U.N.T.S. 4.

¹⁷ Implementation of Human Rights Treaties, Executive Order 13107 (dated December 10, 1998).

¹⁸ *Opened for signature* Mar. 7, 1966, 660 UNTS 195, reprinted in 60 AJIL 650 (1966).

¹⁹ Part I, ¶1 (“The sources of military jurisdiction include the Constitution and international law.”).

²⁰ See generally Jordan J. Paust, *Customary International Law And Human Rights Treaties Are Law Of The United States*, 20 Mich. J. Int’l L. 301 (1999).

construed to violate the law of nations if any other possible construction remains.”²¹
There is little, if any, dispute as to the validity of *Charming Betsy*.

13. Here, the President relies on the statutory authorization of the Uniform Code of Military Justice (UCMJ), particularly Articles 21 and 36, to justify empanelling this Commission.²² Therefore, should the Commission determine that the applicable treaties are not “self-executing,” and thus are not automatically the “law of the land” pursuant to the Supremacy Clause, *Charming Betsy* still requires that this purported statutory authorization—the UCMJ—be interpreted in a way that their procedures are consistent with international law. This is important, because military, statutory law—the UCMJ—applies in Commission proceedings.

14. **Military Law:** Whether based on statutory authorization or constitutional requirements, all provisions of the UCMJ are applicable to these Commissions. Article 36, cited by the President as authorization for empanelling these Commissions, states:

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commission, and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter. (emphasis added)

(b) All rules and regulations made under this article shall be uniform insofar as practicable.

15. The Court of Appeals for the Armed Forces (CAAF) has long held that the whole panoply of rules of statutory construction applies when interpreting the UCMJ.²³ In *United States v. Brinston*,²⁴ CAAF summarized these general principles in military law contexts:

- legislative intent in enacting a statute should be gleaned from the statute as a whole rather than from any of its parts
- “the entire act must be read together because no part of the act is superior to any other part”

²¹ *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). In *Charming Betsy* the Court held that the Nonintercourse Act of February 27, 1800, 2 Stat. 7, did not apply to a former resident of the United States who had moved to St. Thomas and sworn allegiance to the king of Denmark. The Court concluded that the Nonintercourse Act, which by its terms applied to persons under the protection of the United States, did not include the former resident, declaring that any other construction would depart from the customary international standards of diplomatic protection. The Court would not infer that Congress intended such a result. *Charming Betsy*, 6 U.S. (2 Cranch) at 8.

²² PMO, 13 Nov. 01; 18 U.S.C. §§821, 836.

²³ See *United States v. Brinston*, 31 M.J. 222, 226 (C.M.A. 1990).

²⁴ 31 M.J. at 226.

- “statutes in pari materia must be construed together.”²⁵

16. Here, as a matter of statutory construction, the language of Article 36 expressly provides that all provisions of the UCMJ are applicable to these Commissions. First, the plain language of Article 36 notes that it is subject to “this chapter.” Article 36 is located in a “chapter” entitled “Uniform Code of Military Justice” which comprises 145 sections—18 U.S.C. §801-946.

17. Further, statutory construction requires the Commission reads the UCMJ a “coherent whole,” being mindful that “the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail.”²⁶ Such a reading here requires the Commission to follow all provisions of the UCMJ. To read Article 36 independent of the other provisions of the UCMJ would render them superfluous and the duty of the Commission is not to do that.

18. Article 36b even requires that any rules prepared by the Commission be “uniform” with all the rules and regulations issued pursuant to it. The Rules of Court-Martial (RCM) are issued pursuant to Article 36b and thus any rules of this Commission cannot by Congressional mandate materially diverge from the dictates of the RCM.

19. In any event, the Supreme Court has long ago decided that the procedural provisions of the UCMJ apply to a person in Mr. al Qosi’s position. In *In re Yamashita*,²⁷ the Court was presented with essentially the same argument: *i.e.* that “enemy combatants” were entitled to application of the procedural provisions of the Articles of War (the precursor to the UCMJ) during military commissions. The Court held that they were not, because they were not designated as persons to whom Article 2 of the Articles of War stated they applied.²⁸

20. Under the same analysis, the opposite now holds true. Now, Article 2 of the UCMJ (the successor to the same provision of the Articles of War) expressly enumerates Mr. al Qosi as a person who is subject to the Code: “persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary and which is outside the United States and is outside the Canal Zone, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.”²⁹ This is Guantánamo Bay. This is Mr. al Qosi.

²⁵ See also *FTC v. Ken Roberts Co.*, 276 F.3d 583, 589 (D.C. Cir. 2001)(“in pari material--like any canon of statutory construction--is a reflection of practical experience in the interpretation of statutes: a legislative body generally uses a particular word with a consistent meaning in a given context.”)(quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972)).

²⁶ 310 F.3d at 902 (citations omitted); see also *Market Co. v. Hoffman*, 101 U.S. 112, 115-116, (1879).

²⁷ 327 U.S. 1 (1946).

²⁸ 327 U.S. at 20. Article 2 of the Articles of War then enumerated “the persons . . . subject to these articles,” who are denominated, for purposes of the Articles, as “persons subject to military law.” In general, the persons so enumerated are members of the Army and the personnel accompanying the Army. Enemy combatants are not included among them.

²⁹ 18 U.S.C. §802(12).

21. Thus, the Supreme Court has decided and statutory construction dictates that all provisions of “this chapter” (the entire UCMJ), apply in the military commission context. Any Commission ruling must comply with the UCMJ provisions, and all procedures must be “uniform,” must not be contrary and must not be inconsistent. Essentially, if the UCMJ says something can or cannot happen, then this Commission by rule or decision cannot say the opposite.

22. **Due Process/“Full and Fair Trial”**: But even if the Commission were somehow to determine that Guantánamo Bay is a dark corner of the world where the light established principle of law does not shine, all of these sources of law (the Constitution, the UCMJ, international treaties and customary international law) should still enlighten what a “full and fair trial” requires. In other words, these sources of law are, at a minimum, persuasive of what due process means today.

23. At its heart, due process protects the right to a fair trial, which is “the most fundamental of all freedoms”³⁰ -- “More than an instrument of justice and more than one wheel of the Constitution, it is the lamp that shows that freedom lives.”³¹ “Due Process is that which comports with the deepest notions of what is fair and right and just.”³² In other words, “[w]hether the trial be federal or state [or military], the concern of due process is with the fair administration of justice.”³³

24. What “due process” in a general sense means at a particular time and in a particular case is not subject to mathematical formulation. Rather, it is an evolving process, one that requires constant reflection on the state of human affairs. As the Supreme Court has eloquently stated:

“due process,” unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, “due process” cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, “due process” is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process.³⁴

³⁰ *Estes v. Texas*, 381 U.S. 532, 540 (1965).

³¹ *Duncan v. Louisiana*, 391 U.S. 145, 156 n. 23 (1968) (quoting P. Devlin, TRIAL BY JURY 164 (1956) (internal quotes omitted)).

³² *Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950) (Frankfurter, J., dissenting); see also *Argersinger v. Hamlin*, 407 U.S. 25, 47 (1972) (Burger, J., concurring) (“principle of due process “requires fundamental fairness in criminal trials”).

³³ *Mayberry v. Pennsylvania*, 400 U.S. 455, 464 (1971).

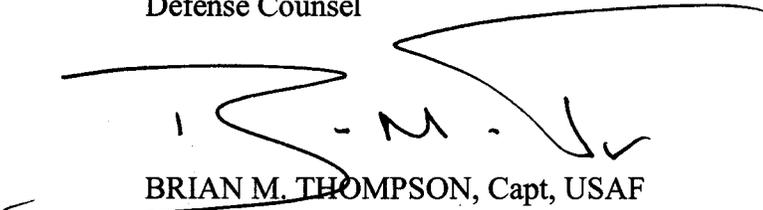
³⁴ *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring).

25. When creating new legal machinery from scratch (as the Commission will be doing if it does not rely on constitutional, international and military jurisprudence), reference to international law is not only appropriate, it is historically proven. From the beginnings of the Nation, the customary “law of nations” was considered the “the laws of the United States” and our courts often turned to it for guidance.³⁵ An author of *The Federalist Papers* urged decision-makers in the nascent United States to pay “attention to the judgment of other nations.”³⁶ The intent was to help produce decisions that would “appear to other nations as the offspring of a wise and honorable policy;” furthermore, “in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed.”³⁷ If early Justices of the United States Supreme Court, confronted with novel legal questions, turned to international law with little compunction, so should this Commission.³⁸

26. **General Principles—Conclusion:** Unlike our Founding Fathers, this Commission has many more sources of law that should, at a minimum, guide its rules, procedures, and decisions. This Commission cannot simply abandon 800 years of Anglo-Saxon jurisprudence, more than 200 years of constitutional law, more than 100 years of international law, and 50 years of modern military law simply because it is expedient. To have any credibility, and to provide basic due process, these sources of law should inform the creation of Commission law.



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³⁵ *Henfield's Case*, 11 Cas. 1099, 1101 (C.C.D.Pa. 1793) (No. 6,360)

³⁶ *The Federalist* No. 63, at 407-08 (Alexander Hamilton or James Madison) (1st Modern Library ed., 1941).

³⁷ *Id.* at 407-08 (further asking “what has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had ... been previously tried by the light in which they would probably appear to the unbiased part of mankind?”).

³⁸ See Diane Marie Amann, *Guantanamo*, 42 Colum. J. Transnat'l L. 263 (2004).

Attachment B: Sampling of Media Stories (attached)

- 16 Sept 04 – The Daily Telegraph (Sydney Australia)
- 13 Sept 04 – Legal Times
- 13-20 Sept 04 – The New Republic
- 25 Aug 04 – The Times (London)
- 29 Jun 04 – The Charlotte Observer
- 26 Jun 04 – Los Angeles Times
- 12 July 03 – The Financial Times (London)
- 07 May 03 – Associated Press
- 10 Jan 03 – ABC News
- 07 Oct 02 – Orlando Sentinel (Florida)
- 10 Apr 02 – The Deseret News (Salt Lake City)
- 10 Apr 02 – The Miami Herald
- 25 Mar 02 – US Government Printing Office
- 21 Mar 02 – CNN

- 17 Sep 04 – Human Rights Watch (independent Commission observer)
 - “A Few Good Men at Gitmo”
 - “US.: Military Commissions Fatally Flawed”
 - “US.: Makeshift Process of Military Commissions Imperils Justice”
- 14 Sep 04 – NPR “Top 10 Signs You Might Not Get a Fair Trial at Gitmo”

1 of 195 DOCUMENTS

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The Daily Telegraph (Sydney, Australia)

September 16, 2004 Thursday

SECTION: LOCAL; Pg. 2

LENGTH: 171 words

HEADLINE: Hicks' fair trial 'nearly impossible' - ATTACK ON AUSTRALIA

SOURCE: MATP

BODY:

TERRORISM suspects David Hicks and Mamdouh Habib would not be brought back to Australia despite concerns of an unfair trial at Guantanamo Bay, Prime Minister John Howard said.

This was despite a damning report by Australia's only independent legal observer which said a fair trial for the two was virtually impossible.

Leading barrister Lex Lasry QC travelled to Cuba for the initial hearing on August 25 of South Australian David Hicks who has been detained at Guantanamo Bay since 2001.

"I don't think he [David Hicks] can get a fair trial in this system," he said.

The perception of a fair trial was already compromised by US president George Bush labelling the Guantanamo Bay detainees "killers", he said.

"The Australian Government should make a request to the US Government that David Hicks be removed from this process and either be put before a proper system of criminal justice or sent back to Australia." But Mr Howard said that was an unrealistic proposition because of Australian laws.

LOAD-DATE: September 15, 2004

September 13, 2004

SECTION: POINTS OF VIEW; Pg. 52

LENGTH: 1563 words

HEADLINE: Military Mess;

Ad hoc tribunals dreamed up by the Bush administration risk botching the trials of Guantanamo detainees.

BYLINE: By Stuart Taylor Jr.

BODY:

The first of the ad hoc military commissions, which finally held pretrial hearings at the Bush administration's Guantanamo Bay prison camp in late August, has been something of an international embarrassment. We can do better.

I refer here to the pending criminal prosecutions of Osama bin Laden's chauffeur and three other suspected al Qaeda members for alleged war crimes. The prisoners are to be tried by a Bush-created commission with a retired Army judge as presiding officer and four active-duty officers as members. These proceedings should not be confused with the less formal [and even more slapdash] hearings that began in July before three-officer "combatant status review tribunals," to determine which of the other 580 or so Guantanamo prisoners -- most of whom will not be criminally prosecuted -- are "enemy combatants" subject to continued detention.

There is much to be said for using special military tribunals, rather than civilian courts, to try terrorists captured on foreign battlefields for alleged war crimes. Sometimes, security concerns may call for trials in remote locations, for greater secrecy than the civilian process allows, and for use of hearsay and other evidence that is inadmissible in civilian courts.

But so far, the Bush administration has botched the job. By turning its back on more than five decades of progress in the quality of military justice and instead using a deeply flawed 1942 precedent as a model, the administration has designed its commissions in ways that fall short of fairness.

OFF TO A BAD START

Among the embarrassments at last month's preliminary hearings:

§ Retired Army Judge Peter Brownback III was handpicked to be the presiding officer by his close friend John Altenburg Jr. Defense Secretary Donald Rumsfeld had earlier picked Altenburg to oversee the commission process as the "appointing authority." Military defense lawyers challenged the impartiality of Brownback and other commission members: One of them had gathered intelligence about al Qaeda and Taliban forces in Afghanistan, and another had helped coordinate the transport of prisoners to Guantanamo.

§ Brownback is the only commission member who has legal training. Nevertheless, he at times seemed to share his colleagues' confusion about the still-uncertain rules he is supposed to enforce.

§ The proceedings were marred by sometimes-egregious translation errors, prompting disputes about many things, including the official translator's interpretation of a supposed confession of al Qaeda membership blurted out by a Yemeni defendant.

§ While the military lawyers assigned to represent the four defendants were commendably aggressive, they all had to work out of one crowded room, and they were given inadequate access to interpreters, support staff, and other resources, by comparison with the more numerous prosecutors.

§ One defense lawyer plans to leave the service because he was passed over for promotion. One wonders: Did his superiors hold his aggressiveness in defending his client against him?

It took nearly three years for the Pentagon to bring the first defendant before the first commission, which was authorized by a hastily drafted November 2001 order from President George W. Bush. This delay seems especially incomprehensible in light of the Pentagon's March 2002 letter citing "the need to move decisively and expeditiously" in spurning the American Bar Association's request for a chance to comment on the draft procedures.

And after all this time, the allegations against the first four defendants hardly support Rumsfeld's description of the Guantanamo detainees as "among the most dangerous, best-trained, vicious killers on the face of the Earth." Take Salim Ahmed Hamdan, another Yemeni, who was bin Laden's chauffeur and, allegedly, his sometime bodyguard and transporter of weapons. The charges against Hamdan -- conspiracy to commit crimes including murder and terrorism -- do not allege that he ever participated personally in an attack. Are these really the worst guys we could find among the 600-plus alleged al Qaeda and Taliban fighters who have been imprisoned at Guantanamo?

THE WRONG PRECEDENT

The shaky startup has highlighted the fundamental flaws in the design of the military commissions. White House and Pentagon lawyers modeled them on the far-from-fair process that President Franklin Roosevelt slapped together in 1942 for the secret trials and hasty executions of a handful of failed "saboteurs" who entered the United States off German U-boats. The Bush administration discarded wholesale the far-more-detailed, far-more-modern, congressionally enacted rules and procedures that have been used for decades in ordinary military courts-martial. The White House left it to the Pentagon and the presiding officer to make up procedural rules as they go along.

Perhaps the most glaring defect is the administration's evasion of appellate review -- which is routinely available to defendants in ordinary courts-martial -- by either military courts or the U.S. Court of Appeals for the Armed Forces. With five presidentially appointed, Senate-confirmed judges who, by statute, must be drawn "from civilian life" and serve 15-year terms, the appeals court is relatively insulated from fear of presidential or Pentagon displeasure. By contrast, military-commission rules route appeals to a three-judge review panel handpicked by the same Defense secretary who has pronounced the Guantanamo detainees to be "vicious killers." The final appeal goes either to Rumsfeld or to the same George W. Bush who has said, "I know for certain that these are bad people."

HOW WE TREAT OUR OWN

There is a better way: Follow all or most of the long-established, congressionally enacted, elaborately detailed court-martial rules and precedents that are used to prosecute our own service members, including those accused of war crimes at the Abu Ghraib prison in Iraq. Indeed, this is precisely the approach that Sen. John Edwards has recently said a John Kerry administration would follow.

While military trials of any kind would draw objections from many libertarians and human rights groups, the modern court-martial process has earned a reputation for fundamental fairness and de facto independence from political and command influence. And international critics of Bush's decision to give his military commissions jurisdiction only over foreigners would have less reason to complain if those foreigners received the same [or almost the same] fair-trial protections as do our own soldiers.

The court-martial approach, explains Georgetown law professor Neal Katyal, a critic of the Bush approach, would also require assigning these cases to randomly selected military judges and jurors rather than to people "handpicked by the civilians at the Pentagon."

I have some sympathy for retaining two military-commission rules that depart from the usual court-martial process. One allows military commissions to consider hearsay and other ordinarily inadmissible evidence if it "would have probative value to a reasonable person." [The commission rules go too far in appearing to allow testimony obtained through torture.] The other rule provides that, when justified by security concerns, sensitive evidence may be concealed from the public and the defendants, although not from their military lawyers.

Legal Times September 13, 2004

But any such deviations from the established rules should be based on proven need and vetted by Congress. Instead, Bush has chosen, in Katyal's words, to "junk an entity with a proven track record for a speculative gamble that has produced literally no payoffs after three years."

MESSAGE: VICIOUS KILLERS?

Procedural problems aside, does it make sense to even bring war crimes prosecutions against such a small fry as bin Laden's chauffeur? Such cases may risk trivializing al Qaeda's monstrous crimes by focusing on relatively minor accessories who have no blood on their hands. Another risk -- especially in the event of acquittals -- is increasing the international pressure to release not only the defendants but also other, unprosecuted Guantanamo detainees, even if they still seem dangerous.

On the other hand, the chauffeur surely helped bin Laden's jihad more than did some defendants who have already been prosecuted in civilian courts -- such as John Walker Lindh, the "American Taliban," now serving a 20-year prison term. And credible prosecutions of people such as the chauffeur could send a symbolic message that giving even relatively minor assistance to mass-murdering terrorists is a grave crime warranting severe punishment.

Sending such a message is, however, just about the only thing we can accomplish by prosecuting small-fry detainees at Guantanamo -- as compared with the alternative of simply keeping them locked up as enemy combatants. And if the trials aren't seen to be fair, the intended message will be eclipsed in world opinion by a far different one: that America is railroading Arabs, Afghans, and others through a second-class justice system from which it has exempted its own citizens.

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LOAD-DATE: October 12, 2004

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June 26, 2004 Saturday
Home Edition

SECTION: MAIN NEWS; Foreign Desk; Part A; Pg. 4

LENGTH: 525 words

HEADLINE: THE WORLD;
Britain Pressures U.S. to Release 4 Prisoners

BYLINE: John Daniszewski, Times Staff Writer

DATELINE: LONDON

BODY:

In a challenge to the Bush administration's policies at the U.S. prison at Guantanamo Bay, Cuba, Britain's top legal officer said Friday that an American plan to try British citizens in a military tribunal was unfair and a violation of international standards.

The public protest by Lord Peter Goldsmith, Britain's attorney general, comes in spite of a U.S. promise that British citizens would not be subject to the death penalty, as would prisoners of other nationalities, and despite the release in March of five of the nine British citizens held at the prison.

It also comes as the U.S. Supreme Court is expected to rule on the legality and constitutionality of the prison, where about 600 inmates have been held, some for nearly three years, without access to lawyers or to their families, and with no fixed terms of incarceration.

Britain is the Bush administration's closest ally in its campaign against terrorism. It has provided more than 10,000 troops to the U.S.-led coalition force in Iraq.

But after months of quiet diplomacy failed to move the Bush administration to accept requests from Foreign Minister Jack Straw to repatriate the remaining British detainees at Guantanamo so that they can be investigated and tried here, officials apparently have decided to increase the pressure by airing their dissent openly.

Goldsmith has been leading British efforts to negotiate with U.S. authorities the hand-over of the detainees, who were captured in Afghanistan or Pakistan or were suspected of being linked to Al Qaeda.

The remarks by Goldsmith, prepared for delivery Friday night at the International Criminal Law Assn. in Paris, were released to the BBC and British Press Assn. news service.

Goldsmith said that Britain was prepared to accept "some limitation of fundamental rights" to combat terrorism, but that "there are certain principles on which there can be no compromise."

"Fair trial is one of those -- which is the reason that we in the U.K. have been unable to accept that the U.S. military tribunals proposed for those detained in Guantanamo Bay offer sufficient guarantees of a fair trial in accordance with international standards," he said.

Human rights groups have harshly criticized the military commissions, ordered by the Bush administration in November 2001.

They say that the judges, as military officers, would not be independent; that under current plans, the defendants would not be allowed to question witnesses or see all the evidence against them; and that evidence obtained through coercive means could be used.

In addition, convictions would not be subject to review by an independent judiciary and only President Bush, as commander in chief, would be able to grant pardons. In public statements, Bush has labeled the Guantanamo prisoners as a group as "killers."

The detainees have not been granted prisoner-of-war status, which would guarantee protections under the Geneva Convention. Instead, they are regarded as "enemy combatants."

The U.S. government has denied accusations by former prisoners that the Guantanamo detainees are subjected to beatings and other forms of abuse. It says they are being treated humanely.

LOAD-DATE: June 26, 2004

Financial Times (London,England) July 12, 2003 Saturday

British ministers have been more reluctant to reject outright the presumption of innocence, one of the fundamental principles underpinning a legal system that Britain has exported worldwide. But they have shown some sympathy with the argument that such rules may need to be interpreted loosely to deal with the nature of the terrorist threat. Downing Street this week stressed that "the information flowing from those at Guantanamo Bay is important in terms of the war against terrorism and we can't overlook that".

The reluctance to condemn outright the US treatment of captives held at Guantanamo does not stem just from a sympathy with Mr Bush's objective of fighting terrorism, however. Britain's security, defence and foreign policies are becoming inextricably enmeshed with those of the US.

This week, Geoff Hoon, the defence secretary, committed the UK's armed forces to fitting in with American "doctrinal dominance". In April, the government agreed what it described as "unprecedented co-operation and sharing of intelligence" between the UK and the US. And David Blunkett, home secretary, has signed a bilateral treaty that allows the US to extradite suspects without first proving there is a prima facie case against them, but gives no reciprocal rights to the UK.

Reaction to this deal was at the time far more muted than the fuss created by the - fully reciprocal - deal on extradition the government has agreed with the rest of the European Union. The Tories attacked this "obnoxious" agreement, while remaining largely silent on the US treaty.

But the growing perception of an imbalance in Britain's relationship with the US is one of the factors behind the outcry over the Guantanamo detainees. When he signed the agreement on intelligence sharing, Mr Blunkett declared: "If we accept that we are now interrelated one with another, whether we like it or not, we will understand why the UK and the US stand shoulder to shoulder." This "shoulder to shoulder" terminology implies a partnership of equals. Inevitably, as the government appears to accept, Britain is playing a vastly subordinate role.

That recent British tendency to give ground willingly to the US, and exceedingly grudgingly to the rest of Europe, could now be severely tested by the Guantanamo issue. If the US refused point blank to return the men without some kind of guarantee that they will be tried in Britain, there would be little that the UK could do about it.

As Menzies Campbell, the Liberal Democrats' foreign affairs spokesman, said yesterday: "The government has no legal sanction or leverage that one could bring to bear in this situation. The prisoners at Guantanamo Bay are being held under a presidential order. Mr Blair must ask for President Bush's personal intervention."

LOAD-DATE: July 11, 2003

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Associated Press

May 7, 2003 Wednesday

SECTION: WASHINGTON DATELINE

LENGTH: 586 words

HEADLINE: U.S. Military Tribunals Lack Defendants

BYLINE: PETE YOST; Associated Press Writer

DATELINE: WASHINGTON

BODY:

The Pentagon's system of military tribunals is ready to begin work, but a key component is missing: defendants.

Lawyers familiar with the matter say they believe only a small number of the approximately 660 detainees captured in the war on terrorism and held at Guantanamo Bay, Cuba, will ever appear before the U.S. military tribunals.

The rest will go home either as free men or to face charges in the countries where they are citizens.

Countries that have said publicly they want their citizens home from Guantanamo include Russia, Saudi Arabia, Sweden, Britain and Pakistan.

Guantanamo Bay is a likely location for any U.S. military commission trials. The Pentagon has listed 18 war crimes and eight other offenses that could be tried, including terrorist acts and false surrenders.

The detainees are former Taliban fighters and others from 42 nations, thought at the time of their capture by the U.S. government to have connections to al-Qaida, the terrorist organization led by Osama bin Laden. In most instances, they were picked up in Afghanistan and Pakistan.

After lengthy interrogation, many of the detainees are thought to be low-level former Taliban fighters, unlikely prospects for commission trials. Several are juveniles. More than a dozen Guantanamo detainees will be sent home this week, while an additional 30 or so are to be brought in.

When the detention center in Guantanamo opened in January 2002, Vice President Dick Cheney called the men in custody there and in Afghanistan "the worst of a very bad lot." On a trip to Guantanamo, Secretary of Defense Donald H. Rumsfeld called them "among the most dangerous, best trained, vicious killers on the face of the Earth."

The Bush administration has categorized the detainees brought to Guantanamo Bay as unlawful combatants, not prisoners of war. They have no constitutional rights because they are non-U.S. citizens held outside U.S. territory on land leased from Cuba. Legal advocacy groups have gone to court on the detainees' behalf.

Guantanamo Bay isn't the only source of possible defendants for military commission trials.

Associated Press Online May 7, 2003 Wednesday

Major terror suspects in U.S. custody who are held far from Guantanamo Bay at undisclosed locations around the world could be subject to the trials. So could accused Sept. 11 suspect Zacarias Moussaoui, if the government is unable to work out its problems in his federal court case over the use of classified information. And if President Bush expands the order he signed in November 2001, Iraqis alleged to have committed war crimes could face commissions.

Michael Ratner of the Center for Constitutional Rights deplores the fact that "some of these people have been there 15 months and not had any kind of a tribunal determine whether they were properly picked up."

Others say any criticism should be tempered by the new reality of life in a post-Sept. 11 world.

"Legally, if you're going to question the validity under the Constitution of what the government has done, what they have done is probably all right, but whether it's socially and morally acceptable, certainly it's uncomfortable," former military prosecutor Jeff Ifrah said.

The Pentagon is moving toward decision day. It has issued rules for the tribunals. It is considering Army Col. Frederic Borch III to be chief prosecutor overseeing military commission trials and Air Force Col. Willie Gunn to run the chief defense counsel's office. They would supply the pool of military legal talent for the prosecution and the defense.

LOAD-DATE: May 8, 2003

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ABC News Transcripts

SHOW: WORLD NEWS NOW (02:00 AM ET) - ABC

January 10, 2003 Friday

LENGTH: 1793 words

HEADLINE: SPORTS

BODY:

graphics: SPORTS

LIZ CHO, ABC NEWS

(Off Camera) Golfer Jim Furik has a second home some 300 yards from the golf course in Kapalua, Hawaii, and that is where the PGA year opened yesterday.

LIZ CHO (CONTINUED)

(Voice Over) This is Furik for birdie on the 18th. The 50 foot putt could have given him a course record 63, but it didn't drop and he had to settle for 64 and share the first-round lead. Furik is tied with Ernie Els. Els had two eagles. On the 16th, though, he had to be satisfied with a birdie after this almost eagle.

LIZ CHO (CONTINUED)

(Off Camera) San Francisco Giants pitcher Levon Hernandez denies he shoved or swung golf clubs had a Miami warehouse owner.

LIZ CHO (CONTINUED)

(Voice Over) Miami police arrested Hernandez Wednesday and charged him with aggravated assault. He is out on bond. Hernandez says the 65 year- old man from whom he rents the warehouse swung at him physically and verbally.

graphics: MIAMI

LEVON HERNANDEZ, GIANTS PITCHER

He told me you're a (CENSORED BY NETWORK) If you weren't a baseball player, you'd still be cutting sugar cane in Cuba. I hate that. It's offensive to me, and all Black people.

LIZ CHO

(Off Camera) Won the 1997 World Series MVP award when he was with the Marlins.

LIZ CHO (CONTINUED)

(Off Camera) The Ducks played a home game, then traveled to Denver.

LIZ CHO (CONTINUED)

(Voice Over) They got in at four in the morning, and they should've been tired when they played the Avalanche, but they are the Mighty Ducks. This is the first of two goals by Jason Crog. The Ducks woke up a little late, but they came from behind to win five to three.

LIZ CHO (CONTINUED)

(Off Camera) Good for them. And going back to golf, just very briefly. Ernie Els had kind of a scary moment a couple of weeks ago. New Year's Day, he and some buddies came home to his house in, in South Africa and they found some 25 year-old guy sleeping in his bed. No idea who he is. Police came, they arrested him. He's actually out on bail. They don't know if perhaps he had a little too much, you know, bubbly New Year's Eve.

MIKE VON FREMD, ABC NEWS

(Off Camera) Shocking.

LIZ CHO

(Off Camera) Yeah, I know. So, and yesterday I mentioned that my husband played in Kapalua, and said that he played horribly. My husband was not all that pleased that I said that I said that he played horribly, but he tried his best.

MIKE VON FREMD

(Off Camera) Well, good for him.

LIZ CHO

(Off Camera) Yeah.

LIZ CHO (CONTINUED)

That's sports for this half-hour.

MIKE VON FREMD

When we come back, sending messages from Guantanamo.

graphics: LETTERS FROM GUANTANAMO

ANNOUNCER

ABC's "World News Now" will continue after this from our ABC stations.

graphics: ABC WORLD NEWS NOW

commercial break

graphics: ABC WORLD NEWS NOW

LIZ CHO

Here are some of the stories we are following this morning at ABC News.

LIZ CHO (CONTINUED)

North Korea says it is withdrawing from the Nuclear Nonproliferation Treaty. North Korea calls its actions self defense from a most serious threat from the US.

LIZ CHO (CONTINUED)

The Chief UN Weapons Inspector acknowledges no smoking gun has been found in Iraq so far. But he adds Iraq isn't making a serious effort to help inspectors get the names of scientists whom might know something about the Iraqi weapons program.

LIZ CHO (CONTINUED)

And former Democratic Congressman Ed Mezvinsky of Pennsylvania was sentenced to six and a half years in prison. He was convicted of bilking friends and family, including his mother-in-law, out of \$10 million.

LIZ CHO (CONTINUED)

And those are some of the stories we are covering at ABC News.

graphics: ABC WORLD NEWS NOW

MIKE VON FREMD

There are more than 600 men being held at the US Naval base in Guantanamo. The US says they are suspected members of al Qaeda and the Taliban taken into custody in the war on terrorism. Most of them have not been allowed to communicate with a lawyer or their families since they were brought to Guantanamo. But now, some of them are getting word back to their families. It just takes a while to deliver the message, as ABC's Josh Gerstein found out in this report for "Nightline" last night.

JOSH GERSTEIN, ABC NEWS

(Voice Over) A team from the Red Cross makes its way through the Afghan desert. Its mission, not to provide disaster relief or medical help, but to deliver messages from prisoners held by the US military at Guantanamo Bay.

LAROND GISELLE,

HEAD OF KANDAHAR'S RED CROSS OFFICE

'Cause it's half the, half the world, so it cannot be, cannot be any further away. But it's an important load, than the very long, very long distance, yes, I'm sure.

JOSH GERSTEIN

(Voice Over) Larond Giselle, the head of the Red Cross' Kandahar office, says finding the correct recipient requires persistence and a bit of detective work.

LAROND GISELLE

Usually we have the name of the village, and even inside the village we have the name of the mosque, because you have different mosques in the, in each village, and that's how the people have the address. And then, you go to the elder, to the community, and you ask them to help us find the, the person.

JOSH GERSTEIN

(Voice Over) The Red Cross convoy finally arrives at its destination.

LAROND GISELLE

Can we come in?

JOSH GERSTEIN

(Voice Over) After welcoming the team into a village guesthouse, Haji Nuradeem (PH) pulls out several postcards, and a photo of his 27-year- old brother Mohamed Naseem (PH) He says Mohamed was arrested in Pakistan in the fall of 2001. Local police turned him over to the Americans, he wound up at Guantanamo Bay. Haji Nuradeem can't read, so one of the Red Cross workers reads the message to him.

MALE TWO, RED CROSS WORKER

I'm sending greeting to my great brother, Ajeena Sallah (PH), Ajeena Sabeen (PH), and all other family members.

JOSH GERSTEIN

(Voice Over) The relative composes a reply to be sent back to Guantanamo. Then comes the difficult part, the questions.

HAJI NURADEEM, BROTHER OF PRISONER

I'm asking if there are any investigation to find out which prisoners should be released, and which prisoners should not.

LAROND GISELLE

We don't have any information about the investigation and where they stand in this process.

JOSH GERSTEIN

(Voice Over) The family gets no real answers. The visitors are soon sent on their way.

JOSH GERSTEIN (CONTINUED)

(Off Camera) This district was home to Taliban leader Mullah Omar, and it's still home to numerous al Qaeda and Taliban sympathizers. It's not surprising then, that this area gets more than its share of messages from Guantanamo Bay.

JOSH GERSTEIN (CONTINUED)

(Voice Over) Nuradeen adamantly denies that his brother was involved with radical groups.

HAJI NURADEEM

If there is any proof with my brother, he had connection with Taliban or al Qaeda, this is fine. They can hang him. But I'm quite sure he had no connection with Taliban or al Qaeda.

JOSH GERSTEIN

(Voice Over) When it opened a year ago, the Guantanamo Camp was supposed to hold hard-core al Qaeda members.

PRESIDENT GEORGE W. BUSH, UNITED STATES

The ones in Guantanamo Bay are killers. They are, they don't share the same values we share. They would like nothing more than to, to come after America, or our friends and allies.

graphics: MARCH 2002

JOSH GERSTEIN

(Voice Over) Over time, the US has sent more than 630 men from at least 40 countries to Guantanamo. "The Los Angeles Times" reported recently that dozens of prisoners with no apparent ties to al Qaeda or the Taliban were, nevertheless, shipped to Cuba.

GREG MILLER, LOS ANGELES TIMES

At a minimum, 59 were sent there over the objections of intelligence officers in Afghanistan, and the reason we know that is because the officers in Afghanistan, as the problem worsened, started compiling their own list. Lists of people who are on manifests for Guantanamo, who they felt shouldn't be on those lists.

JOSH GERSTEIN

(Voice Over) Reporter Greg Miller says military higher-ups were so nervous they might released a terrorist, that it became nearly impossible to get anyone released.

GREG MILLER

No one wanted to be the person who let the 21st hijacker go.

JOSH GERSTEIN

(Voice Over) Last October, four men were released. The military said they no longer posed a threat. Two were at least 70, one of them claimed to be more than a 100. The Pentagon said more releases would follow. So far they have not. Plans for military tribunals have also lagged. More than a year after President Bush signed an order to allow such trials, none has been convened. Pentagon officials declined to discuss specific cases, but made clear they're in no hurry to release any of the prisoners.

MAJOR-GENERAL JEFFREY MILLER,

UNITED STATES ARMY

Josh, we're at war.

JOSH GERSTEIN

(Voice Over) Major-General Jeffrey Miller runs the Guantanamo camp.

MAJOR-GENERAL JEFFREY MILLER

We are being very thorough in examining each detainee for his intelligence value, and then determining whether he is a further threat to our nation. We'll make recommendations on their transfer or release following that. But it is a very careful procedure.

JOSH GERSTEIN

(Voice Over) Sayed Roshan (PH) manages the Traffic Department at Ariana, Afghanistan's national airline. He says his 21-year-old son Abaseen was driving a taxi in the Afghan City of Gardez last April. On the same day, someone threw a grenade at an American patrol. An Afghan commander arrested Abaseen, and turned him over to the US. His parents received this message.

SAYED ROSHAN, FATHER OF PRISONER

Now I'm here in the Guantanamo Bay, for whatever they bring with an investigation.

JOSH GERSTEIN

(Voice Over) His son tried to explain further, but American military censors blacked it out. Roshan enlisted the help of Afghanistan's Interior Minister who contacted the Americans to tell them they had the wrong man. Months later, Abaseen remains in custody. If there are innocents at Guantanamo, sending them home appears to be a low priority for the military and the Bush Administration. The impact that stance may have on the broader US campaign to win over Afghanistan's hearts and minds is hard to predict. This is Josh Gerstein for "NIGHTLINE" in Afghanistan.

MIKE VON FREMD

That was some of last night's "Nightline."

LIZ CHO

And you're watching "World News Now." There's more news coming up.

commercial break

graphics: DOW JONES, NASDAQ

LIZ CHO

(Off Camera) London's Mayor is offering a truce in the battle for the birds. Two years ago, the mayor banned the time-honored tradition of pigeon feeding in Trafalgar Square. That sparked protests from animal rights activists. Today the Mayor gave in, sort of, and announced a plan to allow limited feeding of the pigeons.

LANGUAGE: ENGLISH

LOAD-DATE: March 5, 2004

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Orlando Sentinel (Florida)

October 7, 2002 Monday, FINAL

SECTION: A SECTION; Pg. A1

LENGTH: 1635 words

HEADLINE: RIGHTS ADVOCATES DECRY DETAINEES' PLIGHT

BYLINE: Ivan Roman, San Juan Bureau

BODY:

GUANTANAMO BAY NAVAL BASE, Cuba -- In the 10 months since the first of what the United States calls "war-hardened killers" began arriving here from Afghanistan, this tropical outpost has been evolving into a permanent penal colony.

The numbers tell the story.

The prison population has grown to 598 men from 43 countries since the first 20 detainees arrived Jan. 11, in the later stages of the huge military offensive that began in Afghanistan a year ago today.

The 8-by-6-foot wire cages have been replaced by wire-mesh cells with floor toilets, metal-frame beds and wash basins. An additional 204 cells will be ready this month, bringing the total to 816, and 2,000 are planned.

A 20-bed hospital has been built, and the population of this century-old seaside military installation in the Caribbean has doubled to 5,000.

Plans the Navy had for mothballing Guantanamo have been scrapped, for now, in the name of the war on terrorism.

Missing is any indication of how long the suspected terrorists, who have no lawyers and no legal rights, will be held at this 43-square-mile base. It could be months, years, a lifetime.

And it is that open-endedness, coupled with the fact that the Bush administration refuses to treat the detainees as prisoners of war under the Geneva Conventions, that has enraged human-rights advocates.

Critics argue that only case-by-case consideration of each detainee's role in the conflict and whether they, particularly Taliban forces, should be treated as POWs can safeguard the United States' moral authority to demand that its troops receive the same protections if captured during an attack on Iraq.

The detainees "are being denied some basic rights, and they're in limbo with no idea or timetable for what's going to happen," said Vienna Colucci, director of specialist programs for Amnesty International. "The authorities don't seem to think they need to justify their actions anymore and take for granted that people aren't paying attention."

HUMANE TREATMENT

U.S. officials argue that security comes first.

"I feel we are playing an important part in the global war on terrorism, and I think it's a highly visible mission," said Army Col. John J. Perrone Jr., the commander in charge of Camp Delta. "We're doing the right thing."

Orlando Sentinel Tribune, October 7, 2002

Military officials stress their humane treatment of the detainees, who have now been allowed to grow beards. They have been issued Qurans by the Pentagon, and \$20,000 has been spent on books for the prisoners to help them deal with depression and boredom.

A full-time psychologist has been added to the base's mental-health team to help spot detainees suffering from severe depression that could lead to suicide.

Officials say many have gained weight thanks to the 2,000 calories in three daily meals that strictly follow an Islamic diet. Domelike machines on the "roofs" that block the cell blocks from the rain and sun help circulate air at the seaside prison, which is lined by several fences with razor wire and guards in towers looking in all directions.

Guards have been ordered not to interrupt the detainees during their five daily prayer sessions.

They are taken out of their cells twice a week for showers and twice a week for 15 minutes to exercise, all individually so they don't gather or discuss anything at length.

Those who throw water or spit at guards go into one of 80 isolation cells with steel walls and a small window.

About 11 percent of the 1,000-plus guards are women, interacting with men whose cultures do not allow females to be seen as authority figures.

"They won't acknowledge them; they won't look them in the eye and things like that," Perrone said. "They refuse things when offered by a female, and as time goes on, that changes. They wouldn't take food from them or let them escort them to sick call. That's pretty much taken care of, but there are still a few who won't."

At the camp hospital, detainees have been taken in for surgery 61 times -- including three amputations -- and specialists have been flown in to repair broken bones or relieve back problems.

About 30 of those locked up are on antidepressants or anti-psychotic medication for mental illness, which doctors say the men had before arriving in Guantanamo, most suffering from post-traumatic stress after their experiences on the battlefield.

"Wherever these people go or if they stay here, they will need mental-health care," said Capt. Albert J. Shimkus Jr., the commanding officer in charge of the detention camp's hospital.

SUICIDE ATTEMPTS

Critics and family members say some detainees have sent messages through the Red Cross, blaming the indefinite detention for causing severe stress and depression. There were four suicide attempts during the summer -- men trying to hang themselves with sheets -- and more since August. How many, military officials refuse to say.

The beefed-up mental-health staff will try to pinpoint where to intervene as time goes on and stress kicks up. Pointing to the food and health care they get, military officials often speak of better treatment in certain areas than the men were accustomed to back home.

"We have had no detainees hurt while here," said Brig. Gen. Rick Baccus, who is in charge of the detention operation, except the intelligence units. "We have provided as much recreation as possible. We have constant support for their religious needs. From a humanitarian standpoint, we've done all we can."

'UNLAWFUL COMBATANTS'

The human-rights advocates dispute that assertion. Locking people away indefinitely without access to any legal representation, not offering specific charges against them and not allowing them to make their case or bring a defense to any court also violates human rights, they say.

The Bush administration calls the detainees "unlawful combatants" and refuses to consider them prisoners of war because they don't hail from a single nation nor were they members of armed forces that have a traditional military-command structure.

Advocates counter that only a case-by-case consideration of whether these men, particularly the Taliban forces, should be prisoners of war would shield the United States from future recriminations that it is violating international law and human rights.

In short, if they are not POWs or they do not face specific charges to be aired in a court or military tribunal, activists say, the detainees should be set free.

FEDERAL LAWSUITS

Frustrated by months of no movement from the Pentagon, family members and lawyers for 12 Kuwaitis, two British citizens and two Australians sued to force the government to bring them to court with all the guarantees of due process. The government countered that the courts had no jurisdiction because the detainees were foreign citizens who were not on U.S. soil.

A judge in Washington, D.C., sided with the government, and the cases are under appeal.

"It appears the U.S. government is trying to create a rights-free zone so they can move them to a place or scenario where rights don't apply," Amnesty International's Colucci said. "That is simply not acceptable or justified under international law."

Under all the articles of the Geneva Conventions, POWs would have to be given accommodations according to their rank, be able to organize and select representation in prison and be released at the end of the conflict. It is unclear what exactly would be the end of a conflict like this, which some would characterize more like a law-enforcement action than a typical war.

Even two U.S.-born terror suspects, Jose Padilla and Yasar Esam Hamdi, are being held indefinitely in military prisons in Charleston, S.C., and Norfolk, Va., without charges, lawyers or access to courts.

POSSIBLE CONSEQUENCES

"What happens in Guantanamo is just the leading edge of how the administration tackles this problem overall, and this is a problem that is not going away," said David Danzig, a spokesman for the Lawyers Committee for Human Rights in New York City.

"What happens in Guantanamo is happening to U.S. citizens in the U.S. and could happen to more in the future. It's about more than the 598 people down there."

Adding to the concern is what this will mean for U.S. troops.

"If we act like this, we give everyone an excuse to violate the most basic tenets of international law, and we'll have no standing to complain," said Tom Wilner, a Washington attorney representing the 12 Kuwaitis and their families. "It has horrible implications for our citizens outside of this country. They are going out there with only the protections of their guns."

Baccus said such fears and comparisons miss the mark. Those locked up in Guantanamo did not carry their arms openly or abide by the laws of land warfare that make up the Geneva Conventions.

"I think the U.S. will abide by the Geneva Conventions and make sure that our soldiers do so, and as such will demand that our soldiers be treated with POW status," Baccus said. "That cannot be said for these illegal combatants. It's already been determined that they did not comply with the Geneva Conventions to begin with, so they cannot expect to be treated as such."

Military tribunals, pushed to the back burner by controversy and other legal priorities at home, now seem to be on the horizon again. Officials would have to figure out how to set them up and who to charge, which could take many, many more months.

And all indications are that they would be at Guantanamo, the only U.S. base in a communist country.

"We can respond pretty quickly if we have to," said Capt. Robert A. Buehn Jr., the base's commanding officer.

"I'm happy that we have this mission. My first year here was demolishing buildings and no investment to the base. I still think the base has value to the U.S."

GRAPHIC: PHOTO: Holding area. Military police supervise the 1st detainees from the war on terrorism to arrive, Jan. 11, at Camp X-ray, the temporary facility created for them at the U.S. naval base at Guantanamo Bay, Cuba.

SHANE T. MCCOY/DEPARTMENT OF DEFENSE

PHOTO: On duty. A soldier in January guards the facility where detainees, who have no lawyers or legal rights, will be held indefinitely.

TOMAS VAN HOUTRYVE/THE ASSOCIATED PRESS

PHOTO: At Guantanamo Bay. Soldiers lead an orange-suited detainee captured in Afghanistan through an enclosure at the naval base in January. Now, 598 men from 43 countries are held there.

LYNNE SLADKY/THE ASSOCIATED PRESS

BOX: ABOUT THE PRISON

On Jan. 11, Guantanamo Bay Naval Base began accepting Taliban and al-Qaeda prisoners captured in the war on terrorism. Currently, there are 598 prisoners from 43 countries.

SOURCES: CNN, Sentinel research, Guantanamo Bay Naval Base

MAP: (locator map)

ORLANDO SENTINEL

LOAD-DATE: October 7, 2002

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Deseret News (Salt Lake City)

April 10, 2002, Wednesday

SECTION: WIRE; Pg. A04

LENGTH: 679 words

HEADLINE: World datelines

BYLINE: Compiled from Deseret News wire services

BODY:

Australia

CANBERRA -- About 250 Afghan asylum seekers broke out of an Australian detention camp on the Pacific island of Nauru and pelted police with rocks before being returned to the compound. The detainees walked out of the camp and were confronted by Nauruan police and Australian Protective Service officers.

Botswana

GABORONE -- Botswana had to start distributing medicine to patients with the AIDS virus because it has one of the highest infection rates in the world and its skilled work force is dying off. It is the first country on the continent to commit to a widespread program of providing AIDS medicine through its public health system. The government began the program earlier this year.

Canada

TASIUAQ -- Inuit leaders have signed a wide-ranging treaty with Quebec that promises millions of dollars for the vast Nunavik region and gives permission to study hydroelectric projects in exchange. The agreement would inject about \$297 million over 25 years into Nunavik, where 10,000 Inuit populate a territory that covers 200,000 square miles in northern Quebec.

China

SHANGHAI -- China's Three Gorges Dam, the world's largest hydroelectric project, will create a reservoir massive enough to raise temperatures and force crop changes in nearby areas, a government meteorologist predicted. A researcher at the China Meteorological Administration, said temperatures in central China could rise by an average of 1 degree after the dam's completion in 2009.

Colombia

BOGOTA -- Colombia's capital is on edge after a string of bombings -- including one that killed two police officers -- and the launching of two homemade mortars near the presidential palace. A parked car with a body inside blew up Tuesday, killing two members of a bomb squad south of Bogota. Two small bombs also exploded in a downtown commercial district of the capital, injuring four people, including a 6-year-old girl.

Congo

KINSHASA -- Some as young as 9 years old when they picked up their guns, Congo's former child soldiers demonstrated by the hundreds Tuesday for an end to Congo's war. The government acknowledges 5,500 child soldiers in the ranks of Congo's army.

Cuba

GUANTANAMO BAY NAVAL BASE The new general in charge of this offshore prison project says he considers each of his captives "killers" Brig. Gen. Rick Baccus said it was "not really" of concern to him that Pentagon guidelines for any upcoming Military Commissions consider the captives innocent until proven guilty.

France

PARIS -- President Jacques Chirac made the first visit by a French head of state to Paris' Grand Mosque in 76 years to denounce attacks on Jewish sites and call for unity between French Jews and Muslims. Synagogues, schools and cemeteries have been targeted, often with firebombs, in the last two weeks.

Germany

BERLIN -- Chinese President Jiang Zemin faced pressure over his country's human rights record as he held talks with Chancellor Gerhard Schroeder and other German leaders here on issues from economic relations to cultural exchanges between the two countries.

South Korea

SEOUL -- President Kim Dae-jung has been admitted to the hospital for treatment of a minor stomach ailment. Kim, 76, was taken to a hospital in Seoul after a dinner with visiting Finnish President Tarja Halonen. Doctors believe the ailment was caused by pills the president took to treat a pulled thigh muscle.

Yugoslavia

KOSOVSKA MITROVICA -- Thousands of Serbs rallied to demand the release of a hardline leader imprisoned after clashes with U.N. police and other Serbs held in Kosovo jails. The protest in the city of Kosovska Mitrovica came a day after 22 international police officers and 12 Serbs were hurt in the confrontation.

Venezuela

CARACAS -- President Hugo Chavez lashed out at striking oil workers in a nationally televised speech, accusing them of trying to overthrow him and cripple Venezuela, one of the world's biggest oil exporters. "No one stops Venezuela, especially a diminished number of oligarchs, of corrupt ones," Chavez said.

LOAD-DATE: April 10, 2002

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The Miami Herald

April 10, 2002, Wednesday

SECTION: INTERNATIONAL NEWS

KR-ACC-NO: K2654

LENGTH: 478 words

HEADLINE: General says Pentagon guidelines for detainees 'not really' of concern

BYLINE: By Carol Rosenberg

BODY:

GUANTANAMO BAY NAVAL BASE, Cuba _ The new general in charge of this offshore prison project says he considers each of his captives "killers" even before any military justice that Washington may mete out.

Speaking in a get-acquainted interview with The Miami Herald and The Associated Press, Brig. Gen. Rick Baccus said it was "not really" of concern to him that Pentagon guidelines for any upcoming Military Commissions consider the captives innocent until proven guilty.

Baccus added that he had not received word yet to prepare for the trials. Guantanamo Bay is considered a likely location to hold them, although none of the 299 prisoners now held at Camp X-Ray have been charged and no venue has been set.

"They're all killers. They all were carrying weapons against United States servicemen," said Baccus, 49, a career army officer, lately with the Rhode Island National Guard, who took command of the prison project March 28.

He added that he had not read the prisoners' profiles, which are being built here through interrogations by a Military Intelligence unit under a separate command, so he does not know their individual cases.

Defense Secretary Donald Rumsfeld has said the interrogations will sort out those who were inappropriately or inadvertently swept up the U.S. net in Afghanistan, and that some could be sent back to their nations of birth. No timetable has been set for repatriations, the general said.

Most are suspected members of Osama bin Laden's al-Qaida network and the Taliban militia that offered bin Laden sanctuary in Afghanistan. Six were transferred to Guantanamo Bay after their capture in Bosnia for plotting an attack on the U.S. Embassy in Sarajevo.

The prisoners are currently being held at Camp X-Ray. Commanders at this U.S. Navy base are waiting for contractors to finish fabricating 408 new cells, probably Sunday.

Meantime, Baccus said an early priority of his six- to 14-month stretch as prison project commander is fixing departure dates for soldier and Marine guards who have been working in and around the rugged prison since early January.

Rotations have already begun and some troops have moved into new wooden housing overlooking the Caribbean at the site of the new detention camp.

The Miami Herald April 10, 2002, Wednesday

Duty here has been distasteful for some troops. At Camp X-Ray, soldiers empty plastic waste buckets that prisoners use when the guards don't have time or staff to lead the captives in hand and foot shackles to latrines around the camp.

The general also cast as premature a three-star Army general's announcement that the new troops' housing at Radio Range will be named "Camp America." The troops, now living in a rugged encampment called Freedom Heights, have not chosen a nickname, Baccus said.

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JOURNAL-CODE: MI

LOAD-DATE: April 10, 2002

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Weekly Compilation of Presidential Documents

March 25, 2002

SECTION: No. 12, Vol. 38; Pg. 469; ISSN: 0511-4187

IAC-ACC-NO: 86049690

LENGTH: 853 words

HEADLINE: Exchange with reporters in Alexandria, Virginia; Brief Article

BODY:

March 20, 2002

Military Tribunals

Q. Mr. President?

The President. Yes.

Q. What are you hoping to achieve by holding the military tribunals? And at this point, do we have any people eligible to face those tribunals?

The President. Well, the tribunals are just an option for us. And we'll be using the tribunals if in the course of bringing somebody to justice it may jeopardize or compromise national security interests. So they're a tool; they're an option. As you know, we're discussing rules about how they can function well. The Defense Department asked a lot of opinions from respected scholars, and the world's now beginning to see what we meant by a fair system that will enable us to bring people to justice but at the same time protect national security. I have no plans right now to use anybody--nobody in mind yet. But the option is available.

Q. Are many of those people otherwise going to be sent back to their home countries, and have you decided which ones would be--

The President. Well, we're still in the process of getting as much information from the detainees as possible. Remember, these are--the ones in Guantanamo Bay are killers. They don't share the same values we share. They would like nothing more than to come after Americans or our friends and allies. And so, therefore, it's in our national interest to make sure we know enough about them before we decide what to do with them. So there's a process--ongoing process to get as much information as we can from the prisoners, the detainees. Some talk; some don't talk.

Q. But let me follow, if I could-----

The President. There will only be three questions.

Q. Okay, sorry. But if you say they're killers-----

The President. They said they're killers.

Q. -----what makes them eligible to go to the tribunal?

Weekly Compilation of Presidential Documents March 25, 2002

The President. I told you, if any evidence that is required to convict them jeopardizes the national security interests of the country, we'll use the tribunal.

Situation in the Middle East

Q. Mr. President, are you frustrated by the continuing violence in the Middle East, that looks--one day it looks good, the next day it's-----

The President. Of course, I am. I am frustrated by the violence in the Middle East, and so are a lot of people who live in the Middle East. I know there are some people who do not want us to achieve any kind of peaceful settlement of a longstanding dispute. And they're willing to use terrorist means to disrupt any progress that's being made. And that frustrates me. It frustrates mothers and dads who happen to be Palestinians and Israelis, because they want to raise their children in a secure environment.

Nevertheless, we'll continue to work the issue and work it hard. Zinni is over there; he's making some progress. He's saying to both parties, "Stay the course. Work hard to get into Tenet." And hopefully we can achieve what we all want to achieve, which is eventually a political settlement. But first and foremost, we've got to come up with a security agreement. We made some progress, and I want to thank Zinni for his job that he's doing there. And I'm looking forward to being briefed by the Vice President tomorrow morning when he gets back from--he's getting back this afternoon, but he's going to come in tomorrow morning. We'll have breakfast first thing in the morning, prior to me leaving for Mexico.

Q. Mr. President, just yesterday the Vice President was suggesting that he could meet with Chairman Arafat if there was a cease-fire. Does a cease-fire mean an end to all suicide bombings?

The President. Well, what he said was, was that there are certain conditions under which he would meet with Mr. Arafat, and that is getting into the Tenet agreement and meeting the conditions. And we've also said that we expect there to be a 100 percent effort by Chairman Arafat. We expect him to be reining in those people with whom he's got influence. Clearly, he's not going to have influence with every single suicide bomber. I understand that. But we expect him to be diligent and firm and consistent in his efforts to rein in those who would like to disrupt any progress toward peace and rein in those who would harm our friends the Israelis.

And as I've said in the past, I didn't think he has done a very good job of doing that up to now, and I believe he can do a better job. And that's exactly the message the Vice President is delivering in his statement.

Listen, thank you all very much. I don't want to hold two press conferences in one week.

NOTE: The exchange began at 1:25 p.m. in the mini-auditorium at Samuel W. Tucker Elementary School. In his remarks, the President referred to U.S. Special Envoy to the Middle East Gen. Anthony Zinni, USMC (Ret.); and Chairman Yasser Arafat of the Palestinian Authority. The President also referred to the Tenet plan, the Israeli-Palestinian cease-fire and security plan of June 13, 2001, negotiated by Director of Central Intelligence George J. Tenet. The transcript released by the Office of the Press Secretary also included Mrs. Bush's closing remarks.

IAC-CREATE-DATE: May 30, 2002

LOAD-DATE: May 31, 2002

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CNN

SHOW: CNN LIVE TODAY 10:00

March 21, 2002 Thursday

Transcript # 032112CN.V75

SECTION: News; Domestic

LENGTH: 642 words

HEADLINE: U.S. Set to Announce Details of Military Commissions

BYLINE: Bill Hemmer, Jamie McIntyre

HIGHLIGHT:

U.S. is set to announce how it will try some of the captured Taliban and al Qaeda prisoners before military commission. The Pentagon is not calling them tribunals anymore, and that is just one way it hopes to head off criticism that the trials may violate principles of the U.S. justice system.

BODY:

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BILL HEMMER, CNN ANCHOR: The U.S. is set to announce how it will try some of the captured Taliban and al Qaeda prisoners before military commission. The Pentagon is not calling them tribunals anymore, and that is just one way it hopes to head off criticism that the trials may violate principles of the U.S. justice system.

From the Pentagon now, our military affairs correspondent Jamie McIntyre with this story.

(BEGIN VIDEOTAPE)

JAMIE MCINTYRE, CNN CORRESPONDENT (voice-over): Pentagon sources say it's possible only a small number of the Taliban and al Qaeda fighters held in Guantanamo Bay, Cuba will ever face a military commission. The Pentagon says the legal process it's fashioned takes into account the concerns of critics.

VICTORIA CLARKE, PENTAGON SPOKESPERSON: I think when people see the whole thing and hear the questions get answered, I think they'll say, you know what, that's a pretty good product, and that is a fair and a balanced and a just system.

MCINTYRE: Sources say the process will be open, similar to a military court martial. The accused will be presumed innocent. They must be found guilty beyond a reasonable doubt. The defendants will have the right to an attorney and to see any evidence against them, although classified material may be reviewed in closed session, and the military panel will have to be unanimous to impose the death penalty.

There are also some differences. The panel can decide to admit hearsay and secondhand evidence, and while there will be a right to appeal, it will be to a military review board, not the federal courts.

CNN LIVE TODAY 10:00 March 21, 2002 Thursday

And the final review will fall to President Bush, who seems to have already made up his mind.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES: Remember these are the ones in Guantanamo Bay are killers. They don't share the same values we share.

(END VIDEOTAPE)

MCINTYRE: And in just -- less than an hour, Defense Secretary Rumsfeld, along with the vice chairman of the joint chiefs and the Pentagon's top lawyer, the general counsel, will lay out in detail exactly what they have come up with for these trials, and they say that they will be able to defend them as fair and just against any criticism -- Bill.

HEMMER: You know, Jamie, the one thing we do not know about this issue is whether or not it will ever even take place. Is there much talk about that at the Pentagon, or is it something that they believe will happen at some point at some date with the small group of men?

MCINTYRE: Well, the thought process now is that there will be some small number that will face these military commissions or tribunals, but it is entirely possible that in the end nobody will. It will be entirely up to President Bush to decide who is subject to this kind of justice, and it is probably going to be several months before anything takes place.

The berry objective of the Pentagon is to get from these detainees in Guantanamo Bay and elsewhere intelligence that will prevent future attacks against the United States and help them track down al Qaeda terrorist cells in as many as 60 countries around the world. At that point, they may send some of them back to their country of origin, or they may face this tribunal.

But at this point, it's not clear whether it will be just a small number, and whether it's possible that maybe none will face it at all.

HEMMER: We may learn more in about 47 minutes' time. Thank you, Jamie, see you then. Secretary Rumsfeld will make that announcement at 2:00 p.m. Eastern. We will bring it to you live, again, when it happens at the Pentagon, 11:00 a.m. on the West Coast. TO ORDER A VIDEO OF THIS TRANSCRIPT, PLEASE CALL 800-CNN-NEWS OR USE OUR SECURE ONLINE ORDER FORM LOCATED AT www.fdch.com

LOAD-DATE: July 11, 2003

HUMAN RIGHTS WATCH

A Few Good Men at Gitmo

The military commissions now taking place at Guantánamo Bay, Cuba, fall somewhere between a trial and a farce. The military officials involved in the process all seem committed to doing the best they can, but it is clear that they are struggling to make sense of a needlessly complicated and faulty system foisted on them for political purposes, not justice. Nobody knew what exactly was happening or how to react, from the moment when we human rights observers were left to fend for ourselves, to the military judge who buried his head in his hands several times as if to escape the commission.

The first sign of trouble was that the military had no idea how to handle independent observers. First, the military tried, half-heartedly, to limit journalists from interviewing us—even though we were all staying in the same quarters. Second, military officials were apparently unsure about what trial monitors do and tried to keep us from talking to prosecutors, court officials, and translators—precisely the people whose conduct we were supposed to be monitoring. They finally caved in, but only after days of encouraging us to go to the beach instead.

Basically, the U.S. military seemed confused about our very presence. Fair enough: They've never done this before.

Unfortunately, the confusion outside the courtroom was more than equaled by the disarray of the commission proceedings inside. For that, there's no excuse.

The U.S. government has not adequately explained why these military commissions, with these rules, are being held in the first place. After all, U.S. federal courts and the U.S. military justice system are widely praised around the world, and they have demonstrated their ability to deal with cases involving terrorists, crimes against humanity, and war crimes. The ad hoc system put into place at Guantánamo violates the detainees' fundamental right to a fair trial, and it is unlikely to provide convincing accountability for those who participated in crimes against humanity by attacking civilian targets in the United States, Afghanistan, or elsewhere around the world.

The commission hearings are being held in a large pink building atop a small peninsula jutting into Guantánamo Bay. Our military handlers told us the building had formerly housed a dental clinic. We found this an unlikely explanation, given the building's turret-like tower on top and commanding location.

A mysterious grey cement building adjacent to the commission building was adorned with various high-security notices and multiple military guards. A row of port-a-potties were the only other structures atop the hill.

We were told that, as observers, we were limited to the military commission's main room. This chamber, with seating for about 60 people, looked like a high school gym spruced up for the prom. A blue velvet sheet covered three walls. Flags and insignias of the five military services were displayed prominently, in particular behind the panel of judges. Cookie-cutter office furniture completed the image of a stage set. Computer monitors—apparently not attached to any computer—were set up before the commissioners, but removed after a couple of days.

All this had been done for the four detainees facing charges. They are represented by military defense counsel and, in one case, a civilian lawyer. There is plenty of security.

Human rights observers and a few journalists attended the hearings. Meanwhile, another 60 journalists followed the proceedings, delayed by a five-minute security lag, by video from an auditorium on a neighboring hill.

The hearings were punctuated by bouts of confusion. Three of the four detainees do not speak English well enough to participate without translation. One might have expected the commissions to have had expert interpreters on hand. Instead, the detainees could barely understand the discussion. At one point, as one detainee was apparently confessing that he was a member of Al-Qaeda and that his confession had not been coerced by the U.S. government, the commission heard instead that *the U.S. government* had not been coerced into stating it was a member of Al-Qaeda. The attempted confession was cut off, and nobody was sure what the detainee was saying or what the court record showed.

But even some of the native English speakers—particularly members of the commission—seemed confused about how the process should work. Only one member of the commission was a lawyer. It was obvious from the comments of the other members that they had difficulty with basic legal issues. Do the Geneva Conventions apply to an armed conflict? Can a suspect be found guilty for an action that wasn't a crime at the time? Given the complexity of the cases, this level of confusion is troubling.

What's more, the impartiality of the five members was cast in doubt. Several of them had served in Afghanistan during "Operation Enduring Freedom," so they might reasonably be expected to harbor strong personal feelings about people accused of committing crimes against U.S. or coalition soldiers there. And then there was the revelation that the commission's presiding officer is a long-time friend of the appointing authority, who works for the Bush administration and who brought the charges against the defendants in the first place.

Military defense lawyers challenged the commission for these (apparent) improprieties—but resolving these challenges is the responsibility of the appointing authority who selected the panel and the presiding officer in the first place, with full knowledge of their background and experience.

The biggest problem was the rules governing the commission. Unlike in U.S. courts-martial, defendants cannot appeal their case to a civilian court. The entire process—from trial to judgment to sentencing to final review—is entirely in the hands of the military. But independent review, whether in the U.S. justice system or others, is essential in order to correct mistakes at trial and ensure just verdicts and sentences. Other commission rules make it extremely difficult for defense lawyers to gather evidence to put together a defense. The prosecution can use evidence kept secret from the defendant as well as evidence obtained through the coercion of witnesses.

To his credit, the presiding officer struggled visibly to find answers to the tough procedural challenges posed by the defense lawyers. But there was little he could do: The problems raised were not of his making.

In defending the commissions, U.S. President George Bush's administration has noted that military commissions have been part of American history since the Revolutionary War. The presidential order creating the military commissions in November 2001 was drawn from those established during World War

II. But the order didn't mention that such commissions always sought to apply the current rules governing courts-martial, and that courts-martial have changed a great deal for the better since the enactment of the Uniform Code of Military Justice in 1950.

Military lawyers tried to address the due process flaws in the 2001 order by issuing a series of rules and instructions. But instead of applying existing rules for courts-martial and deviating where necessary to reflect the difficulties of obtaining evidence in a war zone, the military basically started from scratch. Now they have dropped what they couldn't finish in the laps of the military commissions.

So it seems that a few good men who are serious about doing their jobs properly are grappling with a bad system that was needlessly imposed on them. The existing rules do not create a level playing field. In other areas, rules of procedure are wholly lacking, leaving the participants to navigate their way through uncharted waters.

As a result, the international spotlight has now turned from the alleged crimes of the accused to the unfairness of U.S. justice. In one of the hearings, a panel member said that he believed that "actions speak louder the words." Others on the commission agreed.

By the same token, the world will judge the United States at Guantánamo by the actions it takes to ensure fair trials, not by its rhetoric about how fair the commissions are. There is still much to be done. The travesty of Guantánamo Bay does not address the tragedy of 9/11.

Zarifi was in Guantánamo Bay, Cuba, observing the military commissions.

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HUMAN RIGHTS WATCH

U.S.: Military Commissions Fatally Flawed

Guantánamo Hearings Show How They Fall Far Short on Fair Trial Standards

(New York, September 17, 2004)—The failure of the Guantánamo Bay hearings to meet basic standards for fair trials shows that the U.S. military commissions are fatally flawed and must be scrapped, Human Rights Watch said in a letter today to U.S. Defense Secretary Donald Rumsfeld. Human Rights Watch, whose observer attended the August hearings, urged the U.S. government instead to bring prosecutions before federal courts or courts-martial.

“The Guantánamo hearings clearly demonstrated that the military commissions lack competence, impartiality and fair rules of procedure,” said Kenneth Roth, executive director of Human Rights Watch. “It’s time for the U.S. government to put the military commissions out of commission.”

Human Rights Watch found that commission rules and practices fall far short of international fair trial standards. At the Guantánamo hearings, recognized rules of legal procedure were not used, and the competence and impartiality of proposed commission members was questionable. Moreover, military defense counsel lacked resources, and the defense faced procedural obstacles in challenging evidence.

Human Rights Watch supports the prosecution of those implicated in war crimes, crimes against humanity, and acts of international terrorism by tribunals that meet international fair trial standards. Bringing people to justice requires fair trials. By resurrecting World War II-era military commissions, rather than using existing criminal courts or courts-martial, the Bush administration has unfortunately placed the international spotlight on the unfairness of the trials at Guantanamo, rather than on the alleged crimes of the accused.

The Human Rights Watch trial observer, Sam Zarifi, found the commission hearings to be needlessly confused, as did many others present. The commission’s presiding officer and the panel faced the daunting task of having to create a legal system virtually from scratch, without the benefit of existing U.S. military or federal codes, regulations or case law.

Although the commission serves as both judge and jury, only the presiding officer has a legal education. The other members were visibly confused by questions about such basic legal issues as jurisdiction, *ex post facto* laws, and the applicability of the Geneva Conventions to armed conflict. The lack of expertise is a problem because, as the presiding officer acknowledged, the commissions will have to address very complicated issues of U.S. and international law.

The hearings also raised serious concerns about the impartiality of commission members. The four defendants currently before the commissions are all held in connection with the conflict in Afghanistan. However, several commission members had intelligence or combat responsibilities for this conflict, which raises questions about their ability to be impartial. It was especially surprising that the presiding officer on the commissions was a longtime friend of the appointing authority, a Defense Department appointee given significant judicial powers, furthering concerns about bias in commission rulings.

The hearings were marred by frequent problems with the U.S. government translators, who proved incapable of satisfactorily interpreting between Arabic and English. Some of these mistranslations significantly altered the meaning of the defendants' statements and made their understanding of the proceedings extremely difficult. The use of poor translators, even if addressed in future hearings, raises important concerns about whether testimony obtained outside the courtroom from detainees at Guantánamo and other witnesses is at all accurate.

The military defense counsel assigned to the cases have provided zealous representation of their clients, but the Defense Department has not provided them adequate resources to carry out their responsibilities. The defense team has too few lawyers and paralegals, and lacks basic infrastructure like sufficient computers and telephones. Just before the August proceedings began, the defense team had to conduct their work on the floor after the conference table was removed from their room.

Human Rights Watch said in its letter to Rumsfeld that the initial hearings highlighted just a few of the problems facing the military commissions. As the cases progress, and as new prosecutions are undertaken, issues such as these are likely to multiply.

“The Bush administration needs to reject these fundamentally flawed commissions,” said Roth. “Justice can only be served if the U.S. government brings prosecutions that meet international fair trial standards. That means prosecution before federal criminal courts or courts-martial.”

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HUMAN RIGHTS WATCH

U.S.: Makeshift Process of Military Commissions Imperils Justice

Poor Interpretation, Panel Bias Highlight Flaws

(Guantanamo Bay, Cuba, August 27, 2004) — The military commission proceedings against the first four detainees at Guantanamo Bay were mired in confusion because of fundamentally flawed legal procedures and inadequate interpreters, Human Rights Watch said today.

The military commissions, held in a makeshift court house atop a hill overlooking Guantanamo Bay, began on Tuesday, August 24.

Despite the laudable professionalism of military officials throughout this week's military commissions, Human Rights Watch called on the U.S. government to institute a process that would ensure competent, independent and impartial trials consistent with U.S. and international standards.

"The commissions got off to a chaotic start, with deep confusion about the process, concerns of bias among panel members, and grossly inadequate interpreters," said Sam Zia-Zarifi, Human Rights Watch's observer at Guantanamo Bay. "Some military lawyers and officers have been put in the impossible position of trying to wring justice from a basically unfair system."

The first four days of proceedings highlighted the structural problems predicted by legal observers. Among the most significant concerns were:

- The absence of an independent review process outside the military chain of command;
- Rules of evidence that are stacked against the defendants; and
- Designation of commission panel members with little legal experience to decide complicated issues of military, U.S., and international law.

Compounding these problems was a series of inadequacies that should be immediately addressed. Most notable were the significant interpretation failures that undermined the credibility of the week's proceedings. Three of the accused are Arabic-speakers, and the interpreters were incapable of conveying their statements properly for the court. In addition, the military had not yet provided the assigned military defense lawyers with sufficient staff and resources.

Moreover, serious questions emerged about the appearance of bias among members of the military commission. The presiding officer's close friendship with the appointing authority, who is empowered to review the presiding officer's determinations, also raised doubts about the process's impartiality. The presiding officer is the only member of the five-person commission with any legal training, and is responsible for providing basic rulings in the cases and guiding the process. Some commission members apparently also had direct intelligence or operational responsibilities over detainees, including some of the defendants, which might impede impartial deliberation.

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COMMENTARY

Top 10 Signs You Might Not Get a Fair Trial at Gitmo

The Tavis Smiley Show, September 14, 2004 · The U.S. military admitted for the first time last week that one of the prisoners held without charges for more than two years at the base at Guantanamo Bay, Cuba, was never an al Qaeda or Taliban fighter and should be immediately released.

The prisoner was ordered to be set free by the military's new "combatant status review tribunal" which is meant to provide a fair hearing for detainees. But commentator Connie Rice has been monitoring the tribunal, and she's come up with another of her Top 10 lists -- this time: **Top 10 Signs You Might Not Get a Fair Trial in Guantanamo.**

(10.) Your lawyer's boss is the prosecutor.

"Your lawyer's next promotion will be decided by the man trying to get you executed -- this would be like Marcia Clarke being Johnnie Cochran's boss," Rice says. "So much for zealous representation and the right to counsel."

(9.) Your Arabic translator -- who was hired by the prosecution -- doesn't speak your dialect.

"And you just met him the day before your trial, which means your lawyer has not been able to talk to you, either. Due process? Forget about it in Guantanamo."

(8.) Four of the five judges in your case have never seen the inside a law school.

"This is like being wheeled in for a quintuple bypass to find Jerry Springer holding the scalpel."

(7.) Two of your judges have just returned from heated battles in Afghanistan fighting a resurgent Taliban.

"This is like being wheeled in for a quintuple bypass to find Ted Bundy holding the scalpel."

(6.) The president of the United States has publicly condemned you as a terrorist and enemy combatant, but the judges who report to this commander-in-chief advise you of your presumption of innocence.

"The president's declaration is like the Chief Justice declaring you guilty," Rice says. "And if there *were* any presumption of innocence, you'd have had a bail hearing. We must have missed them."

(5.) Your tribunal was last used more than 50 years ago when it resulted in summary executions without meaningful appeals.

"And there was no playbook 50 years ago either, which is why your judges are clueless as to

how your tribunal should proceed," Rice says. "And in 2004, there still will be no meaningful appeal."

(4.) The people you must appeal your conviction to are the same people who prosecuted you.

"This would be like OJ Simpson appealing to Chris Darden for review of the conviction OJ should have received."

(3.) When your lawyer asks the judge if he's ever read the Geneva Convention, the judge says no.

"This would be like *you* asking your doctor if she's ever read Gray's Anatomy -- and she says no, and asks if Oprah is going to make into a movie," Rice says. "These Guantanamo tribunals have to apply the Geneva Conventions, U.S. military law, international and other human rights law -- and these judges have never even walked by a law school. Fair trial? Forget about it. You're in trouble..."

(2.) When your lawyer asks one of your judges what's the jurisdiction of the court to hold your tribunal, and the judge looks dumbstruck.

"This is like asking a pilot for his FAA clearance and flight plan, and him looking at you like you've grown a second head," Rice says. "Without jurisdiction, a court is powerless to hear the case. This is so *basic*."

(1.) The general who decides your motion to disqualify all five of your judges as incompetent and conflicted is the *same* man who picked them in the first place.

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- Jul. 14, 2004

Connie Rice: Top 10 Weapons of Mass Distraction

SECTION: Pg. 7

LENGTH: 741 words

HEADLINE: Island Mentality

BODY:

It was always clear that the war on terrorism would require a certain amount of improvisation. After all, the threat the United States faces is unique in our history. But the military commissions that debuted in Guantanamo Bay last week--governed by rules invented largely on the fly--are in danger of becoming a farce: a kangaroo court that undermines not only America's already shaky international reputation but also our own standards of justice and due process.

Authorized by executive order and crafted by the Pentagon, the commissions are inherently flawed. They have an unusually low standard for admissible evidence, allowing

hearsay and even statements obtained under coercion. They

don't require that a detainee be advised of the evidence against him or allow for an independent appeal. Moreover, although the commissions are said to presume innocence, that may be impossible when Defense Secretary Donald Rumsfeld has already called the Guantanamo detainees "among the most dangerous, best-trained, vicious killers on the face of the earth."

If problematic in design, the panels are proving even worse in practice. At pretrial hearings last week for four detainees, defense lawyers questioned the impartiality of the five military officers and one alternate who will sit as both judges and jury. One panelist was responsible for gathering intelligence information about Al Qaeda and Taliban forces. Another supervised the transport of detainees from Afghanistan to Guantanamo. And the presiding officer, Army Colonel Peter Brownback III, is a close friend of the Pentagon official who appointed him and who is supposed to direct and review the proceedings.

There are also questions about the military officers' competency. Among the panelists, only Brownback, a retired military judge, has any legal experience. When the alternate panel member was asked if he knew what the Geneva Convention was, he replied, "Not specifically. No, sir." And, when he tried to recover by volunteering that the Convention had three articles, the defense corrected, "Actually, there are six, sir."

But perhaps the lowest moment came when Brownback cut off a Yemeni defendant in the midst of a premature confession of his Al Qaeda membership. Chaos ensued--no evidence was supposed to be entered at the hearing, and the commissions have no protections from self-incrimination. While Brownback instructed the other panelists to disregard the statement (as if that were possible), Arabic speakers contested the official translator's interpretation of the confession. In fact, egregious translation errors were a theme throughout the proceedings and prompted questions about the reliability of statements translated during interrogation.

Why are the military commissions in such disarray? Kevin Barry, director of the National Institute of Military Justice, suggests: "This is a new trial system no one has ever operated in. ... The rules are kind of made up as we go along." Preventive detention and some form of military trial may be better than traditional courts for dealing with the

unprecedented threats the United States faces. But ad hoc procedures are no way to establish good legal doctrines--which are what we desperately need.

Thus far, the executive branch has claimed absolute authority over the Guantanamo detainees, and the courts have allowed the White House and the Pentagon overly broad discretion. But rules governing a situation this novel and this important should not be left to the courts anyway; they should be defined by the legislature. Congress should stop shirking its responsibility and pass a comprehensive terrorism bill that authorizes the White House to detain enemy combatants but makes explicit their rights during detention and the procedures under which they will be brought to justice. Of course, it's unlikely that Congress will act before the November election. But the first Guantanamo trials won't actually begin until early next year. There's still time to establish a fair, independent process that can safeguard individual rights--without undermining national security--and help repair the serious damage the Guantanamo detentions have done to America's reputation. Because our legal proceedings are necessarily reflections of our standards and values, what happens at Guantanamo is not just about the men in the orange jumpsuits. It's about holding ourselves to standards we can hold up to the world and be proud of at home.

LOAD-DATE: September 3, 2004

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The Times (London)

August 25, 2004, Wednesday

SECTION: Overseas news; 14

LENGTH: 787 words

HEADLINE: 'Bin Laden's driver' smiles in the dock

BYLINE: Roy Eccleston in Guantanamo Bay, Cuba

BODY:

SALIM AHMED HAMDAN removed his head shawl, patted his short-cropped hair and entered the courtroom wearing a robe, light jacket and bright smile -an alleged terrorist and the first person to face a US military commission in more than half a century.

Mr Hamdan was brought before the five-member commission, the first since 1948, after eight months in solitary confinement and claims he has been beaten in custody.

The 34-year-old Yemeni was allegedly Osama bin Laden's driver and bodyguard for five years from 1996. He has been charged with conspiring with al-Qaeda, which he knew had been involved in the attacks on US embassies in East Africa in 1998, on the warship USS Cole in 2000 and the September 11 attacks.

Prosecutors claimed that he had delivered weapons for al-Qaeda and bought and drove lorries that ferried bin Laden around, as part of his security tasks.

Mr Hamdan was allowed to shed his orange prison jumpsuit for the preliminary hearing and wear traditional Yemeni garb. He spoke little, just answering "la" and "na'am" for yes and no to initial questions about the hearing through an Arabic translator.

An armed guard sat near by, but Mr Hamdan appeared to be relaxed and gave a small wave after entering the room, set up in an old Second World War naval headquarters overlooking Guantanamo Bay.

About 60 people, including seven reporters, were allowed in. American troops armed with shotguns and machineguns patrolled the grounds outside the court.

His lawyer, Lieutenant-Commander Charles Swift, who has begun legal action in US federal courts challenging the commission as unconstitutional and illegal, quickly called for the disqualification of the presiding officer of the commission, Colonel Peter Brownback. He gave four reasons, including the fact that Colonel Brownback was the only lawyer, which, he said, would give him improper influence over the other commission members.

Despite his smiles, Mr Hamdan has lost 50lb in the past six months of solitary confinement, according to human rights lawyers. He has said in court documents made public this month that he was beaten and threatened with death by his interrogators.

In 2001, as US forces were fighting in Afghanistan, Mr Hamdan says that Afghan fighters captured him, tied him up and sold him to US forces. He also says that US officers in Afghanistan beat him, forced him to sit motionless for days and threatened him with torture, jail and death.

In a statement to a district court in Seattle, Mr Hamdan complained of the psychological pressure on him. "I have not been permitted to see the Sun or hear other people outside or talk with other people," he said six months ago. "I am alone here except for a guard. One month is like a year here and I have considered pleading guilty in order to get out of here, after two months in solitary."

Established by President Bush in 2001, the commissions have been lambasted as unfair because the military acts as prosecutor, judge and jury -and because the final appeal is to Mr Bush, who has called the Guantanamo inmates "killers".

Yemeni security officials, speaking on condition of anonymity, said that Mr Hamdan had joined a Yemeni branch of the Egyptian militant group Islamic Jihad before al-Qaeda was formed in 1998.

Representatives from Amnesty International, the American Civil Liberties Union, Human Rights Watch, Human Rights First and the American Bar Association were being allowed to watch the hearings, but they were not allowed to see the prison or speak to panel members or prosecutors.

The International Committee of the Red Cross said that it was weighing whether to send an observer. The Geneva-based group has been the only independent organisation with access to the 585 prisoners accused of links to the Taleban or al-Qaeda.

Human rights groups have criticised holding the men as enemy combatants, a classification giving them fewer legal protections than prisoners of war. They also have questioned whether the commissions will be fair.

Two others charged with conspiracy are Ali Hamza Ahmad Sulayman al-Bahlul, 33, also of Yemen, and Ibrahim Ahmed Mahmoud al-Qosi, born in 1960. A fourth, David Hicks, 29, of Australia, faces charges of conspiracy to commit war crimes as well as aiding the enemy, and of attempted murder for allegedly firing at US or coalition forces in Afghanistan.

It could be months before the actual commissions begin.

Rules of evidence used in US courts and courts-martial will not apply and some groups express concern about the use of evidence obtained in interrogations. Some freed prisoners said they gave false confessions after interrogations lasting up to 14 hours.

LOAD-DATE: August 25, 2004

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Charlotte Observer (North Carolina)

June 29, 2004 Tuesday ONE-THREE EDITION

SECTION: MAIN; Pg. 8A

LENGTH: 378 words

HEADLINE: NO BLANK CHECK;
COURT REJECTS BUSH ADMINISTRATION'S POLICY ON DETAINEES

BYLINE: Observer Staff - Editorial

BODY:

The U.S. Supreme Court weighed two conflicting views of the war on terror and came down against the exercise of arbitrary power by the president and for the American system of checks and balances. The court made the right choice.

The Bush administration had asserted that as commander in chief, the president could capture people he designated as suspected terrorists or their protectors and hold them indefinitely without access to courts or lawyers. In a ruling Monday, the Supreme Court said no. Both foreign nationals and U.S. citizens seized as potential terrorists have a right to challenge their treatment in U.S. courts, the justices said.

The suit challenging the treatment of foreign nationals was filed in behalf of some 600 men imprisoned at the U.S. base in Guantanamo Bay, Cuba. When first of the prisoners arrived there in January 2002 Vice President Dick Cheney called them "the worst of a very bad lot" and Defense Secretary Donald Rumsfeld said they were "among the most dangerous, best-trained, vicious killers on the face of the earth."

If the government can substantiate that assertion in court, it will have a right to hold them. The issue decided Monday was whether the courts have jurisdiction to rule on a president's claim of authority to order "potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing," wrote Justice John Paul Stevens for the 6-3 court majority. The justices said yes, that matter must be resolved in court.

In the case of American-born detainee Yaser Esam Hamdi, the court was even more emphatic. Writing for an 8-1 majority, Justice Sandra Day O'Connor said the court has "made clear that a state of war is not a blank check for the president when it comes to the rights of our nation's citizens." Mr. Hamdi, too, must have his day in court.

The war on terror will require some rethinking of the rights and responsibilities of Americans. And a president in wartime must have more authority to act than he might have in time of peace. But unchecked arbitrary power inevitably leads to tyranny. It was time for the courts to assert the traditional American value that, however good his intentions or sincere his concerns, no president can declare that his word is law.

LOAD-DATE: June 30, 2004

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Los Angeles Times

June 26, 2004 Saturday
Home Edition

SECTION: MAIN NEWS; Foreign Desk; Part A; Pg. 4

LENGTH: 525 words

HEADLINE: THE WORLD;
Britain Pressures U.S. to Release 4 Prisoners

BYLINE: John Daniszewski, Times Staff Writer

DATELINE: LONDON

BODY:

In a challenge to the Bush administration's policies at the U.S. prison at Guantanamo Bay, Cuba, Britain's top legal officer said Friday that an American plan to try British citizens in a military tribunal was unfair and a violation of international standards.

The public protest by Lord Peter Goldsmith, Britain's attorney general, comes in spite of a U.S. promise that British citizens would not be subject to the death penalty, as would prisoners of other nationalities, and despite the release in March of five of the nine British citizens held at the prison.

It also comes as the U.S. Supreme Court is expected to rule on the legality and constitutionality of the prison, where about 600 inmates have been held, some for nearly three years, without access to lawyers or to their families, and with no fixed terms of incarceration.

Britain is the Bush administration's closest ally in its campaign against terrorism. It has provided more than 10,000 troops to the U.S.-led coalition force in Iraq.

But after months of quiet diplomacy failed to move the Bush administration to accept requests from Foreign Minister Jack Straw to repatriate the remaining British detainees at Guantanamo so that they can be investigated and tried here, officials apparently have decided to increase the pressure by airing their dissent openly.

Goldsmith has been leading British efforts to negotiate with U.S. authorities the hand-over of the detainees, who were captured in Afghanistan or Pakistan or were suspected of being linked to Al Qaeda.

The remarks by Goldsmith, prepared for delivery Friday night at the International Criminal Law Assn. in Paris, were released to the BBC and British Press Assn. news service.

Goldsmith said that Britain was prepared to accept "some limitation of fundamental rights" to combat terrorism, but that "there are certain principles on which there can be no compromise."

"Fair trial is one of those -- which is the reason that we in the U.K. have been unable to accept that the U.S. military tribunals proposed for those detained in Guantanamo Bay offer sufficient guarantees of a fair trial in accordance with international standards," he said.

Human rights groups have harshly criticized the military commissions, ordered by the Bush administration in November 2001.

They say that the judges, as military officers, would not be independent; that under current plans, the defendants would not be allowed to question witnesses or see all the evidence against them; and that evidence obtained through coercive means could be used.

In addition, convictions would not be subject to review by an independent judiciary and only President Bush, as commander in chief, would be able to grant pardons. In public statements, Bush has labeled the Guantanamo prisoners as a group as "killers."

The detainees have not been granted prisoner-of-war status, which would guarantee protections under the Geneva Convention. Instead, they are regarded as "enemy combatants."

The U.S. government has denied accusations by former prisoners that the Guantanamo detainees are subjected to beatings and other forms of abuse. It says they are being treated humanely.

LOAD-DATE: June 26, 2004