

US prepares for military tribunals at Guantanamo Bay

Kate Randall
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The United States is making plans to try prisoners held at the US Naval base in Guantanamo Bay, Cuba by military tribunal. All of the potential charges carry a possible death sentence. In violation of international law, the estimated 680 prisoners have been held without charges and without legal representation since they began arriving at the US military camp 18 months ago. Previously incarcerated at Camp X-Ray, they are now being held at the newly constructed Camp Delta.

The prisoners are citizens of as many as 43 countries, the majority rounded up following the US invasion of Afghanistan. Those held have reportedly included several teenagers as young as 13 years old. The Bush administration has labeled the prisoners “illegal combatants” and claims they have no rights to the protections afforded to prisoners of war under the Geneva Conventions.

US government plans for the military tribunals were revealed by Major-General Geoffrey Miller, who is in charge of the prisoners, and reported May 25 in the *British Mail on Sunday*. Prisoners would be tried and sentenced without leaving Guantanamo Bay. According to the *Mail on Sunday* article, the plans include building a permanent jail at Camp Delta, with a possible death row and execution chamber. The trials would take place without juries and without appeal to a higher court. President George W. Bush and Defense Secretary Donald Rumsfeld would have final say on sentencing of suspects, up to and including the death penalty.

In a report in the Australian *Courier-Mail*, Jonathan Turley, a law professor at George Washington University who has opposed plans for military tribunals, commented, “It is not surprising the authorities are building a death row because they have said they plan to try capital cases before these tribunals. This camp was created to execute people. The administration has no interest in long-term prison sentences for people it regards as hard-core

terrorists.”

There are now about a dozen people in the Pentagon Office of Military Commissions preparing for the tribunals, and a chief prosecutor and defense counsel have been named to oversee the military commissions. Col. Will A. Gunn, an Air Force Academy and Harvard Law School graduate, has been appointed as acting chief defense counsel. He most recently served as executive assistant to the Air Force judge advocate general. Col. Frederic L. Borch II, a career Army lawyer, has been named acting chief prosecutor. Borch is reportedly examining about 10 Guantanamo cases, but the final decision on whom to prosecute rests with Bush.

The Pentagon is also seeking to recruit civilian defense attorneys to represent prisoners, who will be provided with military lawyers but can also ask for a civilian lawyer, to be remunerated at their own expense. As of May 22, only two defense attorneys had expressed any interest in applying for the job.

A May 28 article by Vanessa Blum in *Legal Times* examined how the tribunals are to be conducted. Any lawyers who volunteer will be required to submit to extraordinary restrictions on their defense. The Pentagon will retain control over the entire legal proceedings—naming commission members, approving charges and imposing sentences.

Don Rehkopf, a Rochester, New York attorney who co-chairs the National Association of Criminal Defense Lawyers’ military law committee, told the *New York Times*: “It would be unethical for any attorney to agree to the conditions they’ve set. You have to agree to waive the attorney-client privilege so that the government can monitor your conversations. It’s a total farce.” New York lawyer Michael Ratner, president of the Center for Constitutional Rights, described the Pentagon’s proposed tribunal procedures as “a one-way road to conviction.”

Evidence can be accepted at the tribunals that would not

be admitted in civilian or military courts. The only standard for submission of evidence will be that it has “probative value to a reasonable person.” The fact that evidence cannot be authenticated or is hearsay is not grounds for barring it. Furthermore, commission findings will not be subject to independent review by any appeals court. The tribunal’s rulings will be reviewed only by a three-member panel selected by the secretary of defense, who has the power to appoint or remove its members.

All civilian lawyers will be required to obtain “secret-grade” security clearances, and will have to sign affidavits agreeing not to enter into joint defense agreements. They will not be allowed to speak to the press or leave the site of the proceedings without permission from tribunal authorities.

In violation of basic US judicial traditions, all communications between civilian lawyers and their clients may be monitored by intelligence agents. In addition, civilian lawyers may be barred from some commission proceedings, at the discretion of tribunal authorities.

Prisoners will be subject to be tried for more than two dozen crimes, including attacking civilians and taking hostages and other crimes deemed “terrorist” by the tribunal authorities. Every offense is punishable by death. A two-thirds vote of panel members is required for a determination of guilt on any charge. A two-thirds vote is required for most sentences, while a death sentence requires a unanimous vote of a seven-member panel. The Pentagon changed this final requirement after widespread public opposition to an earlier plan that would have required only a two-thirds vote to sentence a defendant to be executed.

While the Bush administration’s proposals outlining procedures for military tribunals constitute a travesty of justice, the hundreds of prisoners who remain at Camp Delta are not guaranteed even this legal forum. Pentagon proposals include plans for a permanent terrorist prison in Guantanamo, where individuals could be held in perpetual limbo with no legal redress.

The press has been allowed extremely limited access to the Guantanamo Bay camp, and virtually no access to the prisoners. The International Committee of the Red Cross is the only independent body allowed to visit the detainees. However, in response to accounts leaked to the press of the deplorable conditions for prisoners, the Pentagon was forced on May 28 to report new suicide attempts at Camp Delta.

Pentagon spokesperson Navy Lt. Cmdr. Barbara

Burfeind reported that in the previous 10 days one prisoner had attempted to kill himself for the first time, while another had made a repeated attempt. Burfeind said a total of 18 men had attempted suicide, mostly by hanging, in the camp’s 18 months of operation. A number of these men had tried multiple times to kill themselves, bringing the total number of attempts to 27. Prisoners have also conducted hunger strikes to protest their conditions.

Prisoners were originally kept at Camp X-Ray in 8 ft. by 8 ft. by 6 ft. metal cages, but have now been moved to a more permanent facility at Camp Delta, with ventilation and plumbing. While a small number of prisoners have been repatriated, the majority to Saudi Arabia, new prisoners continue to arrive and more prisoners than ever are now being held at Guantanamo.

On May 16, the BBC reported the arrival of 30 new prisoners. Most of these men are Afghans, captured by the US and Northern Alliance in Afghanistan during 2001 and 2002 and held without charges in Afghanistan since then. The Pentagon has released no figures on how many others are still being held in that country in violation of international law.

Shah Mohammad, 23, a Pakistani man released in early May from Guantanamo, told the BBC he was captured in November 2001 by the Northern Alliance, who turned him over to the US. “Before boarding the plane [for Cuba],” he said, “our hands and feet were tied and duct tape was stuck across our mouths, blindfolds were placed on our eyes and devices were shoved into our ears.”

Mr. Shah said he had traveled to Afghanistan in search of employment. “I was employed by the Taliban to bake bread for them and they paid me a monthly stipend for these services,” he said. “I had nothing to do with the military side of things in Afghanistan.”

Shah told the BBC he was given injections to make him talk while in custody. “They used to tell me I was mad. I was given injections at least four or five times as well as different tablets. I don’t know what they were meant for.” He said the majority of men in Guantanamo spent their detention in complete isolation, released only for interrogation and twice-weekly 15-minute exercise breaks.



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