

Pentagon fired military lawyers assigned to defend Guantánamo prisoners

Jamie Chapman
19 December 2003

Pentagon officials have reportedly dismissed the first crew of military lawyers recruited last spring to defend prisoners being held incommunicado in the US detention camp in Guantánamo Bay, Cuba.

Last July, President George W. Bush designated six of the 660 prisoners being held there as eligible for trial by “military commissions.” As yet, no formal charges have been brought.

An article in the January 2004 issue of the American magazine *Vanity Fair* entitled “Operation Take Away My Freedom: Inside Guantánamo Bay” said that the selected “judge advocates,” as the military defense attorneys are known, were reassigned after protesting that the terms of the proceedings would make it impossible for them to assure the defendants a fair trial.

The prospective defense counsel objected in particular to rules allowing prosecutors to monitor attorney-client conversations. Ordinary rules of evidence are to be waived, allowing the admittance of hearsay, confessions obtained under duress, and secret evidence that would be kept from the defendant. In addition, the tribunals are to allow unsworn written and telephone testimony by prosecution witnesses, making a mockery of the principle of facing and cross-examining one’s accusers.

Unlike regular military courts-martial, there is no possibility of appeal to civilian authority. The only appeal allowed is to a panel of three military judges appointed by the same secretary of defense who brings the charges in the first place. If, by some miracle, a defendant is found not guilty, President Bush has the authority to reverse the verdict, imposing the death penalty, or simply remanding the defendant back to the limbo of indefinite detention without charges from which he came before trial.

Pentagon officials denied that the attorney firings

ever took place, while offering no explanation for the reports.

The *Vanity Fair* article went on to state that the attorneys brought in to replace those who were dismissed are equally troubled by the unfair procedures. They were reportedly planning to submit the commission’s rules to the ethics committees of the state bar associations to which they belong, with a lawsuit to be filed alleging improper orders, if, as they expect, the ethics panels find that the rules violate due process.

On December 3, the British *Guardian* newspaper released a report on its own month-long investigation into Guantánamo Bay, making substantially the same allegations.

The *Guardian* quoted an ex-military lawyer familiar with the incident:

“There was a circular that went out to military lawyers in the early spring of 2003 which said ‘we are looking for volunteers’ for defense counsel. There was a selection process, and the people they selected were the right people, they had the right credentials, they were good lawyers.

“The first day, when they were being briefed on the dos and don’ts, at least a couple said, ‘You can’t impose these restrictions on us because we can’t properly represent our clients.

“When the group decided they weren’t going to go along, they were relieved. They reported in the morning and got fired that afternoon.”

The British newspaper went on to cite a “uniformed source with intimate knowledge” of the current situation in Guantánamo, who said that the mood among a new team of six military defense lawyers was one of “deep unhappiness.”

“It’s like you took military justice, gave it to a

prosecutor and said, ‘modify it any way you want,’” the source said.

The fact that the US military’s own handpicked lawyers are unable to stomach the rules governing the planned military tribunals is the clearest indication that the Guantánamo detainees will receive nothing but drumhead justice.

Apparently taking the Pentagon’s denials as good coin, the US television networks and leading newspapers have virtually all failed to report on the controversy.

The firing of the military lawyers is only one of the indications that the Bush administration is facing a growing crisis over its illegal detentions in Guantánamo. The December 6 *Washington Post* cited reports of plea agreements prosecutors were negotiating with the first two defendants who were among those expected to be tried, the Australian David Hicks and Moazzam Begg, a British citizen.

Sources said that, after two years of detention, much of it in solitary confinement, the two were prepared to plead guilty to associating with Al-Qaeda and/or the Taliban, making a confession in open court and expressing regret for their actions. Armed with the threat of the death penalty, as well as the incentive of improved conditions of confinement for those who “cooperate,” interrogators have apparently been softening up their captives for the plea bargains without their having benefit of legal representation.

Since formal plea bargains can only be accepted after defendants have consulted counsel, these reports would also explain the timing of the Pentagon’s decision to allow David Hicks to meet with his military-appointed lawyer Major Michael Mori. On December 11, Mori became the first lawyer to see a Guantánamo detainee, along with Stephen Kenny, the Australian civilian attorney retained by the Hicks family.

Kenny was not allowed to meet with his client without Major Mori present, and he was banned from talking to the media about his visit.

British attorney Clive Stafford Smith, hired to represent Moazzam Begg, responded to the reports of his client pleading guilty by saying, “This is all part of a Stalinist show trial, in which you’re tried in public only if you agree to plead guilty.” Smith has not been allowed to meet with Begg.

For over two years, the Bush administration has

maintained that the Guantánamo detainees have no right to an attorney or for that matter any rights whatsoever under US or international law. That they have now granted one detainee access to an attorney—albeit under strictly controlled conditions in which a free client-attorney exchange is precluded—suggests a tactical concession aimed at salvaging its brutal and unconstitutional policy of holding anyone it likes indefinitely without charges by simply declaring them “unlawful combatants,” a term that has no meaning in either US or international law.



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