Another Guantánamo military officer condemns prisoner tribunals

Naomi Spencer
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An unnamed Army officer who served at dozens of Guantánamo prisoner tribunals has characterized the legal proceeding against one detainee as "unconscionable," and said commanders dictated rulings against prisoners that tribunals found should be released. The officer will provide key testimony when the US Supreme Court meets on December 5 in a case involving Guantánamo detainees.

According to an October 27 report in the British *Independent* newspaper, the officer's criticism emerged when lawyers investigating the case of a Sudanese hospital administrator uncovered a sworn statement from the military panel member. One of the lawyers, William Teesdale, told the *Independent* that the evidence overwhelmingly suggested that Adel Hamad, who has been held by the US for five years, had no ties with Al Qaeda. "Mr. Hamad is an innocent man, and he is not the only one in Guantánamo."

The officer, the paper said, "was so frightened of retaliation from the military that they would not allow their name to be used in the statement, nor to reveal whether the person was a man or a woman."

The Associated Press reported on October 5 that the whistleblower, an Army major, said that in six cases panel members unanimously declared detainees were not enemy combatants, only to have superior officers order new hearings in which the findings were reversed.

According to the *Independent*, "The major also described 'acrimony' during a 'heated conference' call from Admiral McGarragh, who reports to the Secretary of the US Navy, when the panel refused to describe several Uighur detainees as enemy combatants."

The officer took part in 49 of the Combatant Status Review Tribunals (CSRTs) that began in July 2004. The tribunals were created after the Supreme Court ruled partially against the Bush administration, finding that Guantánamo Bay prisoners must have some sort of hearing to evaluate their designation as "enemy combatants"—a category that the Court accepted as valid. (See "The meaning of the US Supreme Court rulings on 'enemy combatants'")

From the beginning, the CSRTs have been nothing more than drumhead tribunals to rubber stamp decisions already made by the military and the Bush administration. In response to the Supreme Court decision, former Defense Secretary Donald Rumsfeld crafted the framework for the tribunals, where detainees were labeled either "enemy combatants" or "no longer enemy combatants," as window dressing for the past and ongoing violations at the facility.

Of the nearly 600 status review hearings that took place between 2004 and 2005, officers ruled that all but 38 were so-called enemy combatants.

Several military officers from inside the Guantánamo prison have spoken out against the drumhead hearings this year. In June, Army Lieutenant Colonel Stephen Abraham, a career military intelligence officer, filed an affidavit charging that the tribunals were shams. "Anything that resulted in a 'not enemy combatant' would just send ripples through the entire process," he told the *New York Times* in a July 23 interview. "The interpretation is, 'You got the wrong result. Do it again.'"

In his affidavit, Abraham pointed out that few panel members "had any experience or training in the legal or intelligence fields." The panels, he said, were "largely the product of ad hoc decisions by a relatively small group of individuals."

Abraham described the unanimous finding of his panel in a hearing: "What were purported to be specific

statements of fact lacked even the most fundamental earmarks of objectively credible evidence. Statements allegedly made by percipient witnesses lacked detail. Reports presented generalized statements in indirect and passive forms without stating the source of the information or providing a basis for establishing the reliability or credibility of the source."

Earlier this month, the military announced that it was considering conducting new rounds of CSRTs for the more than 300 detainees at the facility. This move was largely an attempt by the military to prevent the criticisms of officers from undercutting the tribunals themselves.

The Defense Department's lead officer over the prison, Navy Captain Theodore Fessel Jr. attempted to portray the decision as evenhanded and judicious. He told journalists October 10, "With all the outside eyes looking in at the process, it's forcing us to say, 'OK, did we take everything into consideration when we did the Combatant Status Review Tribunals?'"

Fessel justified the new trials as "an acknowledgment that if there is new evidence or a new thing to take into bearing, in the spirit of being an open and fair process, we have to take that into consideration." Lawyers for detainees have rightly pointed out that the government has even more impetus to trump up evidence for the new hearings than the first time around, and the corrupted process would be repeated.

Furthermore, the new hearings would be a legal maneuver employed by the Justice Department with the intention of stonewalling nearly 130 detainee appeals currently challenging the findings of status review hearings in the District of Columbia federal appeals court.

In July, the court ordered the Bush administration to disclose information the government had collected against detainees up to the time of their hearings. The Justice Department, citing national security, has refused to comply.