

U.S. Won't Limit Detainees' Visits With Attorneys

By WILLIAM GLABERSON

The Justice Department yesterday withdrew one of its proposals to tighten restrictions on lawyers representing detainees at Guantánamo Bay, Cuba, but said it would continue to press a federal appeals court for other limitations on the lawyers.

In a court filing yesterday morning, department lawyers said they were no longer asking the appeals court in Washington to limit the lawyers to three visits with detainees at the Guantánamo naval base, where about 380 men are now held.

A series of department proposals to curtail detainees' lawyers drew wide attention and was criticized by legal groups and in Congress, with opponents saying the Bush administration was denying detainees the most rudimentary tools to challenge their confinement.

"After further consideration of this issue by the Department of Defense," the tersely worded filing said, the government "is no longer seeking to incorporate a three-visit threshold for the number of counsel visits."

But the filing made clear that the administration would continue to

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seek other limitations on the lawyers. These would include requests to permit only one visit for a detainee to authorize a lawyer to handle his case; to screen mail sent by lawyers; and to allow government officials, on their own, to deny lawyers access to secret evidence used against detainees by military panels.

The filing came days before arguments are scheduled in a case that has become one of the main battlegrounds in the legal struggle over the administration's detention policies. In that case, eight detainees have challenged the findings that they are properly being held as enemy combatants. Arguments are scheduled for Tuesday in the United States Court of Appeals for the District of Columbia Circuit. The proposal that would have cut off lawyers' access to their clients had been

controversial, partly because it came as many detainees were resisting cooperating with their lawyers, adding a new layer of complexity to the legal battle over Guantánamo.

Some critics said that yesterday's government action was a strategic retreat on the proposal that had drawn the most fire, and that the remaining proposed restrictions would damage the relationships between lawyers and detainees.

"This is window dressing," said Vincent Warren, the executive director of the Center for Constitutional Rights, an advocacy group that has coordinated the detainees' lawyers.

"The remaining restrictions — which include monitoring attorney-client mail — makes meaningful representation impossible," Mr. Warren said.

Barry M. Kamins, president of the New York City Bar Association and one of the most outspoken critics of the department proposals, said yesterday's action would not win over lawyers' groups that had opposed the proposals.

"The easing of this one rule barely begins to address the egregious violations of the attorney-client relationship," Mr. Kamins said.

But some supporters of the department's proposal said critics had not paid adequate attention to the government's accusations that the restrictions were necessary because the detainees' lawyers had caused unrest at Guantánamo by providing the detainees information about terrorist attacks and other events.

"There are real national security issues here," said Gregory S. McNeal, a professor at the Pennsylvania State University Dickinson School of Law who has been a consultant to war-crimes prosecutors at Guantánamo.

One new rule the Justice Department is still proposing would permit government officials to unilaterally deny the lawyers access to any secret evidence used by military panels to determine that their clients were enemy combatants, which would be a reversal of existing procedures.

Another proposal declares that if officials conclude that detainees' lawyers violate any of the rules governing their actions, the government "may bar counsel from visiting the

U.S. Naval Base at Guantánamo Bay, Cuba" without any court authorization. Under the current practice, lawyers said, disputes have been addressed by a federal magistrate.

Some critics of the administration said they saw the department's decision as the most recent example of a pattern of withdrawing proposals that draw extensive criticism just before courts are called on to rule.

In their original request for the new rules, the department's lawyers had said commanders at Guantánamo had called for the restrictions because of "intractable problems and threats to security at Guantánamo" that they blamed on civilian lawyers for detainees.

But in an interview reported in The Miami Herald last week, Rear Adm. Harry B. Harris, the commander at Guantánamo, was quoted as saying that the officers had changed their view. Admiral Harris said that the remarks cited by the department had been made last summer after a riot and the suicides of three detainees, and that the circumstances were now less turbulent.

Yesterday's court filing included a two-page affidavit dated Thursday, in which Admiral Harris said that the detention facility "has re-evaluated its requirements to ensure that its procedures concerning attorney visitation and related matters are not more stringent than necessary." He declined an interview request yesterday.

A Pentagon spokesman, Cmdr. Jeffrey D. Gordon, said the remaining restrictions the government was seeking in court "remain warranted and appropriate in light of operations at Guantánamo."

A spokesman for the department, Erik Ablin, said that in the court case "the position of the United States is driven by base security operational and resource concerns."

Critics say the Justice Department's action days before a court case is strategic.

