

# Rules for Lawyers Of Detainees Are Called Onerous

## *Fair, Adequate Defense Questioned*

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The cadre of civilian lawyers representing terrorism suspects held by the military at Guantanamo Bay are not allowed to meet their clients in private, without video surveillance. All their mail and notes must be turned over to the military. Classified information cannot be shared with their clients. They are not entitled to everything the government knows about their clients.

Months before the trials of some of the detainees are set to begin, some of the attorneys say the Defense Department's regulations for their work are so onerous that they will be unable to provide a fair and adequate defense of their clients.

"How can I defend him if he is not allowed to see or hear classified information?" asked Brent Mickum, the Washington attorney representing alleged al-Qaeda operative Zayn al-Abidin Muhammad Hussein, commonly known as Abu Zubaida. "He can't play a meaningful role in his own defense."

These challenges will confront the lawyers who represent the six men charged this week with conspiring to commit the Sept. 11, 2001, attacks, whom the Bush administration wants to try before a panel of military officers later this year. Mickum is scheduled to meet his client, who is not one of the six, for the first time next week, but he is already worried that the secrecy rules will present a heavy burden.

Although the government says the cases against the six — five of

whom were aggressively questioned by the CIA during lengthy stays at secret prisons — are now ready to proceed, defense attorneys say that the logistical challenges associated with defending such unusual clients under heavy guard on an isolated island will slow and hamper their preparations.

Gitanjali Gutierrez, a lawyer at the Center for Constitutional Rights who represents terrorism suspect and Guantanamo detainee Majid Khan, said yesterday that "the real concern with the military commission process is that the evidence brought forward won't be clean but will be deeply tainted with torture" that occurred during the interrogations.

Gutierrez said she is concerned that prosecutors will cite "national security concerns and will deny the lawyers and the detainees any background about the [witness] statements that are offered. That will be a way of manipulating the process and of keeping the taint of torture secret." She is barred by the military rules from discussing anything related to her meetings with Khan.

The Bush administration, trying to shore up support for the military-trial procedures, has cabled U.S. embassies around the globe with instructions to emphasize that evidence obtained through torture will not be allowed, but that evidence obtained through treatment considered "cruel, inhuman, and degrading" is to be allowed, the Associated Press reported last night.

The four-page cable also noted

that defendants can object to statements they think were coerced, with rulings to be made by the chief military judge.

The trial procedures, which were sanctioned by Congress after a lengthy legislative fight in 2006, have nonetheless been heavily criticized by European lawyers and politicians. Yesterday, British Foreign Secretary David Miliband said on a BBC radio call-in show that "we have some concerns" about how fair the military trial will be for Khalid Sheik Mohammed, the most prominent of the six newly charged defendants.

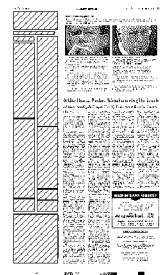
"We don't . . . we would never use waterboarding," Miliband said, referring to the CIA's admission that it used that simulated drowning technique to coerce disclosures from Mohammed and two other detainees.

Chief among the defense attorneys' concerns are that details of the CIA's aggressive techniques will be shielded from the court because they are classified and that the Pentagon will be unable to compel the CIA to send its employees to testify at military commissions or produce evidence of torture.

"We are not in the position to compel any other government agency to produce information," Air Force Brig. Gen. Thomas W. Hartmann, legal adviser to the convening authority for military commissions, said on Monday.

Yesterday, Army Col. Stephen David, the chief defense lawyer for military commissions, said he has appointed only one military lawyer so far to represent Mohammed al-Qahtani, who was not held in CIA custody. But he is trying to find five more defense counsels to represent the others, who were held by the CIA; getting them will nearly double the size of his office.

Civilian attorneys have not yet been appointed to represent, at the forthcoming trial, the five who were held in CIA custody. The American Bar Association, which the Pentagon had said would help arrange such representation, has refused to partici-



pate because it objects to the trial procedures. Those appointed must obtain security clearances and sign highly restrictive agreements barring them from discussing anything their clients say.

"It could take months and months to just go over the classified information," David said. He added that there are numerous logistical and legal hurdles and that there will probably be challenges to the untested process itself. "Everything is magnified. You're not growing the garden in northern Indiana; you're growing the garden on the moon. There's no perspective."

David said it is unclear what will happen if detainees choose to forgo legal representation. He acknowledged that it is inevitable that torture will be a central issue for judges to consider.

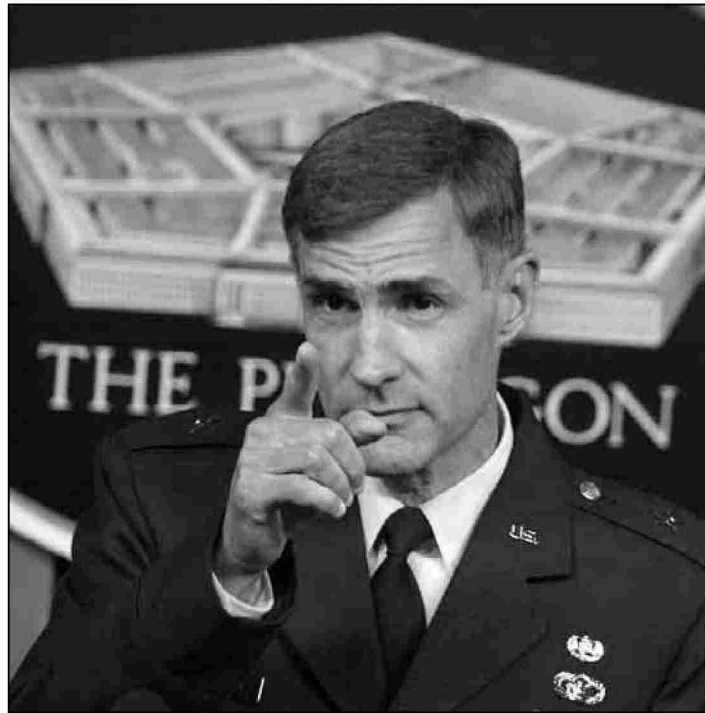
"I don't know how you avoid the waterboarding issue," David said. "I don't know how, once that occurs, you ever avoid that issue. I don't know how you prevent defense counsel from probing into that. I don't know how you ever rehabilitate waterboarding or how you rehabilitate torture, whether it's your client or others saying things against your client."

All mail from the lawyers to the detainees and from the detainees

to their attorneys is screened by a Defense Department Privilege Team, whose job it is to stop anything the team determines not to be "legal mail."

Mickum said he is concerned that he cannot share any classi-

fied information about his client with other lawyers who have clearances. "Not being able to talk to each other will do away with a means we found earlier helped us determine what was true or false," he said.



BY HEESOUN YIM — ASSOCIATED PRESS

**Brig. Gen. Thomas Hartmann announced that six Guantanamo Bay detainees have been charged in connection with the Sept. 11 attacks.**