

NEW ROADBLOCKS DELAY TRIBUNALS AT GUANTÁNAMO DISPUTES OVER LAWYERS Pentagon Is Frustrated in New Effort to Push Detainees' Cases

By WILLIAM GLABERSON

GUANTÁNAMO BAY, Cuba — When military officials announced war crimes charges against six detainees for the Sept. 11 attacks two months ago, the move was part of an effort to accelerate the Bush administration's sluggish military commission system, which has yet to hold a single trial.

But the Sept. 11 case immediately hit a snag. Military defense lawyers were in short supply, and even now, two months later, not one of the six detainees has met his military lawyer.

The delay in getting lawyers to those detainees, which largely grew out of a struggle within the Pentagon over legal resources, is indicative of the confounding obstacles facing this latest effort to expedite the military tribunals.

Since fall, when charges had been lodged against just three detainees, military officials have charged 12 more terrorism suspects. Yet there is a growing consensus among lawyers inside and outside the military that few of those cases are likely to actually come to trial before the end of the Bush administration.

"Speed is going to be very, very difficult to accomplish here," said Stephen A. Saltzburg, a military law expert at George Washington University. "They may be overconfident that if they just push ahead, all the ducks will end up in a row. I don't think that's going to happen."

The road to a trial is difficult in some cases partly because they involve potential death penalties and claims of torture by interro-

gators, issues that raise thorny legal questions that could take months or longer to sort out. But even comparatively simple cases

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without capital penalty issues are proceeding slowly.

In addition, just as the Pentagon is pushing to try cases in part to show the viability of the tribunal system, some civil liberties groups and defense lawyers are working to slow the pace, partly to keep the system from gaining legitimacy by eliciting testimony against terrorism suspects that could inflame Americans. They say they plan a dizzying array of challenges to try to prevent any significant number of what they call political trials.

They are particularly focused on the Sept. 11 case, which for more than six years has been expected to be the centerpiece of the Bush administration's military commission system.

"The government can be assured that this will not be a quick show trial," said Anthony D. Romero, executive director of the American Civil Liberties Union. "Not if we can help it."

The A.C.L.U. and the National Association of Criminal Defense Lawyers announced a plan last week to provide experienced defense lawyers for some detainees.

The standoff over the military lawyers for the Sept. 11 suspects grew out of a long-running dispute over legal resources at the Pentagon. The chief military defense lawyer for Guantánamo, Col. Steven David, said in an interview that he lacked enough experienced lawyers and other staff members.

Guantánamo military defense lawyers have long said they are not given resources by the Pentagon to match the investigative capability of the military prosecution, which draws on the Federal Bureau of Investigation, Central Intelligence Agency and other agencies. Until a handful of new military lawyers were appointed this week to represent Sept. 11 defendants, the military defense office was sharply outnumbered, with 15 defense lawyers to battle 31 prosecutors.

But Brig. Gen. Thomas W. Hartmann, an official of the Office of Military Commissions at the Pentagon, argued that the defense office was staffed well enough to have begun to defend the Sept. 11 case the day it was announced.

In a recent interview, General Hartmann, who has been pressing to move more quickly on the Guantánamo cases, made clear

that he was impatient. "You have to get the train moving so you can get to a destination," he said. "And the train hadn't been moving."

But even with enough lawyers, Colonel David said, there were countless impediments to quick trials, including questions about how the tribunals are to deal with detainees' claims of torture. Lacking precedents and clear rules, he said, "there are issues within issues within issues."

At a news conference here on Wednesday, the deputy chief military prosecutor, Col. Bruce A. Pagel, said that while the government wanted quick trials, the pace would largely be determined by military judges.

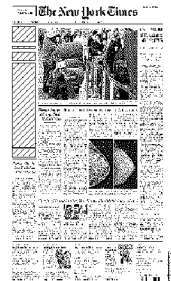
"There is just no predicting that," Colonel Pagel said. "There are just too many variables."

Each of the 14 cases now pending presents legal tangles. In one, the morass grew so thick that the judge scheduled pretrial proceedings after the date he had set for the trial, evidently realizing that there were too many unresolved issues to rush the case. In another, a detainee refused to leave his cell for an arraignment and had to be forcibly extracted.

On Wednesday, proceedings were delayed when a detainee complained that the tribunal translation was flawed. After that was resolved, the detainee, Ahmed Mohammed Ahmed Haza al Darbi, declared the proceeding

political and refused to participate, adding, "History will record these trials as a scandal against you."

Prosecutors planned this week to arraign two suspects, one who they say was a Qaeda paymaster



and the other, they say, a propaganda chief. But that rudimentary step is not to go off as they had hoped. The case of the propaganda chief had to be postponed because his military lawyer had recently left the defense office, taking that case back to its starting point.

By chance, the alleged paymaster and the alleged propaganda chief were the first ones identified for war crimes trials by the Pentagon back in 2004. Yet all

Guantánamo cases were derailed in 2006 when the Supreme Court struck down the Bush administration's first war crimes system.

The first trial of a detainee under the new system is now scheduled for May 28. But defense lawyers for that defendant, Salim Ahmed Hamdan, who was a driver for Osama bin Laden, have filed nearly 30 legal motions, raising questions that included procedural issues and basic challenges to the Guantánamo system itself.

Andrea J. Prasow, one of Mr. Hamdan's lawyers, said her experience in a comparatively simple Guantánamo case showed the extraordinary complexities that seem certain to entangle all of the battles here.

It may be possible, Ms. Prasow said, for one or two cases to be tried by the fall. But, she said, "I don't see how it is remotely possible for the others to get under way."

Some of the defense requests in Mr. Hamdan's case show the kinds of issues that are tying prosecutors in knots. His lawyers have accused Pentagon officials of improperly influencing the prosecution by directing that charges be filed for political reasons and, the lawyers said, demanding "sexy" cases to attract public attention. They also claim that Mr. Hamdan is so psychologically damaged by the conditions under which he has been held that he is incapable of assisting his lawyers.

The Hamdan defense has worried prosecutors by winning the right to submit written questions to four detainees who were formerly held in secret C.I.A. prisons.

The request to question prisoners like Khalid Shaikh Mohamed, the self-proclaimed mastermind of the Sept. 11 attack, brought strong objections from prosecutors who said it could be a national security threat.

When a military judge allowed

very limited written questions, the prosecutors pleaded with him to reconsider. The judge stuck with his ruling.

But a major battle is expected if, as seems likely, Mr. Hamdan's defense follows that request with a demand that those former C.I.A. detainees be called to testify in public.

J. Wells Dixon, a lawyer at the Center for Constitutional Rights, said the charges, which seek the death penalty against the six men charged with the 2001 attack, are so complex that defense teams in those cases will need months, if not years, to prepare. The center represented one of the six men in a case challenging his detention before the war crimes charges were filed.

"There is no possibility," Mr. Dixon said, "that these cases are going to proceed to trial any time soon."

General Hartmann said trials in any system could be subject to delays. But he said he had told military prosecutors and court officials not to get distracted as problems cropped up.

"My guidance to people," he said, "is 'keep moving' and when the rocks start to fall on you, you move a little faster."



TORR HESLER/THE NEW YORK TIMES

The shoes of detainees outside a cell at the Guantánamo Bay detention center. Military tribunals have yet to begin, though many inmates have been charged.