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Even Prosecutors Want Tribunals Open

Military tribunals for terror suspects at Guantanamo Bay, Cuba, are taking place behind closed doors. The proceedings should be open to ensure fairness.

Editorial
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The war against terrorism is serious business, and Americans must take seriously the manner in which it is fought. Not just on the battlefield, or the home front. Not just in the apprehension and detention of terror suspects. But also in those proceedings where suspects are tried, and, if guilty, convicted and sentenced.

Americans should take seriously what happens in military tribunals now getting off the ground at Guantanamo Bay, Cuba. Citing the need to safeguard intelligence sources, the Bush administration is conducting the proceedings behind closed doors. Our own view is that it is essential that these proceedings be open to the press, since openness is a disinfectant to abuse and the short-circuiting of due process.

When the administration came up with the idea of using military tribunals to assess the guilt or innocence of terror suspects, it probably made some sense to hold the proceedings at Guantanamo. Conducting the tribunals at a military base on foreign soil meant that officials wouldn't have to worry about things like due process. But that was before the Supreme Court ruled that the jurisdiction of U.S. courts extended to prisoners at Gitmo.

Some military defense attorneys have said the tribunals aren't fair and that the deck is stacked to ensure convictions. But somehow, it carries more weight when the complaints come from military prosecutors, the very people who stand to benefit from having the proceedings slanted in their direction. You might expect these prosecutors to keep quiet.

But some haven't kept quiet. According to a recent article in The New York Times, two military prosecutors -- Capt. John Carr and Major Robert Preston, both of the Air Force -- complained last year to superiors and colleagues in confidential e-mails that the tribunal system was not fair to defendants. According to the article, Carr wrote in his e-mail that he had been told by a superior officer that the military panel that hears evidence in tribunals would be "handpicked" to ensure convictions and that some documents withheld for security reasons might contain exculpatory evidence. Preston wrote in his e-mail that he could not in good conscience sign off on the fact that the proceeding were "full and fair" when he believed otherwise. There was an investigation by the Pentagon's independent inspector general, who found no evidence of unlawful behavior or ethical violations.

This isn't over. Perhaps there needs to be another investigation, this time by a nonmilitary entity such as the Justice Department. As it stands, it's hard to know which version to believe -- especially since these trials are held in secret. If the military is confident that its hands are clean in the trying of prisoners at Guantanamo, then all the more reason to open the proceedings so Americans can see that for themselves.