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Guantanamo Stonewall

Editorial
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Last June, the U.S. Supreme Court ruled that the 600 foreign terror suspects held at the Guantanamo Bay naval base were entitled to lawyers and the chance to challenge their imprisonment. But in the months since, Pentagon and Justice Department officials have simply acted as if the high court's decision didn't exist, blocking efforts by detainees to meet with their lawyers and insisting on onerous conditions for those meetings.

Last week, U.S. District Judge Colleen Kollar-Kotelly spelled it out to the Bush administration again. You must let detainees confer with their lawyers, she said, and you cannot monitor their conversations.

Kollar-Kotelly's decision could not be clearer. The government's foot-dragging, appeals and prevarication, she wrote, are "attempts to erode this bedrock principle" of attorney-client privacy with a "flimsy assemblage" of arguments.

The judge scoffed at administration claims that detainees can adequately represent themselves before military tribunals or rely on non-lawyer advisors. Many of these men need interpreters to communicate, she wrote, and certainly "can't grapple with the complexities of a foreign legal system" without a lawyer, access to a law library and English fluency.

The judge's rebuke is all the more stinging because she is a former federal prosecutor. The Justice Department's reaction should have been a humble, "Yes, your honor." Instead, a department spokesman mumbled, "We are reviewing the decision," a past signal for more stalling and appeals.

In some respects, the Supreme Court spawned this stalemate. The justices upheld the general principle that terror suspects are entitled to due process. But they were short on specifics, opening the way for challenge on every ambiguity and forcing lower courts to spell out exactly what sort of lawyer is acceptable and what conditions the Pentagon may impose on the proceedings.

Because President Bush insisted early on that detainees had virtually no rights, the administration now finds itself with no good options, even in the most troubling cases. Pentagon officials already have freed 200 or so men, concluding that they were wrongly arrested or had no further intelligence value.

But some former detainees have joined insurgent groups in Afghanistan and Iraq that are fighting U.S. troops. Holding the remaining men indefinitely is no solution either. The longer they stay penned in Guantanamo Bay, the higher the cost to taxpayers and the more radicalized the men become.

The opening proceedings last summer of the ad hoc military tribunals Bush ginned up to sort out who's dangerous and who's not proved a disaster. The interpreters were incompetent and even commission members were confused about the rules. The Pentagon is now scrambling to reorganize and restaff the panels in a doomed effort to salvage any credibility.

As the administration continues to stonewall judges doing what the founding fathers intended ensuring that the president doesn't overstep his authority it is not a stretch to say that Americans are witnessing the makings of a constitutional crisis.