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Pre-Trial Hearings for Detainees Elicit Criticisms, Defense

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GUANTANAMO BAY NAVAL BASE, Cuba - The Pentagon resumed its war-crimes court with two days of pre-trial hearings last week after more than a year's delay, symbolically kick-starting the stalled process amid a Supreme Court challenge.

But the hearings ended with an echo of how they began - with military defense lawyers and legal observers condemning the so-called military commissions as stacked against the defendants, and the government defending its new, secret security court as a necessity in the war against terrorism.

"If I hear `full and fair trial' one more time, it's going to make me sick," said Army Maj. Tom Fleener, a 20-year veteran who was mobilized from work as a federal public defender in Wyoming - only to learn that his client, Yemeni Ali Hamza Bahlul, 37, refused any U.S. military representation.

Countered the chief Pentagon prosecutor, Air Force Col. Morris "Moe" Davis, "We have nothing to be ashamed of, and I'm proud of everybody involved in the process."

"Somebody better get Maj. Fleener a bag because he's going to be sick," Davis added. "I'm going to say it: `full, fair and open.'"

Pentagon officials have decided that captives cannot act as their own lawyers. Military defense lawyers had argued that it is a centuries-old fundamental right in U.S. civilian and military law, as well as in international courts.

Fleener said he might risk his civilian law license by defending a client who doesn't want him. A U.S. Army colonel ordered Fleener to defend Bahlul, who declared a boycott of the trial and sat through the proceedings without headphones to hear their Arabic translation.

A federal judge had closed the court, for several months, with an injunction against the trial of Yemeni Salim Hamdan, who drove a truck on Osama bin Laden's Kandahar, Afghanistan, farm.

The Supreme Court is expected to decide the constitutionality of the commissions this session, with oral arguments in March. Among those challenging the war-crimes court are a U.S. Navy lieutenant commander and other active-duty lawyers, called JAGs, for judge advocates general.

Their challenge asserts that the commissions violate U.S. obligations under the Geneva Conventions. Further, Hamdan's lawyers say that Congress didn't give President Bush the power to create an extrajudicial tribunal after the Sept. 11, 2001, attacks.

The Bush administration asked the Supreme Court on Thursday to dismiss Hamdan's appeal.

Now, only nine of the 500 or so detainees here from more than 33 nations face charges before a military commission - the first American war-crimes court since World War II.

Moreover, even captives cleared of war crimes can still be held at Guantanamo as "enemy combatants," according to Pentagon officials, as long as there is a war against terrorism.

"If this truly is a war of ideas, the idea that people can be held indefinitely without charge or trial is a powerful idea indeed," said Ben Wizner of the American Civil Liberties Union, who observed the proceedings. "And it's an idea that is serving our enemies. Not us."

The first captives arrived four years ago and soon stirred international controversy about their lack of prisoner-of-war status, then their treatment and, increasingly, the on-again, off-again commissions.

In Washington, Bush said Friday: "Guantanamo is a necessary part of protecting the American people."

To be sure, last week's hearings - run separately by two U.S. colonels in black robes - had moments of drama, although somewhat less so because of a Pentagon policy prohibiting cameras:

Bahlul, who is accused of being an al-Qaida propagandist and a bin Laden bodyguard, delivered an anti-American screed, waved a sign proclaiming his boycott in Arabic, then removed his headset translation device and steadfastly ignored the proceedings.

But a tentative May 15 trial date has been set for Bahlul, his boycott notwithstanding.

Fleener later said he was "horrified" - not by his client, but by the ruling that forced his representation on the man.

"In America, you don't have a justice system like this," he said. "We ... spent a couple of hundred years putting together a good system ... where people have rights to counsel, people have rights to confront accusers, people have rights to evidence."

Canadian reporters got their first glimpse of Toronto-born teenager Omar Khadr, who was 15 at his capture in Afghanistan in a July 2002 firefight in which a U.S. Army medic was killed.

The Khadr case took up more time but made less progress. There is no trial date, and he has yet to enter a plea.

A Marine lieutenant colonel who will serve as Khadr's lead counsel has yet to be formally detailed to the case, or meet his client.

Rather, a big chunk of the Khadr case involved a civilian defense attorney's claim that Davis' comments were prejudicial against the youth.

"I continue to have serious reservations about his ability to get a fair trial," said Khadr's civilian attorney, American University law professor Muneer Ahmad.

Davis has said that those facing commissions are "terrorists" - but that they can get fair trials.

Critics contend that Khadr, who was born in Toronto to a Muslim fundamentalist family, should never have been taken to Guantanamo, and should have received international treaty protections spelled out for child soldiers.

A military commissions spokeswoman, who is an attorney, said Khadr may have been 15 at the time of the crime, but he's an adult now.

He is 19, and his appearance in the court reflected it. The young man last seen in photos as a fresh-faced youth had sprouted a fuzzy black beard and was at least 6 feet tall.