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## **War-Crimes Proceedings Open with Lawyer's `Sorry'**

A prosecutor apologized to a Supreme Court justice, military judges differed on culturally appropriate attire and artists' sketches had a few surprises.

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GUANTANAMO BAY NAVY BASE, Cuba -- Oops. The Pentagon's chief prosecutor opened the latest installment of the military commissions for alleged war criminals here by misquoting a U.S. Supreme Court justice -- and used the closing news conference to issue an apology.

On April 4, Air Force Col. Moe Davis built his remarks around the statement "this is not a war, at least not an ordinary war" and five times pointedly attributed the quote to Justice Steven G. Breyer during Supreme Court arguments on March 28.

The Pentagon's prosecutor went so far as to chastise the Clinton appointee with this: "When al Qaeda attacked on Sept. 11 and murdered 3,000 of our fellow citizens on our soil, that was an act of war."

In fact, Breyer was characterizing a challenge brought by detainee lawyers -- who argue that the format for the first U.S. war-crimes tribunals since World War II skirted both Congress and international treaty obligations.

What Breyer said was this:

"I take their argument as saying, 'Look, you want to try a war crime. You want to say this is a war-crimes tribunal. One, this is not a war, at least not an ordinary war. Two, it's not a war crime, because that doesn't fall under international law. . .'"

By April 7, Davis used another news conference to apologize to the justice.

"I didn't intend it as an insult to Mr. Breyer," he said, then blamed the news media.

Davis said he "didn't rate" a seat at the Supreme Court arguments, so he read a news agency account -- not the rush transcript issued soon after the 90-minute session on March 28.

### **COUNT DRACULA**

The Guantánamo captive named Binyam Muhammad reads news reports, too.

Muhammad, who allegedly discussed dirty bombs with José Padilla, a one-time Broward County resident, in Pakistan, argued he is a victim of mistaken identity.

"Call me Count Dracula," the 27-year-old British-educated Ethiopian exile suggested to the Marine colonel presiding at his case, who addressed him as "Mr. Muhammad."

In February, Davis likened Guantánamo captives and their attorneys to vampires hiding from the harsh glare of Pentagon justice.

"Remember if you dragged Dracula out into the sunlight he melted?" the chief prosecutor told reporters. "Well, that's kind of the way it is trying to drag a detainee into the courtroom."

Muhammad's lawyers said they included commission news articles in his case reading material.

## **FASHION FLAP**

The latest commissions also illustrated how one captive's clothing may be culturally appropriate -- and another's an insult.

Marine Col. Ralph Kohlmann, the presiding officer, cautioned Muhammad's lawyers that commissions, or quasi-jurors, may be prejudiced by Ethiopian attire:

The man who alleges he was brutalized with a scalpel during interrogation in Morocco walked into his hearing last week in a traditional Pakistani Muslim tunic -- dyed fluorescent orange, like captive jumpsuits.

Commission rules require ``business casual attire or, if an accused desires, culturally equivalent attire."

Lawyers for Muhammad said he considers his clothing ``culturally appropriate."

On Jan. 11, however, another presiding officer, Marine Col. Robert Chester, told lawyers for a Canadian captive to lose the T-shirt. Omar Khadr, 19, turned up at his war court debut in a trademark red, gray and blue Canadian "Roots" jersey for the early stages of what the Pentagon intends to be a conspiracy-murder trial in the Afghanistan firefight death of a U.S. Army medic.

## **VEIL OF SECRECY**

The issue of anonymity and pseudonymity came up several times during the hearings.

For starters, prosecutors are still shielding their names from publication, a discretion given them under Pentagon ground rules.

But when Associated Press sketch artist Janet Hamlin showed up for the hearings, several prosecutors agreed to have their features included.

An earlier sketch artist was required to show both captives and prosecutors as ghostly face-less people.

Now, the Muhammad case prosecutor has announced plans for more secrecy.

The Navy lieutenant, whose name cannot be published here, put the presiding officer and defense on notice that all U.S. government and agency witnesses will be ``be testifying under pseudonyms."

The Marine colonel, Kohlmann, told the Navy lieutenant to file a motion.