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## **Military lawyers will debate war questions**

### DETAINEES GETTING THEIR DAY IN COURT

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GUANTÁNAMO BAY, Cuba -- If America is at war, did it start Sept. 11, 2001, or when U.S. forces invaded Afghanistan? Did it end when U.S. troops toppled the Taliban? Did President Bush have the power to create a whole new military justice system without permission from Congress? Is terrorism a war crime?

These are among the questions that lawyers will debate this week and next before the Pentagon's Military Commission, the first exclusively U.S. war crimes court since World War II.

Now whittled down to a panel of three officers from a pool of five officers and an alternate, the U.S. military colonels will hear lawyers' arguments on behalf of David Hicks, 29, of Australia and Salim Hamdan, 34, of Yemen. They are the first two men facing trial on conspiracy charges as alleged members of Osama bin Laden's Al-Qaida movement.

Defense lawyers for the two men have filed hundreds of pages of motions that challenge everything from whether the court itself is legitimate to whether mere membership in Al-Qaida constitutes a war crime.

"This is where the defense is challenging every aspect of the commission," Navy lawyer Lt. Susan McGarvey said Sunday, speaking for the Pentagon on the trials. "This is the very heart of the legal system -- to be able to challenge it."

Prosecutors counter that U.S. history and tradition provides the framework for a new legal system in the 21st century's war on terrorism. They repeatedly argue in briefs that Bush had the authority to create the war crimes court because, "the United States is engaged in a war against the international terrorist group known as Al-Qaida."

The defense attorneys, like their prosecution counterparts, are U.S. military lawyers assigned by the Pentagon. Not only do they dispute U.S. allegations that Hicks and Hamdan were members of Al-Qaida, but they are using briefs this week to try to dismantle the court.

Rather, they argue, if their clients are to face U.S. justice at all, they should be tried using long established, existing U.S. military or civilian law.

Bush administration advocates argue the commissions are necessary to protect classified and other secret information in a time of war.