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Prosecutors Doubted Fairness of Guantanamo Trials

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WASHINGTON, D.C. -- As the Pentagon was making its final preparations to begin war crimes trials against four detainees at Guantanamo Bay, Cuba, two senior prosecutors complained in confidential messages last year that the trial system had been secretly arranged to improve the chance of conviction and to deprive defendants of material that could prove their innocence.

The electronic messages, obtained by the New York Times, reveal a bitter dispute within the military legal community over the fairness of the system at a time when the Bush administration and the Pentagon were eager to have the military commissions -- the first for the United States since the aftermath of World War II -- be seen as just at home and abroad. During the same period, military defense lawyers were publicly criticizing the system, but senior officials dismissed their complaints and said they were contrived in an attempt to help their clients.

It is now clear that the defense lawyers' complaints, and those of outside groups such as the American Bar Association, were being echoed in confidential messages by the two high-ranking prosecutors.

In a separate e-mail message, the chief prosecutor flatly rejected the allegations by his subordinates.

Among the striking statements in the prosecutors' messages was an assertion by one that the chief prosecutor had told his subordinates that members of the military commission that would try the first four defendants would be "hand-picked" to ensure that all would be convicted.

Evidence issues

The same officer, Capt. John Carr of the Air Force, also said in his message that he had been told that any exculpatory evidence -- information that could help the detainees mount a defense in their cases -- would probably exist only in the 10 percent of documents being withheld by the CIA for security reasons.

Carr's e-mail message also said that some evidence that at least one of the four defendants had been brutalized had been lost and that other evidence on the same issue had been suppressed. The March 15, 2004, message was addressed to Col. Frederick Borch, the chief prosecutor who was the object of much of Carr's criticism.

The second officer, Maj. Robert Preston, also of the Air Force, said in a March 11, 2004, message to another senior officer in the prosecutor's office that he could not in good conscience write a legal motion saying the proceedings would be "full and fair" when he knew they would not.

Brig. Gen. Thomas Hemingway of the Air Force, a senior adviser to the office running the war crimes trials, said that the e-mail messages had prompted a formal investigation by the Pentagon's inspector general and that the investigation found no evidence to support the two officers' allegations of legal or ethical problems.

Borch, who has since retired from the military, sent his own e-mail message to Carr and Preston on March 15, 2004, calling their allegations "monstrous lies."

Borch did not respond to telephone messages left at his home. Carr, who has since been promoted to major, declined to comment when reached by telephone, as did Preston. Both Carr and Preston left the prosecution team within weeks of their e-mail messages and remain on active duty.