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U.S. Is Examining a Plan to Bolster the Rights of Detainees

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New York Times
March 27, 2005

The Defense Department is considering substantial changes to the military tribunals that the Bush administration established to prosecute foreign terror suspects at Guantánamo Bay, Cuba, military and administration officials say.

The proposed changes, many of which are detailed in a 232-page draft manual for the tribunals that has been circulating among Pentagon lawyers, come after widespread criticism from the federal courts, foreign governments and human rights groups.

Those changes include strengthening the rights of defendants, establishing more independent judges to lead the panels and barring confessions obtained by torture, the officials said.

The draft manual has renewed a sharp debate within the Bush administration between military and civilian lawyers who are pushing to overhaul the tribunals and other officials who have long insisted that suspected terrorists held at Guantánamo are not entitled to many of the basic rights granted defendants in United States courts.

Military officials said the draft, which is modeled after the Manual for Courts-Martial, was written under the auspices of the Pentagon official in charge of the tribunals, Maj. Gen. John D. Altenburg Jr., who is now retired. The proposals gained momentum after high-level discussions late last year that included officials at the Pentagon, the office of the White House Counsel and the National Security Council.

The proposals would generally move the tribunals - formally known as military commissions - more into line with the judicial standards applied to members of the American military in traditional courts-martial, officials said. Many military lawyers have privately urged such a shift since President Bush first authorized the commissions after Sept. 11.

The administration's willingness to restructure the commissions, which have been a central part of its strategy for fighting terrorism, is uncertain. Some officials said they considered the proposals premature because a lawsuit challenging the legality of the commissions is now in a federal appeals court.

In addition, some of the White House aides who supported changes to the commissions have recently moved to new jobs, leaving behind a small but powerful group of officials, led by Vice President Dick Cheney and his staff, who have opposed changing to the commission rules unless forced to do so by the courts, officials said.

"There are a number of folks who would like to make changes," one Pentagon official said of the rules governing the military commissions. But, the official added, "Cheney is still driving a lot of this."

At an interagency meeting earlier this month on detainee policy, officials said, the State Department's designated legal adviser, John B. Bellinger III, who was formerly the legal adviser on the National Security Council staff, raised the question of possible modifications to the commission procedures and was quickly rebuffed by Mr. Cheney's counsel, David S. Addington.

"We don't need any changes in the commissions," the officials quoted Mr. Addington as saying.

A spokesman for Mr. Bellinger, who was traveling, declined to comment. A spokesman for the vice president's office did not respond to requests for comment on Mr. Addington's views.

A spokeswoman for General Altenburg, Lt. Susan McGarvey, said, "We are always considering ways to improve the commissions process," but she declined to discuss the draft manual.

The plan to use military commissions to try terrorism suspects emerged in the weeks following the attacks of Sept. 11, 2001, from a small group of White House and Justice Department lawyers who consulted closely with Mr. Cheney, current and former administration officials have said.

By their own accounts, those officials sought to use the presidency's war powers to allow the military to detain, interrogate and prosecute terrorism suspects who might be harder to question or convict in the federal justice system.

A military order signed by Mr. Bush on Nov. 13, 2001, promised that the tribunals would be "full and fair." But the order and subsequent Pentagon regulations denied defendants some due-process guarantees of civilian and military courts, including the right to hear and contest all of the evidence against them.

After more than two years of delays, the commission hearings began last August but were marred by disorganization and other problems. For a time, Pentagon officials said, they considered removing the presiding officer chosen to lead the first four trials.

Those proceedings were halted after a federal district judge in Washington ruled on Nov. 8 that the commissions could not legally try one of the first defendants, Salim Ahmed Hamdan.

The judge, James Robertson, said the administration had improperly bypassed Congress in setting up the commissions and violated binding international law when it refused to screen prisoners like Mr. Hamdan in accordance with the Geneva Conventions. Judge Robertson also held that commission rules allowing the defendant to be excluded from some proceedings and denied access to some of the evidence against him were "fatally contrary to or inconsistent with" the standards of American military and civilian courts.

Rather than push forward with other trials, General Altenburg chose to regroup. Several weeks earlier, he had asked a senior lawyer on his staff, Col. Lee Deneke, to oversee a group of lawyers in drafting a manual that would address procedural shortcomings of the tribunals and some of the criticisms made by legal experts, foreign governments and human rights groups, officials said.

"There has been a push for some time to address some of the outstanding issues on military commissions," said one administration official, who, like others insisted on anonymity because of the secrecy of the process. "But now it is no longer just a few voices advocating changes. Now you have the courts saying that some things need to be done."

Several officials who have read the draft manual said it would address only some of the criticisms raised by Judge Robertson, a former civil rights lawyer and naval officer appointed by President Bill Clinton.

In his 45-page ruling, Judge Robertson also noted other discrepancies between the military commission rules and the courts-martial regulations of the Uniform Code of Military Justice, including the lack of speedy trial provisions or guarantees against self-incrimination and the smaller size of a commission panel and the comparative ease with which it can vote a life sentence.

The draft manual affords defendants more power to challenge the evidence against them, even when that information is classified, officials said. Another proposal raises the minimum number of

military officers on a tribunal to five from three. In a capital case, as many as 12 panel members might be required, one military lawyer said.

The manual would also bar any "confession or admission that was procured from the accused by torture," according to portions of a draft read to a reporter. The definition of torture in the draft is fairly broad, covering any act "specifically intended to inflict severe physical or mental pain and suffering."

The draft manual includes a legal analysis of each provision. Without the analysis, the 232-page draft runs just over 100 pages, an official said.

One of the most significant proposals would make the commissions' presiding officer more like the judge in a general courts-martial. Officials said that change was intended to solve procedural problems created by rules that now require all commission members to rule on questions of the law, as well as on the facts of a case, even though the members are generally active-duty or reserve officers without legal training.

But the problem might also be one of the most difficult to fix, officials said.

In order to change the scheme, military lawyers, including General Altenburg, would now like to amend the presidential order, a step that would probably be opposed by some in the White House and that might take months to move through the bureaucracy even if it were fully endorsed, officials said.

Administration officials also appear to be divided over the wisdom of changing any of the commission rules before the federal lawsuit is resolved.

Although many officials are optimistic about the administration's chances before three Republican-appointed judges who are scheduled to hear arguments in the case on April 7 in the Court of Appeals for the District of Columbia Circuit, many of those officials also expect the matter to reach the Supreme Court regardless of the outcome.

"People who think that it will be full steam ahead for the commissions after the appeals court rules fail to appreciate how much litigation might be ahead of us," said a military lawyer who advocates changes to the commissions. "A manual like that might make the courts more reluctant to intervene."