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Use of Torture to be Weighed in Guantanamo Evidence

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GUANTANAMO BAY U.S. NAVAL BASE (Reuters) - The military judge presiding over four of the Guantanamo war crimes tribunals said on Wednesday he would consider whether torture was involved when deciding what evidence could be admitted in the trials.

The judge, retired Col. Peter Brownback, stopped short of guaranteeing to exclude evidence obtained through torture, but said, "My personal belief is that torture is not good."

The issue was raised during a pretrial hearing at the remote U.S. base in Cuba for Ali Hamza al Bahlul, a Yemeni captive who acknowledged he is a member of al Qaeda and is accused of acting as a bodyguard for Osama bin Laden.

Bahlul's military lawyer, Army Maj. Tom Fleener, said he would introduce evidence at trial that Bahlul had been tortured, but did not elaborate. The defense attorney raised the issue while questioning Brownback about beliefs or experiences that could affect his impartiality.

"Do I agree that the method by which we obtained evidence should be considered before it's admitted and should be considered in evaluating evidence? Yes," Brownback said.

He said definitions of torture varied but in the hypothetical example of evidence obtained from someone stabbed in the eye with a red-hot needle, that would be torture and "it doesn't sound likely that I would let it in."

Legal scholars and human rights activists have criticized the Guantanamo tribunals as unfair for reasons including the potential use of statements obtained through torture and coercion. Wednesday marked the first time the subject was discussed during four rounds of pretrial hearings held since the tribunals convened in August 2004.

The war crimes tribunals, formally called commissions, are the first held by the United States since World War Two.

Only 10 of the nearly 500 Guantanamo prisoners have been charged with crimes, and Brownback is the presiding officer in four of those cases.

AWAITING SUPREME COURT RULING

In a case assigned to another presiding officer, defense attorneys plan to argue Ethiopian defendant Binyam Muhammad gave false confessions after he was beaten regularly and slashed with scalpels at prisons in Morocco and Afghanistan.

Evidence in the Guantanamo cases has been ordered sealed until presented at trial.

Prosecutors said none would go to trial until after the U.S. Supreme Court rules on whether President George W. Bush had authority to create the tribunals to try foreign terrorism suspects after the September 11 attacks. The court will hear arguments on March 28 and is expected to rule in June or July.

During Wednesday's hearing, Bahlul said he had no direct relationship with the September 11 attacks but did not believe Fleener or any other U.S. lawyer could defend him fairly.

"Because I am from al Qaeda and my counsel is an American, therefore the psychological war or conflict is ongoing ... it becomes impossible for the counsel to put aside his true feelings," he told the court through an Arabic-English translator.

He asked to represent himself but Brownback denied the request. Tribunal rules set down by Bush require that defendants have U.S. military lawyers who are able to review secret evidence that may not be shown to the defendants.

Bahlul is accused of conspiring to commit war crimes by acting as a bin Laden bodyguard and making al Qaeda recruiting videos. He faces life in prison if convicted.