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## The black hole of Guantanamo

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Although a federal judge has declared a military tribunal at Guantanamo Bay trying a detainee incompetent because it fails to decide the legal protections due the defendant under the Geneva Convention, a separate set of hearings for many of the detainees is continuing there. These too are being vigorously challenged in the courts as contrary to a June Supreme Court decision that these prisoners are entitled to due process and basic fairness.

Recently, Jameel Jaffer, an American Civil Liberties Union lawyer, returned from observing this other series of hearings, the Combat Status Review Tribunals (CSRT), which are set up to determine whether the hundreds of detainees at Guantanamo Bay are being lawfully held in the first place. Mr. Jaffer concluded, as have even some of the military defense lawyers who have previously submitted briefs to the Supreme Court, that they are defying a June decision by the U.S. Supreme Court that these prisoners must get due process in the simplest terms and basic fairness.

In the 6-3 Supreme Court ruling, the court wrote that these alleged unlawful enemy combatants are entitled "no less than American citizens" to challenge the evidence against them, among other rights.

Yet, as the New York Times' Neil Lewis noted on Nov. 1, a recent brief by the Bush administration pretends there was no such Supreme Court decision. The government stated that "the notion that the U.S. Constitution affords due process and other rights to enemy aliens captured abroad and confined outside the sovereign territory of the United States is contrary to law and history," an argument the Supreme Court smacked down.

With regard to sections of the Patriot Act and a number of subsequent executive orders, the government has previously been charged with making up the law as it goes along. This now appears to include by passing the Supreme Court.

As Mr. Jaffer notes, these CSRTs do not "provide anything like due process. Reversing the presumption of innocence, the tribunal starts by presuming that the prisoner is in fact an enemy combatant, and it's up to the prisoner to prove that he's not. "One Yemeni defendant said that "the United States should know that a person is innocent until proven guilty, not the other way around." Moreover, the prisoners are denied access to most of the alleged evidence against them because it is classified. Most crucially, the prisoners are denied a lawyer. Instead, they are given a "personal representative": a military officer without legal training.

As Human Rights Watch reports from Guantanamo Bay, "two of the three members" of the tribunal before which the prisoners sit in shackles "have no legal training or experience "although their job is "to rule on matters of law." James Ross, senior legal adviser for Human Rights Watch, says reasonably that "it's astonishing that the United States would try a case of historic importance (and that can result in permanent imprisonment) with officials who are struggling to grasp basic legal concepts. Real courts with real judges should be trying these complex cases, not tribunals started from scratch." I expect, or at least hope, that the Supreme Court will eventually require this administration to provide real judges and real lawyers at Guantanamo Bay.

But, as of this writing, the rule of law there is so bizarre that, as Mr. Jaffer points out, while "CSRT has reviewed the cases of some 200 prisoners, it has ordered the release of only one. Many

prisoners are now refusing to participate in the process at all." Indeed, about a third of the detainees will not attend these kangaroo courts. But fear not, they will be judged anyway, in absentia, by these non-lawyers and non-judges. Obviously, this counterfeit process was conceived to con the Supreme Court into believing the government was adhering to its June decision.

But already, on Oct. 21, in Washington, U.S. District Judge Colleen Kollar-Kotelly ruled that all the prisoners at Guantanamo Bay have the right, as the Supreme Court decided in June, to American lawyers with whom they can speak without the government listening in.

So far, lawyer-client confidentiality has been almost entirely forbidden there, including with those non-lawyer "personal representatives." This crude attempt by the government to skip the Supreme Court is not surprising in view of attitudes of key administration officials long before these fake proceedings at Guantanamo Bay started. Vice President Dick Cheney called the detainees "the worst of a very bad lot ... devoted to killing millions of Americans. "Mr.Cheney, where is the presumption of innocence? And Secretary of Defense Donald Rumsfeld said they were "among the most dangerous, best-trained vicious killers on the face of the earth." But the overwhelming majority have not been charged with any crime. If they're so heinous, then charging them should have been a swift, clear process.

Instead, as Mr. Jaffer says, "Guantanamo remains a legal black hole."