

The following text may be printed, copy/pasted, or downloaded and emailed.

Trials of Terror Suspects Halted

Bush administration is expected to reconsider procedures for detainees at Guantanamo as it appeals a ruling against the troubled tribunals.

John Hendren
Los Angeles Times
November 13, 2004

WASHINGTON — The Bush administration suspended its system for putting accused terrorists on trial Friday and began legal efforts to salvage the process in the face of a court ruling that declared it below U.S. standards of justice.

The halt in proceedings is indefinite. The Pentagon decision Friday put off action scheduled for December at the U.S. naval base at Guantanamo Bay, Cuba. The Pentagon on Monday had called off proceedings scheduled for November, and already had delayed hearings set for January.

The latest delay came as the Justice Department began its appeal of a ruling handed down this week that a pair of processes for handling detainees were unfair and unlawful. The ruling here by U.S. District Judge James Robertson forced a halt to a hearing in the trial of a Yemeni man accused of supporting terrorism as Al Qaeda leader Osama bin Laden's driver.

Friday's action added to the uncertainty over the system of military commissions used to try the defendants at Guantanamo. The commissions have been plagued by procedural delays and practical problems, have been attacked as unfair by defense lawyers and have been assailed by civil libertarians as deficient under U.S. and international law. Two military commission members and an alternate, half of the panelists appointed to hear cases, were dismissed after defense lawyers charged they had possible conflicts of interest.

The mounting difficulties have increased pressure on the Bush administration to reconsider the basic structure of military commissions, senior Defense officials and Pentagon sources said. Among the options likely to receive new consideration are altering rules to ensure broader rights for defendants and replacing the trials at Guantanamo with military court-martial proceedings — an option Robertson said would solve most problems in the detainees' trials.

Administration officials are said to be considering moving all 550 detainees from the American-occupied sliver of Cuba to a military prison on American soil, such as one in Ft. Leavenworth, Kan.

Many of the Guantanamo detainees, seized from battlefields in Afghanistan, have been in custody since 2001. President Bush ordered the creation of a military commission system of justice patterned after tribunals used after World War II to handle their cases.

However, only four of the hundreds of detainees who have been processed at Guantanamo have faced the military commissions.

The Justice Department filed papers Friday indicating its intention to appeal Robertson's ruling, which came in the case of Salim Ahmed Hamdan. The appeal will be heard by the U.S. Circuit Court of Appeals for the District of Columbia, although no hearing date has been set.

Hamdan's trial before the commission had been set to conclude in December.

The administration Friday added to the heat of the public debate over the tribunals. In a speech, outgoing Atty. Gen. John Ashcroft, without directly mentioning the Hamdan case, accused the federal judiciary of jeopardizing national security by issuing rulings that encroached on the power of the president to interpret international treaties and other laws.

"The danger I see here is that intrusive judicial oversight and second-guessing of presidential determinations in these critical areas can put at risk the very security of our nation in a time of war," Ashcroft said in a speech to the Federalist Society, a conservative lawyers group.

Meanwhile, civil rights advocates continued to object to the system. Jameel Jaffer, an observer at the trials for the American Civil Liberties Union, called the commissions "fundamentally lawless."

"They are proceedings designed not to provide fair process, but rather to rubber-stamp essentially political decisions," Jaffer said. "There is no doubt that the Supreme Court's rulings were critically important, but Guantanamo remains a legal black hole."

After the Supreme Court ruled in June that detainees must be afforded full access to U.S. courts, the Pentagon instituted a second, shorter process to address concerns that prisoners were being held for long periods of time without judicial review.

The "combatant status review tribunals" are brief proceedings that review the government's decision to keep detainees in custody. More than 350 detainees have appeared before review tribunals, with 131 found properly held as enemy combatants and therefore eligible to be tried under the military commission process. Only one man, a Pakistani, was ordered released after his status review. More than 200 others have been released without status hearings.

But Robertson's ruling Monday said the status review tribunals were not competent to decide whether detainees should be held or freed. They deny prisoners access to lawyers and rely on a presidential determination that the detainees are enemy combatants as evidence, Robertson ruled.

Robertson, a former Navy officer who was appointed a judge by President Clinton, also ruled that the system for determining whether each detainee qualified as a prisoner of war failed to pass muster in international law. Under the Geneva Convention, the detainees would be POWs and would gain a series of well-protected rights. With POW status, they could only be tried in a military court-martial, which international lawyers and human rights advocates say is a fairer and more established system.

As the government appeals its case, it also is mulling over what to do with the disarray facing its system of justice for detainees.

"I have a hard time believing that the government would just ditch the military commission process. But I could see them changing the way it has been structured," said a former government official who has studied the issue.

The former official said there had been friction between the Pentagon, which oversees the system, and the Justice Department, which contends it could be structured to encourage more plea bargains and move more quickly.

"The guys at the Justice Department have been demanding that this be accelerated, and have been wondering why this took so long," the former official said.

There may be less friction in Bush's second term. Alberto R. Gonzales, nominated to be attorney general, was an architect of the system of military tribunals that the Defense Department is using in Cuba.