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Extended Detention in Cuba Mullied

Officials Indicate Guantanamo Bay Could Hold Tribunals, Carry Out Sentences

RELEASED IN FULL

By John Mintz
 Washington Post Staff Writer
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As the Bush administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval base at Guantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.

"It's become clear that some of the al Qaeda detainees, even if they're not convicted of anything, will have to remain in detention for quite some time" because of the continuing threat of terrorist activity, said one knowledgeable source. Terrorists convicted at the military tribunals also could be imprisoned at the base, which offers the government a number of security advantages, officials said.

U.S. military officials have drawn up blueprints for a 408-bed, air-conditioned prison building that would replace the clusters of temporary, open-air cells occupied by 254 al Qaeda and Taliban fighters captured in Afghanistan. U.S. officials expect that once built, the semi-permanent structure would remain

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in use for at least five years, sources said.

Since President Bush announced plans for the military tribunals Nov. 13, his administration has scrambled to develop comprehensive regulations under which the detainees would be tried and held. Rules under consideration would require a unanimous vote of judges to impose a death sentence and would allow defendants avenues for appeal, sources said.

Tom Malinowski, a Washington representative for Human Rights Watch, raised questions about the prospect of extended detention of unprosecuted prisoners. "It is a basic principle of law" that people shouldn't be jailed indefinitely without charges, he said. Yet it could be argued that under international law, detainees such as these could be held for the duration of a war, he added.

"The question is, which war?" he said. "Is it the war in Afghanistan, the one against al Qaeda or the one against terrorism? That could be 50 years."

The Guantanamo naval base also is the front-runner to be the site where suspects would be tried in tribunals, sources said. After early criticism from human rights groups, U.S. officials have drawn up guidelines for trials that more closely resemble criminal trials and military courts-martial.

In his Nov. 13 presidential order, Bush said convicted terrorists could receive the death penalty with just a two-thirds vote of judges. But the latest draft of the rules would require a unanimous vote, sources said.

Bush's initial directive ruled out appeals to any court, but the new guidelines allow some appellate review, though the details remain hazy.

The Defense Department's office of general counsel is the lead agency fashioning the guidelines, in consultation with the White House and the State and Justice departments.

"The staffs are still working on it," a White House official said. "The plan hasn't gotten to any decision-makers, like [Defense Secretary

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Donald H.] Rumsfeld or Bush."

Suspects in any tribunal would have the right to hire private defense lawyers, to present evidence and witnesses and avoid testifying, sources said. Hearsay or second-hand evidence would be allowed at the tribunals, although it is barred in both courts-martial and civilian trials.

The prosecutors and judges for the planned tribunals would come from the military's judge advocate general's office, or JAG, sources said.

"Insofar as JAG officers are involved, they'll bring a JAG sensibility to the proceedings, and they are very careful people," said Ruth Wedgwood, an expert on international law at Yale University who supports the Bush tribunal plan. "They're proud of having brought military justice to the point that it provides up to and sometimes beyond" the protections afforded in civil justice.

But earlier in the deliberations, top officials in the Army, Navy and Air Force JAG offices opposed military tribunals, saying they preferred that terrorism suspects be prosecuted in ordinary criminal courts, a military official said. White House officials responded that holding tribunals in U.S. federal courthouses would present overwhelming security problems, the official said.

Administration officials expect that military tribunals would largely be open to the public, except for portions that would be closed to hear classified evidence. But one reason for holding the tribunals at Guantanamo Bay is that access to the base -- and therefore to the hearing sites and prison -- is strictly controlled by the U.S. military, knowledgeable attorneys said.

The base has similar advantages as a prison. Detaining war captives aboard ships would violate the Geneva Conventions -- which Bush recently decided to apply to Taliban fighters but not members of al Qaeda -- as would commingling them in ordinary prisons with domestic criminals.

Military officials also cited dangers found in history: In World War II, when 435,000 captured German military personnel were held as prisoners of war in this country, 2,222 escaped. Some blended into the population and were not located for years, an unacceptable risk when it comes to al Qaeda fighters, U.S. officials believe.

Guantanamo's unique legal status also is an attraction. It is Cuban territory that is leased essentially in perpetuity to the United States under a series of agreements.

"It is not in any federal judicial district, so it is not subject to habeas corpus," the legal right for someone in custody to demand a hearing before a judge to decide the legality of the detention, said a lawyer

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informed about the government's deliberations.

Moreover, the administration believes that a 1950 U.S. Supreme Court decision minimizes the chances a prisoner could file an appeal in federal court. The ruling said that captured German soldiers, who had aided the Japanese military after the armistice in Europe, had no legal right while outside the country to demand a U.S. court hearing on their case.

But many of these deliberations remain murky, one informed lawyer said, because "so much of all this is very, very, very closely held."

Staff writer Thomas E. Ricks contributed to this report.

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