

Guantanamo terror tribunal rules eased

Defense will get more information on eavesdropping

The Associated Press
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WASHINGTON - The Pentagon has agreed to change rules for defending terrorism suspects at military tribunals, including allowing defense lawyers to object in court if the government wants to listen to attorney-client strategy sessions.

The Defense Department has come under pressure from allies, U.S. lawyers and civil libertarians to modify its requirements governing legal representation in these cases.

Outside lawyers say the changes will make the trials fairer.

Under revised rules not yet released by the Pentagon, defense lawyers would have much more information about whether and how the government might eavesdrop on their conversations with suspects, people familiar with the changes told The Associated Press.

Neal Sonnett, a Miami defense lawyer and head of an American Bar Association committee studying tribunals, said defense lawyers no longer would have to sign an affidavit that makes it appear the lawyer endorsed the eavesdropping.

"That is a major change that is going to make it a lot easier for civilian lawyers to participate," said Sonnett, who worked with Pentagon lawyers to suggest changes.

A Pentagon spokesman confirmed that rules changes will be announced soon. He declined to provide details.

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“We’re doing some tweaks and adjustments and clarifications on the rules that I think will be very well received and that address issues raised by our allies and also by other legal professionals and other organizations,” Maj. John Smith said.

Plans for military tribunals have been in the works for more than two years; the White House has yet to give a date for the first one.

The trials probably will take place at Guantanamo Bay, Cuba, where the U.S. military is holding about 650 people from about 40 countries picked up in the hunt for terrorists after Sept. 11, 2001. Most of them were apprehended in Afghanistan and Iraq.

Like military personnel facing a court-martial, defendants brought before a tribunal automatically get a military defense lawyer. Defendants also may hire a civilian lawyer or accept that lawyer’s services for free.

Many civilian defense lawyers have been leery of agreeing to help represent tribunal suspects because of Pentagon requirements that some lawyers saw as violations of fundamental attorney-client privileges and ethical guidelines.

Most troublesome is the requirement that the government may eavesdrop on conversations between a suspect and his lawyer and that lawyers must agree up front that such monitoring could take place.

The Pentagon has said the eavesdropping would only be used for intelligence or security ends, and any information picked up would not be used against a suspect at trial.

The Pentagon has not dropped its insistence that agents can listen in, but the reworked rules are much more explicit about how the government chooses which suspects, if any, it will monitor, and which government agency will do the monitoring. A defense lawyer would be notified about planned electronic monitoring and could object to it at trial, Sonnett said.

The military closely monitored a defense lawyer’s first visit with terrorism suspect Yaser Esam Hamdi on Tuesday. Lawyer Frank Dunham is representing Hamdi before the Supreme Court, not at a military tribunal, but the Pentagon said the security risks of a private visit between lawyer and client are similar.

In another change, the revised rules make clear that civilian lawyers could get extensive help from their home offices or other outside

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lawyers, even though those outsiders are not part of a Pentagon-approved pool of lawyers.

Twenty civilian lawyers have signed up for that pool so far, and four have passed background and other checks so they are approved to participate in any trial, Smith said. Two applicants were rejected, and other applications are pending, he said.

Defense lawyers can also sign up to represent a particular defendant without joining the general pool.

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