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+1 (703) 428-0711**Presenter:** Senior Defense Official

Thursday, July 3, 2003

Background Briefing on Military Commissions

Senior Defense Official: I just really wanted to put out some information very quickly and then we'll go right to questions and answers.

Today the President has determined that six enemy combatants currently detained by the United States are subject to his military order of November 13, 2001. The President determined that there is reason to believe that each of these enemy combatants was a member of al Qaeda or was otherwise involved in terrorism directed against the United States.

I think with that setup, there are obviously a lot of questions, I assume, on your mind and we'll be happy to take those.

Charlie?

Q: We assume that Dr. Wolfowitz will determine whether or not they will be subject to commissions. In other words, the President has determined that they are eligible to go before commissions, and the Pentagon now determines whether or not they will in fact be charged, what they will be charged with --

Senior Defense Official: Why don't I talk just a little bit about the process.

Senior Defense Official: I think you're in effect correct. In effect, it is a



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grant of jurisdiction over the person. Then after that the prosecution would look at the cases, determine if there were appropriate charges, would then present the charges to the appointing authority, and at that time it would be up to the appointing authority, Dr. Wolfowitz in this case, who would determine whether or not to approve the charges and perhaps to appoint a commission and refer those charges to the commission.

Q: These six, we assume, are among those held at GTMO, and why these six? Are the things that they have done especially egregious to single them out?

Senior Defense Official: It's really not so much -- These are people among others who have been evaluated. There are a lot of factors. The quality of the evidence we have against them, how far along we are in intelligence gathering, and it's really mostly that these are people who are available, and according to the process we've established for gathering this information we've determined that we have sufficient action -- The President has indeed determined that he's got reason to believe that they are as I described them.

Q: And they are at GTMO. They're among those being held at GTMO?

Senior Defense Official: We're not talking about the individual cases and I don't think we need to discuss exactly where they're being held because that's a little bit more specificity than I think we're prepared to discuss.

Q: Will they be moved from wherever they are now, assuming GTMO, to a regular military prison?

Senior Defense Official: I think that also would be premature to discuss that since in fact there have been no charges approved in any of these cases, nor has there been a commission appointed or any specific directions given by the appointing authority. So at this juncture we just don't have --

Q: How fast do you expect that to happen?

Senior Defense Official: Again, I think it would be best -- We'll discuss process and the kinds of things that can happen because there will be so many factors involved in --

Q: Should we see something before the end of the year, or is this going to be --

Senior Defense Official: -- kinds of steps that are involved. Again, repeating what we told Charlie.

Q: I wrote it down. So what about timeline? Will it take six months to do this or is it going to be on a fast track? We have the what, where, when, why thing, and this is the when part. So when?

Senior Defense Official: It's like a what part, too. We gave you a lot of what --

Senior Defense Official: As you can tell in the past we've been proceeding very methodically and deliberately and carefully and I think that that will continue to guide the military commission process. In that regard it probably wouldn't be prudent to set any kind of a timeline because the criminal justice system should not be driven by timelines, they should be driven by the facts of the case. That's what's the next step is for the chief prosecutor to look at the facts of the case and see if there are appropriate charges for those facts. So I think that's the reason we wouldn't want to set ourselves to a timeline. We want to look at each individual case on a case-by-case basis and do the right thing.

Q: Can you take us a little further on the who's and what's of these? Are they Afghan, are they al Qaeda, are they terrorists that you found in this country?

Senior Defense Official: Again, we're not going to discuss particular aspects of any of the individual cases because it's just premature to do that.

Q: How about a ballpark? Are the majority of them one or the other?

Senior Defense Official: All I think we're really prepared to say is there's evidence that they may have attended terrorist training camps.

Q: In Afghanistan? And --

Senior Defense Official: I'm not going to discuss those kinds of details. They may have attended training camps, they may have been involved in the kinds of activities that are consistent with terrorist activities -- financing, recruiting. Those are the kinds of things that would lead us to the kind of determination that the President made today.

Do you have any more to add?

Senior Defense Official: I'd just say that is a summary of the kind of evidence involved in the six cases that we've seen come back from the President today. But we wouldn't want to discuss any specific case or a specific kind of evidence associated with those activities.

Q: Will you hold the trials in the same place if they are held? Will they be in GTMO, will they be in this country?

Senior Defense Official: Again, that's a decision that gets made at a later point in this process. That would be at the point when the appointing authority in fact refers charges to a commission.

Q: But not -- I mean are the options in this country or another country or --

Senior Defense Official: The military commission order that the Secretary of Defense signed March 21, 2002 and the Military Commission Instructions were written, designed to give us the flexibility to do what was appropriate in every case so we have a large range of options. That's why the rules were written the way they were written.

Q: Will we find out the identities of these people and the specificity of the charges when they are actually referred to a commission, when a commission is appointed? Or when?

Senior Defense Official: We may indeed at the time of charging provide that information. At the time of charging or perhaps at the time when a defense counsel would be assigned to an individual.

It would be inappropriate at this time since in fact no charges have been brought against any of these detainees.

Senior Defense Official: And let me just emphasize one point the Colonel made is that we may identify those things, and we may not. We will at the point of a commission should any of these get to a commission, the objective is as much transparency as practicable, and those are the kinds of things we consider at the time.

Q: So it's possible you won't ever identify them to us?

Senior Defense Official: I suppose that is possible. Yeah, I suppose that is possible.

Senior Defense Official: But the intent is, as directed by the Secretary of Defense, that these proceedings will be as open as practicable.

Senior Defense Official: Remembering again that one of the principal

objectives of this third way, the President sought a third way, we have an Article 3 system of justice, we have courts-martial, a third way to be able to set up a body of rules that will allow us to protect information to achieve additional intelligence gathering purposes that may lead to the capture of more terrorists. So it's important to remember.

Q: Can you describe the makeup of a commission?

Senior Defense Official: In general, you mean?

Q: How these commissions will be made up.

Senior Defense Official: There may not be commissions in this case. It's important to keep that in mind. We may have commissions, we may not. But in general, commissions.

Senior Defense Official: Under the Military Commission Order No. 1 you see that the commissions are constituted by a three to seven member panel of commissioned officers from the armed forces, one of whom is a presiding officer who must be a judge advocate.

Q: And for a guilty verdict, what's the percentage of commission members that have to vote --

Senior Defense Official: A two-thirds vote of the three to seven member panel.

Q: Do the six know that they've been chosen?

[Laughter]

Senior Defense Official: Again, I don't think we want to answer specific questions that might involve those individuals.

Q: Can you say a little bit more about what this means in terms of status now or change of status? Are they still to be described as enemy combatants? How should they be described then?

Senior Defense Official: Legally there is no change to the status. They are being held as enemy combatants right now. They are being held simply as a function of the war on terrorism and detained because they are a threat to the United States.

A criminal process has not begun in any of these cases. Again, it's a decision the President has made that's akin to a granting of jurisdiction but there's been no exercise of that jurisdiction so therefore no criminal process or rights and procedures that normally attend a criminal process are in place yet.

Q: So their right to representation doesn't start until they're charged?

Senior Defense Official: The way the order reads, they will be given a defense counsel sufficiently in advance of any trial to make sure that they can prepare an adequate defense. Certainly there's no trial that has been directed at this point in time.

Q: Are these six the first ones who've been put in this jurisdiction? And is it a rolling process where we might expect to see more down the line? Have you looked at the entire universe of enemy combatants and decided these are the only six that will --

Senior Defense Official: Yes, to both your questions. It is the first time that the President has made a "reason to believe" determination; and there may well be more.

Q: Secretary Wolfowitz, as I understand, sent a report over to the White House and gave reasons why the six should be eligible for possible commissions or possible trials. Were these six the only ones that were pulled initially? Or was there a large list and the President just picked six from it initially? Or are these six -- Are these the only six suggested initially?

Senior Defense Official: First of all, there are a number of factors beyond what may have been recommended from this building that have led to the President's determination that he has reason to believe that these are people engaged in terrorism against the United States. So it's more than just the recommendations or suggestions that may have come from here.

With regard to whether there are others that the President has considered, I don't think we have anything to say on that, do we?

Senior Defense Official: The only legally relevant thing that has happened today is the President's decision to provide these "reason to believe" determinations. It wasn't an action by the Pentagon.

Q: A couple of procedural questions.

The appointing authority is responsible both for deciding which if any of

these half dozen are to be charged; and the appointing authority also is responsible for forming the commissions.

Should any of these be charged and decide to plead guilty, some sort of plea bargain, is it necessary for them to go before a commission to execute that bargain? Need there be a commission for a plea bargain to be finalized?

Senior Defense Official: Yes. The way the rules are written there needs to be a commission in any event. And in fact the commission does have responsibilities even for a plea agreement in that they have to determine whether or not a plea is voluntary and informed.

Q: And in the sequence of those two chores of the appointing authority, does either one necessarily come first? Deciding to charge somebody and then creating a commission? Must the commission be created first?

They're both chores in separate sections of the order.

Senior Defense Official: I think you've read the order correctly and the order does not specify a particular chronology as to how those events would have to occur.

Q: Lastly, if you had a couple of questions from here and there about where it could be and you're declining to say where, but someone said could they be brought to a military base, surely you can say you don't wish to bring them into U.S. territory after winning a case that says they have no habeas corpus rights outside of U.S. territory. You're not suggesting that's an open question to bring them to the United States --

Senior Defense Official: We're not suggesting anything with respect to locale. I think that's the way to take it. That's speculation on your part.

Senior Defense Official: In view of the day and the hour I think we probably have time for maybe two more.

Q: This might be putting the cart before the horse, but if no charges are preferred against one of these six or if they come through and the tribunal finds them not guilty, are they automatically set free? Or would they go back into detention for intelligence purposes?

Senior Defense Official: We can't really answer that right now.

I can say this, that as this process develops we certainly will be getting

more information about those people. If one of them were to go through a commission process, at the end of that process we would know much more than we know now.

So any decision like that would have to be made at that time.

It would also be a bit misleading to say that we wouldn't consider sending one of these people before a commission. Certainly the acting chief prosecutor will be looking at potential charges on these cases that have had determinations made on them.

Senior Defense Official: Let me talk about one thing in terms of your question about after a potential commission what might happen. Remember the purpose of the commission, and that was to have a third way, something different, and the rules were structured in a very deliberate fashion but deliberately flexible. So there are a lot of things.

As the colonel said, there's going to be further intelligence gathering. And that, by the way, is the second point. A principal purpose of this third way is to be able to protect intelligence and what intelligence may be gathered during the process would help determine sort of the ultimate outcome of any of these individuals.

Q: So is it possible then that somebody could go through a commission, be found not guilty, and then have them say well, congratulations, you're not guilty but you're still an enemy combatant so back into wherever we're holding you?

Senior Defense Official: As a legal matter, they're two completely different questions. They're not being held because of any criminal activity or any charges. They're being held because they're enemy combatants in an ongoing armed conflict.

What we're talking about with military commissions is a criminal process so in that regard they're two distinct issues.

With respect to factually whether or not the Department of Defense would want to continue holding someone, that's an issue -- My only point there is if a military commission process starts up certainly the facts available to decision makers will be greater. So that's a decision they'll make at that point in time.

Senior Defense Official: Anything else?

Thank you very much. Have a great 4th of July.

Q: Is there any [inaudible], like does this set any kind of process going that says at the end of five years they have to be done or is it still open ended?

Senior Defense Official: The war on terrorism is open ended.

Q: All right.



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