

United States Department of Defense.

News Transcript

On the web: <http://www.defenselink.mil/cgi-bin/dlprint.cgi?http://www.defenselink.mil/transcripts/2004/tr20040518-0784.html>

Media contact: +1 (703) 697-5131

Public contact: <http://www.dod.mil/faq/comment.html> or +1 (703) 428-0711



Presenter: A Senior Defense Official and a Senior Justice Official

Tuesday, May 18, 2004 3:07 p.m.
EDT

Final Administrative Review Procedures for Guantanamo Detainees

STAFF: Well, I think everybody knows why we're here today. Today the department's announcing the release of the final Administrative Review Procedures, the instructions for detainees at Guantanamo Bay. This was something that was first announced by the secretary of Defense back in February 13th, as a matter of fact, down in Miami. And I would commend to you the transcript of that, which is on the DefenseLink, if you are interested in the origins as you're writing your story.

But back then, of course, he made this announcement by saying that, "In a departure from the practices in most previous wars, the United States is working to release those enemy combatants that can be judged to be no longer a threat or who no longer possess intelligence that could help us prevent future acts of terrorism."

And so today we have our senior Defense official and our senior Justice Department official who are here today to go over this new administrative review instruction with you. The instruction is being brought in, I think, as we speak, so that you'll have it, along with a fact sheet that addresses kind of the high points of it. And they're going to talk you through it just a little bit and then open it up for your questions.

So with that, I'll turn to the Defense official to start.

SR. DEFENSE OFFICIAL: Thank you. The Administrative Review Procedures that are the subject of this talk have been adopted just for the enemy combatants captured in the Afghan theater who are detained by the department at the Guantanamo Bay Naval Base. The procedures will provide an annual review for each enemy combatant detained at Guantanamo. Each detainee will have an opportunity to appear before a review board and present his case for release, that he does not continue to pose a threat to the United States. The review board will consist of -- and the review board will sit in panels of three military officers.

The detainee will be allowed to present his statement directly to the review board. He will have

the assistance... the detainee will have the assistance of a military officer in preparing for and presenting his statement to the review board.

In addition, the review board will receive a presentation from a second military officer whose task is to present all of the information relevant to the question that's to be resolved by the review board, which is whether the detainee continues to present a threat to the United States and its allies. That designated military officer, as you'll see, is described in the review procedures. That officer's responsibility is to present all the information, both information that shows that the detainee continues to be a threat and, on the other hand, information that would tend to show that he is no longer a threat. The review board will review the evidence. The detainee's family will be allowed to present written information to the board, as will the government of the state that -- of which he is a citizen will also be allowed to present information to the board. The other relevant government agencies -- Department of State, Department of Justice, CIA, Homeland Security -- will also have the opportunity to present information.

The review board will make an assessment based on all the evidence presented, whether the detainee continues to present a threat to the United States, and will make a recommendation to a senior civilian, presidentially appointed, Senate-confirmed official of the department, who will have the ultimate authority to determine whether the detainee should be released, should be transferred to his home country for continued detention, or should continue to be detained in the custody of the United States.

Among the procedural aspects of the review, the detainee will have access to an interpreter or a translator as necessary, will be able to meet with the assisting military officer who will assist him in presenting his case to the review board.

It's important to put this in context. The review that's undertaken is not legally required. The status of these detainees has been determined: they are enemy combatants detained in the ongoing conflict. As a matter of policy, the department has adopted these procedures so as to not keep any detainee -- basically any detainee for whom the war is over, who is no longer a threat to the United States. We don't want to hold anyone longer than is necessary, and these procedures allow us -- the department an opportunity to review the case of each detainee individually annually to determine whether or not further detention is warranted.

Any -- we'll take questions.

Q How does the process you've just described differ from the way that you're been releasing the folks that have been released thus far?

SR. DEFENSE OFFICIAL: As you'll see when you get a copy of the procedures, this process is added as a new layer to the procedures that have already been in place. The interagency review process has been in place, under which I believe 134 detainees have been released. Another 13 have been transferred to other countries for further detention. Once a detainee has been through all of those

existing procedures, then they will be subject to review under these review procedures. They will be reviewed. We will start the procedures. We will -- there are already -- we're already working on implementing them. The reviews will start as promptly as possible, and for each detainee they will be reviewed on an annual basis.

Q Can you give us some sort of an example of what you anticipate a detainee will be able to tell you, other than I promise not to be a terrorist anymore?

SR. DEFENSE OFFICIAL: Well, there are a number of different things that could be presented. He may -- the review board will be presented with all the information in the possession of the United States government that bears on the question of whether or not the detainee continues to pose a threat. The military officer who is assisting the detainee will be given a summary of that information, the information that's being presented to the board, to present and discuss with the detainee in advance of the hearing before the board, and to work with the detainee on presenting a case to the board.

Q I'm just having a hard time coming up with an example in my own head as to how, if I were a detainee, I would convince you to -- now that I've been in jail for the past two years, that I'm not a threat to you right now.

SR. DEFENSE OFFICIAL: Well, it's -- any -- any factors that one could think of hypothetically -- conduct while in detention, information that's been provided, statements that other detainees have made about this particular detainee, any -- there's no limitation onto the type of -- the type of evidence that the detainee under review could present.

Q A couple of things. First, you mentioned annually. How many years are you planning on holding these folks? And second, what kind of transparency will there be on this process? Will we be able to see anything, or will we just be consistently given the answers, which are, you know, no, we can't talk to you in any way about any of the detainees at all? Is there any transparency?

SR. DEFENSE OFFICIAL: Just -- two parts to your question. First, the reviews will be annual. Under the law of war, we are -- the government is allowed to detain these combatants until the hostilities are over. And we've done that in prior conflicts. We can't say now when the hostilities will end. In a departure from prior U.S. wartime practices, however, what we're doing here with these procedures is allowing the detainee basically to tell us that, in his case, his war is over, he's no longer a threat to the United States.

As for transparency, the problem with transparency is that a lot of the information that will be presented at the hearing will be classified, which imposes restrictions on public access.

Q I mean, will you be able to allow anyone access to redacted transcripts, any -- any sort of transparency that will give anyone in the world who thinks that this already sort of a ridiculous process -- and that's not me saying that, because you've heard this criticism -- I mean, how do you -- how will you somehow convince the world that this is, you know, something that's fair to these detainees, it's fair

to the families, it's fair to the countries -- ?

SR. DEFENSE OFFICIAL: Right. Well, first, we are -- by doing that, first of all, by publishing what the procedures are going to be that we're going to implement. The general question of whether transcripts of the proceedings or access to the proceedings would be made public, the answer to that has to be no because of the classified information that would be presented. As to whether or not in implementing the procedures it would be possible to provide redacted versions of either decisions that were made or transcripts, that hasn't been finally resolved.

Q A follow-up on that question and expand upon it, let's say that prisoner number 555 is going to come up for his or her annual review. How much time in advance do you let this prisoner know, and what manners -- methods can be used for that prisoner to say -- to contact his or her family to prepare those statements of the host governments?

SR. DEFENSE OFFICIAL: As you'll see in the procedures, we -- the method of contacting the family would be done through the detainee's home country. The home country would be notified of the fact that the detainee would be subject to review. And it's required that there be sufficient time to allow both his home government and his family to submit written statements on his behalf.

Q And sufficient time will be determined at some future point?

SR. DEFENSE OFFICIAL: Right.

Q Okay. And I'm sorry. And what happens if there's no home country identifiable, but this person may have some people that he wants to have submit written testimony on his or her behalf?

SR. DEFENSE OFFICIAL: Well, to that extent, again, we would have to -- I'm not aware of any case in which that would come up, but it would be a case in which the military officer who's assisting him would be there to address that type of issue.

Q And finally, then, will it be announced that Prisoner 555 had a hearing, and it was agreed to or reviewed?

SR. DEFENSE OFFICIAL: No.

Q Nothing? Okay.

Q Can you explain the decision behind denying these detainees a right to a lawyer when they're appearing on these annual reviews? And also, just the fact that it's an annual review -- isn't it -- I mean, it is implicit that you're planning on holding these detainees for a period of years. I mean, it's -- is it not implicit?

SR. DEFENSE OFFICIAL: First, on counsel, as you'll see explained in the procedures, these are

not -- this is not an adversarial proceeding. The military officer who is presenting evidence to the review board on behalf of the United States is presenting both evidence in favor of detention and evidence in favor of release. We are -- this is not a judicial proceeding. It's a review undertaken to determine whether, as a matter of policy, the United States government should release a particular detainee and whether that detainee poses a threat to the United States and its allies.

So counsel -- there isn't really counsel for the United States or for the detainee in this proceeding. There's a military official -- officer who will assist the detainee, and there's a military officer who will present all the information that's in -- reasonably in his possession, the government's possession, on the issue of whether detention should continue or not.

Q But what would be harmful about giving the detainee a lawyer to represent him? I mean, this is a hearing that's going to determine whether he's going to spend another year behind bars.

SR. DEFENSE OFFICIAL: Well, again, this is -- there's a balancing that goes on. This is, again, not an adversarial proceeding. It's a proceeding that's instituted by the department for policy reasons -- it's not legally required, it's not a judicial proceeding -- to determine whether the detainee continues to pose a threat to the United States. And for a whole host of reasons, there are procedural complications with introducing counsel, in particular with classified information, for example.

So --

SR. JUSTICE OFFICIAL: And if I could add one thing, because there have been a couple of questions about the annual nature of the reviews suggests that this will go on for a number of years. And I think it's something that Secretary Rumsfeld touched on in his speech in Miami, and that was touched on here today, that ordinarily under the laws of war, once someone is captured as an enemy combatant, they can be detained until the end of the conflict and that's it; they're there, they're there till the end of the conflict.

And I think that the Department of Defense, in recognition of some of the novel characteristics of this conflict, of the fact that it is not a state-to-state conflict where there is going to be a very definitive, say, peace treaty defining the end of the conflict and everything will end, is trying to come up with an innovative approach to deal with that fact. It may go on for a number of years. There may not be that definitive peace treaty. So how do we deal with that new situation? And this annual review process is a way to make sure that there's an examination every year of do we really need this person still to be here; is this person really still a threat, and instead of just leaving it till when the conflict might end, which in this case might be both some time, and somewhat difficult to determine.

Q You, I think, published the draft proposal some time ago.

SR. DEFENSE OFFICIAL: Right.

Q And then invited public comment about this. Can you say if you've made any changes from

the draft as a result of that public comment or, indeed, whether you've made any changes to the draft as compared to these, and why you did that?

SR. DEFENSE OFFICIAL: Sure. You'll see that there were changes that were made. These were vetted carefully both within the government. We received public comment both sent directly to us and published in the media. We took all of those under consideration, accepted the proposals that we thought improved the procedures and didn't take others. And you'll see, if you compare -- it was actually published --

Q Can you give an example?

SR. DEFENSE OFFICIAL: I'm sorry?

Q Can you give an example or some examples of what changes you made?

SR. DEFENSE OFFICIAL: Not off the top of my head right now. You can see if you compare side by side what was published on March 3rd, I believe it was, on our website, the procedures, with what we have released today, that there were a substantial number of changes.

Q Well, I mean, the broad outline seems almost identical to what was announced.

SR. DEFENSE OFFICIAL: The broad outline is the same, basically, which is it's a non-adversarial process before a panel of three military officers, and that the detainee will be able to present his case, with the assistance of a military officer.

Q When some of the cases of these detainees came up in the last several months for release, there were disagreements between agencies about whether these people should or should not be released. So the idea is that this review board, even if the CIA says yes, release them, and DOD says don't, the review board will be the ultimate arbiter and be able to resolve these disagreements? Or is there another process where --

SR. DEFENSE OFFICIAL: No, this would be the process under which the question would be resolved. It wouldn't actually be the review board itself. The review board makes a recommendation to a person, a senior defense official, who in the course of our implementation will be designated as the senior person to review what the recommendation -- the proceedings before the review board, the record that's been created, and make the ultimate determination as to whether to release, to transfer to another country or to continue detention.

Q Who is that person?

SR DEFENSE OFFICIAL: It hasn't been designated yet but will be promptly. We are undertaking to implement these immediately. I expect an announcement will be made quite shortly.

Q Will it be somebody who's putting on another hat that's already been --

SR. DEFENSE OFFICIAL: It will be someone who is currently in the Department of -- a civilian, presidentially appointed, Senate- confirmed Defense official.

Sir?

Q Will the public be notified of these actions if someone is released or other steps are taken? Second, is it the position of the U.S. government that this proceeding more or less is equivalent to what is referred to as a competent tribunal in international law?

SR. DEFENSE OFFICIAL: First, the decision will be reported, as you'll see in the order, to the home country of the detainee and obviously to the detainee himself. It will not otherwise be made public.

These procedures are not -- you've referred to competent tribunal, which is -- I think it's a reference to Article 5 of the Geneva Conventions. These procedures are in many respects broader and more substantial than Article 5 proceedings. For example, we are allowing the home government of the detainee to present information on his behalf and his family, for example, to participate and make statements. So it's a different inquiry.

The Article 5, the competent tribunal, is really making a determination about whether a person seized on a battlefield is a prisoner of war or is another -- or it falls into some other type of activity. For these detainees at Guantanamo, that decision has already been made. This decision is about whether or not they still constitute a threat to the United States and can be released or transferred consistent with U. S. national security interests.

More information is being collected from a lot more sources and so that, I think, would make this a much more substantial process than the Article 5 tribunal.

Q Even with all the protections that the American civilian legal system has -- the transparency, the -- you know, several levels, the lawyers, everything -- there are mistakes that take place every day. This is completely closed. This is something that, you know, the Department of Defense is asking us and the international community to just sort of trust us. How are we to know that, you know, half of the people there aren't innocent, that they are going to get a fair shake? How can you impress upon us that, you know, hey, we can be trusted with this, we are ready to be able to take this kind of responsibility? How?

SR. DEFENSE OFFICIAL: Well, as my colleague said, these procedures aren't required by law. These are persons who have been detained in the course of an armed conflict and can continue to be detained until those hostilities are over.

We are publishing these procedures to tell the American people and the world how we are going

to treat and process these detainees as a matter of policy. If a detainee no longer poses a threat to the United States; if, as I've said before, if for a particular detainee his war, his hostility toward the United States, his threat to the United States is so diminished that we believe that it's in U.S. national security interest to release that detainee -- we don't want to hold anyone longer than we have to. It's an administrative -- it's an administrative burden and cost, and we don't want to, as a matter of humane treatment of people -- if a person is not a threat to the United States, we don't want to hold them any longer than is necessary.

SR. JUSTICE OFFICIAL: And I think it's important to bear in mind what my colleague was emphasizing there, that if you start from the viewpoint of the criminal justice system, yes, these procedures are not as elaborate as those in the criminal justice system, but that's because this isn't criminal prosecution. It's not a matter of criminal prosecution; this is warfare. And if you compare these procedures to the baseline for warfare, the amount of process being provided here in terms of an opportunity to appear, notice to your home state, they can appear, they can get information from your family and present that information, you have someone to be your assistant, presenting information just on the question of whether you're a threat and should continue to be detained, not about any punishment for a charge or anything, it's much more process than is ever typically provided under the laws of war.

Q So to go back to his question, with the closed nature of this, you are telling the world trust us. I mean, that's essentially what you're saying because there's no transparency built into this whatsoever.

SR. DEFENSE OFFICIAL: Well, as I said before, the problem with transparency is that a lot of the information, a large bulk of it, is going to be classified information, which simply can't be made public.

Q Didn't you say that you wouldn't even announce when people are released?

SR. DEFENSE OFFICIAL: We would -- as you'll see in the procedures, we won't make a public announcement, but the home government will be notified, the family will be notified, the detainee would be notified of what the result is --

Q (Off mike.)

SR. DEFENSE OFFICIAL: -- that is --

Q And the problem isn't with people who everyone can reasonably assume is a terrorist. The problem is, what if there's an innocent person who's been sitting down there all this time? I believe the ICRC has made those claims. What protections are there and how can the international community -- what's there to, you know, ensure that there aren't some innocent people who are going to be sitting there for years on end; that never had anything to do with the war and just sort of got scooped up, were in the wrong place at the wrong time?

SR. DEFENSE OFFICIAL: Well, as is outlined in the procedures, there's already been an elaborate process, starting on the battlefield at the moment of capture. It's a -- as I said, it's a great burden on the United States to take somebody into custody, transport them halfway across the world to Guantanamo, Cuba, keep them in custody in that facility. We don't want to do that for people who are not a threat to the United States. So we've already had procedures in place for what's now -- since hostilities began, to review and to determine whether a person is properly detained. These procedures assume that a person has properly been detained, and the only issue that is being addressed by these procedures is whether they are -- continue to be a threat to the United States.

Q The thing about -- I'm confused on -- you said 'till the end of conflict, and I thought that you said earlier that we're talking about the Afghanistan conflict.

SR. DEFENSE OFFICIAL: Yeah, or the war on terror --

Q Yes. The Afghanistan theater you, said.

SR. DEFENSE OFFICIAL: Right.

Q Right.

Q So --

SR. DEFENSE OFFICIAL: Well, yeah, just to clarify, these are the -- we're -- these procedures apply only to detainees who are in the custody of the department at Guantanamo Bay, Cuba. And those detainees have all come from the Afghan theater. They are detainees -- anybody who would come --

Q (Off mike) -- remind me --

SR. DEFENSE OFFICIAL: Well, or in the war on terror generally, we've got -- putting -- anybody who -- the vast bulk of the detainees are from the Afghan theater. Anybody who gets -- in the war on terror is transferred to control of the Department of Defense at Guantanamo Bay, Cuba, will get the benefit of these procedures.

Q Well, even if they're not -- were not captured in the Afghan theater, but they're at GTMO -- (inaudible) -- they'll still benefit from these proceedings.

SR. DEFENSE OFFICIAL: Correct.

Q Okay. But now, at the end of the Afghan theater, the end of that war, the Afghan aspects --

SR. DEFENSE OFFICIAL: Well, the war on terror --

Q So in other words -- I'm not trying to make you look bad --

SR. DEFENSE OFFICIAL: Right, no --

Q -- but even though someone was picked up in Afghanistan and that conflict ends, in some form or fashion, and if it's ever declared over, even though the war on terror continues elsewhere, they could still be held, unless they -- (inaudible) -- if the war continues, they can still be held.

SR. DEFENSE OFFICIAL: Correct. It's defining when the hostilities end. And it's a political judgment as to when the hostilities --

Q The war on --

SR. DEFENSE OFFICIAL: The war on terror --

Q -- just so I'm sure, it's the war on terror, not just the Afghan --

SR. DEFENSE OFFICIAL: I was referring to the large bulk of the detainees we're talking about. I'm distinguishing them from Iraq.

Q The others, right. I understand. I wanted to make sure of the -- the end of the game.

SR. DEFENSE OFFICIAL: Correct. Okay.

Q Can you tell us --

Q What about the ones that are being held in the military brigs in Charleston, or -- ?

MR. BOUCHER: Separate procedures are being -- there are some -- there are a -- several detainees who are in Charleston. Separate procedures very, very similar to these are being adopted and will be released shortly, I would expect within the next few days, which will have -- there are some differences in the procedures that would be applied. For example, they -- most of them are the -- are U. S. nationals, for example. Several of them have instituted habeas litigation pending before the Supreme Court. They have counsel, that sort of thing. So we've got -- there are some distinctions in their -- in their status that need to be -- need to be addressed, and we've got to make some minor changes to those procedures. So, separate procedures will be released, as we say, in a footnote here for the GTMO procedures; separate procedures will be issued for enemy combatants in the control of the Department of Defense in the United States.

Q What is the motivation for this? Why not just stick with the original interagency process?

SR. DEFENSE OFFICIAL: The original interagency process is continuing.

Q Then why add something to it?

SR. DEFENSE OFFICIAL: Once -- once a person that's been through the interagency process and is at GTMO, we want to provide -- and that's why it's annual. If they're -- something changes over time in the person's behavior or their situation, information provided --

Q But there are some people who have been released during the course of the interagency process.

SR. DEFENSE OFFICIAL: Correct. Correct.

Q I'm trying to understand why you guys are going through this much effort to create these rules and this process. Is it to convince the world that you're not -- or that you're trying, at least, to provide some kind of fairness to this? I mean, what's the motivation behind it? I don't understand. The motivation behind --

SR. DEFENSE OFFICIAL: The motivation behind adopting these procedures --

Q Yeah, behind adopting these procedures, instead of just sticking with the sort of ad hoc interagency process that has already resulted in the release of 135. Clearly, that worked. So why wouldn't this, too?

SR. DEFENSE OFFICIAL: Right. Well, this will provide even more information, for example, from the host government of the detainee who's -- excuse me, the country that the detainee comes from, his home country, his family, provided -- given --

Q Sure. Do you think there's been a problem? Has that been lacking in the interagency process?

SR. DEFENSE OFFICIAL: No, I -- the interagency process has functioned well as far as I know. And this is -- these are to -- once somebody has already been through that process, it provides on a periodic basis another opportunity, another look to see, to double-check, to make sure that that person still should be kept in U.S. custody.

Q But what if the home country's not cooperative? What if the home country says, "This is a bad guy; I don't want to deal with him," is that a strike on this guy already?

SR. DEFENSE OFFICIAL: It's information that would be considered by the board.

Q And then how many -- how many people are down there now that this applies to, and do you have any feel for how many might be released?

SR. DEFENSE OFFICIAL: My understanding is there are just under 600; five hundred and --

SR. JUSTICE OFFICIAL: I guess that's the rough number. I'm not sure.

SR. DEFENSE OFFICIAL: -- 590, 584. I'm not quite sure off the top of my head.

Q Do you have any notion of what percent of them might actually qualify to be released?

SR. DEFENSE OFFICIAL: I don't.

Q Are we to expect that --

Q Is an important element of this another way of encouraging detainees to give up information? In other words, a detainee comes before his review, it's established he's been a model prisoner, he has renounced violence; but is this a way of telling him, look, we might release you, but we think you're holding back, and we won't release you until you give us the information we think you know about?

SR. DEFENSE OFFICIAL: This isn't an intelligence-gathering exercise. This is an exercise really for once people have been through sort of the screening process and the interagency process for reviewing whether a person should be released, and the intelligence process is through. This is really for people who have gone through that process, a determination has been made that they should stay in U.S. control; providing then on an annual basis an opportunity for that detainee to demonstrate that he no longer poses a threat to the United States, and for the United States government in an organized, systematic way to review all of the other information it has from any other sources that would show one way or the other whether that person still poses a threat to the United States.

Q And just to clarify, there's a number of people in GTMO from places like Bosnia, Africa, other locations. This procedure applies to them?

SR. DEFENSE OFFICIAL: It applies to detainees at GTMO.

Q Presuming first of all, presuming all 600 or so are going to through these hearings, does that mean -- I mean, they'll have to do three or four a day just to get everybody once a year.

SR. DEFENSE OFFICIAL: It's going to be very resource intensive. And that's why it's taking a sustained effort by the department now to ramp up and to get the processes going, get all the people in place who need to do the hearings. But that is --

Q What are the resources? How many people, how much money? What are the resources?

SR. DEFENSE OFFICIAL: Those are the questions that we're now trying to address. I'm --

Q To follow, so this is over and above a sentence someone might have to serve as a result of a conviction of the military tribunal, right?

SR. DEFENSE OFFICIAL: No. This has nothing to do with -- anybody who is subject to the president's military order, who would be going through a military commission, they are not -- it's an important qualification -- they are not eligible for administrative review under these procedures. These are only --

Q How about when they finish their sentence?

SR. DEFENSE OFFICIAL: If they finish their sentence and a determination is made that they are -- they continue to be a threat to the United States, just as they would if they hadn't gone through a military commission, as long as hostilities continue and they were detained in the course of those hostilities and continue to pose a threat to the United States --

Q At that point -- you used the term "enemy combatants" earlier, and said if hostilities ceased, you'd be obliged to release them. Isn't it really that they're declared unlawful enemy combatants so they're not covered by that?

SR. DEFENSE OFFICIAL: I'm sorry, if they're unlawful combatants --

Q So you can keep them without -- even if hostilities end --

SR. DEFENSE OFFICIAL: I'm sorry, I'm confused. You asked about whether they -- somebody who was --

Q Well, they're all enemy combatants.

SR. DEFENSE OFFICIAL: Correct.

Q It's whether they're -- I thought the -- instead, what we're dealing with here are these unlawful combatants.

SR. DEFENSE OFFICIAL: Correct. They are all unlawful enemy combatants. They are not -- some of them may be subject to military commissions. Those people who -- and there are six of them who have been identified to date -- (to the other briefer) -- Correct me if I'm wrong --

SR. JUSTICE OFFICIAL: That's right.

SR. DEFENSE OFFICIAL: -- that have been -- the president has made a determination that they are subject to his military order for prosecution by military commission. Those persons, those six, are not eligible for these review procedures. They are being processed --

Q Let me finesse it. Everybody there, by virtue of not having certain rights, has been declared an unlawful combatant; is that not so?

SR. DEFENSE OFFICIAL: I think --

Q Enemy combatants -- Iraqi soldiers are enemy combatants under international law.

SR. JUSTICE OFFICIAL: That's right. They have been determined -- the al Qaeda there have been determined --

Q No --

SR. JUSTICE OFFICIAL: Well, let me just go one step at a time. The al Qaeda there have been determined not to have POW status because al Qaeda is a terrorist organization, it's not a state party to the Geneva Conventions. They can't have POW status under the Geneva Conventions. In addition, because they didn't comply with the requirements for lawful belligerency, that they were unlawful or illegal combatants or belligerents, yes. Taliban similarly; that because they did not comply with the four requirements under Article 4 of the Geneva Convention on prisoners of war, that they do not have POW status under the Geneva Conventions. And yes, they are illegal or unlawful combatants.

But that -- I don't see, then, where you're getting to something --

Q Is that not the basis on which you can keep them for a long time? If they were not unlawful combatants, after the war ends, you have to release them.

SR. JUSTICE OFFICIAL: Well no. Okay, here's -- I think I understand where you're going. And this is -- let me try to clarify this.

An enemy combatant, lawful or unlawful, POW status under Geneva Conventions or not, an enemy combatant can be held until the end of the conflict. So they could all be held till the end of the conflict.

If someone is prosecuted for a particular act in the military commission -- for example, one of the crimes and elements listed in the rules for military commissions is unlawful belligerency murder. That is murdering someone while an unlawful belligerent, because unlawful belligerents do not have the belligerent's privilege to take life on the battlefield.

If one is prosecuted and convicted for that and sentenced to a long term and the war ends before that term has been served, then yes, he could be detained to serve out that sentence. And that's -- I mean, that's part of the customary laws of war that would apply. Even under the Geneva Convention system, it's clear. There is a provision in the GPW that permits someone to be held after the end of the conflict to finish a penal sentence for some specific crime that he's been charged with.

Q Now, the example with no penal sentence.

SR. JUSTICE OFFICIAL: Yeah, if there's no sentence --

Q Unlawful combatant --

SR. JUSTICE OFFICIAL: -- and the conflict ends --

Q And the conflict ends --

SR. JUSTICE OFFICIAL: -- it's my understanding that at the time that the conflict ends that those people would be released if they have not been convicted, if there has not been some process against them.

Q When is the first review hearing going to be held?

SR. DEFENSE OFFICIAL: I can't give you a date.

Q When's the soonest it could be?

SR. DEFENSE OFFICIAL: Oh, I honestly -- I'd be speculating at this point. We are putting together -- literally, I'm attending meetings today -- putting together --

Q Months away from now?

SR. DEFENSE OFFICIAL: No, no, no, no.

Q Days away from now?

SR. DEFENSE OFFICIAL: We're talking about weeks.

Q Weeks.

SR. DEFENSE OFFICIAL: Weeks, not months.

Q And how many detainees are there right now? How many detainees are there right now at GTMO?

SR. DEFENSE OFFICIAL: Just under -- I think it was 595. Just under 600.

Q Is that including the six or is that without the six?

SR. DEFENSE OFFICIAL: That, I believe, includes the six.

Q Five (hundred) ninety-five and six.

SR. DEFENSE OFFICIAL: Right.

Q And you mentioned that there's other rules -- similar rules for Charleston.

SR. DEFENSE OFFICIAL: Right.

Q Will there be similar rules -- forgetting Iraq penal facilities for the moment, for Diego Garcia and other --

SR. DEFENSE OFFICIAL: No --

Q No?

SR. DEFENSE OFFICIAL: Just for the United States and for GTMO.

Q Can I go back to what Pam was asking about, the reasoning for this review panel? Was there any, for lack of a better term, pressure put on DOD from Amnesty International or Red Cross to add this layer, or is this just something that was developed in the process through --

SR. DEFENSE OFFICIAL: This is something that's been in the works for a long time. I mean, the secretary's speech was back in February. But even before then it was something that was in the works. It's not something that's of recent vintage and it's really, in many ways, a practical benefit to the department so that we don't have to hold people who are no longer a threat -- that there's actually a process in place. Somebody is going to take responsibility and say I'm going to review all the evidence with respect to this person, and this person is no longer a threat to the United States and can either be released or can be transferred to his home country.

Q Given that there is, as we've been discussing, an interagency process already and there's a military commissions process, I mean, isn't this essentially a rather expensive public relations exercise to take some heat out of the political row around this?

SR. DEFENSE OFFICIAL: No, it's actually to make -- to focus the inquiry on the threat as opposed to -- the interagency process has a lot of different components to it, and it's threat, there's intelligence, there are assessments of, for example, whether a person would be eligible for a military commission. This focus of this inquiry is strictly on whether the person continues to constitute a threat. After he's been through all of the other screening processes that are in place and is -- a decision has been made that that person should stay at GTMO. On a regular interval, that decision will be reevaluated, and through this review board a decision will be made as to whether or not that person should continue to stay in U.S. custody or it's safe to release them.

STAFF: Sir, there's a gentleman way in the back there that's trying to get your attention.

Q I wanted to make sure I understood something that you had mentioned earlier. Do I understand you that you might consider or are considering releasing redacted transcripts of these proceedings?

SR. DEFENSE OFFICIAL: That hasn't been decided. What has been decided is that there will -- because of the classified information that will be discussed, that there would not be public access to the proceedings or to the raw transcripts. As to what's done with it after that, that just hasn't been decided in implementing.

Q And again, just to be clear, what's the rationale for not at least releasing the fact that, you know, a detainee is under review or has been released or has been reviewed and his release has been denied; just the fact that you took a look at the guy and said yes or no?

SR. DEFENSE OFFICIAL: Right. I mean, it's something that we have decided for security reasons. So we are not going to -- it could be reconsidered. These -- as you will see in the text of the order, these can be amended by the secretary as we go forward. And as they're implemented we're going to have to -- there are a lot of questions that are going to have to be resolved -- many of them have been raised here -- in implementing the procedures and fine-tuning it. That can be reassessed.

Q Sir, can I just clarify something from earlier? Everyone -- I think I misunderstood something earlier in my line of questioning. Everyone that's going to be going through this will have already been through a process to determine whether or not they should be being held down there, whether or not they are a threat.

SR. DEFENSE OFFICIAL: Right.

Q Has everyone down there been through that yet? Has there been a determination made, everyone's been scrutinized?

SR. DEFENSE OFFICIAL: Yes.

Q So everyone who's down there now has been through an administrative process and has been determined to be a threat, and that's the point at which they come through this?

SR. DEFENSE OFFICIAL: Well, they're been through the process, and it's described in detail in the order, the process that they have gone through from the point of capture on the battlefield to the decision whether to transfer them to Guantanamo, their arrival at Guantanamo, even while they're at Guantanamo, the interagency process. Once they've been through all those procedures, which are -- they're -- the reviews are done for different reasons. There's an initial determination, you know, at the battlefield capture: Is this someone who should be transferred to Guantanamo?

Once they've been through all those processes, and we -- a decision has been made that this person is a threat to the United States and should remain at Guantanamo, these procedures are now in

place, so that on an annual basis -- even though, as my colleague has pointed out, under the law of war, we're not required to do so, on an annual basis we will review each detainee and determine whether or not that detainee continues to be a threat to the United States.

Q This is Charles Manson comes and sits down in front of three people, and they decide, "Well, is this guy still nuts, or is he cleaned up and ready to go back out in society" --

SR. DEFENSE OFFICIAL: Whether he -- whether that detainee is a threat to the United States and its allies.

Q Okay.

Q On the treatment of detainees, as you know, Senator Leahy has asked DOD to supply videotapes, which apparently exist, of how guards have treated -- handled detainees in various situations. How is DOD going to respond to that? Do you know?

STAFF: The question is really beyond the scope of what we're here for today with respect to administrative procedures. So with that, if there is anything else that's really burning, and I don't see any hands up, let's call it -- let's wrap it up.

Q Just one real quick one, I guess.

STAFF: On administrative procedures?

Q Just on the procedures, yes.

STAFF: (Inaudible) -- go ahead.

Q The three officers -- are those officers going to be brought in from the United States? Are those three officers who are based down in Guantanamo Bay?

SR. DEFENSE OFFICIAL: The officers will be selected by the designated civilian official. It's the senior -- senior political appointee will oversee the process. He will select the members of the board, and they could come from anywhere within the United States military.

Q All right. Thank you.

Q Thank you.

(C) COPYRIGHT 2004, FEDERAL NEWS SERVICE, INC., 1919 M STREET, N.W., SUITE 220, WASHINGTON, D.C. 20036, USA. ALL RIGHTS RESERVED. ANY REPRODUCTION, REDISTRIBUTION OR RETRANSMISSION IS EXPRESSLY PROHIBITED. UNAUTHORIZED REPRODUCTION, REDISTRIBUTION OR RETRANSMISSION CONSTITUTES A

MISAPPROPRIATION UNDER APPLICABLE UNFAIR COMPETITION LAW, AND FEDERAL NEWS SERVICE, INC. RESERVES THE RIGHT TO PURSUE ALL REMEDIES AVAILABLE TO IT IN RESPECT TO SUCH MISAPPROPRIATION. FEDERAL NEWS SERVICE, INC. IS A PRIVATE FIRM AND IS NOT AFFILIATED WITH THE FEDERAL GOVERNMENT. NO COPYRIGHT IS CLAIMED AS TO ANY PART OF THE ORIGINAL WORK PREPARED BY A UNITED STATES GOVERNMENT OFFICER OR EMPLOYEE AS PART OF THAT PERSON'S OFFICIAL DUTIES. FOR INFORMATION ON SUBSCRIBING TO FNS, PLEASE CALL JACK GRAEME AT 202-347-1400.

<http://www.defenselink.mil/transcripts/2004/tr20040518-0784.html>