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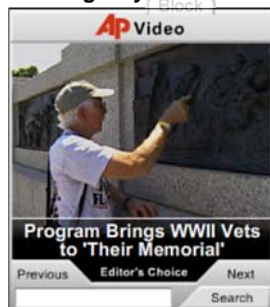
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Justice Watch

Miami lawyer: U.S. should take high road in tribunals

June 23, 2008


By: John Pacenti

A U.S. Supreme Court decision allowing foreign terror suspects to challenge their detention in civilian court won't have an immediate effect on those facing military commission trials, said a Miami attorney who served as an observer in Guantanamo for the American Bar Association.

[Neil Sonnett interview](#)

Criminal defense attorney Neal R. Sonnett is serving as the ABA's eyes and ears at the U.S. Navy base in Guantanamo, Cuba, for the military cases against detainees.

While some analysts predict the Supreme Court decision will end Guantanamo's detention of

 suspected terrorists as we know it, Sonnett expects the impact to be more indirect.

"We are just going to see how it pans out," said Sonnett, chair of the ABA's Task Force on the Treatment of Enemy Combatants. "The decision itself does not bring the commission proceedings to a halt, but it does open up new avenues for litigation."

Sonnett was interviewed in his Miami office after returning from Guantanamo. He said he was expressing his personal opinion and was not speaking for the ABA.

In a case brought by six Algerian detainees in *Boumediene v. Bush*, the Supreme Court split 5-4 to revive about 200 stalled habeas corpus petitions pending in federal court in Washington.

In a rebuke to the Bush administration, Justice Anthony Kennedy wrote for the majority, "The laws and Constitution are designed to survive and remain in force in extraordinary times."

Justice Antonin Scalia in dissent said the June 12 decision "will almost certainly cause more Americans to be killed."

Cmdr. Jeffrey Gordon, spokesman for the Pentagon and Guantanamo, referred questions on Guantanamo commission hearings to the Department of Justice.

"While we disagree with the ruling, it is important to note that the Boumediene case did not concern military commission trials," the Justice Department said in a June 12 statement.

"Boumediene involved a challenge to the procedures that Congress and the Executive (branch) have established to permit enemy combatants at Guantanamo to challenge their detention during ongoing hostilities."

Of about 270 men detained at Guantanamo, less than two dozen have been officially charged. The Pentagon has said it plans to try as many as 80 detainees.

"Recent studies have shown that a large percentage of the people in Guantanamo are not terrorists," Sonnett said. "They were sold to the United States troops for bounties. There are some who were turned over to Americans as revenge for tribal feuds. They are not people who were ever dangerous to the United States."

In light of the Supreme Court decision, he said attorneys for those charged have asked for habeas corpus relief in federal court as well, but "the government is going to do all it can to move these cases along."



Neal Sonnett

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Defense attorneys asked for a postponement at a June 5 arraignment at the Navy base for five suspects linked to the Sept. 11, 2001, terrorist attacks that killed 2,973 people. Two attorneys were not even present because they had yet to complete security clearances, Sonnett said.

Marine Col. Ralph Kohlmann, chief judge of the Guantanamo Bay war court, rejected a delay and ruled three defendants, including admitted al Qaeda mastermind Khalid Sheikh Mohammed, could serve as their own attorneys.

The American Civil Liberties Union claimed the civilian attorneys have had too little time to gain the trust of the defendants after they had been in solitary confinement for five years and tortured.

"What was so extraordinary about these proceedings is that they took place before lawyers really had a chance to consult with their clients," Sonnett said.

The detainees also are unlikely to trust lawyers assigned to them by the military, he said.

"They are wearing the very same uniforms as the folks who captured them and the folks who brought them to Guantanamo and the folks who jailed them in Guantanamo and the folks who are going to prosecute them in Guantanamo and the military judge who is going to preside," Sonnett said.

The Bush Administration has denied that it tortures detainees. President Bush said he disagreed with the Supreme Court decision but said the administration will abide by it.

He observed the June 5 proceedings with others from the back of the courtroom behind double-paned glass. An audio feed was cut off repeatedly when the suspects spoke of torture or forced medication.

One comment that got through came from detainee Ammar al-Baluchi, who called the hearing "unfair and unjust" and said he should have been given an attorney five years ago when he was arrested. He allegedly handled money destined for the 9/11 hijackers.

"The government is talking about lawyers free of charge. The government also tortured me free of charge all these years," al Baluchi told the court.

Sonnett said Kohlmann didn't help matters, repeatedly undermining civilian attorneys at the daylong hearing.

"The judge was downright rude," he said. "It really seemed clear to me that he was trying to cut off the lawyers at the knees, to belittle the lawyers so that they would not look good in the eyes of their clients, so the clients would not accept them as lawyers."

Sonnett plans to submit a report this summer to the ABA's 546-member House of Delegates, recommending Guantanamo be closed and terror suspects be tried in U.S. federal courts.

Both presumptive presidential nominees — Democrat Barack Obama and Republican John McCain — have said Guantanamo should be closed. But Sonnett said the Bush administration is rushing terror suspects to the military commission trials, possibly to make it harder to close the detention camp or create an election-year spectacle for political gain.

Sonnett noted Air Force Col. Morris Davis, who resigned last October as chief prosecutor for the trials, has said he was pressured by superiors to pursue high-profile cases before the presidential election.

In a Los Angeles Times op-ed piece in December, Davis said: "I concluded that full, fair and open trials were not possible under the current system. I felt that the system had become deeply politicized."

The rules governing the commission trials were set by Congress in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006.

Unlike under the Uniform Code of Military Justice where courts-martial track federal court rules for civilians, the foreign terror suspects are subject to a system modeled on the military commissions that tried German saboteurs after World War II.

Congress created a hybrid justice system that has no precedent and where rules tend to change, Sonnett said.

The role of defense attorneys — especially civilian lawyers — is minimized and, more

disturbingly, the rules of evidence have changed to avoid embarrassing revelations, especially about interrogation techniques, he said.

Any evidence that has probative value to a reasonable person, including hearsay, is allowed. Defense attorneys for the detainees have complained that interrogators were told to destroy notes, which Sonnett contends is nothing short of obstruction of justice.

ABA president William Neukom wrote President Bush in February, saying that detainees will not receive due process or fair trials because “the standards for admissibility of evidence could allow for convictions based on rank hearsay” and “statements secured through coercion could be introduced against a defendant.”

At the arraignment, the word torture was mentioned by detainees at least a half-dozen times. The military has acknowledged water-boarding — which simulates drowning — was used to obtain information from Khalid Sheikh Mohammed.

Another suspect, Ramzi bin al Shibh, said he was given a psychotropic drug, and Sonnett said it was evident it was against his will.

“If we intend to try them and show the rest of the world the way due process works in America, then we have to be careful how we proceed with these cases. We can’t just have show trials,” he said. “What I saw in Guantanamo ... was not a shining example of full and fair due process from the denial of request of continuance to the rush to trial.”

The ABA has been on the forefront of the issue of the treatment of terror suspects since U.S. citizens including Jose Padilla were charged with terrorist activities.

Lobbying by the ABA removed substantial roadblocks that threatened participation by civilian lawyers in military trials.

If the five 9/11 suspects at Guantanamo are guilty, Sonnett said they must be brought to justice and may deserve the death penalty. But America should show the world its impartial system of justice when trying cases with such a severe penalty, he said.

Some members of Congress are talking about revamping the commission trial system again to better reflect existing military law. But Sonnett said the federal courts already have shown they can handle high-profile terrorism cases.

Moving the terror cases to federal court would help take back the moral high ground lost amid reports of torture and abuse at detainee prisons in Iraq, Afghanistan and Guantanamo, he said.

“It’s not about them. It’s about us,” Sonnett said. “It’s about this country, not them.”

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