

GUANTANAMO DETENTION CAMP

Lawyer's release of names defended

■ Navy lawyers dued over whether a counterpart at Guantánamo spilled national security secrets by revealing names of war-on-terror captives.

BY CAROL ROSENBERG

crosenberg@miamiherald.com

NORFOLK, Va. — Attorneys for a Navy lawyer facing up to 24 years in military prison for mailing a list of Guantánamo detainee names to a civil liberties group — inside a Valentine — argued at his court-martial Monday that the document wasn't secret and its disclosure did not endanger national security.

Lt. Cmdr. Matthew Diaz, 41, a Navy JAG or judge advocate general, faces five charges ranging from unlawfully releasing classified material to conduct unbecoming an officer.

"This case deals with the deliberate, intentional, conscious release of classified information," the prosecutor, Navy Lt. James Hoffman, told a jury of seven Navy officers at the week-long trial's opening here at Naval Station Norfolk.

Defense attorneys countered that the material wasn't marked "SECRET" on the computer screen or on the printout, drawn from a Guantánamo database that contains intelligence on war-on-terror captives.

But, in opening arguments, both sides agreed that Diaz mailed the 39-page computer printout of the names and serial numbers to the New York Center for Constitutional Rights in January 2005.

He shrunk the pages in a copier to the



DIAZ

bearing a picture of a droopy-eyed Chihuahua and mailed it in a fire-engine-red envelope with a return address of Joint Task Force Guantánamo, at the U.S. Navy base in remote southeast Cuba.

At the time, the civil liberties group was leading the charge in federal court to file unlawful detention suits called habeas corpus petitions on behalf of as-yet-unidentified captives.

But rather than use the list to transform a John Doe lawsuit into one with detainees' names, Barbara Olshansky, attorney for the Center for Constitutional Rights, testified that she called a Washington, D.C., federal court, where the lawsuits were filed, and was instructed to turn it over to a security officer.

FBI agents tracked it back to Diaz through fingerprints.

At issue is whether the information was then classified and whether it endangered U.S. national security and helped America's enemies by being mailed to a New York City human rights attorney whose clients included war-on-terror captives.

The prosecutor argued that trial evidence would show that the information Diaz downloaded from a largely classified intelligence website — including codes and serial numbers — "puts at risk lives of our soldiers, sailors, airmen and Marines on

size of an index card, Hoffman told the jurors. Then he tucked them inside a Valentine's Day card

the front line in the war on terror."

But a defense counsel, Navy Lt. Justin Henderson, said his client had a "crisis of conscience" during a six-month tour at the offshore prison, where he was deputy staff judge advocate — and didn't believe the names were a national security secret.

"We don't expect the evidence will show that Matt Diaz made the right decision. We don't expect the evidence will show he made a wise decision," said Henderson. "He made a decision that was less than forthright. But he did not make an unlawful decision."

Diaz, a 17-year veteran of U.S. military service, started out as an enlisted soldier but subsequently got a law degree at the Washburn University School of Law in Topeka, Kan., and a commission as a Navy officer.

He was based at Guantánamo in late 2004 and early 2005, when civil liberties lawyers were arguing that a U.S. Supreme Court decision meant the Bush administration should release all Guantánamo detainees' names.

But it would be more than a year before those names were released — after another court ordered their release in a Freedom of Information lawsuit filed by The Associated Press.

Diaz's civilian attorney, a former Marine Corps major and military judge, Patrick McLain, said lawyers would put on a defense later this week that spoke to Diaz's good character and a "hard-scrabble" upbringing as a child of divorce whose father has been on California Death Row for more than 20 years.



McLain said his Navy attorney client believes his father was wrongly convicted of killing patients as a health-care provider.

When he was charged, Diaz initially faced a maximum of 36 years in prison, if convicted. Charges have since been reduced and he now faces a maximum of 24 years.