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## **Debate drags on over U.S. detainees**

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U.S. NAVAL STATION, GUANTÁNAMO BAY, Cuba - Chained to a chair before three judges in a fortified detention camp, the man in the orange jumpsuit and flip-flops smiled nervously when a U.S. military officer called him an "enemy combatant."

The man is charged with being a member of al-Qaida. The proof? That his name appeared on a list in a senior al-Qaida member's computer, though the list had no heading.

Did he have anything to say in his defense? the judges asked.

The detainee took an oath to "Allah, the most merciful," clutched the three yellow pages of his statement and read it aloud in Arabic.

"I am a civilian so why am I being tried in a military court?" the man asked.

The detainee's confusion is understandable: though being charged by the military, he did not serve in an army.

It also cuts to the heart of a debate about the U.S. military's treatment of the 550 foreign men it has held here for nearly three years as alleged Taliban or al-Qaida fighters.

Until recently, the men were held without formal charges or legal counsel, prompting outrage from critics who claimed they were being denied due process and subjected to heavy-handed interrogation tactics including physical abuse.

That changed in June, when the U.S. Supreme Court ruled that the detainees are entitled to hearings to challenge their status as enemy combatants. Since then, more than 200 of the detainees have appeared in the hearings, known as Combatant Status Review Tribunals, at this U.S. military outpost.

### Human rights concerns

But many human rights groups believe the hearings are biased against the detainees. Among their concerns is the fact that the detainees can be held indefinitely on the basis of evidence they aren't even allowed to see.

"The persons who have been responsible for war crimes should be prosecuted but in a fair manner - and that's not what is taking place," said James Ross, senior legal adviser for Human Rights Watch. "We're concerned about the process and concerned about the United States abiding by its international law obligations. These hearings are not a substitute."

Military officials at Guantánamo Bay said they are detaining, interrogating and judging the detainees "in a manner consistent with the Geneva Conventions" of 1949, which govern the treatment of prisoners of war and civilians. "The global war on terrorism is a different type of war," said Capt. Beci Brenton, a military spokeswoman. "We are developing an innovative way to deal with that terrorism. We think the process we have established provides them a fair opportunity."

The detainees are being treated better than international law says they have to be, U.S. military officials said.

The Supreme Court rejected the U.S. government's argument that it could hold the detainees indefinitely without a hearing because al-Qaida fighters aren't citizens of a single country and Taliban soldiers aren't soldiers for a legitimate government, making both groups ineligible for POW status.

The detainee, whose name the military will not allow to be released, said he belongs to neither group. "I know that the accused is innocent until proven guilty," he said. "First prove that I am a criminal," he continued, asking that he see evidence against him, "and then after that I will prove I am innocent."

A few independent U.S. media reports suggest this detainee is not a member of al-Qaida or the Taliban, but a humanitarian volunteer who went to Afghanistan to help war victims but was sold into captivity by Afghans who traded dozens of men for cash. U.S. officials had offered bounties for suspected fighters in the frenzy after the invasion.

#### Low intelligence value

The apparent holes in the case against him coincided with the release of other media reports and independent investigations alleging detainees at the camp here have very low intelligence value in the war on terror.

Lt. Col. Anthony Christino, a 20-year veteran Pentagon intelligence officer, said earlier this month that officers at Guantánamo Bay are harvesting low-grade intelligence from the detainees and that U.S. officials have "wildly exaggerated" the value of the interrogations.

The detainees, whose names are being kept secret by the military, were plucked from areas near battlefields in Afghanistan or Pakistan after the Sept. 11, 2001, attacks. Many have been held here since January 2002.

They live in cells identical to those in facilities ranging from minimum- to maximum-security U.S. prisons.

They are assigned white, tan or orange jumpsuits, the colors denoting how cooperative they have been: white is most cooperative, orange is least.

All will undergo hearings by the end of the year during which they will sit shackled in 10-by-20-foot rooms in Camp Delta, the sprawling detention center inside Guantánamo Bay.

The tribunals, designed by U.S. Defense Secretary Donald Rumsfeld, decide whether detainees are enemy combatants based on secret evidence garnered from secret sources. The military judges, whose names also aren't revealed, deliberate in secret. And detainees must answer charges without help from a lawyer, unless you count the "personal representative," an officer with no legal training whose name is also secret, even to the detainee.

#### Neutrality test

On Wednesday, a federal court judge ruled that three detainees must be allowed access to attorneys and that the U.S. government can't monitor their conversations with their lawyers. But it is unclear when or whether that ruling will apply to all detainees.

In addition, lawyers and human rights advocates are barred from even observing the tribunals. Journalists may attend only if they keep secret the identities and nationalities of detainees. That applies even in the case of the man who smiled when accused of belonging to al-Qaida, though he is one of 12 detainees named in the lawsuit that prompted the Supreme Court's June ruling.

All three military judges must pass a "neutrality" test, but human rights monitors say the criteria are weak.

Neutrality is established merely if none of a judge's relatives was killed in the Sept. 11, 2001, attacks. The judges also must not have been involved in the capture, detention or interrogation of detainees.

The hearings may have two outcomes: The detainee will be freed if the judges believe he's not an enemy combatant or judged to be of little intelligence value. Otherwise, he'll be held for up to a year until his case is reviewed at another hearing. Those reviews can be repeated indefinitely - and the detainee held indefinitely.

So far, the tribunal judges have declared 95 detainees to be enemy combatants. It has found only one detainee to be innocent. He was released.

As a result of the Supreme Court ruling, the U.S. military also must hold trials for detainees suspected of having committed war crimes. The 15 detainees who have been charged with war crimes so far will be given military defense lawyers.

Underscoring concerns by human rights groups about the neutrality standards for judges, three of the six U.S. military officers conducting those war-crimes trials were removed Thursday after complaints of potential bias. Preliminary motions in those trials are to begin Nov. 1.

Military officials acknowledged that they probably will release most of the detainees, who come from at least 42 countries and speak a dozen languages. More than 200 of the 750 men who have been brought to the detention camp have been released so far.

Some were freed for lack of evidence, said Brig. Gen. Martin Lucenti, deputy commanding general of the Joint Task Force at Guantánamo Bay, while others were released to their own countries' authorities for further judicial proceedings.

Lucenti said a core group of detainees from one country - which the military would not allow Newsday to identify - has been the most resistant to interrogations, and that some of the members have not uttered a word to authorities since arriving nearly three years ago.

He said a small group of detainees are providing the best intelligence information, and that some have no intelligence value, but that "They are committed to radical Islam, to cut the heads off of infidels - and that's us."

#### Treatment of detainees

Nonetheless, he said they are treated well, receiving, for example, religious items including Qurans, prayer beads, mats and oil, and arrows in their cells pointing to Mecca. "We're intent here on providing a humane detention regime because it will yield the best intelligence," he said. "We're making efforts to comply to the maximum extent we can with the International Committee of the Red Cross."

Still, he acknowledged that the camp has been the site of at least 34 suicide attempts by 21 prisoners, none of which was successful.

In January, Red Cross officials publicly aired concerns about the treatment of the detainees at the camp, in a highly unusual move for the organization, which gains access to POWs and other suspected combatants in exchange for keeping its findings confidential. Some of those concerns still exist, Red Cross officials said.

"Our basic line hasn't changed," said Antonella Notari, a spokeswoman for the Geneva-based organization, referring to the group's concerns over the detainees' mental and emotional health since they have endured long periods of interrogation.

Amanda Williamson, a Red Cross spokeswoman based in Washington, said, "Some of our recommendations have been implemented, but there are certain elements of treatment that need to be addressed."

Lucenti said Guantánamo Bay was unfairly "painted with the same brush" when the Abu Ghraib prison scandal in Iraq erupted last spring.

Brig. Gen. Jay Hood, commander of the Camp Delta joint task force, said Guantánamo came under suspicion when critics charged that some methods of abuse of Iraqi prisoners at Abu Ghraib were first approved by high-level U.S. military officials such as Rumsfeld, and had been used first on detainees in Guantánamo Bay.

Some released Guantánamo Bay detainees have said they were severely beaten by special armed teams, and that the assaults were videotaped by other officers.

Other media have reported that detainees complained to the Red Cross of being hooded, stripped naked and intimidated by dogs, in incidents similar to those depicted in photos from Abu Ghraib. Last week, The New York Times quoted unnamed officers at Guantánamo Bay as saying the most resistant detainees were regularly beaten.

But Hood, who came to Camp Delta in March, and Lucenti said they are unaware of specific instances of prisoner abuse.

"There's no record or accusation that we had stripped prisoners here or left anyone naked for any period of time," Hood said.

"We do have guard dogs," Hood said, but "those dogs have not been anywhere near the detainees."

During interrogations, an interrogator, an analyst and a linguist or translator interview each of the detainees, searching for strategic information about al-Qaida and links to other terrorist groups. Detainees may be held in place for questioning by chains strapped to an eyelet bolted to the floor.

One interrogator said he makes the most progress when detainees view their captors as human beings, too.

"When you make a connection with them and humanize Americans, that creates great breakthroughs," he said, adding that some detainees have opened up after being brought tea and biscuits, for example, or ice cream.

Hood, who opened the camps to the media in the wake of an international outcry over lack of access, claimed information gathered at Guantánamo Bay has forced al-Qaida to abort a number of attacks, especially in Europe, but he would not provide specifics.

Brenton, the military spokeswoman, said officials are completing about seven hearings each week. Some detainees remain silent or choose not to take part in their proceedings, while others

take issue with their confinement and question the authority of the officers who judge them. About one-third so far have refused to take part, but their hearings go on in their absence, officials said.

One detainee, a young, red-bearded man who was allegedly captured in Afghanistan because he was a friend of a man who later committed a suicide bombing, claimed he did not know his friend had such designs.

"What explosion, what bomb?" the detainee asked through an interpreter.

"I cannot say in this session," responded a military officer, saying the information about that incident is in the "classified" portion of the hearing.

The detainee had also been staying and studying at a school that the military officer said was supported by a nongovernmental organization that had allegedly provided funding to a terrorist group.

The man admitted to attending the school, which he said he sought out because it offered fast-track education in Islam, but he disavowed the terrorist ties.

"I didn't know [his friend] do something like that to kill himself or someone else," said the detainee, speaking in broken English. "If I know that, I wouldn't have friends like that. ... My religion is a peace religion. ... I don't support terrorists. I only want to be a Muslim and pray to God."

#### Disputes al-Qaida link

Meanwhile, the detainee in the orange jumpsuit whose name appeared on an al-Qaida member's computer was allowed as much time as he liked to make his case and ask questions. His statement lasted over an hour.

The man, a soft-spoken father of two and a teacher with a degree in Islamic law, had participated in a weeks-long hunger strike while being detained.

He took issue with the criteria used to determine his alleged membership in al-Qaida. He testified he was in Afghanistan in fall 2001 because a man he had met in Mecca had asked him to teach the Quran to villagers there.

"Is a person who traveled to China a communist?" he asked. "Is a person who traveled to Iraq a member of the Baath Party?"

His "personal representative," an Air Force officer, sat quietly during the response to the charges and offered no evidence in his defense.

Tribunal members were most concerned with why the detainee traveled to Afghanistan during the war and why his name turned up on the al-Qaida operative's computer.

"There is no relationship between me and any person from al-Qaida," he said. "There are millions of Arabs with my name."