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Detainee Hearings Bring New Details and Disputes

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The government contends that Feroz Abbasi trained as a suicide bomber, that Martin Mubanga had a list of Jewish targets in New York he was studying for future attack and that three Bosnian men were plotting to blow up the U.S. Embassy in Sarajevo.

Abbasi, they charge, was training in guerrilla warfare at an al Qaeda base called Camp Farooq when Osama bin Laden gave a speech to future fighters just before the Sept. 11, 2001, attacks.

"Detainee volunteered for advanced courses . . . because this training was a [prerequisite] for being sent to the front of the front lines," the government concluded. "After completing his basic training . . . he volunteered for a martyrdom mission" to defend an airport in Kandahar from American troops, it said.

The allegations, and dozens like them, have been trickling in to a federal court in Washington in the past several weeks. They publicly reflect for the first time the Pentagon's justifications for detaining some of the 550 captives at the U.S. military prison at Guantanamo Bay, Cuba.

The information comes from special hearings -- conducted by the government at Guantanamo Bay in an attempt to comply with a landmark Supreme Court ruling in June -- in which three military officers weigh the assembled information about the detainees and decide whether they were rightfully held because of links to the Taliban or al Qaeda. The tribunals have conducted 475 hearings. One man has been freed, 193 have been ordered to remain in prison and the cases of the others are pending.

Classified Evidence

The newly released federal court documents provide far more detail than was previously available about dozens of detainees arrested around the world in the aftermath of the Sept. 11 attacks and taken to the U.S. naval base in Cuba. They also show how the special tribunals rely overwhelmingly on classified evidence and often ignore information that the detainees assert proves their innocence.

The detainees, who cannot consult lawyers at the hearings, are not allowed to see the classified evidence or learn the sources of the allegations against them.

Several contend that American interrogators physically and psychologically abused them until they made false, incriminating statements about themselves and fellow prisoners, according to their statements to the tribunals or their lawyers. In papers released Thursday, an Australian detainee who faces charges of war crimes asserted that U.S. interrogators repeatedly beat him while he was blindfolded, injected him with drugs against his will and offered him a prostitute in exchange for information about his fellow prisoners.

"I can't believe these things can happen, that they can come and take your husband away at night and, without reason or evidence, destroy your family, ruin your dreams," Nadja Dizdarevic, the wife of a Bosnian Muslim seized by U.S. authorities in January 2002, wrote to the federal court. Her husband, Boudella al Hajj, was taken into custody on the steps of a Sarajevo court that had found him not guilty of terrorism charges.

"Why? Why are they doing this to us?" Dizdarevic asked.

A Pentagon spokeswoman, Capt. Becky Brenton, said the combatant status-review tribunals are not legal proceedings and the Pentagon does not have to meet court standards for the use of evidence or to prove a charge beyond a reasonable doubt. Rather, she said, the wartime military reviews seek to answer one question with the facts close at hand: Is the person an enemy combatant, either because he is a member of al Qaeda or the Taliban, or by supporting them?

"A lot of information and witnesses the person wants to bring forward may not be relevant to answering that question," Brenton said. "Of course, we do have a presumption going into these that they are enemy combatants, based on prior [informal] reviews."

The dispute moved to the U.S. District Court in Washington after the Supreme Court ruled on June 28 that Guantanamo Bay detainees cannot be held indefinitely and that they have a right to contest their imprisonment in U.S. courts. Within days, civil liberties groups began filing claims for detainees; so far, 63 are before the federal court.

Military law expert Eugene R. Fidell said the tribunals fail to provide the due process required in any challenge to a detainee's imprisonment, known as a habeas corpus petition. But Douglas W. Kmiec, a Pepperdine University law professor, said the tribunals are fair because they allow detainees to contest charges, and the Supreme Court did not specify that the military had to do more.

Disavowed Confessions

In a large majority of the more than 50 case files reviewed by The Washington Post, each panel of three military officers that made the decision found the detainee's denial of the allegations unpersuasive and relied instead on classified evidence withheld from the detainee or on confessions that he said were made under duress. The military says releasing the classified material would jeopardize national security and its intelligence sources.

"The best you could say of the government's evidence against these people is that it's extraordinarily thin -- to the point of being nonexistent -- and anything that cuts against their case is rejected," said Brent Mickum, Mubanga's attorney.

Some of the transcripts draw portraits of fanatical holy warriors bent on violence against the United States and Israel. Abbasi, for example, admitted to interrogators that he traveled from his home in London to Afghanistan "to take action against Americans and Jews" and that he learned how to use assault weapons, grenade launchers and machine guns in "Camp Farooq." After Sept. 11, 2001, he volunteered to help an elite terrorist group defend the airport in Kandahar against U.S. forces. The tribunal reported that he said he was not disturbed about being called an enemy combatant but was "humbled Allah would honor me so."

Abbasi was removed from his tribunal hearing as he disputed some allegations and as he shouted that the tribunal had denied him his rights as a prisoner of war. "Your actions will come before Allah," Abbasi told the tribunal. "And Allah may forgive you and Allah may punish you."

Charges' Credibility

Detainee lawyers say the allegations made during the tribunal hearings cannot be trusted, for three main reasons.

First, they said the tribunal definition of enemy combatant is so broad that the military has incarcerated people who never took up arms against the United States or were arrested thousands of miles from Afghanistan or Iraq, Koran teachers who taught Taliban members, and professionals who say they unknowingly gave money to charitable organizations that funded al Qaeda.

Abd Al Aziz Sayer Uwain Al Shammeri, a Kuwaiti professor of Islamic studies, questioned the tribunal's presumption that he was an al Qaeda member, an accusation that the tribunal based on three facts: that a version of his name was on an international terrorist list, that he traveled to Afghanistan in September 2001 and that he tried to cross into Pakistan without a visa. He said millions of Arabs linked to the same Saudi tribe share his last name, and that he traveled to Afghanistan to teach the Koran as a Muslim duty.

"How can it be that travel to a large country with millions of people is travel for al Qaeda?" he asked, according to tribunal documents. "For is a person who traveled to China considered a communist?"

Al Shammeri said he fled Afghanistan after the Sept. 11 attacks without returning to his host's home to retrieve his passport when he heard that the Northern Alliance, the Taliban's main military opposition at the time, was rounding up and killing any Arabs it could find. He said he presumed Pakistani authorities would return him to Kuwait once they verified his identity.

The military officers found Al Shammeri's explanation about his passport "unpersuasive" and cited other classified evidence.

"I didn't think they would tell me, 'Since you don't have identification or a passport, that means you're a follower of Usama Bin Laden,' " Al Shammeri said, according to tribunal documents.

Detainee attorneys also contend that tribunal authorities select the information they consider. Al Hajj, a Bosnian Muslim clergyman originally from Algeria, was arrested in October 2001 based on an FBI tip that he and others were plotting to bomb the U.S. Embassy in Sarajevo. The Bosnian Supreme Court ruled in January 2002 that there was no credible evidence that he and five others had hatched such a plot. The day they were released, they were immediately taken into custody by U.S. authorities.

Al Hajj's lawyers provided the Bosnian court documents to the Justice Department months ago. The tribunal agreed that the records would be relevant but said they were "not reasonably available." The panel did, however, obtain a copy of an earlier Bosnian court document, which indicated al Hajj was under investigation.

"They can get their hands on information they want, but they can't get their hands on what detainees ask for," said Melissa Hoffer, one of al Hajj's attorneys.

Hoffer said her clients have never been questioned about the alleged bombing plot, despite nearly three years of captivity.

Dizdarevic wonders when her husband will meet the U.S. standard for release. The members of al Hajj's panel, citing classified evidence to continue holding him, said, however, that another review board should consider his exoneration before a Bosnian court the next time his case is reviewed, next year.

"After three years of fight, without any reason, they declare that my husband is an enemy combatant, a man that was so good that he would never in his life wish anyone any harm," she wrote. "What am I supposed to tell my children, who at every phone ring, every door bell, ask 'Is this our father?' "

Pentagon officials declined to comment on specific cases.

Allegations of Abuse

Detainee lawyers also say that captives are subjected to abuse designed to aid U.S. interrogators. This includes extremes of heat and cold, extended periods in painful positions, blaring music and strobe lights for hours at a time. The lawyers say some detainees have made false statements to halt the mistreatment.

In July, the International Committee of the Red Cross formally told Guantanamo Bay authorities that these and other tactics were tantamount to torture. Last week, a Justice Department lawyer told one of the judges hearing the cases that it would not be illegal to torture detainees to obtain statements about them.

Australian David Hicks, 29, a Muslim convert who is charged with training in an al Qaeda camp and defending a Taliban tank after the U.S. invasion of Afghanistan, told his military lawyer in an August affidavit about an atmosphere at Guantanamo Bay in which abuse was often part of the interrogation process. He said that his head was rammed into the asphalt several times, that he was hit with a rifle butt, and that he and other detainees routinely witnessed abuse or heard the cries of their fellow captives.

Mubanga, a British citizen, was accused of being a member of al Qaeda who traveled to Pakistan to fight U.S. forces and was studying ways of attacking 33 Jewish organizations in New York. He told the tribunal that the allegations were false and that he confessed to some of his interrogators' accusations under duress and physical abuse.

"I see now that the duress and mistreatment that I am incurring shall not stop until they [the American government] get the result they want," Mubanga told the tribunal, according to the transcript.

Mubanga said he was fighting in Pakistan to help Muslims reclaim disputed Kashmiri territory from India, and fled to an uncle's home in Zambia when U.S. bombs began dropping in Afghanistan. He told the tribunal that his relatives and passport documents could prove his innocence.

The tribunal ruled that some of the records and witnesses he requested were "not reasonably available" or were irrelevant to the question of whether Mubanga was an al Qaeda member. But in a rare admonishment, a military legal adviser later told the panel it had erroneously rejected that evidence. The tribunal is preparing for another review of Mubanga's case.