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Detainees' cases show another side of Gitmo Federal court papers reveal complexities of captives

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Bisher Al-Rawi says he left Britain in 2002 for The Gambia to start a peanut-oil processing business. Emad Abdalla Hassan says he set out for Pakistan from Yemen in 2000 to study the Koran. Hadj Boudella, a professor of physics in Algeria, claims he went to Bosnia in 1992 to do humanitarian work.

All three men say they have been illegally incarcerated at the controversial prison at Guantanamo Bay, Cuba, where the U.S. military has detained 550 suspected al-Qaeda and Taliban operatives for nearly three years.

The stories of how they came to be swept up in the United States' worldwide, anti-terrorism dragnet are emerging in federal court in Washington, D.C. Their cases offer a more complex picture of Guantanamo captives than what has been described by U.S. officials, who generally have portrayed men held in Cuba as fighters picked up on the battlefields of Afghanistan.

The three detainees are among more than 60 Guantanamo captives who have taken advantage of a Supreme Court ruling in June that allows them to challenge their detentions in federal court. The ruling has set the stage for federal judges to force the Bush administration to reveal who is being held at this remote U.S. Navy base -- and why.

Since the Pentagon began transferring detainees to the base in January 2002, U.S. officials have described Guantanamo captives collectively as "the worst of the worst," hardened terrorists determined to kill Americans. Court papers filed in recent weeks suggest that the government indeed could be holding al-Qaeda and Taliban fighters and financiers of al-Qaeda leader Osama bin Laden's network.

But the papers also reveal that some Guantanamo detainees -- including Al-Rawi, Hassan and Boudella -- were not captured in Afghanistan, and that the reasons for holding them are less clear.

Many of the detainees say they were taken into custody because they were in the wrong place at the wrong time; others say their words were twisted or misunderstood by military translators. Some detainees have hinted that they were tortured into confessing about having ties to terrorism.

The truth may be elusive because the U.S. government, citing national security concerns, is relying heavily on secret evidence to justify holding many of the detainees. The Bush administration's tactics have led some legal analysts to question whether the administration is violating the spirit of the Supreme Court's ruling.

"We are all deeply concerned about national security," says Muneer Ahmad, an American University law professor. "But the government should not be holding people without providing a factually based reason for doing so."

Cases challenge fairness

After the Supreme Court's ruling, Bush administration officials predicted there would be chaos in U.S. courts as lawyers for Guantanamo detainees rushed to file claims seeking their release. So far, that has not happened.

The Center for Constitutional Rights in New York, the civil liberties group that brought the original cases before the high court, has lined up law firms to represent groups of detainees in lawsuits filed in Washington. Fourteen cases have been filed on behalf of more than 60 captives. They include nine petitions filed since June.

All of the cases challenge not only the detentions, but also the fairness of administrative hearings that the Pentagon began in July to review each detainee's situation and determine whether he should continue to be held indefinitely as an "enemy combatant."

President Bush says he can hold the captives because they violated the laws of war by failing to wear military insignia, among other things, and that they must remain in custody to keep them from rejoining the fight against the USA.

The government's strategy is to use the review panels -- known as Combatant Status Review Tribunals -- to convince federal judges that the detainees have received as much due process as they deserve, considering that they are foreigners who are not entitled to the panoply of rights that U.S. citizens enjoy.

Justice Department lawyers are taking a hard line against the detainees' claims in federal court with a different take on the Supreme Court's ruling. They say the court based its ruling on a statute, not the Constitution, and that the foreign detainees should have no legal rights such as the right to counsel.

Attorneys for the detainees counter that the high court would not have invited captives to file lawsuits without allowing them to have lawyers. Last month, U.S. District Judge Colleen Kollar-Kotelly ruled that an array of U.S. laws allow judges to ensure that captives have lawyers to help them in court.

But her ruling has no effect on the Pentagon's decision to bar detainees from having lawyers to help them before the review panels. As of Wednesday, 295 such hearings had been held at Guantanamo, without lawyers for detainees. Only one detainee has been determined not to be an enemy combatant; he was released.

The hearings are split into public and secret sessions. The media have observed some public sessions, which detainees also can attend. Only military officers can attend the secret sessions.

Civil libertarians are concerned that detainees might be incriminating themselves by testifying before the panels without a lawyer's help. Several detainees have answered questions posed by the panels, the court papers reveal.

The government's aggressive tactics don't end there. The military's review panels are using affidavits by captives' relatives -- filed in the detainees' civil lawsuits -- to justify detentions. The panels are citing inconsistencies between what the detainees and their relatives say about matters such as a captive's relationship with his father, or how and why other prisoners went to Pakistan or Afghanistan.

Capture was 'a mistake'

The military has held hearings to review the status of Al-Rawi, Hassan and Boudella and has determined that the men should continue to be held at Guantanamo.

Human rights advocates say many detainees were not fighting the United States, but were captured in the chaos of war or sold to U.S. forces by bounty hunters. According to court papers, Hassan, 25, says his capture was "a mistake" that occurred in a college dorm in Pakistan, not on a battlefield in Afghanistan. He says he believes he was taken into custody because he was with men from Saudi Arabia, Libya, Russia and Yemen.

Al-Rawi, 37, says the U.S. military cut a deal with Gambian officials and kidnapped him while a petition for his release was pending in British courts. U.S. court papers say he is detained because he admitted helping Abu Qatada, a London preacher with alleged ties to al-Qaeda, find an apartment, among other things.

Al-Rawi, who had lived in Britain for 18 years, says he was a go-between for Qatada and British intelligence agents. At his review hearing, Al-Rawi sought testimony from several British agents, including some he says visited him at Guantanamo. British authorities refused to provide the agents, whom Al-Rawi says he knew only by their first names.

Boudella, 39, was one of six Algerians arrested in Bosnia in October 2001 on suspicion of plotting to attack the U.S. and British embassies in Sarajevo. A day after the Bosnian Supreme Court ordered their release because they had been held for three months without charges -- and as their relatives waited at the prison gate -- the Algerians were turned over to the U.S. military and then were taken to Guantanamo.

The military review panel was impressed with Boudella's claim that he is not anti-American, but it felt compelled to keep him in custody because of secret evidence it had reviewed, court papers say. But the panel took the unusual step of recommending that Boudella be considered for release when he receives an annual evaluation on whether he continues to pose a threat to U.S. interests.

Justice Department lawyers say in court papers that the circumstances surrounding such captures are "quintessential political questions" for the president -- not the courts -- to decide. They say that although Afghanistan was a home base for al-Qaeda before the U.S.-led coalition ousted the Taliban leadership there, the terrorist network's far-flung activities "have hardly been confined to that country."

Secret evidence elusive

The court papers also shed light on Guantanamo captives who were caught during the war in Afghanistan.

Abdullah Kamal Abdullah Kamal Al Kandari, a Kuwaiti Ministry of Electricity and Water employee, says he went to Afghanistan after the Sept. 11 attacks to fulfill a duty under Islam to help the poor.

In justifying the military's reasons for holding Al Kandari at Guantanamo, a review panel cited \$15,000 he took to Afghanistan and a Casio watch he wore that investigators say is a type often used by terrorists to set off bombs.

"If I had known that, I would have thrown (the watch) away," Al Kandari, 31, told the panel, according to court papers. He explained that the watch is popular in Kuwait because its compass

can be used to help Muslims pray in the direction of Mecca and its alarm can be set to remind them to pray five times a day.

Al Kandari said he did not know why his name was on an al-Qaeda operative's computer, other than because Al Kandari was "famous" as a member of Kuwait's national volleyball team. "I swear, they don't know me," he said. "The problem is the secret (evidence). I can't defend myself."

The review panel found Al Kandari's testimony "somewhat helpful" but said it "relied heavily" on secret evidence that indicates "he is believed to be a member of al-Qaeda."

Fouad Mahmoud Hasan Al Rabiah, a Kuwaiti businessman suspected of delivering money to bin Laden in July 2001, also told a review panel that he had gone to Afghanistan to help the poor. Al Rabiah, 45, who denied having any ties with al-Qaeda, said in his review hearing that he weighed 240 pounds when he had to ride a small motorbike while being taken into Afghanistan by guides.

"If I were bringing money to bin Laden, don't you think he would have sent me a car?" Al Rabiah quipped.

The military panel didn't believe him. "There was more to the story than the detainee would have the tribunal believe," it said in its report, referring to secret evidence.

Teen among captives

Attorneys for Omar Khadr, a Canadian citizen, say he is a boy who is being punished as a man. At age 15, Khadr was among the youngest captives from the war in Afghanistan. Shortly after he turned 16 in September 2002, he was taken to Guantanamo and housed with adults. Khadr's grandmother says he was wounded and nearly blinded in one eye when a house in which he was hiding was bombed and overtaken by U.S. forces.

But the review panel relied on reports that Khadr had acknowledged throwing a grenade that killed a U.S. soldier during the battle. The military also says he planted land mines in an area used by U.S. convoys.

Court papers reveal that the panels also rely on evidence from informants who are among the Guantanamo detainees. One detainee said he had seen Faruq Ali Ahmed carrying an assault weapon and wearing a uniform at bin Laden's private airport in Afghanistan. Ahmed, 20, a Yemeni, denied the allegations but acknowledged that he had associated with Taliban members because he had taught the Koran in Afghanistan.

A military officer assigned to be Ahmed's "personal representative" before the panel wrote that he believes the detainee lied about Ahmed -- and other detainees -- to get better treatment at Guantanamo.

Caption: High security: Two U.S. Army soldiers walk with a detainee at the military prison in Guantanamo Bay, Cuba, in March 2002. About 550 suspected al-Qaeda and Taliban operatives have been held there for nearly three years. Al-Rawi: Claims U.S. military cut a deal and kidnapped him. Khadr: Canadian was taken to Guantanamo at age 16. Family fun: Abdullah Kamal Abdullah Kamal Al Kandari rides tire boats with his family before his capture. The Kuwaiti says he went to Afghanistan after the Sept. 11 attacks to help the poor.