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## **Dock of the bay**

The Pentagon says there is nothing wrong with the hearings it has been forced to set up to ensure that the Guantanamo Bay inmates are being justifiably imprisoned. The FT security correspondent went to Cuba to see for himself

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It could have been a charter holiday flight bound for any Caribbean island. As we took off from Jacksonville, Florida, the captain announced the weather forecast was fine. Parents and children chattered as the sea slipped by below until we reached Cuba, a dry brown island outlined by white surf. But the passengers were mostly military families returning from this summer's leave and the flight was headed for the US naval station at Guantanamo Bay, where some 550 prisoners have come to symbolise the Bush administration's response to the attacks on New York and the Pentagon on September 11, 2001.

Nearly 750 men from more than 40 countries have been jailed in Guantanamo since the US toppled the Taliban regime in Afghanistan at the end of 2001. Many were picked up in and around Afghanistan on suspicion of being tied to al-Qaeda. Others were seized hundreds or thousands of miles from the battlefield. Nearly 200 have been released, but the rest, says the Pentagon, must be detained because they are a valuable source of intelligence or pose a threat if released.

Until recently, little has been known about who the prisoners are and whether their detention has been justified. They have been jailed by the US military, yet kept out of the reach of US law. Only four have been formally charged. None has been allowed customary access to civilian lawyers, yet all prisoners face the possibility of execution or indefinite detention if eventually found guilty of war crimes.

Human rights lawyers have fought the administration over what they claimed was a prison that breached the fundamental rules of law. And in June this year, the US Supreme Court ruled that the prisoners did have a right to challenge their detentions in a civilian court. In response, the Bush administration hurriedly set up what it called "combatant status review tribunals" at Guantanamo, which it claimed would determine whether each prisoner was in fact an "enemy combatant" and therefore being rightfully detained according to the laws of combat. Surprisingly little attention has been paid to these tribunals, even though they offer a rare chance for outsiders to see who is held in Guantanamo and why. They were the reason I was flying to Cuba.

Even before I left London, I learned that the tribunals bore little resemblance to traditional court proceedings, including those conducted by the military. An official in Guantanamo e-mailed me a list of conditions I had to agree to abide by before I would be allowed to report on the hearings. I could not identify the officers presiding over the hearings, nor other military personnel. Nor could I reveal anything about the detainees that could identify them, including their names, even if they were among the many prisoners who are openly discussed and pictured on the internet as relatives and lawyers seek support for their cases. I was later told that I should also ignore any detainee who tried to communicate with me during his hearing. I supposed this was a possibility, since the hearings were likely to be the first chance detainees had had to present their cases in front of an outsider.

Journalists are the only representatives of the civilian world who may observe the hearings. Lawyers are not permitted; the detainees must represent themselves. Nor is anyone from the Red Cross or Amnesty International or any other non-government organisation allowed in. But it soon

became evident that this was far from the only way in which these hearings differed from what normally goes on in a courtroom.

After the flight landed, I was taken to what would be my home for the week of my stay: the "bachelor quarters" on the western side of the 2.5-mile-wide Guantanamo Bay. It was strange to finally see the place for myself. This remote base played a prominent role in both of the most significant recent global conflicts: the cold war, when it was a flashpoint in the Cuban missile crisis, and now the global war on terror (or "GWOT" as it is known in US military vernacular). The Guantanamo station exists under an indefinite lease negotiated in 1934, which Cuba's leader, Fidel Castro, regards as invalid (he refuses to cash the \$4,085 rent cheques the US sends each year).

The U-shaped base encircles the bay and is marked off from the rest of Cuba by a 17-mile chain link fence. Midway along the fence is the main crossing point, Gate 17, once the Checkpoint Charlie of the Caribbean. Not long after I arrived, a US Marine took me up to see the watchtower at Gate 17. A sign in Spanish over the gate welcomes those leaving the base with the words: "Republic of Cuba. Land Free of America." The watchtower in the scrub and thorn bushes on the Cuban side of the fence was manned. "Don't point," the Marine warned me. "They get really upset if you point. You'll see them pick up their weapons."

A camp official explained that the prisoners were housed in several different camps, or adjacent cellblocks, according to how co-operative they were, and how much contact they were allowed with other prisoners. As part of the prison's "behaviour modification" process, the detainees were issued different coloured overalls: orange for "unco-operative" prisoners; pale brown for "less resistant" ones, and white for the rest.

Camps one and two were for "co-operative" prisoners, most of whom received "comfort items" such as anti-dandruff shampoo, soft plastic pens (which bent so they could not be used as weapons) and library books. "The comfort items for the most part are non-negotiable," the camp official said. "But if they try to use their trousers to kill themselves or break camp rules, they can lose the comfort items." Camp three was for "unco-operative" prisoners and camp four for "compliant" inmates, the only ones to get prayer mats.

Another block, Camp Echo, was for the handful of prisoners deemed ready to appear before full military trials, or commissions, for war crimes. (All the detainees will soon be subject to a third legal procedure, annual review boards, which will decide whether they remain a potential threat or can be released on the grounds that they are no longer of intelligence value.)

The maximum security section, camp five, was for the 50 most difficult inmates. They were kept in solitary confinement and under CCTV surveillance day and night. A military official at this camp said the inmates got an hour of recreation time three times each week, but their activity was limited: "We don't give them soccer balls. They're not in the standard operating procedures." Other requests had been met: "We downloaded the call to prayer from the internet and pipe it into the intercom system," he said.

The room where the combatant status review tribunals are held is inside a pale grey portable cabin, about 50ft long and 20ft wide, just inside the main prison gates. The cabin is divided by a corridor, on each side of which are small rooms, including interrogation rooms and the prison library. The librarian told me there were books in 14 languages, including Uighur and Uzbek. "They are getting more chatty," said the librarian, who delivers books on a weekly round to "deserving" prisoners. "One Saudi has become keen on David Copperfield. The Yemenis and Pakistanis are most keen on Agatha Christie."

Eventually, I was led into the tribunal room where a hearing was about to start. It was a small space, only about 8ft wide and 15ft long. The official who had been escorting me did not come inside: there was no room for him. The first person I saw was the prisoner, a thin, anxious-looking young man. He wore an orange suit (immediately identifying him as "unco-operative") and sat in

the corner opposite the door, his hands bound in cuffs attached to a heavy chain around his waist.

I was told to sit a couple of feet away from him. On his other side was the court translator, a young Arab-American woman. Next to him was his "personal representative", a military official assigned to each detainee who is supposed to help lead the inmate through the tribunal procedures. Like most other personnel in the prison, his name tag was taped over. Not even the detainee knew his personal representative's name. On the other side of the room was the "recorder", another military official who acted as both prosecutor and defence, reading out evidence both for and against the release of the detainee.

At the end of the room was a table covered in dark green baize, which was where the three members of the tribunal would eventually sit. An air conditioning machine hummed gently. It turned off from time to time, leaving the room in a strained silence broken only by the prisoner, whose chains clattered as he raised a finger to scratch his nose. Suddenly, the recorder stood. "All rise," he said, as the three tribunal members filed into the room - a woman and two men, one of whom was the tribunal president. Everyone stood, except the prisoner. His feet were shackled to a bolt in the floor.

As the proceedings got under way, the recorder summarised the case against the prisoner: he was a Kuwaiti "member of al-Qaeda" who had travelled through Iran to Afghanistan in September 2001 and had been arrested after Afghanistan was invaded, while trying to cross into Pakistan without any documents. One of the prisoner's aliases, the recorder said, had been found on the hard drive of a computer owned by a senior al-Qaeda member.

The tribunal president asked the prisoner if he had any questions about the hearing. The prisoner did. "Do the people who are members of the tribunal have a background in law?" he asked through the translator.

"They are military officers," said the president, "and one [meaning himself] is a judge advocate-general."

"And the others, do they know anything about the law?" the prisoner asked.

"We have a general knowledge of the tribunal and the proceedings," said the president.

"I am a civilian, so how can you try me in a military court?" The prisoner's question seemed reasonable, one that in fact was central to the entire proceedings.

"This is an administrative hearing," said the president, "to determine whether you have combatant status."

Driving back, we passed Camp X-Ray, the zoo-like prison that was hastily thrown up to house the first prisoners brought here from Afghanistan nearly three years ago. This is where the first, disturbing images of Guantanamo's jail were taken in early 2002: men being pushed on wheeled stretchers or led in chains like orange-suited animals. The camp remains intact but empty and overgrown by weeds. Its inmates have been moved to a more permanent prison complex, Camp Delta, a few miles away. As we drove slowly past Camp X-Ray's empty cages, I asked if I could take a photograph. I was told I could not.

The combatant status review tribunals are held inside Camp Delta, which lies on the eastern side of the base on a craggy outcrop of rock lashed on one side by the sea. I was taken there in a military speedboat with a machinegun mounted on its bow that sped across the bay from my quarters to the far side where the camp was situated. "Used to be that the Cubans watching us were the worry," one of the US Coast Guard crew remarked as we skimmed across the choppy

water. "Now it's the caymans," he said, referring to the crocodile's smaller cousins that live in the mangroves around the bay.

We pulled up at a wharf and the official escorting me began the short drive through the sweltering Caribbean heat to Camp Delta, past the Guantanamo Bay golf course and the Guantanamo Bay shopping mall, where "Gitmo" baseball hats, fast food and other assorted necessities could be purchased.

The prison complex appeared much like any other, with its high fences, razor wire and lights, though it was small and looked as if it could be easily walked around in less than half an hour. Inside, soldiers greeted each other with a salute and the words: "Honour bound," to which another would reply: "Defend freedom."

The prisoner was then asked to make his case. "Regarding the accusation that I am a member of al-Qaeda," he said, "It is merely words, with no evidence to prove it." He said he had gone to Afghanistan after meeting an Afghan Muslim on a pilgrimage to Mecca who, after discovering the prisoner had been an Islamic scholar at a prestigious university, had invited him to teach there. He had moved around the country, visiting different mosques, teaching Muslims how to pray and how to read the Koran. He only spoke Arabic and the Afghan man who had invited him acted as his translator.

At one point, the recorder said that "some effort" had been made to try to track down "Mohammed", a witness the prisoner had requested for today's hearing, "but he had not been found". I guessed that Mohammed was the Afghan man who had invited the prisoner to teach in Afghanistan.

Though the detainees are not allowed lawyers in these hearings, they can call witnesses to assist their case. Thirty prisoners have asked for witnesses, more than half of whom have been other detainees. The tribunal officials decide whether the witness is likely to be relevant to the case and if they are, the US State Department tries to track down witnesses outside the prison. But sometimes, like Mohammed, they cannot be found.

As the hearing went on, a tribunal member asked the prisoner why he went to Afghanistan knowing the country was about to be at war. The prisoner said he knew wars often affected only a small part of a country, often near the frontlines, and anyway, he had seen reports of the Americans saying the Taliban were ferocious fighters and the war would take a long time.

"I didn't realise that the government of Afghanistan would fall in the blink of an eye." When it did, he knew he had to leave quickly. "After the fall of the Taliban every Arab in Afghanistan was wanted dead or alive," he said. "I heard they had started buying and selling Arabs. I said to the man I was with I wanted to leave quickly. Killing had become a small thing there, where people kill for money."

He rushed to the Pakistan border, not taking his travel documents or luggage, thinking it would not matter and the Pakistanis would allow him to return home. Instead, they handed him over to the Americans, who interrogated him and sent him to Guantanamo Bay. "What indicates that I am not a dangerous person and that I have no secrets is that I turned myself over to the police (in Pakistan) without any resistance," he told the tribunal members. "I went to them."

He had seen people do this safely in his own part of the world during wars. "When Iraq invaded my country, men and women and children crossed the border to Saudi Arabia or Iran. No one said that they were sympathetic to Saddam Hussein. These countries didn't arrest them, but constructed medical tents to treat them. Nobody asked for documents, because the circumstances weren't normal." He went on to say he had never had anything to do with Osama bin Laden or al-Qaeda and it was impossible to make such connections merely because he had

travelled to Afghanistan. "Is a person that travels to China considered a communist? And is a person who travels to Iraq loyal to the Ba'ath party?"

As for his name, or his alias, appearing on an al-Qaeda operative's computer, he said he had no name other than the one he was using before the tribunal (which I am forbidden from reporting). "There are millions of Arab people who have the same name," he said. "My tribe is very large in the Gulf. My tribe is present in Kuwait, Saudi Arabia, Jordan, Syria and Iraq. I can't prevent anybody writing my name if they want to. It's out of my control. If Hitler wrote my name I wouldn't go to him and say: 'Why did you write my name?'"

When he finished his statement, a tribunal member said:

"I understand you're a lawyer."

"No. I have studied some law," said the prisoner.

"You have a degree in Islamic law."

"That's what brought me here, to this prison, that degree."

"Most unfortunate."

"If I get out of here, I wouldn't study any Islamic law," said the prisoner. "I would just raise sheep."

Eventually, the hearing drew to a close. The president looked up at the prisoner and asked if there was anything else he wanted the tribunal to be aware of. "I hope that you really are fair in this tribunal," said the prisoner, "And that you don't punish me for things that other people have done. If I made a mistake and you want to punish me for that, I don't have a problem with that because it was something I did. But don't punish me for other people's mistakes."

"Thank you for your participation," said the president. And then the hearing was over. Or almost over. The evidence presented publicly to the prisoner - and any journalists present at these tribunal hearings - is not the only information the tribunal members hear about the cases. A senior tribunal officer later explained to me that the evidence the recorder read to the detainee was unclassified information that had been derived from classified information which was presented separately to the tribunal. Detainees did not have a chance to see the classified material, let alone rebut it.

"During the classified portion of the hearing, the detainee and witnesses leave the room," the official said. "In cases where they are found to be an enemy combatant, the classified material seals their fate." He said the process was just. "I personally think it's fair. It's a reputable process." Most of the detainees do not readily admit to being enemy combatants, he said. "They are very adept at developing cover stories. That's their thing. Some won't say anything at all."

Asked why the military was conducting the trials, instead of civilian courts, he paused and said: "I don't know why it's in the hands of the military. As soldiers we are not allowed to dip into that area. Aspects of it are moving towards the courts. It's an issue of: 'It's never been done before. It's new turf.' Where it will end up, who knows?" After September 11, he said, he didn't think anyone knew how these things were supposed to be done. "There's a learning curve," he said. "How do you protect the American people and our allies in a human rights and civil rights-compliant regime? How do you do this? They struggle with the answers to these questions in Washington."

A little while later, I was told the tribunal had come to a decision about the prisoner whose hearing I had watched. It had found that he had been correctly designated an enemy combatant and should continue to be detained in Guantanamo.

Early one morning in the bachelors' quarters, I ran into a US lawyer shooting pool by himself on the residence's snooker table. His name was Brent Mickum and he had been on the base for a day, waiting to see if he was finally going to be granted access to three British detainees whom he had been trying to see for months.

He was scathing about the combatant status review tribunal process, saying it was "a complete charade", only being carried out to limit the government's likelihood of being successfully sued by any detainees eventually released. "None of us essentially knows the reason for the detentions," he said. "The idea that these guys after three years are enemy combatants is preposterous."

He said some lawyers who had had access to detainees had been advising them not to attend the tribunals because the result of the proceedings could be used against them in future trials. All three of the detainees he was trying to help had been through the tribunal process and had been deemed to be combatants, even though he had tried to advise against this. He said he wrote to one of them counselling him not to attend the tribunal - which the detainees have the right to do. The letter was not passed to the prisoner until after the hearing had taken place, even though Mickum said it arrived at Camp Delta days beforehand.

"By design, the process is meant to do them harm," he said, saying he saw no reason why the detainees should "assist in their own demise. The government set out to create a jail that was beyond the law. I think it's an abomination and the US behaviour is shameful."

Those running Guantanamo, unsurprisingly, do not agree. I spoke to the prison commander, Brigadier General Jay Hood, who said everything being done at the jail was consistent with each of the Geneva Conventions. Moreover, he said: "The people here are of tremendous intelligence value. Intelligence has been gathered here that provided information on aspects of terrorist operations worldwide. Actions have been taken by European countries based on intelligence gathered here. What is shared with them, they may not even know that it came from here."

He said prison commanders were constantly reviewing their work and were confident it was sufficiently "robust" to produce good decisions. "I think it's worthwhile at least understanding that this is a conflict like no other that any of our countries have been involved in, against an enemy that is utterly different in terms of character and method. That's what steers the debate."

I witnessed another combatant status hearing before I left. The prisoner was a Turkish national who had been living in Germany. There is a lot about him on the internet, where photos taken before his arrest show a clean-shaven young man with a slick haircut, wearing a smart zippered jacket. Nearly three years later, he looked very different. His brown hair was a mass of frizzy locks that fell down his back. He had grown a long beard, which covered the heavy chain around his waist.

Unlike the first detainee I saw, this prisoner had never been to Afghanistan. But according to the recorder at his hearing, he had joined Jama'at Tabligh, an Islamic group accused by several countries, including the US, of supporting terrorist acts against the US. He had studied Islam with Jama'at Tabligh in Germany and at the age of 19, two weeks after the September 11 attacks, went to Pakistan where he received lodging and schooling from the group and travelled to Karachi, Lahore and Peshawar.

In addition, the recorder said, he had planned to go to Pakistan with a man "who later became a suicide bomber".

"What explosion was this person responsible for?" the prisoner asked him.

"I can't answer this," said the recorder - it was based on classified evidence that the prisoner was not allowed to hear.

He was arrested by Pakistani officials who hauled him off a bus about seven weeks after arriving there, in the third week of November, and eventually handed him to the Americans, who sent him to Guantanamo Bay.

The tribunal president asked if the prisoner would like to make a statement. The prisoner said he had met the suicide bomber when he was 16 but had had little contact with him during the last year in which he had known him. "I never thought he experimented with bombs," he said.

He said he believed Jama'at Tabligh was a peaceful group and that was why he wanted to study Islam with them in Pakistan. "In Pakistan I could study in two months what would take three years in Germany." He said his only reason for going to Pakistan was to study. "I didn't go to Pakistan to kill anybody or to study any weapons or anything. I didn't meet any terrorists. Maybe I did, but I didn't know that they were terrorists."

In any case, he said, "If I supported terrorists who killed people because they were not praying, I would have started with my mother and father because they did not pray. And I love my mother and father. And I have a lot of friends who did not pray. I hate terrorists and I will always hate them. Because of Osama bin Laden I am here now. I am losing some years of my life, because they showed Islam in a wrong way. I am not angry with Americans. A lot of Americans died on 9/11."

He admitted he had no proof of his innocence to offer the commission, but said: "I didn't kill anybody. I didn't harm anybody. I didn't steal anything. I just made the wrong trip at the wrong time, to study Islam in Pakistan. When I went to Pakistan there was no war in Afghanistan and even if there was a war, it had nothing to do with Pakistan."

Finally, he concluded: "That's all I have to say. I hope you guys will judge the truth. I am not an enemy combatant. I want my freedom back, because I am not a terrorist."

The tribunal members then asked him a series of questions. Was he sure he didn't know the suicide bomber was involved in terrorism? He didn't. Did he know Jama'at Tabligh supported terrorism? No. Did he ever go to Afghanistan? No.

Eventually, nearly three hours later, the prisoner said he wanted to know if he would have to stay in Guantanamo for longer, "or if I will go back home". The tribunal president said: "If we make a determination that you are not an enemy combatant, we will arrange for you to be returned to your home country. I don't want to make a promise to you that I can't keep. Another board will determine whether you are a threat."

Finally, the prisoner was led back out to his cell. A week later the tribunal's conclusion was delivered: he was definitely an enemy combatant. But on what grounds, neither the prisoner, nor I, was ever likely to be told.

Early last month, a judge made what appeared to be a significant ruling about the Guantanamo legal proceedings. Judge James Robertson of the US District Court in Washington DC ruled that the trial of one of the few Guantanamo detainees facing a full military commission, Osama bin Laden's chauffeur, Salim Ahmed Hamdan, should be halted because of doubts about his status as an enemy combatant. Judge Robertson said the combatant status review tribunal was not a "competent tribunal" under Article 5 of the Geneva Convention, and could therefore not decide whether the detainees had been correctly designated enemy combatants. Unless Hamdan was proven by a "competent tribunal" to be a combatant, he could not be tried by the military commission, the judge ruled.

As this magazine was going to press, a Guantanamo public affairs officer said the combatant status review tribunals were continuing at the camp despite the judge's ruling. "In the meantime,

some legal issues are being argued in Federal Court which may or may not ultimately affect this process," he added.

By November 29, a total of 428 detainees' tribunals had been heard. Of these, 160 detainees had been deemed enemy combatants. The remainder were awaiting formal ratification of the tribunal's decision from the Pentagon. To date, only one hearing has resulted in a detainee being released from Guantanamo Bay.