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Guantánamo Prisoners Getting Their Day, but Hardly in Court

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GUANTÁNAMO BAY, Cuba, Nov. 7 - Each day, several shackled detainees are marched by their military guards into a double-wide trailer behind the prison camp's fences and razor wire to argue before three anonymous military officers that they do not belong here.

One, a 27-year-old Yemeni, spent more than an hour on Saturday telling a panel that he was not a member of Al Qaeda or a sympathizer, saying that he had never fought against the United States and should never have been detained here at Guantánamo as an unlawful enemy combatant.

The Yemeni, a scraggly-bearded man bound hand and foot, sat in a low chair, his shackles connected to a bolt in the floor, frustrating his efforts to gesture with his hands to make his arguments. Inside the small, harshly lighted room, he alternated between pleading his case and angrily criticizing the process as unfair. Although he spoke Arabic that had to be translated by a woman sitting beside him, there was no mistaking his contempt for the panel members, who sat on a raised platform about 10 feet away and whose questions he ridiculed frequently.

These briskly conducted proceedings, which have received little notice, constitute the Bush administration's principal answer to the Supreme Court's ruling regarding the rights of detainees who have been imprisoned since the administration began its fight against terrorism after the Sept. 11 attacks. The court ruled 6 to 3 in June that the detainees had a right to challenge their detentions in federal court, saying that even though the base is outside the sovereign territory of the United States, federal judges have jurisdiction to consider petitions for writs of habeas corpus from those who argue that they are being unlawfully held.

The hearings here have come under heavy criticism because they do not meet the traditional standards of court proceedings. For one thing, the detainees are left to argue their cases for themselves, without assistance from lawyers.

The hearings, formally called combatant status review tribunals, were hurriedly devised and put into place just weeks after the Supreme Court's ruling. The administration, which has been battling to have the military retain as much control as possible over the detainees, told a federal court in Washington last week that the tribunals more than satisfy the Supreme Court ruling. The government argued that because of the tribunals, federal judges should reject the dozens of petitions they have received from defense lawyers asking them to intervene.

Capt. Charles Jamison of the Navy, who oversees the tribunal proceedings here at Guantánamo, said he expected to have them completed for all 550 remaining prisoners by the end of the year. So far, some 320 detainees have appeared before the tribunals, and so far, the Pentagon has passed final judgment on 104. Of that group, 103 were found to have been properly deemed unlawful enemy combatants and properly imprisoned; one detainee was released.

Those deemed unlawful enemy combatants will have a chance to argue in a separate proceeding that they should be released because they are no longer a threat.

Even without any legal proceedings, the United States has released more than 150 Guantánamo detainees to their home governments, saying they no longer posed a threat, and it is expected that many of the remaining ones will also be released.

The Yemeni who appeared Saturday denied through his translator that he had any affiliation with Al Qaeda. He said the United States had no proof and "should know that a person is innocent until proven guilty, not the other way around." Throughout the hearing, the man, whose name may not be published under the conditions set by the military, complained, sometimes with sarcasm, that "this is like a game."

An officer not on the panel acted as sort of a prosecutor in assembling the charges, while yet another acted as the detainee's personal representative to explain the proceedings but not to serve as a defense lawyer. All the officers had their name tags covered by tape.

Critics have complained that the tribunals are fatally flawed, not only because the detainees do not have lawyers but because they are generally hampered in disputing any charges because they are not allowed to see most of the evidence against them because it is classified.

Captain Jamison said the tribunals were administrative procedures and thus did not have to meet standards of regular criminal proceedings.

One official said it was apparent from the unconvincing explanations of many detainees as to why they had been carrying a gun or were at a battle site that they were indeed enemy combatants.

Like detainees at all the hearings, the Yemeni was given an unclassified summary of the charges, but the evidence to support the most serious accusations is classified and was considered in a closed session after he was taken back to his cell.

In the public session, an officer told the panel that the man was "a supporter of Al Qaeda" because he had traveled to Pakistan from his home country and had been "recruited by Jama'at al-Tabligh," an organization based in Pakistan that posed as an Islamic missionary group but was really a cover for helping Qaeda terrorists with travel arrangements.

The man asked the panel, "Where's the proof?" He said that if the government was claiming he had a connection to Al Qaeda, "there should be evidence that I support Al Qaeda." The Army colonel who was the panel's president responded, "We're not here to debate these points." She said, "This is what we're given and this is your opportunity to give us your story."

The Yemeni was disdainful of another panel member, a Navy commander, who asked him if he believed in jihad, answering that he did so as all Muslims did but that that did not mean he meant harm to America.

Another detainee, a 33-year-old Afghan who served as a municipal police commissioner in his village, tried to convince a different military panel on Thursday that he was an unwilling member of the Taliban government. The man admitted that he had supervised a ritual stoning to death of three people charged with adultery but said he had not chosen the people or the penalty.

A Tunisian detainee on Thursday decided at the last moment to refuse to attend his hearing. His personal representative, an Air Force lieutenant colonel, said the Tunisian man said he had been told by Allah not to attend. The officer, however, offered the detainee's responses to the charges that he was a member of Al Qaeda and had a Kalashnikov assault rifle when he was captured.

About a third of the detainees decline to attend the tribunals, officials said, and they are then tried in absentia, as was the Tunisian prisoner. The military has established a panel at the Pentagon to hear many of those cases. There are four panels here at Guantánamo.

The detention of hundreds of men at Guantánamo has led to a variety of legal proceedings, some wholly contained within the military and others involving federal courts.

Last week, for example, a military commission heard pretrial motions in the set of war-crimes trials being conducted on a different part of the base. Four detainees have been charged in those proceedings.

The war-crimes trials before a military commission have faced difficulties, including translation problems and complaints from military lawyers that the officers on the panel are unsuitable. Although the war-crimes proceedings are separate from reviews of the detainees' enemy combatant status, the two collided last week. One of the three officers on the military commission trying war crimes asked to see the information from the combatant review tribunal for David Hicks, 29, an Australian who is charged with terrorism and attempted murder and whose case was being considered last week.

Joshua Dratel, a civilian lawyer from New York representing Mr. Hicks, erupted in anger in the courtroom, saying it was outrageous for the commission to consider information from a proceeding with lesser guarantees of due process.

"This man is on trial for his life," Mr. Dratel said. He said that for the military commission to consider accepting evidence from the other proceeding - a proceeding in which the prisoner cannot confront his accuser or see all of the evidence against him - showed that the war-crimes trials were "not just on a different island from the rest of the world but a different planet."

Lt. Col. Sharon Shaffer, the deputy chief judge of the Air Force who is defending another detainee before the war-crimes commission, said it was wrong for an enemy combatant review tribunal to question a detainee who was represented by a lawyer in other proceedings. Colonel Shaffer represents Ibrahim Ahmed Mahmoud al Qosi of Sudan, who is charged with conspiracy to commit murder and terrorism. The colonel instructed Mr. Qosi to demand that one of his lawyers accompany him to the enemy combatant tribunal. She said they simply tried him in absentia and declared him an enemy combatant.

Conversations with senior military officials suggest that there is an informal expectation that after most of the detainees are found to be enemy combatants, the military will start releasing what eventually will be a majority of them after yet another set of proceedings. Those proceedings, called annual review boards, are expected to start as early as next month and are supposed to determine if the enemy combatant remains a threat and may be released. One official said that approach would allow the military to assert that most of the detainees were not wrongfully imprisoned, but it would also provide a solution for the administration's desire not to hold such a large number for years.

The administration has asserted that the Guantánamo detainees are not entitled to the prisoner-of-war protections of the Geneva Conventions as they do not meet the criteria of regular soldiers. International lawyers have criticized the United States, saying that the Geneva Conventions require hearings to determine whether they can be deemed other than P.O.W.'s.