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He Was Dressed in a Tan Tunic: I Don't Want This Court, He Said

The secrecy is lifted on the trials in CampDelta as world hears defendants speak for the first time

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BY EARLY morning the damp heat was already rising around the courthouse, a drab, low building topped with radio masts high above Guantanamo Bay. Inside, everyone waited in silence: Captain Daniel O'Toole, of the US Navy, the "presiding officer", wearing black robes and taking the place of a judge, and the defence and prosecution in the formal dress uniforms of the US Army, Navy and Air Force.

Then the doors opened to reveal the defendant, Jabran Said bin al-Qahtani, a slight figure with wild black hair and 4in beard, a head shorter than the military police holding his arms. He was dressed in a tan tunic and cropped trousers, the uniform of the "medium-compliant detainee" at Guantanamo, America's detention camp for its captives in the War on Terror, on the southeastern fringe of Cuba.

He had evidently rejected the armfuls of blazers and slacks that Lieutenant Commander Bryan Broyles, his Pentagon-appointed lawyer, had tentatively picked out for him at the Navy Exchange superstore.

"I don't want this court," he said in Arabic, the mild, sing-song tone of the female translator jarring with his own. "You judge and you sentence me the way you want if this is Allah's will. A nation that is an enemy of Allah cannot be a leader."

He then rejected Mr Broyles as his lawyer and left the court, refusing to return.

Mr al-Qahtani, a Saudi citizen whom Mr Broyles believes is 26 or 27, is one of only ten Guantanamo "detainees" to be charged with a crime in the four years since the camp opened.

His appearance on Tuesday was the first chance for observers to hear him speak.

At least 760 men and boys have passed through the camp; observers calculate that 493 remain. None has yet been brought to trial. But since January, the court has been working through pre-trial hearings for those charged, which lay the ground for the "military commissions", the special tribunals that President Bush has created to try the "detainees". The US Government maintains that the captives are not conventional prisoners of war, subject to the Geneva Conventions, but are "unlawful combatants".

This week Colonel Moe Davis, the chief prosecutor, said that two dozen more might soon be charged, and that the Government might ask for the death penalty for some.

But the Department of Defence also said that it had listed 141 more detainees for release or transfer to their own countries, as it does not plan to charge them or try to extract more intelligence. It has already released or transferred 267. The final four British citizens at the camp were sent back to Britain in January last year, where they were freed without charge. Nine long-term residents of Britain remain at the camp, according to Amnesty International; some are applying for citizenship.

In January 2002 Donald Rumsfeld, the Defence Secretary, called the detainees "among the most dangerous, best-trained vicious killers on the face of the Earth". But critics of the military

commissions - who include, on fundamental points, the Pentagon defence lawyers - argue that the US does not have enough evidence of serious crimes. "If these really were the worst of the worst, as Mr Rumsfeld says, you'd think that someone other than Osama bin Laden's driver would have showed up by now," Mr Broyles said (referring to Salim Ahmed Hamdan, one of those charged).

This week's hearings have brought three detainees to court: Mr al-Qahtani, Sufyan Barhoumi, an Algerian, and Ghassan Abdullah al-Sharbi, another Saudi. They were allegedly captured by Pakistani forces in a guest house in Faisalabad on March 28, 2002, with Abu Zubaida, who is said to be an al-Qaeda mastermind. US forces took the three to Guantanamo and Abu Zubaida to an undisclosed destination.

The three are charged with conspiracy. The US alleges that Mr Barhoumi trained Mr al-Qahtani and Mr al-Sharbi in making improvised explosive devices (roadside bombs) to attack US forces in Afghanistan. Lawyers for all three reject the charges, on the ground (among others) that conspiracy does not represent a crime under international laws of war. According to Mr Broyles: "The US has no business treating him (Mr al-Qahtani) as anything other than a prisoner of war, or releasing him to civilian authorities to be tried in civilian courts."

When the US began capturing alleged terrorists after the attacks of September 11, 2001, it hoped that by putting them on the Guantanamo naval base, they would be outside US jurisdiction. The US first leased the bay from Cuba in 1903 and held on to it through the 1959 coup by Fidel Castro, although he does not recognise the contract and does not cash the \$4,000 (£2,200) cheque that the US sends him each year.

The zone, hemmed in by mountains, is eight miles wide and five deep and split in half by the bright turquoise water of the bay. At night the brilliant white lights of the 17-mile perimeter fence mark the edge of US territory; the dim lights of Cuban towns glow beyond. One narrow gate in the northeast allows occasional, uneasy contact. US guards (who hail each other with the greeting "Honour bound!" and the reply "To defend freedom!") dream of the day when "Communist Cuba" will fall and they can visit Havana. When the first detainees arrived in January 2002, they were held in CampX-Ray, near the northern border. The prisoners, in blaze orange jumpsuits and goggles, shackled to gurneys as they were moved between wire cages, became the image of Guantanamo around the world.

Now, CampX-Ray is abandoned, the cages covered with yellow-flowered creepers and mockingbirds; the interrogation room an innocuous hut smelling of timber in the heat.

All the captives are now at CampDelta in the southeastern corner, a cluster of five prisons 200ft from the cliff edge, although the double ring of green mesh fence blocks the sea view. It is ringed with lights, watchtowers and rolls of concertina wire.

Fewer than a tenth - the most obstructive - still wear orange. The "most compliant" wear white and live in Camp Four ("a free-range camp", one officer said), where they can gather for prayer and football.

But all other captives will soon be held in concrete cells, 6ft square and 8ft high, with a small slot in the door for receiving food or listening to prayers. Halliburton, the construction company of which Vice-President Dick Cheney was previously chief executive, is now building Camp Six, a permanent, concrete, maximum-security prison to house 220.

A landmark Supreme Court ruling in 2004 - one of many tussles over Guantanamo between the Administration, the courts and Congress - held that Mr Bush could not claim that the territory was outside US control and that prisoners had the right to challenge their detention in US courts.

"The lawyers rushed in by the planeload," said Ben Wizner, a staff lawyer for the American Civil Liberties Union.

The Supreme Court, in decisions expected by the end of June, is considering a range of challenges to the legitimacy of the commissions and the legality of indefinite detention for those who are not charged. It may rule on whether a new law passed by Congress and signed by Mr Bush curtails detainees' right of habeas corpus, the age-old right to challenge unlawful detention. At least 100 detainees have seen a lawyer and all have been swept up in the "habeas" petitions. Some claim that they have been tortured.

Before the Associated Press news agency extracted a full list of names and nationalities this year, in a freedom of information petition, civil liberties groups had put out calls in Muslim countries asking for names of suspected detainees.

The Supreme Court decisions could block the Guantanamo commissions, approve them or order amendments. But meanwhile, they continue.

To an observer, the most startling feature is the passionate criticism of the commissions by the military lawyers, who are also serving officers. Colonel Dwight Sullivan, of the Marines, the head of the team of Pentagon defence lawyers, said: "The defence has filed numerous motions pointing to the aspects that do not meet the President's requirement that the military commissions be a full and fair trial." He added that the court was making up rules as it went along. "What we are continually seeing is cherry-picking. The presiding officer wants to be treated like a judge whenever it suits him."

Captain Wade Faulkner, Mr Barhoumi's military lawyer, a 37-year-old Texan as clean-cut and intense as the protagonist of a John Grisham thriller, also called the commissions "inherently unfair". He said that some of the primary problems stemmed from the presiding officer's power to order the defence to keep classified evidence secret from clients. Mr Barhoumi "may not get to hear what they say about him and I may not be able to tell him", Captain Faulkner said. "If he can't tell me that what witnesses are saying is wrong, then I can't cross-examine them."

That made it even harder to win captives' trust, he said. "The relationship is so fragile. We wear the same uniform as the people who captured them." (He may not appear before his client in civilian clothes.)

His relations with Mr Barhoumi had been jeopardised, he said, by the decision to move him to a confined cell before trial and the failure so far to enable him to telephone his family, despite letters passed through the International Committee of the Red Cross on February 28 telling him that his father had died in December.

Yesterday, in the most fluent defiance of the court so far, Mr al-Sharbi dismissed his Pentagon lawyer, the fourth detainee to do so. "To me, it's the same circus, different clown," he said.

The presiding officer has maintained that the accused does not automatically have the normal right to reject representation, noting that he would then have no access to classified information. He has ordered the defence lawyers, where their state bar associations agree, to override their obligations to respect their client's wishes, and to press on.

Robert Rachlin, a partner of a Vermont law firm, and a habeas corpus lawyer for Mr al-Sharbi, said: "We are in terra incognita. My heart goes out to these young men and women [the defence lawyers]. They would not face this quandary in a regular courtroom or military tribunal." A final sting in the process is that even if the prisoners are acquitted, the US claims the right to detain them as "belligerents" as long as there is a "battlefield" in the War on Terror. As Mr Broyles put it: "If convicted, I suspect [Mr al-Qahtani] will go back to the same cell as if he were acquitted."

The chief prosecutor dismissed the criticism. The detainees "have more rights than we've ever extended to anyone in the history of warfare", Colonel Davis argued. "I don't think the American public has anything to be ashamed about in what we're doing here."

But, in Mr Wizner's view, "Americans can be proud that uniformed members of the military are providing such a vigorous defence to accused terrorists. But we should be ashamed that the system to prosecute them fails to conform with any recognised legal standards."

No one would claim that all the Guantanamo detainees have been harmless bystanders. But the question facing the US is why it could not try them in normal courts. That would go a long way toward silencing the world's criticism.

FOUR YEARS ON

Guantanamo base area:

45 square miles

Running cost:

\$95m a year

First arrivals of detainees:

January 2002

Most recent arrival:

September 2004

Most common nationalities:

Saudi, Yemeni, Afghan, Algerian

Those determined "no longer enemy combatant":

38 (of which 29 have been released, and nine, including five Uighurs, do not have a country that will accept them and are waiting indefinitely in "CampIguana")

Suicides:

39 have attempted, none successfully, 13 repeatedly

Source: Department of Defence

THE ARGUMENTS

AGAINST

Jimmy Carter

'I think what is going on in GuantanamoBay and other places is a disgrace to the USA'

Tony Blair

'It is an anomaly. It should end sooner rather than later'

Amnesty International

'Guantanamo has become the gulag of our time'

Florida Senator Mel Martinez (member of Bush's first Cabinet):

"It has become an icon for bad stories'

Peter Hain MP

'I would prefer that it wasn't there and I would prefer it was closed'

Sir Menzies Campbell

'The systematic violation of human rights undermines the moral authority of the West and makes it impossible to win the long-term battle for hearts and minds'

FOR

President Bush

'Guantanamo is a necessary part of protecting the merican people'

Bryan Whitman (Pentagon spokesman):

It serves a 'vital purpose'

Donald Rumsfeld

'These are people who are out to kill people'

Supreme Court justice Antonin Scalia

War is war, and it has never been the case that when you captured a combatant you have to give them a jury trial in your civil courts . . . give me a break'

US Vice-President Dick Cheney

'Occasionally there are allegations of mistreatment. But if you trace those back, in nearly every case, it turns out to come from somebody who had been inside and released to their home country and now are peddling lies about how they were treated'