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Court on Trial: As Justices Weigh Military Tribunals

A Guantanamo Tale --- Torture in Morocco Is Alleged By Accused Accomplice In Old 'Dirty Bomb' Plot --- A Constitutional Conundrum

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Four years ago, a Muslim convert from Chicago and another from London set out from Karachi, Pakistan, intent on terrorism in America, the U.S. government says. The two were stopped at the Karachi airport for problems with their papers. Then their paths diverged.

The Chicagoan, Jose Padilla, was arrested when he arrived at O'Hare airport, accused of plotting to explode a radioactive "dirty bomb," and jailed without charge as an "enemy combatant." The result is a civil-liberties storm that has twice reached the Supreme Court. It is a flash point in the debate over executive power, individual rights and homeland security that has smoldered since Sept. 11, 2001.

The other Muslim convert wasn't a U.S. citizen. And his path, he asserts in an account provided by one of his lawyers, has led to a Moroccan torture cell, imprisonment at Guantanamo, Cuba, and a proceeding to be held in a secretive military court created by order of President Bush after Sept. 11.

The identity of this second inmate, even his existence, largely escaped notice. The announcement of Mr. Padilla's arrest in 2002 by then-Attorney General John Ashcroft made no reference to a second man. His existence was briefly mentioned two years later at a news conference on the Padilla case, although then-Deputy Attorney General James Comey said this prisoner's name was classified.

But last November, after the Defense Department quietly listed five Guantanamo prisoners newly approved for military trials, the name of the alleged accomplice of Mr. Padilla could be pinpointed. He is Binyam Mohamed, a 27-year-old who was born in Ethiopia, lived for a time in America and moved to London in his teens. His story, which is impossible to verify, is that he was tortured and told by his captors what they wanted him to say.

The profound constitutional issues these murky events raise are now coming to the fore. The Supreme Court today will hear arguments over the validity of the military commissions set up to try prisoners at Guantanamo. Lawyers for the prisoners will argue they are illegal. The government will say the president has inherent power to create such commissions and that traditional laws of war give prisoners accused of war crimes limited rights.

Adding to the constitutional confusion, the justices face administration claims that a law known as the Graham-Levin Amendment, which provides limited legal rights to Guantanamo prisoners, strips the Supreme Court of jurisdiction over the military-commissions case. One of the amendment's authors, Democratic Sen. Carl Levin of Michigan, says the law does no such thing.

Then next week, proceedings in such a commission are to begin against Mr. Mohamed. The proceedings in his case and Mr. Padilla's underscore the contrasts between traditional law and special military trials in addressing the modern scourge of terrorism.

With Mr. Padilla, the administration acknowledges it can't use some evidence because it was collected while the Chicagoan was held without charge and denied the rights to have a lawyer and avoid self-incrimination.

The military-tribunal system doesn't bar such evidence. Advocates say it may be the only way a suspect can be held to account for a plot with alleged al Qaeda ties, because a civilian trial might entitle the defendant to subpoena al Qaeda leaders the U.S. holds abroad -- exposing intelligence sources and methods. But critics say such a military proceeding comes at the cost of a fair trial, and that this cost is too high. A military-commission trial, they warn, risks countenancing evidence extracted by torture.

The commissions are panels of four or more military officers, one a lawyer, and held at Guantanamo. The public can't attend, in contrast to civilian trials, but the Pentagon flies in a handful of reporters to file accounts, unless the presiding officer deems the information too sensitive.

A five-page charge sheet accuses Mr. Mohamed of conspiring, along with Mr. Padilla, with al Qaeda leaders to commit the war crimes of "attacking civilians, attacking civilian objects, murder by an unprivileged belligerent, destruction of property by an unprivileged belligerent and terrorism." The al Qaeda leaders it cites include Osama bin Laden, Ayman al-Zawahri, Khalid Sheikh Mohammad, Abu Zubayda and the late Muhammad Atef.

The sheet says that around May 2001, after a conversion to Islam, Mr. Mohamed went to an al Qaeda training camp in Afghanistan, attended a lecture by Mr. bin Laden and was sent to a 30-day "city warfare course" in Kabul. It says he trained on AK-47 assault rifles but not pistols "due to lack of ammunition." It says he went to an explosives class in Kabul also attended by Richard Reid, the so-called shoe bomber.

Then, the charge sheet says, Mr. Mohamed went to Pakistan with Abu Zubayda, a senior al Qaeda figure later captured there. Along the way, it says, Mr. Mohamed met Mr. Padilla, and in Lahore they "reviewed instructions on a computer . . . on how to make an improvised 'dirty bomb.'" However, the sheet says, Abu Zubayda considered a dirty bomb unfeasible, so they weighed alternatives, "such as blowing up gas tankers and spraying people with cyanide in nightclubs."

The sheet says Khalid Sheikh Mohammad -- the alleged Sept. 11 mastermind, now also in custody -- explained in Karachi that their mission would involve targeting gas stations and natural-gas-heated apartment buildings, using the gas to cause explosions. It says in April 2002 Messrs. Mohamed and Padilla were given \$6,000 and \$10,000, respectively, to go to the U.S. and execute the plot.

Mr. Padilla has told interrogators the two were feted the night before their departure by al Qaeda leaders including Khalid Sheikh Mohammad and Ramzi Binalshibh, according to Mr. Comey at the 2004 news conference. "That is," Mr. Comey said, they were "hosted at a farewell dinner by the mastermind of Sept. 11 and the coordinator of those attacks." (Both are now in custody.) Because of the conditions under which Mr. Padilla was being held, such a statement by him couldn't be used against him in federal court, but could at a military commission.

The two didn't get far. Passport control stopped them at the Karachi airport and held them overnight.

Mr. Padilla, under U.S. surveillance, was allowed to proceed to Chicago, where Federal Bureau of Investigation agents arrested him as a material witness in a criminal probe. A month later, just before a deadline to justify his detention, the U.S. transferred him, at President Bush's order, to a military prison.

Last November, as the Supreme Court weighed a challenge to his military detention, Attorney General Alberto Gonzales announced plans to return Mr. Padilla to civilian custody and prosecute him for other crimes. Instead of a dirty-bomb plot, he now is under indictment for having

supported a terrorist organization during the 1990s, among other charges. These charges, the U.S. says, are based on evidence it obtained lawfully. He has pleaded not guilty.

Mr. Mohamed, meanwhile, returned to the Karachi airport a week later with a forged passport, the Pentagon's charges say, attempting to fly to London. He was arrested again. The charge sheet ends there. The Pentagon declines to elaborate about "allegations that may become the subject of litigation in Mr. Mohamed's military commission."

His attorneys filed a brief supporting today's Supreme Court challenge to the validity of the military commissions, which concerns another Guantanamo inmate. The brief asserts that Mr. Mohamed "was rendered to Morocco by United States personnel . . . where he underwent unspeakable torture."

Besides this brief, Mr. Mohamed's version emerges in two other places: an interview with his brother, a U.S. citizen who asked not to be named for fear of reprisal for his relationship to an accused terrorist; and an account written by one of Mr. Mohamed's attorneys, Clive Stafford Smith, which the attorney says reflects what Mr. Mohamed told him during meetings at the Guantanamo naval base. The Wall Street Journal reviewed this 26-page account but had no way to authenticate it as Mr. Mohamed's own words.

Mr. Mohamed was born in Ethiopia, says his brother, and reared for a time in Nairobi, Kenya, where their father was an engineer for Ethiopian Airlines. Although of Muslim background, the family was secular, said the brother, adding that Mr. Mohamed attended a Catholic school. With Ethiopia in turmoil, the family in the early 1990s moved to the U.S., where Mr. Mohamed's brother and two sisters received asylum. Young Binyam knew nothing of the Quran, says his brother, but he "memorized 'PoliceAcademy' " and was always reciting dialogue from the 1984 Steve Guttenberg comedy. "It was annoying."

Their father returned to Ethiopia and Binyam stayed in the U.S., the brother says. But "my sister and I didn't want to take the responsibility of raising a 14-year-old kid," so their father placed Binyam in the care of family friends in Britain. He later moved to a London YMCA. This brother says he last saw Mr. Mohamed in 1998 but the family spoke to him weekly until July 2001, when he stopped answering his telephone.

The brother says he knew nothing of Binyam's interest in Islam or of his fate until May 2002, when two FBI agents arrived, showed a photo of Mr. Padilla and said Mr. Mohamed had been seen with him. The brother says he finally learned Binyam's whereabouts in January 2005 after the International Red Cross said he was a prisoner at Guantanamo.

According to Mr. Stafford Smith, Mr. Mohamed, after studying kickboxing and computer programming, found his Islamic faith in 2000. He was having a rough time in life because of a drug problem, the lawyer says in an interview, "and he converted because it seemed like a sanctuary." The attorney says Mr. Mohamed worked as a janitor for a London mosque and then journeyed to Afghanistan. Besides getting away from the streets, "he also wanted to see the Taliban with his own eyes, to decide whether it was a 'good Islamic country or not.' "

Mr. Stafford Smith is a Briton who was educated in the U.S. and spent 25 years here opposing capital punishment, winning honors from Queen Elizabeth II. He founded an international advocacy group called Reprieve for prisoners facing the death penalty. His name was passed around by British inmates of Guantanamo seeking a sympathetic lawyer, he says, and in January 2005 he got a postcard from Mr. Mohamed requesting his representation, sent via the International Red Cross.

He says Mr. Mohamed "dabbled with the idea of going to Chechnya" to join Islamic rebels fighting Russian rule but denies any tie to a terrorist plot against the U.S. -- or knowing Mr. Padilla.

Mr. Stafford Smith ridicules the suggestion that his client, who he says spoke no Arabic when he got to Afghanistan, and Mr. Padilla, who is not alleged to belong to al Qaeda, were feted by its leadership. "The idea of a conspiracy that involves two very minor people . . . and every major figure in al Qaeda except bin Laden himself seems risible," Mr. Stafford Smith wrote in a defense memorandum.

The attorney quotes Mr. Mohamed as saying he had "never met anybody like Khalid Sheikh Mohammad." But the lawyer also says he hasn't pressed his client to say whether he encountered any of the numerous al Qaeda figures the charge sheet says he conspired with.

An attorney for Mr. Padilla declined to say whether his client admits knowing Mr. Mohamed. The Padilla attorney, Andrew Patel, said he is weighing whether to call Mr. Mohamed as a witness in Mr. Padilla's trial set for September in federal criminal court in Miami.

In what Mr. Stafford Smith says is Mr. Mohamed's account, the prisoner says his misleading of Karachi airport authorities about his identity led to 14 weeks' detention in Pakistan and questioning by British and U.S. agents. In July 2002, the account says, U.S. agents flew him to Morocco. "It was when I got to Morocco that they said that some big people in al Qaeda were talking about me. They told me that the U.S. had a story they wanted from me, and it was their job to get it. They talked about Jose Padilla and they said I was going to testify against him and big people," the account reads.

The account says that in Morocco, questions were posed by Arabs and a self-described Canadian. The account says he was shackled in painful positions and punched by guards -- and then, weeks into his detention, came harsher treatment: "They took the scalpel to my right chest. It was only a small cut. Maybe an inch. . . . Then they cut my left chest. This time I didn't want to scream because I knew it was coming."

The account continues: "One of them took my penis in his hand and began to make cuts. He did it once, and they stood still for maybe a minute, watching my reaction. One of them said it would be better just to cut it off, as I could only breed terrorists. "I could not take any more of this torture, and I eventually repeated what was read out to me," the account continues. "They told me to say that I had been with bin Laden five or six times," that he himself had recommended targets, and that he had known about 25 terrorist leaders. "They told me I must plead guilty. I'd have to say I was an al Qaeda operations man, an ideas man."

After his confession, the account says, "brainwashing" began. "I remember they played Meat Loaf and Aerosmith over and over. I hated that," the account says. "When I became a Muslim, I had tried to get away from this. I'd canceled all the music out of my head and now they were forcing it back."

Morocco 's Embassy in Washington didn't respond to requests for comment.

In January 2004, the account says, Mr. Mohamed was flown to Afghanistan and held by the U.S. for months in a place called the "prison of darkness." It says he was chained to the floor, kept in a lightless cell for 23 hours a day and subjected to "horrible ghost laughter and Halloween sounds" or Eminem's "Slim Shady," at blasting volume.

Eventually, according to the account, U.S. soldiers said, " `This is the story that Washington wants.' It was about a dirty bomb. I was meant to steal the parts and build it with Padilla in New York. I did not even know what a dirty bomb was." Mr. Mohamed was taken to Guantanamo in September 2004, the account says, and told he must stay until he agreed to testify against others. Mr. Mohamed is to be judged by a panel of seven military officers whose names are secret but for the presiding officer and sole lawyer, Marine Col. Ralph Kohlmann.

U.S. citizens have a right to attend their trials, confront witnesses and compel defense witnesses to testify. Guantanamo defendants, by contrast, can be barred from proceedings and denied the right to compel testimony by witnesses if the commission finds this necessary to protect national security.

The military commission has discretion to consider any evidence it deems of "probative value to a reasonable person." The Pentagon acknowledges this could include statements taken through torture. It said last week it is considering rule changes to limit such evidence.

There's an indication Col. Kohlmann has considered the question of how to treat evidence possibly received this way. In November, at his child's high school in Durham, N.C., he led a student discussion titled "Torture, Terrorism and National Security." An organizer said it wasn't recorded or transcribed. The Pentagon wouldn't make Col. Kohlmann available for an interview.