

## Two at Guantanamo face military tribunal

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### US will prosecute the first detainees since WWII trials

By Charlie Savage, Globe Staff, 2/25/2004

WASHINGTON -- The Pentagon announced yesterday that it will prosecute two Guantanamo Bay detainees in the first military tribunal convened in more than half a century, filing charges of conspiracy to commit war crimes against an alleged Yemeni propagandist and an alleged Sudanese paymaster for the Al Qaeda terror network.

Both men served as bodyguards and aides for Osama bin Laden, according to military indictments unsealed yesterday. One allegedly also produced an Al Qaeda recruitment video glorifying the 2000 attack on the USS Cole in Yemen, which killed 17 Americans. The other allegedly served as a key accountant for bin Laden, funneling money from front groups to Al Qaeda.

Neither will face the death penalty for their actions, said Major John Smith, a spokesman for the Defense Department's Office of Military Commissions. Both are among 650 "enemy combatants" captured after the Afghanistan invasion who have been held for as long as two years in a prison camp at Guantanamo Bay Navy Base in Cuba.

The decision to move forward with the charges brings a new urgency to what had until now been a hypothetical debate over the fairness of military tribunals, in which defendants face a panel of officers and are denied the protections of a jury trial or the right of appeal to an independent panel. The military may close portions of the trial or monitor attorney-client discussions for security reasons.

Civil libertarians around the world have questioned whether such tribunals could protect a defendant's right to a fair trial, but the Bush administration argues that the alternative justice system is necessary to protect national security in a time of war. The Pentagon noted yesterday, however, that in many respects the commissions will resemble a conventional trial: Defendants are presumed innocent until proven guilty beyond a reasonable doubt; they have the right to remain silent, the right to a defense attorney paid for by the government, and the right to call and confront witnesses.

The military is charging each with conspiring with Al Qaeda to kill civilians, destroy property, and commit other acts of terrorism. The tribunal has yet to appoint judges, who are likely to convene in a retrofitted air traffic control tower adjacent to the headquarters at the heart of the Guantanamo naval base.

It may be months before the tribunal gets underway if the defendants do not enter a plea deal, officials said. Army Major Mark Bridges, who is representing one of the defendants, Ali Hamza Ahmed Sulayman al Bahlul of Yemen, said yesterday that he has not yet been shown any of the evidence against his client and difficulties in obtaining an independent Arabic translator with security clearances have delayed a first meeting with Bahlul.

"My main concern is Mr. Bahlul's ability to get a fair trial in the system he's being prosecuted in," Bridges said. "We're going to need a substantial amount of time [to prepare] to be sure. This is an investigation into charges that span a couple of different countries in a time period significantly in the past and with witnesses perhaps scattered around the globe."

The other defendant charged yesterday was Ibrahim Ahmed Mahmoud al Qosi of Sudan.

Steven Watt of the Committee for Constitutional Rights, which filed the pending Supreme Court case over the Guantanamo detainees may challenge their detention in the civilian court system, criticized the choice of the first tribunal defendants. "This 'conspiracy' charge is so amorphous," he said. "It's hardly the worst of the worst that are going before the military commission first. We'd still criticize the commissions wholesale, but this

would have been an opportunity for them to put out the worst of the worst first to give them the legitimacy that the government so craves for these commissions."

But Paul Rosenzweig, a senior legal fellow at the conservative think-tank Heritage Foundation, said the importance of these two defendants to the Al Qaeda effort should not be underestimated. "Saying that a propagandist is not an integral part of a terrorist organization is a bit like saying that Joseph Goebbels was not an intimate part of the Third Reich," he said.

In a related development, White House counsel Alberto Gonzales made a rare public appearance yesterday to defend the Bush administration's policy of detaining both US citizens and foreigners suspected of terrorist intentions for extended periods without access to lawyers or courts.

Speaking at a American Bar Association breakfast meeting, Gonzales said the Bush administration's decision to designate someone an enemy combatant involves extensive consultation among the departments of Defense and Justice, the FBI, CIA, attorney general, and the president to ensure the suspects pose a substantial security risk.

"For those worried the president can designate anyone in this room as an enemy combatant, I can assure you a process is in place," he said.

Michael Noon, a Catholic University law professor who attended the ABA meeting, said the timing of the Gonzales speech with the military tribunal announcement emphasized the Bush administration's position that what was legal in World War II remains legal today, despite international agreements over war prisoners subsequently enacted, such as the 1949 Geneva Convention.

That position, he said, will remain controversial as the tribunals get underway.

"When this happened the last time, nobody knew it or cared," Noon said. "We had over a thousand trials in the Pacific of Japanese war criminals by military commission and hundreds in Europe."

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