

6 AT GUANTÁNAMO ARE SAID TO FACE TRIAL IN 9/11 CASE FIRST BIG PROSECUTION A Military Commission Will Try to Fix Blame

for the Attacks

By WILLIAM GLABERSON

Military prosecutors are in the final phases of preparing the first sweeping case against suspected conspirators in the plot that led to the deaths of nearly 3,000 Americans on Sept. 11, 2001, and drew the United States into war, people who have been briefed on the case said.

The charges, to be filed in the military commission system at Guantánamo Bay, Cuba, would involve as many as six detainees held at the detention camp, including Khalid Shaikh Mohammed, the former senior aide to Osama bin Laden, who has said he was the principal planner of the plot.

The case could begin to fulfill a longtime goal of the Bush administration: establishing culpability for the terrorist attacks of 2001. It could also help the administration make its case that some detainees at Guantánamo, where 275 men remain, would pose a threat if they are not held at Guantánamo or elsewhere. Officials have long said that a half-dozen men held at Guantánamo played essential roles in the plot directed by Mr. Mohammed, from would-be hijackers to financiers.

But the case would also bring new scrutiny to the military commission system, which has a troubled history and has been criticized as a system designed to win convictions but that does not provide the legal protections of American civilian courts.

War-crimes charges against the men would almost certainly place the prosecutors in a battle over the treatment of inmates because at least two detainees tied

to the 2001 terror attacks were subject to aggressive interrogation techniques that critics say amounted to torture.

One official who has been briefed on the case said the military prosecutors were considering seeking the death penalty for Mr. Mohammed, although no final decision appears to have been made. The official added that the military prosecutors had decided to focus on the Sept. 11 attacks in part as an effort to try to establish credibility for the military

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commission system before a new administration takes the White House next January.

"The thinking was 9/11 is the heart and soul of the whole thing. The thinking was: go for that," the official said, speaking on the condition of anonymity because no one in the government was authorized to speak about the case. Even if the charges are released soon, it would be many months before a trial could be held, lawyers said.

A Pentagon spokesman, Bryan Whitman, declined to comment specifically. But he added that the government was preparing a case against "individuals who have been involved in some of the most grievous acts of violence and terror against the United States and our allies."

"The prosecution team is close to moving forward on referring charges on a number of individuals," Mr. Whitman said.

Ever since President Bush announced in 2006 that he had transferred 14 "high value" detainees to Guantánamo from a secret C.I.A. detention program, it has been expected that the Pentagon would eventually lodge charges involving several of the numerous terror plots to which officials say several of those men were tied.

Officials have said detainees now held at Guantánamo are responsible for attacks that killed thousands of people, including the United States Embassy bombings in East Africa in 1998, the attack on the destroyer Cole in 2000, and the Bali nightclub bombing in 2002.

But it has always been clear that a case involving the Sept. 11

plot would be the centerpiece of the military commissions system and its most stringent test. After the Supreme Court struck down the Bush administration's first system for military commission trials in 2006, Congress enacted a new law.

Among other things, the Military Commissions Act provides that detainees charged with war crimes are entitled to military lawyers to defend them, a presumption of innocence and a right of appeal. But detainees' lawyers and other critics have said that many flaws remain, including the fact that the system is under Pentagon control and even the judges are military officers.

Told of the possible charges, Carrie Lemack, whose mother was killed on American Airlines Flight 11, said such a trial would be a grueling process for the families. But, Ms. Lemack said, "It is important that justice be brought to those who killed my mother and nearly 3,000 others."

It was not clear Friday whether final decisions had been made about precise charges and which detainees are to be included.

But it is known that the prosecutors have considered charges of murder, conspiracy and providing material support for terrorism because of the Sept. 11 deaths. It is also known that a joint team of military and Department of Justice lawyers working on the case have considered charging six of the best-known Guantánamo detainees.

Lawyers have said that two of those are men whose treatment in American hands would inevitably be a focus of defense lawyers in their cases.

One of them, Mr. Mohammed, known as KSM, was subject to the simulated-drowning technique known as waterboarding while in secret C.I.A. custody, Gen. Michael V. Hayden, the director of the Central Intelligence Agency, confirmed this week.

The American-educated Mr. Mohammed was described by the Sept. 11 commission as the "self-cast star, the superterrorist," with plans for destruction on a vast scale. At a Pentagon hearing last year, he claimed responsibility for more than 30 terrorist at-



tacks and plots.

He was explicit about his role in the 2001 attacks. "I was responsible for the 9/11 operation, from A to Z," he said.

The other detainee whose treatment could become a focus of any trial is Mohammed al-Qahtani, who has been held at Guantánamo since 2002. Pentagon officials have said he may have been the so-called "20th hijacker." A month before the attacks, he flew from Dubai to Orlando, Fla., but was denied entry into the United States by an immigration official.

Pentagon investigators concluded in 2005 that he had been subject to abusive treatment at Guantánamo, including sleep deprivation, being forced to wear a bra and being led around on a leash.

Gitanjali Gutierrez, one of Mr. al-Qahtani's lawyers at the Center for Constitutional Rights, said she had no information about whether he would be charged. "But if he is," Ms. Gutierrez said, "I can assure you that his well-documented torture and the controversy over secret trials will be the focus."

Zacarias Moussaoui, who at one point was identified by prosecutors as a potential "20th hijacker" pleaded guilty to conspiracy in 2005, and is serving a life term. He is the only person who has been tried in a United States court for involvement in the Sept. 11 plot.

Defense lawyers are also expected to use any commission

cases to challenge the prosecutors over the C.I.A.'s destruction of tapes of interrogations of two detainees, which has been acknowledged by the agency.

Among the other four potential defendants are Guantánamo detainees who intelligence officials have said played critical support roles for the hijackers.

Officials say Ramzi bin al-Shibh, who had been a roommate of the lead hijacker Mohamed Atta in Hamburg, Germany, was the main intermediary between the hijackers and Al Qaeda leaders in the months before Sept. 11.

The Pentagon has described another detainee, Ammar al-Baluchi, a nephew of Mr. Mohammed, as "a key lieutenant for KSM during the operation on 11 September" who wired \$114,500 to the hijackers.

Mr. al-Baluchi's assistant was Mustafa Ahmed al-Hawsawi, according to various accounts. The September 11 commission said that Mr. al-Hawsawi had been assigned by Mr. Mohammed to help coordinate hijackers' travel and was so centrally involved that he was their contact for unused money to be returned in the days before the attacks.

Finally, the detainee known as Khallad, who is missing part of his right leg as a result of what officials say is a long jihadist history, is believed to have had long ties to Mr. bin Laden. Officials have said Khallad helped select and train some of the hijackers and was originally slated to have been one of them himself.

A Guantánamo Trial

Here are six people — and their suspected roles in the Sept. 11 attacks — who have been considered as potential defendants in a war-crimes trial at Guantánamo Bay, Cuba.



Khalid Shaikh Mohammed

Captured March 2003

The United States educated, senior Qaeda operative who has admitted to being the driving force behind the Sept. 11 attacks.



Ramzi bin al-Shibh

Sept. 2002

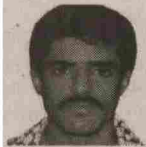
Paymaster and primary point of contact between Qaeda leadership and the Sept. 11 hijackers.



Mustafa Ahmed al-Hawsawi

March 2003

A Saudi financial and travel planner for Al Qaeda who, with Mr. bin al-Shibh, was a communications link between Khalid Shaikh Mohammed and the Sept. 11 hijackers.



Walid bin Attash

April 2003

Former bodyguard for Osama bin Laden. Helped plan the bombing of the destroyer Cole and helped Mr. bin Laden select operatives for the Sept. 11 attacks.

Ammar al-Baluchi (formal name: Ali Abd al-Aziz Ali)

April 2003

Cousin of Ramzi Yousef, who was involved in the 1993 World Trade Center bombing, and nephew of Khalid Shaikh Mohammed. Assisted his uncle with various plots, including the Sept. 11 attacks and Richard Reid's attempted shoe bombing.

Mohammed al-Qahtani

December 2001

Believed by American officials to have been the planned 20th hijacker. A month before the attacks, he flew to Orlando but was denied entry.