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The government's case for keeping the Guantánamo Bay prisoner locked away seemed airtight. He had confessed to overseeing the distribution of supplies to al-Qaida fighters battling U.S. forces in Afghanistan, even describing the routes where pack mules hauled the packages.

But a federal judge rejected Fouad Mahmoud Al Rabiah's confessions, concluding that he had concocted them under intense coercion. Even statements that the government insisted Al Rabiah had made under noncoercive, or "clean," questioning were tainted, U.S. District Judge Colleen Kollar-Kotelly ruled, and she ordered that Al Rabiah be released.

The government has lost eight of 15 cases in which Guantánamo inmates have said they or witnesses against them were forcibly interrogated, according to ProPublica's review of 31 published decisions that resolve lawsuits filed by 52 captives who said they've been wrongfully detained.
Because some of the judges' opinions are heavily redacted, it's impossible to be sure there aren't more cases in which the government offered interrogation evidence collected under questionable circumstances. More than 50 such lawsuits are still pending, two years after the U.S. Supreme Court gave Guantánamo inmates the green light to challenge their detention in the U.S. District Court for the District of Columbia.

Judges rejected government evidence because of interrogation tactics ranging from verbal threats to physical abuse they called torture. Even in the seven cases the government won, the judges didn't endorse aggressive methods. In six, they decided the detainees' stories of abuse simply weren't credible or were irrelevant to the outcome. In one, the prisoner had repeated self-incriminating statements in military hearings, which the judge viewed as less intimidating than the interrogations he found unacceptable.

The 15 decisions offer the most detailed accounting to date of how information obtained from the Guantánamo inmates through controversial tactics is standing up in court. They come in cases initiated by detainees seeking release via a writ of habeas corpus, not cherry-picked by prosecutors. Criminal law experts say the judges' opinions help explain why the government has decided not to pursue criminal convictions against some detainees. Such evidence would pose even greater problems in criminal trials, for which requirements of proof are more demanding.

The Obama administration has already said that at least 48 of the remaining 176 prisoners at Guantánamo will be held indefinitely because they're too dangerous to release but can't be prosecuted successfully in military or civilian court. They've said that coercion-tainted evidence is one obstacle.

In most of the cases the government lost, the judges rejected statements even from the "clean" sessions that the Bush administration began administering in 2002 to collect evidence to use in court. The fear prisoners experienced during improper interrogations bled over to corrupt those statements too, the judges said. In Al Rabiah's case, Kollar-Kotelly found that interrogators fed him incriminating details "that the Government has not even attempted to rely on as reliable or credible," including a story of his handing Osama bin Laden "a suitcase full of money." Then interrogators used "abusive techniques," such as sleep deprivation, threats of torture and other methods described in redacted passages, to get him to admit to them. Al Rabiah is now free in his home country, Kuwait.

"We thought all along that this could happen," said Brittain Mallow, the former commander of the Department of Defense Criminal Investigation Task Force, who supervised the clean interviews from 2002 to 2005. "There was no question in our minds that that would be a defense strategy, to say, 'This person was treated badly, and you can't trust anything he told anyone.' But we didn't control all the interviews of the detainees, so what we could do was limited."

Where the judges draw the line for acceptable tactics affects how interrogators question U.S. prisoners in ongoing hostilities, said Robert Chesney, a former adviser to President Barack Obama's Detainee Policy Task Force. In May, the U.S. Court of Appeals for the D.C. Circuit denied U.S. captives in Afghanistan the same right to legal review as the Guantánamo detainees, but after three prisoners sought a rehearing, the court this month ruled that they could present new evidence in a lower court to continue fighting their detention.

"You have to assume that, if you're in charge of a detention facility, you're operating in the shadow of these rulings," said Chesney, who teaches national security law at the University of Texas School of Law.

Lawyers familiar with the Guantánamo case files expect many of the remaining habeas cases will also turn on judges' assessments of interrogation evidence.

"I'm not aware of a single case that doesn't rely extensively on statements of detainees," said Philip Sundel, deputy chief defense counsel in the Defense Department's Office of Military Commissions. An administration review recently obtained by The Washington Post supports his assessment: "Much of what is known about such detainees comes from their own statements or statements made by other detainees during custodial debriefings."

At this point, the government has lost 37 of the 53 habeas cases that have been decided, most because it couldn't produce enough reliable evidence that the men were al-Qaida or Taliban militants.

No Do-Overs

The government is borrowing its clean-evidence approach from criminal law, by which prosecutors occasionally succeed in arguing that a change in time, scene or interrogator has reduced a suspect's fears enough that a court should accept his subsequent words as voluntary and true.

But almost no change has been enough to convince judges that the unusual pressures experienced by the Guantánamo inmates had been eased. Many of the detainees were aggressively interrogated at foreign prisons. Once at Guantánamo, each captive was questioned "dozens of times, over the course of weeks and months, by different entities, different persons, different interviewers, sometimes for completely different purposes and with different kinds of questions," Mallow said. Driven to get actionable intelligence, some interrogators used now widely criticized tactics such as prolonged sleep deprivation, sexual humiliation, stress positions, threats with military dogs and, as Mallow put it, "experimentation

and ad hoc methodologies."

In the 15 decisions ProPublica reviewed, only once did the government succeed in persuading a judge that the taint of coercion had been removed from specific pieces of evidence. Moving detainees from harsh prisons abroad to Guantánamo didn't work, nor did sending in cordial interviewers rather than aggressive interrogators. In some cases, judges still saw taint in "clean" statements taken months or even years after coercive interrogations.

Last year, Justice Department lawyers tried to show that Farhi Saeed bin Mohammed was an al-Qaida fighter by using statements from another detainee, Binyam Mohamed, whose "harrowing" interrogation ordeal was described in an 81-page opinion by Senior Judge Gladys Kessler. For two years, beginning with his capture in April 2002, foreign interrogators holding him "at the behest of the United States" beat and kicked him, chained him to a wall, kept him half-standing for long stretches and cut him with a blade, including on his genitals. He was "fed information" and "told to verify it." During that time, he was also interrogated by the FBI and CIA.

The government's lawyers didn't contest the allegations of mistreatment but instead argued that the treatment of the informant didn't undermine the evidence he gave later. They submitted statements he'd made after being transferred to Guantánamo, where a U.S. interviewer "developed a relationship with him that was non-abusive and, in fact, cordial and cooperative."

But Kessler didn't buy that better treatment had done the trick. Given that, "throughout his detention, a constant barrage of physical and psychological abuse was employed in order to manipulate him and program him into telling investigators what they wanted to hear," she wrote, it was "more than plausible" that he had also manufactured details in nonabusive questioning.

Had Binyam Mohamed's statements been clean, Kessler suggested, they would have made all the difference in the case against the other detainee, who according to other, reliable evidence had some tie to "a terrorist pipeline." Instead, Kessler ordered in November that Farhi Saeed bin Mohammed be released. The government is appealing her decision.

Binyam Mohamed, the informant whose torture Kessler described so vividly, had already been released. He's now free in Britain, where he has mounted a public campaign to have the British

officers he claims were complicit in his torture held accountable.

The U.S. government's bid to block Saeed Mohammed Saleh Hatim's habeas lawsuit met a similar fate. He had confessed to receiving military training from al-Qaida, but later said he'd made up the story in fear of punishment.

Government lawyers didn't contest that Hatim, while held for six months at a U.S. military base in Afghanistan, had been beaten repeatedly, kicked and "threatened with rape if he did not confess to being a member of the Taliban or al-Qaida," according to U.S. District Judge Ricardo Urbina's opinion. Instead, they submitted confessions he gave after arriving at Guantánamo, under cleaner questioning. But Urbina found that Hatim's confession was "tainted by torture" and ordered that he be released. The government is appealing the decision.

Mallow said he never thought the clean-interrogations strategy was surefire: "Do you believe the argument that, if someone was abused as a child, they're going to be affected for the rest of their life? I think it depends on the individual. You don't have an absolute argument that after 30 days that everything you do now is completely separate and clean."

Coercion challenges and other problems with detainees' reliability were pivotal in these cases, because the government had little to show besides questionable interrogation evidence. In Al Rabiah's case, for instance, the government's other proof amounted to statements from four detainees that Kollar-Kotelly rejected as unbelievable and even "demonstrably false." In Hatim's case, the government's other key evidence came from a fellow prisoner who, according to the military's own evaluators, suffered "severe psychological problems," including "psychosis" and "auditory hallucinations." Other judges had already rejected evidence from that informant, Urbina noted.

The Obama administration is appealing five of the eight coercion cases it lost, all to the D.C. Circuit. Three detainees who won habeas cases by alleging forced interrogations have been released, while four who lost have appealed. In at least one case, there is still time for the losing party to file an appeal.

Cleaner Evidence

The six cases the government has won despite a claim of coercion weren't endorsements of harsh interrogations. Rather, the judges ruled in the government's favor because they were skeptical of the detainees' claims of abuse or for other reasons.

Government lawyers scored their most direct victory in the case of Yasein Khasem Mohammad Esmail, convincing U.S. District Judge Henry Kennedy that the prisoner had invented much of his claim of mistreatment.

Esmail's lawyers had submitted three ever more elaborate accounts saying he had been threatened with death, thrown from a plane and buried to his neck in the ground, Kennedy said in his April 8 decision. To counter the detainee's claims, the government submitted medical records that undercut his story and produced sworn statements from two U.S. interrogators who denied using or witnessing most of the techniques Esmail described.

In a discussion that took up nearly half his 43-page opinion, Kennedy said he found the interrogators to be more credible than Esmail. Esmail had been "mistreated," he said, but his claims were "exaggerated."

Esmail's legal team consisted of S. William Livingston, Alan Pemberton and Brian Foster of Covington & Burling; David Remes, founder of the nonprofit Appeal for Justice; and Marc Falkoff, a professor at Northern Illinois University College of Law. Remes and Falkoff declined to comment, and counsel at Covington did not respond to e-mails.

Chesney, the University of Texas law professor, said Kennedy's decision was "a big win for the government. It shows that it is possible to rebut claims of torture, that the courts don't simply accept detainees' claims of abuse." But the judge's opinion didn't address the broader question of which interrogation methods will find acceptance in court. The judge thought Esmail was "a little bit abused," Chesney said, but not so abused as to poison the interrogation evidence. "It's bad that the courts are not speaking more clearly about where the line is. Is it torture? Is it cruel and inhuman treatment? Is it any kind of interrogation?"

In upholding the detention of another prisoner, Omar Mohammed Khalifh, Senior Judge James Robertson, now retired, said it was unnecessary to decide whether his interrogation statements were tainted, because the government's other evidence was enough to show he was an explosives instructor for al-Qaida.

The closest the government got to erasing the taint of substantial coercion was in its victory against Musa'ab Omar Al Madhwani. Senior Judge Thomas Hogan said "a variety of harsh interrogation techniques" had tainted 23 interrogation statements the government obtained from the detainee. But Hogan determined that the self-incriminating testimony the prisoner gave during formal military hearings was clean. Two years had passed between the worst abuse and the military hearings, Hogan reasoned, and at the hearings, Al Madhwani apparently spoke voluntarily and had been able to seek help from a military-assigned "personal representative."

The Criminal Arena

If coerced evidence is costing the government wins in the habeas cases, criminal law experts say, it would pose worse problems if those cases were prosecuted in civilian or military courts. The rules for excluding tainted evidence are stricter in both kinds of criminal trials, yet the government's need to marshal evidence is greater. To win a habeas case it need prove only that a detainee is "more likely than not" a member of the enemy, but to win a civilian or military criminal conviction it must prove guilt beyond a reasonable doubt.

A death threat alone could undermine a prosecution, if the believability of a prisoner's statement in response to that threat was crucial to the case, said retired U.S. Army Major General John Altenburg, who until November 2006 was in charge of deciding which Guantánamo detainees would face military commission trials. Altenburg is currently of counsel to Greenberg Traurig.

So far, only 24 of the 779 men held at Guantánamo at some point have been charged with a crime to be heard by a military commission. Four of them have been convicted. Only one detainee, Ahmed Khalfan Ghailani, has been moved from Guantánamo to face charges in a civilian court; that case is currently unfolding in federal court in New York.

A January report by the Guantanamo Review Task Force said tainted evidence was hindering prosecution "in some cases," but that it was not, overall, a "principal obstacle." Administration

spokesmen declined to elaborate or to disclose the names of detainees who will not be tried for this reason.

The coercion issue has cropped up in a few high-profile instances. In the case of Omar Khadr, who was 15 when detained in 2002 for allegedly killing a U.S. Army medic in Afghanistan, the judge in his ongoing military commission trial ruled on Aug. 9 that prosecutors may use his confessions despite his claim that he spoke out of fear. In pretrial proceedings, a U.S. interrogator said he'd told Khadr a tale of an uncooperative Afghan teen who was raped by inmates in an American prison.

But a top Bush official revealed to journalist Bob Woodward that Mohammed al-Qahtani, the suspected 20th hijacker of Sept. 11, 2001, couldn't be prosecuted in a military commission because of "life-threatening" torture. And the military case against alleged Sept. 11 plotter Moh amedou Ould Slahi -- who recently won his habeas petition, partly by claiming coercion -- ended in 2007 before formal charges were filed, after the lead prosecutor said that key admissions had been extracted by torture.

Even if the administration doesn't prosecute any more of the Guantánamo prisoners, the legal damage caused by harsh interrogations is likely to keep emerging as their detention challenges move through court. At least 50 more prisoners have filed habeas lawsuits before federal judges in Washington.