

U.S. to Try 6 On Capital Charges Over 9/11 Attacks New Evidence Gained Without Coercive Tactics

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The Bush administration announced yesterday that it intends to bring capital murder charges against half a dozen men allegedly linked to the Sept. 11, 2001, terrorist attacks, based partly on information the men disclosed to FBI and military questioners without the use of coercive interrogation tactics.

The admissions made by the men — who were given food whenever they were hungry as well as Starbucks coffee at the U.S. prison at Guantanamo Bay, Cuba — played a key role in the government's decision to proceed with the prosecutions, military and law enforcement officials said.

FBI and military interrogators who began work with the suspects in late 2006 called themselves the "Clean Team" and set as their goal the collection of virtually the same information the CIA had obtained from five of the six through duress at secret prisons.

To ensure that the data would not be tainted by allegations of torture or illegal coercion, the FBI and military team won the suspects' trust over the past 16 months by using time-tested rapport-building techniques, the officials said.

Though long expected, the Pentagon's announcement means that the self-described mastermind of the Sept. 11 attacks — Khalid Sheik Mohammed — and five others accused of taking part in the associated training, financing and logistical preparations

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could face a military jury before the end of President Bush's term, something the administration has made a priority.

Prosecutors recommended to senior officials that the men be tried jointly and they asked Susan Crawford, the convening authority for military commissions, to approve

the death penalty. Preliminary hearings could begin within a month.

Brig. Gen. Thomas W. Hartmann, Crawford's legal adviser, said yesterday that the charges "allege a long-term, highly sophisticated, organized plan by al-Qaeda to attack the United States of America."

Mohammed is alleged to have masterminded the plot in consultation with Osama bin Laden. The five others — Walid bin Attash (also known as Tawfiq bin Attash), Ramzi Binalshibh, Ammar al-Baluchi, Mustafa Ahmed al-Hawsawi and Mohammed al-Qahtani — are accused of helping to finance and facilitate the attack. Hartmann said there have not been discussions about charging bin Laden.

An unanswered question is whether the FBI and military interrogators could have extracted the same information without a road map from the CIA indicating what they might say. It also remains unknowable whether the detainees would have responded to a friendly approach without first receiving more aggressive treatment.

Vincent Warren, executive director of the Center for Constitutional Rights, which represents one of the detainees charged and many more at Guantanamo Bay, said the cases are "essentially show trials, as President Bush is leaving his tarnished legacy to the next president." He added: "They are being used to justify six years of lawlessness and barbarity this government has been doing."

White House spokeswoman Dana Perino said Bush played no role in deciding which detainees would be prosecuted, or in deciding to pursue the death penalty. "The White House was not involved," she said. "They made the decision to bring the charges today because, as they said, they were ready to do so."

Officials said most of the detainees talked to FBI and military interrogators, some for days, others for months, while one or two rebuffed them. The men were read rights similar to a standard U.S. Miranda warning, and officials designed the program to get to the information the CIA already had gleaned by using waterboarding, which simulates drowning, and other techniques such as sleep depriva-



tion, forced standing and the use of extreme temperatures.

"They went in and said that they'd love to talk to them, that they knew what the men had been through, and that none of that stuff was going to be done to them," said one official familiar with the program who spoke on the condition of anonymity because of its secrecy. "It was made very clear to them that they were in a very different environment, that they were not with the CIA anymore. There was an extensive period of making sure they understood it had to be voluntary on their part."

Prosecutors and top administration officials essentially wanted to cleanse the information so that it could be used in court, a process that federal prosecutors typically follow in U.S. criminal cases with investigative problems or botched interrogations. Officials wanted to go into court without any doubts about the viability of their evidence, and they had serious reservations about the reliability of what the CIA had obtained for intelligence purposes.

"It was the product of a lot of debate at really high levels," one official familiar with the program said. "A lot of people were involved in concluding that it may not be the saving grace, but it would put us on the best footing we could possibly be in. You can't erase what happened in the past, but this was the best alternative."

The existence of an FBI effort to reconstruct CIA evidence was previously reported in the Los Angeles Times, but officials provided new details and described its success in interviews over the past week.

At CIA headquarters, yesterday's announcement of the prosecutions was applauded. The agency previously interrogated five of the six men in secret prisons. CIA Director Michael V. Hayden sent a congratulatory message to employees, saying the trials would be a "crucial milestone on the road to justice" for

victims of the Sept. 11 attacks.

Hamilton Peterson of Bethesda, whose father and stepmother were on hijacked United Flight 93, which crashed in Pennsylvania, said yesterday that he supports the trials and the prosecutors' push for the death penalty. "I do not see how someone could view the death penalty as inappropriate for the murder of approximately 3,000 people," Peterson said. "There is an obvious necessity for justice to be fulfilled."

Notably absent from the Pentagon's list are Zayn Abidin Muhammed Hussein, commonly known as Abu Zubaida, and Abd al-Rahim al-Nashiri, the detainees who, in addition to Mohammed, are known to have been subjected to waterboarding. Lawyers for the detainees have predicted that courts will throw out as illegal the evidence the CIA obtained in such sessions.

"There's strong consensus that the 'big' case should be brought first — that is, the prosecution of those who played a direct role in the 9/11 attacks," a law enforcement official said. U.S. officials think Abu Zubaida and Nashiri were not directly involved in the Sept. 11 plot.

The plan to obtain voluntary disclosures emerged from a small group of senior officials from several agencies who took the defense secretary's Gulfstream jet to Guantanamo Bay shortly after the high-value detainees were transferred there. They quickly decided to distance themselves from the CIA's interrogation approach and to try to talk to the men as near-equals. Officials said that instead of being forced to endure endless grilling, the detainees were allowed to say when interviews would start or end.

Observers watched the interrogations remotely so they could verify that the questioning complied with the Army's updated field manual on interrogations, which includes strict prohibitions against aggressive techniques.