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Experts: Plenty of proof to convict alleged 9/11 mastermind

Marisa Taylor - McClatchy Newspapers

WASHINGTON — U.S. officials once described the confession of accused 9-11 mastermind Khalid Sheikh Mohammed as a gold mine of intelligence that proved his role in a litany of terrorist plots.

However, now his admissions — because they were made during interrogations in which he was waterboarded 183 times — have become a liability for the Justice Department as it readies to hold him accountable in a U.S. court.

As a consequence, prosecutors who are preparing the case against Mohammed and other Sept. 11 defendants are faced with piecing together a much more complicated narrative that will need to include seized evidence, financial transactions, recorded phone conversations and a shadowy web of cooperating witnesses willing to betray al Qaida in court.

"Prosecutors are going to want to put on a case that in their minds is overwhelming and that can leave absolutely no doubt," said Jack Cloonan, a retired FBI agent and a former member of the bureau's Osama bin Laden unit. "To put on coerced statements or some sort of flimsy circumstantial case would be disastrous."

Those sympathetic to both the prosecution and the defense agree that prosecutors will have a hard time convincing a judge to allow them to rely on any information gathered through so-called enhanced interrogation techniques. Even if they can, experts said, the Justice Department is unlikely to see it as beneficial to the case because of the prospect that the details of his treatment would appall jurors.

"This is not only the trial of Khalid Sheikh Mohammed," Cloonan said. "The entire Justice Department and Attorney General Eric Holder's place in history will be on trial as well."

The Obama administration hasn't said whether, under political pressure, it will reverse plans to hold the trial in civilian court. Critics of the plan have cited concerns about the admissibility of evidence as one of several reasons that the trial is better suited to a military court, which has different standards for introducing evidence.

However, many experts — even those who are supportive of the military route — agree that prosecutors appear to have plenty of evidence to present in either forum without having to resort to statements obtained through abusive interrogation tactics.

At the trial announcement, Holder alluded to compelling evidence not yet made public, adding, "I've considered the problems that these cases represent, and I'm quite confident that we're going to be successful in the prosecution efforts."

"The U.S. has collected a very significant amount of evidence and a number of individuals who can verify (Mohammed's) role as a terrorist sponsor, as a terrorist operative and as a terrorist mastermind," said Rohan Gunaratna, an al Qaida expert who testified for the government in the trial of convicted al Qaida supporter Jose Padilla.

Gunaratna, however, didn't predict an easy conviction for the man whom U.S. agents know as KSM. "The trial will require a lot of work and a very significant investment of time. However, he added, "there is sufficient evidence to convict" for 9-11 and other terrorist plots.

The case against Mohammed dates to at least the 1990s, when he was implicated in the 1993 World Trade Center bombing and the foiled so-called Bojinka plot, which included plans to blow up 12 U.S.-bound airplanes in 1996. His nephew Ramzi Yousef was convicted for his roles in both schemes.

Yet federal agents initially regarded Mohammed as little more than a "freelance terrorist," according to the 9-11 Commission report.

"Although we readily equate KSM with al Qaida today, this was not the case before 9-11," the commission said.

By the time of the Sept. 11 attacks, the National Security Agency reportedly had collected recorded phone conversations between Mohammed and 9-11 hijacker Mohamed Atta, but hadn't shared them with other authorities.

At least a portion of these recordings and others could be introduced at trial. U.S. officials who investigated the 1998 U.S. Embassy bombings in Kenya and Tanzania identified some 114 intercepts involving the Sept. 11 plot.

Apart from Mohammed's confessions during interrogations, he claimed responsibility for the 9-11 operation "from A to Z" during a military hearing at Guantanamo that should be admissible in court.

He also admitted his role in an interview with an al Jazeera reporter by declaring, "I am the head of the al Qaida military committee. ... And yes, we did it."

"He's convicted himself out of his own mouth," said Philip Zelikow, the former executive director of the 9-11 Commission.

While the commission scrutinized Mohammed's confessions to interrogators and found much of them to be credible, it also discovered discrepancies.

"We know things that he told to interrogators that we don't think were true because of other evidence that contradicts it," Zelikow said.

In one example, Mohammed is said to have confessed to leading an al Qaida summit in which he discussed the 9/11 plot, but Cloonan said the FBI agent who was tracking Mohammed at the time had studied photos of the event and didn't spot him.

Cloonan said that was why prosecutors were going to want more than just Mohammed's words, coerced or not.

"They're going to want a fink on the stand to finger him as the mastermind of 9-11," he said. "When someone (a witness) comes into a court and acknowledges that they are a member of al Qaida, it's extremely compelling to the jury."

Cloonan, who questioned al Qaida member turned informant Jamal Ahmed al Fadl, is convinced that the Justice Department has such cooperating witnesses. Otherwise, he reasoned, Holder wouldn't have proceeded with the case in civilian court.

Al Fadl, or "Junior" as he's known, is one witness who could provide at least historical background on Mohammed, but the Justice Department will need others who have more recent information on the attacks, Cloonan said.

Like turncoats of a reputed mafioso or drug kingpin, it'll be challenging to find cooperators who have firsthand knowledge of Mohammed's role, rather than lower-level henchmen who can testify only to indirect knowledge, he said.

Guantanamo detainee Abu Zubaydah implicated Mohammed as the mastermind of 9/11 during traditional law enforcement questioning, although he was later waterboarded 83 times. Ali Soufan, the FBI agent who questioned Zubaydah without using the more controversial methods, could end up testifying about Zubaydah's voluntary admissions. However, it's unclear how persuasive the testimony would be, because questions have been raised since about Zubaydah's importance to al Qaida and his mental state. Soufan declined to comment.

Gunaratna said it was likely that prosecutors had revisited major al Qaida operatives who were serving life sentences for various roles in other plots to see whether they were now willing to cooperate.

Foreign intelligence agencies also have collected evidence that could prove useful in convicting Mohammed, he said. Gunaratna interviewed one of the men whom Pakistan arrested in connection with the murder of Wall Street Journal reporter Daniel Pearl, who he said corroborated Mohammed's claims that he personally slit Pearl's throat with a knife.

Prosecutors could offer physical evidence as well, experts said.

At Mohammed's arrest, agents seized a computer hard drive that contained documents related to 9-11, including letters from bin Laden himself. The CIA also allegedly has a set of Mohammed's fingerprints, although it's not known where they were found and whether they've been matched to anything connected to the plots.

U.S. law enforcement has amassed details on how al Qaida financed the operation, although from the public record it's unclear how convincingly they lead to Mohammed. The 9-11 Commission found that the plotters spent \$400,000 to \$500,000 on the attack and that Mohammed "provided his operatives with nearly all the money they needed to travel to the United States, train and live."

However, the commission added that "the origin of the funds remains unknown."

Bernard V. Kleinman, Yousef's attorney, said he thought that defense lawyers would level a number of challenges to the prosecution's case because of the coerced confessions, potential speedy-trial violations and a possibly tainted jury pool due to statements the Obama administration made that appear to convict Mohammed.

"Ordinarily, I would think prosecutors would have a difficult case ahead of them," he said.

Because the nature of the alleged crimes, however, the most difficult task will be for defense attorneys to ensure that their client gets a fair trial, he said. "At the end of the day, the U.S. government's track record on convicting terrorists is really very good."

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