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Guantanamo secrecy breeds anything but trust

Manning Pynn (Op-Ed)
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Reader Jimmy Ross of Longwood called last week to ask about something he had seen at the bottom of Page A14 of Wednesday's Sentinel.

The Associated Press article about military tribunals of prisoners at Guantanamo Bay Naval Base in Cuba ended with a quotation from a man "whose name journalists are prohibited from releasing."

Ross, a student of the law, wondered how that could be.

He knew that the United States Supreme Court long has held that the government can't restrain the press from publishing information, because that would amount to censorship and violate the Constitution's First Amendment. That theory, which first arose more than 70 years ago, was reaffirmed most notably in 1971 in the case of the Pentagon Papers, a leaked classified study revealing that the president had deceived Americans about U.S. involvement in Vietnam.

Then-Assistant U.S. Attorney William Rehnquist, now chief justice of the United States, asked the Washington Post not to publish the papers. When the Post refused, the government sued. Eventually that case and a lawsuit by the New York Times, trying to overcome a temporary restraining order, ended up before the Supreme Court, which ruled that the government could not block publication.

So how can the government block publication of the names of prisoners in the Guantanamo tribunals?

Actually, it's not quite that simple.

For nearly three years, the Guantanamo prison has held several hundred people -- including, for several months, some children -- who were captured after the invasion of Afghanistan. Most have spent all but half an hour each day in 7-by-8-foot steel-grate cells and have undergone regular interrogation.

The prison's population has fluctuated from a high of about 700 to about 549 today, with about 146 being transferred for release and 56 handed over to other nations.

There have been 34 suicide attempts, some multiple attempts by the same desperate people.

The government took the position that all the prisoners either are terrorists or people who supported terrorism and that they come under neither the protections of the Geneva Conventions nor those of the U.S. judicial system. Consequently, the prisoners were not charged with crimes, given access to lawyers or told what their ultimate fate might be.

Restrictive attitudes extended also to the press, which has been given guided tours of the prison but only limited details about what goes on there.

The Supreme Court ruled in June, though, that the Guantanamo prisoners, "like American citizens, are entitled to invoke the federal courts' authority," and that has resulted in the tribunals about which Ross inquired.

Air Force Major Michael Shavers explained that the tribunals are administrative rather than legal processes used to determine if prisoners are correctly classified as enemy combatants. He referred to the Geneva Conventions' prohibition of "holding detainees up to public scrutiny" as the reason the military doesn't divulge their names or allow them to be divulged.

So the government that contended that the prisoners didn't fall under the Geneva Conventions' protections now cites the same rules to explain why their identities must be concealed.

So far, 349 tribunals have been held. Final action has been taken on 131 prisoners, 130 of whom were found to be enemy combatants.

Shaver stated that a less-restrictive set of rules will apply to coverage of the trials by military commission that will determine if the prisoners are guilty of war crimes.

Regardless of one's view of the wisdom or appropriateness of this offshore system of incarceration, interrogation and justice, denying the press -- and, thereby, the public -- an opportunity to know fully what is going on, even in administrative proceedings, ultimately can breed nothing but distrust and suspicion.