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Lawyers cast light inside `Gitmo'

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KANSAS CITY, Mo. - "Among the most dangerous, vicious killers on the face of the earth," Defense Secretary Donald Rumsfeld called them. "Hardest of the hard core."

Hundreds of "enemy combatants" captured in and around Afghanistan - including some 550 still held by American forces at the U.S. Naval Base at Guantanamo Bay, Cuba - were deemed such a risk to national security, the Bush administration denied them access to lawyers until recently.

Last month, Scott M. Sullivan, a New York lawyer, brought cookies to eight of them.

"They ask, `How is my mother? My brother?'" Sullivan said. "They want to see pictures of any new children in the family.

"To a person, they tell us, `All I want is to go back home and live in peace with my family.'"

Sullivan is among only two or three dozen U.S. lawyers now allowed to enter Guantanamo to meet with shackled detainees, many of whom have spent three years in captivity without being formally charged with a crime.

One by one, as their identities become known, the suspected terrorists are hooking up with law firms challenging the detainments in civilian courts, as provided by a U.S. Supreme Court ruling last year.

Access to outside counsel - long fought by the Pentagon - is casting new light on the inner shadows of "Gitmo." Lawyers who have been there accuse the military of engaging in psychological torture, medical neglect and dirty tricks to turn detainees against attorneys.

The International Committee of the Red Cross, having inspected the facilities, voices similar accounts of "cruel, inhumane and degrading" treatment.

However, a report issued this month of a Defense Department probe found Guantanamo's operations and interrogation techniques to be exemplary, with only seven confirmed cases of "minor abuse" of detainees.

"We are holding them to prevent them from continuing to fight against the United States and for their intelligence value," Pentagon spokesman Maj. Michael Shavers said last week. "What critics are forgetting is that under (the Geneva Conventions), there's nothing requiring representation for enemy fighters suspected of breaking laws of war."

Four Guantanamo detainees face charges of committing war crimes. They will be tried by military commissions that assign lawyers to the defendants.

Entitled to some of the same rights accorded criminal suspects in civilian courts, they could be executed if convicted.

As for the rest of the prison population, Shavers said the military has evaluated detainees - and freed nearly 150 of them - since the facility opened in January 2002, after the fall of Afghanistan's Taliban.

One, Abdullah Mehsud, showed his ruthlessness after his release from 25 months of detainment last spring. Returning to Pakistan, he restored ties with al-Qaida and took credit for masterminding the abduction of Chinese engineers working on a dam project.

Others released from Guantanamo became celebrities in their home countries. Most denied working for al-Qaida or the Taliban, saying instead they were in the wrong place at the wrong time.

Beginning last summer, Combatant Status Review Tribunals brought 558 uncharged detainees to military panels. As a result, 33 "were found to no longer be enemy combatants," Shavers said, and they had no lawyers. They are in the process of being released.

The Pentagon established the on-site tribunals in response to the Supreme Court decision in June 2004 placing the onus on the Bush administration to justify the continued captivity of each enemy combatant.

The high court's ruling also cleared the way for lawyers such as Sullivan to seek security clearances to allow them to meet with detainees.

U.S. Sen. Pat Roberts, chairman of the Senate Select Committee on Intelligence, said Thursday that the presence of lawyers at Guantanamo represents one "pendulum swing" in an ongoing struggle to balance human rights against a new kind of warfare.

"As that pendulum swings, you've got to make sure you don't do anything to endanger terrorist interrogations," said the Republican from Kansas. "I can tell you, right now, terrorist interrogation is the No. 1 source we have to save lives and prevent attacks on the homeland."

Sullivan works for the global law firm Allen & Overy, representing 13 Guantanamo detainees - all Yemeni nationals - at no cost to them.

"None of them had been picked up by American forces," he said.

Rather, the Yemeni prisoners were apprehended by the U.S.-allied Northern Alliance in Afghanistan or by police in Pakistan and other countries.

One of Sullivan's clients, Imad Abdullah Hassan, wrote a poem to his mother from Gitmo, according to a court affidavit filed by Hassan's brother:

Mother, my longing for you has consumed my heart

I swear by all Creation I don't know how I can talk to you

In the night, in my waking dreams, I feel your love

Saying always, where is Imad?

Commenting on the arrival of the first prisoners three years ago, Vice President Dick Cheney called them "the worst of a very bad lot ... devoted to killing millions of Americans."

Many refused to speak to interrogators; one defiantly insisted on serving as his own lawyer before a military commission.

At least 57 Guantanamo prisoners were named as al-Qaida members on a list distributed in 2002 by supporters of the terrorist organization in Afghanistan.

"These are people who would gnaw through the hydraulic lines in the back of a C-17 (transport plane) to bring it down," said Gen. Richard Myers, chairman of the Joint Chiefs of Staff.

Sullivan said he came away with a different impression of his clients.

"They're kids - short in stature, very narrow shoulders," he said.

"It's a camp run by young guards holding young detainees."

Attorneys visiting Guantanamo must abide by procedures approved by a federal judge, which include, for security purposes, turning all of their notes over to the military and allowing meetings to be videotaped without sound.

When Sullivan needs to review interview notes or to read a letter sent by a detainee, he must go to a "secure facility" in the Washington area (he cannot specify the location), where files on the detainees are stored and declassified.

That unlawful combatants would be entitled any counsel rests on a small body of legal precedence set in World War II, when Nazi saboteurs who sneaked into the United States were caught and tried by a U.S. military commission.

"The old doctrine of conventional armed conflict was that if you were an unlawful combatant - say, a guerilla out of uniform or a certain kind of spy - you really had no rights as a prisoner," said John C. Kunich, a law professor at Roger Williams University in Rhode Island. "No due process, no right to an attorney, nothing."

Guantanamo prisoners meet with counsel in a small room at a detention area dubbed "Camp Echo." Their shackled feet are chained to eyehooks in the floor.

The hair of one of the detainees represented by Allen & Overy, a Yemeni Muslim named Fahmi Abdullah Ahmed, was shaved in the shape of a Christian cross - a taunt performed by his captors, Ahmed told lawyers.

Another client had developed severe jaw pain after a tonsillectomy last summer. Sullivan said the man was not getting adequate medical treatment for the pain.

Published news reports in recent weeks cite numerous cases of Guantanamo detainees telling their attorneys about sexual tactics allegedly used by female interrogators.

Flouting Islamic taboos about sexual contact, the women allegedly rub their bodies against detainees and wear lacy bras while interrogating, attorneys told The Washington Post .

The Pentagon confirmed in January the verbal reprimand of a female interrogator who smeared red dye on a detainee's shirt and told him it was menstrual blood.

One of Sullivan's clients relayed a story of being forced to keep his eyes on a woman in a tight shirt during interrogation.

Later, at a sandwich shop on the naval base, Sullivan's military escort noted that an interrogator was at a nearby table.

"There was a man in uniform and a very voluptuous, platinum blond woman in tight clothing," Sullivan said. "I asked my escort, 'The man's an interrogator?' And my escort said, 'No. The woman.'"

The New York Times last week reported the accusations of Washington lawyer Thomas Wilner, who represents a dozen Kuwaitis at Guantanamo.

He said military guards tried to drive a wedge through client-attorney relations by telling some inmates their attorney was a Jew.

A spokesman for the military task force that runs the detention center issued a denial: "We are taking no action to interfere with the attorney-client relationship."

Most of the lawyers representing Guantanamo detainees have been assisted by the Center for Constitutional Rights, a liberal legal action group.

"The most satisfying part of my life the last six months is hearing from super-right-wing Republican lawyers who want to find a client to represent," said the center's Tina Foster, who helps direct lawyers to the detainees. "We're even getting calls from people with no legal training or background; they're just ticked off."

"In this country, if you don't have the evidence to charge someone, you gotta let him go. We have a system of due process that works well. (The government's stance) goes against everything a lawyer learned in law school."

Sullivan studied at the University of Kansas and got his law degree from the University of Chicago. He was student body president at KU and Blue Valley Northwest.

By coincidence, a colleague working closely with him at Allen & Overy, Brittany Prelogar, who attended Blue Valley North with Sullivan before he moved to Blue Valley Northwest, has compiled briefs of behalf of the Guantanamo detainees.

"It took on added significance for me, personally, after seeing the abuse of (Iraqi) prisoners at Abu Ghraib," said Prelogar, formerly of Overland Park.

A federal appeals court is weighing two conflicting lower court decisions on whether the military violated detainees' rights and illegally concluded they were "enemy combatants" without providing them adequate opportunity to rebut the charges.

More than 100 Guantanamo prisoners are named in 33 different habeas corpus petitions before several U.S. district court judges. The identities of many other detainees remain unknown.

On Tuesday in Washington, U.S. District Judge Henry H. Kennedy Jr. expressed skepticism about the legality of reported plans to transfer dozens of men from Guantanamo to the custody of foreign countries.

Such a move would put the detainees beyond the reach of U.S. judges, Kennedy said, and "the court will not have jurisdiction to provide relief sought by petitioners."

It probably will take years for the courts, the White House and the world community to agree on the rights of suspected terror fighters, said Kunich, the military law expert.

"We're in a situation of having to completely remake the laws of war for a modern era," he said. "In a war on terror, we're fighting a notion, not a nation ... and you don't know when this war ends."

Shavers, the Defense Department spokesman, said many Guantanamo detainees may never stand before military commissions - which are, by design, the final arbiters for combatants who wage war out of uniform.

"People change over time" and may yet be freed, he said. "When these individuals were captured, we were certain they were enemy combatants, (but) people who may have once been hard-core Jihadists have renounced the Jihad, to use an example."

The four detainees facing military commissions are "those who made the most egregious violations" based on the evidence against them, Shavers said.

They include two Yemenis: Salim Ahmed Hamdan, charged as a bodyguard and driver for Osama bin Laden, and Ali Hamza Ahmed Sulayman al-Bahlul, an accused al-Qaida propagandist.

A Sudanese, Ahmed Mahmoud Al-Qosi, is accused of being another bin Laden bodyguard and his accountant.

The fourth is David Hicks, an Australian accused of attending al-Qaida training courses and returning to Afghanistan after the terrorist strikes of Sept. 11, 2001. Hicks allegedly armed himself with an AK-47 rifle and grenades to fight U.S. forces.

Their trials currently are held up by legal challenges in the federal courts.

Beyond the multitude of rulings, tribunals and stalled commissions, public opinion ultimately will come to bear on the scales of justice, Kunich said.

"I don't think anyone wants to see these cases turn into a Robert Blake, O.J. Simpson situation, where public proceedings just go on and on," he said. "But the prospect of potentially endless detention with no due process at all? It strikes the public as unjust.

"It seems un-American, if you will."