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Lawyers for detainees huddle at U. of C.

BY Abdon M. Pallasch Legal Affairs Reporter
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Lawyers for 9/11 detainees being held at Guantanamo Bay, Cuba, and other facilities convened this weekend at the University of Chicago Law School to talk strategy on the next phase of defending the prisoners of the "War on Terror."

Frank Dunham won one of the biggest victories against the Bush administration so far, getting his U.S.-born client Yaser Hamdi released after three years in custody and sent back to Saudi Arabia. Dunham has not fared as well with his other client, Zacarias Moussaoui, who the government said was the would-be 20th hijacker.

Joseph Margulies has seen three of his four clients released from Guantanamo. He has yet to meet his remaining client, though he has been trying for more than a year to get permission to visit him in Guantanamo.

It is not helping these lawyers' causes that eight of the released Guantanamo detainees have gone back to the battlefield in Afghanistan.

Eyes on Supreme Court

Both men and others at the "Terrorism and the Rule of Law" conference are waiting to see whether the U.S. Supreme Court will recognize the Bush administration's right to secretly detain suspected al-Qaida leaders at hidden locations such as a U.S. base on the British Indian Ocean island of Diego Garcia, or in Jordan.

"There are enemy combatant witnesses, 'ghost witnesses,' that are not being held in Guantanamo," Dunham said. "They're being held somewhere in the world, nobody knows where."

When the Supreme Court justices ruled in June that the military could not hold the detainees indefinitely at Guantanamo without access to lawyers and U.S. courts, they concluded that the base "leased" from Cuba was under American jurisdiction. But Margulies argued that the justices left themselves an opening to rule later that detainees secretly stashed in non-U.S. holding cells around the world might also deserve access to U.S. courts.

"Does [the] Rasul [decision] reach Abu Ghraib? Does it reach the ghost detainees in Diego Garcia? Does it say there is no person beyond the law? There is a precious ambiguity," Margulies said.

Noting the abuse of prisoners at Abu Ghraib was front-page news for most of the time they decided the case on his client, Shafiq Rasul, Margulies said, "I think what the justices were doing was telling the administration and the Justice Department to get its house in order." If there are more Abu Ghraibs, the court may assert its jurisdiction overseas, he said.

Wants to question witnesses

Dunham is fighting the government's efforts to seek the death penalty for his client without letting him question the "ghost witnesses" against him held in undisclosed locations about the "unsourced, incomplete summaries by unknown agents of the government of what they say the witnesses said."

One U. of C. law student asked the panel if the government would have any legal basis to respond to another terrorist attack with a roundup of Arab-Americans similar to the internment of Japanese-Americans in 1942.

The government had no legal basis to do it then but did it anyway, the assembled lawyers and law professors said.

"Don't kid yourself into thinking that with the right [presidential] administration these things won't happen," Dunham said, reminding the audience that the internment of Japanese-Americans happened under Democrat Franklin D. Roosevelt.