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HARDBALL: GITMO Debate

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CHRIS MATTHEWS, HOST: Amnesty International calls Gitmo the gulag of our time. Defenders say America is at war, there's no alternative site and the prisoners are treated humanely. Tonight, should the United States shut down the prison camp at Guantanamo Bay?

Let's play HARDBALL.

Good evening. I'm Chris Matthews.

Top Pentagon officials were forced to defend the need for the Guantanamo detention facility before the Senate Judiciary Committee today.

MATTHEWS: Tom Wilner is an attorney representing 11 Kuwaitis being held in Guantanamo.

Mr. Wilner, thanks for joining us.

I know you represent people that are in Guantanamo. But why do we have Guantanamo? What is the issue here?

TOM WILNER, ATTORNEY FOR GUANTANAMO BAY PRISONERS: Well, the reason the government established Guantanamo was really to take people outside the law. They said that Guantanamo was outside the United States, so if they took foreigners there, they didn't need to abide by the law. Simple as that.

MATTHEWS: And so, let me ask you. You've got -- you've got clients.

Is there reasons besides criminal justice to hold people? In other words, can you hold a person simply because you believe, for example, he is the 20th hijacker? You believe, if you let him go, the first thing he's going to do is tape some bombs to himself and blow up an airplane? Is that a reason for holding somebody? WILNER: Absolutely. I think that everybody should realize that we have got to be able to hold anyone who is really dangerous to our country.

The real question at Guantanamo, though, is, you have got to have some system to distinguish those who are dangerous from those who are not. I mean, you've got to have -- the precondition to any incarceration has got to be some independent examination of the facts to see if there's a justification for it. And that has not happened at Guantanamo.

MATTHEWS: Your clients, were they just swept up in this? They weren't guilty?

WILNER: I think my clients -- we know that my clients were swept up and they were bounties. They were sold for bounties by Pakistani tribespeople. And they've never had a fair hearing to say, is there reason that they should be there?

MATTHEWS: Where were they picked up?

WILNER: Mostly in Pakistan.

MATTHEWS: What were they doing?

WILNER: A lot of them were there for charitable purposes. Some were there on trips.

I mean, I have got 12 clients, 11 who are still there. Three of them are teachers. Two of them were with a Kuwait charitable organization. Another guy was a former engineer with Kuwaiti aircraft who was looking for a charitable, establishing a charitable foundation there.

MATTHEWS: Well, Hamas could be called a charitable foundation, and Hezbollah.

WILNER: They could. Sure. Sure they could.

MATTHEWS: Well, they have multi purposes, these organizations. And one of them is terrorism, right?

WILNER: No, listen, and civilians can be bad guys. And people can do things bad. But you've got to have some way of looking at them...

MATTHEWS: Were your clients involved in terrorism?

WILNER: I don't think so, no.

As a matter of fact, the government has never said that they were. You know, of all the people at Guantanamo -- this is critical -- only 14 have been named as people the government has reason to believe were connected with terrorism. None of the others do they say they have reason to believe were connected with terrorism. Only five have been charged.

MATTHEWS: But I have read, of the 500-plus people down there, there's 500-plus, almost all of them who are -- are defined as enemy combatants.

WILNER: Yes, but enemy combatant is a slippery term.

I mean, they don't say -- when they first took them down there, they said these guys are the worst of the worst and they're terrorists. They don't even say that anymore. They said that they might have been fighting or helping or supporting the Taliban, even if they weren't terrorists. And that's very important for us to understand.

MATTHEWS: What -- let me just break it into the simple fact. And you would -- put your clients in this perspective.

It seems to me there's two reasons to keep -- maybe three reasons to keep somebody detained for any reasonable amount of time, besides overnight. One is that you think they're guilty and you're going to try them at some point. Two, you think they're dangerous.

WILNER: Yes.

MATTHEWS: Three -- and this could overlap the others -- they got info. Right?

WILNER: Well, I -- I would disagree.

MATTHEWS: Do your clients have any of these things? Are they either guilty, are they dangerous or do they have info the government wants?

WILNER: I think none of the three.

I would argue that the third one, you shouldn't hold somebody just because he has info. For instance, if you had -- if you had done something wrong, they can't hold you forever.

MATTHEWS: Well, you disagree with our colleague Alan Dershowitz on that. If somebody knows a bomb is about to go off in three months or three hours, you hold them.

WILNER: Well, could you hold somebody's brother because a guy -- because a brother was a bad guy, could you hold the rest of his family? There are other ways to get information, besides...

MATTHEWS: Depends how big the bomb is, maybe.

WILNER: Well, I mean, there are times that we could really stretch the limit on people.

But, you know, nobody is claiming that these people at Guantanamo fall into that -- that latter category. Nobody says, after three years, that they have any ticking bomb information. The government doesn't even say that most of these people are terrorists. It uses the term enemy combatant. They're holding a guy who they say was -- was taken into service as a cook for the Taliban against his will and they're calling him an enemy combatant.

MATTHEWS: Well, you've got to come up with a motive. Why do you think they're being held, then?

WILNER: I -- you know, I think, in a way, you really need to ask the government that. I think the government has made some big mistakes here and I don't think they're willing to admit it, although the...

MATTHEWS: I'll give you one. You're the expert. You're the attorney. But it seems to me, one reasonable supposition is, once you've held a guy for a year or two, he is so ticked off at his captors, the -- us, that, when you let him go, he is going to join the other side.

WILNER: Well, there might be that danger. And I can tell you, my guys who are Kuwaitis, most of them have told me that they were so shocked by this, that they loved the United States. The United States freed them from Saddam Hussein. When they were turned over to the United States, they were overjoyed. And then, immediately, they were treated this way.

MATTHEWS: Well, can they make that -- when they make that plea to their captors, when they do get interviews, obviously, and they say, look, we were swept up in this damn thing, we were -- we -- we were not doing anything wrong over there in Pakistan. What do they -- what do they get told?

WILNER: They get told something very much like -- you know, I hate to use the word gulag, because it is an inappropriate term for this.

But if you read Anne Applebaum's book about the gulag, people who were swept up with that would say to their captors, I'm an innocent guy. And the captors looked back at them and say, you could not be. Why else would you be here? We don't take innocent people. It is that sort of...

MATTHEWS: Cyclical argument.

WILNER: Cyclical argument, sort of Kafkaesque argument.

MATTHEWS: Have any of the people who -- have been released from Gitmo once they've been sent down there? Or is that a point -- a roach motel down there?

WILNER: No, they've had -- they've had 200 people released. And the government says, well, some of those went back to fight.

You know, and my guys tell me, he said that there's no rhyme or reason to this. They're releasing guys from here who are open, you know, supporters of Osama bin Laden and we sit here we don't even get a fair hearing.

MATTHEWS: Yes.

Thank you very much, Tom Wilner.

WILNER: Thank you.

MATTHEWS: Thanks for coming on, on short notice.

MATTHEWS: Republican Senator Lindsey Graham of South Carolina is a member of both the Judiciary Committee and the Armed Services Committee of the United States Senate. And he's opposed to shutting down that detention facility at Guantanamo Bay, Cuba.

Senator Graham, you are out there fighting hard to defend this institution. What is all the fighting about, from your perspective, holds right now? Why are people wanting to shut it down?

SEN. LINDSEY GRAHAM (R), SOUTH CAROLINA: Well, I think people are concerned that it has created an image problem for us throughout the world. There's some legitimacy there. People are concerned that you've had detainees for three years without any movement.

I share those concerns. But the bottom line is, you have got over 500 people. Some of them are very, very dangerous. You just can't let go. So, I want to reform it, not close it.

MATTHEWS: Why is it a good place to hold dangerous detainees?

GRAHAM: Because it is not South Carolina. It is not New York. It is not any state. Any senator who wants to close this place down, the question should be to them, would you take them in your state? It is a place under military control. It is an isolated place. It is easy to defend. And you -- I think it is an ideal place.

But it is not working to its maximum efficiency. There are three goals I think we should achieve by having Guantanamo Bay, number one, a place to interrogate detainees who are enemy combatants or terrorists to get information in a humane way to protect us, two, a place to have trials, to hold them accountable for their terrorist activity, and, three, a place to show the world that the rule of law works even for terrorists.

And those three goals, I think, are good goals for the war on terror, but we're falling short.

MATTHEWS: What about a person who is simply dangerous but didn't commit a crime yet? How do we deal with them?

GRAHAM: Well, to be an enemy combatant, you have to have been found to have been part of a force, al Qaeda or some other terrorist network. So, mere membership, in my opinion, makes you subject to being tried.

Enemy combatants historically have been held for the duration. The question becomes, when is this war over? I can't tell you when it is over. I know this. You can't take people to Guantanamo Bay and keep them forever, nor should you let them go within 72 hours, like a common criminal.

We need a procedure and process that will allow us to determine who an enemy combatant is, interrogate them to make us safer in a humane way, and set up trials for the worst offenders and repatriate those who -- who don't meet the category of a -- of a threat. That, to me, would look good to the world. It would make us safer.

And the Congress, Chris -- you're an old congressional staffer -- the Congress needs to get more involved. We need to write statutes, in my opinion, dealing with the concept of enemy combatant and just not leave it to the Pentagon.

MATTHEWS: But what do you do with the guy who is accused of being the 20th hijacker? He was picked up in the field out there on the border with Afghanistan and Pakistan. We know him to be the 20th hijacker. He would have been the fifth member of that crew that the plane -- where the plane crashed in Pennsylvania.

GRAHAM: Right.

MATTHEWS: And may not have crashed if he had been part of the crew, the hijacking crew. It may have gone all the way to the Capitol, where you are right now, and blown up the place.

GRAHAM: Right.

MATTHEWS: So, he didn't get to do what he wanted to do. We know that. Is that -- can we hold him in perpetuity, so he doesn't try it again?

GRAHAM: Number one, you interrogate him and you be aggressive.

Physical and psychological stress is part of interrogation. And that can be part of what goes on at Guantanamo, as long as it is humane and meets international norms. But physical and psychology stress are acceptable techniques, as long as they don't get out of bounds. So, we need to standardize...

MATTHEWS: But why should we ever let that guy go? Senator, why should we ever let Kahtani go?

GRAHAM: You should prosecute him. What you should do is hold him accountable.

The missing link down there is, if you have got a guy who is the 20th hijacker, that you believe was involved in planning the 9/11 events, that is intricately involved in the terrorist activity and terrorist network, they should be held accountable.

Here's the message. If you join al Qaeda or some sympathetic group like al Qaeda and we catch you, if you're not killed, you're going to be held accountable for your crimes and your terrorist activity. We should prosecute this person, hold them accountable under the rule of law to let the

world know that, one, that we`re a rule-of-law nation, and, two, future terrorists, that there`s a downside for joining these groups.

MATTHEWS: Is there any reason, except for image, that we should shut down Guantanamo that you can think of?

GRAHAM: Absolutely not. And it is the wrong image.

We need a place to interrogate the 20th hijacker, the 21st hijacker. We need a place to prosecute people who are involved in heinous activity. We need a place to hold them accountable. To shut this down I think would set us back in the war on terror. We`ve received good information from interrogating these people, but not one person has been prosecuted yet.

So, let`s redo Guantanamo Bay. Let`s set procedures in place that will withstand international scrutiny. Let`s make sure that the -- that the world knows, this is not a gulag, but it is a place where bad people go to be interrogated, to keep us safe as a nation and every answers for their crimes. And if you can`t prove the case after a reasonable period of time, you have to repatriate them. That`s what we need to do, in my opinion. And we should do it soon.

MATTHEWS: Thank you very much, United States Senator Lindsey Graham from South Carolina. Thanks for joining us.

GRAHAM: Thank you.