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Captives Tell their Side

From a Saudi with 24 siblings to a Libyan who admires Gandhi, the stories of once nameless Guantánamo detainees come alive in lawsuits in U.S. District Court.

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WASHINGTON - Long before U.S. troops took him in shackles to Guantánamo Bay, Libyan exile Omar Deghayes got a law degree in London. He lost part of his sight, at age 4, to childhood swordplay.

He says his family fled their homeland for Europe in 1986 because his father was killed for opposing Libyan strongman Moammar Gadhafi. He says he admires Gandhi and Nelson Mandela.

Deghayes, 34, is also one of the "worst of the worst" -- an enemy combatant -- now suing President Bush and the Pentagon to charge him or set him free from Camp Delta.

And, like dozens more so-called terror suspects, he is using the U.S. District Court here to systematically do something the Bush administration has fought for three years: He is telling his side of the story.

Far from the razor wire, inside the court that ordered Richard Nixon to turn over the Watergate tapes, the stories of the once nameless, faceless men kept captive at the U.S. Navy base in Cuba come alive in page after page of habeas corpus petitions for 140 Guantánamo captives from 23 countries from China to Saudi Arabia.

They include assertions of being kidnapped to Afghanistan so the United States could cast them as captured on the battlefield. They write of wives and children awaiting their return and complain about their conditions, medical care and isolation.

Some allege American interrogations turned to torture. Others says they are innocent, devout Muslims mistaken for Islamic militants.

WAR POWERS

Bush administration lawyers have systematically fought the lawsuits, using the president's war powers to justify keeping scrutiny of Guantánamo's detainees outside the courts.

They argue the petitioners are terrorists whose interrogations have yielded valuable intelligence in the hunt for al Qaeda cells and the war to topple the Taliban. Commanders say they comply with a presidential order to treat the detainees humanely, and interrogations are strictly monitored.

Former captive Mamdouh Habib, 46, went home to Australia in January. But in his lawsuit, he argued that U.S. forces outsourced his case to Egypt, where interrogators used electric shock and water torture to force from him a false confession -- that he knew some Sept. 11 hijackers.

Captive Abdulla al-Anazi sued in February. But little else is known about him -- except that he is a double amputee who presumably lost both legs in battle and has 24 brothers and sisters in Saudi Arabia.

And there's Fahmi Abdulla Ahmed, in his 20s, the son of a Yemeni air force colonel who asserts he was captured by Pakistani police and handed over to Americans in Afghanistan. His lawyer, Adrian Stewart, describes him as a "shrimpy guy with black teeth" who says that U.S. troops humiliated him by shaving off his eyebrows and head hair -- for a cross-shaped buzz-cut.

HIGH COURT RULING

The prisoners' lawsuits have been stacking up since June, when the U.S. Supreme Court ruled that foreigners held in U.S.-controlled Cuban territory can contest their captivity in federal courts.

As a body, the petitions are a "step by step" effort to "reestablish the rule of law and the principle that even the president is not above the law," says attorney Michael Ratner of New York's Center for Constitutional Rights, which has championed the effort.

An outspoken critic of the Guantánamo prison, Ratner said the lawsuits illustrate a government power gone awry: "Not only has this wrong-headed effort harmed the detainees, but it has undermined critical legal protections."

Anyone who shouldn't be there, the government said, will be weeded out through Pentagon panels sifting through classified secrets that the courts need not see.

The Supreme Court disagreed. And, it fell to the federal judges in the white concrete U.S. District Court along Constitution Avenue.

PRISONERS SPEAK

Judges there have done everything from issuing restraining orders banning the Pentagon from moving detainees to third countries to ordering the military to stop eavesdropping on lawyer-client conversations. Since then, prisoners have started to speak of soldiers and interrogators using sexual and religious humiliation in the prison that the administration likes to boast is humane overall.

One judge, George W. Bush appointee Richard Leon, tossed out seven Algerians' habeas petitions and said the federal courts should not intrude. Another, Clinton appointee Joyce Hens Greens, said Guantánamo captives can sue, and highlighted torture allegations.

Now a federal appeals court will play Solomon, on a question destined to return to the Supreme Court.

Meanwhile, the captives and their American lawyers keep turning to the court. Just this month, another judge filed an injunction against the Bush administration that banned it from sending prisoners to nations where the State Department has alleged human rights violations.

And more and more prisoners have been filing petitions, through U.S. lawyers who have learned about prisoners the Pentagon has tried to keep anonymous. The cases use a template that has evolved over the past year.

BASIC ARGUMENT

Different prisoners' legal arguments can vary, but they mostly follow a basic American civil liberties line: Guantánamo prisoners should be set free, they say, because they have not been charged and are being held in indefinite detention, a Fifth Amendment violation.

Their detentions violate U.S. military law, they assert, because the Bush administration has taken a pick-and-choose approach to Geneva Convention protections and violates the Army's own regulations on war-time captives.

And, increasingly, the lawyers argue that reported torture has rendered meaningless any confession their clients have made through repeated interrogation, which violates Congress' own Alien Tort statute.

Then they include the kind of personal details that, if a judge ever actually hears a case, makes a captive come alive.

`FASCINATING'

"From an intellectual perspective they are fascinating cases and the issues are very, very important to our system of justice," said Newark, N.J., lawyer Mark Berman, whose firm is defending two Qatari brothers.

"There are very, very interesting issues and there has been a tremendous effort to make sure that all these people have counsel," added Berman, whose firm's senior partner, retired federal Judge John Gibson, argued the Guantánamo prisoners' case before the Supreme Court.

All this is happening as the Pentagon has been slowly thinning the prison population, freeing a few and sometimes sending them to custody in foreign countries -- beyond U.S. law.

FEAR OF TORTURE

Lawyers for Egyptian Sherif Mashad, a resident of Italy who was captured along the Afghan-Pakistan border, for example, argue that he could be tortured if he is sent to Cairo, on the theory that after three years in Guantánamo he must be a terrorist.

Deghayes likewise is seeking his return to London, where his mother lives as a British citizen, not the country his family fled for Switzerland 25 years ago, and ultimately political asylum in England.

MISTAKEN IDENTITY

British-born U.S. attorney Clive Stafford Smith argues that Deghayes is a victim of mistaken identity, and that military intelligence has mistakenly branded him a one-time Chechen fighter named ``Abu Walid."

THE PROOF

Were he to reach court, Stafford Smith said, he would provide proof that the boy's right eye has been damaged since a boyhood accident. Yet European agencies circulated a mug shot purporting to be Deghayes that portrays a goggle-eyed black-haired Chechen fighter.

"These petitions demonstrate that the Bush administration wasted a huge amount of time, money and effort in a wild goose chase," Ratner said. "[Defense Secretary Donald] Rumsfeld's `worst of the worst' were nothing of the sort. There is no evidence to have justified their detentions for a week, much less three years."