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N.Y. Attorneys Get Firsthand Look at Guantanamo Conditions

Allen & Overy sends latest group to Cuba for detainee habeas interviews

Mark Fass
New York Law Journal
02-28-2005

On a recent Friday, Sarah Havens, a second-year associate in the New York office of British firm Allen & Overy, spent the morning in her Sixth Avenue office negotiating the final details of a European telecommunications financing project.

A few days later, she found herself in an approximately 10-by-15-foot cell in Guantanamo Bay, interviewing an enemy combatant.

It was "nerve-wracking at first," she said. "You read about the things they've been exposed to, so you don't know what to expect."

Havens and three of her colleagues from Allen & Overy are among the dozen or so New York attorneys who have flown to Cuba in the last few months to gather information for the habeas corpus petitions their firms have filed on behalf of Guantanamo Bay detainees.

The four attorneys -- Havens, Sarah Fels, Adrian R. Stewart and London-based Douglas Cox -- flew from Ft. Lauderdale to Guantanamo on Jan. 10, returning four days later. Barred from flying over Cuban airspace, their 10-seat commuter plane had to circle the island and refuel on a small Bahamian isle to reach Gitmo, which sits on Cuba's southern tip.

On arrival at the Guantanamo Bay Naval Airstation, the lawyers met their military escorts, received their identification cards and left for their hotel, the \$12-per-night "Bachelor Housing" that normally accommodates visiting members of the press, the Red Cross or the soldiers' families.

A sergeant drove the group by van through the western half of the base, which houses the airstrip, the canteen, the civilian workers' quarters and the Bachelor Housing.

The next morning, they traveled by boat to the windward side, home to the barracks, the base headquarters, a high school, churches, hotels, a bowling alley, restaurants (including a Subway and a McDonald's) and, at Camp Delta, nearly 550 detainees.

"It was like being in Kansas City," said Havens, an associate in her firm's banking practice. "It wasn't like being in Cuba at all."

HABEAS PETITIONS

Allen & Overy represents 14 of the approximately 550 men being detained at Camp Delta, the newly built, long-term detention facility at Guantanamo Bay. Their clients, like the other prisoners, were picked up mainly in and around Afghanistan and Pakistan beginning in January 2002.

In June 2004, the U.S. Supreme Court ruled in *Rasul v. Bush*, 124 S. Ct. 2686, that federal courts have "jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at Guantanamo Bay."

The Center for Constitutional Rights, the Manhattan-based organization that spearheaded *Rasul*, has recruited private lawyers to file habeas corpus petitions on the detainees' behalf, including a

number from New York firms. Four days after the U.S. Supreme Court ruled in Rasul, Clifford Chance and Gibbons, Del Deo, Dolan, Griffinger & Vecchione filed petitions. The New York offices of Allen & Overy, Dorsey & Whitney and Paul, Weiss, Rifkind, Wharton & Garrison, along with firms from Boston and Washington, D.C., soon followed suit.

In all, more than 25 firms, as well as professors from Georgetown University and Seton Hall law schools, have filed petitions, according to Tina Foster, a fellow at the Center for Constitutional Rights.

The petitions assert that no legal basis supports the petitioners' imprisonment, and ask for their immediate release. They request, among other relief, an order that prisoners are being held in violation of the Fifth Amendment's guarantee of due process.

In order to flesh out the petitions, the attorneys have begun flying to Cuba to meet with their clients. The most recent group to go from New York were the four Allen & Overy lawyers.

KAFKA-ESQUE

Upon arriving, the base felt ominous, according to Stewart, a fifth-year corporate associate. The attorneys debated which adjective fit best, "Orwellian" or "Kafka-esque."

"Everything was upside-down or backwards," he added. "We have access to classified information that we can't share with our clients, because they don't have security authorization. It makes it hard to advocate on their behalf."

The attorneys and their two translators broke into two teams of three, each team meeting with one client per day for three days, in cells designated specifically for interviews and interrogations.

The cells were like "little cabins," according to Fels, a senior counsel in Allen & Overy's banking and finance department and the firm's pro bono coordinator. The rectangular buildings were divided along the long axis. On one side sat a table and chairs, on the other half, separated by bars, a holding cell.

"You could actually look through and see their bed, their toilet, their towels," said Fels.

The detainees' feet were shackled to a hook in the floor. An agreement barred government representatives from sitting in on the meetings, but the military videotaped the sessions for the lawyers' security.

The firm's clients are all Yemeni men in their 20s or early 30s, according to their habeas petitions. One man said he went to Pakistan to study religion, another to study pharmacy. One went to work in textiles, another to buy and sell honey.

The attorneys had preconceptions about the men they would meet. Because the prisoners come from cultures where interactions with women are rare, and with female attorneys practically nonexistent, the lawyers said they worried the men would not speak openly. They said they feared their clients might have grown too jaded to talk, that they would think the attorneys were undercover agents.

Indeed, "one client, after seeing our business cards. wanted to see our passports as well," said Fels.

The attorneys were advised that the men could be dangerous.

"You've been told, 'They chewed through chains to take down a 767,' but they're just kids," said Havens, referring to the U.S. general who suggested that prisoners on their way to the island might chew through hydraulic cables. "They were all polite. They were all nice. They weren't intimidating."

After three years of prison food, the detainees were grateful for the treats the attorneys brought with them.

"Snickers were a big hit," as were tea and coffee, said Havens.

"Their spirits were higher than I would have expected," though they did "realize that there's a certain American ideal of justice, and they're not getting it," she added.

Fels agreed.

"I found them remarkably lucid, and still having a sense of humor. I expected them to be embittered, and I didn't get that sense at all," she said. "On the other hand, I think they are in a sense kind of fatalistic about it."

Seeking to establish an attorney-client relationship, the lawyers explained their role and the purpose of habeas petitions, and answered questions.

A protective order limited the information the lawyers could provide. They could not discuss, for example, political events. They were, however, allowed -- and prepared -- to talk about other issues dear to their clients' hearts.

"They asked about soccer," said Havens. "Unfortunately, it was not a good year for the Yemeni team."

Though unable to disclose the substance of their meetings, the attorneys said they felt the trip accomplished its purpose.

"I think in the sense that we were able to meet with the clients we intended to meet, and that all of them agreed to let us represent them, and that we were able to establish some relationship of trust, that it was a success," said Fels. "The hard part was to leave and know they were going back into captivity."

DUE PROCESS

The associates returned to New York on Jan. 14. Havens plugged away on Enron-related litigation, Fels on a billion-peso loan agreement for a Mexican mortgage-purchaser. Stewart returned to "capital markets deal, restructurings, that kind of thing."

Since their trip, two federal district court judges have split as to whether Rasul entitles prisoners at Guantanamo to have federal courts examine the legality of their detention. Legal experts expect an appeals court to reconcile the rulings.

In the meantime, attorneys continue to head to Cuba to accumulate information. As of last week, Allen & Overy was planning to send four attorneys, including Havens and Cox, to meet its eight other clients.

The attorneys also continue to travel to a secure facility outside of Washington, D.C., to work on the petitions. Classified material can be reviewed only at the facility, and all writing must be done on its computers. Each case has its own safe.

The lawyers have been forwarding details of their trips to their clients' families in Yemen, said Havens, who has spoken with the parents of numerous detainees.

"I can't tell them anything their son said, but I can say, 'He looks OK, his spirits are high,'" she said.

Though she acknowledges that she may be representing men who have fought against the United States, Havens said she felt no ambivalence about the cause.

"If these guys are guilty, the government needs to show they're guilty," she said. "We're not asking that the government sets every single one free. We're just asking for some semblance of due process, so that the guilty can be distinguished from the innocent."

Stewart voiced mixed emotions.

"My personal ambivalence is that it's a very, very difficult situation," he said. "If we get the relief we're asking for, there's a significant chance they'd go to prison in Yemen, which I don't know, but I would guess, is worse than Guantanamo."