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Guantanamo Bay Hearings

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KWAME HOLMAN: In recent weeks, there has been growing debate over whether Guantanamo Bay should be shut down. It follows allegations of abuse of the Quran, which sparked bloody riots in Afghanistan and elsewhere. And most recently, a leaked interrogation log from the prison described controversial tactics used on the suspected 20th 9/11 hijacker. Vice President Cheney and other top officials of the Bush administration have defended the prison.

VICE PRESIDENT DICK CHENEY: If we didn't have that facility at Guantanamo to undertake this activity, we'd have to have it someplace else because they're a vital source of intelligence information. They've given us useful information that has been used in pursuing our aims and objectives in the war on terror.

KWAME HOLMAN: Today, Congress entered the debate. Several Senate Democrats, including Vermont's Patrick Leahy, repeated concerns about the treatment of the detainees, as the Judiciary Committee launched into a review of the administration's legal procedures at Guantanamo.

SEN. PATRICK LEAHY: Guantanamo Bay is an international embarrassment to our nation, to our ideals and it remains a festering threat to our security.

KWAME HOLMAN: However, committee chairman Arlen Specter reminded senators the purpose of today's hearing was not to recount the recent charges of abuse, but for Congress to develop the legal framework for holding and questioning prisoners.

SEN. ARLEN SPECTER: The focus of today's hearing is going to be on the procedures used with detainees. We do not have within the scope of this hearing the issues of torture or mistreatment.

KWAME HOLMAN: And on the first panel of witnesses, Air Force Brig. Gen. Thomas Hemingway, speaking for the Department of Defense, assured members that the more than 500 prisoners at the camp were being afforded legal protection.

BRIG. GEN. THOMAS HEMINGWAY: The rules of evidence and procedure established for trials by military commission compare favorably to those being used in the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia. These rules are consistent with our national commitment to adhere to the rule of law.

KWAME HOLMAN: Ohio Republican Mike DeWine asked Gen. Hemingway why it was taking so long to prosecute the detainees, noting that many have been imprisoned for more than three years.

SEN. MIKE DeWINE: Explain to me, you know, what's going on here? This seems to be a horribly slow process.

BRIG. GEN. THOMAS HEMINGWAY: Well, in the first place, the primary reason that we hold people is to get them off the battlefield, and secondarily to gain intelligence.

SEN. MIKE DeWINE: I understand that.

BRIG. GEN. THOMAS HEMINGWAY: Until the intelligence effort has concluded on any particular detainee, the law enforcement effort really doesn't commence. Once we know that the intelligence people have finished in their analysis of the individual, we look at what they have collected and make a determination whether or not this individual is a candidate for trial by military commission.

KWAME HOLMAN: Hemingway noted that 23 detainees have been released to date. California Democrat Dianne Feinstein cited the case of a specific Guantanamo detainee, Salim Ahmed Hamdan, Osama bin Laden's former bodyguard and driver. Although he's been charged with conspiracy to commit war crimes against the U.S., Hamdan is not accused of taking part in any specific act of violence.

SEN. DIANNE FEINSTEIN: He's been there for months in isolation, contrary to Geneva Convention, and he could be there, essentially, forever. That's what -- how I interpret what you've said. If it's different, please tell me.

BRIG. GEN. THOMAS HEMINGWAY: Well, he is not being held contrary to the Geneva Convention. He's being held humanely.

SEN. DIANNE FEINSTEIN: In isolation --

BRIG. GEN. THOMAS HEMINGWAY: And it's my understanding that he is in the general population at Guantanamo Bay.

SEN. DIANNE FEINSTEIN: Let me ask you this. So pre-commission, housing in solitary for seven months, is not a violation of the Geneva Convention?

BRIG. GEN. THOMAS HEMINGWAY: I wouldn't consider the conditions under which he was held to be solitary confinement. I've seen the facilities. From what the people at Guantanamo Bay have told me about the conditions and the treatment he received, I wouldn't call it solitary confinement. He was removed from the general population, but I would not call what he was in solitary confinement.

SEN. DIANNE FEINSTEIN: Would you call it isolation?

BRIG. GEN. THOMAS HEMINGWAY: I would call it segregation.

KWAME HOLMAN: Appearing frustrated by the Democratic charges of abuse, Alabama Republican Jeff Sessions weighed in.

SEN. JEFF SESSIONS: This country is not systematically abusing prisoners. We have no policy to do so and it's wrong to suggest that, and it puts our soldiers at risk who are in this battle because we sent them there, and we have an obligation to them not to make the situation worse than it is. If we made errors, we'll bring them up and prosecute people.

KWAME HOLMAN: During the hearing, just one senator, Democrat Edward Kennedy, called for closing down Guantanamo. Late today, Attorney General Alberto Gonzales confirmed reports there have been discussions within the Bush administration about doing just that.

Legal limbo for detainees

MARGARET WARNER: And with me now are two members of the Senate Judiciary Committee who took part in today's hearing, Arizona Republican Jon Kyl, and Patrick Leahy of Vermont, the committee's ranking Democrat. Welcome to you both.

Senator Leahy, as we just saw you began the hearing very critical of what's going on at Guantanamo, but after hearing from different Defense Department and Justice Department witnesses, were you reassured at all that in fact these detainees are being afforded the proper level of legal rights and legal protection?

SEN. PATRICK LEAHY: Well, we have an awful lot of questions still left on the table. One of the basic questions I asked the military, how many people do we have down there? He said well, approximately...I said exactly how many. "Well, we don't know; around 500 and some odd." I said, "Well, Where are they from? Are they all from Afghanistan? There's 40 some nationalities." I said, "Do they come from other countries?" "Well, here and there." I'd like more specific answers.

The question isn't Guantanamo by itself. Obviously, if we're holding people, we're going to hold them somewhere. The question that the rest of the world keeps asking this nation, this great nation of ours, is what is this legal limbo they're being held in? How do you get them out of that legal limbo? And I hope that the hearing may have pushed us closer to finding a way to have something other than this legal limbo.

MARGARET WARNER: But do you feel from what you heard today that they are in a sort of legal limbo?

SEN. PATRICK LEAHY: I believe they are. And when you go three years -- first they said they wanted to have military tribunals because they would be quicker. It went three years; you didn't have a single military tribunal. There is no plan exactly how they're going to be handled. We, both Republicans and Democrats in the Senate, have offered to sit down with the administration and write legislation that would give them such a plan. I think it's way, way overdue.

MARGARET WARNER: All right. Senator Kyl, what was your reaction to today's hearing? Did you feel the Defense Department and Justice Department had an appropriate legal framework, or do you think these detainees are in a kind of legal limbo?

SEN. JON KYL: They're not in a legal limbo any more than any other prisoners in any other war were in limbo when they were captured. The concept here of capturing people on the battlefield is to get them in a position where they can't cause you anymore harm. And, secondly, for those who can give you good intelligence information, obtain that information, too, to prevent further harm to your troops or to civilians in the case of terrorists. That's the purpose for detaining these prisoners, these combatants who were shooting at our troops.

Now, there are some who believe that they should be tried. Tried for what? You don't try prisoners of war. You hold them until the conflict is over with. There are some who have been accused of war crimes or who will be accused of war crimes. They will receive trials through military commissions that have been set up and the rules of procedure for those have been described. And they are complete and thorough. And I don't know of anybody who is suggesting here this evening that those rules are not appropriate.

Trial by jury

SEN. JON KYL: What's happened is that the U.S. Supreme Court has said that because Guantanamo is under U.S. control, some rules relating to U.S. procedures apply, including habeas corpus, which means that the people have a right to have their status reviewed. And after that ruling, the status of every one of these detainees was reviewed. Some of them were released as a result of that review. But the kind of people who remain held are terrorist trainers, bomb

makers, extremist recruiters and financiers, bodyguards of Osama bin Laden, would-be suicide bombers, folks like this. They're the ones that continue to be held -- not in limbo as if they have some right to a determination and a trial by jury or something, but being held until this conflict over with so they don't cause any more harm.

MARGARET WARNER: Is that what you are saying, Senator Leahy, that these people deserve a trial by jury? Why isn't the kind of hearing they have enough?

SEN. PATRICK LEAHY: We could set up hearings, but the Constitution says, it's very clear, the Congress will make rules concerning captures on land and water. We haven't made any rules on this. We've offered to sit down. They've gone outside the Geneva Convention and some points they'll say it applies, other points it doesn't.

Let us make a very clear statement to the rest of the world what they are. If they're going to say we are going to hold them until hostilities are over, if hostilities are defined as being under a terror threat, that's going to happen for the rest of our life. Do we hold them for the rest of our life?

And then the idea that they were caught on a battlefield. Some were. Some were turned over to us by bounty hunters who may have had other reasons...and when they tell us...first they talk about they're all from Afghanistan. Then they say wait a minute, there are 40 different nationalities. Or they may be from other countries. We're sorry, we don't know where they're from.

Shutting Guantanamo down

MARGARET WARNER: Let me cut to the larger issue here that has come up a lot. And I'll stay with you, Senator Leahy, and then to you, Senator Kyle. Some members of the Senate, Senator Kennedy on your side of the aisle, have said it is time to just shut Guantanamo down; it's become too much of an embarrassment and a lightning rod for criticism internationally. Are you for shutting it down?

SEN. PATRICK LEAHY: Both Republican and Democrats have said that; the president's own cabinet is now saying we are considering that. What I'm far more interested is not so much Guantanamo but saying to the rest of the world we have rules and we're going to follow rules. Today we do not. I don't care what anybody says. We do not have rules, not consistent rules.

MARGARET WARNER: Senator Kyl, what's your view? Senator Martinez, a Republican of Florida, has also called for shutting it down. What's your view on that?

SEN. JON KYL: I don't know that he has called for shutting it down. I think we need to be careful about exactly what people have said about studying the issue or looking into it. But it absolutely should not be shut down. We spent a lot of money, I think over \$150 million to construct a really good facility for holding people, a facility in which they are treated very well. They are not abused.

The Geneva Convention accords have not been violated, I repeat not violated, and therefore there is no point in shutting this facility down. Senator Leahy is right about one thing. The question is not about the facility. If you didn't hold them there, you would have to hold them someplace else. The question is what are the appropriate procedures?

And I also concur it would be perfectly appropriate for Congress to write those procedures but we haven't done so. If we do so, they will presumably apply. In the meantime, the United States Military and Department of Justice responding to the United States Supreme Court decision, has established the procedures under the combat status review tribunals as well as the military commissioners that try those cases where there's actually an allegation of a war crime or a crime that has been committed.

MARGARET WARNER: So Senator Kyl, staying with you, then do you -- would you support Senator Specter, the chairman of the Judiciary Committee, who said today he did think that in fact you all, beginning with your committee and then the full Senate and the Congress, should, in fact, get into this now, not just leave it to the Defense Department and the courts?

SEN. JON KYL: I would support that. But I do it not on the basis that somebody up to now has been doing it all wrong, but rather because we have that authority and I would rather for to us do it than to have the courts try to sort it all out.

Just bear a couple other things in mind here to put it in perspective. The idea here is to try to separate out those who need to be held from those who could be released. Well, we released a bunch of them and guess what? Twelve of them, at least that we picked up subsequently, went right back to fighting us again. And, again, the point of keeping prisoners during a conflict is so that they don't go back and hurt your people again. And the war on terror, it is true; they don't all come from Afghanistan. They come from a lot of places in the world and you don't know where they are going to strike.

Redefining the detainees

MARGARET WARNER: So, Senator Leahy, if the Congress were to get into writing new rules, and you'd be obviously involved in this, are you saying that these detainees should be thought of as Senator Kyl does, as essentially -- they're not -- he didn't use the term "prisoners of war," but as enemy combatants in a time of war, or are you saying they're entitled to the full rights of criminal defendants in our system, including the right to see the evidence against them?

SEN. PATRICK LEAHY: I'm saying that they have rights far beyond what we have said. We are, after all, the nation that justly deserves a reputation of being the nation that follows the rule of law more than any other nation.

We are not doing it here. I think we have to show the rest of world not that we say, well, we can hold them forever so long as there's any terror threat, well, that will last throughout your lifetime and my lifetime, but rather say, we are saying for procedure, we are either going to charge them with something or we are going to release them.

Some, we are now finding, were picked up, not because they acted against us, but now that they have been held for several years, I suspect that they have a great deal of resentment against the United States and they may be against us.

MARGARET WARNER: You are saying they need to be charged and...

SEN. PATRICK LEAHY: Charged or released. Basically it comes down...a simplification would be charge them or get rid of them. The idea of holding them for the rest of their lifetime makes no sense. If one of the -- One of the administration witnesses said today they could be held indefinitely, be held forever. That is not the signal we want to send the rest of the world.

MARGARET WARNER: Senator Kyl, are you saying we could, the U.S. could hold them in perpetuity?

SEN. JON KYL: Well, sure. That's been the case with every war. You wait until the war is over to release the prisoners. This isn't sport fishing, you know, catch and release. This is serious business. What would you charge them with -- that they were fighting us and that they might fight us again and you're going to go back and find somebody that was in Afghanistan, this guy, and have him come testify that yeah, if he were released, he would probably fight again -- in no conflict ever -- just take World War II, for example, did we ever try anybody. We never charged

the German POWs and tried them; we simply held them until the end of the war was over. And that's the same thing here.

MARGARET WARNER: And when do you think it war will be over? I mean, do you agree with Senator Leahy, that it could be your lifetime, all of our lifetime?

SEN. JON KYL: Well, I don't think the war on terror is going to last that long. But let's assume that it's going to last a long time. Obviously, as time goes on, we have to make a determination. There is an annual review of every one of these people as to whether they still pose a risk. Based on that review, they are either retained -- detained, or they're released.

As I said, unfortunately, twelve of the people who have been released went right back to fighting us again. So we made a mistake there. But if we can conduct that review and we determine that the people are no longer a threat to us, I'm all for releasing them. Until then, you need to detain them.

MARGARET WARNER: All right, gentlemen. We have to leave it there. Thank you both.

SEN. JON KYL: You're welcome.