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Detention without end?

David Brancaccio (Op-Ed)
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BY MY CALCULATION, the war on terror has just surpassed the length of America's direct involvement in World War II. From the attack on Pearl Harbor to Sept. 2, 1945, the day Gen. Douglas MacArthur accepted the Japanese surrender on Tokyo Bay, was three years, eight months, 26 days. From 9/11 until now is about the same stretch of time.

There are many reasons this is important. A war without foreseeable end has enormous implications for the men and women of the armed forces, for their families and for each taxpayer. It also represents an especially uncomfortable challenge to America's system of laws. My visit this spring to the military prison at Guantanamo Bay, Cuba, made that clear.

The infamous kennels of Camp X-Ray at Guantanamo are now empty, draped in browned weeds woven into the chain link by the hot, Cuban wind. The working parts of the prison are more Spic and Span. The most severe camp I saw consists of corridors of metal cells, each with a sink, a Turkish toilet, a platform for a mattress, a few sundries and a prayer rug.

In the simple cell the military showed me, a Quran was treated carefully, suspended in a pouch fashioned out of a clean surgical mask. As we now know from the military, this kind of respectful treatment of the Muslim holy book was not always the case in this prison.

Respect for the American tradition of due process also has been uneven. I found that on display in another part of Guantanamo prison, Camp Five, which is not a camp but a massive concrete building with air conditioning, a humming security control room and hissing, remotely controlled door locks.

Camp Five looks built to last, suggesting by the very permanence of its architecture that someone is planning for the global war on terror to last longer than it has. The camp is modeled after a state penitentiary in Indiana, but it differs in at least one crucial respect: Prisoners in Indiana are subject to the rights of America's venerated legal system. Prisoners in Guantanamo are subject to - well, no one is quite sure. All would agree that the legal rules that govern the destinies of the people stuck in Guantanamo are new, evolving and untested.

Prisoners of war are released when an armistice is signed, according to the Geneva Conventions. There are no POWs at Guantanamo. U.S. officials prefer the term "enemy combatants," a new kind of prisoner for a new kind of war. If the Geneva Conventions apply - and it is worrisome to many that this sentence has to start with the word "if" - then these enemy combatants can plan on getting out when the long war on terror is over. That is to say, around the 12th of never.

That is, unless military officials decide a detainee has no more intelligence to share and no longer represents a threat to American soldiers or interests. Who decides and how is this decided? The military's new way of answering those questions is a three-officer Administrative Review Board, and it should not be confused with the military tribunals intended to put that small subset of combatants on trial for war crimes, Nuremberg-style.

The military knew I was coming, and officials from the Office for the Administrative Review of the Detention of Enemy Combatants had one case ready for me to see inside a conference room, deep inside maximum-security Camp Five.

Officials emphasized that the proceedings would be what they termed "administrative," not "judicial" - not quite akin to a parole hearing, but a process for reviewing the status of detainees once a year. It looked somewhat judicial, including swearing oaths to tell the whole truth. But all of the officials were anonymous, their nametags obscured with adhesive tape.

I sat 4 feet away from the prisoner, who was in a folding chair, his wrists shackled and his ankles chained to a bolt in the concrete floor. He was a 52-year-old Afghan man, thin in his camp-issue orange garb and flip-flops. He had a leathery face and a scraggly black beard turning white at the sideburns. His manner was intense but almost affable as he spoke through a translator.

The prisoner could hear the unclassified summary of the secret report that guided his case. The officers who would make the official recommendation about whether the man should stay in the camps, should be transferred to a third country or should be released were able to consult the report. The prisoner had limited ways of rebutting them. He could offer his version of events, either verbally or in writing. He could also call another detainee who might also have information to bolster a case for release. I had no way of independently verifying any of the military's assertions.

Among the accusations against the prisoner, there were some doozies, if true. The military said he used to work for Taliban intelligence. According to the unclassified brief, the detainee was caught with incriminating papers, including a faxed copy of a list of questions from an Iranian newspaper for none other than Osama bin Laden.

The detainee scoffed at the idea that he had any major role in Taliban intelligence. He said he did not have the money for the ransom that would have allowed him to avoid being drafted by the Taliban. After the U.S.-led war ousted the Taliban from power in Afghanistan, the prisoner said, he received money from the U.S.-supported government of President Hamid Karzai to establish a secular school to teach algebra and foreign languages. The detainee said he was criticized by fundamentalist hard-liners for not setting up a madrassa, or traditional Islamic school. These people may have turned him in.

"Somebody sold me to the Americans for \$100," he said.

As for the incriminating papers, the prisoner offered this explanation: While he was away temporarily in Iran, a car driven by members of the Taliban broke down in a rainstorm near his wife's house in Afghanistan. The people in the car asked his wife to take a box of papers and other items for safekeeping, he said. When he returned from Iran, the prisoner said, he did not examine the box, but reported it to the local governor.

As for a fax, the prisoner said he did not even know what a "fax" is. He said he has never seen one. "Is it a plane, is it a car?" he asked his Guantanamo review board.

One square-jawed, intense-looking officer wanted more information about the school the prisoner said he was to establish. What was the school called? Who financed it? Who were the teachers and what were their names? There were also questions about the circumstances surrounding the receipt and disposal of the mysterious box of papers, which the prisoner, somewhat vaguely, tried to answer.

"I'm just a poor teacher with two wives and 10 children," the prisoner said.

The board's goal was not to determine truth or innocence. The three officers are to judge whether the prisoner possessed more useful intelligence that he had not shared or if he would be a menace once released. It was the word of a nervous, powerless man without a lawyer against that of an official, classified report.

"You gentlemen know about human rights," he said. "I don't know."

After nearly an hour, I was led out of the hearing room and the prisoner was presumably taken back to his cell in Camp Five. The board's recommendation is not made public. But I was assured it would be passed up to the senior civilian Pentagon official who is the final link in this particular chain of command, Navy Secretary Gordon R. England.

He will tread carefully before letting anybody out. At Guantanamo, soldiers tell stories of detainees released from U.S. custody who showed up fighting U.S. and allied soldiers. A senior officer at Guantanamo emphasized to me that there are some "bad dudes" in the camps. "Flying-planes-into-buildings kind of dudes," he said.

At the time of my visit, the military said about 70 of these Administrative Review Boards had been held. Just how many of these proceedings have resulted in recommendations for release remains one of the many secrets of Guantanamo.

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