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# Attorneys seek an end to force-feedings at Guantanamo

Claire Schaeffer-Duffy | Oct. 28, 2013 NCR Today

Here's a bit of uplifting news: Ten days ago, Washington D.C. -- a city best known these days for small-mindedness and political dysfunction ? served as the setting for yet another chapter in the fight to achieve just and humane treatment for Guantanamo Bay prison detainees.

On Oct. 18 attorneys Jon Eisenberg from Oakland, Calif., and Cori Crider of the London-based charity Reprieve [1] filed a lawsuit before a U.S. District Court of Appeals arguing that the force-feedings at Guantanamo violate international law and religious liberty [2]. The plaintiffs involved are British resident and Saudi national Shaker Aamer, Syrian national Abu Wa'el Dhiab, and Algerian nationals, Nadil Hadjarab and Ahmed Belbacha.

Of the 164 men still detained at the military detention facility, 84 were cleared for release by a government interagency task force nearly four years ago. In February 100 men, many of them entering their second decade of detention, launched yet another hunger strike to protest. ?There is no end in sight to our imprisonment,? one detainee said [3].

Provoked by the strike, President Barack Obama announced [4] in May during a major national security speech that he would start releasing the cleared men. Two have left the prison so far, including plaintiff Nadil Habjarab. Sixteen are reportedly still refusing food.

At the peak of the hunger strike, as many as 40 detainees were subjected to force-feeding, a procedure that entails shackling a prisoner to a chair and threading a tube down his nose to pump his stomach with liquid food. Some of the men also allege being forcibly medicated with Reglan, an anti-nausea medicine used by the U.S. military during the force-feedings. Prolonged use of the drug can have serious side effects and cause neurological disorders that mimic Parkinson's disease. ANI Pharmaceuticals, the U.S.-based manufacturer of Reglan, has said it is "deeply concerned [5]" by reports of the drug's use at Guantanamo.

There are medical circumstances when nasogastric feeding can help keep a person alive, and this is what military personnel say they are doing every time they thrust a steel-tipped tube into the nose of a shackled detainee. But the American Medical Association has issued several condemnatory statements on the subject. It has said force-feeding a detainee who is competent to decide for himself whether or not to eat "violates core ethical values of the medical profession."

?The AMA has long endorsed the World Medical Association Declaration of Tokyo, which is unequivocal on the point: ?Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially," the association wrote in an April letter [6] to the Pentagon.

The letter was just one of many statements of protest issued this summer from the medical community concerning the force-feedings. A June editorial [7] in *The New England Journal of Medicine* urged physicians to refuse to cooperate in the procedure, saying bluntly ?Force-feeding a competent person is not the practice of medicine; it is aggravated assault.?

The British medical journal *The Lancet* published an open letter [8] to Obama signed by 153 U.S. and international doctors, asking the president to tend to prisoners' requests for treatment from independent doctors. The military doctors, the detainees said, could not be trusted because of their dual allegiance. In July, the British Medical Association called for [5] suspending the force-feeding and launching an inquiry into how the "unjustifiable" practice had developed.

The British docs also asked companies like Nestle, which are reportedly supplying the U.S. military with nutritional supplements, to disassociate themselves from those sales.

Eisenberg's and Crider's lawsuit specifically challenges two human rights violations at Guantanamo Bay:

- force-feeding of hunger-striking detainees in order to prolong their indefinite detention, in violation of international law and medical ethics;
- deprivation of religious free exercise by denying hunger-strikers the right to pray in congregation. At Guantanamo, guards put hunger strikers in solitary confinement - a common strike-breaking practice in prisons. Attending communal prayer, even during the Muslim holy season of Ramadan, is prohibited.

[Denial of religious liberty is an ongoing problem in U.S. prisons, especially for inmates who often spend years in segregated housing units. Denied access to worship services and face-to-face encounters with religious leaders, Mass for Catholic prisoners in these circumstances is often the Eucharist slipped through a flap in a cell door.]

The Obama administration contends the force-feedings are humane, the detainees are not "persons" entitled to religious free exercise, and the courts lack jurisdiction to prohibit human rights violations at the military detention facility.

When two district court judges ruled on these issues during the summer, one condemned force-feeding [9] and called upon Obama to put a stop to it. The other viewed the practice as essential [10] to preventing suicide. Both judges concluded they lacked jurisdiction.

Eisenberg said he and Crider never got to discuss the illegality of force-feedings at the Oct. 18 hearing because the fundamental question of jurisdiction -- do U.S. courts have the authority to rule on conditions at Guantanamo? -- dominated the morning's arguments. It's an extremely significant question for the prison.

Guantanamo, in its initial configuration, was a uniquely lawless zone. The detainees were not considered prisoners of war, a status that ensures some protection under international law and the U.S. military code of justice, but rather "enemy combatants." As such, they were denied the writ of habeas corpus -- an ancient right that a bunch of English landowners wrested from King John back in 1215 when they dragged him naked out of bed one night and forced him, at sword point, to sign the Magna Carta.

Habeas corpus, which means ?to have the body,? ensures due process. No monarch or ruling authority is allowed to lock someone up forever without at least granting the imprisoned an opportunity to appear in court and face charges. [It does not apply to POWs, who, held for the duration of a conflict, are not charged with criminal wrongdoing.]

Guantanamo detainees did not have this right until some heroic attorneys, brandishing the U.S. Constitution, wrested it from the government with *Boumediene vs. Bush*, a 2008 Supreme Court ruling that grants detainees the right to challenge the legality of their detention. The nine judges, however, remained silent on the issue of jurisdiction.

*Boumediene* predictably unleashed a bevy of habeas petitions from Guantanamo attorneys. According to Eisenberg, no U.S. court has yet ruled a detention unlawful, the decision based on a claim that it is "reasonable to suspect" the detainees of terrorism. But he said if he and Crider "win the jurisdictional issue," the courts can oversee prison conditions to determine if they are humane or inhumane.

"It means the court has the power to [figuratively] open Guantanamo's doors to the attorneys so we can look into claims of abuse from our clients," he said, later adding that he thought Obama's attorneys "would fiercely fight" any ruling that gave the courts this power. Under the current arrangement, lawyers' access to the military detention facility and their clients is severely restricted.

Should the D.C. Court of Appeals decide it has no jurisdiction over human rights violations at Guantanamo, then the court is saying the prison can do anything to these men, Eisenberg said.

"They could torture them, harvest their organs. The courts would be saying they can't stop the most egregious abuses, even if [the prison] brought in Josef Mengele the Third, and he decides to inject everyone with the plague for one of his medical experiments," he said.

A middle-of-the-road ruling from the appeals court is also possible. "The judges decide they have the power to adjudicate but are not going to use it. The message to the government then becomes, 'You can do nearly anything you want,'" Eisenberg said.

His colleagues at the private California law firm are of "varying opinion" about his Guantanamo litigation. He estimates he has given 400 hours pro bono for this particular case, which is "nothing," he said, "when compared to the dozens of lawyers who give years of pro bono work to these cases. They are the real heroes."

Guantanamo was created as a prison for "terrorists" -- men and boys, some of them stateless, who were haphazardly rounded up from various corners of the world. Today, it's a hellish limbo for its inmates and a political and legal nightmare for the U.S. government. The facility "should have never opened," Obama said in May, for it "has become a symbol around the world for an America that flouts the rule of law."

Yet for every great harm we construct, there are always people trying to undo that harm. It's important to remember them. Their work might seem miniscule relative to the hazard, but knowing of the effort, their persistence gives hope. And that is why I think news of this appeal, the arguments for which consumed less than two hours of a mid-October morning, is uplifting.

I am praying for good outcome.

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[5] http://www.theguardian.com/world/2013/jul/27/bma-says-end-guantanamo-force-feeding
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