



A mobile guard tower stands over a camp for Chinese Uighur detainees at the U.S. military prison in Guantánamo Bay, Cuba. JOHN MOORE/GETTY PHOTOS

Who's afraid of lawyers?

By Leonard Goodman

There has been a growing outcry over demands from conservative groups like KeepAmericaSafe.com and from Sen. Charles Grassley, R-Iowa, for the names of all lawyers working for the Obama administration who “once represented or advocated on behalf of . . . terrorist detainees.” Many conservatives have spoken against these attacks as contrary to the American legal principle that even unpopular defendants deserve a lawyer. But what hasn't been pointed out is that if these conservative folks really care about keeping America safe, they are barking up the wrong tree.

I am one of the lawyers who represent a Gitmo detainee. Like the other Gitmo lawyers, I volunteer my time and money, not because I sympathize with terrorists, but because I don't believe any government should have the power to indefinitely detain a person without charging him with a crime. I also believe in a basic principle of law (which this country used to follow) that merely calling someone a terrorist doesn't make him one.

It is not Gitmo lawyers who are endangering America. We are fighting to lift the veil of secrecy so that judges and Americans can learn the truth about each detainee, a principle endorsed by the U.S. Constitution.

More than 90 percent of the Gitmo detainees (including my client, Shawali Khan) were captured by foreigners and turned over to the United States, often in exchange for well-publicized cash rewards. Khan's



story is like many others. He was captured not far from his home by Afghan men linked to a corrupt warlord. Khan's captors named him as a “terrorist” and, we believe, collected their cash reward.

Under the Geneva Conventions, Khan would have had a hearing before being sent off for incarceration. But Bush administration lawyers wrote legal memos declaring that any person captured by the U.S. in connection with its war on terror has no rights under international or U.S. law. Thus Khan was sent off to Gitmo without anyone checking to see if the allegations made against him were true or false. Eight years have passed, and Khan remains locked in his cage at Gitmo. He has never been charged with a crime or had any court review on whether his detention is justified.

The direct consequence of the decision to deny all rights to any person alleged to be a

terrorist is that many men were sent to Gitmo by mistake. However, because most of the detainees' cases have been kept out of the courts and out of the public eye, the names and numbers of the men held at Gitmo are unknown. This is un-American.

The decision to keep these cases out of court was political. It was done so that our leaders could falsely boast that the men they sent to Gitmo are the worst of the worst. As Dick Cheney crowed in 2005, the Gitmo detainees were “picked up on the battlefield; they're terrorists; they're bomb-makers; they're facilitators of terror; they're members of al-Qaida and the Taliban.”

Roughly 30 detainees, of about 700, have had their cases reviewed by a district court judge at a habeas hearing. (An even smaller group of detainees, led by Khalid Sheikh Mohammed, have actually been charged with crimes and will perhaps get a trial.)

Undergrowth obscures signs near the former Camp X-Ray at Guantánamo Bay.

Twenty-five of the 30 detainees who have had habeas hearings were found to be held at Gitmo without justification and were ordered released.

Note that a habeas hearing is not like a trial. Government lawyers are not required to call any witnesses but can prove their case — that the detainee is connected in some way to a terrorist group — by submitting hearsay statements of witnesses. The detainee has no right to be present at the hearing but may testify by video.

About 400 Gitmo detainees were released by the Bush administration as a result of secret, back-channel negotiations with their home countries, and without judicial review. Some of the released detainees have joined anti-U.S. terror groups. However, because their cases were kept secret and away from the courts, it is impossible to say whether these men were terrorists at the time they were sent off to Gitmo or were innocent men who learned to hate the U.S. after years of unjust incarceration and harsh interrogation.

On the other side of this fight are lawyers carrying out a government policy designed to keep the American people and the courts in the dark about the men held at Gitmo. It is a policy based on fear and ignorance that actually makes our nation less safe.

Sen. Grassley and the misguided folks at KeepAmericaSafe.com are targeting the wrong lawyers.

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