VALUE-ADDED INJUSTICE

The U.S. military court and prison at Guantánamo Bay, Cuba, have cost more than $6 billion to operate since opening nearly 18 years ago and still churn through more than $380 million a year despite housing only 40 prisoners today.

That does not include the $60 million annual expense of operating Guantánamo's naval base or the salaries of military personnel, including the 1,800 guards overseeing the detention center's prisoners.

Included in that amount are taxpayer-funded charter planes often flying just a few passengers to and from the island; hundreds of thousands of dollars' worth of government electronic devices intentionally destroyed each year due to spills of classified information; some Pentagon-funded defense attorneys billing about half-a-million dollars a year; and total legal costs of nearly $60 million annually even though Guantánamo has had only one finalized conviction.

Criticism of that spending comes even from inside Guantánamo. A former top attorney there has filed a federal whistleblower complaint alleging "gross financial waste" and "gross mismanagement."

Retired Air Force Col. Gary Brown also claims that he and the former head of the military court were fired because they were negotiating a controversial cost-saving proposal with defense lawyers: allow Guantánamo prisoners — including Khalid Sheikh Mohammed and his four co-defendants in the Sept. 11, 2001, terrorist attacks — to plead guilty in exchange for life in prison rather than face the death penalty. Such plea deals, Brown says, "would stop wasting resources."

Many attorneys and other officials who have worked there openly condemn the spending.

"It's a horrible waste of money. It's a catastrophic waste of money," said Michel Paradis, a Guantánamo defense attorney for Abd al-Rahim al-Nashiri, the alleged mastermind of the bombing of the USS Cole naval warship. "No matter if you want to see all of these guys shot in the street or whether or not you think Guantánamo itself is an aberration that should have closed yesterday — whatever your goal is, the military commissions have failed to achieve that goal."

"There have been billions of dollars spent on Guantánamo that were totally unnecessary," said Morris Davis, Guantánamo's chief prosecutor from 2005 to 2007. Davis says he quit when he felt pressured by his superiors to use evidence obtained through torture, and he calls the military commissions "an overwhelming failure."

Nearly 800 detainees have passed through Guantánamo since prisoners began arriving there in 2002, and 40 people are still confined there. Some have been held for nearly 18 years without being charged. Only one conviction has been finalized, and Guantánamo's legal cases have been virtually deadlocked for years.

Yet the court and prison continue to spend what Brown calls an "eye-popping" amount each year on construction, travel, housing, vehicles, computer systems, linguists, translators, investigators, expert witnesses, case analysts, paralegals, court reporters, various types of contractors and hundreds of attorneys.

Brown said it wasn't just the spending that shocked him. He also questions whether Guantánamo prosecutors can win death penalty convictions at trial, because so much evidence is tainted by torture. He notes that if trials do happen, the appeals process is expected to last another 10 to 15 years, incurring costs of at least another $1.5 billion. And the government argues that even if the defendants are found not guilty at trial, it can continue to keep them imprisoned indefinitely.

Guantánamo attorney Walter Ruiz represents Mustafa Ahmad al-Hawsawi, who is accused of helping finance the Sept. 11 hijackers, and he calls the military court "the most dysfunctional criminal justice system in America and most likely the most dysfunctional on Earth."

David Nevin, who until this week had been the lead lawyer for Khalid Sheikh Mohammed for several years,

said that if the death penalty came off the table, "We'd be done. We would've been done a long time ago."

Nevin is one of numerous defense lawyers who for years have been calling the military commissions a "farce," "legal theater" and a "show trial."

"Because even if they are acquitted, they won't be released, and if they're convicted and sentenced to death, the odds are that they will die in prison before they can ever be executed," Nevin said. "So it is an exercise in futility and ... it's an utter waste of time and money."

No current Guantánamo prosecutors will speak publicly with the media, and several of them declined multiple interview requests. But at least a half-dozen former prosecutors have publicly or privately criticized Guantánamo's military court, including former chief Guantánamo prosecutor Davis.

"October 3 will be the 12-year anniversary of the day I resigned, and if you look at what's happened over the last 12 years, I think you could sum it up as 'not much,'" said Davis. "What I wish they would have done was to move these cases into federal court, where they would have been wrapped up years ago and saved the taxpayers a lot of money."

The Pentagon would not supply a detailed spending breakdown to NPR because it said that could expose "sensitive information," and breakdowns it has given Congress have contained errors.

Included in the spending that many Guantánamo lawyers described as wasteful are hundreds of thousands of dollars' worth of government devices destroyed each year due to "spillage," which in military terminology means classified information that's accidentally disclosed. That can happen when information shared via email is later labeled as "classified," causing a retroactive spill. Those costs are part of the $7.5 million spent annually at Guantánamo on technology.

"On multiple occasions I've had maybe four or five laptops, multiple Blackberries and iPhones that are government-owned, literally destroyed," said Michael Garber, a case analyst on one of Guantánamo's defense teams.

Guantánamo's island location off the southern tip of the United States also drives up costs. Lawyers, judges, contractors, and other court employees must fly to Guantánamo any time they want to attend a legal hearing, or any time they want to talk with a prisoner, since attorneys are not permitted to speak with the inmates by telephone.

To get there by air, they must travel on taxpayer-funded, government-chartered flights – often Boeing 737s operated by commercial airlines that bid for the routes – that cost $185,000 roundtrip and often carry only a few passengers. Total Guantánamo travel costs about $6.5 million a year.

"A former colleague told me one time he was on a flight with two people," said Guantánamo defense lawyer Wyatt Feeler. "That's the fewest I've heard. I've certainly been on flights where the vast majority of seats were empty."

There are also hundreds of generators, air conditioners and dehumidifiers throughout Guantánamo, all working to keep mold, iguanas and banana rats out of office space and lodging facilities in the intense Caribbean heat. Their pervasive hum is emblematic of the financial challenge of trying to run an American-style court system in a tropical overseas location.

The combined cost of Guantánamo's prosecutors and defense teams is nearly $60 million a year. That includes the expense of "learned counsel," which are Pentagon-paid private lawyers specializing in death penalty cases. Every Guantánamo prisoner facing the death penalty is entitled to such a specialist. Two military court judges have issued orders prohibiting disclosure of the fees paid to those attorneys. But according to a document obtained by NPR, some of them bill about $500,000 a year.

"Our job is to defend them, and I don't care what the cost is," said Marine Brigadier General John Baker, chief defense counsel for the Military Commissions Defense Organization, which is basically the public defender agency for Guantánamo.

"This is a country that was founded on the concept of the rule of law and is held out across the world as the place where justice is done," he said. "That's part of the reason we keep plugging away and fighting to make sure that at every turn we can make it as fair as it can be."

Baker added: "People need to know the travesty that is Gitmo. It's beyond comprehension that it is 2019 and people that were accused of crimes that occurred in 2001, and captured in 2003, are nowhere near trial."

Last month, a military court judge — Air Force Col. Shane Cohen — set Jan. 11, 2021, as the start date for the Sept. 11-related trial, although he cautioned that several other deadlines must be met for the trial to begin then. Those include developing plans for how to provide enough food, housing and transportation for the crowds that would arrive on the island if a trial were held there.

Meanwhile, expenses at Guantánamo continue to mount as the military court is basically stuck in place. For years, lawyers have been fighting over basic legal questions like whether the U.S. Constitution applies to the war court.

"We used to say that it feels like they're going backwards," said Karen Greenberg, who is the director of the Center on National Security at Fordham University's School of Law and writes often about Guantánamo. "Now they actually are going backwards."

Guantánamo's judges are exasperated, too. Last year, according to a hearing transcript, one of them said that unless the status quo changes, "We're going to continue to spin our wheels and go nowhere."

At that same hearing, when defense lawyers insisted that Guantánamo's shortage of housing and other amenities makes it physically unready for a trial, a lead prosecutor told the judge the only way to jumpstart the process is to spend more money.

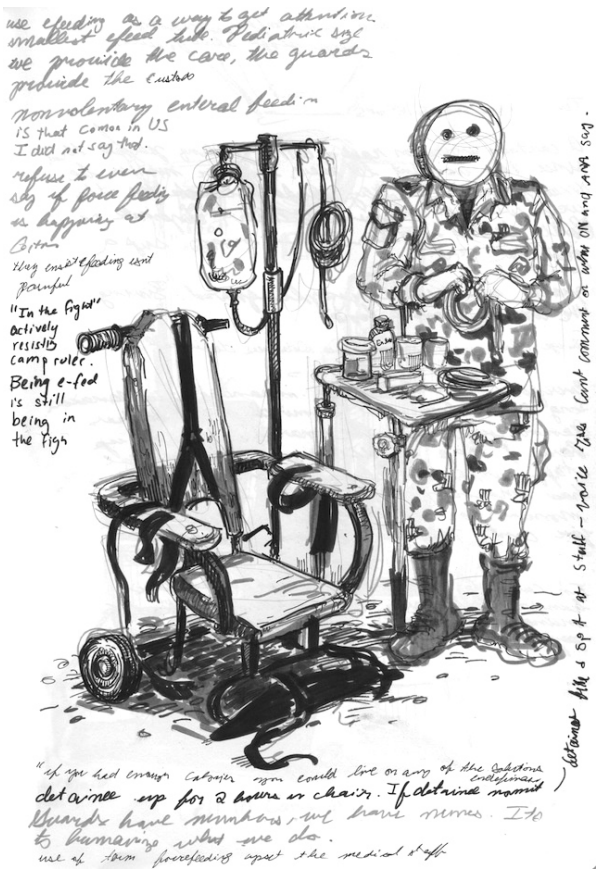
The case of al-Nashiri, the accused USS Cole bomber, has been paused for nearly two years, ever since three of his defense lawyers quit after finding listening devices in an attorney-client meeting room.

Another time, a defense team discovered that the FBI had turned one of its paralegals into an informant. Once, a prisoner recognized his Guantánamo interpreter as having been at the secret CIA site where he was tortured years before.

"The degrees and permutation of chaos in these military commission proceedings is something that's just unimaginable," said Paradis, one of al-Nashiri's remaining lawyers. "It's something you couldn't make up unless you were the writers for the show Veep or something like that."

Still, Paradis predicts that Guantánamo will continue to exist at its current pace and expense for decades.

"They brought a new cell down that is wheelchair accessible, so you're going to have the most expensive, most notorious old-folks home in the Caribbean that you've ever seen," he said.

Reporting by **Sacha Pfeiffer**

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