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Terror case's drain on resources draws outrage

3 public defenders on legal team a financial strain, critics say

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The Detroit News

Detroit-- When Umar Farouk Abdulmutallab was arraigned Friday on charges he tried to blow up a Northwest Airlines flight on Christmas Day, he had not one, but three, taxpayer-funded attorneys at his side.

The hearing came less than a month after a daylong symposium was held at Wayne State University to address what's been described as a "crisis" in the lack of public resources for indigent criminal defendants in Michigan and across the nation.

Chief Federal Defender Miriam Siefer said for the first time Friday she expects her office to keep the Abdulmutallab case and that there has been no talk by him or his family about hiring private attorneys.

The resources expected to be devoted to the Nigerian's case would be controversial under any circumstances. Add the fact that he is the son of a wealthy Nigerian banker and that he is accused of blowing up a plane carrying 290 passengers and crew, and the situation draws outrage from some quarters.

"It's nauseating," said U.S. Rep. Candice Miller, R-Harrison Township, who thinks Abdulmutallab should be tried in a military court, not a civilian one. "In every way, it makes you sick -- the cost, the unfairness. It should not be happening this way."

But even some who don't quibble with Siefer and two attorneys from her office, Jill Price and Leroy Soles, being assigned to the Abdulmutallab case worry the resources devoted to his defense will mean other needy defendants will lose out.

"I understand why there may be out of necessity a need for more than one attorney," said the Rev. Wendell Anthony, president of the Detroit branch of the NAACP.

"Does that mean that people who are in the system now will not get all of the service that they need? Quite frankly, I think it does."

But Anthony said that shows the need to fund more public defenders or create a special fund for extraordinary cases such as Abdulmutallab's, not to take some of the accused bomber's lawyers away.

"For us not to give him his day in court, for us just to cut him off at the knees ... without a hearing, if we do that, then we become what our enemies are," Anthony said. "They get the victory; we do not."

'A ton of discovery'

Abdulmutallab would still receive taxpayer-funded assistance if he was tried in a military, rather than a civilian court. In fact, experts say military tribunals offer defendants many of the same protections -- such as presumption of innocence -- civilian courts do.

A major difference is that if Abdulmutallab had been declared an "enemy combatant," the government could have subjected him to prolonged and aggressive questioning not permitted on civilian defendants.

But some who say the government by all means should pay for an attorney for Abdulmutallab balk at the idea of doing more than that.

"I'm not sure why he gets three attorneys," said Rep. Pete Hoekstra, R-Holland. "It's always remarkable how in the system these people despise, we provide the maximum protection for them."

The federal defender has about 20 attorneys in its Detroit office, so 15 percent of its legal talent is involved in the Abdulmutallab case.

Siefer, who could have opted to farm out the Abdulmutallab case to one of a panel of about 100 private attorneys in the Detroit area who take public defender cases for about \$150 an hour, could not be reached to comment on whether she thinks the case will strain her office's resources.

Three federal defenders also were assigned to represent Karim Koubriti, a Moroccan, in the high-profile and prolonged 2003 terrorism trial in which convictions the government won later were overturned after the Justice Department admitted to prosecutorial misconduct.

Petra Bartosiewicz, a New York journalist whose book on post-9/11 terror trials, "The Best Terrorists We Could Find," is to be published early next year, said terrorism cases require "an enormous amount" of legal defense resources -- far more than typical criminal cases.

"There's a ton of discovery involved in these cases, and more often than not, the discovery is classified," said Bartosiewicz, referring to the evidence the government gathers that it must share with defense attorneys. Classified discovery means there may be relatively few attorneys in a Federal Defender Office qualified to handle the case, she said.

But like Anthony, Bartosiewicz said taxpayer funding of the extra legal resources is justified because of the complex constitutional and other legal issues involved.

A burdensome case

Detroit attorney Joseph Niskar said it's not just attorneys from the Federal Defender Office who will be involved in the Abdulmutallab case, but also paralegals and investigators who may need to travel to Nigeria or elsewhere overseas to prepare an adequate defense.

Niskar worked on the Koubriti terror case. Along with Detroit attorney James C. Thomas, he represented defendant Ahmed Hannan. Because the Federal Defender Office was representing Koubriti, representation for Hannan and the other two defendants had to be farmed out to "panel attorneys" such as Niskar and Thomas, who work in private firms but will take public cases.

Because there is only one defendant in the Abdulmutallab case, it will likely be more burdensome to the Federal Defender Office than the Koubriti case, in which the public and private attorneys for all four defendants worked together as a team, Niskar said.

Taking a team approach

Still, Niskar said Siefer and her attorneys are extremely sharp, and he does not expect the Abdulmutallab case to put an undue burden on her office or cause other indigent criminal defendants to go without.

"What they can't handle, they'll just give out" to panel attorneys, Niskar said.

Detroit attorney Anthony Chambers, the area representative for private attorneys who take federal public defender cases under the Criminal Justice Act, had a similar view.

"These three attorneys they have on it are very well-experienced, great lawyers," Chambers said. "I don't think that in any way it's going to take away from their effectiveness or their ability.

"They have decided, obviously, on a team approach to this case, as they should."

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