

THE CONFLICT IN IRAQ: Challenging the Army

THE TROOPS

Eight Soldiers Plan to Sue Over Army Tours of Duty

By MONICA DAVEY

MORRILLTON, Ark., Dec. 3 — The eight soldiers come from places scattered across the country, from this small town in their northwest of Little Rock to cities in Arizona, New Jersey and New York. In Iraq now, Kuwait, where they all work now, most of them hold different jobs in different units, miles apart. Most have never met.

But the eight share a bond of anger: each says he has been prevented from coming home for good by an Army policy that has barred thousands of soldiers from leaving Iraq this year even though the terms of enlistment they signed up for have expired. And each of these eight soldiers has separately taken the extraordinary step of seeking legal help, through habeas corpus, Internet searches and e-mail inquiries from their camps in the conflict zone, or through rounds of phone calls by an equally frustrated wife or mother back home.

With legal support from the Center for Constitutional Rights, a liberal-leaning public interest group, lawyers for the eight men say they will file a lawsuit on Monday in federal court in Washington challenging the Army policy known as stop-loss.

Last spring, the Army instituted the policy for all troops headed to Iraq and Afghanistan, called it a way to promote continuity within deployed units and to avoid bringing new soldiers in to fill gaps left in units by those who would otherwise have gone home when their enlistments ran out. If a soldier's unit is still in Iraq or Afghanistan, that soldier cannot leave even when his or her enlistment time runs out.

Since then, a handful of National Guardsmen who received orders to report for duty in California and Oregon have taken the policy to court, but the newest lawsuit is the first such challenge by a group of soldiers. And these soldiers are already overseas — transporting supplies, working radio communications and handling military contracts, somewhere in the desert.

"You should know I'm not against the war," said David W. Qualls, one of the plaintiffs and a former full-time soldier who signed up in July



David W. Qualls at home in Morrilton, Ark., on leave from Iraq. A member of the Arkansas National Guard, he is one of eight soldiers planning to file a lawsuit to prevent the Army from requiring them to stay on duty.

which was first instituted during the First Persian Gulf war: more than a decade ago, as a tactical lesson learned in Vietnam, where troops were rotated out just as they had become acclimated to a treacherous environment.

"If someone next to you is new, it can be dangerous," said Lt. Col. Pamela Hart, an Army spokeswoman. "The bottom line of this is unit cohesion. This way, the units deploy together, train together, fight together and come home together."

Some soldiers like Mr. Qualls, though, say they wonder if the rule is not just another way to keep troop numbers high, particularly at a time when the military has been stretched thin and the number of troops in Iraq is expected to rise still more, to 150,000, in the coming weeks.

In recent months, at any given moment, about 7,000 soldiers who had been planning to retire, leave the military job or move to a different military job. The rule affects soldiers whose enlistments are scheduled to end within 90 days before their unit is deployed, those already deployed, and those whose term would end up to 90 days after their unit returns. On Friday,

They've served their time, but they still can't go home.

Island said she began making calls on her son's behalf, first to her representatives in Congress and later to anyone she could find.

"My son," she said, "is not someone afraid to follow orders and fulfill his obligation. He's a very compliant soldier, but he feels like he's being stabbed in the back."

One soldier's wife, from New York City, said she received an e-mail message from Military Families Speak Out, an antiwar group, about the possibility of a lawsuit, and urged her husband to be part of it.

Asked whether antiwar forces were instigating this lawsuit, Mr. Lobel, who like his co-counsel, describes himself as openly opposed to the war in Iraq, laughed and said, "The soldiers and their families came on their own, he said.

"They were desperately looking for some way to solve their situations, and it looks like most of the people they found who were trying to counsel or represent people in their situation were antiwar people," Mr. Lobel said. "But to me, the most interesting aspect of this whole thing is that it's not a question of antiwar or pro-war. It's not a question of 'red states or blue states. This stop-loss question is just about fairness."

As part of a rest-and-relaxation leave allowed some soldiers, Mr. Qualls arrived at his modest Morrilton home just in time for Thanksgiving supper with his wife, Cheryl, and their daughter, Kelly.

Seated at his computer on Friday he fiddled with a pen as he described whether he might face restrictions for taking legal action, something he says he told his unit commander nothing about before he left. He said his family had struggled financially and emotionally with him gone, and he has to put the genie in a bottle.

"The other thing," Mr. Qualls said, "is you've got thousands of people over there in the same situation as me and somebody's got to do something. Why not have it be me? I can't worry about what people will say."

Mr. Qualls is due back at his rapid post on a base north of Baghdad this coming weekend. He said he hoped a judge would issue a temporary restraining order and allow him to stay home. But if he loses, he said, he will get on that plane.

way. Their hopes are far more practical. They want to go home.

Mr. Qualls was one of the first soldiers to find Mr. Lobel and Staughton Lynd, another lawyer now working with the Center for Constitutional Rights on the case and whose antiwar activities date to the Vietnam era. As Mr. Qualls wandered the Internet one day in Iraq, he said, he came across news reports of a National Guardsman in California who this summer had become the first to challenge stop-loss in court.

Mr. Qualls said he immediately began sending e-mail messages that guardsman's lawyer, Michael S. Soragan, and was eventually referred to Mr. Lynd and Mr. Lobel, who were separately beginning to hear from other soldiers who had found them in recent weeks in a variety of ways.

Some of the soldiers e-mailed or called the National Lawyers Guild, Military Law Task Force or the G.I. Rights hot line, and were referred to the lawyers, Mr. Lynd said. The wife of one soldier said she handed all the research for his case herself, studying the enlistment contract and newspaper clippings and finally coming across Mr. Lynd's name. And a 34-year-old mother from Long