



Scott Barker, Anne Castle, Trip Mackintosh
Guantanamo Bar Association Narrative

My partners, Anne Castle and Trip Mackintosh, and all the Holland & Hart lawyers and support staff who are contributing to the representation of five Algerian GTMO detainees are proud to be part of this historical constitutional enterprise and to do all we can to obtain a fair hearing and justice for our clients.

This narrative focuses on Abu Muhammed,¹ our first client to have been “released” from GTMO, where he was wrongfully held prisoner for nearly five years. His story, as you will see, underscores why it is important to provide due process to all GTMO detainees.

I. BACKGROUND ON HOLLAND & HART’S INVOLVEMENT

Before telling Dr. Muhammed’s story, I’d like to describe how we got involved. In March 2005, I attended an annual meeting of the American College of Trial Lawyers in Palm Springs, California. The Saturday morning program was devoted to the topic of “individual rights in the aftermath of 9/11.” Anthony Lewis, the former New York Times Supreme Court Correspondent and author of Gideon’s Trumpet, gave the keynote address. His speech was brilliant, poignant and

¹ In order to protect his privacy and his family, who have returned to Algeria, our client prefers that public statements about him be made under a pseudonym, Abu Muhammed. I will, therefore, refer to him by his pseudonym.

broad ranging, but what hit me was his description of Guantánamo Bay and the crying need for lawyers to become involved in helping GTMO detainees to vindicate the habeas rights that the Supreme Court had recognized in *Rasul v. Bush*. Following a thunderous, standing ovation for Mr. Lewis, one of the fellows took the microphone and invited us to take up the challenge.

This was something I felt compelled to do, especially given my military background.² So, upon my return to Denver, I approached my long time partner and friend, Anne Castle, about joining the effort. Anne, who for many years has devoted much of her professional life to pro bono causes, gave an enthusiastic “yes.” We next put out an invitation to the lawyers in the Firm.³ Thirty people volunteered. Trip Mackintosh, one of our partners, was at the top of the list. Trip is fluent in French and was posted to Morocco while in the Peace Corps. His North African experience and his French language skills guided us toward the representation of five Algerian detainees who, at the time, were without counsel.

The Holland & Hart team has settled into a group of about eight lawyers and a legal assistant, who together have invested in excess of 1,000 pro bono hours in the more than two years we have been involved. We filed our first of five habeas petitions in the United States District Court for the District of Columbia in June 2005. Four of our clients are still detained, and we continue to toil on their behalf.

² My father was a career Air Force pilot with combat duty in two wars. I had served in the Air Force myself for eight years after graduating from the Air Force Academy and before I went to law school.

³ Holland & Hart is the largest firm in the Rocky Mountains, with approximately 360 lawyers in offices in seven states. It has long been known for its commitment to pro bono work, including the willingness to take on controversial causes.

II. ABU MUHAMMED

Dr. Abu Muhammed was born and raised in Algeria where he was trained as a medical doctor. He fled Algeria in the late 1990s as a result of political oppression and fear for his life based upon the mysterious circumstances involving the death of his brother. He obtained U.N. refugee status in Pakistan. Dr. Muhammed never bore arms against the United States or its allies and was never a member of or provided support to any organization hostile to the interests of our country.

At the time of his apprehension in 2002, he was an innocent civilian living peaceably in Peshawar, Pakistan with his wife and six children. He was “arrested” at the home of a friend, taken into custody by the United States and quickly transferred to GTMO, where he remained incarcerated until November 2006.

We filed a habeas petition on his behalf in the summer of 2005. Unbeknowst to us, Dr. Muhammed had been determined to be a “non-enemy combatant” by GTMO authorities in May 2005, a fact that was not disclosed to us until October of that year. Indeed, the fact that Dr. Muhammed had been found innocent was revealed in a footnote to a brief filed in the habeas proceedings by the Government!

So, beginning in the fall of 2005, we began efforts to get Dr. Muhammed, an admittedly innocent man, released from GTMO to a place where he could be reunited with his family. Algeria was still not an option, because Dr. Muhammed continued to fear for his life there, even though his wife and children moved back to Algeria after his GTMO incarceration. His first choice was

France, where he has sisters and a brother and where his fluent French would facilitate integration into a new culture. Other choices included Saudi Arabia or Yemen. Albania wasn't on his list. We were told repeatedly that the State Department was working on the problem, but no real progress reports were ever provided. Efforts to get the United Nations involved failed. We did manage to facilitate telephone contact between Dr. Muhammed and his family.

Then, without any warning at all, we received a phone call from the DOJ lawyers on the Friday before Thanksgiving (November 17, 2006). We were told that Dr. Muhammed had been released from GTMO and was enroute to Tirana, Albania, where he was to be offered asylum, even though he informed GTMO authorities that he did not want to be sent there. We later learned that the first attempt to transfer Dr. Muhammed to Albania was aborted when a scheduled airborne refueling failed (apparently, the Government did not want to risk the political ramifications of landing somewhere to refuel). We also later learned that Dr. Muhammed made the eighteen hour flight shackled to the floor of the plane.

We quickly determined that someone from our team needed to travel to Albania, as soon as arrangements could be made, to assist Dr. Muhammed in dealing with the U.N. and the Albanian government. Thanks to the good offices of Sabin Willett, we were put in touch with an Albanian NGO that had assisted him when some of his Uighur clients had been released to Albania in May 2006. We were able to establish e-mail contact with the Director of the NGO and one of his

assistants, Borana Lushaj, a young Albanian college educated woman who was fluent in English.⁴ She was instrumental in getting me into a hotel, setting up meetings and serving as a translator.

We learned that Dr. Muhammed was in need of winter clothing, so Anne made a blitz shopping trip and filled a large duffel with clothes that we thought would suit his needs and fit our client. The duffel was lost along the way and did not arrive with me. Fortunately (and somewhat surprisingly), it was delivered to my hotel the last day I was in Tirana, and I was able to get it to Dr. Muhammed before I left.

I left Denver on Tuesday, November 21, flying through Frankfurt, Rome, and then on to Tirana, arriving late on November 22. I was there through Saturday, November 25. In an odd way, Tirana was reminiscent of Saigon and Phnom Penh of the mid 1970s. The entire city, even the central plazas, looked tired, with both Muslim and Christian influences visible. Things Italian seem to be popular, apparently stemming from Italy's close proximity and the Italian occupation during World War II. Power outages were sporadic and taken in stride by the locals, a palpable sign that the economy is struggling and the basic infrastructure inadequate. The people were friendly, even through the language barrier. Cell phones and low cut Western style jeans were the norm, at least among those under forty.

Dr. Muhammed was confined to the United Nations Refugee Center in the Babrru District, a half hour cab ride from city center. He was told he could not leave the Center until he had officially applied for asylum. In short, Babrru is a slum and the Refugee Center minimally basic.

⁴ Borana is the daughter of a former Major General in the Albanian armed forces who was purged from his position when the totalitarian regime collapsed. According to Borana, he and his wife are now "retired" and still living in Tirana. At the time of my trip to Tirana, Borana was awaiting word on her application to pursue an advanced degree at Cambridge.

It consisted of a central cracking concrete courtyard about the size of half a football field, surrounded on all four sides by fifty-year-old one-story barrack type buildings. Dr. Muhammed's room was a space, about twenty feet by ten feet, with no central heating, although he did have a space heater that functioned on and off. It was furnished with a single bed, a small table and two chairs. He shared a bathroom with the person across the hall. Meals were cafeteria style in a small dining room in the compound. I did not sample the food.

I met with Dr. Muhammed on the morning of November 23 (Thanksgiving Day) at the Refugee Center. Dr. Muhammed speaks Arabic, French and decent English, which he claimed to have learned at GTMO. We were able to communicate in English. He had been given a cell phone and had spoken with his family in Algeria already. Dr. Muhammed is a man who has learned to live in peace with his surroundings. He greeted me warmly and was all smiles. But, he was deeply troubled by his predicament. He said he had told the GTMO guards who put him on the plane and the Albanian border police that he did not want asylum in Albania. He expressed a continuing desire to get to France or an Arab country, but not Algeria.⁵ I told him that my task was to meet with the Albanian government and with U.N. representatives to assess the situation. However, I warned him that he likely had no choice but to seek asylum in Albania and then try to get somewhere else.

For the next day and a half, I trundled around Tirana, attending meetings that had been arranged in advance by Borana. I met with Drita Avdyli, the Albania Minister for Refugees; Mohammed Hossein Kheradmand, the Director of the United Nations High Commission for

⁵ Working through his connections in France, Trip was able to locate a French immigration lawyer willing to help Dr. Muhammed in his efforts to get to France, on a pro bono basis.

Refugees; and Veronique Brumeaux, First Consul at the French Embassy. The net result of these meetings was that Dr. Muhhamed's only choice was to seek asylum in Albania and then mount an effort to get to France or some other place. Dr. Muhammed's "release" from GTMO left him, in effect, a stateless person. Without a connection to some country, no other nation would deal with him in any fashion. Despite his U.N. refugee status, the UNCHR would not intervene on his behalf because it had concluded that Albania was a "safe environment" for refugees.

I returned to see Dr. Muhammed on Friday, November 24, and delivered the news that his options were reduced to one: ask for asylum in Albania. He agreed to that option, and we so informed Ali Rasha, the Albanian who was the Director of the Refugee Center. An Arabic translator was rounded up and Dr. Muhammed signed the papers, in my presence, that day.

I left Dr. Muhammed and Tirana with mixed feelings—anger over what my country had done to this innocent man; happiness that he had finally been released from prison; and pride over the contributions that Anne, Trip, myself and all the Holland & Hart lawyers involved had made to his release.

As of this writing, Dr. Muhammed remains in Albania, still separated from his family. Despite his medical training, he still has no job because there is no employment in Tirana without being able to speak the language, which Dr. Muhammed is studying daily. We have located a new French lawyer, and efforts continue to get Dr. Muhammed and his family reunited in France.

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