

In the spring of 2005, Air Force higher headquarter sent out an e-mail announcement seeking JAG volunteers interested in working at the Office of Military Commissions (OMC). Although the e-mail announcement offered little information about the position, the job appeared to be one of great opportunity and interest. After briefly thinking about whether to volunteer, I did so.

Several months later, in November 2005, I received a telephone call from the chief defense counsel of the OMC. He called to inform me that I had been selected for a position in the defense office. He stated that he had the perfect case for me. I was then appointed to represent a detainee named Binyam Mohamed who had been charged with war crimes and would be tried by the commission courts. This was the first time I heard the name Binyam Mohamed.

I peppered the chief defense counsel with various questions about the commission process. I had no idea what to expect. The chief defense counsel answered my questions the best he could but he seemed unsure how the trials would be conducted. At the time I did not realize that the entire commission process was untested and so brand new that no one really knew how any of it would work. Looking back, this should have been my first clue that something was amiss. Here I was assigned to defend an individual against allegations of a major war crime in a so-called judicial system that was not yet fully established.

I soon learned that the rules and regulations that would govern the commission process were being created out of thin air and written on the fly. Rules, regulations and procedures were being written and implemented before the ink on the paper had a chance to dry. The military commission, by analogy, was a highway system that allowed heavy traffic to operate before the construction of the road was complete or plans had been thought out about where to build the next stretch of highway. As a result, I soon found myself trying to litigate a major war crime with schizophrenic rules and procedures. I also quickly learned that the only sound construction and goal of the military commission system was to establish a rigged court that would guarantee convictions. The entire process was maddening. I often found myself questioning whether people in charge cared about the constitution, due process and the rule of law.

Prior to my appointment as military defense counsel, Binyam Mohamed was represented by civilian defense counsel, Clive Stafford-Smith. As a former appellate death row attorney I knew Clive by name, aware that he was well known in the death penalty community. I had never personally meet Clive before we worked together on Binyam's case. Clive had represented Mr. Mohamed for several months before my appointment and had a wealth of information about Binyam Mohamed.

Clive provided me with a copy of the charges and other materials. After I had initially read the charge sheet I thought the allegations were a joke. I actually laughed after I read it. Binyam was charged with one long complex conspiracy that did not appear to be a valid war crime nor did the allegations make a lot of sense. I read the charge sheet several times looking for a substantive war crime. There was not a single substantive charge or war crime; there was only one long, complex conspiracy. There was no murder offense, no

mass killings, no death of civilians, no buildings destroyed. There was not a single offense which I thought warranted the government to try Binyam as one of the first ten men to be tried in a special war tribunal in fifty years. If America was going to try a person in the first war tribunals since the Nuremberg trials, Binyam's case had no business being on the list. This was a sick joke.

My next thought was that perhaps Clive forgot to send me the entire set of charges but he assured me he had. In re-reading the charges, there were several issues that continued to bother me.

First, how was the government to prove any of the alleged charges in the conspiracy? I could not imagine anyone from al Qaeda taking the stand and testifying for the government. (I did not know at the time that the rules and regulations of the military commission would simply be allowed to nullify and suspend the rules of evidence, due process, the Constitution, and the rule of law in order to avoid the need for real and reliable evidence at trial.)

Second, it made no sense that Binyam, a non-Arab speaking westerner who had recently converted to Islam, could be in the inner circle of the al Qaeda organization. Names on Binyam's charge sheet read like a "Who's Who" of the al Qaeda membership list: Osama bin Laden, Khalid Sheik Mohammed, Jose Padilla ("dirty bomber"), Richard Reed ("shoe bomber), Abu Zubayda, etc.. Surely, if Binyam, a janitor and former heavy drug user from London's West End, could work his way to the top of al Qaeda organization in nine months and dine with the most wanted terrorists in the world, surely the U.S. intelligence agencies should be able to find bin Laden and get inside the organization. It made little sense. It appeared that the government was simply throwing mud at the wall to see what would stick and anything with Osama bin Laden's name on it was likely to stick in a rigged military court.

Another, puzzling fact on the charge sheet was that Binyam was arrested at the Karachi airport with an airline ticket to London. He was not picked up on the battlefield, the place the U.S. had claimed the bad guy were being picked up. He was not picked up by Americans or coalition forces in the mist of fighting. He was arrested at an airport with a return ticket to London. Things were not adding up, and I quickly had concerns about the legitimacy of any of the facts in the conspiracy allegation. If the U.S. had real bad guys to try for war crimes, Binyam was not one of them. And if Binyam was an example of a top bad guy, then the entire war on terror was being oversold to the American public and the world.

After reading through tons of material and re-reading the charge sheet to exhaustion, the next logical step was to meet Binyam Mohamed. At Clive's suggestion we left for our travels to Guantanamo Bay Cuba the day after Christmas. This was definitely unexpected travel, as I had expected to spend Christmas and New Year's Day 2006 with family; instead I was traveling to Cuba and spent the holidays in Guantánamo Bay.

I quickly learned several practical lessons in practicing under the military commission system. For example, I quickly learned that any legal visit meant a minimum of three or four days of traveling. Clive and I initially met at a hotel in Jacksonville, Florida on December 26, 2006. The next day, we drove six hours from Jacksonville, Florida to Miami, Florida to catch a military flight to Guantánamo Bay. Unfortunately, the flight was scheduled to leave on December 28, which meant we had to spend another night in Florida before flying to Cuba. My travels from Philadelphia to Jacksonville, the six hour car ride to Miami, and the full day's wait to fly to Cuba proved to be the first of many long complicated travel plans to Guantánamo over the next three plus years.

I also quickly learned that if anyone wanted to design a legal system that stripped counsel of the ability to establish any meaningful and effective attorney-client relationship, Guantánamo and its military commission system definitely fit the bill. Given distance, travel, and logistics, not to mention the nonsensical, asinine rules of the camps and the commission courts, the entire process was clearly designed to prevent full and fair legal representation, let alone fair trials.

The first day that Clive and I were scheduled to see Binyam, we decided that Clive would visit Binyam alone. We were unsure how Binyam would react if I walked into the visit unannounced to tell him that I had been assigned as his military counsel without his knowledge or consent. We were also especially concerned about how he would react toward a military attorney representing him. After all, he was reported to have been repeatedly tortured and mistreated by U.S. officials, including the CIA, FBI, interrogators, and military guards. The way we approached Binyam on this matter had to be well thought out especially given the abuse and mistreatment he had suffered.

Binyam described in detail how he was tortured, abused, mistreated, and drugged for years. Binyam's torture included being cut on his penis; being kept in pitch black rooms for weeks; being held in stress positions for days on end; being subjected to weeks of blaring non-stop music and sounds of others being beaten and tortured; having his food drugged; being deprived of food and water; being forced to defecate and urinate on himself; being threatened with death at gun point; and the list goes on.

Binyam gave Clive the okay to allow me to visit. I was very grateful as I felt there was a little less pressure to walk into the visitation room with his consent; even if the consent might have been reluctant. I dressed in civilian clothes rather than in my military uniform so as to distinguish myself from the guards and in hope of establishing some type of trusting relationship.

I am not sure who was more apprehensive and nervous during the visit, Binyam or me. Admittedly, Binyam had every reason in the world to be apprehensive and anxious. After all, I was a U.S. soldier, and as far as he was concerned, I was part and parcel of the same American and military system that rendered and tortured him. Moreover for Binyam, my visit could be another Guantánamo trick. It had been reported that interrogators occasionally pretended to be lawyers to trick detainees into talking and/or promising to

send them home if they cooperated with counsel. Therefore, Binyam rightfully and rationally had reason to be on edge during my visit.

I, on the other hand, should not have been nervous or apprehensive but I was. I realized that all the rhetoric and talk about “terrorists,” Guantanamo detainees being “the worst of the worst,” the consistent reminder of 9-11, and the consistent message about the next terrorist attack being just around the corner must have had a bigger effect on my psyche than I had known. Here I was a seasoned former death row attorney who had sat face to face with dozens of convicted murderers and serial killers, and I was actually nervous and afraid of Binyam Mohamed not because he had been convicted of any wrongdoing but simply because he had been labeled a terrorist. I had never been afraid to visit a single death row client, no matter how horrendous the murder, yet I found myself on edge visiting Binyam on charges that did not involve murder and that were quite questionable. I suddenly realized the ugly power of fear, labeling and misinformation. I realized how propaganda can be used to keep people afraid and fearful and the truth hidden.

While I admittedly entered the visiting room with a lot of apprehension, I surely did not walk out with the same emotions. Instead I left feeling confused, angry, mad, and bewildered. I realized in a span of a three or four hours that very little if anything I had been told about Binyam as a terrorist detainee and about Guantánamo was likely honest.

During the three or four hour visit, I sat and listened to Binyam and Clive. I said very little. I observed. Every little detail in Binyam’s body language, gesture, action, voice, tone, reflection, demeanor, and behavior negated every single thing I had been led to believe about Binyam Mohamed and Guantánamo. I realize based on years of interviewing, counseling, representing and talking with prisoners, criminals, and convicts that things were not adding up with what I was observed with Mr. Mohamed. Binyam was not a big bad terrorist. He was not “the worst of the worst.” He was not a mad man. He was not al Qaeda. He was not a jihadist. Who was this man? Binyam was a person who wanted to be left alone to return back to London and not back to any battle field, as the American people would be told.

In each subsequent visit since December 2005 my convictions that America had captured and wrongly detained many innocent people on the flimsiest of evidence (or from evidence and statements derived from torture) grew ever stronger. I realized that the American people and the world had been lied to. Guantánamo Bay was not filled with terrorists but with people labeled as terrorists. There is a big difference. Whether we like to admit it or not we have wrongly and unlawfully mistreated, abused, tortured, detained, rendered and held too many innocent people and have violated international and human right laws to fight the so-call war on terror. In many ways we have created our own worst enemy—ourselves.

On December 28, 2005, I walked into the cell of Binyam Mohamed apprehensive and wary of him (and people like him), believing he was obsessed and bent on a mission to destroy America and our way of life. However I left the visitation room not at all apprehensive or

wary of Mr. Mohamed. Instead I felt apprehensive and wary of a so called judicial process and detention system that was hiding the truth and causing Americans to live in fear.

I left my visit a change person. I entered the visitation a true believer that we had caught terrorists and would give them a fair trial. I left realizing Guantánamo was a big mistake—a mess that would to a give justice to a single person. I also left the cell determined to fight for Binyam Mohamed’s freedom and to prove his innocence. I was on a mission, probably one of the biggest in my legal career, to uncover the truth and expose the deceptions of Guantánamo Bay and the commission courts. That was nearly three years ago. Today, I am still engaged in the battle.

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