

False Refusal

“Your client is refusing to meet with you.” The eight words every habeas lawyer dreads hearing. A young military escort delivered them to me just after I stepped off the ferry on the windward (prison) side of Guantánamo Bay on August 2, 2006. As the bus carried me, my translator, and other habeas lawyers to the Subway and McDonald’s (the precursor to every client meeting at the prison), I composed a note to the client, Mohammed, whom I had never met. I had tried to meet him on June 10, 2006, but that was the day three men were discovered dead in their cells; all habeas meetings were cancelled and the prison locked down. When we got to Camp Echo, where Mohammed and I were supposed to have met on August 2, I gave an Arabic translation of the note to a JAG officer who agreed to deliver it to Mohammed. Neither I nor my translator was permitted to see or speak to Mohammed. This is the one right the government consistently has granted to Guantánamo prisoners: the right to refuse a visit with a habeas lawyer.

The disappointing news came back later that morning. According to the JAG officer, Mohammed was adamant that he would not meet with me. This did not come as a total surprise. Many prisoners did not want to cooperate with American lawyers because, in their view, that would legitimize the system that had held them in a legal black hole for many years. One of Mohammed’s fellow prisoners had told us he wanted a lawyer, but the message had been much delayed and Mohammed could have changed his mind in the interim.

The habeas litigation was stalled for the next two years, while the government argued that the federal courts had no authority to hear the prisoners’ claims. Meanwhile, in early 2007, I filed a Freedom of Information Act request with the Department of Defense (DoD) to obtain unclassified records relating to Mohammed and other prisoners represented by my firm, Jenner & Block LLP. The DOD began to produce documents only after I filed suit.

On May 12, 2008, almost two years after I was told Mohammed refused to see me, the DOD produced a document labeled “INTREP ACTIVITY.” The document appeared to be a log of interactions between Mohammed and his guards. I checked the log for August 2, 2006 and found nine entries. At 5 a.m., Mohammed returned his sheet to the guard. (In the wake of the June deaths, the guards distributed sheets every night and collected them again the next morning.) At 6:52 a.m., Mohammed refused his breakfast. At 1:15 p.m., Mohammed refused to shower. At 4 p.m., guards searched his cell, but nothing was found. At 4:30 and again at 6:30 p.m., Mohammed refused his medications. (I do not know what medications he was prescribed or why.) At 8 p.m., he exchanged library books. Two hours later, he received his sheet. At 10:25 p.m., guards searched Mohammed’s cell again, and again found nothing.

Because the guards might have informed Mohammed of his lawyer’s visit the night before the planned meeting, I checked the four entries for August 1. At 5 a.m., Mohammed returned his sheet. At 5:16 p.m. he refused to shower and, shortly

afterward, a search found no contraband. At 4 p.m. he went to the “rec pen.” At 10 p.m., Mohammed received a sheet for the night.

Curiously, there was no mention of Mohammed’s refusal to meet with his lawyer. In fact, there was no indication that anyone ever informed Mohammed that I had come to see him. I will now try again to meet this man who has spent the past six years isolated from the outside world.

Patricia A. Bronte
Jenner & Block LLP
Chicago, Illinois