

## Matt Darby – GTMO Reflections

I am a senior member of the Center for Policy and Research at Seton Hall University School of Law. I co-authored reports that reveal a number of embarrassing truths about the detainees at Guantánamo Bay. These reports have proven useful on two fronts: both for defense lawyers representing the detainees, and in causing the general public to question whether our government is correctly handling the situation. We did not begin this project with the intent to write the reports. Rather, we were simply trying to assist Professor Mark Denbeaux with his defense of two detainees by analyzing piles and piles of government documents. By producing statistics and noting patterns, we hoped to give Professor Denbeaux an idea of where his client stood with respect to the body of the detainees. It wasn't until we saw that the statistics and patterns showed the government might not be holding the right people that we decided to write the reports. The reception of these reports has been both hot and cold. Hot, in the sense that they have received a lot of reception from the press. Cold, in the sense that many people think that such reports are unbecoming of an American citizen. The latter reception is the one that puzzles me.

When I first told my granddad about my work, he responded with an Internet forward depicting the twin towers falling. "Do you remember?" the forward asked. The implication, of course, is that I was being unpatriotic. Whenever I mention these reports at parties or at job interviews, there is always a moment of awkward silence as I wait for the other person to respond. Sometimes I hear a positive, "Oh, that's cool!" Other times I get a less than approving, "Ah."

As if it were unpatriotic for a citizen living in a democracy to question his government! I see things differently. Since I do live in a democracy, I am a voting shareholder in my government. I own it. Robert Gates is my employee. Public servants work for me, and as their boss, I should demand an accounting. Therefore, when my government takes hundreds of prisoners and holds them without trial, I want to know why.

Today I had a conversation with a friend. We were watching Fox News together, and the anchor told us that Barack Obama plans to close Guantánamo. What a mess that will be, said my friend. The problem, I responded, is that the government didn't bother to gather any evidence on these guys when they picked them up, and now they're too embarrassed to give them a criminal trial, because they know they don't have anything. My friend answered, "Well that's all speculation."

The problem is, he's right! I don't know what evidence the government has on the detainees. My government, which I own, is withholding information from me. My government has gone rogue. By classifying vast amounts of information, my government attempts to avoid my scrutiny. It claims that these actions are for my own benefit. I, the disgruntled shareholder, am not amused by this apparent insubordination.

But this is a war, the executive protests. Why are you continuously peeking over my shoulder? I am fighting for you. At such a time, am I not allowed some leeway?

No. In fact, the scrutiny at such a time should be more severe. In a company, the shareholders could not care less about the executive's actions when business runs smoothly. In times of crisis, however, the shareholders demand to know what is going on. Were the CEO to claim that the crisis entitled him to go without communication, the board would fire him. Why should our government be any different?

As a shareholder in the United States of America, I require that I be allowed to examine the books. I want to know what my stock is worth. I worry that the secrecy upon which my CEO has insisted is being used to cover up actions of which I would not approve. Hence, I consider my

work with Seton Hall's Center for Policy and Research to be very patriotic. Our mission is to provide the general public with a glimpse of what the government would prefer not to disclose. We are the auditors who reveal to the shareholders the actions of the officers. Audits are performed for the health of a company, not for its detriment.

The thing about audits is that they tend to reveal things. Because of my work, and the work of my colleagues, we *know*, not just suspect or believe, some frightening facts. Although we have not seen any of the classified evidence against the detainees, we know that over half of all detainees are not even accused of having committed a hostile act against the United States or her allies. We know that the detainees were not allowed to present any evidence of their own during the kangaroo courts known as the Combatant Status Review Tribunals. We know that most of the detainees were not captured by the U.S., but rather turned over by foreign powers. Even though the government has certainly withheld much information, it has revealed enough to allow a partial audit. The results of this audit are frankly quite disturbing.

I submit that it is the patriotic duty of all Americans to question our government. We should force the officers to answer to the shareholders, even in the midst of wartime activities. At the same time, we should remember that these actions are not actions of rebellion, but rather of the utmost loyalty. Our goal is not to tear down the government, but to make it stronger.

In this case, we hope to make the government stronger by moving it back onto the foundations of justice upon which it is built. With regards to Guantánamo, our government has shifted off of these foundations and onto the sinking silt of so-called military necessity and false patriotism. America deserves to know about this structural flaw in the house, the government, in which she lives. Those who would overthrow the government claim that their allegiance lies with the inhabitant of the house, to America herself, rather than the structure of the government. While this claim is true, it is important to realize that America lives in a mighty fine house. Our government is the first large-scale democracy to ever grace the face of the Earth. It allows unparalleled freedom of speech and thought, the likes of which have never been seen. Power routinely changes hands with no riots and no bloodshed.

My goal in co-authoring the Guantánamo reports was not to tear this house down. Never! Rather, my goal was to see if there were any cracks in the particular section of the house that I was inspecting. Once I found one, I waved my hands in the air, yelling to anyone who would hear, "There's a crack in this house! Fix it!"

Now tell me, what is unpatriotic about that?