

Of Heroes

by Buz Eisenberg

Years ago I attended an annual Memorial Day parade in my little hometown of Ashfield, Massachusetts. Selectman Bill Perlman was the speaker that year and, as is the custom, he spoke to those who had given their lives for freedom. But rather than reflecting only on those who lost their lives while in uniform, Bill also spoke of the four civil rights workers murdered in Mississippi in 1964. He reminded us of the countless people who had suffered arrest, beatings, having their homes burned, and who had been blacklisted in the struggle for a just and free society. I was and remain moved by his reminder that of the faceless millions who have sacrificed for freedom, but whose heroism goes unacknowledged. I want to speak to such heroes. But before I do, a word about my involvement.

I've been asked the question more times than I can remember: "Why did you want to represent Guantánamo detainees?" My answer never changes, despite feeling a bit sanctimonious even as I answer: "Because I took an oath." Of all the complex reasons and rhetoric and lofty answers I could summon, more than any, it really comes down to that moment you stood there with your right arm raised and made a promise to yourself and your society. In the rough and tumble of an active practice, it's easy to forget you took that oath so many years ago. But in every jurisdiction, every attorney is deemed qualified for that license to practice only after subscribing to an oath. In my state, the Massachusetts Attorney's Oath was adopted by a rule of court in 1686. For well over four centuries, if you want that license, you must first swear to uphold the law. And since 1789 that oath has included a promise to support the Constitution of the United States. I'd had a small practice in rural Western Massachusetts, a relatively insignificant practice in the total scheme of things. Yet for twenty-five years I'd tried to fulfill that promise.

Then I found myself watching as my country was holding men without charges, without fair process. I observed all three branches of government seemingly conspire to block the federal courts from so much as hearing a single claim that these detentions were contrary to our constitutional guarantees. And no matter how horrific the reports of cruel, inhumane, and degrading conditions under which they were held, nothing was being done. There I sat, license in my wallet...and I'd taken that oath.

So I volunteered to represent a client in early December of 2004, and have been actively involved since. I can't count the hours invested, but they number in the thousands. My wife and I fund the effort from our retirement account. We figured since we'd saved that money to secure our future, only to then watch as our constitutional democracy drifted toward a police state, using our savings to help resuscitate the Constitution was just another way to secure our future.

So, let's get back to those heroes to whom I alluded. When I first got involved in late 2004 the government wasn't disclosing the identities of the men

being held at Guantánamo Bay. I volunteered in the wake of a ruling by the Supreme Court finding that, notwithstanding the position of the Executive Branch, the federal courts did indeed have jurisdiction to entertain court challenges questioning the lawfulness of the detentions at Guantánamo Bay. As a result of that case I, along with a large number of lawyers, volunteered to represent such men. But we faced a major problem right out of the blocks - how can you file an action on behalf of someone you've never met, and whose name you don't even know? Somehow that veil of secrecy had to be pierced, so that names of detainees could be known, and turned over to the lawyers willing to accept a client on a *pro bono* basis.

Enter the heroes, people like Tina Foster (then of the Center for Constitutional Rights, now Executive Director of International Justice Network,) Clive Stafford Smith of the UK's human and legal rights organization Reprieve, and representatives of the International Committee of the Red Cross were slogging their way through the Muslim world in an attempt to identify family and friends who had reason to believe their loved one had been taken into US custody and transported to Guantánamo. Tina and the others achieved remarkable success, finding ways to collect names of likely detainees and funneling them to willing attorneys for representation.

In my case, Tina got me a name of one of the children who had been taken into US custody, a seventeen-year-old Saudi national. By court order, the attorneys would not be permitted to meet with their prospective clients unless and until they had been awarded Secret Security Clearance status by the government, a process that begins with a cumbersome application and involves interviews and background checks that take time. However, the federal court issued what is called a Protective Order, allowing people to bring suit on behalf of the prospective client in the name of a "Next Friend." In my case, the next friend was a cousin, and we filed suit immediately while our application for clearance was being processed.

During this period, and indeed for years, Tina was laboring to support the endeavor of those lawyers who had filed, and those lawyers who were awaiting the name of a client on whose behalf they would file a claim. Since my client was a Saudi we applied for a visa to visit Saudi Arabia to meet with the family and learn about our client, the facts and circumstances of his having been taken into custody, and to reassure the family that their son had an ally in the US courts. As we feared at the time we honestly explained the purpose of our proposed visit on the visa application, the Kingdom of Saudi Arabia didn't respond to our application. Fortunately, the heroes were on it.

Tina labored to arrange a visit to Bahrain, a small country on the Arabian Peninsula, and just a two hour drive from Riyadh, the capital of Saudi Arabia. She invited us to join her in Manama, Bahrain's capital, where we'd stay at a hotel and perform two principle functions. First, we would notify our clients' families and our next friends that, and when, we would be there. Second, we would outreach to other families whose sons were missing and who were desperately seeking legal assistance to locate and help them. We wrote our next

friend, went to New York to plan and obtain visas, and hopped on a plane in summer of 2005.

After about eighteen hours of travel we arrived at the Elite Suites Hotel close to midnight. We walked into the hotel lobby where we found Tina, who herself had only recently arrived after spending three weeks in Yemen attending a conference and recruiting families. Tina was holding court with reporters, and immediately gestured for us to come to the front of the lobby to participate in the press conference.