

“Speech”

by **Melissa Hoffer**

Four-and-a-half years ago, Mohamed Nechla, Lakhdar Boumediene, Hadj Boudella, Belkacern Bensayah, Saber Lahmar, and Mustafa Ait Idir were living ordinary lives in Bosnia-Herzegovina. Mohamed and Lakhdar worked with children orphaned in the civil war. Mustafa repaired computers and provided technical support services. Saber and his wife were expecting a child.

In October 2001, their lives were shattered when the U.S. insisted that Bosnia arrest the six men—all Muslims of Algerian descent—based on unfounded U.S. allegations that they were involved in a plot to bomb the U.S. Embassy in Bosnia. One by one, each man was taken into custody.

As news of the arrests filled Bosnian media, not one fled. The men spent three months in jail while the federal prosecutor investigated the charges. No stone was left unturned—investigators searched computer files, phone records, questioned witnesses and the men.

Finally, the federal prosecutor recommended to the Bosnian high court that the six be released. He had identified no evidence to justify their detention. The high court agreed, and ordered their release.

Despite this order, the U.S. placed tremendous pressure on Bosnians to turn over the six to U.S. custody, threatening to withdraw support if Bosnia failed to comply. As the six were released from jail in Sarajevo on January 18, 2002, they were turned over to nine soldiers and then hooded, handcuffed, and jammed into waiting vehicles. The huge crowd of community members that had

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gathered to protest the seizure tried to prevent the cars from passing; wives strained to catch glimpses of their husbands.

As Mohamed Nechla tells it, the six were taken to an airport and handed over to the Americans, who removed Mohamed's hood, placed sensory-deprivation goggles on his eyes, a mask on his mouth, and coverings over his ears. The pain from the extremely tight wrist restraints was excruciating. He cried, "My hands!" His hands and arms grew numb.

He was placed in a seated position on the floor of the plane. If he slumped or fell, he was slammed back upright by soldiers. The flight lasted several hours.

When the plane landed, they were in an extremely cold place. Mohamed believes it was Turkey or Germany. There were dogs barking very close to him. He was terrified they would bite or attack him. They boarded a second plane. Mohamed's hands were still in pain. The trip lasted many hours. Before the plane landed, he was given an apple—the only food he received during his nearly two-day journey.

After the plane landed, he was painfully dragged to a bus by his biceps. Soldiers repeatedly screamed, "Don't move! Don't talk!" When the bus stopped, Mohamed was pulled down the boarding stairs. He was dragged to a gravel area and placed in a painful position, with his legs straight out in front of him, shackled, and his wrists still shackled.

Soldiers screamed insults about him and his family. A soldier punched his head. The intensely hot sun pounded down on him. He fainted. A soldier shoved him upright. A long time passed. He began to have difficulty breathing through the mask and felt he was going to suffocate.

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He cried out for help. A soldier snapped the mask against his face. He began to cry. Mohamed had arrived in Guantánamo.

Indefinite Detention

After the U.S. Supreme Court's landmark decision in *Rasul v. Bush* to grant Guantánamo prisoners the right to bring claims of habeas corpus in U.S. courts, a team of lawyers at my firm and I filed habeas petitions for the six.

In fall 2004, the U.S. government moved to dismiss all the habeas petitions filed on behalf of Guantánamo prisoners, arguing they had no rights that could be vindicated on habeas—that Rasul had been an empty promise, allowing access to the courts for the sole purpose of dismissing the petitions on the grounds the prisoners had no rights.

Although the pending cases were before federal Judge Joyce Hens Green of the District of Columbia, my case and one other were pulled back for decision to Judge Richard Leon—a recent President Bush appointee—the judge to whom they had originally been assigned.

In January 2005, Judge Leon ruled against us, agreeing with the U.S. government that Guantánamo prisoners have no rights under the Constitution or any international law. A few weeks later, Judge Green ruled in favor of the prisoners, maintaining they had fundamental due process rights, and those had been violated. Both rulings are on appeal to the U.S. Court of Appeals for D.C.

While the litigation drags on, the Bosnians have been held at Guantánamo for more than four years as alleged "enemy combatants." They have never been charged with a crime. The U.S. maintains Guantánamo prisoners are not protected by the Geneva Conventions and that

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Guantánamo is beyond the reach of U.S. law. In so doing, the U.S. has attempted to create a new category of human beings wholly exempt from the protection of any law.

The U.S. position is that it may seize anyone, anywhere, at any time, if there is reason to believe that person is an "enemy combatant"—someone who is part of or "supporting" (even unwittingly) al Qaeda, the Taliban, or forces "associated" with these groups. The global dragnet cast by this definition is so broad that an attorney for the U.S., arguing before Judge Green in December 2004, admitted it would include a little old lady from Switzerland who gave money to an Afghan charity organization that—unbeknownst to her—funneled the contribution to al Qaeda.

Once seized, the men may be held as long as the War on Terror lasts—a potentially lifelong sentence—without ever being charged with a crime. They are not permitted to see or speak to their families. Letters are heavily censored. They are routinely tortured during interrogations as a means of enforcing camp discipline, disorienting their minds, and degrading their humanity.

### Inhuman Treatment

Shortly after arriving at Guantánamo in early 2002, Lakhdar Boumediene was subjected to a thirteen-day period of extreme interrogation and near total sleep deprivation. He was interrogated from midnight until five a.m., and for several hours more during the day.

After interrogations, he was returned to his cage, his wrists shackled and his feet chained to an anchor on the floor. Several times, while incapacitated in this position, guards repeatedly lifted him up and threw him to the floor. When I first met him in May 2005, he showed me a scar on his knee from one such incident.

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His captors threatened to send him to Jordan where "they could make him talk" and to a U.S. prison where he would be raped. They threatened to shave his beard and apply lipstick to him. He was violently choked by a Jordanian interrogator. Each time Lakhdar made a request, he was told to ask his interrogator. Access to medical treatment was granted or denied based on the interrogators' assessment of his cooperation.

In April 2005, my colleagues and I filed a Freedom of Information Act suit seeking records concerning our clients' treatment at Guantánamo. As a result, the U.S. produced thousands of documents, including one confirming medical personnel involvement in interrogation. Lakhdar has been interrogated between 100 and 200 times.

Our clients have been severely beaten, and two spent fifteen months in solitary confinement. On one occasion, Mustafa Ait Idir was alone in his cell when guards said they wanted to search it. They instructed him to sit on the floor, and secured his hands behind his back. They slammed his body and head into the steel bunk. They threw him on the floor, pounding his body and banging his head into the floor. They banged his head on the toilet. They stuffed his face down the toilet and repeatedly pressed flush. Mustafa feared he would drown. The guards carried him outside and threw him on the ground. They held him down and stuffed a garden hose into his mouth. They opened the spigot. Mustafa began to choke. He could not breathe. The guards took the hose out of his mouth and sprayed his face. This violent assault was wholly unprovoked.

In early 2004, Guantánamo guards undertook a systematic effort to interfere with certain prisoners' ability to worship as Muslims by removing their pants. Muslim men cannot pray without

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pants. The Immediate Response Force (IRF)—a riot squad frequently called upon to subdue and intimidate prisoners—was present, as were several U.S. military officers. When guards approached Mustafa for his pants, he explained he needed them to pray, and begged the guards not to take them. The IRF members sprayed him in the face with chemical irritant, and one squeezed his testicles until he fell to the ground. They repeatedly jumped on his body. They secured Mustafa's hands behind his back, and one IRF member slowly bent one of his fingers back until it broke. The pain was excruciating, but he did not scream for fear the beating would continue. He was refused medical attention.

A few days later, guards again came to search his cell. An officer ordered Mustafa to sit on the floor with his hands behind his back, which he did. The officer sprayed chemical irritant into his face. Two or three guards entered the cell. One forced Mustafa's body onto the steel floor and jumped on his back. The second guard did the same thing. They secured his hands behind his back, carried him outside, and threw him onto the gravel. An IRF member jumped on his head. After this beating, half of Mustafa's face was paralyzed for several months. He was in constant pain. When he tried to eat, food and liquid leaked from his mouth. Guards mocked him. He continues to experience pain.

These are only a few examples of the torture and inhumane treatment my clients have endured while being held without charge at Guantánamo. These incidents are corroborated by numerous similar incidents observed by FBI agents at Guantánamo, as documented in records

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produced in FOIA litigation brought by the American Civil Liberties Union and witnessed by former U.S. military personnel.

My clients do not understand why they are being held. The high court of their country ordered their release. The Bosnian government has publicly stated its willingness to repatriate them. They struggle to maintain sanity and composure. They long for their families.

The Lesson of Guantánamo

I did not know what to expect the first time I visited them. I knew they had been held under extremely difficult conditions. I tried to place myself in their shoes, and wondered if they would trust me, a citizen of the country that had torn their lives apart and stolen years that cannot be replaced. Maybe they would think I was just another interrogator. But when I greeted them each separately in the small cells allotted for lawyers to meet with prisoners, each welcomed me, smiled, and thanked me. Their graciousness and warmth was overwhelming; I found myself pressing back tears I had not expected.

Toward the end of my stay, one of the guards told me Mohamed wanted to speak with me again. He had already been placed behind the barred portion of the cell, and I had to stoop to speak with him from the other side of the barrier. At the end of our conversation, he held up his palm to the wire, and I did the same.

Guantánamo is devoid of living things. The ground is covered in gravel. The cells are housed in brown sheds, surrounded by a chain-link fence topped with razor wire. The trust and

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strength of character these men have shown is a wave wearing down rock over time; it is a single blade of grass, somehow managing to grow among Guantánamo gravel.

If we extinguish that humanity with lawlessness and cruelty, we extinguish hope for the future of humankind. For when we causelessly take away a person's freedom, we erode our own. But as we join with others around the world fighting unjust imprisonment and torture, we honor and preserve our humanity. This is the lesson of Guantánamo.

Melissa Hoffer is an attorney for Boston firm, Wilmer Cutler Pickering Hale and Dorr. The article is excerpted from a speech Hoffer gave at Le Memorial de Caen in Caen, France at the 17th Concours International de Plaidoiries, a conference on cases of human rights violations. To see a video of the full speech, go to <http://memorial-caen.fr/portail/concours/index.asp>.