

Reflections on Representing Detainees at GTMO

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I have worked as a public defender for over twenty-five years representing indigent people charged with crimes. It never occurred to me that one day I would also be representing people held for years in custody without any charges whatsoever. That day came when our federal defender office, the Community Federal Defender Office for the Eastern District of Pennsylvania, was asked by the federal district court in Washington, D.C. to represent five of the detainees held in Guantánamo. Our office agreed, and I have been part of a team of attorneys and support staff in our office who volunteered to work on these cases. This legal representation has been unlike anything I have ever done before. None of the five detainees we represent have been charged with any crimes, yet, and at the time of this writing, they all continue to be held under indefinite detention at Guantánamo.

Nothing, even access to our clients, can be taken for granted in the Guantánamo litigation. The first major battle was just for the right to talk with our client. When we were assigned to the case, the U.S. government was refusing permission for an attorney visit to Guantánamo to conduct an interview. The government attorneys claimed that since this detainee, an Afghani named Muhammed, had filed his request for legal help and for release indirectly through another detainee, I would first have to get written "authorization" from Muhammed directly before going to see him. But the government would not allow me to write to him to get this authorization. It was a perfect Catch-22. Without the authorization I could not see him, and without seeing him I could not get the written authorization. (I have since learned that such Catch-22s epitomize all facets of the Guantánamo Bay Prison.)

Ultimately, a federal magistrate judge ordered the government to permit an attorney visit, and I added Muhammed's name to the list of detainees I was to interview on an upcoming visit to Guantánamo. I submitted the list through the government to the authorities in Guantánamo, but the government then appealed to the federal district court judge assigned to the case, who stayed the magistrate's order and scheduled a hearing on the issue for the day *after* my return from Guantánamo. When I arrived in Guantánamo, however, I was ecstatic to discover that the authorities still had Muhammed listed for an interview with me

—someone there had forgotten to take him off the list. So I finally got to talk with Muhammed only because the government's bureaucratic machinery malfunctioned.

I visited Muhammed in Camp "Echo," which at the time was used both for punishing detainees and for attorney interviews. Detainees are kept in isolation there in a small cell with an adjoining space for interviews containing a table, chairs and a bolt in the floor for ankle shackles. When I came into the room with my paralegal and our interpreter, Muhammed was already seated and shackled to the floor. He viewed us suspiciously. He was brought to Camp Echo the night before and had assumed it was for punishment, but he couldn't figure out what he had done wrong. When we explained that we were part of the legal team that would be representing him, he was perplexed. The letter a fellow detainee had sent asking on Muhammed's behalf for legal help had been mailed nearly a year and a half earlier. Muhammed had forgotten about it and had given up hope that any attorney would come to see him. It took several hours to convince him that we were not interrogators and that we really were there to represent him. Fortunately, he did ultimately believe us and signed an authorization for us to represent him so that we could continue to see him each time we came to Guantánamo.

Like so many detainees at Guantánamo, Muhammed had not been picked up on the battlefield. He was a farmer who was arrested at his home at night, long after the Taliban had been chased from power. No weapons or anything else suspicious was found in his home. His arrest was based solely on the word of unidentified people from his village who had given his name to U.S. and Afghan forces, probably in exchange for a bounty U.S. forces were offering.

To verify that Muhammed had never been involved with the Taliban or al Qaeda, we scheduled a trip to Afghanistan for investigation. We went in early spring, hoping to be there before increased Taliban violence that was expected once the snows in the mountain passes melted away. I went with Mark, another attorney on our Guantánamo team, and we flew through New Delhi to Kabul, Afghanistan. Muhammed is from Paktia province, an area south of Kabul rife with anti-government activity, so we arranged for Muhammed's two brothers to meet us in Kabul.

As we met the two brothers, Jamil and Hassan, emotions were high for all of us. It had taken us five months to locate the brothers, and we were first able to contact them just days

before we departed on our trip. For their part, Jamil and Hassan were grateful to finally speak with someone who had actually seen their brother recently and who was working to secure his freedom. We spent an afternoon talking with them about Muhammed, and then video-taping their statements. We then put them to work securing petitions from local officials in Paktia who knew Muhammed and could verify that he was just a hard-working farmer who had never been involved in any Taliban activity.

Another purpose for our trip was to meet with Afghan government officials who we hoped could press for the release of Muhammed. The Afghanistan Human Rights Organization, which provided us with invaluable assistance throughout our stay, arranged a meeting for us with the head of the Afghanistan Peace and Reconciliation Commission, Sibghatullah Mujaddedi. Mujaddedi, himself a former president of Afghanistan, is also the president of the upper chamber of the Afghan National Assembly. We also met with the member of the National Assembly representing the district where Muhammed had been living. Both promised to do all they could to press for Muhammed's release.

What was most striking about our meetings was that all of the officials were very sympathetic and understood that many of the detainees in Guantánamo had been picked up based on false information. They explained to us that within Afghan culture, disputes between families and neighbors are common and may carry on for years, with each trying to seek revenge against the other. Providing false reports to U.S. forces had just become another way of carrying on these feuds.

On our last day in Kabul, we held a press conference with about twenty-five members of the Afghan press. We talked about the work we were doing to secure the release of wrongly held detainees and emphasized that there are hundreds of other attorneys in the U.S. working on the Guantánamo cases as well, trying through every means available to secure the release of those wrongly detained. The members of the media seemed uniformly perplexed that the U.S., which has been seen as providing the model for fairness and justice, could hold so many indefinitely and on such little basis. They kept asking us: “Why?” Unfortunately, this is the very question we were trying to answer ourselves. We returned to the U.S. knowing only that for years to come our country will be judged by how we have treated the detainees at Guantánamo.