

The Force of Time At Guantanamo

By Jim Nickovich

Seven Long Years

I have represented a GTMO prisoner for nearly one year. I was in my sixth semester of college when the prisoner arrived at GTMO. At that time, I resisted the popular admiration for a president using a tragic attack on the United States to expand his executive authority. While many of my college classmates adored a leader committed to hunting down the villains of 9/11, I was concerned about the collateral damage of what I perceived to be his cavalier attitude. What I vaguely foresaw then, and what is clear to most now, is that the prolonged imprisonment of hundreds of suspected “unlawful enemy combatants”—only a small percentage of whom deserve to be locked up—is a damaging piece of collateral damage sure to mar this nation’s image through the annals of time.

Shortly after the prisoner I now represent was first imprisoned at GTMO, I graduated from college and then went to law school. At law school I was exposed to both sides of the debate on the war on terror and detention of suspected enemy combatants at GTMO. I participated in discussions with civil liberty groups like the ACLU and Center for Constitutional Rights and took a class with Bush administration lawyer and “torture memo” architect, John Yoo. I witnessed my classmates call for Professor Yoo’s resignation and community protestors storm my constitutional law class, donned in costume, attempting to recreate the most horrific scenes from Abu Ghraib. I also absorbed several lectures from Professor Yoo and watched countless televised press conferences with Bush administration officials, emphasizing the danger of terrorist enemies in a time of war and the need for more enhanced interrogation techniques and a more aggressive strategy to prevent unpredictable acts of aggression against the United States.

During this time period, I also had several internships, got a full time job, saw close family members die, watched close friends get married, went on several long vacations, campaigned for candidates in two presidential elections, watched the Red Sox finally win a World Series, saw three Olympic games, and witnessed art, fashion, and music change, and change again.

The prisoner I now represent at GTMO saw none of that. He had been imprisoned for six years before he even had a lawyer. He has not been able to work, go to school, experience art, music, or fashion, watch sports, stay abreast of current events, watch television, or remain informed of the death or marriages of any close family or friends for seven years. He has not been allowed to present his case to a judge or jury. He has just had to accept the fact that he has been deemed an unlawful enemy combatant. Fundamentally, GTMO is about the passage of time.

GTMO’s Strongest Ally

If you’re a lawyer, you can’t go to GTMO without a security clearance. That takes time. At least six months, maybe a year. It depends on the investigator assigned to you, how many references he decides to check, how many phone conversations with old landlords, friends, and employers he decides to have, and how long the paperwork takes to get processed. Accustomed to the efficiency of private practice, the attorney representing the prisoner finds himself mired in seemingly endless, and sometimes overlapping, cycles of forms, phone conversations, and

interviews with agents from the FBI, Department of Justice, and Department of Defense. Time passes. Another year without entertainment, family, or friends for the prisoner.

The clearance finally comes and you are set to go. You schedule your trip and make sure you can get in to see the prisoner you represent. You fly to Washington, D.C. You spend the night there and then fly to GTMO. You go through customs at GTMO. You sit in the airport hangar at GTMO. You bake in the 100 degree heat pounding on the black asphalt at GTMO. You wait for the bus to take you to the ferry. You take the ferry from the leeward side of the island to the windward side of the island. The working day done, you settle in and spend the night at GTMO. The next day, you attempt to get your security badge from the government employee assigned to confirm your clearance and process your badge. There is an error in their records so you have to come back later. You eventually get your badge and are ready to meet the prisoner. You have scheduled a meeting. You drive around the heavily blockaded base and check in with the appropriate government official. You show that official your badge and wait. The military official goes into his office and then emerges and tells you the prisoner refused to meet with you. Can you blame him? The military will not tell him ahead of time that you are not a military official. They will not explain to him who you are. He just knows that in the seventh year of his imprisonment some American wants to meet with him. You have on good information that his experiences with Americans since his capture and imprisonment have not been pleasant. You accept that building trust with the prisoner is a difficult process; and an integral one. So, you wait again. You write a note and hand it off to a military official to pass along to the prisoner. You hope the military translator on the inside of the prison translates the note correctly. You are not allowed to see the prisoner yourself. You are not allowed to have your translator directly translate the note to the prisoner. You are not even allowed to have your translator present when the military translator translates your note to the prisoner. Through the note passed to the military official and military translator, you ask the prisoner to meet with you and tell him you will be back again.

You try to meet the prisoner the next morning but have little time. He again refuses. You want to write another note but you do not have the time. You have to return. You have to pack your bags, take the bus to the ferry, the ferry to the airport hangar, more waiting, then from GTMO to Washington, D.C., then home. The workweek has passed. While the location of GTMO was chosen to escape jurisdiction of the courts (an argument that the Supreme Court ultimately refuted)¹, it also makes the lawyer's work a time draining, expensive, and exhaustive enterprise. Any lawyer whose time is valuable does not have the time to spare to take multiple planes, ferries, and buses over multiple days to take a shot at meeting the prisoner they represent.

Frustrated at having been shut out in your first trip to GTMO, you wonder what to do. Everyone representing a prisoner tells you the same thing: GTMO takes time. So you go to GTMO again. A month later. The same ordeal. The same flights. The same ferries. The same buses. The same waiting. But this time, the prisoner agrees to meet with you. He agrees to go through the arduous process of being waken early in the morning, fully searched and chained on his way to the room in which he will meet you, and then chained to the floor awaiting your presence. But your military flight from Washington, D.C. to GTMO is delayed. More of your time has been swallowed. You call ahead and let the military officials know you will not be there, but they move the prisoner—chains and all—in spite of your attempt to cancel the meeting. He waits. Time ticks. You do not show. Trust is ruined. There is no naïve expectation that the

¹ See *Boumediene v. Bush*.

military guard who chained the prisoner and moved him from his prison cell to the room where he was supposed to meet with you explained that your absence was the result of a delayed flight. You finally arrive at GTMO, but it is to no avail. Trust is gone. You have failed. Another week long trip made in vain. Time marches on. Time away from the attorney's private practice. A week of missed opportunities at the office. It is hard to imagine giving up another. And then you remind yourself that the prisoner has given up seven years of his life. Imprisoned without trial. No judge, no jury. No television. No weddings. No family. No friends. Just the slow passage of time.

GTMO is about time. It takes enormous chunks of it from the lives of the men it imprisons. More than 500 of those men, now reunited with their families, have given years of their lives to the prison without charge, trial, or any evidence of wrongdoing. It takes time from the attorneys who wish to bring justice to the men imprisoned and the country that has imprisoned them. As long as the status quo remains, GTMO has served the ideological purposes its architects intended. The passage of time is GTMO's strongest ally.

Time Not Yet Passed

When this period of American history is viewed with appropriate hindsight, GTMO will be remembered. It has been a well documented experiment. And as time passes and the "arc of humanity bends toward justice," GTMO will be universally recognized as a tragic policy decision that has failed to achieve its intended purpose of eradicating terrorism while jeopardizing the United States' position as a bastion of justice, individual rights, and freedom.

Looking out of the window of my San Francisco office and setting my eyes on that abandoned prison turned national park in the middle of the Bay², I am relieved at what the future may hold for GTMO. In time, may the future reveal a world where draconian prisons that once claimed to serve the purpose of defending a nation are declared impediments to the progress of humanity, perhaps even cultivated into something that promotes societal improvement. The sublime view from GTMO of the calm, endless sea reminds us that the future is a blank canvass that can be repainted.

² Alcatraz