

## **Dispatch from GTMO**

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### **Day 2: September 15, 2013**

Our day started out rather slow: we went to the Guantánamo “Starbucks,” a small shop where inside, a woman happily brews Starbucks coffee (the kind you can buy in bags from your local supermarket). After, we went to Bayside, a restaurant that serves Sunday brunch. Then our day picked up.

Our escorts took us on a tour of the military base. We went to see the beach – Girl Scout Beach (because apparently there is a local Girl Scout troop here) -- and then to the “lighthouse museum.” There, we saw boats that the U.S. Coast Guard recovered from the waters of Guantánamo Bay – boats from Cuba and Haiti that refugees used to try to make their way to the United States. The boats were on display around the old Guantánamo lighthouse, one that no longer functions. While I enjoyed seeing the boats, I found the whole museum set-up to be rather peculiar. I found it odd that Cuban boats, manned by people who either died at sea or were sent back to Cuba, would be put on display for visitors. And I found it curious that our escorts wanted us to see the museum “badly.”

After heading to the museum, we climbed the hill to see the wind turbines. We were told that pictures of the turbines are not allowed. At the top of the hill, we exited our vehicles and looked down into a valley where we saw Camp X-Ray, a temporary detention facility at Guantánamo that was used to house some of the earliest detainees. Today, it is no longer being used. While we only saw the camp from afar (from a distant hill) it definitely looked like a brutal place. Most of the facility was exposed to the Cuban sun. There was barbed wire everywhere. Lookout towers were on all four sides. One of the members of my group gasped and said it looked reminiscent of a World War II concentration camp. In some ways, it definitely had that feel. Even though the camp is no longer in operation (all the detainees were moved to Camp Delta), we were told that taking pictures was strictly off limits. Carol Rosenberg, a reporter from the *Miami Herald* whom I met last night, told me that the FBI had investigated claims of abuse at Camp X-Ray in 2009, though they ultimately found nothing. Looking at the camp, I wondered if there really was nothing.

On our way back from Camp X-Ray, as we rode down the mountain, I noticed metal structures carved into the side of rock. They were square, white, and surrounded by wire. Our escort said that he thought ammunition was kept inside each structure. Doubtful. It seemed odd that military personnel here on a base would store ammunition in multiple storage facilities carved into the mountain. One of the other NGOs, from Human Rights Watch caught my eye and we exchanged glances. She, too, was skeptical of our escort’s claims. Was the escort just joking? Or did he not know? Or was it both?

After seeing Camp X-Ray, we headed over for a 2 p.m. tour of the courtroom complex with Colonel Wendy Kelly and her subordinate, Officer-in-Charge (“OIC”) John Imhof. First, we saw where the detainees enter by vehicle in the morning on hearing days. They explained to us how guards must inspect the premises hours in advance of the hearings (at 00:30), how the gates open

and close and how the facility is tightly guarded when the detainees arrive. Then, they showed us a structure that each detainee must sit in before entering into the courtroom to ensure that they are not bringing in any contraband materials. Then, they showed us the first holding cell in the set of five (all five are set behind the courtroom and the detainees wait there before the hearings begin; they also sit in the holding cell if they choose not to sit in court). The cell was divided into two parts. The part farthest from the entryway was all set up for the one of the detainees – it had a bed, a washcloth and a prayer garment. There was a camera mounted on the screen. The part closest to the door had a chair for the detainee's lawyer, along with a television for the detainee to watch the hearing on a 40-second delay (should the detainee choose not to participate in the proceedings). There was a metal barrier with holes dividing both parts.

When we walked outside of the cell, I asked the OIC which detainee was placed in each cell and he told me that information was classified information and not relevant to the tour. That was a pretty odd moment. All of the other NGOs looked at me as if to say "that was a really good question," and many whispered to one another, questioning why that information was off-limits. It seemed like a pretty innocuous question to me.

Then we entered the courtroom. We saw the six tables on the Defense side (one is not being used), the tables for the prosecution, the tables for the stenographers, the court administrator, the judge's bench, etc. Then, we entered the gallery, where we will sit together tomorrow. The gallery looks into the courtroom, separated only by double-paned sound-proof glass. On the ceiling of the gallery are five mounted flat-screen televisions, which will record the hearings tomorrow on a 40-second delay.

The gallery was where things got eerie. Both Colonel Kelly and Mr. Imhof asked us if we had any questions. Discussion started. We asked about their thoughts on the benefits of trying the detainees in a military hearing versus a civilian hearing. They told us that the jury is more educated, the atmosphere is one of "no-nonsense," and that there is a greater level of professionalism amongst the lawyers and that these things, together, justify the hearings at Guantánamo.

That did not sit well with one of the observers from our group. He began to ask our tour guides follow-up questions, "Well, don't you think..." And at that moment, something bizarre happened. Videos of dancing hula girls started playing on the television monitors and loud Hawaiian music started playing through the audio. Colonel Kelly began to respond, even though we obviously could not hear her. Then the music stopped, the televisions went black, and she stopped speaking, as if she had finished. "Any more questions?" she asked. Someone in the group asked a question about problems that the defense team had sending and receiving emails a few weeks back. "Well," Colonel Kelly said. And then the music started blasting again. The televisions turned on and this time, there were pictures of waterfalls and palm trees playing.

Before we left the complex, our guides concluded the tour. They thanked us for coming, told us that our visiting Guantánamo is "essential" to the process and said, "We just want you to know that we are neutral. We are like Switzerland. We don't take a side one way or the other. We support both sides." As I walked away, I had one gut reaction: it felt like a propaganda tour.

In the evening, we met briefly with General Martins, the chief prosecutor, who welcomed us to

Guantánamo. The meeting was short, though he told us that we would meet later on in the week to discuss the trial and to ask him specific questions. He told us to get some rest, because the week is going to be intense.

I will take his word for it.

## **Key Themes and Questions**

*During my second day here, I asked a number of questions, including:*

### **The benefit of the military commission:**

Both Colonel Kelly and Mr. Imhof were adamant that trying the detainees in a military court was proper and both extremely beneficial. They emphasized several times throughout the tour that one of the benefits of a military commission is a more educated jury (that in a civilian court, jury members are usually just folks who couldn't escape the jury pool). This did not make any sense to me. In a military commission, aren't the jury members of the executive branch – and possibly the same pool of people that tortured the detainees?

### **International law / The law of war:**

The International Covenant on Civil and Political Rights (ICCPR) governs the use of fair trial standards and protections, stating that unless there is some extreme circumstance, individuals must be tried in a civilian court. The burden is on the government to show that some circumstance exists that necessitates holding the trial outside of a civilian court. How would the government respond to this? How would they justify bringing the detainees before a military commission? War? One of the members of my group spoke about how the Law of War, from an international humanitarian law perspective, allows nations to try detainees in a military proceeding if they were captured in war.

It is my understanding that all of the detainees who will be in court this week were captured in Pakistan or Afghanistan, not captured on a battlefield. So if that's the case, would the government cite the Global War on Terror as the war justifying the military commission?

As the Center for Policy & Research has learned over the course of the past several months, the Global War on Terror might not be a "war" at all. It does not have the same duration, intensity, and goals that generally define "war."

In that case, is there an armed conflict that justifies the use of these military commissions? Second, if there *is* an armed conflict, is the U.S. abiding by the International Covenant on Civil and Political Rights? And third, if so, are proper military standards being applied?

Finally, if the government justifies trying these detainees in a military court because they were detained during "war," how far can this concept extend? To drug traffickers who were picked up in the "War on Drugs?" What else?