

Dispatch from GTMO

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Day 3: September 16, 2013

This morning, we woke up early to prepare for court. Military personnel escorted us to the back of the courtroom complex at about 8:00 am and from there, we went through levels of security. In a small “security-screening tent,” we each passed our belongings through a metal detector, walked through body-scan machine and gave our identifying information to guards...twice.

Then, the following occurred:

- **8:15 am** – Our NGO group enters the courtroom observation gallery. People inside the courtroom are preparing their materials for court.
- **8:30 am** – The first detainee, Khalid Sheikh Mohammed (KSM), arrives. He is dressed in military gear with a white head piece. His beard is bright red. One of our NGO observers explains that the prophet, Mohammed, also dyed his beard bright red.
- **8:36 am** – The second detainee, Walid Muhammed Salid (WMS), arrives. He is dressed in a tan uniform with a white head piece.
- **8:45 am** – The third detainee, Ramzi Bin al Shibh, (RBS) arrives. He is dressed in a tan uniform with a white head piece.
- **8:47 am** – The fourth detainee, Ammar al-Baluchi (AB) arrives. He is dressed in a tan uniform with a white head piece. He arrives holding a colored prayer mat which he places on the back of his chair.
- **8:50 am** – The fifth detainee, Mustafa Ahmed Adam al Hawsawi (MAH) arrives. He is dressed in a white, traditional garment. He arrives holding a white prayer mat.
- **8:59 am** – The victims’ families promptly enter the courtroom observation gallery and take a seat.
- **9:00 am** – Colonel James L. Pohl, presiding judge, enters the courtroom and begins the session.
- **9:00:40 am** – The televisions in the courtroom observation gallery room begin playing with sound. We watch the various television screens, and looking for events as they happen in the courtroom in real-time. Judge Pohl began by welcoming everyone to court. He stated that a New York Police Department officer was present in the courtroom for reasons that are unclear. Then, he addressed Cheryl Bormann, the defense counsel for the second detainee, bin ‘Attash. The Judge had heard that Ms. Bormann was feeling very ill and asked if she needed to see a doctor. Ms. Bormann replied that she had a 10:35 am

appointment and that she would have to leave court. The Judge told her that she “sounded terrible” and that court would recess until 12:00 p.m., as soon as he read the detainees their rights. Judge Pohl began reading each of the detainees his rights: “Your failure to cooperate may adversely impact your defense.....on some days, you may be compelled into court.... You may decide to return to your holding cell...” Then, he went down the row of detainees and asked whether each understood their rights.

The first detainee responded in the microphone, “We are never allowed to get any of our papers from our lawyers,” to which the judge responded, “Mr. Mohammed, I am not discussing a legal issue with you right now – I am merely trying to determine whether you understand your rights.” KSM responded, “I say yes, but I am not convinced of it.” The judge responded, “It is apparent that KSM does not understand his rights. He will be compelled to court everyday unless he understands his rights. I will allow counsel to talk to the defendant and I will return to him last to determine whether he wishes to be compelled to trial.”

The second detainee, WMS, said he did not understand his rights and the Judge stated that he will be brought to court every day this week.

The third detainee, RBS, stated that he did not understand his rights. Then he started yelling in court (in English), “I have a right to talk. I have a right to talk. You cannot make me not talk. I have a right to talk.” “No you don’t have that right,” Judge Pohl said. The Judge told him that he had to be quiet and that he could not be disruptive in court. RBS continued yelling in court. The Judge ordered him forcibly removed. In a matter of a few seconds, several armed guards took RBS outside the side door and back to his holding cell.

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The fifth detainee, MAH, stated that he understood his rights.

Then Judge Pohl returned to KSM to determine whether he had changed his mind and whether he truly understood his rights. David Nevins, his attorney, appeared at the center podium. He explained that KSM, did not understand how his failure to appear in court could negatively impact his defense. He re-read Paragraph Six of the defendant’s rights, about how the detainee’s failure to show up in court may negatively impact his defense. Nevins stated, “We feel that the present environment is very constrained. . . We cannot exchange information. The fact is, Your Honor, these meetings are not what they appear to be – what they are cracked up to be. This is not an ordinary commission hearing.” The Judge responded, “That’s not my reading of Paragraph 6. I see it to mean that by not being present in the courtroom, he cannot participate. It simply refers to the ability to meet and cooperate with counsel.”

General Martins stood up: “I think it’s sound language, your honor. What we are discussing now is all a matter of semantics, all a matter of language.”

Judge Pohl seemed to agree. “Mr. Mohammed,” he stated, “I am only talking about your right to be present here.” Then, there was no sound on the television. The Judge continued, “I don’t know whether that was heard that he acknowledged in the affirmative twice.”

At 9:25 am, court was recessed until 12:00 pm. We left the courtroom and headed back to our tents.

Though I only sat in court for 25 minutes, I learned a lot. First, I was intrigued by the 40-second delay. Why 40 seconds?, I kept asking myself. Why not 30? Or 50? Why 40? What possibly could folks in the courtroom say in 40 seconds that would be so important? Would I witness one of these moments? Will the red light (a revolving red light – the kind you might see atop a police car) go off inside the courtroom this week, signaling that someone in the courtroom is saying something that must be screened?

I also thought about the set-up of the courtroom. There are a lot of people packed into that courtroom, especially on the defense side. I wondered (and still wonder) how the defense teams will interact with one another. Will they all “be on the same page?” Will they all question witnesses the same way? This is something you do not see in civilian courts. It seems complicated and confusing.

I also thought about the detainees and how the judge read each one of them his rights. Does he do this every day? Only at the start of a week of hearings? To what extent do the detainees really care about being read their rights? What was Ramzi Bin al Shibh’s rant all about? Does he have a right to talk? Would he have a right to talk in a civilian court? To what extent is this process meaningful? Credible?

We returned to court at 12:00 p.m. Court is cancelled for the rest of today and tomorrow so that Cheryl Bormann may recover from her illness.

Someone in our group whispered that this is “defense strategy.” Being sick?