

Dispatch from GTMO

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Reflections on the Hearings of Abd al Hadi Al-Iraqi

In November of 2014 I had the opportunity to travel to Guantanamo Bay (GTMO), Cuba to represent Seton Hall University School of Law's Center for Policy & Research. I was honored to be the first Arab-Muslim American law student and research fellow to represent Seton Hall Law in GTMO. I departed from Andrews Air Force Base along with two military escorts and 12 other Non-Governmental Observers (NGO). The Miami Air flight was filled with approximately 100 passengers that included Military Commissions staff, translators, members of all branches of the U.S. Armed Forces and three members of the media (US News, Christian Science Monitor, and the Miami Herald). The trip was dedicated to observing the hearings of Abd al Hadi al-Iraqi, an Iraqi, high-value detainee brought to GTMO in 2007 and charged with several war crimes, and considered by the U.S. to be an Al-Qaeda leader.

Due to the high capacity of the flight I was inadvertently separated from my group, and had the pleasure of sitting next to Retired Army Colonel Robert L. Swann, a current member of the prosecution team for the 9/11 military commission cases of Khalid Sheik Muhammed and Mustafa Ahmad al-Hawsawi. I later learned that he was formerly the lead prosecutor on the referenced matters and a former military judge himself. Directly across the aisle from me was an Arabic translator, one of 10 to 20, whom I identified by his Arabic conversations with his colleagues. The duration of my four-hour flight would consist of lengthy conversations with both of these knowledgeable individuals, each in a separate language.

The Virginia-based translator was very eloquent and kindhearted. I engaged in our approximately two-hour conversation entirely in Arabic for reasons of comfort, without fear of unwanted eavesdropping. Aside from cordial small talk about our lives, the translator disclosed to me interesting facts about their duties on the base. First, all the translators are unaware of where they will be stationed until they actually arrive on the base. Second, they are all given and prepped with all the motions and court materials prior to all hearings to ensure that they are well-acquainted with translating any nuanced legal terminology. Third, while most of the detainees are from the Arab Gulf (Yemen, Saudi Arabia, etc.) none of the translators are from that region and thus they are confronted with dialectical problems at times. In addressing issues with dialects, a problem never previously tackled by the Commissions, the Virginia translator informed me that all translators are well-trained to identify the dialect of the detainee within the first three words uttered, and are taught to translate speech contextually rather than verbatim. I was very impressed by this translator's specific talent and with his eagerness to ensure that everything he translated was accurate. While I did not come into direct contact with the other translators, I hoped they were just as competent. Improper translations can implicate a person with crimes he did not commit or with attributes he never had.

The second half of my flight I conversed with Colonel Swann. I would later learn that Colonel Swann was cited by the press for his views on how the Torture Convention did not apply to the Military Commissions. Despite retiring, he maintained his position on the prosecution team of the 9/11 trials. He was adamant that all detainees, including high-value detainees, lived in humane conditions, enjoyed recreation time, televisions, had Wii Consoles and were all allowed to speak other prisoners. We were not allowed to visit any prison camp or speak to any detainee, and therefore, none of these “facts” could be verified during our visit. In addressing one of the motions to be argued at the hearings, on restricting female contact with the detainee, Swann dismissed any argument of faith-based reasoning, and stated that such measures would only serve to further empower the detainees. Swann was greatly empowered in prosecuting the 9/11 cases, and he could not wait to begin the trial. He stated that the prosecution was ready with significant amounts of evidence to seek the death penalty for all the 9/11 defendants. Swann was strongly ignited by the stories of the 9/11 families, and the justice that he hoped he would render after the completion of the Commissions.

Upon arrival at the base, I reconvened with my fellow NGO observers, 11 out of 12 of whom all had legal background and were all coming from a different US state. I would spend the duration of my trip on the base with the group at all times. We were transported in two specifically designated vans by military escorts who would be with us at all times during our travels around permitted areas on the base. It was amusing to learn once we entered the vans that the Lady Gaga music playing on the radio was from a radio station on the base called Radio GTMO that played all American tunes. In a later visit to the impressive station itself we would also learn that the station never broadcasts news on the Commission hearings and had a main focus of making sure popular American shows and music were screened to the base at appropriate times.

We were immediately assigned to military tents beside the courtroom that accommodated only the basic essentials. We later learned that there were hotels on the base that were much more accommodating, but we had no access to them for unknown reasons. We further had no access to Wifi or cellular based phone calls. The next morning, we would awaken at 7:00 AM, and report to the courtroom for the first day of motion hearings. We were all given security badges, yet we went through routine security every day prior to entering the courtroom. The courtroom was designed to accommodate all the 9/11 defendants, and all the observers and media sat in the far back of the room in a secluded gallery. The gallery had screens that presented the court proceedings in front of us with a 40-second delay to ensure that all information stated were properly screened before being heard by the NGOs. Translations to the detainee were never heard and throughout the hearings only the word “yes” was spoken by al-Iraqi in the courtroom.

The defense attorneys (2) were both prior members of the armed forces, and the lead prosecutor in the case was a civilian attorney. The attire worn by all present was according to the role played by every party in the courtroom. For example, on the first day al-Iraqi entered the courtroom with a white garb and a white head scarf customary to general Arab culture; the Defense attorneys and members of the prosecution who served in the armed forces were dressed

in military attire; and the lead prosecutor, a civilian, was dressed in a casual suit with no tie. The second day of the hearing, al-Iraqi appeared in court with an authentic scarf that was customary to the Iraqi and Jordanian areas. I would later learn that defense attorneys fill a locker, similar to a costume closet, that detainees may choose from or request other items to wear into court.

Additionally, the Judge noted Muslim prayer times in order to call for a recess and have the defendant pray. The insistence of having the defendant pray at the exact time prayer is called was astonishing. There are usually a few hours between each prayer time, allowing Muslims the flexibility to pray accordingly. The courtroom featured a total of eight armed military guards (four directly beside the defendant who changed at certain intervals), the defendant, two defense attorneys and four members of the prosecution. The gallery had an additional combination of five armed and unarmed military personnel. During the next hearing day the number would increase to ten armed guards present in the courtroom and nine guards in the gallery, the vast majority of whom were male Caucasians. The defendant was very frail, old, clearly unarmed and shackled to the floor and of course on a heavily secured military base, making the need for so many guards even more perplexing. Oddly enough the judge made the same observation when inquiring with the prosecution as to why a female was necessary to shackle to the detainee when there were so many other guards present. I believe the security measures taken served as a façade for legitimizing the danger of the detainee to the observing community before a trial on the merits even begins.

The Military Commissions were procedurally structured differently than any other courtroom I have witnessed. During our time there the defense argued the following: Defense Motion to Compel Discovery, Defense Motion to Strike Common Allegations, Defense Motion to Dismiss for Lack of Subject Matter Jurisdiction, Defense Motion to Compel a Status Determination pursuant to Article 5 of the Geneva Convention and Emergency Defense Motion for Appropriate Relief to Cease Physical Contact with [Female] Guards. What was quickly learned, and what frustrated the defense and the judge even more, was the lack of adequate compliance with discovery requests on behalf of the Government. The Prosecution's responses to the motions were not made public, and were only given to us after a specific request was made to Chief Prosecutor General Mark S. Martins. The Prosecution further withheld necessary evidence from the Defense that inhibited them from arguing their motions properly. The Judge granted the Defense an adjournment on several of their motions due to the lack of transparency by the Government. The Prosecution also argued for the admittance of a charge sheet to be given to all the jurors. The charge sheet was extremely prejudicial, and included more than 60 alleged charges, none of which have been proven. By submitting the sheet to the jury, any reasonable person would have been overwhelmed by its volume, and ultimately would have ignored the facts before them.

My takeaway from several encounters is that if you ask enough times you may eventually obtain some answers. We were given a tour of the holding cells for the detainees and inside the courtroom upon our request. The holding cell included a screen to view the court proceedings, but the sound was not translated, thus, while a detainee may choose not to be present in the courtroom he will only be able to hear the proceedings against him in a foreign language while in

the holding cell. The cell also featured another indication of religious “liberty”, with an arrow pointing to Mecca for prayer, but with only two feet to actually posturize. The space would make it incredibly difficult to pray comfortably, but I assumed comfort was not a goal in structuring every area. The holding cells also had cameras that would monitor the detainee at all times, even during attorney-client meetings. This meant that maintaining an environment of confidentiality was extremely difficult.

After word got out that there was an Arabic speaking NGO present at GTMO, Tony, the head of the translators and all court staff, felt obligated to meet me. An Arab-American himself, he conversed in Arabic with me to “test” my Arabic. He noted that translators sat in a trailer outside the courtroom to maintain their security, and explained how he handpicked every translator from a third-party contractor to ensure they are the best of the best.

On another occasion, the NGOs were granted a private meeting with General Martins. The General had no concrete answers to pressing questions regarding when certain detainees will face trial and what is holding them up. General Martins only indicated that the government needs to ensure they can present evidence implicating the defendant beyond a reasonable doubt. At the same time, the Commissions allow for hearsay statements to be admitted into evidence. The most reassuring statements made by General Martins were in his answer to a question regarding how the Muslim faith is implicated in all crimes being tried at GTMO. General Martins specifically stated that this was “not about Islam”, and rather, the individuals being tried were motivated by power and economical needs. General Martins’ persona and charisma presented a very diplomatic aura, more like that of a State Department official as opposed to an official from the Department of Defense. General Martins further pointed to Omar, a Muslim civilian-attorney seated next to him, who was a member of his prosecution team.

Later that same day the Joint Task Force (JTF) took us to Camp X-Ray, but unlike many visitors before us, we were able to actually enter the Camp. The Camp was surreal and while they presented it as a strictly temporary facility, any minute spent in those cells presented a poster like image for cruel and unusual punishment. The JTF specifically indicated that the only air-conditioned enclosed room in the area was reserved for the dogs. The military personnel who accompanied us from JTF were trained to answer questions blandly, and either did not know the answer or could not speak about questionable actions taken within the Camp because “it occurred when they were not there.” Our military escorts made every effort to keep us occupied in as many leisure activities as possible, and it became a personal challenge of myself and other NGOs eager for answers to seek and request more information about the actions taken in GTMO.

Furthermore, while external media sources may present an image that GTMO is near closing, the facts on the ground present nothing to that effect. The camp is home to a McDonald’s, Pizza Hut, and Subway, an outdoor movie theater, a stadium, a high school, several military contractors, and traits common to the largest US naval bases anywhere else in the world. Workers on the base are all hired by third party contractors and are natives of Jamaica or Haiti. There is also a frustration and a lack of interest on the parts of many participating in the Commissions: the Judge on the al-Iraqi case, for example, stated that “he has a day job” when confronted with scheduling issues by the Prosecution, further citing his needed presence across

the globe for other cases. Another military official, who requested to remain anonymous, candidly stated, “do you think it would take this long if it wasn’t fair.” The experience I faced presented a side of justice that propped itself up with an illusion of transparency while hiding behind the shadows of unanswered questions and loopholes of confidentiality. Out of the 122 detainees currently left a majority have been cleared for release, years ago, and of the remaining only six are actually facing trial. As for the rest nobody seems to know of their fate. It is our duty as law students to continue to travel to GTMO as often as possible to ensure an understanding of our justice system and our government’s practices.

To leave you with the thought of a better future, on our final night in GTMO a military plane flew above our heads, an uncanny sight since there is no airport. Only later the next morning would we learn that the plane carried five detainees, heading to Slovakia and Georgia, all of whom were determined to be of no threat to the United States. We can only hope that the continued NGO presence including Seton Hall Law students, who question actions and monitor practices in GTMO, will only help to facilitate the release of detainees who have been imprisoned for over a decade with no legal recourse and call for the trial of those left in limbo.