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Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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We sat for almost four hours under the tents erected outside the Military Commissions building at Guantanamo Bay, waiting to hear whether the arraignment of Mohammad Jawad, a young Afghan man, would take place. Jawad was 16 or 17 when he was picked up in Afghanistan in December 2002 for allegedly throwing a hand grenade at a US military vehicle in which two soldiers and an interpreter were injured. He faces no charges of terrorism, material support, or any connection to al-Qaeda or the Taliban. He was just a young man in Afghanistan when the US invaded his country. We had heard various rumors that the hearing might not happen, that there was an issue with his lawyers, and that the detainee was not cooperating, but the military authorities weren't prepared to confirm anything.

Our long wait outside was not unusual. Nor was the fact that we needed a military escort to leave the shade of the tent to walk to the port-a-potties 100 feet away (the rationale for which is still a complete mystery to all involved). What was unusual was that when we finally entered the courtroom, having passed three sets of security checks, Jawad was already in the room. He was sitting at the defense table, in his orange jumpsuit so symbolic of Guantanamo, with his legs shackled together, clearly agitated, constantly rubbing his forehead, and holding his head in his hands. This was striking, both because normally detainees are not brought into the courtroom first, but only after the parties, security, journalists, and other observers are settled, and also because detainees are not required to wear their prison uniform when they attend hearings and normally don't.

In Jawad's case, his orange (as opposed to white or blue) jumpsuit marked him out as uncooperative. Indeed it was his alleged lack of cooperation that had delayed the proceedings for some hours. Jawad simply did not want to participate in a proceeding that he believed was illegal. He did not want to play along with this process. So he had indicated earlier in the day that he was refusing to attend. However, while Jawad could refuse to attend his trial, and the rules allow the Military Commissions to move forward with his trial in his absence, the chief military judge, Marine Col. Ralph Kohlmann, determined that Jawad was required to be present for his arraignment. So Jawad was forcibly removed from his cell and brought to court where we weren't told exactly how. And there he sat. Judge Kohlmann explained that restraints remained on the detainees' ankles because he had been so uncooperative in terms of his physical movement.

Judge Kohlmann did want to emphasize that none of this, including the fact that Jawad had apparently decided to remain in his orange jumpsuit, should be taken as undermining his presumption of innocence. It was hard to believe, though, that such procedural formalities would have any meaning for Jawad, who clearly felt that his five years of incarceration had already stripped his presumption of innocence far more than refusing to change clothes ever could.

Moreover, it was not clear whether Jawad was following the proceedings. He had an interpreter beside him who occasionally whispered to him, but he was not wearing his headphones to hear the court interpretation. The judge, at the prosecution's urging, instructed him to put them on, which he did. But he still didn't seem to be listening and didn't respond to the judge's question as to whether he could hear. You could sense suspicion rise that this was just another demonstration of Jawad's unwillingness to cooperate.

For five minutes or so, with the assistance of the interpreter sitting beside Jawad, the judge struggled to determine whether there was an interpretation problem, or whether Jawad was being obstinate. Finally, the judge had the headsets brought to him. Jawad, it turned out, was not being difficult; the headsets were simply not working. He had basically heard nothing but English, a language he does not understand, since he was in the room.

The battle between Judge Kohlmann seeking to move forward a process and Jawad struggling to convey his experience was only beginning. Jawad was told that he had a right to counsel. He wanted to know if he could speak. He was asked if he understood that he had a right to have a military lawyer as his defense counsel free of charge. He said he did understand, but he wanted to say something. He was told that he would be given an opportunity to speak later. Jawad insisted that he wanted to speak right away. Again, there seemed to be almost a sense of satisfaction among the military that those of us who have criticized the current military commissions system for their lack of fairness and ability to ensure a fair trial, were witnessing firsthand how difficult these detainees could be.

Yet Jawad's demeanor was not belligerent or abusive. It was focused, displaying almost an anxiety that if he did not keep insisting, he would not be understood and he might lose the opportunity to speak. Maybe he had learned from five years of incarceration and interrogation that the trick is to repeat things over and over again until you feel you are making progress. And he had something he

needed to say, something he said he wanted the journalists to hear.

Advising Jawad again that he would be allowed speak, Judge Kohlmann also warned that failure to cooperate would result in a loss of that opportunity. So the judge returned to clarify whether Jawad had understood his right to counsel. Jawad said that he did, but he did not want his counsel or any other military counsel. Speaking in Pashto, he said:

I dont want this counsel or this session, or any trial. I am asking are you treating me with justice and fairness or not? I do not want him or anyone else. I am innocent and I want justice and fairness I do not want this decision at all. I want justice and fairness. I do not want a lawyer. I am innocent. I have been treated unfairly. I have been tortured. I am a human being. I have not violated any law or infringed anyones rights. Whatever has been done to me is illegal. I was brought here illegally. I was only 16. I didnt know that there was a court or what the job of the judge is. I just want law and justice and fairness.

In an effort to plow ahead as if this were some form of normal proceeding, Judge Kohlmann asked if this meant that Jawad wanted to represent himself. Jawad was confused.

How can I represent myself? I dont know. he said.

Good question, responded the judge, though still seemingly unable or unwilling to grasp the depths of Jawads apparent despair.

Jawad continued to explain how he was innocent and that he was 16 when he was arrested. He claimed that soldiers mistreated him and accused him of knowing about the September 11, 2001 terrorist attacks. He told the judge that when he was held at Bagram, Americans had killed three people by beating them. He said he needed to know the reason that he was being held in prison, and he needed the world to hear him because his pleas of innocence had gone no further than his cell. He asked Kohlmann: Is it in the US Constitution how to treat a 16-year-old with justice? I want justice and fairness.

Judge Kohlmann told Jawad that although he understood the detainee had been confined for a long time and wanted to speak, he needed to answer the question about who he wanted as a lawyer. Jawad was told that the proceedings would move forward and Jawad should cooperate. Jawad insisted: If a lawyer comes to defend me in an illegal trial how does that work in the Constitution? Everything should be based on the law.

Jawad had enough, he did not want his lawyer nor, having been locked up for five years, did he know another lawyer. He had tried again to explain this: Since I dont know any lawyer how can I have them represent me? ... I dont know a lawyer. I only know I want someone to be just with me. Yes, I want someone to represent me, but in a lawful manner, in a lawful court. Jawad then thought of one way he might find a lawyer.

I should be given freedom so that I can find a lawyer, he said.

The judge was quick to shoot down that prospect. That is not going to happen, he responded.

Judge Kohlmann finally decided that, for now, the assigned defense lawyer would remain on the case. By this time, Jawads head was on the table and he was complaining of a headache. My condition is not good, I cannot use them, he said, referring to the headphones the judge ordered him to put back on so he could hear about his right to be present at trial. Jawad complained again of his headache, claiming that since he had been arrested the constant exposure to lights and blubs had made him sick. While Judge Kohlmann sought to repeat for Jawad what his rights at trial would be, Jawad decided to bring things to an end. Ok. I understand. Do not bother me any more.

The judge concurred. He ruled that Jawad had understood the rules but that he was simply refusing to cooperate.

As the session drew to a close with a discussion over assigning a new defense counsel, Jawad had his head on the desk, rubbing his forehead. We were all asked to leave the room, but Jawad was still sitting there. Clearly we were not to observe how this young man would be removed from the courtroom.

I left, wondering how long it was going to take to realize that when a system is so flawed that you have someone like Jawad, who was locked up for five years before being charged with committing a crime, no amount of apparent due process formalities in court about orange jumpsuits or a right to a US civilian counsel of his choice could cover over the basic denial of justice and fairness.

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