

Witness Against Torture: Why We Must Act

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Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. Constitution Amendment I

An old cliché says that anyone who has herself for a lawyer has a fool for a client. Nevertheless, going to trial in Washington, D.C., this past June 14, I and twenty-three other defendants prepared a pro se defense. Acting as our own lawyers in court, we aimed to defend a population that finds little voice in our society at all, and to bring a sort of prosecution against their persecutors.

Months earlier, on January 21st, we had held a memorial vigil for three innocent Guantanamo prisoners, recently revealed to have been in all probability tortured to death by our government with what would turn out to be utter impunity – and because we had wished the culpable parties to take notice, we’d staged a vigil where they worked, specifically on the Capitol Steps and in the Rotunda of the U.S. Capitol Building. We had been charged with causing a “breach of the peace,” a technical legal term for a situation that might risk inciting people to violence. In abetting Administration use of torture, Congress had been inciting others to horrendous violence, and we’d been protesting perhaps one of the gravest imaginable breaches of the peace. Now we were making our small attempt to take these crimes to court, in the course of defending ourselves against what we felt to be a misdirected charge.

At the time of our arrest, we were on the final day of a 12-day fast organized by Witness Against Torture, aiming to help end the U.S. practice of torturing prisoners. Calling for the long-promised and long-delayed closure of Guantanamo, release of all detainees held without charge there, and an actual end to U.S. usage of torture, we had considered it our duty under international law, and our right under the Constitution, to assemble peaceably at the seat of government for redress of extremely serious grievances.

“And what were those grievances,” Ed Kinane asked me, as we teamed up for a “dress rehearsal” in preparation for our trial. Ed, my fellow pro se defendant, planned to question me, as a witness, about our actions.

I recited our reasons for taking action on January 21st:

We harbored a grievance against the U.S. government for violating the rights of detainees held in Guantanamo, some of whom have been detained for over eight years without charge; still others are being held even though there has been a U.S. court order for their release. On October 7, 2008, a U.S. federal judge ordered the release of 17 prisoners held in

Guantanamo. They still have not been freed.

We harbored a grievance on behalf of three men whom U.S. military officials claimed committed suicide in an exercise of “asymmetrical warfare,” but who may well have been murdered in custody. In light of credible evidence that has yet to be analyzed in a court of law, they may have been tortured to death.

Ed had designed his questions so that I could deliver as much information as possible regarding our motives for being in the Capitol.

Each of us, when introducing ourselves to the court, would speak our own name and then give the name of a particular Guantanamo detainee on whose behalf we were speaking. Ed, (speaking for Fahmi Salem Said Al-sani), asked me to tell the court something about the man whom I was representing.

“Ahmed Mohamed is a 32 year old citizen of China,” I said. “He was captured near the Pakistan-Afghanistan border in December 2001. As of June 11, 2010, he has been held at Guantanamo for eight years and one month. He is a detainee from the Uighur Muslim minority in western China and is one of 17 Uighurs who were approved for release from Guantanamo on October 7, 2008. However, a federal appeals court stayed the order after the U.S. government appealed.”

We were also keenly aware of three men who supposedly had committed suicide in Guantanamo. Two days before going to the Rotunda to protest the Guantanamo nightmare, we had read, on the Harper’s Magazine website, a January 18, 2010 article “The Guantanamo ‘Suicides’: A Camp Delta Sergeant Blows the Whistle.”

In this article, investigative journalist Scott Horton reports on interviews with Army Staff Sgt. Joe Hickman and Specialist Tony Davila, both of whom had been deployed to Guantanamo, and establishes a strong case that three men reported as having committed suicide, —37-year-old Salah Ahmed al-Salami, 30-year-old Mani Shaman al-Utaybe, and 22-year-old Yasser Talal al-Zahrani, —were suffocated to death in the interrogation chair. In 2006, these three prisoners had been brought, dead, to the medical clinic at Guantanamo, and a Navy medical corpsman had told Hickman that the men, one of them severely bruised, had died from having had rags stuffed down their throats.

At our trial rehearsal, I told Ed that I’d believed I had a responsibility and a duty to demand an accounting for what had happened to these men. I believed that no U.S. citizen, whatever the consequences, should choose the convenience of political silence in the face of grievous crimes against humanity still being committed at Guantanamo, Bagram and other U.S. detention sites.

In the Rotunda, Jerica Arents, (speaking for Saaïd Fahri), now one of our co-defendants, had entered into the area where a recently deceased President’s body is laid in state, an area marked by a white circle, and silently placed a mourning cloth upon that spot, bearing the names of Mr. Al-Salami, Mr. Al-Utaybe and Mr. Al-Zahrani. Our co-defendant, Carmen Trotta, (speaking for Shaker Aamer), had explained the purpose of our action to onlookers, after assuring the nearby Capitol guard that we were raising important questions. Other members of our group, myself included, had poured different colored rose petals over the banner bearing these names.

We had knelt to express our remorse. We had recited brief biographies of each of the three victims. Then we had sung the verses to a song that had been sung by South African prisoners under Apartheid, when other prisoners were being taken away for interrogation, torture or execution. We had, however, adapted the song to embrace our brothers and sisters in U.S. bondage:

“Courage, Muslim brothers, you do not walk alone. We will walk with you, and sing your spirit home.”

Many people come to the capitol every day of the year. They are free to ask questions and to make comments. But, if you raise questions and comments of a political nature, police officials believe they must enforce a law to restrict your enactment of this right, even though the Constitution insists that Congress shall make no law to abridge the right of people to assemble peaceably for redress of grievance. We believed that expression of grief and remorse for the lost lives of these three men should properly happen in a place where U.S. people mourn the loss of a president’s life. While a U.S. president possesses near-unimaginable power, the men whom we mourned suffered from unimaginable powerlessness. Earnest mourning of these lost lives was crucial for truthful recognition that the U.S. government has used torture as a means of punishment, possibly even lethal punishment, in violation of international law and basic human rights.

The prosecution claimed that those who had assembled in the center of the Rotunda were “noisy and boisterous,” yelling prayers and hymns. Officers who arrested other defendants, on the capitol steps, claimed that a group of people were shouting in a way that tried to “imitate an Arabic dialect.” In cross-examination, Clare Grady and Malachy Kilbride, both co-defendants, helped clarify that these defendants were reading the names of people imprisoned in Guantanamo and Bagram. By mid-afternoon, the prosecution rested its case.

Judge Russell Canan had asked the prosecutors, several times, to help him understand how our actions at the Capitol building would have been likely to produce violence on the part of others. At one point, he cautioned all present that he wouldn’t tolerate any noisy outbursts in the courtroom. Ed and I exchanged surprised glances. “He’s going to acquit us,” I murmured. About ten minutes later, Judge Canan granted our motion for acquittal, and the trial was abruptly over.

Of course we are not, in good conscience, acquitted from our duty to stop the Pentagon from engaging in further war crimes at Guantanamo, Bagram and other places where the U.S. military is holding people without charge, places where torture has been routinely practiced, – and may still be. We still bear responsibility, every day, to fulfill our duties under international law and expose the practices, at Guantanamo and Bagram, which constitute a horrendous breach of the peace and are likely to produce even more violence. Understanding the difference between law and justice, we must try to narrow the gap between justice and the enforcement of U.S. laws.

“If you act like there is no possibility of change,” Bill Quigley, one of our attorney-resource people, told the court, “you guarantee there will be none. These people have acted like there is a possibility for change and they are trying to bring about that change.” Bill, who is the Center for Constitutional Right’s Legal Director, said that those who won’t adjust to injustice bring hope into the world. He quoted the Rev. Dr. Martin Luther King’s “Beyond Viet Nam speech, delivered in April, 1967, at the Riverside Church: “We must speak with all the

humility that is appropriate to our limited vision. For we are deeply in need of a new way beyond the darkness that seems so close around us.”

Dr. King’s Riverside church speech will guide us, as we plan our next action.

We are called to speak for the weak, for the voiceless, for the victims of our nation, for those it calls ‘enemy.’ For no document from human hands can make these humans any less our brothers. I think of them, too, because it is clear to me that there will be no meaningful solution until some attempt is made to know them and hear their broken cries.

We still have a choice today: nonviolent coexistence, or violent co-annihilation. We must move past indecision to action. If we do not act, we shall surely be dragged down the long, dark, and shameful corridors of time reserved for those who possess power without compassion, might without morality, and strength without sight.

We hope Dr. King’s words can help convey our remorse and sorrow to the families and friends of detainees imprisoned, tortured and in some cases killed because we have not yet succeeded in ending U.S. practices of torture and illegal detention. We long to acquit ourselves justly by closing not only Guantanamo, but every military base that prolongs the foolish agony of war in our world.

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