

ROSA BROOKS

# The good, the bad and the prosecuted

Last week, in a news cycle dominated by Atty. Gen. Alberto R. Gonzales' latest woes, the conviction and sentencing of Lt. Cmdr. Matthew M. Diaz made hardly a ripple. On May 17, Diaz was found guilty of leaking secret information about Guantanamo detainees. According to prosecutors, Diaz was intent on aiding enemies of the United States and endangering U.S. troops.

His crime? Diaz, a career Navy lawyer, made the foolish mistake of believing that the U.S. government should respect the basic rights of the Guantanamo detainees.

In 2004, the U.S. Supreme Court held (in *Rasul vs. Bush*) that the hundreds of anonymous Guantanamo detainees who had been held incommunicado for years were entitled to seek judicial review of their detentions, with the assistance of lawyers. But when attorneys for the Center for Constitutional Rights — the group that had successfully brought the *Rasul* case to the high court — requested a list of detainees, the Defense Department refused to provide it.

Appalled by what he saw as an effort to circumvent the court's ruling, Diaz, who was then the deputy director of Guantanamo's legal office, printed out a list of detainees and sent it — anonymously — to the rights group.

What Diaz did was foolish and wrong. He should have gone up the chain of command to protest the Defense Department's decision, or resigned. But in the poisonous atmosphere of Guantanamo — where cruel and inhumane treatment of prisoners was authorized, where showing simple humanity was considered suspicious and where minor dissent from administration policy could lead to severe career consequences — Diaz felt he had no choice.

In 2005, when investigators discovered it was Diaz who had released the list of detainees, military prosecutors came down hard on him. They piled on multiple charges, enough to put him in prison for decades.

Ironically, in 2006 a federal court declared that the list of names of Guantanamo detainees was public information and the government released it to the Associated Press. But this came too late to help Diaz, whose rash gesture was still prosecuted as aggressively as if he'd sold nuclear secrets to Iran.

When Diaz sent the list of detainee names to the rights group, he already knew what human rights advocates suspected but couldn't prove: that many Guantanamo detainees were merely Taliban foot soldiers or, in some cases, innocent men who had been wrongly detained, and that the detainees had been subjected to illegal interrogation techniques.

As Diaz put it in an interview with the *Dallas Morning News*, the administration's claim that the Guantanamo detainees were "the worst of the worst" was one of "two misstatements or false statements that occurred about Guantanamo. . . . The other statement was 'we do not torture.'"

A 2006 Seton Hall study of declassified records indicates that fewer than half of the Guantanamo detainees were determined by the military to have committed "hostile acts against the United States," and only 8% were considered to be Al Qaeda fighters. Some of the detainees have been determined by the military to be noncombatants, but they remain detained for the simple reason that our government can't figure out what else to do with them.

The aggressive prosecution of Diaz stands in depressing contrast to lackadaisical government efforts to prosecute U.S. personnel implicated in detainee abuse cases.

Last year, a study by New York University's Center for Human Rights and Global Justice found that fewer than 15% of the 600-plus U.S. personnel implicated in detainee abuse had been court-martialed and fewer than 10% received any prison time. In several notorious cases, even brutal killings of detainees led only to nonjudicial "administrative" punishments.

The prosecution of Diaz highlights



the degree to which U.S. interrogation and detention policies have become unjustifiably arbitrary. Our detention policies scoop up the innocent and the guilty alike — and Diaz, who broke the law in an effort to prevent abuses, found himself aggressively prosecuted, while others who committed abuses remain wholly unaccountable. That's no way to promote the rule of law.

Fortunately for Diaz, the seven Navy officers who made up the jury in his case were more humane than the

higher-ups who spearheaded his prosecution. The jury rejected the most serious charge against Diaz and sentenced him to only six months in prison.

The jury understood that the persistence of deep injustice may lead some to break the letter of the law in an effort to uphold the law's spirit. When Diaz mailed the list of detainees to human rights lawyers, he did the wrong thing — but he did so for all the right reasons.

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