

Litigator of the Week: What the End of Sentence For a Terrorist Tortured by the CIA Could Mean for Guantanamo Bay's Future

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By Ross Todd
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“From a normal U.S. teenager to being a high-value detainee at GTMO.”

That’s how Majid Khan, the only known American legal resident to be detained at Guantanamo Bay, described what he called his “unthinkable journey” during his sentencing for war crimes last year. It’s a journey that included more than three years of captivity in CIA black sites, as well as torture. It’s also included a decade of cooperation with U.S. officials since his February 2012 guilty plea. He has admitted he served as a courier for an Al Qaeda affiliate and delivered \$50,000 that was used to fund a deadly 2003 bombing of a Marriott hotel in Jakarta, Indonesia.

Katya Jestin of Jenner & Block and Wells Dixon of the Center for Constitutional Rights, this week’s Litigators of the Week, have represented Khan for more than a decade. Last week the official overseeing military commissions at Guantanamo slashed 16 years off Khan’s initial 26-year sentence, meaning he’s served his full time. The move came after seven of the eight military sentencing jurors in his case wrote a clemency letter calling his torture “a stain on the moral fiber of America.”

Litigation Daily: How did this assignment come to each of you?

Wells Dixon: Majid Khan disappeared after he was captured in March 2003. He was a ghost. His family had no idea where he was or if he was alive until his name surfaced during a trial in the Southern District



Courtesy photos

J. Wells Dixon(L) senior staff attorney with Center for Constitutional Rights, and Katya Jestin(R) co-managing partner with Jenner & Block.

of New York in November 2005. His family asked the Center for Constitutional Rights to file a habeas corpus case to obtain his release, and, days before that case was filed, President Bush announced Majid’s transfer to Guantanamo in September 2006. CCR sued for access to Majid, and after a year of litigation in federal court in DC, I was finally able to meet him in October 2007.

Katya Jestin: Shortly thereafter in 2008, CCR approached Jenner & Block to partner with them on Majid’s defense. At that time, the plan was for certain

Guantanamo detainees to be tried in EDNY and SDNY, so CCR was looking for co-counsel with significant federal trial and Department of Justice experience. Once I heard about Majid's torture at the hands of U.S. officials in CIA black sites, I was in.

Who all is on your team and how have you divided the work?

Jestin: Our team has always included Wells and me, plus a great cohort of Jenner & Block lawyers, current and former, including **Anthony Barkow**, **Prashant Yerramalli**, **Nayiri Keosseian Pilikyan**, **Karthik Reddy**, **Clifford Berlow**, **Kyle Tramonte**, **Paul Monteleoni**, **Natalie Orpett**, **Christina Gilligan**, **Colleen Harrison**, **Grace Wallack**, **Olivia Hoffman**, **Zachary Blau**, and **Irene Ten Cate**. In total, 89 Jenner lawyers and paralegals have donated more than 6,500 hours to working on Majid's defense, with Wells and the Jenner team having done the lion's share of brief drafting over the years.

Dixon: Many CCR staff members have worked on Majid's case over the last 15 years, including my colleagues **Shane Kadidal** and **Aliya Hussain**. We have also had the privilege to work alongside many talented lawyers from the Military Commissions Defense Organization, including Army Major **Michael Lyness**, who argued Majid's case to the military jury in October 2021, and **Ian Moss**, a former Marine and Obama administration official who led the team's legal policy and engagement strategy for the three years leading up to the conclusion of Majid's case.

Can you give me some examples of the logistical issues that you've dealt with in handling Mr. Khan's case?

Dixon: Guantanamo is a logistical nightmare. The list of logistical issues is long. Traveling there is a challenge in and of itself. Guantanamo is a remote military outpost, and it is not easy to get there. We have to fly in and out of Washington, DC., and the flights are infrequent and unreliable. Communication is another major challenge. There is limited cell service and internet access. Legal mail takes days, if not weeks, to be delivered. Telephone and video calls are not permitted, except in limited circumstances from DC. Files are maintained in DC. The list goes on.

Jestin: Another major hurdle is that nearly everything about Majid and his case is highly classified, which was in major ways just pretext to prevent disclosures about what happened to him in CIA custody and to shield those responsible for his years of torture. Both Wells and I have security clearances. Everything Majid says is presumptively top secret — this has made communicating with our client excruciatingly difficult at times. To say it has been Kafkaesque would be an understatement.

Your client pleaded guilty in February 2012 and the government agreed to delay his sentencing so he could cooperate with U.S. authorities. What has that cooperation meant?

Jestin: First, the importance of this agreement cannot be understated. Drawing on my background as a former prosecutor and working with a DOJ lawyer who was detailed to the commission's prosecution office, we negotiated a deal that, in some ways, mirrors an Article III cooperation agreement. Under that agreement, Majid has provided truthful information to the government for over a decade. His cooperation has meant providing fulsome information concerning numerous individuals, including 9/11 defendants and those involved in the 2003 J.W. Marriott Hotel bombing case. The veracity of his information has been incontrovertible. And now, because of this agreement and his adherence to it, his sentence has been served and he must be transferred out of Guantanamo. That will be a historic day. That will be justice served.

At his sentencing hearing last fall, Mr. Khan became the first former prisoner of the C.I.A.'s black sites to publicly describe the torture he faced. The transcript of what he described is hard to read, let alone contemplate. How much did you know about what he was going to say going into sentencing?

Dixon: We worked very hard with Majid in advance as he planned his remarks at sentencing. In fact, one of the hardest parts of this representation has been knowing of the abuses he endured and not being able to talk to anyone about it (at least until some of the information was declassified years later) or get him the rehabilitation care he needs. The hearing was an important moment for him to finally share his

experiences, which he had been forced to live with on his own for so long.

Jestin: Indeed, this moment was actually something that Majid felt so strongly about that we bargained for it in his pre-trial agreement with the government. Both he and we wanted him to have the opportunity to speak out about what he went through and show his humanity and expose the wrongs engaged in by the U.S. government officials. It was also important to him that he start with a declaration of contrition. He was not trying to mitigate his own crimes for which he has pled guilty, but make the point that no person, no matter what they have done, should be subjected to torture.

Tell me about the clemency letter that seven of the eight officers on the sentencing jury issued after the hearing. What significance did it play in the outcome here?

Jestin: The jury's clemency letter was a clear and unequivocal condemnation of Majid's torture and abuse, and the deprivation of his fundamental rights. It was a repudiation by senior military officers of the CIA's treatment of prisoners like Majid in the aftermath of the September 11th attacks. This letter sent a message that the military commissions at Guantanamo should not be used as a vehicle to cover up past crimes by U.S. officials; the letter provided a measure of accountability for the mistreatment of Majid and other detainees at the hands of U.S. officials.

Dixon: This was quite a significant moment, and we hope that the nation saw this as an opportunity to reflect on how the U.S. compromised the values to which it aspires in the name of national security.

Although Mr. Khan has served his sentence in full, he can't by statute be released in the U.S. What role will you have in the diplomatic process to find a country where he can be released and reunited with his family?

Dixon: Majid cannot be sent back to Pakistan because of human treatment concerns related to his cooperation with U.S. authorities for more than a decade. The Biden administration must locate a third country where he can be safely resettled with his wife and daughter whom he has never met. We will work

with the administration to effectuate his transfer to a country where he can lead a productive and peaceful life after Guantanamo.

I gather that you think the resolution of Mr. Khan's case could be significant to the future of those that remain at Guantanamo Bay. How so?

Jestin: As I testified before the Senate Judiciary Committee in December 2021, Majid's case illustrates a way forward toward resolving the remaining military commission cases at Guantanamo through negotiated dispositions, which is indispensable to fulfilling the Biden Administration's stated policy objective of closing the detention facility at Guantanamo. Indeed, on March 15, 2022, The New York Times reported that in the wake of the Convening Authority's approval of Majid's final sentence and the successful completion of his military commission case, other military commission defendants, including those accused of involvement in the 9/11 attacks, have begun plea negotiations with the government toward bringing those cases to an end more than a decade after they began. We hope that Majid's case provides a roadmap to how these cases can be resolved through agreement. The 9/11 victims' families deserve closure, and we all need to move forward.

What will you remember most about your work on Mr. Khan's case?

Jestin: I will most remember Majid delivering his statement. It was so painful and powerful to see him relive his experiences for all to hear. It was difficult to listen to, despite the fact I have heard about it a multitude of times over the past many years. Nor will I ever forget his treatment at the hands of the U.S. government. As a former federal prosecutor, I am so disappointed by how our system failed him (and others like him). I hope that his testimony and the resolution we were able to achieve for his legal case will help ensure that this cannot happen again.

Dixon: The first time I met Majid in 2007, he was a scared kid who had been badly tortured in CIA black sites. He was a mess, both physically and psychologically. He's come a long way since then, and we are very proud of him, but I will never forget that scared kid. And I will never forget what U.S. officials did to him.