On Being Fired, the Limits of Lawyers, and the Limits of Law

Muneer I. Ahmad

When Omar Khadr, my former client at Guantánamo Bay, fired me in April of 2007, it was not for the first time. By my count, it was at least the third, but, finally, the last as well. For me, it was the formal end of nearly three years of the most challenging client representation in which I have engaged. For Omar, it was just another day in the dim, nearly forgotten hole in our collective conscience known as Guantánamo.

This disparity in how Omar and I experienced the firing mirrors a broader set of differences between us in life experience and world perspective on three critical issues: the role and limitations of law; the relationship between law and power; and the relationship between law and resistance. Ultimately, Omar's decision to fire me and my co-counsel reflected a judgment not only about our efficacy, but the ability of law and legal process to bring meaningful change at Guantánamo. Whether that judgment was correct or not is something about which I feel deeply ambivalent, and I suspect that Omar does as well.

Like all of the prisoners there, Omar was brought to Guantánamo based on a unilateral and superficial designation of him by the Executive as an "enemy combatant." But Omar's case is unique is several respects. First, when he was captured by U.S. forces in Afghanistan, in July 2002, Omar was only fifteen years old. Today he is the youngest prisoner at Guantánamo. Second, Omar is a Canadian citizen, and the only Westerner still imprisoned at Guantánamo. Finally, while the vast majority of prisoners at Guantánamo have never been charged with any crime and, by the government's admission, never will be, Omar is one of the handful of individuals at Guantánamo who has been charged with alleged war crimes, to be tried before a substandard military commission system invented to try—and convict—select Guantánamo prisoners. (It is the government's position, however, that even if someone is acquitted by a military commission, he

can still be imprisoned indefinitely as an "enemy combatant," thus raising the question of what is gained by having a trial at all.) The charges against Omar, which include murder, arise from allegations that at the end of a U.S. assault on a house in Afghanistan where he was living, Omar threw a grenade that killed a U.S. service member. In addition, members of Omar's family are alleged to have terrorist connections, and the notoriety of his family has figured prominently in how he has been perceived, both in Canada and by the U.S. government.

When the Supreme Court decided the case of *Rasul v. Bush* in June of 2004, recognizing the right of Guantánamo prisoners to challenge the legality of their imprisonment through a process known as habeas corpus, it rejected the government's position that Guantánamo was beyond the reach of law, and opened the way for all of the prisoners to file actions in federal court in Washington. Soon after the decision, my colleague, Rick Wilson, got in touch with the Center for Constitutional Rights, which has played a central role in the Guantánamo litigation, and by July we had been assigned to represent Omar. Over the next two and a half years, we would meet with him more than a dozen times, file mountains of paper in federal court, and represent him in preliminary military commission proceedings.

Eventually, the habeas litigation stalled due to various government maneuvers, coupled with Congress twice passing legislation attempting to strip the Guantánamo prisoners of their habeas rights. The military commission proceedings were halted in June of 2006, when in the case of *Hamdan v. Rumsfeld,* the Supreme Court invalidated the system as contrary to U.S. and international law. Congress subsequently authorized a new system, little changed from the old one, and by the spring of 2007, Omar was facing commission proceedings again. Although a Canadian citizen by birth, the Canadian government has largely abandoned him, due in no small

part to the unpopularity of his family, and appears to have placed its faith in the military commissions as the appropriate means for resolving Omar's case.

It was in the course of our first visits with Omar that we learned about the circumstances of his capture and his treatment at Guantánamo. The first time we saw him, in November of 2004, he looked very much the teenager: gangly and awkward, with a disarming smile. He had lost most of the vision in one eye from the shrapnel he received during the firefight in Afghanistan. He showed us the scars on his chest and back where he had been shot, multiple times, and let us feel the shrapnel still embedded in his forearms. He told us of the interrogations that began almost immediately after his capture in Afghanistan and continued at Guantánamo. He was threatened with rendition to Afghanistan and Egypt where, his interrogators told him, he would be raped by older men. On one occasion at Guantánamo, interrogators refused to permit Omar to use the bathroom, and so he urinated on himself, after which two guards lifted his hog-tied body, poured pine solvent on him and the floor, and used him as a human mop to clean the mess. We told Omar we were there to help, and he smiled in appreciation.

The last time I saw Omar, in November of 2006—the second-to-last time he sought to fire me—was the most extraordinary of all my visits with him. On the first day, he refused to see me. I wrote him a note which military officials took to him, but still he refused. I left a second note, saying I would come back the following day. When I returned, I was told that Omar had agreed to see me this time, and that he had been taken to Camp Iguana for the meeting, a short drive from his solitary confinement in Camp 5.

We had never met in Iguana before, and there was a deep irony to our doing so now: Camp Iguana had been established to house a group of children, some as young as twelve years old, who, like Omar, had been brought from Afghanistan to Guantánamo as "enemy combatants." There,

they lived in dormitory-style rooms on the ocean's edge, received educational instruction and psychological counseling, played soccer outdoors, and were allowed ice cream and viewings of various movies, such as "Castaway," (Tom Hanks stranded on a desert island) on DVD. Eventually, they were all sent home. Although Omar was only fifteen at the time he was captured, he was never taken to Iguana because an arbitrary Pentagon policy, without any basis in law, reserved Iguana for those who were fifteen or younger *at the time of arrival* at Guantánamo; Omar had turned sixteen while in custody at the U.S. base in Bagram, awaiting transfer to Guantánamo. Only now, at the age of twenty, when he had grown to over six feet tall and his peach fuzz had given way to a thick beard, was he being allowed in Iguana.

I arrived at Iguana and waited as guards prepared Omar for my visit: removing the goggles and headphones prisoners must wear while being transported so as to keep them disoriented, unlocking his wrist shackles, and attaching his ankle shackles to an eyehook in the floor. Just when I was getting ready to enter the room, a guard told me that Omar had changed his mind about meeting with me, and was being transported back to Camp 5. I walked outside to intercept him, and as I emerged from the bungalow-style building in which I had been waiting, I saw two guards on the other side of a fence escorting Omar to a white van. "Wait!" I shouted, and hurried toward them. Omar turned and stared impassively, waiting for me to speak. It was late morning and already uncomfortably warm. "Assalaam aleikum, Omar," I said. "Waleikum assalaam," he replied. I asked him to meet with me, but he demurred, saying he wanted to go back to Camp 5. I asked that he sit with me for fifteen minutes, so that I could update him on his case. "You're not my lawyer anymore," he said, "I fired you. I don't want you representing me anymore." Guards stood on each side as this transpired, holding Omar by the arms, and a lawyer from the Staff Judge

Advocate (the military lawyers for the base) stood beside me. So much for attorney-client privilege, I thought.

I asked Omar why he wanted to fire me and at this he glowered, saying that I was doing nothing to help him, and that I was of more benefit to the government than I was to him. I knew immediately what he meant, in part because I harbored the same concern: as a lawyer at Guantánamo, my mere presence and ability to meet with my client signified the existence of some law and legal process at Guantánamo, even as I attempted to demonstrate the lack of both. By participating as a lawyer at Guantánamo, I risked unwittingly legitimizing Guantánamo. And yet, with so little to show for our efforts—Omar was still detained indefinitely, and still faced a trial before a sham military commission—this legitimizing of Guantánamo threatened to overwhelm any good we could do on Omar's behalf. It did not help that, though Muslim, I was American, as Omar had come to mistrust all things American, which is hardly surprising given his experiences in Afghanistan and Guantánamo.

As I pondered Omar's argument, and how to respond, I felt myself momentarily departing my body, rising, and gazing down on what felt like a scene out of a movie. There we stood in tense confrontation, staring face-to-face through chain-link fence, the sun bearing down, guards flanking Omar, shackled in his khaki jumpsuit, and me, an accordian file of legal papers under one arm, shielded from the glare and hiding from Omar's accusatory stare behind sunglasses, secretly panicked as to how to negotiate myself back into his confidence. I finally broke the silence and told Omar that I worried he might be right. I told him what I believed to be true—that his position was not unreasonable and that perhaps the costs of legitimizing Guantánamo were greater than the benefit gained of trying to challenge it through legal process. But I also told him that this was worth discussing, and that even if in the end he decided not to keep his lawyers, I could help him to

think through how best to proceed without us, because whether he liked it or not, legal process was being thrust on him in the form of military commissions.

For whatever reason—persuasion, exhaustion, pity—Omar relented, and eventually we sat down together. It was a long and often difficult meeting, lasting five hours, and in the end, my co-counsel and I were tentatively "unfired." But within a matter of months, we would be fired again, this time permanently.

That day in November was one of accounting, and of accountability. It forced me to speak candidly with Omar about what law and lawyers could do to help him, and perhaps more importantly, what they could not. This, in turn, forced me to confront anew these questions for myself, and to think seriously about the contradiction of using legal process and legal identity—that is, my standing as a lawyer—to prove up the lawlessness of Guantánamo. And it dramatized, not for the first time, how vastly different are the worlds that Omar and I inhabit—mine a world of ideas bounded only by imagination and time, his a world of concrete and steel, circumscribed by concertina wire, in which time is the one thing in abundance. When these two collided, the question was posed, could my world penetrate his, and his mine?

Over the lifetime of the Guantánamo litigation, events that have been momentous for the lawyers often have been mundane, or even meaningless, for the prisoners: court victories, congressional maneuverings, condemnations of Guantánamo by world leaders, publication of favorable editorials. For the lawyers, these were all victories. Moreover, because only in brief, delusionary moments did we believe that a single blow would destroy Guantánamo, because we were committed to a longer view of history and a gradualist view of change, we became all the more invested in the small gains. We knew that we were not just litigating individual disputes, we were trying to create political consciousness and shift cultural understandings of Guantánamo, on

the part of the courts and the public, so as to enable fundamental change. We were educating as were litigating, and the education process is often imperceptibly slow.

It was, then, frequently jarring to meet with Omar and to learn of what little consequence these developments were in his life. The Supreme Court's decision in *Hamdan v. Rumsfeld,* and Omar's reaction to it, exemplify this phenomenon. *Hamdan* was an unexpected and significant victory in the Guantánamo litigation. Not only did it invalidate the rudimentary military commission system created by the Administration for alleged war crimes, it also held that the detainees were protected by at least some provisions of the Geneva Conventions. Thus, in a single decision the court repudiated two of the central claims upholding the Administration's Guantánamo regime: its authority to determine the legal process to be afforded the Guantánamo prisoners, and its contention that the prisoners are protected by no law whatsoever.

I remember clearly the first conversation I had with Omar after the *Hamdan* decision came down. Despite my enthusiasm for the legal victory, despite the fact that the decision had halted his own military commission proceedings, Omar was unimpressed. In retrospect, his reaction proved more sanguine than my own, because he understood intuitively—*viscerally*—that while the theoretical foundation of Guantánamo may have shifted, the material fundamentals remained the same. Omar's captivity, in solitary confinement, continued, unmodified by Supreme Court jurisprudence. The guards and interrogators wielded essentially the same power over him as before, and he was, once more, detained indefinitely and without charge. The law may have changed, but the will of the Administration had not. As the lawyers hailed a new legal landscape, for Omar, life the day after *Hamdan* looked, smelled, tasted, and felt unmistakably and unrelentingly like the day before.

Our respective experiences of *Hamdan* captured the familiar difference between procedural and substantive justice. The Court's decision, invalidating the military commission system as unauthorized by Congress, contrary to international law, and likely inadequate in its protections for defendants, was about the process through which law must be adopted. The substantive right of Hamdan, and other Guantánamo prisoners, to be free of captivity, was not addressed, and so the material condition of imprisonment remained unchanged. Of course procedure and substances are related, and the procedural victory of *Hamdan* forestalled the substantive injury of subjecting Hamdan and others to trial, and likely conviction and punishment, in an illegitimate system. The difficulty here was that because Hamdan, Omar, and the others who faced military commissions were being imprisoned indefinitely on the basis of the Executive's flimsy and, by the government's account, unreviewable "enemy combatant" designation, they had already been tried, convicted, and punished in an illegitimate system. The substantive harm had been done, and *Hamdan* did nothing to undo it.

It might be argued that, by virtue of his age and isolation, Omar was ill-situated to appreciate the significance of the *Hamdan* decision, and of other positive developments in the Guantánamo litigation. It might be argued further that it was our responsibility as his lawyers to provide Omar with the context to appreciate the significance of these developments and that his indifference reflected a failure on our part. There is truth to both arguments. Indeed, it was both our factual theory and our legal argument that Omar's youth compromised his understanding of his circumstances, both before and at Guantánamo. Moreover, we understood fully that in light of the disabilities effected by his age and by the deliberately disorienting environment of Guantánamo, it was important for us to provide Omar with a context for understanding the litigation. But this begs the question of why we believed these legal victories to be significant in the first place.

To the lawyers, *Hamdan* mattered not only because it halted ongoing, deeply flawed proceedings, but because of what we believed it to signify: it was, first and foremost, a rebuke of a central pillar of the Administration's Guantánamo policy, and more broadly, of the Administration's claim of expansive, and unfettered, executive power. We believed that it signaled a willingness of the courts to serve as a meaningful check on the executive, and that while it did not itself resolve Omar's plight at Guantánamo, it augured well for future court proceedings. But beyond the courtroom, *Hamdan* was significant because it deligitimized the administration's strategy of using military commissions, thereby increasing the political costs for continuing to use them, and further deligitimized Guantánamo, which already was an international embarrassment for the administration. Relatedly, it raised the political costs for Canada's acquiescence to the commissions, by implicitly adjudging Canada to have placed its faith in an illegal system. Our hope, and our belief, was that these consequences of the *Hamdan* decision might erode the political viability of the commissions, for both the administration and Canada, and thereby open the way for an alternative, bilaterally negotiated resolution to Omar's case.

Indeed, our understanding of *Hamdan* rested upon a background presumption that Omar's case ultimately would be resolved through politics and not the courts. Legal process was helpful in demonstrating the illegalities of Guantánamo, but the ultimate goal, freeing Omar from Guantánamo, could best be achieved by forcing both the U.S. and Canada to negotiate the terms of his release. In fact, there is no case of any Guantánamo prisoner having been released through court order. At the end of the day, politics has dictated decisions on who is released and who is not, and law has operated only so as to shift, clarify, or crystallize those politics.

Thus, in order to explain to Omar the significance of the *Hamdan* decision, we had to make explicit our assumptions about how law operates and how it produces change. Providing

context for the decision meant engaging Omar in political education, articulating a political theory, and explaining our theory of social change. Moreover, our lawyering theory—our vision of how change is effected through law and our self-conception in that process—was deeply implicated in our relationship with Omar. As there is in every lawyer-client relationship, whether openly acknowledged or not, there was a specific politics to the representation, and with Omar, we often tried to make that politics plain.

But it is not only the lawyers' politics that are brought to bear on the relationship, and despite his youth, Omar had developed a politics, too. His was not a politics of religious ideology learned in the madrasahs (indeed, he had never attended one), but a theory and understanding of power, the brute force that undergirds politics, grounded in the excruciating, lived experience of Guantánamo. For his lawyers, power was an abstraction, soft and diffuse, transmitted through a blurry, bureaucratic membrane, a sophisticated, nearly invisible form of social control. For Omar, power was the barrel of a gun.

What emerged, then, was a difference in the metric for success that Omar and his lawyers used. For Omar, observable, experienced change in his physical and psychological condition—that is, not merely his material well-being, but his *materiality*—was the measure of success. For his lawyers, removed from the lived experience of Guantánamo, we saw incremental progress even when none was felt by Omar. But the fact that our professional judgment was unimpeded by the daily degradation of Guantánamo was both an asset and a part of the problem.

It would be a mistake to say that Omar was concerned merely with short-term relief (improved living conditions, more exercise time, better medical treatment) while we were concerned with the long-term goal of his release. The difference between us was rather more profound, and concerned competing judgments about how best to achieve the long-term goal. In

the beginning of our relationship, Omar gave law, and us, the benefit of the doubt. But over time, he developed a theory of social change far different from ours, and in light of how little material gain his lawyers had been able to achieve for him over the course of two and a half years, placed significantly less weight on law and lawyers.

As much as we viewed litigation as one part of a multi-prong strategy to shift the politics around Guantánamo, it was, predictably, legal process in which we were primarily engaged. For Omar, the solution did not lie in law. His daily existence at Guantánamo was, in his eyes (and, increasingly, in mine), an indictment of law, and with every passing day, the case against law got only stronger. So, too, did the case against us, his lawyers.

Without any formal legal training, and without even a high school diploma, Omar came to understand law like a student of the Critical Legal Studies movement. His experience of law at Guantánamo and of legal process in habeas corpus and military commission proceedings led him to view law as a series of infinitely manipulable categories (enemy combatants vs. prisoners of war, detainees vs. prisoners), whose master is not merely politics, but power. Omar came to see law as the government's tool of oppression rather than his and the other detainees' instrument for liberation. And he saw that no matter what the legal victory—the granting of habeas rights in *Rasul,* the invalidation of the military commission system in *Hamdan*—the government could simply readjust its legal position, choosing once more from the infinite pool of legal categories and achieve the same practical result as before the supposed victory. Thus, even after these landmark decisions, the prisoners are, functionally, without habeas rights, and Omar and others are again before military commissions that look remarkably like the old system.

To be sure, there is a more complex explanation for the Administration's frustration of *Rasul* and *Hamdan,* including its success in recruiting Congress to legislatively override the

Court's decisions. But Omar's rejection of law suggests that even as the story is more complex, it is, simultaneously, far simpler. From Omar's perspective, law follows power, not the other way around, and law is incapable of inverting the relationship.

On this point, I must admit my own ambivalence, and to Omar's decision to fire us, I must confess my own complicity. Since early on in the litigation, I have wondered about the will of the courts (as distinct from their authority) to remedy the injustices of Guantánamo. At the same time, I threw myself into the litigation, fueled by an understanding that law has at times, in my own career and over the course of American history, proven an effective means for change. So long as we were in federal court, I held out hope that Omar's case would be heard, and once heard properly, justice would be dispensed. Of course, politics was evident there, too, as the outcome of identical motions filed on behalf of multiple prisoners varied, predictably, depending on who had appointed the judge. But it was my brief participation in the military commission system that most severely undermined my belief in the integrity of law, at arm's length if not wholly separate from politics, and it was in the course of representing Omar in the commissions that I unwittingly may have bolstered the argument for my firing.

The military commissions were a crude parody of a justice system. They took place in a former dental clinic at Guantánamo that had been re-decorated with plush carpeting, blue velvet curtains, and mahogany furniture so as to mimic a courtroom. Under the original military commission system, there was no judge, and yet the presiding member of the commission wore a black robe and carried a gavel. The rules of the commission were promulgated, on a rolling basis, by at least three different bodies within the Pentagon, and the rules changed constantly. Indeed, the hastily constructed nature of the commission room mimicked the substantive deficiencies of the system. Defendants were promised that the system would be "full and fair," yet evidence

obtained through torture was initially admissible (a rule change mid-course ended this, but even then evidence obtained through cruel, inhuman or degrading treatment remained admissible). Double and triple hearsay was admissible, and the government could use secret evidence and close proceedings to the public at will. There were no rules of discovery, no rules of decision, and no rules of precedent. The commissions masqueraded as law—indeed, we were told to refer to the ever-changing body of rules as "Commission Law."

In light of the shallowness of the system, one of our litigation goals was to expose the deception, to pull back the mask and reveal that what lay behind was not a system of justice, but a political will to produce convictions. We openly decried the commissions as a sham, mocked the lack of rules and regularity, and sought to dramatize the illegitimacy of the system. Our consistent argument was that the trappings of law—gavels and blue velvet curtains—were substituting for a truly fair system.

The ultimate unraveling of our relationship with Omar suggests that perhaps we were all too successful in our argument, and that in the process of exposing the illegitimacy of the military commissions, in Omar's eyes, we tore the mantle of legitimacy from law itself. While habeas proceedings in Washington had gone on for over a year prior to the first military commission hearing in Omar's case, in January 2006, the commission hearing was the first legal proceeding of any kind that Omar had ever witnessed, much less participated in as a party. And while the experienced observer could see easily through the artifice of the commissions, for Omar, this was the only legal system he had ever seen or known. The commissions, then, came to represent for Omar not the perversion of law, but its operation. Our advocacy helped Omar understand how the terminologically and ritualistically rich discourse of a courtroom could mask, soften, and plausibly

deny the operation of political power, thereby preserving the prevailing power relationship in which the government held not merely all the cards, but all the guns.

Indeed, through the commissions, Omar experienced exactly how an elaborate, well-dressed, and well-spoken system could, under the claim of law, disregard, and thereby sanction, his treatment at Guantánamo. Among the first experiences he had in the commissions was watching the presiding officer chastise me for having claimed repeatedly that Omar had been tortured. By doing so, the presiding officer argued, I had impugned the reputation of the government, and thereby the prosecution. Here was a system of law that found a defense allegation of torture distasteful—un-collegial—while leaving uninterrogated the underlying practices of torture, enacted on the body of the young man sitting before it. To Omar's ear, and indeed to mine, the voice of law sounded unmistakably like that of his captors and torturers.

As lawyers, we have a professional stake in the legitimacy and efficacy of law. Law, and its ultimate triumph, is our faith story, and without it, we are thrust into existential crisis. But recognizing the limits of law allows us to accept our own limits as well. Sometimes lawyers fail because of their own shortcomings. Sometimes, though, we fail because law has failed. At Guantánamo, I have no doubt that I made many mistakes that undermined Omar's trust in me. But so, too, was my fate yoked to law—the wagon to which I hitched myself—and in law, the failure is clear.

The faith story of law has been double-edged in the Guantánamo litigation. On the one hand, for the domestic American audience—both judges and the general public—the story of law's supremacy has found some resonance with a self-conception as a nation of laws. This is to say that the legal faith story is part of the national faith story. One need only look at the repeated assertions by the administration that the United States does not torture not only because it is illegal, but

because it is un-American. On the other hand, so long as the promise of American law remained unfulfilled, so long as judges allowed to persist the fundamental conditions of Guantánamo—indefinite detention without charge or meaningful opportunity to challenge the legality of the detention—law's story was, for the prisoners, merely a story, of some rhetorical force, but incapable of delivering substantive results. And, as I have suggested previously, as law's exponents, the lawyers suffered a loss of credibility with their clients when law failed.

Like many of the Guantánamo lawyers, I told law's faith story in briefs filed with the court and in press statements. I imagine that some lawyers told the story genuinely, because they truly believed it, while others may have done so cynically, because they calculated that others believed in it and therefore would find it persuasive. In either case, it was a high-risk strategy with respect to our clients, many of whom were willing to give the lawyers the benefit of the doubt regarding their claims of American justice. Eventually, however, Omar, and perhaps others, became disillusioned with the faith story, and with us.

One might reasonably question whether law has, as I have suggested here, truly failed, or if instead the records of Guantánamo-related litigation does not instead support law's supremacy. It is clear, for example, that each time the Supreme Court has considered the administration's "enemy combatant" policies, whether at Guantánamo or in the territorial United States, it has ruled against the government, and indeed, has done so with considerable rhetorical flourish regarding the integrity, and inviolability, of law. (Consider, for example, Justice O'Connor in the case of alleged "enemy combatant" Yaser Hamdi, a U.S. citizen, remarking tartly that "a state of war ... is not a blank check for the President....") But here again we must consider the measure of law's success. Only the dispassion of a lawyer, sitting comfortably and unimprisoned, thousands of miles away, can accept the familiar bromide that law moves slowly. Somehow, we have decoupled law's

efficacy from its integrity. We lament, "Justice delayed is justice denied," but return time and again to the wellspring of law. The faith story is strong.

In the end, we might do better to more honestly appraise and accept the limitations of law, and more strategically engage in the uses of law. The critique I suggest here recalls much of the criticism of the landmark case of *Brown v. Board of Education,* long hailed as the most important civil rights decision of the Supreme Court. Yet, despite the court's order, in 1954, to desegregate the nation's public schools, post-*Brown* litigation dragged on for decades, and public schools today remain pervasively segregated. While the legacy of *Brown* has been much debated, and its cultural and symbolic value hailed, it is clear that *Brown* alone could neither permanently desegregate the schools nor achieve the ultimate substantive goal of equalizing educational opportunity for black and white students.

Can law free Omar Khadr from Guantánamo? For Omar, the costs of finding out were too high, and the payoff too low. While other prisoners charged with alleged war crimes refused to participate in the military commissions, or sought to disrupt them, Omar initially placed his faith in his lawyers', and America's, faith story. But with nothing to show for it, he came to realize that his compliance in the system bled easily into cooptation. By this account, so, too, did the participation of his lawyers.

For Omar and many of the other prisoners, to be complicit in their own captivity is to succumb to the dehumanization of Guantánamo. I believe that Omar was willing to give law a shot both because of the hope it presented to secure his freedom, and secondarily, because it was a potential form of resistance to the forces of Guantánamo to which he was subjected daily. But law failed to serve either purpose, neither gaining him freedom nor sending up meaningful resistance. This is what led Omar to his accusation under the brutal sun of Camp Iguana, that I was doing

more good for the government than for him, for rather than undermining the government's position, I was burnishing it. Lawyers, courtrooms, motions, arguments: all of these signify law-as-justice at Guantánamo. To distance himself from this fiction, and to preserve his sense of self as an autonomous individual, not yet wholly devoured by the machinery of Guantánamo, Omar chose to distance himself from us as well.

Indeed, I increasingly have come to understand that for Omar, resistance to Guantánamo is essential to maintaining his own humanity. The degradation that Omar has experienced, since the age of fifteen, has been designed to break him. The purpose of torture, for example, is to so compromise the will of the individual that he no longer maintains control, is no longer sovereign. The perversity is that the torturer must so degrade himself in order to render the tortured inhuman. For five years, Omar has been broken down, but he clings not merely to life, but to the self-conception that he is, notwithstanding the prodigious efforts of his captors and torturers, still human. It is through resistance that he expresses his humanity.

Law having proved impotent, Omar and others have turned to other forms of resistance: the firing of lawyers, boycotting military commission proceedings, hunger strikes, and even suicides. These are not merely acts of defiance, or in the case of suicide, escape from the oppression of Guantánamo. Rather, they are an insistence upon recognition of the prisoners of Guantánamo as thinking, acting individuals who, even in the most constrained of environments, retain that core of autonomy that make us human, as if to say, we may be held in cages, but we are not destroyed. This is an existential statement and not a legal argument, and when the stakes are rendered so elemental, there may be little that lawyers can do.

Even in the context of resistance, I believe that lawyers can play an important role in surfacing, framing, and publicizing these acts in a manner that furthers the prisoners' goals, and by

engaging in complementary legal strategies—for example, seeking court orders to enjoin the forced feeding of hunger-striking prisoners. This reflects my broader view that traditional legal strategies can form one critical component of a multi-prong approach to social change, one that might include media work, policy advocacy, community organizing, and civil disobedience. To varying degrees, all of these have been part of the Guantánamo advocacy, and I believe that the legal advocacy has been tremendously important. But it has not been without its costs, not least of which has been the paradox of legitimizing the lawlessness of Guantánamo through the assertion of law, an assertion that is made every time a lawyer steps into the breach.

One day in the future, Guantánamo will be over. I am confident that Omar will be released from there, and when he is, it will be with some imprimatur of law. And some day in the future, we will look back at this era and laud the decisions of the courts—*Rasul, Hamdan,* and others—as evidence of law's success even in a moment of national crisis. But today, after more than five years of captivity, after enduring torture as a teenager and spending one fifth of his life growing up at Guantánamo, law has failed Omar Khadr, and the many other prisoners at Guantánamo. A triumphalist narrative of law at Guantánamo will emerge, but it will fail to account for the loss of childhood, and the deprivation of humanity, of the past many years.

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That last visit with Omar at Camp Iguana ended about an hour before sunset. Just before I left, Omar asked to use the bathroom, and two guards came in, unshackled him from the floor, and escorted him across the camp compound to the latrine at the other end. A few minutes later, Omar emerged, and we began the walk back. The path led us close to the perimeter fence, beyond which a rocky cliff dropped precipitously to the Caribbean. At the point closest to the fence, Omar slowed, and then stopped entirely, staring out at the gleaming, raucous waves and a magnificent

sky. "This is the first time I have seen the ocean since I got to Guantánamo," he said. As he stared, he squinted and smiled broadly in the look of wonder of a child seeing the ocean for the first time, or an old man seeing it for the last. The guards loosened their grip on Omar, their arms slackening, a momentary concession to humanity—his, and theirs. A minute later their arms contracted, and Omar began walking again. I turned away to conceal my wet eyes. There was still so much to lose.