

## Bittersweet

I come from military. My father was USN and then USN(R). An aviator, a veteran. My brother, USMC. Hot spots all over the world. Me, I serve, too. I am a public defender. We who serve believe that problems should be solved correctly and fairly. We believe that our government is just that, ours. In our family, we like uniforms, amiable chatter, strength, camaraderie, and we can keep secrets. Who would have imagined that service in the matter of public defense would bring me back to a base. Naval Air Station, Guantánamo Bay, Cuba. The Pearl of the Antilles. I gotta say, during my time, GTMO NAS is like no other base on which we were stationed.

Over this time, my Philadelphia public defender colleagues and I have represented six Guantánamo detainees. YEARS our clients were (and two still remain) detained as a part of the war in Afghanistan and elsewhere. YEARS of NOISE and crazy-making silence. YEARS of learning English from the men and women who work Charlie, Echo or Bravo. YEARS of trying to forget and YEARS of trying to remember. Years of trays in, trays out. They eat what we eat. It's time for them to pray. Jailer-soldiers. It's not what we non-uniformed folks would ever get to see on any other base at any other time. Systemized at the drop of a hat and having to answer our questions—even if only to tell us that the questions will not be answered. Good soldiers and respectful officers.

My colleagues and I came to the base with an appointment to negotiate the new application of complicated and ancient rules of habeas and reactionary statutes and represent these men in court. We went to court. We went to two courts. We filed papers in the district court. We filed papers in the court of appeals. We investigated the charges on the charge sheet. We prepared evidence to be considered in a military tribunal called the Administrative Review Board. We stood by and waited while the complicated and ancient rules of habeas and the reactionary statutes were litigated out in front of us at the highest levels, in and out of the Supreme Court of the United States. And then, about F., an Algerian, we received this EMAIL from the base:

*Through either the Administrative Review Board (ARB) process or the process DOD had in place prior to the ARBs, your client has been approved to leave Guantánamo, subject to the process for making appropriate diplomatic arrangements for his departure, Accordingly, my prior guidance regarding submission of materials for a 2007 ARB for your client is inapplicable to this detainee. He will not be receiving another ARB proceeding.*

*As you know, such a decision does not equate to a determination that your client is not an enemy combatant, nor is it a determination that he does not pose a threat to the United States or its allies. I cannot provide you any information regarding when your client may be leaving Guantánamo as his departure is subject to ongoing discussions.*

Now what.

So, we said to ourselves, he can leave. What does that mean. Alas, there was no litigation at the highest levels of the judiciary to tell us anything about this. There were only questions. Who will make arrangements? How will they go about making them? When will they be made? Can he go back to Algeria? What's he facing back in Algeria? Who do we speak with from Algeria? Can we

just call up the embassy and ask for a meeting? Can we trust what we are told? Will he need a lawyer in Algiers? One can get the idea.

We worked to answer all those questions. In the meantime, F. withdrew. Isolation and silence worked their destructive aspects. Fear of change, distrust of lawyers, send me somewhere else, just set it up and let me live in Europe. So, more questions. Can we seek asylum in the U.S.? Can we seek protection in a third country while he is in custody at the base? What country? Can we just call up an NGO and ask them to help us? Can we show up in a putative host country and request an audience with the right ministers? Do we need yet another lawyer? Alas, AGAIN, there was no litigation at the highest levels of the judiciary to tell us anything about this.

Then, we worked to answer all those questions. Both pistons operating: for a safe repatriation to Algeria; or to be adopted as a son of France and her proud “anciens combatants.”

Then, two Algerians returned home. Then, two more in August of 2008, including F.

He’s out. I write an email to a translator who has worked with us regarding F.

*hey c., yes, we are aware and have been aware of both some unsavory conduct at the time of transfer, and aware of the talk amongst part of the group. all has been aired. in general, in light of most recent developments, f's situation is one of the more stable legally. to state the obvious, he is no longer in Camp VI, and, he is home! with mother, eating couscous, probably depressed, as he has been during most of the past 20 years.*

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There was a fair amount of talk among counsel for the Algerians about F.’s experience. A little skepticism, maybe a little bit of bitterness that F’s experience was out front and maybe not lock step with other plans or beliefs of other detainees. Maybe there was (necessarily) uninformed questions about whether we were just the get-along lawyers who would just “let it happen” to their man. Dunno, exactly. But, not sweet at the moment. They cared for their men. So, I wrote to our colleagues from here, there and everywhere who also represent men whose country of origin is Algeria. They wanted to know.

*I think it would be unwise to represent anything about F's experience as we could verify no part of it. as you recollect, he was very despondent, lashing out at us for not considering his asylum wishes, depressed. What became a real difficulty was that he became entrenched in thinking that we were the enemy and he remained ignorant of a lot of stuff that was going on. ...sadly, he knows how to do time.*

*he stopped accepting letters, refused all visits ...he asked for a call to us and was granted it in a matter of hours. when the call was all set up and all on the line, he refused to get on the phone. he has some rather longstanding issues and, quite frankly, his depression will be much better managed out of prison with his family.*

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*we were given notice [of his transfer home]. we tried to see F. and he was still*

*consistently refusing.*

*counsel was arranged for him in algeria since the time of my trip to france. again, sadly, he is still entrenched to go it alone. he has refused the help of counsel and appears to be just leaving it be to see what will happen. honestly, it may be exactly the same result....*

*now, this is not to say that he has no story of intimidation to tell... this was a very tense situation all the way around with no great case for one thing or the other. AND, I do know he looks well physically; living with mom-- who is elderly and cried for two days to see her oldest son, his sisters etc... I pray for some healing in this family and for this man.*

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Who could have expected that this public service to F. would require us to master many areas of law and politics. Matters of war, matters of international law, matters of Algerian culture and laws, matters of history, personality and diplomatic prognosticating. What we knew was that this gentle man could leave Guantánamo. The military said so. If only the way was clear. Maybe it was. He's home. But it was a complex and bittersweet route to pick our way through.

Day in and day out, our work as public defenders is rigorous, for lack of better word. My close colleague in this case is Shawn, and we both work for clients who have been death sentenced. We know what isolation and NOISE and <sup>silence</sup> can do to a mind. We've seen it for years. We work hard for a lot of bittersweet—sometimes it tastes very good when put alongside the alternative; a lot of time spent between that rock and hard place.

If we are honest with ourselves (and we are, that is one of many reasons I love Shawn), we have lingering ego pain. We ask ourselves “How could it be that F. got to a point that he would not hear from us about the measures to make certain that any repatriation was safe and sound AND the measures to prepare his case to be championed by a protective country in the EU?” And, with our experience, we know what to tell ourselves. We're public defenders. We serve. This is our country and we serve. Even, if on the best days, our victories are bittersweet.

thanks, cristi