

Josh Dratel

Gallows Humor

What stays with me most about Guantánamo was how so much of what occurred there simply made me laugh—oftentimes inappropriately so, whether ironically, bitterly, sardonically, or otherwise. Yet I could not avoid that reaction. Whether because of the surrealism, the absurdity, the hypocrisy, the capriciousness, or maybe because some events were just plain funny. Maybe it was a defense mechanism, constituting the only alternative to anger and frustration, to the helplessness we experienced when confronted by a system—more accurately a human laboratory—designed and implemented to break human beings physically, emotionally, psychologically, and culturally. Maybe it was because GTMO represented such an alternative universe that what occurred there lacked any foundation in the “real” world, and it could be viewed as amusing without significant consequences.

Of course there were consequences, for real persons absorbing real pain and punishment, but parsing out the wry parts enabled me to move forward in *my* mission—representing and defending my client—rather than become immobilized by the injustice, intolerance, and insensitivity to ordinary human interaction that GTMO symbolized. Whatever the reason, I remember constantly resorting to laughter while at GTMO, certainly more than an objective assessment of the situation would appear to warrant.

What events and situations caused that gallows-humor response? I can assemble a partial list. If they do not make you laugh as well, do not feel bad or confused. For some of these items, you *had* to be there. And, believe me, if you didn't *have* to be there, you wouldn't want to be. For others, well, people did give me odd looks when I laughed. But that could not deter me. If they did not understand, it would be too difficult to explain. Besides, often I did not mind being viewed

as a bit unpredictable and inscrutable. That helps when you're navigating a bureaucracy as entrenched as the military, and an environment as impenetrable as GTMO.

So here is my partial list of what made me laugh—and still does—whether cynically, incredulously, caustically, or worse:

- How little the interrogators knew about al Qaeda, Islam, the Middle East, or Islamic terrorist organizations, a fact painfully evident from a review of their uninformed and amateurish interrogations of the detainees;

- That after we (Hicks's counsel) were admonished not to reveal *anything*, even the slightest detail, about David's living quarters, after our first few visits to Guantánamo in early 2004—because such information was “classified”—on our next visit a few weeks later we were told we would not be visiting with David in his cell, but rather would be set up in a cell, which had exactly the same configuration as David's, that had been outfitted for the media to view as an example they could write about and photograph. The only intervening event had been the Supreme Court oral argument in *Rasul v. Bush* regarding the Guantánamo detainees' habeas corpus rights;

- How information we were provided under the proviso that it was classified was published on the internet a few months later;

- That migrant workers from Jamaica and the Philippines were permitted access to the most sensitive sites at or in the detention camps, while counsel—some military, and the rest possessed of appropriate security clearances after the most comprehensive background checks—were processed through multi-level checkpoints and searches before being permitted to enter the camps;

- That the twenty-year-old soldier who conducted those searches one day in 2007 inquired of Hicks's Australian lawyers, after discovering Australian currency in their wallets, whether it

represented “a lot” of money, as if David was going to swim home, paying his way with Australian currency at ports of call throughout the Caribbean;

- How at the opening commission proceeding in August 2004, when one of the four initial detainee defendants insisted on proceeding *pro se*, the presiding officer put his head in his hands on the table because that was not an event for which the rules had many any preparation or accommodation. Indeed, at every commission proceeding something occurred that would make him do that—something completely unanticipated by those who designed the system, and which demonstrated clearly that the system was ill-conceived and poorly implemented;

- That during the initial military commission proceedings in August and October 2004, the military assembled a huge show of force and security during the day while the commissions were in session, but at night the commission building was completely unguarded and accessible to anyone who knew the code for the front door;

- How at the initial commission hearings it was instantly apparent to the private Arabic interpreters in the audience (who were working with the defense lawyers) that the interpreters employed by the commission to translate the proceedings for the detainee defendants did not understand Arabic properly;

- That the only military lawyer among the original JAG officers assigned to the defense team who has received a promotion was the lawyer whose client refused to accept a lawyer, and instead proceeded *pro se*;

- That the camp administration refused to allow us to send David certain books, such as *To Kill A Mockingbird*, because it had the word “kill” in the title. *Presumed Innocent* was another banned title. Needless to say, we were not successful in getting *Breaker Morant* approved, either;

- How David was not allowed to keep *The Torture Papers*, a book I co-edited, and gave to

him, and which traced the U.S. government's torture policy after 9/11 through official memoranda and reports, because the detention authorities claimed it had nothing to do with his case;

- How the camp library did not have books in English for David (but he was offered books in Russian as an alternative to the Arabic, Pashtun, or Urdu texts the other detainees were offered);

- How at Camp Echo David was offered recreation with a soccer ball in a cage that was not appreciably larger than his cell;

- That David received more news from the guards—and a fair amount of gossip and sometimes disinformation—on a regular basis than from his lawyers during our intermittent visits;

- The nonsensical redactions to David's letters to his family, and their letters to him;

- That while I was suffering from two herniated disks in my lower back, I was informed (by the soldiers who observed our meetings on the video cameras that were positioned on the ceiling of each cell) that I could not lie on David's concrete slab bed to relieve the pain while we met with him. Later we were informed we could no longer urinate in his toilet during our half-day meetings with David;

- How, after we had been visiting Guantánamo for a year or two, the detention authorities at Camp Echo created "sidewalks" etched in the gravel that we had to use rather than proceeding in a direct line to the cell where we would meet with David;

- That as the population of detainees declined steadily from the time I began visiting Guantánamo in January 2004, the number of structures built by private contractors steadily *increased*, more often than not for no discernible purpose;

- That the iguanas, who enjoyed protected status on the base, and thus could roam blithely across roads, parking lots, and wherever they fancied, were afforded more rights and protections than detainees;

- The stunted deer that roamed the wild spaces near the camps—the offspring of normalized deer that, as we were told, had been brought down decades earlier by a base commander who wanted to hunt them. The subsequent generations were undersized because there wasn't sufficient vegetation to fulfill their traditional dietary needs;

- That base personnel who played the GTMO golf course had to use little Astroturf mats under the ball for most shots because the course grass had been worn away in many places by the Haitian migrants who had been confined there years before;

- How for an extended period of visits a woodpecker worked rhythmically on one of the wooden detainee shacks at Camp Echo, perhaps, we mused, assisting the detainees in a long-term escape plot about as effective as the habeas corpus petitions they had all filed in the U.S. courts;

- Every time I asked a soldier, whose name tag on his uniform was replaced by a series of numbers, whether he was related to another soldier I'd met that day whose number also began with 0001.