

## David Marshall: My First Visit to Guantánamo Bay

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The Guantánamo Bay Naval Station lies on the south coast of Cuba, near the eastern end of the island. My plane, a little Caribbean island-hopper flown by Lynx Airlines, swooped in from the sea, because, I think, Cuba does not permit American planes to fly over its territory. We landed at six p.m. After a guard inspected my luggage and my Defense Department papers authorizing my visit, I took the bus to the Combined Bachelor Quarters, the lodging for all “habeas counsel”—we lawyers seeking *habeas corpus* for prisoners.

On the bus I began my survey of Guantánamo. I saw that the buildings, like military buildings generally, had been designed with utility, not elegance, in mind. Most were cinderblock. Many were painted pale yellow with broad bands of brown trim. Most that were not pale yellow bore a similarly bland color, such as salmon or beige. Some roofs had been inspired by Quonset huts. There were a few white modular buildings whose roofs, culminating in a row of pointed summits, suggested one of King Arthur’s campaign tents.

Palm trees were not much in evidence. To my surprise, there were many cacti. Perhaps the mountains of eastern Cuba, easily visible a few miles away, cast a rain shadow. Much of the base is hilly, with exposed rock slabs here and there.

The bay divides the base into two sections. They are called, not the eastern and western sides, but the Leeward and Windward Sides. All travel between the sides is by ferry. A land route would have to go through Cuban territory.

The Leeward Side is much smaller and has many fewer buildings and facilities, mostly some housing, including the CBQ where I stayed, and the airport. Habeas counsel must remain on the leeward side except when visiting clients, all of whom are housed in the detention section on the windward side. Most of the diversions are on the windward side, so the off-hours restriction to

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the leeward side makes a day off at Guantánamo a thing to be avoided whenever one can. (Meager flight schedules, though, often require a lawyer to spend a Saturday or Sunday, when prisoner visits are not allowed, at the base.)

I had prepared myself to swelter. The first evening was only pleasantly warm, though. Temperatures, I was told, do not vary much over the course of the year, but humidity does. According to the guest information book in my room, July and early August make up the brutal season. The book warned to avoid vigorous midday activity then. Every building I visited during my stay was air-conditioned.

The next day, a partly cloudy one, I found the weather comfortable except at midday, and even then it was comfortable in the shade.

The evening of my arrival, all habeas counsel then at the base gathered on the front terrace of the CBQ to enjoy comradeship. There I had my first meeting with Gitanjali Gutierrez, the director of the Guantánamo habeas counsel program for the Center for Constitutional Rights, the public interest law firm that coordinates representation of the Guantánamo prisoners. The plan was for Gita to meet my client, a young man from Syria, with me. She had met with him in February and, in essence, would now introduce me to him. The language gap would be bridged by Arabic interpreter Masud Hasnain, whom I had hired from northern Virginia for the purpose. The three of us went to a corner of the terrace to plan for the meeting. I had attended a habeas counsel training session in Washington, D.C., in February, at which the many unusual challenges of meeting with Guantánamo clients had been discussed, so the session on the terrace did not take long.

The next morning at 7:40, we caught the bus to the ferry.

Imprisoning alleged terrorists is the most famous function of the base, but it goes on only in a small area. The various military services have a role in it, so it is known as the Joint Task

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Force, or JTF, area, distinct from the other areas from which Coast Guard and Navy craft, I think, carry on that older war, the war on drugs, and fish refugees from the sea. (Haiti is not far away.)

Our escort, Seaman Weeks, picked us up in a van at the ferry terminal. Apparently as a favor to the first-timer, Masud and Gita had me ride shotgun, up front. Gita and Masud served as tour guides, pointing out, for example, the building in which the newly created military commissions have just started convening to try the few Guantánamo prisoners who face specific charges. (The others are being held indefinitely as “enemy combatants.” If I let this travelogue veer farther into the legal issues of Guantánamo, though, I won’t know where to veer back.)

Among the sights was a walk-in version of a drive-in movie theater. Instead of parking for cars, it featured three grandstands arrayed to form an amphitheatre. As the audience was not so far from the screen as at a drive-in, the screen was smaller but did not look less sturdy or permanent. I was told that the base had several such theatres and no indoor ones.

Weeks drove us first to an office building where I had my photo taken and my permanent GTMO-JTF badge issued. The big type on it read “Escort required.”

Under normal conditions, Weeks would then have driven us to McDonald’s or Subway to pick up breakfast to go, for ourselves and the prisoner. At every jail and prison at which I had previously visited a client, a lawyer was forbidden to bring the prisoner anything but legal papers. The rules at Guantánamo, though, permit lawyers to bring all manner of food and drink to client meetings. The only limitation seems to be that the prisoner may consume it only during the meeting. For some prisoners—the ones most like me—meetings with habeas counsel become pig-outs. Counsel, always looking for ways to strengthen relationships with suspicious clients, tries to bring foods popular in the client’s homeland, such as dates, figs, pistachios, and tea. (No, the McDonald’s and Subway at Guantánamo don’t have extensive menus along those lines, but many

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prisoners enjoy Western food, too.) A common subject to cover in an interview is whether the client would like his lawyer to bring any special treat at a future visit.

I had been alerted that my client would feel free to eat only if we lawyers ate. Always ready to go the extra mile for a client, I had prepared by eating nothing before boarding the ferry.

But things did not go according to plan for us. Weeks met us at the ferry with the news that the young Syrian had refused to meet us. (Candace Gorman, habeas counsel in from Chicago, simultaneously learned that she had been similarly spurned by her client.)

Our first order of business after getting my badge thus became going to Camp V, where my client was imprisoned, to write him a request to reconsider.

Weeks drove us to the JTF area. At the entry checkpoint, soldiers of the Puerto Rican National Guard made sure we had the proper badges. Leaving the checkpoint, Weeks nudged the van over several severe speed bumps. Soon after that, we reached a place where orange jersey barriers jutted alternately from left and right into the two-lane roadway. The effect was to reduce the road for twenty-five yards or so to a one-lane, serpentine path.

Just beyond that we came to the “camps.” They lie in three clusters between the hills and the sea. Each cluster is surrounded by a fence about two stories high. A coil of razor wire guards the inside of the bottom of the fence, and another cluster guards the top. In many places the fence is covered with green translucent fabric. Signs everywhere prohibit photography.

According to what I heard and what I observed, no prisoner ever gets close to the exterior fence. Small exercise areas adjoin the buildings. A prisoner’s only time outside is his time in the exercise yard.

Prisoners suffer much isolation. The image of inmates in a prison working together in the laundry, lounging together in the yard, and forming a football team to play the guards does not fit

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Guantánamo. I eventually got inside Camp V, where the isolation is severe, but I have read that it is worse next door, at Camp VI. There, prisoners are permitted to leave their windowless, individual cells only once a day for an exercise period. The exercise area has walls two stories high, so even there a prisoner can see nothing of the natural world except the sky. Direct sunlight rarely reaches prisoners in the exercise area. Only when in the exercise area can a prisoner communicate with another prisoner, and then only by speaking to one of the few prisoners who has simultaneous exercise in a neighboring, but not connected, exercise area. A prisoner in Camp VI never has contact with another living thing—not even a blade of grass—unless an insect lands on him in the exercise area. (I am not counting the gloved hand of a guard who moves the prisoner.)

When any prisoner is moved from a camp, he travels by van. (Habeas counsel are often required to meet prisoners in a camp other than the ones in which they reside.) The prisoner has his feet shackled together and his hands shackled to his waist. A hood is placed over his head. He is placed in the windowless back of the van and driven to his destination.

Wherever a prisoner meets his lawyer, he does so with one ankle chained to a ring in the floor. If the meeting lasts the entire day—and they usually do—the ankle will be so chained all day, except for meal and toilet breaks. I have visited many persons in custody, but I had never seen this before.

I was surprised at the intensity of the security. It seemed as if someone thought al Qaeda had a navy which might land a force of marines to bust their guys out. Of course, the idea that al Qaeda could bring down the World Trade Center once seemed outlandish. Overestimating its capacities now is perhaps understandable.

When I commented to Weeks on the security level, he agreed. “If anyone escapes this place,” he said, “I think they should just let him go.” He would have earned his freedom.

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We had this exchange while parked outside Camp V. Gita had written my Syrian client a request to reconsider his refusal to meet us. She had written the note in English, Masud had translated it into Arabic, and Army Captain Jason Smith had carried it into Camp V to the client.

As reported in the press, prisoners often refuse to meet with their lawyers. My client eventually changed his mind, so we did meet that day. Because attorney-client communications are confidential, I cannot report his reasons for refusing, but I can report reasons that often motivate refusals at Guantánamo.

Prisoners find it hard to believe that the lawyers are not really working for the government, against them. They come from countries in which a prisoner could never count on a lawyer to be loyal to him.

Guantánamo prisoners also often consider the legal process futile. Why participate in a process that will raise their hopes, then surely dash them? When one looks at the record—every victory in court has been quickly nullified by an act of Congress—it is hard to gainsay that view.

There are reports that some interrogators have impersonated lawyers for the prisoners. I don't know whether that has happened, but even an untrue report like that will discourage cooperation with lawyers.

If a prisoner is moved to another camp to meet his lawyer, he will undergo shackling and placement of a hood over his face. This could be distressing to anyone. If the prisoner has undergone “harsh interrogation” in the past, it will likely be much more distressing. (How many of the prisoners at Guantánamo suffer post-traumatic stress disorder?) A prisoner thus may refuse to meet with his lawyer because he is unwilling to undergo transportation to the meeting.

The tendency of prisoners to refuse to meet their lawyers is just one of many features of Guantánamo work that distinguish it from the rest of my twenty-two years of representing

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prisoners. Almost all of these features complicate the work. One simplifies it: no compensation to me of any sort—so no need to track either time worked or expenses incurred!

And one distinction greatly enriches the work: in no other work I have done have I felt so much a spiritual descendant of the English nobles who in 1215 wrung from King John the Magna Carta. I have only a small role in the history of holding the sovereign to answer for imprisoning someone. But I do have a role. And that feels good.