

The Other Side of the Island

“Do not wave, point or gesture toward the Cubans.” This warning appeared on the brief I received from the Marines for the five-mile run I signed up for at Guantánamo. The race started at the Northeast Gate to Castro’s Cuba—the gate through which two old Cubans still cross every morning to work on the base and return every evening to their homes—and ran along the barbed wire fence line perimeter. It ended at Kittery Beach, one of the few beaches I had not yet been to at GTMO; I spent a lot of time at Phillips’ Park Pier, where I obtained my Open Water SCUBA certification and where I had completed my first night dive just two days before the race. Life as a lawyer in the military commissions system is certainly different than it was when I was habeas counsel.

My decision to leave a private firm, where I had been part of a team representing ten Saudi detainees, to work for the Office of Military Commissions, was an easy one. I was reaching my breaking point at a big firm. The long hours, few vacations, and often tedious work were starting to get to me. I went to law school to help people, and although I was doing a lot of *pro bono* work, spending the majority of my time defending banks in securities law actions was not what I had in mind. Even the move from New York to D.C. was not enough to make me pause. For years I had been interested in international human rights law. The Office of Military Commissions seemed as close as I could get to that, outside of working for one of the international tribunals. The hardest part of leaving was explaining my departure to my Guantánamo clients. They were understandably confused about how I could leave to work for the American military—their jailors.

I first learned about Guantánamo when I was studying International Human Rights Law in my second year of law school. The images of hooded men in orange jumpsuits being kept in cages

was powerful, but I never dreamed I would end up working for them, or that they would still be imprisoned five years later. When I started at a big law firm I wanted to work on capital cases. The images of Guantánamo had receded from my memory. It was not until I first learned that the firm was getting involved that I felt the call to action. Guantánamo is like a snowball: minor involvement almost inevitably becomes greater as one realizes the depth of the horror that has been perpetrated in the name of America. Once I started, I wasn't sure if I could stop, so moving to the military commission side of the game was a much easier choice than leaving to do any other sort of public interest work. I felt that I had started this project and had some sort of need to see it to its end. Yet still, there is no end in sight.

I had grown frustrated with habeas work. No matter how many small gains we achieved in federal court, it seemed that we would never achieve any real progress. Releases were happening slowly but they seemed to have nothing to do with the legal cases. I thought that at least for a criminal defendant there would be some hope of challenging the system and the charges. In my last days at the firm, we frantically called members of Congress to try to stop the Detainee Treatment Act. Access to federal courts was rapidly disappearing for uncharged detainees and I hoped that at least for the ones who would be charged, I could try to make a difference in the military commission system.

The life of a habeas lawyer at Guantánamo is circumscribed. You must sleep on the leeward side of the island, in the Combined Bachelor's Quarters that is a cross between a roadside motel and a dorm. You cannot travel alone to the other side of the island. You cannot rent a car, go out for a late dinner, jog along the road to Camp X-Ray, or go snorkeling. In many ways, the limits are helpful—they used to remind me constantly of how unpleasant life on the island can be. No matter how tired, sweaty and dirty I felt, I knew that my clients were suffering so much more.

Now, as a Department of Defense employee “on orders,” I am free to roam the base as I please, unescorted for the most part. Now, when I go to the beach, or have a barbeque with my colleagues, I feel guilty. Recently, I set out for a run after work at the base. It had just started raining, and I thought about turning back. But I reminded myself that there were 380 men on the island who would give anything to be able to run free in the rain. So I ran, and thought about them every step of the way.

The legal work is often very separate from the client relationships. The work is interesting, and novel. Law students dream of practicing constitutional law, and I get to write briefs that address exciting constitutional issues frequently. But it does not take long to realize that no matter how persuasive an argument, the judicial system is not helping the detainees of Guantánamo. Over the course of my involvement, many detainees have stopped meeting with their lawyers. They are understandably frustrated. Lawyers appeared with promises of justice. We are taught to believe in the law, and trust that the system, no matter how broken, will generally get things right. For many lawyers, it can be difficult to believe the utter disregard for the Constitution that we have seen displayed by our president and so many members of our military, including other lawyers. When I first started visiting Guantánamo, I thought that if only other people could see what I had seen, they would care. I eventually came to realize that many Americans simply do not care if the detainees are tortured or mistreated. Even educated people, even elected officials, even federal judges, simply do not care about the men held at Guantánamo. There are many explanations for this but the outcome is still the same.

It is challenging, then, to explain to a detainee why he should trust you. Every minor gain in court is quickly overshadowed by a countermove by the administration, or by a different court. Challenging to demonstrate your trustworthiness, when anything you might promise—a date for

the next visit, a news article related to the case, a certain kind of chocolate—might be obstructed by forces beyond your control. Even very little things can become of magnified importance in a way that I am sure is natural for someone in a closely-controlled environment. Our client likes cheesecake. The store at the base used to carry cheesecake. Lately, cheesecake has been out of stock. So we show up visit after visit with approximations. Sometimes it's coffee cake, sometimes it's chocolate cake; recently, our paralegal baked cookies. We take extra steps to try to gain the client's trust. I wear long, loose clothing and cover my head. At first I found it a bit awkward. I was constantly adjusting my hair, worried that if even a stray strand emerged I would lose any trust I had gained. But I have learned that most of the detainees recognize that I do not ordinarily dress that way and simply appreciate the gesture of respect it signals. After a while, the scarf becomes just another item to pack along with sunscreen.

Guantánamo is a land of contradictions. It is a prison and a military base, a tropical island with beautiful views and a strip mall. The new ice cream shop has wireless internet but it can be difficult to get a clear phone line to call home. Our office is infested with rats and cockroaches but the courtroom below has dark, shiny, wood furniture and sophisticated technology. When I first started traveling there, I was excited, but now I dread every trip. I still have trouble sleeping at night upon my return.

I often wonder when I will reach my limit, at what point will I feel that I have become a tool in the charade that pretends that detainees have access to a legal system but really just uses it as another form of oppression. Will it be after my client is convicted? After we lose an appeal? After a new administration takes over and does not close the detention facility? I don't have the answers yet, so I continue to fight. In the meantime, I drape my scarf over my head and settle down for more chocolate cake.

Andrea Prasow: The Other Side of the Island

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