

REMES GUANTÁNAMO FLASHBACKS

Guantánamo Litigation Flashbacks

1. My involvement in the Guantánamo litigation began with a call from Neal Katyal, a young Georgetown law professor, asking for my assistance in the *Hamdan* case. Neal and I had recently become friends working on amicus briefs in the Supreme Court in the *Newdow* case, which involved an Establishment Clause challenge to “under God” in the Pledge of Allegiance. The Court disposed of that case without reaching the merits, which was fine with us. The amicus brief that Neal wrote with Professor Richard Epstein of Chicago Law School on behalf of former California Supreme Court Justice Joseph R. Grodin lit the way for the Court.

In April 2004, Neal filed a habeas action on behalf of Salim Ahmed Hamdan, a Yemeni held at Guantánamo. Salim was Osama bin Laden’s driver. The government charged Salim with conspiracy and providing material support for terrorism and intended to try him before a military commission established by the president in the aftermath of 9/11. Neal was challenging the legality of the commissions. One of Neal’s claims was that the commissions violated the Geneva Conventions. Neal asked me to prepare an amicus brief on behalf of retired generals and admirals arguing that the safety of American soldiers captured abroad depends on applying the Conventions to all individuals captured by the United States, including the men at Guantánamo. Over the summer, I prepared the brief, assisted by Covington & Burling associates Jeffrey Wu and Tara Steele, and a bevy of summer associates.

In November 2004, District Court Judge James Robertson invalidated the commissions as violative of the Geneva Conventions. In announcing his decision from the bench, he singled out our brief for special mention, and he cited our amicus brief three times in his decision. In a land-

mark decision in June 2006, the Supreme Court held that the commissions was unauthorized by law and violated the Conventions. I provided Neal with *amicus* support throughout the litigation and coordinated the principal *amici* supporting Salim in the Supreme Court.

My most joyous moment in the *Hamdan* case—apart from the court decisions in Salim’s favor—was filing a letter with the Supreme Court on the eve of oral argument in March 2006 suggesting that Justice Scalia recuse himself on the ground that he had made remarks at a conference earlier that month that appeared to call his objectivity into question. The *Washington Post* ran a prominent story on the recusal request the next morning. At oral argument, Justice Scalia was uncharacteristically subdued, if not grumpy, and his dissent did not address the merits of the case.

After the Supreme Court invalidated the commissions, the President stampeded Congress into the Military Commissions Act of 2006, which authorized new military commissions. The government tried Salim under the new regime in 2008. A military jury acquitted Hamdan of the more serious charge of conspiracy but found him guilty of aiding terrorism. However, the jury, in practical effect, sentenced Salim to only five months in prison. In November 2008, the U.S. sent Salim home to Yemen to serve the rest of his sentence.

Ironically, as a result of being convicted for aiding terrorism, Salim left Guantánamo sooner than if the government had charged him with a crime. When I visited my clients at the prison in December 2008, they told me that the prisoners were delighted for Salim but outraged that they, who were charged with no offense, remained imprisoned, while Salim, who was convicted of aiding terrorism, was set free. One client remarked that if he had known things would turn out so well for Salim, he too would have confessed to being Osama’s driver.

2. My involvement in *Hamdan* led to my involvement in the Guantánamo habeas litigation. In June 2004, the Supreme Court held in *Rasul* that federal courts had jurisdiction to entertain habeas cases brought by Guantánamo prisoners. Clive Stafford Smith of Reprieve, a London-based human rights organization, had collected from the families of about seventy-five men at Guantánamo authorizations to file habeas cases on behalf of the men. After *Rasul* came down, the Center for Constitutional Rights in New York, or CCR, sought counsel for the men.

Marc Falkoff, a new lawyer in our New York office, was offered as clients thirteen of the men, all Yemenis. Aware of my work in *Hamdan*, Marc asked me to be the partner in charge. I agreed on the condition that I would not have to play an active role in the litigation, though I soon became deeply involved, and the case eventually changed my life. Marc and Robert Knowles, another new lawyer in our New York office, filed our habeas case on July 27, 2004, exactly one month after *Rasul*. Our case, *Abdah v. Bush*, was assigned to District Judge Henry Kennedy. The case was one of eleven cases brought soon after *Rasul* was decided. These thirteen cases, together with the two cases involved in *Rasul*, were the cases that wound up in the Supreme Court in *Boumediene* four years later.

3. One early challenge in the litigation was negotiating a protective order with the government. The order would govern our handling of classified information and “protected” information (certain unclassified information too sensitive to be made public), and establish procedures for visiting and communicating with clients. Neil Koslowe, Brent Mickum, and I negotiated for our side; Terry Henry, a reserved man with a dry wit, was the government’s principal negotiator. Terry and I established a friendly working relationship, which served us well in the litigation when the going got rough. At one point in the negotiations, I noted that handling classified in-

formation was a new thing for some of my colleagues. Terry replied, “That’s what scares the shit out of me.”

The two sides submitted to District Judge Joyce Hens Green, who was coordinating the cases, a proposed protective order that reflected points of agreement, accompanied by a report setting out three significant points of disagreement—the number of “secure facilities,” where classified information would be kept; information-sharing among habeas counsel; and public comment by petitioners’ counsel. Judge Green ruled for us on two of these points. First, she ruled that counsel in different habeas cases could share classified documents and information. Second, she ruled that we could comment publicly on information in the public domain that was classified, as long as we didn’t indicate that we knew the information was classified.

Unfortunately, Judge Green ruled against us on the third point, which would prove to have great practical consequence. With habeas counsel located throughout the country, we requested that the government provide secure facilities in several major cities. U.S. courthouses throughout the country had such facilities. Judge Green, however, provided for only one, to be located in Crystal City, Virginia. In 2008, John McCain’s national presidential campaign headquarters were in the same building, a surreal situation for many of us.

With only that secure facility available, all habeas counsel, wherever located, had to come to Washington, D.C. to review their client meeting notes and their clients’ legal mail, and to prepare briefs and other court filings containing classified information. The resulting time and expense that every trip entailed, on top of the time and expense of visiting Guantánamo, was a heavy burden for all non-Washington habeas counsel, but most of all for the solo and small-firm practitioners and public interest lawyers. And minimizing the cost by economizing had its own price.

Reprieve lawyers staying at the cut-rate Americana hotel (“Hospitality Is Our Business”) near the Secure Facility found themselves sharing their rooms with bedbugs and cockroaches, and had the bites to prove it.

4. Under the protective order, all communications by a client to his lawyer were presumed to be classified unless reviewed and cleared by a “privilege review team.” (The PRT, as we called it, was bound to keep the communications confidential.) Accordingly, we could not leave Guantánamo with our client meeting notes. Instead, the military would be responsible for transmitting our notes to the Secure Facility in a secure manner. Initially, the military’s idea of secure transmission was dropping the material in a mailbox in Florida. Early on, the military managed to use an incorrect zip code. A batch of our mail sat for weeks in a basement of the Department of Homeland Security before the mistake was discovered.

The PRT often refused to clear client meeting notes and client letters as to which, by our lights, secrecy could not reasonably be considered justified. One of my favorite examples is the PRT’s refusal to clear a map of the camps drawn for me by one of my clients. The military went to great lengths to prevent prisoners in one camp from having a sense of the layout of other camps or the location of the camps in relation to one another. Thus, when the military brought a prisoner to meet with his lawyers at Camp Echo, where lawyer-client meetings were held, the military loaded the prisoner—manacled, blindfolded, and facing toward the rear—into the back of a small pickup and drove the prisoner around the winding, hilly roads of the camp complex before arriving at Echo. We viewed this procedure as one of several means the military used to discourage prisoners from meeting with their lawyers.

At the time of one of my visits to the base in 2005, the prisoners were engaged in a hunger strike to protest their conditions and open-ended detention. My client began to describe the hunger strike to me, but I soon became confused about where particular events were happening. To clarify his account, my client drew me a detailed map of the prison complex showing the locations of the camps and identifying by name the cellblocks in each camp. This information was common knowledge among the prisoners. But when the map arrived with my notes at the Secure Facility, the PRT refused to clear it. I requested a meeting with the head of the PRT—a veteran spook who called himself “Kent Bond”—to complain about the PRT’s refusal to clear that and other information in our notes. In our meeting, I asked “Kent” why, if the prisoners already knew the information in the map, from whom was he trying to keep the map secret. “Kent” speculated that the map might help confederates of the prisoners on the outside attempt a rescue. I pointed out that anyone attempting to land on the base without authorization by air would be blown out of the sky, or if by sea, out of the water. “Rules are rules,” was his reply.

In fairness to “Kent,” an experience of one of our interpreters proved that fears of unnoticed incursions onto the base are not entirely fanciful. One day, our interpreter was walking up the road to our living quarters. From a distance, he saw two men, further up the road, walking in his direction. The men turned out to be Cubans who were fleeing Cuba. Furtively following the island’s coastline, sometimes by boat, sometimes on foot, the men managed to cross onto the base undetected. Spotting our interpreter, the men raised their arms and surrendered to him.

5. The next milestone for me in the litigation was the hearing before Judge Green on the government’s motion to dismiss the habeas cases. It was in this hearing that a government lawyer, Brian Boyle, famously told Judge Green that the president, if he so chose, could hold indefin-

itely as an enemy combatant “a little old lady in Switzerland [who] gave money to a charity for an Afghan orphanage, and the money was passed to al Qaeda.”

As the moving party, the government would go first, arguing in support of its motion. We would then argue against the government’s motion. Four of us would argue. Going first would be Tom Wilner of Shearman & Sterling and Joe Margulies, a veteran civil rights lawyer. I would then address aspects of the government’s arguments that I thought warranted further attention. Barbara Olshansky, deputy legal director of CCR, arguing points of international law, would bring up the rear. Because my argument, like a rebuttal argument, would depend on the course of Tom and Joe’s presentations, I couldn’t anticipate what I’d say.

In due course, the hearing began. The government presented its argument, and we presented ours. When my turn to argue came, I pressed the point that Guantánamo is United States territory for all practical purposes, a point made by Justice Kennedy in his concurring opinion in *Rasul*. Indicating agreement, Judge Green asked me whether it was true that there was a McDonald’s at the base. I told her that was our understanding. On reply, Brian retorted, sarcastically, that “last time I checked there was [also] a McDonald’s in Paris.” But Judge Green turned the joke back on Brian, asking whether he really meant to compare Guantánamo to Paris. Boyle ducked, said a few more words, and sat down.

Some time later, David Rivkin, a lawyer in private practice who championed the Bush Administration’s Guantánamo policies, similarly made light of the situation. Appearing with me on the Diane Rhem show right after three prisoners committed suicide in June 2006, David insisted that the prisoners at Guantánamo enjoyed greater rights than any other enemies ever held by the U.S. in wartime. To illustrate his point, he invoked “Hogan’s Heroes,” a 1960s situation comedy

about Allied prisoners held in a fictitious German POW camp in World War II. “Look at Hogan’s Heroes,” he said. “Did you notice any lawyers walking around in that prisoner of war camp and filing habeas petitions? No, that’s never been the case.”

Guantánamo Travel Flashbacks

6. Between December 2004 and December 2008, I visited Guantánamo at least fifteen times. Because we had so many clients, each trip would take a week if another lawyer from the firm went with me, and two weeks if I went by myself. Our visits lengthened even as the number of clients we saw on each trip dwindled over time. Our visits lengthened because the military reduced the time available for client meetings. In the early days, in theory at least, a lawyer could meet with clients from 8:00 a.m. to 6:00 p.m. seven days a week. Over time, the military effectively reduced the daily meeting time to 9:30-11:30 a.m. and 1:30-4:30 p.m.¹ As a result, a lawyer had to spend more time at the base to give each client the same time as before.

I would fly from Washington, D.C. to Fort Lauderdale on a regular commercial airline, and from there to Guantánamo on a cramped, rickety puddle-jumper operated by Lynx Air or Air Sunshine, tiny carriers serving the Caribbean from Fort Lauderdale. Our fellow passengers on these short-haul flights were typically soldiers, contractors, relatives of those at the base, and sometimes ICRC staff. The bored pilots did not pretend to be flying the Friendly Skies. The flights had to avoid Cuban airspace, so the trip each way took at least three hours. With no bathrooms on board, everyone made sure to use the facilities at the terminal before boarding. I and other veterans of the flights wore noise-cancelling headphones to soften the drone of the engines and propellers. All in all, from door-to-door, traveling to Guantánamo took the better part of a day, and the return trip sometimes also required an overnight stay at an airport hotel. Round-trip airfare to Guantánamo

was at least \$800. Lynx and Air Sunshine charged \$500 for a round-trip ticket; a Washington-Fort Lauderdale round-trip ticket cost about \$300. In fairness, though, purchases on the island are tax-free.

The military also operated flights to Guantánamo. These were non-stop flights out of BWI and nearby Andrews Air Force Base. However, until *Boumediene*, which set the habeas cases in motion, the military would not allow us to travel on these flights. I had read that the flights the military used to ferry politicians to and from Guantánamo for dog-and-pony shows took only three hours each way, and I am sure that the military denied us access to these flights as yet one more way of making our Guantánamo visits a hassle. But after *Boumediene*, the military finally allowed us to take military flights for \$700 round-trip.

Habeas lawyers who took the military flights told me that the flights were unreliable and unpredictable, often leaving earlier or later than scheduled. And, unless one got lucky, the aircraft used for habeas lawyers were not the sleek corporate jets used to sweeten the Guantánamo experience for politicians but heavy-duty transport planes. One transport plane the military used was the massive four-engine C-130 Hercules, a mainstay of military transport and other heavy-duty missions worldwide for more than fifty years. My colleagues told me that the ride on this behemoth was cold, bumpy, and deafening. Passengers sat strapped into wall-style troop seats, and the ride took more than five hours each way. I stuck with commercial travel.

7. Two women ran the show for Lynx Air at the base – Marilyn and Laurie. Marilyn, who retired in late 2008, was my favorite. I enjoyed her good humor and easy laugh, and I particularly admired her year-round deep tan, which her blonde hair and gold jewelry accentuated. She and I are joined forever by the near-calamity of my disappearing passport. At the end of a spring

visit to the base, I showed up at the Lynx airport check-in counter, ready to leave. Behind me stood a long line of unhappy fellow passengers. Processing me for boarding, Marilyn asked me for my passport. I had brought my passport with me to Guantánamo but now couldn't find it – either on my person or in my bags. Marilyn refused to check me in. She reminded me that the government had recently begun requiring Americans arriving by air from Canada, Mexico, and the Caribbean to have passports, and she told me that Lynx could be fined \$25,000 if she allowed me to board without mine. Frantic, I turned my pockets inside-out and ransacked my bags, and I had the CBQ staff search my room. No luck. In spite of some serious groveling on my part, however, Marilyn not be budged. So I stepped aside from the counter waiting anxiously as she processed the other passengers. When she finished with them, she took pity on me and called the immigration office in the Department of Homeland Security. Miraculously, she reached the right official in time and persuaded him to waive me in. A couple of weeks after I got home, I found my passport. I had hidden it in an inconspicuous compartment of my Bose headphone case. I never hid my passport again when I visited Guantánamo.

8. I had never visited a military base and didn't know what to expect. At the end of a long day of travel, we landed at the airstrip after dark. The airstrip consists of a runway and a hangar for helicopters and small planes. Connected to the hangar on opposite sides are two small compounds. One houses a check-in counter and holding area for Lynx and Air Sunshine passengers. The fluorescent-lit room has beige-painted cinderblock walls and vinyl flooring. The only comforts are a few scuffed plastic chairs in the main room, and a couple of junk-food and soda vending machines in a small adjoining room. The other compound is a bit spiffier but still spartan. It houses offices and a check-in and waiting area for passengers on government flights. Its com-

forts are a few desktops in its hallway offering slow high-speed Internet and a viewing area for watching loud, violent action movies on a big flat-screen monitor.

I recall stepping off the plane into oppressively warm, humid air. Floodlights glared through the haze. A short distance away, two young soldiers faced us cradling what appeared to be automatic weapons. The unhappy sentries must have been posted there as theatre – to impress us – because they served no other discernible function. After stepping off the plane, we and the other passengers collected our bags, which had been unloaded onto the tarmac. Doing our best to fend off the mosquitoes, we all shuffled into a tented area enclosed by a chain-link fence. There, other unhappy young soldiers, wearing surgical gloves, apologetically searched our bags. I cannot recall whether a military escort was on hand to meet us that evening. We soon boarded the school bus that serves as the public transportation on the base. Leaving the floodlights and soldiers behind, at least temporarily, we rode through the darkness to our quarters about a mile up the road from the airstrip.

Guantánamo Prison Flashbacks

8. Prisoners generally met with their lawyers at Camp Echo, one of several camps comprising Camp Delta. I cannot improve on the vivid descriptions of Camp Echo and our visit routines provided by Nicole Moen of Fredrikson & Byron who represented an Algerian, and Tom Wilner of Shearman & Sterling, who represented a group of Kuwaitis and brought one of the first Guantánamo habeas cases.² Suffice it to say that Camp Echo is square-shaped and bounded by a succession of chain-link fences—outer, middle, and inner—that form the perimeter of the camp. Each fence is crowned with concertina wire, and a green tarp covers the wall of each fence to prevent sight of the other side. Each fence has a gate that is kept padlocked at all times and cannot be

unlocked unless there is a guard standing on each side of the gate. No two gates can be unlocked at the same time. Armed soldiers look down from wooden guard towers. The camp is sandy. There is no vegetation, and no life, save heavy-lidded iguanas and doomed, errant crabs. During the day, the air is humid, and temperatures are usually in the nineties. In the broiling heat and glaring sun, the camp sometimes shimmered like a desert mirage.

Once the outer gate was unlocked, we entered the camp, passing into an area that contained a low wooden structure with men's and women's toilets, and several guards whose job it was to search us. At the time of this writing, when we entered and left the camp, the guards would search our papers page-by-page for contraband or forbidden written material. They would also wand us front and back. In addition, on our way in to see our clients, we had to give the guards a detailed list of the food and beverages we brought with us as breakfast or lunch for our clients. When a dozen or more lawyers and interpreters had come to see clients, these searches could take up to forty minutes, a large portion of our meeting time. From this outer area one passed into a narrow buffer area a few yards long separating the middle and inner fences. Escorted by one or two guards, we crossed this buffer area to the inner gate, and through that gate, into to the camp proper.

The camp proper consisted of a square-shaped courtyard with a row of attached wooden cabins on facing sides. (There was also a row of cabins on a third side, facing the entrance to the camp, which for a brief time were available for client meetings but later housed hunger strikers and snitches.) Inside each cabin was a narrow one-person cage, with a small adjoining area for meetings with lawyers. In the center of the courtyard stood an enclosed air-conditioned guard post. To relieve their boredom, the guards raked pretend sidewalks in the sand. These sand sidewalks (later replaced with actual concrete sidewalks) were bounded by pretend curbs—small humps of sand.

One sidewalk ran along the edges of the courtyard, adjacent to the cabins. The other two sidewalks traversed the courtyard diagonally. The guards took their pretend sidewalks very seriously. Once, before I understood the gravity of the matter, I accidentally stepped off a pretend sidewalk and received a reprimand from a guard.

One day, several of us, led by a young guard, were crossing the courtyard on one of the diagonal sidewalks. We were a motley contingent—men and women of all ages and body types, in comfortable, casual clothes, clutching bags. All we lacked were fanny packs and cameras. As we crossed the courtyard, our young escort turned and looked at us. Taking in the sight of our straggly group, the concertina-crowned fences, the looming guard towers, and the rows of wooden cabins glimmering in the hot sun, he said simply, and innocently, “This looks like a guided tour of a concentration camp.” He turned back around, and we continued on our way.

9. From January to November 2005—the first year of habeas visits after *Rasul* came down—the military lawyer at Guantánamo who was responsible for habeas counsel visits was Lieutenant Commander Tony F. De Alicante. De Alicante, who was about forty, was the senior prosecutor in the Pacific Region for the Navy in Pearl Harbor, Hawaii at the time of his deployment to Guantánamo.³ De Alicante seemed to view us as aiding the enemy. He seemed to believe that, despite *Rasul*, our involvement at Guantánamo was illegitimate, and, what’s more, inimical to the military’s anti-terrorism mission. A chief petty officer who was one of our escorts under De Alicante’s command said that federal court decisions in our clients’ favor were considered “advisory” on the base.

De Alicante clashed with me and at least one other lawyer, Julia Tarver Mason of Paul, Weiss, Rifkind, Wharton & Garrison, during his tenure. Our clash is a play in three acts. In Act

One, De Alicante and I get off on the wrong foot. The scene is Echo 7, the “model cell” in Camp Echo where lawyers and interpreters waited to meet with their clients. As I recall, about a dozen lawyers and interpreters, and two or three soldiers, were crowded into the room, shooting the breeze while waiting for our day to begin. Suddenly, in burst a bantam in uniform. I’d never seen him before. Skipping the pleasantries, he issued a series of commands to govern our activities. When he finished, there was silence. Then I said, “Who *are* you?” I genuinely meant the question, but it negated the message of authority he was trying to convey. My question signaled that we did not consider ourselves to be under his command, and the lieutenant commander did not like that. He was not only used to being in authority but in exercising absolute control.

In Act Two, De Alicante and I nearly come to blows. In our early visits to the camp, the military treated our schedules with contempt. This contempt took passive-aggressive forms. For example, the military would bring a prisoner to Camp Echo a day or more before a meeting with his lawyer, and leave the prisoner in the Camp a day or more after the meeting. During this time, the prisoner would be left alone in a cell that offered no contact with other prisoners. The military thus made the prisoner accept the solitary confinement to see his lawyer.

Another example of the military’s contempt for our schedules was its mix-ups in arranging our meetings. Lawyers would sometimes arrive at Camp Echo to meet with their clients, only to discover that their clients had not been brought to Camp Echo to meet them. Or clients due in the afternoon were brought in the morning, or clients due in the morning were brought in the afternoon. It made us crazy. In this scene, I arrive at Camp Echo, only to discover that Client A, with whom I had met at the camp the day before and was supposed to meet with the following morning, had been returned to his cell; and that Client B, with whom I was also supposed to meet that day,

had not been brought to the camp. Annoyed, I asked the guards to put me on the phone with De Alicante. When De Alicante took the phone, I voiced frustration that Client A had been returned to his cell and Client B was missing. Client B was not “missing,” De Alicante replied, “we know exactly where he is.” I asked De Alicante to fix the problem.

When my translator and I left our morning meeting with another of our clients, or during a bathroom break—I cannot recall which—we passed into the entry area where the bathroom shack and search table was located. There stood De Alicante, who looked cross. De Alicante approached me until we were face to face and told me never to “disrespect” him or the guards again. I responded that I wasn’t trying to disrespect anyone but was merely trying to make sure we saw our clients as scheduled. De Alicante stood his ground, and I stood my ground. The exchange became heated to a point that my interpreter thought De Alicante and I were about to come to blows. I particularly recall De Alicante nearly poking my chest with his finger as he emphasized that “You have your mission, and we have our mission.” When De Alicante and I finally realized we had reached a stalemate, we shook hands in a sportsmanlike way and agreed to a truce of sorts. Before parting, however, De Alicante leaned over to me and told me, in a confidential manner, “Your clients would slit your throat in a second if they had a chance.”

De Alicante clearly believed that our respective missions were at cross-purposes: our mission as habeas counsel was to shore up—and eventually free—our clients; his mission was to win the war on terror, which he believed required breaking our clients down. De Alicante clearly believed that his mission as paramount and to be achieved at any cost. And as we will see in Act Three, De Alicante was apparently willing to subordinate his ethical responsibilities as a lawyer to his military objectives as a soldier.

Act Three begins at the ferry landing on the Windward Side of the Bay. The prison and most social life—movie houses, marinas, shopping, athletic facilities, and restaurants—are located on the Windward Side. From the landing, we would take the ferry to the Leeward Side of the Bay, where we stayed. The Leeward side was desolate. It was home to the airstrip, housing for some soldiers and the third-world workers on the base, and our living quarters. The ride was breezy and took about twenty-five minutes, affording breathtaking views of open sky, open sea, and distant mountains in the fading light. Occasionally, we'd see a manatee. As we neared the Leeward landing, the ferry would slow as we passed a wildlife habitat. We'd watch pelicans, on spotting a fish, drop abruptly from the air, splash into the water, and catch the prey.

We were required to have an escort and wear our I.D. badges at all times when on the Windward Side. These were strict requirements. At the end of a day of client meetings, our escort would drive us, wearing our I.D. badges, to the Naval Exchange, or NEX, where we would shop for our dinner; our escort would then drive us to the ferry landing, where he would collect our I.D. badges and leave us to board the ferry. The ferry landing was a five-to-ten minute ride from the NEX, passing hilltop structures where military commission hearings were held and a large electric power-generating facility.

One Saturday, our escort drove us from the NEX to the ferry landing to catch the 2:30 p.m. ferry. This escort was a loud, obnoxious chief petty officer in his late fifties who, while pretending good humor, would never let you forget that he was the boss; he seemed to be the boy who grew into a bully because he was bullied as a boy. The ferry had not yet arrived, but it was almost 2:30 p.m., so our escort collected our I.D. badges and drove off. We soon realized, however, that the 2:30 p.m. ferry did not run on Saturdays. We therefore had an hour to kill. So we hopped on the

next bus and returned to the NEX to have sandwiches. When finished, we caught a bus back. Obviously, though, when we went to the NEX, we did not have an escort and were not wearing I.D. badges. As chance would have it, one of the other Chief Petty Officers who served as a habeas escort noticed us on our way back to the ferry landing. She promptly reported the infractions.

I'm not sure what happened next, but apparently all hell broke loose when De Alicante learned of these breaches. Our escort, who had told us he would be signing on for a new tour of duty at the base, had left by the time I made my next visit several weeks later, and De Alicante came close to banning my interpreter from the base, on the theory that my interpreter, who had been to the base many times, should have known better. But De Alicante reserved his most stinging punishment for me.

At the end of each day of client meetings, we would seal our notes in a flat, self-addressed envelope. We would then affix three quarter-sized adhesive "secret" stamps across the edge of the envelope's sealed flap, so that one could not open the envelope without breaking the seals. We then handed the envelope to our escort, who would place the envelope in a satchel made of heavy green zippered cloth and padlock the zipper. In due course, one of the escorts or other staff would take the notes to the base's mail facility.

A week or two after I returned to Washington, D.C. from the trip featured in Acts One and Two, I received an anxious call from one of the Court Security Officers. She informed me that the envelope in which I had placed my meeting notes had arrived with the seals broken. One of my colleagues confirmed that the envelope flap was open as well. I immediately requested an investigation. The military responded with an affidavit swearing that as far as they knew, only two seals had been broken, and they had been broken while the envelope was being jostled with other mail

on the way to the base's mail facility. Call me paranoid, but I didn't believe it. I could think of no other explanation except that De Alicante had decided to get back at me for my insubordinate behavior and at the same time demonstrate that I could have no expectation that my communications with my clients would remain confidential.

10. One of my saddest clients, M., was an older man from Taiz, perhaps in his sixties or seventies. Poor, unemployed, without prospects, and without family except for an aging sister, who cried whenever we visited her, M. had gone to Afghanistan to help Islam. Once there, he was pressed into military service by the Taliban. While in training, M. broke a leg and was taken to a hospital. The U.S. seized and imprisoned M. because it suspected that the hospital director was associated with al Qaeda. He had suffered horribly in Bagram before being taken to Guantánamo; he showed me scars on his feet and legs that he said were from injuries he suffered when soldiers at Bagram dragged him over razor wire into a pen. Now, five years later, his health and spirit broken, M. sat despondently with us, looking down at the cell floor. He clearly had no interest in discussing his case. At last, M. looked up at me and asked, softly and simply, "When I return to Yemen, how long will I be in jail there?"

11. In the fall of 2008, at the request of Y, one of my original clients, I took on a new client, H., a young man from Aden, which is a bustling port city in the south of Yemen. In our first meeting, I told H. of the anguish that I felt for him and my other clients. I acknowledged the injustice of his situation and the brutality of his treatment. In short, I sought to demonstrate my empathy. When I finished, H. calmly said to me, "You're an observer."

* * *

12. When Sarah, our younger daughter, was a sophomore at Trinity College, my wife, Naomi, and I flew up to Hartford to visit her. It was a sparkling autumn afternoon. The leaves

were turning. Naomi and I walked with Sarah around the campus, admiring its lush lawns, noble elms, and magnificent Collegiate Gothic architecture. We then went to see Sarah's dorm room. Her room was one of four singles organized around a small common area. Amidst the flotsam and jetsam in the common area was a futon facing a television set. On the futon lay one of Sarah's roommates with her boyfriend. As I peered into Sarah's tiny room, I exclaimed that it was smaller than a prisoner's cell at Guantánamo. From the door of her room, I overheard the boyfriend say to Sarah's roommate, "Yeah, right. Like he's been to Guantánamo."

¹ Though scheduled from 9:00 to 11:30 a.m., our morning meetings would typically begin at 9:30 a.m.; and, though scheduled from 1:00 to 4:30 p.m. our afternoon meetings would typically begin at 1:30 p.m. The meetings started late mainly because of the time it took to search the lawyers and interpreters, and to obtain identification badges for arriving lawyers and interpreters.

² Scott Russell, "From Downtown to Guantánamo," Apr. 7, 2005, *available at* <http://www.cageprisoners.com/articles.php?id=8154> (last visited Jan. 1, 2009); Thomas Wilner, "Guantanamo: American Gulag," L.A. Times, Feb. 26, 2006, *available at* http://uniset.ca/terr/news/lat_wilner_guantanamo.html (last visited Jan. 1, 2009).

³ *Atkison News*, April 2005, *available at* <http://www.willamette.edu/agsm/email/atkinsonews/2005/april/> (last visited Jan. 2, 2009).