

“Leaving Guantánamo”

By Sabin Willett

A sullen rain thrums the taxi roof. The car labors along a dirt road stitched with gravel and mined with stupendous potholes. In the wet the holes have become pools—ponds, some of them—and our driver creeps around them the way a teen in the family Ford negotiates his first driveway. Beside the road, earth-movers loom from the fog, alongside heaps of earth and rubble and exploded garbage bags. The rain grows fiercer, rattling the roof. Outside, on a donkey cart, a boy hunches against the storm. The rain seemed to bounce off him, and then I realize it isn't rain at all.

The woman with whom I've shared the last cab at the airport shrugs. “It's normal,” she says.

I had imagined every sort of ending for Guantánamo except a hailstorm.

About thirty-five hours before, on Friday, May 5, at four o'clock in the afternoon, the telephone rang in my Boston office. It was Bob. At the moment his call came in, I was looking at stacks of legal cases on the desk. I wondered, were his stacks as high? Had he read every case, read it again, underlined and highlighted and annotated and read it yet again? In my firm we had mapped and plotted Scalia dissents and Stevens majorities and Kennedy concurrences, but by rights, Bob ought to have been more worried. We only represented two unfortunates from Central Asia, swept up by mistake in the so-called war on terror. Bob has the most powerful client in the world.

On Monday morning, we were bound for the United States Court of Appeals for the District of Columbia. It is a great court. The Chief Justice of the United States sat there not so long ago. At 9:30, three distinguished judges would take the bench. The green light would come on. And for the next half hour they would hear about Adel and Abu Bakker, two Uighur men from Turkestan, which is controlled by Communist China. The men are refugees from communism.

“Leaving Guantánamo”

By Sabin Willett

While waiting in Pakistan for Turkish visas in late 2001, they were sold by bounty hunters to U.S. forces. For more than four years, the President refused to release them, claiming the power to hold them in prison until some other country agreed to take them off our hands.

Except—they were neither soldiers nor wrongdoers. Everyone admitted this—even the military. They were mistakes. It seems that our mistakes are for the Old Europe to remedy. So they sat in cages in Guantánamo.

But Bob had news. The Justice Department had just filed a motion to dismiss the appeal. “They’re not there any more.”

“Where are they?”

After he answered, I said, “No, Bob, where are they *really*?” And he told me again.

When the call was over, it was past ten p.m. in Europe. My secretary has an instinct for phone calls like this and was standing in the doorway, waiting for the explanation.

“Kris,” I said, “How do I get to Albania?”

I reach the Sheraton Tirana at mid-day Sunday. The hailstorm gives over again to rain and then pulls out altogether. The sun peeks out suspiciously. The hotel is another dislocation: clean, western shiny marble floors inside; outside, mown grass. Upstairs is a room, also clean, with the same minibar you’d find in Cleveland. The same Internet. The same television. In an hour, another cab arrives. He frowns at the name I give him.

“*Babrru*? Why?”

We strike off past the rusting soccer stadium, past the University, through Parliament Square, with its creaky monoliths of the Communist era and piles of cobblestones and rubble. Was that the wiring for the street lights, hanging from tree boughs? Women in high heels and tight

“Leaving Guantánamo”

By Sabin Willett

skirts walk briskly in the road, avoiding dogs and rubbish and puddles and Mercedes. We pass the Parliament building, pass Soviet-style apartments blocks now painted in pastels. Then things deteriorate. We leave the main road, and now there are great piles of rubble interspersed between shops. Children play beside a hill of rubbish in a schoolyard. A goat picks at something in the weedy verge of the road. Asphalt gives way to dirt, now thick with pedestrians, dogs, carts, scooters. No pastel is on the lowering gray walls here. Sometimes there are no walls at all. Rusting rebar stands up like corn stalks in Autumn on burned hulks of buildings.

Then we reach the bridge.

It is narrow and in spots the cement has crumbled to rebar. A ravine falls away beneath it, and the ravine is coated as far as one can see with garbage. Acres of garbage spread, hills of it—for miles. The garbage is along the banks and in the stream, which runs the color of a pale cement. The vista is of a vast, filthy shantytown clinging to the shoulders of garbage.

“Babrru,” says the cabbie. He turns and repeats the word. *I told you.*

For a while we cannot find the UN refugee center. This is not the sort of place where there are street addresses. The cabbie asks passersby, and they shrug, or point in the direction opposite to the last point. We find it in an hour or so: a small sign in English, hung outside a walled compound with barred windows and barbed wire running along the roof. “United Nations Refugee Center,” it says.

A little window in the metal gate slides open. Questions are put in English, and when that fails, halting Italian. The responses are curt, and in Albanian.

“What’s he saying?”

“He say, ‘go away,’ ” the cabbie explains.

“Leaving Guantánamo”

By Sabin Willett

But I had clients—five Uighur men, just arrived from Guantánamo! It didn’t matter. Could I visit them just for a minute? I couldn’t. Could he confirm they were there, they were safe? Go away. Could I send in a note? No. The little window in the gate slams shut. The cabbie shrugs.

Babrru—told you.

But I have a fallback strategy, the electronic kindness of a stranger received just hours before I left the United States. “Try Eri,” her email said. “He knows everyone.”

Sunday night. The Pied Piper of Albania greets the waiters in a fish restaurant. Erion Veliaj runs Mjaft! (“Enough!”), a sort of Albanian Moveon.org. He is tall, handsome as a film star, quick witted, insistently generous, charismatic, energetic, a polyglot. He is in a hurry; one almost believes his impatience can get seize the country by the ears and drag it from its chaos of rubble into the future. His organization rallies Albanian youth through the Internet and is forcing a draught of public service on the old guard of Albanian politicians. Mjaft’s website is hit by many Albanians. A lot of them vote.

Eri answers half a dozen text messages while listening to my story.

“You need a meeting with Oлдashi,” he says.

Oлдashi is the Interior Minister of Albania. Eri is twenty-six.

“Sure. Him and George Bush, too.”

“I can’t help with Bush.”

“How do I get a meeting with the Interior Minister of Albania?”

“No worries.” It is Eri’s favorite phrase. He punches a number into the phone and starts speaking in Albanian. In a few minutes he rings off.

“Leaving Guantánamo”

By Sabin Willett

“All set,” he says. “He’ll meet you.”

“That was...?”

“Of course.”

“Eri, thanks, that’s tremendous. But I have only a couple of days. Do you think maybe tomorrow, we could...”

“He’ll meet you *now*.”

“Now? Where is he going to meet me at nine o’clock on a Sunday night?”

“At his office. Let’s go. After coffee.”

On the way to the Interior Ministry Eri drives the wrong way down a one-way street. Two cops pull Eri over. Then they recognize him, exchange pleasantries, shake his hand, and wish him a good evening, smiling broadly. As we pull away, he nods at me.

“No worries.”

We are in a set from a James Bond picture: the one where M’s Soviet counterpart has his Louis XIV desk beneath a slowly turning ceiling fan: pillars, latticed windows, a minister with an inscrutable half-smile, cigarette smoke wreathing to the ceiling. Outside, men in blue uniforms (Are they police, soldiers? Is there a difference?) tote automatic weapons. It is the first of several meetings with Albanian ministers that span the next twelve hours. The result is that by early afternoon on Monday we are back in Babrru. The gate opens, and the head of the refugee center is there to welcome the attorney for the five former Guantánamo prisoners who on Friday sought political asylum in the Republic of Albania, and also to explain to him the rather delicate matter that seems to have arisen with the Chinese ambassador, which is why it would be prudent to avoid publicity.

“Leaving Guantánamo”

By Sabin Willett

I barely hear all of this, looking for the guys. The last time I saw Adel and Abu Bakker, they were wearing white GTMO pajamas, in isolation cells, and Adel was saying to me, “This last year has been the worst. It is over a year since they told us we were innocent, but we have had to stay here anyway ...” Adel has bright brown eyes, a ready smile, a handsome Caucasian face, a calm endurance. He is thoughtful, his demeanor gentle and soft-spoken. His friend Abu Bakker is more compact, his features more Asiatic and his manner sometimes intense. He speaks earnestly about what communist oppression has meant to his people; is quick to recite the mass sentencings in the square, the fire-hosing of peaceful demonstrators, the jailing of poets, the torture of his own father. (Two weeks later a journalist would ask him if he was angry with United States. “I would say the better word is disappointed,” he said. “In Turkestan, we had always admired America before.”)

Now Adel and Abu Bakker and their three buddies Ahmet, Akhdar and Ayub come out of their small flat across the courtyard, smiling broadly. No more pajamas! They wear new blue jeans, rolled up about six inches, and new sneakers. They are living behind barbed wire in a compound in the middle of a slum, in one of the poorest countries in Europe, a country where not a single human being speaks their language. They are far from home and friends in China, with little hopes of again embracing their wives, or seeing more of their children than photographs. It seems that their Odyssey has only begun.

But they are out of Guantánamo at last. And those smiles! Across the courtyard they shout the Uighur greeting -- “Yahshimusiz!”

“Albania! Al-hem dilillah!”

“Leaving Guantánamo”

By Sabin Willett

What happens *after* Guantánamo? Men are into their fifth year of imprisonment. The “detention facility” (the government prefers “detention” to “imprisonment”—it sounds less permanent) is years past any feeble intelligence value that, for appearances sake, we’d all better pretend it once had. One can almost sense the nervous question being asked by the Bush administration. A few cases have been resolved like Adel’s and Abu Bakker’s: days before a hearing, the prisoner is spirited away. Rather than let a court hear an actual case, the government hustles the prisoner out of the jurisdiction. They did this in 2002 with Mamdouh Habib, one of the few prisoners actually charged with a crime. They said he was the worst of the worst. But rather than prove it, or permit a court to hear about the torture the government had contracted for him in Egypt, the government released him on the eve of his hearing.

Since 2004 this has rarely been necessary. The Supreme Court ordered hearings in June, 2004. But disputes as to the extent of prisoner’s rights arose, and a district judge issued a stay in January, 2005 while the Court of Appeals considered the matter. It is still considering. The question has been confused by a rider Congress tacked on to a defense bill late in 2005. The rider either does, or doesn’t deprive the courts of habeas jurisdiction for Guantánamo cases, which either is, or isn’t constitutional. Mountains of briefs have been written about the proposition that we can set up an island prison beyond law but not beyond Starbuck’s and McDonald’s. These issues are catnip to law professors.

But if your leg is chained to the floor of a Guantánamo cell, if for more than four years you have lived in a six feet by eight feet cage and been permitted only twice a week to stand outdoors in a gravel yard for fifteen minutes at a time, if you have been living that way because a Northern Alliance captain sold you for a \$5,000 bounty, if you are simply an Afghan chicken farmer, or a Yemeni aid worker of a Saudi policeman or an Algerian doctor, the niceties of American appellate

“Leaving Guantánamo”

By Sabin Willett

litigation are not very interesting. Long ago you sensibly concluded that American justice is a self-delusion which for some peculiar reason known only to themselves Americans need to maintain. The man chained to the floor has never been charged with a crime nor had a hearing before any court. To him, boasts of commitment to ideals like freedom and due process and the rule of law are confessions of the insane. Some of these men have been seeking out of this madness, in the only way left to them. Through every means available they have been trying to take their own lives.

When all is said and done, perhaps a dozen or two jihadists will be charged with crimes. Here and there a driver may be convicted. These are the exceptions. Hundreds of prisoners have never been and will never be charged with any crime, or any other wrongdoing. Some of them were Taliban soldiers, but the Uniform Code of Military Justice and the Geneva Conventions all make clear that enemy soldiering is no crime, and indeed no dishonor. Enemy soldiers are to be treated, under Geneva and the Army Field Manual, as our own soldiers. No coercive interrogation. No cages. No humiliation. When the shooting stops, they are to be released—immediately. That’s the law.

But Guantánamo is a place beyond law—even Congress says so now. And so long as Guantánamo remains a place beyond law, a place courts are too timid to examine, the Guantánamo Myth—that, as a general proposition the prison holds “terror suspects”—will persist. In fact, almost no one there is suspected of anything that could be called terrorism. The military’s records show that eighty-six percent were sold for bounties—sold from a roiling and impenetrable tribal culture where money is scarce and petty grudges are plentiful. To judge by the military’s accusations, hundreds of prisoners were simply soldiers: not terrorists or plotters or bombers, but dirt-poor farmers conscripted as privates in the militia that controlled Afghanistan. Hundreds more

“Leaving Guantánamo”

By Sabin Willett

weren't even that. They weren't seized on battlefields. No one says they took up arms against America, or planned to. Military records say they did things like stay in Taliban guesthouses (almost all lodgings in 2001 Afghanistan were Taliban guesthouses—if you traveled, that's where you stayed), or possess Kalashnikovs in their homes (almost all adult Afghan males did, and still do). These people pose no threat and they offer no intelligence value. There is no reason to keep them at Guantánamo, except the embarrassment of releasing them, and thereby disclosing, at least to the press, who they really are.

Unwinding Guantánamo, like unwinding Iraq, is a problem. After the most penetrating voice in the world has for four years branded them as terrorists, who wants the prisoners? We don't want them. State's quiet blandishments to our allies (whoever they still may be) that *they* should want them (“It turns out these fellows are not so harmful after all! Trust us!”) are greeted with a diplomatic half-smile. So nobody wants them.

In Albania, Eri was a traffic cop for the local press. I sat in his office giving back-to-back interviews. One exchange was always the same:

Q: Why is America dumping its terrorists on a struggling country like Albania?

A: They're not terrorists. The military concluded they weren't.

Q: Then why didn't America take them?

One night I asked a fellow at the U.S. Embassy, “What *is* the answer to that last question?” He didn't know either.

By Monday afternoon, things have become tense. The Chinese are demanding that the five “terrorists” be extradited to China. (In China, “terrorism” is a one-size-fits-all word. Writing poems is “spiritual terrorism,” for example). The Albanians issue vague statements. They will

“Leaving Guantánamo”

By Sabin Willett

consider the asylum applications, and the Chinese charges, in due course, and in accordance with law, and so on. Behind the scenes the U.S. embassy is administering heavy doses of restorative. Journalists are clambering onto the roof of the UN center, trying to get photographs.

But I am determined that the men should walk in the open air. I ask the center director to drive us back to town. (The embassy is particularly concerned that the U.S. lawyer not return to advise the Court that the men are just in a new prison, and so this request, to the great consternation of the director, is granted). The van bursts like a thoroughbred from the center's gates and leads the local press a merry chase to town, shaking them briefly and reaching a restaurant near a park, while the Uighurs simply look alarmed, staring out the windows at the rubble careening by. For the first time in five years they sit down in a restaurant, but no one is hungry. We walk in the park. Surely freedom will feel good. But the Uighurs by this point are terrified that they might be snatched by Chinese agents. The park is full of trash. A little gypsy boy of about six tugs on their sleeves, asking for money. When we return, there is a report that an Albanian MP had sided with the Chinese. “This will all blow over,” says one of the Albanian officials. Eri seems to agree. “No worries,” he said. “Give it time.”

Maybe. Or maybe not. Who can say what will happen in Albania? Now it is an American client, whose participation as one of the “Coalition of the Willing” in Iraq secures desperately needed foreign aid. But not so long ago it was a Chinese client. And it remains the case that there is no one in the country who can even translate into Uighur the asylum applications.

The Third Geneva Convention requires that an enemy soldier be released after the cessation of hostilities, and the Fourth says that when a person is determined to be a civilian, he must be released with the same dispatch. The word choice was intentional. Release of prisoners is not to wait for armistices, or treaties, or the other niceties of lawyers and diplomats. When the

“Leaving Guantánamo”

By Sabin Willett

shooting between armies stops, even if crime and chaos and insurgency remain, prisoners of war are to be released. “War,” of course, means conflict between nations – such as the war Congress authorized against Afghanistan in 2001 and completed in 2002, not public relations “wars” against common nouns that no Congress ever authorized and by definition could never reach an end.

True, release is more easily said than done. In 1943, when the Badoglio government fell, the Italian peninsula remained under control of the Nazis. It simply was unfeasible to take Italian POWs from Camp McKay in South Boston, put them on troop ships, and send them to Salerno while war raged on in Europe. But the law is the law. So even though the Italian POWs had fired shots in anger against American soldiers, we did the next best thing. We billeted the Italians in barracks. They were given jobs, days out. They were welcomed in churches in Boston’s North End. They were taken to lunch. There were parades and concerts and games of bocci, and not a few proposals of marriage. It was, under all the circumstances, the honorable thing to do. Were we simply a bigger people then?

What happens after Guantánamo? For the U.S., it is a matter of staying the course. The government will delay by writing briefs and taking appeals. It will avoid a trifling number of actual hearings by broadcasting a trifling number of prisoners to client states like Albania. And it will wait. As with Iraq, the answer is, hunker down until 2008, when it will become someone else’s problem.

For the Uighurs, no one knows what lies after Guantánamo. At this writing, they remain stranded in the Babrru center, their future in doubt. Adel spoke by telephone the other day to his wife, and to his small son. After four years in Guantánamo, that blessing was indescribable. The practical reality is harder. They are ten thousand miles away. In Albania he has no language, no job, no friend, and a guy from Macedonia in the next room who’s been there three years.

“Leaving Guantánamo”

By Sabin Willett

The notion that a resettlement in Albania made any practical sense was as absurd to the Albanians as it was to anyone following the case. The U.S. has a Uighur expatriate population (Uighurs have often received political asylum and are a favorite of our State Department) in which resettlement would have worked. Albania doesn't. It was humiliating to the Albanians to see how easily their emerging nation could be exploited by the U.S. The Albanian journalists quickly cut through all the legal and political chaff. To them, it was simply shameful.

Still, your country is like your family: you don't like to hear it criticized outside the home. Which is why, when the local press asked, “Why don't you Americans act honorably?” I so very much wanted to contradict them.