

MY WORST MOMENT AS A LAWYER

By Sabin Willett

Remarks delivered December 5, 2006 at Newburyport, MA Amnesty International Meeting

My worst moment as a lawyer took place on August 30, 2006, at the stroke of noon, just as I was leaving Echo One, an interrogation cell at Guantánamo Bay.

I will come to the facts by and by, but first, a hypothetical. It is a favorite of Professor Alan Dershowitz of the Harvard Law School: the ticking time bomb scenario. I call it “Agent Jack Bauer’s Hypothetical.” Here’s how it goes:

1. We know a bomb is somewhere near Times Square.
2. We know it is a weapon of mass destruction.
3. We know it’s... ticking.

The Problem is, we don’t know *where* the bomb is.

You may ask, how do we know all this, and not know where the bomb is? Never mind, says Agent Jack Bauer. Wait, there’s more:

1. We have in our possession, Ahmed.
2. He knows where the bomb is.
3. We know that he knows where the bomb is.

Such a lot of things we know! How did we acquire all this intimate knowledge, and remain ignorant of the key thing? Don’t ask questions, says Agent Alan Dershowitz.

Here’s the delicious thing about this hypothetical. It *still* isn’t done—it’s going to get even stupider. The question is whether we might torture Ahmed, so as to save millions of New Yorkers. Ahmed—by definition a psychotic—will tell us where the bomb is, if only we could torture him, and do so before the bomb goes off! Fantastic! Ahmed won’t lie to us! Won’t find a way to misdirect us for a few minutes. Won’t tell us things he thinks we want to hear.

How is it that profoundly brilliant people, like Professor Alan Dershowitz, talk earnestly about objectively stupid hypotheticals like this—hypotheticals with no tether on reality? I’ve been to Guantánamo Bay six times, I’ve met twelve men there, I’ve read hundreds of pages of military records, I have read evidence of the most systematic and sordid torture, and I have never read, anywhere, a single allegation about a bomb, ticking or otherwise.

Fear and war do funny things to people. Even intelligent people.

Up on Capitol Hill last summer, they were watching Agent Jack Bauer, and reading Agent Alan Dershowitz, and Professor John Yoo, late of the Justice Department and now teaching at Berkeley (a man who would defend the Marquis de Sade if he were in the executive branch). Congress had been learning from these guys, because two months ago they passed the Military Commissions Act, a law that announces our nation’s fidelity to the Geneva Conventions the old fashioned way—by redefining

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them. “Cruel, inhuman and degrading” is defined no longer by dictionary but by the President. Torture means murder, and organ failure, and rape, and so on. And, thus it doesn’t mean the things not defined: call them institutionalized cruelty. Isolation, sensory deprivation, stripping prisoners naked, threatening them with dogs, terrifying them with suffocation, humiliating them: a brand of torture called “soft” only by those who have never experienced it. All legal now.

Because our world is more influenced by Agent Jack Bauer than by facts—just open your newspaper, and ask yourself what *fact* it was that got us into the blood swamp of Iraq—let’s ask an amoral question. Does torture work?

Well, we know of an actual prisoner, subjected to precisely these “soft” torture techniques who, after a few months, confessed to his involvement in a weapons of mass destruction plot—a plan to explode germ weapons in cities and murder millions of people.

His name wasn’t Ahmed. It was Frank.

Colonel Frank Schwable, of the First Marine Air Wing, United States Marine Corps. He was shot down over North Korea in 1952. Schwable was not beaten. His North Korean captors used the techniques now blessed by Congress: isolation, humiliation, sleep deprivation.

Schwable wrote a lengthy confession, detailing America’s plans to use of germ warfare in Korea. It was all false, of course. Later, Schwable said:

“You sit there and you just think... you grasp at anything your mind can concoct... your judgment becomes warped... You get a feeling of utter, hopeless, despair.” He added: “I want to re-emphasize that I did not undergo physical torture. Perhaps I would have been more fortunate if I had, because people nowadays seem to understand that better. I didn't have that. Mine was the more subtle kind of torment. That is a little bit harder, I am afraid, for people to understand.”

On November 30, 1953, Henry Cabot Lodge, U.S. Ambassador to the UN, went on the floor of the United Nations to denounce this treatment as a “step straight back to the jungle.” This year, the Congress and the president took that step.

But that’s ancient history, Korea. No one studies history any more—they just cleaned all the books out of the University of Texas library. (They were getting in the way of the cafe tables.) 9/11 changed everything; it’s a new paradigm; who needs history! Right?

How about *recent* history? What does it say about whether torture works? Has anyone heard of Ibn Sheikh al-Libi? They sent him to Egypt, and tortured him. He, like Colonel Schwable, was able to glean what his captors wanted to hear. So he told us all about the weapons of mass destruction ... in Iraq.

Some people don’t agree that these techniques work.

Twenty former careers interrogators of the Army submitted testimony to the Congress last summer that they don’t work. Congress wasn’t listening. The general counsel of the Navy told his superiors in 2002 that these methods were illegal, they were immoral, and they don’t work. They weren’t listening either. To whom were they listening?

Agent Jack Bauer.

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Torture hypotheticals might be harmless if they were merely stupid. But it isn't that simple. When prominent intellectuals like Dershowitz and Yoo and prominent public servants like Attorney General Gonzalez become apologists for official cruelty, when they answer the question "May we torture?" with, "It depends what you mean by 'torture,'" instead of, "Never," they sew vagueness among the policy makers. "It Depends" is passed from the policymakers to the generals, and from the generals to the colonels, and from the colonels to the platoon commanders, and so on until "It Depends" falls into the lap of a twenty-year-old Marine specialist, who decides to string up by his arms in a U.S. Air Base at Bagram, Afghanistan a young Afghan called Dilawar. (The Marine knows there's a weapon of mass destruction somewhere too, and that Dilawar knows about it. Or something.)

Except, in December, 2002 it wasn't a hypothetical any more. It was a fact that Dilawar hung, Christ-like, by his wrists from a wall, and called out to God as they beat him, until, on December 10, 2002, Dilawar was dead.

Americans did this. People with uniforms on, and Velcro patches on the uniforms, and my flag on the patches.

Dilawar was a taxi driver. The only bomb he knew about was the ancient Mercedes diesel he drove for fares.

His brother came to Bagram and took the body away to the Afghan village where Dilawar's father and mother and wife and sisters and daughter tried to clean it up and bury it. They wept and asked God to make sense of this for them, but He couldn't. He couldn't, but I can.

It all comes of hypotheticals.

So let's have no more of hypotheticals this evening. Let's stick to facts. Besides, if we don't get to the facts soon, I'll never come round to my worst moment as a lawyer. And the main fact we'd like is this. After five years, whom are we holding down there at Guantánamo Bay, anyway?

The way we used to answer that question in this country was in a habeas corpus hearing. The prisoner would demand the legal basis for his imprisonment. The government would have its say, and a judge would decide. But your Congress and your president abolished that. So how do we answer the question?

One way is rhetorically.

"The people that are there are people we picked up on the battlefield, primarily in Afghanistan. They're terrorists. They're bomb makers. They're facilitators of terror. They're members of Al Qaeda and the Taliban."

– Vice President Cheney

"Among the most dangerous, best trained, vicious killers on the face of the earth."

– Donald Rumsfeld (Jan. 27, 2002)

They would "gnaw through hydraulic lines of transport planes."

– Gen. Richard Myers (Jan. 11, 2002),

"They were captured on the battlefield seeking to harm U.S. soldiers."

– Senator John Cornyn (R-TX)

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So the rhetoric is powerful and alarming. What about the numbers?

The number of Prisoners Held at Guantánamo Bay Cuba is approximately 450. Most of them are in their fifth, and some are starting their sixth year of U.S. captivity. The number of them who have ever been charged with a crime is ... ten.

The number charged with a 9/11-related crime is... Zero. The number, after five years, convicted of anything is...

Zero.

How about all those people shooting at American troops on the battlefield? The number, according to military allegations is ... five percent. And the percentage of prisoners who are never accused of ever engaging in a single act of violence is fifty-five.

Well, hold on, wait a minute. Senior officials said these people were the worst of the worst, and you're saying only five percent were taken on the battlefield? If only five percent were taken on the battlefield, where did the rest come from?

Leaflets. Let me read to you what the smiling fellow on this leaflet says.

Get wealth and power beyond your dreams...

You can receive millions of dollars helping the anti-Taliban forces catch al-Qaida and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people.

This is what we distributed to induce people to turn in prisoners. All over Northeastern Afghanistan and western Pakistan, in late 2001. How many did we distribute?

The Secretary of Defense said, "Leaflets are dropping like snowflakes in December in Chicago."

So there's a disconnect.

It seemed to me there was only one other way to find out who's at Guantánamo—and that was to go there. When I did that for the first time in 2005, I had my greatest surprise of all.

In July, 2005, we met our clients Adel and Abu Bakker. We discovered that even the Military admitted their innocence. And kept them locked up, secretly, anyway.

Adel and Abu Bakker are Uighurs, a Muslim minority group from central Asia. Their republic was overrun by Mao Tse Tung in 1949. Ever since, Uighur poets have sung of, and Uighur patriots have argued for independence. In Communist China, this is known as "terrorism."

Many Uighurs have been imprisoned. Many have fled the country. Among them were Adel and Abu Bakker. In 2001, they were in Afghanistan. When the U.S. bombed their village, the Uighurs fled to the mountains, and then crossed back into Pakistan.

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Now, at the time, the U.S. was dropping those leaflets we saw. And so the grateful Pakistani villagers cashed the leaflets in for bounties. The going rate was \$5000 per head. Adel, Abu Bakker, and sixteen other Uighurs were shipped to Kandahar in January, 2002.

For a moment, let's leave them in the U.S. Airbase at Kandahar, a dreadful place that MPs referred to as the "Abattoir," and focus on China. Ever since 9/11, China had been exploiting the so-called war on terror, by urging the U.S. that its political dissidents were terrorists—particularly the Uighurs. We knew this was bogus. For years, in its annual China report, the State Department had noted the communist oppression of the Uighurs. In December, a spokesman said, "We don't regard the Uighur groups as terrorists."

And then in August, 2002, everything changed. The administration began its massive effort, political, diplomatic, and logistic, to prepare for an invasion of Iraq. Speeches about mushroom clouds were heard. \$700 million was secretly authorized for logistical advance work. CIA teams parachuted into Northern Iraq. Deputy Secretary of State Richard Armitage raced to Beijing to line up Chinese support, or failing that, acquiescence. On August 26, he met senior Chinese officials, and told them we needed to invade Iraq—the sanctions weren't working. Would President Jiang Zemin come to a summit in Crawford?" The Chinese said, "We'll come to your summit, but remember when we said, 'We want you to consider the Uighurs terrorist?'"

Two weeks later, in September 2002, the U.S. declared that a Uighur organization was now terrorist. In Guantánamo Bay, Adel and Abu Bakker and the other guys got visits from Chinese interrogators. (Years later, in 2005, they wouldn't let me on the base for months, until the FBI had interviewed every landlord I'd ever had. But the Chinese communists got to the base in two weeks.) Six weeks after that, President Jiang Zemin came to Crawford and let it be known, as these things are known among diplomats, that if we invaded Iraq, the Chinese would stay on the sidelines.

You know the next chapter. By early 2003, the UN had turned us down; war was on; we didn't need a diplomatic consensus any more. In GTMO, the Chinese allegations had unraveled, so that by Spring, 2003, our clients were being told by military interrogators, "You're innocent, you'll be leaving soon."

But there was a problem. What country wanted to sour its commercial relations with China, in order to take a guy with two years of GTMO on his resume? Not one of twenty-five the State Department later claimed to have asked. So our clients sat in cells at Guantánamo.

A year went by. We come to 2004, when the Supreme Court ruled that habeas corpus rights exist in Guantánamo and ordered the district judges to hold hearings on the merits.

Now keep in mind, the theory by which the prisoners are held is that they are a new kind of "combatant" in a new kind of global war, and the President can hold them the way he holds the old kind of enemy soldier—so long as the war lasts. Not because the enemy has done anything wrong, but to prevent his return to the battlefield. That's the idea, and in 2004 the Supreme Court said, nevertheless, they get a hearing, in front of a judge, on the merits, to figure out whether they really are these enemy soldiers.

Except that the people we are now talking about, like most people at Guantánamo—nobody says they were ever on a battlefield, or part of an army, or a militia. Nobody accuses them of terrorism. Nobody says they committed any crime. No one says they committed a hostile act against Americans.

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Instead of submitting to judicial hearings in 2004, the Defense Department put in place a set of military panels called “combatant status review tribunals” or CSRTs. The prisoner would never see or be able to respond to any evidence. The panel itself wouldn’t see evidence of innocence unless a military officer decided to give it to them. So far as we can tell, the military never actually offered a witness, or a piece of evidence, ever, not one, when a prisoner was present. They called in the prisoners, read out some vague charges, and asked if they had anything to say for themselves. And then they excused them. After that, we don’t know what happened, because it’s all a secret, except that at the end of it, they pronounced them “enemy combatants.”

These were the CSRTs. The Justice Department said to the Courts, this is good enough. This is wartime; this is a military matter. The courts weren’t sure. Was it good enough? They asked for briefs and more briefs, and nice questions went up on appeal, and then Congress wrote a statute last year, and more briefs went up, on even nicer questions, about whether the 2005 bill applied to old cases or only new, and meanwhile, no one had a hearing on the merits, and men rotted in the cages at Guantánamo, and in June, 2006, three of them took their own lives.

Finally the Congress on September 29 abolished habeas corpus. That’s good enough for America, said 51 senators, including Lieberman of Connecticut, Lautenberg of New Jersey, Gregg and Sununu of New Hampshire, Collins of Maine. Please do remember their names.

What they abolished—Habeas Corpus—is this simple proposition: that whenever it imprisons a human being, the executive can be forced to justify that imprisonment in law, to a judge. For seven centuries it protected the least of us from the greatest, the humble subject or citizen from her king or president. Its roots run back to Runnymede itself. Today it is abolished for non-citizens. Today the President may seize people on the streets of Sarajevo or Doha or Bangkok or, if they are not U.S. Citizens of Newburyport, shackle them, hood them, send them to a desert island, and there hold them in prison, forever, without saying why to any court. We find all of this done in the name of security, under the premise that our generation faces a threat my grandfather did not: as if Americans were not killed at Pearl Harbor and Normandy; as if Americans did not fear U Boats off Long Island or Kamikazis in the Pacific; as if Washington felt no threat in 1862 by the encampment of an enemy army at Sharpsburg, Maryland, fifty-six miles away. And we find, on September 29, a pliant and docile parliament of mice doing his bidding. The Senators said they did this in the name of “freedom.” Somewhere Mr. Orwell is smiling.

Now, to come back to the Uighurs, It won’t surprise you that almost everybody who went through this CSRT process turned out to be an enemy combatant.

But when we went to the base in July 2005, we learned something extraordinary. Even the military couldn’t say with a straight face that Adel and Abu Bakker were enemy combatants. They said they *weren’t*. And held them in a secret prison anyway.

The fact that even the military admitted they weren’t ECs gave us a hook. We filed an emergency motion. The court cajoled, but the government didn’t release the men. They were bitten by their own rhetoric. They couldn’t send them back to China to face the torturers, but the whole rest of the world had heard the president loud and clear. Guantánamo prisoners—weren’t they vicious killers, terrorists? No one wanted them.

Three days before Christmas, 2005, District Judge James Robertson ruled the imprisonment was illegal. But, he said, I am powerless to remedy it, since I cannot order their release into the U.S. Case dismissed. Up we went to the Court of Appeals. An argument was scheduled for May 8, 2006,

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another Monday. On Friday, the telephone rang. It was the Department of Justice. Your clients are gone, they said. We've sent them to Albania.

So I got on an airplane and flew to Milan, and thence to Tirana, and on Monday morning, I saw the guys again. Adel, Abu Bakker, and three other Uighurs had exchanged prison and shackles for an Albanian refugee center where there are still bars on the windows and guards at the door. They do not speak the language. There is no Uighur community for support. In Europe, only Moldova is poorer. I don't know what the future holds.

But I do know that, but for *habeas*, which today is abolished, Adel and Abu Bakker would still be in a cage. And I do know that back in China, like the rest of us, they have families.

Bad as all this sounds, I *still* haven't gotten to my worst moment as a lawyer. But I'm getting close.

Back in 2005, during our first meetings with Adel and Abu Bakker, we learned another peculiar thing. They were two of eighteen Uighurs who had been together in Afghanistan, fled the bombing together to Pakistan, were sold together to the U.S. Except, the same CSRT that said Adel and Abu Bakker and three other guys were *not* enemy combatants found that other Uighur men who were with them *were*. One of these was a fellow called Abdulnasir.

So, in July 2005, we filed a petition for him.

At this point we had worn out our welcome. We were filing all these papers, saying that innocent men were in Guantánamo, and the newspapers were starting to write about it, and they weren't happy with us in the Defense Department.

So they said, you can't come back to the base to see Abdulnasir. You need his written permission first.

We said, "How can we get his written permission without coming to the base?"

They said, "That's your problem."

So we went to the magistrate judge, who said, let them to the base. The Bush administration appealed, and we went to a district judge, who said, let them to the base.

But all that took time. So that it wasn't until August 30, 2006, that we first met Abdulnasir, and I had my worst moment as a lawyer.

Imagine for a moment, if you possibly can take yourself out of this beautiful sanctuary, in this peaceful church, in this bustling city, in this pleasant commonwealth, in this prosperous republic, imagine what that meeting must have been like for Abdulnasir. He had been sold to Americans almost five years before. More than four years before, he had been sent to Guantánamo. More than three years before, American interrogators had told him, "Congratulations, you're innocent. You'll be leaving soon." More than two years before, the Supreme Court said he had a right to a hearing before a judge. He'd never had one. Eighteen months before, a CSRT pronounced him an "enemy combatant" without explaining why. A year before, he'd learned that American lawyers had filed papers on his behalf. Except, they'd never come to see him. Two months before, three Guantánamo prisoners, in despair over the endless imprisonment, had killed themselves.

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He was within a few months of beginning his sixth year in captivity. His sixth year of living in pens, in cages, without a newspaper, a letter from home, without the touch of a human hand; without a photograph; without a woman; without being able to walk in the open air and breathe free.

Most people who have endured this—most of our clients, in fact—have become depressed. In the clinical sense. Angry, paranoid, despondent. They don't know if we really are their lawyers. They don't trust us. Some won't shake our hands. Some won't see us. They mistrust all Americans.

Abdulnasir was different. He's a young man, with a big afro, and a goofy beard, and warm brown eyes, and a gentle, soft-spoken manner. He's thoughtful. He smiled at us. He shared the tea we had brought. He asked us thoughtful questions about the American legal system. We thought it was a good meeting. Right up until the end.

We only had until noon. At a quarter to twelve, he asked what the "downside" of pursuing his habeas case might be. His thinking emerged: to a man still imprisoned three years after being told by interrogators, "Congratulations, you're innocent," American justice was pure fiction. People who believed it had any impact in the real world were delusional. And Abdulnasir is not delusional. But he thought his case might be the cause of his jailers' increasing hostility and the worsening of his living conditions, specifically, the loss of one of his most valuable possessions—something that makes a real difference in his life—his bed-sheet.

It was noon. The MP arrived to order us out. Abdulnasir said something to Rushan, our translator, and her face fell, and she was silent.

"What?" I asked.

"Sir," said the MP, "Time's up."

"*What did he say?*" I pressed Rushan.

"I'll tell you outside," she said.

"*Sir,*" said the MP.

Then Abdunassir spoke sharply to Rushan, the only sharp words I ever heard from him.

"Give us a minute," I said to the MP, "for Christ's sake. It took thirteen months to get this meeting."

"Sir, you need to leave *now*, Sir," said the MP.

Outside Rushan told me. "He said he wants you to stop. Stop the habeas case. He said very firmly that I must translate that and be sure you understood it. When I didn't translate that, he knew."

The meeting was over. It would take four, five months to see Abdulnasir again. And it hit me. We were standing there in the gravel yard outside Camp Echo, in the searing Cuban heat, and it hit me. After four and half years at Guantánamo, Abdulnasir had reached a logical conclusion. Bed-sheets are useful, and real. And the American justice system isn't worth a bed-sheet.

All through the autumn, I've thought about that moment.

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My whole career—twenty-three years—is tied up in the American justice system. I need to believe in it, or else admit that my career has been devoted to a fiction; that I have been a fool. Nobody wants to believe that.

With all my books, and training, and resources, and experience, have I failed to penetrate, to grasp what this gentle young man, with no resources, and only one book, has seen—has seen with blinding clarity?

Abdulnasir is held in the name of our global war on terror, which now has been underway for longer than the Second World War lasted. The concept of wartime detention is that you may hold the prisoner so long as the war lasts.

So Abdulnasir has a question. How long will the “War on Terror” last?

One way to get a sense of how long it will last is to consider how long terror has lasted already.

We can all agree that terrorism has flourished in the Middle East since the Balfour Declaration in 1917. Palestinians engaged in terrorist acts against Jews and, latterly, Israelis. Israelis and before 1948 Zionists engaged in terrorist acts against Palestinians. Palestinians murdered fifty-nine Jews in Hebron in August, 1929, to pick one obscenity from a thousand. The Israeli Baruch Goldstein murdered twenty-nine Palestinians at prayer in February, 1994, to pick another from a thousand more.

How far do you want to go back with terrorism? To Tsarist Russia, when the “anarchists”—we’d call them terrorists today—attacked civilians and in 1881, murdered Tsar Alexander II?

To 1867, when the Fenians, precursors of the Irish Republican Army, began bombings in England?

To the Paris of the 1790s, when the Committee of Public Safety wreaked havoc on civilians—a time known as the “Terror?”

Shall we go back to the seventeenth century, when the murder of civilians, the destruction of homes and crops and livestock was the commonest form of conflict on this continent between the indigenous people and the invading Europeans, and an English general won naming rights for a nearby college by deploying bio-terrorism through distribution to natives smallpox-infested blankets. Perhaps you’ve heard of Lord Jeffrey Amherst.

Shall we go back to the late Fifteenth Century, and ask the Arawaks—if we could find one—whether terrorism was practiced by Columbus?

Or shall we go right back to 68 BC—when terrorists burned the port of Ostia, and a frightened Roman Senate passed the Lex Gabinia to give consul Gnaeus Pompeius Magnus—known to history as Pompey the Great—special war powers. Sound familiar?

By the way, this spelled doom for Rome’s brief flirtation with democracy—the triumvirate would soon follow and then the Roman Empire, which would see the end of what little Rome had known of civil liberties.

So how long has terror lasted? Since history was recorded.

You never know who might be a terrorist. Egyptian President Anwar Al-Sadat in the 1940s founded a “murder society” to attack British civilians in the canal zone. Ariel Sharon stood at the gates of

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Sabra and Shatilla. Menachem Begin in 1946 blew up the King David Hotel in Jerusalem and laid waste to the village of Deir Yassin.

Can anyone even define it? Along the border of Lebanon and Israel last July, which set of city-bound missiles were terrorist—the ones going north or the ones going south? It takes a better metaphysician than me to distinguish a block in Tyre from a block in Haifa.

We need to acknowledge, if we are thoughtful people, that terror is everywhere, and has been with us always, and involves all kind of people who later get called “men of peace.”

My point is not that we should not struggle against terrorism. It is to ask, does any person in this room think she will live to see its *end*? And thus the end of the global war against it? Do you think you’ll watch on TV as the Emperor of Terror comes aboard a Navy warship to sign the instrument of surrender? So can we at least be honest with ourselves. When we say the President has special powers during the global “War on Terror,” we are saying he has them forever. Always and forever can the President seize and lock people up at Guantánamo without judicial review. He can hold them there forever, and our judicial branch is impotent. And that, Professor Dershowitz, is not a hypothetical. That is the fact in America today.

When the history of this shameful period is written, there will be few Americans to be proud of. But let me tell you about one.

His name is Charles Swift. He is a Lieutenant Commander in the Navy, a lawyer in the Judge Advocate General’s Corps. In 2002, he was assigned to defend an Afghan called Hamdan. You may have heard of Hamdan. He was bin Laden’s driver—one of the very few Guantánamo prisoners with an actual Bin Laden contact, one of only ten—after five years of Guantánamo, only ten!—ever charged with a crime.

Four years ago, Swift was told by a superior officer, “Your job is to plead him out.”

Now Swift is heir to a great tradition of military law, and is sworn to uphold the Constitution, and also happens to be an officer and a gentleman, so he answered, “My job is to be his lawyer, Sir,” which is how an officer and a gentleman politely says, “Fuck you.”

Swift saw through the phony military commissions then on tap, and demanded a court martial—which is a fair military trial—and when they wouldn’t give him one, he took them to a federal judge and got an injunction. The government wasn’t happy about that, so they appealed. The case went all the way to the Supreme Court, and earlier this year, he won. By any objective measure, his contribution to military law, and to the tradition of the armed forces is immense. His diligence, his courage, his toughness, his determination were a great credit to our profession, and something every American could admire. As much as any of us, Lieutenant Commander Charles Swift has worked to restore honor to this country.

A few months ago, Lieutenant Commander Swift was up for promotion to Commander. He was passed over. Sometimes I speak to law students. Maybe a few law students are here tonight. If so, I want to tell them something. When you become lawyers, you will have clients, and they will have questions about what the rules are. They will press you for the answers they want to hear. Maybe your client will be a local homeowner, and maybe she will be the president. Maybe you will be assigned to represent a drunk driver, and maybe bin Laden’s driver. Maybe you will be asked to approve a business deal, and maybe a policy of torture.

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But one day—I can promise all the future lawyers this—you will be called on to take a stand. Right then, you will have a choice. Right then, it's gut check time.

Am I Charlie Swift? Or am I John Yoo?

Should I just plead him out? Or should I be his lawyer?

People can give you promotions and money, and people can withhold them. Honor you have to get for yourself. Nobody gives it to you. But nobody can take it away, either. When your day comes, as it surely will, I hope you'll remember Charlie Swift.

Lieutenant Commander—as far as I'm concerned, there's no more honorable rank in the Navy.

Thank you.

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