

GUANTÁNAMO: THE WORST THING MY COUNTRY DID DURING MY LIFETIME
(EXCEPT BOMBING NAGASAKI AND HIROSHIMA)

Stephen Yagman

It was a Saturday, either January 10 or 11, I don't remember which. Something like that great verse from the Foreigner song *Long, Long Way from Home*:

It was a Monday
A day like any other day
I left a small town
For the apple in decay

It was my destiny
It's what we needed to do
They were telling me
I'm telling you

I was vacationing at an A-frame we for years had rented on the beach on the Caribbean Island of St. Barth's, at *Les Islets de la plage*. It is the only time during the year I actually don't work and do absolutely nothing— except walk Every morning at 11:00 a.m. to pick up the *International Herald Tribune* from a local bodega.

This Saturday, I did the same thing, tucked the paper under my arm, and then walked back to the beach, where I lie all day long. It is the most peaceful place in the universe for me. The waves gently wash up to the shore of St. Jean Bay; there is no sound but the waves; and I actually hear myself breathing there. Apparent peace, true tranquility, and I had another week left to do this before returning to the law.

As I lay back down on the sand and opened the paper, I saw a horrifying photo on the front page. It was mysterious, evil, and foreboding. Hooded men were seated in horizontal rows in the back of a cargo plane. They appeared to be either strapped together or strapped to the floor. Men in military uniforms were around them. I was shocked. I hadn't yet read the photo's caption, but I was both mesmerized and frightened by the photo. I was stunned. It was chilling for me.

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I read the caption. It was us, the Americans, kidnapping alleged Taliban from Afghanistan and moving them to Guantánamo Bay, Cuba. I read the story. I was shocked. I think it was the hooding that grabbed my gut. It reminded me of medieval hangings. It's hard to describe what I felt. I was revolted, virtually nauseated. I put the paper down several times, and then again picked it up and looked at the photograph. It was ghoulish.

I thought, who could have authorized this. How can it be happening? I tried just to lie on the beach, but I kept picking up the paper. I was haunted.

I went inside and showed it to my wife, and I told her we had to return to the United States so that I could file a lawsuit to stop what I saw in the photo. She agreed.

I couldn't get a flight out of St. Bart's until the next day, Sunday. We flew to St. Martin and from there got a connecting flight to Los Angeles, through Miami.

On the leg from St. Martin to Miami, I found myself seated next to a man who mistakenly had gotten on the flight from Paris to St. Bart's, but he had intended to go to Miami. When he heard me speak English, he bluntly asked me about the photo I had seen, that had been shown all over Europe. He wanted to know what America was doing. His tone was polite but very troubled.

I told him America had done something horrible, that I was a lawyer who might be able to do something about that, and that I was on my way back from St. Bart's to Los Angeles because of that photo. He was Norwegian and was on his way to a sail boat race. He wished me success. He figuratively shook his head at my country.

Sunday evening, when I got back to L.A., I began telephoning people of principle whom I knew, including professors, clergy, and lawyers, and asked all of them if they would agree to be part

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of what became the Coalition of Clergy, Lawyers, and Professors that I lined up to be petitioners in a federal habeas corpus proceeding to address the Guantánamo situation. About twenty folks signed on.

In less than a week I had drafted the first Guantánamo action, not to seek anyone's release—I didn't know if any of the detainees had done anything wrong—but to seek federal court review of their detentions.

The action eventually was thrown out for lack of standing, *Coalition of Clergy, Lawyers & Professors v. George Walker Bush and Donald K. Rumsfeld*, 189 F.Supp. 2d 1036 (C.D. Cal. 2002), and the dismissal was affirmed by 310 F.3d 1153 (9th Cir. 2002), *cert. denied*, 123 S.Ct. 2073 (2003).

In the meantime, in January 2003, I ran into my friend Randall Hamud at the Advanced Criminal Law Seminar in Aspen. He knew of the *Coalition* case and told me he had a Libyan client whose brother was detained at Guantánamo and asked if I would be willing to take the case. I asked him how much I could pay him and his client to be able to have the case.

Belaid Gherebi had learned his brother, Salim, was detained at Guantánamo when the FBI came to the flight school at which Belaid was a flight instructor (yes, you couldn't make this up) to question Belaid about Salim, whom Belaid hadn't seen in fifteen years. Apparently, an interrogation of Salim revealed he had a brother in San Diego.

Though separated by many years in age and the many years since he had communicated with Salim, Belaid felt the familial urge to try to help his brother.

Now, I had a client with standing, and I filed what became *Gherebi v. Bush and Rumsfeld*, 262 F.Supp. 2d 1064 (C.D. Cal. 2003) (habeas relief denied, this time not on standing, but on ground habeas statute had no extraterritorial application), *rev'd* 352 F.3d 1278 (9th Cir. 2003) (holding

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American control of Guantánamo provided basis for application of habeas), *stay issued*, 124 S.Ct. 1197 (2004), *cert. granted, judgment vacated by Bush v. Gherebi*, 542 U.S. 952 (2004), *on remand, Gherebi v. Bush*, 374 F.3d 727 (2004) (reinstating opinion in 352 F.3d 1278 and transferring venue to U.S. Dist. Ct. in Washington, D.C.), 338 F.Supp. 2d 91 (D.C.D. 2004) (denying government motion to transfer venue to Eastern District of Virginia or Southern District of Florida).

It was, and remains, a hollow victory. Salim Gherebi remains at Guantánamo. My friend Erwin Chemerinsky and I did this by ourselves.

In 2004, I wrote a play about Guantánamo, and it was performed on July 14, 2004 (Bastille Day) at Beyond Baroque Foundation's Venice, California Theater. It depicts, verbatim, the transcript of the Ninth Circuit oral argument. The judge who dissented, Susan R. Graber (who got her seat on the Ninth Circuit because she roomed with Hillary Clinton at Wellesley), compared Guantánamo to a spa! Yes, a spa.

In June 2004, the Supremes (*sans* Diana Ross) held habeas corpus relief extended to detainees at Guantánamo, using the very same reasoning Judge Stephen R. Reinhardt, with Chicago-based District Judge Milton I. Shadur joining, used, but without mentioning the *Gherebi* case.

Unfortunately for me, bringing this case became part of the motivation, along with my being Idaho Special Prosecutor in the Ruby Ridge murder prosecution of an FBI sniper, for the feds to prosecute me for tax evasion. *C'est la vie*.

Still on bail, but perhaps not for much longer,

Stephen Yagman