

# ESSAY

## INSIDE GUANTANAMO

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### INTRODUCTION

The first group of prisoners arrived at the Department of Defense's detention centers in Guantanamo Bay, Cuba from Afghanistan on January 11, 2002.<sup>1</sup> Their feet were manacled and their hands were short-shackled to chains on their belts.<sup>2</sup> They wore earmuffs or noise-blocking headphones and opaque goggles or hoods.<sup>3</sup> The men were hauled off the planes like so much baggage, and taken to Camp X-Ray, an outdoor detention center where the eight-by-eight cages resembled dog kennels.<sup>4</sup> Over eighty percent of the men in Guantanamo had been picked-up by Pakistanis or Afghanis, often tribal enemies, and ransomed to the American military for between \$3000 and \$25,000.<sup>5</sup>

The horror that was Guantanamo must never be forgotten. In May 2007, I visited the Department of Defense's detention centers in Guantanamo Bay, Cuba. What I saw and experienced then no longer exists; two-thirds of the nearly 800 detainees have been released<sup>6</sup> and President Obama has promised to

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<sup>1</sup> ANDY WORTHINGTON, *THE GUANTANAMO FILES: THE STORIES OF THE 774 DETAINEES IN AMERICA'S ILLEGAL PRISON* xii (2007); CNN.com, *Shackled Detainees Arrive in Guantanamo*, Jan. 11, 2002, <http://archives.cnn.com/2002/WORLD/asiapcf/central/01/11/ret.detainee.transfer/index.html>; Katharine Q. Seelye, *First 'Unlawful Combatants' Seized in Afghanistan Arrive at U.S. Base in Cuba*, N.Y. TIMES, Jan. 12, 2002, at A7, available at <http://www.nytimes.com/2002/01/12/world/nation-challenged-prisoners-first-unlawful-combatants-seized-afghanistan-arrive.html>.

<sup>2</sup> PETER JAN HONIGSBERG, *OUR NATION UNHINGED: THE HUMAN CONSEQUENCES OF THE WAR ON TERROR* 76 (2009); see also CNN.com, *supra* note 1; Peter Jan Honigsberg, *Establishing a Truth Commission for Guantanamo*, HUFFINGTON POST, Jan. 10, 2009, [http://www.huffingtonpost.com/peter-jan-honigsberg/establishing-a-truth-comm\\_b\\_156826.html](http://www.huffingtonpost.com/peter-jan-honigsberg/establishing-a-truth-comm_b_156826.html).

<sup>3</sup> HONIGSBERG, *supra* note 2, at 76.

<sup>4</sup> HONIGSBERG, *supra* note 2, at 77; see also Seelye, *supra* note 1, at A7.

<sup>5</sup> MARK DENBEAUX & JOSHUA W. DENBEAUX, REPORT ON GUANTANAMO DETAINEES: A PROFILE OF 517 DETAINEES THROUGH ANALYSIS OF DEPARTMENT OF DEFENSE DATA 2-3 (Seton Hall Pub. Law Research Paper No. 46, 2006), available at [http://law.shu.edu/publications/guantanamoReports/guantanamo\\_report\\_final\\_2\\_08\\_06.pdf](http://law.shu.edu/publications/guantanamoReports/guantanamo_report_final_2_08_06.pdf); Associated Press, *Guantanamo Inmates Say They Were 'Sold': Warlords, Others 'Trumped Up Charges' for U.S. Cash Rewards*, MSNBC, May 31, 2005, <http://www.msnbc.msn.com/id/8049868/>.

<sup>6</sup> Associated Press, *Pentagon: Gitmo Detainees Returning to Fight*, MSNBC, Jan. 13, 2009, <http://www.msnbc.msn.com/id/28642784/>.

close the facilities by January 2010.<sup>7</sup> Consequently, this essay provides a historical account of my visit to Guantanamo when it was a fully-operational prison.<sup>8</sup>

As an outside visitor, I saw only a sanitized version of Guantanamo, a version that the military wanted me to see. The government masked the evil doings—the cruel and degrading mistreatment, the torture, the sensory and sleep deprivation, the inordinately long periods of isolation—that others have said exist behind the cell walls.<sup>9</sup> All the same, military personnel accompanied our group every moment, and I came away from the experience unnerved.

Some people have described Guantanamo as an alien planet.<sup>10</sup> Others have described the experience as Kafkaesque.<sup>11</sup> In the end, no term fittingly captures the feeling one has while visiting the island. A photographer I met while touring the base said that he could shoot one-thousand photos and return one-hundred times and still never capture this hell. Even so, this narrative of my visit, complete with my emotional exhaustion and the alarm that accompanied the four-day trip, offers a glimpse into the bizarre and discomfiting world of Guantanamo. My narrative begins with the strange application process.

#### APPLYING TO VISIT: THE BIZARRE APPLICATION PROCESS

Guantanamo is at the southern tip of Cuba, a long and narrow island. As Cuba does not permit U.S. aircrafts to fly in Cuban airspace, they must take a three-hour circuitous route around the island. Mark Denbeaux, a fellow law professor and habeas lawyer cautioned me when I told him I was applying to visit Guantanamo: “After they strap you in, they announce that the next bathroom stop is at Guantanamo. There are no bathrooms on the ten-seater propeller aircraft. And the bumpy flight is over three hours.” He was right, but applying to visit Guantanamo was even bumpier and more circuitous than the flight itself.

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<sup>7</sup> Mark Mazzetti & William Glaberson, *Obama Issues Directive to Shut Down Guantanamo*, N.Y. TIMES, Jan. 22, 2009, at A1, available at <http://www.nytimes.com/2009/01/22/us/politics/22gitmo.html>. However, in June 2009 Congress placed restrictions on transfers of detainees to other countries and on transfers for criminal prosecutions and detentions into the U.S. Larry Margasak, *Congress Passes Restrictions on Detainees*, SEATTLE TIMES, June 19, 2009, [http://seattletimes.nwsources.com/html/politics/2009358170\\_apuscongressspendingbills.html](http://seattletimes.nwsources.com/html/politics/2009358170_apuscongressspendingbills.html).

<sup>8</sup> Although the future of Guantanamo remained uncertain as of the writing of this article, all of the information contained in this essay was accurate as of August 1, 2009.

<sup>9</sup> See Adam Zagorin, *Inside the Interrogation of Detainee 063*, TIME, June 12, 2005, <http://www.time.com/time/magazine/article/0,9171,1071284,00.html>; see also INTERROGATION LOG, DETAINEE 063, Nov. 23, 2002, available at <http://www.time.com/time/2006/log/log.pdf>; Letter from T.J. Harrington, Deputy Assistant Dir., F.B.I. Counterterrorism Div., to Major Gen. Donald J. Ryder, Dep’t of the Army, Criminal Investigation Command (July 14, 2004), available at <http://www.aclu.org/projects/foiasearch/pdf/DOJFBI001914.pdf>.

<sup>10</sup> Karen Greenberg, *There are No Prisoners at Guantanamo, Which Isn’t a Prison*, THE AGE, Mar. 15, 2007, available at <http://www.theage.com.au/news/opinion/no-prisoners-at-guantanamo-not-a-prison/2007/03/14/117372253792.html?page=fullpage>.

<sup>11</sup> H. Candace Gorman, *Kangaroo Tribunals Give a Kafkaesque Edge to Guantanamo*, S.F. CHRON., Apr. 15, 2007, at E3, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/04/15/ING47P6V8U1.DTL>.

Apart from people affiliated with the government or the military, only two classes of people were permitted to visit the Guantanamo Naval Base: members of the media and “habeas lawyers.” “Habeas lawyers”—a label the Bush Administration often used disparagingly—represent the detainees. Although I am an attorney, I have never been a lawyer for any detainees. Instead, I applied to visit as an author representing the University of California Press, the publisher of my book, *Our Nation Unhinged: The Human Consequences of the War on Terror*, which was released in spring 2009.

I began the application process in October 2006 when I asked a law student and research assistant, Jody Taliaferro, to help me set up a visit. At first, she had difficulty finding the contact person, but she finally reached a Pentagon spokesperson and e-mailed me: “I am happy to report that we are definitely on the right path. However, that said, it is a pretty intimidating path!”<sup>12</sup>

Intimidating, it was. Jody recounted that, “When I explained who I was and what I was doing on your behalf, the spokesperson asked for your information (full name, university), which I could hear him typing in. He then wanted to know if you had already written anything on Guantanamo, and if so, what. I said that you had written a law review article that was in the publication process. He asked me to obtain a copy and mail it to him.”<sup>13</sup>

The article she referred to had taken an unpopular stance with the administration of the time. Needless to say, I was reluctant to send it to the Pentagon official without going through proper channels. It argued that the term “enemy combatant” is an illegitimate term that the Bush Administration adopted after 9/11 to circumvent the Geneva Conventions and the United States Constitution, and give itself free rein to mistreat and torture detainees.<sup>14</sup>

When I told my friends and colleagues that I intended to visit Guantanamo, they were convinced that, given the nature and tenor of the article, the Pentagon would never grant me permission to visit Guantanamo.

Jody called the spokesperson again and asked him to outline the Pentagon’s policies and procedures for allowing journalists to travel to Guantanamo. According to Jody, “He said that he would have to find out what your ‘history, sympathies and interest were in Guantanamo.’”<sup>15</sup>

When she asked how that was relevant, he replied, “You know exactly what I mean.”<sup>16</sup>

Yet, when she phoned him a few days later, arguing again that we needed to see the protocols for applying to visit Guantanamo, he admitted that he had no official policies or established procedures in place; he said that he would “figure something out.”<sup>17</sup>

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<sup>12</sup> E-mail from Jody Taliaferro to author (Oct. 16, 2006) (on file with author).

<sup>13</sup> *Id.*

<sup>14</sup> Peter Jan Honigsberg, *Chasing “Enemy Combatants” and Circumventing International Law: A License for Sanctioned Abuse*, 12 UCLA J. INT’L L. & FOREIGN AFF. 1, 1-2 (2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=942058](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=942058).

<sup>15</sup> Telephone conversation between Jody Taliaferro and Pentagon Official (Oct. 16, 2006). The author has opted to not identify this individual.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Apparently, he did. The next morning a more accommodating military officer sent Jody an e-mail with the subject line, “Greetings from Guantanamo Bay, Cuba.” The e-mail read, “I can help you with your interest in visiting our operation.”<sup>18</sup> To obtain permission to visit Guantanamo, I had to complete three steps: review the ground rules for the visit, submit my “vital information” to run a background check, and select dates of travel. The officer also said that it was his “pleasure” to assist me in obtaining access and that he was concerned with “changing the image” of Guantanamo.<sup>19</sup>

The following day, another officer at Guantanamo sent an e-mail requesting my personal information, including my social-security and passport numbers, date and place of birth, eye and hair color, height and weight, and my three most recent writings, including my article on enemy combatants.<sup>20</sup> Without any explanation, this e-mail closed with two quotes from the New Testament.<sup>21</sup> The first quote stated, “No eye has seen, no ear has heard, no mind has conceived what God has prepared for those who love Him,” from 1 *Corinthians* 2:9.<sup>22</sup> The second read, “Do not be deceived: God cannot be mocked. A man reaps what he sows,” from *Galatians* 6:7.<sup>23</sup> Somehow, the quaint notion of separation of church and state had not filtered down to the base at Guantanamo.

Presumably to assist in filling out the form, the e-mail included a “Vital Template Table” attachment.<sup>24</sup> When I opened it, I was shocked to find someone else’s personal information, including his social-security and passport numbers, and date and place of birth. We could not believe that someone at Guantanamo could have made such a mistake.

When Jody phoned the number in the template to see whether the individual was a real person, the person named on the template answered the phone. “How did you get my number?” he asked.<sup>25</sup> Jody told him. He was a photographer for a European newspaper who had applied to re-visit the base. Although the photographer was annoyed that the military had attached his personal data to the e-mail, he was gracious, funny, and helpful. At the end of the conversation, he generously offered Jody his e-mail address, so that she could contact him again.<sup>26</sup>

“I already have it!” Jody replied.<sup>27</sup>

The next day, a different officer at Guantanamo re-sent the same request for information—this time without the religious quotes or the attachment. This officer was very helpful in moving the process along. However, when I filled

<sup>18</sup> E-mail from Pentagon Official to Jody Taliaferro (Oct. 24, 2006) (on file with author).

<sup>19</sup> *Id.*

<sup>20</sup> E-mail from Pentagon Official to Jody Taliaferro (Oct. 25, 2006) (on file with author).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Telephone conversation between Jody Taliaferro and Photographer (October 26, 2006). The author has opted not to identify this individual.

<sup>26</sup> *Id.* Since then, he has visited Guantanamo and offered to provide a photograph for my book.

<sup>27</sup> *Id.*

out the application form, I could not help worrying that someone might forward my personal information to future applicants.

A few weeks later, we received the news: “The professor’s visit to Guantanamo Bay has been approved.”<sup>28</sup> However, I still had to take the three-hour, bathroom-less, bumpy, circuitous plane ride.

#### WELCOME TO THE “GITMO EXPERIENCE”

I arrived at Fort Lauderdale’s Hollywood International Airport bright and early Monday morning, May 7, 2007. Because Guantanamo schedules media visits for Monday through Thursday, I had flown from my home in California the night before and spent the night in an airport hotel. Air Sunshine operated the ten-seater propeller flight to Guantanamo that left from Terminal Four. Interestingly, there was no security metal detector or baggage search for weapons and liquids over three ounces. The military had already vetted anyone boarding a plane to Guantanamo and provided an “area clearance.”<sup>29</sup> In fact, reporters, photographers, and habeas lawyers often take advantage of the fact that no one confiscates liquids and purchase duty-free liquor at the airport which they carry with them to Guantanamo.

I sat opposite the tiny gate and waited for the flight, which was behind schedule. A girl, perhaps nineteen, who worked as a contractor at the base, started chatting with me. She clarified that the plane was late because it was waiting for her friend to arrive, but she never told me who her friend was or explained why the plane would wait. Instead, she pulled out her camera and showed me digital photos of the island, the restaurants and bars, pictures of her with her friends, and several close-ups of a friendly Cuban iguana that resides at a rocky outcropping on a particular beach. She and her friends affectionately called the iguana Roxanne. There was also a photo of her posing with Rear Admiral Harry Harris who was, at that time, the Commander of the Joint Task Force on the base. Another photo showed people jogging, each wearing reflector belts in green or red. She explained that she had to be careful when taking photos; security had confiscated her friend’s camera after her friend snapped a photo that violated security regulations.

“If you like to party, this place is fun,” the girl buzzed. “But if you are not social, you feel locked in. Every Thursday is Jamaican ‘barbeque all you can eat and drink’ night.” Fortunately, she confided, she was a party girl. Nevertheless, she liked going off-island for the weekend, and visiting her high-school friends back home. She revealed that she worked “behind the wire,” meaning she worked in the detention camps. She would have continued talking, seemingly indefinitely, had the woman sitting next to me not said that she was a lawyer.

<sup>28</sup> I asked Jody to inform the Pentagon that we had received the attachment with the photographer’s information. Although she e-mailed them, we never received a response from the Pentagon.

<sup>29</sup> For entry requirements to Naval Station Guantanamo Bay, see COMMANDER NAVY INSTALLATIONS COMMAND, GTMO AREA CLEARANCE INFORMATION 4-5, [https://www.cnic.navy.mil/navycni/groups/public/@pub/@southe/@guantanamo/documents/document/cnic\\_050498.pdf](https://www.cnic.navy.mil/navycni/groups/public/@pub/@southe/@guantanamo/documents/document/cnic_050498.pdf) (last visited Sept. 8, 2009).

Suddenly, the girl became mute. Perhaps she realized that neither the lawyer nor I was really like her. Why this girl thought that I was her colleague to begin with, I cannot say. I was old enough to be her father and I was certain that I did not look like the contractors who were always ready to party. When I asked her something about what she did behind the wire, she just shrugged. The conversation was over.

I had met Candace Gorman, the lawyer sitting next to me, while waiting in the flight check-in line that morning. She was from Chicago and represented two detainees. In 2005, the Center for Constitutional Rights held a conference about Guantanamo in hopes of encouraging more lawyers to represent detainees. Gorman volunteered. She reports on her experiences and her clients through her personal blog<sup>30</sup> and pieces she has written for the Huffington Post Blog.<sup>31</sup>

When it was time to board the Air Sunshine plane to Guantanamo, we nine passengers passed a Gulfstream jet as we walked onto the tarmac. I could not help but wonder if the CIA had used it to transport “ghost detainees.” The CIA, in a process known as “extraordinary rendition” had, through the use of dummy corporations, employed Gulfstream jets to transport detainees to other countries such as Egypt or Syria, or to secret CIA “black site” locations.<sup>32</sup> These detainees were known as “ghost detainees” because the United States did not acknowledge either their capture or existence.<sup>33</sup> When the detainees arrived at the secret “black site” destinations, they were confined to filthy cells, isolated for long periods, and tortured.<sup>34</sup> I could not help but wonder whether the CIA had transported ghost detainees on this Gulfstream jet parked a mere fifty yards from our aircraft.

I also wondered who really owned Air Sunshine. Was Air Sunshine another CIA dummy corporation? In white jackets and pressed slacks, the pilots certainly looked the part of former military or intelligence officers. Additionally, Air Sunshine had a very unusual security notice on its website. A portion of it read, “[I]ndividuals using this computer system are subject to having all of their activities monitored and recorded. Anyone using this system expressly consents to such monitoring . . . .”<sup>35</sup>

To maintain optimum balance, the co-pilot sat the nine of us by weight. Although the tenth person never arrived, the propeller engines started up and off we flew. I quickly identified the people who had flown on these flights before because they all wore earplugs or listened to their iPods to block out the roaring engines.

When we landed, we walked through a huge, old, wooden airplane hanger. Military security met us at the end of a walkway lined with black and white

<sup>30</sup> The Guantanamo Blog, <http://gtmoblog.blogspot.com/> (last visited Sept. 19, 2009).

<sup>31</sup> The Huffington Post, Blog Entries by Candace H. Gorman, [http://www.huffingtonpost.com/h-candace-gorman-/#blogger\\_bio](http://www.huffingtonpost.com/h-candace-gorman-/#blogger_bio) (last visited Sept. 5, 2009).

<sup>32</sup> HONIGSBERG, *supra* note 2, at 179-193 (discussing extraordinary rendition under the Bush Administration).

<sup>33</sup> *Id.* at 179.

<sup>34</sup> *Id.* at 179-80.

<sup>35</sup> Air Sunshine, Security Notice, [http://www.air sunshine.com/security\\_notice.htm](http://www.air sunshine.com/security_notice.htm) (last visited Sept. 19, 2009).

photographs depicting simpler days at the base. They searched our bags, but not our persons. Their primary interest was our electronic equipment; they inspected my laptop, digital camera, digital tape recorder, and iPod. After we passed through security, guards separated the habeas lawyers from the other passengers and directed them to their housing on the leeward side of the island.

In Guantanamo, habeas lawyers and members of the media received very different treatment. Lawyers resided on the leeward side of the island, the side on which the planes land. Media visitors stayed on the windward side where all of the detention centers, recreational activities, and eateries were located—save for one tiny greasy spoon on the leeward side that closed at 5:00 p.m. Each morning, the lawyers caught the twenty-minute ferry ride to the windward side.<sup>36</sup> When they completed their interviews of their clients for the day, they headed to one of the Naval Exchanges (NEX) to purchase their dinners and any other items. Over time, the lawyers developed a community culture. Together they purchased chicken and beef at the NEX, returned to the leeward side, and then barbequed their meals.

Architecturally, the lawyers' housing resembled a 1950's motel. Except for a pretty beach ten minutes away from their living quarters, the lawyers' side was bleak. Perhaps it was meant to be. Guantanamo's administrative personnel had no interest in engaging the lawyers and would have preferred not to have them at the base at all. There was little if any conversation between the military and the lawyers except when absolutely necessary. Moreover, several habeas lawyers had confided in me that those conversations were often laced with hostility.

While the military contractors and personnel waited for their rides, three soldiers warmly greeted me and the other two media visitors. They introduced themselves as our designated escorts for our three-day trip and escorted us to a non-descript white van. The other visitors were Karin Henriksson and Chris Malvyszynski. Karin is a well-respected United States correspondent for the Svenska Dagbladet, a major daily newspaper in Sweden. She had made her home in Washington, D.C. for the previous twenty years. Karin had been to Guantanamo once before in the 1980s when nearly 40,000 Haitians arrived as boat people to escape the escalating brutality, violence, and poverty consuming their nation. Her photographer, Chris Malvyszynski, had only been in the U.S. for eighteen months. Chris was building a reputation as one of the best photographers in Europe.

As the days progressed, I grew increasingly thankful that Karin and Chris were on this tour with me. The visits to the detention centers were intense and although the escorts were pleasant, they were not our friends. It was comforting to be able to review the day's events every evening with Karin and Chris. Had I been the only visitor that week, I am not sure that I could have maintained my sanity.

From the airport, our guides drove us to a "u-boat," a utility boat with canvas sides. We had arrived too late to take the ferry across the bay. Most of

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<sup>36</sup> CLIVE STAFFORD SMITH, EIGHT O'CLOCK FERRY TO THE WINDWARD SIDE: SEEKING JUSTICE IN GUANTANAMO BAY 7 (2007) (providing additional information about the ferry and Guantanamo).

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the riders on the boat were Jamaican and Filipino contractors, the two nationalities constituting the largest group of contractors on the island. They helped build the detention centers and managed most of the menial chores. They even had access to areas that habeas lawyers with security clearances could not access.

As soon as we boarded the u-boat, one of our military escorts sang the praises of working on the base. He mused that the assignment was like a “paid vacation.” As he described the waters where the Guantanamo River flows into the Guantanamo Bay, he noted, “And the fishing is great.”

To maintain its normalcy, the base included numerous American amenities such as: an outdoor movie theater with free first-run hits (the newly released blockbuster, *Spiderman 3*, was due that weekend), tennis courts, go carts, batting cages, boats, a golf course, gym, bowling alley, Tiki Bar, McDonald’s drive-thru, Subway, KFC, and A&W. A Taco Bell was on the way. These were all part of the military’s “MWR,” or Morale, Welfare, and Recreation Program on the base. There were also several NEX shops that provided the same items sold in any mainland supermarket. Although souvenirs were available at all the NEX stores, one NEX was entirely devoted to selling tee shirts, hats, cups, and other Guantanamo reminders to take back home. I had been hoping to find a tee shirt that read, “The least worst place” that, I had been told, had been available for sale several years ago. Alas, they were all gone.

“This is the Gitmo experience,” cheered MC2, one of our escorts. MC2 was a Mass Communications Petty officer, Second Class. He was a Naval man, who preferred that we called him MC2, referring to his rank, rather than his name. His friends called him, “MC squared.” “They do their best to keep us entertained,” he assured us in talking about the military.

MC2 grew up in Okinawa, and his father had also been in the service. When the planes struck the World Trade Center and the Pentagon on 9/11, he was living in Hawaii. Those events propelled him to join the military. Although he knew he was too old to move up the ranks, he was willing to leave his wife and teenage daughter at home to do his part in the War on Terror. MC2 told us that he hoped to be shipped to Iraq and Afghanistan in the future so that he could experience those outposts as well.

Overall, the Navy was in charge of the island and the Marines provided security for the naval base. The Joint Task Force (JTF), comprised of members of all four armed services plus the Coast Guard, was responsible for the security of Camp America, where the detention centers were located. The JTF was described to us as a “tenant organization” on the naval base.<sup>37</sup> Our escort informed us that the men outnumbered women eighteen-to-one on the base.

Normally, media visitors were assigned two or three guides. However, in April 2007, a month before my visit, the former media relations officers were rotated off the island and a new contingent of the Louisiana National Guard had been brought in to replace them. In order to train the new members, as many as

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<sup>37</sup> A tenant organization is one that resides on an installation but organizationally answers to a different branch or unit than the one in charge of that installation. Kathleen T. Rhem, *Guantanamo Troops Deployed in Unusual Surroundings*, DEFENSELINK, Feb. 25, 2005, <http://www.defenselink.mil/news/newsarticle.aspx?id=25798>.



a half-dozen or more troopers escorted us at various times throughout the three days.

Once across the bay, we boarded another van and drove to the “Jerk House,” where Karin, Chris, and I each purchased a barbeque dinner. The Jamaican chef had been living on the island for seventeen years, and his establishment was reputed to sell the best food on the island. From there, our escorts took the three of us to check into our townhouses where we had the option of either a double for \$15.00 per night or a single \$30.00 per night. Chris and I were assigned to share a double. After checking in, we watched a brief PowerPoint introduction to the base in MC2’s room. Additionally, MC2 told us that the military required us to remain confined within our condos throughout each night. MC2 was housed in a condo next door.

#### VETTING PHOTOS

Although our escorts informed us that the condos would have high-speed Internet service, it did not work. We received dial-up as a backup. My roommate Chris, who was very adept with technology, found it hard to believe that the modems did not work, as secure and efficient communication is essential to the military. Instead, he figured that the military gave us dial-up so that photographers could not e-mail any of their photos prior to leaving the island.

The military required media visitors to use digital equipment for all photos. Each night of our stay, an Operations Security contractor (OP-SEC) reviewed and vetted our digital photos, searching for what he described as “security lapses.” While we watched, he began the process by downloading our photos onto his laptop. Then, clicking on them one-by-one, he moved his mouse to highlight various angles of the photo.

Photos that showed faces of detainees or guards, the nametags of guards, water towers, more than one guard tower in a frame, certain antennae, or pictures of the coastline were security lapses and not permitted. Whenever an image of a secure item appeared in the photo, even in the far background, the OP-SEC deleted the photo. We were informed that al-Qaeda and other terrorists could use such information to plan an off-shore attack on the island. In addition, an escort reminded us that the government also wanted to protect the “privacy” of the detainees by not photographing them.

On one evening, one of the escorts who had shadowed us during the day leaned over the contractor’s shoulder and encouraged him to delete photographs that he had initially approved. More than once, the escort suggested that the contractor increase the resolution to two-hundred pixels and shift the focus of a photo to the upper and lower corners to look more carefully for security lapses.

One of my photos of the old-fashioned McDonald’s drive-thru sign had a water tower in the distant background. The picture was deleted. So was my first photo of the charming yellow “iguana crossing” road sign, which also had a grimy water tower in the distance. I returned the next day to re-shoot that photo, but this time I asked the same escort who had persuaded the contractor to delete my earlier photo to take the photo. I figured that if she took it, even if the water tower reappeared, the escort would not advise the security contractor

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One of the Guard Towers at Guantanamo

to delete the photo that evening. It worked: she did not advise him, and he did not delete it.

The OP-SEC contractor informed us that some visiting photographers had taken as many as two-thousand photos during their stay. I could not imagine how the OP-SEC contractor could review thousands of photos and yet maintain consistency in his decision-making. Additionally, I wondered whether any photographers ever uploaded their photos into separate files in their laptops before the evening OP-SEC session. No one ever checked our computers to see whether we had uploaded anything. One had to question both the accuracy and efficiency of these photo deletion sessions, and whether the entire process was just arbitrary.

“Arbitrary” also came to mind on our second day at the base when we visited the base’s Naval Commander. At one point, as the Commander described the borderline between Cuba and the United States in Guantanamo Bay, I asked him to show us the waterline on the map that he had on the wall. As he walked up to the map to identify the waterline, his media assistant interrupted to add: “You can find the borderline and other locations in Guantanamo Bay, as well as those along the coastline, on Google Earth.” Of course, she referred to the same coastline that the OP-SEC contractor had so diligently searched for in our photos.

## OUR FIRST FULL DAY BEGINS

On Tuesday morning, we rose early for our first fully scripted day. It was hot and humid, with temperatures approaching the eighties at 7:20 a.m. Our driver, MC2, stacked the back of the van with ice-cold liters of Crystal Geyser.

We began with a van ride to the mess hall. The cost of breakfast for non-military personnel was two dollars. Choices included hot and cold cereals, bacon, sausage, eggs, omelets, muffins, and a fruit bar. The soldier in front of me in line ordered five hard-boiled eggs to start. He informed us that you can eat as much as you want, but you cannot take any food with you. A Filipino contractor collected our money.

When we returned in the afternoon, lunch cost \$3.60 and had even more choices than breakfast. There were separate lines for hot meals and cold meals; a fast food counter for tacos, a deli-sandwich bar, and a fruit and salad line. The dessert cooler had Ben & Jerry's Cherry Garcia bars, Eskimo Pies, and ice cream sandwiches.

While we were eating breakfast, one of our shadow guides said to me, "This should put to rest any thoughts about the food in the military." I wondered whether he could tell that I was a food snob. Later that day, a military person who took combat photos in Iraq and Afghanistan for the military told us that the food is even better in the war zones. In his words, "After a tough day in the field, what could be better at night than a slice of home-made cherry pie?" However, a recent study indicates that soldiers in war zones have gained too much weight and some have become obese because of the military's attitude that one of the few comforts that the military can provide soldiers in war zones is food, and lots of it.<sup>38</sup>

When we walked out of the galley after breakfast, I heard the Star Spangled Banner. An escort announced that it was reveille. "Seems pretty late for reveille," I thought out loud. Reflecting the rivalry between the Army and the Navy, an Army escort quipped, "This is a Naval Base." This Army escort had been in the military for twelve years, having joined after high school. She married an Army man. After they had kids, she stayed home to raise them. When her husband completed his twenty years of service, they switched places. He came home and she returned to the military to complete her term. She was the brightest escort that we met. She was also the only female escort.

I asked one of our guides whether there was time for us to go to the café that sold Starbucks coffee. Before arriving at Guantanamo, someone had told me that there was a Starbucks on the base. Actually, there was not. The café was not a corporate Starbucks with its corporate furniture and wi-fi connections, but it did sell Starbucks products and Breyers ice cream. I needed something stronger, and perhaps a more psychologically comforting reminder of home, than galley coffee.

Our next stop was MC2's condo to attend another PowerPoint briefing. A guide led the briefing, describing the base and the various detention centers that we would be visiting. Camps 5 and 6, the most secure, held sixty-eight percent

<sup>38</sup> Gary Marx, *Other Battle in Iraq: Weight Gain*, CHI. TRIB., Nov. 27, 2008, at 24, *available at* [http://archives.chicagotribune.com/2008/nov/27/nation/chi-letter-iraq-food2\\_marx\\_nov27](http://archives.chicagotribune.com/2008/nov/27/nation/chi-letter-iraq-food2_marx_nov27).

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of the current population of 380 detainees. Only ten percent of the current detainees were housed in Camp 4, the housing for the most “compliant” detainees. The camps were numbered in the order that they were constructed. Although they had told us that Camps 5 and 6 were the most secure facilities, in fall 2007 the Bush Administration revealed that there was a secret camp known as Camp 7, which housed the sixteen high-value detainees.<sup>39</sup>

Reading from the PowerPoint slides, our guide said that the Taliban and al Qaeda were not “High Contracting Parties” (i.e. signatories to the Geneva Conventions). This information was designed to explain why these detainees were not considered Prisoners of War (POWs) and, accordingly, not provided the rights and protections required for POWs under the Geneva Conventions.<sup>40</sup>

That night, I explained to Chris and Karin that the PowerPoint was incorrect. Former Secretary of State Colin Powell and other officials believed that, at minimum, the Taliban, who were seen as the armed forces of the state of Afghanistan (a signatory to the Geneva Convention) were entitled to POW status.<sup>41</sup> There was also a more tenuous argument: that al Qaeda operatives, by being part of the armed forces of the Taliban, could also be termed POWs.<sup>42</sup>

Could the military have listened into these nightly conversations that we held in our kitchen? I briefly wondered about this possibility, and then dismissed it as paranoia. However, the next day I started thinking that it was possible that my speculations were correct after a high ranking officer told me that my visit should not have been approved. (More on this later.)

The PowerPoint orientation in MC2’s condo included a photo of an interrogator and a detainee sitting across from each other playing chess. “This is one way that the interrogators interview the detainees for information,” the military escort explained. I wondered to myself whether the detainee was ever check-mated. Another photo showed what appeared to be military personnel spraying a detainee. Although I did not recall ever seeing the photo, the presenter explained that this picture had been seen around the world in the spring of 2002 when the first groups of detainees were sent to Guantanamo, but had been misinterpreted. He explained that although the public assumed it was an example of torture, it was actually a photo of the military spraying for bugs.

During the briefing session in the condo, our escort stated that America did not “do detention as punishment.” Presumably, he meant that the purpose

<sup>39</sup> Peter Finn, *Defense Lawyers Get Access to Secret Guantanamo Camp*, WASH. POST, Oct. 28, 2008, at A08, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/10/27/AR2008102702955.html>; Associated Press, *Attorney Gets Access to Gitmo’s Secret ‘Camp 7,’* FOXNEWS.COM, Oct. 28, 2008, <http://www.foxnews.com/story/0,2933,444515,00.html>.

<sup>40</sup> See Honigsberg, *supra* note 14, at 8-22 (discussing the rights and protections under the Geneva Conventions available to all combatants).

<sup>41</sup> Memorandum from Colin Powell, Sec’y of State, U.S. Dep’t of State, to the Counsel to the President and Assistant to the President for Nat’l Sec. Affairs (Jan. 26, 2002), reprinted in *THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB* 122-24 (Karen J. Greenberg & Joshua L. Dratel eds., 2005), available at <http://www.slate.com/features/whatistorture/pdfs/020126.pdf>.

<sup>42</sup> Memorandum from William H. Taft IV, Legal Advisor, U.S. Dep’t. of State, to Counsel to the President (Feb. 2, 2002), reprinted in *THE TORTURE PAPERS: THE ROAD TO ABU GHRAIB*, *supra* note 41, at 129-134, available at <http://www.slate.com/features/whatistorture/pdfs/020202.pdf>.

of detaining the captives was twofold: to obtain intelligence by interrogating the men, and to prevent their return to the battlefield. The presenter continued reading from the PowerPoint: "It is unusual in modern warfare and during an on-going conflict, that we outright release enemy combatants to their home countries." "We're making history," he added, indicating that no previous nation has ever released detainees captured in a war prior to the end of the conflict.

Both the above statements were misinformation. The term "enemy combatant" did not exist as a legitimate legal term before 9/11.<sup>43</sup> The Geneva Convention only recognizes the legal terms "lawful combatant" and "unlawful combatant."<sup>44</sup> The Bush Administration adopted the term enemy combatant to circumvent the conventions—with no rule of law in place, the administration believed it could act unlawfully and mistreat and even torture the detainees.<sup>45</sup>

In addition, as many as eighty percent of the enemy combatants at Guantanamo were not captured on the battlefield. Rather, they were sold to the Americans for bounty by the Pakistanis, tribal Afghanis, and the Northern Alliance.<sup>46</sup> Consequently, the men America released from Guantanamo were likely to have never been combatants of any kind and should never have been detained in the first place.

#### COMPLIANT DETAINEES (CAMP 4) AND COMPLIANT REPORTERS

When the briefing session ended, we returned to the van and drove to Camp America, the site of the detention centers. Only people with special badges designating official reasons for visiting were allowed access into the Joint Task Force division of the base.

Our guide informed us that all military and media personnel entering the detention facilities, including us, must remove or cover their badges so that the detainees could not identify us and pass our identities to al Qaeda operatives on the outside. Interestingly, no one talked about the possibility that when a guard does not wear a nametag, the guard cannot be held accountable for any inappropriate behavior he may commit against a detainee.

Camp America comprised the area that housed all the detention camps, the offices for the military personnel and the buildings that held the administrative hearings and trials. Camp Delta was the name for all the detention centers, or camps, inside Camp America.

In addition to the numbered Camps 4, 5 and 6, there were Camp X-Ray (which will be discussed later) and Camp Echo. In spring 2007, Camp Echo did not house any detainees. Instead, habeas lawyers used its cells to meet with their clients. The process worked this way: a detainee was transferred from his cell to a cell in Camp Echo the night before he was to meet with his lawyer. The next day, the detainee was moved to an adjoining meeting room and shackled to the floor. Only then was he permitted to visit with his lawyer. The camp was likely named Echo because Echo was in the NATO phonetic alphabet used

<sup>43</sup> Honigsberg, *supra* note 14, at 6.

<sup>44</sup> *Id.* at 9.

<sup>45</sup> *Id.* at 9-10, 13.

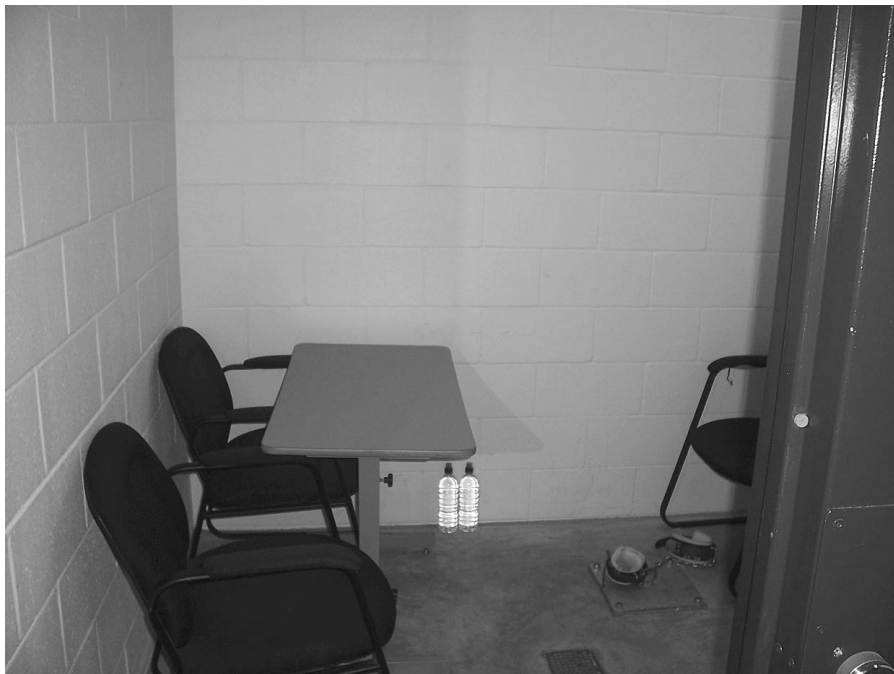
<sup>46</sup> Denbeaux & Denbeaux, *supra* note 5, at 2-3.

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by the military (as were Delta and X-Ray).<sup>47</sup> Nevertheless, it was not without irony that the camp was named Camp Echo, because habeas lawyers believed that their conversations with their client-detainees in Camp Echo had an “echo.” That is, they suspected that the military monitored their conversations.<sup>48</sup>



One of the Interview Rooms at Camp Echo

As we approached Camp Delta, we spotted a sign identifying the “Value of the Week: Selfless Service.” Last week, the value of the week had been “Commitment.”

We began our tour with Camp 4, the current home for the forty most “compliant” detainees. The same Operations Security contractor who reviewed our photos each evening accompanied us as we entered the complex. He did not explain why he was there, but he observed our movements and monitored our photography. He also informed us that he was involved in training the guards.

When we walked into Camp 4, we passed a wooden guard tower, a metal gate and a ten-foot chain-link fence topped with coiled barbed wire. The unit

<sup>47</sup> Naval Historical Ctr., *Frequently Asked Questions: Phonetic Alphabet and Signal Flags*, <http://www.history.navy.mil/faqs/faq101-1.htm> (last visited Sept. 5, 2009).

<sup>48</sup> Wells Dixon is one habeas attorney who believes this. Telephone conversation with Wells Dixon, Senior Staff Attorney, Guantanamo Global Justice Initiative, Ctr. for the Constitutional Rights (Dec. 12, 2007); see *Wilner v. Nat'l Sec. Agency*, No. 07 Civ. 3883 (DLC), slip op. at 4 (S.D.N.Y. filed June 25, 2008), available at [http://docs.google.com/gview?a=v&q=cache:Q8wa39f2h6UJ:media.miamiherald.com/smedia/2008/06/25/20/gitmo-tapped.source.prod\\_affiliate.56.pdf+Wilner+v.+Nat%E2%80%99+Sec.+Agency,+No.+07+Civ.+3883+%28DLC%29&hl=en&gl=us](http://docs.google.com/gview?a=v&q=cache:Q8wa39f2h6UJ:media.miamiherald.com/smedia/2008/06/25/20/gitmo-tapped.source.prod_affiliate.56.pdf+Wilner+v.+Nat%E2%80%99+Sec.+Agency,+No.+07+Civ.+3883+%28DLC%29&hl=en&gl=us).

of cells we visited was vacant. Other lawyers who had been to Guantanamo told me to regard these empty cells as “model” prisons, rather than as genuine examples of where the detainees were housed. Each cell was eight-by-ten, and had slots known as “bean holes” at the belly level and ankle level. According to our escorts, before the detainees would exit the cell, they would stick their feet through the bottom slot to be manacled. Then, they placed their hands through the mid-body slot, and their hands were shackled to a belly chain. The cells consisted of a metal shelf-bed attached to the wall and a squat-toilet on the floor. In the most recently built centers, the toilets were raised off the floors.

The camp’s deputy commander informed us that the only person who fully understood a detention center was someone who worked in one and interacted with the detainees. Without explaining the distinction, he assured us that detention centers were not like prisons. “My job is to make sure everyone is safe,” he added.

Compliant detainees wore white uniforms. They received the most privileges. They were permitted to play soccer with others and to gather together in recreation areas. The escorts showed us that in addition to sandals, a toothbrush, toothpaste, and a Koran distributed to everyone, the compliant detainees received additional amenities. They received a prayer rug, thermal underwear to protect them from the icy-cold air conditioning, a roll of toilet paper, tennis shoes, a plastic water bottle and a plastic box in which they kept their letters and their correspondence with their habeas lawyers. They were also permitted to borrow one book a week from the prison library. Our escorts never explained who decided whether a detainee was compliant or what criteria was used to make the decision.

Those detainees who were less compliant wore tan. They had more limited privileges and received fewer extras. No soccer play and no plastic box for them. Those least compliant detainees wore orange and were only issued the Koran, a toothbrush, toothpaste, and sandals. They asked for a sheet of toilet paper when needed. Apparently, toilet paper is restricted because detainees had used toilet paper to write notes to each other.

Then there were the men who were considered “suicidal.” They were given a large, thick, green, rubber blanket to wrap themselves in. As of June 2007, four detainees had allegedly committed suicide: three in 2006 and one in 2007. In 2006, the three collaborated to hang themselves within a few minutes of each other, using torn sheets and clothing to fashion their nooses.<sup>49</sup> The lone suicide in 2007 was a hunger striker who weighed 88.5 pounds at one point.<sup>50</sup> However, the military would not provide further details as to how he died.<sup>51</sup> In

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<sup>49</sup> Josh White, *Three Detainees Commit Suicide at Guantanamo*, WASH. POST, June 11, 2006, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/10/AR2006061000507.html>.

<sup>50</sup> William Glaberson & Margot Williams, *Pentagon Files Offer Details on Detainee in Suicide*, N.Y. TIMES, June 1, 2007, at A22, available at <http://www.nytimes.com/2007/06/01/us/01gitmo.html>.

<sup>51</sup> *Id.*

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June 2009, the military alleged that a fifth person committed suicide at the base.<sup>52</sup>

The military tried to discourage suicides because they generated bad publicity. Perhaps the military thought the green rubber blankets would keep the number of suicides down. During my visit, and in the media, the military characterized the suicides as acts of political and military tactics, and not of desperation. Navy Rear Admiral Harry Harris, the base's former commander, described the hangings as "asymmetric warfare,"<sup>53</sup> a term that had several definitions including not "fighting fair."<sup>54</sup>

In the middle of the aisle between two sets of cells sat a traffic cone with the letter "P" stenciled on it. The "P" was for Prayer. When the detainees were called to prayer (five times a day), the prayer cone was present. A black arrow pointing to Mecca was painted on the floor or on a wooden platform beneath the each detainee's mattress. The arrow was also painted in each recreation cage.

The recreation yards had caged sides and tops. We could hear the compliant detainees playing soccer as we walked by. Alongside each recreation area poster boards displayed copies of the detention rules, vetted articles from Arabic newspapers, and an Islamic calendar. In addition, copies of Common Article Three (CA3) of the Geneva Conventions were posted in all languages spoken by the detainees. In 2006, the Supreme Court decided *Hamdan v. Rumsfeld*,<sup>55</sup> the second of three Guantanamo-related decisions on the right to

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<sup>52</sup> William Glaberson & Margot Williams, *Officials Report Suicide of Guantanamo Detainee*, N.Y. TIMES, June 3, 2009, at A19, available at <http://www.nytimes.com/2009/06/03/us/politics/03gitmo.html>.

<sup>53</sup> "The U.S. Joint Chiefs of Staff have defined 'asymmetrical warfare' as 'Attempts to circumvent or undermine an opponent's strengths while exploiting his weaknesses using methods that differ significantly from the opponent's usual mode of operations.'" ROGER W. BARNETT, ASYMMETRICAL WARFARE 15 (2003) (quoting FRANKLIN B. MILES, ASYMMETRIC WARFARE: AN HISTORICAL PERSPECTIVE 2-3 (1999)). The National Defense University, Institute for National Strategic Studies defines the term as a version of "not 'fighting fair,' which can include the use of surprise . . . and use of weapons in ways unplanned by the United States." NAT'L DEF. UNIV., 1998 STRATEGIC ASSESSMENT: ENGAGING POWER FOR PEACE 169 (Hans Binnendijk et al. eds., 1998), available at <http://www.au.af.mil/au/awc/awcgate/sa98/sa98ch11.htm>. A suicide bomber would be an example of someone committing asymmetrical warfare. DICTIONARY OF MILITARY TERMS: A GUIDE TO THE LANGUAGE OF WARFARE AND MILITARY INSTITUTIONS 21 (Trevor Nevitt Dupuy et al. eds., 2003).

<sup>54</sup> Carol Rosenberg, *Commander of Guantanamo's Detention and Interrogation Center Talks to the Miami Herald*, MIAMI HERALD, May 20, 2007, at 1L.

<sup>55</sup> *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006).





A Mecca facing arrow under a detainee's mattress

habeas for the detainees.<sup>56</sup> *Hamdan* mandated that, at minimum, all detainees be covered by CA3.<sup>57</sup>

Common Articles are the sections of the Geneva Convention that apply to all four of the conventions. At minimum, CA3 protects detainees from cruel and inhumane treatment and torture,<sup>58</sup> as well as outrages upon personal dignity, particularly humiliating and degrading treatment.<sup>59</sup> If tried, detainees must be tried by a regularly constituted court affording basic guarantees of due process and the rule of law.<sup>60</sup> However, CA3 does not offer as much security

<sup>56</sup> The first two Guantanamo decisions, *Rasul v. Bush*, 124 S. Ct. 2686, 2692 (2004), and *Hamdan*, 126 S. Ct. 2749 were based on the statutory right of habeas. The Court based the third decision, *Boumediene v. Bush*, No. 06-1195 (U.S. June 12, 2008), on the constitutional right to habeas. The Court decided *Boumediene* after Congress passed the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2601, denying all habeas rights to the detainees. The Supreme Court has heard two other challenges by enemy combatants. One, *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004), held that the executive could not hold an American citizen captured on the battlefield indefinitely as an enemy combatant without a due process hearing. The Court decided the other case, *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004), on procedural grounds, and never reached the substantive issue of whether the executive could hold an American citizen captured on American territory indefinitely as an enemy combatant.

<sup>57</sup> *Hamdan*, 126 S. Ct. 2749; Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

<sup>58</sup> Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 57, at art. 3 § (1)(a).

<sup>59</sup> *Id.* at art. 3 § 1(c).

<sup>60</sup> *Id.* at art. 3 § 1(d).

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and protection as the Third Geneva Convention, which provides substantially greater rights and protections to all prisoners of war.<sup>61</sup>

As we left the recreation areas and the adjoining walls posted with the Common Articles, our escort took us to the caged showers. They were individual showers that the detainees used one at a time. The guards controlled the showers. Once a week the detainees were permitted razors with which to shave.

Unlike the other cells that housed only a single detainee, we also saw a room that held eight bunk beds, covered in blue plastic, used by eight compliant detainees. Our escort told us that in May 2006, a group of detainees who lived in this room covered the window of the door with a sheet and slicked the floor with feces, urine, and vomit. Then they yelled. When the guards barged in to see what the problem was, they slipped and fell into a heap, becoming targets. The detainees attacked them with pieces of the observation camera, lights, and fan.

While visiting, I had the opportunity to speak casually with military personnel. Many of the guards and military officers we met throughout the tours of each camp described their work by reciting the mantra “I just do my job.” In addition, several guards and other military personnel told me, “I do not think about my job.” During our four days, no one, not even the top brass on the base, said anything other than they follow the orders and procedures set out by their superiors. No one admitted to making policy. Policy was directed from above.

It did not take me long to become mentally exhausted by what was intended to be an outwardly normal experience of visiting a military base that included detention facilities. It reminded me of Hannah Arendt’s book, *Eichmann in Jerusalem: A Report on the Banality of Evil*, that described how a normal and mundane routine administered by unthinking bureaucrats can seed the path to horror.<sup>62</sup>

I can only assume that many of the soldiers living on the base kept themselves busy by running, exercising, and drinking, in an attempt to block out any troublesome or disagreeable thoughts. Doing whatever it took to stay numb was the safest route to surviving each day. Several soldiers told me how they were counting the days until they could leave. Not everyone experienced “the Gitmo Experience” that MC2 had raved about.

On the other hand, MC2 told us, “If I had to be a detainee, I would want to be a detainee here.” Karin, Chris, and I looked at him incredulously. MC2 continued, “Another journalist asked me whether he could quote me on this. I thought about it for a moment, and said, ‘Sure, why not?’”

Much has been written about the mistreatment of the detainees.<sup>63</sup> Yet, MC2 was not the only person who assured us of America’s benevolence. Many of the bureaucrats we met, especially those at the camp’s highest level, emphasized that the detention camps were designed for the “safe and humane treatment” of the detainees.

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<sup>61</sup> See generally *id.*

<sup>62</sup> HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (1994).

<sup>63</sup> See HONIGSBERG, *supra* note 2, at 75-173.

Later, on our way to the prison library, we spotted a middle-aged, olive skinned detainee in white dress. He was bearded and his head slumped over his chest. Two guards, one on either side, were firmly escorting him to wherever they were heading, gripping him by his elbows. Because the guards halted so that our group could pass, I was not able to determine whether the guards were dragging him or he was moving under his own power. They waited until we entered the module that holds the library before they came any closer to us. Media visitors were not permitted to talk to the detainees.

The library “is provided to all compliant detainees,” the deputy commander explained. “It provides intellectual stimulation.” Detainees not interested in intellectual stimulation worked in the garden or played soccer, he added.

Two librarians with masters degrees supervised the library. The library contained approximately five-thousand items, including magazines and picture books in nineteen languages. I spotted a handful of DVDs and videos. According to the librarian who gave us the tour, the stories of the prophets were the most popular among the detainees. Second were the stories of animals. Among the books I found on the shelves were the picture book, *Froggy Eats Out*, and the three hundred page narrative, *Chicken Soup for the Horse Lover’s Soul: Inspirational Stories About Horses and People Who Love Them*. We were told that the librarians and guards needed to inspect all books and magazines when they are returned because the detainees deface pictures of women. Additionally, the books and magazines are inspected because the detainees also try to communicate with each other by writing notes in the margins or underlining words.

The military had set up a classroom in Camp Delta and they were still looking for someone to teach English. That seemed odd, as there must have been people available who could teach English as a second language. But there was another story here. Apparently, when habeas lawyers wanted to send English language books to their clients in order for their clients to learn English, the military refused to distribute the books. The military later explained that the detainees were not permitted to learn English.

The military’s rationale was if prisoners were taught in English, they would become adept in listening into the conversations of the guards and other military personnel and might convey military and detention procedures and protocols to other detainees. The information could also be passed on to others on the outside if and when the detainees were released. However, in 2007, Commander Harris considered reversing the five-year-old policy that regarded teaching English an “operational security hazard.”<sup>64</sup> English is now taught at the base.<sup>65</sup>

MC2 told us that we were “compliant reporters” while he escorted us throughout the prison. Apparently, he intended it as a compliment. He explained that many “non-compliant reporters” would ask the same question four times in the hope that one of the guides would answer it differently. That

<sup>64</sup> Rosenberg, *supra* note 54.

<sup>65</sup> Carol Rosenberg, *Guantanamo Detainees Get a Dose of Culture*, MIAMI HERALD, NOV. 23, 2008, at 1A, available at <http://www.miamiherald.com/news/front-page/v-fullstory/story/783923.html>.

was unlikely because all escorts carry the same “Smart Book” that has answers to questions we might ask. If the answer is not in the Smart Book, the guide consults up the chain of command for the answer. MC2 also indicated that because we did not ask as many questions nor ask the same questions repeatedly, our tour schedule moved much faster than the usual media tour. Thus, our guides found themselves forever trying to fill up the time.

#### THE CUBAN IGUANA AND SUPREME COURT JURISPRUDENCE

As we left the cells of Camp 4, we saw a Cuban iguana relaxing on the pebbles and warming itself in the sun. Chris took a close up photo of this prehistoric creature. The iguana posed proudly, reminding us that Tom Wilner, a Washington D.C. attorney, had used him as the subject of one of his three main arguments to the United States Supreme Court.<sup>66</sup>

In the fall of 2003, Wilner needed to persuade the Supreme Court justices that it was in the nation’s interest to grant certiorari in his case on behalf of a dozen Kuwaiti detainees held in isolation in Guantanamo without charges, without a hearing, and without access to a lawyer. Wilner made three arguments in his elegant petition to the court. First, he argued that under the Constitution, the courts play a critical role in striking the balance between the President’s need to protect our nation’s security and the accused’s fundamental constitutional rights to a fair hearing, the assistance of counsel, and a neutral decision-maker.<sup>67</sup>

Second, Wilner argued that the administration’s mistreatment of the detainees and the denial of their rights under law had become an international embarrassment.<sup>68</sup> Here was the opportunity for the Supreme Court to rectify the wrong.

For his third argument, Wilner told the story of the Cuban iguana.<sup>69</sup> When the Cuban iguana crosses the Cuban border into Guantanamo, it is protected by American law under the Endangered Species Act.<sup>70</sup> (Anyone who kills a Cuban Iguana on Guantanamo is subject to a fine.)<sup>71</sup> However, the human beings held prisoner at Guantanamo were not protected under American law.<sup>72</sup> Wilner concluded that if the Supreme Court did not review his clients’

<sup>66</sup> Petition for Writ of Certiorari at 23, *Al Odah v. United States*, 540 U.S. 1003 (2003) (No. 03-343). The federal district court consolidated the *Al Odah* case with *Rasul v. Bush*, 124 S. Ct. 2686, 2690 (2004).

<sup>67</sup> Petition for Writ of Certiorari, *supra* note 66, at 9-11.

<sup>68</sup> *See id.* at 25-27, 29-30.

<sup>69</sup> *Id.* at 23.

<sup>70</sup> Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544 (2006). Pursuant to 16 U.S.C. § 1533, the U.S. National Fish and Wildlife Service has declared the Cuban iguana (*Cyclura nubila nubila*) a “threatened species,” which is likely to become endangered in the foreseeable future. U.S. Fish and Wildlife Serv., *Species Profile: Cuban Ground Iguana (Cyclura nubile nubila)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C02W> (last visited Sept. 6, 2009).

<sup>71</sup> 16 U.S.C. § 1540 (2006) (providing civil penalties of up to \$25,000 for each violation).

<sup>72</sup> Petition for Writ of Certiorari, *supra* note 66, at 23.

cases, the Cuban iguana would have greater safeguards than human beings at Guantanamo.<sup>73</sup>



The Supreme Court agreed to hear his case. In June 2004, Justice Stevens penned the history-making opinion. In *Rasul v. Bush*, the first of three Guantanamo decisions, the justices granted the Guantanamo detainees the right to a statutory habeas hearing on the legality of their detentions.<sup>74</sup> Never before had prisoners held by the military outside the territorial limits of the United States been granted the right to file habeas petitions in federal courts. In *Rasul*, Justice Stevens recognized that the United States did not have complete sovereignty over Guantanamo, because Cuba owned it.<sup>75</sup> Nevertheless, through its indefinite treaty with Cuba, the United States exercised complete jurisdiction and control over Guantanamo.<sup>76</sup> Justice Stevens did not mention the Cuban iguana, but if you looked carefully, you could see it peeking out from behind the pages of the opinion.

#### MEETING “CHARLIE V”

After lunch, we returned to Camp America to tour Camps 5 and 6. Camps 5 and 6 were surrounded by one gate and wire complex, but were separate, free-standing buildings. I asked our guide, the deputy commander of the

<sup>73</sup> *Id.* (arguing for review because “[u]nder the D.C. Circuit decision . . . human beings held prisoner at Guantanamo are not entitled to the same protections as a Cuban iguana”).

<sup>74</sup> *Rasul v. Bush*, 124 S. Ct. 2686, 2699 (2004).

<sup>75</sup> *Id.* at 2693.

<sup>76</sup> *Id.* at 2696.

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camps, whether Khalid Shaikh Mohammed, the alleged mastermind of 9/11, was housed in these camps. He answered that he did not know and did not want to know. He just did his job.

Our guide for Camp 5 was “Charlie V.” As no one wore a nametag in the detention centers, the directors of each camp took on generic names. This director, like the previous director, was known as Charlie V. The current Charlie V believed that the next director would also wear the title Charlie V.

One of our escorts wore a nametag with the letters PAO. Another guard thought that was her name and asked her to remove the tag. The letters stood for Public Affairs Office. She kept the tag.

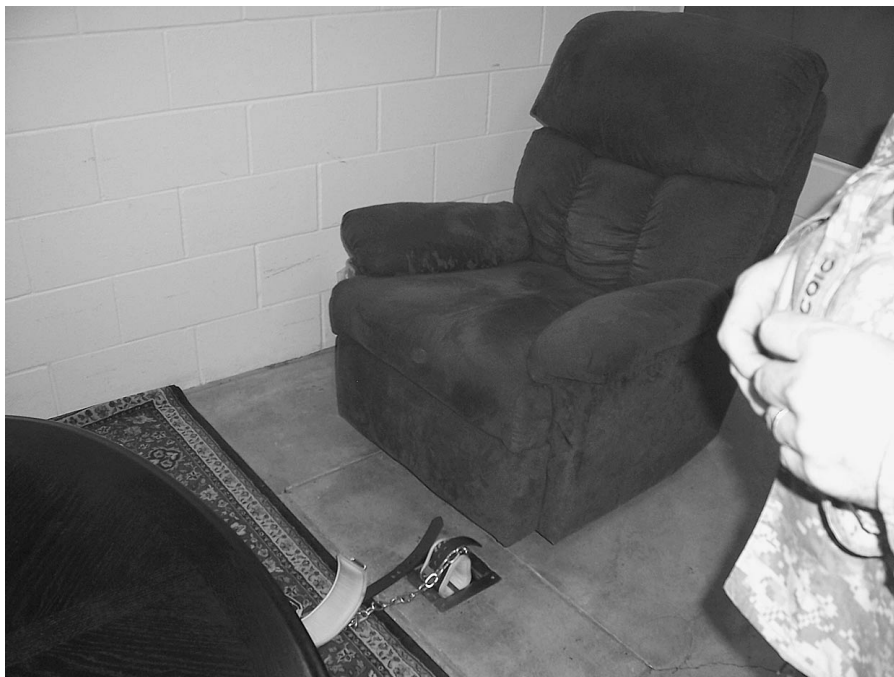
While we were waiting for the soldiers to coordinate our entrance into Camp 5, I observed one soldier’s contemptuous attitude toward Candace Gorman, the lawyer I had met at the airport. His demeanor may have reflected his hostile attitude toward habeas lawyers in general or perhaps his attitude toward women lawyers in particular. I spotted Gorman waiting outside the center while the military arranged for her to go inside and meet her client. She smiled at me and I smiled back. I mentioned to the officer escorting us that I wondered why she was waiting there for such a long time. Although it was obvious to my escort that I knew who Candace was and that she was a lawyer, the officer replied, “Who knows who she is. She could be a cleaning woman.”

Camp 5 was a two-tiered, maximum-security facility that housed one-hundred detainees in single cells, most without windows.<sup>77</sup> Prisoners who lived here could be kept in isolation for years. We were told that the detainees in Camp 5 had the most intelligence value and were the most dangerous. The Army was in charge of Camp 5 (the Navy was in charge of Camp 6). Cells in Camp 5 were eight-by-twelve-by-eight feet with steel doors and few windows. Cameras monitored each cell twenty-four hours a day.

Charlie V escorted us to an empty interrogation room. When a detainee was brought to the interrogation room, the detainee would sit in a “lazy boy,” his legs chained to the floor with restraints, and a table separating him from the interrogator. Our escort told us that interrogations were often conducted at night, although one had to wonder how effective that strategy was because detainees saw no daylight from their cells, were held in solitary confinement around the clock, and were deprived of all human contact except with guards and interrogators unless they had a lawyer. An emergency call button was within the interrogator’s reach.

A DVD or video monitor was on the counter in the corner of the room. Someone asked Charlie V why the monitor was there. “So that the detainee can watch movies,” he replied. Apparently, detainees who revealed significant intelligence matters were rewarded with an Arabic television show or movie. However, I could not help but think that the monitor was also used to show the tape of another detainee confessing or of a detainee surrendering to American

<sup>77</sup> Carol Rosenberg, *Permanent Jail Set for Guantanamo*, MIAMI HERALD, Dec. 9, 2004, <http://www.miamiherald.com/1377/v-fullstory/story/277527.html>. The prison was modeled after an Indiana prison, and built by KBR. *Id.* KBR was formerly Kellogg Brown and Root, a subsidiary of Halliburton. HONIGSBERG, *supra* note 2, at 238. Dick Cheney was CEO at Halliburton before he became vice-president. *Id.*



One of the Interrogation Rooms at Guantanamo

forces. Knowing that it was not uncommon for the military to disseminate misinformation in times of war, I saw no reason to ask.

The eight-by-twenty foot exercise cages in Camp 5 were designed for use by only one detainee at a time; they were smaller, lower, and much more secure than the group exercise yards in Camp 4. A burly guard with a shaved head stood in the walkway with his back to us while he watched the two cages flanking the hallway. Detainees exercised, if at all, one at a time – unlike those in Camp 4, where two or more compliant detainees were permitted to exercise together.

We observed one detainee exercising in his cage by pacing back and forth from one end of the cage to another. It reminded me of the times that my wife and I took the kids to the Oakland Zoo and observed the sole tiger pacing in his fifty-foot cage. Despite the detainee's white tee shirt and white trousers, presumably indicating that he was "compliant," he was held in Camp 5. I was able to take a photo of the detainee when his back was to us.

We were told that all detainees in Camp 5 and 6 received one to two hours of exercise a day. Candace Gorman told me that her client, Abdul Hamid Al Ghizzawi, was permitted to exercise, but he only received his exercise time in the middle of the night. Only one detainee was allowed in each exercise cage. Camp 6 had an exercise machine outside one of the cages. Although we were told that these machines were available to the detainees, I did not see any exercise machines inside the exercise cages.

In Camp 5, we were shown the "habeas room," a tiny cell where a detainee would meet with his lawyer. It was much smaller than the interrogation room. Here too, a leg restraint secured the detainee to the floor. The guide

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explained that although many detainee-lawyer meetings were held in Camp Echo (which we were not permitted to see), meetings between a lawyer and detainee were sometimes held at this detention center.

ATTORNEY-CLIENT INTERVIEWING PROTOCOL<sup>78</sup>

What no one told us was that when a habeas lawyer met a client at Guantanamo, the lawyer was not permitted to bring in a laptop to take notes. Instead, the lawyer could only jot down notes by pen on paper. When the interview was over, guards collected the lawyer's notes and sealed them in an envelope. The envelope was sent to a "privilege team" at a "secure facility" in Washington, D.C. After the privilege team finished reviewing the notes, they sent the lawyer notification that he could retrieve them. Notification occurred between seven and thirty days after the time that the notes arrived at the facility. Before the notes were returned, any classified information was redacted before the notes were returned.

If the notes contained classified information, the documents were kept in a secret drawer earmarked for the attorney. Although the attorney was permitted to see the redacted information at the secure facility, he could not use it in a brief, court document, or anywhere else. After *Rasul*, a federal judge issued a protective order—providing for this seeming violation of confidentiality of attorney-client privilege.<sup>79</sup> The protective order also established the ground rules for visiting the naval base as well as the procedures for preventing unauthorized disclosure of classified national security information.<sup>80</sup>

Gorman told me that letters from a client are often considered classified. If so, she was permitted to take notes on the letter at the facility, but she was required to leave her notes there along with the letter. She was not allowed to reveal the secure facility's precise location within D.C. There was no name on the door of the secure facility, nor was there any number.

The government reasoned that because the actual adversary, i.e. the government prosecutor, would not see the notes, the procedure did not violate attorney-client privilege. Although the only people who had access to the notes were in the secured facility, that knowledge provided little comfort to the lawyer or especially to the client. The detainee had to ask himself, why would he reveal important, but sensitive, information to his lawyer if he knew that the people in the government would read it? And yet, without all the information, how could his lawyer best assist him?

Camp 6 was a two-tiered prison and modeled after a prison in Michigan.<sup>81</sup> The prefabricated building arrived at Guantanamo on a barge. Like Camp 5, it had a small medical clinic, although Karin noted that it had "lots more locks." The guard explained that the fence enclosing the second tier was "to avoid someone falling off." The hallways were very dark, and from what I could see,

<sup>78</sup> Over the course of many conversations, Candace Gorman provided the Author with the following information about interviewing protocols.

<sup>79</sup> *In re Guantanamo Detainee Cases*, 344 F. Supp. 2d 174, 175 (D.D.C. 2004).

<sup>80</sup> *Id.* at 178-92.

<sup>81</sup> Like Camp 5, Camp 6 was also built by the Halliburton subsidiary, KBR. HONIGSBERG, *supra* note 2, at 239.



there was no natural light within the prison. We could hear the detainees calling to each other through the holes in the floors and the doors of their cells.

Camp 6's commander had been in the Navy for twenty-two years. She was pleasant but uncommunicative. Her nametag read "OIC" for Officer in Charge. This OIC was not interested in answering any questions. Her position required her to escort the media, but her demeanor made it obvious that she would have preferred never to have met us. I cannot blame her. Dealing with the media and answering uncomfortable questions had no value for her. She hurried us through the facility in ten minutes, if that.

#### DETAINEE HEALTH AND FORCE-FEEDING

Our escorts also took us to the detainees' medical center. The head physician directed a staff of one-hundred, including a psychiatrist, a psychologist, family medical staff, internists, and twenty nurse practitioners. There were also visiting "ologists," a term he used to describe doctors such as psychologists, urologists, and others with medical expertise. However, because there were many more soldiers than detainees on the base, most of the medical staff on the base were there to assist the soldiers and workers, not the detainees. The head physician led our tour of the medical facility. Although the director informed us that few, if any, of the detainees were ill, he added that the detainees had over twelve-thousand monthly interactions with the medical staff who supervised sick calls, routine clinic appointments, physical therapy, and a pharmacy that filled prescriptions totaling four-hundred pills a day.

I was told that if a detainee was seriously ill, he would be seen at the base naval hospital instead of this center. When I reported this statement to Candace Gorman, she found the physician's reassurance of hospital medical care incredulous. Her client had both Hepatitis B and TB, he had not received treatment for either yet. The only treatment he received was a pain pill for a leg injury. At the time I visited, there were no detainees residing in the thirty-bed hospital clinic.

At our briefing session earlier that morning, one of the escorts said that the detainees received better dental care than the average American. This statement said a lot more about our healthcare system than it did about the care of the detainees.

The doctors informed us that the health of the detainee population mirrored that of the general population. However, it was hard to imagine that the mental and emotional health of the detainees reflected the general population. In fact, the briefing session indicated that fifteen to eighteen percent of the detainees arrived with mental illnesses, a significantly larger proportion than in the general American community.<sup>82</sup> In addition, as many of the detainees were held for long periods in isolation and in conditions of sensory and sleep depri-

<sup>82</sup> According to the National Institute of Mental Health, nearly sixty-million Americans, 26.2 percent of Americans ages eighteen and older, have a diagnosable mental disorder in a given year. However, the main burden of serious mental illness is concentrated in about six percent, or one in seventeen Americans. Nat'l Inst. of Mental Health, *The Numbers Count: Mental Disorders in America*, <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america/index.shtml#1> (last visited Aug. 23, 2009).

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vation, life in the camps likely increased the mental instability of the detainees significantly.<sup>83</sup>

During our tour, the hospital's director showed us the plastic tubes used to force-feed detainees who were on hunger strikes. Habeas lawyers told me that as many as forty-six detainees, perhaps more, were on hunger strike when we were there in May 2007. The director of the facility disputed this statistic and asserted that the number was much lower. He said that it was closer to a dozen. However, according to the BBC, in September of 2005 alone, 131 detainees were on hunger strikes.<sup>84</sup>

The doctors revealed that two detainees had been on strike for over six-hundred days. I was shocked that these two people were willing to undergo the humiliating and painful tube-feeding for nearly two years, and I was surprised that I had not read any media account of these two detainees' resolve. When I asked whether these men were "high-value detainees," that is, the detainees who presumably had the most intelligence value, the doctor said that he could not say, nor did he inquire into those issues. As others on the base, he just did his job.

According to the hospital director, if a detainee refused to eat for nine consecutive meals, the detainee was sent to the medical facility for observation. A psychologist would also meet with the detainee and attempt to determine why the detainee was not eating. Perhaps it was for some other reason than to strike. The physician suggested to us that the reason could be physical or mental. For example, a prisoner's desire to commit suicide was considered a "mental health issue." He explained that there were all kinds of reasons and pressures on the detainees to participate in a hunger strike, such as to gain standing and respect from other detainees.

The military described hunger strikes as "voluntary fasts."<sup>85</sup> According to the doctors, the rationale behind force-feeding detainees was "preserving life." If the detainee persisted, he was restrained in a chair designed to hold him in a secure position. Straps immobilized his head and body while he was force-fed. The doctor said that the restraint chairs were for the safety of the nurses. A tube, three to four millimeters thick and twenty-seven centimeters long, was threaded through the detainee's nostril and into his stomach. Not infrequently, the tube would miss the throat and go into the lungs, choking the prisoner. Once the tube was in place, a fortified supplement, like Ensure, was poured into the tube. As long as a detainee refused to eat, he was fed this way twice a day. After a force-feeding, the detainee remained confined in the restraining chair at the facility for an hour so he could not vomit up the nutrients. Habeas lawyers told me that if a detainee vomited, defecated, or urinated on himself, he was forced to sit in it. However, the military believed that the detainees might vol-

<sup>83</sup> Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325, 333-53 (2006).

<sup>84</sup> BBC News, *Guantanamo Hunger Strikers Double*, <http://news.bbc.co.uk/2/hi/americas/4568152.stm> (last visited Sept. 6, 2009).

<sup>85</sup> Neil A. Lewis, *Plea for Intervention in Detainees' Hunger Strike*, N.Y. TIMES, Sept. 22, 2005, at A20; Press Release, Joint Task Force Guantanamo, JTF Guantanamo Updates Voluntary Fast Numbers, Dec. 29, 2005, available at <http://www.southcom.mil/pa/Media/Releases/PR051229.pdf>.

untarily vomit, defecate, and urinate on themselves to defeat the force-feeding. According to the doctors, detainees fed through a nasal tube were at normal weight for their height and age.

In 1975, the World Medical Association issued the Tokyo Declaration declaring that prisoners have the right to refuse food—providing they understand the consequences of their actions.<sup>86</sup>

#### MEETING PRISON GUARDS

After touring the medical center, our escorts drove us to the same room where the OP-SEC contractor reviewed our photos. Two young men were sitting in the room waiting for us. They were prison guards available for interviews. One of the guards from Camp 6 had been in the military for eighteen months and was in his mid-twenties. The other man had been in the military for a dozen years, and worked in Camp 1. The older guard was formerly an aviation machinist. Neither guard had prior experience in prison work. The machinist said that one day his supervisor assigned him to take a class. He said that he did not know what the class was for; he just followed orders. While in the class, he realized he was being trained to become a guard. The training lasted for one month.

In the prison, detainees sometimes hurled “cocktails,” a combination of feces and vomit. Although they did not specifically admit to being exposed to “cocktails,” the guards acknowledged that they were “put through everything” during their training sessions. They declined to disclose whether they wore facemasks, but the deputy commander later revealed that the guards wore both facemasks and eye protection. The guards acknowledged that they were nervous in their work, but tried not to show it.

“Detainees do things to get a rise out of you,” one guard explained. “They try to get into your head,” added the other.

The guards rotated among all the detention centers and were never informed about their charges. They did not know the detainees’ names; they only knew the detainees’ countries. Instead, the guards called the detainees by numbers. Guards were not told in advance how long their guard assignments at each prison would last; they were only informed when their tours of duty were up. I was informed that guards were instructed to be “fair, firm, and impartial.” In particular, they were told not to pick favorites because that could cause problems, such as detainees acting up out of resentment. If the guards mistreated a detainee or engaged in a disproportional response, they were susceptible to discipline and demotion. The guards seemed devoid of affect. Although it seems unfair to characterize them that as death warmed over, how else could

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<sup>86</sup> WORLD MED. ASSEMBLY, WORLD MEDICAL ASSOCIATION DECLARATION OF TOKYO: GUIDELINES FOR PHYSICIANS CONCERNING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN RETALIATION TO DETENTION AND IMPRISONMENT, Oct. 1975, *available at* <http://www.wma.net/e/policy/c18.htm>. The Guidelines were adopted in 1975 and revised in 2005 and 2006. Paragraph 6 reads in part: “Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially.”

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they work in these detention centers and maintain their sanity—especially after observing the detainees either pacing back and forth or sitting or lying motionless in their sunless cells, denied human contact, and eating meals pushed through the slots in their cell doors, day after day?

#### A CHALLENGE TO MY PRESENCE ON THE BASE

Next, we visited the food preparation area. As I stepped down from the van to go into the building, one of our escorts, while holding his cell phone, called out to me. “Mr. Peter, have you ever done pro bono work for the detainees?”

“What?” I responded. “No, I haven’t. In fact, I do not practice law of any kind.”

“Okay,” he replied, and relayed this fact into his cell phone. He hung up, turned to all three of us and firmly directed us into the food preparation area. The escort then hurried off.

I wondered what that episode outside the food-prep was really about and how my presence was now an issue. After all, I applied to visit Guantanamo and revealed both my legal background and the law review article I had authored on the illegitimate term “enemy combatant.” Why did the military raise the issue now, one day after I had arrived at Guantanamo? I tried to calm myself down and wait until we left the food-prep area to seek him out and ask what was going on.

At the food-prep site, a line divided the preparation of the food for the soldiers and contractors from the food prepared for the detainees. As many detainees required their food be prepared pursuant to halal requirements, (similar to the methods required by religious Jews in preparing kosher foods) certain meals had to be prepared separately. The woman in charge of all food preparation cheerfully explained how the cooks plan six or seven different kinds of dishes for the detainees at each meal.

On this particular day, a detainee chose between a chicken dish and a vegetarian dish labeled falafel (although it seemed like couscous). Detainees could choose between a soft diet, a bland diet, a fish diet (the fish was fried), a high-fiber diet, and a low-calorie diet. Baklava was a frequent dessert. Except for low-calorie meals, the detainees’ meals totaled 4500 to 5000 calories a day. That number seemed excessive, because the average American man should consume no more than 2200 to 3000 calories a day, especially when doing minimal physical labor, as the detainees were.<sup>87</sup> Perhaps, the government fed the detainees high-calorie meals because they did not finish their dishes. Or perhaps, they were overfed in order to rebut any claim that they were not amply fed. Overweight detainees make for better photo-ops than emaciated detainees.

At the end of our food-preparation facility tour, I spotted the escort. I walked up to him, when no one else was close by and asked why he wanted to know whether I had ever represented detainees. He responded that his supervi-

<sup>87</sup> U.S. DEP’T OF HEALTH AND HUMAN SERVS. & U.S. DEP’T AGRIC., DIETARY GUIDELINES FOR AMERICANS 12 (2005), available at <http://www.health.gov/dietaryguidelines/dga2005/document/pdf/DGA2005.pdf> (indicating that males between nineteen and fifty-one-plus years of age require 2200 to 2800 calories a day).

sor, the Deputy of Public Affairs in Guantanamo, and the Deputy's superior in Washington, D.C, wanted to know. "Why?" I asked. He shook his head. I concluded that because he could not find the answer to my question in his "Smart Book," he needed to wait for further instructions from his superiors.

It is difficult to express my unease in words. Although the thought fleetingly crossed my mind, I did not think that I would be detained. I had not done anything illegal. If they had made a mistake in allowing me to visit, it was their problem. I was reminded of my earlier, haunting suspicions that perhaps our conversations in our condo were, indeed, bugged.

That evening, I phoned my wife and told her of the incident. I asked her to contact the Department of Defense and the military officials who approved my visit if she did not hear from me within the next twenty-four hours. I also suggested that she contact Professor Susan Freiwald, a well-connected law school colleague. Professor Freiwald went to law school with several high-ranking members of the administration and had worked with Barack Obama on the Harvard Law Review. In the surreal world of Guantanamo, it was difficult for me to find firm ground. I had trusted my instincts, but was I overreacting? Had I perceived the situation correctly and acted sensibly in response?

I also had another, more tangible, fear. Knowing that lawyers had their written notes confiscated after meeting with their detainee clients, I feared that the authorities would similarly demand that I hand over my notes, including my laptop, so that the military could ship them to Washington to be vetted. Of course, unlike habeas lawyers, I had no access to any privileged or classified information, and it would have been unreasonable for the military to inspect my notes. However, as a journalist, I was not sure that I had any protections for my notes. Besides, if the habeas lawyers voluntarily surrendered their notes, what was to stop the military from expecting the same "voluntary behavior" from me?

From then on, I did not type any notes onto my computer. Instead, I handwrote notes on little pads of paper and on a yellow pad. I compulsively stuffed the little sheets into different pockets. Nothing further occurred regarding my visit until the following afternoon.

So much was wrong, yet undefined, on this tropical island where 7500 soldiers and contractors were inextricably linked to 380 foreign detainees. It was within this context that Karin and Chris helped me maintain a measure of balance and perspective. Each night, Karin, Chris, and I used our dinner time to sort out the enormity of the day's events as best we could. Discussing the events and experiences of the day and the related legal aspects gave us momentary perspectives. Moreover, having these two smart and sensitive colleagues there to validate my unease was invaluable. Although the McDonald's and such lent a familiar structure and routine in this superficially normal environment, there was no firm grounding where we stood.

I slept fitfully that night, alternating between a floating state of awakening and a feverish state of dreaming. I was not thinking that much about the incident where I was questioned, although those thoughts tried to push their way into the night. Instead, much of the time, my heated and overactive brain flashed on all the camps and camp personnel who were repeating that they were just doing their jobs, and on the detainees, knowing I could not even begin to

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imagine what they were thinking or not thinking during their interminable and inhumane periods of isolation and sensory and sleep deprivation.

#### CAMP X-RAY AND THE CUBAN BORDER

Wednesday morning, MC2 told us the history of Camp X-Ray, where the first group of detainees arrived in January 2002. Although the camp was now abandoned, when it was fully-operational, three-hundred detainees were housed at Camp X-Ray. The camp was originally built for the Haitian boat people.<sup>88</sup> The cells were outdoors, exposed to all elements, and had no bathrooms. Gravity metal pipes for urinating were added later. The cages were eight-by-eight-by-eight. After looking at the photos, a friend of mine remarked that they reminded her of dog kennels, except worse. MC2 read from his Smart Book as he described the camp, advising us to watch out for pieces of barbed wire hidden in the tall grasses that had reasserted their place in the abandoned camp.

We visited one of the five dilapidated wooden huts that were originally used for interrogations. The other huts were in ruin and were not safe to enter. A military escort informed us that all the detainees were strapped onto stretchers when they were taken from their cages to be interrogated. This was for their safety as well as for the safety of the guards; they explained that no one could be “roughed up” if the detainee was tied down. At that time, there was no compliant detainee classification. Oddly, one of our escorts pointed out what a great movie-setting this corner of the island would make.

That same escort told me that he hoped to return to Iraq where he had been assigned to the dangerous Sunni Triangle.<sup>89</sup> He was twenty-five when I met him and he had joined the Army’s infantry division when he was eighteen. When I asked him whether he had a family, he told me that he had a four-year-old son. “Aren’t you worried for your son?” I asked, thinking that his son needed his father.

“I want him to be proud of his father,” he replied.

From Camp X-Ray we headed to the Northeast Gate, the border with Cuba. A very pleasant and informative Marine guide joined our tour. He told us that every two to three months Cubans seeking asylum try to cross the border, but they are usually repatriated. Asylum seekers who are allowed to stay and live on the base are not permitted to enter the continental United States.

Before Castro came into power, the road we took from Camp X-Ray to the gate had continued into Cuba. Since then, “tank traps” (steep gullies) were built alongside the road to block any Cuban tanks from passing into Guantánamo. The United States had once set landmines in the adjoining areas, but has since collected all but nine that the military could not locate. Cuban landmines still existed in large numbers, and, not infrequently, the Marines would hear a landmine explode as an animal scampered over it.

<sup>88</sup> Nicholas M. Horrock & Anwar Iqbal, *Waiting for Gitmo*, MOTHER JONES, Jan.-Feb. 2004, at 15, available at <http://www.motherjones.com/politics/2004/01/waiting-gitmo>.

<sup>89</sup> The Sunni Triangle is the area to the north and west of Baghdad. PBS, *The Sunni Triangle: Tribes and Insurgents*, Feb. 12, 2004, <http://www.pbs.org/wgbh/pages/frontline/shows/beyond/iraqis/sunni.html>.

The information that surprised me most was what happened after the border between Cuba and Guantanamo was closed in 1959.<sup>90</sup> At that time, approximately two-hundred Cuban day-laborers had been crossing each day to work on the base. When the border closed, they appealed to Castro, arguing that they depended on the income their jobs provided. Castro relented, and permitted the workers to continue crossing, but ordered that no new workers be added. Fifty years later, three Cuban workers still crossed the border each morning and returned each evening. Their ages were between seventy-five and eighty-five, and their job was to carry and distribute the pensions of former workers back to Cuba every two weeks.

MC2 told us that he hoped to be partying in Havana the next year, envisioning that Castro would be dead by then and that the country would return to what he described as its former festive self.

#### FEIGNING DUE PROCESS AND THE RULE OF LAW

After lunch, we drove back to Camp America to visit with Captain Gary Haben, the officer in charge of the Office of Administrative Review of Detained Enemy Combatants. He introduced us to the room where the Combatant Status Review Tribunals (CSRT) held hearings to determine whether or not a detainee would continue to be considered an enemy combatant. A detainee's status was first determined at capture, and then the CSRT hearings reviewed that determination.<sup>91</sup> However, the CSRT hearings were anything but models of due process. Rather, the Department of Defense and the Bush Administration designed the procedure so that decisions nearly always validated the earlier status determination. Professor Mark Denbeaux reviewed the outcome of five-hundred CSRT cases and discovered that all but thirty-eight cases concluded that the detainee was an enemy combatant.<sup>92</sup>

CSRT hearings were administrative hearings before panels of three officers.<sup>93</sup> The burden was on the detainee to prove that he was not an enemy combatant, a nearly impossible feat.<sup>94</sup> First, detainees were unfamiliar with both the language and the legal system. Second, detainees were not allowed the assistance of counsel nor were detainees ever permitted to bring witnesses in their defense, other than detainees housed in Guantanamo.<sup>95</sup>

In those few hearings where the CSRT panel decided that the detainee was no longer an enemy combatant, the Department of Defense held "do-overs." New hearings, usually with the same evidence, were held in Washington D.C. before a different panel. At these new hearings, Guantanamo CSRT decisions

<sup>90</sup> Stephen Gibbs, *Guantanamo Reflects US-Cuba History*, BBC NEWS, <http://news.bbc.co.uk/2/hi/americas/7010725.stm> (last visited Sept. 6, 2009).

<sup>91</sup> HONIGSBERG, *supra* note 2, at 75-173.

<sup>92</sup> MARK DENBEAUX & JOSHUA W. DENBEAUX, NO-HEARING HEARINGS: CSRT: THE MODERN HABEAS CORPUS? 1, 39 (Seton Hall Pub. Law Research Paper No. 951245), available at [http://law.shu.edu/publications/guantanamoReports/final\\_no\\_hearing\\_hearings\\_report.pdf](http://law.shu.edu/publications/guantanamoReports/final_no_hearing_hearings_report.pdf).

<sup>93</sup> HONIGSBERG, *supra* note 2, at 114, 118.

<sup>94</sup> *Id.* at 116.

<sup>95</sup> For more on CSRTs, see Honigsberg, *supra* note 14, at 31-32, 56-57, 60, 72; HONIGSBERG, *supra* note 2, at 114-15.

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were usually overturned, and the new panel found the detainees to be enemy combatants after all.<sup>96</sup>

In June 2007, Stephen Abraham, an Army colonel who had served on a CSRT panel, filed a declaration with the United States Supreme Court.<sup>97</sup> In it, he identified a miscarriage of justice where a CSRT hearing he presided on found that a detainee was not an enemy combatant.<sup>98</sup> Notwithstanding a complete lack of new evidence, the panel's decision was subsequently overturned in Washington D.C.<sup>99</sup> In April 2007, three months before Abraham had filed the declaration, the court had denied certiorari in *Boumediene v. Bush*.<sup>100</sup> Just two weeks after Abraham filed his declaration, the Court reversed itself, and granted certiorari in *Boumediene*.<sup>101</sup> This was the first time in decades where the Court reversed a previous decision to deny a petition for certiorari.<sup>102</sup> *Boumediene* was the third Guantanamo case to reach the Supreme Court.

In June 2008, the Court issued its momentous decision in *Boumediene*. Authored by Justice Kennedy, it guaranteed all detainees in Guantanamo the constitutional right to habeas hearings, with the due process rights of a fair hearing and assistance of counsel before a neutral decision-maker. The two earlier Supreme Court cases, *Rasul v. Bush*, and *Hamdan v. Rumsfeld*,<sup>103</sup> declared that the detainees had *statutory* rights to habeas. After each of these cases, Congress passed statutes intended to remove habeas rights of Guantanamo detainees. The certified question in *Boumediene*, however, required the Court to rule on the detainees' *constitutional* rights. Kennedy's opinion closed the door on the Administration's ability to foreclose the detainees their right to habeas hearings.

Captain Haben informed us that, with the exception of the fourteen "high-value" detainees who were transported in the fall of 2006 from CIA detention centers (also known as "black sites") and foreign prisons where they were tortured under America's program of extraordinary rendition, all the CSRTs were completed by 2004. The hearings for the high-value detainees were completed in summer 2007. Also excepted from the 2004 CSRTs, were a handful of other detainees who were transported to Guantanamo subsequent to those fourteen.

The Administrative Review Boards (ARB) that provided an annual review of each detainee's status were housed in the same modular rooms that housed the CSRTs. The first meetings of the ARBs were held in 2005. Presumably, these panels decided whether detainees would remain in detention, be trans-

<sup>96</sup> HONIGSBERG, *supra* note 2, at 124.

<sup>97</sup> Reply to Opposition to Petition for Rehearing at i-viii, *Al Odah v. United States*, 540 U.S. 1003 (2007) (No. 06-1196), *available at* <http://www.scotusblog.com/movabletype/archives/Al%20Odah%20reply%206-22-07.pdf>.

<sup>98</sup> *Id.* at vii.

<sup>99</sup> Andy Worthington, *Horror at Guantanamo: Libyan Detainee Infected with Aids*, HUFFINGTON POST, Jan. 31, 2008, [http://www.huffingtonpost.com/andy-worthington/horror-at-guantanamo-liby\\_b\\_84337.html](http://www.huffingtonpost.com/andy-worthington/horror-at-guantanamo-liby_b_84337.html).

<sup>100</sup> *Boumediene v. Bush*, 127 S. Ct. 1478 (2007) (mem.) *denying cert.* to 476 F.3d 981 (D.C. Cir. 2007), *reh'g granted and vacated*, 127 S. Ct. 3078 (2007) (mem.).

<sup>101</sup> *Boumediene v. Bush*, 127 S. Ct. 3078 (2007).

<sup>102</sup> *See Hickman v. Taylor*, 328 U.S. 1337 (1947) (mem.) (granting cert.).

<sup>103</sup> *See Rasul v. Bush*, 542 U.S. 466, 484 (2004); *see also Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006).



ferred back to their home countries, or be released to another country because their home countries would likely torture them on their return. Those detainees designated for transfer became the responsibility of the Department of State, and no longer went through the ARB system. In some situations, the home country refused to take the detainee and the detainee was left, in effect, in purgatory until some other country agreed to accept him.

In actuality, prisoners were much more likely to be released because of pressure from their home countries, rather than because of ARB decisions. Diplomacy trumped “innocence.” For example, by September 2009, 121 of 140 Saudi detainees had been released.<sup>104</sup> In comparison, 98 out of 111 Yemeni detainees remained in Guantanamo.<sup>105</sup> Saudi Arabia had had a very favorable relationship with the Bush Administration; Yemen did not. The better a nation’s relationship was with the United States, the more clout it wielded to bring its detainees home.

As of the spring of 2009, only one Westerner remained in Guantanamo, a Canadian named Omar Khadr who was captured when he was a juvenile.<sup>106</sup> The Canadian Prime Minister had refused to ask for Khadr’s return.<sup>107</sup> In April 2009, a Canadian federal court ordered the government to try to bring Khadr back home to Canada.<sup>108</sup> In August 2009, the Canadian Federal Court of Appeals upheld the lower-court decision.<sup>109</sup> The Government of Canada is appealing that ruling and Khadr continues to remain at Guantanamo.<sup>110</sup>

We also toured the building that, at the time, housed the military commissions. These military commissions, also called military tribunals, held trials to prosecute detainees who were charged with committing war crimes. Unlike Article III courts or military court-martials, military commissions do not provide all of the constitutional due process rights and protections. The military commissions created by the Bush Administration permitted the use of evidence obtained through coercive methods if it served “the interests of justice.”<sup>111</sup>

<sup>104</sup> See the following regarding the numbers of detainees: Andrei Scheinkman et al., *The Guantanamo Docket: The Detainees*, <http://projects.nytimes.com/guantanamo> (follow “Citizenship” hyperlink; then follow links for both “Saudi Arabia” and “Yemen”) (last visited Sept 19, 2009).

<sup>105</sup> *See id.*

<sup>106</sup> *See* Khadr v. United States, 529 F.3d 1112 (D.C. Cir. 2008); Khadr v. Prime Minister of Canada, File T-1228-08 (Apr. 23, 2009) (Can.), available at <http://decisions.fct-cf.gc.ca/en/2009/2009fc405/2009fc405.pdf>; Reuel S. Amdur, *Finklestein: Middle East Powder Keg Ready to Blow*, THE ARAB AMERICAN NEWS.COM, June 9, 2008, <http://www.arabamericannews.com/news/index.php?mod=article&cat=Canada&article=1014>.

<sup>107</sup> Rob Gillies, *Canada’s Supreme Court to Hear Guantanamo Case*, MIAMI HERALD, Sept. 4, 2009, <http://www.miamiherald.com/news/americas/guantanamo/story/1217760.html>.

<sup>108</sup> TheOmarKhadrProject.com, *Federal Court of Appeal Affirms Order for Repatriation*, [http://www.omarkhadrproject.com/\\*-Breaking-News-\\*Federal-Court-orders-Canada-to-see-repatriation.html](http://www.omarkhadrproject.com/*-Breaking-News-*Federal-Court-orders-Canada-to-see-repatriation.html) (last visited Oct. 26, 2009).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Josh White, *From Chief Prosecutor to Critic at Guantanamo*, WASH. POST, Apr. 29, 2008, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042802982.html>.

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This included coercive evidence obtained before the passage of the Detainee Treatment Act on December 30, 2005.<sup>112</sup>

Due to confusion over the timing of our visit, the door to the building was locked and we almost missed seeing the room where the first military commissions were to be held. (In 2008, the trials were moved to a huge tent at another location on the base.) However, Morris (Moe) Davis, who was then the Chief Prosecutor for the military commissions, was sitting outside the building having a cigarette when we arrived. He graciously offered to unlock the door and take us inside to explain the procedures. The room was being remodeled at the time to allow for a larger jury panel and more visitors. Davis explained that Susan Crawford, the Convening (supervising) Authority, would select military members who would be flown in to sit on the jury. They were not likely to be lawyers. Davis anticipated as many as seventy-five to eighty prosecutions for war crimes.

Apparently, Davis must have been having doubts about what he was saying. Six months after we met him, Davis made a 180-degree turn. On October 6, 2007, he abruptly resigned as Chief Prosecutor in Guantanamo. Davis later claimed that his supervisor wanted a larger role in the prosecution and interfered with his handling of the cases.<sup>113</sup> In addition, Davis asserted that the trials had become highly politicized.<sup>114</sup> He indicated that he had been pressured to pursue “sexy” and “high interest” cases in time for the 2008 elections.<sup>115</sup>

Davis’s rage did not stop there. In February 2008, still in uniform as a senior legal official for the Air Force, he moved even closer to the edge. Only eight months after writing about the “fair and transparent nature of the military commissions,”<sup>116</sup> Davis agreed to testify that the hearings at Salim Hamdan’s war crimes trial may have been rigged. Hamdan, who was from Yemen, was bin Laden’s driver.<sup>117</sup> Davis said that his testimony would address the “potential for rigged outcomes” and that he had “significant doubts about whether [the

<sup>112</sup> “Statements obtained by torture are not admissible (10 U.S.C. § 948r(b)), but statements ‘in which the degree of coercion is disputed’ may be admitted if reliable, probative, and the admission would best serve the interests of justice.” DEP’T OF DEFENSE, MANUAL FOR MILITARY COMMISSIONS I-1 (2007) (quoting 10 U.S.C. § 948r(c)), available at [http://www.cfr.org/publication/12453/manual\\_for\\_military\\_commissions.html](http://www.cfr.org/publication/12453/manual_for_military_commissions.html). For statements obtained after December 30, 2005, the date the Detainee Treatment Act (DTA) was enacted, the methods used to obtain those statements have to comply with the DTA. The DTA forbids cruel, inhuman and degrading treatment of the detainees, which seemingly would include torture. 42 U.S.C. § 2000dd(a) (2006).

<sup>113</sup> See White, *supra* note 111.

<sup>114</sup> See *id.*

<sup>115</sup> Josh White, *Ex-Prosecutor Alleges Pentagon Plays Politics*, WASH. POST, Oct. 20, 2007, at A3, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/20/AR2007102000179.html>.

<sup>116</sup> Morris D. Davis, *The Guantánamo I Know*, N.Y. TIMES, June 26, 2007, at A21, available at <http://www.nytimes.com/2007/06/26/opinion/26davis.html>.

<sup>117</sup> William Glaberson, *Ex-Guantánamo Prosecutor to Testify for Detainee*, N.Y. TIMES, Feb. 28, 2008, at A18, available at <http://www.nytimes.com/2008/02/28/us/28gitmo.html?pagewanted=print>. See below for discussion on Hamdan’s military commission case and Davis’ testimony.

commission system would] deliver full, fair and open hearings.”<sup>118</sup> Hamdan was ultimately convicted of providing material support for terrorism, and received a sixty-six-month sentence with credit for time served.<sup>119</sup> He was released and sent back to Yemen in November 2008 to serve the final month of his sentence.<sup>120</sup> He is now a free man.<sup>121</sup>

Had it not been for President Obama’s intent to close the prisons, detainees who were not tried before military commissions and who were not released could have conceivably remained in their isolated cells in Guantanamo for the rest of their lives without ever being charged or tried. In the spring of 2009, Candace Gorman’s client with TB and Hepatitis B was still in Guantanamo and had not yet been charged with any crimes. He was so debilitated that he had lost much of his eyesight and ability to walk. In early February, he was washing his clothes in his toilet. On some of Gorman’s visits, her client was too humiliated to let her see his condition, and he would not leave his cell to meet with her.

After President Obama announced that he was sending officials to Guantanamo to review the detention centers, Al Ghizzawi’s environment, as well as the environment of some but not all of the detainees, changed. In March 2009, he was permitted to watch a bland film once a week, and also allowed outside to see the sun and the trees for the first time in seven years.<sup>122</sup> However, many other detainees were still held in solitary confinement with no outdoor access.

#### BARKING DOG, EMOTIONAL EXHAUSTION, AND A FAREWELL

It was time to return to the OP-SEC for another round of photograph review. After that, we were scheduled to meet with Brigadier General Cameron Crawford, the Deputy Commander of the Joint Task Force. However, before our meeting with Brigadier General Crawford, the Deputy Public Affairs Officer walked into the room and immediately fixed his eyes on me.

“You are unusual,” he began, a marked hostility in his voice and a severe gaze in his narrowed eyes. “Someone must have really spoken highly of you.”

Apparently, he could not understand how my visit received approval. He pointed out that the base needed tougher standards. “Otherwise, everyone and his mother would be down here saying that they represent media,” he growled. “You are not typical,” he added. He indicated that both he and his superior who worked in the Pentagon were wondering how I managed to be here.

Repeating the question our escort asked me the previous day, he again asked whether I had ever done “pro bono work for the detainees.” I wonder what he would have done if I had represented detainees in the past. Why could I not be a habeas lawyer and an author at the same time? However, in this case, I was only an author. He was not satisfied. It did not really matter what I said; it seemed as if the sole purpose of his confrontational tone was to assert himself

<sup>118</sup> *Id.*

<sup>119</sup> *Guantanamo Justice*, WASH. POST, Nov. 27, 2008, at A28.

<sup>120</sup> *Id.*

<sup>121</sup> Moneer Al-Omari, *Hamdan is Free*, YEMEN POST, Jan. 12, 2009, <http://www.yemenpost.net/63/LocalNews/20085.htm>.

<sup>122</sup> E-mail from Candace Gorman (Mar. 6, 2009) (on file with author).

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as the authority when, in actuality, he was a bureaucrat with limited power. Tiny dogs often bark the loudest.

Unfortunately for him, it was too late. The base's commander had approved my visit, and the chain of command trumped. Of all the people we saw during those three days, he was the only one who was unpleasant to us. Everyone else was cordial, often amiable, and even gracious at times, whether they liked our being there or not.

Deputy Commander Crawford closed our visit by repeating the mantra we had heard again and again throughout those three days: The base is here for the "safe and humane care and custody of the detainees and visitors." He then added this fanciful statement: "Soldiers and warriors dream of peace, and work themselves out of a job." I wish. I was tired, and not much else needed to be said.

That evening, Karin, Chris, and I again purchased our dinners from the Jerk House. There was something comforting about that routine. We were ready to go home and welcomed the thought of rising at 5:30 a.m. to catch the ferry and our eight-o'clock flight to the mainland.

Early Thursday morning, our escorts drove our van onto the ferry that took us to the leeward side. We returned to the old air hanger where our flight was waiting. Once we checked in with the airline, our military escorts' jobs were complete. Two escorts said that they were heading to the beach that day.

I wished them the best. They certainly needed a "Gitmo vacation" to maintain their equilibrium among those powerful spirits that wreaked havoc on the minds of those who made their temporary home in the place they call Guantanamo.