

has become “a symbol of torture and justice delayed”—a “recruiting poster for terrorists.”<sup>35</sup> Some of these allegations have been at least partially addressed by the commission rules that were amended in 2009. But considering all of the negative publicity, it may be understandable that the Chief Prosecutor sought to convince non-governmental-organization (NGO) observers like me that these criticisms are wrong and that Camp Justice deserves its name because justice really is being done at Guantanamo. Yet most lawyers I know try to persuade others through evidence and reason rather than by artlessly labeling opponents as foolish. Perhaps because of a lack of time or because he felt that we NGO observers were unable to understand the merits, the General glibly alleged that opponents’ claims that the Gitmo proceedings are unjust, opaque, or illegal were entirely baseless. He did not get into details as to why the antagonists’ arguments are without merit or why the proceedings at Guantanamo are important to continue and support.

One of my fellow observers who had visited with General Martins at Gitmo on a prior occasion remarked that the General seemed tired. By the time I met General Martins, he had been serving as the Chief Prosecutor of the military commissions for approximately three and a half years. Considering the political and legal quagmire that is Guantanamo, it would not be surprising to find someone appointed to lead the charge in continuing these military commissions to be tired of defending the enterprise.

#### **7. Being a Gitmo defense attorney can be a career killer.**

Mr. Hadi al-Iraqi’s defense attorney also met with us while in Gitmo to discuss his side of the case. I was surprised by how that meeting went. Considering the hierarchical structure of the military, I expected that the Lieutenant Colonel defense attorney would be careful in any criticisms he had of the military judge, the prosecution, and especially the Convening Authority. Certainly, I expected him to vigorously defend and represent his client’s interests, but I did not expect the bold statements that I heard. The defense attorney suggested that the trial was rigged against his client. It was from him that I learned the Convening Authority, who decides that the detainee should be charged, handpicks the members of the panel. And there was also mention of attorney-client meetings being bugged by the government. Did this officer really have the latitude to speak critically of his military colleagues? I’m not sure, but perhaps he had little to lose. I learned that being appointed as defense counsel in these military commissions trials is a career killer. Among the human rights NGO observers at Gitmo, the word seemed to be that defense attorneys like the Lieutenant Colonel were, from the start, meant to lose. If true, it is difficult to see how that could be a career booster.

#### **8. It’s absolutely beautiful down there.**

Despite the dark subject that brought me to Gitmo, it was impossible not to recognize how beautiful it is down there. Certainly there is a strict, orderly, isolated, and mechanistic characteristic to the base; it is, after all, a fully operational military base. But the amazing beaches, the lush hillsides, the rocky shores, the lofty mountains, and the clear blue

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35. *See id.*; *Perpetuating Guantánamo’s Travesty*, N.Y. TIMES, Jan. 17, 2015, <http://www.nytimes.com/2015/01/18/opinion/sunday/perpetuating-guantanamos-travesty.html>.

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waters are breathtaking. On top of the beauty is the mystery that shrouds this Caribbean jewel. Since the United States and Cuba severed relations in 1961 during the Cold War, there have been significant restrictions on U.S. citizens' travels to Cuba, and it is primarily only U.S. military personnel who have been able to enjoy this small forty-five-square-mile piece of Cuba at Guantanamo Bay. Knowing that my experience was in this way unique only added to the exquisiteness of the island.

**9. Camp Justice offers an odd juxtaposition of gravity and levity.**

Gitmo's beauty and intrigue sets an odd scene for observing military commissions proceedings. On the one hand, individuals like Mr. Hadi al-Iraqi have spent about a decade in detention. And he may be one of the lucky ones, as charges being filed suggests that he at least has an opportunity to defend himself and a chance—however small—that he could be found not guilty, or even guilty, and released.<sup>36</sup> Other detainees have not been charged, and, under the laws of war, may be held until hostilities come to an end.<sup>37</sup> Currently, there seems to be no end in sight for this War on Terror.<sup>38</sup> Further, from all accounts, the detainees' conditions of confinement are unpleasant.<sup>39</sup> I was not granted access to view the facilities in which the detainees are currently being held, and there are apparently several detention sites on the base. Some of my guides suggested that the detention facilities' cells have been built to the standard specifications of U.S. federal prison cells—about six by eight feet, which is slightly narrower, and a little over a foot longer, than a king-sized mattress. I was able to view the prior detention camp—Camp X-Ray—which was used until 2002,<sup>40</sup> from the nearby road. From this perspective, the Camp looks like a large pen where you would temporarily keep wild animals. I suppose that many view these detainees as nothing more than dangerous wild animals; they have been charged with committing some horrific crimes—murdering, or assisting the murder of, thousands of Americans and committing war crimes.

Although I visited Gitmo to watch the military commission proceedings for one of these charged terrorists, there was a fair amount of downtime at Camp Justice—particularly when my fellow observers and I were excluded from the proceedings because they were deemed to include information beyond our security clearance levels. During this free

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36. See David J.R. Frakt, *Prisoners of Congress: The Constitutional and Political Clash Over Detainees and the Closure of Guantanamo*, 74 U. PITT. L. REV. 179, 226 (2012); *supra* text accompanying note 12.

37. See *Hamdi v. Rumsfeld*, 542 U.S. 507, 520 (2004) (stating that “[t]he capture and detention of lawful combatants and the capture, detention, and trial of unlawful combatants, by universal agreement and practice, are important incident[s] of war”; that “[t]he purpose of detention is to prevent captured individuals from returning to the field of battle and taking up arms once again”; and that “[i]t is a clearly established principle of the law of war that detention may last no longer than active hostilities” (internal quotations and citations omitted)).

38. *But see* Vladeck, *supra* note 11, at 2195 (“[T]here appears to be little question that, as current Homeland Security Secretary Jeh Johnson has put it, we are reaching a ‘tipping point’ in the conflict Congress authorized back in 2001.”).

39. To be sure, conditions of confinement for U.S. state and federal prisoners are also unpleasant.

40. Camp X-Ray was used as a temporary detention facility for about three and a half months before the detainees were transferred to Camp Delta—a more permanent facility. See Karen Greenberg, *THE LEAST WORST PLACE: GUANTANAMO'S FIRST 100 DAYS* 118 (2009); Charlie Savage & Damon Winter, *Camp X-Ray: A Ghost Prison*, N.Y. Times, Sept. 1, 2014, <http://www.nytimes.com/interactive/2014/09/01/us/guantanamo-camp-x-ray-ghost-prison-photographs.html>.

time, the other NGO observers, our military escorts, and I spent time on the gorgeous beaches, took a boat tour of the Bay, and enjoyed the cuisine of the several restaurants on the base, including my favorite, the Korean Barbecue place. We also told jokes, listened to stories, and shopped at the Navy Exchange. In many ways, it was a fun, novel, and interesting experience. Yet I kept guiltily wondering how I could enjoy myself—how I could soak up the sun on the tropical beaches and drink homemade vodka lemonades while listening to *actual* war stories—while so many detainees were locked up nearby and while so many Americans are still mourning because of the horrible crimes that these detainees may have committed. Gitmo offers a surreal experience of watching war crime trials in a tropical paradise.

**10. Those serving in the military have given up so much for us.**

I have described Gitmo as existing in a tropical paradise, but I learned that many of the military personnel stationed at Gitmo have a different impression. Many of them admitted that they do not like living down there but that it is part of their duty to serve on this isolated base over 500 miles from home. In addition to the drudgery of everyday service, the Gitmo residents explained that there is little to do on base. And unlike most other U.S. military bases, there is nowhere to go beyond the confines of the base.

Being stationed at Gitmo looks easy, though, if you consider the lives of our soldiers deployed to places like Iraq and Afghanistan. They give up precious time with their families and friends back home and put themselves in harm's way to protect our country and aid strangers in foreign lands. (I really ought to maintain some perspective when I complain about Gitmo—about living in a tent for a week, having to use bottled water to brush my teeth, missing the much more sanitary bathrooms back home, and having to keep watch for invading banana rats.) Despite my concerns about the proceedings at Gitmo, I am thankful for our soldiers and the hospitality I enjoyed while visiting the Guantanamo Bay Naval Base. The experience was one of patience and learning, and I value the opportunity to be a small part of this piece of history. But I am happy to be home where the laws and procedures seem to make more sense.

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