

AMERICAN LIMBO

REFLECTIONS ON A RECENT JOURNEY TO GUANTANAMO BAY

► BY BRIAN GLYN WILLIAMS, STETSON '86

For most who have never been to Guantanamo Bay it is something of an abstract, a place defined by disparate images of Al Qaeda prisoners in orange jump suits, barbed wire, guard towers and US Marines. It is more of a symbol, a 21st century Devil's Island or an emblem of shame for many critics of the Bush administration, than a real place.

Others see it as an off shore Caribbean Alcatraz that confines some of this century's most dangerous men. Among others, it holds Khaled Sheikh Mohammad (KSM), the mastermind behind the slaughter of almost three thousand people on "Holy Tuesday" (as 9/11 is known in jihadist circles). KSM is also the man who proudly boasted of beheading Wall Street Journal journalist Daniel Pearl with his own "blessed hand." For those who lionize KSM, Guantanamo is for this very reason as potent a focus or symbol of the hated Americans as the obscene photos of Iraqi prisoners being abused by US troops at Abu Ghraib.

I must confess that as I looked out the window of our military jet airliner at the green Sierra Masestra mountains and turquoise Caribbean Sea below, the image that came to my mind was of Jack Nicholson as a Gitmo-based Cold Warrior in *A Few Good Men*. That movie had been about an earlier Manichean struggle between good and the 'Evil Empire', now we were involved in a more complex war against the 'Evil Doers.' And it was that global conflict that had brought me here to one of the world's most recognizable symbols of the global war on Al Qaeda.

When our plane banked hard in order to avoid flying over Cuban airspace, I strained to see the famous War on Terror sights I associated with Guantanamo Bay. As our plane dove like a fighter bomber towards a small air strip located on the leeward (western) side of the crescent shaped bay, I finally made out a line of towers on the green hills marching off into the distance. And on the windward (eastern) tip of the harbor I could make out several square shaped complexes that I knew were the camps Delta, Echo and Iguana which had been built to replace Camp X-Ray.

Somewhere in the camps was a Yemeni citizen named Salim Hamdan who had been captured following a fire-fight in Afghanistan in November 2001. While the US Special Forces who apprehended him had not known who he was

initially, he turned out to be one of the first big catches of the war on terror. For Salim Hamdan was no ordinary Taliban, he was Osama Bin Laden's driver.

And it was Hamdan that had drawn me here to serve as an expert witness in what was shaping up to be the first Military Tribunal since World War II and first Gitmo trial. I had been asked by the Defense – which was led by the fiery former JAG (Judge Advocate General) named Charlie Swift – to serve as an expert witness on Hamdan's behalf.

When I had received the call to join the defense from a retired CIA colleague, I was initially of a mixed mind. While I had read the media reports of the landmark Hamdan vs. Rumsfeld case (which went to the Supreme Court in 2006 and led to the overturning of the White House's Military Commissions), I needed to know more about Hamdan himself. If I felt that he was a member of one of Al Qaeda's notorious *akhunds* (terrorist cells, like the infamous Hamburg Cell which attacked the US on 9/11) I could hardly serve as a witness. On the contrary, my work for the government on jihadists and trans-national terrorists thus far had been more about putting terrorists away than closing down Guantanamo.

Having prepared my testimony, it was now time to fly on the plane which was filled with members of Defense, Prosecution, UN observers, random lawyers, and human rights monitors from Andrews Air Force Base to Guantanamo Bay. It was time to leave the US and go to a place that was deemed to be beyond the reach of America's legal system, but paradoxically within reach of her law.

Expert Witness Testimony

When the case of Bin Laden's driver, Salim Hamdan, was finally heard, I was very impressed by the security I witnessed. When Hamdan was moved from the camps to the old converted airport terminal on the hill that served as the Military Commission courtroom, that part of the base was essentially on lockdown. As snipers patrolled the surrounding landscape with weapons drawn, we were waved through numerous checkpoints by armed guards who checked our clearance passes and thoroughly investigated us and our vehicle with explosive-sensing devices and metal detectors. Having made

our way through the security perimeter, it was finally time to give my testimony and meet Bin Laden's Yemeni driver, Salim Hamdan.

Hamdan's case was interesting to say the least. He was a dirt poor Yemeni who volunteered to go to Afghanistan to wage jihad in the 1990s (nothing illegal in and of itself when you consider that the US actually sponsored such jihad activity until 1991). But when that effort failed, he was told about a relatively unknown Saudi dissident living in Afghanistan named Osama Bin Laden. Would Hamdan be willing to work for him as a guard and chauffeur for \$200 a month? Hamdan agreed and he did so right up until the arrival of the avenging Americans in November 2001. It was at this time that he was captured driving a Toyota with a shoulder fired SAM 7 (surface to air missile) in the back. When it was discovered that he was actually Bin Laden's personal driver he was whisked away to distant Cuba and had been confined in the 'Pearl of the Antilles' ever since. While few felt that he was a major Al Qaeda terrorist mastermind or even a participant in any Al Qaeda attacks, the fact that he was captured with a weapon was damning.

My role in the hearing was rather straightforward – to share my findings on the existence of hundreds if not thousands of armed Arabs like Hamdan who served on the front line in an auxiliary support role as fighters in Afghanistan. As members of an established jihadi fighting unit that was perhaps the most organized in all Afghanistan, the Defense felt that these jihadi foreign legionaries should be covered by the Geneva Conventions article four (which states that those who fight under a command structure, with uniforms and insignia should be given prisoner of war status if they are captured). My own field research in Afghanistan from 2003-2007 pointed to a relatively organized Arab command structure (for Afghanistan) which of course sharply delineated this group of fighters from the Al Qaeda sleeper cells whose members were terrorists (i.e. these Al Qaeda terrorists did not openly wear camouflage uniforms and carry weapons like Hamdan did).

The most interesting moment of the hearing for me was when Hamdan was led in handcuffs into the court room by several armed soldiers. I remember him watching me intently as I both gave my testimony and underwent a ferocious cross-examination by the Prosecution. I noticed he was a small, wiry man wearing an over-sized checkered sports coat, Yemeni baggy pants, sandals, and huge headphones to hear my testimony in Arabic. When I contested a few points with the Prosecution, I noticed him nodding his head emphatically, but other than that he seemed to be relatively resigned to his fate.

Regardless of what he thought about me, I felt little for him. Neither the sympathy that many human rights activists

automatically feel for everyone in Gitmo (including KSM who be-headed Daniel Pearl and killed 3,000 people on 9/11) nor the reflexive blind hatred of those ultra-patriots who unquestioningly support the imprisonment or even execution of anyone even suspected of links to terrorism. For me he was an abstract and my job was to share the intelligence I had gathered during my time on the ground in Afghanistan working with captured Taliban prisoners of war and their Northern Alliance captors.

When the surreal Military Commission Hearing was over I was not sure what my overall impression of Guantanamo Bay was. I was certainly impressed by the energy of the Defense team. They worked long hours on this case that they sincerely felt was a bellwether on whether the US would accept internationally recognized convention dealing with foreign prisoners of war. For them it was about America being recognized abroad as a country that followed the international standards we had helped draw up. I felt what was important was that the prisoners at Gitmo, some of whom were undoubtedly guilty, got their day in court from a country that prided itself on its judiciary. Just housing them in an off-shore Alcatraz designed to circumvent our own juries seemed positively un-American.

For me the whole idea of creating a place, a place where the ideals of justice our founding fathers created explicitly *do not apply*, seemed to be an aberration of everything America stands for. The time, money and effort that went into flying human rights activists, international observers, lawyers, court personnel, translators, reporters and expert witnesses like myself to this place that was not covered by the 'universal' principles espoused in our Constitution seemed farsical. If another country, say Russia or China or Iran, had created such an off shore *gulag* to house its enemies, it would have surely been defined as a suitable candidate for lessons in the principles of democracy. The whole place seemed an aberration of American values and I could not help but view it through the eyes of foreigners who no longer seemed to define America as the great city on the hill, but as an isolated base on an island in the Caribbean.

The prosecution tried to conflate Hamdan's driving Bin Laden around with terrorism but the all military jury disagreed. They agreed that he was not a terrorist mastermind and accepted my explanation for a battle-field SAM 7 weapon in his car as valid. While the government wanted 30 years to life, the jury shocked everyone by giving Hamdan just six months. Gitmo's first case was freed in January and is now living with his wife and daughters and driving a taxi in Yemen.

*For photographs of Guantanamo Bay please see:
http://www.brianglynwilliams.com/cuba/field_cuba.html*