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A Law Professor's Reflections on Representing Guantanamo Detainees

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A LAW PROFESSOR'S REFLECTIONS ON REPRESENTING GUANTÁNAMO DETAINEES

*Randall T. Coyne**

INTRODUCTION

As a professor of law at the University of Oklahoma, I am evaluated annually by my peers on my performance in three areas: teaching, scholarship and service. Since joining the faculty in 1990, I have elected to satisfy my service obligations to the university by providing legal representation, usually pro bono, to the most despised members of society: those who are facing capital charges or awaiting execution.

I have had the honor and privilege of representing death row prisoners in Texas, California, Colorado, and Oklahoma. In recent years, I have represented Guantánamo detainees. Abdenour Sameur is an Algerian army deserter who had been granted refugee status by Britain in 2000.¹ Aminullah Tukhi is an Afghani who fled the Taliban and landed in Iran, where he worked as a taxi driver. Mr. Sameur was freed from confinement in 2007, largely due to the efforts of Reprieve, an international human rights organization based in London. Around the time of Mr. Sameur's release, Mr. Tukhi was transferred from Guantánamo to Polecharky prison in Afghanistan.² He also was ultimately released.³

Currently, I represent two capital clients. Scott Eizember is a resident of Oklahoma's death row. Ahmed Khalfan Ghailani has been designated by the federal government as a "high value detainee." Mr. Ghailani has spent the past four years in solitary confinement. The last two of those years were spent at Guantánamo,⁴ awaiting a capital trial in

* Professor Coyne is the Frank Elkouri and Edna Asper Elkouri Professor of Law, University of Oklahoma College of Law.

1 *Profile: UK residents in Guantanamo*, BBC News, Dec. 20, 2007, <http://news.bbc.co.uk/1/hi/uk/6934782.stm>.

2 Email from Andrew Warden, Trial Attorney, U.S. Dep't. of Justice, to Randall T. Coyne (Dec. 13, 2007) (on file with author).

3 Email from Pardiss Kebriaei, Staff Attorney, Center for Constitutional Rights, to Randall T. Coyne (Apr. 30, 2008) (on file with author)

4 Richard Willing, 'High-value' detainees among transfers to Gitmo, U.S.A. TODAY, Sept. 6, 2006, at A6.

New York and facing the prospect of a military commission proceeding.

I once heard Professor Michael Tigar, a truly great lawyer, describe his license to practice law as a ticket. I agree. A license to practice law, properly used, entitles the bearer to a front row seat to some of the most compelling dramas known to man. These are the dramas in which the government, with its virtually limitless resources, seeks to deprive some hapless creature, a murder suspect, or an alleged enemy combatant, of his freedom or his life.

I. DEBUNKING THE ENEMY COMBATANT/ TERRORIST MYTH

Guantánamo detainees have been branded by our highest government officials as “terrorists”⁵ or “al Qaeda fighters.” According to government officials, these detainees were captured on the battlefield, or committed hostile acts against Americans or their allies.⁶ Secretary of Defense, Donald Rumsfeld, called the men detained at Guantánamo “the worst of the worst.”⁷

5 Joby Warrick, *A Blind Eye to Guantanamo?*, WASH. POST, Jul. 12, 2008, at A02; Tim Golden, *Voice Baffled, Brash andirate in Guantanamo*, N.Y. TIMES, Mar. 6, 2006, at A02.

6 For example, during a March 28, 2002 Department of Defense briefing, former Secretary of Defense Donald Rumsfeld said:

As has been the case in previous wars, the country that takes prisoners generally decides that they would prefer them not to go back to the battlefield. They detain those enemy combatants for the duration of the conflict. They do so for the very simple reason, which I would have thought is obvious, namely to keep them from going right back and, in this case, killing more Americans and conducting more terrorist acts.

Donald Rumsfeld, U.S. Sec’y of Defense, Defense Department Briefing (Mar. 28, 2002), <http://www.globalsecurity.org/military/library/news/2002/03/mil-020328-usia03.htm>.

7 On September 20, 2001, in an address to a joint session of Congress, President George W. Bush said, “Either you are with us, or you are with the terrorists.” *Report on Recovery and Response to Terrorist Attacks on World Trade Center and Pentagon—Message From the President*, 147 Cong. Rec. 107th Cong. S9553 (2001), 2001 WL 1103998 (Cong.Rec.). The Washington Post, on October 23, 2002, quoted Secretary of Defense Rumsfeld as calling the detainees “the

In 2006, Professor Mark Denbeaux of Seton Hall University School of Law published a study which put the lie to these bald assertions.⁸ Relying exclusively on the military's conclusions, and without regard to the statements or contentions of any prisoner or prisoner's lawyer, the Seton Hall study suggests the following conclusion:⁹

*95% of the detainees were not in fact captured on the battlefield.*¹⁰

If not captured on the battlefield, how did these enemy combatants stumble into U.S. custody and begin their interminable residence at America's gulag? American forces distributed leaflets in Afghanistan. These leaflets exhorted Afghans to turn suspected terrorists over to American forces in order to receive valuable rewards. A typical leaflet features a smiling Afghan who says:

Get wealth and power beyond your dreams. . . . You can receive millions of dollars helping the Anti-Taliban forces catch Al-Qaida and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people.¹¹

Professor Denbeaux reports that 86% of the detainees were delivered to American forces by people who received these leaflets.¹²

*92% of the detainees are not al Qaeda fighters.*¹³

According to the government's own records, just 8% of the detainees are properly characterized as al Qaeda fighters. Of the remaining

worst of the worst." See Mark Denbeaux & Joshua Denbeaux, *The Guantánamo Detainees: the Government's Story* ("Seton Hall Report"), at 4 n.2 (2006), <http://law.shu.edu/aaafinal.pdf>.

8 Mark Denbeaux & Joshua Denbeaux, *The Guantánamo Detainees: the Government's Story* ("Seton Hall Report"), at 4 n.2, (2006) <http://law.shu.edu/aaafinal.pdf>.

9 See generally, P. Sabin Willett, Speech Delivered at the Woodrow Wilson School of Public and International Affairs at Princeton University: Who's At Guantánamo, Anyway (Feb. 27, 2006), http://law.shu.edu/guantanamoteachin/willett_princeton_lecture_re_first_report_1_.pdf.

10 Mark Denbeaux, *supra* note 9, at 2.

11 *Id.* at 25.

12 *Id.* at 2-3.

13 *Id.* at 2.

92%, 40% have no definitive connection with al Qaeda, while 18% have no definitive affiliation with al Qaeda or the Taliban.¹⁴

*55% of the detainees are not determined to have committed a hostile act against the United States, its allies or anyone else.*¹⁵

This is true, though “hostile act” has been given the broadest definition possible. Fleeing from the bombing of American forces qualifies as a “hostile act.” Consider also that in 2001 Afghanistan had an estimated population of 8 million adult males, and 10 million Kalashnikov rifles. The evidence against 39% of the detainees consisted, in part, of the possession of a Kalashnikov rifle.¹⁶

What of my released client, former Guantánamo detainee Abdenour Sameur? Was he “the worst of the worst,” someone who, if released, would “return to the battlefield to kill” more Americans and conduct “more terrorist acts”?¹⁷

Mr. Sameur was arrested in the mountains between Afghanistan and Pakistan in the company of other Arabs. He had been shot in the leg. Mr. Sameur admitted having prior knowledge of the September 11, 2001 terrorist attacks, although he later explained that this confession was extorted from him by his American captors who refused to treat his leg injury until he confessed. Fearing that his leg would have to be amputated if treatment was delayed, Mr. Sameur told the authorities what they wanted to hear.¹⁸

Despite the frenzied fear-mongering of the Bush administration, one can safely assume that Mr. Sameur, who was reunited with his family in England late last year after being freed from Guantánamo, is not now and never has been a terrorist.

Mr. Tukhi’s story is similar. It begins shortly after the United States commenced bombing Afghanistan. Articulate and well-educated in economics, Mr. Tukhi was rounded up with other Afghans in Iran,

14 Mark Denbeaux & Joshua Denbeaux, *The Guantanamo Detainees: the Government’s Story* (“Seton Hall Report”), at 2 (2006), <http://law.shu.edu/aaafinal.pdf>

15 *Id.*

16 *Id.* at 19.

17 See Warden *supra*, note 3.

18 *Profile: UK residents in Guantanamo*, BBC News, Dec. 20, 2007, <http://news.bbc.co.uk/1/hi/uk/6934782.stm>.

primarily because he lacked appropriate documentation.¹⁹ He spent a month in an Iranian prison and then was transferred to a place, probably a CIA site, that he described as “the underground” or “dark prison,” run primarily by Afghans.²⁰ At this facility, he was interrogated by Americans several times. Next, he was sent to Bagram and then to Guantánamo. He spent five years there before being transferred to Polecharky Prison in Afghanistan.²¹ No charges were ever filed against Mr. Tukhi, and he too was eventually released.²²

Mr. Sameur and Mr. Tukhi’s obvious innocence is not anomalous. Many Americans will recall Shafiq Rasul, who succeeded in persuading the U.S. Supreme Court to review his case.²³ After Mr. Rasul’s case came before the Court, and three months before the Court handed down its opinion in his favor, Mr. Rasul was quietly released from U.S. custody.²⁴ Scores of other detainees, classified as enemy combatants, have been released during the “war on terror.”²⁵ On March 6, 2007, the U.S. Defense Department reported that since 2002, approximately 390 detainees had been released or transferred from Guantánamo.²⁶ As of December 16, 2008, approximately 250 detainees remained incarcerated at the Guantánamo Bay Naval base in Cuba.²⁷ More detainees have been released or transferred than still remain in Guantánamo.²⁸

II. UNDER THE SECURITY CLEARANCE MICROSCOPE

19 Email from Lynne Cooper, Attorney, to Terry W. West, Attorney, The West Law Firm (Apr. 8, 2008) (on file with author).

20 *Id.*

21 *Id.*

22 Email from Lynne Cooper to Randall Coyne, Apr. 8, 2008 (on file with author).

23 *Rasul v. Bush*, 542 U.S. 466 (2004).

24 *Britain Frees 5 Citizens Sent Home From U.S. Jail*, N.Y. TIMES, Mar. 11, 2004, at A3.

25 Tom Lasseter, *Day 1: America’s Prison for Terrorists Often Held the Wrong Men*, McCLATCHY NEWSPAPERS, Jun. 15, 2008, <http://www.mcclatchydc.com/259/v-print/story/38773.html>.

26 News Release, U.S. Dep’t of Defense, No. 253-07 (Mar. 6, 2007), <http://www.defenselink.mil/releases/release.aspx?releaseid=10582>.

27 News Release, U.S. Dep’t of Defense, No. 1017-08 (Dec. 16, 2008), <http://www.defenselink.mil/releases/release.aspx?releaseid=12394>.

28 U.S. Dep’t of Defense, *supra*, note 26.

Before an attorney is authorized to travel to Guantánamo to meet with the client, the lawyer must first obtain a Secret Security Clearance through either the Department of Defense (DOD) or the Department of Justice (DOJ). Among other things, the security clearance application process involves filling out a comprehensive government form, 86 (EG),²⁹ which normally requires the applicant to provide personal information relating to activities in the past seven years. In the Guantánamo litigation, the government has extended the reporting period to ten years. Applicants must submit fingerprints and sign an authorization empowering the government “to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, credit bureaus, consumer reporting agencies, collection agencies, retail business establishments, or other sources of information.”³⁰ Additionally, applicants must sign an authorization for the release of medical information³¹ and are required to permit the Internal Revenue Service to reveal confidential information about them.³²

Finally, applicants must submit to an interview with a Federal Bureau of Investigation special agent and sign a nondisclosure agreement. If the security clearance is granted, the applicant receives a security clearance briefing from a DOJ staffer. Before given access to any classified information, counsel must first sign a “Memorandum of Understanding” agreeing to comply with the terms of the Protective Order.³³

In connection with my representation of Mr. Sameur and Mr. Tukhi, I received the most basic security clearance designation: Secret. However, because Mr. Ghailani was designated as a “high value detainee” by the government, I faced two additional hurdles prior to receiving authorization to meet with him. First, I was required to upgrade my security clearance level from Secret to Top Secret. This required that I

29 Questionnaire for National Security Positions (revised Sept. 1995), <http://gsa.gov/portal/gsa/ep/home.do?tabid=0> (follow “forms” hyperlink, then type “SF86” into the “find a form” search box.).

30 U.S. Office of Personnel Management, Standard Form 86, Questionnaire for National Security Position (revised Sept. 1995), <http://www.opm.gov/forms/html/sj.asp>.

31 *Id.*

32 Internal Revenue Service, Tax Check Waiver, IRS Form 12339-A (2006), <http://www.irs.gov/formspubs/lists/0,,id=97817,00.html>.

33 *In re Guantanamo Detainee Cases*, 344 F.Supp. 2d 174, 178 (D.D.C. 2004).

update my original security clearance application and undergo even more searching scrutiny. Second, to fully represent Mr. Ghailani I was required to apply to become a member of the Military Commission civilian defense counsel pool. I submitted this application to the DOD on June 26, 2008, and received conditional approval on July 21, 2008, subject to my obtaining a Top Secret Security Clearance designation. More than seven months have passed since I applied for a Top Secret Security Clearance Upgrade. I have heard nothing from the government.

III. LOGISTICAL NIGHTMARES AND THE CONE OF SILENCE

Those who survive the security clearance quagmire and are granted membership in the Military Commission civilian defense counsel pool confront even greater challenges once they are approved to represent Guantánamo detainees. An Orwellian labyrinth of security rules converts even the simplest aspect of providing competent representation into an ordeal.

Notes taken by a detainee's lawyer during client interviews must be turned over to military personnel.³⁴ These notes are then sent by secure means to a secure facility in Crystal City, Virginia, for review by Department of Defense officials and possible declassification.

Even the most mundane pleadings must first be sent by secure means for clearance to the "Court Security Office" (CSO) in Washington, D.C.³⁵ Only after the CSO determines that the document may be publicly filed and gives defense counsel the "all clear" approval may the document be filed electronically on the public court docket. The irony is that the CSO gives the pleading to the government attorney assigned to the case—the opposing counsel—who then determines whether the filing contains anything that should be kept secret.

Should counsel need to quote from materials classified as secret in pleadings or filings, headaches increase. Counsel must fly to Washington, D.C. to draft the document. Counsel must use a government-supplied computer located in the secure facility in Crystal City, Virginia. Once the document is finished and all errant copies are shredded, counsel makes

34 *In re* Guantanamo Detainee Cases, 344 F.Supp. 2d 174, 176-77.

35 *Id.* at 178-79.

copies on a government-supplied photocopier and hands them over to the secure facility administrator. At that point, the pleading is considered filed. The administrator then calls the CSO, which sends someone over to collect the document. Once opposing counsel gives the “all clear” approval, the document may be filed publicly. Counsel is prohibited from removing even a single copy of the pleading from the secure facility.³⁶

Co-counsel wishing to discuss their client’s case may face additional hurdles. In a new millennium incarnation of *Get Smart’s* “cone of silence,”³⁷ counsel with appropriate security clearances can discuss top secret material only in the secure facility.³⁸ Because most of the words spoken or written by high value detainees are considered classified, co-counsel’s need to strategize about the case or even discuss what the client said during a recent interview may necessitate a trip to Crystal City.

IV. CONSEQUENCES OF REPRESENTING THE DESPISED

One emerging criticism, leveled with increasing frequency against those of us who seek to protect the rights of the detainees, is that we have been engaging in “lawfare.”³⁹ Because the terrorists have engaged in “warfare,” those who would seek to enforce the rule of law by protecting the rights of accused terrorists are accused of engaging in “lawfare.”

Berkeley Law professor John Yoo, considered by many to be the

36 *In re* Guantanamo Detainee Cases, 344 F.Supp. 2d 174, 179 (D.D.C. 2004).

37 The Cone of Silence is one of many recurring joke devices from *Get Smart*, an American comedy television series of the 1960s. Invented by “Professor Cone,” the device is designed to protect the most secret of conversations by enshrouding its users within a transparent sound-proof shield. Whenever Maxwell Smart (“Agent 86”) wants to speak to his boss (“Chief”) about a top secret matter, “86” would insist on using the comically defective technology despite being reminded that it never works. The Chief, usually with annoyed skepticism, would press a switch, causing the device to descend from above his desk, surrounding the heads of the would-be conversers.

38 Jim Loney, *Logistics, Secrecy, Hamper Guantanamo Trials*, REUTERS, Jul. 13, 2008, <http://www.reuters.com/article/domesticNews/idUSN1337899120080714>.

39 One definition of lawfare is the pursuit of strategic aims, the traditional domain of warfare, though aggressive legal maneuvers. Jeremy Rabkin, *Lawfare*, THE WALL STREET JOURNAL, Jul. 17, 2004, <http://www.opinionjournal.com/forms/printThis.html?id=110005366>

chief architect of the Bush Administration's pro-torture policies, was sued by convicted terrorist Jose Padilla. Professor Yoo whined, "Even as our brave young soldiers fight in Afghanistan and Iraq, and our intelligence agents succeed in disrupting follow-ups to the 9/11 attacks, terrorists are *using our own legal system as a weapon against us*."⁴⁰ One wonders whether Professor Yoo considers the American legal system to be private property. He has publicly pouted, "Lawfare has become another dimension of warfare."⁴¹ It is as if he believes that neither law nor justice has a role in the struggle against terrorism. Professor Yoo's complaints are hardly surprising, coming from an administration which appointed Charles Cully Stimson the Deputy Assistant Secretary of Defense for Detainee Affairs. Stimson angered many with his shocking suggestion that corporate America should boycott law firms that represent Guantánamo detainees.⁴²

This brings to mind an anecdote—perhaps apocryphal—I heard years ago as a summer associate at the prestigious D.C. law firm Arnold & Porter, known to take up unpopular liberal causes. As the story goes, the firm's co-founding partner, Paul Porter, was accosted one day at the country club by an obviously hostile and irate conservative U.S. Senator.

The Senator spat, "I understand that law firm of yours represents Communists and homosexuals and the like."

Firm legend asserts that Porter coolly replied, "That's true. And what can we do for *you*, Senator?"

Closer to home, my work on behalf of Guantánamo prisoners has generated a fair share of criticism. A typical example is an email I received after a local newspaper reported favorable comments I made about the Supreme Court's ruling in *Boumediene v. Bush*:⁴³

Dear Sir,

Re: Your representation of Terrorists

40 John Yoo, *Terror suspects are waging 'lawfare' on U.S.*, THE PHILADELPHIA INQUIRER, Jan. 1, 2008, at A10.

41 *Id.*

42 John Heilprin, *Views on Detainee Representation Draw Fire; Pentagon Officials Suggestion of Boycott is Irresponsible, Legal Groups Say*, THE WASHINGTON POST, Jan. 14, 2007, at A5.

128 S.Ct. 2229 (2008) (Guantanamo detainees entitled to challenge the legality of their confinement using the writ of habeas corpus).

It makes me sad to think that someone from my alma mater, OU, presumably a reasonably-paid professor, is representing a terrorist enemy of the United States. I, as a Vietnam vet, don't believe that they even deserve the rights accorded by the Geneva Convention, let alone the rights conferred on them by the recent (liberal) Supreme Court decision.

I would like to be really angry with you, but I have decided not to say what I am really feeling about you just now. I just thought that you should know that I, for one, am very humiliated by what you are doing.⁴⁴

V. PRACTICAL CONSIDERATIONS AFFECTING ACADEMICS

Before concluding, I would like to spend a few moments discussing some practical problems peculiar to academics that choose to represent Guantánamo detainees. There are law professors scattered across the country deeply involved in this litigation, from Harvard, Yale, Georgetown, New York University, Fordham, the University of Texas, Northeastern University and many other remarkable law schools.

A. Finding Shelter for Guantánamo Representation Under General University Policies

University policy regarding governance and oversight of faculty activity is typically set forth in a Faculty Handbook. Several provisions of the University of Oklahoma Faculty Handbook (OUFH) are relevant to my work on behalf of Guantánamo detainees.

As a threshold matter, the OUFH reminds each new employee of his or her duty to have a signed and notarized Loyalty Oath as part of the employee's personnel file.⁴⁵ By statute, each member of the OU community must solemnly swear, among other things, to support, obey and defend both the United States Constitution and the Oklahoma state

44 Email to author (Jun. 13, 2008) (on file with author) (name of sender deleted).

45 University of Oklahoma, *Norman Campus Faculty Handbook*, §5.5, available at <http://www.ou.edu/provost/ouncfhhb.pdf>.

constitution.⁴⁶ This is not particularly problematic. I teach constitutional law and I am a strong proponent of the rule of law.

More troublesome is the provision requiring affirmation that the employee “do[es] not advocate . . . or justify, directly or indirectly . . . and [is] not a member of or affiliated with any party or organization, political or otherwise, known . . . to advocate . . . revolution, sedition, treason or a program of sabotage, or the overthrow of the [federal government or Oklahoma state government] or a change in the form of government thereof by force, violence or other unlawful means.”⁴⁷ Here, I can confidently argue that my advocacy on behalf of those accused terrorists falls far short of advocating terrorism.

I take some comfort from a Statement of General Policy in the OUFH:

Employee participation in outside professional, commercial and pro bono publico activities can make important direct and indirect contributions to the strength and vitality of the University. . . . Because of its value to the University, its rewards for individual employees, and its contributions to the larger society of which the University is a part, the University recognizes that employee participation in outside professional . . . or pro bono publico activities is often appropriate.⁴⁸

Further shelter for my work on behalf of Guantánamo detainees can be found in a different handbook provision, describing professional service and public outreach:

Professional . . . service and public outreach is work done by a faculty member to advance the interests and capabilities of various communities, either inside or outside the University. These activities should stem from the faculty member’s professional expertise . . . and . . . should support and enhance the faculty member’s

46 51 Okla. Stat. § 36.1 (1953) (Repealed by Laws 2004, c. 408, §2, eff. Nov. 1, 2004).

47 Id. at § 36.2A.

48 *Norman Campus Faculty Handbook*, *supra*, note 45, at §5.10.2(B).

scholarly stature.⁴⁹

Each year, in addition to constitutional law, I teach courses in criminal procedure and capital punishment. Of greater relevance to my Guantánamo work, I also teach a seminar on terrorism and civil liberties.

B. Common Sense and Pragmatic Suggestions

Although sometimes in short supply in the academic world, common sense can help protect academics that perform service work viewed by many as controversial and by some as tantamount to treason. Some of these suggestions are enshrined as university policy and are mandated; others appear to me to simply make sense.

*In speaking or acting as private persons, faculty members should avoid creating the impression of speaking or acting for their college or university.*⁵⁰

I recall when I first started working on behalf of accused Oklahoma City bomber Timothy McVeigh; I received a call from the university president's office, and was asked by a presidential underling whether I expected to be sitting at a counsel table during Mr. McVeigh's trial. Given that Mr. McVeigh stood accused of murdering 168 people (including 19 children) 25 miles away from campus, I was sensitive to the university's concern. However, as a lawyer, my first duty was to my client. I refused to let administrative skittishness interfere with my ability to form a trusting relationship with my client.⁵¹

A related piece of advice:

Don't use University letterhead in connection with your representation of controversial clients.

Even though you may be justifiably proud of your membership in the academy, and you may have reason to believe that your status as "law professor" may entitle you and your client to somewhat better treatment and greater consideration than that afforded by the government to lay

49 *Norman Campus Faculty Handbook, supra*, note 45, at §3.6.3.

50 *Norman Campus Faculty Handbook, supra*, note 45, at §3.2.1(C)(emphasis added).

51 For an account of the difficulties encountered in representing Timothy McVeigh, see Randall Coyne, *Collateral Damage in Defense of Timothy McVeigh*, 1 COOLEY J. OF ETHICS AND RESPONSIBILITY 19 (2006).

practitioners, the safest course is to avoid using university letterhead in connection with your representation of accused terrorists.

Don't let pro bono work interfere with your primary academic mission: teaching.

Far from interfering with my teaching duties, I find that all my service work on behalf of criminal defendants greatly enhances my effectiveness as an instructor. On rare occasions, if classes must be cancelled due to litigation conflicts, it is essential that the classes are made up. Failure to do so is giving aid and comfort to your enemies, those who may resent your work and wish you harm.

Make every effort to minimize incurring any costs that will be borne by the University.

Other institutions may be more flexible in this area. Bringing a personal laptop to work for use on controversial matters can help blunt inevitable criticism. Similarly, when long distance calls are necessary, I make sure to use my personal cell phone for that purpose. The last thing you want to do as an academic working for a public university is to create a paper trail that gives some misguided critic ammunition to raise hell with the legislature about how taxpayer dollars are being used to subsidize the next terrorist attack on American soil.

Take care with respect to the use of student research assistants.

The Department of Justice, which is the government agency in control of the security clearance process, has refused to permit law students to apply for clearances.⁵² Thus, students are not permitted to meet with clients because all information received from clients is presumptively classified.⁵³

CONCLUSION

On September 20, 2001, addressing a joint session of Congress, President George W. Bush infamously said, "Either you are with us,

52 Martha Rayner, *Roadblocks to Effective Representation of Uncharged, Indefinitely Imprisoned Clients at Guantanamo Bay Military Base*, 30 FORDHAM INT'L L.J. 485, 488-489 (2007) (describing DOJ's unilateral rule barring law students from the clearance process notwithstanding broad language in the protective order).

53 *Id.*

or you are with the terrorists.”⁵⁴ Such simplistic declarations are both extremely divisive and patently unhelpful. It bears reemphasizing that most of the men unilaterally labeled enemy combatants and incarcerated indefinitely at Guantánamo are neither enemies nor combatants, much less terrorists.⁵⁵

In my opinion, President George W. Bush has demonstrated utter contempt for the rule of law. If fighting for the rule of law, struggling in support of separation of powers, and insisting that executive power be checked during this so-called war on terror means I am with the “terrorists,” so be it. I am with the terrorists. Given that the Bush administration has created an atmosphere in which torture is commonplace—if standing up against torture means I am with the terrorists, then I am with the terrorists. Given that I love my country, though I loathe the monstrous injustices perpetrated by the current government—I am with the terrorists. Given that I have dedicated my life to the pursuit of justice and passionately support the protections of the United States Constitution and the Bill of Rights, my place is alongside the terrorists. Is there anyone on this planet in greater need of zealous legal representation?⁵⁶

Like you, I have worked extremely hard for my ticket; and as long as I am able, I will use it to fight for fairness and freedom. The privilege of practicing law is precious. Use your ticket wisely.

54 President George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), <http://whitehouse.gov/news/releases/2001/09/print/20010920-8.html>.

55 See *supra* notes 9-17 and accompanying text.

56 See, e.g., Lonnie T. Brown, Jr., *Representing Saddam Hussein: The Importance of Being Ramsey Clark*, 42 GA. L. REV. 47, 118 (2007) (“Individuals widely viewed as morally repugnant are arguably the ones most in need of quality representation in order to balance the adversarial playing field and ensure that the process is fair, whatever the outcome”).