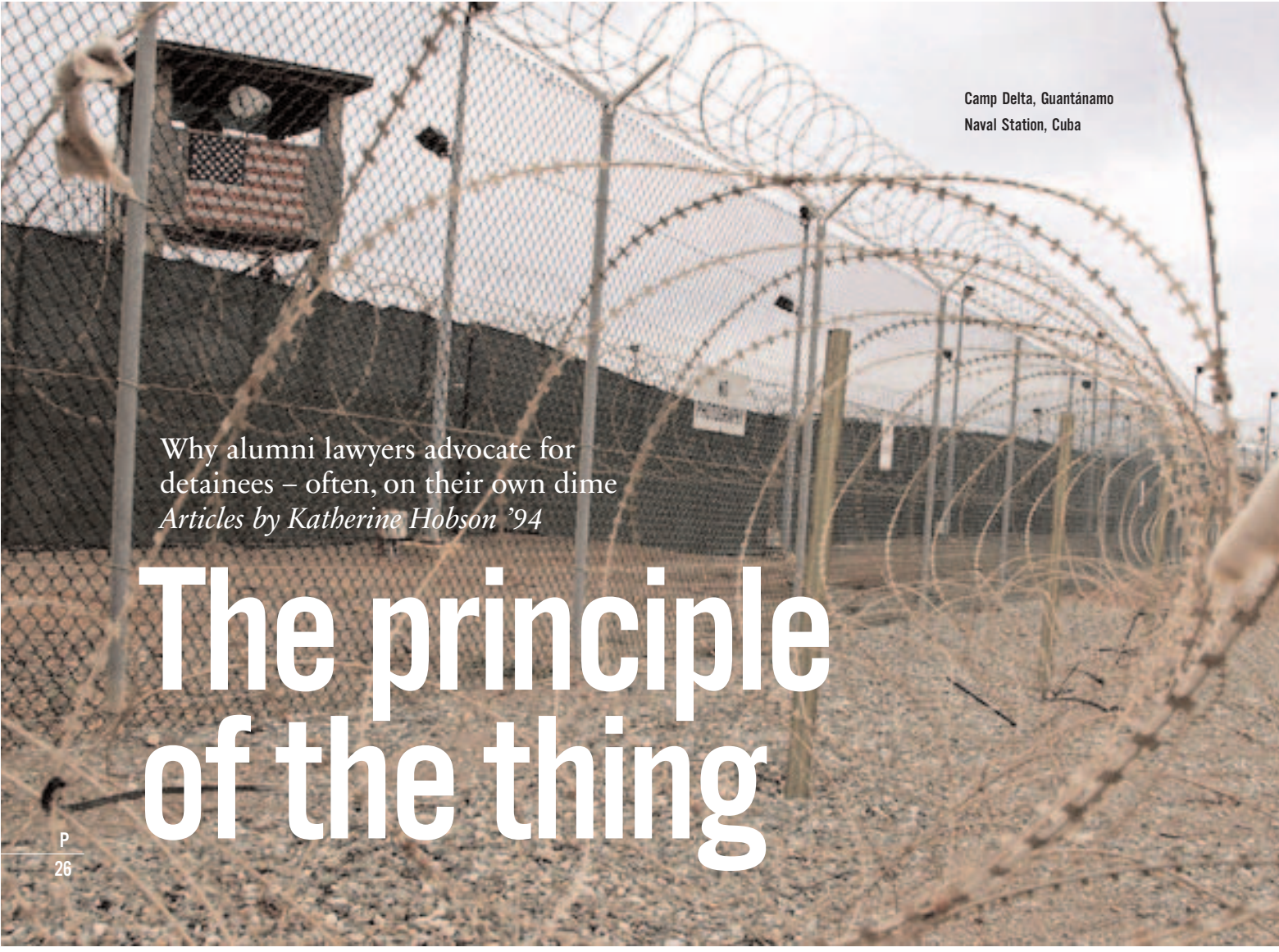

Camp Delta, Guantánamo Naval Station, Cuba

Why alumni lawyers advocate for detainees – often, on their own dime

Articles by Katherine Hobson '94

The principle of the thing

P 26

It's not easy for attorneys to work with clients when those clients are being held at the detainee camp at Guantánamo Bay, Cuba.

The puddle-jumper from Fort Lauderdale takes nearly three hours to reach the naval base on the far side of the island, since it cannot fly over Cuban airspace. The airport and barracks-style housing for visitors are on the leeward side of the bay, while the facilities housing the detainees are on the windward side. Each morning of their visit, attorneys take a bus to the ferry that travels across the bay. Once on the base, they meet clients in a separate facility not unlike an interrogation room. Each attorney is accompanied by a military officer except when speaking to a client. While there are plenty of items you can't bring in — such as paper clips and sharp objects — the exceptions can make for a rather surreal scene. "I can bring a bag of something in from the McDonald's on the base to my client, who's been rotting in a cell for five years," says Matthew Handley '97, an associate with Cohen, Milstein, Hausfeld & Toll in Washington, D.C., who has made the trip to Guantánamo twice to meet with some of the four clients his firm is representing.

The clients are not always welcoming — or even willing to meet their representatives. "They can be fairly distrustful," Handley says. (Detainees have claimed that interrogators have posed as lawyers.) The work can be depressing, the setting intimidating and conspicuously out of reach of the reg-

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ular U.S. justice system, and the legal victories stateside slow in coming — the Supreme Court recently declined to hear appeals on behalf of two groups of detainees, delaying any direct review of the system that determines if they're legitimately confined. Meanwhile, the Justice Department has proposed new limits on the lawyers' contact with their clients. Why, then, would so many attorneys — even those not normally engaged in human-rights work — be doing it, given the time commitment and financial and emotional costs?

The principle of the thing was what grabbed the attention of many lawyers. *Habeas corpus* — the right to appear before a court that will assess if imprisonment is lawful — lies at the root of our justice system. Lawyers defending the detainees don't claim that the prison is filled entirely by innocents, but rather that there's no way even to assess the detainees' status — no one knows what they're charged with. Nor is there any way to tell on what basis the person was captured. According to a report issued by researchers at Seton Hall Law School, 86 percent of Guantánamo detainees were arrested by the Northern Alliance, which fought the Taliban in Afghanistan, or by Pakistan, and turned over to the United States at a time when the United States was offering bounties and putting up posters with messages like: "You can receive millions of dollars for helping the Anti-Taliban Force 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 schoolbooks and housing for all your people." Lawyers also are pursuing claims for mistreatment suffered while at the detainee camp.

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"I think Guantánamo is the challenge for this generation of lawyers," says Eric Lewis '79, a partner in Baach Robinson & Lewis in Washington, D.C. He's the lead counsel representing four British former detainees in *Rasul v. Rumsfeld*, a suit filed in 2004 that seeks compensation from former defense secretary Donald Rumsfeld '54 and other military officials for injuries the detainees claim they suffered while being unlawfully detained at Guantánamo. (Another torture case against Rumsfeld, *Ali vs. Rumsfeld*, which was brought by nine Iraqi and Afghan former detainees, was dismissed in March.) Lewis believes there has been both torture and lack of due process — adding up to a "systematic program to act in a way that's anathema to the Constitution and desperately counterproductive."

"It's a process issue," agrees Peter Ryan '87, an associate with Dechert LLP in Philadelphia. He is working on three cases on behalf of 14 Afghan detainees. "If someone has committed a crime or a war crime, give them a fair process and convict them. Then the process works, and we can have a high degree of confidence — and the world can — that the process works and is fair. But this administration has said from the beginning that [detainees] have no rights, and in response to the Supreme Court decision [*Rasul v. Bush*, the 2004 decision that affirmed detainees' rights to challenge their detentions through the U.S. courts], they've put up a ramshackle process."

George Daly '58 is a retired lawyer in Charlotte, N.C. He responded to an article in a trial lawyers' magazine and is now working on behalf of one of the detainees. "What appeals to me [about working with detainees] is that Guantánamo violates the basic norm of a civilized society, which is that there's a functioning legal system that guarantees basic rights," he says. "Some are terrorists and others are totally innocent — the problem is there's no legal process for sorting them out. The government tried to create a place that was beyond the law." One of Daly's previous clients committed suicide before finding out that the government was preparing to release him. His current client has been cleared for return to Libya, his birthplace, but he doesn't want to go. (He was living in Afghanistan in 2001 and fled to Pakistan after the war started, which is where he was arrested.)

Items included in a "compliant detainee kit" in a cell at Camp Delta. The arrow points toward Mecca.

Now Daly is involved not only in the legal principles of a *habeas corpus* case, but in gathering evidence and affidavits to demonstrate that his client would be harmed if he returned to his home country. "We've been in touch with ambassadors of foreign countries, political secretaries — all sorts of people around the world who can execute affidavits about the conditions in Libya," he says. "I spend time interviewing witnesses and getting them to make statements relevant to the issues of the case." As a civil-rights lawyer, Daley has dealt with

COURTESY MATTHEW HANDLEY '97; CESAR VERA/LATINVISIONS/CORBIS

issues like flag-burning, draft-dodging, and abortion rights, and so the legal procedures involved were familiar to him. But dealing with human-rights issues — gathering evidence from far-flung people about conditions in Libya — was a novel experience. "I learn something new every day," he says.

Daly is not the only participating attorney who's new to human-rights work. Law firms of all stripes have been jumping on board. The remarks in January of then-Pentagon official Charles Stimson, criticizing mainstream lawyers for offering *pro bono* help and advising that corporate CEOs should "ask firms to choose between lucrative retainers and representing terrorists," actually served as a galvanizing event, several Princeton lawyers said. (Stimson, the deputy assistant secretary of defense for detainee affairs, later resigned because of the backlash to his remarks.)

"That very much backfired," says Handley, even among big corporate firms and their business clients, hardly known for being bleeding-heart liberals. "The reality of it is that many of these businesses are very sympathetic to claims that the process is being abused — they often think the government is overstepping its bounds. And the reputation of the United States abroad is in tatters, which doesn't help U.S. businesses." Since the end of 2004, the firm has taken on four clients in Guantánamo. Two are Mauritanian; one was picked up in Pakistan, where he'd been living, and sold to the United States for a bounty. "He more or less thinks he was in the wrong place at the wrong time," says Handley. Another, a friend of the first client, is in his early 20s and has been cleared by the U.S. government for release — but Mauritania won't take him back. Until his destination can be settled, he's still living in Camp 6, the newly opened prison at Guantánamo modeled after the modern U.S. supermax prison.

"Some are terrorists and others are totally innocent — the problem is there's no legal process for sorting them out." George Daly '58

An interrogation chair and desk in an empty room at Camp X-Ray.

Handley's employer is a plaintiffs' law firm that encourages work in human-rights causes. Handley was a Peace Corps volunteer in Nepal after leaving Princeton and had a strong interest in South Asia and its relationship with the United States. "I was abroad in the late 1990s, and it was a time where I felt relatively safe in most places I went to when I was living abroad. Now I feel that I've had things taken away from me — 10 years ago you didn't have to be an American apologist and have to explain yourself as set apart from what people consider that which governs the U.S. It's angering and it's depressing," he says.

Avi Cover '95 got involved almost by accident. He was a Teach for America alumnus and third-year law student at Cornell with a broad interest in public-interest law when he answered an ad requesting research help in examining executive power after 9/11. He found himself working on a detainee rights case for Joseph Margulies, a Cornell visiting professor who was the lead counsel on *Rasul v. Bush*. Cover was hooked, describing the excitement of the work as "almost like a drug." He worked for Margulies through the summer after law school and then looked around for a full-time job in the same area, eventually ending up working for the city of New York in its World Trade Center Unit, defending against claims by rescue workers claiming negligence by the city. "It was traumatizing work," he says, given that he had to work with and sometimes against people already traumatized by 9/11. But he says that's where he really learned to be a lawyer, and when he heard of an opening at Human Rights First, he jumped at the chance to return to human-rights work. That's where he is now, working on legislative, public advocacy, and litigation matters as a senior counsel in the group's law and security program. Human Rights First files *amicus* briefs in the major detainee-rights cases, and also was involved in the recently dismissed suit against Rumsfeld. It's intellectually fascinating work, but Cover admits it can also be Sisyphean and, on occasion, frustrating.

Ellen Lubell '81 and her law partner at Tennant Lubell, in Newton, Mass., had been interested in human-rights work for many years, though their firm deals with intellectual-property issues. But the suicides of three detainees in June 2006 prompted them to get involved. "We were so distressed, and sitting still felt impossible," she says. They contacted lawyers representing some of the detainees to offer their help, and ended up taking on one client, a 31-year-old Algerian man with a sixth-grade education who had learned to say "thank you" in English. He was picked up in Pakistan

COURTESY GEORGE DALY '58; CESAR VERA/LATINVISIONS/CORBIS

"Having to imagine what it would be like to be held separately from your family, not knowing why you're being held — there's a hopelessness that felt so devastating." Ellen Lubell '81

and turned over to the Americans. "Having to imagine what it would be like to be held separately from your family, not knowing why you're being held — there's a hopelessness that felt so devastating," says Lubell.

Whatever the motivation of the attorneys involved in litigation, there are costs. Time and money are the most obvious; lawyers involved in the defense of Guantánamo detainees pay their own way. Larger corporate firms have *pro bono* budgets; Dechert, Peter Ryan's firm, allows associates up to 200 hours of *pro bono* work per year before requiring them to get permission for more. His detainee case, he says, clearly is consuming more than 200 hours, and he's had no problem getting approval to continue. Over at Cohen, Milstein, Hausfeld & Toll, which collects fees on a contingency basis, Handley just works on the cases in addition to his regular caseload.

Smaller firms have an especially tough financial struggle. Daly estimates that he and another local attorney have paid a total of $12,000 between them for trips to Guantánamo and translators, which run $1,500 a day. Lubell and her partner raised $18,000 in donations from the community to help defray the costs of travel, translators, and FOIA requests, and she admits the time commitment is overwhelming. "It's our biggest *pro bono* project — it's huge," she says, estimating it's been in the "hundreds and hundreds of hours." And, she hastens to add, it's worth it: "If I could put my practice on hold, I'd take another client." P

A security door of a cell in Prison Camp Delta.

COURTESY ELLEN LUBELL '81; CESAR VERA/LATINVISIONS/CORBIS

Katherine Hobson '94 covers health and medicine for U.S. News & World Report.

Princeton professors and visitors also have been involved with detainee rights. Here are some who are working on the issue.

Kim Lane Scheppele

Much of the debate over the Patriot Act has focused on what it means for Americans. But Professor Kim Lane Scheppele thinks it goes beyond that. Scheppele says the legislation was tracked by a U.N. Security Council resolution requiring member countries to change their own laws to fight terrorism, stop money from flowing to terrorists, share information about terrorism suspects with other countries, and prevent the immigration and asylum system from being used by terrorists. "And every state gets to adapt it to their own particular circumstances, which is a great way for an executive to grab power," she says.

The result? "All these creeps around the world look at this and say 'we can get away with doing this to our domestic opposition,' " says Scheppele, the Laurance S. Rockefeller Professor of Public Affairs in the Woodrow Wilson School and the University Center for Human Values. She witnessed the birth of new constitutional democracies in Eastern Europe, and says that what is taking place now in countries like Russia and Indonesia is like the camera running in reverse. In some cases, it's not too late to reverse the trend, through a combination of external pressures and sanctions and internal leadership, but it won't be easy, she says.

Scheppele, who serves as director of Princeton's Program in Law and Public Affairs, also has written about torture; one paper questions all the tenets of the so-called ticking-bomb scenario, which posits that there's a nuclear bomb set to detonate in Manhattan within hours, and you have captured the sole terrorist who knows where it is. Do you torture him to get that information? By saying you'd use torture in that nuclear scenario, she says, it becomes only a matter of degree and of figuring out under which other circumstances it would be OK. But that scenario is artificial and unlikely ever to happen (except on the television show *24*), she says: It's nearly impossible that interrogators would know the exact timing and nature of a threat, unlikely they could be

JON ROEMER/COURTESY WOODROW WILSON SCHOOL

sure that the captured person had that information, and impossible to know whether torture actually would force a confession. That makes it a false test, she says; in the real world, giving a blanket disapproval of torture isn't likely to risk a great threat.

Frederick Hitz '61

As a former inspector general of the CIA, Frederick Hitz '61 is a realist; he believes that the intelligence community needs a wide range of tools at its disposal to prevent and combat terrorism. But he has been teaching — at Princeton and recently the University of Virginia Law School — and writing about a practice he feels crosses the line into unacceptable behavior: extraordinary rendition, the practice of taking into custody people suspected of terrorism and either interrogating them in secret prisons or turning them over to allies known to mistreat prisoners.

Its proponents say that in the wake of 9/11, it is justified to use such an extraordinary measure to combat the war on terror, he says. But Hitz has called for the end of the practice, saying it doesn't work, is immoral, and threatens to prevent the international cooperation that's needed to foil future cross-border terrorist plots. "A plot in Hamburg gets to the streets of the U.S. pretty quickly," he says. Yet "neither the CIA nor the FBI will be welcome [in foreign countries] if we're breaking the law of the area where we are."

Hitz foresees changes in, or a substitution for, the Geneva Convention to deal with stateless criminals. "These guys aren't going to be subject to sanction under international law in the traditional way," he says. "You've got to be able to hold them." He also sees the long-standing ban on CIA involvement in domestic law enforcement falling away as "intelligence-based policing" — acting on information gleaned through foreign intelligence to catch bad guys at home — becomes more prevalent. That will require oversight and accountability, he says. And in this new era, people will have to get used to living with the potential of a terrorist strike. "The hard-nosed reality is that we are going to be subject to attack, we're doing the best we can to prevent those attacks, and we need to get on with life."

Martin Flaherty '81

The juniors in Martin Flaherty '81's spring-semester Woodrow Wilson School policy task force on U.S. detention practices in the global war on terror were grappling with some of the toughest problems around: indefinite detention, harsh interrogation techniques, extraordinary rendition, and the use of military commissions. "We're looking at each issue through the lens of three things: international and domestic law, foreign relations, and security," says Flaherty, a fellow in Princeton's Program in Law and Public Affairs and co-director of the Crowley Program in International Human Rights at Fordham Law School in New York. He was hoping to present the group's findings to Congress at the conclusion of the class.

In his own work, Flaherty has focused on the expansion of executive power and on international law, with the benefit of his background as a historian. "The U.S. has dealt with nonstate actors since the Barbary pirates," he says, though clearly technological developments and weapons of mass destruction make those nonstate actors a more serious threat than in the past. He did some human-rights work in Northern Ireland during the mid-1990s, on a mission with the Lawyers Committee for Human Rights (now Human Rights First), and he sees some parallels to the current situation in the United States: a well-established democracy (England) using tactics not generally accepted in civil society, with self-defense as the justification. "Both violated fundamental human rights and were counterproductive," he says. "Interning people indefinitely without trial was one of the best recruiting tools for the IRA."

Deborah Pearlstein

Deborah Pearlstein straddles the worlds of theory and practical human-rights work. The associate research scholar at the Wilson School's Law and Public Affairs Program is continuing a series of workshops she began as director of the law and security program at the nonprofit group Human Rights First by holding off-the-record discussions between policy-makers and the people who actually implement that policy — in this case, private business contractors (including security personnel) whose role in the Iraq war is large and controversial. She also was involved in a recently dismissed case against Donald Rumsfeld '54 on behalf of former detainees who claim they were tortured.

On the academic side, Pearlstein is interested in the implications of expanded executive power — the likes of which Bush administration lawyers have argued is necessary to deal with unprecedented security threats. Pearlstein argues that even assuming the threats are without precedent, it's not clear that a more powerful executive is the best practical strategy in terms of national security. Isn't it likely, she asks, that having competing views challenging the executive's consensus would be more effective? This is her first full-time position at a university, and "it's really important that what I'm doing in the academy is tied to the outside world," she says. *By K.H.*

PHOTOS: JON ROEMER/COURTESY WOODROW WILSON SCHOOL (HITZ); VICKERS AND BEECHLER PHOTOGRAPHY/COURTESY MARTIN FLAHERTY; BEVERLY SCHAEFER (PEARLSTEIN)