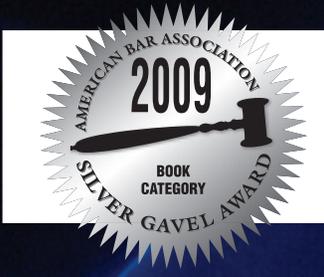


Kafka Comes to America: Fighting for Justice in the War on Terror, A Public Defender's Inside Account

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COMMITTEE COMMENTARY

Kafka Comes to America is Stephen Wax's compelling story of his representation of two very different clients detained on suspicion of terrorism in the wake of the September 11 attacks. Adel Hamad, a Sudanese hospital administrator, was taken from his home in Pakistan in 2002 and sent to the United States prison at Guantánamo Bay, Cuba. Brandon Mayfield, an attorney and United States citizen, was arrested and detained by the FBI after federal authorities concluded that one of Mayfield's fingerprints had been found on materials associated with the 2004 train bombings in Madrid. Wax, a former prosecutor and long-time Oregon federal defender, zealously defended both men, ultimately securing their freedom. In *Kafka Comes to America*, Wax admirably weaves together the compelling human dramas of Hamad

and Mayfield and their families with an informative and detailed account of the legal issues and proceedings involving both men. At the same time, *Kafka Comes to America* is about Wax—his passionate belief in an accused's right to a defense and his abiding admiration for the American system of justice, under which the government paid him to vigorously defend the very same individuals it detained and sought to prosecute. *Kafka Comes to America* combines first-rate storytelling with an important firsthand account of the struggles of two clients and their lawyers to obtain justice in the challenging political and legal environment stemming from the events of September 11. Wax's accessible and rich account deserves to be widely read.



INTERVIEW with Steven T. Wax

Steven Wax is the long-serving Federal Public Defender for the District of Oregon. He is the author of Kafka Comes to America.

When did you first start writing? Did you consider focusing on only Mayfield or Hamad and not both? What did you hope to accomplish by writing about both of them?

I started writing shortly after the plane took off from the airfield at the base at Guantánamo after my second visit to see clients there in May 2006. Periodically throughout my career, I have spoken and written about human and civil rights and the relationship between the citizens of this great country and our government. My experience in representing Brandon Mayfield put some of those issues into high relief. The experience in Guantánamo was, however, different in kind. Visiting with my clients chained to the floor, seeing firsthand what our government was attempting to keep hidden, and learning firsthand the lies that our government was telling had a tremendous emotional impact on me. I felt that I was in a unique position and wanted to share what I had seen with as many people as possible in the hopes that they would be motivated to help change the government's policies and ensure that the men in Guantánamo received some fair process. Both Hamad's and Mayfield's stories could have stood alone. Telling them together, however, reinforces the point that the abuses of the war on terror were not limited to aliens—"the other,"

"over there"—but were taking place with U.S. citizens here at home as well.

What resources were required to write your book?

I wrote the book while working full time, so I had to make the time to write in the early morning hours, late at night, and on the weekends. The primary resource required for the book was my time and the support of my family. Once Judith Gurewich and Other Press purchased the book, the wonderful resources of Other Press, including editor Corinna Barsan, copy editor Yvonne Cardena, and publicists Terrie Akers and Megan Feulner, kicked in.

How do you think *Kafka Comes to America* fosters public understanding? What do you see as its public impact?

Kafka Comes to America addresses some of the most fundamental legal, constitutional, and political issues of our day through the stories of two men and their families whose lives were devastated by the policies of the Bush administration. While questions about the scope of presidential power, the separation of powers, and the importance of the writ of habeas corpus are fundamental, it is sometimes difficult to grasp their import when discussed as constitutional

abstractions. *Kafka* attempts to bring those abstractions to life, to show their continuing importance to our political dialogue, by developing the legal issues in lay terms in the context of their impact on real people. Because I believe that an informed citizenry is essential to a vibrant democracy, my hope is that the long-term impact of the book will be to strengthen our democratic institutions and help guard against future abuses of power.

What does winning the Silver Gavel Award from the ABA mean to you?

Winning the Silver Gavel Award is an honor and a humbling experience given the valuable work of past honorees and the field of potential winners this year. I hope that the award will increase *Kafka's* exposure and further the goal of public education.

EXCERPT

A Cry for Help from Guantánamo

The choices we make in the grip of fear are the truest test of our humanity.

—Stephen Kyle

Early in the evening of March 3, 2006, I stepped out of a fifteen passenger twin-propeller plane onto the airfield of the United States Naval Base in Guantánamo Bay, Cuba. Nonmilitary personnel could get to Guantánamo only out of Ft. Lauderdale, Florida, on Lynx Air, which ran the fifteen-passenger planes, or Sunshine Air, whose planes were even smaller and noisier.

The sun had set by the time we landed and the plane pulled up to the airport building, a small room attached to a large hangar. Walking across the tarmac to picnic tables under a wallless roof, where two soldiers waited to search our suitcases, I was excited finally to be in Guantánamo to meet one of the four clients my office was then representing—Adel Hassan Hamad, a Sudanese man who had been a prisoner there for forty-four months. It had been a long road for me but a much longer one for Adel.

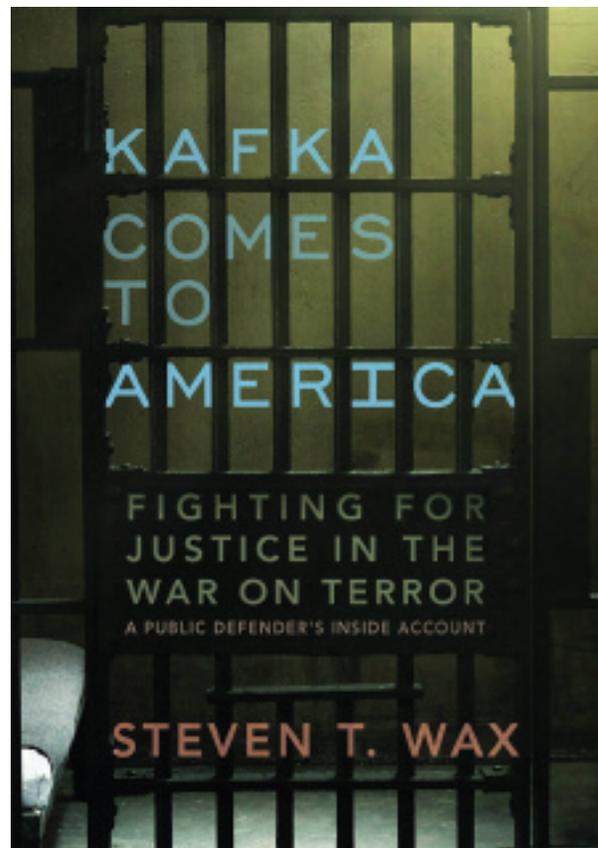
It was one year to the day since Adel had handed a one-paragraph handwritten *habeas corpus* petition to the guards in Guantánamo and asked them to send the paper to the United States District Court in Washington, DC. Adel's petition, like those of nearly fifty other prisoners who filed petitions at the same time, is poignant in its brevity and clarity. He proclaimed his innocence and asked for help, concluding deferentially, "With my appreciation and my respect to you and my trust you will do me justice." Unlike the other three petitions my office had received, Adel's did not reveal anything about himself, including why he thought his imprisonment was unjust.

Habeas corpus, Latin for "bring the body forward," is one of those seemingly arcane legal writs that were brought to America from England. Unlike any of the other ancient English writs with Latin names—like *audita querela* or *assisa de morte antecessoris*—that sound like they should be incantations uttered by one of Harry Potter's teachers and whose meaning is known today only to scholars of legal history, *habeas corpus* has remained a fundamental part of both Anglo and American law. It dates back to 1215, to the Magna Carta, when the barons reined in King John at Runnymede. ...

The Founding Fathers were so concerned about the abuses of the English kings that they enshrined *habeas corpus* in the Constitution in what is called the Suspension Clause.

The writ is so important that neither the president nor Congress can get rid of *habeas* except in times of "rebellion or invasion," and even then only temporarily. So sacrosanct is the writ that it has been suspended only four times in our history: during the Civil War, briefly in 1871 during the height of the Reconstruction battles, in the Philippines during the Spanish-American War, and in the territory of Hawaii after Pearl Harbor.

Five months before landing at the naval base, I had been assigned by the federal district court in Washington, DC, to represent Adel and three other men imprisoned in Guantánamo, Mr. Chaman and Mr. Nazar Gul from Afghanistan, and Mr. Shabaan from Syria. I was a relative latecomer to the *habeas corpus* litigation, which had begun in 2002 shortly after the first twenty prisoners were flown to Guantánamo from Afghanistan in chains, muzzles, earmuffs, and blindfolds by U.S. forces.



Kafka Comes to America retails for \$25.95 hardcover. It is available from Other Press and booksellers nationwide. For more information go online to www.otherpress.com/bookpage.php?bkID=540