

# Advocating for an Accused Terrorist

By Neha S. Gohil and Shams S. Miha

In small, bare prison bungalows in the south corner of Guantánamo Bay, Cuba, lawyers from prominent U.S. law firms sit at tables across from young men dressed in bright orange jumpsuits, attempting to teach them about the structure of the U.S. judicial system. The U.S. Supreme Court's 2004 ruling in *Rasul v. Bush* held that detainees captured in the "global war on terror" and confined in Guantánamo—virtually incommunicado until then—have the right to legal representation and access to U.S. federal courts. Since then, habeas petitions have been filed in U.S. courts on behalf of many of these prisoners, with the help of lawyers they had never met until their first meetings in these cells.

Under the watchful eye of

government cameras, lawyers attempt to explain basic due process concepts such as attorney-client privilege, checks and balances, and the Geneva Conventions to men who have learned, through repeated interrogations, religious abuse, and humiliation tactics, not to trust any American who visits them in captivity. While lawyers are anxious that their clients place trust in them and the system, the stark differences between the representation of Guantánamo detainees and other federal prisoners make building this relationship all the more difficult.

The challenges begin long before meeting with the clients. First, pursuant to a protective order issued by the U.S. District Court for the District of Columbia, lawyers must obtain a secret-level security clearance from the U.S. government. The process entails filling out a comprehensive application detailing one's life history for the past ten years and FBI-conducted interviews with the applicant's friends and colleagues. Each law firm is allocated a finite number of security clearance applications with the result that most firms, despite having the wherewithal, accept only a few clients.

The protective order also governs the scope of the lawyers' actions in their representation of Guantánamo detainees. For example, all classified information and detainee files must be

reviewed at a single designated facility, which results in lawyers writing legal briefs divorced from their firm's resources. Moreover, the protective order limits what lawyers are permitted to reveal to their clients, including all information deemed classified by the government. Usually, the traditional attorney-client relationship is predicated on the free flow of information. Here, lawyers must represent clients to the best of their ability while simultaneously withholding critical information and evidence from them.

Building trust with clients, although key, is difficult. Many detainees have reported religious abuse, beatings, and cultural degradation at the hands of their captors. Almost none have even a rudimentary understanding of the U.S. legal system and the litigation being undertaken on their behalf. Most do not speak English, and interpreters are needed for all attorney-client interactions. Cultural differences—female lawyers, for example—can create volatile situations. The questions asked of lawyers are endless—from "Why should I trust you?" to "Can I see your passport?"

In an effort to gain their clients' trust, lawyers come prepared with everything from DVD introductions from family to simple snacks of Arabic sweets. Many lawyers have regular contact with detainees' families in

an effort to keep them informed about their family member's case and gain support for the lawsuit. As a consequence of the slow-moving legal process and the lack of attention to detainees' needs and medical care on the base, lawyers have learned to counsel "creatively," advocating for their clients' interest not only on the legal front, but also in the media and within the medical community, becoming their sports reporters and their links to family back home.

In a recent example of alternative methods used to address the situation of the detainees, one law firm filed a medical complaint on behalf of its clients with the State Medical Board of California to draw attention to the active involvement of medical personnel in interrogation activities at the camp. Lawyers also visited Yemen to meet with families of their clients—who are often woefully misinformed about their sons' situations—and in a diplomatic effort, lobbied Yemeni politicians and ministers to ask for the return of their citizens.

As we are constantly reminded, the war on terror has changed the landscape of law enforcement. In Guantánamo, hundreds of men have been imprisoned for more than three years; only four have ever been charged with any crime. The war on terror has also had a profound effect on the role of lawyers' representation of indi-

viduals detained with some alleged connection to terrorism. Lawyers know very little about the alleged grounds for their clients' detention and what they do know they are not permitted to reveal if it is deemed classified by the government. Lawyers are bound not just by ethical and legal rules but also by constraints imposed by the federal government based on national security concerns. And, most unusual of all, lawyers may communicate and visit with their clients only with the permission of opposing counsel—the very same federal government. Despite and perhaps because of all of this, many of the nation's top lawyers are donating their time and resources to Guantánamo detainees and the maintenance of a fundamental legal principle—due process. ■

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