

# My Experiences Representing a Guantánamo Detainee

by H. Candace Gorman

How hard could it be? I actually uttered those words when I first contemplated representing a Guantánamo prisoner. I am a civil rights attorney who works primarily on contingent fee cases, so—rightly or wrongly—I consider a lot of my practice to be pro bono. But for many years, I had never really delved into a formal pro bono project. All of that changed when I received an e-mail from the Chicago Council of Lawyers in 2005. It announced a luncheon discussing Guantánamo, the U.S. naval base in Cuba where so-called enemy combatants in the war on terrorism are detained. When I read the announcement, I thought the topic sounded interesting. I also felt that I did not know enough about what was going on at Guantánamo, so I RSVP'd that I would be there. When it came time for the luncheon, I was home sick with bronchitis. But, like most luncheons, no one took attendance, and a few days later I received an e-mail thanking me for my attendance and reminding me that Guantánamo still held more than 200 men without attorneys.

As I stared at the e-mail, questions swirled through my mind. I wondered how it could be that more than a year after the Supreme Court held that the men at Guantánamo were entitled to representation, so many of them still lacked attorneys. In Illinois alone we have more than 50,000 registered attorneys, so how could it be that there were not enough attorneys in the whole country for a couple hundred men? I wondered what would be involved in representing someone from Guantánamo. I wondered who else was representing the men. And yes, I wondered if I should volunteer.

I called the e-mail's author, Gary Isaac, a partner at the Chicago office of Mayer Brown, who explained briefly the parameters of the involvement: The prisoners were in Guantánamo, none had been charged with anything, the habeas

petitions were being filed in D.C., and we pay for all of our own expenses. Gary also explained that eventually, if I took on representation, I would visit my client at Guantánamo and fight for a habeas hearing before a federal judge. It sounded simple enough.

That these individuals had been languishing in detention for years with no charges filed against them is what pulled me in and has kept me in. I did not even have to think about issues like guilt or innocence because I would be dealing with something much more basic: habeas corpus, the ancient writ that demands the right to go before a court and have the government explain why you are being held and what it is you are charged with, so that you can prepare a defense.

On some level, I knew when I saw Gary's e-mail that I was going to volunteer, but after our phone call, there was no turning back. I was not thinking about this being a long haul. Earlier that year I had finally settled a case that I filed 12 years earlier, a case that took me all the way to the U.S. Supreme Court, where I argued and won a unanimous decision in 2004. So although I was used to the long haul, I never in my wildest dreams expected this to drag on. All I would be doing is arranging for a habeas hearing. I never thought about what this might cost financially. I never even asked any questions about the costs, perhaps because I had recently been paid, finally, for my time on the case that I took to the Supreme Court. Perhaps. But I think it had more to do with the fact that I knew this was about as important as it gets, and I have a tendency to just do things that I think should be done, without necessarily thinking through all of the potential issues. One of the joys of being a sole practitioner!

My next step was to participate in a two-hour conference call in which the New York Center for Constitutional Rights (CCR) presented more information about representing a Guantánamo prisoner. CCR is the umbrella organization coordinating the Guantánamo pro bono project, and it wanted

*H. Candace Gorman, of the Law Office of H. Candace Gorman, is a civil rights attorney in Chicago, Illinois. She maintains a blog about the Guantánamo litigation at <http://gtmoblog.blogspot.com>.*

potential habeas counsel to know what they were in for before taking on a client. I learned some astonishing things during that call, including (but of course not limited to) that there was no such thing as attorney-client privilege when it came to representing a Guantánamo prisoner; my clients' mail to me would be read by the Justice Department's (DOJ) "privilege team," and if they determined something should not be publicly disclosed, they redacted the information; my notes from visits with clients would be confiscated after the visits and read by the DOJ; and the DOJ also would redact my notes before faxing them back to me. The unredacted versions of the letters and notes would only be available to me in a special drawer at the "secret facility." (As it turned out, almost nothing has ever been redacted, so my materials have been a free read for the DOJ).

I was non-plussed. My first thought was, what if I just do not write anything down when I meet with my client? I soon learned that that would be fine, but I could never use anything I learned from my client unless it was "cleared" or filed under seal (which requires a visit to the secret facility, which I will explain later). What happens if I take notes and submit them for "clearance" (i.e., I "let" the DOJ read the notes) but then later remember something else? (I am an awful note taker.) They have a process for that, too. It involves closing the blinds in your office and writing it out by hand with something hard underneath (not another sheet of paper) and sending it to the Court Security Office with special precautions so as not to be intercepted. I kid you not. I quickly learned that the bottom line is that anything you may want to use publicly had better be put in your notes.

Even though I made the decision to represent a man at Guantánamo, I admit that I thought the men being held at the base were probably up to no good. However, I believed, as I still believe, that the men deserved (under our Constitution, our treaties, and international law) to be told why they were being held and to be able to contest those reasons. Surely the days of holding people indefinitely and without charge solely on the say-so of who-knows-whom were gone, right? That was one of the problems: The people in control answered "no" to that question.

What I did not know at that time was what our government did know—that most of the men held at Guantánamo were guilty of no wrongdoing. That is why more than 500 people have quietly been returned home, literally in the middle of the night. Later I discovered things like the confidential CIA report from August 2002, which concluded that most of the Guantánamo detainees "did not belong there." I also learned that the former Guantánamo commander, General Jay Hood, and his deputy commander, General Martin Lucenti, both stated that "a large number" of the Guantánamo detainees "shouldn't be there . . . and have no meaningful connection to al Qaeda or the Taliban." According to General Hood, "sometimes we just didn't get the right folks," and the reason those "folks" are still in Guantánamo is because "nobody wants to be the one to sign the release papers." Those reports remained confidential until long after I had learned of the innocence of my two clients.

However, before I learned about the secret reports that were opening the curtains to the truth at Guantánamo, I did learn some startling things. I learned that when we started dropping the bombs in Afghanistan in 2001, we also started dropping something else: leaflets. And not just in Afghanistan, but in Pakistan and other countries. Thousands upon thousands of

leaflets offered some of the poorest and most desperate people in the world something that would be hard for even the average American to turn down: financial security for their families for life. It does not take a Supreme Court justice to figure out that many people would not care whom they were turning over, and, as it turns out, many people in the war-ravaged countries did not. If you combine the bounty program with the fact that the military sought no proof that the person turned over to them was anything other than a personal enemy or random stranger, you have a problem. A big problem.

After the two-hour conference call, I was more determined than ever to volunteer, and I signed up for the next step: a mandatory two-day CCR training session in New York City. I attended one of the bimonthly sessions in the fall of 2005. The approximately 20 attendees included big-firm lawyers, a few retired military lawyers, a few sole practitioners like me, and a group of three retired attorneys pooling resources to co-represent one man. By the second day of training, lawyers sitting next to me from a big corporate firm in Chicago were offering resources to help me with expenses.

The training session itself was disturbing on several different levels. We were schooled about representing victims of torture, given some basic and helpful knowledge about the Islamic religion, and told how to protect our own mental health in the face of what we would soon be hearing and witnessing firsthand. This was when I heard about the lack of evidence against some of the individual prisoners. It was also when I first started learning about the DOJ's use of various tactics to avoid judicial oversight. Although no one at the training suggested that every man at Guantánamo was innocent, we learned that mistakes had been made and that it was important for us to learn as much as we could about our individual clients. In contrast to what we would face in the Guantánamo litigation, the battles from my civil rights cases over the years seemed tame (and petty). I was starting to realize that it would be difficult to go back to my usual law practice.

Possibly the most distressing part of the training was listening to former detainee Moazzam Begg, who teleconferenced in from London. Begg had been released from Guantánamo earlier that year, and for approximately 90 minutes, he told us his harrowing story of being in the hands of U.S. forces. If you have not read his own account of his capture and detention, I recommend you pick up his book, *Enemy Combatant: My Imprisonment at Guantánamo, Bagram, and Kandahar* (New Press, 2007).

Two days later, back in Chicago, I received an e-mail from CCR with the name of a Libyan man who was to be one of my clients: Abdul Hamid Abdul Salam Al-Ghizzawi. Other than his name, I received very little information about this man, but I did learn two things that were important: First, unlike some men at Guantánamo, I knew that Al-Ghizzawi wanted a lawyer, and, second, I knew that Al-Ghizzawi was ill.

As time went on, I learned more about this man, not just my client's version of his arrest and detention, but also the government's version, which corroborated what my client told me. One of the more astonishing things that I learned occurred almost two years after I started representing Al-Ghizzawi. I was sitting in one of the tiny, sweltering interrogation rooms reviewing court filings with him when he casually pointed to his name on one of the court captions and said, "that is not my name." By this time, I had met with Al-Ghizzawi several times and filed numerous pleadings and motions on his behalf

in the district court, circuit court, and even an original habeas petition in the U.S. Supreme Court. I had reviewed many of these filings with him, although perhaps without captions. When Al-Ghizzawi told me it was not his name, I just looked at him with a sinking feeling in my stomach. He was looking carefully at the document, and I waited patiently while he stared at it. He pointed to the name on the pleading again and said “this part is my name,” pointing to “Abdul Hamid” and “Al-Ghizzawi.” But then he continued, “this part is not my name” (pointing to the middle) “Abdul Salam.” “This was the name of a man in a cell near me at the beginning of my time at Guantánamo, but I have not seen him for a long time. The military added his name to mine.” I stared at him wondering not only how I could lose my confidence so quickly (hence the sinking feeling) but also why I never thought to ask him his name. I guess it just never dawned on me that the government did not even know his name—or did they? Without thinking, I just crossed out those two names from the caption, but I am still bothered about whatever happened to Abdul Salam. One day, when I have time, I will try to figure out who he is (or was) and what happened to him.

Shortly after receiving what I thought was the name of my client, I filed a petition for habeas corpus on his behalf. I had to clear a daunting series of bureaucratic hurdles before I was allowed to meet with him. To see Guantánamo detainees, their attorneys must first receive a security clearance and then have a protective order entered by the court that outlines the rules for habeas counsel. I applied for my security clearance shortly after filing the habeas petition. As I was waiting for my clearance, I received news that my client’s health was deteriorating, and I filed an emergency motion to have the protective order entered so that an attorney who already had clearance could visit with my client and determine his condition. The DOJ opposed the order, and the judge subsequently denied my motion, finding that I did not show anything “concrete” or any “impending irreparable harm” to warrant the entry of the protective order at that time. The judge did not explain exactly how I was to show something concrete when I was not allowed to communicate with my client.

A few months later, still awaiting my security clearance, I received an e-mail from an attorney whose notes were “cleared” from his last visit to the base. The attorney told me that his client was concerned because Al-Ghizzawi was very ill with liver disease. Right after that, my security clearance was finally approved, clearing the final hurdle for me to be allowed to meet with my client. I filed another emergency motion attaching the e-mail from the attorney I had never met. It seems that triple hearsay passes for “concrete.” The judge relented and agreed to the entry of the protective order.

It took several weeks to get everything in order to travel to Guantánamo, but 10 months after I agreed to represent Al-Ghizzawi, and a few months after I had taken on a second client, I finally arrived for my first visit with the men on July 15, 2006, on a small plane owned and operated by a cargo company. The 14-seater takes three hours from Fort Lauderdale because the plane circles around Cuban airspace. There is no bathroom, and in what can only be described as a cruel joke, they provide a cooler with water and pop. As we flew into the small military airport at the base, I was surprised at how arid and dismal this part of Cuba looked. The base, home to 8,500 service members, is divided into two parts separated by the bay. The main part of the military installation

is on the windward side. Attorneys are housed on the leeward side at a dumpy military “motel” called the Combined Bachelor Quarters (CBQ). There is one restaurant on that side, a dive called The Captain’s Galley. Everything is deep-fried (except the beer). Travel into the Cuban part of Cuba is strictly forbidden.

I was the only habeas counsel at the base for the first two days of my five-day visit. The morning routine for counsel is to take the 7:40 bus from the CBQ to a ferry, and then the 8:00 ferry to the windward side of the base where the prison camp is located and where we lawyers are met by a military escort. While the leeward side is ramshackle and barren, the windward side is surreal. There is a Starbucks, a McDonald’s, a combined Subway-Pizza Hut, a Wal-Mart-like big-box store called the Nex, and a gift shop. Yes, Guantánamo has a gift shop that sells Guantánamo key chains, shot glasses, T-shirts, and shell tchotchkes. Filipino and Haitian workers staff most of the establishments. And in the distance, beyond these icons of American consumption, is what I can only describe as “the gulag”: Our infamous prison that houses men indefinitely without charge.

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## **This is not about national security. This is about national embarrassment.**

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My military escort drove me to the prison where my briefcase and papers were examined in a cursory way. On later trips, these searches resulted in letters I had sent to my client (and then brought with me on my visits to make sure he received them) being read by military personnel and then confiscated on the grounds that they made oblique reference to “world events.” I was then ushered by another escort behind a chain-link fence, through three gates into a sweltering hut at “Camp Echo.”

I was nervous going into that first meeting. I knew little about Al-Ghizzawi at that time, and it seemed plausible that he might be the “worst of the worst.” What I did know was that prior to being shipped to Guantánamo in March or April of 2002, Al-Ghizzawi had been held at two separate Air Force bases in Afghanistan, Bagram, and Kandahar and that at the time of our first meeting, he had been sitting at Guantánamo for more than four years without any charges having been filed against him. In time, I learned that this member of the “worst of the worst” was sold to American forces in December 2001 for a bounty—typically \$5,000. Later he would tell me his account of those four years in American hands: the torture, the sexual humiliation, and the medical neglect. Things that should make all Americans feel ashamed. Unfortunately, I would learn firsthand about his next three years as I visited him on average every eight to ten weeks. I chronicled for the courts his deteriorating health over this period, but so far no court has been interested in listening.

When I entered the tiny windowless room for the first time, I did not know any of that. I met a frail, bearded, jaundiced man of about 45, wearing a khaki jumpsuit and flip-flops with one foot shackled to a ring on the floor. As I was putting my

briefcase down and sorting through my papers, Al-Ghizzawi asked me a simple question: “How do I know you are an attorney?” It was well known at this time that interrogators had posed as attorneys to try to trick the men, and I should have been prepared for this question, but actually, I had not given it any forethought. I fumbled in my bag for my business card and handed one to him. Al-Ghizzawi smiled and said “anyone can print a business card.” I thought for a minute and smiled back, “You are right, but I have my law license, too.” In Illinois, we receive a wallet version of our license each year, and I have a little wallet I carry with me that contains each license since I was first admitted to practice law. At that time I had 23. I started pulling them out one by one, and after about 10 or so, he told me I could stop.

We talked about many things over the three days. Initially, I just talked about myself, my law practice, and my family in an effort to break the ice. I told him about my father, a retired lawyer who was then 90, and about my husband and three teenage children. Later, I showed him pictures of my family that I had in my wallet and still later, he brought to one of our meetings pictures of his beautiful, young daughter. He was very curious as to how my family felt about my representing a man at Guantánamo, and I assured him that they were all very supportive. From that point on, we could not start our meetings without him first asking about my father, then my husband and children. He was clearly saddened over the death of my father in 2007. When it came time to describe my law practice, I have to admit it was more than a little difficult. Usually, I do not have trouble describing my civil rights practice, but as I was talking to a man being held prisoner without charges for years because he is an Arab Muslim, it did not feel right explaining those wonderful laws we have in place in the United States to protect people against discrimination and illegal government action. But I told him about how I represent individuals and groups of people in lawsuits against the government, and he seemed pleased with that description. He was surprised when I told him I was a sole practitioner, as most of the attorneys who had been to the base were from big firms or connected with organizations. He asked who was paying for me, and when I explained to him that I was paying for me, he was very gracious and humbled. In the entire three years that I have been representing him, these traits have not left him.

Eventually, I learned from Al-Ghizzawi that he was a civilian in Afghanistan who was originally from Libya. He left Libya as a draft dodger after serving his original draft stint, because he opposed a new regulation that retroactively imposed a longer period of service. At the time of his abduction, he had lived in Afghanistan for several years. He is married to an Afghani woman, and they have a young daughter. Together Al-Ghizzawi and his wife owned a small shop selling honey, bread, and spices. Their daughter was less than six months old the last time Al-Ghizzawi saw her. At the time of this writing, it has been more than seven years since he was taken prisoner. He has not seen or talked to his wife and daughter all these years.

I have now been an attorney for more than 25 years. I have filed thousands of documents in various courts—many of them short, routine documents, and others complex and lengthy. But the procedures have been pretty much the same regardless of the court. Then came the Guantánamo cases. In keeping with the kangaroo atmosphere of the litigation, new

procedures were established to make even the filing of routine documents as cumbersome as possible.

The government claims that there are big, bad secrets in many of the documents that only we attorneys get to see and that it is imperative that those documents are kept out of the public eye. It is true that many bad secrets are in these documents, but the secrets that I have seen are what our government and military has done to these men: This is not about national security. This is about national embarrassment.

One of the first things that confronted me in this litigation was the filing process. At the time, I had never met with my clients and I knew no “secrets.” Notwithstanding that, I was not permitted to file anything without sending it first to the Court Security Office (CSO). You want to file a motion to add a new attorney? Clear it first with the CSO. You want an extension of time to file a brief? Change of address? Again, file it with the CSO first. There was no such thing as a routine document in the Guantánamo litigation. And what does it mean to file it with the CSO? Well, for me, in Chicago, it means I cannot file electronically. It means that sometimes I must pay a courier service to deliver the papers to the CSO in D.C. Other times, attorneys and their staffs in D.C. volunteer to file the documents for me. Usually, a few hours after the delivery, I would receive a call with the “all clear” for me to file it electronically on the public court docket. Sometimes, though, it took longer. Sometimes no one is at the CSO to accept the delivery. (One time I had Fed Ex go back three times in one day, but no one was ever there, and my document did not get filed that day.) So how did the CSO get around that little problem of not being around? They added to the process “the call.” I would have to call the CSO (to see if anyone was around) to announce I had a courier coming. What if no one answers at the CSO? It means no one is there, and you cannot deliver anything. So you call repeatedly until someone does answer.

What is the “all clear” about? Well, the document has to be screened by *someone* to make sure it contains nothing that should not be made public. Who does the screening? My opposing counsel. Yes, the CSO gives my documents to the government attorney assigned in these cases, to read and decide if anything should be kept a secret, before the documents can be publicly filed. I guess the theory is, who would know better about those secrets than my opposing counsel, right?

But that is the easy part. Things got trickier when I finally received a “secret” document—the record from my client’s combatant status review tribunal (CSRT). The government established CSRTs as a result of a 2004 Supreme Court order (*Rasul*) saying that the men at Guantánamo were not only entitled to attorneys but that the military was also required to provide a hearing to determine whether they were actually “enemy combatants.” The military hastily conducted approximately 600 CSRTs in roughly five months. The cards were stacked against the prisoners from the get-go: They were not allowed attorneys, and the tribunals were permitted to rely on hearsay evidence and information acquired through torture. Moreover, evidence deemed “secret” was withheld from the prisoner.

I did a double take when I read the record from Al-Ghizzawi’s CSRT and learned that on November 23, 2004, a panel of three career military personnel met, reviewed the records, and found that Al-Ghizzawi was not an enemy combatant. I later learned that my client was one of more than 30

men who were determined, even through this rigged system, not to be enemy combatants. At the time of the CSRTs, most of these men had already been held for more than two and a half years. When Matthew Waxman, a professor at Columbia Law School but then the assistant secretary of defense for detainee affairs, learned that my client and others were found not to be enemy combatants, he set into motion the “do-over” CSRT to make sure that the men stayed at Guantánamo.

This appeared in a declassified portion of an e-mail exchange between Waxman and others regarding the 30-plus men who were found not to be enemies:

Inconsistencies will not cast a favorable light on the CSRT process or the work done by OARDEC (*the military command*). This does not justify making a change in and or [sic] itself but is a filter by which to look. . . . By properly classifying them as EC (*enemy combatant*), then there is an opportunity to (1) further exploit them here in [G]TMO and (2) when they are transferred to a third country, it will be controlled transfer in status.

(Italics mine.)

Shortly after that e-mail, new panels re-labeled Al-Ghizzawi and the other 30-plus men who had already been found not to be enemies, as enemies. They would now be held indefinitely at the pleasure of the president.

If I want to quote from the CSRT document (a document, which, by the way, has nothing in it that should be considered a secret) I have to fly to the “secret office” in Washington where they have computers and printers for the lawyers. I have a secret drawer there that holds my one secret document. It is only at this facility that I can prepare whatever it is that I want to file with the court that utilizes information from the secret document.

I cannot work from my own computer at this secret location because then my computer becomes “tainted” and would need to be confiscated. If I bring a diskette or a thumb drive with materials from my office computer, it must forever (I guess) stay in my little drawer at the “secret” office. In theory, I could bring my laptop and a bunch of thumb drives, and copy information onto the thumb drives as needed, but each thumb drive may be used only once. Not only can it get complicated (“did I use that one already?”), but it can also be expensive. When I complete whatever it is I am preparing for court, I must make all of the copies on the government copy machine (and shred any miscopies). Then the administrator from the secret facility calls the CSO to request that someone be sent to pick up the documents (and again if no one is there, they have to keep calling). The only good news about working from the secret facility is that the document is considered “filed” as soon as you hand it over to the administrator, at which point it becomes the administrator’s problem to get it to the CSO.

At least they have a new copier at the secret facility now. The first time I filed something, the printer there kept breaking down. A sign on the printer said it was going to be replaced soon, but I was told the sign had been there for more than a year. My secret document was about 175 pages long, and I needed to make seven copies. Every 20 pages or so, the machine broke down. I spent one whole day copying the secret document and shredding the miscopies.

Another time I spent two days at the secret facility, filing

two separate documents for Al-Ghizzawi. Because of his clear innocence and alarming health problems, I have filed numerous documents with the various courts, trying to bring their attention to Al-Ghizzawi’s great injustice. On this particular day, I was filing two more. The first document did not rely on anything secret, but I prepared and filed it at the facility because I had to be there anyway for filing the second document. I gave the “classified” document to the administrator the next day and left Washington. A few hours later, I received an e-mail from my opposing counsel giving me the “all clear” to publicly file the “classified” document. The only problem was that I did not have the document. I could not take the classified document out of the “secure facility” (hence the name) until I received the all clear, and now I was in transit back to Chicago. The answer? I had to ask my opposing counsel to send me my client’s document so that I could file it with the court. So it goes.

In 2007, I learned that a military attorney on Al-Ghizzawi’s first CSRT panel, Lt. Col. Stephen Abraham, submitted an affidavit to the U.S. Supreme Court in support of detainees in the case *Boumediene v. Bush*. The Court found Abraham’s evidence so compelling that it reversed its prior ruling to deny review and agreed to hear the case. This was the first time in 60 years that the Supreme Court decided to review a case after initially turning down review. Abraham’s affidavit to the Supreme Court focused on the shoddy procedures and practices in conducting the CSRTs, but he also discussed the only panel he sat on, Panel 23. Abraham did not remember the name of the prisoner on whose panel he sat, and he assumed that the man was long freed because the panel had found him innocent. Abraham did not know about the do-over panel that “overturned” his panel, or that the man, Al-Ghizzawi, was still languishing at Guantánamo.

I contacted Abraham to tell him. He was stunned. Later, Abraham testified at congressional hearings about the flawed

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## Many of the men still sitting at Guantánamo have been cleared for release for years.

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CSRT process and of the injustice to Al-Ghizzawi, who clearly had no connection whatsoever to terrorism. Abraham characterized the evidence against Al-Ghizzawi as “garbage” and also testified that military officials tried to pressure the panel into changing its determination, but that the panel refused to be intimidated. That new evidence upon which the do-over panel relied is, of course, secret, and although I cannot disclose the contents, I can assure you that there was nothing new presented to the second tribunal—nothing whatsoever. In fact, what really happened was that the same old garbage was given to a new panel. The rubber stamp panel.

In addition to the CSRT, there is another procedure in this Kafkaesque process: the Administrative Review Board (ARB). It is supposed to be an annual assessment of the enemy combatant status. The process is as meaningless and arbitrary as the CSRT. However, you do not have to take my word for it. The transcripts from many of these procedures are available at

the military's Guantánamo website, [http://www.defenselink.mil/news/Combatant\\_Tribunals.html](http://www.defenselink.mil/news/Combatant_Tribunals.html). They are worth a read. In several now-infamous cases, the ARB darkly noted that the prisoner owned a Casio wristwatch (which could conceivably be used to time explosives). One prisoner noted that American military personnel conducting the ARB were also wearing Casio watches and sardonically asked if they, too, were terrorists. Similarly, karate skills, knowledge of computers, and participation in the pilgrimage to Mecca have also been considered factors supporting "continuing detention."

If the ARB recommends the release of an individual, there is never an apology or an acknowledgment that a mistake has been made. To save face (and thwart possible lawsuits), the U.S. government insists that a release "does not equate to innocence." It is also important to note that most of the more than 500 men who have been released to their home countries were not cleared in their ARBs, and many of the 250 men still sitting at Guantánamo have been cleared for release for years.

In early 2006, before I was allowed to meet with or communicate with Al-Ghizzawi, I was invited to submit a letter on his behalf for his first ARB. The government that had done everything possible to prevent me from meeting and communicating with my client was now, in a phony gesture, inviting me to advocate for a man I had never met. I had little to say. Later, after having met with Al-Ghizzawi several times and knowing him to be heartsick for his family, physically ill, and completely innocent, I submitted the details of his capture by bounty hunters and his appalling treatment by U.S. officials to the review board. As far as I can tell, they never read it.

I have now been to Guantánamo approximately 17 times. I never look forward to the visits. I always leave wondering if Al-Ghizzawi will still be alive for my next visit. I never have good news for my clients, and the deteriorating effect of the detentions on their minds and bodies is painful to observe. Even when there is a good Supreme Court opinion, it is hard to get excited anymore because the decisions have no trickle-down effect.

Like most of the prisoners at Guantánamo, Al-Ghizzawi is held in the solitary confinement of Camp Six, which is worse than any of America's supermax prisons. In Camp Six, the men are held under the direst of conditions, regardless of the fact that they have never been charged with anything. Despite the desperate hype from the military, most of the Guantánamo prisoners are given little to occupy their minds. They sit in tiny cells with no natural light or air for at least 22 hours every day, year after year, with no end in sight. They cannot see their families. Most are allowed only one book per week, the same old books that have been around year after year. No radio, no TV, no newspapers. Most receive a maximum of two hours of "recreation time" in four-foot-by-four-foot cages in the blistering Cuban heat. Sometimes the guards arrive at 3 A.M. for Al-Ghizzawi's recreation time. He is too polite to tell the guards what I would feel compelled to say. Instead, he shows his dignity by refusing to stand in the dark. Other times, when the Cuban sun is at its hottest, Al-Ghizzawi is offered the opportunity to stand in a metal cage under the blistering sun where there is no shade.

My notes for the past two years are primarily a chronicle of the deteriorating effect of the detention on both of my clients. However, there are some exceptions. A meeting that I had with Al-Ghizzawi in July 2007 was one: I stepped into the

meeting room and Al-Ghizzawi immediately told me of his despair over the death two months earlier of a fellow inmate, a young Saudi man named Abdel Rahman Al Amri. Al-Ghizzawi knew that Amri had been suffering from hepatitis B and tuberculosis, the same two conditions from which he himself suffers. Like Al-Ghizzawi, Amri had not been treated for his illnesses. Al-Ghizzawi, so ill he could barely walk, told me that Amri, too, had been ill and then, suddenly, he was dead. The military called it an "apparent suicide."

Another time, Al-Ghizzawi told me that he found himself talking aloud even though no one was there to talk to. We both knew he was in dangerous territory. We talked about ways to help fight the mental deterioration, such as trying to read, exercise, or focus on his wife and daughter. Even though his body is already shot to hell with more than seven years of physical and psychological abuse and medical neglect, at least he had been maintaining his mind. He was able to put his life in perspective. He had hope, though mingled with fear, for the future. But now he can no longer read the same old books because his eyes are shot. He spends his days in tedious boredom. At one point, I requested that military officials provide him reading glasses, but when they finally brought him to see the eye doctor, they prescribed distance glasses. It would be funny if it were not so pathetic, but in his tiny cell, there is nothing farther than four feet away from him in any direction. After a few days of headaches from the glasses, he stopped wearing them. So Al-Ghizzawi spends his days pacing in his cell, washing and rewashing his clothes, and preparing for a death he knows is looming.

One of the last times I saw Al-Ghizzawi, he was doubled over in pain and gagging on his own phlegm. In that meeting, Al-Ghizzawi gave me his last will and instructions for me upon his death. He asked me to promise him that when he dies of whatever is killing him, I will have his body tested and the test results made available to his wife and daughter so that they can be sure whatever killed him does not kill them. I did not have the heart to tell him that I would never be able

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## Fair hearings are what our country used to stand for, in the eyes of much of the world.

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to convince the military to provide such a simple request. I promised him the only things I could: that if he dies at Guantánamo, his death will not go unnoticed, and that I will not let him be listed as an apparent suicide. I asked Al-Ghizzawi to try to fight for his mind while I continue to try to fight for his release. Both struggles seemed destined for failure. It is ironic that this man who was the catalyst for a major constitutional ruling by our Supreme Court continues to languish.

My clients have now been held for more than seven years. I understand that, for some Americans, it makes them feel safer to hold men in solitary confinement despite the fact that we have not charged them with wrongdoing. I also know there are some who claim that the conditions that these men are being held under are better than . . . than what? Than the

conditions our men endured in North Korea or in some third-world banana republic? I am sorry, but that is not good enough for me, and it should not be good enough for my country.

Surely, it is not fair hearings that jeopardize our security. Fair hearings are what our country used to stand for in my eyes—and in the eyes of much of the world. I believe that we must hold our prisoners as we would like our soldiers and civilians held, and that we must give the prisoners at Guantánamo the same rights that we would demand for our own people. Why? Because that *was* our creed. If we want to be a world leader, we must be a world example.

I will continue to fight for my two clients at Guantánamo until they are released. I hope their nightmares will be over soon. As for me, there is no going back to my old practice.

I now appreciate not only the tenuousness of our republic but also the special role that lawyers play in maintaining our constitutional system if it is to be maintained. Perhaps you wonder if I, thinking back on that e-mail of four years ago, would respond to a similar e-mail knowing what I know now. As frustrating, disappointing, and discouraging as this experience has been, I would again drop everything for the chance to fight for our fundamental rights under the Constitution. It does not get any more fundamental than habeas corpus. That e-mail in 2005 changed my life, and I hope along the way I can change the lives of others around me. Who knows, maybe next time I will be the one sending out the e-mail. ☐