

# CHICAGOLAND LAWYERS WHO TOLD THEIR STORIES IN *THE GUANTÁNAMO LAWYERS*

By Robert Brunn, Jasmine Villaflor Hernandez, and Clifford Gately

*The Guantánamo Lawyers* (New York University Press, 2009) chronicles the lives of detainees at the Guantánamo Bay Naval Base prison as told through more than 100 personal narratives from the attorneys who have represented them. We spoke with eight Chicago-area lawyers whose experiences are included in the book. We asked them questions about their involvement and how it affected both their lives, and the lives of their clients.

The eight attorneys we talked to are but a fraction of the attorneys and scholars, in Chicago and across the country, who have been seeking due process rights for Guantánamo detainees. What we found was that although each attorney's story differs, there are common threads that run through every interview. Moreover, these attorneys are all bound together by a shared belief in what America should stand for, a sense of professional responsibility to uphold basic freedoms, and a powerful devotion to client advocacy.

## First Impressions

The photographs played across television of prisoners held in Guantánamo Bay dressed in orange jumpsuits, goggles on their faces, and mittens binding their hands, disturbed Tom O'Hara. To O'Hara, now a partner at Hinshaw & Culbertson, it also did not seem right that the President of the United States, as Commander-in-Chief, could detain and imprison anyone in the world he deemed an enemy combatant and hold them indefinitely. In 2004, O'Hara read an article in *The American Lawyer* that identified the Center for Constitutional Rights as the organization that was coordinating the attorneys who were representing Guantánamo detainees and felt he had to take action, so, "I gave them a call."

H. Candace Gorman, a sole practitioner, became an outspoken advocate for Guantánamo detainees, but her involvement almost never came to be. In 2005, after missing an informational luncheon about Guantánamo, Gorman received a thank-you email with a reminder that many detainees still lacked attorney representation. Feeling guilty about missing the luncheon, but intrigued by the new information, Gorman reached out to local attorneys who were already involved. Soon afterward, she received her first client's name and got to work. Gorman



admits that in the beginning she didn't give serious thought to the duration of her representation, or the cost. She said she was drawn to the cause, but had no concept, no inkling, of how thoroughly, and quickly, "it would take over my practice and my life." Since receiving that fateful "thank you," Gorman has traveled to Guantánamo more than 25 times.

Gary Isaac's introduction to the legal issues surrounding Guantánamo happened when he was recruited by Douglass Cassel, who was then the Director of the Center for International Human

Rights at Northwestern University School of Law, to write an amicus brief in support of the petition for certiorari before the Supreme Court in *Rasul v. Bush* (in which the Court ultimately decided that district courts have jurisdiction to hear detainees' habeas corpus challenges, and which opened the door for attorneys to travel to Guantánamo to meet with clients). The strategy called for a number of briefs to be filed by interested parties other than the "usual suspects (such as civil liberties organizations), but instead by retired federal

Since his initial involvement, Isaac has co-written a number of amicus briefs in detainee cases in the Supreme Court and has been deeply involved in the habeas counsel group's political advocacy, working with members of Congress to fight legislation intended to take away the courts' jurisdiction over detainees' habeas corpus petitions.

Marc Falkoff, who is currently a law professor at Northern Illinois University, undertook Guantánamo habeas work while he was an associate at a firm in New York. As much as he wanted to assist Guantánamo detainees, he did not believe he would have the opportunity because he anticipated many other attorneys had already volunteered their services. To his surprise, the Center for Constitutional Rights pounced on his offer to lend his habeas corpus expertise to the Guantánamo cause. His passion and belief in the necessity of this pro bono publico work encouraged his coworkers to also become involved. Ultimately, the firm represented 17 Yemeni detainees.

Like Falkoff, Maya Curtis knew early on that she wanted to get involved. At the time, she was a second-year associate at Jenner & Block, and when she received her first assignment to represent a Guantánamo inmate she said, "I felt like I won the lottery."

Longtime Jenner & Block partner Tom Sullivan has also become deeply involved in representing Guantánamo detainees, as well as writing and speaking on the topic. In a detailed article covering the history, court battles and conditions at Guantánamo entitled "You Have The Bodies," (prepared for a Guantánamo presentation at a 2007 ABA Section of Litigation meeting); Sullivan talked about his "bizarre initiation" to the world of Guantánamo prisoner representation.



Gary Isaac



H. Candace Gorman



Mark Falkoff



Maya Curtis



Matthew J. O'Hara



Jeff Strauss



Thomas Sullivan



Pat Bronte

"Before being permitted to write or visit your clients, you must first obtain a 'secret' security clearance," Sullivan says. This process took months. Then he traveled to a secure facility near Washington, DC to view the files on his client. "You nervously read the contents," explained Sullivan, "and alternate between amazement and amusement as you realize that not only is there little or nothing very secret in the files, but that it's often only the statements the prisoner himself made when questioned by U.S. personnel, with innocent explanations as to why, for example, he was present in Afghanistan or Pakistan, and what he was doing before being taken into custody."

### Meeting the Clients

Just getting to Guantánamo Naval Base prison is a major undertaking.

"To get there, you fly to Ft. Lauderdale, and then continue onto the base on one of two small prop plane carriers," Sullivan said. "The following morning, a bus takes you and your interpreter to the landing at the bay, where a ferry loaded with cars and trucks waits to make the

20-minute crossing to the windward side. In most places on this side you may move about only by bus or van, accompanied by members of the military Joint Task Force, which includes personnel from the Army, Navy and Marine Corps. You are driven to McDonald's to purchase food and drink for yourself, your interpreter and your clients (no meat). Your driver then takes you to the camp where your client is awaiting the meeting."

O'Hara, who has met with each of his clients at least 20 times, said the day it takes to travel each way to-and-from Guantánamo is often extended due to mechanical errors.

Although one of Curtis' clients refused to meet with any attorneys, she did come to represent two detainees. She was under the impression from what she heard in the media that the prisoners incarcerated there were the "worst of the worst." But when she met them, Curtis said they were scared, bewildered and shackled to a table, "not larger than life at all, and not what I would view as threatening."

Before Gorman met one of her clients, Abdul Hamid Al-Ghizzawi, she knew

only that: (i) he expressed a keen interest in working with an attorney (many detainees did not); (ii) he was very ill; (iii) before Guantánamo, he had been held at Air Force bases in Afghanistan; and (iv) as of their first meeting in 2006, he had been held in Guantánamo for four years without any charges filed against him. Gorman said that from their first meeting, Al-Ghizzawi was thoughtful, insightful, and curious. Gorman was touched by his sincere interest in learning about her family. How did they feel about her representing a man at Guantánamo? (They were supportive.) Who paid her to represent him? (no one—it was pro bono). Gorman said she often left Guantánamo, "wondering if Al-Ghizzawi would still be alive for my next visit."

Sullivan said that as with the vast majority of the men held at Guantánamo Bay, his client Rashid, "was not captured on a battlefield, or with a weapon, or in a uniform, nor was he seized by U.S. forces, nor was there evidence that he had fought against our forces or the Northern Alliance, or had any connection to Al Qaeda or the September 11, 2001 attacks. He, as hundreds of other Arabs,

was sold into captivity as an alleged terrorist in exchange for a cash bounty."

Pat Bronte, who has been representing detainees since 2005, originally had three clients, two of whom are still at Guantánamo. "My clients were guys who were picked up around the age of 20, 21 and so they have spent the decade of their 20s at Guantánamo. All three of them were sort of seduced by religious authorities in their countries—people who were respected and looked up to. They were preaching this message that the Taliban was really doing a lot of good in Afghanistan, but the Taliban is under siege and needs assistance from the Muslim world and you should go there and check it out. My clients were convinced that they could go there and provide humanitarian help."

### Establishing Trust Despite Cultural Differences

In January 2002, when the first detainees arrived at Guantánamo, they had little or no interaction with each other. Their first contact with Americans was limited to military personnel and interrogators. Two years later, when attorneys were first allowed into the prison, the attorneys and the prisoners didn't always know what to make of each other.

"You see your client seated behind a table, one leg shackled to the floor," Sullivan said. "If you haven't met before—and often even if you have—he suspects that you and your interpreter are secret agents for the U. S. government who have come to pry information from him."

One the first questions Gorman's client asked was, "How do I know you are an attorney?" After Gorman presented her business card, as well as copies of her law license for the preceding ten years, he began to warm towards her. Through in-depth discussions about their respective families, they found common ground and continued to build their relationship and trust. Gorman had a much different experience cultivating a relationship with her second full-time client. After their third meeting, he refused to meet with Gorman. For one year, they did not have any communi-

cation. Gorman believes patience and remaining available to him has allowed them to continue to work together. Currently, they are still working together on his habeas case.

Bronte said, "For a long time we were trying to break down the barriers that existed between our cultures, and our clients' natural suspicion about Americans saying we wanted to help them. These difficulties in representing prisoners in Guantánamo can't be underestimated." Bronte likened the early days at Guantánamo to social work, but also said, "I think we served a valuable purpose by meeting with our clients and making sure that the

for years for no discernible reason."

O'Hara said the most successful means of establishing trust with his three clients was via communication with their family members. For instance, O'Hara represented Palestinian detainee Walid Abu Hijazi, and O'Hara contacted his brother and father. After speaking with them and explaining his intentions, they gave O'Hara family photos that his client would recognize. O'Hara shared the photos during his next meeting with the client. "By this I could show Walid that he could trust me and safely speak to me."

Jeffrey Strauss, Counsel at Mayer Brown with Isaac, was first brought in by Isaac post-Rasul to help work through



administration knew that it didn't just have carte blanche to do what it wanted, because somebody was watching."

"There is a problem here: there is no real news to report, at least no good news," said Sullivan. "The conversation consists chiefly of you trying to explain why no progress has been made to get a hearing before a tribunal that will require the government to explain why he and his fellow prisoners have been held in jail for five years. At the end of the visit, your client expresses his sincere appreciation for your having come, and assures you he knows that not all Americans support the administration's repressive treatment of the men imprisoned at Guantánamo Bay. You are taken aback and embarrassed at being met with kindness and solicitude by a man whom your government has caged

the legal and logistical issues involved with matching volunteer lawyers with detainees. Strauss, Isaac and Joe Margulies (lead counsel in *Rasul*) were also among a team of lawyers who met in Chicago with Maha Habib, the wife of detainee Mamdouh Habib (one of the original petitioners in *Rasul*) in an effort to gain Mamdouh's cooperation. Maha disclosed details about her life with Mamdouh that only they would know. When Margulies subsequently met with Mamdouh, he was able to use this information to gain Mamdouh's trust. Mamdouh was eventually released without charges, but, as portrayed in the book, Strauss's one meeting with Maha and the impact of Mamdouh's incarceration and treatment left an indelible impression on Strauss of a family that was fractured and that would never fully recover.

## Obstacles to Representation

Not to be overlooked are the logistical difficulties involved in representing clients located in Guantánamo Bay. Attorneys cannot communicate with their clients on the phone or by email. Any direct communications mean endless flights and boat rides. Other obstacles can be difficult to anticipate.

The last time Bronte was at Guantánamo was for a four-day merits hearing, in the middle of which she developed appendicitis. The merits hearing was conducted by video conference from the base to the district court in the U.S. Bronte said that on the big screen in the courtroom, "apparently my face was a lovely tinge of green." Because she was told that medical care at the base was not very good, she decided to wait until she got home to see a doctor, by which time her appendix had burst. She was lucky to have survived.

## Back Home

Sullivan said that the efforts of the lawyers seeking rights for detainees are concentrated in five areas: court battles, persuading members of Congress to restore and protect prisoners' habeas corpus rights, pursuing diplomatic channels, writing and speaking, and keeping in communication with the prisoners and their families.

Curtis said that on the home front she was initially involved in requesting factual returns—asking for the basis of her clients' imprisonment. "That's how Kafkaesque the situations were," Curtis continued. "We really didn't know what the charges were, since they were classified information. So, we were trying to get access to the government's evidence against them, as well as doing habeas work to get their cases in federal court. Also, things would happen at the prison. A lot of the motions we would do would have to do with prison conditions or treatment of prisoners."

Gorman feels passionately about educating others about the issues at Guantánamo. Among Guantánamo attorneys, she is fondly referred to as the "feisty Gitmo lawyer." Gorman reaches

a broad audience through speaking engagements, as well as periodic articles published in the *Huffington Post* and *In These Times*, a not-for-profit, independent news magazine. Gorman's activism has also gone viral. At her law clerk's suggestion and with his technological savvy, she maintains a blog (<http://gtmoblog.blogspot.com>), and frequently posts articles, stories and artwork relating to issues at Guantánamo.

As with many of the Gitmo attorneys, Falkoff is also passionate about the issues and embraces every opportunity to educate others on the topic. Falkoff received poetry from a few of his clients and learned that other detainees sent their attorneys poems as well, which he collected and compiled into an anthology, *Poems from Guantánamo: the Detainees Speak*. First published in 2007, the book is now available worldwide and is even used in a few university classrooms. Last December, Falkoff was scheduled to speak about his book at a college. Unfortunately, his long-scheduled appearance coincided with the death of a young soldier from the area who had been killed when insurgents attacked his unit in Afghanistan. Some local townspeople were incensed and the college cancelled the event. Although no explicit threats were made, Falkoff received many alarming phone calls and blog postings. One message indicated that perhaps Falkoff would understand if one of his own family members suffered a tragic accident. Undeterred, Falkoff gave his keynote speech at the college in February 2010.

## Updates

Although many of the detainees remain at Guantánamo, two of O'Hara's clients have been resettled. One currently resides in Spain and he and O'Hara keep in touch via the Spanish government. O'Hara communicates regularly with another client, "Bilal" who was resettled in Bulgaria. Bilal's transition has been difficult and he does not speak Bulgarian, but it has been comforting for him to speak with O'Hara. Adding to Bilal's worries is that he does not have a job



and cannot support himself, but O'Hara tries to keep Bilal's spirits up via their video conferences.

Despite being cleared for release in 2009, Gorman's client Al-Ghizzawi remained at Guantánamo until March 2010. Gorman learned of his release to the Republic of Georgia via a phone call from a representative at the State Department. Three days later, Gorman found herself in Georgia. Since Gorman's visit, she and Al-Ghizzawi still communicate on a regular basis. They keep each other updated on family news and his new life in Georgia through web chats and emails.

Of Falkoff's 17 clients, five have had habeas hearings. One lost his case, but four others won. Of those four cases, the government filed two appeals and has time to file one more appeal. One Yemeni detainee was sent home.

Pat Bronte was a partner at Jenner & Block during a part of her Guantánamo representation. She is now Of Counsel with Stowell & Friedman, a plaintiff's civil rights litigation boutique law firm. She continues to represent detainees. One of her three clients has been released. Bronte said it just happened one day.

## THE GUANTÁNAMO LAWYERS: INSIDE A PRISON OUTSIDE THE LAW

*The Guantánamo Lawyers: Inside a Prison Outside the Law (Guantánamo Lawyers)*, NYU Press (2009), is a powerful compilation of narratives from attorneys who represent detainees held at Guantánamo Bay Naval Base in habeas corpus proceedings. With a well-edited selection of stories and personal observations, Editors Mark P. Denbeaux and Jonathan Hafetz guide readers through these habeas attorneys' experiences. We learn how attorneys became involved in this pro bono publico work, their first impressions of the naval base and their clients, as well as obstacles to representation.

*The Guantánamo Lawyers* has something for all readers regardless of their personal knowledge and awareness of the issues facing detainees and their counsel. For a complete review of *The Guantánamo Lawyers*, please refer to the October 2010 **CBA Record**.

"It's never been clear to me what criteria they used," she said. "I'm quite sure it had nothing to do with my advocacy."

Maya Curtis went into private practice, got married and had a baby. She said that she got engaged during the time she was representing her detainee clients. Curtis said her clients followed her life with so much interest. "It was sort of heartbreaking to see how my life was progressing while theirs stood still." Her clients even asked Pat Bronte to buy her a wedding present, which Bronte helped them do. "Even though they have no funds, I have

two miniature prayer rugs from both of them," said Curtis. "It's beyond touching that they are in a state of deprivation and they are thinking of what they can get me to celebrate my wedding."

As a postscript, when Curtis met her husband, he was in Special Forces. Curtis said he was happy that she was representing Guantánamo detainees. "It's a testament to his belief in the American justice system," she said. "He said that's the difference between this country and countries he was often on the ground in. If he had been captured

in one of those countries, there would be no question of procedural due process. That wouldn't even be on the table." ■

*The authors of this article are all members of the CBA Record Editorial Board. Robert Brunn is a Research Librarian with the Cook County Law Library. Jasmine Villaflores Hernandez is Administrative Supervisor and Compliance Officer for the First Municipal District of Circuit Court of Cook County. Clifford Gately is a manager in Jenner & Block's Marketing Department.*

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