

# Advocating for an Accused Terrorist

By *Neha S. Gohil and Shams S. Mitha*

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 incomunicado 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. **YL**

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## FOR MORE INFO

Visit [www.abanet.org/poladv](http://www.abanet.org/poladv) to review the ABA's legislative priorities and governmental advocacy efforts regarding antiterrorism and preservation of due process for "enemy combatants." For info on pro bono opportunities, visit the ABA Center for Pro Bono at [www.abanet.org/legalservices/probono](http://www.abanet.org/legalservices/probono).



## When Disaster Strikes: Helping Now, Preparing for the Future

The ABA Young Lawyers Division has partnered with FEMA (the Federal Emergency Management Agency) since 1992 in mobilizing and organizing young lawyers to provide free civil legal service to low-income disaster victims. When called upon by FEMA in the aftermath of the September 11 attacks and

numerous natural disasters, the YLD, and the ABA community at large, responded.

Now, Hurricane Katrina has nearly destroyed the Gulf Coast region. And, long after the region's families and communities have been reunited and rebuilt, the emotional, economic, and physical effects will remain.

If you'd like to volunteer your legal services, donate to a legal fund, or find out more information on what's needed, the ABA has compiled online resources at [www.abanet.org](http://www.abanet.org).

### Are you prepared?

Start with this checklist from the *TYL* editorial board, two of whom reside in hurricane states:

- Review your area's disaster preparedness plan and identify emergency shelters.
- Get organized. Plan what you're likely to need in a disaster.
- Maintain backup files, a list of your clients and their contact information away from your office.
- Designate a person in your office to gather client lists and backup disks.
- Establish a firm Web page and inform your client's and employees to check it for firm updates in an emergency.
- Identify a contact person and place to meet in case your family is separated. Create a code word or phrase so displaced children will know it's OK to let a stranger help them reconnect with you.
- Use plastic zipper bags for keeping documents and other perishables contained and dry.
- Fill two folders. In one, place all your insurance information (hazard, car, health, life), including carriers' local and national phone numbers. In the other folder place all important *original* documents (certificates of birth, marriage, citizenship; divorce decrees, and social security cards) that prove your identity.



- Always have handy fresh batteries, flashlights, a radio, bottled water, canned goods, a can opener, and a cooler.
- What's irreplaceable to you? Define it and protect it. If it's your family's photos, make sure your negatives are in a box or plastic bag for easy grab and go.

We'll be providing more information in upcoming issues. **YL**