

REPRESENTING THE RIGHTLESS

John Robert Holland Anna Cayton-Holland March 9, 2008

The sad truth, as we await the next Supreme Court decision, is that to be foreign born and in American custody today is to be rightless.

Being rightless leaves only protest to manifest dignity.

Prisoner protests in Guantánamo Bay become known to the world through their unclassified writings and statements about their abuse, especially through and during their hunger strikes.

Although we are lawyers, none of us can go to a courtroom and prove that our prisoner clients are innocent—never mind making the government prove that they are guilty beyond a reasonable doubt. There are no courts, and innocence or guilt clearly no longer matter.

During our work in Guantánamo Bay, there have been many sleepless nights thinking about our obligations in representing the rightless in a non-legal system who, as Joseph Margulies has well put it, are held in a “prison beyond the law.”

One young man’s case, that of Mohammed Al Amin, proved especially haunting.

We, along with Agnieszka Fryszman of Cohen Millstein, Hausfeld & Toll, first met Al Amin at the insistence of our other Mauritanian client held in Guantánamo, Abdel Aziz. Mr. Aziz was very concerned about Mohammed and made us feel that no matter what else we did we had to free Mohammed.

Mohammed Al Amin comes from a poor family residing in the outskirts of Nouakchott, the capital city of Mauritania. A very bright religious student, Mohammed traveled to Saudi Arabia to study the Quran.

Al Amin was arrested in the spring of 2002 in Peshawar, Pakistan and put in a Pakistani jail where he reports he was subjected to many beatings and solitary confinement as well as denied adequate food. He was then sent to Bagram where he was tortured, including being suspended by his wrists with his feet dangling for long periods of time. If he passed out he was forcefully awakened. He was abused sexually and suffered severe sleep deprivation.

In Bagram, after being tortured repeatedly, he confessed to being a Jihadist, although he was not.

He was only seventeen years old.

Mohammed was to be his family's sole source of support. He has five sisters and a mother. His father died while he was in Guantánamo. The family has been branded by his confinement and his labeling as a terrorist.

Mohammed Al Amin has never been accused of any acts of terror. He was a member of no army. He fought no one. He injured and killed no one. The same is true of Ahmed Abdel Aziz and of countless other prisoners at Guantánamo. Our clients profoundly maintain their innocence.

When we first met with Mohammed in Guantánamo in late February 2006, he was not much interested in being represented. We spoke with him for many hours. He explained that, despite his unshakeable inward religious convictions, putting any hope in the legal process would only make his already excruciating daily existence worse because he would be disappointed even more deeply if he let himself believe there was any chance of ever getting out when he knew there was none. He trusted in God only. He had no trust in our legal system to deliver him justice.

We did not ask him to trust that system or believe in us. We just suggested it would not hurt him much for us to try to open the windows of possibility and that he did not even have to pay much attention.

You could feel him thinking it was a total charade. These deceitful lawyers, feigning sympathy for his plight, had been sent by those who imprisoned him to trick and deceive him into hope. How could they understand that he was already safe and protected? That residing deeply in his religious soul, impervious to the vicious ways of his captors, beyond any bodily degradations or delusions, he was in a place beyond their reach?

He was living in such daily unspeakable degradation that he found it impossible, laughable really, to believe he might get out. The Americans had done this to him and we were Americans.

He did finally agree to let us represent him because he identified with the idea that he was a witness to the terrifying Guantánamo history that has to be told, as with all such crimes against humanity. In retrospect, perhaps our greatest accomplishment was that he allowed us to represent him at all.

Over the course of his imprisonment at Guantánamo, Mohammed told us how he had engaged repeatedly in hunger strikes. These he described in painful detail and with great poignancy. His words filled us with horror. He told us about the medical abuses and torture that were being inflicted on him in a relentless effort by the government to break his will and make him stop striking. Eventually, he had resolved not to stop until he was freed or dead. It was, as he eloquently explained, his only means of protest against his outrageous confinement.

He described being tied so tightly into restraint chairs that he could not move. Overly large feeding tubes were very painfully forced down his nose and into his stomach. He would be kept like this for hours at a time. He told us how they would deliberately position the tube into his stomach and

then repeatedly yank it out stating that they had not gotten it into the right location. This too would cause him great pain and make his nose bleed. They recycled tubes that had been used on other prisoners, caked with remnants of human blood and bodily fluids. They would overfeed him through the tubes until he vomited, defecated and urinated on himself. Then he would be thrown into his cell covered in his own feces, blood, urine, and vomit and left. Mohammed also talked about doctors who taunted him, warning that this treatment would not stop until he gave up hunger striking. On all of our visits with him, we would hear these same accounts.

Mohammed also described being abused with IV needles. Trainees working with medical personnel subjected him to medical experimentation, sticking him repeatedly with needles, allegedly unable to find his veins. They would stick him dozens of times, one person after another—for no valid medical reasons.

For us, the sincerity and believability of his accounts was overwhelming. They were delivered to us with the vividness of reliving and with that raw indifference to any listener disbelief that marks credible people who are witnesses to the truth. His accounts shamed us. Yet we remained powerless to stop these abuses. If our courts care about what is going on, from the prisoners' standpoint it doesn't matter because they do not act. Thus the government has been entirely free to carry on in these and the hundreds of other pernicious ways that have been reported, as well as those that remain unreported.

The Presumption of Legality

Mohammed Al Amin's "unclassified return" spoke vaguely about his alleged attempted associations with unnamed groups and his alleged desire to become a Jihadist based on his having traveled to Pakistan. If only he had arrived in Afghanistan, the government seemed to be inferring, he would have tried to kill or hurt Americans and their allies in the war on terror. The fact that he had not ever been to Afghanistan did not seem of much concern to the government or its hearing officers. They repeatedly stamped the label of enemy combatant on this young man who had studied theology and manifested a desire to travel, study, and teach his religion to others.

For purposes of these cases, the American legal system is broken. It does not have a prayer of working. As one Justice pointed during the December 5, 2007 arguments before the Supreme Court in *Boumediene v. Bush*, justice delayed for six years is justice denied. The law lives in books and ideals. The prisoners in Guantánamo live in real time in their metal boxes.

We have the utmost respect for the brilliant legal fights being waged by distinguished members of the "Guantánamo Bay Bar Association." We know they are important to assuring that this sorry history not be repeated. But for the people incarcerated like this with the permission of our Courts, who no longer enforce habeas corpus, it is already way too late.

None of our legal work for Mohammed Al Amin, historic meanings aside, meant much of a practical damn, except for providing us the right to see him, to hear him, to witness his endurance

in spite of his suffering. We were committed more deeply not only to work for his release but also to communicate what was going on there to others.

Not one prisoner in Guantánamo Bay has been in a Courtroom in six years. American courts are closed.

The government's sole strategy has been delay and they have implemented this brilliantly without a single loss. The Courts presume that the government acts lawfully although it does not.

Courts are, at their best, too slow and imprecise. Every time the courts even begin to catch up with the government's illegality, the government goes back into strategic planning and produces another complex illegal program, knowing they have delayed the process for another year or two. The courts then again slog through the presumption of legality they afford to the government to the same inevitable conclusion that the government has abused its authority and power to adversely affect the most vital rights and interests of these prisoners once again.

We decided that since there is no possibility for American legal justice in this time zone, we needed to go to Nouakchott and meet our clients' families and their government. We applied for visas.

Diplomacy as Recourse and Strategy

We also called a prominent attorney for the government to ask him for help and whether he too ever had trouble sleeping at night. He did not respond. We told him we wanted the government to release Mohammed Al Amin because they had nothing on him, and he was a young man who still has a chance to live out his life. We asked for his help in securing Al Amin's release.

This lawyer is literally besieged with litigation issues from the hundreds of us who are suing and going round and round in the endless delaying legal circles that is the present legal system for these prisoners, subject to Congressional change after any potentially serious adverse judicial rulings. He said that in all these years no one had ever called him to ask for help, just to confer on their next litigation move.

Our sense in calling was that our government might well need help to figure out ways to get prisoners out of there. He did not admit or deny this but he gave us contact persons and said he would keep an eye on our matter and communicate with others in the State Department.

We told him that we were going to Mauritania and that we wanted him to request our government to assist us in our efforts and let Mauritania know that they would not be opposed to our Mauritanian clients' releases. He would not promise this, but we believe he was in the background helping.

Traveling to Mauritania first involved struggling to obtain accelerated visas. We told Mauritania's Ambassador to the United States, Tijani Ould Mohamed El Kerim, exactly what we were hoping to accomplish.

We told him of the plight of our clients and discussed with him the moral obligation of his country to seek their return. We explained that we believed, with suitable assurances, our country would be very responsive to releasing one or more of their several countrymen but that it appeared this would never happen without Mauritania's help.

While Guantánamo has imploded morally and internationally, it is still not easy to excite foreign governments about seeking such prisoner releases when our country has spent years telling the entire world that these people are the "worst of the worst."

The United States has never explained why over 500 of these supposed "worst of the worst" have now been voluntarily released by our own government without any Court orders requiring them to do so.

The simple goal of our trip was thus to request the Mauritanian government to become much more actively involved in securing the repatriation of their long confined and uncharged citizens.

We wanted to ask the President of Mauritania or his Minister of Justice to provide our government with assurances that upon the return of their countrymen, Mauritania would conduct reasonable investigations and trials of our clients, if necessary, with the provision of all human rights. Prominent lawyers in Mauritania who are part of the human rights initiative for Guantánamo prisoners promised free representation to our clients should there be any charges.

Just before we left in January, 2007, Ambassador Kerim advised us to remember as we went through the trip that it was not Mauritania who had done this to the prisoners in Guantánamo Bay, including to the three Mauritians who were brought there.

Clive Stafford Smith accompanied us to Mauritania from January 18 to January 23, 2007. Clive, who heads Reprieve in London and is a leading voice for Guantánamo Bay prisoners, also represents Abdel Aziz.

Nouakchott is the capital of Mauritania, a large but mostly unpopulated Islamic Republic of about three million people on the western side of Africa, next to Morocco. The largest city in the Sahara, Nouakchott spreads for miles across a large swatch of brilliant orange desert near the Atlantic Ocean. Both Arabic and French are spoken there. Mauritania is a very poor country with an average income under four hundred dollars a year. Despite bans, it is reported that slavery is still practiced. There is still a caste-like system with Black Africans on the bottom rung. Eight hundred thousand people live in Nouakchott. Many people without running water depend on donkeys pulling barrels on carts for their supply.

At the time we went there, Mauritania was just returning to democracy. As a result of a bloodless coup in August 2005 General Ely Ould Mohamed Vall became President and was running the country with a promise to restore democracy through free elections. Those elections were in full

progress as we arrived. Among the many candidates running for President were at least five significant contenders.

In Mauritania, much political work is done through press conferences. We had barely left the airport when our first press conference occurred. Family members from all the prisoners held in Guantánamo were there. Politicians and many members of the media were also there.

Although we had traveled to Mauritania with the express purpose of meeting with government officials, there was no official invite to do so and no certainty that such meetings would occur. Nevertheless, we felt compelled to act at all times as if this was a certainty. So we made media splashes in the first few days, hoping we would be called by the government to come and meet with the Minister of Justice or with President Vall. We were only going to be there for five days and we absolutely needed to meet with the government.

We told the assembled media that we were grateful to the government of Mauritania for having arranged our mission and allowing us to come. We honestly explained to them our regret as attorneys that the United States courts were completely closed to these wrongs. We told them we had come to request the assistance of the Mauritanian government to secure justice for their prisoners held without rights in Guantánamo Bay.

As American and British attorneys, it was embarrassing to travel to an impoverished, fledgling democracy in West Africa to request that the government there act in a humanitarian fashion and work for our clients return by promising the United States fair and just proceedings to investigate and determine the guilt or innocence of our clients—proceedings we have been completely unable to secure in the United States.

The Families of the Rightless

The meetings with our clients' families were among the most moving moments of our lives. Rather than being the monsters invented by government propaganda, many of these men are actually the beloved missing members of close knit and long grieving families. Their pictures were everywhere we went. Their best friends, teachers, parents, grandparents, brothers, sisters, nieces, nephews and well wishers besieged us with tears and stories and questions. We were honored, feasted and thanked profusely for coming.

We explained what we could from the unclassified notes of interviews we had conducted. We assured them of their relatives' physical well being. We listened to their prayers and received gifts and food. We will never forget their faces and their love and the excruciating pain they all carried. If the world could see our clients' families they would be shocked at how they are just like them. Children riding bicycles and drinking Cokes and playing sports. These are literate people speaking multiple languages and living successful lives. Some run newspapers and others are prominent in the government of Mauritania.

When we visited Mohammed's family and discussed his hunger striking, one of his sisters implored us to urge him to think of his family and end the strike. "Tell him not to draw attention to

himself,” she said. “Tell him to just wait and pray and be freed and come back to us healthy.” We did not argue with them except to explain that it was his only means of protest and that he felt fighting back against the cruelties that had been visited upon him was his only way of remaining human. Our explanation was totally unsatisfying to his loved one.

When you read in our papers that the killing of habeas corpus in this country only affects foreign nationals at the moment, hear and know this: these foreign nationals are people a whole lot more like you than you realize. They are much loved and missed by their families. For the very most part, their families are good and decent people with kind hearts and normal human aspirations.

We took photographs and videos of all of them that we hoped to be able to clear with the government and show to our clients when we next visited them. Mohammed’s mother never stopped crying and we had to coax her into wiping her tears away and smiling so we could take a happy picture of her to him.

Representing the rightless in today’s eviscerated legal system is mostly reduced to attempting such elementary human things that continue the strings of life.

Family members and reporters besieged us with questions like: “What happened to America? Don’t you believe in justice? How can Americans hold our countrymen for years without ever charging them? Why can’t we write to them? Why can’t we call them? Why can’t we visit them? When will they be charged? When will they be released?” What do you say to all that?

One night, after we had just left a feast with Mohammed’s family, we received a telephone call from Al Jazeera asking us to come to their studio to discuss our trip to Mauritania. Clive said John should do it as everyone had heard too often from him.

Interventions with Media and Mauritanian Politicians

We went to the station in downtown Nouakchott and were invited to join a panel hook up in several cities about Guantánamo that was being broadcast live to many millions of people. We still had not been invited to meet with the government, nor had we been assured that we would get to do so, and this troubling fact was very much on our minds.

We told the watching audience that we were very grateful to the Mauritanian government for having allowed us to come to their country to discuss the plight of their fellow countrymen and to seek their assistance in securing justice, something we were unable to do for our clients without their help, as proven by the years of legal futility that we had experienced in our country. Once again we stressed that we were very much looking forward to meeting with the top government officials and hopeful that this would occur very shortly.

Later that same night we prepared a major letter to President Vall in our hotel and Anna persuaded a pilot from Air France to help her translate it into French. So as to not alienate our own Ambassador, and to make sure U.S. officials and diplomats were in the loop, we also decided to hand deliver a copy to the American Ambassador in Nouakchott.

The next day we were invited to meet with Mauritania's Minister of Justice, Mohameden O. Bah O. Hamed (Secretary General Ministère de la Justice). This was a very welcoming encounter. We also met with Koita Bamariam, the Director of the Mauritanian Commission for the Rights of Man (Director General des Droits de l'Homme for Mauritania Commissaire au Droit de L'Homme).

While welcoming, the meetings with the Mauritanian officials were pretty brief and to the point. We explained why we had come. We asked for the President to intervene with our government and request the return of their citizens. We also asked that they assure our government that if our clients were returned home, there would be sufficient process on their part to investigate and detain our clients further as necessary. This is a difficult request to make as lawyers, but we understood it was essential.

Because Mauritania was in the midst of an election, we realized we should not solely depend on the present government acting. Mauritania is an ally of the United States in the war on terror. These are highly political questions for countries with prisoners in Guantánamo Bay.

We decided we had to try to meet with every major candidate running for presidential election in March 2007. We prepared letters for each of the candidates requesting that they take a positive position on the plight of the prisoners and requesting that they meet with us. Our host, Mr. Hamound Ould Nebagha who is the President of the Mauritanian Detainees Support Committee (Initiative Populaire Mauritanienne pour La Liberation des Detenus de Guantánamo), arranged to drive us all over Nouakchott, even on his cell phone locating these candidates.

We met with six candidates. The meetings were pretty intense, forcing John to use very antiquated French. Clive's and Anna's French was much better and collectively we muddled our way through pretty effectively. We presented our clients situations. We urged them all to become directly involved. We obtained commitments by most of them to do so, some more heartfelt than others.

One of the candidates, Sidi Ould Cheikh Abdallahi, told us that he would make these prisoners' fates one of the focuses of his campaign.

We held a farewell press conference thanking the government for meeting with us and expressed our fervent hopes that the President Vall would soon act to request the return of the Mauritania prisoners.

We then attended an unbelievable outdoor dinner into the sunset with the members of the Mauritanian Popular Initiative for the Defense of Guantánamo Detainees and heard the call to prayer echoing across the desert dunes about an hour outside of Nouakchott.

Later, family members came with us to the airport to see us off.

Moving Toward Freedom

About a month after coming back from Mauritania in February 2007, we received notice from our government that Mohammed “has been approved to leave Guantánamo.”

However, he was to be held for another seven months.

We traveled down to see Mohammed in Guantánamo. We got our pictures cleared and were very excited to show them to him. The joy he had at seeing his family and hearing of our efforts in Mauritania was wonderful to see. But he was still hunger striking and remained deeply committed to it until he was released.

In March 2007 Sidi Ould Cheikh Abdallahi was elected President of Mauritania and Mohammed determined that he wanted us to write him and quote his words. After our notes containing these words were unclassified, we wrote to President Abdellahi.

This is from the letter John wrote, had translated and sent in French:

□The Honorable Sidi Ould Cheikh Abdallahi
□President of Mauritania

□Dear President Abdallahi:

□Since I wrote you last I was just in Guantánamo to see your citizen, Mohammed Al □Amin. Clive Stafford Smith, my distinguished colleague who you met with during the □election, recently saw Ahmed Abdel Aziz.

□Mohammed Al Amin was clearly declining, both physically and mentally, and we feel □there is now a burning need to fairly resolve his situation.

□As you know, Mohammed is one of the prisoners who our country has cleared for □unconditional release. This means that he has been found to be no threat to anybody – □the U.S. or Mauritania. It also means that no charges have or ever will be filed against □him by the United States. The U.S. has now effectively conceded the truth of what he has □been saying all along – that he should not have been imprisoned at Guantánamo.

□Although a very young man, he has aged enormously due to his mistreatment by the U.S. □military. Because of his concededly unjustified confinement, Mohammed has engaged in □a long, peaceful hunger strike in which he is daily tube fed on multiple occasions. I know □you are aware of this approach. He also reports being victimized by shocking abuses □during the course of this strike. As he has stated, he is hunger striking “to protest my □detention, to ask for my freedom out of this place after staying here for six years without □guilt.”

□You can imagine my meeting with this young man.

□ After I told him all of the news of our trip to Mauritania, including our very encouraging meeting with you, I had to tell him that there were continuing delays in his being returned □ home and that I did not know when this would change.

□ I told him that you had told us personally that you would actively seek his return and that □ you said this publicly during the elections.

□ I told him I did not know or understand why this had not happened or what had changed.

□ My notes from this astounding meeting have just been returned to me, and while they are □ not completely verbatim to what Mohammed said to me they are sufficient for me to □ fairly paraphrase what he asked me to write to you from him directly about his plight.

□ □ “Dear President Abdallahi:

□ □

□ □ I told my attorneys there is a poem that you would know that expresses my □ □ □ feelings. My homeland and my people are still very dear to me even if I do not □ □ □ receive enough support from them.

□ □ You are the father of our country. Please do not forget that our religion imposes a □ □ duty on the father to advocate for your children.

□ □ Those who imprison me say and know that I am innocent and yet I am now told □ □ □ that my country is causing the delay in my return. If this delay was from the □ □ □ Americans I could better bear it but hearing it is from our country makes my □ □ □ condition so much harder. If my freedom were in the hands of the Mauritanian □ □ □ people they would not delay my release one moment.

□ □ Mohammed Al Amin”

□ President Abdallahi, while keeping up his morale, Mohammed is personally asking you □ to end this nightmare of injustice and to intervene to secure his prompt return. We, and □ Mohammed as well, have no doubt that you are fully aware of the will of the Mauritanian □ people as you expressed it to us when we met. He is looking forward to coming home □ and eating again normally with his beloved family in Mauritania. . .

In late September, 2007 we learned that Mohammed Al Amin had been placed on a government plane and flown to Nouakchott. He was held for a few days in comfortable accommodations. His mother was allowed to visit him. President Abdallahi was in the United States. Immediately upon the President’s return Mohammed was released without restrictions and allowed to go home to his family. President Abdallahi kept his word.

Mohammed Al Amin is now living free.