

HABEAS WILL BE THERE IN TEN MINUTES

Hannah Tennant-Moore

In the middle of the night on June 9, 2006, three men imprisoned at Guantánamo Bay reportedly hung themselves with clothing and sheets. One of these men was cleared for release but had not yet been told. The following Monday, Doris Tennant and Ellen Lubell arrived at their small law office in Newtonville, a suburb of Boston. Before they'd put away their homemade lunches or removed their coats, they sat down on the couch in their shared reception area, already knowing what the weekend's news meant for both of them: as lawyers, they had to do something. The force of this decision was fueled by the government's reaction to the deaths: they were immediately termed acts of "asymmetrical warfare," just as suicide attempts preceding them had been labeled "manipulative self-injurious behavior." Guantánamo detainees commit self-injurious behavior about twice as often as they commit disciplinary violations, the majority of which are spitting at guards.

Through the nonprofit Center for Constitutional Rights, which had filed habeas petitions for every Guantánamo detainee¹ they could identify, Doris and Ellen were assigned to represent a thirty-one-year-old Algerian man named Abdul Aziz Naji. They knew that Aziz spoke Arabic, was missing a leg, and was born on May 4, 1975—information that the U.S. military was compelled to provide as a result of an Associated Press lawsuit under the Freedom of Information Act. The security clearance process was not as straightforward. Doris and Ellen each filled out an exhaustive application for the Department of Justice, including listing every place they'd lived in the last ten years and granting access to their health records. An FBI agent interviewed them and their officemates. He called their current and former clients, neighbors, and friends. Three months later, Tennant/Lubell was cleared for potential travel to Guantánamo. They hired an interpreter, reserved seats on one of two commercial carriers who fly tiny, aging planes to Guantánamo (the aircraft used by one carrier flew U.S. supplies to the Nicaraguan Contras during the 70s), and requested governmental approval to travel on that date.

¹ I use the noncommittal term "detainee" that has emerged to describe people held at Guantánamo since it sickly conveys the truth of their situation. The word "prisoner" entails constitutional protections, charges, crimes. These men and boys are simply being detained—if necessary, until the U.S. has smote out every trace of terrorism from the planet.

Meanwhile, Ellen and Doris gave themselves a crash course in constitutional law, which they were rash enough to believe had some relevance to their client's confinement. Doris is a divorce attorney specializing in mediation and collaborative law, both of which spare her clients the expense and anguish of litigation. Ellen's expertise is in nonprofits and intellectual property. They also embarked on an aggressive fundraising campaign to raise the \$20,000 or more a year needed to represent Aziz, a prohibitive sum for a firm consisting solely of Ellen and Doris. But within six months, they'd raised enough money to finance their first year of pro bono work. For the many Americans who feel like powerless bystanders to the constitutional desecration of the last eight years, the Tennant/Lubell fundraising letter represented a simple, concrete act that felt a little like fighting back.

One of the more modest checks for the Tennant/Lubell Detainee Fund was from me, Doris's daughter. I had spent months anguishing over the conditions at Guantánamo made possible by an administration that intentionally placed these men where they could maintain that no law applied. As a citizen of the country that had imprisoned these men without charge, relying on "enhanced interrogation techniques" instead of a judicial process to gather justification for their detention, I felt a responsibility to do something to help them—but I had no idea what that could be. So when my mom called to tell me she and Ellen were making plans to represent a detainee, I was flooded with gratitude. She had joined the small group of Americans who refuse to return to business as usual until the U.S. once again joins the ranks of countries that respect human rights and the rule of law.

This commitment became even more vital—and daunting—when Congress passed the Military Commissions Act (MCA) soon before Doris and Ellen were cleared for travel to Guantánamo. Under this law, which has governed the Land of the Free since October 17, 2006, the following is true: An enemy combatant is anyone—including foreign nationals living in their own countries—who engages in "hostilities against the United States," including providing material support to an organization accused of terrorist activities. *Suspected* alien enemy combatants, including legal U.S. residents, may not challenge any aspect of their detentions in U.S. courts. Those who are tried go before a military commission. They are not guaranteed access to evidence used against them or to a counsel of their choice; evidence obtained through torture and hearsay is permissible. The

president is authorized to interpret and apply the Geneva Conventions—including statutes prohibiting torture—at his discretion; he is not required to notify the public of his decisions.

This law legalized Abu Ghraib, to name only the most publicized incident of human rights transgressions in the global war on terror. It also made it more likely that any innocent men imprisoned in Guantánamo and at the CIA’s secret prisons around the world would remain there: since indefinite detention is legal, the only detainees the government has any incentive to bring charges against are those few against whom they have any evidence.

The MCA passed easily. The Democrats did not filibuster, and few of their constituents complained. A few angry op-eds were published and then forgotten.

According to the Pentagon, only five percent of the approximately 780 so-called enemy combatants held at Guantánamo since 2002 were picked up on a battlefield. (Apparently, no one alerted the president of this fact. In June 2006, he publicly said of the detainees, “These people have been picked up off the battlefield and they’re very dangerous.”) Some were students; some were working for humanitarian organizations; some were doctors, businessmen, and journalists; many were turned in for bounties offered in flyers that, per Donald Rumsfeld’s orders, were scattered over Afghanistan and Pakistan “like snowflakes in December in Chicago.” Perhaps some were involved in terrorist activities—evidence of which no court has considered. The only universal trait of the Guantánamo detainees is that they have all been Muslim men ranging in age from preteens to the very elderly. Doris and Ellen’s client once said it seemed the U.S. was waging a war not on terrorism, but on Islam.

Only one of the nearly 800 men held at Guantánamo has been convicted of a crime. David Hicks, the Australian kangaroo skinner and alleged Taliban fighter, was sentenced to only nine months in prison in exchange for agreeing to a gag order, to never bring charges against the U.S., and to withdraw allegations of abuse against U.S. military personnel. The Australian government released him on December 29, 2007.

The first time Doris flew to Guantánamo to meet Abdul Aziz Naji, she did not know how she would be greeted. She had no way to prove to Aziz that she and Ellen had a

different purpose from the interrogators and guards who represented his only experience of the U.S. As soon as they got off the plane, Doris and Ellen were met by a military escort, who searched their belongings and accompanied them by bus to the Combined Batchelor's Quarters, where they would spend the night. On the way to the prison gates, they stopped at a coffee shop in downtown GTMO to get coffee and a cinnamon roll for Aziz, passing a souvenir shop offering Guantánamo mugs and t-shirts, a Subway sandwich shop, and a high school, all of which accommodate the thousands of enlisted men and women who live at the base. Throughout the base are signs proclaiming, "Honor Bound to Defend Freedom."

Before Doris and Ellen arrived at the prison gates, their escort radioed the guards: "Habeas will be there in ten minutes." Guantánamo lawyers can't be called defense counsel since their clients haven't been charged; they're habeas counsel, or to the enlisted men and women on the base, simply habeas. "I didn't even know that word until I came here," one soldier said to Doris, unsurprisingly—it's not the kind of term people have cause to use in a normal world. After passing through the outside prison gate, over which was written the GTMO theme of the week (in this case, RESPECT), Doris and Ellen were searched a second time. "Why are you dressed like that?" one guard asked of the makeshift head coverings they were wearing.

"Just to make our client feel comfortable," Doris answered.

"They don't push their customs much around here," he said, and then led the attorneys through four more gates and three maximum security doors into a tiny windowless room where Aziz was sitting shackled to the floor and handcuffed. He wore a beige uniform, meaning, "not compliant, but not acting up." He had not been branded "unruly" with an orange uniform, but neither had he been awarded the special privilege of wearing white, reserved for those detainees on their best behavior.

"You're late," he said—who knows how many hours earlier he was brought to this room from his solitary cell?—but his tone was friendly. He was instantly gracious and forthcoming, anxious to tell his story after almost five years held virtually incommunicado—letters home are heavily censored. He spoke calmly and clearly, attributing his enduring sanity to his faith in God's plan for his life. According to Aziz, he was a "corrupt" youth, but Islam had turned him into a good man. Like many other prisoners who get a lawyer, he

thanked them again and again for “taking my case.” One of Doris’s colleagues, when she notified her client she was leaving her firm and others there would continue working on his behalf, received a “bouquet of flowers” from him in the mail (after the letter was vetted for contraband by a review team). He had penciled delicate flowers around the border of his note of thanks and farewell.

Aziz’s story is similar to those of many Guantánamo detainees. Like many religious Muslims, he went to do humanitarian work—mostly transporting blankets and food—with a Muslim organization in Kashmir. While there, he lost his leg to one of the land mines that litter the hotly contested area. After recovering, he decided it was time to marry, since he couldn’t live alone in his disabled state. He went to Peshawar, Pakistan, to live with a fellow Algerian and try to find a wife. For unknown reasons, Pakistani police raided the house and arrested Aziz and his host. Most likely, they were turned in by neighbors for the generous bounties the U.S. offers. The PowerPoint presentation Doris and Ellen give at schools and libraries includes a copy of the flyer the U.S. distributed throughout Afghanistan and Pakistan. It reads, in part, “Get wealth and power beyond your dreams. You can receive millions of dollars for helping the anti-Taliban force catch al-Qaida and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life.” My and your tax dollars pay those bounties.

The organization for which Aziz volunteered in Kashmir has a paramilitary wing, as do many Muslim organizations that provide much-needed social welfare services. Aziz maintains he knew nothing of the group’s militancy. An American expert on the organization stated that it is quite normal for Muslims to be involved only in its social welfare mission, and that, as a newcomer, Aziz would not have been trusted with knowledge of the organization’s military strategy. Furthermore, the Pakistani police, after interrogating Aziz for several days, told him he they had no reason to keep him. This has been corroborated by an English-speaking Sudanese accountant who was arrested at the same time and shared a cell with Aziz during the initial detention. He stated that the police told Aziz and the others captured with him, “We have nothing on you.” And then, a few minutes later: “The Americans want you.” Aziz was held at Bagram for a time and then, hooded and wearing sensory deprivation goggles and earmuffs, he was handcuffed and chained to the floor of a plane headed to Guantánamo.

Aziz's prosthetic leg was badly damaged during his initial interrogations. For months, he was told he would be given a new one if he confessed. This is in keeping with the policy outlined in the Guantánamo how-to manual of getting detainees to rely on their interrogators for all basic needs—that is, after the first two weeks of incarceration, when all detainees are denied mail, the Quran, and Red Cross visits. Aziz has not been interrogated in several years, a sign that the government believes he has no intelligence value. Now he remains in solitary confinement in Camp Six, a permanent maximum security prison built as a state of the art facility and christened with a memorial plaque that reads:

George W. Bush

Donald H. Rumsfeld

October 2006

While prisoners of Camp Six are not kept in cages, they have almost no contact with others, even during meals and prayers. They are allowed out of their windowless cells for about an hour a day, sometimes in the middle of the night. According to Aziz, "It is hell."

Recently, Doris said to me, "People ask me, 'How do you know he's innocent?' And I think, innocent of what?" Aziz has not been charged with any crime, let alone been presented with evidence of that crime in a court of law. He does not have a criminal record. He repeatedly states that he has no desire to hurt people. His descriptions of how he came to Guantánamo and what he did in the years prior to his capture are always consistent and credible. He wants nothing more than to see his family, get married, and live his life as a dedicated Muslim.

During their first meeting, Aziz told Ellen and Doris that he had always thought of America as a place of freedom, where people were treated humanely. He said they had restored his faith in that. Naturally, these words came as a relief to Doris, who was struggling to keep her own faith in America's soul alive. As she drove into Guantánamo for the first time, a vision flashed through her mind. "I imagined coming back here with my grandkids one day," she later told me, "to visit a museum, a memorial to what we had done here and would never do again."

Not all Guantánamo lawyers receive kind words from their clients on their first visits. Some detainees have succumbed to insanity, despair, and paranoia, accusing their lawyers of being spies. Several lawyers have accused guards of encouraging these

suspicions after numerous clients reported that they were told not to trust their lawyers or were punished after meeting with them. Indeed, Aziz told Doris and Ellen that after their first meeting, he was only allowed his exercise hour at night for several months.

But Doris has no contempt for the U.S. soldiers, whom she deems young, well mannered, and mostly working class. Once, she sensed a deep kindness in one of the guards. After their time with Aziz was up, this guard came to escort the attorneys out of the prison. Before he left the room, he turned to Aziz, who remained shackled there, and said, “I’m coming right back. Just hold on. I’m coming right back for you.” The tenderness in his voice was so incongruous to everything else in Guantánamo that it brought tears to Doris’s eyes. One can only imagine the lonely effort required to safeguard such tenderness in a place like GTMO.

On another visit to Guantánamo, Doris spoke informally with the army colonel appointed to coordinate the defense of those detainees who will be tried by military commissions. They were standing around a pool table in their housing quarters, and the colonel was talking about Omar Khadr, arrested by the U.S. when he was fifteen and charged with murder. The colonel said that he thought what the U.S. would be remembered for most during this dark time is not the Iraq war, but how we treated people held in Guantánamo.

The day they made their first trip to Guantánamo, Doris and Ellen learned that Judge Reggie B. Walton (of Libby trial fame) had administratively closed all of the habeas petition cases before him. Aziz’s case had been effectively dismissed; the judge would take no action and hold no hearings. Just outside the prison after their first visit with Aziz, Doris and Ellen handed over their handwritten notes to their military escort to deliver to the “Privilege Review Team.” Several weeks later, the government returned the declassified part of their notes. (As Doris says during their PowerPoint presentation, “There is no attorney-client privilege.”) Tennant/Lubell then filed a motion requesting that the government provide documents relating to the reasons for their client’s detention. That motion, and every motion they’ve filed since, has received the computer-generated response, “This case is closed.”

For several months after taking on Aziz's case, Doris sounded either stressed or despondent every time I spoke with her. "It just feels so hopeless," she said several times, even as she and Ellen continued making plans to travel to Guantánamo, to consult human rights lawyers in Algeria, to keep Aziz's family updated on their visits. When they requested access to their client's medical records, the Department of Justice showed a newfound interest in his civil rights, requiring written permission from Aziz—which meant getting approved for travel to Guantánamo and paying for airfare, time out of the office, and an interpreter. To this day, they have not been granted access to any information the government has on Aziz, excepting three pages of unclassified summaries of a badly translated hearing they downloaded from the Department of Defense website. Once, the Privilege Review Team retained Ellen and Doris's notes, stating certain parts were not readable. To view their notes, they had to travel to a secure facility in Washington, D.C. Another time they were approved for travel to Guantánamo at the last minute and could find no available flights. It was Aziz's birthday. To be a Guantánamo lawyer is to toil in this parody of justice, digging endlessly at the foot of a mountain of dirt that keeps getting replenished from the top.

But despite the constant legal failures, the Guantánamo lawyers are indispensable as witnesses. Without Doris and Ellen, Aziz would be abandoned to an infinite aloneness. Perhaps it was partly because she'd internalized this fact that Doris sounded more cheerful than she had in months after her second visit to Guantánamo. Her voice was brighter as she explained how excited Aziz was to learn that his attorneys were in contact with his family. "Find out what my brother is doing," he said. "Congratulate my sister on her marriage. Tell my father to stop working on the land. He's getting too old." They didn't tell Aziz that his mom was crying as she said, "I just want to see my son again before I die." Or that Doris was holding back tears when the most reassurance she could offer was to say, "We understand. We're mothers, too. We're doing everything we can."

Meeting with Aziz face to face is, so far, the only affirmation Doris has of the usefulness of her work. Beyond battling infuriating bureaucratic delays, she is able to use her skills to preserve human connection. "As we were leaving, I looked back at him one last time and he made direct eye contact," she said, triumphant. "He looked me in the eye and smiled and waved goodbye." This is her legal victory.

After their first visit to Guantánamo, Doris and Ellen were on the cover of the *Newton Tab*, and featured in a *Boston Globe* article. Doris was quoted in an AP article in the *Globe* describing how their fundraising efforts had actually been *enhanced* after the deputy assistant secretary of defense suggested that clients should question being represented by law firms that do pro bono work for terrorism suspects. Apparently, many Americans would not be so easily manipulated. This increase in contributions did not go unnoticed by the Justice Department attorney who had approved Tennant/Lubell's first Guantánamo visit. After reading about their fundraising, he contacted Doris and Ellen and offered to postpone their trip if they needed "additional time to certify that none of their contributors was connected with terrorism." The attorneys thanked him kindly for the offer, but assured him that would not be necessary.

Doris has appeared as a debater on New England Cable News and public television several times. At first, I felt squeamish watching her on live TV—my mother the lawyer, the activist, the angry lady. But when I allow myself a momentary suspension of disbelief—that woman is not my mother; she's just a talking head—I cheer her on as she shouts down "terrorism experts" who base their defense of waterboarding on the fact that they've taught water survival skills to kids and waterboarding is no different—"just a little bit of water." For the average American (or at least one of the seventy percent out of Bush's good graces), I can imagine how satisfying it is to hear someone who is as angry as she should be, saying, "The facts are, waterboarding is torture and it does not result in usable intelligence. When it was practiced against our soldiers in World War II, we prosecuted the perpetrators for war crimes. Look at what has happened to our standing in the world."

Doris finds all of this publicity exhausting. "Ten minutes under those bright lights—it's *nerve-wracking*," she told me once about being in televised debates. She would much rather be arguing her case in a court of law.

In the past year, the U.S. has been quietly shipping many of the Guantánamo detainees out of Cuba. Some are cleared for release; many are not. The approximately 275 men left at the base have become a public relations nightmare for the Bush administration. Without trials or usable intelligence coming out of Guantánamo, they cannot justify their

continued detention to international organizations that refuse to turn a blind eye. But nor can they easily release them. As these men have been branded the “worst of the worst,” many of their home countries won’t take them back. And the stories they have to tell do not paint a pretty picture of U.S. policy.

Doris and Ellen are actually apprehensive of the day they are told Aziz has been shipped back to Algeria. As he puts it, “I am dancing between fires”: indefinite solitary confinement in Guantánamo, or facing Algeria’s anti-terror law, which punishes those accused of terrorist activities with five years in prison if they’re lucky and the death penalty without right of appeal if they’re not. Although Aziz longs to see his mother—as he says, “serve her with my eyes”—he is terrified of living out his life in abusive confinement. Doris and Ellen are working to get him asylum elsewhere. “He wants to live in any Arab country or in Germany,” Doris told me recently.

“Why Germany?” I asked.

“Because that’s where his first good prosthetic leg was from, and he needs a new one.”

“That’s sad.”

“Well, there’s a pretty sizable Muslim population there. He’d be all right.”

She explained to me the fate of five Chinese Uighurs who were released from Guantánamo a year and a half ago, but could not be sent back to China, which is openly hostile to Uighurs and would almost certainly imprison and torture the men. The U.S., Canada, and many European countries have refused to grant asylum. The men still call their American lawyer from the Albanian refugee camp where they live, begging for help to see their families again.

So the battle to save many of the Guantánamo detainees (not to mention the countless “enemy combatants” held at secret prisons) is, in practical terms, a lost cause. What the Guantánamo lawyers are fighting for is America’s conscience. Perhaps Doris and Ellen won’t be able to restore Aziz’s life, but they can refuse to quietly accept what happened to him.

But Doris doesn’t focus on this larger mission. All of the lawyers keep asking each other simply, “How can I get my guys out?” As they exchange legal strategies, take their clients’ stories to Capitol Hill, send out emails encouraging everyone they know to contact

their Congress people and demand the restoration of habeas corpus, they remain focused on their individual cases. They must ignore the moral high road they have accepted in order to keep their eyes on the little battles—accessing their clients’ medical records, convincing their clients they’re not spies, sending notes to families in Algeria that say, “I saw your son this weekend. He wants you to know he is happy and well.”

During Doris’s most recent visit with Aziz, it was “hot as blazes” in GTMO. They sat in a little shack in Camp Iguana surrounded by armed guards. Speaking through a translator, Aziz told his attorneys that a few days ago, guards had taken his shoes, saying they would bring him new ones. Days passed without any sign of a new pair. Because of his prosthesis, he can’t walk without shoes. “I need my shoes back,” he told the guards. “I can’t walk.” The day his attorneys arrived, guards returned his old shoes to him. “I think they brought them back because I was meeting with you,” Aziz said. He made jokes about the guards doling out toothpaste, saying you never knew what you were going to get: sometimes you got none, sometimes a teeeeeny bit, sometimes a WHOLE LOT. “He was so funny talking about it,” Doris said later, laughing.

Ellen and Doris asked Aziz questions for the asylum petition. They hope to save him from being sent back to Algeria by relying on the U.S.-ratified Convention Against Torture, which prohibits sending prisoners to countries where it is likely they will be abused. Even as Aziz thanked his attorneys again and again for all they are doing for him, he shared with them how his Guantánamo brothers’ attitudes about Americans had changed over the years. “We used to say, it’s Bush doing this; now we just say, it’s the Americans,” he said. “When we hear English, we feel like vomiting.” Aziz had never met an American until he was arrested.

Ellen and Doris told Aziz that they felt similarly nauseated when they heard members of the Bush administration speaking about Guantánamo. Ellen explained that her son had written a high school paper on the few instances in the history of the nation when habeas corpus has been suspended. Doris told him about her daughter who had written about the injustices of Guantánamo at the newspaper where she worked. They told him about the antiwar bumper stickers they had on their cars. When Doris quoted hers—“No flag is large enough to cover the shame of killing innocent people”—Aziz nodded slowly.

“Oh,” he said. “That’s very beautiful.”

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