

Defending detainees for sake of the system

Troubled by limits on rights, Austin lawyer aids Guantánamo inmate.

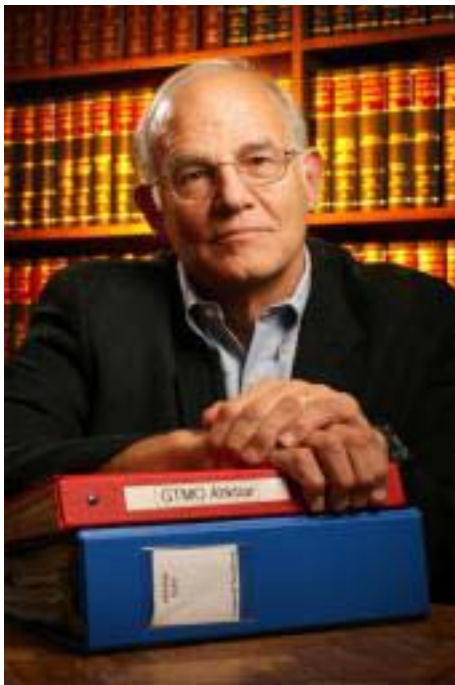
By [Chuck Lindell](#)

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The terror suspect sat on a folding chair in a spotless white prison room, his feet chained to the floor.

His lawyer, Dicky Grigg of Austin, took a chair across the table — all staples, paper clips and other security hazards removed from his papers — and finally shook hands with the most intriguing client of his 33-year legal career.



Jay Janner □ AMERICAN-STATESMAN

'I agree with John McCain: Guantánamo isn't about 'them'; it's about us. The president claims that because of the war on terror that he's above the law, that he can detain these human beings indefinitely with no charges, no right to a lawyer, no access to the courts.' Dicky Grigg Austin lawyer representing Afghan detainee at Guantánamo Bay

It was springtime in Cuba, and Grigg was making his first visit to the U.S. Naval Station

at Guantánamo Bay. It had taken months of work to get there, including obtaining a U.S. government security clearance, examining classified documents in a fortified federal building and outmaneuvering Justice Department lawyers intent on keeping him out.

For three years, Mohammad Akhtiar had been held without trial — one of about 500 prisoners caught in a high-stakes legal battle over where to draw the line between protecting Americans from terrorism and safeguarding constitutional rights.

President Bush has declared the captured men enemy combatants not subject to U.S. laws or treaties such as the Geneva Conventions, which set protections for prisoners of war. Grigg and other members of the loose-knit self-described "Guantánamo Bar Association," who represent about 200 detainees, believe that detention without charges or review by a civilian court violates basic principles of the U.S. system of justice.

Now, both sides are awaiting a potentially historic U.S. Supreme Court decision, which could come this week, on where trials for the detainees may be held — in civilian courts with traditional judges and juries or in military commissions, where an officer acts as judge and at least three officers serve as jurors.

The outcome also could determine whether Grigg and other lawyers may continue representing their foreign clients.

"Everything's on hold while we wait," said Grigg, a personal injury lawyer who got involved in the detainee issue — spending his own money and learning a new line of law — because he feared that a fundamental building block of the legal system was in jeopardy.

"I agree with John McCain: Guantánamo isn't about 'them'; it's about us," Grigg said. "The president claims that because of the war on terror that he's above the law, that he can detain these human beings indefinitely with no charges, no right to a lawyer, no access to the courts."

The Guantánamo facility holds men captured in Afghanistan and elsewhere since 2002, many of them "highly trained, dangerous members of al Qaida, its related terrorist networks and the former Taliban regime," the Defense Department says.

Bush argues that military commission trials have been part of a president's war powers since 1780, but the U.S. Supreme Court ruled in 2004 that the detainees could ask federal courts to review their cases. The decision was vague, however, on how exactly enemy combatants may use the federal courts, setting up the latest constitutional controversy.

The uncertainty forced the government to balance its desire for secrecy with detainee lawyers' need for information.

Government files on the detainees, replete with information compiled by U.S. and foreign intelligence networks, are kept in a secure federal court facility in suburban

Washington. Attorneys cannot enter without an FBI-approved security clearance and cannot leave with any notes taken inside.

Grigg had to agree to other security measures before viewing the classified documents related to his client, an Afghan accused of launching a rocket attack on U.S. troops in 2003.

"I can only talk about the classified information to other (lawyers) who also have a security clearance — in person, not on the phone, not by e-mail, with shades drawn. That's what I was told," Grigg said. "But now here's the worst part of it: I cannot reveal to my client the classified information in his case."

Details of his conversation with Akhtiar are classified as well. When Grigg left his meeting at Guantánamo, guards sealed his notes and sent them to the secure court facility. A few days later, copies arrived in Austin with sensitive information redacted. If Grigg needs to read his original notes, he will have to travel to Virginia.

It is a far cry from Grigg's typical work of suing insurance companies.

A change of subject

Far more comfortable in a pullover shirt than a suit and tie, the soft-spoken Grigg has a jury-friendly drawl and a dry sense of humor.

In 1973, he came to Austin from Lubbock, where he had toiled as a smallish defensive tackle for Texas Tech's football team and later as a prosecutor in the district attorney's office.

"I did my part helping Texas win the 1969 national championship," he said.

In Austin, he built a small but busy practice around wrongful death, serious injury and breach-of-contract lawsuits, preferring the pace of a smaller office while building a reputation as one of the nation's top litigators, including a listing in Woodward/White's "Best Lawyers in America" since 1994.

His clients have included the families of federal agents killed in the 1993 Branch Davidian raid near Waco, for whom he won an undisclosed settlement from several organizations, including the owner of the Waco Tribune-Herald (the same company owns the Austin American-Statesman). Grigg also won a \$22.5 million award for Zebbie Lethridge, a Texas Tech quarterback wrongly accused of shoplifting in the mid-1990s.

Grigg admits that it is a stretch to extend his practice to Guantánamo detainees but said that when the offer came last summer, he could not refuse.

"When I was asked, I got to thinking about it," he said. "I'm just sort of sitting on the

sidelines in a rocking chair and griping about everything, and this was a chance to go try to do something, so I volunteered."

Grigg paid his way to a two-day legal course last August by the Center for Constitutional Rights, a New York nonprofit group that is coordinating representation of detainees by about 450 lawyers.

The center helped him file his first writ of habeas corpus, in effect suing Bush and Defense Secretary Donald Rumsfeld to force them into court to prove that they had adequate reason to detain Akhtiar. No hearing has been held.

Grigg also filled out 10 pages of personal information for his background check and then had to answer questions from friends, neighbors and co-workers curious about why an FBI agent was asking about him. After about three months, his clearance arrived, allowing Grigg to enter the secure court facility in Washington.

He has been inside three times and estimates that he has spent about \$10,000 on Akhtiar's case, not including the amount he could have charged a paying client for his time.

The money felt well-spent when Grigg finally met the man behind the government documents in March.

Learning to trust

Wearing a neatly trimmed salt-and-pepper beard and a white prison jumpsuit, Akhtiar was unfailingly polite and initially reserved, Grigg recalled.

Grigg began by sliding over an e-mailed photo of nine children standing in the dirt of a Pakistani refugee camp. It would be the first time Akhtiar, 56, had seen his family since his capture by U.S. forces in May 2003, and Grigg was not expecting the reaction he got.

"He looked at it a long time — no emotion, he never changes expressions. He says, 'I've never seen these people before in my life,' " Grigg recalled.

About a half-hour later, however, Akhtiar overcame his suspicions that the photo was an intimidation technique — a version of "we know where your family is" — and flipped over the photo to tell a little about each of his children.

Every statement was translated by a \$1,100-a-day interpreter, who also needed a security clearance, hired by Grigg. "My man speaks Pashto, and my high school Pashto is very weak," he said.

Grigg said Akhtiar denied charges that he launched a rocket attack on a U.S. base in

Afghanistan, insisting that he was in Pakistan at the time. He also claimed to be a supporter of the United States who fought the occupying Soviet army in the 1980s and opposed the Taliban as part of the Northern Alliance in 2001, Grigg said.

However, a tribunal of U.S. military officers, meeting in secret after a hearing that included Akhtiar, confirmed Akhtiar's status as an enemy combatant in November 2003.

Two details about the interview nag at Grigg:

- Prosecutors say Akhtiar's membership in the Itihad Islami military force is evidence of a connection to a terrorist group. However, Itihad Islami was a U.S. ally in ousting the Taliban from power in Afghanistan, and its name does not appear on the State and Homeland Security departments' lists of terror organizations, he said.

- Akhtiar discussed "numerous, different interrogation techniques" without emotion until he spoke of being stripped in front of women. "When he talked about that, his voice cracked, and his eyes filled with tears. I mean, you could feel the humiliation," Grigg said.

But Grigg's lasting impression of the interview came toward the end, when Akhtiar asked how he was being paid. Grigg said he wasn't.

"He got emotional, and he teared up, and he took my hand and thanked me profusely and asked Allah to bless me," Grigg said. "And that was extremely moving for me. Going down there and doing this was the most moving experience I've ever had as a lawyer."

Questions of law

The U.S. Supreme Court is the wild card in Grigg's and Akhtiar's future.

In addition to deciding the scope of the president's wartime power to order trials by military commission, the court also may determine whether the Detainee Treatment Act of 2005, which stripped federal courts of the power to hear detainee claims in most circumstances, applies to cases such as Akhtiar's that are already in the pipeline.

Arguing that the act applies retroactively, the Bush administration says all pending detainee cases should be dismissed from federal court. Several justices expressed skepticism during oral arguments in March, but reading the court's intent is difficult amid the case's crosscurrents of law, politics and unsettled constitutional issues.

While lawyers such as Grigg wait to see whether their federal court cases may continue, legal experts are awaiting a Supreme Court decision with potentially far-reaching impact on the separation of powers between the presidency, courts and Congress.

"At stake in this case is whether any law constrains the power of the president to try and punish persons he deems to be enemy combatants," University of Texas assistant law professor Derek Jinks said. "This case will go a long way toward determining whether and which rules constrain the president even when he acts as commander in chief in time of war."

Depending on the Supreme Court decision, Grigg may have company at Guantánamo. The UT School of Law's Rapoport Center for Human Rights and Justice, with help from students and faculty members, hopes to begin representing several detainees.

"The United States has treated Guantánamo as a legal black hole and said constitutional law doesn't apply and international law doesn't apply," director Karen Engle said.

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