

**Taking On Guantánamo**  
**Connecticut Law Tribune**  
**Monday, May 10, 2010**  
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## **Taking On Guantánamo**

Elizabeth Gilson endured 'bumpy ride' in battle for brothers' release

By DOUGLAS S. MALAN

New Haven attorney Elizabeth P. Gilson didn't know what she was getting into.

In 2005, she had read newspaper reports about lawyers traveling to the detention camp at Guantánamo Bay, Cuba, to help prisoners the government suspected of being enemy combatants. Lawyers were trying to file habeas petitions on behalf of prisoners to find out why they were incarcerated.

Gilson was a solo attorney with an environmental practice, but she was incensed to hear that the government was denying prisoners a hearing. So she jumped to action with the help of the Center for Constitutional Rights in New York, which coordinates legal representation for detainees.

What she got into was "a bumpy but interesting ride" studying constitutional law, helping Guantánamo prisoners and making many friends through a long ordeal.

"We got to work on heady stuff about habeas law and its history," Gilson said of her work with fellow lawyers. "It came alive. Our cases put pressure on the government to get [prisoners] out of there."

Now five years after starting her legal battle, Gilson has successfully wrapped up her representation of two brothers who are Turkic Muslims from China.

Bahtiyar Mahnut, 34, and Arkin Mahmud, 45, have been living in Switzerland since March after Gilson helped convince officials there to grant the brothers asylum. They couldn't return to China because of fears they would be persecuted by the Chinese government, which considers them to be dangerous separatists.

Gilson summarized her Guantánamo experience as "thousands of hours in attorney's time, two innocent men and eight years of unlawful incarceration....It was very exhausting, but I don't regret it."

In recognition of her work, Gilson will receive the *Law Tribune* Pro Bono Award at Honors Night ceremonies this week.

"She deserves it," said Susan Baker Manning, a Bingham McCutchen partner practicing in Washington, D.C. "Beth's dedication was unparalleled. She worked tirelessly on [the brothers'] behalf."

Manning worked closely with Gilson representing a group of 17 Turkic Muslim prisoners from China, who are known as Uighurs (pronounced, 'wee-gurz').

Lawyers from large national firms Baker McKenzie and Kramer Levin also represented some of the Uighur prisoners. Gilson was one of four solo attorneys out of more than 500 lawyers overall who helped Guantánamo detainees of all ethnic backgrounds.

She spent about \$50,000 in all. There were numerous flights to Cuba for meetings with the prisoners and hired translators, and trips to Washington, D.C., for hearings.

Sabin Willett, a Boston-based partner at Bingham McCutchen, met Gilson in 2005, and they became part of a six-lawyer team that called themselves the Uighur Bar.

"I think Beth exemplifies the citizen lawyer," he said. "A lot of us got involved in this work from large firms that are easily able to afford it. She reached into her own back pocket to fund this work, and that's as good as it gets."

### **On The Ground**

Gilson's clients were taken by U.S. forces in Afghanistan in 2001 after local villagers were paid a \$5,000 bounty to turn them in. Mahnut, the younger brother, had been the first to leave China seeking work and religious freedom. When his older brother, Mahmud, a divorced father of two, came looking for him, soldiers detained the brothers, believing them to be connected to al-Qaeda or the Taliban.

The brothers arrived at Guantánamo in 2002. What followed was a long-running legal and political dispute over what rights the detainees had, the role of the detention camp and where prisoners would go if they were deemed innocent and released.

Gilson was alarmed to find that the government imprisoned the brothers based on suspicion, but little evidence. In the American legal system, "we don't hold people without having evidence for putting them away," Gilson said. "We look at a person on a case-by-case basis, and that's what the government forgot."

While at Guantánamo, the brothers were formally cleared for release by the U.S. Combat Status Review Tribunal, but the government still declined to release them. Gilson filed habeas petitions in federal court in Washington for her clients and, in 2008, testified before the U.S. House Committee on Foreign Affairs that the brothers were not terrorists.

On two occasions, judges ruled that detainees had the right to go into civilian courts to challenge the government's reason for holding them. Both times, Congress responded with changes in the law that denied court access.

In June 2008, the U.S. Supreme Court determined that all detainees have a right to a habeas hearing. A few months later, a federal judge ordered Gilson's clients and more than a dozen other Uighurs freed, but the government won a stay of that order.

Aside from the back and forth to Washington, Gilson was making four trips a year to Cuba to meet with her clients. There she saw two men growing increasingly embittered about their situations.

"The men were angry and unhappy and they'd yell," Gilson said. "Who knows how you'd react if you were locked up all that time?"

Willett, of Bingham McCutchen, said he was impressed with Gilson's attitude despite the frustrations. "These cases take you to grubby meeting rooms in Gitmo with clients beyond the point of despair and to courtrooms in Washington, D.C.," he said. "This was very demanding work and she carried it out with vigor."

Gilson was known for cheering up the lawyers and translators who traveled together. She packed two suitcases full of frozen food on every trip, stuffing the luggage in the small plane that made the three-and-a-half-hour flight from Fort Lauderdale, Fla., to Cuba. The other lawyers picked up wine, fruits and vegetables at a small market on the island.

In the barracks where lawyers stayed, Gilson prepared stews and various pasta dishes and also began cooking the traditional Uighur dish known as "pollo," a mixture of lamb, rice and vegetables.

"It's a tough place to be, handling the realities of Gitmo," said Manning, the Bingham McCutchen partner. "And there was Beth making a feast at the end of the day for all of us."

### **Leaving Together**

The release of Guantanamo detainees accelerated after President George W. Bush left office, but Gilson's clients and the other Uighurs had a more difficult time because they couldn't return to China.

The last time Gilson traveled to Cuba was September 2009. She brought news that the younger brother, Bahtiyar, had received an offer of asylum from Palau, an island nation in the Pacific. But there was no offer for Arkin, mainly because he exhibited signs of post-traumatic stress disorder.

"The younger brother told me, 'I want more than anything to be out of prison, but we talked it over and decided that he needs me and I won't leave prison without him,'" Gilson recalled. "It was so sad."

But in January, Gilson started working with Swiss officials to find a home for both men. She spent a week in Switzerland again telling her clients' story, and in March, the brothers boarded a plane and left Cuba for Delémont, a French-speaking town of about 11,000 inhabitants.

The Swiss government is paying for the brothers' apartments and providing living expenses while they acclimate to their new home. They're also studying French and looking for employment through a refugee resettlement agency. They may never see their families in China again, Gilson said.

"The Swiss have been so wonderful, and they can be free men," Gilson said. "But I think it will be really hard for them to adjust."

Gilson said she has a "very close" relationship with her clients after five years, and the brothers invited her to visit Switzerland next month. "They wanted me to wait until the flowers are blooming," she said.

And the brothers' other special request? A heaping bowl of homemade pollo.

Meanwhile, Gilson is making her own transition back to her private practice.

"I thought for a long time [the end of her Guantánamo work] would leave a large hole in my life, but I'm ready for new challenges," she said. Her experience working on petitions for Guantánamo detainees has sparked an interest in developing an appeals practice.

The Center for Constitutional Rights has asked her about taking on more cases for some of the approximately 180 prisoners still in Cuba, but "I don't want to go back to Guantánamo," Gilson said.

But she likely will take on more pro bono work in the future, this time aligning her legal skills with environmental causes.

"I like interesting work probably more than a closetful of new clothes," Gilson said, laughing. •