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Business

TRUE BELIEVER

DAVID REMES IS THE LATEST--AND HIGHEST PROFILE--LAWYER TO TRADE IN CORPORATE
LAW TO DEFEND TERRORISM SUSPECTS

Joe Palazzolo

On July 14, inflamed about the treatment of Guantánamo Bay detainees, Covington & Burling's David Remes stood before a group of reporters at a news conference in Yemen and dropped his pants to demonstrate the techniques military guards use to conduct full-body searches.

It was not the usual public demeanor of a partner from one of the most respected, and buttoned-down, law firms in Washington--a lawyer with a client list that has included Exxon Mobil, IBM, and R.J. Reynolds Tobacco.

But if taken as a measure of his devotion to 14 Yemeni detainees he represents, the act seemed to signal Remes' complete transformation from corporate lawyer to Guantánamo Bay advocate. Just four days later, Remes announced he would resign from Covington to raise a human rights practice, Appeal for Justice, around his Guantánamo work.

'It was a mistake,' Remes says of the news conference incident. 'But the event crystallized for me that I really had to fish or cut bait.'

Neither Remes nor Covington will discuss the timing of his departure. According to the firm, Remes told the management committee in May that his days at the firm were numbered, and friends say he had been talking about leaving for nearly a year.

Whatever the circumstances of Remes' departure from Covington, the Guantánamo work clearly has taken hold of the 53-year-old lawyer. Remes is just the latest to join a set of lawyers so consumed by the litigation that they've recoiled from their practices, left their firms, and in at least one case, raided their retirement savings to represent detainees.

'There's something about this Gitmo stuff,' says one veteran D.C. lawyer with more than 40 years of pro bono work. 'People go down there and they come back, and it's just like they've just come back from the heart of darkness.'

SUCKED IN

For Remes, it began in the summer of 2004 when Marc Falkoff, then an associate in Covington & Burling's New York office, phoned Remes, wanting to know if he would consider supervising the pro bono representation of more than a dozen Guantánamo inmates.

'I said, 'Yes, as long as I don't have to do any work,' ' Remes says. 'I was serious. I was not joking.'

According to Falkoff, there was some discussion in the firm about the propriety of taking on the cases. At the time, Covington was representing families of firefighters and police officers killed in the Sept. 11, 2001, attacks, but the project was approved.

The Guantánamo litigation burned 3,022 hours at Covington last year and rated as the firm's largest pro bono project, according to The American Lawyer's annual pro bono survey. In his last year at the firm, Remes worked almost exclusively on Guantánamo matters. But even that wasn't enough. He sought a total conversion, Remes says.

'I didn't want to be a corporate lawyer who did human rights work. I wanted to be a human rights lawyer doing human rights work," he says.

Remes has been involved in every major legal victory for the detainees in the last four years. In the most recent, *Boumediene v. Bush*, the Supreme Court ruled that detainees have a constitutional right to challenge their captivity in habeas corpus proceedings. Remes co-authored one of three petitioners' briefs filed in the case.

He and Falkoff, now a professor at Northern Illinois University College of Law, represent 16 detainees in habeas cases in federal district court, and Remes recently added another, Ahmed Ghailani, whom the Pentagon has charged in connection with the 1998 embassy bombing in Tanzania.

'I envy him,' says one Covington partner of Remes. 'Some people go through life without being able to find something that stokes within themselves that kind of passion.'

When Remes told Michael Ratner, president of the Center for Constitutional Rights, of his plan to leave Covington last fall, Ratner was incredulous.

'I said, 'David, are you serious?' He's a partner at Covington. That is like the goal of 90 percent of the kids at top law schools these days, and he's going to walk away from it?' Ratner says. 'My sense from the outside was that [the Guantánamo litigation] took over his entire life, certainly his entire practice. '

Falkoff said Remes had told him weeks before the Yemen trip that he was leaving Covington, but Falkoff assumed the move was several months off. 'I'd imagine his departure time was moved up as a result of the press conference," Falkoff says.

THE GITMO BAR

The 'Guantánamo Bay Bar Association,' as members drolly refer to it, comprises roughly 750 lawyers from about 150 separate law firms, private practices, federal public defenders offices, law school clinics, and nongovernmental organizations. The military-controlled prison has had the unintended effect of exposing American lawyers to international human rights issues far afield of their traditional practices or previous pro bono work, and for some, like Remes, there's no going back.

Buz Eisenberg, a criminal and civil litigator in Ashfield, Mass., volunteered to represent three detainees, two Algerians and one Palestinian, in December 2004. Eisenberg and his wife, Marcine, have been funding the work with their retirement savings.

"There's no way to explain it without sounding sanctimonious, but it really is because I took an oath," says Eisenberg, a longtime cooperating attorney with the American Civil Liberties Union.

He spends about \$10,000 a year of his own money on the representation, much of it on travel to Guantánamo (about \$3,000 a trip) and on interpreters (as much as \$1,200 a day). His firm, Northampton, Mass.-based Weinberg & Garber, keeps him on staff as 'of counsel,' though he only works on detainee cases.

Like Remes, Eisenberg's work fed his interest in broader international human rights issues. He is the president of the International Justice Network, an organization currently focusing on detainee matters, monitoring human rights abuses in the Philippines, and shoring up the judiciary in Namibia.

'Now that I've been exposed to all this, I can't see how I could ever again be happy litigating a fractious partnership agreement. It just doesn't rise to the level of importance it used to,' Eisenberg says. 'I think I'm in for the long haul.'

H. Candace Gorman, a veteran civil rights attorney in Chicago, shuttered her solo practice in the beginning of 2007.

She has represented two detainees, an Algerian and a Libyan, since 2005. She's made the trip to Guantánamo 15 times and traveled to Switzerland and the Netherlands to lobby government officials there to grant her clients asylum. So far, she's been unsuccessful.

Gorman says Guantánamo has 'almost bred me into a new kind of attorney.' She stopped taking on local clients when she realized she couldn't afford them the attention they deserved; she was too engrossed in the Guantánamo litigation.

'I just wasn't interested in the 'Can I get three months of discovery or six months of discovery?' anymore. There was something so much more important," she says.

Last year, she spent six months working at the International Criminal Court at the Hague as a visiting professional, an experience she sought after working on Guantánamo matters.

'Based upon my experience with the detainees and my experience with the criminal court, I can probably never go back to civil rights practice," Gorman says.

In 2004, she argued and won a statute of limitations case before the Supreme Court-- Jones v. R.R. Donnelley and Sons Co.-- that resulted in a \$15 million settlement. Gorman says she's not tunnelling into her savings just yet, but the costs of representing her two clients are mounting.

'I can't think about trying to raise money,' she says. 'I'm too preoccupied with Gitmo.'

Her exhortation to Remes: 'I hope David has some money saved up.'

BIG LAW BACKING

Remes is, by all accounts, the first partner to leave Big Law behind for Guantánamo work, and his departure highlights the vital role top-tier law firms have played in the litigation. Two Covington partners, S. William Livingston and Alan Pemberton, have volunteered to replace Remes as the firm's counsel in the litigation, and Remes and Falkoff will remain on the cases as co-counsel.

It's still unclear how the costs will be shared. A week-long trip to Guantánamo for one lawyer and one interpreter costs about \$11,000, and Remes has been to Yemen seven times on client matters over the past four years.

'At this point, I can't do the work without their support,' Remes says.

Covington partner Tony Herman, who heads Covington's public service committee, says that 'the firm's expenses in connection with the Gitmo matters have been-- and going forward will continue to be--significant.'

Remes' first move on his own was to offer his services as a local counsel for 20 detainees represented by the nonprofit Reprieve. He's also accepted a guest spot in Princeton's Program in Law and Public Affairs and has reached out to other law firms for funding. Akin Gump Strauss Hauer & Feld's Thomas Goldstein met with Remes recently to discuss the possibility of Akin assisting with the 20 Reprieve clients. Goldstein, who heads the firm's litigation section, says the firm's pro bono chairman is considering the matter.

Large firms supporting smaller firms and practices in the Guantánamo litigation is not new. From the beginning, major firms, like Covington, have borne the travel costs for interpreters, helped coordinate visits to Guantánamo, and shared legal pleadings.

'I've been exposed to huge multinational law firms who have committed themselves

to the very same thing," Eisenberg says. 'It's not like these are movement lawyers who work in blue jeans.'

A scene last month in the courtroom of Senior Judge Thomas Hogan, who is coordinating the Guantánamo litigation in the U.S. District Court for the District of Columbia, gave perspective. More than 200 lawyers, many from major firms--including Wilmer Cutler Pickering Hale and Dorr, Clifford Chance, Shearman & Sterling, and Covington--entered appearances in the first hearing after the Supreme Court's decision in Boumediene.

A cable news reporter surveyed the crowd with wonder, recalling comments made by a Pentagon official in January 2007 that corporations should boycott firms that represent detainees. Charles 'Cully' Stimson, then-deputy assistant secretary of defense for detainee affairs, said CEOs should make firms 'choose between lucrative retainers and representing terrorists.' He resigned his post the following month.

Remes speaks proudly of Covington's commitment to the litigation but shows no regrets about leaving. After each time he visited his detainee clients ('my men,' he calls them) and his clients' families ('my men's families'), his interest drifted further from his regular practice, he says.

'The corporate work I had been doing just seemed kind of meaningless. Who's going to remember in five years, let alone 10, whether the American Tire Association succeeds in blocking a Department of Transportation regulation? What difference is that going to make?'

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