

Introduction

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Following the terrorist attacks of September 11, 2001, the United States imprisoned more than 750 men at its naval base at Guantánamo Bay, Cuba. The prisoners ranged in age from teenage boys to elderly men. They were seized from more than forty countries around the world: some from Afghanistan, others from places as far flung as Bosnia and the Gambia. Many had wives and children. And the prisoners had some other things in common. They were all detained for years without charges, without trial, and without a fair hearing. They were all denied any legal status or protection because President Bush had unilaterally declared them “unlawful combatants.” They were all held in secret and denied communication with their families and loved ones. Most, if not all, were subjected to extreme isolation, physical and mental abuse, and, in some instances, torture. Many were innocent; none was provided an opportunity to prove it.

These are their stories. The stories are told by their lawyers because the prisoners themselves were silenced. From the moment the first prisoners arrived at Guantánamo shackled and hooded in January 2002, the U.S. government prevented them from communicating with the outside world. The United States initially refused even to reveal the prisoners’ names. No one knew who was at Guantánamo, why they had been imprisoned there, or how they were being treated. The public knew only what the Bush administration told it: that the detainees there were all hardened terrorists, “the worst of the worst.”

It took lawyers more than two years—and a ruling from the U.S. Supreme Court—to finally gain the right to visit and talk to the men at Guantánamo. Even then, lawyers were forced to operate under severe restrictions designed to inhibit communication and envelop the prison in secrecy. In time, however, lawyers were able to meet with their clients, observe their suffering, and begin to describe to the world the truth about

Guantánamo. To date, lawyers remain the only people other than government officials and representatives from the International Committee for the Red Cross (who are bound to confidentiality) to see or speak to the Guantánamo detainees. Lawyers have remained on the front lines in the long-running struggle to bring justice to Guantánamo, a battle that has been waged both inside and outside courtrooms, at home and abroad, for more than seven years.

Ironically, lawyers were never meant to go to Guantánamo. After September 11, the Bush administration was looking for a place to bring prisoners captured during the U.S.-led military invasion of Afghanistan (many of whom were sold to the United States for a bounty), as well as prisoners seized elsewhere in connection with the so-called global “war on terror.” The administration believed it had captured many dangerous people and wanted to find a place where it could detain and interrogate them without restriction or interference. It also wanted a place that would be beyond the reach of the courts. So it chose the U.S. naval base at Guantánamo Bay, an approximately forty-five-square-mile area at the eastern end of Cuba.

Although Guantánamo Bay still formally belongs to Cuba, the United States has for more than a century maintained total and exclusive control over the territory through a series of lease agreements. Under the agreements, that control is effectively permanent, lasting as long as the United States wishes to occupy the territory. Bush administration officials thus saw in Guantánamo the possibility of creating an enclave over which the United States exercised complete dominion but whose formal status as “Cuban territory” would place it beyond the reach of any court. Administration officials also believed that by labeling Guantánamo detainees “enemy combatants,” it could hold them at Guantánamo indefinitely, potentially for life, without charges or trial. At the same time, the Bush administration made a series of determinations that the prisoners at Guantánamo, as well as others held as “enemy combatants” in the global “war on terror,” were not entitled to any protections under American or international law, including under the Geneva Conventions, which were intended to ensure that no prisoner is outside the law.

The fact that over time Guantánamo was brought—at least partially—within the rule of law had nothing to do with the Bush administration, which resisted affording detainees any protections and sought to undermine court decisions at every step. Nor can credit be given to Congress, which initially stood silently by and then twice tried to strip detainees of meaningful access to U.S. courts. Rather, it had to do with the resilience

of habeas corpus. For centuries, the writ of habeas corpus has served as the preeminent safeguard of individual liberty and check against arbitrary government power, mandating that the state justify a prisoner's detention before a judge. After September 11, habeas corpus resumed its historical function as a remedy against executive imprisonment and became the main vehicle in challenging the detention and mistreatment of prisoners held in the "war on terror."

In June 2004, the U.S. Supreme Court ruled that the federal habeas corpus statute extended to detainees at Guantánamo and rejected the Bush administration's claim that it could operate a prison without any judicial oversight. "Executive imprisonment," wrote Justice John Paul Stevens in rendering the decision, "has been considered oppressive and lawless" since Magna Carta. Yet, in many ways, the struggle had only begun. The administration quickly sought to block judicial hearings by creating military boards—known as Combatant Status Review Tribunals—that lacked the most basic elements of due process, denying detainees an opportunity to see and respond to the evidence against them and laundering information gained through torture. The administration then twice persuaded Congress (first in 2005 and again in 2006) to amend the habeas corpus statute, which had provided a remedy for federal prisoners since the nation's founding, to eliminate access to the writ for any foreign national the executive designated an "enemy combatant." No hearings occurred as legal battles over the legislation played out. Meanwhile, detainees at Guantánamo continued to languish, day after day, month after month, year after year.

Finally, in 2008, the Supreme Court decisively rejected the Bush administration's continued effort to deny Guantánamo detainees habeas corpus. This time, the Court made clear that the right to habeas corpus was grounded in the Constitution, not merely in a federal statute, which could be amended by Congress. The Court also did not limit its ruling to Guantánamo but instead held that habeas corpus could potentially reach anywhere the United States deprived a person of liberty. Treating detention as a shell game, where a prisoner's location could be shifted to evade habeas review, the Court explained, would make the scope of the Constitution "subject to manipulation by those [Executive branch officials] whose power it is designed to restrain." The Supreme Court thus dealt a significant blow not only to Guantánamo but also to the concept of a lawless enclave on which it was based. Following the Court's decision, district court judges began holding the first hearings for Guantánamo detainees since their imprisonment—a wait that in some cases had stretched more than seven years.

An important legal principle had been vindicated: the right of individuals detained by the United States to seek review before a judge. But the human, moral, and reputational price of this victory was staggering. Hundreds of individuals had been held for years without a fair hearing and subjected to torture and other abuse. The prisoners had largely been kept in isolation and denied all meaningful contact with their families and the outside world. None had been charged with a crime in a court of law.

Guantánamo, meanwhile, had become the source of universal criticism, including from the United States' closest allies. The attorney general of the United Kingdom perhaps best symbolized the broad opposition, remarking that the prison had become a symbol of injustice throughout the world. Calls came from across the political spectrum to close it. Military and diplomatic officials became some of Guantánamo's fiercest critics, maintaining that the prison undermined the United States' credibility and security and diminished its ability to fight terrorism worldwide.

To be sure, Guantánamo had changed over the years. Prisoners no longer were held in the makeshift open-air cells that one former government official compared to "an outdoor cattle stable." By the end of the Bush administration, most of the remaining 250 detainees were being held in modern facilities built to resemble state-of-the-art maximum-security prisons in the United States. But the underlying reality of Guantánamo—one of indefinite detention outside the ordinary judicial system—had not changed; it had become institutionalized.

On Barack Obama's inauguration on January 20, 2009, the new president told the nation, "As for our common defense, we reject as false the choice between our safety and our ideals." In the first hours of his presidency, President Obama ordered that the prison at Guantánamo be closed within a year. The announcement stirred hopes for an end to an ignominious chapter in the country's history and for the restoration of the rule of law in the United States.

Yet important questions remained. What would happen to the remaining prisoners? Would they simply be moved onshore and held under the same failed regime without charges or trial? Would the United States continue to deny prisoners held elsewhere the right to habeas corpus? In short, would Guantánamo simply be modified, or was the Guantánamo system at an end? Those questions have yet to be answered. And despite President Obama's positive first steps, his administration subsequently showed troubling signs of adhering to failed Bush-era national security

policies, from reviving military commission trials to maintaining overbroad claims of secrecy and detention power in ongoing litigation.

It is impossible to capture Guantánamo fully in one book. This book is no exception, but as a collection of stories meant to reflect the experience of habeas attorneys and their clients, the detainees, through the process of the Guantánamo litigation, the book's cumulative perspective offers an exceptional point of view. What is ultimately most striking is the passion of the stories' individual expression—poetic, ironic, somber, and occasionally dryly amusing.

These stories constitute only a fraction of the experiences of the men who have been imprisoned at Guantánamo. Yet through these accounts we hope to provide a fuller picture of some important events during the struggle to bring justice to Guantánamo and to give voice to the experiences of the detainees. The book's goal is to create a historical record of Guantánamo's legal, human, and moral failings and provide a window into the United States' catastrophic effort to create a prison beyond the law, disdainful of its own best traditions and world opinion, a failure that will take many years to repair even after the doors of the prison are finally shuttered.

The stories are organized to take the reader on a roughly chronological journey of the Guantánamo detainee litigation through the eyes of the attorneys. The chapters consist of accounts written mostly by lawyers about their experiences and the experiences of their clients. More than 100 lawyers contributed to this book. Their stories have been edited, and sometimes pieces of the same narrative appear in different chapters. The full and unedited stories of the lawyers are collected and preserved in an electronic archive through the Seton Hall Law School and the New York University Libraries. The editors' text is interwoven throughout the book to help provide context and is demarcated by italics. All quotations without citation in the book have been obtained from sources in the public domain and personal interviews. The pieces were all completed by or before June 2009.

Chapter 1 describes how and why attorneys from a variety of backgrounds decided to get involved in the litigation. Chapter 2 describes the landmark U.S. Supreme Court decision, *Rasul v. Bush*, that first granted attorneys access to the detainees. It also discusses the process of getting to Guantánamo and what the attorneys encountered there. Chapter 3 describes what it was like for attorneys finally to meet their clients and to learn about their lives and experiences at Guantánamo. Attorneys faced many legal challenges in trying to secure rights for their clients. These barriers are described in chapter 4. This chapter also describes the legal

battles to vindicate the detainees' rights to habeas corpus and their day in court. Chapter 5 focuses on the torture and mistreatment of the detainees while at Guantánamo. It also describes the reactions of detainees, including their frustration and despair. Blocked by the lack of legal process, many attorneys discovered alternative routes to advocate for their clients, as portrayed in chapter 6. After years of imprisonment, some detainees were finally released. Yet many remained at Guantánamo, despite the government's admission that they were no longer "enemy combatants." Attorneys describe the devastating effects of this prolonged and arbitrary detention in chapter 7. Finally, chapter 8 describes the treatment of detainees held as "enemy combatants" in the United States and at secret CIA-run "black sites" abroad, which together illustrate that Guantánamo was not simply a prison but part of a larger, global detention system.