

# THE GUANTANAMO LAWYERS

Edited by Mark P. Denbeaux and Jonathan Hafetz  
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Reviewed by Ronald W. Meister

Every historical era poses its great moral question," writes Denny LeBoeuf, a contributor to *The Guantanamo Lawyers*. Anyone wanting examine the moral question raised by this country's decision to imprison hundreds of people at Guantanamo Bay will benefit from this book.

Editors Mark Denbeaux, a professor of law at Seton Hall, and Jonathan Hafetz, a Staff Attorney in the ACLU's National Security Project, have assembled first-person reports from over a hundred attorneys representing Guantanamo prisoners. The highlights are in this book; the full reports are archived on a website they have created for that purpose. Denbeaux brings a wealth of experience to the task, having compiled the authoritative statistical analysis of how prisoners came to Guantanamo, and having coordinated a national Guantanamo Teach-In at Seton Hall. Hafetz's experience includes representing Ali al Marri in the landmark case of an alleged enemy combatant confined for years in the United States without charges or access to counsel at the direction of the President.

Though it is largely devoid of editorial comment, this volume is as chilling an indictment of the Executive's disdain for human rights and the rule of law as could be imagined. Through the words of their lawyers, we accompany the prisoners from their arrival at Guantanamo, hooded and shackled, through their years of interrogation and isolation, their sham status hearings, their improvised tribunals, and ultimately, in a few cases, their release. Like grim annotations to a time-line, one account after another details treatment of human beings that is hard to read in large doses

This is a story that the Government never intended to be told, because Guantanamo was selected to be a place where neither domestic nor international law would apply. That the Government was proved wrong, in a series of three Supreme Court decisions, is a tribute to the lawyers in this book.

I am no impartial reader, having submitted *amicus* briefs in support of Guantanamo prisoners and attended military tribunal proceedings there, but I think it no exaggeration to say that the Guantanamo prison camp was founded on a lie that the Administration never wanted examined by lawyers. Until recently, Guantanamo never held the prisoners that Donald Rumsfeld called "the worst of the worst" — those criminals were in CIA black sites at locations still

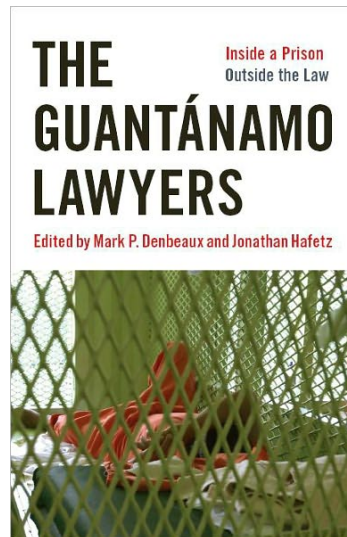
undisclosed. Though every Guantanamo prisoner had been classified by the President, often on appallingly inadequate evidence, as an "illegal enemy combatant," only a handful have ever been charged with crimes. Most of them were, according to Prof. Denbeaux's earlier work, and as the case histories here show, anecdotally, captured nowhere near a battlefield — some of them nowhere near Afghanistan — or were sold to U.S. allies for bounties. The irony is that, once Guantanamo came to house the true villains, Khalid Shaikh Mohammed and other 9/11 conspirators, the facility and its system had been so discredited that they could no longer be used for credible judicial proceedings.

The details of the prisoners' lives, and what passes for legal process, will shock readers familiar with the concept of due process of law. Contributors recount how the prisoners got there; how, especially in the years before *Rasul v. Bush* granted them access to counsel, they were intentionally isolated and disoriented, hooded, shackled, deprived of sleep and food, constantly interrogated, threatened with beatings or rendition, separated from their families,

barred from learning of current events — in sum, subjected to a "torture culture" developed or authorized by a small group of government lawyers, including Jay Bybee, John Yoo and William Haynes, names that should be remembered in every American Civics class alongside those of Yamashita, Höss and Wirz, and the officials of the Reich Ministry of Justice who were put on trial at Nuremberg. All this was (and is) presided over by a military task force whose Orwellian motto is "Honor Bound to Defend Freedom."

Most of this description comes in the book's longest section, "Red Tape and Kangaroo Courts," which will be the part of most interest to lawyers. An excellent narrative interlude by Gary Isaac of Mayer Brown describes the effort to save habeas corpus from Congress, and provides an enlightening peek into the role played by the man who was then the Junior Senator from Illinois. Later sections on torture, hunger strikes and suicides, while containing some of the most heart-breaking stories, are less about the lawyers and more about the prisoners, and stretch out into digressions from the book's main focus.

There is little place for comic relief in these relentlessly depressing pages, but the description of a former Jenner & Block partner attired in modest Muslim garb and resembling "Alfalfa dressed like a nun" provides a momentary respite; and the redoubtable Clive Stafford-Smith's response to accusations that he had smuggled a pair of Speedos into his



client's cell includes satisfyingly black humor about legal briefs.

**T**here is some room for improvement in the book, both structurally and substantively. It would have helped to contrast the views expressed here with contributions from prosecutors or former tribunal officials — some of whom have written elsewhere of their experiences. Without them, the reader is left with the impression that every prisoner at Guantanamo is a victim of mistaken identity, or was blamelessly sold into captivity. It is, after all, their advocates — and only their advocates — who are presenting these accounts, without any input from the other side. It would also be nice to know where the prisoners are now; many of their stories are told so appealingly that we want to know what happened to them.

The lack of balance leads to the book's biggest omission - a failure to examine the Government's two fundamental justifications for its treatment of these prisoners: first, and most important, the view that Guantanamo is not so much a prison, or a holding cell for defendants awaiting trial, as an arena to gather intelligence. According to this "mosaic" theory, September 11 resulted from a failure of intelligence, and every prisoner is a potential source of dots to be connected. Whether prisoners who have been isolated from enemy forces for up to seven years can provide credible intelligence may well be questioned, but the viewpoint persists. The second justification is that the Administration needs to keep these fighters off the battlefield. Of course, many of them were never near a battlefield to begin with, but after they have become radicalized by years of inhumane

treatment, it would not be surprising if some of them have been turned into the enemies they were falsely accused of being in the first place.

Needless to say, little of this reflects well on this country. Many of the contributors express their dismay and even shame. Some got more help from foreign governments than from the executive, legislative or judicial branches of the United States. A constant theme is the disbelief, among people here and abroad who had grown up believing in the United States as a beacon of human freedom, that this country's legal system could sink so low.

**Y**et, this story is not fundamentally about the worst people in this country, but about the best. In the words of journalist Hannah Tennant – Moore, one of the few non – lawyer contributors, "as lawyers, they had to do something." The skill, courage and resourcefulness of the unofficial Guantanamo Bay Bar Association give us reason for pride in our lawyers. They come in all varieties: large – firm associates, sole practitioners, students, human rights lawyers, senior partners, academics. They work in the face extraordinary obstacles – jailers' efforts to discredit them with their clients; logistical nightmares; surveillance of what client meetings they can arrange; limited access to their own notes; sham hearings; unavailability of witnesses and evidence; absence of rules and lack of precedent; extraordinary delays. It is scarcely an exaggeration to say that these lawyers saved habeas corpus, not only from the arbitrary will of the Executive, but from the narrow – mindedness of Congress. This admirable book tells that essential tale.

**This review first appeared, in slightly different form, in *The New York Law Journal*.**

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