

# Guantanamo lawyers speak out on decade of torture and abuse

Peter Daniels  
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Amidst the nonstop patriotic bromides and attempts to incite chauvinism on the tenth anniversary of the 9/11 attacks, there was little attention in the media and none from government officials to the record of devastating attacks on constitutional and democratic rights over the past decade.

A panel discussion held at New York City's John Jay College of Criminal Justice on September 8, a few days before the anniversary, stood out as one of the few attempts to explain what has actually taken place and continues to take place at the Guantanamo prison camp and elsewhere as part of the "war on terror" launched after the 2001 attacks.

The panel of lawyers was part of a series of programs at John Jay College, supplementing the 9/11 Performance Project, including three plays and a number of other performances that aim to examine "the rise of Islamophobia, violence and greed" over this past period.

The speakers at the September 8 event, which was chaired by award-winning actress Kathleen Chalfant, included lawyers who have spent most of the past decade fighting on behalf of those indefinitely detained at Guantanamo. The meeting heard from Fordham Law School professor Martha Rayner; Alexander Abdo of the American Civil Liberties Union; Jonathon Hafetz of Seton Hall Law School; and Gitanjali Gutierrez of the Center for Constitutional Rights (CCR).

A leaflet from the CCR, made available at the meeting and entitled "Guantanamo by the Numbers," provided a capsule description of the history of Guantanamo over the past ten years. 600 men have been released from Guantanamo so far, but 171 remain imprisoned there. 92 percent of those ever held at Guantanamo are not Al-Qaeda fighters, "by the U.S. government's own records." 89 have been cleared for release but remain in detention. 20 or more could leave immediately, but fear torture or other abuse in their countries of nationality. Only 7 men have been charged with a crime, and two of these are now free. The number of "senior government officials who have been held accountable for

wrongful detention and torture," the CCR informs us, is 0.

The speakers fleshed out the meaning of these statistics. Abdo, a staff attorney in the ACLU's National Security Project, noted in opening his remarks that the Obama administration, claiming that it seeks "to look forward and not back," refuses to investigate any of the criminal behavior that took place during the Bush presidency, but at the same time continues to use testimony extracted by torture to justify the continued indefinite detention of scores of inmates who have not seen their families in nearly a decade.

More than a cover-up for the Bush administration is involved here, of course. The Democratic administration is continuing much of the unlawful abuse of power engaged in by its predecessor.

Abdo referred to 2,000 existing photographs on torture in Afghanistan and Iraq, withheld from disclosure by both the Bush and Obama governments, which would unquestionably demonstrate how ludicrous is the claim that Abu Ghraib was the work of "a few bad apples." He referred as well to the continued classification of a September 17, 2001 document in which George W. Bush authorized the establishment of so-called "black sites" which were designated for torture.

Of some 200 autopsy results on deaths in custody, Abdo continued, 30 have been ruled homicides, but not a single victim or victim's family has had a day in court. On the contrary, former Vice President Cheney feels confident enough to take credit for his role in torture.

The procedure was designed with immunity in mind, the speaker explained. All involved could point the finger elsewhere, in a kind of "circular shell game." There were those who were just following orders, the policymakers above them who were only following the advice of their own lawyers, and finally the government lawyers themselves, who were "just lawyers."

The notorious case of Jose Padilla was one of the most flagrant examples of the kind of "Catch-22" logic that has been used to justify unspeakable crimes. Padilla, who was represented by the ACLU, was the US citizen who was held incommunicado and treated brutally for three years and eight

months, before being transferred and tried on unrelated charges. The US District Court dismissed his effort to obtain redress for the cruel and inhuman treatment to which he had been subjected.

Jonathon Hafetz discussed the way in which the authorities had manipulated language in order to cover up and justify flagrant violations of Constitutional rights. “Enemy combatant,” for instance, was used as a substitute for prisoner of war. Even though the US government claimed it was fighting a “war on terror,” it thus claimed the right to ignore the Geneva Conventions and hold “enemy combatants” without trial indefinitely.

Hafetz also explained how the very existence of Guantanamo, on Cuban territory, was used to manipulate the issue of jurisdiction. Since it was formally outside of the United States, it became a convenient location for torture and abuse beyond the reach of legal action that would apply on US territory.

Likewise, the Commander-in-Chief clause of the US Constitution was used in an Orwellian fashion, expanding the definition from that of the leader of the armed forces during wartime to that of a virtual monarch, capable of unchecked executive power. This was interpreted to justify the suspension of treaties, the seizure of American citizens, warrantless spying, and the creation of military commissions to circumvent jury trials.

The courts, despite more than 70 decisions in habeas corpus cases, have done nothing to stop any of the serious abuses of power, Hafetz declared. Extrajudicial detention continues, and not only at Guantanamo. More than 2,000 prisoners remain at Bagram air Base in Afghanistan. Not a single victim of torture has obtained any compensation for his treatment.

Moreover, Hafetz continued, there are plans to greatly expand the appalling violations of human rights that have been used in the past decade. Congress is considering legislation that would mandate indefinite detention for certain “terror-related” charges, whether or not the President decided to grant a trial.

Gitanjati Gutierrez explained in stark terms how the vast majority of Guantanamo detainees had fallen into the grip of the US war machine. Men and boys were picked up in the weeks following 9/11 and sold for bounty. Most had nothing to do with the fighting at all.

Gutierrez discussed some of the prominent cases on which she had worked over the previous decade in connection with Guantanamo. These include the cases of Moazzam Begg and Feroz Abbasi, two of nine British men who were held incommunicado until their release in early 2005, and whose subsequent struggle to clear their names and hold their torturers accountable reached a wide international audience.

Gutierrez is also one of the attorneys for Mohammed al-Qahtani, a Saudi citizen who has been held at Guantanamo since January 2002. The torture of al-Qahtani and others was justified by former Defense Secretary Donald Rumsfeld in his notorious comment that “I stand eight hours a day, why can’t they?” Al-Qahtani was allowed only four hours sleep a night, held in solitary confinement for months, sexually humiliated, and had his family threatened. Medical personnel were brought in to calibrate permissible methods and give the go-ahead for torture. When Gutierrez first met her client, in 2005, “he was a destroyed human being.”

“Guantanamo is now a living death,” Gutierrez declared. “The US today still engages in torture. Some of the most extreme things have hopefully ended, like waterboarding. But sleep deprivation is still permissible today, and indefinite detention, not knowing your fate. The Red Cross calls this torture.”

Her experience has “profoundly altered the way I think about my country,” she said. “As an American citizen I no longer believe in our country any more ... I believe in people.” Our role must be “to keep the light burning, however small that light might be.”

There is a certain pessimism reflected in these remarks. These attorneys and others have clearly waged a courageous struggle over many years. As one of the speakers at this forum explained, they have seen the limits of the courts and the legal system. Feelings of discouragement and isolation, however understandable, especially in light of the continuing travesty of Guantanamo itself, are not the answer.

Urgent political lessons need to be drawn. The war crimes of both the Bush and Obama administrations are the product of an outmoded and reactionary system, not of individuals. The legal battles must be guided by a political strategy, including above all the need for a fundamental break with the Democratic and Republican defenders of torture and other attacks on democratic rights, and basing the fight against these atrocities on the working class in the US and all over the world.



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