

Guantánamo Bay: Housing Prisoners in the War on Terror

There is no situation more complicated than that of the U.S leased Guantánamo Bay Naval Base in Cuba. Since 1903, the United States has been leasing Guantánamo Bay from the Cuban Government. Rumors have circulated through the years that Fidel Castro continues to mock the United States by keeping each check he receives in a drawer in his office. Although notorious for its prison, Guantánamo Bay has a history of being a home to military families, as well as holding place for Cuban asylum seekers and Haitian refugees. However, for the past eleven years, the focus has shifted onto the prison in Guantánamo Bay. After the 9/11 attacks, the United States specifically chose to set up a prison to interrogate detainees in Guantánamo because rights granted to people on American soil would not apply there. This led to both the Bush Administration and the United States Military abusing their authority as they pushed aside the Geneva Conventions and committed various human rights abuses. In his interview with the American Civil Liberties Union, Moazzam Begg, a former detainee, states that the idea of American Justice is a complete oxymoron. The United States of America prides itself on being a true democracy and a voice for all people who are suffering and oppressed; Yet, it is the same country that runs Guantanamo Bay Prison, a place where US law does not apply as suspected terrorists are held without reason and without trial. It is the hope of many international governments, organizations and human rights groups that Guantánamo is closed down and the United States Government gives detainees fair trials.

The whole world watched in horror as two planes slammed into the twin towers on September 11, 2001. Almost unanimously, the American people allowed their

government to declare war on Afghanistan in hopes of finding the terrorists responsible for killing over 3,000 people. On October 7, 2001, the United States invaded Afghanistan and soon after found itself with prisoners who possibly possessed high-value intelligence information. As they temporarily held prisoners with possible ties to either Al-Qaeda or the Taliban, the Defense Department was searching for a permanent place to thoroughly interrogate these prisoners. Compared to the other options, such as Guam, Guantánamo was the “least worst place [they] could have selected” (Sciutto). According to Hansen in Guantánamo: An American History, all other candidates in the running for housing prisoners had a flaw. There was no way that Americans were willing to have this prison in the country, specifically because of the “not in my backyard” politics. Foreign outposts were out of the running because the Pentagon would not be able to fully carry out their interrogations based on what they wanted to do. Protectorates of the United States were also out of the running because American law was still in place there and protectorates were also open to lawyers and journalists. The last option that could object to all previous obstacles was Guantánamo. As a sovereign territory in a “hostile” state, not only does U.S law not apply but also U.S military personnel had both legal and diplomatic immunity there (Hansen). This was the only place that was beyond the jurisdiction of the federal courts. Guantánamo was the perfect option for what the Bush Administration was planning on doing with these suspected terrorists.

When Bush agreed to adhere to the Geneva Conventions while housing and interrogating prisoners, he was referring to how prisoners of war must be treated by the enemy state that captures them. Some of these rules include allowing the prisoners of war to correspond with relatives and receive packages, allowing the prisoners of war to

inform the Central Prisoners of War Agency of their capture as well as not being forced to give basic information about themselves to their captors ("Peace Pledge Union").

However, over the course of the administration's stay in office, laws were twisted and reworded to avoid complying with the Geneva Conventions. During the aftermath of 9/11, it was deputy assistant attorney general John Yoo who found the loopholes in the Geneva Convention as well as rewrote the definition of torture so that the United States could carry out their interrogations with the detainees at Guantánamo. Throughout his legal memos about Guantánamo, John Yoo's main objective was to give as much decision power as constitutionally possible to the executive branch. In Guantánamo: An American History, Hansen refers to two legal memos that John Yoo put out. The first memo was put out on January 9 among national security agencies and was an answer to the question of whether the law of armed conflict applies to the detention and the procedures of trials of Al Qaeda and Taliban militias. John Yoo stated that since Al Qaeda was not a nation but rather a political movement, "it is ineligible to be a signatory to any treaty". In addition to this, the Taliban was a failed government of the failed state of Afghanistan which also made the treaty non applicable. Yoo then raised the question of whether the Geneva Conventions could even apply at all to the treatment of the detainees. Point after point led to a final conclusion by Yoo that the Geneva Conventions do not restrict the actions of the United States military "because it does not constitute federal law recognized under the Supremacy Clause in the constitution". Lastly, according to Yoo, customary international law of armed conflict is to be used only at the discretion of the President (Hansen). On August 1, 2002, deputy assistant attorney general John Yoo wrote his legal memo that defined torture in order for it to be suitable

to what the Bush Administration was carrying out secretly on detainees at the Guantánamo bay prison. The memo also was carefully worded in order to prevent members of the administration who either authorized or carried out torture not to be convicted under the War Crimes Act (Hansen). He redefined torture in vague terms, making it almost impossible to identify what the true definition would be. Similar to his previous memo, Yoo also made a point to mention that if the president states that an interrogation technique is necessary, it is not torture because the president is the commander in chief (Hansen). Donald Rumsfeld, Secretary of Defense under Bush, signed this controversial memo. The torture memo was not exposed to the public until 2004 (Hansen). These two memos are proof that the Bush Administration rewrote laws in order to continue their interrogation and torture of detainees who were thrown in prison without any explanation and without access to due process.

Guantánamo Bay prison is a place where the United States has committed extreme human rights abuses through torture and the holding of prisoners without probable cause. Detainees are trapped in a nightmare as they are held indefinitely. After John Yoo redefined torture to suit the Bush Administration's plan, the United States Military had a large variety of options of interrogation techniques. In Guantánamo: An American History, Hansen describes the various interrogation techniques that he collected information about through Torture Team by Philippe Sands, which exposed the truth of the torture that occurs in Guantánamo. These "enhanced interrogations" were carried out by military personnel who received little training in the area (Hansen). Methods included holding detainees in stress positions, showing detainees pornographic images, sexually taunting the detainees and much more which are all in public logs kept

at the prison (Hansen). In his interview with George Washington University, Rasul Shafiq, a former detainee, states, “They made us feel like animals. They never made us feel like humans, never. They humiliated us. What they did, they took us into one tent. They ripped our clothes off. Then they took us outside. It was about 60 or 70 meters, the other tent, and there was numerous amounts of soldiers there, male and female. They made us walk past while we were still naked, and that was just to humiliate us (Torturing Democracy).” In his interview he also states, “they brought females into the interrogation...coming up to them and touching them all over, and just like making them feel unease. And even not just females. Male interrogators as well, just touching them, just making them feel like if they don't answer the question, give them the answer that they want, anything could happen to them (Torturing Democracy).” This is the United States Military that used these torture techniques to interrogate detainees at Guantánamo. As a country that stands for justice, the Bush Administration allowed military officials to go against every aspect this country stands for. These disturbing forms of torture paint an image of the United States not as a country of justice but rather as a country of hypocrisy.

Through the Guantánamo Public Memory Project, it is possible to listen to stories from the perspective of former detainees as well as lawyers and prison guards who worked with detainees. The fear and propaganda surrounding this prison is overshadowed by the human connection depicted in videos throughout the project. Both the American Civil Liberties Union and Witness to Guantánamo compiled videos for the public memory project. The American Civil Liberties Union compiled the detainee’s videos. **Moazzam Begg** was detained for three years without any charge, trial or explanation and was released without any charge, trial and explanation. His story is one of many who

were in the wrong place at the wrong time. He moved with his wife and kids from England to Afghanistan to set up a school for girls. Shortly after September 11, his home was stormed and he was taken away without any explanation. In Guantánamo, he was spat on and threatened with dogs. He watched a fellow detainee tortured to death. Begg tells his interviewer: “My experience of America prior to this was everything I’d seen in the films, the concept of the good guys, the concept of people doing the right thing, and that was shattered... there is a word that really encapsulates American Justice...an oxymoron”. The American Civil Liberties Union also interviewed **Omar Deghayes** who was born in Libya and fled to England when he was a child after the Kadafi family killed Omar’s father. He attended law school because he wanted to work on human rights issues to help others. After moving to Afghanistan to study Middle Eastern governments, he got married and had children. Once September 11 happened, he feared for the safety of his family and tried to move them through Pakistan back to England. He did not make it and was arrested and sent to Guantánamo. Omar speaks about the various torture methods including waterboarding and being hit with electric guns. Witness to Guantánamo interviewed lawyer **Yvonne Bradley** who was an attorney for a detainee. She compared Guantánamo to Alice in Wonderland because detainees are never sure of what is real and what is not real. Ms. Bradley was scared when she walked into the room to meet the detainee because of all of the propaganda and fear that surrounded this prison. She told her interviewer that after meeting her client, she realized that “whatever I knew about Guantánamo, whatever I read about Guantánamo... was likely not true. That was the first time it hit me...wow how fear and propaganda can make such a difference with how people understand things.” Witness to Guantánamo also interviewed another lawyer,

Clive Stafford Smith. The United States did not publish a complete list of detainees until May 2006. He told his interviewer, “This is something that offended me...that a democratic government would bang up a bunch of people in prison and keep secret who they were. How Stalinist could you get!” Instead of publishing a list, the United States told the British Government that they had some of their people in Guantánamo and the British Government told the families who then found lawyers to help get their loved ones out of Guantánamo. **Brandon Neely** was a prison guard and was interviewed by Witness to Guantánamo. He told his interviewer that every day before going to work in the prison, his boss would say, “These people are the worst of the worst. They will kill your family in a heart beat”. Going against the norm, he actually engaged with the detainees and found that they were very similar to him. He is even now Facebook friends with Rasul Shafiq, one of the three detainees who sued the Bush Administration for what happened in Guantánamo. The Guantánamo Public Memory Project gives great insight on what occurred in the prison from all perspectives and each perspective agreed that the United States of America overstepped many boundaries with the human rights abuses committed in the prison.

Some detainees, aware that every single one of their rights had been trampled on, sought justice. The first case brought before the Supreme Court was in April 2004. In *Rasul v. Bush*, the question of “Do United States courts have jurisdiction to consider legal appeals filed on behalf of foreign citizens held by the United States military in Guantánamo Bay Naval Base, Cuba?” came to the Supreme Court (“*Rasul v. Bush*”). In a 6-to-3 opinion written by Justice John Paul Stevens, the Court found that the degree of control exercised by the United States over the Guantanamo Bay base was sufficient to

trigger the application of habeas corpus rights. Stevens found that the right to habeas corpus can be exercised in "all ... dominions under the sovereign's control." Because the United States exercised "complete jurisdiction and control" over the base, the fact that ultimate sovereignty remained with Cuba was irrelevant ("Rasul v. Bush"). Because of the Supreme Court ruling, detainees were able to challenge their detention as unconstitutional. This landmark ruling has led many detainees at Guantánamo to raise their voices and get the justice they deserve. However, this justice is coming at a snail's pace. Even though the Bush Administration announced the establishment of Combatant Status Review Tribunals, there are still ways for abuse within the system (Hansen). Amnesty International released a report in 2008 about the continued struggle of detainees despite their right to habeas corpus: "More than six years after the first detainees were transferred to Guantánamo, only six people have had their cases adjudicated – the majority taking plea deals rather than fighting their case in a courtroom heavily stacked against them. Only a handful of others have even been charged." Moreover, according to Amnesty International, approximately 60 detainees were cleared to be released in 2008 but the United States had not found a place to send them to yet. Although more light is being shed on the issue and more human rights lawyers are going to Guantánamo to help fight for detainees' rights, the process is not moving fast enough for international governments, non-governmental organizations and human rights activists.

With so many national and international issues that the United States Government has to deal with, Guantánamo has not been at the top of the list. In 2008, President Obama stated that closing the prison was on his agenda and even signed an executive order to that effect (Krever). Seven years later, there are approximately 160 prisoners still

trapped in Guantánamo, even though 82 have been cleared for transfer to their home country (Krever). It is time for President Obama to do something. The image of the United States of America will be one of complete hypocrisy if the government does not give Guantánamo detainees the justice they deserve.

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