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Introduction

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GUANTÁNAMO BAY: AN INTRODUCTION TO THE SYMPOSIUM ISSUE

*Muhammad Usman Faridi** and *Maxwell Leighton†*

Emblematic of the City University of New York (CUNY) School of Law's mission to train its graduates to practice law in the service of human needs, the New York City Law Review publishes scholarly work exploring novel legal issues that affect the public interest. To some, the law review's name might suggest a concern narrowed to within the publication's urban limits. Yet the wide-ranging ambit of a public interest focus, shared by its host school, pushes the New York City Law Review to encompass a cross-dimensional, national, and international public interest scholarship.

On March 23, 2007, the law review held a day-long symposium entitled, "Guantánamo Bay: The Global Effects of Wrongful Detention, Torture, and Unchecked Executive Power." The symposium centered on the legal issues surrounding the detention of individuals by the United States government in Guantánamo Bay, Cuba. Cosponsored by the Center for Constitutional Rights, the Center for International Human Rights at John Jay College of Criminal Justice, and the CUNY University Student Senate, the symposium featured a variety of prominent legal practitioners and scholars who addressed the many complicated and timely issues stemming from the seizure, detention, and abuse of "enemy combatants."

The event also commemorated the Center for Constitutional Rights' 40th anniversary and honored the organization's leading role in protecting and promoting constitutional and human rights. A recognized force in the world of public interest law, the Center has never shied from instigating and supporting the noblest of causes, especially to protect the unpopular and marginalized. In its four decades of work, the organization has dedicated itself to safeguarding our core constitutional protections and human rights when threats overshadow. For that, the New York City Law Review and the CUNY School of Law salute the Center for Constitutional

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Rights as an exemplar of our educational mission, in real-world action, catalyzing the law to serve human need.

The Guantánamo symposium was the occasion for thoughtful and wide-ranging discourse on the complex legal aspects of the United States government's actions both in Guantánamo and in the broader context of a "war on terror." The program addressed the basic fairness and ultimate legality of the detainees' imprisonment and treatment, leading to a long catalogue of queries: Do such persons have the right to seek relief from American courts? If so, can Congress negate their right? What is the status of detainees under international humanitarian law? Should they have protections against torture and coercion? Should they be tried, and if so, when, for what crimes, and under what procedures? If tried, would detainees thereafter have a right to appeal and, if so, to whom? When, and under what circumstances, should they be released? Will they endure further torture when they are released to their governments? What are the respective powers and proper roles of the executive, legislative, and judicial branches of the United States government in dealing with the detainees? What is the legal status of detainees being held at locations other than Guantánamo Bay during the "war on terror?"

The fear mongering that can overtake a society will often lead it to sidestep such questions, obscuring the clear-eyed analysis vital to the search for answers. Through a series of panel discussions, a cross-section of academics and legal practitioners in the areas of civil liberties, international law, and national security examined the role of international law in American courts, the various and tenuous legal distinctions created by the "war on terror," and the current and future impact of government tactics on domestic law. A final panel, consisting of defense attorneys representing "enemy combatants" and other detainees, discussed the strategies they embraced and stigmas they encountered while advocating justice for clients subjected to widespread social opprobrium.

Moreover, beyond lofty legal analysis and familiar policy concerns, the symposium recognized our shared humanity, one that acknowledges injustice and refuses to accept "reason" without rationale. Such a principle girds the advocacy of the Center for Constitutional Rights, the symposium honoree, and fits equally well with all of the event's participants. Even when engaged at times in apparently dry legal discussion, we sought never to lose sight of our common human condition, made palpable by the seeming unbridgeable divide between detainees held without recourse in

Guantánamo Bay, and those of us who are free to discuss their fates, seated comfortably in a New York City auditorium.

There is an artificial sense of safety in a label. The word “detainee” is a sanitized appellation, useful for distancing us from the named thing. “Detainee” does not impart the sheer fright felt upon being snatched away indiscriminately. It does not describe one’s fear at the prospect of an interminable incarceration, bereft of trusted counsel, of an existence stretched short of hope. It cannot capture the stark reality of imprisonment, or anguish at one’s lonely, constricted, and dehumanized state. By rejecting that label, and bridging that separation, we discover basic decency, born out of concern and respect for the very commonality that unites us, rather than those distinctions that divide.

In that spirit, combining the best legal reasoning with a predominant concern for human need, this issue of the law review contains the related articles and symposium remarks from many of the panelists who gathered that day. We want to extend our sincere gratitude to the Center for Constitutional Rights, the Center for International Human Rights at John Jay College of Criminal Justice, the CUNY University Student Senate, the staff and editorial board of the New York City Law Review, Professor Franklin Siegel, Dean Michelle Anderson, and our faculty advisors Ruthann Robson, Andrea McArdle, and Penelope Andrews. We would also like to thank the authors and panelists for volunteering their time and expertise—many traveling a great distance—to discuss the vital issues presented at the symposium.

Symposium Program

9:00 Opening Remarks

Jeremy Travis, President, John Jay College of Criminal Justice (CUNY)
Barry Kamins, President, New York City Bar Association

9:30 The Role of International Law in American Courts through the Lens of Guantánamo Bay

Chair: Penelope Andrews, CUNY School of Law
Panelists: Julie Mertus, School of International Service, American University
David Turns, University of Liverpool School of Law, UK
Martin Flaherty, Fordham University School of Law
Linda Malone, William and Mary Marshall-Wythe School of Law

11:00 A War of all Dimensions: Criminals, Civilians, and Enemy Combatants in the “War on Terror”

Chair: Michael Strauss, Centre d’ Etudes Diplomatiques et Strategiques, France
Panelists: George Andreopoulos, CUNY Graduate Center and John Jay College
Eric M. Freedman, Hofstra University School of Law
Johannes Van Aggelen, UN High Commission for Human Rights
Donna R. Newman, Law Office of Donna R. Newman
Karen Greenberg, The Center on Law and Security, NYU School of Law

1:15 Remarks by Dean Michelle Anderson, CUNY School of Law

Keynote Lecture by Jordan Paust, University of Houston Law Center

2:00 Guantánamo’s Impact on Domestic Issues

Chair: Ruthann Robson, CUNY School of Law
Panelists: Jonathan Hafetz, Brennan Center for Justice
Jason Mazzone, Brooklyn Law School
Shane Kadidal, Center for Constitutional Rights
Jameel Jaffer, American Civil Liberties Union

3:30 Litigation in Progress

Chair: Sameer Ashar, CUNY School of Law
Panelists: Anant Raut, Counsel, Committee on the Judiciary, US House of Representatives
Martha Rayner, Fordham University School of Law
Joshua L. Dratel, The Law Office of Joshua L. Dratel, P.C.
Joshua Colangelo-Bryan, Dorsey & Whitney LLP
Dr. Marc D. Falkoff, Northern Illinois University College of Law