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Dear Readers,

Thank you for picking up this issue of the Binghamton Law Quarterly! This issue is one that commemorates our recent successes as an organization, the growth it continues to experience, and the future accomplishments that await it under the newly elected Executive Board. As a graduating senior who has had the privilege of participating in this organization since shortly after its founding, this issue is also bittersweet. The Binghamton Law Quarterly has achieved many feats since our second issue, from our charter with the Student Association to our most recent collaboration with the Human Rights Institute's Source Project; we continue to grow and improve at an exceptional pace. There are many individuals to thank for assisting in our publications, and as always, we are bound to miss a few.

With that said, our commitment to disseminating interesting topics within the law to the general public would not be possible without the kind and continued support of the Philosophy, Politics, and Law department. We must also thank the Pre-Law office and the Harpur Law Council for their assistance in our recruiting efforts and events. Their continued aid in our operations allows us to serve Binghamton University as a space for the discussion of legal issues and provides the opportunity to insert these findings into the public discourse. This publication also features some of the work of contributors to the Human Rights Institute's Source Project, who were kind enough to collaborate with us in our mission to bring legal issues to the forefront of public discussion at Binghamton University.

With regard to the content in this issue, we are excited to include articles ranging from law in Guantánamo Bay to legal issues regarding college

athletics. Our collaboration with the Human Rights Institute also influenced our theme for this cycle. We received many exceptional articles, but ultimately chose those representing the rights of various groups. Some specific highlights are intellectual property rights, the rights of convicted felons, and the future of welfare through initiatives such as Universal Basic Income. Overall, we are hopeful that you enjoy this issue as much as we relished the opportunity to assemble it.

For all readers, whether you are intent on attending law school or are simply interested in the topics we have chosen to discuss, I welcome you to the content inside and hope that you can gain a better understanding of the law and its relation to the world around you. The law reflects and affects the world we live in, and it is our hope that the content we produce inspires in you an interest in this interplay. Thus, we must thank our talented writers and hard-working editorial staff, without whom this issue would not be sitting before you. We are always searching for more writers, editors, and designers to help make our publications the best they possibly can be. If you are interested in joining our team, please contact us at Quarterly@BinghamtonSA.org and mention the capacity in which you would like to become involved. With this, our eighth issue published, we are extremely proud of what we have accomplished, and are excited about what the future entails for our organization. We hope that you continue to join us on our journey and in our further engagement with the law.

Sincerely,

Mathew Anekstein,

Chief Editor

VULNERABILITY OF LAW IN GUANTÁNAMO BAY

By Ciara Lavin

The Guantánamo Bay Detention Center has achieved notorious status as a "legal black hole" in the years following the attacks of 9/11. With a legacy of human rights abuse and unclear status under US jurisdiction, Guantánamo lives up to its historical reputation as a place where law applies only where the United States government decides it does. In a country founded on ideals of individual rights and a government that respects those rights for all, how has the law been rendered so vulnerable to misuse?

Vulnerability is defined as the quality or state of being exposed to the possibility of being attacked or harmed, either physically or emotionally.[1] Vulnerability theory, pioneered by scholar Martha Fineman, is a new approach to human rights that argues the innateness of vulnerability in human nature and should be considered in all areas of law.[2] Though the theory does not address what it means for law itself to be vulnerable--susceptible to abuse and harm--it is clear that the theory applies. Law becomes vulnerable to harm when it is interpreted with an agenda in mind, as one can see in legal action regarding Guantánamo Bay Detentions. This constant redefinition of law – seen within the so-called "Torture Memos" that were released and then quickly rescinded – shows a determination to transform law from a guideline for governing fairly into justification for torture and inhumane treatment.

The "Torture Memos" remind us that procedures used in Guantánamo Bay are a result of intentionally ambiguous legal actions within the ambiguous "war on terror". This ambiguity within warfare that had never before been seen was exploited quickly by executive officials in their determination to find ways to avoid legal scrutiny by arguing that protections guaranteed in the Geneva Conventions and War Crimes Act didn't apply to detainees in the war on terror. For example, in these memos, Alberto Gonzales of the White House Counsel, John Yoo of the Justice

Department, and President George W. Bush all argued that the Geneva Conventions would not apply to this "war on terror" at the time, in part because the Conventions were meant to address conflicts between states, not conflicts between a state and a "subnational" group.[3] Gonzales also mentions that a refusal to apply prisoner-of-war status could be justified by acknowledging Afghanistan as a failed state, and by a gap in Section 2441 of the War Crimes Act that could otherwise hold American officials accountable for mistreatment.[4] These government officials also quickly worked to horrifyingly redefine the word "torture," as seen in the memo from Judge Jay Bybee to Alberto Gonzales. There is an actual part of the memo in which Judge Bybee argues that the "infliction of pain or suffering" could be impossible to prosecute because the word "severe" in the definition of torture is not actually defined.[5]

Other members of the executive branch disagreed. Secretary of State Colin Powell argued that any conduct that does not align with rules set by the Geneva Convention on the Treatment of Prisoners of War (or GPW) would create controversy and prompt investigation, regardless of the actual status of the detainees, and would open U.S. military servicemembers to abusive treatment.[6] The fact that another executive official saw the proposed legal framework as unjust highlights just how significantly the law had been misinterpreted. This state of legal ambiguity extends to trials at Guantánamo that continue today.

The rule of law is vulnerable, especially for defense lawyers of detainees in "an ad hoc system of military commissions" invented by the American government for the purpose of Guantánamo Bay trials.[7] Lieutenant Colonel Sterling Thomas, a defense lawyer of detainee Ammar al-Baluchi, is an outspoken witness to questionable laws and legal moves made with regards to these military trials where the rules are constantly being changed to benefit the government. The Military Commissions Act of 2009 allows torture derived evidence into a court of law with the review of factors such as the circumstances of the collection of evidence, how voluntarily the statement was given, and whether or not these statements were confirmed by the "clean teams" sent to re-interrogate detainees.[8] This act is one of multiple meant to shift the balance to favor prosecutors over defendants, granted through slim gaps in

the law. For example, these "clean teams" still gain questionable evidence despite not using the same "enhanced interrogation techniques," as the interrogations are conducted post-torture with detainees who have never been properly treated for trauma.

Lieutenant Colonel Thomas, as well as attorney Alka Pradhan, also point out practice of withholding evidence from defense teams. Pradhan, also defending Ammar al-Baluchi, often faces frustration in finding methods of competently representing Mr. al-Baluchi because of the restrictions on classified information: she is not allowed to share any kind of "legal mail," give exact quotes from her client, or access the same medical records that the prosecution team can easily access.[9] If there are any examples that perfectly emphasize the imbalance of the evidence-sharing structure within the military commissions, it is the case of Zero Dark Thirty. Zero Dark Thirty is a film directed by Kathryn Bigelow about the quest to kill Osama bin Laden, created with the help of CIA agents on set. The director and writers of this film had included a graphic torture scene of a suspect named Ammar – a clear depiction of Pradhan and Thomas's client – with information that was not even given to the real Ammar al-Baluchi's defense team.[10]

The fact that a movie director was better trusted with classified information than two highly qualified lawyers is a clear indication of how vulnerable law is to misuse. From the creation of a military commissions system in which no one knows how a trial should proceed to the simultaneous admittance and denial of using torture, the law has been rendered vulnerable since it no longer protects the "innocent until proven guilty" from unchecked government control. Until there are clear legal definitions of how to regard conduct and trials in Guantánamo Bay, the law will continue to be susceptible to misuse in the government's quest for absolute immunity, and the detainees of Guantánamo will continue to be extraordinarily vulnerable to human rights abuses in their indefinite detentions.

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