

*Editor's comment: Please note that the US acquired the land after 1898 and refuses to leave. It's a small occupied territory.*

By Mick O'Reilly

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Sunburnt and short-wearing Canadian holidaymakers nervously peer through a razor wire fence under the cold gaze of Cuban military watchtowers.

The no man's land that reaches out to the razor wire fence is laced with tens of thousands of mines across the second most heavily defended border. North and South Korea has more land mines.

Welcome to Guantanamo Bay.

For the tens of thousands of Canadian tourists who enjoy cheap all-inclusive holidays to the southern shore resorts of Cuba every winter, Guantanamo is just another day trip, like catamaran booze cruises or swimming with dolphins.

Across that wire is an enclave of America in Fidel and Raul Castro's backyard — the only US military base in a communist country.

"It really is quite surreal," says Mark Falkoff, an associate professor of law at Northern Illinois University who represents inmates — men designated as "enemy combatants" by the United States and detained at Guantanamo Bay Naval Station in a legal limbo.

There, under procedures brought into place since the 9/11 attacks ten years ago, US military and intelligence officials are free to use waterboarding, sleep deprivation, stress positions and physical and psychological tactics to glean any and every ounce of information from the detainees.

For Falkoff, the camp and the tactics used are an abrogation on America's record of civil liberties and represent illegal detention contrary to the US constitution and laws.

### **Solitary confinement**

Since 2004, Falkoff has visited the Guantanamo detainees more than a dozen times and has brought three cases to the US Supreme Court in an effort to win proper legal rights for his clients there.

"Literally, when you come out of the prison, the razor wire fence and mine fields are there and the land is mostly scrub and bushes, unlike the main section of the naval base across the bay where the topography is quite different," Falkoff says.

In the early days, detainees were held in open wire enclosures of Camp X. That has since been replaced.

"The authorities have essentially built a supermax prison for the detainees," he says. "Most can mingle in a communal setting for at least part of the day. But there are still some who are being held in solitary confinement and have been there since they were brought to Guantanamo eight or nine years ago."

Inside, the atmosphere is sterile.

"It's antiseptic," he says.

When he meets his clients, they are brought to him in orange jump suits, their limbs manacled and chained to a floor in a room constructed from a shipping container.

Conversations go heard, every movement watched.

Even if the conditions have improved for the inmates since Falkoff first visited the camp in 2004, their continued detention without proper judicial process violates the basic concept of habeas corpus — literally translated from Latin as 'we have the body'.

He is a specialist in the legal principle of habeas — a notion first entered into common law under the Magna Carta presented to King John of England in the 13th Century. It prevents authorities from holding prisoners indefinitely without having to face legal processes.

"Despite this principle, in essence the United States government is holding people and throwing away the key," Falkoff notes.

As a lawyer committed to justice, Falkoff believes it is his duty to ensure the detainees receive due process and fair hearings and trials — something which the US government itself was opposed to by placing the detainees in a military base offshore — away from the obligations afforded to every other prisoner or accused person in America.

### **Special category**

"For me, it is important that Guantanamo be considered US territory," Falkoff says. "That means that the detainees there must be afforded the same rights as everybody else. You cannot take away a person's rights to habeas, fair trials and due process simply because you designate them in a special category and remove them offshore. That is a subversion of the principles of natural justice."

He warns that President Barack Obama is trying to use Bagram Air Base near Kabul, Afghanistan in a similar capacity, where detainees can be held and questioned without proper oversight and due process.

By keeping the camp open, Falkoff is under no illusions.

"Guantanamo is a recruiting poster for any extremist who wants to find a cause to strike against America," he says.

He says that ten years after 9/11, there is little political will from either Republicans or Democrats to close the base, and it will likely remain open for the foreseeable future.

"Yes," he says, "the first executive order signed by President Obama when he assumed office was to order the closure of Guantanamo. But he has not exerted the political will to close the base and now, given the constraints placed on him by Congress, he cannot afford to close it. It will remain open until such a time as there is a 'Nixon-in-China' moment where a leader — most likely a Republican — will have the will and political clout to close the base. Obama does not have the political capital nor is he willing to exert it to close Guantanamo despite signing that executive order."

At one stage, Falkoff represented 13 Yemeni detainees of whom five remain.

"When we managed to bring these cases to court, the files were essentially empty," Falkoff notes. "There was no evidence to present to a court to maintain holding on to these people."

As a lawyer, Falkoff believes that all accused parties are entitled to representation and due process regardless of their guilt or innocence.

### Check and balance

The standards of justice to which the detainees are held fall far below those associated with any other accused. Miranda rights, where accused people have a right to silence and legal counsel, are non-existent. Similarly bail, the right to a speedy trial and the right to proper treatment without duress, are normal legal concepts which have been thrown out the window in Guantanamo.

"I believe that you cannot simply tear up the Constitution because you want to hold somebody on suspicion of something for as long as you want to," he says.

Appeals courts in the US have, however, started to negate some of the advances made by the Guantanamo lawyers in taking cases to the Supreme Court.

"The judiciary is supposed to be a check and balance to the executive branch, but with more conservative judges on the bench, there is a reluctance now to question the actions of executive when it comes to the war on terror," he says.

Falkoff describes himself as an American patriot, someone who believes that the US should be seen as a beacon of freedom and justice.

"One of my clients in Guantanamo is a Yemeni named Adnan," Falkoff says. "I believe he is innocent and there is nothing in his file.

"Adnan was picked up by Pakistani security forces after he crossed over from Afghanistan where he was seeking help for a head injury. He was handed over to the Americans and was brought to Guantanamo," he says.

"Adnan is determined that he will get out of Guantanamo one way or another — either dead or alive," Falkoff says. "He has tried to commit suicide several times, but he is determined to

leave."

"The detainees there have a remarkable spirit," he notes. "They do take great courage from their faith. They are remarkably calm in many ways, believing that this is what God has willed for them as a test of their faith. That really is quite remarkable."

Defending the Guantanamo detainees, however, has brought Falkoff's life into danger.

"I, as with all of the lawyers who have represented the detainees, have received death threats against myself and my family," he says. "But I am American and I am a patriot and I believe it is my duty to ensure that the detainees receive the same rights and freedom as everyone else."

A recent scheduled public meeting Falkoff was due to address had to be cancelled after police received a credible threat to the law professor.

Three years ago, Falkoff published a book of poetry from the inmates. "The works still are read at poetry circles and the such but overall, I think the issue of the Guantanamo detainees is far removed from most people's minds," he says. "That's why it is important to keep pressing for their legal rights, fair hearings and an end to indefinite detentions."

### **Death poem**

Take my blood.  
Take my death shroud and  
The remnants of my body.  
Take photographs of my corpse at the grave, lonely.  
Send them to the world,  
To the judges and  
To the people of conscience,  
Send them to the principled men and the fair-minded.  
And let them bear the guilty burden before the world,  
Of this innocent soul.

Let them bear the burden before their children and before history,  
Of this wasted, sinless soul,  
Of this soul which has suffered at the hands of the "protectors of peace".

— *Jumah Al Dossari*

### US presence

The United States have had a presence at Guantanamo Bay since 1898 during the Spanish American War, when a US naval force took shelter during the summer hurricane season. US Marines assisted Cuban scouts in chasing Spanish forces inland.

With Cuba's independence in 1903, the 120 square kilometre base was leased to the Americans for \$2,000 (Dh7,343) a year. That deal was renewed in 1934, with the US agreeing to pay the equivalent rent of \$4,085 in gold annually.

Castro's revolution resulted in the island having a communist government, making Guantanamo the only US base to be located in a Soviet-leaning country.

Since the revolution, only one cheque for the rent has been cashed, which Castro says was due to confusion. The cheques continue to come, with them being supposedly kept in the revolutionary leader's office drawer. The cheques are made out to "Treasurer General of the Republic", a position that was abolished with the 1959 revolution.