

Law Day Live



BOSTON MASSACRE.

From an original drawing by Alonzo Chappel in the possession of the Publisher.

Engraved by G. W. Peck, New York.

The Great Writ: Relief from Unlawful Imprisonment

The Legacy of John Adams

Lesson Plan



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Lesson Plan

1. Obtain a DVD copy of **The Response** located at <http://www.theresponsemovie.com/>
2. Review the following terms with your students:
 - a. Due process
 - b. Fourth Amendment
 - c. Fifth Amendment
 - d. Sixth Amendment
 - e. Eighth Amendment
3. Review **The Response-Background Information** handout with students.
 - a. Using **Jigsaw**, have the students read assigned sections of **The Response-Background Information** and then report back to their expert groups.
 - b. **Activity**-Have the students compare and contrast the differences between a criminal court hearing and a Combatant Status Review Tribunal.
4. Provide the following questions to students before they watch ***The Response***.
 - a. *What are the specific ways in which the tribunals differ from a regular criminal court? Are these differences justified?*
 - b. *Why are Unlawful Enemy Combatants treated differently than accused criminals?*
 - c. *Are the actions of the Combatant Status Review Tribunal constitutional?*
 - d. *What is fair in this situation?*
 - e. *How should the United States government create a proper balance between honoring rights and liberties and protecting our national security?*
5. Pass out the **Q Chart** to students and have them generate questions in the chart as they watch ***The Response***.
6. Based on the information gained from ***The Response***, students will write an essay that argues for or against the Combatant Status Review Tribunals. Students will use specific examples from the background information, the movie, and the follow up discussion to support their argument.



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The Response-Background Information

Habeas Corpus

Habeas Corpus (also known as “The Great Writ”) is one of the fundamental principles of our democracy. Translated from the Latin, it roughly means “present (or show) the body.” In other words, a king (or the executive) can not just grab someone off the street and toss him/her in jail indefinitely without the safety net of an impartial judge taking a look at the case to determine if the accused has been properly imprisoned/detained. In other words, a Writ (i.e. an order) of Habeas Corpus requires that the king/executive has to present the person (i.e. the body) to the neutral judge/fact-finder in order to review the evidence and determine if there is merit to the charge. Our founding fathers felt so strongly about this principle that they purposefully enshrined it in our Constitution. "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. Article I, Section 9. The Writ of Habeas Corpus sits side by side with the Magna Carta as great protections against overreaching executive power.

Recent Developments in Habeas Corpus

In 2005, in an effort to override the Supreme Court’s decision in Rasul, Congress passed the **Detainee Treatment Act (“DTA”)**. The DTA stripped the federal courts of jurisdiction to consider habeas corpus petitions filed by prisoners in Guantanamo, or other claims asserted by Guantanamo detainees against the U.S. government. The Act also limited appellate review of decisions of the **Combatant Status Review Tribunals (CSRT)** and Military Commissions.



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In June 2006, the U.S. Supreme Court decided the case of *Hamdan v. Rumsfeld*. Donald Rumsfeld was the Secretary of Defense at this time and Hamdan was the paid driver of Osama bin Ladin while bin Ladin was in Afghanistan. The Court held that the DTA did not specifically bar the Supreme Court, as opposed to other federal courts, from having jurisdiction. Further, the Court found that the administration did not have congressional authority to set up military commissions that did not comply with the Uniform Code of Military Justice (and the Geneva Conventions). Responding to the Court's decision later in 2006, Congress passed and President Bush signed the **Military Commissions Act ("MCA") of 2006**. This statute authorized the planned military commissions, gave support to past and future determinations made by the **Combatant Status Review Tribunals (CSRTs)**, and stripped federal courts (including the Supreme Court) of jurisdiction to hear any habeas corpus cases filed by detainees, including those that were pending at the time Congress enacted the MCA.

On June 12, 2008, the Supreme Court, in the case of *Boumediene v. Bush*, responded for the last time. In an historic ruling, the Court stated in a 5-4 decision that the Military Commissions Act of 2006 was unconstitutional. The Court held that the MCA improperly limited detainee's access to judicial review (habeas corpus) because the U.S. holds "de facto" control over Guantanamo (i.e., the U.S. military has held physical and real control over the base facilities, and has for more than 100 years).



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Geneva Conventions

The Geneva Conventions evolved in the course of the 20th century in response to the massive global armed conflicts of World Wars I and II. Along with the evolution of the **Uniform Code of Military Justice (UCMJ)** in the United States, the Geneva

Conventions recognized that even in the context of war and the military, rules and process apply. For the first two years of the “war on terror” (2002-04), the Bush Administration’s position was that it was not required under international law to provide any legal process to detainees. The Administration held that because the suspects were not part of an organized and uniformed national military force, they were not entitled to the protections of the Geneva Conventions. In effect, the Bush Administration held that the President, as Commander-in-Chief, could hold these “unlawful enemy combatants” until the “war on terror” was over.

Uniform Code of Military Justice (UCMJ)

Please click on the link below to access the complete Uniform Code of Military Justice (UCMJ) based on the Report of the Committee on a Uniform Code of Military Justice to the Secretary of Defense (1949).

http://www.loc.gov/rr/frd/Military_Law/pdf/morgan.pdf

Preempting Terrorism

After the September 11, 2001 terrorist attacks on New York City, the Pentagon and over the skies of Pennsylvania, President George W. Bush responded with the “war on terror.” On September 18, 2001, Congress quickly passed the **Authorization for**



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the Use of Military Force (“AUMF”) a brief directive that authorized the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States...” A key element of this emerging authority was the definition of a class of "Unlawful Enemy Combatants."

Unlawful Enemy Combatants

The Bush administration decided that terrorism suspects around the globe would be considered “unlawful enemy combatants.” In turn, thousands of suspects were rounded up in Afghanistan, Pakistan, and Iraq, as well as Indonesia, Bosnia and even in the United States. While some were captured on the battlefield, most were not. Frequently, bounties were paid for alleged enemies. Journalists and researchers have analyzed and reported on the bounty system and its outcome. The Administration argued that this was a new type of war where the battlefield was everywhere and the Geneva Conventions, which had previously governed the laws of war, did not apply.

Detainee Representation

Participants in a **Combatant Status Review Tribunal (CSRT)** would include the Court Recorder, a military officer whose job it was to keep the audio record (*these hearings were never filmed), swear in the witnesses, present the materials and answer any questions the tribunals members might have; a translator for the detainee (most detainees did not speak English); and the detainee’s Personal



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Representative. This personal representative is a military officer who, by law, is not an attorney and whose responsibility is to assist the detainee with the process of how the **Combatant Status Review Tribunals (CSRTs)** work. As this person is not a lawyer, there is no confidentiality between the detainee and the Personal Representative. Anything the detainee says to his Personal Representative must be relayed to the court.

Combatant Status Review Tribunals (CSRT)

The **Combatant Status Review Tribunals (also known as CSRTs)** were established on July 7, 2004 (less than two weeks following the Supreme Court's decisions in *Rasul* and *Hamdi*) by order of the U.S. Department of Defense. The first **Combatant Status Review Tribunal (CSRT)** hearings began later that month. These were not judicial hearings, but administrative panels to determine solely if each detainee had been properly classified as an (unlawful) enemy combatant. Within six months, over 550 **Combatant Status Review Tribunals (CSRTs)** were held.

These non-public hearings were conducted by three military officers who served as the tribunal. They would review the non-classified material with a detainee. Under the rules of the **Combatant Status Review Tribunals (CSRT)**, the detainee was not permitted to see the classified evidence against him. Nor was he permitted to question (cross-examine) the witness(es) against him. Nor was he allowed to have an attorney (whether civilian or military). The U.S. government reasoned that the classified information was important and should not fall into enemy hands [ergo a key element of finding the right balance between national security and



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international standards of individual rights]. At the conclusion of the administrative hearing with the detainee, the three military officers/tribunal members would deliberate on the hearing. During this deliberation, they would have an opportunity to review portions of the classified material against the detainee.

Statistics: Guantanamo by the Numbers

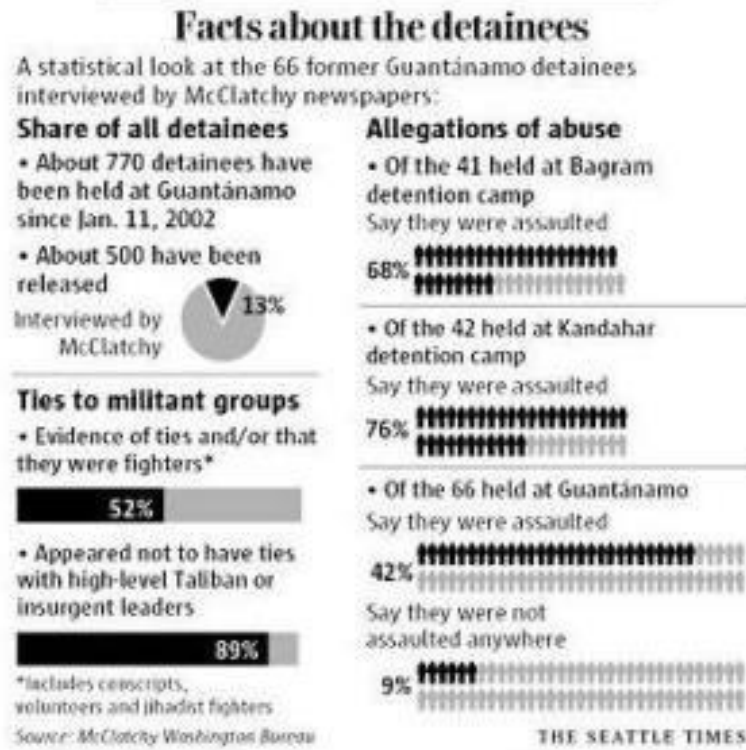
Close to 800 of these suspected enemy combatants were blind-folded, bound, and taken by plane to the Guantanamo Bay Naval Base in Cuba. Guantanamo Bay lies on the southeastern edge of Cuba. The United States won control of this 45 square mile harbor area over 100 years ago as part of the victory in the Spanish-American War.

Under the terms of the lease signed with the newly installed Cuban government at the time, the U.S. could maintain control over the naval base in perpetuity for \$2000.00 per year in gold coins. A 1934 treaty between the U.S. and Cuba reaffirmed the lease, modified the annual lease payment from coins to \$4085.00, and reaffirmed the permanency of the lease unless both governments agreed to break it or the U.S. abandoned the base property. (Since taking control of Cuba, Fidel Castro has only cashed one U.S. check).



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Counterinsurgency Doctrine

President Obama was elected in 2008, inheriting the laws and policies established post-9/11. During the presidential campaign he promised to close Guantamo to "restore the standards of due process and the core constitutional values that have made this country great even in the midst of war, even in dealing with terrorism."

On his second full day in office, January 22, 2009, President Obama promised to return America to the "moral high ground" in the war on terrorism. The president signed an **Executive Order** declaring that the detention center would be closed within one year. (A second Executive Order signed the same day formally banned torture as an acceptable interrogation technique). President Obama said



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that Guantanamo “has damaged our national security interests and become a tremendous recruiting tool for Al Qaeda.” (Newsweek, Jan. 6, 2010)

The year passed, January 22, 2010 has come and gone, but Guantanamo remained open as of the spring of 2010. Congress has refused to provide any money for detainees to be transferred to the U.S. for trial or detention. President Obama has stated that he still intends to close Guantanamo, but no firm date has been set. His administration did complete a case-by-case review of every remaining detainee. (At this time there are less than 200 men still being held indefinitely).

Terrorism Prosecutions

Combatant Status Review Tribunals (CSRTs) determine status, not guilt or innocence with respect to a crime. Only a few Guantanamo detainees have ever been charged with any type of crime – whether a war crime, an international crime, or a crime under any U.S. law. Rather, the detainees have been kept in detention at Guantanamo due to their status as (unlawful) enemy combatants.

Question Creation Chart (Q-Chart)

	Is	Did	Can	Would	Will	Might
Who						
What						
Where						
When						
How						
Why						

Directions: Create questions by using one word from the left hand column and one word from the top row. The farther down and to the right you go, the more complex and high-level the questions.