

# Detention dilemma: Suggestions for Guantánamo

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President Obama took a crucial step toward reestablishing the nation's moral bearings with his executive order outlawing torture (see [news story](#) in this issue). His order calling for the closing of the Guantánamo Bay prison in Cuba, where scores of terrorist suspects have been held without trial, was another important step toward demonstrating that the nation will not sacrifice human rights in the war on terrorism.

But the Guantánamo closing is only symbolic. Obama gave his administration a year to close down the facility, and in that time he must decide what to do with current and future detainees suspected of engaging in terrorism.

That decision will not be easy, at least not for anyone who recognizes that the war on terrorism is not a conventional war and who believes that there really are dangerous terrorists out there. In a conventional war, there is no doubt about the identity of captured enemy soldiers—you can tell them by their uniforms. Nor is there doubt about the duration of their captivity—they are held as prisoners until the formal end of hostilities. But that analogy doesn't work in this case, since the terrorists don't wear uniforms, and the fight against terrorist activity will not end with any formal surrender.

If the terrorism suspects aren't prisoners of war, what are they? Some would say they should be treated like any other crime suspect—tried in civilian criminal court, where they can be presented with the evidence against them and allowed to defend themselves with the help of lawyers. If they have committed a crime, then they will be sentenced to jail; if not, they should be released.

But the analogy to crime suspects doesn't work either. The evidence that the government would have against terrorism suspects is not the sort that is likely to be admitted in regular courts. And a public airing of the evidence would reveal national security secrets and undermine the nation's intelligence operation.

So what do we do with current and future terrorism suspects? President Bush's response was to declare that the president has the power to detain indefinitely people suspected of a connection to terrorism, without any charges being filed, without a court hearing and without benefit of a legal consultant. That approach invites abuse and (as the Supreme Court has ruled) ignores the right of habeas corpus—the right to challenge unlawful detention—one of the most fundamental safeguards of liberty.

The best proposed solution to the dilemma would be to establish a national security court, authorized by Congress and administered by civilian federal judges. Such a court could establish rules of evidence and criteria for detaining suspects that are appropriate to the war on terrorism, and it could allow for appeal within the system. Such a court would take decisions on detention out of the hands of the executive branch (and the Defense Department) alone.

There is no perfect way to balance liberty and security, but given the reality of the terrorist threat, and in light of the previous administration's cavalier attitude toward protecting liberty, a system of this sort would have the best chance of protecting rights and deserving the support of the American people.