

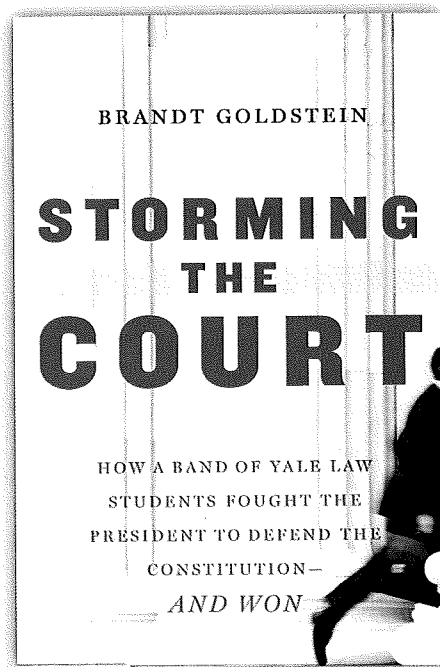
## Brandt Goldstein's *Storming the Court*

"HUNGER STRIKE CONTINUES AT GUANTANAMO BAY," "U.S. Denies Guantanamo Bay Prison Abuse," "Guantanamo Bay Prisoners Seek U.S. Court Hearings"—these are just some of the headlines published in recent months regarding the alleged maltreatment of terror suspects being housed at Guantanamo Bay, Cuba, many of whom have been held for three years without charge. Most were captured in the Afghanistan war, suspected of ties to al-Qaeda or the ousted Taliban regime that sheltered the terrorist network. Such is the case in 2005. But in 1992, those faced with similar circumstances were mostly from Haiti, and their only crime was being HIV-positive. In Brandt Goldstein's *Storming the Court* (Scribner, September 2005; Hardcover: \$26), a group of Yale University law students sue the government to seek freedom for these Haitians, facing a myriad of legal obstacles along the way.

### Fleeing Repression

The military coup in Haiti forms the backdrop—the populist leader, Jean Bertrand Aristide, and his government are overthrown. The new government brutally represses Aristide supporters, and thousands of Haitians flee. The U.S. government enacts a policy of stopping any vessels headed for Florida, taking custody of the passengers, and destroying the boats. The government does not want to let the refugees in for fear of HIV, violence, encouraging a mass exodus from Haiti, and (some say) racism. So INS returns them to Haiti or, when later forced by a court order and media pressure, holds them at the U.S. military base on Guantanamo Bay.

Goldstein explains complicated legal issues crisply for the educated reader and with almost enough detail for the curious immigration attorney. Goldstein describes INS's argument and how the agency fought to keep the right to due process from being applied outside the United States, in effect, keeping the Haitians from exercising any right to counsel. Service officers conducted cursory asylum screening interviews, which resulted in the return of most Haitians to their country. INS also maintained that Haitians who test positive for HIV cannot enter the United States, even if they do appear to qualify for asylum.



### A Compelling Story

The author follows a group of equally passionate and committed Yale law students who litigated *Haitian Center Council v. McNary*, 969 F.2d 1350 (2d Cir. 1992) (*rev'd sub nom Sale v. Haitian Ctr. Council*, 509 U.S. 155 (1993)), along with an ambitious, brilliant professor with a deep sense of honor and obligation stemming from his family's flight from Korea as refugees,

and a large New York law firm that offers the students space and a partner's time pro bono. The legal intricacies serve as a primer on civil procedure, litigation strategy, and asylum law—namely, in which court to file, what issues are precluded by *res judicata*, how international law interacts with U.S. asylum law, whether the U.S. Constitution only provides rights to asylum-seekers once they have reached U.S. soil, and how to frame arguments before the U.S. Supreme Court to target centrist justices.

International human rights law comes into play as the students argue that INS could not return anyone to a situation where he or she is likely to be persecuted—the principle of *nonrefoulement*. Further, the students assert that if the United States took custody of the Haitians, it must provide care to meet basic humanitarian norms. INS fights the students on every level. The students painstakingly sue to gain access to Guantanamo to interview detainees to document cases where the Haitian military tortured or killed those returned. The students also document the agonizingly poor conditions there—particularly toward the end when the remaining HIV-positive detainees had compromised immune systems, and the medical facilities could not contain the spread of opportunistic infections or deal with the myriad side effects of AIDS. Finally, the students obtain a video of the U.S. military forcefully suppressing the weakened detainees as they protest their indefinite detention.

The author carefully walks the reader through the story with numerous interviews and extensive research (meticulously footnoted). However, at times, the book reads like the transcription of a series of interviews rather than an integrated whole. Some more insights from the government could have added balance. →

The students eventually win release of the remaining detainees. Interestingly, the Clinton Administration feels the need to oppose the release to placate Congress and sends a lower-level attorney to argue the case for the government rather than the Solicitor General. It was an interesting bit of politics that had tremendous costs in litigation. In the end, the Clinton Administration saves face with the restrictionists by allowing the detainees into the United States in the face of a court order.


But the story does not end there. Through various legal maneuvers, the case does not set a precedent and further arguments before the Supreme Court fail. The epilogue of the advance copy takes the story through May 2005, as litigation continues regarding the status of current detainees on Guantanamo, with the current Bush Administration arguing for trials by a military panel without attorneys

and denying any charges that the U.S. Army provides inadequate treatment and medical care.

### Unfounded Fears

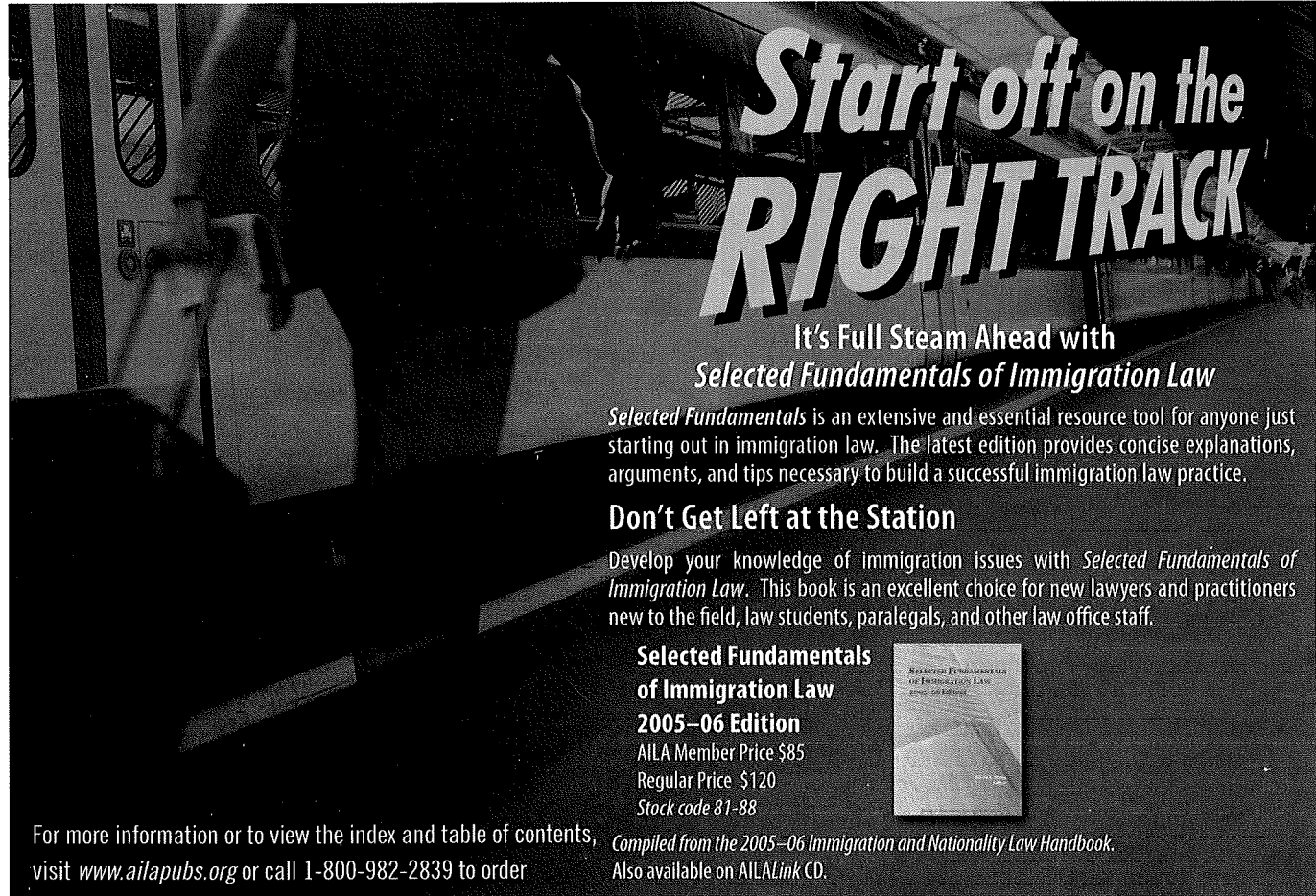
As Goldstein writes, if a group of pro-democracy activists had risked their lives to flee from the Soviet Union across dangerous seas to American soil, they might very well have received a parade on Fifth Avenue. Yet, the Haitians provoked fears—the same fears that have led to successive waves of restrictionism throughout our history: that immigrants bring disease, that they are violent, that allowing them into the country will lead to a mass exodus that will overwhelm our ability to integrate them. The book argues clearly that quality medical care and education can control disease, that violence tends to worsen when people feel helpless, and that our economy and society has shown time and again that we

can integrate new immigrants. See, as one of many examples, the Economic Focus column in the July 9, 2005, issue of *The Economist*, reviewing a study of how the United States absorbed 125,000 Mariel Cubans in 1980.

On vacation recently, I read John Grisham's latest, *The Last Juror*, a wonderfully told story of racism, legal intrigue, and politics. The epilogue states that the author "took great liberty" with the facts "to move [the] story along." Brandt Goldstein had no need to change the facts for dramatic impact—*Storming the Court* narrates reality and tells a powerful story. 

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*Articles in ILT do not necessarily reflect the views of the American Immigration Lawyers Association.*



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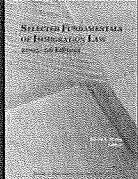
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