



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

Republican Witch-hunters Embrace Dictatorship **by Andy Worthington**

Are there no depths to which conservatives will not sink in their ardent embrace of the war on terrorism? The latest monstrosity from the right came courtesy of Keep America Safe, a toxic organization headed by Liz Cheney, the daughter of former Vice President Dick Cheney, who recently put out a disgraceful TV ad, “Who Are the Al-Qaeda Seven?” The ad questioned the loyalty and patriotism of nine lawyers in the Justice Department who had represented prisoners at Guantánamo before joining the DoJ.

To be fair, Liz Cheney’s ad has backfired badly, drawing the ire not only of those on the left, but also of heavyweight conservatives, nineteen of whom [signed a statement](#) last week denouncing it, declaring, “We consider these attacks both unjust to the individuals in question and destructive of any attempt to build lasting mechanisms for counterterrorism adjudications,” and adding that the attacks on the lawyers “undermine the Justice system more broadly,” by “delegitimizing” any system in which accused terrorists have lawyers, whether that system is federal court trials or military commissions.

Those who signed the statement included former Solicitor General Ken Starr, former Deputy Attorney General Larry Thompson, former White House lawyer Brad Berenson, John Bellinger, the former legal adviser to the National Security Council and the State Department, and two former detainee policy officials in the Bush administration, Matthew Waxman, and Charles “Cully” Stimson, who, ironically, was himself forced to resign from the DoD in 2007 after starting a similar witch-hunt against corporate law firms whose lawyers represented prisoners at Guantánamo.

Interestingly, another former Bush official who signed the statement is Daniel Dell’Orto, the acting general counsel for the DoD after [the resignation of William J. Haynes](#) in 2008. Dell’Orto was close to those who established the Bush administration’s torture regime as the deputy to Haynes, who was [one of Dick Cheney’s key “war council” lawyers](#), along with David Addington, John Yoo, Alberto Gonzales, and Timothy Flanigan.

Further criticism came from the conservative author and lawyer Paul Mirengoff, who “contrast[ed] what Cheney is doing to the anti-communist crusades launched by Sen. Joseph McCarthy,” as the [Huffington Post](#)’s Sam Stein explained, following a call to Mirengoff, and from Peter D. Keisler, an assistant attorney general in the Bush administration’s Justice Department, who told the [New York Times](#) that it was “wrong” to attack the lawyers, and that “There is a longstanding and very honorable tradition of lawyers representing unpopular or controversial clients.”

Moreover, in the [Wall Street Journal](#) on March 10, former Attorney General Michael Mukasey wrote that Keep America Safe’s argument was “both shoddy and dangerous.” Mukasey pointed out that “a lawyer who undertakes to represent someone whom his neighbors — perhaps rightly — revile as a threat to the public welfare is obligated to bring his talents to bear just as forcefully in favor of that client as he would if he were representing Capt. Alfred Dreyfus, the French artillery officer who in 1895 was found guilty of treason and sent to Devil’s Island for little more than being Jewish.”

This is all very encouraging, of course, because the only people who can legitimately complain that lawyers who worked on behalf of prisoners at Guantánamo shouldn’t work for the Justice Department and are, essentially, traitors to their country, are those who believe that time should have stopped before the Supreme Court [ruled in June 2004](#) that the prisoners had habeas corpus rights; in other words, the right to ask why they were being held.

The only reason that the Supreme Court made this decision was because prisoners in Guantánamo who stated that they had been seized by mistake had no way of challenging their detention. This was because the Bush administration had created a legal black hole at Guantánamo, holding men (and boys) neither as prisoners of war, protected by the Geneva Conventions, nor as criminal suspects, to be put forward for federal court trials on charges related to terrorism, but as “illegal enemy combatants,” a novel category of human being with no rights whatsoever.

Those who worked on the prisoners’ cases may have been doing so for reasons that some conservatives find distasteful, but the blunt truth is that those who took on Guantánamo cases were — and still are — working as part of a fully functioning civilized country that respects the rule of law, and those who regard such actions as a sign of fraternizing with the enemy are, if not just opportunistic leeches, playing the fear card, the kind of deluded people that America can do without, apologists for the dictatorial powers seized by President Bush that would have been anathema to the Founding Fathers.

Sadly, however, much of the damage wrought by Liz Cheney and her colleagues will never be undone. In a country where a large percentage of the population is permanently whipped up into a frenzy regarding the Obama administration’s response to terrorism by opportunistic broadcasters and lawmakers, who have seized on national security issues as a winning card in a

relentlessly negative campaign, it's probable that many of the conservative voices criticizing Liz Cheney will have been ignored.

Even more worrying, however, is the fact that, despite this backlash in defense of America's foundation as a country based on the rule of law, other Republican lawmakers continue to insist that they should be dictating the Obama administration's policies, even though their proposals smack of the kind of hysterical overreaction that got us in this mess in the first place.

President Obama [made a terrible mistake](#) last May when he accepted calls to revive [the military commission trial system](#) for Guantánamo prisoners, and also signaled his willingness to [continue holding other men indefinitely](#) without charge or trial. A government driven more by principles and [less by pragmatism](#) would have insisted, as Obama suggested on taking office, that the only acceptable ways of dealing with the prisoners was to put them forward for federal court trials, or to release them.

This failure has given succor to those who are desperate to come up with novel ways of dealing with terrorist suspects that would have been far more difficult to launch had the administration acted more decisively. When Attorney General Eric Holder [announced in November](#) that five men — including Khalid Sheikh Mohammed — would face federal court trials for their alleged involvement in the 9/11 attacks, he was following a course that reflected the best of America's legal traditions, and, as he recently told Jane Mayer of the [New Yorker](#), “I don't apologize for what I've done. History will show that the decisions we've made are the right ones.”

Nevertheless, by also reviving the military commissions, the administration allowed itself to be ambushed by critics who stirred up opposition to the decision to hold federal court trials, which has led to a ludicrous situation in which Sen. Lindsey Graham, in some unholy alliance with Obama's Chief of Staff Rahm Emanuel (who “walked out” the door whenever Guantánamo was mentioned, according to a source cited by Mayer) has been [pushing Obama](#) to [reconsider the decision](#) to try the men in federal courts.

Sen. Graham is not the only one pushing at Obama's self-inflicted vulnerability on Guantánamo and related issues. Since the failed plane bomber, Umar Farouk Abdulmutallab, was apprehended on Christmas Day, countless critics have charged headfirst into the lawless space inhabited by Liz Cheney and Keep America Safe, arguing that Abdulmutallab should not have been interrogated by the FBI, read his rights, and charged in a federal court, and, in some cases, arguing that he should specifically have been [waterboarded](#) and sent to Guantánamo.

This, sadly, is no fringe activity reserved for lunatics, and just last week, Sen. John McCain and Sen. Joe Lieberman introduced a bill, the “Enemy Belligerent Interrogation, Detention and Prosecution Act of 2010” ([PDF](#)), in which they proposed to ban civilian trials for those designated by the federal government as “unprivileged enemy belligerents.” The bill defines an “unprivileged enemy belligerent” as “an individual who (a) has engaged in hostilities against the United States or its coalition partners; (b) has purposely and materially supported hostilities

against the United States or its coalition partners; or (c) was a part of al-Qaeda at the time of capture,” meaning that it could easily extend to anyone who allegedly supports hostilities against the U.S. — including, it would seem, American citizens.

Moreover, the bill proposes stripping these “unprivileged enemy belligerents” of any of the legal rights usually afforded those accused of crimes in the United States, proposing that they should be taken into military custody for the purposes of interrogation and determination of their status, with the possibility that, after interrogation and determination of status, some might be designated as “high-level detainees.” In addition, the bill proposes holding these men “for the duration of hostilities,” and, if desired, putting them forward for trials by military commission.

In a ludicrously overblown [press release](#), Sen. McCain ignored all the evidence that Abdulmutallab’s interrogation had provided useful information, stating that the primary reason for introducing the legislation was “to ensure that the mistakes made during the apprehension of the Christmas Day bomber, such as reading him a Miranda warning, will never happen again and put Americans’ security at risk.”

We are, I suppose, fortunate that Sen. McCain did not win the 2008 presidential election, as this bill so shockingly echoes almost every vile innovation that the Bush administration established in its “war on terror.” However, it is depressing that, while Liz Cheney has provoked some Republicans to remember that America already has laws for dealing robustly and fairly with terrorist suspects as part of its criminal justice system, other Republicans are still intent on undermining history and America’s self-image by insisting that terrorists are warriors, ignoring the military commissions’ [lamentable history](#) of dealing with terrorist suspects, ignoring the federal courts’ [successful history](#) of dealing with those very cases, and, in the case of Senators McCain and Lieberman, apparently believing that resuscitating the darkest years of modern American history will serve any useful purpose at all.

Like Liz Cheney, McCain and Lieberman seem to have forgotten that dictators or those who support them, rather than elected officials who are obliged to uphold the U.S. Constitution, are the only people who believe in holding people in arbitrary detention, neither as prisoners of war nor as criminal suspects, but as “illegal enemy combatants” — or in 2010’s remake, “unprivileged enemy belligerents” — who can be held indefinitely, and interrogated in conditions that, when last tried out in the wake of the 9/11 attacks, led inexorably to the torture that John McCain used to deplore.

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America’s Illegal Prison](#) (published by Pluto Press) and serves as policy advisor to the Future of Freedom Foundation. Visit his website at: www.andyworthington.co.uk.