

By Andy Worthington

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“Some issues,” the [New York Times](#) declared in an editorial on June 25, “require an unwavering stand. Preserving the role of law enforcement agencies in stopping and punishing terrorists is one of them. This country is not and should never be a place where the military dispenses justice, other than to its own.”

Fine words, indeed, although the *Times* itself has, over the last ten years, in common with most, if not all of the American establishment, failed to thoroughly and repeatedly condemn efforts, first by George W. Bush, and then by the Obama administration, to hold military trials for the mixed bag of soldiers and terrorist suspects held at Guantánamo.

This is where the rot set in, for which everyone in a position of authority, whether in politics or the media, bears responsibility. However, the failure to stem the poison flowing from this wound to the established order — in which terrorists are criminals, and soldiers are not terrorists — has led to an outrageous situation in which lawmakers (both Republicans and Democrats) have decided that the aberrations introduced by the Bush administration, which should, by now, have been thoroughly discredited, were, instead, just the first steps in the creation of an all-encompassing military state.

In this dystopian future, coming to America within months, if lawmakers are successful, anyone

regarded as a terrorist must be held in military detention, where, if it is planned, they may be subjected to abuse with impunity, and, if required, held forever without a trial and without any rights.

This was the aberration initially dreamt up by Bush and his close advisors for their “War on Terror,” and implemented at Guantánamo, throughout the war zones in Afghanistan and Iraq, and around the world in [a network of secret prisons](#) , but although it should have died as an enduring concept when President Obama took office, it took less than a year for supporters of military detention for terror suspects to start proposing its continuation and expansion, suggesting that no foreign terror suspect should ever receive a federal court trial.

None of the cheerleaders for military detention cared that, throughout the eight years of the Bush administration, the detention program in the “War on Terror” was actually a failure as well as an aberration, which had [struggled to try just three men](#) , because the correct venue for terrorist trials was in federal court, where hundreds of successful trials took place.

Instead, when, in November 2009, Attorney General Eric Holder [announced a federal court trial](#) in New York for Khalid Sheikh Mohammed and four other men accused of involvement in the 9/11 attacks, the cheerleaders for military detention began mobilizing against the trial, starting a successful backlash that encouraged the administration first to freeze the proposal, and then, this year, to [officially abandon it](#) in favor of a military trial at Guantánamo.

This was a disgrace — and [Eric Holder knew it](#) , if no one else — but what no one in the administration foresaw was how Obama’s steady capitulation to pressure would embolden his critics to make ever more outrageous demands. Six weeks after the 9/11 trial announcement, when Umar Farouk Abdulmutallab, a Nigerian, was apprehended in Detroit after trying — and failing — to blow up a plane with a bomb in his underwear, the cries went up for him to be sent to Guantánamo and subjected to waterboarding, not read his Miranda rights, interrogated non-coercively by FBI agents, and tried in a federal court.

The critics did not have their way, although they did persuade the ever-compliant President to abandon releasing any more cleared Yemenis from Guantánamo, [issuing a temporary moratorium](#) that is still in place a year and a half later. This has contributed enormously to the stalemate at Guantánamo

— where 171 men remain, even though

[89 have been approved for transfer](#)

— and has created ill-feeling in Yemen, where the President has, effectively, judged all Yemenis as potential terrorists.

Even more crucially, the empowerment of Obama's critics led inexorably to further attempts to dictate policy. There had been attacks on the President's power before, through legislation preventing any prisoner from being [brought to the US mainland for any reason](#) except to face a trial, and through moves to prevent the President from closing Guantánamo by [buying a prison in Illinois](#) and moving the prisoners there. However, in December last year lawmakers went further than before.

In [passages inserted into the annual defense authorization bill](#), lawmakers banned the use of funds to bring any Guantánamo prisoners to the US mainland — even to face trials — and specifically mentioned Khalid Sheikh Mohammed by name. They also banned the use of funds to buy a prison on the US mainland for the Guantánamo prisoners, and prevented the President from releasing any prisoner unless the defense secretary signed off on the safety of doing so. This provision was designed specifically to prevent the release of any prisoner [cleared by the President's own interagency Guantánamo Review Task Force](#) to countries regarded by lawmakers as dangerous, including Afghanistan, Pakistan and Yemen.

These passages were an unwarranted and unconstitutional assault on the President's powers, as [even Conservative commentators recognized](#), but Obama again failed to challenge his critics. This reinforced them to such an extent that, in May, when dealing with this year's defense authorisation bill, lawmakers in the House of Representatives responded to the news of [the assassination of Osama bin Laden](#) not by declaring an end to the “War on Terror,” but by insisting that the basis for that war — the Congress-approved [Authorization for Use of Military Force](#), passed the week after the 9/11 attacks — should be [renewed and made even more sweeping](#).

They also renewed their attacks on the President's ability to transfer prisoners to the US mainland to face trials, his right to release prisoners to other countries without jumping through hoops, and his right to review prisoners' ongoing detention without Congressional interference, according to his March 7, 2011 Executive Order [authorizing the indefinite detention without](#)

[charge or trial](#)

of 47 of the remaining

Guantánamo prisoners. That order had already enraged those on the other end of the political spectrum, who recognized that it was Obama's official extension of the heart of Bush's own discredited detention policies.

Also included in the attacks was, for the first time, a fundamental assault on the President's right to prosecute foreigners seized in connection with terrorist offences in federal court, also without interference from Congress.

The problems with the defense authorisation bill first came to light at the end of May, when the President's advisors [finally responded](#) to "provisions that challenge critical Executive branch authority" by stating that, "If the final bill presented to the President includes these provisions ... the President's senior advisors would recommend a veto."

That was important, but although the endless expansion of the "War on Terror" was dropped as an aim, as a result of [concerted pressure from opponents](#), the Senate Armed Services Committee was fundamentally undaunted, and last month unveiled its plans for the mandatory military detention of terrorist suspects. As the

[New York Times](#)

explained in its dissenting editorial:

Republicans and Democrats are championing bills to further militarize the prosecution of terrorists, beyond anything even President George W. Bush proposed. They want Americans to believe the legislation will keep the country safer. In fact, these bills could end up tying the hands of FBI agents and other law enforcement officials trying to disrupt terrorist plots. They are likely to deprive prosecutors of their most powerful weapons in bringing terrorists to justice. And they come perilously close to upending the prohibition, which dates back to Reconstruction, against the military's operating as a police force within the United States.

The *Times* also noted, correctly, that there was "no sign" that the White House had "tried to stop" the House of Representatives from "passing a particularly awful version of these bills, which would move most, if not all, terrorism cases from civilian courts to military tribunals," or had "tried to stop" the Senate Armed Services Committee "from approving only a slightly better one." The editors also had no time for complaints by Democrats on the Committee, who include Sen. Carl Levin, that "they defeated far worse proposals," and made it clear that "President

Obama must push the Democratic leadership to amend the Senate bill — and make it clear that he will veto any bill that turns over proper law enforcement functions to the military.”

While this situation continues to fester, with only the threat of a veto standing in the way of a dangerously militarized state, another development — the uproar over the administration’s proposal to try an alleged Somali terrorist, Ahmed Abdulkadir Warsame, in federal court in New York — has kept the advocates of military detention busy, even though the Warsame case actually raises a whole set of other troubling issues.

Before his arrival in New York to face a trial, Warsame had been held on a ship, in military custody, since April 19. As a result, the most troubling question ought to concern this two-month period off the books, whereas the military detention crowd has obsessed instead about how President Obama has been involved in what 23 Senators, led by John McCain and Mitch McConnell, [described last week in a letter](#) as an action that “appears to be a circumvention of the clear intent of many in Congress that terrorists captured abroad under the Authorization for Use of Military Force should not be brought into the United States for trial.”

Perhaps this will play into the hands of the Obama administration, in which federal court trials are seen as the correct venue for terrorist trials, even though Obama is himself responsible for having revived the military trials at Guantánamo in the first place, when [he should have left them alone](#). This latest development — the letter from the 23 Senators — certainly doesn’t show lawmakers in a favourable light, as they continue, obsessively, to flog their pet topic.

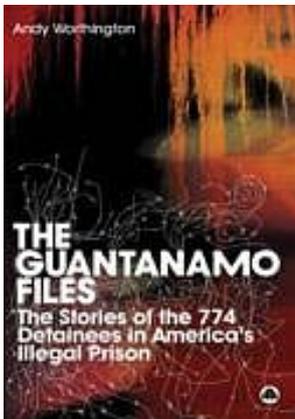
If people are paying close attention, they may finally realize how deranged the advocates of military detention sound, although they should, of course, have been wary in the first place of the military being given powers that correctly belong to the law enforcement agencies, and especially of proposals that anyone accused of terrorist activities in the US must be held in military detention.

That way extreme danger lies — very possibly of the kind that led to the US “enemy combatant” [Jose Padilla losing his mind](#) in a US military brig during his ordeal of solitary confinement and torture between 2002 and 2005 — and if that is understood, then the correct focus in the Warsame story might become clear. That is to ask, ten years after [ships were used to hold prisoners](#) seized after the invasion of Afghanistan, at the start of the so-called “War on Terror,” why a ship

has now been used to hold, for several months, a prisoner seized in connection with another conflict — in Somalia — in which the United States is not even officially involved.

In addition, it is also worth asking why, two and a half years since the end of the Bush administration, we are hearing once again about how a prisoner held outside the law had his first interrogations sessions — conducted under unspecified circumstances — followed by non-coercive interrogations by FBI agents, which were designed to secure evidence for a federal court trial. As the [Associated Press](#) described it, Warsame “was interrogated at sea by intelligence officials,” and it was only later that the FBI stepped in and “began the interrogation from scratch, in a way that could be used in court.”

Under Bush, the follow-up interrogators, after the torture had taken place, were [openly referred to as “clean teams”](#) — as they were in February 2008 when Khalid Sheikh Mohammed and his alleged co-conspirators, held for years in secret CIA torture prisons, were [first put forward for military trials](#). If we are back in the dirty world of torture, that is even more chilling than the persistent attempts by lawmakers to establish a militarized state.



Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press, distributed by Macmillan in the US, and available from Amazon — click on the following for the [US](#) and the [UK](#)) and of two other books: [Stonehenge: Celebration and Subversion](#) and [The Battle of the Beanfield](#)

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, updated in June 2011, details about the new documentary film, “

[Outside the Law: Stories from Guantánamo](#)

” (co-directed by Polly Nash and Andy Worthington,

[on tour in the UK throughout 2011](#)

, and available on DVD

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