

# The Enduring Shame of Guantanamo

**From the Archive:** In his State of the Union address Tuesday, President Trump announced that he had signed an executive order to keep the U.S. detention facility at Guantanamo Bay open. On this occasion, we republish an article from 2012 by Nat Parry marking Guantanamo's ten-year anniversary.

By Nat Parry (First published on Jan. 12, 2012)

When the Guantanamo prison camp, originally dubbed by the U.S. military Camp X-Ray, opened in January 2002, the United States came under international criticism that was nearly unprecedented in its intensity.

Some of the loudest complaints came from the staunchest U.S. ally, the United Kingdom, where three cabinet ministers Robin Cook, Patricia Hewitt and Jack Straw expressed concern that international agreements about the treatment of prisoners of war were being breached. The UN High Commissioner for Human Rights, Mary Robinson, also objected to the camp and called on President George W. Bush's administration to follow the Geneva Conventions.

In a Jan. 19, 2002, column in the British Independent, Robinson argued that because the Afghanistan conflict was of an international nature, "the law of international armed conflict applies." She took issue with the administration's assertion that the prisoners were "unlawful combatants" and thus outside the protections of the Geneva Conventions.

European Union foreign policy chief Javier Solana said that despite the Sept. 11 atrocities, "changing our values and our way of life would be terrorism's first victory."

Amnesty International expressed concern about the tactics being used and the secrecy surrounding the camp. "Keeping prisoners incommunicado, sensory deprivation, the use of unnecessary restraint and the humiliation of people through tactics such as shaving them, are all classic techniques employed to 'break' the spirit of individuals ahead of interrogation," the human rights group said.

The International Committee of the Red Cross – in an unusual deviation from its practice of not publicly criticizing detaining governments – said the United States might have violated Geneva Convention rules against making a spectacle of prisoners by distributing pictures of the detainees being subjected to sensory deprivation, which were published worldwide.

British human rights attorney Stephen Solley said the treatment of the suspects

was “so far removed from human rights norms that it [was] difficult to comprehend.”

Seven years later, just two days into his administration, President Barack Obama’s announcement that he would close the Guantanamo camp was greeted with international praise equally intense. An Executive Order Obama signed on Jan. 22, 2009, seemed to unambiguously mandate the closure of Guantanamo within a year:

“The detention facilities at Guantanamo for individuals covered by this order shall be closed as soon as practicable, and no later than one year from the date of this order. If any individuals covered by this order remain in detention at Guantanamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.”

Michele Cercone, spokesperson for the European Union Justice and Home Affairs Commission, said at the time that the commission “has been very pleased that one of the first actions of Mr. Obama has been to turn the page on this sad episode of Guantanamo.”

UN High Commissioner for Human Rights Navi Pillay also praised Obama’s Executive Order, saying that it was a good day for the rule of law. “The fact that President Obama has placed such a high priority on closing Guantanamo and set in motion a system to safeguard the fundamental rights of the detainees there is extremely encouraging,” she stated.

“The United States has in the past been a staunch supporter of international human rights law, and this is one of the reasons that the regime that was established in Guantanamo has been viewed as so damaging,” the High Commissioner added.

Now at Guantanamo’s ten-year anniversary and nearly three years after President Obama’s Executive Order there is a palpable sense of disappointment and betrayal from the human rights community. The United States is finding itself on the receiving end of now-familiar criticism of its indefinite detention policies, with human rights organizations and intergovernmental bodies renewing their complaints that for the past ten years, the U.S. has flouted international human rights standards in its practices at the notorious prison camp.

“Human Rights Watch opposes the prolonged indefinite detention without trial of terrorism suspects at Guantanamo Bay and elsewhere,” said HRW in a statement on

Jan. 6. The group reminded the U.S. of its obligations to prosecute terrorist suspects and to compensate detainees who have been wrongly imprisoned and mistreated over the past decade:

“The practice [of indefinite detention] violates U.S. obligations under international law. Human Rights Watch has strongly urged the U.S. government to either promptly prosecute the remaining Guantanamo detainees according to international fair trial standards, or safely repatriate them to home or third countries.

“We have also called for investigations of U.S. officials implicated in torture of terrorism suspects and for adequate compensation for detainees who were mistreated. Human Rights Watch will continue to press for compliance with these obligations. Failure to do so does enormous damage to the rule of law both in the US and abroad.”

On the eve of Guantanamo’s tenth anniversary, Amnesty International said, “Guantanamo has politicized justice internationally by portraying detainees as having no human rights.” Amnesty has described the legacy of the Guantanamo Bay prison as a “decade of damage to human rights” not only in the United States, but across the world.

In a report released on Dec. 16, 2011, Amnesty stated:

“The USA speaks the language of human rights fluently on the global stage, but stumbles when it comes to applying human rights standards to itself. The Bush administration promised to put human rights at the centre of its counter-terrorism strategy, but singularly failed to do so. The Obama administration has promised the same thing, but the USA continues to fall short of this commitment, despite what were undoubtedly positive initial steps in the right direction.”

“From day one,” said Amnesty, “the USA failed to recognize the applicability of human rights law to the Guantanamo detentions.”

Ambassador Janez Lenarcic, the Director of the Organization for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (ODIHR), also expressed dismay over the failure to close the Guantanamo facility.

“Universal human rights standards require that the detention of terrorist suspects shall be accompanied by concrete charges and the persons detained under these charges shall be immediately informed of them and brought before a competent judicial authority,” Lenarcic said.

In a press release, ODIHR reminded the United States of its OSCE obligations:

“As a participating State of the OSCE, the United States has committed itself to respect human rights in the fight against terrorism and to ensure the right to a fair trial within a reasonable time before an independent and impartial tribunal. In the OSCE Bucharest Document of 2001, participating States expressed their determination to protect their citizens from security challenges such as terrorism ‘while safeguarding the rule of law, individual liberties, and the right to equal justice under law.’”

Lenarcic regretted that the practice of indefinite detention without trial has been codified into U.S. law with the recent adoption of the 2012 National Defense Authorization Act (NDAA). He called for a swift closure of the Guantanamo detention center and urged the authorities to prosecute promptly the remaining Guantanamo detainees in accordance with international fair trial standards, or release them.

Moazzam Begg, a 43-year-old British Muslim who was wrongly detained at Guantanamo for three years until British authorities negotiated his release in January 2005, is more despondent about the prospects of closing the prison camp.

“Gitmo will never close. That is a fantasy,” Begg recently told CNN. “I’ve stopped wishing for it. Even if it closes its doors, it will be only symbolic. The detainees who are still there will go somewhere else to be held and be treated possibly worse, and still not get their time in court. And Gitmo, in a way, will always be open. It will be in my memory, in my head, just like everyone else who experienced that hell.”

Colonel Morris Davis, a chief prosecutor at Guantanamo Bay during the Bush administration, concurs with Moazzam Begg, saying that Obama “doesn’t have the balls” to close Guantanamo.

**Nat Parry is co-author of Neck Deep: The Disastrous Presidency of George W. Bush.**

---

## The Remarkable Story of Fidel Castro

Since Fidel Castro’s death, the mainstream U.S. news media has been on a flashback to the Cold War presenting one-sided denunciations of the “communist dictator,” but there is another side to the story, explains Marjorie Cohn.

By Marjorie Cohn

When Fidel Castro died on Nov. 25 at the age of 90, we lost one of the most

remarkable leaders of the Twentieth Century. No other head of state has so steadfastly stood up to the United States and survived.

In 1959, the Cuban Revolution, led by Castro and Ernesto “Che” Guevara, overthrew the ruthless Fulgencio Batista, who had come to power in a coup d’état. Batista’s government had protected the interests of the wealthy landowners. In order to control the populace, Batista had carried out torture and public executions, killing as many as 20,000 people. During his regime, Batista was supported – financially and militarily – by the United States. Indeed, the U.S. Mafia’s gambling, drug and prostitution operations flourished under Batista’s government.

Led by Castro, the new Cuban government expropriated U.S.-owned property, companies and holdings in Cuba. The United States responded with a punishing economic embargo, which later became a blockade. The CIA attempted unsuccessfully to overthrow the revolution in the disastrous 1961 Bay of Pigs invasion.

Since 1959, the U.S. government and the expatriated Cuban-Americans who fled Cuba after the revolution have tried mightily to topple the Castro government, without success. Castro survived more than 630 assassination attempts.

### **Legacy of Fidel Castro**

“What’s amazing here is you’ve got a country that’s suffered an illegal economic blockade by the United States for almost half a century and yet it’s been able to give its people the best standard of health care, brilliant education,” Ken Livingstone, former mayor of London, said in 2006. “To do this in the teeth of an almost economic war is a tribute to Fidel Castro.”

Castro practiced a unique form of internationalism. Nelson Mandela credited Cuba with helping to bring down the system of apartheid in South Africa. Cuba fought with the revolutionaries in Angola. And Cuba regularly sends doctors to other countries and provides foreign nationals with free medical education.

As Nelson Valdes noted in 2013, Castro, together with others, “shaped a foreign policy and national movement around the fundamental concept of national sovereignty, yet devoid of any self-centered nationalism.” He added, “This unique form of national self-determination incorporated other countries on an equal footing. In fact, national sovereignty and solidarity had precedence over ideology.” Thus, Valdes wrote, “Cuba has aided countries, despite the economic and political differences they may have.”

In 1953, in what is considered the beginning of the Cuban Revolution, Castro, his brother Raul and more than 100 other rebels mounted a failed attack against

the Batista regime at the Moncada Barracks. Castro was arrested, tried, sentenced to 15 years in prison and released in an amnesty deal two years later.

At his trial, Castro famously said in his defense, "Condemn me, it does not matter. History will absolve me."

### **U.S. Interference in Cuba**

The U.S. economic embargo was initiated in 1960 by President Dwight D. Eisenhower in response to a memorandum written by L.D. Mallory, a senior State Department official. Mallory proposed "a line of action that makes the greatest inroads in denying money and supplies to Cuba, to decrease monetary and real wages, to bring about hunger, desperation and the overthrow of the government."

Cuba turned to the U.S.S.R. for assistance, which supported the Cuban Revolution until the collapse of the Soviet Union in 1991. In 1962, in response to the stationing of U.S. nuclear missiles in Turkey, Soviet leader Nikita Khrushchev placed nuclear missiles in Cuba. After a tense standoff, Khrushchev and U.S. President John F. Kennedy negotiated a withdrawal of the missiles from both Cuba and Turkey.

The economic blockade continues to this day. It is an illegal interference in the affairs of the Cuban people, in violation of the International Covenant on Civil and Political Rights and the Charter of the Organization of American States. Every year for 26 consecutive years, the United Nations General Assembly has called on the United States to lift the blockade, which has cost Cuba in excess of \$ 1 trillion.

U.S. meddling in Cuban affairs did not start in 1959. Since 1898, when the United States intervened in Cuba's war for independence, the U.S. government has tried to dominate Cuba. The United States gained control of Guantanamo Bay in 1903, when Cuba was occupied by the U.S. Army after its intervention in Cuba's war of independence against Spain.

Cuba was forced to accept the Platt Amendment to its constitution as a prerequisite for the withdrawal of U.S. troops from Cuba. That amendment provided the basis for a treaty granting the United States jurisdiction over Guantanamo Bay.

The 1903 agreement gave the United States the right to use Guantanamo Bay "exclusively as coaling or naval stations, and for no other purpose." A 1934 treaty maintained U.S. control over Guantanamo Bay in perpetuity until the United States abandons it or until both Cuba and the United States agree to modify it. That treaty also limits its uses to "coaling and naval stations."

None of these treaties or agreements gives the United States the right to use Guantanamo Bay as a prison, or to subject detainees to arbitrary detention or torture, cruel, inhuman or degrading treatment, which have been documented at the prison.

Castro, who called the Guantanamo base “a dagger plunged into the heart of Cuban soil,” refused to cash the rent checks the U.S. government sends annually. “An elemental sense of dignity and absolute disagreement with what happens in that portion of our national territory has prevented Cuba from cashing those checks,” he noted. The United States, according to Castro, transformed the Guantanamo base into a “horrible prison, one that bears no difference with the Nazi concentration camps.”

It is no accident that President George W. Bush chose Guantanamo Bay as the site for his illegal prison camp. His administration maintained that Guantanamo Bay is not a U.S. territory, and thus, U.S. courts were not available to the prisoners there. But, as the Supreme Court later affirmed, the United States, not Cuba, exercises exclusive jurisdiction over Guantanamo Bay, so habeas corpus is available to prisoners there.

Amnesty International aptly described the irony: “Given the USA’s criticism of the human rights record of Cuba, it is deeply ironic that it is violating fundamental rights on Cuban soil, and seeking to rely on the fact that it is on Cuban soil to keep the U.S. courts from examining its conduct.”

Since the revolution, anti-Cuba organizations based in Miami have engaged in countless terrorist activities against Cuba and anyone who advocated normalization of relations between the U.S. and Cuba. These terrorist groups have operated with impunity in the United States with the knowledge and support of the FBI and CIA.

For example, Ruben Dario Lopez-Castro, associated with several anti-Castro organizations, and Orlando Bosch, who planted a bomb on a Cubana airliner in 1976, killing all 73 people aboard, “planned to ship weapons into Cuba for an assassination attempt on [Fidel] Castro.”

In the face of this terrorism, the Cuban Five came from Cuba to gather intelligence in Miami in order to prevent future terrorist acts against Cuba. The men peacefully infiltrated criminal exile groups. The Five turned over the results of their investigation to the FBI. But instead of working with Cuba to fight terrorism, the U.S. government arrested and convicted the five men of unfounded charges.

## **Human Rights in Cuba**

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights contain two different sets of human rights, respectively.

*Civil and political rights* include the rights to life, free expression, freedom of religion, fair trial, self-determination; and to be free from torture, cruel treatment and arbitrary detention.

*Economic, social and cultural rights* comprise the rights to education, health care, social security, unemployment insurance, paid maternity leave, equal pay for equal work, reduction of infant mortality; prevention, treatment and control of diseases, as well as the rights to form and join unions and strike.

The U.S. government criticizes civil and political rights in Cuba while disregarding Cubans' superior access to universal housing, health care, education and its guarantee of paid maternity leave and equal-pay rates.

Unlike in the United States, health care is considered a right in Cuba. Universal health care is free to all. Cuba has the highest ratio of doctors to patients in the world, at 6.7 per 1,000 people. The 2014 infant mortality rate was 4.2 per 1,000 live births – one of the lowest in the world.

Free education is a universal right, up to and including higher education. Cuba spends a larger proportion of its gross domestic product on education than any other country in the world.

Cuban law guarantees the right to voluntarily form and join trade unions. Unions are legally independent and financially autonomous, independent of the Communist Party and the state. Unions have the right to stop work they consider dangerous. They have the right to participate in company management, to receive management information, to office space and materials, and to facility time for representatives. Union agreement is required for layoffs, changes in patterns of working hours and overtime, and for input on the annual safety report.

As of 2018, the date of the next Cuban general election and the date Raul Castro has promised to step down from the presidency, there will be a limit of no more than two five-year terms for all senior elected positions, including the president. Anyone can be nominated to be a candidate. It is not required that one be a member of the Communist Party. No money can be spent promoting candidates and no political parties (including the Communist Party) are permitted to campaign during elections. Military personnel are not on duty at polling stations; school children guard the ballot boxes.

In 2006, the World Wildlife Fund, a leading global environmental organization, determined that Cuba was the only country in the world to have achieved

sustainable development.

Meanwhile, the U.S. government has committed serious human rights violations on Cuban soil, including torture, cruel treatment and arbitrary detention at Guantanamo. And since 1960, the United States has expressly interfered with Cuba's economic rights and its right to self-determination through the economic embargo.

Cuba is criticized for its restrictions on freedom of expression. Castro learned from the Guatemalan experience what would happen if he did not keep a tight rein on his revolutionary government. Jacobo Arbenz, a democratically elected president of Guatemala, carried out agrarian land reform, which expropriated uncultivated lands, compensated the owners and redistributed them to the peasantry. This program raised the hackles of the United Fruit Company, which enlisted the U.S. government to overthrow Arbenz. The CIA and the State Department obliged.

Stephen Kinzer wrote in his biography of the Dulles brothers that Guevara "told Castro why [the CIA coup in Guatemala] succeeded. He said Arbenz had foolishly tolerated an open society, which the CIA penetrated and subverted, and also preserved the existing army, which the CIA turned into its instrument. Castro agreed that a revolutionary regime in Cuba must avoid those mistakes. Upon taking power, he cracked down on dissent and purged the army."

### **Obama Opens the Door**

In 2006, Castro suffered a serious illness and turned over the reins of power in Cuba to his brother Raul, who became president in 2008.

On March 21, 2016, President Obama and Raul Castro held a joint press conference at the Palace of the Revolution in Havana. Obama notably declared, "Perhaps most importantly, I affirmed that Cuba's destiny will not be decided by the United States or any other nation. Cuba is sovereign and, rightly, has great pride. And the future of Cuba will be decided by Cubans, not by anybody else." Unlike all prior U.S. presidents, Obama understands the significance of treating Cuba with respect.

This is a lesson Donald Trump will hopefully learn. The President-elect has sent mixed signals about whether he will continue Obama's steps toward normalization of relations between the U.S. and Cuba. The businessman in him will be receptive to investment, and, indeed, hotel building, in Cuba.

But, pandering to Cuban-Americans in Florida during the election, Trump talked tough against Cuba's government. "Many of our leaders seem to view Florida's Cuban conservatives, including the assassins and terrorists among them, as

People Who Vote,” Alice Walker wrote in *The Sweet Abyss*.

On the Cuban side, Raul Castro has made it clear that normalization cannot occur until the blockade is lifted and the United States returns Guantanamo to Cuba. In an op-ed in *The New York Times*, Harvard lecturer Jonathan Hansen wrote, “It is past time to return this imperialist enclave to Cuba,” adding, “It has served to remind the world of America’s long history of interventionist militarism.”

Normalization of relations will not happen overnight, Rene Gonzalez, one of the Cuban Five, told me when I visited Cuba last year. “We have to remember that relations between the countries have never been normal.” Antonio Guerrero, another member of the Five, added that normalization will require “the dismantling of the whole system of aggression against Cuba, especially the blockade.”

Castro survived 90 years. And Castro’s revolution survives, notwithstanding 57 years of aggression and assassination attempts by the United States.

“Fidel Castro was an authoritarian. He ruled with an iron fist. There was repression and is repression in Cuba. In Fidel’s kind of argument, he did it in the name of a different kind of democracy, a different kind of freedom – the freedom from illness, the freedom from racism, the freedom from social inequality,” Peter Kornbluh, director of the Cuba Documentation Project, told Amy Goodman on Democracy Now! “And Cuba has a lot of very positives that all the other countries that we don’t talk about don’t have. There isn’t gang violence in Cuba. People aren’t being slaughtered around the streets by guns every day. They defeated the Zika virus right away. There is universal health care and universal education.”

In a 1998 NBC interview with Maria Shriver, Castro wryly noted, “For a small country such as Cuba to have such a gigantic country as the United States live so obsessed with this island, it is an honor for us.”

History has absolved, and promises to continue to absolve, “El Comandante” Fidel Castro.

**Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild and deputy secretary general of the International Association of Democratic Lawyers. Her most recent book is “Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues.” Visit [her website](#) and follow her at Twitter [@marjoriecohn](#).**

**This article first appeared on Truthdig**

**[[http://www.truthdig.com/report/item/the\\_remarkable\\_legacy\\_of\\_fidel\\_castro\\_20161202](http://www.truthdig.com/report/item/the_remarkable_legacy_of_fidel_castro_20161202)]**

---

## “We Are Adopting Principles of Fascism”

Retired Army JAG Major Todd Pierce explains how his perspective on U.S. foreign policy and politics has changed as he watched the nation’s slide into “perpetual war,” in Part Two of an [interview](#) with Philip Weiss of Mondoweiss.

[\(Click here for Part One\)](#)

Philip Weiss: However humble your ambition, you’ve traveled widely, been a friend of a lot of interesting people and at 65 you’re going to the New School, and you visit your son in Paris, where he’s studying philosophy after he left the priesthood. A very full life. But you’re full of dark warning. So why can’t I say there are areas of great freedom in your life, to be celebrated. And darkness will always be there?

Todd Pierce: I’m trying to preserve the freedom I’ve had. I see a genuine threat to it. And I see it from people whom I know. The people in this Veteran intelligence group I’m in [[Veteran Intelligence Professionals for Sanity](#)] includes the four NSA whistleblowers, Kirk Wiebe, Bill Binney, Ed Loomis, and Thomas Drake. Binney has got to be one of the smartest people in the world, I don’t think that’s an exaggeration. He was one of the smartest people at the NSA.

PW: You’ve met him?

TP: Yes. And he agrees with me fully. Because he’s seen the NSA. We’re a more sophisticated form of what I think has to be called fascism. The term fascism was applied to the way the communists and Stalin got on as well. You bring the term fascist to what it really means, and that ultimately is, ultra-militarism and authoritarianism combined with an expansionist foreign policy. And that’s us—what you can see us becoming.

PW: What do you mean?

TP: We’re selective. Bill Binney and these guys were all arrested at gunpoint by the FBI. They were able for a number of ways—including Bill Binney being quite smart and turning the tables and showing that the government was making things up— they were able to get out of it. The other person is Diane Roark, who was in

charge of oversight of the NSA for the congressional intelligence staff. They've got the capabilities to spy on everybody and collect every bit of data that we share, and they're doing it, and yeah they haven't had to— again going back to Posner and Vermeule— they don't need to do those things yet.

PW: Like what?

TP: Well, let's say we do ramp up a war with Russia and we do get a more active antiwar movement. Say a Donald Trump who's already let everybody know what he thinks of the constitution, or Hillary Clinton... And Obama has said he can kill American citizens. The military goes to them and says, "Hey, these dissenters are going to cause us to lose a war, like the Vietnam War. Let's put them in military detention, let's impose censorship." Everything's in place right now.

PW: How many Americans would accept that?

TP: A poll Chas Freeman showed me says that 55 percent of Republicans already say they could accept a military junta running things today in the United States. Almost that they desire one. There's a breakdown. Do you think we need one now or do you think we should have one if there's a constitutional violation? I think it's about 29 percent of Democrats said, "Yeah, time for a military junta now," 43 percent said, "Yeah, if there's a constitutional violation," and Republicans even higher. In any case, a high number of Americans believe we should have a military junta, which means martial law.

PW: Idiots express these views all the time.

TP: Yes, but during World War II, what did it lead to? It led to the removal of 120,000 Japanese Americans from the west coast into what was called at the time, concentration camps. It wasn't a benign thing. Our myth is, well these people gathered willingly and it was... No, they were told, get here for transportation to the— concentration camp was the word the government was using at the time, till it was put in disrepute. And they were put under armed guard, and there were cases of people who, just by being near the boundary and the fence, got shot by trigger happy guards. Even though most people acceded to it, the Japanese Americans, so there wasn't heavy force, military force was always there.

PW: Binney has a reason to say fascist, being at the point of the lance. He was atypical. Lefties pointed at certain events in the '80s and said fascism. You remember them saying that?

TP: Yes, absolutely. You could point to those things, and you could say it was proto-fascism. There's authoritarianism; what Nixon was doing and later Reagan were all elements of it. But I think it took an event like 9/11 to bring it to

greater fruition. So the seed of it was there then and it could easily have evolved into things we have now, because we know of things that Nixon was saying. But it didn't get to the point we're at today. Reagan never said— his Department of Justice didn't go into court and say, "Yeah I can kill an American citizen," in the case of the Sandinistas. But they did do so in the Obama administration, and I was in the court when they did. Because I was there the day Anwar al-Awlaki's father brought a case to get injunctive relief to not kill his son.

I was just an observer, we heard the case was going to be heard. And there the DOJ was saying, the president as commander in chief has to have the power to take any means necessary. And if that means killing an American citizen, he has that within his power. What was it a couple of months later [September 2011] al-Awlaki's son was killed. And for good measure they killed his grandson a few days later.

His grandson was not collateral damage; he was killed separately, a few days or a week later. They said later that Awlaki was an operational leader, which again means nothing. But then what was his son? He wasn't collateral damage, there was no reason to believe he was an operational leader, still they kill him. Was that because they saw him as a symbol? Just like you have preventive detention, you have preventive assassination?

PW: At Nuremberg they hanged propagandists.

TP: [Julius] Streicher, yes. But he went beyond propaganda, too. I forget the details, but I have read his case. But you can make the argument that he went beyond propaganda. I think it included incitement to aggressive war and a few other things like that. Of course we wage aggressive war, but we present it as we have good intentions, unlike the Germans. Raymond Aron talks about that: How good intentions are used to justify all sorts of war crimes.

PW: There was someone in the Obama administration who wrote, it's perpetual war, get used to it.

TP: Rosa Brooks. She wrote that after she had actually left the Pentagon. Rosa Brooks was good on human rights.

PW: Could that article be read as a rationalization of endless war?

TP: It was saying, "OK, let's get down to work now to put in place some of the human rights protections that we need." But, again, the nature of the article, reading it, was justifying perpetual war. At least my cynical reading of it was. And again let's put in statute some things to protect the human rights. Number one, that doesn't work when you get into a mindset that we're at war. You saw

that with the Japanese American removal. You always get around the law because there's always a claim of military necessity. So again to accept the idea that we're in perpetual war, is to help continue the perpetual war.

There's a wonderful quote by [E. Barrett] Prettyman, a federal court judge, in fact the building is named after him. He said it in regard to a fourth amendment case, actually a case of the JDL [Jewish Defense League]- I don't remember the facts, they were doing something with Russians and they got charged. "We are dealing with doctrines and not with the presumable taste and sense of individual officials. Maybe none of these examples would ever occur. But the question before us is not whether they would happen but whether they legally could."

PW: So that's the Section 1021 issue [of the National Defense Authorization Act (NDAA)]?

TP: Exactly. I've said this a number of times to colleagues. I am not saying that these things will all happen. I don't know what external circumstances will drive people. But they legally could happen. And as the DOJ said, legal detention could happen to a guy just because of expressive activities. So that's the quote I like to use in justifying my very dark view.

PW: So you agree, yours is a dark view?

TP: I think it's a dark view because of what legally could happen. But I'm not saying it's going to, I'm saying it could happen. I like to point out, this right might be casually given away as necessity for a war, then you might get a Donald Trump who's president, and he has already made clear his intention to violate the Constitution, and gets cheered for it. A year ago there was a guy who was in the process of getting hired by West Point, as a constitutional law teacher-and he had written an article, though... [that] argued that we are going to have to start putting law professors into military detention, and take other legal measures because they are subverting our will to fight. That struck home. These fascistic strains exist. The fact that guys like Posner and Vermeule teaching at Harvard and University of Chicago openly say, "We have to go back and study Carl Schmitt." That doesn't make us a fascist society, but-

PW: Could studying Schmitt be innocent?

TP: Carl Schmitt was actively engaged in justifying the Nazis. He wasn't a Nazi to begin with, he would be considered a Conservative revolutionary, but like so much of that wing of radical rightwing German politics, went into the Nazis. But Schmitt was writing actively, he was assisting the Nazis in getting into power, he spoke of the need for a dictatorship in 1922. His theory of the friend/enemy distinction is the fundamental principle of fascism- that a nation must have an

enemy. That's essentially the fascist view.

PW: Tell me about the Vietnam precedent.

TP: Well, Sam Adams was a CIA analyst in Vietnam who was disagreeing with Westmoreland's numbers on how many Vietcong there were in 1967. He argued that you had to count more of them than Westmoreland was counting. Westmoreland was trying to make it seem as if we were winning. And Adams was trying to be objective and present the facts as they were to the decision makers. Sam Adams took it up the chain of command in the CIA, and eventually the CIA met with the Department of Defense to try and come up with a consensus on the numbers. But the military, the Department of Defense had more influence and basically won the argument. So the numbers were lower than they presented to the public and the president. The Tet offensive came about a couple months later in 1968. That false number cost the United States a lot of lives, cost the Vietnamese a lot of lives. That could have been prevented if they had been using intelligence.

PW: There was a lawsuit over this.

TP: Right. CBS had Sam Adams on *60 Minutes* where he made these allegations. Westmoreland sued. And Westmoreland agreed to settle it without a finding, conceding that CBS had its facts right. But it's put a chill into the media ever since. That's what the people who write about it say. Ever since then, *60 Minutes* has not been quite as willing to go out on that limb. [Former CIA analyst] Ray McGovern, he and a few other people he knew put these organizations together [including Veteran Intelligence Professionals for Sanity] back when the Iraq War was starting to try and present information to the public that was actually accurate. I met Ray McGovern and Phil Giraldi and Colleen Rowley when I was getting *amicus* support for one of the cases that I was working on. They signed on. That's when I got involved in their organizations. I'm not an intelligence officer, but my work in psyops and military commissions qualifies me.

And what if Donald Trump gets elected, what's going to restrain him? This article in [the Washington Post](#) pointed out, really nothing. That's not because of him, but because of the way the office of the presidency has accumulated power in the last 50 years.

PW: That goes for Hillary Clinton, too?

TP: Absolutely. Hillary Clinton was part of the administration that argued that they could kill American citizens purely on the president's say so. Then made the specious claim that Harold Koh was responsible for as legal adviser to the State Department that we're not at war because we don't have boots on the ground

in Libya. We're just firing missiles from a few miles out. As if the people dying in Libya from those missiles didn't think they were being attacked and at war by a foreign power.

PW: Do you have compassion for those folks?

TP: I've got compassion for those people who were unjustly attacked in different ways. My father was a Bataan death march survivor. He came back and I didn't want to say that— at least one death march survivor that I'm acquainted with had said that what kept them going was the hatred they developed in the prisoner of war camp. But yet, it's a natural emotion, as anybody knows, I believe, if you look within yourself, when something really bad happens to you or when someone brutalizes you. Whatever country it is. People victimized by the National Socialists of Germany or the Soviet Union military rule of Eastern Europe, or any other despotic regime. You come to hate your oppressor.

In my father's case, and in other prisoners of war I met, they didn't carry that hatred beyond the prison of war camp. We never grew up with an anti-Japanese idea.

But a lot of Americans just accepted that the Japanese American removal was necessary or fell under military necessity. And when you learn a little about it, you find, that not only was it unjust to those 120,000 people whose loyalties were to the United States but it was all driven by lies, and not hysteria, because it was planned years before by the military command on the west coast and in Hawaii.

What it was driven by was racism, as we now know too, but also I would say the bias of the military—of dealing with any threat. Like Cheney using the 1 percent doctrine. If there is so much as a 1 percent risk, you must take extraordinary means to defend yourself from this very faint risk. That was the same principle that the military was following on the west coast, that there might be a Japanese American out there whose loyalty might be more to Japan than the United States and if so, he might be tempted to engage in sabotage.

The ironic thing is that the person who is really given much of the blame for driving this, in addition to General [John] DeWitt, but working with the provost marshal under DeWitt was a Jewish

American, [Major Karl] Bendetson. He was really the driving force. So the irony is that at the same time people were being put in concentration camps in Europe—and realize this was before Germany had gone all the way to the final solution. At this point in 1942, the extermination camps weren't well known, and the Germans said, we're just putting internal enemies into these camps.

But we were doing the same thing on the west coast, and it was being driven in large part by this Jewish American. Then you realize that the Zionists are doing the same thing in Israel or Palestine. I'm saying, "There's no ethnic group that is above committing these type of oppressive acts."

And I should say, you asked about my acquaintanceship with Jewish Americans, what formed my attitudes. Well— Leon Uris. When I was growing up, I read the book *Exodus* and I saw the movie. It did influence my understanding of the Middle East as it did probably almost all Americans.

PW: What was the influence?

TP: The idea that the Jews in Israel were the victims and were gallantly trying to get their independence. Very much analogically to the US. It was intended as propaganda and it was very successful propaganda. Look at my own case. But it goes to the point. We have been engaged not only in Israel, but in our own wars that we now claim to be in— they're entirely based on propaganda and false propaganda. I don't think the American people realize that so much. It goes to Vietnam too. Sam Adams tried to reveal that they were lying. That entire war was fought on false claims by the United States.

I mentioned to you that Benjamin Netanyahu, working with his admitted fascist father, and Menachem Begin, who was deemed a fascist, as well by Hannah Arendt and Einstein, set up what you could say was a disinformation or influence operation called the Jonathan Institute. Netanyahu has been engaged, following in his father's footsteps, promoting what should be called fascist propaganda ever since, continuing now as Prime Minister. And as you know, it's more sophisticated than ever.

PW: On what basis do you say Netanyahu is fascistic?

TP: There's a couple good books, I don't have the titles offhand, explaining how Likud grew out of the Herut party. And Herut grew out of the maximalist wing of Revisionist Zionism. Even within Revisionist Zionism, they were the fascists. Jabotinsky was radical right, but not necessarily fascist in how I am looking at it. But Begin and some others including Netanyahu's father came out of that faction that was influenced by General Pilsudski of Poland, who was a fascist. And this was interwar Europe, when there were a lot of fascist movements, with slight variations based on their own nationalistic orientation.

And so this group of European Jews were, as well, influenced by those fascist ideas and they had their own movement. They even had reached out to Hitler— early. Today a lot of people say, "Why didn't we do something about Hitler early?" Well, a whole lot of people didn't realize where Hitler was going,

including these Jewish fascists. So they reached out to Hitler but were rebuffed. They definitely were in contact with Mussolini. And Mussolini's own fascist movement, according to various sources on fascism, had Italian Jews that were part of it. Fascism wasn't something that was anathema to Jews, though of course Nazism became that. So that's a movement that Netanyahu's father Ben Zion and Menachem Begin came out of.

I haven't looked at this stuff for so long. But Jacob Talmon was an Israeli political scientist, who wrote a book on the origins of totalitarian democracy in 1952. He was addressing the Eastern European countries under the influence of the Soviet Union, which were democratic in name only. And if you tie that in to Edward Bernays's argument— you have to have propaganda to direct the people in the right direction. Fascism's founding principle is how to manipulate the masses. So propaganda was always central to fascism.

Totalitarian democracy allows for the form of democracy, but it requires the fascist principle that all the people must be driven to the same ideas. And of course militaristic and authoritarian because you can't have dissenters in a fascist state, or not too strong of a dissident movement.

That's the point I'm making: Israel and the United States since 9/11, you have to consider us to be a form of totalitarian democracy. We're not the worst of it. I'm not saying that for a second. But we have a couple of billionaires who can really buy up the election, Sheldon Adelson on the Republican side, and Haim Saban on the Democratic side. What politician can be successful if they don't fall into one of those camps?

If you look at the platforms, both parties have given their undying loyalty to Israel, and it's clear that Israel's policies are our policies. As you know, there are a number of Israelis now who are saying that Netanyahu and Lieberman represent a fascist form of governance.

PW: But what is America? I'm a free man in New York, you're a free man in Minnesota. I've been fired from jobs for my views, but— what is America?

TP: As I discussed the other day, No we're not a fascist state in what anyone thinks of as a fascist state. But we are adopting principles of fascism. You as a free man in New York, and me as a free man in Minnesota, we are pretty well protected by our civil liberties. But what about someone in the Mid-East? There's a discussion going on, that we can kill anyone who we deem to be the enemy.

We are operating a fascist system in our foreign policy. That's where the fascism is plain to see. That's what both parties are fully in agreement with.

Not as we are at home—we are still relatively secure in our liberties. It's hard to see that we would become, the ordinary term is fascist— if there's a better term tell me— but the foreign policy— as others have frequently said, including Hannah Arendt, when you wage a totalitarian foreign policy like that, it eventually spills over more and more into your domestic system, and we're seeing this in Section 1021, and Israel passed its anti-terrorism law this summer. They've always had provisions previously not to entirely suppress dissent but to make it uncomfortable, and they are constantly through propaganda changing people's opinions, so they become more and more militaristic and they support the radical right wing. Like Likud and Lieberman.

PW: Where do you see that propaganda in our country?

TP: Just in the general news. The New York Times, as your site has pointed out, has very imperfect coverage of what happens in the Middle East and Palestine. It's like a self-censorship.

And we saw it with the coverage of the Iraq War. Again, I go back as I mentioned the other day to the post-Vietnam War era. When these generals came out with this false claim, "We would have won but for the media." The Department of Defense has deliberately— you can find articles and papers on how do you control the media— they've developed policies on how you control it. Shape it, direct it. That's what we're living under, the embedded journalist program. That was strictly as a result of that. Because they knew that people being put in close proximity with soldiers would develop a natural sympathy with them. Not in the sense of feeling sorry for them, but, "We're together in this."

PW: The war on terror has gotten skewed coverage?

TP: Absolutely, in part because most people don't understand it. Again, going back to the media, Antiwar.com found out they were being surveilled by the FBI because they opposed the war. They are immediately suspect because of that, and everything we thought we had resolved by stopping COINTELPRO back in the 70's has been taken to a higher level, where the NSA surveils everyone.

We have total surveillance of the US population through the NSA. That's what these huge data storage facilities are about, to store all the data that they've gathered. They've gone to the public and say, "We're not listening to your phone calls." But what they are doing is storing it. It's all there, just like a huge data file. Like the Stasi— they would go look at their file on someone, and go use that against them. Well, we have all that data collected, including people's attitudes. So if the day comes, which, if people like Vermeule and Posner have said, we may have to impose censorship and have military detention, they might

have been more careful in what they said about detention.

The book is *Terror in the Balance*. The idea is that we always have to balance civil liberties against national security. But it's a false argument. Because our greatest national security is having a full and open discussion on our policy. We didn't want to allow that with Johnson and Nixon but it happened and, like I say, these generals said we should put these dissenters in detention.

The antiwar movement proved to be more wise than our generals were. Our generals would have driven us into national bankruptcy for the lost cause of Vietnam.

PW: What is wrong with the media coverage of the war on terror?

TP: Just the presumptions of all of it. Number one, the beginning presumption is that 9/11 happened out of the blue. The U.S. was sitting there, everyone was peacefully going about their business. And nobody writes about the hundreds, well over a thousand, military bases throughout the world. No one is talking about the relationship between the U.S. and Saudi Arabia and Egypt, Syria in the past, Jordan. The United States has been propping up these police states all these years, which led to the 9/11 attack. Because al Qaeda said, "We may be oppressed by the Saudis, but it's the United States that's propping it up."

[Prussian general and military theorist, Carl von] Clausewitz writes, "war never comes about without history." There's always history to it. We treat 9/11 as if we were all innocents. Then it unleashes the most ferocious opinions toward Muslims and then there's this constant incitement of Islamophobia. Not necessarily from the main media, but Fox certainly does.

PW: So in 9/11, we're the innocents. That persists to this day?

TP: Even more so with the debate over, "Is it radical Islamic terrorism?" Again, you look at who used those words first, it was Netanyahu. It's a consistent propaganda theme that he's used, as in that book over there [pointing at *Fighting Terrorism* by Benjamin Netanyahu]. That this isn't about legitimate political grievances or even any political grievances, this is all about this radical Islam. And it's not just a few Muslims. When you read into it, it's really Islam itself, it's a radical and murderous religion. And that's become the predominant theme in the U.S., I would say, whether it's by the hard right or the people who try to present themselves as more moderate.

But look at what we've been doing. Look at what you'd see if you're a Muslim country. Then you can figure that you're probably in line for some kind of military attack.

PW: What do you think of Islam?

TP: Well I'm not going to express a particular opinion on it except to say I believe it's mischaracterized in a variety of ways. The caliphate was not the threat that the Islamophobes make it out to be. There was a caliphate in Turkey, the Ottoman Empire, till 1922, and it was never a threat to the west. They do have their way of governing, as we do. We always profess, especially conservatives, a commitment to Judeo-Christian values. Well, you know what that led to with the Native Americans.

The fact that it is a predominant religion in the Middle East means that to appeal to people, you refer to Islam, to unite people. Just as we do in various ways, and they do in Israel. So I don't think it's inherently a murderous religion, as the Islamophobes make it out to be, and Netanyahu constantly makes it out to be. What we're dealing with is a group of people from the Islamic territories and lands who sit on oil and are in the way of Israel's expansion. And so they have legitimate political grievances because of what we've been doing to them. Which is not to say they're all innocents or they govern their countries well.

But again, going on to classic military strategists, like Clausewitz, we can't be in a constant state of war, both morally and militarily. And the fact is that we are the aggressors, really. None of these Islamic countries threatened the United States until a group of anti-Saudi terrorists, guerrillas, insurgents did, only because we were propping up the Saudi regime. It's all based upon politics. As Clausewitz says, war is a continuation of politics, or policy by other means. And we do the same thing. We're hypocritical in all this.

PW: You say that We have to know ourselves.

TP: That goes to Sun Tzu and Clausewitz. They said in various ways, To understand the nature of the conflict, you have to know yourself, you have to know the enemy. If you don't know yourself, you don't know what is motivating the enemy. If we can't recognize that, maybe what we did in support of what was done in Beirut in 1982 had an effect upon the people we now deem to be our enemy, we can't understand what motivates them. And not knowing what motivates them has us doing the resisting them in maybe ways that make things worse rather than better.

A few officials come to recognize this at a micro level, in terms of counterinsurgency, that maybe it's not so good to wipe out a family with a drone in Pakistan. But the same thing applies at a macro level in our foreign policy. If we don't accept that the U.S. has created some of these grievances, then we can't bring about a reconciliation, a resolution that is satisfactory to everybody and strategically necessary to the U.S..

The idea that we can fight a perpetual war, as some people now talk about, is exactly against everything that classical strategists understood. It should be self-evident to anybody. We've seen what happens if you try. Look at the Soviet Union in the 1980s, when they collapsed as a result of their perpetual war.

PW: Is that why they collapsed?

TP: It certainly was a big part of it— all the expense in Afghanistan and the dissent. These things are all interrelated. We try and make it out that the war is over there and has no effect here. But we're constantly taking more and more money out of our own domestic budget to keep the military going.

Or the police issue: We're training them to become militarist. Not to come down on the police, but we're seeing cases that to anyone smacks of an execution. The person in Chicago who was shot fifteen times—the person running away and was shot in the back by a police officer. We send our police officials over to Israel to be trained in what is military occupation tactics. But our own military members come back and they have adopted this viewpoint from their own experience in Afghanistan and Iraq. That's been imported.

Again, it's spilling over into our own domestic system. That's the ultimate cost, as Hannah Arendt said. French officials recognized this after a while, when they were fighting in Algeria. Eventually, the ultimate risk is that you lose your democracy as a result, and I would say that we're already far along in that process.

PW: You're an autodidact.

TP: I know what that means but refresh my memory.

PW: You're a self-taught intellectual.

TP: I would definitely agree with that. Self-taught by pursuing knowledgeable works.

PW: It's a term of praise to me, but it has a certain liability. You were, in my view, deeply influenced by your father's experience of the horrors of war and you wanted to be a political scientist but you were raised in circumstances where that was not available, and you worked construction and read books. But now at age 65, you're going to be a political scientist.

TP: That was the one area I was really interested in as a kid.

PW: But in the meantime, you have gotten a rich experience of the world that most academics don't have.

TP: I would add, looking back, I did have this interest in the military, coming out of my dad's experience. So it wasn't just the academic interest in politics, but rather the convergence of circumstances, the Vietnam War going on and the issue of insurgency.

PW: OK. But the risk with an autodidact is, he has independent ideas. But all ideas have a social component. They come out of a community. Have you ever had the charge thrown at you, that there is no establishment rigor in your thoughts, they're not shaped by a community, they're entirely independent?

TP: Maybe in law school in my first year. I went in there thinking pretty independently. And I did well. Not to flatter myself, but I was right on the approach that I was taking. Which was acknowledged. But I'm never out there in the sense that I'm outside of everyone. I'm arguing from within but using the principles that are given but seeing them slightly different.

I mentioned the cases with the judge in St. Cloud, I was clearly outside the norm there, and another law clerk pointed that out to me. There was a guy whose offense would have gotten him put into prison for 10 years. My friend who was a clerk said he and I were the only two clerks out of 10 or 11 who would have thought independently where we would have looked at the facts rather than accept what the county attorney said. And furthermore, I had the only judge who would have listened. His own judge would have said, "No, we can't do that."

PW: What does that tell you about human society? We run with the pack?

TP: I absolutely agree with that. I hate to use the word, but there is something about group mentality, and it's not just where people consciously say, "I'm going along with the group." It's almost unconscious in thinking that way, which is always at work when you go to war.

PW: So if human beings behave in this fashion, what is the hopeful scenario of how we demolish this propaganda? You and I love this country. What's the hopeful way this war ends? You say in Vietnam the antiwar movement had the wisdom, and notwithstanding two million deaths or whatever, the country righted itself in the end.

TP: Today I'm not as hopeful as people might have been in '67, '68. Because then it was more apparent and there was more self-interest at stake; people were being drafted. Today we have so successfully shielded people from direct consequences of the war that they don't connect the two, but it's in effect every single moment. Education, policing, etc— all are being sacrificed for the war. If you look at the budget, the first bite of the apple is the defense industry and the Defense Department. We have to take care of defense. And we get

the crumbs which are left, and we try and work it out so we get enough for education and roads. So we are already paying a huge economic price domestically to maintain the wars and the military. But people don't make that connection very well.

So I'm not as hopeful today because the government has shielded the people more from the effects of the government's bad policies. The other side of it is the terrorism acts that I think are directly attributable to the war. In San Bernardino, Chattanooga, Orlando— all are direct consequences of the war. It's like 9/11 two. This was a direct effect of our foreign policy, but we see ourselves as innocents.

Every terrorist incident that takes place, officials say, "We don't know what the motive is, we're searching, blah blah." But there are always sufficient clues that it is driven by belief, by injustice, or as David Hume said, sympathy that people feel when they see such a great injustice being done, and some way or another it hits a tipping point and they engage in some act of violence. The person in Orlando said, "I'm doing this because of your bombing Afghanistan, my country." Even though he never lived there.

That's not to say that we should be suspicious of all these people, because it can happen to people who are not even Muslim. In the Vietnam era we saw people becoming sympathetic to the Vietcong because they could see that they were being victimized by the US military. It took a while for people to realize how victimized they were. So there are these human emotions that are triggered by the type of war we're fighting right now.

We are paying the cost, but they're indirect, so we're not seeing it, and that's what's being covered up. So that's why there's a necessity for a counter narrative to be presented. There are two motivations. It's not about Islam, it's about violent political acts being committed in propping up a very despotic Middle East. It's about the US role in maintaining a very repressive system of governance in the Middle East.

PW: Including in Israel?

TP: Including in Israel.

PW: Would you have had this understanding a year ago, or five years?

TP: It began to be formed when I was in the Gulf War. That began shifting my way of thinking. I admit I was very much a neocon and going along with the neocons' thinking on national security. And the Gulf War opened my eyes a bit. I talked to a number of Saudis, I took advantage of being there to meet people individually. I began to see how they saw things a bit more. And it took time;

but then when 9/11 happened and then seeing what we had become, that opened my eyes a little further. Then just continuing to search for and find an explanation for what's all going on.

PW: Did you ever say, "I love the military"?

TP: No never.

PW: Why are you laughing?

TP: Well, I didn't like the regimentation.... I'm pretty normal; most people don't like that regimentation.

PW: What do you think of military culture's influence? Is that the problem?

TP: We survived as a democracy for years, even in Vietnam. We had challenges to democracy then, COINTELPRO, military surveillance; but we weren't militaristic then. That's why we got so much opposition. It wasn't long before that that Eisenhower said, watch out for the military industrial complex.

The military set out deliberately following the Vietnam War to change people's attitudes. The movie Top Gun was one of the first examples where they began working with Hollywood. Changing the narrative, changing the perception. They had a deliberate strategy to elevate the military in the eyes of the people. That in itself isn't necessarily that bad either, but a number of circumstances came together, including the neocon constant incitement toward war, and then 9/11, of course, that was the final trigger that was necessary to bring us into this. And we're moving deeper into this militaristic world, as both presidential candidates show.

PW: How much time have you spent in Guantanamo?

TP: I went down there probably 35, 40 times. Once a month we would go down and see our client. We'd fly down there on Monday morning, check in, do all the things we had to do. Then see our client for the next couple of days, and come back on a Thursday or Friday.

PW: What does Guantanamo look and feel like?

TP: Well, again, even defense attorneys don't get to go into the actual prison camps. And there's a number of different ones, three or four different camps, and one that was closed. We don't get to see that ordinarily. What you get into, you have the regular military base. It's a navy base. That's like middle-America, they've even got a high school. They're going to spend an exorbitant amount of money to build a new high school. Again, talk about misplaced priorities. But you have families down there... You have that side of the camp

running normally, like any military base.

Then you have a detention facility, and that comes under a different military command. And you drive out to it, and when you get close, it becomes like something you would think of in any militaristic society. The checkpoint, you go in and constant security. The guards [are] very paranoid, seeing everybody, including their fellow soldiers, as I was, as a potential terrorist. Former guards have talked about this... How the guard force is constantly incited to be hostile. When they were getting deployed for the first time to Guantanamo, they first took them to the World Trade Center site, and said, "You're going to be guarding the people that are responsible for this." Which is not the case, other than maybe 5 people, if that. So it's constant conditioning for everyone there, that we've got the worst of the worst. And that did not change under Obama.

I started under the Bush regime, and there were no changes. The people who were running things were the same people, or anyway had the same attitude. We had to go through a process under Obama, to have each detainee have his record reviewed, and he could present facts to the review board. But I don't think they changed a bit from what had been done under Bush. Bush had already begun releasing people. The whole story that these were the worst of the worst was unraveling. So Bush released a lot. That continued under Obama, but no greater and no less, really, if you look at the statistics. So there was no change that you could see other than during that brief period of [Obama promising], we're going to close Guantanamo.

PW: Where are your clients?

TP: One of them is in Sudan, where he is from, and the other one is still in Guantanamo, the appellate case. He was one that the government would say is too dangerous to release.

PW: The one who wouldn't meet with you?

TP: Yes. His crime is as a propagandist, is how the government describes it. We're waiting for a decision right now. All the offenses that [Salim] Hamdan and our client were convicted of were originally

held not to be war crimes on review. This goes to the fraudulence of the whole military commission system. I don't have time to say that here, but they made up offenses and said they were war crimes.

Virtually everything coming out of the Bush administration originally was made up. They fabricated legal precedents and misstated them. Under our system, you can only have military commissions in three different circumstances: one would be under military occupation, one would be under martial law, and the third

would be for war crimes. Well, we were officially not under martial law and the United States and Guantanamo are not under occupation. The only thing left is war crimes. So they made up these offenses that they claim are war crimes.

War crimes are clearly delineated in Nuremberg and now the international court—but [they are] none of these offenses they used to charge these people with, because 90 percent of these people had not done anything other than possibly fight as guerrillas, and that's not a war crime. They might have been sympathetic to al Qaeda, or might have been foot soldiers or a go-fer, like my client, but no one charged with the usual offenses had planned the 9/11 attack. Nobody planned on killing civilians.

So they tried to wrap it up into one giant conspiracy, the same as the German Nuremberg defendants had been charged with conspiracy. But that conspiracy was to wage aggressive war or commit genocide. There's no conspiracy by the people in Guantanamo to wage aggressive war or commit genocide. They're not even charged with that. Only the few that were alleged to be responsible for 9/11 have been charged with actual war crimes.

So they made up the material support for terrorism charge which was intended to get anybody they wanted even if it was only for something they said. Or for the video that one client made about why people in the Middle East feel they have a legitimate grievance against the United States. Material support for terrorism was deemed to be a war crime. Solicitation was deemed to be a war crime. Finally, conspiracy was charged, and they said that was a war crime, even though it wasn't a conspiracy to commit aggressive war or genocide.

In fact, that conspiracy to commit aggressive war would more fit Cheney and the whole bunch of neoconservatives that were involved in pushing us into Iraq.

In the DC Court of Appeals, what we argued was, these are not violations of the international law of war, they are not international war crimes. The government said they were. The court of military review agreed with the government. Then we got to the DC circuit, and we said the same thing, and the government turned around and said the defense is absolutely right.

But then they invented something that they call the domestic common law of war. And what they say are the legal precedents are the Civil War— that was one period of time where they held a lot of military commissions. But that was under martial law. They weren't war crimes, they were martial law violations. The other time was the Quirin case, where eight German soldiers entered our lines, and they took their uniforms off and plotted or some of them did to commit sabotage. They were enemy soldiers concealing their identity in our territory. It breaches the law of non-intercourse as a form of perfidy. That was 1942.

So, anyway, they used that as a precedent. But none of the people that we have captured and have been charging with conspiracy committed that offense; none of them came through our lines. They were all in Afghanistan. Or some other place. Maybe being an insurgent— but it's no war crime to be an insurgent. Otherwise all generals would be in war crimes tribunals, because the US army sponsors insurgents in places like Libya and Syria.

So we're saying that it's a war crime to be an insurgent if you're not on our side. But if you are, it goes to, one person's freedom fighter is another person's terrorist. The whole system was fabricated from falsehoods, and that's what we're operating under now.

One of the people [unnamed colleague] I disagree with most is very supportive of what we have been doing. But he sort of slipped one time and said, this military commissions act, it's almost like we are exercising martial law over the whole world. We are. We are taking those precedents from our own martial law period over our own territory and applying it to the world. Someone who may be anti-drone warfare in Afghanistan or Pakistan is guilty of a war crime, and gets targeted with a drone attack.

So we are doing to the Mideast and other parts what the Germans did to Europe in World War II. They held that any anti-German opinion was basically a war crime. And putting aside the Jewish issue—but non-Jewish people who might be opposed to the Nazis invasion, before the Germans invaded, they would be put into military detention.

That's the problem with the idea that you're at war, because you adopt the most extreme understanding of who the enemy is and then justify killing them or putting them in military detention because they're the enemy.

PW: This case will go through the federal appeals system?

TP: We're waiting for the decision. We've already won once in the DC Court of Appeals. They vacated the conviction of Salim Hamdan, and his case was in parallel with ours. So they were ready to drop the conviction, but the government asked for an *en banc* decision in our case. It's already been held that material support for terrorism and solicitation are not war crimes. So that conviction of our client has been vacated. Conspiracy is the one issue remaining...

I also worked on one of the five cases that are charged with 9/11, for about a year. That's where I ended up doing a lot of research that I'm now talking about, on the origins of the conflict, which can really be dated to the end of World War 1, and the colonialization and division by the French and British of

Iraq and Syria and Lebanon, and the brutal measures that France and Britain used to suppress any dissent to their colonialism. So that's where I became acquainted with some experts in the field.

PW: Why is that the background?

TP: In all these cases, it goes to, "Is a rebellion legitimate or is it a war crime?" Well the government says, "It's a war crime. Unless it's our own." When you understand what is really being done depending on the individual client, what we're calling terrorists are what would more properly be known as guerrillas. It's a form of guerrilla warfare. Putting aside the places that they have been charged with killing civilians. I'm not justifying that in any way; but we've also done it ourselves.

In World War II we really adopted the idea of terror bombing. That's no secret. So it's really been us as much as anyone else who have driven the standards of international law downward. And the Nazis had done it before they attacked Warsaw, and the fascists attacked Guernica. The British and French adopted it as early as 1920, what they called colonial policing.

You could say that the West, whatever the Ottomans had done to the Arabs beforehand, when France and Britain took over after World War I—in one article I came across, the British said, "What do you do to a troublesome village? You drop a couple of 500 pound bombs and some more 250 pound bombs on them, and the problem goes away." This was a general who would have been in the Royal Air Force, as it was being formed, describing the use of air power in counter guerrilla operations. About 1920.

We like to believe that it was only Arabs that began killing civilians. We brought that in to the Mideast with western colonial policing. Whatever the Ottomans were doing before the end of World War I, we legitimated it or took it to a higher level with the west's colonial policing policies of killing civilians to terrorize them.

PW: You're not hopeful this is going to end?

TP: I think human nature— people don't change until they have to. The Germans were happy going on for the most part most of them, until they hit Stalingrad. Then they began reconsidering things. I think that's the nature of human beings; until they hit bankruptcy or some other calamitous event they don't see that maybe this is the wrong course, they don't want to change course. What is going to be the turning event, it's hard to say, because these terrorist attacks are pinpricks, we're not going to hit Stalingrad like the Germans did. We'll just slowly erode our economy and— again, we're doing it already, but we can conceal

it.

So what do you do? There was the White Rose group in Germany, at the University of Munich— Sophie Scholl, her brother and some friends. Her brother and the friends had been to Stalingrad or the eastern front and came back because they were medical students. They came to realize what the Germans were doing to the people in the east, and they formed the White Rose group. I think '43, '44.

So they tried to inform the German people of what was really being done in their name by the government. And they were somewhat successful. They got messages out. Unfortunately they got caught and were executed. But even then, some of their messages they had sent out got taken out to the West and were then used as leaflets to drop to the people. So they really contributed far more after their death to the defeat of Germany and the Nazis.

It's those people who see what's wrong that have to try and change the dominant narrative to one of truth, to what is truthfully taking place.

PW: What did the US hit in Vietnam, calamity wise?

TP: The Tet Offensive. Building up to it was the constant propaganda. There's a book written about Westmoreland by a former Army Officer, Lewis Sorley. The title is, *Westmoreland, the General Who Lost Vietnam*. Sorley wasn't anti-Vietnam. He was a lieutenant colonel who just believed that Westmoreland's tactics were wrong, and believed that [Gen. Creighton] Abrams was doing something different, when he wasn't. He wrote this book about how LBJ was trying to use propaganda to sell to the American people that he could have both Vietnam and the war of poverty and have no consequences and that we were winning there. But Westmoreland was an eager participant in what was called the progress offensive, and beyond what even LBJ wanted of him. Part of that was concealing the numbers of how many people were actually opposed.

The South Vietnamese government was a despotic government, they had the population under a harsh martial law. South Vietnam was not a democracy where the people were in any way happy. It was a harsh military regime. Which turned a lot of the Vietnamese away from supporting the government. And the government in Hanoi may have been as bad or worse, but it was driven by nationalistic feeling more than the South was. And there was a lot of support in South Vietnam for unification with the north and against the South Vietnamese government. Westmoreland was covering up and concealing that. And that failure of intelligence allowed the Tet Offensive to take place.

The revisionists like to say the Tet Offensive was our greatest victory, we killed so many Vietcong. But ultimately war is about perceptions. It wasn't

about the media turning against us and making a victory look like a defeat. But the critical audience was the Vietnamese people and they could see that, yes, the Vietcong actually does have quite a bit of power.

The American generals said, "The critical audience that we had to maintain this concept of the will for war was the American people." No, it was the Vietnamese people. If we didn't have their support, the war could never have been won, no matter how much the American people supported it.

That's the same as what's going on in the Mid-East today. It's the people of the Mid-East who have to make decisions, but we have shown by everything we've done, including causing the vast migration out of Mid-East into Europe— all these things have turned any common sense view of what's going on against what the United States is doing. We have done everything wrong from a strategic point of view from the very beginning of 9/11, is the point I've tried to make.

PW: What should we do?

TP: I say, get out of Afghanistan. We've been there 15, 16 years now and failed every day. Our staying there is what stokes the Taliban insurgency. Not to say they're all going to give up when we leave, but we can't win as long as we're there. Because that is the cause of the Taliban fighting against us.

We have no choice but to get out of there, unless we want to continue as the Soviets had done squandering our treasure. It goes to the theme of groups like ISIS and al Qaeda, that the United States is generally an imperialist power taking over the lands of Islam. And as long as we're in Afghanistan, we just maintain the apparent truth of that claim. We need to stop acting as imperialist powers to get this anti-imperialist guerrilla war to a lower level. At least in the foreseeable future, there's going to be continuous opposition to a U.S. imperialist policy.

A fascist foreign policy is going to inherently generate opposition. Hannah Arendt called it: A totalitarian foreign policy, by its very nature, triggers opposition. That goes to understanding ourselves and understanding our enemy. If we can't understand that about ourselves, then how can we ever reduce the violence coming from the opposition? Again, you can find this all in Clausewitz, written 200 years ago.

PW: Where are you on the election?

TP: I'm for anybody but Trump or Clinton. I see in both of them the emphasis on militaristic values. They each have a slightly different tack, depending upon the constituency. Trump has actually talked a little bit more prudently about a war. He's not actually trying to gin up a war with Russia, but then he gets as

advisers people like Michael Ledeen and General [Michael] Flynn.

I have read Flynn's book and it's just more of the same: radical Islamic terrorism is the enemy along with Russia and Iran. You can't have an adviser like Flynn and think this guy is going to have a different policy. Plus, Trump has made it clear that even if he doesn't plan to go to war against Russia, it's not out of prudence, but his own talk has always been about promoting fascist values— putting journalists in prison, detention, whatever.

Hillary Clinton has a track record of that under Obama, basically attacking journalists, like James Risen and others. So I see no difference between the two.

PW: And her foreign policy?

TP: I have great trust in her that she is going to get us into wars. No matter what she says, she has done it already, she has a track record. She is the one who was promoting the Libyan war over Obama's hesitancy, from what I understand. Then Syria, and the Ukraine coup she obviously had to be in on that with her subordinate, [Assistant Secretary of State] Victoria Nuland.

So we know what she'll do. Trump might actually be too lazy or less interested in those things. But again his talk has been just as bad.

PW: Does his Islamophobia bother you?

TP: Absolutely. He's adopting Netanyahu's theme, that this is all radical Islamic terrorism. Again with all of his attacks on Obama for not using that phrase, he has legitimized it even more for Netanyahu. He's tied up with Flynn, and Flynn's made clear that he considers himself a virtual member of the IDF [Israeli Defense Forces]. The US and the IDF are far closer than anyone thinks. If you think about it, we're really operating as a joint command in the Middle East, whether it's us restocking their ammunition, or our special operations groups working hand in glove.

PW: You mentioned Hunter Thompson's 180 rule before I started taping. What's that?

TP: Thompson said his belief was that he tried to follow the 180 degree philosophy, and that was that, anytime government officials tell you one thing, the truth is 180 degrees from that. Or close to 180 degrees. In other words, they're lying; and you have to believe the exact opposite. When you start to think about it, on important issues, that's pretty much true. War issues. "We were winning in Vietnam," the truth was the exact opposite. "The surge succeeded." The truth is the exact opposite. "We're winning here, we're winning

there.” The truth is the exact opposite.

PW: You’re about to go to the New School. What’s your role?

TP: I think I’m going to be a very lowly student in a Masters of Arts in Politics program. Obviously this is a culmination of my lifelong interest, including the tradition the New School has as a university in exile. I have been reading this material all my life. The New School had these anti-totalitarian Jewish Germans come over, Hannah Arendt and Ernst Fraenkel. And they have maintained that same approach to politics. I figure it’s a very logical place to go. And I’m still involved in the al-Bahlul case and continuing to study for what may be necessary.

PW: Has meeting the accused been important to your thinking?

TP: I don’t think so. My approach in all this has come about from what we’re doing to ourselves. Not that I don’t have moral qualms about what we’re doing to them. But recognizing what we’re doing to ourselves. We’re not violating the constitution so much as we’re supplanting it. We’re keeping it in name but it no longer means anything.

To be clear, I do have sympathy for people who are being made the victims, who we are killing in these unjust wars.

PW: What does it mean that you’re now friends with lefties?

TP: The lefties you refer to are people that I would have been ideologically opposed to in the ’80s– not the ’60s and ’70s so much. But the ’80s. And recognizing my own fallibility, whatever ways we may have disagreed in the past, that’s irrelevant. Because today, quite honestly, it’s only the left that has taken a critical view of what the U.S. is doing, with the exception of Ron Paul. And, of course, not all of the left, as we saw with Hillary Clinton being nominated. But there’s a remnant of the left that does criticize what we’re doing and has an understanding of what Israel is doing to the Palestinians and that does make us natural allies.

PW: So I came to the Israel issue for very selfish reasons. Sounds like you are concerned for your community.

TP: I try to make a point of that. My criticism isn’t that our militarism is out there winning these wars, though it would be that, as well as our motives are illegitimate. My criticism is that the militarism is out there losing these wars to our detriment, beside the moral cost that we’ve become complicit in. The point I’ve tried to make is that people like Petraeus and all these other generals, and the politicians who are supporting them, they’re the ones who are

leading us over the cliff or into the abyss and they're wrong. Just like Westmoreland. They're the ones who are costing us.

Germany's enemy wasn't the Jews in the '30s and the '40s, as the Nazis claimed. It turned out it was their own Nazi party, and the military leaders who went along with it, they're the ones who destroyed Germany. And it was our generals in Vietnam that were destroying the United States, and unfortunately their effect is continuing today because we adopted their false stab in the back narrative.

PW: What about the politicians?

TP: Yes. They each feed off each other. Absolutely.

[...]

PW: The name you've mentioned more than any other in our conversation is Hannah Arendt. Why?

TP: She makes a lot of points that are valuable to understand what is going on today. I'm not that acquainted with everything she's written. I'm not even sure that she would agree with me today were she alive. But the points she made are valuable to an analysis of what is happening today. They are points she developed first hand seeing a totalitarian regime coming to power.

**Philip Weiss is the founder and co-editor of [Mondoweiss.net](http://Mondoweiss.net), where this interview [originally appeared](#).**

---

## “Everything That We Have Done Since 9/11 Is Wrong”

“Everything that we have done since 9/11 is wrong,” says retired Army JAG Major Todd Pierce, whose personal journey to that conclusion helps explain why so many ex-military people are growing disillusioned with U.S. foreign policy.

Philip Weiss of Mondoweiss was curious how Todd Pierce, a military man from Minnesota, became a critic of what looks increasingly like America's permanent warfare, so Weiss interviewed Pierce in a two-part [in-depth interview](#), which we received permission to republish at Consortiumnews.com. (This is Part One)

Philip Weiss: Tell me about your background.

Todd Pierce: I was born in Princeton, Minnesota, in 1951. My mother had grown up on a farm and her family background was Swedish immigrant and Scottish immigrant. My father was from Iowa. One uncle of his had been the minister to China during the Boxer rebellion, Edwin Conger. His wife kept all her correspondence, and it became a source book for the Boxer rebellion.

Something that shaped my thinking was my father was in the Bataan death march. He got released in 1945, by U.S. Army Rangers and Filipino guerrillas. They were rescued from the Japanese in a heroic raid. I knew of this through his mother my grandmother. He didn't talk about it. So after 3 years he got released from that prisoner of war camp under conditions every bit as hard as a concentration camp, and five years later he had come to Princeton and he married my mother. And he became certified as a highway engineer for the state of Minnesota.

PW: How did the Bataan death march affect him?

TP: He had been through these atrocities. He did have PTSD as we call it now after the war. As one of his letters points out, he had been in the place where 30,000 Filipinos had been killed and 15,000 Americans. Then in the next letter to my aunt, he said, "Please forgive me for mentioning that, I was in a down mood that day." He never mentioned those kinds of things again. He'd seen the worst you could see, and 3 years later he was living a normal life.

He married my mother. Then my mother came down with rheumatic fever three years later. She was in deteriorating condition thereafter till she died in 1958. My brother, my sister and I lived with my two different grandmothers for a couple of years, and then my father remarried, and we lived in St Paul all five of us. But I had been living with my grandparents on the farm. I preferred to go back to Princeton and the farm. One reason, I was given much more freedom there, which wasn't to my benefit. And I had a very unremarkable education career.

My grandfather was a very independent guy, he stood up for things. He was your typical Scots-Irish guy, and I got a lot of things good from him in that way. But that side of the family didn't place any emphasis on education. So remarkably I was able to get through high school without doing any work and missing a lot of school, and graduated.

PW: Your teachers must have told you you were smart.

TP: It was registered. I'm not saying that to flatter myself. They would remind me, you could do more, you could go to college. Growing up on that side of the family, it wasn't that I didn't have ambition, but I thought what could I do without going to college—perhaps be an electrician. That was the extent of my ambition at that time. If it had seemed a realistic choice when I was in high

school, I would have wanted to get a PhD in political science. That was always my interest. But by that time, it was already, "Yeah, there are no jobs for this."

I got out of high school, came down and got a job in a factory in Minneapolis. Lamar, it was a hairspray factory, and worked there for about 6 months. So I had a pretty unimpressive career. First in that hairspray factory, then working for General Tire, putting tires on cars in Minneapolis

PW: When did you go into the military?

TP: I had enlisted in the Marines in high school in 1969 with the intent of going into the infantry. I look back and shudder at my poor judgment. But I failed my physical because I hurt my back that winter before going in. So I put that aside. But it was like I had unfinished business, I wanted to get into the Marines, to finish what I had started. The Vietnam War was going on, and I had turned against it at that time. But my uncle and my dad had been in World War II and been willing to step forward to defend the country, and I had that embedded in me coming from where I was. I ended up going to the Marine reserve, then going to work as a plasterer when I came back. I didn't like working in factories.

So I went to Marine Corps boot camp, but I quickly tired of going to drill once a month and getting my hair short. I thought of going active duty but the Marine first division officially came back from Vietnam and so there were a lot of excess people on the base at Camp Pendleton, painting rocks.

I ended up going into the National Guard reserves and going back to Princeton, and for ten years I did farming and construction. I did plastering and cement work. And I was pretty good at reading blueprints. Not everyone in construction can do that. And from that time till I was 30, I was always involved in farming.

PW: Do you know how to milk a cow.

TP: Yes. I milked cows. I was a milkhauler, I picked up livestock to take to the stockyards. Did fieldwork, plowing, discing, combining, haybaling. And I'd say that farming does imprint a view of the world. It's not a forgiving lifestyle. It's black and white, a life of absolutes. If you don't do something, something bad will generally follow. If you don't get out and milk your cows, your cows will get sick.

PW: Did the '70s affect you?

TP: The counterculture was always there. My friends were hippies. And beginning in the late 60s, I was a reader of Ramparts magazine and Hunter Thompson. I was

part of the counterculture. My friends who were hippies— we always were interested but were relatively uneducated and just searching. But later I was working in New Mexico and I hung out with grad students—reading books and philosophy, and discussing things. That was my first real experience amongst a more intellectual atmosphere.

PW: Did you have any awareness of Israel?

TP: Virtually none. Though let me say my stepsister who I wasn't close to had married an Iraqi student from the Colorado School of Mines. She lived in Denver. He was studying petroleum engineering. And honestly our family was entirely Israeli oriented. Because when the 1967 war broke out, he was buying a car, and the salesman said something anti-Arab, and he got mad about it. And our family was—you know, he was an Arab, but our sympathies were with Israel.

PW: Did you have sympathy for him?

TP: Sympathy for him, yes. But not putting ourselves in his place and thinking about it. We were very typical Americans. We had Israeli-centric eyes.

PW: But you were against the Vietnam War?

TP: In '67, I was 16 years old, and I was pro-Vietnam War at that point. I was reading a lot of books like The Green Berets [1965]. I was looking at it from an American perspective, this is part of counter insurgency. And with the '67 war, I thought that Israel is our ally and the Arabs are aligned with the Soviet Union. And that was a deciding factor in how I looked at things.

I always was anti-totalitarian from the youngest age. That goes to my dad's experience. And that interest in World War II also extended to Germany, and one of the first books I read when I started reading more history was Shirer's *Rise and Fall of the Third Reich*— the kid's version of the Third Reich. And it was the time of the Cold War, so I came across things like the Hungarian Revolution and East Germany and the Berlin wall. So I was anti-totalitarian from the youngest age.

And though I turned against the Vietnam War, unlike some of my friends, who were having the prevailing attitude that if we're wrong, the other side must be right, I never defended the Vietnamese either. I was anti-communist. But for a variety of reasons, I turned against the war from an American perspective. "Why are we there?"

PW: What about education?

TP: I started taking night classes at junior college. And construction was

always up and down, and during one of the low periods [...] I was able to get an internship because of my construction experience. So that was where I got interested in computers.

And I decided to go in the army reserve and become a computer programmer. Now when I left the National Guard a few years earlier, I said, "Never again." I will be honest with you, I didn't care for regimentation. But this was the only way someone would pay me to go to school.

And Stewart Brand who was part of the counterculture said, "The Vietnam War is over, people should consider going in the military and getting training in computers." I thought, "Yeah." So countercultural ideas, the good ones, have always had some influence.

Later I came to know Ken Babbs who, along with his partner Ken Kesey, you could say were the originators of the hippie movement. And I told Ken Babbs, "Blame it on Stewart Brand, or give him credit for me going in the military, however you want to look at it."

PW: Is Babbs still around?

TP: Yes, he's in Eugene, Oregon. How I got acquainted with him— in [the book] *Electric Kool Aid Acid Test* [author] Tom Wolfe asks this guy, who's a Vietnam Vet, what was it like, and Babbs pointed to a pile of papers in the corner. "There it is, read all about it." It was a manuscript for a book on Vietnam. That manuscript got lost, not surprisingly, perhaps, and years later, in 2010, 2011, the story goes, a friend of Babbs sent him a copy of the manuscript that he didn't realize was out there. And Babbs and his wife produced a book called *Who Shot the Water Buffalo*. That was when I was a defense counsel with military commissions. And trying to bring in a better understanding of how we fought our wars. So I contacted Babbs, and being a Guantanamo defense attorney, that was my introduction, and we started corresponding, and he later invited me out to a visit.

PW: Was that a good book?

TP: Here's a point— let me fill this out. Babbs was one of the first American military service members in Vietnam. He was sent there as a Marine helicopter pilot before the war heated up, and then when he was there the war started heating up. I asked him in an oral history, what were his ideas once he got there. Did you think the war could be won? He said, No, I knew almost right away that war could not be won. I was taking Marines out on patrol, and even in those early years they would just pretend to be out on patrol because they didn't want to get too far away and not get back to the helicopter to pick them up. So they

were already shirking their duty, because they didn't want to put their lives on the line for what they already knew was a lost cause.

PW: They knew that the people didn't want them there.

TP: Yes.

PW: How political were you then?

TP: In 1983 I got hired as a computer technician in the active duty reserve program, and I was on active duty for almost 10 years. And during that time, that's when I got more politically interested and began spending a lot of time in the library. And I will admit that I became a neoconservative. I had been a liberal through the 70s, then came the Iranian Revolution and the Soviet invasion of Afghanistan. And it just seemed like something is wrong here. I was a blue collar Reagan Democrat at that time, though I didn't like Reagan. I may have even have voted for John Anderson. I forget, but I was leaning more to the right at that time. As did a lot of people.

This is when the guerrilla war was heating up with El Salvador and Nicaragua. And being anti-totalitarian and anti-communist, I wasn't a right winger, I was a social democrat type you could say, but there had been some Nicaraguan Sandinistas who had broken off, and one of them was a former nun from southern Minnesota. She had been married to a Sandinista, but as the government became more Leninist he became disaffected and left the country.

And another guy was studying for a doctorate in Iowa who was a former Sandinista. He had actively supported the revolution when he had been in Europe, he was very knowledgeable about liberation theology. And Minnesota was a hotbed for support for the Sandinistas, with the Socialist Workers Party playing a large role. My interest was always in ideologies, revolutionary ideologies.

PW: You weren't on that team?

TP: No. I was against Trotsky and against Stalin and on the other team. I was coming from the liberal critical side toward Communism, and I got more involved in my reading, and I got acquainted with a person here who would remain a neoconservative, an attorney, who had gotten involved because of the involvement of the pro-Sandinista side at her Lutheran church. She didn't think she was getting the fullest picture. We joined forces. I was also talking to a number of different professors who had opinion pieces in the papers consistent with my own. And I met an IDF [Israeli Defense Forces] officer then teaching at the University of Minnesota. Some friends introduced me. If I had a political mentor then, it was this IDF officer.

PW: Would you take the same stance today vis-a-vis the Sandinistas, given the left-wing crowd you're in?

TP: I don't apologize for being anti-Sandinista. The people who interested me were the critics from the left side criticizing the Leninism. I was talking about the influence in global education of a pro-Sandinista point of view without any opposing viewpoint. That was the issue. There didn't seem to be a counter narrative. I wasn't interested because of a kneejerk pro-American perspective.

PW: But your left-wing friends in New York, the late Michael Ratner and Michael Smith, this would be a real difference between you.

TP: They would have been on a different side. And like I say, I would remain anti-Sandinista today, but today, I would be against interventionism. Someone I am friends with now is David MacMichael, he worked with the CIA at various levels. He's a member of the Veteran Intelligence Professionals for Sanity group, which Ray McGovern and a few others started in opposition to the Iraq War. MacMichael is elderly now, and he's much more on the left today than he would have been in the 50s and 60s. In the 80s he served as an expert witness for the Sandinista government in a lawsuit against the United States. And when I worked in military commissions I got acquainted with Paul Reichler, co-counsel for Nicaragua in that lawsuit. So talk about coming full circle.

I would respectfully disagree. I remain anti-totalitarian. That's why I am doing what I am doing today. That's why I volunteered to defend Guantanamo defendants. Because we had adopted the same techniques I had spent my life in opposition to.

When 9/11 came, almost immediately when we picked up people in Afghanistan and Bush and Cheney were saying, "They don't get the protection of the Geneva Conventions," my position is, "No, that's wrong." I had the experience of my dad in my background, and I said, "Wait a minute, this is what we used to accuse communist regimes of doing, violating human rights, etcetera. It's no more right when we're doing it than it was back when I was in opposition to the Sandinistas."

PW: How long were you a neocon?

TP: One of the professors I knew referred me to the National Association of Scholars, which was started by Herb London and Steve Balch, both of New York, and I got involved with them. Balch said, "Why don't you start a state chapter of the Minnesota Association of Scholars." That was 1987. And our first issue that we took a stand on was a call for a more balanced approach on global education.

In this period of time, I also got acquainted with the Institute on Religion and Democracy. All the neocons! And I got acquainted with Peter Collier and David Horowitz. I was arranging for various people to come into the state and speak at colleges. And I also got acquainted with Michael Ledeen's wife, Barbara Ledeen, who had worked with a group that sponsored Horowitz and Collier.

One guy I met in the association of scholars, I won't name names, but he was known as a Straussian at Carleton, and in our first meeting getting this association together he said, "Where do you teach?" He figured I must have been a professor. I broke the news, "I don't even have a college degree." I was putting on a good act.

PW: What was your religious training, and had you met Jews?

TP: We were very irreligious in my family. We went through the formality of getting confirmed in the Lutheran church, but just like in school, I didn't go to confirmation very much. My neighbor wrote my confirmation report. At the end of ninth grade, we had to meet every morning for a week with the pastor to prepare for confirmation and then write a five-page paper. I went the first day and didn't go the rest of the week. I talked to the pastor, and he said, well, if you get the paper in we'll confirm you. So my neighbor wrote the paper. I don't know how I persuaded her. I couldn't tell you what it was on.

The only Jews I knew were a local grocer, who would drive up from Minneapolis every day. He and his brother had a dry goods and grocery store, named Mark's.

PW: They were hardworking guys?

TP: Yes they were, and they gave credit, which farmers needed.

PW: What about anti-Jewish prejudice?

TP: None, that I was aware of. Minneapolis, according to The Mary Tyler Moore Show, had antisemitism, but it just wasn't an issue where I grew up. We liked these guys, we shopped there, they were always friendly. My grandmother liked them. I got to know Aaron, he was a real character, with a lot of jokes, he could have been on the comedian circuit. His brother Bert was older and a little bit more reserved.

PW: Now you were meeting them professionally. Were you thinking, "Wow, these are Jews?"

TP: No, it wasn't the way I thought. I thought, "This IDF officer, he knows something about war and politics."

PW: You told me your ideas really started to change with the Gulf War.

TP: Right. August 2, 1990 came along with the invasion of Kuwait by Iraq. I believe that was a Saturday, and our unit had a mission to the Mideast, as theater area material management center. They said right away, "We'll be mobilized for this." I was a very patriotic person. I supported the Gulf War. But it also opened my eyes to how corrupt things were.

PW: How was that?

TP: Just the way things were done. We got mobilized to Fort Polk [Louisiana] in September. Then to Saudi Arabia beginning of October. The first thing we got told was, "You will be here at least a year." And I was told to train someone in the computer job, because the computer was going to be left in Saudi Arabia.

The US Army wanted to be in the Middle East. Even before we left Baton Rouge, I was told that my computer, the computer I was the sole technician for, would not be coming back. They weren't going to see what Saddam Hussein would do, they had their opening to get into the Middle East.

This particular computer I maintained, maintained all the ammo stockages in the theater; any ammo that came into the theater was digitally inventoried on the computer and allocated. So it was sort of an inside view of what was being done at a high level of command. And like I say, it opened my eyes to how things really worked in the military.

PW: Why did they want to be in Saudi Arabia?

TP: To me at the time, but more with hindsight—it was that yeah, the United States wanted to get more involved, more directly in the Middle East. We were already propping up the Saudi regime in a variety of ways. And Osama bin Laden, one of the complaints he had was that the United States was in Saudi Arabia. When you break that down, the complaint was about the United States propping up the Saudi regime, which was corrupt and keeping most of the wealth for themselves in the Saudi family. When you got there, you could see that first hand. I'd go for a walk, and you could see a palace there and the rest of the people largely in poverty.

We got there in October, and most of the units were out of there by May. But because we had a permanent mission there we were still there and I don't know when they planned on getting us out. But the people from Baton Rouge and Arkansas said, "When are we getting out of here," and they started calling congressional members, saying, "The war is over." And about May they said, "We're going to keep part of the unit here, and send the rest back to Baton Rouge, and we'll continue the mission."

But what was the mission? The war was over, so what was the mission? The mission

was to plant the United States in the Middle East, with a remnant here in Saudi Arabia.

I got out of there only because a regular army soldier wanted to stay there, a computer technician. So he transferred to our unit and he stayed there. We left part of the unit there in the Khobar towers. I helped them move in. It was a giant apartment complex. Like the projects in Chicago.

PW: Did that make you cynical?

TP: That was where I really became cynical in a whole lot of ways, both at the micro level— officers having adulterous affairs and having a motive to stay there, with one another, and I'm being careful not to name names, but high ranking officers, who were actually lobbying to keep us there, because they didn't have a financial interest in going back, plus they had their mistress there. It was the lower level people suffering in various ways financially, and this was before cell phones; phone calls home were expensive, and they were trying to maintain contact with their families.

PW: People have had affairs in the command before.

TP: No, that's not new at all. It happens at every level in the military. Not just the adulterous affairs, but more just the conflict that goes with it, and how that works out personnel wise. I didn't worry about who was having sex with who, but rather what consequences that had for me and the other soldiers. You see people getting promoted faster and what not.

PW: What about the macro level?

TP: That computer is probably still there. Rusting now that things are updated. But they were setting up a system of logistic bases. They had already started one in Saudi Arabia, then they had another base in Kuwait, where they launched the war in 2003. We were putting a stranglehold on Iraq from the very beginning of the end of the Gulf War.

PW: Whose plan was that?

TP: I have to believe that we were doing it from the time we left. From the highest level. George H.W. Bush and Cheney, they had exhibited some prudence in not invading Iraq at the time, but at the same time they were exercising total control over Iraq in a variety of ways.

Let me throw in one other thing here, very quickly. I came back and I got a promotion and a job down in Fort McCoy [in Wisconsin]. I was applying to law school at the time, and fulfilling the requirements by getting a four year

degree. And I entered Hamline Law School in 1993, at age 42.

But that experience in Fort McCoy made me even more cynical. The way the commanders were. Again, adultery. Which is there everywhere you go. But the personality of the commander was very controlling. I got down there and I'm hearing right away from enlisted men and officers, "Don't say a word, don't question anything." And every week they had a meeting with the commander who would talk, and the second week, a captain raised a question, "Why isn't this being done?" The people around me were whispering, "He'll be gone in a week." And sure enough, the next week he was shipped out to a less desirable place.

PW: How did you go from law school to becoming a JAG?

TP: My goals were modest. I wasn't looking for a large law firm partnership or anything. My goal was just to be a prosecutor in a medium-sized Minnesota county where I live. I was more of a law and order guy.

But when I was finishing law school, [a former army colleague] had become commander of the legal support unit for an army reserve unit. And by that time I had joined the army psyops [Psychological Operations] unit as a reservist, one weekend a month, as a noncommissioned officer, but that unit was being disbanded so I called him up and I said, "Do you have any positions?" He did and said, "I can't promise you but I might get you a commission as a JAG..." [T]he paperwork went in and I got the commission. So then I became a JAG. I got commissioned in 1996 and I was 45 years old.

Meantime, I applied to be a judicial law clerk in St Cloud, with a judge. I got hired by him, and it was fortuitous, we were very compatible in outlook. He was a state judge, very senior, appointed by a Democrat. In the course of working for him, I won't give you too many details, but my outlook shifted, after I saw a couple of cops testifying falsely on a couple of cases. I thought, "Yeah, there's a place for the defense more than I appreciated before." My sympathies shifted. I remained more conservative at that point. But conservative in the idea that, "No, you got to have the defense and defend these civil liberties."

That was a transformational experience. We had a few cops come in, and a cop was lying. This cop who was investigating false allegations became involved with the alleged victim's mother, and you read the police report and the thing just fell apart. And the charge was very serious: a charge of sexual conduct with a 15 year old girl. The case was filled with inconsistencies, and I persuaded the judge to dismiss the charges. No judge wants to dismiss a charge of criminal sexual conduct involving a 16 year old girl, because it is going to get a lot of attention. But I went back to him three times.

The charges were against the mother's new husband. They'd met in a nudist camp. He had a pension as a teacher, and the daughter never liked the guy. I don't blame her, but she made the allegation of sexual contact, and the story rang false for a lot of reasons. The cop had gotten in an affair with the mother. I persuaded the judge, this is inherently incredible, it couldn't be true. It took three times to convince the judge and he dismissed the charge.

The judge said, "Yeah, go ahead and write up an order dismissing the charge, but make it very careful and make it bulletproof." And I did. And that was later vindicated by the prosecution and the police.

PW: What effect did that have on you?

TP: Well it added another layer of cynicism.

PW: Our conversation began with you saying the foreign policy positions of the Democrats and Republicans are fascistic. That's a strong statement. Do you think that in this belief, with your long ideological history, that you have a romance about when America was good?

TP: I have a yin and yang view. Yeah, there's much that's good about America and relatively speaking in the course of human events and history, we are often exactly as we have held ourselves up to be. We did break ground in opening up more freedom for the world. But at the same time we were committing genocide [through] constant warfare against the indigenous people. Which cannot be denied and cannot be legitimized, or justified.

PW: How are we doing in terms of those freedoms?

TP: Many people could argue that at any point in our history we really were hypocritical because of the way we treated indigenous people. And you can make an argument that every war we had, even the revolutionary war, was driven by economic self-interest, but again, it brought about good outcomes. We were always on an imperialistic course with manifest destiny and subjugating the indigenous people. And you can't justify that and you can't defend it in a moral sense. But we really took that to a higher level with the Spanish American war, where we become a global imperialist and joined the other imperialist powers. My great-great uncle was part of that, as a minister to China. But even then it was always mixed. John Quincy Adams said we don't go abroad to slay dragons or tyrants, but we stay at home. Like any country you have schizophrenic political attitudes.

So how do you measure our achievement? In the long term, I guess you have to measure by what we brought about in human rights.

But I think it's like we hit a peak and now we're on a downhill side. Now human rights has become a pretext to go to war and to use as a weapon against other countries, not equally against despotic regimes, but selectively at whoever we want to target.

It goes to Hannah Arendt's point about totalitarian foreign policy, which I take to be a fundamental principle of fascism, and as others have written, fascism, contrary to what some will say— what's a fascist regime, and they get into minutiae, what did Mussolini do. While more astute observers point out that fascism is what fascism does. Even if we don't have anybody speaking Italian to us doesn't mean that we can't be fascist.

And fascism is a national manifestation, so every country is going to have its own cultural form of it. We're seeing an American form of it, particularly in the political conventions. Last night [at the Democratic Convention], some antiwar protester said, "No more war," and they were drowned out with people chanting, "USA, USA."

They didn't treat them any different at the Democratic one from the Republican. This morning, Joe Scarborough said, "You know the Democrats have gotten rid of their Vietnam syndrome." They're back in full warfare mode. They're just triumphant. There's a satisfaction that both parties are united on their foreign policy. No more of this antiwar dissent, or Democrats apologizing for what we're doing. We finally silenced the antiwar left. There's a triumphalism being expressed.

PW: St. Cloud led where?

TP: I learned there was an active reserve JAG officer opening at Fort Snelling [in Minneapolis]. I thought, "I have to apply and see what happens." I got hired. I went on active duty in 1998, as again an active Army Reserve JAG officer. About the same time the Kosovo War was beginning, and in large part coming out of the Gulf War, I had become anti-interventionist, to give him his due credit, partly under Pat Buchanan's influence. He was making the argument, the Cold War is over, get the peace dividend, it's time to come home, America, invest in the United States, lower the defense budget. I'd been anti-communist and anti-Soviet, but I wasn't militaristic.

So, I was very much in line with that. I had already had two indications through the military of our real long term goals in foreign policy. Being told our computer would stay in the Middle East, then seeing how we ramped up our logistics bases there. Then when I was in the psyops unit, during training, our commander came to us one day and said, "You know, if you guys are thinking your mission is going to be reduced, you're wrong." We had just come back from the

Gulf conflict. "We're actually going to be doing more things around the world on these psyops missions." That was probably 1993 or 1994. [...] And bear in mind, the psyops are mainly in the army reserve. The way it's set up, they don't need that many people on hand except during a war. So when a war breaks out that, they need psyops and they've got them all ready in the Reserve.

Also when I was undergoing that psyops training, down at Fort Bragg, one of the instructors was a master sergeant who had been in Iraq during the Gulf War, and she was up in the Kurdish area after the war, and she and a captain had nothing to do, they were twiddling their thumbs— and this goes to show the incompetence of the military and the lack of sound reasoning—her and this captain were up there as psyops working with the Kurds. They're supposed to be helping them get food, and they decide, well, we need to do something in line with psyops, so they started preparing this propaganda message, Rise up against Saddam Hussein.

And she hated the Kurds because they did exactly what they'd asked them to do. The Kurds in the north rose up and got decimated by Saddam's forces. And she just couldn't contain herself, [...] she hated the Kurds, because they'd actually listened to her. I presume she got some kind of rebuke for it officially.

PW: That was in the news, right?

TP: There was another rebellion in the south. That was driven by George H.W. Bush. [He] made some statements that encouraged southern Iraqis, the Shiites to rise up, the so called Marsh Arabs. She was up in the Kurdish area, and I'm just relying on her anecdote here, but according to this person who would have been a senior NCO, on her own, she and this other officer incited the Kurds to rise up and rebel. She hated the Kurds, because she didn't care about the Kurds getting killed as a result—and I'm guessing but she probably got in a little bit of trouble, maybe a reprimand, for an ad hoc psyops campaign. But she didn't get too severe a reprimand, because she was working as a senior instructor.

They succeeded in inciting them to rebel, but she didn't want them really to rebel. They were just doing that because "Hey— this is what we do." It was just a gross dereliction.

PW: What was next for you?

TP: I got off active duty in November 2002 as they were ramping up for the Iraq war. And I took a job as assistant county attorney in Fillmore County, in southeastern Minnesota, in February 2003, then I left in April 2004 and started working at the Minnesota secretary of state's office, and worked there till March 2008.

Then I went on active duty for Guantanamo in June 2008.

PW: Did you elect to do that?

TP: Yes, I volunteered. Again, going back to the very beginning stage of the global war on terror, they said, "We're not going to recognize the Geneva Conventions." I was on active duty then. I opposed that, and I opposed the Iraq war.

PW: What does that mean to oppose the war inside the military?

TP: There was a senior NCO who put up a sign, No war in Iraq, in her yard. And someone saw that and reported her. They were looking at punishing her. It never made it into the papers. That put me in a quandary, because they wanted to have punitive action against her, and I'm trying to recall if it ever got to the stage where I had to say yes or no. I opposed any action. And I had very good relations with the general. I would have told him not to do anything.

PW: Where were you on 9/11?

TP: I was on active duty as a JAG officer. I went into work that morning. And our staff was small, me and a lieutenant colonel, and he routinely would come in late. And that day he didn't come in till 2 or 3 o'clock, which I won't say anything more about. It was all happening when I got to work, and the second plane hit and we knew it was terrorism, and so we began wrapping up immediately our command, because we were responsible for all the Reserve units in six states. Also we knew people were being mobilized almost immediately. I was in on all the discussions because the more senior guy hadn't shown up yet. And you could just see the hysteria taking hold of a lot of people.

Then at the end of the day, late in the day, because we worked late, finally my senior officer arrives, so I can go home, and I picked up my son [from school in Minneapolis] so we could go home, and see my stepson who was back from the Marines on leave. He'd been in a year and a half, and I was anxious to see him. And there was a huge traffic jam. And finally we got north, and we came to an overpass, and there was a guy on the overpass with a kid waving a flag. He backed the traffic up five miles because everyone honked a horn and slowed down a bit. It was something like after Pearl Harbor. But I was ticked off. I wanted to get home and see my stepson.

The next night— the same thing. The guy was out there again with a flag. The third night, I pulled over. I had my uniform on, and I said, "Hey you're backing up traffic for ten miles. You've done this now for a couple days, we get it." He said, "I just want to show my support." I said, "I'm in the military, I want to get home, you're doing a disservice to me."

The guy was out there again the next night. I called the highway patrol. I said,

“Look, I understand free expression, but backing up traffic? Can you at least suggest that he stop?” But they said, “Oh no, we can’t.”

Fortunately, he wasn’t out there after the weekend.

PW: Why wasn’t it freedom of expression?

TP: It was hysteria. Immediately— out came this outpouring. He was patriotic, but again to me, sitting out there—he was backing traffic up for miles. I never criticized anyone’s patriotism, though we could get on to a different topic, of how it’s become hyper-militarism.

PW: Where else did you see the hysteria?

TP: Just watching my fellow officers. They were changing before our very eyes. “We have to go to war, we have to start killing people.” Then it all started. Picking people up with no Geneva Conventions.

PW: But what were your feelings on 9/11? I remember myself that day. I said, “I’d go after those bastards.”

TP: Absolutely. Remember, I was still inclined to be hawkish. I was non-interventionist but I was still hawkish, and I said, “We got to go after the guys who are behind this.” I had no doubt about that. I was mobilizing troops and I was fully in support of these guys. But let’s do it right. Let’s do it legally. I was going back to all my time having an interest in guerrilla war and how do you deal with it. When you start acting outside the law, when you act hypocritically, you are aiding the enemy. This is a fundamental principle of counter insurgency, which we’ve never followed in spite of Petraeus’s talk. You’re aiding the enemy.

Hey, we’re doing everything wrong. Almost from the beginning we did everything wrong. We went into Afghanistan— yeah, hunt down Al Qaeda, the perpetrators. Then it turned into removing the Taliban. The Taliban aren’t terrorists. The Taliban may be horrible people, they are not terrorists. You can’t expand the war.

Then it expanded to Iraq. Even at the beginning, they were talking about Iraq. So everything we have done is wrong and has led to the creation and expansion of ISIS. We brought it into existence by our own policies.

PW: Did you ever say this to Michael Ratner? He used to say the same thing.

TP: I said it frequently on an email list I was on with him. I remember he responded to me when I talked about martial law— that these principles, if we follow them, are a threat to our civil liberties and political dissent.

PW: That was happening in the Vietnam days?

TP: The military wanted to do it. I went in and did quite a bit of research on Westmoreland and these guys. I read this book *On Strategy*, which is a mimicry of Clausewitz's book, *On War*. It pretended to be taking Clausewitz's thought and applying it to Vietnam. In fact, Clausewitz said the strongest form of warfare is defensive. He was writing as a Prussian national, in opposition to Napoleon's invasion, and he said, "Stay at home, defend your country, don't go out on offensive operations." And in this book *On Strategy*, Podhoretz turned that upside down. The book is by Harry Summers, but Podhoretz is listed. There's a section on the offensive. How the offensive is a stronger form of war, and as a footnote, Podhoretz is given as an authority for that, not Clausewitz, who said the opposite.

Clausewitz's book wasn't popular with the Germans because Clausewitz also said you need to have civilian leadership making the decisions on war, because the military is more narrow minded. So the German military almost immediately reinterpreted Clausewitz's book, and that's how it's handed down to the Americans.

The point of Colonel Harry Summers's book, *On Strategy*, was we would have won the Vietnam War had our will not been diminished by the antiwar movement and the press. I had actually adopted that view a bit in the '80s myself. Till becoming sober again. But the press had been targeted as the enemy, for having reported the news. In the course of our argument on the right to know, I read these memoirs by Generals Davidson and Westmoreland and Admiral Sharpe. They were all in agreement that the press lost the war for us, the antiwar movement. Davidson and Sharpe said for the next war, we got to have military detention and censorship. Basically, we got to bring back the martial law we had during the Civil War and in Hawaii during the World War, which they had all been familiar with.

In Hawaii, they needed Japanese-Americans as a work force, so they didn't have the mass removal. They had martial law. I went to the museum in Hawaii. They had signs, imposing censorship. And that's what these Vietnam-era generals would have known all about [...], and they were advocating that for the Vietnam War. It's unconstitutional, so it's difficult to do, but the military internalized this way of thinking, so they've been coming up with these ways of basically suppressing news and information ever since.

PW: How long did you serve as a Guantanamo defense attorney?

TP: I began June 2008, and it actually continues to this day. I'm still on a case before the DC Court of Appeals, we're still waiting on a decision.

PW: How many guys have you met at Guantanamo?

TP: At Guantanamo itself, I have only met one client, one prisoner [Ibrahim] al-Qosi. The appellate case I'm still on, he would never meet with us. Though one time, to the surprise of my co-counsel, he agreed to meet; and it was my co-counsel who was down there, so they met and actually they ended up talking throughout the day. His name is [Ali Hamza] al-Bahlul. He told my co-counsel, "I want to give you a message to send to your president." The guards wouldn't let him bring in his pen and notebook for some random reason, but he had a MacDonald's coffee cup, and al-Bahlul twisted the lid of the coffee cup to use as a stylus and etched his message into the styrofoam. "Stop waging war on us and we'll stop fighting back."

It's clear all the time, what is their motivation. We sent the whole cup to the White House.

So I only met al-Qosi. Now I have met a number of former prisoners after [their release]— British and Sudanese.

PW: Did the meetings have an effect on you?

TP: Actually, it didn't have any real effect on my thinking. It only confirmed the conclusion I had already come to, that here's why they fight. Our client was a very calm person, low-key person. This was his personality, this wasn't just putting on an act. He had gone to Afghanistan in the late 1980s from Sudan, and volunteered, maybe having been encouraged by CIA propaganda to go fight the Russians. He came late in the war, so he might have done a little fighting late in the war, and that war ended, but the group he joined up with happened to be bin Laden's, because that was one of the groups fighting and organizing people. So he went to continue fighting the Russians in Chechnya, but he got there just at the time when a cease fire was going down. So he didn't do much fighting there. He probably was never involved with much fighting. Then he went to Sudan, when bin Laden went there. He became more of a gofer for bin Laden and did some menial jobs trading produce from bin Laden's farm, which he wasn't very good at.

PW: Bin Laden had a farm in Sudan?

TP: Yes, he invested quite heavily in Sudan for a while. But the US put pressure on the Sudanese government to kick him out, so then he went back to Afghanistan. Our client al-Qosi followed him to Afghanistan. There he was basically a driver and a logistics guy, picking people up and bringing them there. He definitely agreed with al Qaeda's goal of fighting the west, for the reasons al Qaeda said. We were being monitored, so I didn't get into real specifics. So I couldn't quote you.

On Israel, I did casually say or carefully say something about Israel, and—yeah, that’s an issue. But I knew that because the other client had created a propaganda video or a documentary of why we fight.

PW: The coffee cup one?

TP: Yeah. In 1998 or 99. The video is called *The State of the Umma*, the Umma being the Islamic people. It’s their version of our World War II propaganda movie, *Why We Fight*. And they list the reasons. The three reasons in 1998 or 1999 were: The US troops staying in Saudi Arabia. It’s not just they’re on supposed holy ground, rather it’s why they’re there, they’re propping up a Saudi regime that is plundering the state’s coffers.

The second reason they cited, I think in this order, I believe was the sanctions on Iraq which led to the deaths of indisputably 500,000 children, which Madeleine Albright said was worth it, and they obviously disagreed. She was asked about it on 60 Minutes, and I think Lesley Stahl said, “Well we hear there’s been 500,000 children that died as a result of sanctions, Madame Secretary.” “Well, we felt it was worth it.” She later said it’s not what I meant. But that’s what went out, as her response.

And the third reason was the Israeli military occupation of Palestine. And those were the three reasons listed in 1998 or 1999. That’s what they were operating under when they planned 9/11. 9/11 was not intended to bring the United States down, but it was a classic guerrilla technique: how do you bring the enemy into your territory. Bin Laden had concluded, “Why are we going to fight the Saudis when the Saudis are the tool of the Americans? Get the real enemy.” And none of this is to defend anything bin Laden did. But he attacked a building, the Pentagon, that was a legal military target. And the World Trade Center, you could make an argument that it was too, because it was crammed with national security offices. There were a lot of federal government offices in there.

They wanted to draw the United States into their battle space, so they would have a better advantage in fighting us. But the purpose in targeting the United States was because it was the United States pulling all the strings in the Middle East. Including with Israel. Because we’re a Joint Military Command with Israel, you could say, today. Then with Saudi Arabia, and Egypt. You can tell me if you disagree. But when you look at the ammo carriers— when Israel runs out of ammo in an assault on Gaza, we’re the logistics train, bringing up and resupplying them. Just like my unit in Saudi Arabia was the logistics train for the troops, we’re doing the same for the Israeli Defense Forces when they launch a war.

PW: So would you say you became politicized?

TP: My politics today are non-ideological, if you can call it that. As far as ideologies, I can disagree with everybody. Libertarians may be right against the wars, but they advocate economic policies that allow the Sheldon Adelsons to get ever richer, so that they can push for a war. So, functionally, they're supporting war. Uri Avnery captured the Republicans perfectly. When Netanyahu spoke to Congress, he said it reminded him of a German Reichstag session, and half the Democrats are as bad. So there is at least a remnant of Democrats who aren't fascists.

So I don't consider myself ideological. But a pragmatist. Certainly with ethics—we don't go out and kill people at random. But also arguing, "This is against our national interest; what we're doing in the Middle East is not advancing our national interest."

PW: Where is Israel in your thinking?

TP: I think it's right up there with everything I'm criticizing about the United States. Again, militarily, we're functionally a joint military command. We know all about the PNAC [Project for a New American Century] thing. And before that it was Oded Yinon, writing in 1982, advising the Israeli government to fragment the Middle East. He was an Israeli foreign service officer saying, "Rather than dealing with these other Arab states and being in a state of war, what we should do is fragment them, break them into pieces." And later when Netanyahu was prime minister, in 1996, Richard Perle came along making that same recommendation [in the report, *A Clean Break*].

PW: A lot of people make a lot of recommendations. Is that the active thread in their thinking?

TP: Yes. I'm acquainted with Ilan Pappé and 1948 now. So I know much of that was being done well before today. And whatever opinions are of 1948, and criticisms—myself I'm a bit of a pragmatist, ok, so, Israel is in existence, and life and history is filled with injustices, like the Native Americans. You can't undo all that. So as a pragmatist, Israel has got those borders. Even though in 1948 it went beyond those borders. They got those '67 borders [from the 1949 armistice], and so, to reconcile and bring some peace— you're not going to undo '48, but we got to not allow them to continue that conquest that's taking place. I mean, if the United States was continuing to wage war against the indigenous people, say, or Mexico or South America, continuing the war against the indigenous people, I'd say, "OK whatever happened 150 years ago, there's got to be a statute of limitations here, it's got to be fixed, we can't continue it." That's the crime going on today; we can't allow an ongoing crime to continue.

So reading all this, and seeing the part where the expansion is continuing. And

Ben Zion Netanyahu [Benjamin Netanyahu's father] said, "Wipe out the Arabs, get rid of them; and my son agrees with me!" Though he's more cautious about what he says. I can give you the exact quote.

PW: How influential has that thinking been in the U.S.?

TP: Well I think before 9/11 it had obviously been influential with the neoconservatives. Which I had left. But I was still leaning toward the conservative side of things, in large part because of Bill Clinton and Hillary and their wars on Kosovo. That's what resonated with Buchanan's criticism. Because no one on the left was talking about this. So that by default put me on the right, as an anti-Interventionist.

And you got the Christian Zionists. So it was always there. But with 9/11 it expanded exponentially. When 9/11 happened it created a readymade audience for the neocons to say we got to do what Israel does. Karen Kwiatkowski worked in the Pentagon at the time, and she said the IDF officers had regular access. They didn't even have to go through, like I did, with a pass, to get through.

So right away we turn to the IDF. But what the IDF knows is not counter terrorism, in the sense of a democracy defending itself against outside assault—what the IDF knows is how to exercise a military occupation, in the most repressive manner.

And the law of war allows a belligerent nation when they're occupying a nation to protect itself from what the law calls hostile acts. But there's a danger, when you adopt this idea of martial law and military occupation, you're bringing in totalitarian law. The law of war is fundamentally totalitarian law. Because it allows you to protect yourself as the belligerent against any possible threat. So in the case of Israel, a kid writes a graffiti on a wall in the occupation, that can be deemed a hostile act, and they are put in military detention.

PW: Do you remember a case like that?

TP: Yes, I remember reading about such a case. So a hostile act, here's where it raises questions about our drone targeting. We deemed everybody in Iraq who opposed us to be a terrorist, even though they were a legitimate resistance force under the principle we established in France and elsewhere, in World War II. But we're deeming them to be terrorists. And are we doing the same with people who we're targeting with drones?

And maybe someone who is a journalist— and there have been a lot of journalists killed by the United States— are we deeming them to be undertaking a hostile act just because of opinions that they're expressing? I suspect we are.

I was at a Code Pink event on drone warfare, and they had a guest there speaking about a relative who'd been killed. He was a youth, 16 or 17, and he went to an anti-drone war event. A Pakistani politician held a large event in one of the larger cities against drone warfare, and this kid had gone to it, and on his way back he was killed by a drone. Again, when you look at the way the war of law has been interpreted under martial law, the customary way we think of a hostile act is someone carrying an AK-47, but just as I was in psyops—propaganda is deemed to be a hostile act, and propaganda is loosely interpreted. So in a strict military mind, in that tunnel vision mind, if you're weakening our will, like they described in *On Strategy*, then you're aiding the enemy. Therefore you are the enemy.

That's what the generals were arguing in Vietnam. These antiwar protesters are weakening our will, therefore they're aiding the enemy, therefore they should be treated like the enemy and put in military detention. If you can put somebody in military detention, then you can kill them as well. Because it's the same principle. In one of the early military commission cases, they had put this US citizen [Yaser Esam] Hamdi in military detention. It was bought up on habeas corpus appeal, and the Supreme Court justices said, I think it was Sandra Day O'Connor who wrote the Opinion, in warfare you can kill your enemies, so of course you can put your enemies in military detention. And the reverse is true. If you can put somebody in detention, you can also kill them, because they're the enemy.

I've talked to the group that monitors drone warfare in London. And I have asked, how many journalists have been killed. They said 9 or 10 at least. Again putting things together, I don't think it's wildly speculative to say, we have targeted people who are most outspoken against military policy either as journalists or activists in the Islamic world, under the principle that they're committing hostile acts against us. Which may just be what they're saying.

And al-Awlaki the same way. He's accused of being a propagandist. But when they've been challenged they say, "He was actually an operational leader." That conjures up the vision that he's planning military acts. But you could say as well [that] I, as a psyops NCO, was an operational leader too. In my case I was a member of the military. But what they're saying is, "If you're engaged in propaganda, you're engaged in war. Therefore you're a lawful target. You're taking direct part in hostilities." And that's what gets to a lot of civilians, that we don't bother even to defend what we did. We say they have an operational role in the war, when they might just be expressing dissenting thoughts.

PW: What do you mean, we haven't defended?

TP: Other than Awlaki, we haven't bothered really. When we kill a group of

people and they're civilians, they're collateral damage. We've never gone into specifics of this, because no one has even challenged us who has any voice. When you kill this journalist, they keep track of it, in London. But they don't have a voice that anyone listens to beyond their narrow circle. But, like I say, they told me that at least 9 or 10 journalists have been killed.

PW: Dissenting voices, where are they in the culture?

TP: They're virtually nonexistent in my opinion. Which is a danger. We've evolved into this fully militaristic society. You have writers like Phil Giraldi, Ray McGovern, Glenn Greenwald, and websites like Consortiumnews, Antiwar.com, the Intercept, Alternet, and Mondoweiss.net opposing militarism. How many others are there? Very few. We've just been overwhelmed. The Democrats court Petraeus and Petraeus endorses Clinton, and Republicans court General Flynn who collaborates with neocon Michael Ledeen. The mainstream has been fairly unified. Trump is a bit of an outlier. But like I told a lawyer friend who wanted to start a superPAC against Trump, I'm against Trump, but I'm also against the entire Republican party, and I'm not sure that they're not worse. Trump you can at least recognize as a fascist. It's the ones who we don't understand how their policies are fascist that are the real danger. Ted Cruz and Rubio and what's his name Bush, all these guys wanted to continue the George W. Bush policies.

And Hillary Clinton, going back to the first Clinton administration, people said then, she and Madeleine Albright were the hawks in that administration. And she's changed nothing.

PW: Are you worried about the lack of voices questioning these policies?

TP: Absolutely. I've mentioned the case of Ernest Fraenkel. Ernst Fraenkel was describing the situation in 1939 that at least is in formation here. Section 1021 [of the National Defense Authorization Act (NDAA) for Fiscal Year 2012] gives the prerogative to the government. What it says is that a military officer could go and arrest someone should the commander deem that person to be a terrorist threat or a terrorist. That's exactly what the Gestapo used to do with an internal enemy. That's what 1021 provides a legal basis for.

I've argued about this with a lawyer I have a lot of respect for. I say, "This applies to US citizens." He said, "It doesn't apply to US citizens." But the other section explicitly refers to foreigners. There's sections 1021 and 1022, and 1022 applies to foreign terrorists. Within that section, it says it only applies to foreign people. But 1021 doesn't say anything about foreign or domestic. Just by a standard statutory interpretation, I would argue that 1022 explicitly excludes U.S. citizens. Which it doesn't have to do. While 1021

doesn't exclude US citizens.

PW: Has it ever been applied?

TP: What I argue is the correct legal interpretation has been applied, in the *Hedges v. Obama* lawsuit. That's why I keep going back to it. In *Hedges v Obama*, Chris Hedges and a couple of other activists brought a case against the government for injunctive relief. They said, "We don't know what we can do anymore, we don't know who we can talk to, we don't know what we can say." The district court granted the injunctive relief of 1021 and the second circuit court of appeals issued a stay, and the DoJ went in and said, "Yeah, we're at war, the president is commander in chief, and furthermore, you have the Congress—and when the Congress and the president are in agreement, the president's powers are at its apex. 1021 was passed by Congress, so therefore the presidential powers are at the apex. "

So if they deem someone to be a terrorist or a terrorist threat, they could be put in military detention. That doesn't exclude someone for something they write. The government made the argument, it doesn't exclude just expressive activities. It can include expressive activities. It gets back to the kid writing graffiti on the wall. That's a hostile act if the military leader deems it to be so. So in *Hedges v Obama*, the DoJ made that argument that expressive activities could be included and could be considered a hostile act, meriting military detention. But the case was dismissed because Hedges and others didn't have standing because their expressive activities had never been affected. Which is how these cases are always dismissed.

So in other words, we have this Government on record saying, "We're not ruling out any powers."

PW: In my complacency as a journalist who's a dissenter leading a happy life, I say, Todd you have a dark view of world. There's a difference between prosecution and marginalization. We're not being heard, but we're not being thrown in jails.

TP: Well, number one I say *Hedges v. Obama* vindicates my concern. What the DoJ said to the court vindicates my concern. Number two, I'm not saying this is imminent. Posner and Vermeule wrote a book, they're the two who say we have to go back and study Carl Schmitt. Prominent law professors, one at Chicago, one at Harvard, they say, go back and study the work of Nazi Carl Schmitt. In *The Executive Unbound*, three years ago they wrote, "there's always a political factor."

So yes, the president has all these unlimited powers and the Congress has no

constraints on them, but they say, “Don’t worry, there are political factors that will inhibit the president.” So what they’re saying in essence is, “So Hedges, yeah the government says they can throw you in military detention, but don’t worry. They won’t do it.” But in the right situation, as these generals said in Vietnam, if it means a military setback or defeat, yes, we’ve got to resort to these measures. So right now we’re fighting a nondescript enemy, whether it’s ISIS or al Qaeda, but now we’re ramping up against Russia..

Yes, at the present day, as of right now, I agree, I think it would be unlikely. But one factor always to be considered in warfare, is the legitimacy of your cause, who you’re defending. That’s what you’re fighting over in a guerrilla war. So you always want to maintain the utmost legitimacy. [...] We profess to be a democracy, so we profess to protect civil rights. We don’t want to squander that legitimacy if we can help it.

**Philip Weiss is the founder and co-editor of [Mondoweiss.net](http://Mondoweiss.net), where this interview [originally appeared](#).**

---

## Obama’s Gitmo Failure

As President Obama approaches his final year in office, he has yet to fulfill one of his earliest promises, closing the Guantanamo Bay prison. It remains a grievance used by terror groups as a recruiting tool, but the prison has other legal and political problems, writes Marjorie Cohn at TeleSUR.

By Marjorie Cohn

President Barack Obama has yet to fulfill the promise he made in his Jan. 22, 2009 executive order to shutter Guantanamo “no later than one year from the date of this order.” Any individuals remaining there at the time of closure, Obama wrote, “shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.”

However, after threatening to veto the final draft of the annual National Defense Authorization Act (NDAA) partly because it forbids the transfer of Guantanamo detainees to the United States and tightens barriers to sending them to other countries, Obama caved. A White House spokesperson said Obama would sign the legislation, which passed overwhelmingly in the House and Senate. Sen. Bernie Sanders, I-Vermont, was one of three senators to vote against the bill.

Nearly seven years after Obama's promise, 112 men remain at Guantanamo, half of whom have been cleared for release. Obama has released 54 prisoners and is reviewing the cases of others still being held.

In March 2011, Obama designated 46 men to remain in indefinite detention without trial, but promised periodic review of their cases. Arbitrary detention violates the International Covenant on Civil and Political Rights, a treaty the United States has ratified, making it part of U.S. law under the Supremacy Clause of the U.S. Constitution.

The periodic reviews didn't start until November 2013, spurred by hunger strikes at the prison. The reviews continue to be conducted. As a result of those reviews, 14 additional men were cleared for release and five of them have been released.

In April 2013, Obama said, "I think it is critical for us to understand that Guantanamo is not necessary to keep America safe. . . . It hurts us in terms of our international standing. . . . It is a recruitment tool for extremists. It needs to be closed." Yet it remains open.

One of the transfer restrictions required the Secretary of Defense to notify Congress 30 days before a transfer that it would be good for national security. But to avoid being personally responsible if a detainee were to become a terrorist, former Defense Secretary Chuck Hagel hesitated to allow transfers.

Obama is reportedly preparing a plan to speed up transfers of half the remaining Guantanamo prisoners to their home countries or other willing nations. The plan will also set forth new security protocols to prevent detainees from returning to terrorist activities once released.

Military experts are conducting surveys of prisons in the United States for possible transfer of detainees. They include the military prison at Ft. Leavenworth, Kansas; the Naval Consolidated Brig in Charleston, South Carolina; and the U.S. Supermax prison in Florence, Colorado.

In spite of the NDAA, Obama has the power to close Guantanamo. Former White House counsel Gregory Craig and Cliff Sloan, former special envoy for Guantanamo closure, maintain, "the president does not need Congress's authorization to act." They wrote in the Washington Post, "Under Article II of the Constitution, the president has exclusive authority to determine the facilities in which military detainees are held. . . . The determination on where to hold detainees is a tactical judgment at the very core of the president's role as commander in chief."

According to Craig and Sloan, "Congress's purported ban on funding any movement

of detainees from Guantanamo Bay to the United States restricts where 'law-of-war' detainees can be held and prevents the president from discharging his constitutionally assigned function of making tactical military decisions. Accordingly, it violates the separation of powers."

Lt. Col. David Frakt, who has represented Guantanamo detainees before the military commissions and in federal habeas corpus proceedings, concurs. "When the Obama administration really wants to transfer a detainee, they are quite capable of doing so," Frakt wrote in JURIST. He said Obama should direct his Attorney General to inform the D.C. Circuit Court of Appeals that the Department of Justice no longer considers the cleared detainees to be detainable.

Col. Morris Davis, former Chief Prosecutor for the Terrorism Trials at Guantanamo, personally charged Osama bin Laden's driver Salim Hamdan, Australian David Hicks, and Canadian teen Omar Khadr. All three were convicted and have been released from Guantanamo.

"There is something fundamentally wrong with a system where not being charged with a war crime keeps you locked away indefinitely and a war crime conviction is your ticket home," Davis wrote to Obama.

Of the 780 men held at Guantanamo since 2002, only eight were tried and convicted of war crimes. Of those, just three remain at Guantanamo.

Many of the detainees reported being assaulted, prolonged shackling, sexual abuse, and threats with dogs. Australian lawyer Richard Bourke, who has represented several Guantanamo detainees, charged they have been subjected to "good old-fashioned torture." Detainees who engage in hunger strikes are subjected to force-feeding, a practice the UN Human Rights Council has called torture or cruel, inhuman or degrading treatment. At least seven men have died at the prison camp.

The United States has illegally occupied GuantÁinamo since 1903, after Cuba's war of independence against Spain. Cuba was forced to include the Platt Amendment in the Cuban constitution. The amendment granted the United States the right to intervene in Cuba as a prerequisite for the withdrawal of U.S. troops from the rest of Cuba. That provision provided the basis for the 1903 Agreement on Coaling and Naval Stations, which gave the United States the right to use GuantÁinamo Bay "exclusively as coaling or naval stations, and for no other purpose."

President Franklin D. Roosevelt signed a new treaty with Cuba in 1934 that allows the United States to remain in GuantÁinamo Bay until the U.S. abandons it or until both Cuba and the United States agree to modify their arrangement.

According to that treaty, “the stipulations of [the 1903] agreement with regard to the naval station of Guantánamo shall continue in effect.”

That means Guantánamo Bay can be used for nothing but coaling or naval stations. Article III of the 1934 treaty also says that Cuba leases Guantánamo Bay to the United States “for coaling and naval stations.” Nowhere in either treaty did Cuba give the U.S. the right to utilize Guantánamo Bay as a prison camp.

Former Cuban President Fidel Castro has long maintained that Guantanamo is part of Cuba and that the U.S. illegally occupies it. One of Cuban President Raul Castro’s requirements for normalization of relations with the United States is the return of Guantanamo to Cuba.

If there is probable cause to believe a detainee committed a crime, he should be sent to the United States for trial in federal court. The remaining detainees should be returned to their countries of origin or third countries if that is not feasible. After shuttering the prison camp, Obama should return Guantanamo Bay to Cuba, its rightful owner.

**Marjorie Cohn is a professor at Thomas Jefferson School of Law, former president of the National Lawyers Guild, and deputy secretary general of the International Association of Democratic Lawyers. Her most recent book is [Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues](#). See [Marjorie’s blog](#). [This [article](#) was originally published by teleSUR.**

---

## A Political Edge from Guantanamo

Though many of today’s domestic and international crises date back to George W. Bush’s presidency, Republicans see a political edge in frustrating President Obama’s efforts to solve them, reveling in a new narrative about Obama’s “weakness.” The Guantanamo mess is a case in point, says ex-CIA analyst Paul R. Pillar.

By Paul R. Pillar

The national disgrace that is the detention facility at Guantanamo Bay is still in operation largely because of another familiar national disgrace, which is partisan gamesmanship.

At his press conference this past week President Barack Obama stated accurately

the multiple reasons, which include significant political damage to U.S. interests overseas, the facility needs to be closed. Those reasons are even more compelling today, amid force-feeding of hunger-striking prisoners, than they were when the then newly inaugurated Mr. Obama first committed to closing the place.

A prevalent theme in current commentary is that a fluent but timid president is not getting anything done about Guantanamo because he is displaying the kind of weakness that is also preventing him from getting things done on gun control and other issues.

Civil libertarians and others who might usually be sympathetic to Mr. Obama charge that he has been an insufficiently tough leader in dealing with a recalcitrant Congress that has placed multiple roadblocks in the way of closing Guantanamo, including a ban on movement of any of the detainees to federal prisons or any other facilities in the United States.

One is entitled to ask in such situations whether the responsibility lies with someone who cannot overcome recalcitrance or with those who are being recalcitrant. But let us instead just review the bidding on how Guantanamo got to be what it is now.

One can identify three motives, all of them misguided at best and reprehensible at worst, that have been involved. They partly correspond to different phases in the detention facility's history.

The original decision by the Bush administration to construct a jail in such an odd place was intended to keep it, and the prisoners in it, outside the reach of any laws. Subsequent decisions by the Supreme Court kept that objective from being fully realized. In any event, the objective was unworthy, given that the United States is a country of laws and not of arbitrary actions by whoever happens to have power at the moment.

A second motive, which still underlies some of the congressional recalcitrance, is to make an ideological statement that terrorism is "war" rather than "crime" and therefore anyone suspected of involvement in terrorism should be treated differently from anyone else suspected of a crime.

Making ideological statements at the expense of real damage to U.S. interests and to American principles (and doing so while disregarding the record of what has or has not worked, including the successful record of convicting terrorists in federal criminal courts) is an inexcusable way to make policy.

A third motive, which is behind much of what we see playing out about Guantanamo today, is to retain the opportunity, with future elections in mind, to inflict

costs and embarrassment on one's domestic political opponents. Congressional opponents of President Obama are quick to point out that legislation that has constituted much of the roadblock to closing Guantanamo gives the administration the ability to use waivers to release individual detainees to the custody of foreign countries.

Such opponents are not quick to address, of course, why such hurdles and special waiver requirements should have been thrown up in the first place. But in the meantime, it enables the opponents to say the President has not used administrative powers he already has to reduce Guantanamo's prisoner population.

The biggest hoped-for partisan political payoff would come if the waiver authority were actually used. That authority is a dare to the administration to make a mistake.

To release a prisoner to foreign custody the Secretary of Defense has to make certifications about how the receiving country will take steps that ensure the individual will not engage in terrorist activity in the future, or about "alternative actions" that will "substantially mitigate" such a possibility. All of this gets into realms in which it is impossible for any secretary of defense or president to make guarantees.

Recidivism happens. With the anger and resentment building up among the men who are getting tubes shoved up their noses twice a day, there is a significant chance it will happen even with someone who was not really a threat when he was first brought to Guantanamo. Not even the most careful screening and review process is foolproof.

And so the first time any alumnus of Guantanamo gets involved in what can be described as a terrorist incident, there is a ready-made issue to introduce in the next election campaign back in the United States. The administration endangered the American public, will be the charge from some members of Congress, who will disavow any responsibility themselves.

Count Guantanamo among the many issues of public policy on which the national interest has suffered at the hands of politicians who place that interest behind considerations of partisan advantage. Count it also among the issues on which the American public's unrealistic zero-tolerance attitude toward terrorism facilitates such political shenanigans.

**Paul R. Pillar, in his 28 years at the Central Intelligence Agency, rose to be one of the agency's top analysts. He is now a visiting professor at Georgetown University for security studies. (This article first appeared as a [blog post](#) at The National Interest's Web site. Reprinted with author's permission.)**

---

# How Congress Undermined 9/11 Cases

Congressional “tough-guy-ism” blocking President Obama’s plan to shutter the Guantanamo Bay prison and insisting on military tribunals for 9/11 terrorism suspects is making the prosecutions harder than if they had been transferred to civilian courts, an irony addressed by ex-CIA analyst Paul R. Pillar.

By Paul R. Pillar

During a hearing Monday to consider pre-trial motions before the military tribunal at Guantanamo that is handling the case of Khalid Sheik Mohammed and four other defendants charged with perpetrating the 9/11 attacks, the audio and video feeds that run from the courtroom to media rooms and are the only way for the outside world to follow the proceedings were mysteriously interrupted for several minutes.

No one who is saying anything to the outside world seems to know the reason for the interruption. The colonel who is the presiding judge seemed not to know on Monday. A member of the prosecution team said she does know but, with the cameras and microphones back on, would not explain. The following day the judge seemed satisfied with whatever explanation he apparently got, but he wasn’t talking either.

The mysterious electronic gap is a fitting sample of much that is strange about the detention facility at Guantanamo and what goes on there. Part of the strangeness is about Guantanamo itself; other parts are about things that are centered at, or symbolized by Guantanamo, including the basis for indefinite detention of people suspected of involvement in terrorism and the military tribunal system used to try some of them.

What is odd about the facility itself is its anomalous legal status, being on a U.S. military base with a long-term lease from Cuba. Decision-makers in the George W. Bush administration selected the place to establish a detention center that would be as much as possible out of the reach of anyone’s law. The Supreme Court has frustrated whatever hope there may have been to keep it entirely outside the reach of the law, but the anomaly of the place continues to be a basis for the legal uncertainty of much of what goes on there.

One of the latest of the many legal uncertainties about the military tribunal system concerns whether it can be used to try defendants for anything other than

crimes of war. There is disagreement about whether prosecutors can bring to a tribunal conspiracy charges of the sort that can certainly be brought in a civilian court. The Department of Justice says they can; the military judge in charge of the tribunals says they can't (while adding that this very disagreement demonstrates the tribunals' independence and by implication their fairness).

Besides the uncertainty, there is an irony given how members of Congress who have forced the handling of terrorism cases out of the civilian courts and into military tribunals may have thought that this tough handling of the subject as "war" would mean greater power and freedom to punish terrorists without prosecutors' jobs being complicated by all the rules of evidence and whatnot that civilian courts have. With regard to something like the use of conspiracy charges, the move to military tribunals means less, not more, flexibility in what prosecutors can do.

Also in the news this week is the administration's announcement that the State Department official who has been charged with negotiating new custody arrangements for Guantanamo prisoners is being reassigned without being replaced. This move is being interpreted as a tacit admission by the Obama administration that it will not realize its goal of closing the detention facility at Guantanamo, although officially the administration says that is still the goal.

Failure to meet that goal is partly due to facing the reality of each detainee's case being different and many of them being complicated. The failure is in large part due again to Congress, which has restricted movement of detainees both to the United States and to some of the key foreign countries. Thus another irony: the actions of those who think in terms of a "war on terror" with a beginning and an end have laid the basis for a supposedly temporary detention system that will have no end.

President Obama recently appointed former prosecutor Mary Jo White to head the Securities and Exchange Commission. As U.S. attorney for the Southern District of New York, White's office successfully prosecuted several of the highest profile terrorism cases, the experience that most refutes some of the chief arguments made in favor of reliance on the military tribunal system.

Although at the SEC White will be a regulator rather than a prosecutor, the administration's evident hope and message in making this appointment is that Wall Street crooks will face effective punishment. Maybe the United States will handle the cases of such crooks with greater rationality, consistency and effectiveness than it seems to be handling the cases of suspected terrorists at Guantanamo.

Paul R. Pillar, in his 28 years at the Central Intelligence Agency, rose to be one of the agency's top analysts. He is now a visiting professor at Georgetown University for security studies. (This article first appeared as a [blog post](#) at The National Interest's Web site. Reprinted with author's permission.)

---

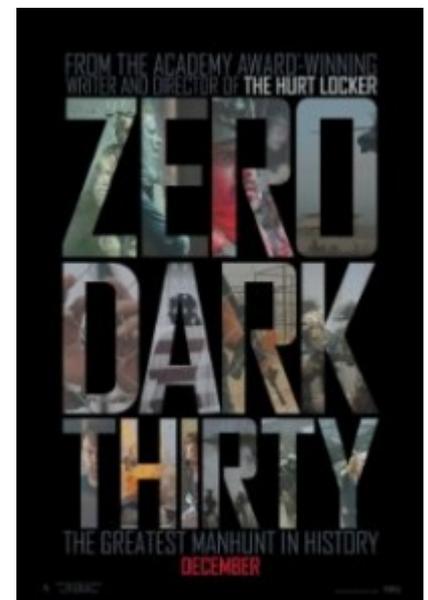
## The Dark Side of 'Zero Dark Thirty'

Movie-goers across America can now see the hunt-for-bin-Laden film, "Zero Dark Thirty," and its graphic portrayal of torture as a key element in that search. But the filmmakers distort the facts and ignore the reality that torture is illegal, immoral and dangerously ineffective, writes Marjorie Cohn.

By Marjorie Cohn

On Jan. 11, eleven years to the day after George W. Bush sent the first detainees to Guantanamo, the Oscar-nominated film *Zero Dark Thirty* makes its national debut. *Zero Dark Thirty* is disturbing for two reasons.

First and foremost, it leaves the viewer with the erroneous impression that torture helped the CIA find bin Laden's hiding place in Pakistan. Secondly, it ignores both the illegality and immorality of using torture as an interrogation tool.



The thriller opens with the words "based on first-hand accounts of actual events." After showing footage of the horrific 9/11 attacks, it moves into a graphic and lengthy depiction of torture. The detainee "Ammar" is subjected to waterboarding, stress positions, sleep deprivation, and confined in a small box.

Responding to the torture, he divulges the name of the courier who ultimately leads the CIA to bin Laden's location and assassination. It may be good theater, but it is inaccurate and misleading.

The statement "based on first-hand accounts of actual events" is deceptive because it causes the viewer think the story is accurate. All it really means, however, is that the CIA provided Hollywood with information about events depicted in the movie.

Acting CIA Director Michael Morell wrote a letter to the Senate Select Committee on Intelligence in which he admitted the CIA engaged extensively with the filmmakers. After receiving his letter, Sens. John McCain, Dianne Feinstein and Carl Levin requested information and documents related to the CIA's cooperation.

The senators sent a letter to Morell saying they were "concerned by the film's clear implication that information obtained during or after the use of the CIA's coercive interrogation techniques played a critical role in locating Usama Bin Laden (UBL)."

They noted, "the film depicts CIA officers repeatedly torturing detainees. The film then credits CIA detainees subjected to coercive interrogation techniques as providing critical lead information on the courier that led to the UBL compound." They state categorically: "this information is incorrect."

The letter explains that after a review of more than six million pages of CIA records, Feinstein and Levin made the following determination: "The CIA did not first learn about the existence of the UBL courier from CIA detainees subjected to coercive interrogation techniques. Nor did the CIA discover the courier's identity from CIA detainees subjected to coercive techniques.

"No CIA detainee reported on the courier's full name or specific whereabouts, and no detainee identified the compound in which UBL was hidden. Instead, the CIA learned of the existence of the courier, his true name, and location through means unrelated to the CIA detention and interrogation program."

In a speech on the Senate floor, McCain declared, "It was not torture, or cruel, inhuman, and degrading treatment of detainees that got us the major leads that ultimately enabled our intelligence community to find Osama bin Laden."

McCain added: "In fact, not only did the use of 'enhanced interrogation techniques' on Khalid Sheik Mohammed not provide us with the key leads on bin Laden's courier, Abu Ahmed; it actually produced false and misleading information."

Many high-level interrogators, including Glenn L. Carle, Ali Soufan and Matthew

Alexander, report that torture is actually ineffective and often interferes with the securing of actual intelligence. A 2006 study by the National Defense Intelligence College concluded that traditional, rapport-building interrogation techniques are very effective even with the most recalcitrant detainees, but coercive tactics create resistance.

Moreover, torture is counter-productive. An interrogator serving in Afghanistan told Forbes, "I cannot even count the amount of times that I personally have come face to face with detainees, who told me they were primarily motivated to do what they did, because of hearing that we committed torture. Torture committed by Americans in the past continues to kill Americans today."

Torture is also illegal and immoral important points that are ignored in *Zero Dark Thirty*. After witnessing the savage beating of a detainee at the beginning of the film, the beautiful heroine "Maya" says "I'm fine."

As he's leaving Pakistan, Maya's colleague Dan tells her, "You gotta be real careful with the detainees now. Politics are changing and you don't want to be the last one holding the dog collar when the oversight committee comes."

Torture is illegal in all circumstances. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a treaty the United States ratified which makes it part of U.S. law, states unequivocally: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

The prohibition of torture is absolute and unequivocal. Torture is never lawful.

Yet despite copious evidence of widespread torture and abuse during the Bush administration, and the Constitution's mandate that the President enforce the laws, President Obama refuses to hold the Bush officials and lawyers accountable for their law breaking.

Granting impunity to the torturers combined with propaganda films like *Zero Dark Thirty*, which may well win multiple Oscars, dilutes any meaningful public opposition to our government's cruel interrogation techniques.

Armed with full and accurate information, we must engage in an honest discourse about torture and abuse, and hold those who commit those illegal acts fully accountable.

**Marjorie Cohn is a professor at Thomas Jefferson School of Law. Her most recent book is *The United States and Torture: Interrogation, Incarceration, and Abuse*.**

---

---

# Kafkaesque Legacy of Gitmo/Bagram

More than a decade after the 9/11 attacks and George W. Bush's "war on terror," U.S. justice remains mired in Kafkaesque legal swamps at Guantanamo Bay and Bagram, places where murky theories about "unlawful combatants" mean detainees have no real rights, says ex-CIA analyst Paul R. Pillar.

By Paul R. Pillar

Among the legal anomalies and affronts to justice involved in certain things the United States does in the name of counterterrorism is an incarceration netherworld that seems likely to persist as indefinitely as the detention of many of the people caught in it.

We didn't seem to have this problem before 9/11. But the popular sense, after that one off-the-charts terrorist event, that America was "at war" led to the problem. The Bush administration obliged by declaring a "war on terror."

Applying the established law of war would not suffice, however; that would have meant giving suspected terrorists the rights of prisoners of war. The response was to handle anyone who came into U.S. hands with some suspicion of possibly having something to do with terrorism as if they were not subject to any system of law and the rights associated with it.

People scooped up in Afghanistan or elsewhere were declared to be "illegal combatants" if they were declared to be anything at all. Most were sent to a newly established detention facility at Guantanamo, the location of which was not chosen so the prisoners could enjoy the mild Caribbean climate. The location was chosen with the intention of keeping detentions there outside the purview of anyone's law, given Guantanamo's special status as a base under a long-term lease that is outside the United States but also not subject to the sovereign control of any foreign country.

The ploy has not worked completely, in that the U.S. Supreme Court ruled in *Boumediene v. Bush* in 2008 that Guantanamo detainees have a right to contest their detention in U.S. courts. But the specific practices at Guantanamo continue to reflect the legal vacuum in which the prisoners find themselves.

One recent decision by the Obama administration about which the *New York Times* editorial page appropriately took exception severely limits the right of prisoners to consult their attorneys in confidence. As one of the lawyers involved pointed out, this vitiates the right of habeas corpus that the Supreme Court formally bestowed four years ago.

It is not just prisoners at Guantanamo who are affected. This month a district court heard for the second time a case involving prisoners being held at a detention facility in Bagram, Afghanistan. The same court had earlier interpreted the *Boumediene* decision as applying not only to Guantanamo prisoners but also ones held at Bagram who had been captured someplace other than Afghanistan. That decision was reversed on grounds that a war zone is a war zone, and thus outside the jurisdiction of a civilian court, even if the prisoners in question had been nabbed somewhere else, although the appellate court left a possible opening for rehearing, leading to the current proceedings.

The main trouble-maker in much of this is the Court of Appeals for the D.C. Circuit, to which the Supreme Court seems content to give very free rein on this subject. It was the D.C. circuit court that ruled that capturing someone outside a war zone and then moving him into a war zone effectively removes his habeas rights.

In another peculiar decision that reversed a district court's order to release a Guantanamo prisoner, the majority on a D.C. circuit court panel effectively said that any documents the government presents in arguing for continued detention should be accepted at face value, even though many such documents reflect questionable and unverified assertions.

Near the end of its just-concluded session, the Supreme Court let this appellate court ruling stand without comment, even though the appellate judges who made that ruling barely disguised their contempt for the *Boumediene* decision.

A problem all along with the "war" formulation as applied to suspected terrorism is not only the twists one has to go through to avoid granting prisoner-of-war status. Since there is no well-defined entity this "war" is being waged against, there is no definable end to the anomalies involved. This problem applies not only to authorizations to use military force but also to detentions.

With no end in sight to the fundamental legal peculiarity involved, at least some of the procedural unfairness should be peeled back, such as that involving the attorney-client privilege. The executive branch's attorneys should also stop challenging the right of prisoners to petition for habeas corpus and instead concentrate on the facts in each case that would warrant continued detention.

Finally, the U.S. Supreme Court ought to show the D.C. circuit who is boss by agreeing in its next term to hear one of the detention cases on which a majority at the circuit court seems determined to place its insubordinate stamp.

**Paul R. Pillar, in his 28 years at the Central Intelligence Agency, rose to be one of the agency's top analysts. He is now a visiting professor at Georgetown**

University for security studies. (This article first appeared as a [blog post at The National Interest's Web site](#). Reprinted with author's permission.)

---

## Hope Dies at Guantãinamo

A combination of a right-wing federal Appeals Court in Washington and a disinterested U.S. Supreme Court means Guantãinamo inmates have little hope for justice even if a District Court judge sides with their arguments. That means the right of habeas corpus is effectively dead for detainees, Marjorie Cohn writes at Jurist.

By Marjorie Cohn

The tragic case of Adnan Farhan Abdul Latif hit a dead end when the U.S. Supreme Court issued an order refusing to hear his case last week. Latif, a Yemeni man, has been imprisoned at Guantanamo Bay since January 2002, after being detained while traveling to seek medical treatment.

Latif had suffered serious head injuries as the result of a car accident in 1994, and the Yemeni government paid for him to receive treatment in Jordan at that time. But his medical problems persisted, and in 1999 Yemen's Ministry of Public Health recommended that Latif undergo tests, therapy and surgical procedures at his own expense.

Unable to afford it, Latif said he left Yemen in 2001 with the help of a charitable worker to seek free medical treatment in Pakistan. When he was picked up in Afghanistan, on his way to Pakistan, and transferred to U.S. custody in December 2001, Latif had his medical records with him.

After a kangaroo court proceeding, a Combatant Status Review Tribunal at Guantanamo declared Latif to be an "enemy combatant." He was not allowed to attend the hearing, nor was he permitted to see the evidence against him. Instead of a lawyer, he was given a "Personal Representative", a military officer who did not represent Latif's interests.

Four years ago, the Supreme Court rejected the Bush administration's argument that the detainees at Guantanamo had no right to contest the legality of their confinement in US courts. In *Boumediene v. Bush*, the Court upheld the habeas corpus rights of the detainees, saying they must be given "a meaningful opportunity" to challenge their detention.

Latif petitioned a federal district court for a writ of habeas corpus. The Obama administration opposed the petition, relying on information from an interrogation report. Large sections of the report were blacked out, so it is difficult to know exactly what the report says.

But we do know that, according to the report, Latif admitted to being recruited for jihad, receiving weapons training from the Taliban and serving on the front line with other Taliban troops. Latif said his interrogators garbled his words so that their summary bears no relation to what he actually said.

In the U.S. District Court for the District of Columbia, Judge Henry Kennedy granted Latif's habeas petition, concluding that it could not "credit the information [in the Report] because there is serious question as to whether the [Report] accurately reflects Latif's words, the incriminating facts in the [Report] are not corroborated, and Latif has presented a plausible alternative story to explain his travel."

It troubled Judge Kennedy that, "[n]o other detainee saw Latif at a training camp or in battle. No other detainee told interrogators that he fled from Afghanistan to Pakistan, from Tora Bora or any other location, with Latif. No other type of evidence links Latif to Al Qaeda, the Taliban, a guest house, or a training camp."

Particularly significant to Judge Kennedy was that the "fundamentals [of Latif's story] have remained the same." More than a dozen interrogation summaries and statements contained "[Latif's] adamant denials of any involvement with al Qaida [sic] or the Taliban; his serious head injury from a car accident in Yemen; his inability to pay for the necessary medical treatment; and his expectation and hope that [the charitable worker] would get him free medical care."

Judge Kennedy also reasoned that errors in the report support "an inference that poor translation, sloppy note taking . . . [blacked out] . . . or some combination of those factors resulted in an incorrect summary of Latif's words." The fact that Latif was found in possession of his medical papers when seized, according to the judge, "corroborat[ed]" Latif's "plausible" story.

The government appealed the district court ruling to the conservative U.S. Court of Appeals for the District of Columbia Circuit, which reversed the grant of habeas corpus. The appellate court admitted that the interrogation report was "prepared in stressful and chaotic conditions, filtered through interpreters, subject to transcription errors, and heavily redacted [parts blacked out] for national security purposes."

But for the first time, the DC Circuit held that government reports must be

accorded a “presumption of regularity.” That means they will be presumed to be true unless the detainee can rebut that presumption.

Judge Janice Rogers Brown, who wrote the opinion for the two judges in the majority on the three-judge appellate panel, twisted Boumediene’s statement that “innovation” could be used in habeas corpus proceedings into a “presumption of regularity” in government reports. Judge Brown criticized “Boumediene’s airy suppositions.”

The dissenting appellate judge, David S. Tatel, noted that, in practice, the presumption of regularity will compel courts to rubber-stamp government detentions because “it suggest[s] that whatever the government says must be true.” He concluded that the report in Latif’s case was inherently unreliable because “it contain[s] multiple layers of hearsay.” Judge Tatel accused the majority of denying Latif the “meaningful opportunity” to contest the lawfulness of his detention that Boumediene guarantees.

When seven detainees whose petitions had been denied by the DC Circuit, including Latif, took their cases to the Supreme Court, they hoped the high court would do justice. During the Bush administration, the Court had struck down illegal and unjust executive policies. These included the denial of habeas corpus rights to Guantanamo detainees, the refusal to afford due process to U.S. citizens caught in the “war on terror” and the holding of military commissions because they violated the Uniform Code of Military Justice and the Geneva Conventions.

But hope for justice died last week when the Court refused to even consider the propriety of the appellate court’s denial of habeas corpus to those seven detainees. Henceforth, detainees who lose in the DC Circuit cannot expect the Supreme Court to give them relief. Their last stop will be at one of the most right-wing circuits in the country, which overturns or delays all release orders by federal judges if the government objects.

The Supreme Court’s refusal to review the appellate court decisions in these cases has rendered Boumediene a dead letter. Since 2008, two-thirds of detainees who have filed habeas corpus petitions have won at the district court level, yet not one of them has been released by judicial order. Judge Tatel wrote that “it is hard to see what is left of the Supreme Court’s command in Boumediene that habeas review be ‘meaningful.’”

Like many men at Guantanamo, Latif went on a hunger strike to assert the only power he had in the face of utter hopelessness, the power to refuse food. He was force-fed for three months, which, he says, “is like having a dagger shoved down your throat.” As attorney Marc D. Falkoff writes in his chapter about Latif in

*The United States and Torture: Interrogation, Incarceration, and Abuse*, “[t]he United Nations Commission on Human Rights calls this torture.”

Of the 800 men and boys held at Guantanamo since 2002, 169 remain. Of those prisoners, 87 have had their release approved by military review boards established during the Bush administration, and later by the Guantanamo Review Task Force established by President Obama in 2009. Yet they continue to languish in the prison camp.

In her opinion, Judge Brown wrote, “Luckily, this is a shrinking category of cases. The ranks of Guantanamo detainees will not be replenished.” Indeed, Obama has sent only one new prisoner to Guantanamo. His strategy is to assassinate “suspected militants” or people present in “suspicious areas” with drones, obviating the necessity of incarcerating them and dealing with their detention in court.

As Judge Brown ominously observed, “Boumediene’s logic is compelling: take no prisoners. Point taken.”

**Marjorie Cohn is a Professor of Law at Thomas Jefferson School of Law and past president of the National Lawyers Guild. She is editor of *The United States and Torture: Interrogation, Incarceration, and Abuse*, released earlier this year in paperback by NYU Press.**

**<http://www.jurist.org/forum/2012/06/marjorie-cohn-latif-scotus.php>**

---