



## SWEET LAND OF LIBERTY

### The Lowell Sun

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In presiding over the first trial in a civilian federal court of a Guantanamo Bay prisoner, Judge Lewis Kaplan insisted on staying within our rule of law, angering many and startling others. On trial was Ahmed Khalifan Ghailani, facing more than 280 counts of murder and conspiracy for being involved in the 1998 bombing of one of our embassies in Africa. Americans were among the murdered.

At first, there was anger against Kaplan when he refused to admit testimony from a key prosecution witness because it had been extracted by torture. So he refused to bar the Constitution from an American courtroom. Then, when Ghailani was acquitted by the jury of all counts except one for conspiracy, there was outrage from Republican Congressman Peter King, soon to be chairman of the House Internal Security Committee (New York Times, Nov. 23). Chiming in was Republican Congressman Tom Price (Kaplan's action being "a gross miscarriage of justice"), to which a New York Post editorial added that the process (conducted by Judge Kaplan) was "tortured" (New York Times, Nov. 23).

But what astonished some other Americans, who have been indifferent to the radical surgery on our rule of law by presidents Bush and Obama, was a statement by Kaplan during the trial that even if Ghailani were acquitted on all counts, "his status as an 'enemy combatant'" would keep him in prison until the end of hostilities against terrorism.

To many of us this was hardly news. In the unlikely event that

the self-admitted mastermind of 9/11, Khalid Sheikh Mohammed, winds up in a federal court, Attorney General Eric Holder has said firmly that an acquittal will not free him. Indeed, Holder has pledged that "if any high-profile terrorism suspects are acquitted, they will never go free." ("Obama Administration Weighs Indefinite Detention," National Public Radio, Nov. 24).

It's long been evident that President Obama would welcome legislation guaranteeing the permanent detention (as he prefers to call it) of so-called high-level terrorists without the irksome intervention of civilian judges demanding due process for the defendant and a showing of actual evidence of guilt.

With a current Republican majority in the House and possible majority in both chambers in 2012, National Public Radio's Dina Temple-Raston reports that "the president who campaigned on closing the prison at Guantanamo Bay may end up doing something wholly different: Signing a law that would pave the way for terrorism suspects to be held indefinitely."

That urge is likely to be bipartisan in view of the diminishing number of ardent constitutionalists among congressional Democrats and Republicans. Temple-Raston adds, "Republican Sen. Lindsey Graham of South Carolina (has) quietly introduced a bill that would codify detention."

So, she continues, "While the idea of holding suspects indefinitely without charge is against everything the American legal system stands for, it is happening already." But she's referring to the pre-9/11 American legal system -- before the Patriot Act began the process of dismembering it.

As of last August, before the midterm elections, Graham had made his move for permanent detention; and NPR notes that "incoming House

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Judiciary Chairman Lamar Smith of Texas is working on a companion bill to Graham's effort." Smith, a Republican, is a strong supporter of the Patriot Act.

Among those troubled, to say the least, by this contortion of what our rule of law used to stand for is Laura Murphy, head of the American Civil Liberties Union's Washington Office. On NPR (Nov. 24) she asks:

"What if the detainees suspected of terrorism are actually innocent? What kind of system would there be to determine that? Would there be any kind of judicial review?"

Hey, President Obama, do you have any answers for her?

Laura continues chillingly: "If this permanent detention applies to terrorism now, she asks, how long before it applies to drug lords or human traffickers or organized crime?"

Or to citizens suspected of grave "material support" to suspected terrorists?

And now, wow, look who is joining this fateful debate that turns our once hallowed presumption of innocence inside out -- and kicked down the road! In Nov. 20 Wall Street Journal, John Yoo -- the internationally notorious author of the "torture memos" that also ruthlessly twisted "our values" (as Presidents Bush and Obama often describe as their mandate) -- also embraces President Obama.

Urging him to forge ahead with getting judges out of the way, Yoo advises his latest soul mate: "The Obama administration should drop the idea of trials altogether and simply continue to detain al-Qaida members until the war is over" (or the prisoners die of greatly advanced age).

Without judges and juries in the way, professor Yoo (he teaches constitutional law at the University of California, Berkley) continues: "Detention is not a problem to be wished away. Rather, it is a solution for more effectively collecting the intelligence that will win the war."

With these suspects permanently locked away from all outside contact in maximum-security prisons, there will be no limits to how intelligence is collected -- as our CIA's "black sites" and certain special-forces operations have demonstrated.

In a 1987 dissent (U.S. v. Salerno), Justice Thurgood Marshall warned about permanent detention: "Throughout the world, there are men, women and children interned indefinitely, awaiting trials which may never come ... because their governments believe them to be 'dangerous.' Our Constitution, whose construction began two centuries ago, can shelter us forever from the evils of unchecked power."

Not forever, Justice Marshall.

What are we Americans turning into? The Obama Justice Department dropped all charges against John Yoo's lawless go-ahead for torture. The file verdict was that he had simply used "poor judgment."

What will be the verdict of history on our going along with life imprisonment without judges?

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