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Charles R. Church is an attorney who devotes most of his efforts to human rights issues: detention, torture, the facility at Guantanamo Bay, habeas corpus, etc.
His website is: www.churchlawllc.com
Email him at: charleschurchllc@gmail.com

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Trump and his minions are wrong about Guantanamo

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During his campaign, Donald Trump infamously promised to “load [Guantanamo] up with some bad dudes.” I say “infamously,” since the impulsive and notoriously ill-informed Trump clearly failed to realize what a dumb idea that was, and that even former President George W. Bush — once my choice for our worst president — in his memoir concluded that “the detention facility had become a propaganda tool for our enemies and a distraction for our allies.”

On March 14, 2017, Paul Lewis, Bush’s former Director of the Defense Department’s Office of Legislative Counsel and Obama’s Special Envoy for Guantanamo Detention Closure put the latter point more severely and less self-protectively in “Lawfareblog” www.lawfareblog.com/continuing-need-close-guantanamo-bay-detention-facility ^[3]. He wrote that the detention facility “is disdained by the international community ... and in the best judgment of both Administrations, [Gitmo] hurt us more than it helped us.”

U U U

One reason is sufficient, though there are more. The U.S. tortured prisoners, not only at CIA black sites and at Abu Ghraib; it also did so at Guantanamo (but only during Bush’s tenure). Accordingly, as Lewis pointed out, both presidents, five secretaries of defense (Rumsfeld (!), Gates, Panetta, Hagel, and Carter) and four secretaries of state (Powell, Rice, Clinton and Kerry) reached the same conclusion.

Nonetheless, recently Trump signaled that, not only will he not close the enormously expensive and damaging facility, he wants to utilize and expand it. Predictably, he did so with a pants-on-fire whopper, by tweeting: “122 vicious prisoners, released by the Obama Administration from Gitmo, have returned to the battlefield. Just another terrible decision!”

The truth, of course, is much different. Only nine of the recidivists were transferred (not released outright) during Obama’s watch, and the other 113 were transferred under Bush.

Trying to improve yet another embarrassing situation, the obedient White House press secretary, Sean Spicer, excused Bush because “most of [the releases] were court-ordered,” even though in (non-alternative) fact only three detainees were transferred pursuant to court order before

Obama took over. The other 110 transfers by Bush's people were voluntary.

Missing also from the Trump team's attempted snow job is the reality that, in large measure, Bush's people chose Gitmo on account of his lawyers' advice that holding prisoners there would allow the government to evade judicial review of their detentions. Fortunately, the Supreme Court disappointed them, so that "advantage" no longer is available.

Then Jeff Sessions, though not the first attorney general to have lied (John Mitchell provides one memorable example), was probably trying to be truthful when in a radio interview he pronounced Guantanamo "a very fine place" to hold "these kind of criminals."

This profoundly careless remark about people who have been neither charged nor tried reminds me of when Donald Rumsfeld called the original Gitmo captives the "worst of the worst," before Bush's people voluntarily transferred 532 of the 780 he had sent there. (Obama added exactly zero people.)

Sessions then proceeded to blame the Obama administration for, as Prof. Steve Vladeck put it in the March 12 edition of "Just Security:" "the delays that have wracked the military commissions [which] are all because of 'legal complications that the Obama administration seemed to allow to linger and never get decided.'" <https://www.justsecurity.org/38758/whitewashing-guantanamo/> ^[4]

Sessions went on to list reasons to support this accusation which, alas, were wholly misguided.

The Bush Administration implemented its strategic vision of prosecuting alleged war criminals by military commission ("MC") in an executive order the Supreme Court found to be illegal. (Sound familiar?) At Bush's bidding, Congress then enacted the Military Commissions Act of 2006 to reinstate that method of prosecuting the captives.

But, contrary to Sessions, any purported advantages of MCs over civilian courts have nothing to do with protecting classified information from defendants, nor from preventing such defendants from having court-appointed lawyers.

First, the Classified Information Procedures Act protects sensitive information in civilian courts, and second, the defendants are represented, in large part, by detailed military counsel. As Professor Vladeck notes, the salient difference between the MCs and civilian courts involves "whether defendants have a constitutional right to confront the evidence and witnesses against them on a par with civilian criminal defendants."

What's abundantly clear is that, when it comes to their wish to preserve and enlarge Guantanamo as a detention facility and to continue relying upon MCs, which have proved themselves wholly unsuited for their mission, Trump and his subordinates are all too willing to lie, and/or to prove themselves profoundly ignorant on vitally important topics we are depending upon them to understand.

Steve Vladeck believes, and I agree, that this apparently orchestrated effort to pin all that is wrong with Gitmo and the MCs on Obama "smacks of nothing more than cheap and dirty politics."

Charles Church is a member of two legal teams that represent the first so-called “high value detainee,” a man commonly called Abu Zubaydah. One team represents its client in connection with the military commissions at Guantanamo, and the other pursues his freedom in a habeas corpus case before a federal judge in Washington, D.C.

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