



## Obama's Broken Promises: Openness, Ending 'Military Commissions'

Obama decided to suppress photos of detainees being tortured by American interrogators on the grounds that "the most direct consequence of releasing them, I believe, would be to further inflame anti-American opinion and to put our troops in greater danger."

Comedy Central's *Daily Show* host Jon Stewart [quipped](#) that Obama's statement "does crystallize the dilemma we find ourselves in, though, when we go down this whole torture and abuse road. Torturing detainees is allegedly the only way to get certain information that will make us safer. But pictures of us doing it ... puts us in harm's way."



Of course, if torturing detainees really does inspire more Muslims to begin terrorist acts against the United States, we're not really safer using torture even if we accept the highly dubious claim that torturing detainees provided valuable intelligence. Stewart joked, "I guess that settles it. We'll just have to stop taking pictures of it. This whole thing is those digital cameras' fault!" But Obama's statement is an acknowledgement of the obvious truth that no person would accept torture of their child as acceptable. If the interrogators were doing nothing untoward, there would have been nothing to hide. Thus, it's not surprising that many people would fight against a nation employing such tactics.

The reality is still different from what Obama told the world. Suppressing the photos will only spur wild conspiracy theories in the Muslim world about what really happened, and in the end suppressing the photos won't make Americans any safer.

President Obama once pledged to make the federal government more open and [claimed](#) that "sunlight is the greatest disinfectant." But now he believes that government should operate more like a mushroom.

### **Military Commissions**

President Obama has also [basically renewed Bush's unconstitutional "military commissions"](#) under the MCA. Obama claims he would make some changes around the edges, including a ban on using evidence obtained under torture and giving defendants more choices of defense attorneys. But the essence of the goals behind the idea of special military commissions — avoiding both the Uniform Code of Military Justice and the civilian criminal justice system — remains.

As anyone even vaguely familiar with the U.S. system of common law knows, trials are not gifts of rights our legal system gives to the guilty. Rather, trials for the guilty protect the innocent. Guaranteeing trials for the guilty protects the rest of us from being forgotten in a prison without ever having a chance to defend ourselves. Yet innocent people like [Canadian Maher Arar](#), [German Khalid El-Masri](#), and



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[Chinese Huzaiifa Parhat](#), did languish in prison without a trial under the Bush detention policy. Many others still languish in prison without trial, and it's possible most of them are innocent.

Some constitutionally ignorant people have protested that the U.S. Constitution does not "grant" trials to foreigners, or that somehow the U.S. Constitution doesn't apply to foreigners. But the Constitution doesn't "grant" trial rights to specific groups at all — neither to U.S. citizens nor foreigners. Not even a single right is conferred on any person by the U.S. Constitution. The Constitution and Bill of Rights simply *protect* those inalienable rights every single human being on Earth already enjoys from God. Moreover, the Constitution was designed to limit the government, not citizens and foreigners, and those limits have no exception clause for the citizenship of the person.

The U.S. Constitution allows only two kinds of trials, military (under the Uniform Code of Military Justice) and criminal (under Article III of the Constitution and the Fifth and Sixth Amendments). The Bush administration attempted to set up a third "military commissions" legal system designed to prohibit fair trials to defendants, including the virtually unregulated use of hearsay evidence, secret evidence that defendants wouldn't be able to contest or even see in court, and absurd restrictions on defense attorneys.

The Congress is given the power under the [Constitution](#) "to define and punish piracies and felonies committed on the high seas, and offences against the law of nations," but the power to detain and bring them to trial is limited to procedures outlined by the [Bill of Rights](#), especially the Fifth and Sixth Amendments (not to mention the Eighth Amendment banning torture).

[Obama said](#) military commissions "are appropriate for trying enemies who violate the laws of war, provided that they are properly structured and administered. In the past, I have supported the use of military commissions as one avenue to try detainees, in addition to prosecution in Article III courts." While military tribunals are appropriate during times of war (and it should be pointed out that the United States is not at war, since Congress rejected a declaration of war by voice vote in the "war on terror"), even in a time of war they must be under the regular military system of justice in order to be constitutional. The military justice system is designed to try people fairly under the conditions of war, which includes the need for secrecy, but the Bush administration wanted more than mere secrecy. They wanted unfairness, and unconstitutionality. Congress gave it to President Bush with the Military Commissions Act, and it was appropriately struck down by the U.S. Supreme Court. President Obama now says he will follow essentially the same unfair process.

But, as just about everything else with the Obama administration, there's always an ulterior motive for their actions. In the case of the special military commission trials, they're concerned they might lose the ability to continue to hold detainees without trial if they don't pretend to renew the military commissions route. As MSNBC writer Pete Williams explained, "The administration is taking action now because a legal hold on the commission hearings at Guantanamo is about to expire. Government lawyers feared that simply asking for another stay would not succeed."

In other words, if Obama doesn't re-approve the Bush military commissions with some superficial changes, then courts will rule against them for detention without trial. The ulterior motive is to deny trial rights further by stringing the courts along for another year or two, and allow those innocent detainees (there are doubtless some still in custody) to serve yet more time behind bars for a crime they didn't commit.

— Photo: White House



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