

Where is President Obama's will to win?

Close Guantanamo now

By Charles C. Krulak and Joseph P. Hoar

January 30, 2011

"It is fatal to enter a war without the will to win it."

— Gen. Douglas MacArthur

Two years ago, a group of retired generals and admirals that we lead stood with President Barack Obama in the Oval Office as he signed an executive order to close the U.S. detention facility at Guantanamo Bay within one year. Obama called Guantanamo "a damaging symbol to the world." His leadership sent a strong signal that America was changing course and was again a nation of laws, that those who were cleared of misconduct would be released, those who stood accused of crimes would be held to account, and that Guantanamo would then be closed.

Today, we must question the administration's commitment to lead in closing Guantanamo and in ensuring that our national security policies reflect our values and our commitment to the rule of law. The president has failed to fight for what he stood for on Day 2.

For two years, despite clear authority, the administration has transferred only one detainee from Guantanamo to be tried in U.S. federal court. After Attorney General Eric Holder announced that the administration would prosecute those who committed the atrocities on 9/11 in federal district court, the administration turned tail in the face of political opposition and NIMBYism. When Congress passed restrictions limiting future prosecutions, Obama issued a signing statement that amounted to no more than a "I wish you hadn't done that."

The recent announcement by Defense Secretary Robert Gates that military commissions at Guantanamo will resume only compounds the problem that the president is not leading in bringing those accused of crimes to justice in federal court. The contrast between the trials in federal courts with well-established practice and procedure versus the trials before commissions, which allow hearsay evidence and derivative evidence of torture, provide a striking contrast between what works and what does not.

We do not let Congress off the hook for this political quagmire. Congress should not have tied the president's hands in how to bring to justice those charged with terrorism-related

crimes. Our federal courts have convicted more than 400 on terror charges since 9/11. Commissions have convicted only five. Our federal courts have more than 200 years in handling difficult cases with precedent to guide them. The commissions established by the Bush administration are new, untested and governed by rules that are constitutionally deficient. Any conviction in a commission is likely to be challenged to the U.S. Supreme Court and take years to resolve. Any commission conviction will be regarded with deep suspicion by the world.

We expect our commander in chief to lead when the going gets tough. We need to return to the consensus that emerged in the 2008 presidential campaign when Sen. John McCain, R-Ariz., said he would close Guantanamo his first day in office, if elected. We need to follow the prudent conclusions of leaders such as Gen. Colin Powell, Gen. David Petraeus, Gen. Wesley Clark, former FBI Director William Sessions, Nixon counsel John Dean and Secretary Gates, who have all called for the facility's shuttering.

The president must reset the debate and remind Americans about why it is important to align national security policies with our values, and use our institutions as part of the arsenal in combating terrorism. The president should move forward with federal court trials to the fullest extent permitted by law, including the use of unrestricted funds to transfer those charged with crimes to U.S. federal court, or at the very least securing indictments against those charged with terrorism-related crimes.

If local politicians scream foul when a case is brought to their district, lead. There have been terror suspects tried in more than 50 federal district courts throughout the country. The trial and conviction of Ahmed Khalfan Ghailani, the only Guantanamo detainee transferred to the U.S. for prosecution, in New York City resulted in business as usual, despite the unwarranted cries from some that the city would erupt in chaos.

Guantanamo is an example of what happens when we overreact. We make bad decisions. Terrorists get us to abandon our ways, our laws, our institutions, our values. That is, in fact, the only way they ever win. That is one unfortunate legacy of 9/11, and it is a mistake we must stop making.

It is time to learn. Our courts work. Our Constitution works. Our police and FBI and military work. To ensure that we move forward, and do not continue to backslide on commitment to the rule of law, the president must lead. If the president leads, we will continue to stand by him.

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