

The Pentagon's Destruction of the Bill of Rights

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It is supremely ironic that Pentagon officials take an oath to support and defend the Constitution because they intentionally destroyed the Fifth and Sixth Amendments to the Constitution when they set up their “judicial” system at Guantanamo Bay, Cuba. In fact, the very reason the Pentagon established its system in Cuba, rather than the United States, was to circumvent and avoid the provisions of the Constitution and the Bill of Rights.

Prior to the 9/11 attacks, whenever someone was charged with terrorism or any other criminal offense, U.S. officials would secure a grand-jury indictment and then prosecute him in a U.S. District Court. The accused in the federal court system is guaranteed certain procedural protections, many of which were carved out during centuries of resistance by British citizens to the tyranny of their own government. Our American ancestors demanded that many of those procedural protections be expressly enshrined in the Bill of Rights so that everyone would know that federal officials would have to abide by them whenever they charged people with federal crimes.

Examples of procedural guarantees include no cruel and unusual punishments, the right to confront adverse witnesses, the right to counsel, the right to due process of law, the right of trial by jury, the right to be presumed innocent, the right to remain silent, the right of speedy trial, the right to be free from unreasonable searches and seizures, the right to be free of coerced confessions, and the right to counsel.

After 9/11, the Pentagon established its own “judicial” system at Gitmo to try terrorism cases, as an alternative to the federal judicial system in the United States. Yet, one searches in vain for any authority in the Constitution for the Pentagon to do that. When one reads the Constitution, the intent of the Framers is clear: one judicial system — the federal system — for trying all cases involving the commission of federal offenses.

Contrary to what some people maintain, terrorism is not an act of war. It is a federal criminal offense. That’s why it’s listed in the U.S. Code, which enumerates federal criminal offenses. It’s also why terrorism cases have long been tried in federal district court. It’s also why the Pentagon is prosecuting terrorism defendants in its “judicial” system in Cuba.

The establishment of the Pentagon’s system now enables federal officials the option of sending people who are accused of terrorism into two different systems — one run by the federal courts and the other run by the Pentagon. Thus, if two different people are charged with participating in the same terrorism offense, one can be sent into the federal court system and the other can be sent into the Pentagon’s system.

The choice makes all the difference in the world to people who are accused of terrorism

because the two systems are total opposites. The Pentagon's system has destroyed the procedural guarantees that the federal court system still protects. There is no trial by jury in the Pentagon's system; trial is by military tribunal. Torture and other cruel and unusual punishments are meted out in the Pentagon's system, oftentimes before conviction. Confessions can be coerced and are admissible into evidence. Hearsay evidence is admissible, which nullifies the right to confront adverse witnesses. Defendants are presumed guilty and treated accordingly. There is no right of speedy trial; some people have languished in the Pentagon's system for more than a decade without trial. In the beginning, the Pentagon wasn't even going to allow its prisoners have lawyers, but the Supreme Court put the quietus to that plan by ordering otherwise. Even then, the Pentagon has secretly monitored communications between attorney and client, a severe violation of the attorney-client privilege that is sacred in the federal court system.

Again, this was all by design. The U.S. military has long been a conservative organization, and conservatives have long poo-pooed the procedural protections in the Bill of Rights as nothing more than ludicrous constitutional "technicalities" intended to let guilty people go free. After 9/11, the Pentagon decided that it was going to show how an ideal "judicial" system would operate, one in which such constitutional "technicalities" could be ignored.

In the process, America ended up adopting a "judicial" system that is very similar to those in totalitarian regimes. After more than 200 years of Bill of Rights protection, the fear generated by the 9/11 attacks enabled the Pentagon to figure out a way to successfully circumvent those protections. In the name of keeping us "safe" from "the terrorists," the result has been a destruction of critically important parts of the Bill of Rights.

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