

9/11 “Justice”: The Pentagon’s Upcoming Kangaroo Show Trial in Cuba

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After 18 years, there is a possibility that the Pentagon is finally going to permit a “trial” of five men who are accused of conspiracy to commit the 9/11 attacks. If so, the proceedings will prove what a charade the Pentagon’s entire “judicial system” at Guantanamo Bay, Cuba, has been and continues to be. In fact, the trial, if it is even permitted to take place, will serve as a mirror for how “trials” are conducted in communist China or, for matter, in communist Cuba.

Let’s review how the Pentagon’s “judicial” system got established in the first place. After the 9/11 attacks, the Pentagon decided to establish a prison, torture center, and “judicial” system for accused terrorists that it would be capturing and kidnapping around the world. It decided to locate this center in Guantanamo Bay, Cuba.

Why Cuba rather than somewhere in the United States? The Pentagon wanted to make certain that it would have omnipotent power to run its center any way it wanted, without having to bother with the rights and guarantees enumerated in the Constitution, especially in the Bill of Rights. It also didn’t want any interference with its operation from the U.S. Supreme Court and the rest of the federal judiciary. In other words, the Pentagon wanted a Constitution-free zone in which to operate its prison, torture center, and “judicial” system.

Ultimately, much to the Pentagon’s chagrin, the Supreme Court ruled that it did have ultimate jurisdiction over the Guantanamo operations. However, while the federal judiciary has accepted some petitions for writ of habeas corpus from Guantanamo inmates, overall it has followed its longtime policy of deference to the national-security establishment when it comes to matters of “national security.”

What the Supreme Court should have done from the very beginning was to order a complete shutdown of the Pentagon’s prison, torture center, and “judicial” system at Guantanamo Bay. There is a simple reason for that: the Constitution, which is the higher law that controls the actions of federal officials, including the Pentagon, does not authorize the Pentagon to operate such a center.

It is critically important to keep in mind that terrorism is not an act of war. Instead, it is a federal criminal offense. That is why there are terrorism trials in federal courts in New York, Washington, D.C., Virginia, and elsewhere. Terrorism is listed among federal crimes in the U.S. Code. In fact, the Pentagon’s upcoming “trial” in Cuba is itself an acknowledgement that terrorism is, in fact, a criminal offense, one that here is being prosecuted by the Pentagon in Cuba rather than by the U.S. Justice Department in federal district court here in

the United States.

Two different systems

It is also critically important to recognize that the Constitution does not provide for two separate judicial systems to try criminal cases, one run by the military and the other run by the federal courts. The Constitution provides for only one judicial system for all criminal offenses, including terrorism cases.

It is also critically important to recognize that the principles being followed in both systems — the federal court system and the military system — are as different as night and day.

In the federal court system, people who are accused of terrorism or any other crimes are presumed innocent. Judges and law-enforcement personnel are prohibited from torturing people or inflicting other “cruel and unusual” punishments on them. An accused has the right to remain silent — i.e., no forced confessions. Communications between attorney and client are confidential. The accused has the right to confront his accusers — i.e., hearsay evidence is inadmissible. Trials can be by jury, where ordinary citizens, not a judge, decide the facts of the case and the guilt or innocence of the accused. Trials must be speedy — i.e., no 18-year delay, as there has been in the Pentagon’s system.

Things are the exact opposite in the Pentagon’s system, which is precisely why it established its system in Cuba rather than the United States. Remember: the Pentagon’s goal in establishing its center in Cuba was to avoid the principles of the Constitution and the interference of the Supreme Court.

Why would the military want to avoid the principles of the Constitution, especially given that military personnel take oaths to support and defend the Constitution? The answer lies in the conservative military mindset that has long held that the Bill of Rights consists of constitutional “technicalities” that permit guilty people to go free. By establishing an independent prison, torture center, and “judicial” system at Gitmo, the Pentagon was going to show the American people and the world what a “real” judicial system should look like, one where “the guilty” got what was coming to them and where there was no possibility of an acquittal by some ignorant jury.

Thus, under the Pentagon’s system, the accused are presumed guilty. They are subject to being brutally tortured, not only to secure information but also confessions. Forced confessions are admissible at trial. There is no right of trial by jury. A tribunal of military personnel, all of whom are answerable to the President, decide the facts in the case and the guilt or innocence of the accused. Communications between attorney and client are secretly monitored. Hearsay evidence is admissible. Trials can be delayed indefinitely. The outcome of the “trial” is not in doubt.

There is something else that is of critical importance to recognize: When an accused terrorist is taken into custody, U.S. officials have the discretionary authority to decide into which system to send him. They can select the federal court system, which protects the rights of the accused through the Bill of Rights and where he could possibly win an acquittal. Or they can send him into the military system, where no such rights exist and where the outcome is preordained. There is no way that that type of discretionary and dual system of justice can possibly be reconciled with “the rule of law,” which requires everyone in similar circumstances to be treated in the same manner. There is also no way to reconcile such a

dual, competing system with the U.S. Constitution. Finally, there is no way to reconcile such a system with any reasonable definition of the term “justice.”

The Pentagon’s upcoming “trial” at Gitmo won’t be a trial at all. It will be a kangaroo proceeding, one that is no different from those in totalitarian regimes. Along with the Pentagon’s prison and torture center in Cuba, its upcoming kangaroo proceeding will only bring more shame and ignominy to our country.

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