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Gitmo Threatens Us All

by Jacob G. Hornberger

It might be safe to say that Americans who have been supporting or pooch-pooching the torture, mistreatment, and sex abuse of detainees at the Pentagon's infamous detention facility at Guantanamo Bay have been doing so because the detainees have been foreigners. What those Americans might not realize is that "Gitmo" is for Americans too, especially if the president and the Pentagon are able to convince the federal courts to adopt their "unlawful-combatant" theory in the "war on terrorism."

Think about it: As a practical matter, is there any difference between a foreign terrorist and an American terrorist (e.g., Yaser Hamdi and Jose Padilla)? In fact, I'd be willing to bet that the president and the Pentagon would consider the American terrorist even worse than the foreign-born terrorist, given that the former has betrayed his own country.

Let's analyze the power that the president assumed on 9/11. As a result of that attack, President Bush declared a "global war on terrorism" (or "GWOT," as Washington bureaucrats term it) and suggested that such a war was akin to a real war, such as World War II. However, he sent the word down the military ranks that prisoners in the GWOT — unlike prisoners of war in World War II — would not be entitled to the protections of the Geneva Convention because they were "unlawful combatants," presumably because they don't wear uniforms and they attack civilian targets.

What other inference could U.S. soldiers troops have drawn from the president's message except "take off the gloves"? Obviously, no officer — from general to lieutenant — is going to be stupid enough to issue an order to enlisted personnel that says, "What the president meant is that you are now authorized to torture, murder, mistreat, and sexually abuse the terrorists here at Gitmo, and, as your superior officer, I will take responsibility for your actions."

Instead, here's how the military system works: First, make certain the interrogators at the bottom receive the "Geneva Convention doesn't apply" message. But just in case things go wrong and people find out, CYA by not issuing any specific orders, thereby preserving your deniability, innocence, and shock over any "revelations." Second, whatever happens, protect the president,

who will promote and reward those who are loyal, not only those within the military chain of command but also those legal advisors who gave him cover with appropriate legal opinions.

As our Founding Fathers understood so well — and as I detailed in my three-part series “[Obedience to Orders](#)” — one of the major drawbacks to a standing army is the propensity of professional officers to blindly obey orders or, in the absence of specific orders, to please their superiors, especially given that promotion and career advancement depend on favorable approval reports from their superiors. After all, does anyone honestly believe that the military officers stationed at Guantanamo Bay were simply sunbathing when enlisted personnel were torturing, mistreating, and sexually abusing detainees under their noses? Moreover, whatever happened to the military concept of holding officers responsible for the wrongful actions of their troops?

So what does all this have to do with American citizens? It’s very simple: In the GWOT, American terrorists are subject to the same treatment as foreign terrorists, including being sent to Guantanamo Bay. And there is little doubt that U.S. military personnel would be more than willing to treat an American terrorist at Gitmo the same way he treats a foreign terrorist, if not worse, especially if he believes that such treatment meets with the approval of his superiors. After all, don’t forget how they treated U.S. citizen [John Walker Lindh](#), the “American Taliban.”

“But the Pentagon isn’t sending Americans to Gitmo, only foreigners.” That’s true but that’s only a political decision — one that can easily be rescinded, especially if the president and the Pentagon are able to achieve their goal of total independence at Gitmo — that is, no federal court interference with their “wartime” operations.

“But Gitmo would be limited only to genuine American terrorists.” Ah, but keep in mind an important question here: Who determines whether a particular American is a terrorist in the GWOT?

Under the Constitution, a jury makes the determination, both for foreigners and for Americans accused of terrorism. But under the “wartime” powers assumed by the President and the Pentagon, *they* make the determination. Under their theory, their decision is final and conclusive. No trial, or at best some kangaroo military tribunal. No Constitution. No Bill of Rights (whose protections expressly extend to all *persons* — that is, both Americans and foreigners accused of crimes by the federal government). No habeas corpus. No federal-court interference. No judicial review.

If the Supreme Court ultimately rules in favor of the president’s and Pentagon’s “GWOT unlawful-combatant” theory, any American — I repeat: any American (including dissidents and critics) — who is labeled a “terrorist” will be subject to be whisked away to Gitmo to receive “unlawful-combatant” treatment. And there will be nothing — I repeat: nothing — that he or his family or his friends could do about it.

And make no mistake about it: The U.S. military, from the Pentagon on down, will continue to disregard the Geneva Convention and the Constitution with respect to its treatment of

prisoners at Gitmo, even if such prisoners are Americans, if they believe that by doing so they are either following orders or pleasing their commander-in-chief or their superior officers.

Therefore, Americans might want to think twice before cheering the Pentagon's mistreatment of foreign detainees at Gitmo. They might well be cheering the torture, mistreatment, and sex abuse of their countrymen and perhaps even themselves.

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