



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

The War on Terrorism Is a Deadly Sham

by Jacob G. Hornberger

Pardon me for asking an indelicate question. It's a question, however, that is staring everyone in the face but hardly anyone, especially those in the mainstream media, wants to ask it. Here's the question: If we're really at war against the terrorists, as the Bush administration continues to claim, then what in the world is Zacarias Moussaoui, a genuine terrorist, doing in U.S. federal district court?

How many prisoners taken captive in World War I, World War II, the Korean War, and the Vietnam War were indicted and prosecuted in U.S. district court as criminal defendants, as Moussaoui has been? Answer: None, and the reason is that those were genuine wars, as compared with President Bush's "war on terror," which is nothing more than a sham, and a deadly one at that.

Recall what U.S. officials and even some Washington, D.C., libertarians and conservatives were saying immediately after the 9/11 attacks: that those attacks were "acts of war," not criminal acts. Unfortunately, they never explained how they arrived at that conclusion. Equally important, for some reason they seem to be silently acquiescing in Moussaoui's being tried as a criminal defendant in U.S. district court rather than being treated as a prisoner of war, as enemy soldiers were during the two world wars and the Korean and Vietnam wars.

Keep in mind that 9/11 wasn't the first time that terrorists attacked the World Trade Center. Terrorists also attacked it in 1993. Those terrorists were indicted by a federal grand jury, prosecuted in federal district court, and convicted. In other words, they were treated as criminal defendants, not as prisoners of war in the "war on terrorism."

What's the difference between the 1993 and the 2001 attacks on the WTC? The number of people killed is certainly different, as are the methods by which the two attacks were carried out.

But how can those factors convert what is a criminal act into an act of war? Answer: They can't. What is a criminal act remains a criminal act even though the number of victims increases or the methods of committing the criminal act change. A criminal act is a criminal act, not an act of war.

And that's, in fact, exactly why U.S. officials have Zacarias Moussaoui fighting for his life in a federal district court rather than sitting in a POW camp. Despite President Bush's oft repeated mantra "We're at war in the war on terror," U.S. officials have treated Moussaoui as a criminal defendant, and rightly so. Terrorism is a crime, not an act of war. If it were an act of war, Moussaoui wouldn't be receiving a jury trial as to the nature of his punishment. He would be sitting in a prisoner of war camp, just as enemy prisoners did in World War I, World War II., the Korean War, and the Vietnam War.

Don't forget that the feds have long claimed that Moussaoui either conspired to commit the 9/11 attacks or conspired to later hijack a plane and fly it into the White House. If 9/11 was an act of war, wouldn't that make related attacks an act of war too? In fact, if Moussaoui were an enemy soldier waging war rather than a criminal suspect accused of conspiracy to commit terrorism, how could U.S. officials punish him for planning to attack the White House? Isn't attacking government command-and-control centers what soldiers are supposed to do in time of war?

The plain truth is that, despite all the "we're at war" mantras issued by President Bush and Vice President Cheney, terrorism is a crime, not an act of war. That's why Moussaoui is in federal district court, with the full approval of the Justice Department, a U.S. district judge, and even a federal court of appeals. It's also why the Justice Department has indicted and prosecuted a host of other people for terrorism and continues to do so.

Recall, for instance, Timothy McVeigh, who did the same thing that the 9/11 attackers did — bomb a building and kill innocent people. Like Moussaoui, McVeigh was indicted by a federal grand jury and prosecuted in federal district court. He was given the death penalty, which he appealed through the federal appellate system, and he was ultimately executed. McVeigh was treated as a federal criminal defendant because terrorism is a crime, not an act of war.

The fact that terrorism is a crime, not an act of war, was most recently reflected by the Justice Department's securing a grand jury indictment against accused terrorist Jose Padilla and then requesting the federal courts to order his transfer from military custody to the control of a U.S. district court. If terrorism were an act of war, instead of a criminal act, would the Justice Department have taken such a course of action? (Of course, it should be noted that the Pentagon is reserving the power to take Padilla back into custody if he is acquitted, something that the military does in communist regimes as well.)

So where does that put President Bush's "war on terror" along with his "we're at war" mantra? It puts them in the category of sham — a deadly and destructive sham because, again, terrorism is a crime, not an act of war. The only reason that the president employs such mantras is to expand federal power, especially in the hope of punishing suspected terrorists, both foreigners and Americans, without going through the normal judicial processes.

Consider, for example, the people who have been held, tortured, and sexually abused at the U.S. military base at Guantanamo Bay, Cuba. Ever since 9/11, U.S. officials have claimed that

the federal courts could not interfere with their operations at Gitmo because it would interfere with the president's wartime powers as commander in chief of the armed forces.

But there is at least one big problem with that claim: Since terrorism is a criminal act, not an act of war, that makes the detainees at Gitmo criminal suspects, not prisoners of war. And as criminal suspects, they have all the rights and guarantees enumerated in the Bill of Rights, the same rights and guarantees that are now being accorded Moussaoui and Padilla and that were accorded Timothy McVeigh.

“But the Bill of Rights guarantees due process of law, jury trials, and right to counsel only to American citizens, not foreigners,” some people claim. Wrong! These rights and guarantees, by the express terms of the Bill of Rights, extend to all persons, citizen and noncitizen alike, whom the feds accuse of a crime:

In *all* criminal prosecutions, *the accused* shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. (Emphasis added.)

After all, don't forget that while Jose Padilla is an American, Zacarias Moussaoui isn't. He's a *French* citizen. Now ask yourself: do you honestly believe that U.S. officials would accord a *French* citizen fundamental due-process rights if a federal judge didn't force them to do so? Despite the fact that he is a foreigner, as a federal criminal defendant Moussaoui is entitled to same rights and guarantees as an American criminal defendant, and the presiding judge in the Moussaoui case is making certain he receives them.

The problem is this: Despite the lip service they give the Constitution and “our American way of life,” the truth is that all too many U.S. officials, from the president to the Pentagon to the Congress hold the Constitution in contempt. In fact, what we're seeing is the culmination of decades of U.S. officials' mocking and ridiculing the rights enumerated in the Bill of Rights.

Why did federal officials set up their “war on terrorism” detainee camp in Cuba rather than in the United States? A main reason: so that they could treat people suspected of terrorism the way they wanted, without the interference of U.S. federal judges and the U.S. Constitution. In other words, they didn't want to have to treat suspected terrorists the way they're having to treat Moussaoui and Padilla and the way they had to treat McVeigh.

Instead, they wanted to do things their way, which included inflicting cruel and unusual punishments on suspected terrorists, a barbaric act that our ancestors prohibited in the Bill of the Rights. Pentagon officials wanted to establish their own independent judicial system in which the Pentagon would show Americans and the world the virtues of military “justice” — a type of

“justice” predicated on warrantless searches and seizures, torture, sex abuse, indefinite detentions, and other forms of severe punishment — in other words, the omnipotent power to mete out “justice” without concerning themselves with constitutional “technicalities.”

If Moussaoui were being tried before one of those kangaroo military tribunals at Gitmo, where the judges are military officials who answer to the Pentagon and their commander in chief (the president), does anyone honestly believe that such tribunal judges would have displayed the level of independence that the presiding federal judge in the Moussaoui case has displayed? If Moussaoui were at Gitmo he would have been railroaded into an execution chamber long ago. Whether the jury ultimately gives Moussaoui life or death, every American should be proud that an independent federal judge has done her best to ensure that Moussaoui has been accorded a fair trial at every step of the proceeding. It should also make Americans feel a bit safer, especially given that Congress, having become as big a rubber stamp for the president that Saddam’s congress was for him, has proven itself unwilling to protect our rights and freedoms from presidential and military assault.

The military tells us that everyone at Gitmo is guilty of terrorism. Of course, many of the detainees challenge that assumption, including those who have been released by the military without having been charged after long detentions. There’s a fundamental problem here that all too many American seem to overlook: the long-established principle in American law called the “presumption of innocence.”

In every criminal case, the defendant is presumed innocent, and the government has the burden to prove his guilt beyond a reasonable doubt. It is not an easy burden to meet, and many criminal defendants go free not because the jury concludes that they’re innocent but because the jury concludes that the government hasn’t proven their guilt beyond a reasonable doubt. The rationale behind this system is that, as the adage goes, it’s better that ten guilty people go free than that one innocent person be found guilty. In other words, the prospect of convicting and punishing an innocent person is so horrible that we’d rather let many guilty people go free than wrongfully convict an innocent one.

The Pentagon has turned that age-old principle upside down at Guantanamo Bay. Everyone at Gitmo is presumed guilty of terrorism and is therefore subject to torture, sex abuse, indefinite detention, and other forms of punishment, unlike Zacarias Moussaoui, who is under the jurisdiction of a federal judge who won’t even countenance prosecutorial misconduct, much less torture and sex abuse of Moussaoui.

The principle of presumption of guilt in the “war on terrorism” has another upside-down quality to it, a very deadly one. If U.S. officials target a suspected terrorist overseas traveling in a car or residing in a house, they have no reservations about firing a missile at the car or dropping a bomb on the house, even if such action kills several innocent bystanders. The idea is “Better that one terrorist is killed even if ten innocent people are killed in the process.”

Thus, based on how it is waging its war on terrorism in Iraq, it is not difficult to imagine, especially in a crisis environment, the Pentagon waging its war on terrorism here in the United States in the same manner it is waging it around the world — that is, for example, by firing a missile into a suspected terrorist’s apartment complex, even if it kills innocent bystanders. The Pentagon would consider such “collateral damage” to be “worth it,” just as it does in Afghanistan, Iraq, and elsewhere, especially if it rids the world of a “terrorist” and even spares the nation a “messy” and expensive trial, such as in Moussaoui.

That’s one important reason the powers being claimed by the president and the Pentagon are so ominous, not only for foreigners but also for Americans. Ever since 9/11, Americans have been burying their heads in the sand, saying to themselves, “Oh well, they’re only doing it to foreigners, not to Americans.” The Pentagon even put their minds at ease soon after 9/11 by advising them that no Americans would be sent to Gitmo. What Americans didn’t realize was that this was simply a policy decision on the part of the Pentagon, one that could easily be rescinded should circumstances warrant it.

The discomfiting reality that Americans are having a difficult time absorbing is that President Bush and the Pentagon are claiming the same powers over the American people as they are exercising in Iraq. After all, “we’re at war,” aren’t we? And haven’t they repeatedly stated that the entire world is the battlefield in the “war on terror”? Haven’t they repeatedly emphasized that the United States is part of that battlefield? Haven’t they said that the president has the power to ignore constitutional restraints here in the United States in his role as commander in chief of the armed forces during time of war?

Do you see any federal judges and federal magistrates operating in “liberated” Iraq? Do you see writs of habeas corpus being issued to challenge the wrongful detention of thousands of detainees? Do you see jury trials? Do you see independent magistrates issuing search and arrest warrants?

Welcome to the realities of the “war on terrorism” and the world of military “freedom”! Welcome to the deadly and destructive sham that federal officials have slowly but surely been employing ever since 9/11 to expand their power over the people of the world, including Americans. So far, Americans have been relatively lucky ... well, except for Jose Padilla, an American who was held in military custody for three years as an enemy soldier in the “war on terrorism.”

Unless Americans decide to pull their heads out of the sand and stop their knees from knocking at the mere sound of the word “terrorism,” the “war on terrorism” noose that U.S. officials are employing overseas will continue to be slowly but surely tightened around the necks of the American people.

Jacob Hornberger is founder and president of The Future of Freedom Foundation.

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