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Al-Qaeda in Federal Court

by Jacob G. Hornberger

Ever since 9/11, U.S. officials have been telling us that the “war on terrorism” has made it necessary for the U.S. military to hijack America’s criminal justice system by taking suspected terrorists into military custody and punishing them, denying them the rights normally guaranteed to criminal defendants in the Bill of Rights.

The feds have argued that the war against terrorists requires a different set of rules. They told us that the 9/11 attacks were an act of war, not a criminal act of terrorism. They said that al-Qaeda was a different kind of enemy and that the war on terrorism was a different kind of war — different from, say, the war on the Mafia or the war on drugs. This new type of war, they said, required military invasions of sovereign and independent countries, military tribunals, torture, and the cancellation of federal court involvement in matters of terrorism.

Well, if all that’s true, then why have U.S. officials secured a grand jury indictment for treason in federal district court against Adam Yahiyeh Gadahn, an American who is said to have joined al-Qaeda and even made pro-propaganda videotapes in its behalf? As an important member of al-Qaeda, wouldn’t he ordinarily be a poster child for the new rules of engagement in the war on terrorism?

Long-time supporters of The Future of Freedom Foundation will recall that immediately after 9/11 we wrote that a military attack on Afghanistan in an attempt to capture Osama bin Laden and bring him to justice would just end up killing thousands of innocent Afghan people, which would then generate more anger and more hatred, which in turn would produce more threats of terrorism. We wrote the same thing in the months leading up to the invasion of Iraq.

In retrospect, no one can deny that the wars on Afghanistan and Iraq have turned both countries into violence-ridden, terrorist-producing wastelands. In fact, the invasion of Afghanistan, along with the war on Iraq, has been a dream-come-true for bin Laden and al-Qaeda recruiters, given the enormous anger and hatred that have arisen in response to massive military strikes both in Afghanistan and Iraq that have killed and maimed hundreds of thousands of innocent people.

As one senior Western military official in Afghanistan recently put it, “We have killed a lot of Taliban, but they are not running out of foot soldiers, and for every one we kill, we create new families that hate us.” As the recently issued National Intelligence Estimate stated, “A stark assessment of terrorism

trends by American intelligence agencies has found that the American invasion and occupation of Iraq has helped spawn a new generation of Islamic radicalism and that the overall terrorist threat has grown since the Sept. 11 attacks.”

“So you would have just let the 9/11 terrorists go?” critics said to us. Absolutely not, we responded. Instead, we recommended doing what is always done when a criminal offense is committed. Start looking for leads, both domestic and foreign, cooperate with foreign law-enforcement agencies, and put out a large reward for the capture of the terrorist suspects. If nothing else, isolate them so that they couldn’t do any more harm before they were captured and brought to justice. Most important, we argued that it was necessary to reevaluate and change U.S. foreign policy, which had generated the anger and hatred that led to the 9/11 attacks.

Well, guess what the feds have done in the case of Adam Yahiyeh Gadahn, who is believed to be in Pakistan. No, they’re not threatening to invade Pakistan to secure his capture. Hopefully, they have figured out that that would only incite more anger and hatred as a result of the U.S. military’s killing thousands of innocent people in the process and, as we learned with bin Laden, it wouldn’t even guarantee Gadahn’s capture.

Instead, U.S. officials are doing exactly what we said should have been done with bin Laden and his cohorts. They’re offering a reward of \$1 million for information leading to his capture, at which point they intend to bring him back to the United States to stand trial in a federal district court, rather than send him to Guantanamo Bay for torture and a kangaroo trial.

Will Gadahn be arrested soon? We don’t know. Sometimes bringing people to justice can be done relatively quickly, as when U.S. officials indicted and convicted foreigner Zacarias Moussaoui, a member of al-Qaeda who was involved in the 9/11 attacks. Sometimes it takes longer, as with Ramzi Yousef, the foreign terrorist who attacked the World Trade Center in 1993 and who wasn’t captured until two years later — in response to a big reward for his capture. Yousef too was indicted, tried, and convicted in federal district court rather than turned over to the U.S. military for confinement, torture, and punishment.

Question: If the federal court system and the Bill of Rights are good enough for two foreigners who committed terrorist acts against the World Trade Center — Ramzi Yousef and Zacarias Moussaoui — and an American accused of being an active member of al-Qaeda, then why isn’t it good enough for all persons accused of terrorism? Equally important, where are the rule of law and equal treatment under law when some terrorist suspects can be treated one way (i.e., military custody and kangaroo courts) and others treated another way (i.e., federal court jurisdiction and the Bill of Rights)?

If the U.S. government had followed the same procedure with bin Laden, who, as everyone knows is still at large, that it followed with Ramzi Yousef, Zacarias Moussaoui, and now Adam Yahiyeh Gadahn, instead of having followed the military route, countless innocent people would still be alive today; untold numbers of people would not have been detained, tortured, and sexually abused by the CIA and the military; and the world’s post-9/11 sympathy would not have turned to anger, hatred, and disrespect for this country. In fact, if the world had stayed with us rather than turning against us in response to

Afghanistan, Iraq, and Guantanamo, bin Laden might well be in captivity today or, at the very least, would be isolated and would not be having such an easy time recruiting people to his cause.

Mr. Hornberger is founder and president of The Future of Freedom Foundation. He will be among the 22 speakers at FFF's upcoming conference on June 1-4 in Reston, Virginia: "Restoring the Constitution: Foreign Policy and Civil Liberties" (www.fff.org/whatsNew/conference.htm).

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