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2009**CIVILIAN TRIALS FOR 9/11 SUSPECTS AREN'T ENOUGH**[| Print |](#)

Political Views

By MWC News

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By Ivan Eland

The Obama administration's decision to try Khalid Sheikh Mohammed, the self-described mastermind behind the 9/11 terrorist attacks, and four alleged co-conspirators in civilian court is a laudable return to the rule of law from the Bush administration's kangaroo military commissions, which convened offshore in Guantanamo to avoid giving defendants full legal rights under domestic or international law. But it is not enough.

Conservative commentators harshly criticized the move as either giving the heinous terrorists a break or, in the words of Sen. John Cornyn (R-Texas), treating the 9/11 attackers as "common criminals." Even liberals on the MSNBC television network couldn't seem to grasp the greatest significance of Obama's move, saying that it would restore U.S. prestige around the world.

Sen. Cornyn's comments indicate that conservatives, in their haste to conduct their own crusade against a non-Christian religion, would rather buy into the terrorists' warped conception of themselves as holy warriors than treat them for what they are: dastardly common murderers. The liberals would rather have other countries like the United States than focus on the restoration of constitutional safeguards.

The Fifth Amendment to the Constitution says that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger. . . ." The Sixth Amendment ensures the defendant, for all criminal prosecutions, a public jury trial in the state or district in which the crime was committed, which includes getting a list of specific accusations, being confronted with hostile witnesses and compelling favorable witnesses, and having the right to a defense counsel.

The exception for the Fifth Amendment includes an alternative justice system only for U.S. military personnel during wartime, not "unlawful enemy combatants." Thus, despite earlier precedents in U.S. history, including during World War II, military tribunals for enemies are unconstitutional, especially when they violate many of the requirements of the Sixth Amendment.

Thus, the main benefit of Obama's move is partially restoring a constitutional justice system after years of Bush administration abuse. Yet at least five other Guantanamo prisoners, and likely many more, will be denied a civilian trial. These five are being held for an attack on the USS Cole, an American warship, in 2000. Ostensibly, hitting a military target means a trial in a military tribunal. Although Obama has improved safeguards in such tribunals, the reality that some terrorists get better justice than others—evidently the more people you kill, the more justice you get—smacks of prosecution forum-shopping in order to get convictions.

Administration officials even admit that the vast majority of Guantanamo prisoners will continue to be held indefinitely without any kind of trial. Even more horrible, acknowledged innocent people will be held until a foreign country accepts them, because U.S. administrations have been politically scared to admit they terribly wronged these people and release them into the United States.

Undermining even the civilian trials is the unlikelihood that any of the 9/11 defendants would be released even if acquitted. U.S. Attorney General Eric Holder declined to say whether this was possible. In any normal trial, it is a given. Holding a high-profile prisoner even after he is exonerated could subvert the perceived fairness of



the U.S. justice system even further. Autocracies hold show trials; a republic does not.

But if these defendants are treated as any other similarly accused murderers, bringing them to justice in a civilian court is one step out of the abyss.

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