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Guilty Until Proven Innocent

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The purpose behind protecting the rights of the accused is not to protect the guilty, but instead to protect the innocent. After all, when a person is found guilty, he will be punished.

In the movie about the famed 16th-century English statesman Thomas More, *A Man for All Seasons*, More's wife and daughter want a man arrested because he is "bad." While More agrees he is a bad man, he insists the man should remain free until he breaks a law, even "if he were the devil himself." At this point, a man named William Roper challenges More, "So, now you give the Devil the benefit of the law!"

More responds, "Yes! What would you do? Cut a great road through the law to get after the Devil?"

When Roper insists that he would "cut down every law in England to do that!" More explains why he would give even the Devil due process of law: "And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!"

From the time we are little children, we learn that a person is presumed innocent, in the eyes of our legal system, until proven guilty beyond a reasonable doubt. Increasingly, however, the concept that the accused is entitled to due process of law before suffering punishment at the hands of the government is under assault in the United States.

In recent times, during both Democrat and Republican administrations, America has been drifting toward a new legal standard — we are presumed guilty until we can prove our innocence.

Many areas in which we can be presumed guilty could be offered as evidence of these assertions, but we shall focus on four areas that are particularly egregious: indefinite detention under the National Defense Authorization Act, the no-fly list, civil asset forfeiture, and the attack upon due process at America's colleges and universities.

Indefinite Detention

Buried in the mammoth National Defense Authorization Act (NDAA) — which funds military spending, and is considered must-pass legislation — is a provision that allows the president of the United States to capture and detain "enemy combatants," including Americans, indefinitely, without any charges ever being brought. (This provision was first passed in Fiscal Year 2012 and has been continuously renewed

since that time.) The language is written in such a sweeping way that even the United States itself can be considered part of the battlefield in the "war on terror." Those arrested can be designated enemy combatants by the administration, and then imprisoned indefinitely by the military without habeas corpus or trial or being found guilty. Many Americans — such as former Army Public Affairs Officer Tom McCuin in his article "What's Really in the National Defense Authorization Act?" — dismiss the threat this section of the NDAA poses, saying that it presents no danger to Americans. They claim that Americans are safe from indefinite detention and that the law is narrowly focused and only applies to

"covered persons" pursuant to the 2001 AUMF [Authorization for the Use of Military Force — for those who attacked America on September 11, 2001]. It defined covered persons as either someone "who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks," or "who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces…"

Section 1022 required that anyone "who is captured in the course of hostilities" be held "in military custody pending disposition under the law of war." It was intended to clarify that those detained during combat were not being held on criminal charges that required reading them their Miranda rights.

But they are wrong: The law is so sweeping that any country, including the United States, is part of the global battlefield in our "war against terror, and those accused of being terrorists can be any nationality, including American — and can simply be "disappeared."

The law's removal of Americans' rights is no accident: The first iteration of the bill included a section that would have protected Americans from suffering arrest without protections of the Constitution, but not only did the Obama administration threaten to veto the legislation if that wording were included, Defense Secretary Leon Panetta sent a letter to Senator Carl Levin (D-Mich.) stating that adding such wording "restrains the Executive Branch's options to utilize, in a swift and flexible fashion, all the counterterrorism tools that are now legally available," as is recounted in an article at pandaunite.org entitled "Top Myths About the NDAA." Senator Lindsey Graham (R-S.C.) said of the bill: "And those American citizens thinking about helping Al-Qaeda, please know what will come your way: Death, detention, prosecution." Then-President Obama signed the bill into law, while promising not to arrest Americans. He probably should have added — unless he *really* wanted to do so.

By placing indefinite detention into the NDAA, members of Congress are faced with either not funding our national defense or voting to strip Americans of basic protections against being unjustly jailed.

History buffs, of course, remember parallel legislation that passed the German Reichstag in 1934. In that year, using the fear of communist terror, the government passed the Reichstag Fire Decree, which, as stated in the online Huffington Post article "This Administration Now Has the Power to Indefinitely Detain Americans Without Charge or Trial," "suspended provisions of the Weimar constitution that protected civil liberties, including the right to a speedy trial, the right to face your accuser, protection against search and seizure without a warrant, the right to assemble and the right to free speech." The culmination of Hitler's abuses of civil liberties was the near-annihilation of Jews across Europe.

However, some backers of indefinite detention argue that it is necessary to combat global terrorism, mocking the idea that an American president cannot be trusted to use this power judiciously.

But if we give this power to one man, why have judges, courts, or a judicial system at all?

For centuries, legal tradition — going back even before the founding of the Republic — has recognized that a person cannot be held without a formal charge, and then must be afforded a trial. The U.S. Constitution, particularly in the Bill of Rights, places clear restrictions upon the power of the federal government. Amendment V says that no person can be "deprived of life, liberty, or property, without due process of law," while the Sixth Amendment stipulates, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." Furthermore, the Posse Comitatus Act of 1878 forbids the use of the military in domestic law enforcement.

The reason for these safeguards is so that government doesn't abuse its privileges, and while an American president usually has support from about one-half of the populace, he is working at odds with the other half.

President Trump has been accused by liberals of regularly assaulting women, having families thrown off their own properties so that he could build a casino, traitorously colluding with Russia to influence an American presidential election, being racist in his choice of tenants for his rental dwellings, etc. Is he someone Democrats want to hold the power of legally making people disappear without being able to challenge such an action in court? Another Republican president, Richard Nixon, was guilty of ordering his agents to commit illegal acts in the Watergate scandal.

Likewise President Obama has been accused by his opponents of having the IRS penalize conservative businesses, having his Justice Department give guns to violent Mexican gangs so that he could rail against the Second Amendment (Fast and Furious), accepting bribes and kickbacks from the Russians to sell American uranium deposits to the Russians, persecuting Christians, fomenting hate between blacks and whites, shunting government money to political cronies by pretending it was meant to help the environment, etc. Is he someone Republicans want to hold the power of legally making people disappear without being able to challenge such an action in court? Another Democrat president, Bill Clinton, has been accused of rape and more criminal scandals than can be named here, including visiting a private island nicknamed "Sex Slave Island" on multiple occasions.

In truth, it is probably unlikely that an innocent American would find himself in Guantanamo Bay, Cuba, but it sets a precedent for abolishing restrictions on government, a path that history — and the U.S. government's warrantless spying on Americans' electronic communications — tells us will grow hugely unless stopped in its tracks.

Nineteenth-century British statesman Lord Acton put it well: "Power tends to corrupt, and absolute power corrupts absolutely."

Thomas Jefferson responded to the idea that we should simply trust the president, once remarking, "In questions of powers, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

The No-fly List

Another chink in the armor protecting Americans from government abuse came about through the no-fly list.

The no-fly list was created by the FBI after the September 11 attacks of 2001. It contains the names of people who have not committed any terrorist acts, yet whom the government *suspects* may someday commit terrorist acts so forbids them from flying on commercial airplanes. The administrations of

Obama and Trump have continued to use the list. When first created in December 2001, only 594 people were on it. According to a June 20, 2016 *Washington Times* article entitled "FBI no-fly list revealed: 81,000 names, but fewer than 1,000 are Americans," "a top lawmaker" gave an outline "of the secretive program on the floor of the Senate" that day revealing that the list indeed held 81,000 names. The list is used jointly with the "TSA selectee list," which doesn't ban flying but mandates that persons on that list receive additional scrutiny when being screened. That list had about 28,000 names in 2016, of which nearly 1,700 were U.S. citizens. A person is not notified that he is on either list, and might never even be aware of it, unless prevented from boarding an airplane. In essence, a person is punished without any guilt being proved by any government.

People are put on the no-fly list for a variety of reasons. An article entitled "8 ways you can end up on the no-fly list," by Sid Lipsey, quotes airline industry analyst Robert Mann and an article by the Intercept about a "secret document issued by the National Counterterrorism Center that details how the government puts people on the no-fly list as well as on terrorist databases." One can be put on the no-fly list for either committing or being suspected of committing terrorist activity, traveling to certain countries, being a nonviolent political activist, having a name similar to someone on the list, refusing to become a government informant for the FBI, being the victim of a clerical error, having a non-terrorism-related open warrant, or making a tweet the government finds disturbing. That's a list that is easy to get on.

> Americans on the list are treated differently from other Americans based on a *guess* as to what they *might do*. Not only is that un-American, but the slippery slope toward where its bad ends will lead is already evident.

The consequences could be dramatic. Imagine that some of your extended family resides in a part of the Middle East known for Islamic terrorism, and you visit yearly. On one of your trips, when attempting to return home to the United States, you are not allowed onto the plane because of your inclusion on the list, and you are stuck there. This has reportedly happened. Or what if you are a businessman who needs to fly for work and you are told out of the blue that the government won't allow you to fly or tell you why you are banned or even allow you to appeal the decision in court? (According to the ACLU, since the government lost a case in federal court, it has *committed to* telling interested Americans if they are on the no-fly list, as well as providing some sort of method to "redress" the problem, but it still refuses to give reasons to listees for their blacklisting.)

The list was created in secret, and originally operated in secret, with both the FBI and the TSA lying about its existence, which they did for the first two and a half years of the program. Because it is a secret list, people have no opportunity to argue against being placed on the list. And even after the list's existence became known, the government's official policy was to not confirm or deny someone was on the list — even if someone was not allowed on a plane. Timothy Edgar, who helped oversee the list under both Bush and Obama, defended the secretive process of the list as a necessary evil, in order to combat terrorism. Edgar conceded that the list is "a little unfair, or a lot unfair, but this is a part of the new normal of post-9/11."

The reason given for keeping the names of those on the list secret, as well as the reasons for putting someone on the list in the first place, is that potential terrorists would be forewarned that they are

being watched, and terrorists might ferret out American intelligence sources or methods. But just because someone is on the no-fly list doesn't mean he is subject to arrest, so he will find out the first time he tries to fly anyway — before he goes on his merry way.

Congressman Justin Amash (R-Mich.) challenged the thinking that produced the no-fly list. "The government may not infringe on any of our rights without due process. People are added to the president's No-Fly List on the basis of secret criteria, without trial and the ability to confront the accuser, and without conviction. This list and others like it are unconstitutional."

But in truth, people who create lists such as these, or merely defend their use, don't care about rights, at all. They care about physical safety while traveling and about alleviating personal fears, but definitely not about constitutionally protected rights. Consider if we extend their rationale about using guesses, uncorroborated accusations, and fear to guide government. Since guns, knives, and motor vehicles are tools of the terrorist trade, all should be forbidden to suspected future killers. Too, logically, since terror suspects shouldn't be able to fund their projects, under the same justification, government should deny Americans access to the financial system: savings accounts, checking accounts, loans. Since people should not be able to plan terrorist events, no terrorism suspect should expect any room in any dwelling he occupies to be unbugged or be allowed to buy a computer, etc. All are about taking away *some people's freedoms* based on the whim of a government bureaucrat.

Sound totalitarian to you?

One such infringement on personal freedom has already been brought forth. After the Orlando nightclub massacre by Islamic terrorist Omar Mateen, gun-control advocates saw the list as a novel way to restrict Second Amendment-protected rights. "No-fly, no-buy" was the catchy phrase conjured up by gun-control advocates, including President Obama. "People with *possible* ties to terrorism who are not allowed on a plane shouldn't be allowed to buy a gun," Obama insisted. (Emphasis added.) A bipartisan group of senators led by Republican Susan Collins (Maine) proposed a bill making it illegal for anyone on the no-fly or selectee list to buy a gun.

The hazards of such a thing should be plain to everyone. First, as in the IRS case where government officials chose to turn down or bury requests for nonprofit status from conservative entities, while passing liberal ones, any individual's ideological disagreement with a government bureaucrat could end up leading to one's inclusion on "a list." Two, who gets to decide whether someone is too dangerous to buy a gun? Apparently, David Nelson, an actor who played in *The Adventures of Ozzie and Harriet*, would have lost his right to buy a gun under this line of thought, as he was stopped at an airport because his name was on the no-fly list. Three, the criteria for being placed on the list are already so loose that anyone could end up on it. A third government list provides a good example: In 2007, a U.S. Department of the Inspector General follow-up audit of an audit done in 2005 showed that there were more than 700,000 names on the U.S. government's Terrorist Watch List and that the list grew by about 20,000 names per month. Four, government lists are riddled with inaccuracies: The Inspector General audit of 2007 showed that, despite the government being warned two years earlier, it "found that 38 percent of the records … tested continued to contain errors or inconsistencies that were not identified through the [Terrorist Screening Center's] quality assurance efforts."

Moreover, the vox.com article entitled "Turning the no-fly list into the no-gun list, explained" reported: "The federal government says that 'Ninety-nine percent of individuals who apply for redress' — i.e., who

formally ask the government why they were blocked from traveling and if that can be fixed — 'are not on the terrorist watchlist, but are misidentified as people who are.'" Even the late Senator Edward Kennedy was stopped from boarding a plane, apparently because his name was very similar to another person whose name was on the list.

Just because a person is a "suspect" does not mean that person is guilty of anything. Depriving a person of a constitutionally protected right, such as purchasing a firearm, cannot happen legally under the Constitution, unless a person has actually been charged with a specific crime, and convicted. If the freedom to fly and the fundamental right of self-defense, protected by the Second Amendment, can be denied without due process, then what other fundamental rights protected in the Bill of Rights are also targets for elimination? Are free speech and the freedom to assemble next on the chopping block?

Civil Asset Forfeiture

Many Americans who hear about the dangers of being detained indefinitely without trial might shrug their shoulders; after all, they are not terrorists. Why would they have to contend with any of this? Many undoubtedly react the same way regarding the possibility of being placed on the no-fly list. Why would such a mistake happen to a law-abiding citizen who does not have a criminal record? And of course, some never fly on commercial airlines; why should they have any concern about the no-fly list? And many Americans do not own a gun, so they wouldn't necessarily be concerned with "no-fly, no-buy."

But then there's civil asset forfeiture (CAF), a controversial legal process in which law-enforcement officers take assets from persons suspected of involvement with crime or illegal activity without necessarily charging the owners with wrongdoing.

Legally speaking, with civil asset forfeiture, the case is between police and the *asset itself,* sometimes referred to by the Latin term *in rem*, meaning "against the property"; the property itself is the defendant and no criminal charge against the owner is needed. This has led to some odd-sounding cases, such as *The State v. $12,000 Cash*, or T*he State v. A 2014 Toyota Camry*, when assets are seized from owners without the owners of the property themselves ever being charged at all. Contrast this with *criminal* asset forfeiture, where the accused is afforded all of the constitutional and statutory procedural safeguards available under criminal law and must be found guilty beyond a reasonable doubt before property is forfeited.

Once one's property is seized by police, on mere suspicion of illegality, it is expensive to get it back, if possible at all. Take 61-year-old William Cicco, for example. Cicco left his home in Broken Arrow, Oklahoma, one evening in March 2013, carrying a paper bag containing $15,555 in cash, money he and his wife had been saving.

According to oklahomawatch.org,

Cicco said after he left his home that evening, he was pulled over by a Bixby [near Broken Arrow] police officer responding to a radio call about a possible intoxicated driver. A police report says Cicco's speech was slurred and he appeared to be intoxicated. Cicco said he had taken his prescribed pain medication before leaving the house.

While preparing to impound the car, police found empty bottles for two prescription painkillers and a partially-filled bottle of non-narcotic medicine; all were in Cicco's name and were intended to treat his cancer, he and his lawyer said.

Then they found the bag with cash and accused him of being a drug dealer.

"We worked for it, we saved for it. That's where the money came from," said Cicco, adding the cash was partly to pay for his cancer treatments as well as leave for his family. "It was our money. The money didn't come from anything else."

A drug dog was brought in, and the dog "alerted" to the passenger side door, the police report says. A second drug dog was brought in and alerted to the bag of cash.

Police arrested Cicco for driving under the influence of drugs; speeding; improper lane use; failure to yield to an emergency vehicle, meaning the police car; and a complaint of possession of drug proceeds. A judge set his bond at $15,300, including $10,000 for the drug-proceeds complaint.

Cicco hired an attorney to both defend him on the traffic charges and fight the forfeiture.

"My lawyer told me the DA was stonewalling, they didn't want to give me the money back," Cicco said. "I knew I wasn't going to get it unless I went through this long court battle … so I offered him (the attorney) two grand to get it."

Cicco was found guilty of the traffic charges and the DUI. A judge dismissed the drug-proceeds charge.

Many times, a law-enforcement agency does not even file criminal charges, but simply takes the cash or other property. The harsh reality is that if law enforcement seizes cash or property, the expense of hiring an attorney and fighting to get the money back is often simply not worth it for the suspect — the amount seized is generally less than the expense of going to trial. For this reason, many poor and working-class Americans find themselves victims of CAF with no legal recourse.

Critics of CAF say it offers a perverse incentive to police departments: the temptation for "free money." If the police see a chance to get free dollars, they find "probable cause" to take it. Plus, if victims do end up getting their money back, or at least some of it, it's the taxpayers who end up footing the bill, not the police department, since the money has likely already been spent. Consider the case of Gerald Bryan. As gothamist.com wrote in 2014,

In the middle of the night in March of 2012, NYPD officers burst into the Bronx home of Gerald Bryan, ransacking his belongings, tearing out light fixtures, punching through walls, and confiscating $4,800 in cash. Bryan, 42, was taken into custody on suspected felony drug distribution, as the police continued their warrantless search. Over a year later, Bryan's case was dropped. When he went to retrieve his $4,800, he was told it was too late: the money had been deposited into the NYPD's pension fund….

"They do this all the time, to so many people I know," Bryan, a bartender of 21 years, told us…. Before the raid, he had planned on using the cash to take his girlfriend on a cruise. "A lot of people, when they get arrested, they know that their money is just gone, and they know that the police are taking it to enrich themselves."

And the money need not go into pension funds. *Washington Post* columnist Radley Balko wrote in a January 2015 piece:

The money can also go for new equipment, parties, and travel expenses to training seminars. Some of those seminars are held in places like Las Vegas or Hawaii. And some of them are seminars on how to seize more goodies under asset forfeiture policies, bringing the whole scam full circle. In Detroit, the DA's office has been taking the cars of men suspected of patronizing prostitutes. (The woman in

question need not be an actual prostitute.) In Fulton County, Georgia, forfeiture money has gone for steak dinners, lavish parties, and a sweet new security system for the DA's private home. Other things cops and prosecutors have bought with forfeiture funds: a tanning bed for the police chief's wife; "The Ponderosa," a "weekend home" for the local sheriff; a Zamboni; gold-plated police whistles; and a margarita machine for the DA's office. (To be fair, the office did win first place in the county fair's margarita-making contest.)

My all-time favorite story has to be the one about Ron Sutton, the 30-year Texas prosecutor who spent more than $25,000 in forfeiture money to take his entire staff, their spouses, and a judge on a Hawaiian vacation. Sutton's defense: A judge signed off on the trip. Yes, it was the same judge who went on the same trip he'd just approved.

CAF is so common now that in 2014 federal law-enforcement officers actually seized more property from citizens than did burglars. Abuses by state authorities have led many states to rein in the practice. Robert Johnson, with the Institute for Justice, noted, "Thirteen states now allow forfeiture only in cases where there's been criminal conviction."

But state laws against CAF are no match for enterprising politicians: Enter adoptive forfeiture, or "equitable sharing," the practice by which local law enforcement can circumvent state laws against CAF by "sharing" part of their seized cash or property with federal authorities. In response to state efforts to curtail CAF, Attorney General Jeff Sessions told the Oklahoma Sheriffs' Association on October 19, 2017, "In July, we reinstituted our equitable sharing program: so that criminals will not be permitted to profit from their crimes. As you know well, civil asset forfeiture is a key tool that helps law enforcement defund organized crime, take back ill-gotten gains, and prevent new crimes from being committed.… Civil asset forfeiture takes the material support of the criminals and instead makes it the material support of law enforcement."

Going back to the case of William Cicco, Tulsa County Assistant District Attorney James Dunn, who filed the charges against Cicco, said the majority of forfeiture cases do not involve innocent people having their money taken away. "Do I think we had probable cause [with Cicco] to do it? Yeah. Are there instances where the facts bear out where we can't make our case? Yeah," Dunn said. "You don't throw the baby out with the bath water. Our system is working," he continued.

This is the key argument in favor of CAF, that it helps law enforcement, and most of the people targeted really are bad people, i.e., drug dealers. But if we truly believe in the presumption of innocence, then why do Sessions and other CAF supporters insist on forfeiture without conviction?

Certainly, many who are involved in seizing assets that they believe are used in drug dealing or other crimes truly believe they are doing right and are perfectly honest. They see the ravages of drugs on addicts, and feel justified in taking whatever actions are necessary to combat the problem. However, doing wrong to do right is still wrong. Even in horrific murder, rape, and armed robbery cases, the accused are still afforded the due process of law. One provision of the English Bill of Rights, adopted in the aftermath of the Glorious Revolution in England, was crystal clear: "Forfeitures before conviction are void."

If one concedes that district attorneys' offices, sheriffs' departments, and police departments are underfunded — and in some cases, they no doubt are — that does not justify taking property from American citizens who have not been convicted of any crime. As Senator Daniel Webster said in the

19th century, "Good intentions will always be pleaded for every assumption of power.... The Constitution was made to guard the people against the dangers of good intentions."

Speaking of the Constitution, the Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Clearly, CAF is unconstitutional without a warrant, and is an assault upon the very concept of private property and the legal position that a person is presumed innocent until found guilty beyond a reasonable doubt.

Denying Due Process on Campus

As is the case with terrorism and the scourge of drugs, few Americans have much sympathy for rapists and others who commit sexual assaults. And the presumption of innocence is more easily cast aside for those who stand accused, especially at the nation's colleges and universities.

College administrators, who ordinarily are supposed to be involved with planning an academic curriculum and related issues, are now heavily involved in sorting out whether one of their students is guilty of sexual assault — a criminal act.

How did this come to fall under the province of colleges and universities?

Not surprisingly, the impetus for this comes mostly from dictates by the federal government. The federal government pressures colleges to conduct inquisitions, regardless of what local law-enforcement authorities have determined.

Title IX of the Civil Rights Act requires that colleges receiving any federal funds (this includes students at the colleges receiving any financial aid from the federal government) must follow certain guidelines in the conduct of their "extracurricular" activities — such as sports, debate, and the like. In the past few years, the Office of Civil Rights of the U.S. Department of Education has determined that this also requires colleges to be proactive in the fight against sexual assaults on the college campus.

While few would tolerate sexual assault anywhere in American society, this historically was considered a matter for local law-enforcement authorities to investigate. But now if colleges refuse to conduct these types of investigations on their own and mete out punishment in the form of expulsions and the like, they can face revocation of federal aid.

In April 2011, the Office of Civil Rights issued a 19-page "Dear Colleague" letter dictating that universities receiving federal aid adopt specific procedures in the investigation and adjudication of sexual-assault accusations.

The letter's significance is explained in the book *The Campus Rape Frenzy: The Attack on Due Process at America's Universities*, by K.C. Johnson and Stuart Taylor, Jr. "No other presidential administration had ever asserted the power to dictate specific disciplinary procedures to universities, under Title IX or any other statute. Title IX itself includes nothing that even hints at such a power."

Johnson and Taylor explain how this letter led to the gutting of due process and the presumption of innocence in sexual-assault accusations in higher education: "First, the letter ordered universities to use no higher standard of proof than a bare 'preponderance of the evidence' — meaning 50.01 percent

— to find students guilty of sexual assault."

"Second, the letter strongly discouraged — and in effect, at least as implemented by nearly all colleges, all but forbade — what the Supreme Court has called 'beyond any doubt the greatest legal engine ever invented for the discovery of truth': direct cross-examination of accusers." Other provisions ordered colleges to speed up investigations, and allow accusers to appeal not-guilty findings, "exposing accused students to a form of double jeopardy."

It is not surprising that colleges err on the side of expelling any accused student. Otherwise, the Office of Civil Rights could arbitrarily decide that the college is not following the requirements of Title IX, arguing the college should have expelled the student. In 2015, 124 colleges were under investigation by the Department of Education, examining whether they had properly handled such cases.

In 2014, at the University of Oklahoma, Frank Shannon, a linebacker in its storied football program, was accused of sexually assaulting a woman, but she later opted not to press charges. The local prosecutor in this case said there were conflicting stories as to what happened, and he saw no reason to prosecute.

But the university did see a reason — no doubt fearing a Title IX case. With the threat of federal retribution hanging over the school if it did nothing, OU conducted its own investigation, and suspended Shannon for a year. He was never able to regain his starting position, and his chance of being drafted by the National Football League was severely damaged.

The Campus Rape Frenzy gives details of multiple cases of the lives of students being ruined by mere accusations. No doubt sexual assaults do happen on college campuses and off-campus among students, and persons guilty of such crimes should be punished. But as we give accused murderers the presumption of innocence in the legal system, the same should be afforded to a college student. While colleges do not have the power to imprison a student they find "guilty," their decisions can ruin a student's academic career and reputation, and may also diminish future job opportunities.

Of course, there exists no constitutional authority for the federal government to do what it is doing. Furthermore, it is an effort to usurp the general police power, which is left to the states as part of the "reserved powers" found in the 10th Amendment.

The common thread in all of these violations of due process is the heavy hand of the federal government. Without the federal government going beyond its enumerated powers (which James Madison said are "few and defined"), most of these problems would be greatly reduced, or even eliminated.

But if Americans do not defend the concept of the presumption of innocence and defend due process for all, even in the harder cases, the precedent will be set to abolish both in all cases.

Photo: Getty Images Plus

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