



Written by [Thomas R. Eddlem](#) on February 2, 2011

Rumsfeld to Receive “Defender of the Constitution” Award at CPAC

Giving Rumsfeld an award for defending the Constitution is a bit like giving [Kendra Wilkinson](#) an award for sexual modesty or [Charlie Sheen](#) an award for sobriety. Rumsfeld personally authorized the imprisonment of American citizens without trial and torture of detainees. He oversaw a "military commissions" system he invented that had no authority in law and violated a variety of rights protected under the Constitution. Even a cursory look at Rumsfeld's record as Secretary of Defense during the Bush administration would demonstrate that Rumsfeld openly and directly attacked Articles I, II, and VI of the Constitution as well as the Fifth, Sixth, and Eighth Amendments.



Attack on Articles I, II, VI of the Constitution

Because Rumsfeld made a career as Secretary of Defense of attacking the U.S. Constitution directly, he was the defendant on the losing side of a number of Supreme Court cases the Bush administration undertook to continue its attack on the Constitution. Among the more infamous was [Hamdan v. Rumsfeld](#), in which the Supreme Court struck down Bush administration-invented "military commissions" supervised by Rumsfeld that would have tried detainees in the so-called "war on terror." The Supreme Court [ruled](#) "its structure and procedures violate both the UCMJ [Uniform Code of Military Justice] and the Geneva Conventions."

Ahmed Hamdan is a Yemeni national who was accused of unspecified crimes under the Defense Department's rump military commissions. But courts can only be created through the legislative process, and [Article I of the Constitution](#) begins with the instruction that "All legislative Powers herein granted shall be vested in a Congress of the United States." The same article also reserves to Congress exclusively the powers to "To make Rules for the Government and Regulation of the land and naval Forces" and to "To constitute Tribunals inferior to the supreme Court." Congress alone can create courts under the U.S. Constitution, yet the Rumsfeld courts were created without any specific congressional authorization.

Moreover, Rumsfeld presided over the violation of the [Constitution's Article I, Section 9](#) protection of *habeas corpus*, which prohibits the suspension of the writ of *habeas corpus*. *Habeas corpus*, known as "the great writ" in Anglo-American common law, is a guarantee against being thrown in prison without charges for an unlimited period of time. But Rumsfeld's Defense Department insisted it could throw anyone — even [U.S. citizens](#) — into a dungeon forever and never have to justify the imprisonment in front of a court. When friends of the detainees took the Bush administration to court, Rumsfeld's Defense Department took the case of two American citizens — native American [Jose Padilla](#) and



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naturalized American [Yaser al-Hamdi](#) — all the way to the Supreme Court. In the case of Padilla, Rumsfeld held him imprisoned [for four years without charges](#) and took the case to the Supreme Court twice. Thus, Rumsfeld's Defense Department conspired to deny a right — *habeas corpus* — enjoyed by all people in Anglo-American common law [since at least the 14th century](#).

The Supreme Court in the Hamdan case ruled that the Bush military commissions violated the Geneva Conventions, a treaty to which the United States is a party, empowered under [Article II, Section II](#) of the U.S. Constitution and declared to be a key part of the "supreme law of the land" by [Article VI](#) of that same Constitution.

Attack on Fifth, Sixth Amendments to the Constitution

In addition, the Hamdan case revealed that the Rumsfeld Defense Department's military commissions denied a number of rights guaranteed under the Fifth Amendment of the U.S. Constitution to all defendants, whether American citizens or not. The [Fifth Amendment](#) guarantees all defendants (without distinguishing between citizens and non-citizens) "no person ... shall be compelled in any criminal case to be a witness against himself." Yet the [record](#) demonstrates the Rumsfeld Defense Department engaged in beatings in order to win forced confessions. In fact, the interrogation techniques employed by the Defense Department at Guantanamo Bay, Cuba were copied from [Communist Chinese torture techniques designed to extract false confessions](#).

It's already been explained that the Rumsfeld Defense Department did all in its power to deny detainees — [even U.S. citizens](#) — their habeas corpus right to a hearing to determine the lawfulness of their detention. They also openly conspired how to deny a fair trial — and even a trial at all — to these same detainees. The [Sixth Amendment](#) to the U.S. Constitution guarantees to all defendants that government can not create courts just to convict them, that the court and "district shall have been previously ascertained by law" before the person has been arrested. Yet the Bush/Rumsfeld military commissions were set up to try and convict detainees long after their arrest. Moreover, the [Sixth Amendment](#) guarantees that defendants need to "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." But the Rumsfeld military commissions denied defendants knowledge of the charges against them and denied them access to exculpatory evidence in almost every case. The Supreme Court [ruled in Hamdan v. Rumsfeld](#) that the Bush/Rumsfeld military commissions were unconstitutional in part because of secret evidence prohibited to the defense and that "information used to convict a person of a crime must be disclosed to him."

Attack on Eighth Amendment to the Constitution

Rumsfeld also engaged in an all-out attack against the [Eighth Amendment](#) prohibition against "cruel and unusual punishments" as Secretary of Defense. The standard of evidence for cruel and unusual punishment is far less exacting than the statutory prohibition against torture. Everyone knows instinctively what constitutes cruelty to animals. Rumsfeld authored several so-called "torture memos" calling for a variety of torture methods to be used against detainees at Guantanamo Bay, Cuba. The Senate Armed Services Committee [concluded in a 2008 bipartisan report](#): "The abuse of detainees in U.S. custody cannot simply be attributed to the actions of 'a few bad apples' acting on their own. The



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fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees. Those efforts damaged our ability to collect accurate intelligence that could save lives, strengthened the hand of our enemies, and compromised our moral authority."

Rumsfeld was the [prime force](#) in pushing the torture envelope. When approving a memo recommending a variety of torture methods that included forced standing in a single position for up to four hours at a time, Rumsfeld [hand-wrote on the memo](#): "I stand for 8-10 hours a day. Why is standing limited to 4 hours?" Rumsfeld's [personal involvement](#) in the treatment and interrogation of detainees led some [legislators](#) to ask the Obama administration to prosecute Rumsfeld for [felony torture under federal statutes](#).

One can only wonder why the American Conservative Union and its President David Keene are awarding Donald Rumsfeld the "Defender of the Constitution" award at the upcoming CPAC conference. The ACU lists among its founding principles "ACU represents the views of Americans who are concerned with ... issues of liberty," but calls a "Defender of the Constitution" the same man who [argued that an executive branch bureaucrat can throw a native-born American citizen into a dungeon for torture without ever giving him a trial or even a court hearing](#). How is that protecting liberty?

ACU chairman Keene [wrote](#) that Rumsfeld "is still as honest, forthright, conservative, and down-to-earth as ever," and plans a [cruise junket](#) headlining Rumsfeld. But Rumsfeld is only "conservative" if conservative means "hates the Constitution and has done everything he can to rip it up."

Photo of Donald Rumsfeld: AP Images



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