Making the Case: Why We Should Try Terrorists in Federal Courts

By Mieke Eoyang and Aki Peritz

Federal courts—not military commissions—are the most effective way to bring terrorists to justice. Here’s why:

1. Federal courts have a proven history of being tough on terrorism.
2. Military trials have had a poor track record of convicting terrorists.
3. Federal criminal courts have more tools to convict terrorists than military courts.
4. Federal criminal courts reflect both current reality and America’s commitment to justice.

Federal criminal courts have a proven history of being tough on terrorism.

- Federal courts convicted 438 people of terrorism offenses between September 2001 and December 2010. In such cases, 65% of terrorism defendants pleaded guilty.
- The federal courts often hand down long prison terms to terrorists: the most common sentence is 10-14 years behind bars, while the second most common sentence is life imprisonment.
- Federal prosecutors have tried and convicted high-profile al Qaeda operatives like the 2001 “shoe-bomber” Richard Reid, the 2009 “Christmas Day” suicide attacker Umar Farouk Abdulmutallab, and the 2009 foiled NYC subway attacker Najibullah Zazi.
- Federal courts convicted 9/11 mastermind Khalid Sheikh Mohammed’s nephew, Ramzi Yousef, who was responsible for the 1993 NYC World Trade Center bombing. He now sits in the Supermax prison in Florence, Colorado.

The goal that I set—to defeat al Qaeda and deny it a chance to rebuild—is now within our reach.

— President Obama
May 1, 2012

Federal courts are much tougher on terror suspects that military commissions.
Military trials have had a poor track record of convicting terrorists.

- Since 9/11, there have only been seven convictions in military tribunals, and a number of those convicted are already free, like bin Laden’s driver Salim Hamdan and Australian national David Hicks.6
- Of the seven individuals convicted of crimes by a military commission, the only terrorist sentenced to life in prison—Ali Hamza al Bahlul—had his conviction overturned by a federal appeals court in January 2013, since the crimes he was accused of performing were not war crimes when they were committed.7

Federal criminal courts have more tools to convict terrorists than military courts.

- Two pillars of the criminal justice system often used to convict suspected terrorists are providing “material support for” or committing a “conspiracy to engage in” terrorism. Such charges cannot be brought before most military tribunals, because they are not generally considered war crimes under military law.8
- Foreign countries are willing to provide evidence for use in US criminal trials.9 By contrast, our allies have generally been unwilling or unable to aid our efforts in military tribunal proceedings.
- Federal plea deals are useful in getting cooperating terror suspects to work with us to capture and convict others, according to recent congressional testimony by the FBI Director.10 This cooperation has been used to bring down terrorists and terrorist cells, such as obtaining the quick guilty plea from Ahmed Abdulkadir Warsame, who ran guns between al Qaeda in the Arabian Peninsula and al Shabaab.11

Federal criminal courts reflect both current reality and America’s commitment to justice.

- Some say we should use military tribunals for terrorism suspects. Since America is not engaged in some kind of “forever war,” we should try new terrorism suspects in federal courts.

During the first two years of Barack Obama’s presidency, the annual number of prosecutions for jihadist-related terrorism doubled.


Making the Case

We’ve only convicted seven people in military tribunals—and two of them are already free.

There’s a widespread perception that military commissions are tilted strongly against defendants ... The record to date tells a very different story.

— Matthew Waxman
Former Bush Administration
Pentagon official12
• Trying individuals suspected of terrorist crimes in federal court—which we have done effectively for more than 200 years—is consistent with our values of justice, fairness, and transparency.

Conclusion

Federal criminal courts provide a more effective, tougher, and principled response to the threat of terrorism—far more than military tribunals. Those who argue otherwise are ignoring the record of the last ten years.

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4 Ibid.


