

Trying Terror Suspects in Federal Courts

- ✓ **Federal civilian criminal courts have convicted 400 terrorists since 9/11.¹ Military commissions have convicted only five.²** Federal court convictions include convictions resulting from investigations of terrorist acts and of criminal acts by those with an identified link to international terrorism.
- ✓ **55 federal district courts in 36 states have successfully convicted terrorists since 9/11.** The 400 terrorist convictions were the result of trials in 55 different US district courts; 27 cases were in the Southern District of New York.³
- ✓ **Federal courts have more tools to try terrorists than military commissions.** Federal courts, unlike military commissions, can try terrorists for offenses such as those involving fraud, immigration, firearms, and drugs. In addition, convictions for crimes of conspiracy and material support before a military commission rather than a federal court face a greater likelihood of being overturned on appeal because those crimes were not generally considered war crimes before the Military Commissions Act.
- ✓ **Federal prisons hold more than 300 convicted terrorists. None has ever escaped.⁴ Of the 5 GTMO convicted detainees, only 3 remain in prison.** The American Correctional Association said, “Corrections and law-enforcement professionals in the United States are second to none. We want to assure all Americans that the public will be safe from harm and that the terrorists will be properly and effectively detained -- whether in Cuba or in a single facility or multiple facilities across the United States.”⁵
- ✓ **Federal courts have repeatedly imposed stiff sentences on convicted terrorists.** The Sentencing Guidelines, §3A1.4, provides for increased sentencing for defendants convicted of a crime that “involved, or was intended to promote, a federal crime of terrorism.” US courts have imposed severe sentences on convicted terrorists.⁶
- ✓ **Prosecuting terror suspects before military commissions makes them look like warriors rather than common criminals.** Those who argue that terror suspects should be tried before military commissions because they do not deserve our regular courts miss the mark. As Judge William Young said when sentencing Shoe Bomber Richard Reid, “You’re no warrior.... You are a terrorist. A species of criminal guilty of multiple attempted murders.”⁷

¹ <http://jurist.law.pitt.edu/paperchase/2010/03/doj-releases-details-on-400-convicted.php>; <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/05/AR2010100505683.html>

² <http://www.reuters.com/article/newsMaps/idUSTRE50A2JR20090111>, <http://www.andyworthington.co.uk/2008/10/27/an-empty-trial-at-guantanamo/>, <http://www.google.com/hostednews/ap/article/ALeqM5iSnYtLdPe0aYlSxWJFTIO0hjBYjwD9GQFHCO0>, <http://articles.latimes.com/2010/oct/26/world/la-fg-gitmo-plea-20101026>

³ <http://www.justice.gov/cjs/docs/terrorism-convictions-statistics.pdf>

⁴ <http://www.usdoj.gov/opa/pr/2009/June/09-ag-564.html>

⁵ <http://www.miamiherald.com/opinion/other-views/story/1385750.html>

⁶ <http://www.humanrightsfirst.org/pdf/090723-LS-in-pursuit-justice-09-update.pdf>

⁷ Statement by Judge William Young, U.S. District Court on Sentencing of Shoe Bomber Richard Reid.

- ☑ **Military commissions fail to meet U.S. constitutional and international law fair trial standards.** While the newly constituted military commission rules provide some needed reforms, such as prohibiting the admission of evidence obtained by cruel, inhuman and degrading treatment, some serious flaws remain. For instance, the bill:
 - Continues to permit the admission of coerced testimony obtained at the point of capture or during closely related active combat engagement.
 - Includes an overbroad definition of who can be tried before military commissions, one that extends trials in this forum to juveniles and those not even engaged in hostilities.
 - Permits defendants to be tried ex-post facto for conduct not considered to constitute a war crime at the time it was committed.

- ☑ **Miranda is an effective law enforcement tool that provides valuable information.** FBI and local law enforcement know how to interrogate suspects. Though some decried their reading Miranda rights to the Christmas day bomber, interrogators obtained critical information after doing so. The *Miranda* requirement does not prevent intelligence professionals from interrogating prisoners, and recent court decisions have recognized exceptions to the *Miranda* requirement including the foreign law enforcement interrogations exception and the “public safety” exception to *Miranda* that would likely apply to statements made on the battlefield.⁸

- ☑ **Federal courts are expert at protecting classified information.** The rules for military commissions governing classified information are modeled after the federal court rules. Military commission judges have little experience applying those rules, unlike federal court judges.

- ☑ **Our Constitution applies to citizens and foreigners alike in the U.S. criminal justice system.** It is well-established in the Constitution and by Supreme Court precedent⁹ that, as James Madison said, “[I]t does not follow, because aliens are not parties to the Constitution...they have no rights to its protection.... [A]s they owe...a temporary obedience [to the Constitution], they are entitled in return to their protection....”¹⁰

⁸ <http://www.humanrightsfirst.org/pdf/090723-LS-in-pursuit-justice-09-update.pdf>

⁹ See *Boumediene v. Bush*, 126 S. Ct. 2229, 2246 (2008); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (U.S. 1886).

¹⁰ James Madison, *Mr. Madison's Report on the Virginia Resolutions* (1799)