

Myth v. Fact: Trying Terror Suspects in Federal Courts

Myth: Terrorists have traditionally been tried in military commissions.

- ✓ **Fact: Federal civilian criminal courts have convicted more than 660 individuals on terrorism-related charges since 9/11.¹ Military commissions have convicted only eight, three of which have been overturned completely and one partially.²** Federal court convictions include those resulting from investigations of terrorist acts and of criminal acts by those with an identified link to international terrorism. Federal courts have convicted many high-profile terrorists, including “Shoe Bomber” Richard Reid, Ramzi Yousef (1993 World Trade Center bombing), Faisal Shahzad (Times Square bomber), and Sulaiman Abu Ghaith (Osama bin Laden’s son-in-law) in March 2014.

Myth: Military commissions are better equipped to handle terror cases.

- ✓ **Fact: Federal courts have more tools to try terrorists than military commissions.** Federal courts, unlike military commissions, can try suspects for offenses involving fraud, immigration, firearms, and drugs. In addition, convictions for the crime of material support before a military commission, rather than a federal court, have been overturned on appeal because these crimes have not generally been considered war crimes. While Sulaiman Abu Ghaith, Osama bin Laden’s son-in-law, was convicted of terrorism-related offenses just over a year after he was captured, the military commission trial for the alleged 9/11 perpetrators has remained mired in pre-trial hearings since May 2012.

Myth: Federal prisons cannot safely detain terror suspects.

- ✓ **Fact: Federal prisons hold hundreds of individuals convicted of terrorism-related offenses. None have ever escaped.³** According to the American Correctional Association, “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.”⁴ Guantanamo is also much more expensive than federal prisons, costing more than \$10 million per prisoner annually, compared to less than \$78,000 in a comparable maximum security federal prison.⁵

Myth: Terrorism trials in federal court risk the safety of Americans.

- ✓ **Fact: None of the districts that have tried terrorism suspects have been attacked in response, and Guantanamo actually hinders counterterrorism efforts.** In a speech to the American Constitutional Society, Attorney General Eric Holder said, “Not one of the judicial districts involved has suffered retaliatory attacks.”⁶ Rather, as John Kerry stated, “The Guantanamo detention facility impedes joint counterterrorism efforts with friends and allies.”⁷

¹ <http://www.humanrightsfirst.org/sites/default/files/NSD-Terrorism-Related-Convictions.pdf>

² <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article2163210.html>

³ <http://www.usdoj.gov/opa/pr/2009/June/09-ag-564.html>

⁴ <http://www.miamiherald.com/opinion/other-views/story/1385750.html>

⁵ <http://www.judiciary.senate.gov/imo/media/doc/7-24-13SmithTestimony.pdf> ,

http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf

⁶ <http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-1106161.html>

⁷ <http://www.humanrightsfirst.org/uploads/pdfs/Kerry-GTMO-NDAA-Nov2013.pdf>

Myth: Terror suspects should be tried before military commissions because they do not deserve our regular courts.

- ☑ **Fact: Prosecuting terror suspects before military commissions makes them look like warriors rather than the criminals that they are.** 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.”⁸

Myth: Federal courts aren’t prepared to protect classified information.

- ☑ **Fact: 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.

Myth: All previous flaws in military commissions were corrected in the Military Commissions Act of 2009.

- ☑ **Fact: Military commissions still 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, military commissions:
 - Continue to permit the admission of coerced testimony obtained at the point of capture or during closely related active combat engagement.
 - Include 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.
 - Permit defendants to be tried ex-post facto for conduct not considered to constitute a war crime at the time it was committed.

Myth: Reading suspected terrorists their *Miranda* rights prevents authorities from gathering critical intelligence.

- ☑ **Fact: *Miranda* is an effective law enforcement tool that provides valuable information.** Phil Mudd, former deputy director of the CIA’s Counterterrorist Center and a senior intelligence adviser to the FBI, wrote that he “sat at hundreds of briefing tables for nine years after Sept. 11, 2001, and I can’t remember a time when *Miranda* impeded a decision on whether to pursue an intelligence interview.”⁹ 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.¹⁰

Myth: Foreigners aren’t protected under the U.S. Constitution and therefore cannot be tried in the U.S. criminal justice system.

- ☑ **Fact: 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 precedent¹¹ 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....”¹²

⁸ Statement by Judge William Young, U.S. District Court on Sentencing of Shoe Bomber Richard Reid.

⁹ http://prospect.org/csnc/blogs/adam_serwer_archive?month=03&year=2011&base_name=is_the_administration_gutting

¹⁰ <http://www.humanrightsfirst.org/pdf/090723-LS-in-pursuit-justice-09-update.pdf>

¹¹ See *Boumediene v. Bush*, 126 S. Ct. 2229, 2246 (2008); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (U.S. 1886).

¹² James Madison, *Mr. Madison’s Report on the Virginia Resolutions* (1799)