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## 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 commissions have had a poor track record of convicting terrorists.
3. Federal courts have more tools to convict terrorists than military courts.
4. Federal courts allow the government to continue to collect critical intelligence.

Earlier this year, one of the FBI's Most Wanted—al Qaeda operative Abu Anas al-Libi—arrived in New York City to stand trial for his involvement in the 1998 bombings of the U.S. Embassies in Kenya and Tanzania.<sup>1</sup> He unwillingly turned up in a federal court in Manhattan after American special operations forces nabbed him in a daring raid in Tripoli.<sup>2</sup>

The Obama Administration is right to prosecute hardened terrorists in federal courts, since the American court system remains the most effective way to bring terrorists to justice. Here's why:

### **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.<sup>4</sup> In such cases, 65% of terrorism defendants pleaded guilty.<sup>5</sup>
- 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.<sup>6</sup>

***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<sup>3</sup>

MAKING THE CASE

***Federal courts are much tougher on terror suspects than military commissions.***

- 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.
- No one convicted of a terrorism charge has ever escaped from prison.<sup>7</sup>

## **Military trials have had a poor track record of convicting terrorists.**

America’s military commission system in Guantanamo Bay, Cuba—designed to process many al Qaeda and Taliban operatives—remains beset by problems:

- 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.<sup>9</sup>
- 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.<sup>10</sup>

## **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.<sup>11</sup>
- Foreign countries are willing to provide evidence for use in US criminal trials.<sup>13</sup> By contrast, our allies have generally been unwilling or unable to aid our efforts in military tribunal proceedings.

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

— NYU’s Center on Law and Security, *Terrorist Trial Report*  
Card: 9/11/01 – 9/11/11<sup>8</sup>

### 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 official<sup>12</sup>

## The federal system still allows for robust intelligence gathering and cooperation.

Federal plea deals can compel cooperative terror suspects to work with the U.S. and provide actionable intelligence, even as they face long prison terms. Examples include:

- Abdulkadir Warsame ran guns between al Qaeda in the Arabian Peninsula (AQAP) and al Shabaab. Two years after his capture, a top terrorism federal prosecutor called Warsame's cooperation "an intelligence watershed."<sup>14</sup> He pled guilty to nine different terrorism-related charges in 2011.<sup>15</sup>
- Umar Farouk Abdulmutallab is 2009's so-called "Christmas Day Bomber." Then-Director of National Intelligence Dennis Blair testified that the U.S. received "good intelligence" from the thwarted bomber while in federal custody, and another senior Administration official said his FBI debriefings had been "very successful."<sup>16</sup> Abdulmutallab pled guilty in late 2011 and is now serving a life sentence without parole.<sup>17</sup>

## Conclusion

The embassy bomber will have his day in federal court. Those who argue that this is dangerous or soft on terrorism are ignoring the courts' 200+ year record of being tough on the people who do our country harm.

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## Endnotes

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