



## **Military Tribunals: Justice for The al-Qaeda Terrorist and American Citizen**

An Essay by Archana Vuyyuru, Pax Americana Institute's Intern for Homeland Security Affairs. This essay took second place in the Bradley Foundation's Freedom Prize Essay Contest in 2010.

*"The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means." – Thomas Jefferson*

Today's rapidly changing world demands flexibility from citizens, State governments, and judicial systems alike. In order to thrive while simultaneously sustaining the ideals that have made the United States an extraordinary country, the written laws and judicial systems must be interpreted with care and greater flexibility. This will allow them to be applied with wider latitude without forfeiting justice or efficiency. Thomas Jefferson's entreaty to Americans and government to adopt a disposition to read written laws in a more flexible manner has never been more necessary in today's rapidly converging global community. This adaptability is especially needed when judging agents of terrorist networks who seek to undermine American liberties through acts of terror against innocent Americans. These terrorists are a particular challenge to the judicial system because they are individuals who are committing acts of terror equivalent to warfare in a time when Congress has not formally declared war. The American judicial system is capable of adjusting to accommodate the judgment of these terrorists. The agents of al-Qaeda attempting acts of terror within the boundaries of the United States should be tried by a military tribunal, rather than in a civilian trial, to ensure pronouncement of a just verdict and the security of Americans.

Agents of al-Qaeda attempting terrorism within the United States are engaging in warfare against the U.S. The definitions of war and warfare should not be ideologically limited by past American experiences with war. To be engaged in war or commit acts of warfare was more easily identified in the past because the "enemies" were part of a State-military force and the conflict had a

distinguishable beginning and end. Conflict is much more difficult to clearly identify now due to the simultaneous rise and contraction of numerous insurgent groups who are engaged in asymmetrical conflict with States. In this case, though al-Qaeda is not directly fighting on behalf of a State or within a uniformed military army, they are part of an organization that is attempting to use acts of terror to intentionally harm the fabric of the United States and the rights to which American citizens are entitled.

A narrow reading of war would obstruct the United States from engaging in successful anti-terrorist techniques and prevent the U.S. judicial system from appropriately judging the agents of al-Qaeda. A narrow reading of warfare in Vietnam prevented the United States from developing and engaging in successful anti-insurgency techniques. It ultimately cost the United States the lives of millions of American soldiers as well as billions of dollars. The definition of what constitutes warfare must be broadened in order to prevent further terrorism upon the American people and to ensure that terrorists are tried in the appropriate judicial system. The terrorists who were involved in the World Trade Center (WTC) bomb plot case in 1993 were accused, by the federal grand jury, of planning to “levy a war of urban terrorism against the United States.”<sup>1</sup> The indictment given by within a civilian trial demonstrates that terrorist acts are equivalent in gravity and nature to levying war. Unfortunately, those participating in the 1993 WTC bomb plot case were tried in a civilian court, which prevented the appropriate punishment from being dispensed for that act of levying war. Using a civilian tribunal to try agents who are engaging in acts of war against the United States severely disadvantages American citizens and undermines the rights that the U.S. judicial system is meant to protect.

Agents of al-Qaeda who are attempting terrorist acts must be tried in a military tribunal because they are unlawful enemy combatants. An unlawful enemy combatant is a “person who has

---

<sup>1</sup> Crona, Spencer J., and Neal A. Richardson. "Justice for War Criminals of Invisible Armies: A New Legal and Military Approach to Terrorism." Oklahoma City University Law Review. (1996): Print.

engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al-Qaida, or associated forces).”<sup>2</sup> The Military Commissions Act of 2009 authorizes the use of military tribunals to try unlawful enemy combatants. Agents of al-Qaeda who are engaging in or attempting terrorist acts within the United States would be “purposefully and materially” supporting hostilities against the U.S.<sup>3</sup> Because these agents are levying acts of warfare against the United States and are defined as unlawful enemy combatants under the Military Commissions Act of 2009, only a trial by a military tribunal can provide an adequate measure of justice.

Terrorism can only be adequately judged within the structure of a military tribunal. The entire purpose of judicial proceedings is to determine truth in order to judge the accused of innocence or guilt. In a civilian trial, the civilian jurors must unanimously agree upon a conviction of guilt. If they believe the accused is guilty, they must believe this notion beyond a reasonable doubt. This is the highest burden of proof within the legal system and is designed so that the error falls upon letting the convicted go free. A military tribunal is designed so the military jurors must vote upon a decision with two-thirds majority for the accused to be convicted. The people of the United States cannot bear the potential costs of trying agents of al-Qaeda in a judicial process that errs so heavily on letting the guilty go free. Trying a terrorist within a civilian trial would place a greater emphasis on the security of the convicted terrorist rather than the safety of innocent Americans.

The rules that govern the admissibility of evidence within a military tribunal allow for a larger body of evidence to be reviewed by the jury and judge. The rules increases the ability for the jury to find truth when trying al-Qaeda terrorists. Military tribunals do not involve all of the exclusionary rules that are used in a civilian trial. For example, statements that are obtained from the accused before *Miranda* rights are read to them are allowed to become part of the evidentiary body in a

---

<sup>2</sup> Military Commissions Act of 2006, Chapter 47A—Military commission: Subchapter 1—General provisions: Sec. 948a. Definitions

<sup>3</sup> Ibid 2

military tribunal. This information can potentially prevent terrorist attacks upon the American people. When Khalid Sheikh Mohammad was captured in 2003, the statements that he made before he acquired a lawyer and was read his *Miranda* rights “disrupted plots and saved lives” in the United States.<sup>4</sup> If Mohammad was treated like a regular criminal and read his *Miranda* rights, it would not have been possible to ensure the safety of the American people and broaden the body of evidence used to find truth. However, Mohammad and his co-conspirators will be tried in a civilian trial where there are stricter rules governing the admissibility of evidence. In a military tribunal, the statements that the agents of al-Qaeda make are more likely to be included into the body of evidence that is presented to the military jurors. The structure of a military tribunal allows for the greatest effectiveness when judging the agents of al-Qaeda who are attempting terrorist acts.

Military tribunals provide a more efficient and swifter appropriation of justice than civilian trials. Trials presented to the court are at least “one half” times shorter than jury trials.<sup>5</sup> The terrorists who were charged with the 1993 bombing of the World Trade Center were given two criminal trials. The first trial alone required 207 witnesses and took over five months.<sup>6</sup> General Yamashita was a Japanese general from WWII who was tried for his war crimes by a military tribunal. His trial required 286 witnesses and took a little over five weeks to complete.<sup>7</sup> Civilian trials are a much more consuming process that prevents the appropriate judgment to pass in the most efficient manner. A civilian trial is an inappropriate judicial process in which to try a terrorist and it would consume an unnecessary amount of time. This problem is greatly alleviated in a military tribunal.

---

<sup>4</sup> Hayes, Stephen F. "Miranda Rights for Terrorists." Weekly Standard (2009): n. pag. Web. 30 Apr 2010. <[http://www.weeklystandard.com/weblogs/TWSFP/2009/06/miranda\\_rights\\_for\\_terrorists.asp](http://www.weeklystandard.com/weblogs/TWSFP/2009/06/miranda_rights_for_terrorists.asp)>.

<sup>5</sup> Ibid 1

<sup>6</sup> Dean, John. "APPROPRIATE JUSTICE FOR TERRORISTS: Using Military Tribunals Rather Than Criminal Courts." FindLaw's Writ. Thomson Reuters, 28 Sept 2001. Web. 30 Apr 2010. <<http://writ.news.findlaw.com/dean/20010928.html>>.

<sup>7</sup> Ibid 5

Civilian trials force a greater risk upon the American people. Civilian trials require a civilian jury panel as well as greater transparency of information that is processed through the trial. A civilian jury panel is potentially subject to intimidation by either the defendants or by terrorist agents outside the trial. During the 1993 WTC bombing trial, the civilian jurors faced “an outburst of insults and threatening gestures from the defendants as marshals dragged them from the courtroom immediately after their verdict was returned.”<sup>8</sup> In a military tribunal, military officers would have the physical and psychological experience to understand and accept the risk that a jury must assume when trying agents of a terrorist group. It is unjust to have civilian jurors put themselves and their families at risk to any terrorist reprisal.

Civilian trials require all evidence to be open to the public, which can compromise the safety of information sources and lead to non-cooperation. During a civilian trial, all incriminating evidence, the techniques used to acquire the evidence, and the sources from which the evidence was procured is open to the public.<sup>9</sup> The sources providing the information are in potentially danger and might not cooperate in order to ensure their own security. This transparency that a civilian trial requires would also prevent future informants from coming forward with any useful information. This undermines the ability of a trial to adequately try an accused terrorist and does nothing to safeguard the security of the American public. This system contrasts with the military tribunal, which prevents a broader body of evidence to a panel of military jurists who are secured from potential terrorist reprisals. The sources are also protected from public view so their own security is not compromised. Military tribunals provide security for the American civilian population without compromising civil liberties.

Trying the agents of al-Qaeda within a military tribunal provides a due process that is appropriate and just for those accused of terrorism. Though the al-Qaeda agents are classified as

---

<sup>8</sup> Ibid 1

<sup>9</sup> Perazzo, John. "Why Civilian Trials for Terrorists are a Bad Idea." Frontpage Magazine (2007): n. pag. Web. 30 Apr 2010. <<http://97.74.65.51/readArticle.aspx?ARTID=336>>.

unlawful enemy combatants before their trial begins, they still receive a fair trial that does not assume guilt as a premise. The even-handedness with which a military tribunal renders punishment is exemplified by the post-WWII Nuremberg trials of Nazi leaders. The military tribunal at Nuremberg “acquitted three of the twenty-two major defendants, sentenced four others to twenty years in prison or less, and sentenced three to life in prison.”<sup>10</sup> These trials spared “nearly half of those accused” of the death penalty.<sup>11</sup> The military jurors weigh the case with as much fairness with presented with truth as a civilian jury might. The nature of a terrorist act carries greater weight than a criminal act and should be judged according to a due process that only a military tribunal can provide. Only a military tribunal can administer justice to the al-Qaeda agents while securing the lives of the American people.

The changing nature of conflict in today’s rapidly converging global community requires laws to be interpreted more flexibly. The United States must adjust the implementation of law and the judicial system in order to preserve the liberties that the laws were originally created to protect. Military tribunals must judge al-Qaeda terrorists to ensure that they are prosecuted swiftly, effectively, and justly. Many believe that the lack of transparency within military tribunals give room for assaults on the civil liberties of terrorists. With greater regulation, the potential assault on the civil liberties of terrorists can be greatly alleviated. However, the issue of terrorists’ civil rights is not an intrinsic problem within the military tribunal system but within the American justice and correctional system as a whole. Avoiding a military tribunal in the name of defending the civil rights of terrorists who are attempting to destroy the ideological and moral foundations of the United States undermines the security of Americans. Avoiding a military tribunal in order to adhere to a strict and anachronistic interpretation of written law would, as Jefferson warned, sacrifice the end to the means.

---

<sup>10</sup> Ibid 9

<sup>11</sup> Ibid 9