

U.s. counterterrorism procedure: federal courts vs. military commissions

[Law](#)



Federal Courts vs. Military Commissions Number Federal Courts vs. Military Commissions There is lack of consensus as to the right platform for trying terrorist suspects between Military Commissions and Federal Courts. This is especially true for those who have been caught in the process of planning terror attacks. The extent of damage which such real threats of terror pose to national security and my city in particular, as evidenced in this case is normally unimaginable hence the need to try the suspects under the toughest of conditions. This paper argues that the better platform for trial of terror suspects caught planning an attack should be a Military Commission, rather than a largely civilian Federal Court.

On the one hand, human rights crusaders believe that Federal Courts offer a better platform for justice because terror suspects are just like ordinary criminal suspects whose innocence should be preserved until their conviction or acquittal (Locy, 2004). On the other hand, advocates for national security over justice usually believe that the trial of terror suspects by Military Commissions would deliver better outcomes because the magnitude of terror actions is too costly to deserve their treatment as ordinary civilians. Owing to the potential reality of mass killings, heavy damage to property and massive national fear created by terror activities, I believe terrorists planning to attack my city deserve to be tried by a Military Commission.

I concur with Locy (2004) who noted that Federal Courts are highly restricted in terms of their jurisdiction and therefore, trying of terror suspects appears to be beyond their mandate on two grounds. Firstly, unlike Military Commissions, Federal Courts are mainly expected to carry out national judicial roles rather than the trial and sentencing of mainly international

criminal suspects. This implies that the primary role of Federal Courts is to interpret different local laws based on the provisions of the Constitution, rather than try international terrorists.

Secondly, Federal Courts are expected to resolve major civil disputes between litigants with diverse citizenship, while Military Commissions will handle criminal suspects with similar qualities. This implies the jurisdiction of Federal Courts to deliberate on civil cases whose potential compensation would exceed \$75, 000 as provided under Article III of the US Constitution, does not include the trial of terror suspects (Locy, 2004). As such, a Military Commission has a wider jurisdiction, especially in serious criminal cases. By contrast, I believe the Uniform Code of Military Justice, under §§ 821 and 836 of Title 10, which provides for the creation of Military Commissions, allows for the reasonable expansion of their jurisdiction to effectively try the terrorist suspects (Locy, 2004). To ensure justice to the terror suspects and maintain national security at the same time, I believe the Military Commission should be more assertive than civilian courts, but retain most of doctrines of impartial trial such as; a) admit good evidence obtained by methods that preserve adequate rights of the defendants; b) allow the criminal defendants' right to legal representation and interrogate the evidence used against them, and c) allow the defendants to attend all or important parts of their trial.

Conclusion

Generally, terrorist suspects deserve harsher treatment than ordinary felons. However, the principle of innocence until proven guilty should apply in their handling by law enforcers through to their sentencing or acquittal. As such,

unlike the judicial nature of federal courts, a properly constituted Military Commission observing minimum court procedures would be better equipped to try them.

Reference

Locy, T., (2004). The Trials of Al Qaeda: Federal Court vs. Military Commission. *Case Western Reserve Journal of International Law*, 36(2/3), 507-512.