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OP-ED CONTRIBUTOR

## Tribunal and Error

By ALI H. SOUFAN

SINCE Mayor Michael Bloomberg of New York announced that he no longer favored trying Khalid Shaikh Mohammed, the self-proclaimed 9/11 mastermind, in a Manhattan federal court because of logistical concerns, the Obama administration has come under increasing attack from those who claim that military commissions are more suitable for prosecuting terrorists. These critics are misguided.

As someone who has helped prosecute terrorists in both civilian and military courts — I was a witness for the government in two of the three military commissions convened so far — I think that civilian courts are often the more effective venue. In fact, the argument that our criminal justice system is more than able to handle terrorist cases was bolstered just last week by revelations that Umar Farouk Abdulmutallab, the so-called Christmas bomber, is cooperating with the authorities.

Of the three terrorists tried under military commissions since 9/11, two are now free. David Hicks, an Australian who joined Al Qaeda, was sent back to his native country after a plea bargain. Salim Hamdan, Osama bin Laden's former driver and confidante, is a free man in Yemen after all but a few months of his five-and-a-half-year sentence were wiped out by time spent in custody. (The third terrorist, Ali Hamza al-Bahlul, a former Qaeda propaganda chief, was sentenced to life in prison.)

In contrast, almost 200 terrorists have been convicted in federal courts since 9/11. These include not only high-profile terrorists like Zacharias Moussaoui, who was convicted of conspiracy to kill United States citizens as part of the 9/11 attacks, but also many people much lower on the Qaeda pecking order than Mr. Hamdan.

The federal court system has proved well equipped to handle these trials. It has been the venue for international terrorism cases since President Ronald Reagan authorized them in the 1980s, and for other terrorist cases long before that. Prosecutors have at their disposal numerous statutes with clear sentencing guidelines. Providing material support, for example, can result in a 15-year sentence or even the death penalty if Americans are killed.

Military commissions, however, are new to lawyers. Military prosecutors are among the most intelligent and committed professionals I have ever known, but they faced great difficulties as they operated within an uncharted system, the legality of which has been challenged all the way to the Supreme Court three times.

It's also worth noting that, since 9/11, there have been only two terrorists apprehended under military law on United States soil: Jose Padilla, the American accused of plotting to set off a "dirty bomb," and Ali Saleh al-Marri, a Qaeda operative accused of being a sleeper agent. After several years, both were transferred to the federal system and are now serving time. If anything, holding them in military detention might have

hindered our ability to gain their cooperation, as they gave no new significant information during that period.

Nonetheless, attacks on the abilities of the federal justice system have intensified ever since Mr. Abdulmutallab was arrested in Detroit on Dec. 25 and charged with federal crimes. Critics claim that he should have been held under the laws of war and not read his Miranda rights.

Whether suspects cooperate depends on the skill of the interrogator and the mindset of the suspects — not whether they've been told they can remain silent. When legally required, I've read some top Qaeda terrorists their rights and they've still provided valuable intelligence. Now we've learned that "despite" being read his Miranda rights, Mr. Abdulmutallab is cooperating with his F.B.I. interrogators. This should have been no surprise.

Critics were also off base in claiming that the two F.B.I. agents who first questioned Mr. Abdulmutallab were inexperienced local officials. They were veterans of counterterrorism work, at home and abroad, and are led by the special agent in charge of the bureau's Detroit office, who has run antiterrorist operations across the world. I've worked with him; he's highly experienced. The bureau ignored the attacks on the effectiveness and professionalism of its agents as it focused on getting vital intelligence from Mr. Abdulmutallab. It is owed an apology.

Indeed, it's very disappointing to see politicians and pundits smear the law enforcement community, to imply that the United States attorneys and the F.B.I. cannot do their job properly under the law. Our justice system is an integral weapon in our war against Al Qaeda, and its successes are a big reason the terrorist group has failed to hit our homeland for nine years.

Other criticisms are similarly off the mark, including claims that classified information is at risk in federal courts. Terrorism cases aren't the only instances in which classified information is handled in federal courtrooms — in espionage cases the threat of sensitive material being made public is just as great. That's why in 1980 Congress passed the [Classified Information Procedures Act](#), which allows the government to request permission to withhold classified information, produce summaries and redacted versions, or to show information only to defense lawyers with security clearances. The law is routinely invoked in terrorism trials, especially those related to Al Qaeda.

Critics also claim that trials might give terrorists a soapbox. But federal courts do not allow photography, recordings or broadcasts. What the defendants say is made known only through press reports afterward — just as with military commissions. And federal judges (like military judges) have the power to gag or remove defendants who try to disrupt trials.

Military commissions do serve an important purpose. We are at war, and for Qaeda terrorists caught on the battlefield who did not commit crimes inside the United States, or who killed American civilians abroad, military commissions are appropriate. But for terrorists like Khalid Shaikh Mohammed, who plotted to murder the innocent on United States soil, federal courts are not only more suitable, they're our best chance at getting the strongest conviction possible.

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