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offend  
those who will  
disagree."

# The truth as I see it®



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## Terrorists – civilian courts or military courts?

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How do we handle terrorists? Are they prisoners of war? Are they civilian criminals? The argument is about where they should be tried, civilian courts or military courts. And, though those on each side have good arguments, the law of war and an opinion by the Supreme Court suggest both sides may be correct, depending on the circumstances.

In 2010, the executive branch failed in an attempt to try Khalid Shaikh Mohammed and four others in a civilian court on charges of plotting the Sept. 11 attacks. Recently, Sulaiman Abu Ghaith, bin Laden's son-in-law, was quietly brought into the United States and quickly appeared in federal court before anyone had the opportunity to block it, the executive branch still determined that terrorists be tried in civilian courts rather than military courts.

Are there any precedents to help us decide how best to handle terrorists? The argument for military courts is that terrorists violate the law of war and therefore are unlawful combatants, the Geneva Convention supporting this claim. Additionally, Article 4 of the Third Geneva Convention describes the categories under which a detainee is entitled to prisoner of war status and terrorists do not qualify.

However, they are not without rights. Article 5 of the Third Geneva Convention gives legal protections to terrorists, stating that a "competent tribunal" may determine the status of a detainee. Further, if identified as an unlawful combatant, the detainee must be "treated with

humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial."

The Supreme Court entered the foray in 1942 when eight German spies, who were born in Germany but lived in the United States, voluntarily returned to Germany to fight against the United States, violated the law of war, and were captured in the United States. They challenged being tried by a military commission. Before the Supreme Court, they claimed their detention for trial by a military commission was not in conformity with the laws and Constitution of the United States.

However, the Court ruled "that military tribunals shall have jurisdiction to try offenders for offenses against the law of war." The Court added that "citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because it is in violation of the law of war."

Referring to the Constitution, the Court added, "Section 2 of Article III and the Fifth and Sixth Amendments cannot be taken to have extended the right to demand a jury to trials by military commission, or to have required that offenses against the law of war not triable by jury at common law be tried only in the civil courts."

The Court summarized that "the law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who

are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful."

Anthony D. Romero, executive director of the ACLU, and others, disagree with the Court, claiming that the law of war does not apply if the acts of terrorism occur in the United States and therefore, those terrorists must be tried in civilian courts. I don't believe you can define an act of terrorism by geographic locations, rather you define it by the act itself.

Still, how do we treat isolated individuals committing terrorist acts in the United States? An article in the National Review suggested that someone like Timothy McVeigh, who committed terrorist acts as an individual rather than as a member of a terrorist organization, did not violate the law of war and therefore should be tried in civilian courts.

It appears both side are correct; some terrorists do belong in civilian courts, but not all.