

A loss for America

By KRIS W. KOBACH

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Attorney General Eric Holder's decision to try Khalid Sheik Mohammed and four other Guantanamo Bay detainees in civilian federal court in New York City is the latest in a long series of missteps in the war against radical Islamist terrorism.

KSM -- the notorious, self-proclaimed mastermind of the 9/11 attacks -- and the other accused terrorists will no longer face trial in military commissions, which the US government has historically used for such cases. The administration's decision is a blatantly political one -- intended to placate the ACLU and the radical Left -- that jeopardizes the interests of the nation.

VIDEO: 9/11 SUSPECTS TO BE TRIED IN NY

The five main problems:

* Military commissions are the appropriate venue for trials of unlawful combatant. The US military seized these terrorists on foreign battlefields -- and so didn't read them Miranda rights. The evidence against them was collected by soldiers under war-fighting conditions -- not with sterile gloves and clear plastic bags. And much of the best evidence against them is classified, because making it public would compromise the sources and methods of US intelligence gathering.

In short, these cases do not fit the mold of a typical murder trial in a civilian court.

Military commissions were designed for this purpose. They provide a secure environment that allows for the introduction of classified evidence without making it public. Yet the accused still enjoys the right to an attorney, the right to make his case in full and all of the fundamental rights of due process.

The commissions are also the ideal forum for trying unlawful combatants-belligerents who make war without following the law of war. One of the central tenets of the law of war is that civilians must never be attacked. Since terrorists shatter this rule completely, they are appropriately tried before military commissions.

These commissions provide a fair forum that takes into account the military context of the terrorists' acts. Just because the government has enough unclassified evidence to win a guilty verdict in civilian court doesn't make the civilian court the right venue.

The last time the United States used military commissions in a comparable context was during the Second World War, for the trial of eight Nazi saboteurs transported here by German submarines under cover of darkness in 1942. They landed on US soil carrying explosives with the intent to engage in acts of sabotage. The Supreme Court ruled that the military commissions were an entirely fair and appropriate forum for their trial. They were "offenders against the law of war, subject to trial and punishment by military tribunals." The same is true of these five terrorists.

* The administration is again blurring the line between ordinary crimes and acts of war. Likening terrorists at war with the United States to common shoplifters is wrongheaded. These are not members of our society who refuse to obey our laws: They are enemies of the United States, engaged in war against America and all that it stands for.

* The administration has offered no clear criteria for deciding which terrorists will be charged as criminals in federal court and which ones will face military commissions. Attorney General Holder, in announcing the decision, suggested that the five cases were appropriate for civilian trial simply because the evidence against the terrorists is so strong that they'll surely be found guilty.

Choosing which terrorists will get civilian trials on the basis of who you can convict is not a principled way to administer justice. It also fosters the false impression that military commissions are unfair tribunals, where the government can win with a weaker case.

As the Supreme Court has repeatedly held, military commissions satisfy the Constitution's due-process requirements. The radical Left refuses to accept this fact -- and now the Obama administration is giving them rhetorical ammunition.

* A very real safety threat exists when a terrorist like KSM is tried in an urban area: The city becomes an enticing target for terrorists around the world.

Holder yesterday claimed that New York City is "hardened" and somehow secured against such terrorism. Yet he seemed to be focused on the courtroom itself. But US marshals' ability to protect the courthouse doesn't mean they can protect the whole city.

During the trial, every building in Manhattan becomes a target for the jihadists. They don't need to specifically hit the courthouse to make their point to the world.

*Finally, the trial will take many years to complete. Indeed it may not even start for five years or more.

Once these terrorists are placed into the civilian justice system, an avalanche of motions from their lawyers will ensue. Military commissions can avoid these delays.

It is often said that justice delayed is justice denied. For many who lost loved ones in the 9/11 attacks, those words ring painfully true. Obama's actions will only prolong their pain, for no good reason.

Holder insists that the government will win in these civilian trials. I'm sure he's correct. But winning a trial and winning the approval of the ACLU means little when so much more is lost.

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