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Trends. A Peculiar Defense Logic: Why Terrorists Should Be Incarcerated or Killed Without Trial

Editor

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Defense lawyers for convicted terrorists who could be given the death penalty have often advocated that their clients should neither be convicted nor face such a penalty. While this is what defense lawyers would be expected to do, their public rationale seems quite curious.

The defense rationale is that terrorists are soldiers in a war. They are fighting against a government whose policies constitute a war against people represented by the terrorists and also result in death and destruction. Given that the terrorists are soldiers in a war, they cannot be tried and convicted and sanctioned by the criminal justice system of the government against which they fight.

Fair enough, perhaps. But let's continue with this logic. Soldiers in a war not only shoot when shot at but shoot their adversaries before they are shot at via superior technology, planning, intelligence, and the achieving of surprise. So, if the terrorists are soldiers in a war, they are fair game for the soldiers on the other side. It is, thus, inappropriate for terrorists to be apprehended and tried. Instead there are only two alternatives. They can be incarcerated for the duration of the war--a war that may be ongoing past their natural lifetimes according to the declarations of the terrorists and analysis of their goals. Or they may be killed when discovered--as is often the case in war.

With defense lawyers like this, perhaps the prosecution look less like an enemy. (Cooper, H.H.A. (2001). Terrorism: The problem of definition revisited. *American Behavioral Scientist*, 44, 881-893; Dishman, C. (2001). Terrorism, crime and transformation. *Studies in Conflict & Terrorism*, 24, 43-58; Feuer, A. Terrorism trial lawyers' ethical puzzle: defending haters in U.S. *The New York Times*, <http://www.nytimes.com>; Jensen, C.J., III. (2001). Beyond the tea leaves: Futures research and terrorism. *American Behavioral Scientist*, 44, 914-936; Simon, J.D. (1999). Nuclear, biological, and chemical terrorism: Understanding the threat and designing responses. *International Journal of Emergency Mental Health*, 1, 81-89; Weiser, B. (June 5, 2001). Defense in terror trial cites U.S. sanctions against Iraq. *The New York Times*, <http://www.nytimes.com>.) (Keywords: Criminal Law, Terrorism.)