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Guest commentary: No need to override system of justice for terror suspects

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This week, jury selection is slated to begin in the trial of Umar Farouk Abdulmutallab, who is suspected of trying to blow up a Detroit-bound passenger plane with explosives hidden in his underwear on Christmas Day 2009.

The swiftness with which federal law enforcement officials were able to bring Abdulmutallab to trial is the latest powerful argument against overreliance on the military to combat terrorism. Unfortunately, too many in Congress are not listening.

As 12 people begin to weigh the evidence against Abdulmutallab, Congress will continue debate on a measure that would limit the role of federal, state and local law enforcement in the fight against terrorism. Two provisions in a major defense authorization measure would require military custody of certain terrorism suspects, regardless of their place of capture, and formalize a system of indefinite detention for terrorism suspects, including suspected U.S. citizens.

By limiting the use of the traditional criminal justice system -- and, specifically, the unparalleled experience and talent of the FBI and other domestic law enforcement officers -- the defense bill could actually weaken our counterterrorism efforts.

Congress' purported reason for funneling more suspects into the military system is, of course, to be tougher on terrorism. Terrorist attacks are acts of war, the thinking goes, and therefore should be handled solely by the U.S. military. But the respective records of federal courts and military tribunals undermine this rationale. Through domestic law enforcement, most notably the FBI and Department of Justice, the U.S. has successfully prosecuted more than 400 terrorism cases. Military tribunals have convicted only six people in 10 years.

Given these disparate records, it is insulting to the brave first responders who apprehend suspected terrorists, to the federal law enforcement agents who investigate their crimes, and to the federal courts that have long administered justice to terrorists, homegrown and foreign, to treat them like weak links in the war on terror. Moreover, it is demonstrably counterfactual.

Civilian courts have a broader scope, allowing for the prosecution of many offenses that cannot be adjudicated in military commissions. Civilian courts also offer more finality, because the validity of the offenses and the procedures are significantly less susceptible to legal challenges. Moreover, our allies abroad, who provide us with vital counterterrorism intelligence, have refused to hand over terrorism suspects unless we commit to trying them in our federal courts.

Finally, to resort to the courts our Founding Fathers established in Article III of our Constitution is not only in and of our tradition, it is a part of the very fabric of our nation.

Keeping our nation safe from further terrorist attack will require us to use all the tools we have at our disposal. Members of Congress should think twice before supporting a defense authorization bill that removes our most talented and experienced criminal investigators and prosecutors from the battle against terrorism. They should shudder at the prospect of removing our most vital guardian of the laws from the struggle against global terrorism.

Col. Lawrence Wilkerson (U.S. Army Ret.) is a member of the Constitution Project's Liberty and Security Committee and served as Chief of Staff to Secretary of State Colin Powell.

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