

**DOUGLASS CASSEL**  
**CENTER FOR CIVIL AND HUMAN RIGHTS**  
**301 NOTRE DAME LAW SCHOOL**  
Notre Dame, Indiana USA 46556  
(574) 631-7895  
[Doug.Cassel@nd.edu](mailto:Doug.Cassel@nd.edu)

October 5, 2005

**Worldview Commentary No. 231 on Chicago Public Radio, 91.5 FM WBEZ**

*“Countering Terrorism: American and European Approaches”*

Al Qaeda targets both sides of the Atlantic. The bombings in London and Madrid are bloody reminders that the United States is not the only affluent democracy to suffer violence at the hands of terrorists who respect no bounds of innocence or decency.

Yet the response by European governments differs dramatically from the “war” on terrorism launched by President Bush. Whereas Washington’s military approach attempts to bypass the rule of law, Europeans fight terrorism by combining preventive intelligence with punitive law enforcement. Far more than the Bush administration, European counter-terrorism remains true to the ideals that distinguish democracies from terrorist lawlessness.

The differences are apparent in at least six areas: executions, detentions, equality of treatment, torture, ill treatment of prisoners and trials. In brief:

Executions: The Bush Administration claims the right to execute suspected terrorists outside combat zones on the basis of intelligence information, without trial or due process, under secret guidelines approved by the President. In one publicly known case in Yemen, the US executed five men, including an American citizen.

In contrast, when British commandoes killed two terrorist suspects while trying to arrest them in Gibraltar, the European Court of Human Rights ruled that the killing could and should have been avoided, and that there is no special license to kill terrorist suspects.

Detentions: The Bush Administration claims the right to imprison indefinitely so-called “enemy combatants,” identified on the basis of secret intelligence information, without access to lawyers or courts and without criminal charges or prisoner of war status.

Last year the Supreme Court ruled that our courts have jurisdiction to review such detentions of alleged enemy combatants at Guantanamo. However, the Court has not yet ruled on the Administration’s continuing claims those prisoners have no legal rights of any kind. Nor has the Court yet been asked to rule on “ghost prisoners” we keep in secret prisons in overseas locations unknown even to the Red Cross.

Europeans denounce our executive imprisonments as affronts to the rule of law. In Britain, terrorist suspects who cannot be deported can be held indefinitely, but only with access to lawyers and judicial review, and with provision for house arrest with electronic monitoring.

Equal Treatment: The Bush Administration treats foreign citizens differently: only they can be held at Guantanamo, and only they can be tried by military commission. But in Britain

last year, the House of Lords ruled that the government could not discriminate by holding only foreign citizens, and not British nationals, indefinitely pending deportation. British law was then revised to provide for equal treatment.

Torture: After American military guards at Abu Ghraib and elsewhere were caught committing torture, the American Bar Association and others called for an independent investigating commission. To date, however, the only investigations of our military have been done by our military.

In Europe there are far fewer allegations of torture. Under the European Convention on Torture, an independent monitoring commission has authority to visit and inspect any place of detention. We refuse to accept a similar procedure.

Ill Treatment: President Bush renounces torture, but some of his legal advisers argue that lesser forms of ill treatment are not unlawful, at least when inflicted on foreigners overseas – as at Abu Ghraib.

The United Nations treaty bans not only torture but also “cruel, inhuman or degrading” treatment. Unlike our government, Europeans are committed to respect this international standard.

Trials: The Bush Administration insists on the right to try suspected terrorists before military commissions that fall short of minimum international standards for due process of law. The Europeans, in contrast, prosecute terrorism cases before civilian criminal courts. They are appalled by Washington’s watering down of hard-won fair trial safeguards.

The European Court of Human Rights has ruled that the presence of even a single military officer on a terrorism tribunal – let alone an entire military commission -- violates the requirement that courts be independent and impartial.

In all these ways the Bush Administration shows scant respect for vital legal protections of rights to life, personal security, liberty and due process of law. Facing similar threats from international terrorism, the Europeans set a better example of preserving procedures that protect basic human rights.

Americans like to think of their country as a bastion of liberty. Yet the record of this Administration in combating terrorism is at odds with that perception. Perhaps the time has come to send White House and Justice Department lawyers to Europe for a refresher course on the rule of law.

**Doug Cassel’s commentaries are broadcast Wednesdays during the noon hour of the Worldview program. All views expressed are the personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.**