



## Insight



**Penny Auction FRAUD Alert**  
Special Report Uncovers the Shocking Truth about Penny Auction Tricks.  
[Get details...](#)



**SHOCKING: Samsung 46" LED TV for \$84.95**  
Washington: Online auction site to give away 1,000 TVs for \$84.95  
[Explore now...](#)

[Jewish World Review](#) Oct. 20, 2010 / 12 Mar-Cheshvan, 5771

## Can we try terrorism in our civilian constitutional courts?

By Nat Hentoff

<http://www.JewishWorldReview.com> | As I expected, there has been bitter opposition across party lines to U.S. District Judge Lewis Kaplan's historic refusal to admit testimony against a prisoner, Ahmed Khalfan Ghailani, now at Guantanamo, by a prosecution witness who would show how Ghailani was deeply complicit in a 1998 terrorist bombing of two of our embassies in Kenya and Tanzania that left more than 200 corpses, including 12 Americans.



The identity of the rejected witness, Hussein Abebe, was extracted from defendant Ghailani while he was being subjected to "coercive interrogation" (torture) in a CIA secret prison before being moved to Guantanamo Bay. This proposed witness at the trial had sold the defendant the explosives for the bombing. Because Abebe's evidence is the poisonous product of torture, in violation of our Constitution, Judge Kaplan barred Abebe from the New York courtroom.

During an Oct. 7 NPR interview, Dick Cheney -- a major conceiver of the Bush administration's "dark side" of combating terrorism -- did not agree with Judge Kaplan because "these interrogations techniques were approved by the Justice Department." But there is wide and mounting conviction that those "techniques" were and are not to be found in our rule of law.

Cheney's daughter, Liz Cheney, a forceful commentator these days ([globalxresearch.ca/index](http://globalxresearch.ca/index). Oct. 14), proclaimed that Kaplan's ruling proves the Obama attempt to bring these cases into civilian courts "is irresponsible and reckless."

An especially indignant attack on Kaplan's reason for ejecting this prosecution witness came from Harvard Law School professor Jack Goldsmith ("Don't Try Terrorists, Lock Them Up," *New York Times*, Oct. 8). In the Bush administration Justice Department, it was Jack Goldsmith who took over from the perpetrators of the world-famous "torture memos," John Yoo and Jay Bybee. These memos gave the torturers in the field and Bush and Cheney up high the invented "legal" justification for the savage treatment that broke Ghailani into revealing the man, Abebe, who would connect him to the 1998 atrocities. Goldsmith rejected some of those practices, but others remained.

Accordingly, this furor over Abebe being cut out of the trial is also yet another test of this country's torture policy. The FBI, when involved in dealing with torture suspects in the field, as I've reported, protested against our use of torture and has obtained valuable evidence without it.

But Jack Goldsmith doesn't just urge that civilian trials and military commissions should be abandoned for charged terrorists. Even military commissions, he writes, though "not constrained by certain constitutional rules," are also to be avoided.

This Harvard law professor ends his op-ed fulmination in *The New York Times*: "The administration would save money and time, avoid political headaches and better preserve intelligence sources and method if it simply dropped its attempts to prosecute high-level terrorists and relied EXCLUSIVELY on military detention instead." (Emphasis added). Just "detentions."

This guy, Ghailani, Jack Goldsmith adds, "could be held in military detention until the conflict with Al

Qaeda ends."

So, if this conflict goes on for a century, would he have Ghailani's bones interred at Guantanamo? Goldsmith is far from alone in advocating that what he calls "the demanding standards" of the Constitution be ignored and such defendants at Ghailani -- and the much higher-level accused terrorists who may be brought to Federal court -- by just locked up. Who needs that bothersome Constitution? We're in a war, aren't we?

In an October letter to The New York Times answering Fast-Jack Goldsmith, Ben Wizner (Litigation Director, ACLU National Security Project) says: "Fair and legitimate criminal trials are the only way Americans will see justice done and the world will see that we still uphold the fundamental values we are fighting to defend." How many of us care?

Getting to the chilling truth stirred up by Judge Lewis Kaplan's unyielding conviction that, as he says, "the Constitution is the rock on upon which our nation rests," Ben Wizner, though calling Jack Goldsmith "a respected national security expert," emphasizes that his way of disposing of all the Ghailani's -- Lock Them Up -- "is a measure of how far our nation has since strayed from its core values."

If the Republicans prevail in Congress (both houses) in the midterms and then in the 2012 presidential elections, will we stop straying? It's up to us, no matter which party is on top.

A very essential answer to Goldsmith's Lock-Them-Up solution -- which, I believe, could get many bipartisan votes in Congress -- comes from Karen Greenberg, executive director of New York University's Center on Law and Security, at some of whose public debates I've participated. On Oct. 8, in Clyde Haberman's New York Times column, which I never miss, she reminded us that:

"Of 437 cases (against charged terrorists) that have arisen since Sept. 11, 257 have been resolved in court (civilian trials), with 218 of them ending in convictions or guilty pleas.

"Military commissions, in contrast, have produced a mere four convictions, including those of two men who have received short prison terms and were soon set free."

In that column, Haberman noted that the Ghailani trial still under way is a prelude to the trial of the self-proclaimed mastermind of 9/11, Khalid Sheikh Mohammed, waiting to appear in federal court as his own counsel. But New York City became fearful, including Mayor Michael Bloomberg, who, says Haberman "initially saw justice in putting this man in the dock near the World Trade Center, but came down with a bout of cold feet. The trial is destined (as of now) to go elsewhere."

What are we New Yorkers, and our representatives in Congress, so quakingly afraid of? The Constitution? No, I'm told, the Khalid Sheikh Mohammed trial in New York may bring another 9/11. If the terrorists have so scared us into abandoning that "rock upon which our nation rests," wouldn't you say that the terrorists have won something that will fortify them?

They've lessened our Americanism.