**A- Counterplan Text: The United States ought to extend to non-citizens accused of terrorism prisoner of war status and try defendants in military commissions rather than civilian courts.**

**B- Competition: The counterplan is mutually exclusive; non-citizens accused of terrorism will be treated differently from citizens since citizens cannot be tried in military courts.**

The Supreme Court ruled that military tribunals aren’t bound by the specific due process rights of the Constitution, but are still permitted to operate as a separate trial system. Dean:

THE CRITICS ARE WRONG: Why President Bush's Decision To Bring Foreign Terrorists To Justice Before Military Tribunals Should Not Offend Civil Libertarians By JOHN DEAN Friday, Nov. 23, 2001 <http://writ.news.findlaw.com/dean/20011123.html>

To the contrary, I'm a proponent and I've never said any of those things. Nor do I know any supporter who has adopted such a devil-may-care approach. Actually, it remains unclear what these inchoate panels can and cannot do. Not only are they still being formed, but also the law is unclear. **Because** these **military tribunals are *not* courts, and because they have been used since *before* the Constitution was adopted, there are** unresolved **issues relating to the application of the Constitution.** **In *Quirin* the Court noted, "We cannot say that Congress in preparing the Fifth and Sixth Amendments intended to extend trial by jury to cases of alien** or citizen **offenders** against the lawof war **otherwise triable by military commission," even for infractions "punishable by death."** The Fifth Amendment guarantees the right to indictment by a grand jury, prohibits double jeopardy, protects against compulsory self-incrimination, and guarantees due process of law. The Sixth Amendment provides for the defendant to be afforded a speedy and public trial, to have the benefit of an impartial jury venued where the crime was committed, to be informed of the accusations against him, to be confronted by witnesses against him, to be able to use compulsory process to obtain favorable witnesses, and to have the assistance of counsel.

**Also, any perms would be intrinsic since they would add a plank to the AC advocacy which makes the aff a moving target, killing fairness since I wouldn’t be able for form a cogent strat to engage the aff.**

**C- Solvency and Net Benefits:**

Current civilian court procedures aren’t working. The US has a poor record of successfully prosecuting terrorists. Anderson:  
[Anderson, Kenneth. (Law Professor) “What to do with bin Laden and Al Qaeda Terrorists: A Qualified Defense of Military Commissions and United States Policy on Detainees at Guantanamo Bay Military Base.” Lexis Nexis. 2002.]

Few share Orenstein’s belief in domestic civilian prosecution’s effectiveness, however. More typical would be [According to] the assessment [by]of Paul Williams and Michael Scharf: In the past, **the U**nited **S**tates **has pursued a failed policy of domestic prosecution of terrorists.** In the cases of the 1996 Khobar Towers attack in Saudi Arabia, the 1998 bombings of US embassies in Africa, and Cole attack in 2000, and the 1993 bombing of the World Trade Center towers, the U.S. has**[we have] been able to prosecute only a handful of low-level culprits** and ideological supporters. **With potentially thousands of Al Qaeda terrorists about to fall into the hands of the US military or Northern Alliance, this process [won’t]** will neither **serve as** adequate justice nor as **an effective deterrent to further acts of terror.**

Prosecution of non-citizen terrorists would make conviction next to impossible. Stimson:  
Stimson, Charles Senior Legal Fellow at the Heritage Foundation, April 5th, 2011, “Testimony before Subcommittee on Crime, Terrorism and Homeland Security,” United States House of Representatives. http://www.heritage.org/research/testimony/2011/04/justice-for-america-using-military-commissions-to-try-the-911-conspirators

for practical reasons, certain cases face hurdles to trial in civilian courts and will need to be brought before military commissions.In federal court, criminal defendants receive the full panoply of procedural and substantive rights guaranteed by the Constitution. **But those** guarantees were never intended to extend to enemy belligerents**,** **and** indeed, they **would render effective prosecution** in many cases **impossible**. U.S. soldiers on the battlefield**,** whether in the war on terror or a more conventional armed conflict,do not Mirandize enemy fighters,do not apply to magistrate judges for search and arrest warrants**, and** do not offer captured enemy fighters the customary opportunity to call an attorney upon being detained. **The** Constitution does not, of course, require that soldiers do any of these things**.** Nor does it require that we extend to captured belligerents the same procedural protections that apply to criminal defendants. Those requirements, however, would apply in a federal courtroom, and could derail the prosecution.

Prisoner of war status for detainees will prevent abuses of human rights and is consistent with international law. Sweeney:

Sweeney 03, Michael (Adjunct Professor of Law, former Fellow in International Human Rights, Fordham University School of Law) “Detention at Guantanamo Bay: A Linguistic Challenge to Law” Winter 2003.

Further, **the administration’s position violates the** spirit of **the Geneva Conventions:** that **combatants in enemy hands are entitled to respect for their human dignity** and status as combatants. The cramped cells; shackling; and severe restrictions on exercise, personal hygiene, and communications at Camp Delta violate this guiding principle of the Conventions. **The administration’s attempt to justify the treatment simply by denying that the detainees are POWs is illegitimate.** If avoiding obligations were so simple, the Geneva Conventions would have no practical significance. This denial of POW status eliminates two important administration concerns: (1) acknowledging POW status may inhibit the ability to interrogate the detainees and (2) POW status could mandate the release of detainees who are in fact dangerous terrorists. But **acknowledging POW status does not limit the ability to interrogate or prosecute any more than do other applicable legal obligations.•** Interrogation. Article 17 of the Geneva Conventions provides that POWs must give only their name, rank, serial number, and birth date. It does not preclude requests for more information, and obtaining information is bound to be difficult in some cases, regardless of POW status. Although Article 17 prohibits the use of physical coercion to gain information, so do applicable U.S. and other international laws (e.g., 18 U.S.C. § 2340A, Convention Against Torture; International Covenant on Civil and Political Rights). Acknowledging POW status **[but] would prohibit the use of detention conditions** like those at Camp Delta **to punish the detainees or “soften them up” for interrogation;** but, regardless of official status, the underlying principle of the Geneva Conventions—that combaatants are not criminals per se and are entitled to human respect—would prohibit such treatment.

Military commissions handle classified information better than civilian courts. Mukasey:

Mukasey ‘09 Michael B. former US Attorney General (2007-2009), October 19th, 2009, “Civilian Courts Are No Place to Try Terrorists.” Wall Street Journal. http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html?mod=djemEditorialPage

Moreover, it appears likely that **certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen** established for use at Guantanamo was designed with such considerations in mind. It **provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality.** The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

### Military commissions are empirically proven to be fair. Vagts:

Vagts ‘07, Detlev F. Bemis Professor of Law, emeritus, Harvard Law School, 2007, “Military Commissions: The Forgotten Reconstruction Chapter.” American University International Law Review http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1020&context=auilr&sei-redir=1

As to their necessity, one concludes that commissions are needed where the civilian system is not in a position to press criminal cases. This was the conclusion of Congress and most commanding generals. Commissions would be necessary in another occupation experience where local courts were not functioning, though it might be wise to use civilian judges. In general, commissions can perform adequately and swiftly. The experiment of 2001 with reviving commissions ran into difficulties because it took a long time to adapt established courts-martial practices to the supposed needs of the new assignment. That adaptation was hotly contested, since it involved the first step backward in the history of military justice. The twenty-first century commission system thus negated a major advantage of military courts-that they can convene swiftly and at the scene of the crime. The cases examined seem to have been careful and fair, with convictions not automatic.