Justice and Terrorism – Taking the Example of the Padilla, Hamdi, Moussaoui and Motassadeq Cases[1]

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New York , that jewel among metropolises, and its residents became the victims of an attack on September 11, 2001. The only reason why the monstrosity of this does not transcend our fantasy is because it really did happen. This attack cost thousands of people their lives. The shock waves, which are continuing, affect the very foundations of our social existence, as well as and particularly those of our legal system. Principles, that were regarded as iron, are called into question. The questioners talk and act as though they were courageous open-minded thinkers who appear to be out for their listeners' and readers' indignation. A renowned Harvard professor (Alan Dershowitz), whose biography is characterized by his courageous defense of civic liberties, suddenly becomes a supporter of torture, albeit under allegedly strict, judicially ordered rules. A German teacher of criminal law (Günther Jakobs) is beginning to ponder whether the classical "civil criminal law" is sufficient which he compares with "enemy criminal law" on the level of so-called "ideal types". In a recently published paper, he then quickly lets the philosophical discourse between him, Rousseau, Hobbes, Kant and Fichte become practical:

"Anyone to whom that all still appears uncertain may be helped to elucidation in a flash by a reference to the deeds of September 11, 2001. … Crimes remain crimes even if they were committed with radical intentions and on a grand scale. But it very certainly does have to be asked whether, through its strict fixation on the category of the crime, a commitment is being imposed on the state - namely the need to respect the offender as a person - which is quite simply inappropriate towards a terrorist who particularly does not justify the expectation of general personal behavior. In other words, anyone bringing the enemy under the term of the bourgeois criminal should not be surprised if the terms 'war' and 'criminal proceedings' become confused."[2]

The fact that the terms 'war' and 'criminal proceedings' do not become confused is, though, not a question of philosophical distinctions, but often also a question of quite personal commitment and determined courage. I would like to present two brief portraits of 'silent heroes' here at the outset:

1. The case Padilla v. Rumsfeld

The first one is that of an attorney in New Jersey. The date is 6.10.2002. On this Monday morning, *Donna R. Newman* is just driving along the turnpike from New Jersey to Manhattan to a routine court hearing that she has to attend when she receives a call from a friend who works in the District Attorney's office. "The Pentagon has seized one of your clients", she hears at the other end of the line. Her

client, *Jose Padilla*, had been declared an "enemy combatant" by the President of the United Stateson the day before, on 6.9.2002. Until then, Donna R. Newman had dealt with the everyday cases of criminality in a large city as an attorney practicing alone from a small office in West Manhattan. Her first reaction was incredulous: "I thought he was joking, I had never even *heard* of an enemy combatant."[3]

What had happened? On 5.8.2002, Jose Padilla, an American citizen, had entered the country through Chicago Airport , coming from Pakistan. There he was arrested by FBI officers on the basis of a "material witness warrant" issued by a New York judge, namely in connection with the investigations into the attacks on 11.9.2001. He was taken to New York and brought up before the judge responsible there. As Padilla did not have a legal representative, the judge assigned Donna Newman to him as counsel. She had several conversations with Padilla and finally filed the motion on 5.22.2002 that the material witness warrant be set aside. 6.11.2002 was appointed as the date for the hearing on the motion by the District Court for the Southern District of New York. Two days before this date, the judge was informed that the President had issued an order against Padilla, "designating Padilla as an enemy combatant and directing Secretary Rumsfeld to detain him". Before Donna Newman could speak to her client for a further time, he had already been handed over by officials of the United States Marshal Service to Department of Defense officials and taken to a high security military prison in Charleston , South Carolina. Since then, he has been held incommunicado there, i.e. cut from the outside world, without access to his attorney or members of his family.[4]

Donna Newman did not want to take this lying down. Even during the hearing, which had really been intended to consider the material witness warrant, she drafted a petition of Habeas Corpus, proceedings for a judicial review of an incarceration. As Padilla was no longer able to sign a power of attorney for her for this purpose, she petitioned for Padilla as "next friend", which is possible under the legal tradition in the United States.

She gave vent to her first indignation in harsh words: "As a citizen, it frightens me. I'm frightened that the rest of America doesn't see it. If it can happen based on somebody's suspicions, it means you can pluck people off the street and nobody will know. … That's what they had in Argentina."[5] In the two following years, Donna Newman devoted herself exclusively to this case. A second lawyer was assigned by the court to assist her and Padilla. In the course of time, she received more and more support, not only from the National Association of Criminal Defense Lawyers and the American Bar Association, but also from conservative institutions, such as the Rutherford Institute, and a multitude of further organizations. The recital of parties of the last judicial decision won by her lists a total of fifty "*amici curiae*" who had submitted supportive opinions.

The government countered her petition of Habeas Corpus: Donna Newman did not have a power of attorney. She was not a next friend either; she had only talked to her

client a few times, no friendship would develop from that. In addition, Secretary Rumsfeld was not the correct adversary, if at all, she should take legal proceedings against the director of the prison. In addition, the District Court in New York had a lack of personal jurisdiction. As Padilla was "in association with Qaeda", it was to be feared that he would participate in terrorist acts against the United States and it was thus justified to hold him as an "enemy combatant" in a military prison.

On 6.10.2003, the District Court first ruled: Donna Newman may submit a petition of Habeas Corpus for Padilla as a "next friend"; in addition, Secretary Rumsfeld was the correct addressee for the suit; the court also had jurisdiction for the ruling; in addition, Padilla did have the right to advice by a lawyer; the District Court ordered that the parties agree terms under which Padilla could talk to his attorney. Secretary Rumsfeld refused to do this. The District Court did at least agree with the government in so far as it acknowledged the President's right to give people the status of an enemy combatant; in view of the evidence to hand, this was also justified in Padilla's case.

The appeals lodged by both sides led to a complete success for Donna Newman in a revolutionary ruling by the United States Court of Appeals for the Second Circuit of 12.18.2003.[6] The President, according to the Court of Appeals, did not have the right to seize American citizens on American soil with reference to his function as Commander-in-Chief and have them incarcerated, invested with the status of an enemy combatant; such a measure would have to have been authorized by the Congress.

They preface their ruling, which is marked by a detailed, historical-constitutional argumentation, with the following, quite moving comments:

"As this court sits only a short distance from where the World Trade Center once stood, we are as keenly aware as anyone of the threat al Qaeda poses to our country and of the responsibilities the President and law enforcement officials bear for protecting the nation. But presidential authority does not exist in a vacuum, and this case involves not whether those responsibilities should be aggressively pursued, but whether the President is obligated, in the circumstances presented here, to share them with Congress."[7]

2. The Hamdi v. Rumsfeld case

The case is now pending before the US Supreme Court. There it bears the title "Rumsfeld v. Padilla". The hearing took place on 4.28.2004. The "Hamdi v. Rumsfeld" case was being heard at the same time. Whereas in the former case the Administration is conducting the constitutional challenge, in the latter case it is Yaser Hamdi who has been classified - just like Padilla - by the President as an enemy combatant. He, too, is an American citizen, but was not arrested on American soil, as Padilla was, but in Afghanistan by troops of the Northern Alliance in 2001

in connection with the hostilities. First taken to Guantanamo Bay , it turned out that Hamdi is probably an American citizen, born in Louisiana , who moved to Saudi Arabia with his parents as a child. He was then transferred to a military prison in Norfolk/West Virginia, but still has no access to his relatives or a lawyer. The Fourth Circuit Court of Appeals, on the basis of a ruling by the US Supreme Court of 1942,[8] saw a difference to the Padilla case which their colleagues of the Second Circuit Court of Appeals had decided: Hamdi had been arrested directly while fighting against American troops. Even if he is an American citizen, it would lie in the President's power to classify him as an enemy combatant. Hamdi was represented by the Federal Public Defender, Frank Willard Dunham, Jr. before both the Fourth Circuit Court of Appeal and the District Court. It was also Frank Dunham who achieved the acceptance of the action against this ruling by the US Supreme Court.

Frank W. Dunham Jr . is the other "quiet hero" whose portrait is to be slipped in briefly here into the description of the judicial scenario: He is the "Federal Public Defender for the Eastern District of Virginia", virtually the highest court-appointed defense counsel in this state. In his office in Alexandria still hangs his framed letter of appointment by John Mitchell, Attorney General under Nixon from 1969 to 1972 (sentenced in 1974 for obstruction of justice and perjury in connection with the Watergate scandal). With regard to his political attitude, Dunham is probably more a Republican, thus presumably a sympathizer of the change in leadership after Clinton. However, his defense of civic rights is completely uninfluenced by his possible political sympathies for the present Administration. It is marked by steadfastness and consistency.

3. The United States v. Moussaoui case

This leads us on to the case of *Zacarias Moussaoui*, a French citizen of Algerian descent, who is incarcerated in Alexandria and was for a long time regarded as being the "twentieth hijacker". Here, too, Frank Dunham is the court-appointed defense counsel. In order not to give the impression, to even the remotest extent, that the insistence of the defense could be placed in doubt by Frank Dunham's appointment by the court, he has called in two further independent defense lawyers, Edward MacMahon and Judy Clarke, who are paid from his budget.

Moussaoui is not an easy client. He does not talk to his lawyers; on the occasion of his first appearance when the bill of indictment was read out, he accused his lawyers just like the chairwoman of the District Court of a plot to kill him. His submissions to the court are regularly linked with insults, curses and threats, signed in each case with "Slave of Allah". One of his first motions was aimed at dismissing his lawyers. And thus it also came about that the court had to admit his motion to defend himself.[9] The defense lawyers received the status of "stand-by counsel", being thus initially allowed only to intervene in support where initiatives of the accused

defending himself appeared sensible to them, or, in a higher instance, when Moussaoui could no longer appear himself.

The central legal dispute in the case of Moussaoui has clear parallels to the problems with which the German courts found themselves confronted in the two trials against Motassadeq and Mzoudi:

Moussaoui came into custody three weeks *before* the attacks on the World Trade Center on account of the suspicion of an offense against immigration regulations. After it was found out that he had also attended flying schools, in which the aircraft hijackers of September 11 had been taught, he was indicted in December 2001 and then to a further extent in July 2002 on six counts: of conspiracy to carry out terrorist acts across frontiers, conspiracy to hijack aircraft, conspiracy to destroy aircraft, conspiracy to use weapons of mass destruction, conspiracy to murder officials of the United States of America and conspiracy to destroy property. For the first four counts, the Administration is striving for the death penalty.

Moussaoui disputes that he knew of the plans for an attack on the World Trade Center.

While investigations against Moussaoui were still continuing, further persons were seized outside of the USA ,[10] to whom an important role in the preparation of the attacks on the World Trade Center is attributed. Soon after the arrests became known, Moussaoui made applications to the District Court in Alexandria for access to the potential witnesses. On 1.30.2003, Ms Justice Leonie Brinkema ordered that Mousaoui had to be granted this access, as it was certain that one of the witnesses was involved in the planning of September 11, and it could not be ruled out that his testimony would exonerate Moussaoui. The government representatives proposed "substitutions", written summaries of the interrogations which could then be read out in the trial - a possibility that is regulated in the Classified Information Procedures Act (CIPA); whereby the reading out would be dependent on the accused's consent. The chairwoman of the District Court refused this, as the reports of the interrogations were "unreliable" and the substitutions thus obtained were flawed in numerous aspects. After the District Court had issued an order on 8.29.2003, to also grant Moussaoui access to a further witness, and the government representatives refused this and the substitutions submitted by them appeared unreliable, Leonie Brinkema finally ordered on 10.2.2003 that all the counts of the charges, which exposed Moussaoui to the death penalty, were to be struck off; apart from this, no means of evidence might be brought into the trial and no questions asked that would bring Moussaoui into connection with the attacks on September 11, 2001. Her findings are worth reading:

"The Court has previously found that the defendant's fundamental right to a fair trial includes the right to compel the trial testimony of witnesses, presumably in Government custody, who may be able to provide favorable testimony on his behalf.

Moreover, we have also concluded that, consistent with well-established principles of due process, the United States may not maintain this capital prosecution while simultaneously refusing to produce witnesses who could, at minimum, help the defendant avoid a sentence of death."

It was clear that the government representatives would not accept this ruling by the District Court. On 12.3.2003, there was a hearing before the United States Court of Appeals for the Fourth Circuit on the government's appeal. The ruling was given on 4.22.2004. The reasons for the ruling are conflicting. On the one hand, the Court of Appeals acknowledges that Moussaoui had the right to summons the witnesses in question, in fact even then if they were not on American soil. So long as they were in the custody of the American authorities, they were accessible for the Court and thus also for the accused. This right also existed if it appeared probable that the witness in question would make use of his right not to incriminate himself through his testimony. The Court of Appeals also sees that the witnesses in question could support the accused in his defense. As the government's refusal to present the witnesses would continue, the appellate court finally comes to a solution that is only comprehensible against the background of the jury system and which adheres to the provisions of the Classified Information Procedures Act (CIPA) mentioned above. Substitutions should be prepared from the summaries of the interrogation transcripts, the content of which should be prepared by the government representatives, the court and the defense *together* (outside of the courtroom). Provided that a "communiqué" were to be prepared in this way by those involved concerning the content of the statements, its content should be read out in the trial and made the basis of evidence, but this also only if the accused had previously consented to it being read out.

The ruling is difficult to understand even for American legal experts, particularly as the compromise between opinions drifting apart within the court is also documented in it that annexed to the decision of the panel of three judges there are two dissenting opinions on different passages in each case, thus the whole text in the respective passages seems to have come into being with differently grouped majorities. The commentary in a legal chat group: "Guesswork in black robes."

The Moussaoui case leads on to the two cases that have been tried in Germany while dealing with the attacks of 9.11.2001. I would here like to concentrate on the *Motassadeq* case.

4. The Motassadeq case

Motassadeq is a Moroccan citizen. He came to Germany in 1993. From the winter semester of 1995, he studied electrical engineering at the Technical University of Hamburg-Harburg. In 1998, he passed his intermediate diploma. Among his circle of friends were the later aircraft hijackers Atta, Alshehhi, Essabar and Jarrah as well as Binalshib, who was apparently also involved in the preparations for the attack and was arrested in Pakistan in 2002, and also Bahaji who disappeared after 9.11.2001.

Motassadeq was in pre-trial custody from 11.28.2001; on 2.19.2003 he was sentenced by the Hanseatic Higher Regional Court in Hamburg to a term of imprisonment of fifteen years for aiding and abetting murder on 3066 counts, as well as for attempted murder and grievous bodily harm in five cases in unity of crime with membership in a terrorist association.

Motassadeq was *atmospherically* severely incriminated by the circumstance that he had stayed in an al Qaeda camp in Afghanistan in summer 2000, and had also taken part in shooting practice there. Otherwise there was nothing that brought him into connection in any way by circumstantial evidence with the planning of the attack. His last activity had been a money transfer amounting to DM 5,000, at Binalshib's request, from an account belonging to Alshehi for which Motassadeq had power of attorney.

In order - in accordance with their conviction - to let an involvement of Motassadeq appear plausible, the judges of the Hanseatic Higher Regional Court rewrote contemporary history. According to the written reasons for the judgment, the actual planning of the attack is said to have commenced already at a time when Motassadeq was still regularly together with the later hijackers and was seen with them, namely at the end of 1998/beginning of 1999. Already in spring 1999, Atta, Alshehi, Jarrah, Binalshib, Essabar and Motassadeq are said to have taken the decision to kill a great number of citizens of the USA by hijacking aircraft as well as causing them to crash simultaneously into highly symbolic buildings, such as the World Trade Center. The judgment emphasizes that these six persons knew that the plan could only be implemented with considerable organizational, logistical, financial and personal effort. After they had completed their planning with respect to the intention in Hamburg , they are said to have then traveled to Afghanistan in order also to win Usama bin Laden, the co-founder and financier of al Qaeda, for this. It is then stated verbatim in the judgment: "It was clear to the group around Atta that the assassination plan would fall on sympathetic ears in the case of bin Laden."

Thus: The planning and organization of the attacks on the World Trade Center lay with the six man "group around Atta" in Hamburg-Harburg, there was only financial and personal support from Afghanistan. The terrorist association, which planned and carried out the attacks, consisted of just Atta, Alshehi, Jarrah, Binalshib, Essabar and Motassadeq. For example, according to the construction of the Hanseatic Higher Regional Court , Usama bin Laden could only have been prosecuted as a supporter of the Hamburg-Harburg-based terrorist association around Atta (and as an accessory to the crimes committed by this association).

The fact that this only barely agrees with the sources accessible in the meantime, but also those already available at the time of the pronouncement of the judgment, does not need to be further emphasized. This point was of just as little importance for the appeal. The fact that criminal court judgments do not tally with historical truth has *never* prevented them from becoming res judicata. What became fateful for the

legal validity of the judgment was another passage on the fourth page from the end of the written reasons for the judgment:

“There is also no contravention of the right to a fair trial that could possibly have given the senate cause to suspend the proceedings.

Neither can such a contravention be seen in the fact that no suspension of proceedings took place, although Binalshib cannot, it is true, be examined at the present, but possibly can be in the distant future. The principle of a ‘fair trial’ may namely not take the place of the regulations of the Code of Criminal Procedure (StPO) or of principles of procedure. The accessibility of Binalshib is under discussion here and thus a question that is dealt with abstractly in § 244 Par. 3 StPO and has also been discussed concretely by the senate in accordance with this rule with an order, such as annex no. 23 to the trial record of 1.14.03. By the way, what would also have to be taken into account would be the principle of the enforcement of the state’s claim to punishment, that would be endangered in the case of a suspension of the proceedings, and the principle of acceleration that has a special importance in this present legal review of detention. Incidentally, the potential corrective of a new trial confronts the differences possibly resulting from an application of § 244 Par. 3 StPO, whereby, at present, there are no indications of any kind that statements by Binalshib do exist or are to be expected which could lead to a reopening of these present proceedings.”[11]

Factually, the Hanseatic Higher Regional Court here declared itself in favor of the so-called “windfall” theory of the American government whose representatives said, in rebuttal of Moussaoui’s defense lawyers’ request for access to the persons arrested in the meantime: the arrest of these persons was a pure accident from Moussaoui’s perspective, just as accidental as a windfall,[12] i.e. the ripe fruit on trees that falls in the neighbor’s garden after a gust of wind. His trial, thus the consequence of the windfall theory, would have had to take place even if these persons had *not* been arrested. Their arrest, just like their non-appearance in the trial, did *not* hinder its progress and fairness.

In unusually powerful diction, imbued with constitutional impetus, the 3rd Criminal Division of the Federal Court of Justice, in a ruling pronounced on March 4 of this year, put a stop to such slovenly dealings with the duty to provide clarification. Binalshib had been a direct participant in the crime. It was thus not to be ruled out that he, as the sole survivor - apart from the fugitive Bahaji - could have said something - also exonerating, concerning the extent of Motassadeq’s participation in the crime:

“According to all this, the Higher Regional Court should not have been satisfied here with the conclusion that the participant in the crime, Binalshib, was not available for examination and it could not be clarified either whether and possibly what details he had given in the course of his questioning by US American agencies about the

accused's involvement in the planning and preparation of the attacks on September 11, 2001."

Admittedly, one unobtainable piece of evidence had had to remain on principle outside of consideration when considering the evidence taken:

"However, one exception to this principle does apply when the state being requested for mutual judicial assistance has a considerable interest of its own in the outcome of the criminal proceedings, for instance, because - as here - the criminal acts indicted and their consequences decisively also violated its own security as well as the legally protected interests of its citizens, so the Federal Republic of Germany is thus also acting for it in a kind of vicarious administration of penal justice. In particular if, in such a case, the said state itself makes means of evidence available - here in the person of witness W. - for the proof of the act, it must not be disregarded, if the same state withholds other means of evidence, central for clearing up the deed, from the German criminal court, which could potentially be suitable for exonerating the accused. The danger, which cannot otherwise be ruled out, that the foreign state, by its selective granting of mutual judicial assistance, is controlling the outcome of the criminal proceedings being conducted in Germany in its sense, cannot be tolerated in view of the accused's right to a fair conduct of the trial."[13]

These are very self-assured words. They show that our judiciary has not succumbed to the temptation up to now which the great American judge, legal scholar and poet *Oliver Wendell Holmes* summed up in the sarcastic comment: "Hard cases make bad law." The American judiciary, in fact and emotionally very much more in direct confrontation with the effects of terrorist acts than we in Central Europe are, has countered the endeavors to establish a parallel legal system, that evades their jurisdiction, with a series of courageous rulings that will foreseeably not leave Guantanamo Bay in an unlegislated area either.[14]

5. Conclusion

The comparative examination of the judicature in the United States of America and the Federal Republic of Germany leads back to the starting point of the contemplation. How must the judiciary deal with the dangers of terrorism? It is clear: There must not be a criminal law for the enemy. Its linguistic counterpart, a criminal law for friends, that would necessarily be the consequence, already shows the whole absurdity of the construction. A criminal law for friends and a criminal law for enemies - that is a definite way to no longer being able to distinguish a friend from an enemy.

Transposed into a maxim for human action and judgment, it is a call for arbitrariness. Historically speaking, it would be the self-forgetting break with the experience of the two generations before us: Even for the atrocities committed by the war criminals of the Nazi regime, the principle reaffirmed by the UN General Assembly in

November 1946 that: “Any person charged with a crime under international law has the right to a fair trial on the facts and law,” applied to the Nuremberg Trials.

6. Postscript

On 6.28.2004, the US Supreme Court ruled on the suits by Padilla and Hamdi. Padilla’s appeal was dismissed for formal reasons: he should not have brought an action against Rumsfeld, but against the director of the military prison in Charleston (South Carolina); for this reason, the District Court for the Southern District of New York did not have jurisdiction. Hamdi’s appeal, on the other hand, was allowed: as an American citizen – even if classified as being an “enemy combatant” (the admissibility of which in principal in times of war the US Supreme Court did not question) – he had a right to be informed about the actual charges being made against him and to recourse to a neutral decision maker in order to have his classification as an “enemy combatant” reviewed. An individual examination of the case should take place at all events – even in times of war and conflict. A standard of evidence reduced to “some evidence” was not compatible with the Constitution. What is above all remarkable is the committed dissenting opinion of Justice Antonin Scalia who is traditionally seen as belonging to the conservative wing of the Court. In a wide-ranging historical analysis of the “Writ of Habeas Corpus” he castigates the government’s legal positions in an unusually sharp-tongued manner, but earlier decisions by the Supreme Court are not left out of his criticism either. The ruling by the US Supreme Court in the matter *Ex parte Quirin et al*. from 1942 (cf. footnote 4 above), that was central for the legal disputes about the possibility of a characterization as an “enemy combatant”, is commented by him laconically as follows: *“The case was not this Court’s finest hour.”* The US Supreme Court’s decision of 6.28.2004 – even if containing much vagueness – came at all events at a better hour.

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[1] The article is a slightly adapted version (also provided with further footnotes) of the lecture the author gave on 6.10.2004 at a function given by the Federal Bar Association on the occasion of the 125th anniversary of the founding of the German Bar Associations in Berlin.

[2] *Jakobs*, in HRRS [www.hrr-strafrecht.de] 2004, 88 ff.

[3] National Catholic Reporter, 7.3.2003 (http://natcath.org/NCR_online/archives2/2003a/030703/030703j.htm).

[4] Not to assist in understanding, but solely in order to point to the (also) emotional roots of many activities by the current American government and its constitutional justification, it may be pointed out that the United States of America last found itself exposed to military attacks on its territory (by British troops) in 1814. The terrorist

attacks on the World Trade Center are understood as being an enemy attack on its territory not just by the Bush administration, but also by sections of the population. From this it is deduced that dealing with persons, who appear suspected of participation in terrorism, is (in part) justified legally by recourse to law from times of war. In this connection, the US Supreme Court ruling *"Ex Parte Quirin et al."* of 31.7.1942 (317 U.S. 1, 12/13) plays a special role which concerned a matter of seven agents who had been landed from U-boats on the Eastern coastline of the US, in order to carry out sabotage acts in the USA. Here the US Supreme Court found that "ordinary constitutional doctrines do not impede the Federal Government in its dealings with enemies", they therefore had no right to submit Habeas Corpus petitions to the ordinary courts; the president's rights with regard to enemies "must be absolute". Two of the agents claimed that they were American citizens; the US Supreme Court did not see any reason in this to treat them differently from the German agents: "This does not change their status as 'enemies' of the United States ". In addition, for the direct justification of incarcerations in the case of "enemy combatants", the Joint Resolution passed by the Senate and the House of Representatives on 9.12.2001 is also called into play by government representatives.

[5] As in note 3.

[6] The United States Court of Appeals is the highest ordinary Federal Court of the United States of America , comparable to the German Federal Court. It is divided into a total of eleven "circuits" which have jurisdiction in each case for the Federal District Courts of several states. The territories of the District of Columbia (the territory of the federal capital Washington) or Puerto Rico, which are subject to a federal administration, but do not possess the constitutional status of a state of the union, also form circuits of their own; all in all, there are thirteen circuits. Cf. on this *Niklaus Schmid*, Strafverfahren und Strafrecht in den Vereinigten Staaten, 2nd edition, Heidelberg 1993, p. 46/47.

[7] These, as also the rulings by US courts quoted here below, are to be found in the Internet under http://news.findlaw.com/legalnews/us/terrorism/cases.

[8] See above note 3.

[9] This took place in agreement with the adjudication of the US Supreme Court which, in a ruling of 6.30.1975, saw the "right of self-representation" as guaranteed in the Constitution (under the Sixth Amendment) (*Faretta v. California*, 422 U.S. 806, 821); in the meantime (on 11.14.2003) the District Court judge denied Moussaoui the right of self-defense as his applications to the court were characterized by "contemptuous language that would never be tolerated from an attorney and will no longer be tolerated from this defendant". Source: *The Washington Times* of 11.15.2003.

[10] The names of the persons arrested are not expressly named here as they are officially still “classified”; the present author is adhering to this in this connection as he is also acting for the office of the Federal Public Defender for the Eastern District Virginia in the Moussaoui case.

[11] UA S. 67.

[12] *United States of America v. Zacarias Moussaoui* , Opinion of the United States Court of Appeals for the Fourth Circuit, Decided April 22, 2004 , p. 11.

[13] BGH (Federal Court of Justice) in StV 2004, 192, 195.

[14] Cf. on this: *United States Court of Appeals for the Ninth Circuit*, Opinion filed December 18, 2003, p. 8/9 (*Falen Gherebi v. George Walker Bush, Donald H. Rumsfeld)*: “We recognize that the process due to ‘enemy combatant’ habeas petitioners may vary with the circumstances and are fully aware of the unprecedented challenges that affect the United States’ national security interests today, and we share the desire of all Americans to ensure that the Executive enjoys the necessary power and flexibility to prevent future terrorist attacks. However, even in times of national emergency - indeed, particularly in such times - it is the obligation of the Judicial Branch to ensure the preservation of our constitutional values and to prevent the Executive Branch from running roughshod over the rights of citizens and aliens alike. Here, we simply cannot accept the government’s position that the Executive Branch possesses the unchecked authority to imprison indefinitely any persons, foreign citizens included, on territory under the sole jurisdiction and control of the United States, without permitting such prisoners recourse of any kind to any judicial forum, or even access to counsel, regardless of the length or manner of their confinement. We hold that no lawful policy or precedent supports such a counter-intuitive and undemocratic procedure, and that, contrary to the government’s position, *Johnson*[referring to the US Supreme Court’s ruling of 5.6.1950 in the matter *Johnson v. Eisentrager*, 339 U.S. 763] neither requires nor authorizes it. In our view, the government’s position is inconsistent with fundamental tenets of American Jurisprudence and raises most serious concerns under international law.