

High-Profile Case Shows Federal Courts Capable of Trying Terrorism Suspects, Issue Brief Author Says

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Washington, D.C. —In an ACS Issue Brief released this week, author Stephen I. Vladeck jumps into the debate over whether terrorism suspects should be tried in federal courts or military commissions, using the prominent case of *United States v. Abu Ali* as “an unvarnished example of how the civilian criminal justice system can handle high-profile criminal terrorism cases raising novel legal challenges.”

The case of Ahmed Omar Abu Ali, a U.S. citizen convicted of conspiring with al Qaeda to kill President George W. Bush, raised new and hard questions, Vladeck writes in “Trying Terrorism Suspects in Article III Courts: The Lessons of *United States v. Abu Ali*,” but they were questions the federal courts are well-equipped to answer.

“[W]here unique national security concerns are implicated, *Abu Ali* suggests that courts will attempt to reach accommodations that take into account both the government’s interest and the fundamental protections to which defendants are entitled, keeping in mind Justice Frankfurter’s age-old admonition that ‘the safeguards of liberty have frequently been forced in controversies involving not very nice people,’ ” writes Vladeck, a law professor at American University Washington College of Law and a recognized expert on the role of the federal courts in the war on terrorism.

Questions about whether a defendant is entitled to *Miranda* protections when the investigation is being conducted by foreign officials come up in contexts other than terrorism, Vladeck points out. That the fact pattern in this case was new — U.S. officials submitted questions to Saudi officers for their use during interrogation — makes this an interesting criminal procedure case and helpful precedent, Vladeck suggests.

In facing for the first time Saudi officials’ agreement to participate in depositions — but only if they took place in Saudi Arabia — U.S. District Court Judge Gerald Bruce Lee used “creativity and flexibility” to craft a method for performing a live, two-way video deposition that transmitted the proceedings to the Alexandria courtroom, during which defense lawyers were present in both Saudi Arabia and Alexandria, Vladeck writes. Vladeck suggests that Lee’s innovation showed how technology can help *cabin* proposed changes to current procedural rules, by adapting within the present framework.

In some respects, the district court — and the appeals court — may have come to wrong conclusions, but “what *Abu Ali* might drive home most forcefully is just how seriously Article III judges from across the political spectrum take their responsibility in these cases.” Vladeck

writes. “*Abu Ali* reminds us that sometimes, the law is set up properly to resolve the tension between the government’s interests and the defendant’s rights, even if reasonable minds could argue (in this area of law, as in any other) that judges sometimes get it wrong.”

Vladeck’s issue brief is available [here](#). Please contact the ACS Communications Department to arrange interviews with the author.

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