



November 18, 2009

TO: Interested Parties
FROM: Andy Johnson, Director, National Security Program
Scott Payne, Senior Policy Advisor, National Security Program
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RE: Bringing the 9/11 Conspirators to Justice

Overview

On November 13th, Attorney General Eric Holder announced that Khalid Sheik Mohammed and four other suspected terrorists¹ held in the Guantanamo detention facility would be prosecuted in federal court for their involvement in the 9/11 attacks. With a congressionally mandated 45-day waiting period in place before these suspects can be moved to a federal prison facility in the US, conservatives have begun to attack the American system of justice and denigrate the competency of law enforcement officials and the courts, all in an attempt to gain political advantage by weakening the Obama administration.

Below we offer a brief history of America's successful prosecution of terror suspects along with some answers to the inevitable political attacks on the Attorney General's decision. We believe the case for these trials can be summed up as follows: ***The Attorney General's decision to finally bring these 9/11 conspirators to justice is welcome and appropriate. The most effective, legally sound way of trying, convicting, and punishing these suspected terrorists has been and continues to be in federal court. This will demonstrate to the world the American system of justice endures and cannot be compromised by those who would do our nation harm.***

Prosecuting and Imprisoning Terrorists

Since 1993, the United States has successfully captured and prosecuted hundreds of terrorist suspects, with 216 international terrorists currently held in the United States.² Before the 9/11 attacks, the Clinton administration successfully prosecuted Ramzi Yousef, the mastermind of the first World Trade Center bombing, in federal court in New York City, resulting in a sentence of life in prison. Omar Abdel Rahman, the 'blind sheik,' was prosecuted and convicted in the same court the 9/11 conspirators will be tried and also was sentenced to life in prison. Zaccarias Moussaoui, the so-called 20th hijacker, was tried and convicted without incident in a court in Alexandria, Virginia, in 2006. He too is serving life in prison.

After conviction, these terrorists were sent to federal 'supermax' prisons where inmates are held in solitary confinement for 23 hours a day. Despite holding a 'who's who' list of terrorists, these prisons have never been the target of a terrorist attack, and no one has ever escaped.³

Attacks and Responses

Conservatives are making a number of spurious claims about the trials, each of which is easily rebutted.

1. Trying these cases is a national security risk.

Attack: Bringing the detainees to New York puts the city at an increased risk of terrorist attack. Representative Peter King (R-NY) warned that “these terrorists' new home and the courthouse in which they'll be tried will immediately move to the top of al Qaeda's target list.”⁴

Response: *New York has handled high-level terrorist trials in the past, including the trial for the 1993 World Trade Center Bombing. New York's Mayor and Police Commissioner both said the city is ready to handle the trials.⁵ The trial of Zacarias Moussaoui occurred less than 10 miles from the White House, but conservatives never accused President Bush of putting the White House in further danger of attack.*

Attack: If they aren't convicted, terrorists will go free on US soil. Senate Minority Leader Mitch McConnell (R-KY) recently wrote: “a judge may very well agree with the legal arguments of Guantanamo detainees and order them released into the United States.”⁶

Response: *In the highly unlikely scenario that any of these men are acquitted, the ultimate authority over these detainees remains with President Obama, who will not release them into the US under any circumstances.⁷*

Attack: Holding the trials in federal court will risk compromising sensitive or classified information. Former Attorney General Michael Mukasey has argued that federal courts cannot be trusted to safeguard sensitive evidence, citing the delivery to Osama bin Laden of a co-conspirator list provided to the defense counsel in the Rahman trial in the mid-1990s.⁸

Response: *Legal experts believe that the government will not have to bring significant amounts of classified information into court in order to achieve a conviction.⁹ Even so, the Classified Information Procedures Act allows portions of the trial specifically dealing with classified information to be closed from the public. A recent study of federal terrorism prosecutions found no security breaches in cases where the Classified Information Procedures Act was invoked. In the specific case cited by Mukasey, the government never requested the co-conspirator list be kept classified.¹⁰*

2. US courts can't handle these cases.

Attack: These trials will take too long. Representative Buck McKeon (R-CA) said President Obama's decision “will once again delay bringing justice to the victims and their families.”¹¹

Response: *During the Bush administration, these terrorists sat in Guantanamo for years without any justice for the victims and their families. Bringing these men to trial in New York's federal courts, which have extensive experience handling terrorism trials, ensures that after eight years justice will be served.*

Attack: Detainees could get off because of past mishandling or torture.

Representative King said: "Once they're in civilian court, depending on the judge, the lawyer could say he was arrested [with] no warrant, no Miranda rights, he was waterboarded and spent seven years without a trial."¹²

Response: *These are the men who planned and helped execute the 9/11 terrorist attacks. The evidence against them was strong before they were ever captured and has been strengthened even more since. Attorney General Holder would not have brought the case to trial if the government's evidence was tainted by technicalities or torture. Senate Judiciary Committee Chairman Patrick Leahy (D-VT), who has seen the evidence against the detainees, said "I have no question that they have enough evidence untainted by the waterboarding that will be admissible in court, and he will be convicted."*¹³

Attack: The trials will give terrorists a platform for jihadist rhetoric. Representative Peter Hoekstra (R-MI) "said he feared that Mr. Mohammed and his accused co-conspirators would try to make the trial 'a circus' and use it as a platform to push their ideology."¹⁴

Response: *Such concerns were aired in advance of the trial of Zacarias Moussaoui, but he was not given a propaganda platform by the court and there is no evidence that he was able to influence anyone with the limited amount of time he was able to speak during the trial. At the time, his statements seemed like wild rants and years later, no one remembers what he said.*

3. This decision is politically motivated

Attack: This will not be a trial of Khalid Sheikh Mohammed and his terrorist associates; it will be a trial of the CIA and the Bush administration. Tom Ridge, Bush's first Secretary of Homeland Security, said: "You'd like to think that ... it is simply their interpretation that these individuals are entitled to these kinds of criminal justice protections—rather than using it as a fishing expedition to revisit decisions made during the past six years. Time will tell."¹⁵

Response: *While the mishandling of Guantanamo detainees by the Bush administration has made these trials more complicated, the Department of Justice is only interested in convictions and will avoid tangential issues. Federal prosecutors and courts are professional and duty bound and have demonstrated in previous cases their singular focus on trying the criminal acts of terrorists.*

Attack: This is being done because liberal groups pressured the administration to do it. House Republican leader John Boehner said the move "puts the interests of liberal special interest groups before the safety and security of the American people."¹⁶

Response: *Conservative attacks on the American system of justice are unfounded and politically driven. And they are inconsistent, President Bush said: "I'd like to close Guantanamo... we are a nation of laws. Eventually, these people will have trials and they will have counsel and they will be represented in a court of law."¹⁷*

Attack: It is disrespectful to the victims of 9/11 to bring the perpetrators back to the scene of the crime for trials. Representative Hoekstra said, "We're going to go back into New York City, the scene of the tragedy on 9/11. We're now going to rip that wound wide open."¹⁸

Response: *It is a basic tenet of the American justice system that criminals are tried in the same place where the crime was committed. While the memory of 9/11 will be painful, bringing these men to justice in a public court will ultimately help to bring closure to the families and victims. New Yorkers, like all Americans, will finally be able to render judgment on those responsible for the awful attacks against their city.*

Conclusion

Attorney General Holder's decision to try these suspects in federal court is in the best interest of our national security. Convicted terrorists need to be punished, confined and isolated in secure prisons.

The record of federal prosecutors and the courts in carrying out this solemn duty should not be tarnished by unfounded political attacks or undermined by fear-mongering. Having the suspected 9/11 conspirators continue to languish in legal limbo at Guantanamo does not strengthen the security of America or how we are seen by others. Bringing them to justice in a court of law, however, will make us safer, provide much needed justice, and demonstrate to the world that America remains resolute and will not compromise its founding principles in prosecuting terrorists for their murderous acts.

End Notes

¹ Walid Muhammad Salih bin Attash, Khalid Sheikh Mohammed, Ramzi bin al-Shibh, Ali Abd al-Aziz Ali, Mustafa Ahmed al-Hawsawi

² Fred Kaplan, "There are Already 355 Terrorists in American Prisons," *Slate*, May 29, 2009.

³ *ibid*

⁴ Representative Peter King, "O's Terrible Call," *New York Post*, Nov. 14, 2009.

⁵ Joseph Berger, "Giuliani Criticizes Terror Trials in New York," *New York Times*, November 15, 2009.

⁶ Mitch McConnell, "A lesson from the Uighers," *The National Law Journal*, November 9, 2009.

⁷ Reid J. Epstein, "Q&A on federal terrorism case set for Manhattan," *Wall Street Journal*, November 15, 2009.

⁸ James J. Benjamin, Jr., "The Best Way to Try Terrorists / Federal Court is the Right Place," *New York Times* (Room for Debate Blog), November 13, 2009.

⁹ Reid J. Epstein, "Q&A on federal terrorism case set for Manhattan," *Wall Street Journal*, November 15, 2009; "Legal, political risks abound in NYC trial of 9/11 suspects; military to try 5 other detainees," AP News in Brief, The Associated Press, November 14, 2009; "Dems hail, Republicans bash decision to try 9/11 suspects in New York," *CNN*, November 15, 2009.

¹⁰ James J. Benjamin, Jr., "The Best Way to Try Terrorists / Federal Court is the Right Place," *New York Times* (Room for Debate Blog), November 13, 2009.

¹¹ "Republicans blast Obama decision on Gitmo," *Reuters*, November 13, 2009.

¹² Reid J. Epstein, "Q&A on federal terrorism case set for Manhattan," *Wall Street Journal*, November 15, 2009.

¹³ Joseph Berger, "Giuliani Criticizes Terror Trials in New York," *New York Times*, November 15, 2009.

¹⁴ Joseph Berger, "Giuliani Criticizes Terror Trials in New York," *New York Times*, November 15, 2009.

¹⁵ "Some Fear Bush Administration Could Become Target in 9/11 Trial," *FOXNews.com*, November 14, 2009.

¹⁶ "Republicans blast Obama decision on Gitmo," *Reuters*, November 13, 2009.

¹⁷ "Bush: I'd Like to Close Guantanamo Bay," *TimesOnline*, June 14, 2006.

¹⁸ John Amick and T. Rees Shapiro, "Terrorism trials elicit strong opinions," *Washington Post* (44: The Obama Presidency Blog), November 15, 2009.