

ERIC HOLDER: MOVING KSM TRIAL TO GITMO WRONG DECISION, BUT WE'RE DOING IT ANYWAY

There was something I appreciated about the Holder press conference capitulating on trying the 9/11 defendants in civilian trials.

He didn't try to spin it as a good idea.

Not only did he reiterate his judgment that trying KSM in a civilian trial was the right decision, he also noted that it's not clear whether military commissions can impose the death penalty on someone who pleads guilty.

And then he ended the presser quickly, as if he had to rush upstairs to his office to vacate it so some General could move in.

That said, it's clear that Holder lost an important battle, one he believed in. Here's what Jane Mayer reports on the work SDNY's prosecutors have already done on the trial.

Holder and some of the smartest prosecutors in the country had prepared what they believed was the strongest case possible against K.S.M. Lawyers involved in the effort told me they had spent years on it, and had files filled with killer evidence, just waiting for trial. Careers had been devoted to compiling an impeccable case. By using the civilian justice system, Holder had wanted to send several important messages, among them that terrorists are criminals, not some new breed of super warrior; and that the U.S. legal system is the strongest, fairest, and most credible system in the world. A guilty verdict arrived at in front of the

world, in a public trial, with ordinary citizens sitting in judgment of K.S.M., would be internationally accepted as legitimate, in a way that no military tribunal ever will be. Or so the thinking went.

Of course, if Holder cared that much about these principles—and I believe he does—it would sure be nice to see him resign rather than preside over the continued decline of our commitment to the rule of law.

(Holder's full statement—with my emphasis on select points—is below the line.)

Update: Here's the indictment from 2009 unsealed today. It lists all the known victims of 9/11.

In November 2009, I announced that Khalid Sheikh Mohammed and four other individuals would stand trial in federal court for their roles in the terrorist attacks on our country on September 11, 2001.

As I said then, the decision between federal courts and military commissions was not an easy one to make. I began my review of this case with an open mind and with just one goal: to look at the facts, look at the law, and choose the venue where we could achieve swift and sure justice most effectively for the victims of those horrendous attacks and their family members. **After consulting with prosecutors from both the Department of Justice and Department of Defense and after thoroughly studying the case, it became clear to me that the best venue for prosecution was in federal court. I stand by that decision today.**

As the indictment unsealed today reveals, we were prepared to bring a powerful case against Khalid Sheikh Mohammed and his four co-conspirators — one of the most well-researched and documented cases I have ever seen in my

decades of experience as a prosecutor. We had carefully evaluated the evidence and concluded that we could prove the defendants' guilt while adhering to the bedrock traditions and values of our laws. We had consulted extensively with the intelligence community and developed detailed plans for handling classified evidence. Had this case proceeded in Manhattan or in an alternative venue in the United States, as I seriously explored in the past year, I am confident that our justice system would have performed with the same distinction that has been its hallmark for over two hundred years.

Unfortunately, since I made that decision, **Members of Congress have intervened and imposed restrictions blocking the administration from bringing any Guantanamo detainees to trial in the United States, regardless of the venue.** As the President has said, those unwise and unwarranted restrictions undermine our counterterrorism efforts and could harm our national security. **Decisions about who, where and how to prosecute have always been – and must remain – the responsibility of the executive branch. Members of Congress simply do not have access to the evidence and other information necessary to make prosecution judgments.** Yet they have taken one of the nation's most tested counterterrorism tools off the table and tied our hands in a way that could have serious ramifications. We will continue to seek to repeal those restrictions.

But we must face a simple truth: those restrictions are unlikely to be repealed in the immediate future. And we simply cannot allow a trial to be delayed any longer for the victims of the 9/11 attacks or for their family members who have waited for nearly a decade for justice. I have talked to these family members on many occasions over the last two years. Like many Americans, they differ on where the 9/11 conspirators should be prosecuted, but there is one thing on which they all agree: We must bring the conspirators to justice.

So today I am referring the cases of Khalid Sheikh Mohammed, Walid Muhammad Bin Attash, Ramzi Bin Al Shibh, Ali Abdul-Aziz Ali, and Mustafa Ahmed Al Hawsawi to the Department of Defense to proceed in military commissions. Furthermore, I have directed prosecutors to move to dismiss the indictment that was handed down under seal in the Southern District of New York in December, 2009, and a judge has granted that motion.

Prosecutors from both the Departments of Defense and Justice have been working together since the beginning of this matter, and I have full faith and confidence in the military commission system to appropriately handle this case as it proceeds. The Department of Justice will continue to offer all the support necessary as this critically important matter moves forward. The administration worked with Congress to substantially reform military commissions in 2009, and I believe they can deliver fair trials and just verdicts. For the victims of these heinous attacks and their families, that justice is long overdue, and it must not be delayed any longer.

Since I made the decision to prosecute the alleged 9/11 conspirators, the effectiveness of our federal courts and the thousands of prosecutors, judges, law enforcement officers, and defense attorneys who work in them have been subjected to a number of unfair, and often unfounded, criticisms. Too many people – many of whom certainly know better – have expressed doubts about our time-honored and time-tested system of justice. That's not only misguided, it's wrong. The fact is, federal courts have proven to be an unparalleled instrument for bringing terrorists to justice. Our courts have convicted hundreds of terrorists since September 11, and our prisons safely and securely hold hundreds today, many of them serving long sentences. **There is no other tool that has demonstrated the ability to both incapacitate terrorists and collect intelligence from them over such a diverse range of circumstances as**

our traditional justice system. Our national security demands that we continue to prosecute terrorists in federal court, and we will do so. Our heritage, our values, and our legacy to future generations also demand that we have full faith and confidence in a court system that has distinguished this nation throughout its history.

Finally, I want to thank the **prosecutors from the Southern District of New York and the Eastern District of Virginia who have spent countless hours working to bring this case to trial.** They are some of the most dedicated and patriotic Americans I have ever encountered, and our nation is safer because of the work they do every day. They have honored their country through their efforts on this case, and I thank them for it. I am proud of each and every one of them.

Sadly, this case has been marked by needless controversy since the beginning. But despite all the argument and debate it has engendered, the prosecution of Khalid Sheikh Mohammed and his co-conspirators should never have been about settling ideological arguments or scoring political points. At the end of our indictment appear the names of 2,976 people who were killed in the attacks on that deadly September day nearly ten years ago. Innocent Americans and citizens of foreign countries alike who were murdered by ruthless terrorists intent on crippling our nation and attacking the values that we hold dear. This case has always been about delivering justice for those victims, and for their surviving loved ones. Nothing else. It is my sincere hope that, through the actions we take today, we will finally be able to deliver the justice they have so long deserved.