

After years of detention and torture

Ten Guantánamo prisoners to face US trial

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US Attorney General Eric Holder announced Friday that ten of the prisoners now held in the Guantánamo Bay detention camp would be transferred to US locations and placed on trial on terrorism charges. The purpose of these high-profile trials is to reinforce the claims by first Bush and now Obama that US military aggression in Iraq, Afghanistan and Pakistan is part of a “war on terror” triggered by the 9/11 attacks.

Five prisoners will be brought to New York City and tried in federal court on charges of conspiracy and murder in the terrorist attacks of September 11, 2001. The other five will face individual military tribunals on a variety of charges.

The defendants in the New York City trial include the alleged organizer of the attack, Khalid Sheikh Mohammed, and four men charged with major roles in logistics and financing, Ramzi Binalshibh, Tawfiq Bin Attash, Ali Abdal-Aziz Ali, and Mustafa Ahmad al-Hawsawi.

Holder said the Obama administration would seek the death penalty in the New York City case. “I fully expect to direct prosecutors to seek the death penalty against each of the alleged 9/11 conspirators,” he said. “These were extraordinary crimes, and so we will seek maximum penalties.”

The killing of nearly 3,000 people in the 9/11 attacks was a monstrous crime, for which no political, ideological or religious motivation can serve as justification. But because of the crimes committed by the US government since 9/11—the kidnapping, torture and indefinite imprisonment of thousands of people, some linked to 9/11, but the vast majority having no connection to the events of September 11, 2001—its prosecution of selected alleged terrorists can only be a mockery of justice.

There is, for example, the case of Khalid Sheikh Mohammed, the most notorious of the prisoners now set for trial. On several occasions he declared himself to be the main instigator of the 9/11 attacks, and even, according to some reports, boasted of having personally cut the throat of Daniel Pearl, the American reporter who was kidnapped and

murdered in Pakistan. Nearly a year ago, he sent a note to a military judge in Guantánamo asking to be executed immediately so that he could fulfill his destiny as a martyr.

The case is thoroughly tainted, however, by the fact that Mohammed was waterboarded 183 times, as well as being subjected to many other forms of brutality during six years of detention. There is no way to determine now, after the fact, what portion of Mohammed’s self-indictment is true and what portion was concocted to alleviate his torture. It is clear that he confessed to many crimes that he could not have committed or which never took place.

Even more revealing than the decision to place Mohammed and four others on trial for the 9/11 attacks is the apparent decision *not* to put Abu Zubaida on trial on the same charges. Abu Zubaida is the other prisoner subjected to essentially continuous waterboarding—over 100 such assaults in the space of a few weeks in 2002.

The Bush administration initially claimed that Abu Zubaida was the number three figure in Al Qaeda, next only to Osama bin Laden and Ayman al Zawahiri. It is now conceded, according to press reports citing intelligence sources, that Abu Zubaida was at most a low-level figure who had the misfortune to be the first individual linked to Al Qaeda to be captured by US forces and who confessed to atrocious crimes in order to satisfy the demands of his torturers.

Besides the high-profile New York prosecution, Holder announced that five other prisoners will be brought to an as yet undisclosed US location—possibly the naval prison in Charleston, South Carolina—for trial before military tribunals. These include Abd al-Rahim al-Nashiri, charged with organizing the bombing of the USS Cole when it was docked off the coast of Yemen in 2000; Ahmed Mohammed al Darbi, Ibrahim Ahmed Mahmoud al Qosi, and Noor Uthman, charged with planning and logistical roles in Al Qaeda; and Omar Khadr, charged with killing an American soldier during the US invasion of Afghanistan.

Al-Nashiri was also subjected to waterboarding and threatened with an electric drill and a gun. Nothing that a

prisoner says while a power drill is turned on and held an inch from his head can serve as credible testimony.

At the press conference where he announced the action, Holder was asked how a criminal case could be carried out against defendants who had been tortured by the CIA in secret prisons overseas. Such brutality would normally make effective prosecution impossible, because all statements extracted from the prisoners, and any evidence obtained as a result of those statements, would be inadmissible in court.

The attorney general responded, "I would not have authorized bringing of prosecution unless I thought in the outcome we could be successful. I will say that I have access to information that has not been publicly released that gives me great confidence that we will be successful in the prosecution of these cases in federal court." He did not reveal what this supposed new evidence was, but repeated the assertion that he had "great confidence" in a conviction.

Holder said that those charged with contributing to the 9/11 attacks should be tried in New York City and overruled prosecutors in Virginia who sought a trial there where the third hijacked airliner struck the Pentagon.

Speaking in Japan at the start of a ten-day trip to Asia, President Obama hailed Holder's action. "I am absolutely convinced that Khalid Sheik Mohammed will be subject to the most exacting demands of justice," he said. "The American people insist on it, and my administration will insist on it."

From a political standpoint, the Obama administration seems mainly concerned with fending off right-wing criticism over removing alleged terrorists from Guantánamo and transferring them to the US mainland. There was a predictable uproar from congressional Republicans, joined by right-wing Democrats like Senator Joseph Lieberman of Connecticut and Senator James Webb of Virginia, who said that military tribunals, preferably at Guantánamo, should handle the cases.

Republican House Minority Leader John Boehner warned darkly of the possibility that 9/11 terrorists could walk free from a federal courtroom because of "legal technicalities." He was presumably referring to such things as the prohibition on testimony resulting from torture.

The American Civil Liberties Union hailed the decision to hold trials in federal court as though it was a triumph for democratic rights. The ACLU statement did criticize the use of military tribunals for the five lesser prisoners.

There appear to be two reasons for dividing the prisoners into two groups, five tried in federal court, five by the military. The evidence against the prisoners facing the military tribunal is reportedly weaker than that against the five linked to 9/11, so Holder assigned the cases to a venue more favorable to the prosecution, where hearsay testimony

can be used and defendants have fewer procedural rights.

In addition, the two prisoners specifically charged with attacking military targets, al-Nashiri and Khadr, are among the five to be tried by a panel of officers. This appears to be a sop to the military, which lost more than 160 personnel at the Pentagon on 9/11, but will see the first 9/11 trial take place in a civilian court, not a military tribunal.

Holder conceded that one factor in deciding to conduct Nashiri's case within the military tribunal system was that the attack targeted a US warship docked in foreign territory, rather than a civilian target on American soil. Seventeen sailors were killed in the bombing of the USS Cole.

One of the most flagrantly anti-democratic aspects of Friday's announcement was the decision to put Omar Khadr before a military tribunal. A Canadian citizen, now 23, Khadr was only 15 at the time he was captured by American forces in Afghanistan. He is not accused of being a high-level Al Qaeda operative, but rather of throwing a grenade and killing an American sergeant during the US invasion, an action that would not be considered criminal in the context of a military conflict.

His attorney, Barry Coburn, called the decision "devastating and shocking," expressing bitter disappointment in the new US administration. "We thought that the incoming Obama administration signaled a new day with respect to these cases, a new respect for civil liberties, an abhorrence of torture, a respect for the time-honored legal procedures and protections."

Court proceedings are under way in Canada, initiated with the support of Khadr's family, to compel the Canadian government to seek his repatriation. Holder was asked at his press conference about the Canadian legal case and said only that the Obama administration was aware of it.

Khadr was born in Toronto and taken to Afghanistan by his father, an Islamic fundamentalist militant. He has spent one-third of his life at Guantánamo Bay.

Documents filed with the Canadian courts show that Khadr was threatened with rape, kept in isolation and subjected to extreme sleep deprivation by his US captors. But an official of the Conservative Party government in Ottawa applauded Holder's announcement, declaring, "We believe the US legal process announced today should run its course."



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