



Alleged 9/11 Co-conspirators to Face Trial

Attorney General Eric Holder announced November 13 that the United States will bring five alleged September 11 co-conspirators to New York for a criminal trial. "I am confident in the ability of our courts to provide these defendants a fair trial, just as they have for over 200 years," Holder told the press. "The alleged 9/11 conspirators will stand trial in our justice system before an impartial jury under long-established rules and procedures."



The five detainees include Khalid Sheikh Mohammed, an alleged top al-Qaeda official who underwent the waterboard torture many times during his more than seven years of detention without trial at Guantanamo Bay, Cuba. All five had been selected for "trial" under the military commissions created by Congress that were struck down by the U.S. Supreme Court as unconstitutional because the trials blatantly violated the Sixth and Seventh Amendments to the U.S. Constitution. Holder [explained](#) that:

Five detainees at Guantanamo have been charged before military commissions with participation in the 9/11 plot: Khalid Sheikh Mohammed, Walid Muhammed Salih Mubarak Bin Attash, Ramzi Bin Al Shibh, Ali Abdul-Aziz Ali, and Mustafa Ahmed Al Hawsawi. Those proceedings have been stayed since February, as have the proceedings pending in military commissions against four other detainees accused of different crimes.

Most neo-conservatives and former Bush administration officials condemned Holder's move. "Khalid Shaikh Mohammed should be treated like the war criminal he is and tried in a military court," former New York City Mayor and U.S. District Attorney Rudy Guiliani [told](#) the Fox News Channel. "He is not just another murderer, or even a mass murderer. He murdered as part of a declared war against us — America."

Former Bush-era Attorney General Michael Mukasey criticized the plan in a speech to the Federalist Society, noting that "the plan seems to abandon the view that we are involved in a war."

Meanwhile, *Weekly Standard* editor William Kristol sifted among Democratic comments about the prosecution announcement and found a statement by Vermont Senator Patrick Leahy making a globalist argument for the trials. Kristol quoted Leahy saying: "By trying them in our federal courts, we demonstrate to the world that the most powerful nation on earth also trusts its judicial system — a system respected around the world." Kristol [replied](#): "Do non-Vermont and non-left-wing Democrats



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really think we need what is likely to be a disgusting and dangerous spectacle in order to demonstrate something “to the world”?

Holder’s statement of the reasons for bringing the terrorist suspects to trial made no mention about demonstrating anything to the world. In fact, Holder’s sole argument was that the United States was bound to follow the law: “For over two hundred years, our nation has relied on a faithful adherence to the rule of law to bring criminals to justice and provide accountability to victims.” Holder also [pointed out](#) that his prosecutors would seek the death penalty for any of those found guilty. “I also want to assure the American people that we will prosecute these cases vigorously, and we will pursue the maximum punishment available.... Federal rules allow us to seek the death penalty for capital offenses, and while we will review the evidence and circumstances following established protocols, I fully expect to direct prosecutors to seek the death penalty against each of the alleged 9/11 conspirators.”

Despite the fact that Kristol — who was also counted among those who [refused to condemn the waterboard torture](#) and other “aggressive interrogations” — was wrong in accusing the Obama administration for initiating the criminal prosecutions as an appeal to the world, he did have a point when he [wrote](#) that Holders’ decision would discredit “54 Senate Democrats who voted recently against legislation to bar such civil trials.” He’s referring to the 2006 Military Commissions Act (MCA), backed by Republicans and Democrats alike, that approved that trials of foreign terrorist suspects under military commissions that would have denied defense counsel exculpatory evidence and even the right to view the evidence against their clients. The military commissions under the MCA would have set up a *third* system of trials other than the criminal and ordinary military systems that the Constitution’s [Fifth](#) and [Sixth](#) Amendment requires, and unconstitutionally ex post facto to the offense. ([Ex post facto](#) laws are unconstitutional under [Article I, Section 9](#) of the U.S. Constitution).

Many Democrats and Republicans alike agreed to suspend the Bill of Rights to pass the MCA, and there may be political fallout from Holder’s decision to go forward with a criminal trial.

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