



November 14, 2009

EDITORIAL

A Return to American Justice

Attorney General Eric Holder Jr. took a bold and principled step on Friday toward repairing the damage wrought by former President George W. Bush with his decision to discard the nation's well-established systems of civilian and military justice in the treatment of detainees captured in antiterrorist operations.

From that entirely unnecessary policy (the United States had the tools to detain, charge and bring terrorists to justice) flowed a terrible legacy of torture and open-ended incarceration. It left President Obama with yet another mess to clean up on an urgent basis.

On Friday, Attorney General Holder [announced that](#) Khalid Shaikh Mohammed, the self-described mastermind of the Sept. 11 attacks, and four others accused in the plot will be tried in a fashion that will not further erode American justice or shame Americans. It promises to finally provide justice for the victims of 9/11.

Mr. Holder said those prisoners would be prosecuted in federal court in Manhattan. It was an enormous victory for the rule of law, a major milestone in Mr. Obama's efforts to close the detention camp at Guantánamo Bay, Cuba, and an important departure from Mr. Bush's disregard for American courts and their proven ability to competently handle high-profile terror cases. If he and Vice President Dick Cheney had shown more faith in the laws and the Constitution, the alleged mass murderers would have faced justice much earlier.

Republican lawmakers and the self-promoting independent senator from Connecticut, Joseph Lieberman, pounced on the chance to appear on television. Despite all evidence to the contrary, they said military tribunals are a more secure and appropriate venue for trying terrorism suspects. Senator John Cornyn of Texas, a former judge who should have more regard for the law, offered the absurd claim that Mr. Obama was treating the 9/11 conspirators as "common criminals."

There is nothing common about them — or Mr. Holder's decision. Putting the five defendants on public trial a few blocks from the site of the former World Trade Center is entirely fitting. Experience shows that federal courts are capable of handling high-profile terrorism trials without comprising legitimate secrets, national security or the rule of law. Mr. Bush's tribunals failed to hold a single trial.

The fact that defense lawyers are likely to press to have evidence of abuse aired in court — Khalid Shaikh Mohammed was tortured by waterboarding 183 times — is unlikely to derail the prosecutions, especially given Mr. Holder's claim to have evidence that has not been released yet.

Regrettably, the decision fell short of a clean break. Five other Guantánamo detainees are to be tried before a military commission for the 2000 bombing of the Navy destroyer Cole, including Abd al-Rahim

al-Nashiri, who is accused of planning the attack.

The rules for the commissions were recently revised to bring them closer to military standards. And Mr. Holder cites the fact that the Cole bombing was an attack on a military target to justify a military trial. But that does not cure the problem of relying on a new system outside the regular military justice system. Nor does it erase the appearance that the government is forum-shopping to win convictions. Most broadly, it fails to establish a clear framework for assigning cases to regular courts or military commissions going forward.

Still, this much is clear: the Obama administration has yet to completely figure out how to rectify the disgraceful Bush detention policies, but it is getting there.

[Copyright 2009 The New York Times Company](#)

[Privacy Policy](#) | [Terms of Service](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)