

ERIC HOLDER ON GREG CRAIG'S DEPARTURE

I've long been tracking the suggestion that Greg Craig was being ousted because he—like Eric Holder—supported some accountability on torture (see [here](#), [here](#), [here](#), and [here](#)). That's why I find this exchange so interesting:

Q: [inaudible] Greg Craig's departure and whether that was a surprise to you?

Holder: Yeah, it was a surprise. Um, Greg Craig is a great lawyer, he has been a great friend to the Justice Department. We've had a good relationship with him. He has, I think, contributed in a significant way to the success of this Administration and, I think, to the success of the effort to close Guantanamo. Um, Greg is a friend of mine. And those who have tried to place on him, um, I think an unfair proportion of the blame as to why things have not proceeded perhaps as we had wanted with regard to Guantanamo, that's simply unfair. He is a great lawyer, he has been a great White House Counsel, he was an early supporter of this President, and I know he leaves with the thanks of the President, and certainly with my gratitude.

The entire transcript, including Q&A, is below the fold.

ATTORNEY GENERAL HOLDER: Good morning. Just over eight years ago, on a morning that our nation will never forget, 19 hijackers working with a network of al Qaeda conspirators around the world launched the deadliest terrorist attacks our country has ever seen. Nearly 3,000 people lost their lives in those attacks, and in the

years since, our nation has had no higher priority than bringing those who planned and plotted the attacks to justice. One year before, in October of 2000, a terrorist attack on the United States Cole killed 17 American sailors.

Today we announce a step forward in bringing those we believe were responsible for the 9/11 attacks and the attack on the U.S.S. Cole to justice. Five detainees at Guantanamo have been charged before military commissions with participation in the 9/11 plot. They are Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin Attash, Ramzi Binalshibh, 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. A case in military commissions against the alleged mastermind of the Cole bombing, Abd al-Rahim al-Nashiri, was withdrawn in February.

For the past several months prosecutors at the Department of Justice have been working diligently with prosecutors from the Pentagon's Office of Military Commissions to review the case of each detainee at Guantanamo who has been referred for prosecution. Over the past few weeks, I have personally reviewed these cases, and in consultation with the Secretary of Defense have made determinations about the prosecution of 10 detainees now held at Guantanamo, including those charged in the 9/11 plot and the alleged mastermind of the Cole bombing.

Today I am announcing that the Department of Justice will pursue prosecution in federal court of the five individuals accused of conspiring to commit the 9/11 attacks. Further, I have decided to refer back to the Department of Defense five defendants who face military commission trials, including the detainee who was previously charged in the U.S.S. Cole bombing.

The 9/11 cases that will be pursued in federal

court have been jointly assigned to prosecutors from the Southern District of New York and the Eastern District of Virginia, and will be brought in Manhattan in the Southern District of New York. After eight years of delay, those allegedly responsible for the attacks of September the 11th will finally face justice. They will be brought to New York, to New York to answer for their alleged crimes in a court house just blocks away from where the Twin Towers once stood.

I am confident in the ability of our courts to provide these defendants a fair trial, just as they have for over 200 years. The alleged 9/11 conspirators will stand trial in our justice system before an impartial jury under long-established rules and procedures.

I also want to assure the American people that we will prosecute these cases vigorously and we will pursue the maximum punishment available. These were extraordinary crimes and so we will seek maximum penalties. 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.

In a speech at the National Archives in May, the President called for the reform of military commissions to ensure that they are lawful, fair and effective prosecution fora. The reforms Congress recently adopted to the Military Commissions Act ensure that military commissions trials will be fair and that convictions obtained will be secure.

I know that the Department of Defense is absolutely committed to ensuring that military commission trials will be consistent with our highest standards as a nation and our civilian prosecutors will continue to work closely with military prosecutors to support them in that effort.

In each case, my decision as to whether to proceed in federal courts or military commissions was based on a protocol that the Departments of Justice and Defense developed, and that was announced publicly in July.

Because many cases could be prosecuted in either federal courts or military commissions, that protocol sets forth a number of factors, including the nature of the offense, the location in which the offense occurred, the identity of the victims and the manner in which the case was investigated. All of these things must be considered. In consultation, again, with the Secretary of Defense, I've looked at all of the relevant factors and made case-by-case decisions for each detainee.

It is important that we be able to use every forum possible to hold terrorists accountable for their actions. Just as a sustained campaign against terrorism requires a combination of intelligence, law enforcement and military operations, so must our legal efforts to bring terrorists to justice involve both federal courts and reformed military commissions.

I want to thank the members of Congress, including Senators Lindsey Graham, Carl Levin and John McCain who worked so hard to strengthen our national security by helping us pass legislation to reform the military commissions system.

We will continue to draw on the Pentagon's support as we bring cases against the alleged 9/11 conspirators in federal court. The Justice Department has a long and a successful history of prosecuting terrorists for their crimes against our nation, particularly in New York. And though these cases can often be complex and challenging, federal prosecutors have successfully met these challenges and have convicted a number of terrorists who are now serving lengthy sentences in our prisons.

And although the security issues presented by terrorism cases should never be minimized, our

Marshals, our court security officers and our prison officials have extensive experience and training dealing with dangerous defendants, and I am quite confident that they can meet the security challenges posed by this case.

These detainees will not be transferred to the United States for prosecution until all legal requirements are satisfied, including those in recent legislation requiring a 45-day notice and report to the Congress. I have already spoken this morning to Governor Paterson and to Mayor Bloomberg and am committed to working closely with them to ensure that all security and related concerns are properly addressed. I have every confidence that we can safely hold these trials in New York as we have so many previous terrorist trials.

For the many Americans who lost friends and relatives in the attacks of September the 11th, 2001, and on the U.S.S. Cole, nothing can bring back those loved ones. But they deserve the opportunity to see the alleged plotters of those attacks held accountable in open court, an opportunity that has too long been delayed.

Today's announcement marks a significant step forward in our efforts to close Guantanamo and to bring to justice those individuals who have conspired to attack our nation and our interests abroad. For over 200 years our nation has relied on a faithful adherence to the rule of law to bring criminals to justice and provide accountability to victims. Once again we will ask our legal system in two venues to rise to that challenge. I am confident that it will answer the call with fairness and with justice.

QUESTION: Mr. Attorney General, what do you say to those who say you have a \$400 million facility down in Cuba that has been secured, why couldn't the terrorists be prosecuted there?

ATTORNEY GENERAL HOLDER: Well, we looked at, as I said, the protocol that we worked out with the Department of Defense and on an individualized basis made the determination that we can, I

think, be most successful in bringing the cases involving the 9/11 detainees in federal court in New York.

QUESTION: How much of a factor for you was it that in the case of the five 9/11 detainees, you're returning them basically to the scene of the crime?

ATTORNEY GENERAL HOLDER: Well, that is something that typically happens in the criminal law. The cases are typically tried in the place where the offenses occurred. And so that was one of the factors. There are a number of other factors that went into making that determination, including the nature of the people who were victims, largely civilians in New York.

In addition to that, this is a matter that, as I said, happened in this country as opposed to overseas, which is different from what we might do with regard to those who are going to be tried in the military commissions. But that is a fundamental tenant of American jurisprudence, that crimes are tried in the places where they occur.

QUESTION: Are you confident that they will actually be able to stand trial, that they'll be found mentally competent and their harsh interrogation techniques like waterboarding, that they'll still be able to go to trial despite that?

ATTORNEY GENERAL HOLDER: I would not have authorized the bringing of these prosecutions unless I thought that the outcome – in the outcome we would ultimately 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.

QUESTION: Attorney General, can you say where you expect these military commissions to be held, and can you give some approximation of how many more Gitmo cases you expect to bring to civilian trial in the United States?

ATTORNEY GENERAL HOLDER: We have not made any determinations yet as to where the military commissions will actually take place. We are in the process of reviewing other cases to decide whether they will be brought in federal court or in military commissions, and I expect that we'll be making additional announcements in the very near future.

QUESTION: Attorney General, some critics have already spoken out, saying this is a very bad decision. Congressman Peter King has been quoted as saying, "This makes New York more of a target." How do you respond to that?

ATTORNEY GENERAL HOLDER: New York has a long history of trying these kinds of cases. The person who bombed the World Trade Centers back, I guess, in 1993 was tried there, the Blind Sheikh was tried there. New York has a hardened system. We have talked to the Marshals service there, an analysis was done about the capabilities that exist in New York, and I'm quite confident that we can safely hold people there, that we can protect the people who surround the courthouse area and bring these cases successfully. So I don't think that that criticism is factually based.

QUESTION: At least one 9/11 family member has spoken up and said they're afraid that this trial in a civilian court will give the defendants a platform to spew their jihadi rhetoric and to ridicule the U.S. justice system. Are you at all concerned about giving them that opportunity or do you think that won't happen?

ATTORNEY GENERAL HOLDER: Well, I'm confident that whatever judge is assigned to this case will maintain the dignity of the proceedings and make sure that the only thing that gets on the record is that which is relevant, and that is the focus on whether or not – the focus that should be on guilt or innocence. So I'm confident, as I am with regard – I'm confident with regard to that particular judge, whoever he or she might be, as I'm confident in all federal

judges who have that capacity.

QUESTION: Attorney General, can you tell us if – you can't assure, obviously, an outcome, you can't assure that these people will be convicted. What happens if they're not convicted? Will there be indefinite detentions for those that are not convicted?

ATTORNEY GENERAL HOLDER: I would not have authorized the prosecution of these cases unless I was confident that our outcome would be a successful one.

QUESTION: General Holder, sorry, just to follow up on that, a lot of 9/11 family members, relatives of the victims, have said consistently, whether it's a military commission or this thing – or a civilian court, as my colleague pointed out, they're concerned that some judge could decide that somebody had done something wrong in the prosecution and spring these guys, or one of them, and that KSM could be wandering the streets of anywhere. How do you assure the family members that that's not going to happen, that these guys aren't going to be let go or exonerated somehow through a technicality and be set free?

ATTORNEY GENERAL HOLDER: I looked at the great work that was done by lawyers from the Department of Defense, the Office of Military Commissions, Department of Justice – I'm a prosecutor myself, looked at the evidence. I've considered the problems that these cases represent, and I'm quite confident that we're going to be successful in the prosecution efforts. If I was concerned about the forum not leading to a positive result or if I had a concern – a different concern, we would perhaps be in a different place.

But the reality is – I want to be as assuring as I can – that based on all of my experience and based on all of the recommendations and the great work and the research that has been done, that I am quite confident that the outcomes in these cases will be successful ones.

QUESTION: The other side of that, though, is that it's – if you're saying you're doing this to uphold the rule of law and for the fairness of justice, if you're picking different forums for different defendants based on where you can be sure that the outcome will be a conviction, and using military commissions on those where you're less sure, evidently, how is that fair? How is that the rule of law?

ATTORNEY GENERAL HOLDER: It's not a question of looking at outcome. It's a question of trying to decide exactly where a case is more appropriately brought. If one looks at what has happened in federal court, we have certainly done and have a great deal of experience with bringing terrorist cases. When it comes to cases that violate the wars of law, there's a greater experience, I think, with regard to military commissions. And so those are among the factors that we take into consideration.

We're not looking for outcomes, trying to decide where we can get a better outcome in the one case or the other. We look at a whole variety of factors that are contained, as I said, in that protocol that is publicly available and make a case-by-case determination.

QUESTION: So all five – just to follow – all five of the ones that are going to military commissions that were decided today, is that because those were military targets, like the Cole, and the 9/11 attacks were primarily civilian targets? Is that the defining characteristic?

ATTORNEY GENERAL HOLDER: There are a variety of factors that go into it. certainly with regards to the Cole bombing, that was an attack on a United States warship, and that, I think, is appropriately placed into the military commission setting. At least one of the others involved is an attack on one of our soldiers. So that is among the factors that we considered in making determinations as to whether they go into civilian federal courts or the military commissions.

QUESTION: General Holder, there's been some concern among victims and family members of people who perished in the 9/11 attacks that the five being sent to New York for civilian court will not be charged square-on with 9/11-type offenses, in other words, material support or some lesser offense. Also wondering if you would expect all five of those men to go on trial together or whether they would have separate trials?

ATTORNEY GENERAL HOLDER: We are charging them with the most serious offenses that are appropriate, and we are, as I indicated, seeking the most serious punishment. As I said, I expect to ask for the death penalty when it comes to the prosecution of those five individuals. That is, I think, an indication of how serious I view these cases, how consequential their – how negatively consequential their actions were, and how ultimately they must face the ultimate justice.

QUESTION: Attorney General Holder, coincidentally the Canadian Supreme Court is hearing arguments about the transfer of Omar Khadr to Canada. The lawyer for Khadr suggested today that Khadr will be transferred to the United States to be tried. Will Khadr be transferred here for trial, and if the Canadian courts direct the government of Canada to request Khadr to be transferred to Canada, would you consider that request or would the commission trials here trump that?

ATTORNEY GENERAL HOLDER: Well, we'll look at the Khadr matter. At this point it is one of – I believe one of the cases that's designated for commission, a commission proceeding. And we will, as that case proceeds, see how it should be ultimately treated.

QUESTION: Harsh interrogation techniques, inevitably defense lawyers are going to seek full disclosure about the circumstances of how these detainees were treated while they were in U.S. custody and want to get as much of that before the jury as they can. What is the

Department's position going to be on whether the defense will be entitled to know the full story of how these detainees were treated while they were in U.S. custody?

ATTORNEY GENERAL HOLDER: Well, I think the question – among the questions that have to be asked in that regard is, is relevance. How relevant were those statements? Will those statements be used? I don't know what the defense will try to do, it's hard for me to speculate at this point, so it's hard to know exactly what our response will be. But I'm quite confident on the basis of the evidence that we will be able to present, some of which, as I said, has not been even publicly discussed before, that we will be successful in our attempts to convict those men.

QUESTION: Will they be entitled to that evidence, entitled to know the full story of how they were treated?

ATTORNEY GENERAL HOLDER: We'll see what motions they file, and we'll see what responses we make, and a judge will ultimately make that determination.

QUESTION: – Greg Craig's departure as White House Counsel and whether that was a surprise to you?

ATTORNEY GENERAL HOLDER: Yeah, it was a surprise. Greg Craig is a great lawyer, he has been a great friend to the Justice Department. We've had a good relationship with him. He has, I think, contributed in a significant way to the success of this administration and I think to the success of the effort to close Guantanamo.

Greg is a friend of mine, and those who have tried to place on him I think an unfair proportion of the blame as to why things have not proceeded perhaps as we had wanted with regard to Guantanamo, that's simply unfair. He is a great lawyer, he has been a great White House Counsel. He was an early supporter of this President and I know he leaves with the thanks of the President and certainly with my

gratitude.

QUESTION: Sir, related to that, can you walk through that process and effort to close – at least part of an effort to close Guantanamo Bay? Can you talk about how, with this announcement, how far off you think that day is?

ATTORNEY GENERAL HOLDER: Well, as I've said before, I think it's going to be difficult to close the facility by January the 22nd. And one of the things that I think is most problematic in that regard is trying to relocate the people who are going to be approved for transfer, finding places where they can be safely placed both for the nation that will host them and for the Americans – for American citizens. I'm not sure we're going to be able to complete that process by January the 22nd, though we are constantly in the process of trying to do exactly that.

QUESTION: For the detainees that will be brought to U.S. soil, can you give us a sense of, are they going to be distributed through federal prisons throughout the country, will there be one central location? Can you give us a sense of how that will play out?

ATTORNEY GENERAL HOLDER: My expectation is that they will be housed, as all defendants are, near the places where the trials will occur.

QUESTION: How soon do you think charges will be filed against these five?

ATTORNEY GENERAL HOLDER: I think that's hard to say. We will seek to bring these indictments as quickly as we can. We'll obviously have to follow the laws that have been passed by Congress with regard to notifications, the 45-day waiting period. But I would expect that we will have indictments returned relatively soon.

QUESTION: Attorney General Holder, you said that you're charging them with the most serious offenses that are appropriate. You didn't come out and say specifically that they're going to be charged with the 9/11 attacks. Can you

elaborate on that? I mean, are they going to be charged with that conspiracy specifically or with something less than that or related to that?

ATTORNEY GENERAL HOLDER: They'll be charged for what we believe they did, and that is to mastermind and carry out the 9/11 attacks.

QUESTION: General Holder, how close a call was your decision to send this to a civilian court given the gravity of the issues which you face on security, classified evidence, the torture issue that's been discussed? How close a call was it?

ATTORNEY GENERAL HOLDER: I've only been Attorney General for eight or nine months, and I think this is about the toughest decision that I've had to make as Attorney General, trying to balance the need to ensure that we maximize our chances of success and hold accountable the people who committed these heinous offenses, while at the same time adhering to what I think has been a guide through this administration, adherence to the rule of law. Balancing all those factors, taking to account the desires of the victims, trying to protect classified information, taking all these things into account, it has been a very difficult decision, but I'm comfortable with the decisions that we have made with regard to the placement of people both in civilian courts as well as the military commissions.

QUESTION: Attorney General, you said you're very comfortable with the legal reasons for these decisions and how you expect this to play out legally. Are you – how concerned are you about how this will play out politically, because obviously there's the Hill and there's public opinion, which some polls suggest are really a fan of this idea of bringing people to trial here?

ATTORNEY GENERAL HOLDER: My job as Attorney General is to look at the law, apply the facts to the law, to ultimately do what I think is in

the best interests of this country and our system of justice. Those are my guides. To the extent that there are political consequences, well, you know, I'll just have to take my lumps, to the extent that those are sent my way.

But I think if people will, in a neutral and detached way, look at the decision that I have made today, understand the reasons why I made those decisions, and try to do something that's rare in Washington, leave the politics out of it and focus on what's in the best interests of this country, I think the criticism will be relatively muted. Having said that, I'm sure we'll hear a lot of criticism.

QUESTION: Will you address some of your concerns about the Speedy Trial Act with these cases? And also, how much of these trials can we expect would be open to the public, given some of the classified information that could be –

ATTORNEY GENERAL HOLDER: I don't want to speculate about any particular motions that might be filed. With regard to the openness of the trials, I think we get a sense of that from other significant terrorist trials that have occurred, where they were largely open. Portions of them will likely be closed so that classified information, sources and methods are not revealed, but I would expect that these trials will be open to the public, open to the world, and open to the survivors and victims of these heinous acts.

QUESTION: Will you try the suspects together and/or separately, and do you think they can get a fair trial in New York?

ATTORNEY GENERAL HOLDER: I expect that we will try them together and I expect that through a really searching, complete voir dire process that we can come up with a jury that will ensure that the defendants will get a fair trial in New York.

Thank you.