

RELEASE IN FULL

From: Mills, Cheryl D <MillsCD@state.gov>
Sent: Monday, April 4, 2011 5:51 PM
To: H
Subject: FW: Khalid Sheikh Mohammed: The Capitulation Is Complete

From: Toiv, Nora F
Sent: Monday, April 04, 2011 5:49 PM
To: Mills, Cheryl D
Subject: Khalid Sheikh Mohammed: The Capitulation Is Complete

National Journal Member

ANALYSIS

Khalid Sheikh Mohammed: The Capitulation Is Complete

by Andrew Cohen, *The Atlantic*

Monday, April 4, 2011 | 1:32 p.m.

Attorney General Eric Holder now has the dubious chore of announcing that Khalid Sheikh Mohammed will be prosecuted by military commission at Guantanamo Bay.

In the case of Khalid Sheikh Mohammed, the Obama administration's capitulation is complete. Attorney General Eric Holder, who only 17 months ago heralded a federal civilian trial in New York City for the man accused of masterminding the largest mass murder in American history, now has the dubious chore of announcing to the world that Mohammed instead will be prosecuted by military commission down at Guantanamo Bay, Cuba.

The reversal of plans, if not of policy, will likely be considered one of Holder's most disappointing legacies at the Justice Department. As recounted masterfully last year by Jane Mayer in *The New Yorker* magazine, Holder inexplicably missed several opportunities early on in the process to ease the concerns (some warranted, some not) of local New York officials and other politicians regarding holding a civilian trial in Manhattan. And it has become increasingly clear over time that the White House and Justice Department have been unable to stem the tide of fear and loathing toward Mohammed (and the other terror-law detainees), as expressed with increasing ardor from Capitol Hill.

Whatever its political ramifications for the Obama administration, Holder's retreat in *United States v. Mohammed* won't likely change the defendant's fate at all. He'll still be convicted and likely sentenced to death -- as he surely would have been had his case been left to jurors in lower downtown New York City -- only it will probably now happen sooner rather than later. His military prosecutors won't have to focus just upon ensuring the layup conviction here, but also upon undertaking a trial that ultimately will withstand appellate review by the federal courts. The latter task almost certainly will be more difficult than the former.

I'll have more later -- after the attorney general's press conference, scheduled for 2 p.m. It will be interesting to see whether Holder goes down swinging on this, and rightly calls out the Congress and other new-found opponents of civilian trials

for terror suspects, or whether he declares that a military tribunal for Mohammed is the only practical way forward, given legislative opposition to bringing Mohammed to the States for trial.

Either way, however, today's executive branch cave to Congress reminds us how far we have come from the days, immediately following 9/11, when the executive branch did pretty much what it pleased, when it pleased it, in the vital area of terror law.