

November 17, 2009

Yesterday it was Afghan force levels. Today the KSM trial in New York City.

The decision to prosecute terrorist Khalid Sheikh Mohammed through the US court system is being criticized for the national security threat it poses, the damage to intelligence and intelligence-gathering, and the security threat for New York and those involved in the trial. We hear from a number of commentators on these topics, and on the inefficiency and illogical disruption of the military prosecutorial process already started, as well as the political ideology and poor judgment by Obama and Holder that led to this.

Investor's Business Daily starts a five part series on the housing crisis written by Thomas Sowell.

And the cartoonists go crazy with Obama's bow to the emperor of Japan.

[Peter Wehner](#) posts in Contentions about the upcoming terrorist trial.

The Obama administration is pursuing the prosecution of the 9/11 mastermind Khalid Sheikh Mohammed in federal court in New York. In light of this astonishing decision, I was reminded by a friend that, according to the New York Times, Sheikh Mohammed met his captors with cocky defiance at first, telling one veteran CIA officer that he would talk only when he got to New York and was assigned a lawyer. It looks as though Sheikh Mohammed has seen his defiance vindicated. He has now found an administration more amenable to his view of justice than was the previous one. The Holderization of American justice continues. And I suspect that there will be bad consequences all around for this action.

[Bill Kristol](#) comments on Holder's lack of judgment regarding several aspects of the upcoming trial.

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It's unbelievable that the attorney general would use that phrase in the course of justifying his decision. ...

...Leave aside all the practical problems with trying KSM and his henchmen in a civilian court. Doesn't Eric Holder realize he's inviting a circus-like "juicy tabloid trial" for men who have the blood of thousands of Americans on their hands? Does he really think such a trial will contribute to "fairness and justice," as he claims? Does he think military tribunals aren't fair and just? And did it never occur to him to ask whether giving the terrorists the chance to create a tabloid spectacle is an appropriate way to honor our dead and those who continue to fight the jihadists?

I'm very doubtful a "trial of the century" will serve the cause of fairness and justice. I'm certain it won't help the cause of victory.

[Andy McCarthy](#) comments that Obama's and Holder's political agenda is more important to them than national security. He gives some background, then discusses the trial.

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Let's take stock of where we are at this point. KSM and his confederates wanted to plead guilty and have their martyrs' execution last December, when they were being handled by military commission. As I said at the time, we could and should have accommodated them. The Obama administration could still accommodate them. After all, the president has not pulled the plug on all military commissions: Holder is going to announce at least one commission trial (for Nashiri, the Cole bomber) today. ...

...So: We are now going to have a trial that never had to happen for defendants who have no defense. And when defendants have no defense for their own actions, there is only one thing for their lawyers to do: put the government on trial in hopes of getting the jury (and the media) spun up over government errors, abuses and incompetence. That is what is going to happen in the trial of KSM et al. It will be a soapbox for al-Qaeda's case against America. Since that will be their "defense," the defendants will demand every bit of information they can get about interrogations, renditions, secret prisons, undercover operations targeting Muslims and mosques, etc., and — depending on what judge catches the case — they are likely to be given a lot of it. The administration will be able to claim that the judge, not the administration, is responsible for the exposure of our defense secrets. And the circus will be played out for all to see — in the middle of the war. It will provide endless fodder for the transnational Left to press its case that actions taken in America's defense are violations of international law that must be addressed by foreign courts. And the intelligence bounty will make our enemies more efficient at killing us.

Turns out [David Paterson, NY Governor](#), also thinks it's a terrible decision.

Gov. David Paterson openly criticized the White House on Monday, saying he thought it was a terrible idea to move alleged 9/11 mastermind Khalid Sheikh Mohammed and four other suspected terrorists to New York for trial.

"This is not a decision that I would have made. I think terrorism isn't just attack, it's anxiety and I think you feel the anxiety and frustration of New Yorkers who took the bullet for the rest of the country," he said.

Paterson's comments break with Democrats, who generally support the President's decision.

"Our country was attacked on its own soil on September 11, 2001 and New York was very much the epicenter of that attack. Over 2,700 lives were lost," he said. "It's very painful. We're still having trouble getting over it. We still have been unable to rebuild that site and having those terrorists so close to the attack is gonna be an encumbrance on all New Yorkers."

Paterson also said that the White House warned him six months ago this very situation would happen. ...

[Jennifer Rubin](#) joins in the condemnation. She includes a statement from Senator Lieberman expressing his disapproval.

[Pete](#), the decision to transport Khalid Sheikh Mohammed to the U.S. to be tried in an Article III court, presumably with the same rights as common American criminals, is shocking and entirely unnecessary. I would submit that someone in the Obama administration recognizes this. As pointed out to me today by a congressman infuriated by the decision, the president is out of the country. Congress is not in session. It's a Friday. The ultimate bad-news dump. In this context, it suggests not only a queasy awareness that the American people won't like this but also, frankly, political cowardice. This is a major decision with long-term consequences. If the president believes what he is doing is right, he should exercise leadership and explain it to the American people. Himself.

But, again, the decision itself is utterly unnecessary. As Sen. Joe Lieberman has pointed out, we have a military-tribunal system designed for precisely these cases. His [statement](#) reminded us:

"The military commission system recently signed into law by the President as part of the National Defense Authorization Act provides standards of due process and fairness that fully comply with the requirements established by the Supreme Court and the Geneva Conventions. Earlier this year, when passing the

National Defense Authorization Act, the Senate also passed language expressing its clear intent that military commissions rather than civilian courts in the U.S. are the appropriate forum for the trial of these alleged terrorists. I share the views of more than 140 family members of the victims of the September 11, 2001 terrorist attacks who recently wrote to the Senate urging that the individuals charged with responsibility for those attacks should be tried by military commission rather than in civilian courts in the United States: It is inconceivable that we would bring these alleged terrorists back to New York for trial, to the scene of the carnage they created eight years ago, and give them a platform to mock the suffering of their victims and the victims' families, and rally their followers to continue waging jihad against America."

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Writing in [WSJ](#), [John Yoo](#) has an excellent article on KSM's background, how the intelligence information from the trial will be used by Al Qaeda, and the military commission option designed to handle such cases.

...Prosecutors will be forced to reveal U.S. intelligence on KSM, the methods and sources for acquiring its information, and his relationships to fellow al Qaeda operatives. The information will enable al Qaeda to drop plans and personnel whose cover is blown. It will enable it to detect our means of intelligence-gathering, and to push forward into areas we know nothing about.

This is not hypothetical, as former federal prosecutor Andrew McCarthy has explained. During the 1993 World Trade Center bombing trial of Sheikh Omar Abdel Rahman (aka the "blind Sheikh"), standard criminal trial rules required the government to turn over to the defendants a list of 200 possible co-conspirators.

In essence, this list was a sketch of American intelligence on al Qaeda. According to Mr. McCarthy, who tried the case, it was delivered to bin Laden in Sudan on a silver platter within days of its production as a court exhibit.

Bin Laden, who was on the list, could immediately see who was compromised. He also could start figuring out how American intelligence had learned its information and anticipate what our future moves were likely to be. ...

In the [American Spectator](#), [Philip Klein](#) writes about the security issues that former Attorney General Michael Mukasey noted in a talk. Mukasey was the judge in the trial from the first World Trade Center attack.

...There would also be tremendous security issues involved with making sure that courthouses, jails, the judge and jury, were all safe.

"It would take a whole lot more credulousness than I have available to be optimistic about the outcome of this latest experiment," Mukasey said at the conclusion of his formal remarks.

During a question and answer session that followed, Mukasey was asked if he felt the jails in New York were secure enough to make sure terrorists would not escape, but he said that wasn't really the issue.

"If you ask the wrong question, you're sure to get the wrong answer," Mukasey responded. "Of course it's secure. They're not going to escape. The question is not whether they're going to escape, the question is whether not only that facility, but the city at large will then become the focus for mischief in the form of murder by adherents of KSM, whether this raises the odds that it will. And I would suggest to you that it raises them very high. It is also whether the proceeding, even assuming that it goes forward within the

lifetime of anybody in this room, is one where confidential information is able to be kept confidential, and a trial is able to proceed in an orderly way.”

He later added that, "to the extent that they are within prisons, they are a threat there as well. Any of these people would be a virtually totemic figure in a prison." He argued that "shoe bomber" Richard Reid's success in challenging his solitary confinement shows that there's no guarantee that convicted terrorists would stay isolated from the rest of the prison population. ...

Rachel Adams, in a Weekly Standard blog, posts on Holder's arrogance and hypocrisy.

Though it is a piece of superficiality worthy of People magazine, the Washington Post's account of the process by which Eric Holder came to make his decision to try war criminals in federal court is a remarkable--if inadvertent--revelation of just how much, despite their vastly disparate backgrounds, the attorney general resembles his coolly remote boss, the president. ...

"...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 interest of this country--I think the criticism will be relatively muted."

And there you have it. The dispassion, the self-reverence, the blindness of the man, are marvelous to behold, and so perfectly reflect the president he so perfectly serves. "Neutral and detached" people shall "understand the reasons why" he made those decisions, shall see he has left "the politics out of it," and shall recognize what's right--something the rest of us, benighted and bellicose souls that we are, have never managed to do with respect to the disposition of those committing mass murders of Americans in their ongoing war against our civilization.

Investor's Business Daily hosts a five-part series on housing from one of our favorites, **Thomas Sowell**. Today Sowell discusses how government intervention drove the housing bubble.

...In reality, government agencies not only approved the more lax standards for mortgage loan applicants, government officials were in fact the driving force behind the loosening of mortgage loan requirements.

Members of Congress from both political parties have urged federal regulatory agencies to press banks and other lenders to lower mortgage loan requirements, and have passed legislation to that end and to subsidize or guarantee loans made under lowered standards. ...

...Despite the widespread assumption that government intervention is the key to making housing affordable to people of moderate or low incomes, history shows that it has been precisely in the times and places where government intervention has been greatest that housing costs have been both highest in absolute terms and have taken a larger share of the average income.

This is true whether we compare different places at the same time or different time periods with one another. If we look back to the beginning of the 20th century, when government played a much smaller role in the housing market and there were far fewer restrictions on building, the average American's housing costs were a smaller share of consumer expenditures than at the end of that century. ...

In the [Times, UK](#), [Giles Whittell](#) may be left of center, but he sees the big picture: Obamacare is not about health care; it's about power.

...Deep down, Barack Obama believes it's his turn. He ran for President promising change, and won. "Change" could mean anything to anyone. That was its chief merit as a slogan. But this Administration believes in its soul that the many meanings of the word should include a willingness to expand the role of the State itself if nothing else works. On economic management that meant taking controlling stakes in banks and car giants to stop them failing. On healthcare, it means proving that the Federal Government can move into running a nationwide low-cost insurance programme, and not screw it up.

My father-in-law believes a screw-up is inevitable. For his generation of Eisenhower Republicans it is axiomatic that anything the private sector can do, the public sector can do only worse. Dick Armey and the army of Tea Party activists that he informally leads go much farther. They call the slightest expansion of the State a step towards Marxism. They say so politely, seriously, despairingly, on battle buses and in town halls across the country, and it is a great mistake to doubt their sincerity. ...

...The insurgents also smell blood. As Mr Armey said, this is about power and political control. Mr Obama has staked his presidency on showing that he can win reforms that eluded Mr Clinton in 1994 and generations before that. He has majorities in both houses. Even the legal tussle for a disputed Minnesota Senate seat went the Democrats' way, adding a self-important comedian to their caucus in the upper house and giving them, in principle, a filibuster-proof majority. Yet the President seems unable to use it. ...

...The Tea Party insurgency has blunted the health crusade from the Right. Democratic infighting over tax-funded abortions may do the same from the Left. Slippage deep into next year is entirely possible. So is complete failure, and if Mr Obama fails on healthcare what remains of the bubble of hope he created in his 2008 campaign will deflate faster than a blood pressure cuff in an overpriced private hospital. He will be, at best, a Clinton facsimile; at worst another Carter, undone by his own naivety and shorn of his unused majorities in next year's mid-terms. ...

Contentions

[Khalid Sheikh Mohammed Goes to New York](#)

by Peter Wehner

The Obama administration is pursuing the prosecution of the 9/11 mastermind Khalid Sheikh Mohammed in federal court in New York. In light of this astonishing decision, I was reminded by a friend that, according to the *New York Times*, Sheikh Mohammed met his captors with cocky defiance at first, telling one veteran CIA officer that he would talk only when he got to New York and was assigned a lawyer. It looks as though Sheikh Mohammed has seen his defiance vindicated. He has now found an administration more amenable to his view of justice than was the previous one. The Holderization of American justice continues. And I suspect that there will be bad consequences all around for this action.

Weekly Standard Blog

["Truly the trial of the century"](#)

by William Kristol

Attorney General Eric Holder said yesterday that the trial of Khalid Sheikh Mohammed in federal court in New York will be "truly the trial of the century."

It's unbelievable that the attorney general would use that phrase in the course of justifying his decision.

As Wikipedia helpfully [explains](#):

Trial of the century is an idiomatic phrase used to describe certain well-known court cases, especially of the twentieth century....The Washington Post observed in 1999 on the eve of the closing century: "Calling court cases "the trial of the century" is a traditional bit of American hyperbole, like calling a circus "The Greatest Show on Earth." Nearly every juicy tabloid trial in our history was called the "trial of the century" by somebody. "Every time I turn around, there's a new trial of the century," says defense attorney F. Lee Bailey. "It's a kind of hype," he says. "It's a way of saying, 'This is really fabulous. It's really sensational.' But it doesn't really mean anything.""

Leave aside all the practical problems with trying KSM and his henchmen in a civilian court. Doesn't Eric Holder realize he's inviting a circus-like "juicy tabloid trial" for men who have the blood of thousands of Americans on their hands? Does he really think such a trial will contribute to "fairness and justice," as he claims? Does he think military tribunals aren't fair and just? And did it never occur to him to ask whether giving the terrorists the chance to create a tabloid spectacle is an appropriate way to honor our dead and those who continue to fight the jihadists?

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The Corner

[Holder's Hidden Agenda, cont'd . . .](#) [Andy McCarthy]

This summer, I theorized that Attorney General Eric Holder — and his boss — had a hidden agenda in ordering a re-investigation of the CIA for six-year-old alleged interrogation excesses that had already been scrutinized by non-partisan DOJ prosecutors who had found no basis for prosecution. The continuing investigations of Bush-era counterterrorism policies (i.e., the policies that kept us safe from more domestic terror attacks), coupled with the Holder Justice Department's obsession to disclose classified national-defense information from that period, enable Holder to give the hard Left the "reckoning" that he and Obama promised during the 2008 campaign. It would be too politically explosive for Obama/Holder to do the dirty work of charging Bush administration officials; but as new revelations from investigations and declassifications are churned out, Leftist lawyers use them to urge European and international tribunals to bring "torture" and "war crimes" indictments. Thus, administration cooperation gives Obama's base the reckoning it demands but Obama gets to deny responsibility for any actual prosecutions.

Today's announcement that KSM and other top al-Qaeda terrorists will be transferred to Manhattan federal court for civilian trials neatly fits this hidden agenda. *Nothing* results in more disclosures of government intelligence than civilian trials. They are a banquet of information, not just at the discovery stage but in the trial process itself, where witnesses — intelligence sources — must expose themselves and their secrets.

Let's take stock of where we are at this point. KSM and his confederates wanted to plead guilty and have their martyrs' execution last December, when they were being handled by military commission. As I said at the time, we could and should have accommodated them. The Obama administration could still accommodate them. After all, the president has not pulled the plug on all military commissions: Holder is going to announce at least one commission trial (for Nashiri, the Cole bomber) today.

Moreover, KSM has no defense. He was under American indictment for terrorism for years before there ever was a 9/11, and he can't help himself but brag about the atrocities he and his fellow barbarians have carried out.

So: We are now going to have a trial that never had to happen for defendants who have no defense. And when defendants have no defense for their own actions, there is only one thing for their lawyers to do: put the government on trial in hopes of getting the jury (and the media) spun up over government errors, abuses and incompetence. That is what is going to happen in the trial of KSM et al. It will be a soapbox for al-Qaeda's case against America. Since that will be their "defense," the defendants will demand every bit of information they can get about interrogations, renditions, secret prisons, undercover operations targeting Muslims and mosques, etc., and — depending on what judge catches the case — they are likely to be given

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WCBS-TV Channel 2 - New York

Paterson Rips White House For NYC 9/11 Trial

New York Governor Says Trying Khalid Sheikh Mohammed, 4 Others In New York 'A Decision I Would Not Have Made'

by Marcia Kramer

Gov. David Paterson openly criticized the White House on Monday, saying he thought it was a terrible idea to move alleged 9/11 mastermind Khalid Sheikh Mohammed and four other suspected terrorists to New York for trial.

"This is not a decision that I would have made. I think terrorism isn't just attack, it's anxiety and I think you feel the anxiety and frustration of New Yorkers who took the bullet for the rest of the country," he said.

Paterson's comments break with Democrats, who generally support the President's decision.

"Our country was attacked on its own soil on September 11, 2001 and New York was very much the epicenter of that attack. Over 2,700 lives were lost," he said. "It's very painful. We're still having trouble getting over it. We still have been unable to rebuild that site and having those terrorists so close to the attack is gonna be an encumbrance on all New Yorkers."

Paterson also said that the White House warned him six months ago this very situation would happen. He said while he disagrees with the decision, he will do everything in his power to make sure that the state's Department of Homeland Security will keep New Yorkers as safe as possible.

Republicans, including former New York City mayor Rudy Giuliani, have said the group should be tried in a different location under military tribunal because the attacks are considered an act of war.

Instead, the five suspects will be tried at the federal court house, just steps from Ground Zero.

Attorney General Eric Holder said he decided to bring the suspects, currently detained at Guantanamo Bay, Cuba, to trial in New York because of the nature of the undisclosed evidence against them, because the 9/11 victims were mostly civilians, and because the attacks took place on U.S. soil.

New Yorkers are taking sides over the terror trial for the accused mastermind of the September 11 attacks. "I think it's a logistical and security nightmare for the American People," Alice Hoagland, mother of a 9/11 victim, said.

Hoagland's son was a passenger on United Flight 93 when terrorists crashed it into a Pennsylvania field on that tragic day. Hoagland worries that bringing the self-proclaimed mastermind of the attacks, Khalid Sheikh Mohammed, and his accomplices to New York would make the city an even bigger target — and some security experts agree.

"Keeping the courthouse secure, keeping downtown secure, we've got the manpower to do that, but what we worry about is suicide bombers, something that could attract other terrorists like the ones that are being tried," Robert Strang, of Investigative Management Group, said.

Police Commissioner Ray Kelly said the NYPD is fully prepared. ... [Want to read the rest of this, click here.](#)

Contentions

Re: Khalid Sheikh Mohammed Goes to New York

by Jennifer Rubin

Pete, the decision to transport Khalid Sheikh Mohammed to the U.S. to be tried in an Article III court, presumably with the same rights as common American criminals, is shocking and entirely unnecessary. I would submit that someone in the Obama administration recognizes this. As pointed out to me today by a congressman infuriated by the decision, the president is out of the country. Congress is not in session. It's a Friday. The ultimate bad-news dump. In this context, it suggests not only a queasy awareness that the American people won't like this but also, frankly, political cowardice. This is a major decision with long-term consequences. If the president believes what he is doing is right, he should exercise leadership and explain it to the American people. Himself.

But, again, the decision itself is utterly unnecessary. As Sen. Joe Lieberman has pointed out, we have a military-tribunal system designed for precisely these cases. His statement reminded us:

The military commission system recently signed into law by the President as part of the National Defense Authorization Act provides standards of due process and fairness that fully comply with the requirements established by the Supreme Court and the Geneva Conventions. Earlier this year, when passing the National Defense Authorization Act, the Senate also passed language expressing its clear intent that military commissions rather than civilian courts in the U.S. are the appropriate forum for the trial of these alleged terrorists. I share the views of more than 140 family members of the victims of the September 11, 2001 terrorist attacks who recently wrote to the Senate urging that the individuals charged with responsibility for those attacks should be tried by military commission rather than in civilian courts in the United States: It is inconceivable that we would bring these alleged terrorists back to New York for trial, to the scene of the carnage they created eight years ago, and give them a platform to mock the suffering of their victims and the victims' families, and rally their followers to continue waging jihad against America.

And let's recall how we got here. An informed legal guru observes that we decided to prosecute KSM in a military commission in part because past trials (e.g., those of the "Blind Sheikh" and Ramzi Yousef) may have compromised intelligence. So now we've gone back to the very system that, for legitimate national-security reasons, we had abandoned. As Andy McCarthy, who prosecuted the first World Trade Center bombing trial, observes:

Today's announcement that KSM and other top al-Qaeda terrorists will be transferred to Manhattan federal court for civilian trials neatly fits this hidden agenda. *Nothing* results in more disclosures of government intelligence than civilian trials. They are a banquet of information, not just at the discovery stage but in the trial process itself, where witnesses — intelligence sources — must expose themselves and their secrets.

And what sort of trial? I find it difficult to believe that KSM will not enjoy all the panoply of rights and procedures available in any criminal proceeding. We can look forward to years of motions, demands for classified data, and efforts to prove up that information was extracted under duress and in violation of his constitutional rights. The jailers and interrogators are about to stand trial.

What do we hope to accomplish? It is almost unfathomable. Sen. Kit Bond declared: "Today's announcement, as well as the Obama Justice Department's recent decisions to dismantle and release information about the CIA's interrogation program and support the erosion of the PATRIOT Act tools needed to keep us safe, calls into serious doubt their priorities — defeating terrorism to protect Americans or politically correct prosecutions." Precisely so. Is this a bone to the netroot Left, which may be disappointed by an upcoming decision on Afghanistan? Or is this Eric Holder's band of loony-Left DOJ attorneys run amok? Perhaps the Obama team is still out to impress the "Muslim World."

The 9/11 Commission warned about an excess reliance on criminal-justice procedures and the failure to treat terrorism as a act of war. We are repeating the errors of the past, just days after the worst jihadist attack on American soil since 9/11. (Yes, that's what it is when the killer shouts "Allahu Akbar!" and proceeds on his self-described mission "to do good work for God.") We have a president and an administration that is unserious about national security and whose priorities are something other than keeping America safe. We are as a consequence less safe since Obama assumed office. The American people will, I strongly suspect, agree.

WSJ

The KSM Trial Will Be an Intelligence Bonanza for al Qaeda

The government will have to choose between vigorous prosecution and revealing classified sources and methods.

by John Yoo

'This is a prosecutorial decision as well as a national security decision,' President Barack Obama said last week about the attorney general's announcement that Khalid Sheikh Mohammed and other al Qaeda operatives will be put on trial in New York City federal court.

No, it is not. It is a presidential decision—one about the hard, ever-present trade-off between civil liberties and national security.

Trying KSM in civilian court will be an intelligence bonanza for al Qaeda and the hostile nations that will view the U.S. intelligence methods and sources that such a trial will reveal. The proceedings will tie up judges for years on issues best left to the president and Congress.

Whether a jury ultimately convicts KSM and his fellows, or sentences them to death, is beside the point. The treatment of the 9/11 attacks as a criminal matter rather than as an act of war will cripple American efforts to fight terrorism. It is in effect a declaration that this nation is no longer at war.

KSM is the self-proclaimed mastermind of the 9/11 attacks on the World Trade Center and the Pentagon—and a "terrorist entrepreneur," according to the 9/11 Commission report. He was the brains behind a succession of operations against the U.S., including the 1996 "Bojinka plot" to crash jetliners into American cities. Together with Osama bin Laden, he selected the 9/11 terrorists, arranged their financing and training, and ran the whole operation from abroad.

After the U.S. invasion of Afghanistan KSM eventually became bin Laden's operations chief. American and Pakistani intelligence forces captured him on March 1, 2003, in Rawalpindi, Pakistan.

Now, however, KSM and his co-defendants will enjoy the benefits and rights that the Constitution accords to citizens and resident aliens—including the right to demand that the government produce in open court all of the information that it has on them, and how it got it.

Prosecutors will be forced to reveal U.S. intelligence on KSM, the methods and sources for acquiring its information, and his relationships to fellow al Qaeda operatives. The information will enable al Qaeda to drop plans and personnel whose cover is blown. It will enable it to detect our means of intelligence-gathering, and to push forward into areas we know nothing about.

This is not hypothetical, as former federal prosecutor Andrew McCarthy has explained. During the 1993 World Trade Center bombing trial of Sheikh Omar Abdel Rahman (aka the "blind Sheikh"), standard criminal trial rules required the government to turn over to the defendants a list of 200 possible co-conspirators.

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Bin Laden, who was on the list, could immediately see who was compromised. He also could start figuring out how American intelligence had learned its information and anticipate what our future moves were likely to be.

Even more harmful to our national security will be the effect a civilian trial of KSM will have on the future conduct of intelligence officers and military personnel. Will they have to read al Qaeda terrorists their Miranda rights? Will they have to secure the "crime scene" under battlefield conditions? Will they have to take statements from nearby "witnesses"? Will they have to gather evidence and secure its chain of custody for transport all the way back to New York? All of this while intelligence officers and soldiers operate in a war zone, trying to stay alive, and working to complete their mission and get out without casualties.

The Obama administration has rejected the tool designed to solve this tension between civilian trials and the demands of intelligence and military operations. In 2001, President George W. Bush established military commissions, which have a long history that includes World War II, the Civil War and the Revolutionary War. The lawyers in the Bush administration—I was one—understood that military commissions could guarantee a fair trial while protecting national security secrets from excessive exposure.

The Supreme Court has upheld the use of commissions for war crimes. The procedures for these commissions received the approval of Congress in 2006 and 2009.

Stranger yet, the Obama administration declared last week that it would use these military commissions to try five other al Qaeda operatives held at Guantanamo Bay, including Abu Rahim al-Nashiri, the alleged planner of the 2000 bombing of the USS Cole in Yemen. It should make no difference that this second group attacked a military target overseas. If anything, the deliberate attack on purely civilian targets in New York City represents the greater war crime.

For a preview of the KSM trial, look at what happened in the case of Zacarias Moussaoui, the so-called 20th hijacker who was arrested in the U.S. just before 9/11. His trial never made it to a jury. Moussaoui's lawyers tied the court up in knots.

All they had to do was demand that the government hand over all its intelligence on him. The case became a four-year circus, giving Moussaoui a platform to air his anti-American tirades. The only reason the trial ended was because, at the last minute, Moussaoui decided to plead guilty. That plea relieved the government of the choice between allowing a fishing expedition into its intelligence files or dismissing the charges.

KSM's lawyers will not save the government from itself. Instead they will press hard to reveal intelligence secrets in open court. Our intelligence agents and soldiers will be the ones to suffer.

Mr. Yoo is a law professor at the University of California, Berkeley. He was an official in the Justice Department from 2001-03 and is a visiting scholar at the American Enterprise Institute.

Former Attorney General Michael Mukasey, who as a judge presided over a trial stemming from the first attack on the World Trade Center, on Friday warned that the Obama administration's decision to bring Sept. 11 mastermind Khalid Sheikh Mohammed to New York, along with three other terrorist detainees, to stand trial in a civilian court, reflected a pre-9/11 mindset that viewed terrorism as a simple criminal matter.

Speaking at the Federalist Society's National Lawyers Convention, Mukasey described the move, as "a decision I consider not only unwise, but based on a refusal to face the fact that what we are involved with here is a war with people who follow a religiously-based ideology that calls on them to kill us, and to return instead to the mindset that prevailed before Sept. 11 that acts like the first World Trade Center bombing, the attacks on our embassies in Africa and other such acts can and should be treated as conventional crimes and tried in conventional courts."

Describing a pattern of decisions made since the the Obama administration pledged in January to close Guantanamo Bay prison within a year, Mukasey said that, "What's followed has seemed in many instances to be a system in which policy is fashioned to fit and proceed rhetoric rather than being thought out in advance with arguments then formulated in support of it."

He noted that Congress already authorized the trial of detainees through military commissions, and that those trials would have already been underway.

"Now, that procedure is to be short-circuited -- actually, long-circuited would be more accurate -- so that they could be brought to this country and tried in a civilian court," he said. "We should all be aware that those cases which were scheduled to have already begun now have to start from scratch."

The difficulty of trying terror suspects through civilian courts, he said, is that the discovery process, the public presentation of evidence, and other elements of a trial "could turn a criminal proceeding into a cornucopia of information for those still at large and a circus for those in custody."

He pointed out that when capturing the enemy combatants, pieces of information "were not gathered, nor was evidence gathered, on the assumption that they would be presented in a federal court."

There would also be tremendous security issues involved with making sure that courthouses, jails, the judge and jury, were all safe.

"It would take a whole lot more credulousness than I have available to be optimistic about the outcome of this latest experiment," Mukasey said at the conclusion of his formal remarks.

During a question and answer session that followed, Mukasey was asked if he felt the jails in New York were secure enough to make sure terrorists would not escape, but he said that wasn't really the issue.

"If you ask the wrong question, you're sure to get the wrong answer," Mukasey responded. "Of course it's secure. They're not going to escape. The question is not whether they're going to escape, the question is whether not only that facility, but the city at large will then become the focus for mischief in the form of murder by adherents of KSM, whether this raises the odds that it will. And I would suggest to you that it raises them very high. It is also whether the proceeding, even assuming that it goes forward within the lifetime of anybody in this room, is one where confidential information is able to be kept confidential, and a trial is able to proceed in an orderly way."

He later added that, "to the extent that they are within prisons, they are a threat there as well. Any of these people would be a virtually totemic figure in a prison." He argued that "shoe bomber" Richard Reid's success

in challenging his solitary confinement shows that there's no guarantee that convicted terrorists would stay isolated from the rest of the prison population.

Asked about Attorney General Eric Holder's statement that he was confident that the defendants wouldn't be able to get off on a legal technicality, Mukasey replied that while he doesn't have access to the same information as Holder, "Betting the farm on the outcome of that process always involves risk."

While he was adamantly opposed to today's decision, Mukasey said that if Mohammed and other members of Al Qaeda had to be tried in civilian courts, no venue is better equipped to handle it than the Southern District of New York, where he served as a judge. He also said he was confident in the jury selection process.

"They don't have to have been comatose over the past 10 years to serve on a jury," he explained. "What they have to be able to do is to promise that they will decide the case based only on the evidence presented in the courtroom and not what they hear outside, and there has to be good reason to believe that they could fulfill that promise. And jurors like that can be found. That part of the process I have great faith in. It's the rest of it that worries me."

Weekly Standard Blog **"Neutral and Detached"**

by Rachel Abrams

Though it is a piece of superficiality worthy of *People* magazine, the *Washington Post's* [account](#) of the process by which Eric Holder came to make his decision to try war criminals in federal court is a remarkable--if inadvertent--revelation of just how much, despite their vastly disparate backgrounds, the attorney general resembles his coolly remote boss, the president. As his boss has chosen to do with respect to Afghanistan, so Mr. Holder solicited the opinions of a veritable army to help him "wrestle" with his responsibility:

He ordered top federal prosecutors in four districts -- the District of Columbia, Northern Virginia, Brooklyn and Manhattan -- to present by Oct. 1 their recommendations on how to proceed, and sought input from military prosecutors who had sole control over the cases for years. . . . He consulted with intelligence experts within the Justice Department, the national security division and the solicitor general's office. He kept in continual phone contact with Jeh Johnson, the general counsel of the Defense Department, and deputy Bill Lynn, the Pentagon's point man on detainees. . . . He twice listened to presentations by the top prosecutors in Alexandria and Manhattan, who appeared side by side in the secret command center in the department headquarters and lobbied him to send the era's biggest terrorism case to their office.

He sought and got the nod as well from New York's Governor Paterson, Mayor Bloomberg, Police Commissioner Raymond Kelly, Senator Schumer, the U.S. Marshalls Service, and Lindsey "[Cap and Trade](#)" Graham. And unlike Mr. Obama, whose stuttering impotence on Afghanistan and appeasement of dictatorships on every continent is so worryingly evocative of the dark days of the Carter presidency, the attorney general was able to pull the trigger: "The decision on trials coalesced in Holder's mind Wednesday, at a White House principal's meeting attended by Defense Secretary Robert M. Gates and other top administration officials. But not until Thursday did Holder send a message to the president, then en route to Tokyo, that he had closed the thick briefing book on the cases."

As for criticism, not a worry: "I'll just have to take my lumps, to the extent those are set in my way," he said.

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 interest of this country--I think the criticism will be relatively muted.

And there you have it. The dispassion, the self-reverence, the blindness of the man, are marvelous to behold, and so perfectly reflect the president he so perfectly serves. "Neutral and detached" people shall "understand the reasons why" he made those decisions, shall see he has left "the politics out of it," and shall recognize what's right--something the rest of us, benighted and bellicose souls that we are, have never managed to do with respect to the disposition of those committing mass murders of Americans in their ongoing war against our civilization.

Investor's Business Daily

Housing Bust: Sowell Series Starts Today

by Thomas Sowell



Following up on the well-received series by Thomas Sowell on "The Economics of Medical Care," IBD today begins excerpts from Sowell's latest book, "The Housing Boom and Bust," a chronicle of the biggest economic disaster of our time.

We are doing so because causes of that debacle still aren't understood and because many of the same mistakes are being made now — in some cases by the same politicians — in efforts to overhaul America's medical and financial systems.

The series starts below and will run in five Monday installments. It excerpts the chapter in "Housing Boom and Bust" that deals with "The Politics of the Boom."

Topics will include the myths of housing affordability, the government's encouragement and expansion of lower lending standards, and Congress' unwillingness to reign in regulatory agencies despite risks they posed for the financial system.

"The Housing Boom and Bust" is the 43rd book written by Sowell, considered by many to be America's greatest economist and contemporary philosopher.

In addition to six volumes on economics, including "Basic Economics," a highly readable, common-sense text that's been translated into six languages, his works have treated subjects as varied as migration, civil rights, affirmative action, American education, Marxism and late-talking children.

The Sowell series than ran in IBD from Oct. 28 to Nov. 9 covered a chapter in the latest version of "Applied Economics" that deals with "The Economics of Medical Care." All nine installments are available at IBDeditorials.com.

The new and risky methods of financing home purchases that rose to dominance in the early years of the 21st century could not have replaced more traditional rules and standards for granting mortgage loans unless those who regulated banks and other lending institutions had agreed to such changes.

In reality, government agencies not only approved the more lax standards for mortgage loan applicants, government officials were in fact the driving force behind the loosening of mortgage loan requirements.

Members of Congress from both political parties have urged federal regulatory agencies to press banks and other lenders to lower mortgage loan requirements, and have passed legislation to that end and to subsidize or guarantee loans made under lowered standards.

Presidents of both parties, in different ways, pushed the idea that a higher rate of home ownership was "a good thing." In 1999, the New York Times reported:

In a move that could help increase home ownership rates among minorities and low-income consumers, the Fannie Mae Corporation is easing the credit requirements on loans that it will purchase from banks and other lenders . . .

Fannie Mae, the nation's biggest underwriter of home mortgages, has been under increasing pressure from the Clinton administration to expand mortgage loans among low- and moderate-income people and felt pressure from stock holders to maintain its phenomenal growth in profits.

Higher-risk investments usually pay higher profits, so both the political incentives and the market incentives were for Fannie Mae and Freddie Mac to buy riskier mortgages paying higher interest rates, since the profits went to them and runaway losses would be the taxpayers' problem.

There were many who shared the responsibility — or, in this case, the irresponsibility — for the housing boom that was fueled by easier credit, lower mortgage approval standards and "creative" financing. Moreover, like many disasters, this one began with good intentions.

At the heart of those good intentions was the quest for "affordable housing," another way of expressing the crusade for more home ownership among a wider range of people.

While the term "affordable housing" has not been defined in any absolute sense, the usual way of measuring whether housing is more affordable or less affordable in one place compared to another, or in one time period compared to another, is by comparing what percentage of an average income has to be paid for the average rent or the average monthly mortgage payment.

At one time, the rule of thumb was that housing costs should not take more than one-fourth of a family's income. Others have suggested 30% but, whatever the number, it is meaningful only for comparing one place with another or one time period with another.

Affordability can also be measured by comparing the total cost — not just the monthly mortgage payments — of the average house at a given place with the average annual income of the people who live there.

For example, the median home price in Youngstown, Ohio, has been found to be roughly double the median income in Youngstown. The median home price in Las Vegas has been about six times the median income in that city and, in San Diego, the median home price has been 10 times the median income.

As a rough rule of thumb for making comparisons, "affordable housing" can be a useful concept. In another sense, however, the concept of "affordable housing" conceals an assumption and an agenda that are very much in need of scrutiny. Each individual knows what can and cannot be afforded on that individual's income.

In other words, those who can afford mansions can buy mansions and those who can afford bungalows can buy bungalows. Those who cannot afford to buy any house can rent a house or rent an apartment, and those who cannot yet afford even that can double up with relatives or roommates, or can rent a room. Many people have done some or all of these things at one period of their lives or another.

But that is not what is meant by those who set up a political goal of "affordable housing." The political meaning of affordable housing is that individuals choose their housing and government somehow makes it financially possible for them to have it.

This is seldom spelled out explicitly, much less reasoned out in terms of its implications. Much of political rhetoric serves as a substitute for reasoning.

At the heart of many arguments for federal intervention in housing markets has been the belief that a shortage of affordable housing is a nationwide problem, for which local solutions are inadequate.

According to a New York Times editorial in 2002, "the housing crisis will never be solved unless the federal government gets back into the game." Washington Post columnist David Broder likewise saw the problem as national in scope, that "in almost every city I've visited this year, from Sacramento to Tallahassee to Boston, the shortage of affordable housing is close to the top of people's concerns."

There is, of course, no way to know how representative either the cities that Mr. Broder visited or the people that he talked to were, much less whether their perceptions or interests corresponded to empirical reality. As J.A. Schumpeter said: "You can travel far and wide and yet wear blinkers wherever you go."

Indeed, a New York Times news report flatly contradicted what was said in the New York Times editorial just cited: "A sharp fall in mortgage rates since the early 1980's, a decline in mortgage fees and a rise in incomes have more than made up for rising house prices in almost every place outside of New York, Washington, Miami and along the coast in California."

An earlier study by the Heritage Foundation likewise found that "the ratio of monthly cost-to-gross income decreased" — rather than increased — again, with the exception of "a few metropolitan markets on the East and West coasts."

Other scholarly research has likewise found that affordable housing, by common standards, has been the norm across most of the country, but with glaring exceptions in places where average housing prices are some multiple of what they are in the nation as a whole.

Almost invariably, these are places where severe local government restrictions on land use, and other impediments to building, have driven the cost of houses and of apartment rents to levels that take as much as half of the average family's income just to put a roof over their heads.

For the country as a whole, however, homebuyers have paid no more than the old-fashioned standard of 25% of their incomes for housing in any year since 1985. Renters have in recent years paid a somewhat higher percentage of their smaller incomes but not more than 30% in any year over the past several decades.

Neither by comparison with the recent past nor by comparison with other countries today is most housing in the United States unaffordable. The median-priced home in the United States as a whole is 3.6 times the median income of Americans. For Great Britain, the median-priced home is 5.5 times the median income and, in Australia and New Zealand, the ratio of home prices to income is 6.3.

Acknowledging this reality would cause a widely accepted vision, and the national crusades and policies built upon it, to collapse like a house of cards. Instead, facts that would undermine this vision and this political crusade have been largely ignored.

Despite the widespread assumption that government intervention is the key to making housing affordable to people of moderate or low incomes, history shows that it has been precisely in the times and places where government intervention has been greatest that housing costs have been both highest in absolute terms and have taken a larger share of the average income.

This is true whether we compare different places at the same time or different time periods with one another. If we look back to the beginning of the 20th century, when government played a much smaller role in the housing market and there were far fewer restrictions on building, the average American's housing costs were a smaller share of consumer expenditures than at the end of that century.

Back in 1901, housing costs were 23% of consumer expenditures. But, by 2003, housing costs were 33% of much higher consumer expenditures. There are local data that tell a very similar story:

Until 1970, median homes in nearly all U.S. metropolitan areas typically cost about twice as much as median family incomes in those areas. Depending on the prevailing interest rate, this meant that a family dedicating a quarter of its income to a mortgage could pay off a loan for a home in a little more than 10 years.

Even in coastal California, home prices were very affordable before the severe housing restrictions that began there during the 1970s. As late as 1969, the median-priced home in San Francisco cost no more than 2.3 times the median family income in San Francisco at that time.

That same year, the median price of a home in San Jose was 2.2 times the median family income in San Jose. Spending one-fourth of the median family income on monthly mortgage payments would pay off a median mortgage in San Jose in 12 years.

A decade later, the median family home in San Jose cost 4 times the median family income in San Jose — and now it would take 40% of the family's income to pay off the mortgage in 30 years. By 2005, at the height of the housing boom, the median price of a home in San Jose was 7.5 times the median family income there.

These variations in the affordability of housing prices over time tell essentially the same story as variations in the affordability of housing prices from place to place at a given time: Where there is the greatest government intervention, housing is least affordable.

Nor is this pattern confined to the United States. In 23 of the 26 urban areas around the world where housing is rated "severely unaffordable," there are severe land-use restrictions under the heading of "smart-growth" policies.

Advocates of "affordable housing" seldom — if ever — seek to remove government restrictions that have led to higher housing prices. Instead, they seek various ways of either forcing the private sector to charge lower home prices and lower apartment rents, or else they seek to use the taxpayers' money to subsidize housing in one way or another.

In other words, they do not seek to reduce the government's role in the housing market but to increase it. They do not seek to lower housing costs but to conceal housing costs with taxpayer-provided subsidies or with laws that prevent those costs from being expressed in the prices charged.

Whether or not programs or policies to artificially lower housing prices or monthly mortgage payments have been enough to offset other government policies that artificially raise housing prices, both local and national government policies are among the factors which have set the stage for the housing boom and bust.

Next week: How lower lending standards came about .

From the book "The Housing Boom and Bust" by Thomas Sowell.

Times, UK

It's not about health, it's about who runs the US

Power is draining from Obama. If he can't get his Bill through he will be at best another Clinton, at worst another Carter

by Giles Whittell

A funny thing happened in Ida Grove, Iowa, last Saturday. Funny and a bit sad. Steve King missed his son's wedding. The weather was perfect. The traffic was light. Steve really loves his son, Mick, and has no problem with his new wife, Stephanie. He wanted to be there and could have been, but instead he was in Washington voting against a healthcare reform Bill in the House of Representatives. Despite his vote, the Bill passed.

What was Mr King thinking? Did he miss the most important day in his son's life because he believes the Democrats are wrong to try to extend health insurance cover to the 46 million who lack it, or because he thinks they are going about it the wrong way? He did not. As a fellow Republican with more in the way of name recognition said yesterday: "This is not about healthcare. This is about power and political control."

That Republican was Dick Armey, an icon of the anti-Clinton movement of the early 1990s and a hate figure for the Left, but also a keen student of US social history. He knows full well that America's employer-based health insurance system exists largely by accident. It started as a 50 cents-a-month scheme for teachers, offered in the 1920s by a Dallas hospital looking for ways to keep its wards full.

It grew as a result of bureaucratic accident and business opportunism — not legislation, let alone constitutional amendment — and for decades it offered superb care at reasonable prices. It doesn't any more. It denies cover to many and doles out too much care to many more at prices employers and taxpayers can no longer afford. Few serious politicians in either main party deny that large parts of it are failing.

The central issue for Congress is not whether healthcare needs fixing or even how. It's by whom.

Deep down, Barack Obama believes it's his turn. He ran for President promising change, and won. "Change" could mean anything to anyone. That was its chief merit as a slogan. But this Administration believes in its soul that the many meanings of the word should include a willingness to expand the role of the State itself if nothing else works. On economic management that meant taking controlling stakes in banks and car giants to stop them failing. On healthcare, it means proving that the Federal Government can move into running a nationwide low-cost insurance programme, and not screw it up.

My father-in-law believes a screw-up is inevitable. For his generation of Eisenhower Republicans it is axiomatic that anything the private sector can do, the public sector can do only worse. Dick Armey and the army of Tea Party activists that he informally leads go much farther. They call the slightest expansion of the State a step towards Marxism. They say so politely, seriously, despairingly, on battle buses and in town halls across the country, and it is a great mistake to doubt their sincerity.

Never mind that the most progressive healthcare reforms debated on Capitol Hill since Mr Obama entered the White House are still so private sector-dependent that in Britain no right-wing Tory could advocate them without risking his seat. Never mind that the most state-phobic conservatives are also among the most enthusiastic supporters of a gigantic and reasonably effective government-run machine at the heart of American society, foreign policy and economic life — the US military. There is a new insurgency in US politics that believes the Democrats' pursuit of a public healthcare option is politically, constitutionally, fundamentally unAmerican.

The insurgents also smell blood. As Mr Armey said, this is about power and political control. Mr Obama has staked his presidency on showing that he can win reforms that eluded Mr Clinton in 1994 and generations

before that. He has majorities in both houses. Even the legal tussle for a disputed Minnesota Senate seat went the Democrats' way, adding a self-important comedian to their caucus in the upper house and giving them, in principle, a filibuster-proof majority. Yet the President seems unable to use it.

His first deadline for a healthcare Bill to reach the Oval Office sailed by in August. Christmas is the next, unofficial, deadline. That looks likely to be missed as well. Each day of delay on healthcare is a day of delay on everything else the White House wants Congress to do, starting with once-in-a-century financial regulatory reform and the climate change legislation that has become a test for how the rest of the world judges this Administration's break with the last one. Even Afghanistan is waiting. One reason for Mr Obama's interminable delay over requests for more troops is his fear of splitting the liberal base on which robust healthcare reforms depend.

In truth "robust" already sounds ambitious. The Tea Party insurgency has blunted the health crusade from the Right. Democratic infighting over tax-funded abortions may do the same from the Left. Slippage deep into next year is entirely possible. So is complete failure, and if Mr Obama fails on healthcare what remains of the bubble of hope he created in his 2008 campaign will deflate faster than a blood pressure cuff in an overpriced private hospital. He will be, at best, a Clinton facsimile; at worst another Carter, undone by his own naivety and shorn of his unused majorities in next year's mid-terms.

It is a prospect that sets Steve King's pulse racing. That is why he came to Washington on Saturday instead of watching Mick wed Stephanie. It is also why Mr Clinton told a Democratic power lunch on Tuesday to stop bickering over details and get healthcare done. A Bill — any Bill — would silence the President's critics and kick-start the rest of his agenda, he said. "The worst thing is to do nothing."

Power drains from those too afraid to use it. It is draining now from the White House to a handful of senators who could make or break Mr Obama's healthcare reforms, and thus his presidency. One is Joseph Lieberman, widely accused of being in hock to the health insurance industry that dominates his home state of Connecticut. I don't think so. He's our new neighbour; a modest chap who happens to hold the fate of a nation in his hands. It's time for the President to take it back.





