



Written by [Joe Wolverton, II, J.D.](#) on May 10, 2012

Military Trial of the “Gitmo Five” Underway at Guantanamo Bay

Khalid Sheikh Mohammed, the man accused  by the U.S. government of masterminding the attacks of September 11, 2001, was [arraigned on May 5](#) along with four alleged co-conspirators before a military tribunal at the Naval base at Guantanamo Bay, Cuba.

The five defendants were presented with an 87-page indictment that took nearly three hours to read. The indictment charges the men with 2,976 counts of murder, as well as acts of terrorism, hijacking, conspiracy, and destruction of property. If convicted by the military court, they will be eligible for the death penalty. At the arraignment, attorneys for the five terror suspects gave no indication of how their clients will plead. The next appearance of the men before the military magistrate is scheduled for June 12.

As we have previously reported, the [Department of Defense referred the case](#) against the so-called “Gitmo Five” to a military commission last April and a month later [the Defense Department announced that charges had been formally filed](#) against the men accusing them of participating in the planning of the attacks on the Trade Towers in New York City and the Pentagon in Washington, D.C.

Originally, President Obama promised to hold civilian trials for those suspected of terrorism. In fact, in that statement he specifically mentioned the case of Khalid Sheikh Mohammed.

Mohammed, a Kuwaiti national, is accused by the U.S. government of being a member of al-Qaeda, including running the group’s propaganda machine since 1999.

According to the report issued by the 9/11 Commission, Mohammed was the “principal architect of the 9/11 attacks.” His alleged terrorist activities also include playing a major role in the bombing of the World Trade Center in 1993, the bombings of nightclubs in Bali, and personally beheading American journalist Daniel Pearl in 2002.

He was captured on March 1, 2003 in Pakistan and has been detained at the Guantanamo Bay facility in Cuba since September of 2006.

Mohammed, 46, was charged in 2008 by an American military commission with war crimes and murder and faces the death penalty if convicted.

The other four detainees have also been in custody at the Guantanamo facility since 2006 after having been detained (and allegedly tortured) by the Central Intelligence Agency at secret “black site” prisons located throughout the world.

Just days after the announcement by the Attorney General, the American Civil Liberties Union ran an ad in the *New York Times* calling upon President Obama to be faithful to his promise to try these suspects in civilian courts. In response, the White House issued a statement that they were contemplating trying Mohammed and his colleagues before a military tribunal.

The decision to try these defendants before a military commission rather than in a U.S. federal court was a disavowal of Holder’s earlier statement recommending civilian trials for the suspects.



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In fact, Attorney General [Eric Holder announced last April](#) that Mohammed and the other four detainees classified as 9/11 co-conspirators would be arraigned before military tribunals sometime in 2012. That is now one promise that President Obama has kept.

For the first time, the proceedings in this historic case were “live tweeted” to the world by members of the media who were selected to be present in a room at Fort Meade, Maryland where the arraignment was broadcast live via satellite from Gitmo. That this real time reporting was permitted is a great boon to openness given that reporters are barred from live-tweeting details of a similar hearing in the case of Bradley Manning, the Army private accused of aiding the enemy by providing classified information to WikiLeaks while stationed in Afghanistan. Bradley’s hearings and trial are taking place in Fort Meade, in the same building where reporters watched the hearing on May 5.

The benefits of such instant reporting became immediately apparent, as the goings-on in the courtroom grew stranger by the minute.

Tweets from inside the courtroom revealed some very disruptive behavior on the part of the defendants, actions that were described as a “[mockery of justice](#).” But given the fact that these men are being tried before a military tribunal and not before a federal civil court is itself seen by some to be just as egregious a mockery.

As was [reported by the Guardian](#), a daily newspaper from the United Kingdom, even the former chief U.S. prosecutor at Guantanamo Bay, Morris Davis, “denounced the military trial of Khalid Sheikh Mohammed.” Davis pointed out that the assignment of the trial of the alleged 9/11 co-conspirators before a military tribunal was “intended primarily to prevent the defendants from presenting evidence of torture.”

Davis, a former colonel who was chief prosecutor when Khalid Sheikh Mohammed was transferred to the Guantanamo Bay Detention Facility in 2006, warned that “the military commissions will be badly discredited by the use of testimony obtained from waterboarding and other ‘enhanced interrogation’ techniques used on the accused men.”

There is no debate that the legal proceedings against the five “high value detainees” have gotten off to a rocky — and, for the military and the Obama administration, embarrassing — start. Initially scheduled to last less than an hour, the event dragged on for 13 hours before being adjourned by Colonel James Pohl, the presiding officer.

A survey of reports from eyewitnesses reveals an almost circus-like atmosphere at the arraignment.

For example, take the description of the arraignment [published by the Guardian](#):

KSM [Khalid Sheikh Mohammed] is refusing to address judge and has taken his headphones out in an apparent bid to ignore what he is being told.

The military judge has countered that the defendant — dressed entirely in white, with long flowing beard — cannot simply opt out of proceedings.

And:

Cheryl Bormann [the lawyer for Walid bin Attash], has asked the judge to order women members of the prosecution to cover themselves up “so that our clients are not forced to not look at the prosecution for fear of committing a sin under their faith”.

Bormann [appeared in court dressed in an abaya](#), traditional Muslim clothing that left only her face



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uncovered.

Then there is this account [from the Associated Press](#):

At one point, Mohammed cast off his earphones providing Arabic translations of the proceeding and refused to answer Army Col. James Pohl's questions or acknowledge he understood them. All five men refused to participate in the hearing; two passed around a copy of *The Economist* magazine and leafed through the articles.

Walid bin Attash was confined to a restraint chair when he came into court, released only after he promised to behave.

Ramzi Binalshibh began praying alongside his defense table, followed by Ali Abd al-Aziz Ali, in the middle of the hearing; Binalshibh then launched into a tirade in which he compared a prison official to the late Libyan leader Moammar Gadhafi and declared that he was in danger.

"Maybe they will kill me and say I committed suicide," he said in a mix of Arabic and broken English.

Finally, this was the scene [as reported by CBS News](#):

"All five of them were defiant. They were dismissive. They refused to answer repeated questions from the judge," [CBS News correspondent Jan] Crawford said. "They wouldn't even look at the judge when he asked them questions. They looked down, flipped through magazines or even read the Koran."

At the conclusion of the arraignment, Colonel Pohl announced that the trial of Khalid Sheikh Mohammed and three of his co-defendants is preliminarily scheduled to begin in May 2013, but Pohl then implied that the date was fluid and could be delayed.

The fifth suspect, Mustafa Ahmed al-Hawsawi, objected to the date announced by Pohl and will be given a separate hearing at which a date for his trial will be slated.

Photo: At left a March 1, 2003 photo obtained by the Associated Press shows Khalid Sheikh Mohammed, shortly after his capture during a raid in Pakistan. At right, a photo from the Arabic language Internet site [www.muslm.net](#) and purporting to show a man identified as Khalid Sheik Mohammed is seen in detention at Guantanamo Bay, Cuba: AP Images



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