Khalid Sheikh Mohammed
And the Developments of the 9/11 Trial

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Abstract:

This thesis explores what the author learned while reporting on the developments of the 9/11 trial from January through April 2010. The thesis explores several narratives the surround the trial to prosecute self-professed 9/11 mastermind Khalid Sheikh Mohammed and four co-conspirators. The narratives include discussions with ACLU Staff Attorney Ben Wizner, personal observations and questions raised during reporting, and observations of media reports on the trial.
Wet and wadded, the roll of cotton between my teeth stopped the grind that occurred almost each time pain ricocheted through my neck. A firm brace with a Velcro strap and just enough rigidity kept my neck from tearing and falling apart. Two days earlier I had woken abruptly from the noise of a dropped pan, and tore a muscle. I couldn’t go to school, and I had to sleep in a chair because I couldn’t bring myself to lay and rise. The hum of near-muted morning television washed over my senses as if I had slid under the surface of warm water. And I look back now and think of how muted I felt just moments before my mom called from work to tell me that I needed to turn on the TV. I remember the CNN coverage—the pop-away next to the talking head that I didn’t hear. The footage of the initial fireball puffing out the North tower while the other stood as yet untouched.

With the sound up I sat and ached. Live feeds and instant replays. I remember when the second plane drove into the South tower. And when one tower fell, and then shortly after, the other.

People jumped and fell, their images broadcast live—like images from war, only not censored.
On November 13, 2009 when Attorney General Eric Holder said in a press release:

“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.”

Holder wanted the trials to be “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.”

Holder assured the public that the Justice Department would “pursue the maximum punishment available.” He also expressed his confidence that the federal court to house the trial would do so fairly “under long-established rules and procedures.”

New York City Mayor Michael R. Bloomberg accepted the news, and voiced confidence.

“It is fitting that 9/11 suspects face justice near the World Trade Center site,” said Bloomberg in a press release on November 13, 2009, “where so many New Yorkers were murdered. We have hosted terrorism trials before, including the trial of Omar Abdel-Rahman, the mastermind of the 1993 World Trade Center bombing.”

This trial, which many believe will be the trial of the century, will set precedents for how evidence gathered from terrorists and people who have been tortured will be prosecuted in court. According to the Justice Department, in 2001 at the time of the attacks Khalid Sheikh Mohammed “was then the external operations chief for al-Qaeda,” and admitted the bombing before he was captured.

In 2003, Pakistan’s ISI service captured KSM and handed him over to the CIA. Andy Worthington, who has completed numerous reports on KSM, torture, and
Guantanamo Bay, reported that the CIA waterboarded KSM 183 times, which the Red Cross and Human Rights Watch considered acts of torture.

My internship with Jason Leopold, the editor of The Public Record, and deputy managing editor of Truth Out, began in January 2010.

The first article focused on the reversal of policy focused on the trial’s location. In late January, Bloomberg announced amidst pressure that the people of New York did not want the trial held in lower Manhattan—that it would be too hard to secure and would be too expensive. Then many others voiced concern and backed Bloomberg’s sentiment.

The second article focused on a bill Sen. Lindsey Graham introduced to restrict the Justice Department from funding a trial in the civilian U.S. court system. Graham and other lawmakers wanted the alleged 9/11 perpetrators to be tried before military commissions, which were a hot issue because of the controversy they caused.

In the second article I learned of the culture ware brewing between those that wanted the trial to occur in a military commission and those that wanted the trial in a civilian court. In an interview and teleconference with ACLU Staff Attorney Ben Wizner in March, I figured out the culture war’s perspectives.

The third article I reported examined the slim possibility that the 9/11 trial could come to New Haven, Conn. The focus in this article revealed flimsy nature of the claim. The article also revealed that despite little evidence, the media ran with the story in a circular conjecture.

The fourth article, “Graham Tries To Cut Deal With White House On Guantanamo Closure,” examined Sen. Lindsey Graham’s position, and focused on a deal he attempted to broker with the White House to close the Guantanamo Bay prison
facilities while moving the 9/11 trial into a military commission. Graham’s connection with Rahm Emanuel, White House Chief of Staff, looked crucial as Emanuel described that Guantanamo could not be closed without Graham’s help.

Then the fifth and six articles—“ACLU’s Ben Wizner: Military Commissions ‘An Enormous Practical Failure,’” and “ACLU’s Wizner: ‘There’s Nothing Military About Khalid Sheikh Mohammed’”—contained transcripts of an interview that Public Record reporter Ray Storez and I conducted with Ben Wizner of the ACLU. The interview, which is available online, contains over half an hour of content just on military commissions and Khalid Sheikh Mohammed.

The Public Record, an independent news website, is emblematic of the shifting news culture. The fact that it's online, not for profit, and aims for a niche makes it valuable as a source of information, commentary, and news.

TruthOut, Pro Publica, The Public Record, and Main Justice are alternative places to find news in an environment increasingly lacking investigative stories. There has been little investigative reporting in the mainstream media regarding the 9/11 trial. In three specific areas—the price tag of the trial, the legitimacy of military commissions, and analysis of claims made by both proponents of civilian trials and military commissions that either is more viable than the other—the mainstream media has failed to provide and serve the public in depth, necessary information.

I learned while reporting on the 9/11 trial that brand name media does not investigate, they report—that's a huge problem. Instead of ripping apart statements made
by Lindsay Graham, the ACLU, the White House, other news sources, or any other organization with clout, they take the information at face value.

The trial of the century, the trial to prosecute self-professed 9/11 mastermind Khalid Sheikh Mohammed, effectively began in November 2009 when Attorney General Eric H. Holder announced to the public the Justice Department's desire to try KSM and four co-conspirators in a civilian Federal court in a lower Manhattan courthouse.

Holder's announcement was the catalyst for this thesis paper. Reporting on the progress of this trial alerted me to the differing realities between mainstream media and independent or alternative news.

This thesis examines the reporting I did for the progression of the 9/11 trial through April 2010.

The Venue Change—Nadler’s Letter—
Writing Process for the Article

My reporting on the 9/11 trial began Jan. 29, 2010, the day after New York City Mayor Michael R. Bloomberg announced that he no longer felt that the trial should be held in
lower Manhattan. “It’s going to cost an awful lot of money and disturb an awful lot of people,” he said. “Can we provide security? Yes. Could you provide security elsewhere? Yeah, and I mean—the suggestion of a military base is probably a reasonably good one.”

I sent Jason an e-mail.

Hey Jason,

Bloomberg announced he wants to reconsider the trial. Do you want the story? I can write it tomorrow and talk it over with John Briggs.

Best,

-Josh

Mayor Michael R. Bloomberg of New York City reversed from his original position of support to try self-professed 9/11 mastermind Khalid Sheikh Mohammed and his co-conspirators in a civilian court in a lower Manhattan, fifth district court.

He decided that it would be too expensive to hold the trial. Bloomberg kept coming up in news reports as having said that the trial would cost $200 million a year, or $1 billion overall. Considering that there was no account or document explaining the origin for the price tag—no mention of a specific government office that might have produced a budget analysis type report that had estimated the price to the trial—it seemed a significant target fact.

I had to go to class so I missed the opportunity to jump right into the story.

Jason e-mailed while I was in class:
Heck yes! This is huge!

Jason also e-mailed a copy of a letter sent to Attorney General Eric Holder by eight elected officials in NYC. The letter documented the elected officials agreement with the mayor and their desire to investigate whether the trial could be held in a different location.

Congressman Nadler, a liberal Democrat, was the primary signer of the letter. Nadler and the seven elected officials requested an audience with the administration to discuss the plans and evaluations. The letter brought up interesting questions: Had a survey of potential sites for the 9/11 trial been conducted? Had any organization conducted an evaluation of the potential impact to local residents and commuters, as well as businesses?

Here is an excerpt from the letter:

“We support the Administration’s decision to bring those responsible for the attacks on the World Trade Center to justice in federal civilian court, and we believe that this decision represents a victory for the U.S. Constitution and the rule of law. However, we are concerned that the Administration has not fully considered the impact that the trials would have on lower Manhattan in choosing the Moynihan Courthouse in Foley Square. Indeed, the lower Manhattan neighborhoods in which this courthouse is located are only now recovering from the physical, emotional and financial devastation caused by the 9/11 terrorist attacks and therefore the impacts of this trial site choice are likely to be extremely burdensome.”
I didn't get to my computer until late in the afternoon, but once I read the letter from the eight elected officials I began work on the story. I read an email from Jason with a bit of analysis and sat back.

I like to have coffee or tea around at all times—kind of a compulsion to drink something I can feel down in my gut for a few seconds until it readjusts to my body temperature. It's bad enough that sometimes I reuse a tea bag four and five times—to the point where the water is just bitter, but I avoid all the extra caffeine if I need to. I also like to do this to avoid smoking cigarettes. In the winter it's great because I can plop an aluminum pot on a wood stove and have a drink in minutes. The water boils against the iron and I can hear it in my room—and that’s what I did while I worked on this story.

And it gives me a reason to wander and pace. And for whatever reason, probably to do with blood flow, I write better. I used to force myself to stay at a desk for periods of time. One hour. Thirty-nine minutes, exactly. At fifteen minutes I'd thwart my own authority, tell myself to fuck off, and then go waste time doing something else—and I’d feel good about it.

In this process of pace and think, I pieced the Nadler information into the story. Nadler and seven other elected officials wanted the administration to look into other sites for the trial. A distinction, I realized right off, was that Nadler's letter did not call for military commissions, while legislation from New York State Rep. Pete King did. Pete King introduced legislation to the House that would effectively prevent the Justice Department from funding any civilian 9/11 trial—what Graham would later do, as I mentioned above in the introduction.
Nadler and the elected officials jumped on the bandwagon early. They were one of the first groups to question support for a lower Manhattan trial, in writing, and in the same document, express ambiguous support for a civilian trial. Throughout the day, many others jumped on.

I sent Jason a reply and went to boil water:

Thanks Jason.

I'm out of classes now and will work on this immediately. As I dig I'll be looking for reasons of Bloomberg's change of heart, and where he got certain figures, such as who told him that the trial would cost $200 million a year, totaling $1 billion overall. I'll also look at the possible places to move the trial, and most importantly it seems, the committees/panels/groups suggesting the trial be moved.

I'll e-mail as I go along, are there any questions or things that you think I should be looking for along with these?

I bet the ACLU has something to say about this. Prof Briggs brought up the point that this might be political pressure, and not just monetary pressure causing Bloomberg to reconsider.

Best,
-Josh
In half an hour I tapped out a draft. I kept searching and pacing and drinking bitter tea. For a while I just thought about different ledes to throw on the article. I got into a kind of pace and sit and write and pace and sit and write scenario, which must have looked ridiculous. Nadler's letter bothered me because it actually seemed sincere, and logical—had the many levels of government, the Justice Department, not examined other places to hold the trial, even as a backup?

Bloomberg had surprised many, including myself, who had not been paying close enough attention to the growing base of people—both real and in office—who opposed holding a trial for terrorism in the middle of lower Manhattan. I had experienced some concern over holding the trial in New York. A friend with close connection to 9/11 did not like it at all that the trials would be held in the fifth district. And a journalism professor thought it could open a lot of wounds and might elicit some home turf violence.

White House Press Secretary Bill Burton, who spoke to reporters aboard Air Force One on its way to Florida to endorse high-speed rail, said the administration would continue to support a New York civilian trial. I decided to browse through Google to see what else was being said, and how others were reporting the story. I found something that gave me a bit of a crack back. It was at this point that I found out that Rep. Peter King of New York’s third district had introduced his bill to prevent the Justice Department from funding a trial in New York.

I shot Jason an email and went to find a copy of the bill:

Looks like Rep. Peter King introduced legislation to block the trial from occurring in New York City, today. And Bill Burton, WH Press Sec
stated on Air Force One that the WH will continue supporting the plan to try KSM in NYC.

More to come,
Josh

It didn’t take long to find a copy of the bill. King had it up right away on his website. It was only two pages and took no time to read, but there was a bit more to the bill than I realized. What the bill did not directly state, the language in the bill revealed. It required a move towards a trial by military commission because the bill would prevent funding for a civilian trial. According to the bill, no one who had been a prisoner at Guantanamo could be tried in a civilian court in the U.S. or any U.S. possession or territory. So, if the bill passed, the trial would have to be held in a military commission.

The bill stated:

“No funds made available to the Department of Justice may be used to prosecute an individual who was detained at Naval Station, Guantanamo Bay, Cuba, on or after January 22, 2009, in a criminal court located in the United States or in any territory or possession of the United States.”

I emailed Jason:

I stand corrected, his bill would stop any trials persecuting Guantanamo Bay detainees in the US.
Attached is the bill. I'm also writing this up.

Here's the header:
"To prohibit the use of funds made available to the Department of Justice to prosecute individuals detained at Naval Station, Guantanamo Bay, Cuba, in the United States."

-Josh

The Obama Administration signaled that they would be willing to allow a change in location to another venue within the district, according to an aide of Sen. Chuck Schumer. The fifth district includes several large penitentiaries, military bases, West Point, Stewarts Air Force Base, and Governor’s Island—all places where a trial might be held.

The hour and the amount of caffeine had me geeked. It was sometime around 2 a.m. on the East coast. I wanted to write another story right away, because of the rush of filing a story.

I remember thinking at my desk—two lamps and the light of a laptop, on a disheveled desk and bed and floor—that the possibility of a trial by military commission just got proper momentum, because it would take a good amount of political maneuvering after Bloomberg’s reversal, and the Nadler letter, and the announcement by Sen. Chuck Schumer’s spokesperson that the Obama administration was willing to let the Justice Department move the trial, to keep the trial in New York, let alone a civilian court. And by that point, many had tied the idea of trying a terrorist like Khalid Sheikh Mohammed in a civilian trial to the venue change in such a way that the logical
conclusion was to move the trial from a lower Manhattan courthouse to a military commission.

Inside the ACLU—Ground Zero—Thoughts on the Liberty Woman

Ben Wizner (Photo taken by Josh Durkin)

Industrial size plywood board and chain link fence surrounded block where the towers fell. At the time, the rain had let up a bit, and the sky looked a lighter shade of gray. Advertisements for the World Trade Towers Memorial appeared every few boards, as well as other messages and postings that you might see on plywood and scaffold. A digital image of what the memorial might look like—a cascade of water falling into a square pool, and then a lower tier—repeated every few sections of plywood and chain link.

One advertisement called for retailers to buy up space in the memorial. It had that classic *come advertise with us* suggestion. I imagined people walking through the memorial, with a newly built single tower to look up at—bigger than any other tower. The people meandered and listened to the intentionally muffled sound of waterfall on marble stone. People mulled around the wall of the dead. They sipped locally purchased Starbucks, and wiped grease on their pants from double cheeseburgers before tracing some names. For whatever reason, Miley Cyrus softly grated in the background.
I turned and looked across from the East edge of Ground Zero at a graveyard that ran a hundred feet up to a church. I wondered how the grave stones looked in such condition as they did, untouched and aged, when towers thousands of times their height fell right next to them.

People mulled around. I didn't notice anyone taking pictures. Or anyone stopping to look, for that matter. Two cranes rose above I-beams and scaffold. It seemed sterile and cold. Ray and I didn't say much because there was not much to say.

I tried to clear my voice on the way up in the elevator but couldn't manage to loosen the phlegm. I worried I would talk too fast, and that it would sound muffled. The gray, green, and brown sweater, which had random black rectangles for proper sense of anti-symmetry, made me sweat. However, I left it on because I felt comfortable in it.

Ray wore a black zip-up hoodie with a brown corduroy sports coat—one of the gentlemen ones that style-minded youths say things like *I want to fucking kill you* because you found the hot, covetable thing. He seemed calm, but we both had terribly under slept. I counted two cups of coffee, a Monster, and two—maybe even three—teas in my head. We each had the same. The coffee had been from breakfast in Brewster where we waited for the train into the city. The Monster we both drank on the train. The teas we drank on the walk down through the rain patter and light wind.

Ray and I had walked from Grand Central down to Broad Street at the bottom of Manhattan. Low clouds, a mixture of grays. Rain fell slow, so that by the time we arrived, water had soaked through my CB coat that my dad bought in the 1980s, and
Ray's brown corduroy jacket. Our umbrellas bent, and at times inverted with the city
drafts and the rain.

I remember stopping to get tea at a Starbucks somewhere near Union Square. I
remember walking and wondered how we fit into that morning. We stopped at a
bookstore window. Ray pointed out a book, the name of which I can’t remember now.
And I noticed Cormac McCarthy and Don DeLillo. I had recently read *Falling Man*, by
DeLillo for a course on 9/11 and post 9/11 consciousness. We also read *A Gate at the
Colum McCann.

Rachel Myer met Ray and I at the front desk and brought us past security
moments before. Myer was the ACLU spokesperson that I had set the interview with
Wizner through a week before. Thick, near black hair, tall, and pretty. She had a thin,
dark-blue sweater over a white shirt, and jeans. The security guards, the men at the front
desk, the few people who entered the building while we waited, and everyone else in the
elevator had a work suit on.

I remembered walking through Foley square, and the motto on the New York
State Supreme Courthouse above it's Corinthian columns: "The true administration of
justice is the firmest pillar of good government." I wondered how that fit.

Rachel struck a conversation with a woman in the elevator. Ray and I didn’t talk.
When the door opened Rachel led us out the elevator and into a softly-lit hallway on the
18th floor. We passed several cubicles and arrived at Ben’s office. He gestured us in and we awkwardly set up. He had a great view of Brooklyn from his window.

I felt self-conscious. My pale, semi-translucent, winterized Irish skin burned a red I'm sure must have confused Ray and Ben. Kind of like stage fright. I get it every time. I've learned how to plow through the intense physiological reaction long ago. Takes about two minutes. The odd thing about it is that I can feel it happen, but can’t do a thing about it. So I just waited until my chemicals realigned.

But the other issue was the lack of sleep, and I felt stupid from it. I stumbled in speech. Felt my way through thought the way I sometimes manage to get to work when I'm hung over. I hadn't had a drink the night before. Just an early morning mixed with a habit of getting to sleep at 2 a.m. I thought how I might have benefited from two morning beers, doing the interview on the jovial little high and relaxed nerves, and then facing the chemical sludge my body would wade through.

I had a black Flip ultra HD camera propped up on six or seven books on torture and subjects related to the Khalid Sheikh Mohammed trial. I didn’t have a stand for the camera, so Ben offered the books on his shelf. I checked the view screen, and saw that Ben’s head was cut off, so I added two more books. The camera pointed at Ben from his right, at an angle. I placed my brown Olympus digital voice recorder on his desk in front of the camera so I would have some audio in the case that the camera failed.

We jumped right into the interview. I rambled a question about "how [the military commissions] were inefficient, how the military commissions do not work in relation to civilian trials."
Ben Wizner: "I think the first thing that needs to be said about military commissions – whatever you think about whether they are a fair system of justice – is that they’ve been an enormous practical failure – that in all the years since they were rolled out, only three convictions have been obtained – two of them under pretty unusual circumstances.

The first was the guilty plea of David Hicks, which was really worked out as a negotiation between the Australian Prime Minister and Dick Cheney, which resulted in David Hicks serving nine months in an Australian jail.

The second of course was the trial of Salim Hamdan, bin Laden’s driver, for a crime that probably would have gotten him a 20-year prison sentence in federal courts, and the military jury gave him another four and a half months in addition to his time at Guantánamo.

The third, was the conviction of someone named [Ali Hamza] al-Bahlul, he didn’t even show up for his trial. It was a prosecution of an empty chair.

So this is the record of military commissions at Guantánamo during a period of seven years, when hundreds of convictions for terrorism related offenses were secured in US courts with really long sentences. And remember, you don’t have to bomb the World Trade Center to get a long prison sentence in a federal court, people who did nothing more than attend a terrorist training camp are serving 15, 17, 20-year sentences in US courts. So, just from the most practical level, which one of these systems is more likely to achieve swift justice and severe punishment? It’s hard to understand why anyone would choose the military commissions, which have such a terrible record over the federal courts, which, certainly, from the prosecutions perspective, have an extraordinary record."
I listened, nodded, and tried to follow his thoughts. I don't want my appraisal here to suggest that I didn't know what was going on, but I'd be lying if I said I didn't feel a bit fucked up by all the chemicals in my system—L-Carnitine, panax ginseng, taurine, the b vitamins, niacin, riboflavin, and caffeine. I experienced an interesting stream of anxiety, forced consciousness, and incomplete thought patterns.

Wizner: "This is the most important criminal case, probably in the history of the United States. And the idea that we’re going to bring a case like that into an untested system, where the rules are pretty much being made up as we go along, there are going to be massive legal and constitutional challenges brought to this. I just don’t understand why any government would want to do that."

"I do understand, I think, why there are so many voices in Washington clamoring for this, but it has nothing to do with what system would be a better system for trying these people in. You know people like Lindsey Graham, and Joe Lieberman and John McCain who are proposing legislation for these cases to be tried in military commissions. They want to see themselves as warriors, for them the idea that you would bring these cases into time-tested civilian courts is some sign of weakness, that we’re not tough enough, that we see this as just a law enforcement issue and not the war that it is.

This is the worst kind of identity politics. They’re trying to distinguish themselves as the ones who are tougher and the ones who are warriors, when in fact the opposite is really true."
The person in the world who most wants to be tried by military commission is Khalid Sheikh Mohammed, and he’s made that very, very clear at Guantánamo. He sees himself as a warrior.

And why would we reward that? Why would we aggrandize someone like Khalid Sheikh Mohammed, as the warrior he claims to be rather than punishing him as the criminal that he probably is?"

Ben had an intense, intimidating, yet casual nature. I maintained eye contact, then had to drop for lengths because I felt that he was looking at me the way that people will look at an unsuspecting opponent before throwing a punch, despite his rhetoric, the way that some will smile before attacking. That was the kind of earnestness in his rhetoric.

I kept a Staples perforated writing pad on my lap, 100 percent recycled, 15 lb. paper, 30 point backing, 50 sheets a pad, a small one. I scribbled points to go back to. He spoke in a constant fusillade, so I didn't bother writing down quotes because I had both an audio and video record to rely on later.

I looked to Ray when Ben paused after making a point, and if Ray didn't seem to have a question immediately lined up, I would pick a point on my pad and ask a question about it.

Ben rattled his narrative like an efficient machine. After the interview it was brought to my attention that his preparedness for the interview stemmed from his experience as a trial lawyer. To get an argument across you have to organize your thoughts and have answers immediately available. No time to mess up, no second chances.
It was impressive to listen to him speak. A kind of bouncy cadence matched with a confident voice. He spoke well with his hands, which gyrated, his elbows rarely leaving the armrests on his chair.

The office was comfortably lit. I wondered if Ben were another person, would he think me some horribly naïve college kid with flaccid brains and a Facebook page easier to see from space than the Great Wall?

I looked at Ray to see if he'd speak. We were done. Ben gave us two beige calling cards with the ACLU logo in blue and said we could contact him.

As he brought us into a corner conference room—empty with the lights off—Ben pointed to the helipad where President Obama landed whenever he arrived on the island. He explained that two helicopters land—one decoy one real—and how snipers overlook the area. Maybe even the room we stood in. "The secret service is really impressive," Ben said. I imagined the fuzz of radio chatter, and looked at the corner nearest our position atop the building across the street and above the New York Vietnam Veterans Memorial. I thought I could make out a ledge. It was higher than us, but would have been perfect for a bipod or tripod for a large, bolt-action rifle with direct line-of-sight right through my cornea into the back of my skull. Ben seemed in a way delighted that the snipers might watch him. He told us to try the Staten Island Ferry, because it was free, and gave a great view of the city.

Ray later told me that Ben had a few bottles of whiskey in one of his cabinets. He remembered when I stopped to gawk at a handle of Knob Creek that was about twenty dollars less than I felt it should have been, and Ray recognized the name. I hadn’t noticed them in Ben’s office.
After the interview we took the Ferry, and watched the great green statue as we floated by. There are few people old enough in America to find the woman standing with the golden flame attractive—but then again if some team of engineers and sculptors brought the statue up to current standards, I’m not sure I would either. Imagine a too-skinny, pale-fleshed girl, holding a microphone with her free hand in an unintimidating fist pump to the sky—they could even pipe some auto toned lyrics about a party in the USA out the base of the statue, and really draw some attention.

Half way through the interview Ben said, “It’s a complete canard, the idea that Federal Courts are going to be any worse at protecting classified evidence than military commissions.” He argued, “[Federal] courts, without question, have the best record of protecting classified evidence. The leaks come out of Congress—the leaks come out of the executive branch.”

Ben felt the debate was based on distortions. According to Ben, the military commissions would “[operate] on the same kinds of rules governing classified evidence and disclosure to the public” as the civilian trials. According to Ben, concern with the military commissions rises from the new rules for the commissions. They have more prohibitions against using evidence gotten through torture, but the possibility still exists to admit evidence from a third person as hearsay—which cannot be used in a civilian court.

That kind of distortion will plague the public’s understanding of which kind of trial would be best.
“[W]hat the Obama administration has really set up,” said Wizner, “is this kind of two-tiered system which really undermines, unfortunately, the legitimacy of both the military commissions and the federal courts. It makes the federal courts a place where the administration will only go if prosecutors are pretty sure they can get a conviction. I think that’s really unfortunate.”

The $200 Million Price Tag—Unpublished Article—How to Operate in the Future

I queried the New York City Mayor’s office, the White House Office of Management and Budget, the ACLU, and the New York Police Department for details on the price tag for the trial to prosecute self-professed 9/11 mastermind Khalid Sheikh Mohammed. Throughout January the press and these offices had touted the $200 million price tag without saying how they came to the amount. Nor did any of them reveal investigation into whether the price just spouted at random from some bureaucratic office.
In the case of the NYPD press office, the practice of repeatedly sending e-mails did not get any results. Of the seven I sent only two e-mailed responses came back—one of them a complete sentence.

Jason Post, spokesman for Mayor Bloomberg, had given me the contact over at the NYPD. The price tag is an insignificant fact in the larger understanding of the 9/11 trials, and what may have been a diversion of attention. Yet it proved that the media would pass along information without investigating the source of the information.

To their credit, the White House Office of Management and Budget got back to me rather quickly.

Tom Gavin
Deputy Associate Director for Strategic Planning and Communications
Thu, Feb 18, 2010 at 7:48 PM
Subject RE: Regarding the budget
Josh,
Jean forwarded me your question. The President has been clear that we will seek justice on behalf of the American people for those accused of murderous attacks against our nation. The President promised to close the detention facility at Guantanamo Bay and to try, where possible, terrorists in the federal judicial system. The federal government bears the responsibility to pay for those trials, and the Budget provides those funds including support to local law enforcement. The Budget provides up to $200 million to assist local law enforcement for the
trials’ security-related costs. Funding for local law enforcement is being requested through DHS's [Department of Homeland Security] Urban Area Security Initiative. As a result, individual cities will be able to seek support directly from the federal government.

Tom

The office responded quicker than any other press office save the CT State Attorney's office in New Haven I had contacted earlier for a story I got published about whether New Haven might see the KSM trial. But the White House OMB ignored the basics of my question.

Here is the e-mail I initially sent to OMB spokesperson Jean Weinberg:

Hi Jean,

Thanks for the e-mail address. I'll be sure use it for simple questions. I've been reporting on the developments of the 9/11 trial venue change for The Public Record, PubRecord.org. I'm looking for a line in the budget that the below paragraph describes - the mention of the $200 million dollar fund. I understand that the below comment was made under anonymity, and might be quite off base - but my question is whether this proposal exist in the budget, or not?

"A congressional aide said Saturday that the Obama administration is proposing a $200 million fund to help pay for security costs
in cities hosting the trials, to be included in the president's budget being released Monday. The aide spoke on condition of anonymity because the budget hasn't been announced."  

My second question is whether the "$200m" came from Mayor Bloomberg's office, and did the Mayor's office give the Federal government a detailed account of the budget? Or simpler, why did President Obama choose $200m? The Mayor's office has refused to reveal the detailed budget that describes where the $200 million price tag for the trial came from. It's a confusing process to even get close to knowing where the numbers are being drawn from. I'd be excited to hear any info you have on the subject.

Thanks for the time,
Josh

My question, in its basic form, was how and why did the White House decide that all cities should be able to request up to $200 million in federal aid to host a civilian trial to prosecute self-professed 9/11 mastermind Khalid Sheikh Mohammed and co-conspirators? And it wasn’t answered. Artfully sidestepped, I suppose, but not answered.

The response could lead one to a few conclusions. The White House just approved the exact amount that Mayor Bloomberg has asked for to assuage the crowd worried about the expenses of the trial. If this was the case, the White House approved nearly a quarter billion dollars of taxpayer money to a trial with no budgeted plan. And
with the ceiling in sight, any city could bid for the $200 million and fabricate a budget, through bureaucracy, to fit that amount.

It is also possible that both the Bloomberg office and the White House knew where the price tag came from, and had a good reason not to answer directly. I doubt that, mostly because the number is so neat and round, and is nearly triple an original estimate of $75 million. The New York Daily News reported on Jan. 5, 2010 that "Schumer warned the security cost of the trials would be in the "hundreds of millions," but he declined to give an exact figure."

It is also possible that the White House approved the amount in the 2011 FY budget for political reasons. At the point that the budget came out on Feb. 1, 2010, the White House had changed its policy of holding the KSM trial in a New York courthouse, to a weaker, pragmatic policy of deciding where to hold the trial, with the possibility that it wouldn't be held in NY's fifth district. By conceding to one side of the culture war that wanted to the trial held elsewhere, and by mandating that the trial could be funded up to $200 million dollars by the government, the White House side stepped a political assault. With a worry about the price of the trial taken off the backs of just the cities who would host, and onto the backs of the entire taxpaying population, critics had to change their tactics.

The origin of the price tag for the trial became a small obsession of mine, but considering what the trial was about, more important debates about the trial deserved focus. I had written an article with the intent of publishing it, but it wasn’t timely, and it had other problems.

Here, in its entirety, is the unpublished article:
The Obama Administration set it aside in its budget. Republican Sen. Lindsay Graham is using it as leverage. And Mayor Bloomberg announced the amount Jan. 6 of this year, and still cites it as one reason for moving the trials out of the Manhattan area. But how did the city of New York come up with an estimated price tag of $200 million a year for the Khalid Sheikh Mohammed 9/11 trial?

Jason Post, a spokesman for Mayor Bloomberg, told The Public Record that the “cost estimate was prepared by the NYPD.” He offered a contact at the NYPD. However, they have not responded to an initial e-mail and two follow-up requests sent out last week by The Public Record. So, where did the $200 million price tag come from?

It was reported on Jan. 6, 2010 that Bloomberg sent a letter to Peter Orszag, director of the federal Office of Management and Budget. According to the New York Times, the mayor outlined the reasons for the price tag. Though the Times suggests that the letter was released to the public, it is not currently available.

In fact, the Associated Press reported that New York City has refused to release detailed accounts of the trial and therefore refused to explain how the $200 million was estimated.
Why was such a simple request refused? If an estimation was made, it should have been documented, and should be available to the public.

Vice President Joe Biden, in an interview on Meet The Press, expressed doubt that the Bloomberg office’s numbers were correct. Biden felt that the cost of the trial could be less. “The mayor came along and said the cost providing security to hold this trial is “x” hundreds of millions of dollars, which, well, I think is much more than would be needed,” Biden said.

“The security and other risks inherent in holding the trial in New York City are reflected in Mayor Bloomberg's recent letter to the administration,” Republican Sen. Lindsay Graham wrote in a letter he sent to Attorney General Eric Holder, “advising that New York City will be required to spend more than $200 million per year in security measures for the trial.”

Tom Gavin, a spokesman for the White House Office of Management and Budget, told The Public Record in an e-mail that “the Budget provides up to $200 million to assist local law enforcement for the trials’ security-related costs.” The Fiscal Year 2011 budget released last Monday by the White House used the same figure, the $200 million, but Gavin avoided answering the question: what was the origin of the $200 million price tag?

“The federal government bears the responsibility to pay for those trials, and the Budget provides those funds including support to local law enforcement,” wrote Gavin.
Is the Obama Administration using a budgeted number, and quite a large one, with no clear basis?

The Obama Administration should post a public budget estimate for the Khalid Sheikh Mohammed 9/11 trial from the city of New York after they added a line to their budget allocating such a large sum as $200 million of taxpayers’ money.

[End]

To read this supposed article now is a humbling experience, and I am in fact glad it never made it onto the web. As a journalist, it was a great exercise because after writing it I realized what was wrong with it, and some questions I had not asked.

Had it been organized better, I may have concluded that since Biden did not know much about the price tag, I should have been looking for other indicators that the administration and the Bloomberg office were not directly communicating—that even a simple discussion about the public facts of the trial—like funding—had not occurred between the Obama administration’s representatives and the Bloomberg people. And if that was true, back in February, why had it not occurred? What kind of breakdown in government could that mean?

Given more time, I would like to explore these questions, but I am reminded of John Farmer’s book “The Ground Truth,” in which he documents—among many troubles—the breakdown in simple communication between high and low levels of government. Most of the confusion around this trial will originate from a lack of
communication on all levels of media and government—not necessarily because information is being hidden.

According to ACLU Staff Attorney Ben Wizner, the meta-narrative of the culture war is driven by the concept that the Republicans think they are warriors, and paint the democrats as weak policemen. The essentials of the right wing side of the argument: Khalid Sheikh Mohammed is not a common criminal, and should not be treated as one.

The left wing in this culture war argues that Khalid Sheikh Mohammed should not be treated as a soldier on the same level of American, British, or any other first world soldier. According to Wizner, KSM is a mass murderer, and a terrorist—not a soldier. KSM in his 2006 military commission hearing stated that he wanted to be tried as a soldier, even commenting that he felt on equal ground with the officers in the commission. Wizner, and many others, worry that if KSM is convicted and put to death in a military commission, he'll have gotten exactly what he wants—martyrdom.

The right wing argument assumes that the courts are too reckless with confidential information, and ignores the fact that the courts have clearly defined procedures to protect sensitive information during, before, and after trial, said Wizner.
The culture war breaks down to a kind of identity politics—meaning each side attempts to posture as something they are not. In this case, the right wing attempts to fashion themselves as warriors in an epic battle. We all know that senators and congressman are anything but—even if they had at one point been in combat.

The fact that main stream media perpetuates this narrative should disturb you. It is hard to find writing in the main stream media that examines how this narrative plays into the hands of terrorists.

Wizner said, "If you read [Khalid Sheikh Mohammed's] combatant status review transcript from Guantanamo, he is very very delighted to be treated as enemy combatants and to address U.S. military officers as equals. They’re proud to declare that they’re enemy combatants."

Anyone familiar with the concept of logical fallacies should recognize that the arguments in the culture war, on the right wing side, simply mock the left wing's position. It’s a bombastic, weak argument.

The left wing side of the argument has been essentially absent, but for some institutions like the ACLU, Attorney General Eric Holder, and at times the Obama administration. The Justice Department certainly could have offered a better argument, given their resources, but they have not. Consider the fact that the Justice Department repeatedly stated, time and time again, that they had over 300 terrorism-related convictions since 2001. And recently, they boosted the number to 400. However, the Justice Department has offered no in depth analysis, or even surface analysis of what those numbers mean.
According to the ACLU teleconference, Sen. Mitch McConnell claimed that the Zacarias Moussaoui trial was disastrous. Moussaoui was convicted in a civilian court of and according to the ACLU, Moussaoui was sentenced to life in prison—effectively preventing Moussaoui from becoming a martyr, and hero in the eyes of his followers.

The success of the trial was that he received life in prison without parole, and because the court followed strict procedures, no classified evidence was leaked to the public.

According to the ACLU teleconference, the "they were fixed" narrative has gained some ground. The military commissions were reauthorized in the summer of 2009. However, the rules were never set up by congress.

There's also an illusion that running the trial at Guantanamo would save money. According to Andy Worthington it would be "quite a bill."

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*Reality and Rumors of a trial in New Haven*

On Jason’s tip I called the office of Nora Dannehy and John Durham, two high profile federal prosecutors and Conn. State Attorneys.
I remembered that John Briggs, Ray Storez, and I caught the rumor that the 9/11 trial might come to New Haven watching a local news channel on the internet. The rumors seemed weak, even at their onset, mired in the cheap flash of pop news. We wondered how New Haven could secure the trial of the century better and cheaper than New York and what may well be the best Police Department in the world? Will the taxpayers of Connecticut have to pay for the trial, or would the Federal government pick up the tab? According to NBC, there was already some opposition to any potential trial movement to New Haven—and that's about as far as I got with the story.

The published article on The Public Record read: "The Rupert Murdoch-owned New York Post, citing unnamed Obama administration officials, says New Haven has been discussed as one possibility."

According to the NY Post: "Topping the list, the source said, is upstate Otisville — home to a federal penitentiary where the terrorists, now at Guantanamo Bay, could be housed. Other cities being considered, the source said, include White Plains in Westchester County and New Haven, Conn."

The Conn. office secretary handed me over to the voicemail for spokesman Tom Carson. I left him a short voicemail with my contact info and the basic question. I also sent him an e-mail:

Hi Mr. Carson,

I'm working on a story for Jason Leopold at The Public Record. I'm wondering if I could get a comment from your office about the possibility of the 9/11 trial moving to New Haven. Does US Attorney
Dannehy or US Attorney Durham applaud this idea? Or have concerns about it?

Thanks for the time. I'm working for a 5pm deadline.

–Josh Durkin

He got back to me by e-mail but his office did not comment on the possibility of the 9/11 trial moving to New Haven. He suggested contacting Dean Boyd in the Department of Justice's Office of Public Affairs.

I put a call in, but it went to voicemail. All of Washington D.C. was under snow and shut down. The Hartford Courant reported: "the old granite federal courthouse on the east side of the New Haven Green was under consideration as a possible alternative site."

I got a message from Jessica Mayorga, spokeswoman for New Haven Mayor John DeStefano, Jr. She said, “No, we were not contacted by the Federal government about holding the trials here.”

What I could not find from anyone, was any investigative reporting on how serious the government was considering moving the trial to New Haven—maybe that was the point. Maybe the bigger question became: why weren't the main news media doing their own investigation into what sites might be the most plausible?

The reality felt like the news media went to the sources of authority, and took their word without question. This case might be simple, and insignificant in many ways, but the trial reveals a pattern of taking information from the government without question of it. Shouldn't the media have wondered why there hadn't been an investigation?
Shouldn't the media wonder what organizations were assessing the different locations? My suspicion, and fear, is that I am wrong and that some news organizations picked this up. Fear, because that would mean that journalists got the story, but the story did not get out. That in many ways, would be a reality worse than one in which no reporting is done at all.

I caught a story on Main Justice about a college kid, Nick George, who was detained at an airport because he had Arabic to English flash cards—he was studying for a test. One way to look at it was the security picked up something of interest and decided to investigate. The ACLU alleged violations of rights. What if he had a book in Arabic? To go a bit further, did the airport have anyone in proximity that could translate the Arabic? He was held for a period of several hours, apparently.

I then spoke to Rachel Myer over at the ACLU. We talked about Nick George for a little while. The ACLU filed a lawsuit on George’s behalf. We also talked about the origins of the $200 million price tag and whether the trial would end up in New Haven, but she didn’t have any information on either subject.
The newspaper and TV news ad-based market plans—which are systems set up on attracting readers through entertainment—and the preoccupations caused by soliciting "man on the street" statements from average readers, limits the ability for media to investigate and report. Given the power of the 9/11 trial it is odd that there have been little investigative reports from mainstream sources. That fact should surprise and bother us, but should also lead us to think about where the best news comes from. This trial, given its potential impact, may prove that alternative and not-for-profit news sources get better, deeper stories than the main media—even in a story that would traditionally require prestige and money to fully report.

Ray Storez and I had one of the first long-form interviews with the ACLU regarding the 9/11 trial and military commissions since late January 2010, when the idea of holding a civilian trial in lower Manhattan lost support. It should be the job of large institutions to investigate, but our case has shown that a small outfit can get a lot of reporting done with little resources and mildly up-to-date technology.
Reporting for the KSM trial has shown the limitations of brand name media. The media has largely underreported the developed culture war between those that want the 9/11 trial, and other terrorism trials, in military commissions and those that want the trials in civilian courts.

The media also failed to investigate the price tag of the trial, and instead propelled a number around without stating—until the AP finally got a rejection response from the Bloomberg office—where the price was calculated, using what methods, and based on what figures.

Reporting on the 9/11 trial exposed me to the problems of military commissions. My favorite report to date was the double-video produced from the interview with ACLU Staff Attorney Ben Wizner in Manhattan—Ray and I got a ton of information out of that interview.

The reports also exposed me first hand to problems with the realities that the news media present to the public, and the realities that alternative news sources present—that the alternative news sources often put together a reality with more information than what the mainstream media presents.
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