

Opinion: 20 years after the attacks, the accused of 9/11 must finally be tried — in civilian courts

Opinion by Nick Lewin

Nick Lewin was lead prosecutor for U.S. v. Usama bin Laden, in which role he conducted all the trials for al-Qaeda operatives tried in the Southern District of New York from 2009 to 2017.

Five men who were directly involved with planning and executing the terrorist attacks of Sept. 11, 2001, have been in U.S. custody for nearly two decades. They have long been charged for these crimes. And yet there has been no trial — no reckoning. They remain confined at Guantánamo Bay Naval Base, charged in a military commission system that is, by any objective measure, an abject failure.

Twenty-seven other men still sit in Guantánamo under indefinite “law-of-war detention.” They have been charged with no crime. They are prisoners of our war on terrorism — a legally permissible status under long-standing principles of the laws of war. But, after nearly two decades of being held without charge, is it right? Does it make us safer? Is it consistent with our values? Across the nearly 250-year history of the Republic, we have never deemed any human being so dangerous — so powerful — that we could not, after decades of detention, subject him to adjudication or release. Not through a Revolution, a Civil War, a Cold War. Never.

We can and must use the occasion of marking 20 years since 9/11 to finally deal with all these men in a way that is both effective and consistent with our values. That way is through our federal courts.

America’s civilian courts are far from perfect. Sometimes, dangerous people are acquitted. Sometimes, dangerous people are freed when cases are lost on a legal technicality. Sometimes, dangerous people are sentenced, serve time and are then released back into society. But we tolerate these risks to honor and protect our values. Despite the myriad flaws of our criminal justice system, it approximately balances fairness and efficacy, and is perceived by most Americans as fundamentally legitimate. It provides the forum in which we publicly adjudicate unspeakably terrible crimes and not only punish the guilty but — for many victims and their families and, collectively, us — deliver a powerfully needed sense of finality.

As a federal prosecutor, I spent a decade working alongside the silent counterterrorism professionals who were dedicating their lives to ensuring that the terrorists of al-Qaeda be brought to justice. In pursuit of that goal, these women and men, from law enforcement, the

intelligence community and the military, traveled the world and made enormous personal and professional sacrifices.

And their work has succeeded — in the civilian courts. I know: I prosecuted three jury trials in federal court against senior al-Qaeda leaders and operators. Each man was arraigned in federal court, publicly tried before a civilian jury, convicted, sentenced to life without the possibility of parole, and had his final appeal denied — all in less than five years. In the case of Suleiman Abu Ghaith, Osama bin Laden's son-in-law, it took 4 years, 7 months and 11 days; for Khalid al-Fawwaz, an original al-Qaeda member and close associate of bin Laden, 4 years, 10 months and 18 days; and for Ahmed Ghailani, bin Laden's bodyguard and one of the men who executed attacks against the U.S. embassies in Kenya and Tanzania, 4 years, 6 months and 21 days.

Compare that to the military commissions at Guantánamo Bay: After multiple failed attempts beginning early in President George W. Bush's administration, the present attempt to try the five men charged with the Sept. 11 attacks has been mired in pretrial hearings since May 2012 — more than nine years, with no trial in sight. And, just as last week, the Biden administration sent yet another al-Qaeda case — involving three Guantánamo prisoners accused of the 2002 Bali bombing — into the military commissions quagmire.

We are, individually and as a nation, strong enough to find justice consistent with our values. **For those men still held at Guantánamo Bay, that means bringing charges in federal court against those for whom sufficient evidence exists** — and releasing those for whom it does not. While deeply imperfect, our civilian criminal justice system can impose value-honoring justice, even for men charged with the murder of thousands of people.

Can anyone really dispute that the victims of 9/11 and their families are finally owed a trial in which the evidence against the perpetrators is aired and their guilt or innocence fairly adjudicated? Until we choose to honor the dead by bringing the attackers to justice, we — you and I and our elected representatives — inexcusably perpetuate our collective failure.

Justice is not merely due. It is overdue — long overdue. Any commemoration of the 20th anniversary of 9/11 will be an empty gesture if it is not accompanied by concrete steps to end the injustice of inaction.