



Remarks Prepared for Delivery by Attorney General Michael B. Mukasey at the London School of Economics

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Good afternoon, and thank you for inviting me to speak with you. This is my first trip to London as Attorney General, and although I'm only here for a short time, I've met with a number of people, including the Home Secretary Jacqui Smith, the Justice Secretary Jack Straw, the Attorney General, Baroness Scotland, and officials from the Metropolitan Police Service, among others.

I was grateful for the chance those meetings gave me to learn not only about what your law enforcement has been doing but also how it has gone about it, and to have some frank discussions about ways our two countries have been working together and can work together in the future.

In each of those meetings, I was also able to thank the representatives of law enforcement in the United Kingdom for their cooperation on the full range of issues, from organized crime, to counter-narcotics, to fraud, to counter-terrorism. The work they do, and the work we do together, protects the safety and security of all our citizens.

In the next several minutes I will try to tell you a bit of what we do together with our colleagues in the United Kingdom, discuss some of the ways we have tried to adapt to the threat we face while preserving the rule of law, and then take some of your questions and perhaps even answer a few of them.

The United States and United Kingdom historically have had a special relationship, not the least in our law enforcement efforts. In training, intelligence sharing, investigations, and prosecutorial support, the United Kingdom and United States stand together, working cooperatively toward the same goal of keeping our nations safe from crime.

Law enforcement officers and prosecutors on both sides of the Atlantic benefit from our liaisons in Washington and London. In the U.K., the United States has a strong law enforcement presence, with representatives from the Federal Bureau of Investigation, Drug Enforcement Administration, Department of Homeland Security, Secret Service, Internal Revenue Service, Diplomatic Security Service, a lawyer from my Department's Criminal Division, and soon an agent from the Bureau of Alcohol, Tobacco, Firearms and Explosives.

In Washington, the U.K. has law enforcement officers in various agencies and a liaison prosecutor at the British embassy. Through these officials, and through relationships that have been cultivated

through years of cooperation, our nations have benefited and been made safer.

On an investigator-to-investigator basis, our relationship is strong and successful.

Choose any type of transnational criminal conduct, and there are examples of cooperation between our nations. In counter-terrorism, one important case run jointly by the United States and the United Kingdom was known by the codename Operation Rhyme. In that case, Dhiren Barot, a British national with links to Al Qaeda, and seven co-conspirators were convicted of plotting: to detonate car bombs and a dirty bomb; engage in other attacks on civilians in the United Kingdom; and detonate bombs at financial centers in the United States, including the New York Stock Exchange and the World Bank.

Barot traveled freely between our two countries and enrolled in a university in the United States under a student visa. He exploited the convenience of our open borders and our friendly relations in order to try to kill American and British civilians alike. We were able to thwart his plans only through the close cooperation of our law enforcement agencies.

On the counter-narcotics front, there was the case of Ricardo Fanchini, a Polish national who our Drug Enforcement Administration had identified as a lead member of an international drug trafficking and money laundering organization operating in the U.S., the U.K., and throughout Europe. The DEA, working with several other foreign law enforcement agencies, initiated an investigation into Fanchini's criminal activities, and the U.K.'s Serious Organized Crime Agency determined that Fanchini was living and operating here. We were able to identify several members of his organization operating in the U.S., and ultimately indicted him on drug and money laundering charges.

In October 2007, members of the Metropolitan Police Service Extradition Unit arrested Fanchini in London based on a Provisional Arrest Warrant generated in New York. Subsequent searches resulted in the seizure of documents and computer records. Fanchini did not contest his extradition to the United States, which happened this past January. He and four co-defendants currently are awaiting trial in New York.

Fanchini had been identified by various European law enforcement agencies as an international criminal for years. It took a lot of cooperation and coordination between the U.S., U.K. and other countries to bring about his arrest, but in the end he will be made to face the charges against him. Let me cite another example of joint counter-terrorism cooperation. In 2006, the U.S. also provided significant assistance to the crown prosecution service in its prosecution of the "operation crevice" trial, which involved a foiled Al Qaeda bombing plot in the U.K. During the trial, we arranged to have a cooperating witness from New York, Muhammad Junaid Babbar, travel to London for 6 weeks in order to provide live testimony. That testimony proved to be critical evidence in the case, resulting in the conviction of 5 defendants.

These are just three of many examples. We also benefit from strong prosecutor-to-prosecutor relationships and through well established and well functioning formal mechanisms of cooperation, such as through our 1994 Mutual Legal Assistance Treaty.

Dozens of mutual assistance requests are transmitted by the Department of Justice and by the Home Office every year. These requests are fulfilled not simply as a matter of treaty obligation, but out of a shared commitment to combating and eliminating transnational crime, including terrorism and corruption. It is the investigators in our countries who are, in large part, responsible for the fulfillment

of these obligations, as they are the ones who often are obtaining and serving court orders, gathering evidence, executing searches, and conducting interviews.

Our nations benefit also from our long-standing extradition relationship, which spans more than two-hundred years. As the law evolves over time, so do the treaties that define it. The US-UK relationship was modernized most recently by the 2003 extradition treaty, which gives equal service to both nations in ensuring that criminals are brought to justice. In force now for just under one year, this treaty is complemented by a modern U.K. extradition law, which has leveled the playing field for our nations and holds the United States to the same extradition standard as 20 other nations.

Since the treaty entered into force, both nations have used it effectively as a tool to fight transnational crime. Among the defendants for whom extradition has been requested are people wanted for homicide, narcotics trafficking, fraud, money laundering, and tax offenses. Currently awaiting extradition to the United States from the U.K. are a half-dozen people wanted for terrorism offenses.

Notwithstanding our success in pursuing joint investigations, informal cooperation, formal mutual legal assistance, and extradition, we recognize that we have to assure the public that we are doing so in a fair manner. For example, U.S.-U.K. extradition relations have been subjected to a string of attacks that have created public misconceptions about the treaty.

These criticisms were most recently raised last November following guilty pleas, and last month following the sentencing, of three British nationals connected to the Enron scandal. Some have claimed erroneously that the extradition treaty was negotiated to target terrorists, not ordinary criminals. Others claim that the legal burdens faced by the U.K. and U.S. in extradition are lopsided, with a far greater burden needing to be met by the U.K. Both claims are simply mistaken.

First, although the new treaty certainly is aimed at catching and bringing to justice terrorists, that said, it is also aimed at child pornographers, robbers, narco-traffickers, those who commit corporate fraud, environmental offenders, money-launderers, and any other serious criminals. Nothing in this treaty limits its reach to terrorist offenses. Like other modern extradition treaties in force around the globe, it is explicitly a "dual criminality" treaty, covering only these crimes deemed serious by both nations.

Second, the United States does not require a heavy burden to be met by the U.K. in seeking extradition, even of U.S. nationals. The U.S. standard for extradition is, and always has been, probable cause -- a relatively low burden. Despite claims to the contrary, "probable cause" does not equal "prima facie" proof, which must be met by the government at a trial on the merits; it means reason to believe that a crime was probably committed and that the defendant probably committed it. That's all.

It's true that for extradition requests from the U.S. to the U.K., we once were held to a prima facie standard. But under current U.K. law, that standard has been eliminated for the U.S. and 20 other nations, including not only Australia and Canada, but also Albania and Azerbaijan, and we now have a more balanced extradition relationship.

Both the American and the British public should understand that neither nation has relinquished its sovereignty, that extradition cannot be accomplished on a whim, and that our governments are not intent on violating people's rights. Built into the treaty are several protections for extradition subjects, and these subjects have available to them avenues of appeal — often extremely lengthy ones — to

the courts and the executive in both countries.

The American justice system also has been the subject of criticism, especially with regard to the plea negotiation system. In both of our countries, criminal defendants can voluntarily and knowingly plead guilty rather than go to trial. If this were not permitted, our systems could not work under the strain of the many trials that would occur.

Often, when presented with overwhelming evidence of guilt, a defendant will plead guilty in exchange for leniency. At times, that defendant also agrees to provide information or other cooperation — cooperation that has saved lives and resulted in the recovery of assets stolen from innocent victims — in exchange for a government recommendation as to the sentence.

Judges may choose whether to accept such recommendations, and defendants are not forced to enter into such agreements. The U.S. and the U.K. have mature, independent legal systems, in which a defendant can contest the government's evidence before an impartial judge or jury.

Beyond these issues related to public perception of the fairness of our legal systems, another challenge faced by our countries is how our legal systems can best deal with accused terrorists. As I mentioned earlier, we've worked closely on counter-terrorism prosecutions; but, as both our countries have recognized, we must continue to consider whether our current legal tools are sufficient to handle international terrorism, just as the world at large must consider whether the paradigm created in 1945 after World War II to prevent a recurrence of the evils that led to that war is suited to deal with the evils that generated the war in which we are now engaged.

Terrorism prosecutions and investigations are enormously different from other criminal cases, and the militants charged in those cases are significantly different from the run of the mill criminal defendant accused of a crime. They are not in it for the money, or to cheat or beat the system on this or that occasion; they are not in it to achieve a limited purpose or goal, the way ordinary criminals are; they are in it to subvert and eventually overthrow the system. Their goals are cosmic; their means are apocalyptic.

Both our countries have struggled with how best to deal with this problem, and we've taken somewhat different approaches. The United Kingdom has been thinking about and addressing these issues for longer than we have, and you have the benefit, if you can call it that, of having worked through some of the thornier problems.

The U.K. has been able to adapt police powers to deal with the terrorist threat, and update your laws as necessary to address new topics, such as weapons of mass destruction, aviation security, security of the nuclear industry, and security of pathogens and toxins.

And with the Home Secretary's recently proposed U.K. Counter-Terrorism Bill 2008, the U.K. has turned its attention to important concerns such as the questioning of terrorist suspects; enhanced sentences; and pre-charge detention of terrorist suspects. That is a feature we do not have under our law.

We, too, are engaged in vigorous political debate on the best ways to balance the security needs of our country with the important safeguards of civil liberties and due process essential to our legal systems.

More than 60 years ago, in opening what would become known as the Nuremberg Tribunals, the chief counsel for the United States, Robert Jackson, who once served as Attorney General and who was also a Justice of our Supreme Court, remarked on the importance of the measured response applied by the Allied Nations in trying Nazi war criminals. That these countries, as he put it, "flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason." The Nuremberg trials were criticized by some at the time as simply victors' justice, but they created a record of the evil they prosecuted, and were conducted in an open and fair way.

In our conflict today, I recognize that honest men and women on both sides of the ocean can disagree on the best solutions, and that the differences in our approaches concern more than just minor details or semantics. But all of our responses must be seen as part of our effort to strike the best balance possible between competing, though equally vital, goals.

I'd like to talk for a moment about one area in particular where we've been trying to strike this balance, and that is the military commissions system we've established for detainees designated as unlawful enemy combatants, including the six individuals we recently charged with responsibility for planning the attacks of September 11th.

I noted earlier the difficulties posed by ordinary terrorism prosecutions. When it comes to prosecuting people apprehended by the U.S. military on the battlefields in Afghanistan, or to prosecuting senior al Qaeda leaders captured with the assistance of foreign partners, we are proceeding in the face of obstacles that could well preclude, or artificially narrow, any prosecution that could be brought in an ordinary criminal court.

In these war crimes cases, we have collected evidence under very different circumstances from those employed by traditional law enforcement. Our civilian justice system provides for strict rules governing the collection and authentication of evidence. Battlefields and foreign terrorist safe houses are not like typical crime scenes, and soldiers engaged in combat with an utterly ruthless enemy cannot be expected to gather evidence the way police officers might when they examine a crime scene once the danger has passed, or where they arrest a suspect.

Many legal systems would have difficulty addressing these evidentiary challenges; but given jurisdictional and evidentiary limitations particular to our legal system, they pose acute difficulties for our traditional criminal courts. To take just one example, the hearsay rules that apply in our courts could require the judge to exclude otherwise reliable statements obtained by our military from unavailable foreign witnesses. To take another, the Miranda rules, if applied literally, could force the United States to send defense attorneys to foreign battlefields before we could rely on statements made by al Qaeda members following their capture.

Similarly, these cases concern crimes around the world, and we may need to rely on foreign witnesses, who are outside the jurisdiction of a United States tribunal, or who may be unavailable because of incarceration, injury, or death.

Therefore, military commissions, like international war crimes tribunals, have adopted more flexible evidentiary rules to permit the consideration of otherwise reliable evidence that may not be used under the rules of criminal procedure for ordinary criminal cases. The touchstone of those rules is the

apparent reliability of evidence, not the degree to which the collection of that evidence may conform to the usual rules.

For those reasons, in order to have a full accounting for al Qaeda's war crimes, the United States has turned to a system of military trials, much as the Allies did following World War II. Let me make clear, however, that although military commissions accommodate military necessity and security concerns; they do not compromise fundamental principles of justice.

The military commissions established by our Congress are closely modeled on tribunals that the United States uses in courts-martial to try U.S. citizens in uniform. They include all the protections that we regard as fundamental, they exceed those used at Nuremberg, and they compare favorably with international war crimes tribunals.

Under the Military Commissions Act, for example, the accused enjoys the right to counsel; the presumption of innocence unless guilt is proved beyond a reasonable doubt; and the right to a trial before impartial military judges—the same military judges who preside at courts-martial—and an impartial jury. The accused enjoys the right to see all of the evidence presented against him—including any classified evidence presented to the members of the military commission. And the act ensures that the military judge deems statements admitted to be reliable and in the interest of justice.

Moreover, there will be no secret trials—rather, all trials will be open and public, with only a narrow exception to protect national security. Finally, for those convicted, the Military Commissions Act provides several levels of appeal, including to our civilian courts, and ultimately to the U.S. Supreme Court. Like many of the rights provided in the act, this access to our domestic courts for direct appellate review is an unprecedented protection for convicted war criminals.

We recognize that the use of military commissions has been regarded as controversial by some of our allies. But we hope that as the trials go forward—and the first of them, of a man named Hamdan, who served among other things as Osama bin Laden's driver, is scheduled to begin this Spring—some of the misimpressions about the system will laid be to rest, and the world will see not only the crimes of al Qaeda put upon display, but also a justice system fully consistent with our shared Anglo-American legal tradition as well as the standards of international law. That's why international conversations like this one are important, because they provide the opportunity for a discussion grounded in fact.

Cliché-riddled as it may seem, I think what unites us is far more substantial than what divides us. The common origins of our legal systems, and our long history of cooperation, suggest that we will be able to work together toward common solutions, and I'm glad that I've had this chance to continue our dialogue.

The law enforcement relationship between the U.S. and U.K. is built on trust, respect, and the common goals of protecting our nations and eliminating safe havens for criminals. The United States could ask for no better partner than the United Kingdom in this important endeavor.

Thank you.

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