The Attorney General's oral presentation at the hearing today will depart from his written testimony because of recent developments on Fort Hood and Guantanamo detainees. His remarks as prepared for delivery appear below.

Oral Remarks As Prepared For Delivery

Attorney General Eric Holder Senate Judiciary Committee
November 18, 2009

When I appeared before this committee in January for my confirmation hearing, I laid out several goals for my time as Attorney General: to protect the security of the American people, restore the integrity of the Department of Justice, reinvigorate the Department's traditional mission, and most of all, to make decisions based on the facts and the law, with no regard for politics. In my first oversight hearing in June, I described my early approach to these issues.

Five months later, we are deeply immersed in the challenges of the day, moving forward to make good on my promises to the committee and the president's promises to the American people.

First and foremost, we are working day and night to protect the American people. Due to the vigilance of our law enforcement and intelligence agencies, we have uncovered and averted a number of serious threats to domestic and international security. Recent arrests in New York, Chicago, Springfield, and Dallas, are evidence of our success in identifying nascent plots and stopping would-be attackers before they strike.

Violence can still occur, however, as evidenced by the recent tragic shootings at Fort Hood. We mourn the deaths of 13 brave Americans, including Dr. Libardo Caraveo, a psychologist with the Justice Department's Bureau of Prisons who had been recalled to active duty. The Federal Bureau of Investigation is working diligently to help gather evidence that will be used by military prosecutors in the upcoming trial of the individual who is alleged to have committed this heinous act.

We are also seeking to learn from this incident to prevent its reoccurrence. Future dangerousness is notoriously difficult to predict. The president has ordered a full review to determine if there was more that could have been done to prevent the tragedy that unfolded in Texas two weeks ago. We have briefed the chairman and ranking member of this committee and other congressional leaders on our efforts, and will continue to keep Congress abreast of this review.

I would also like to address a topic that I know is on many of your minds – my decision last week to refer Khalid Sheikh Mohammed and four others for prosecution in federal courts for their participation in the 9/11 plot.

As I said on Friday, I knew this decision would be controversial. This was a tough call, and reasonable people can disagree with my conclusion that these individuals should be tried in federal court rather than a military commission.

The 9/11 attacks were both an act of war and a violation of our federal criminal law, and they could have been prosecuted in either federal courts or military commissions. Courts and commissions are both essential tools in our fight against terrorism. Therefore, at the outset of my review of these cases, I had no preconceived views as to the merits of either venue, and in fact on the same day that I sent these five defendants to federal court, I referred five others to be tried in military commissions. I am a prosecutor, and as a prosecutor my top priority was simply to select the venue where the government will have the greatest opportunity to present the strongest case in the best forum.

I studied this issue extensively. I heard from prosecutors from both the Department and from the Office of Military Commissions. I asked a lot of questions and weighed every alternative. And at the end of the day, it was clear to me that the venue in which we are most likely to obtain justice for the American people is in federal court.

I know there are members of this committee, and members of the public, who have strong feelings on both sides. There are some who disagree with the decision to try the alleged Cole bomber and several others in a military commission, just as there are some who disagree with prosecuting the 9/11 plotters in federal court.

Despite these disagreements, I hope we can have an open, honest, and informed discussion about that decision today, and as part of that discussion, I would like to clear up some of the misinformation that I have seen since Friday.

First, we know that we can prosecute terrorists in our federal courts safely and securely because we have been doing it for years. There are more than 300 convicted international and domestic terrorists currently in Bureau of Prisons custody, including those responsible for the 1993 World Trade Center bombing and the attacks on our embassies in Africa. Our courts have a long history of handling these cases, and no district has a longer history than the Southern District of New York in Manhattan. I have talked to Mayor Bloomberg of New York, and both he and the Police Commissioner Ray Kelly believe that we can safely hold these trials in New York.

Second, we can protect classified material during trial. The Classified Information Procedures Act, or CIPA, establishes strict rules and procedures for the use of classified information at trial, and we have used it to protect classified information in a range of terrorism cases. In fact, the standards recently adopted by Congress to govern the use of classified information in military commissions are derived from the very CIPA rules that we use in federal court.

Third, Khalid Sheikh Mohammed will have no more of a platform to spew his hateful ideology in federal court than he would have in military commissions. Before the commissions last year, he declared the proceedings an "inquisition," condemned his own attorneys and our Constitution, and professed his desire to become a martyr. Those proceedings were heavily covered in the media, yet few complained at the time that his rants threatened the fabric of our democracy.

Judges in federal court have firm control over the conduct of defendants and other participants in their courtrooms, and when the 9/11 conspirators are brought to trial, I have every confidence

that the presiding judge will ensure appropriate decorum. And if KSM makes the same statements he made in his military commission proceedings, I have every confidence the nation and the world will see him for the coward he is. I'm not scared of what KSM will have to say at trial – and no one else needs to be either.

Fourth, there is nothing common about the treatment the alleged 9/11 conspirators will receive. In fact, I expect to direct prosecutors to seek the ultimate and most uncommon penalty for these heinous crimes. And I expect that they will be held in custody under Special Administrative Measures reserved for the most dangerous criminals.

Finally, there are some who have said this decision means that we have reverted to a pre-9/11 mentality, or that we don't realize this nation is at war. Three weeks ago, I had the honor of joining the President at Dover Air Force Base for the dignified transfer of the remains of eighteen Americans, including three DEA agents, who lost their lives to the war in Afghanistan. The brave soldiers and agents carried home on that plane gave their lives to defend this country and its values, and we owe it to them to do everything we can to carry on the work for which they sacrificed.

I know that we are at war.

I know that we are at war with a vicious enemy who targets our soldiers on the battlefield in Afghanistan and our civilians on the streets here at home. I have personally witnessed that somber fact in the faces of the families who have lost loved ones abroad, and I have seen it in the daily intelligence stream I review each day. Those who suggest otherwise are simply wrong.

Prosecuting the 9/11 defendants in federal court does not represent some larger judgment about whether or not we are at war. We are at war, and we will use every instrument of national power – civilian, military, law enforcement, intelligence, diplomatic, and others – to win. We need not cower in the face of this enemy. Our institutions are strong, our infrastructure is sturdy, our resolve is firm, and our people are ready.

We will also use every instrument of our national power to bring to justice those responsible for terrorist attacks against our people. For eight years, justice has been delayed for the victims of the 9/11 attacks. It has been delayed even further for the victims of the attack on the USS Cole. No longer. No more delays. It is time, it is past time, to act. By bringing prosecutions in both our courts and military commissions, by seeking the death penalty, by holding these terrorists responsible for their actions, we are finally taking ultimate steps toward justice. That is why I made this decision.

In making this and every other decision I have made as Attorney General, my paramount concern is the safety of the American people and the preservation of American values. I am confident this decision meets those goals, and that it will withstand the judgment of history.

Thank you.