

## Former AG Mukasey: Terror Cases Don't Belong in Federal Court

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Former Attorney General Michael Mukasey on Friday afternoon criticized the Justice Department for its decision to prosecute five terror suspects in federal district court in Manhattan, calling the move "unwise" and saying it risks creating sweeping new law that will affect routine criminal cases.

Mukasey, speaking at the Federalist Society annual conference in Washington on Friday, said the prosecution of terror suspects in civilian courts poses a significant challenge to the criminal justice system. Cases against Guantanamo Bay detainees, he said, were not investigated with the expectation that prosecution would happen in federal courts, with their stringent procedural and evidentiary rules.

The Justice Department announced Friday morning that five detainees, including Khalid Sheikh Mohammed, the alleged mastermind of the Sept. 11 terrorist attacks, will be prosecuted in the U.S. District Court for the Southern District of New York.

The security of judges, prosecutors, jurors and courthouses, Mukasey said, will be a chief concern. He warned that Manhattan could become a target for "mischief" among the followers of the defendants.

He said he is confident unbiased jurors can be found. "That part of the process I have great faith in. It's the rest of it that worries me," said Mukasey, a partner at [Debevoise & Plimpton](#) in New York.

"Here again, the plan seems to be to abandon the view that we are involved in a war" and return instead to a pre-Sept. 11 criminal justice model, said Mukasey, a former judge in the Southern District of New York himself. He spoke for about 15 minutes and took questions afterward. He is a member of the Federalist Society. ("If I had to be at any venue today after what was announced this morning, I'm glad it's this one," he said.)

The prosecution of terror suspects should occur at the Guantanamo Bay facility, he said. "That such a trial might actually be seen by the American public and the rest of the world as both fair and successful appears not to have occurred to anyone in authority," Mukasey said.

The Obama administration has pledged to shut down the Guantanamo Bay prison camp. A Jan. 20 deadline, however, is unlikely to be met. Mukasey said the decision to prosecute defendants in federal court "appears to have resulted simply from a commitment" to close Guantanamo.

Earlier Friday morning, Attorney General Eric Holder Jr. said he is confident the government will succeed in prosecuting terror suspects in federal district courts. "I would not have authorized the bringing of these prosecutions unless I thought that the outcome, any outcome, would ultimately be successful," Holder said.

Regarding security, Holder said: "New York has a long history of trying these kinds of cases. New York has a hardened system."

Holder said he recognizes the challenges that the cases present and acknowledged evidentiary disputes between prosecutors and defense lawyers are likely. One issue is likely to be whether statements from detainees were coerced. Holder said the relevancy of those statements will determine whether prosecutors seek to use them. "I don't know what the defense might do. It's hard for me to speculate at this point. It's hard to know exactly what our response will be," Holder said.

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