Selected Quotes from UK newspapers

on High Court ruling of 10 April 2008 that the Serious Fraud Office acted unlawfully in stopping the BAE-Saudi corruption investigation in December 2006.

"What started as a David versus Goliath challenge, brought by a group of activists dismissed as “treehuggers”, on Thursday [10 April 2008] culminated in a damning condemnation of the [UK] government that is likely to reverberate for years to come."

Financial Times

"Even the most optimistic of campaigners from Corner House Research and the Campaign Against Arms Trade could not have expected to hear one of Britain’s most senior judges castigate officials – including a former prime minister – for placing the entire criminal justice system under threat."

Financial Times

"There are moments when a statement of the obvious cuts through the fog of self-interest and evasion that clings to much of politics, and clears the way for a genuine fresh start. The High Court's stunning condemnation of the decision to abandon an investigation into alleged bribery by BAE Systems is such a moment. 'No one,' Lord Justice Moses and Mr Justice Sullivan declared, 'whether in this country or outside, is entitled to interfere with the course of our justice.' It should never have fallen to their lordships to point this out."

The Times

"The High Court . . . said there was no proof at all that British national security would have been put at risk by anything the Saudis threatened to do. The purpose of the threat was simply designed 'to prevent the SFO from pursuing the course of investigation he had chosen to adopt'. In that, the judgment went on tersely, 'it achieved its purpose'. "

The Independent

" . . . as the judges commented, there is 'the suspicion' that the security issue was 'a useful pretext for ditching an SFO inquiry that was harming commercial interests."

The Guardian

". . . the government leapt on 'national security' as a pretext to kill off an inquiry that threatened bothersome diplomatic, political and economic consequences. "

The Observer

" . . . the government has drafted legislation [draft Constitutional Renewal Bill] to enshrine in law the Attorney General's right to stop criminal proceedings on grounds of 'national security', while surrendering the right to meddle in all other cases. In other words, the government will relinquish a power it never used and strengthen one it has clearly demonstrated it can abuse."

The Observer

"The BAE court ruling has brought to the boil a simmering controversy over the government's attempts to give itself a wide-ranging power to stop investigations and prosecutions on national security grounds.

"Baroness Scotland, the attorney-general, now has the tricky task of defending her efforts to push through the reforms [draft Constitutional Renewal Bill] in the wake of a judgment that condemned the government for using national security exemptions too loosely.

"Lawyers said the national security argument was the most striking part of a judgment whose attack on the government's legal failings read more like a US Supreme Court attack on an overweening president. "

Financial Times

"[UK Prime Minister] Gordon Brown came under renewed pressure on Friday [11 April 2008] over the government's failure to help a US criminal investigation into alleged bribery by BAE Systems, the big arms company.

"Mr Brown . . . faces criticism at home over the nine-month delay in responding to a request for information made by the US Department of Justice.

Financial Times

"Thursday's explosive court ruling creates a big dilemma for a new generation of senior politicians, investigators and executives, who know how badly the decision to scrap the BAE Systems bribery probe has bruised their predecessors' reputations. Since the investigation into BAE's dealings in Saudi Arabia was sensationally scrapped 16 months ago, the posts of prime minister, attorney-general, Serious Fraud Office director and the company's chief executive have either changed hands or are about to do so."

Financial Times

"The near-silence of BAE on Thursday [10 April 2008] and the other main parties was a sign of how much they all had to think about on a day when Lord Justice Moses's voice rang out uncomfortably loud and clear."

Financial Times

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Selection of articles from UK newspapers

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Financial Times, 10 April 2008

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Financial Times, 17 April 2008

1)
UK government 'placed justice system at risk'

By Megan Murphy, Law Courts Correspondent
Financial Times
April 10 2008

What started as a David versus Goliath challenge, brought by a group of activists dismissed as "treehuggers", on Thursday culminated in a damning condemnation of the government that is likely to reverberate for years to come.

Even the most optimistic of campaigners from Corner House Research and the Campaign Against Arms Trade could not have expected to hear one of Britain's most senior judges castigate officials – including a former prime minister – for placing the entire criminal justice system under threat.

The judicial review into the Serious Fraud Office's decision to scrap a corruption probe into arms deals between BAE Systems and Saudi Arabia was as close to a blow-by-blow account of the government's backroom dealings as is likely to be put forward. When the investigation was abandoned in December 2006, the government repeatedly defended its decision as a matter of national security.

What the judicial review exposed was the seriousness of the threats voiced by the Saudi government – allegedly led by Prince Bandar bin Sultan – as they pressed Tony Blair's administration to scrap the investigation.

Prince Bandar, the former Saudi ambassador to Washington and the son of Saudi Arabia's crown prince, has denied receiving more than £1bn of bribes from BAE in connection with the arms deals.

Previously confidential memos released during the case show that SFO investigators were told they faced "another 7/7" and the loss of "British lives on British streets" if Saudi co-operation on intelligence – such as the monitoring of suspected terrorists – was withdrawn.

But what also emerged were consistent references by senior figures to the potentially devastating commercial consequences of pressing forward with an investigation that was equally unpopular with BAE Systems, Britain's largest defence contractor.

The £43bn Al-Yamamah arms deal between London and Riyadh is Britain's largest export agreement, securing thousands of jobs in a key industry.

At the time the investigation was dropped, the Saudi government was in the middle of negotiating a £20bn contract for the purchase of 72 Eurofighter Typhoon jets. Confidential documents released during the judicial review hearing detail BAE's efforts to derail the inquiry as early as November 2005 in a confidential letter to Lord Goldsmith, then attorney-general. The defence contractor claimed the investigation was straining UK-Saudi relations and placing the arms programme at risk.

“It would almost inevitably prevent the UK securing its largest export contract in the last decade...with the consequent adverse consequences for the UK economy in general and employment,” the company wrote. BAE has consistently denied any wrongdoing with respect to the Al-Yamamah programme.

Eight months later, when Saudi officials learnt the SFO probe might have extended to Swiss bank accounts, Prince Bandar allegedly threatened to withdraw the Typhoon contract, in a private meeting with Jonathan Powell, Mr Blair’s former chief of staff. Less than a week before the investigation was scrapped, he again met Foreign Office officials after beginning negotiations for the purchase of alternative aircraft with Jacques Chirac, the former French president.

Mr Blair noted the “critical difficulty presented to the negotiations over the Typhoon probe” in a note to Lord Goldsmith on December 8 2006, urging him to re-consider halting the inquiry.

“It is my judgment on the basis of recent evidence and the advice of my colleagues that these developments have given rise to the real and immediate risk of a collapse in UK/Saudi security, intelligence and diplomatic co-operation,” wrote Mr Blair. “This is likely to have seriously negative consequences for the UK public interest in terms of both our national security and our highest priority foreign policy objectives in the Middle East.”

The SFO announced its decision six days later. The SFO and Lord Goldsmith insisted the decision was made exclusively on national security grounds.

Robert Wardle, outgoing head of the SFO, told parliament “no weight” had been given to either commercial interests or the national economic interest.

Lord Justice Moses and Mr Justice Sullivan on Thursday excoriated not the substance of the Saudi Arabian threat, but officials’ abject failure to counter it. By failing to exhaust all efforts to rebuff the threats, the government had placed the criminal justice system itself at risk, requiring judicial intervention at the highest level, said the judges.

“No one suggested to those uttering the threat that it was futile, that the United Kingdom’s system of democracy forbade pressure being exerted on the independent prosecutor whether by the domestic executive or by anyone else; no one even hinted that the courts would strive to protect the rule of law,’’ the judges said.
Ministers now face intense pressure to reopen the probe, or to convene a public inquiry into how the SFO reached its decision. The High Court is expected to order the SFO to reconsider its actions.

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2)
UK ‘unlawfully’ scrapped BAE probe

By Michael Peel, Megan Murphy, George Parker and Sylvia Pfeifer
Financial Times
10 April 2008

Ministers on Thursday night [10 April 2008] vowed to drive through unprecedented statutory powers to shut down investigations on national security grounds, [draft Constitutional Renewal Bill] just hours after the High Court said the government had broken the law by scrapping a probe into arms deals between BAE Systems and Saudi Arabia.

Two top judges delivered a fierce rebuke to the government for “failing to recognise the rule of law” and allowing a foreign nation to “pervert the course of justice” in a case that triggered global condemnation.

“So bleak a picture of the impotence of the law invites at least dismay, if not outrage,” said Lord Justice Moses in the High Court in London, as he ruled that the Serious Fraud Office had illegally allowed threats by Saudi officials to derail the bribery probe, which was scrapped in December 2006.

The judge is expected to order the SFO to reconsider its decision to stop the case, which has since spawned probes by the US Department of Justice, Swiss authorities and others. The SFO, which is still investigating allegations of bribery against BAE in six other countries, said it was considering its response but Whitehall officials said they expected it would challenge such a decision.

The SFO suspended its bribery probe into BAE’s “Al Yamamah” arms programme with the Saudi government – apparently after threats from Prince Bandar bin Sultan, former Saudi ambassador to Washington, that Riyadh would withdraw co-operation on intelligence and cancel the £20bn deal with Saudi Arabia to supply 72 Eurofighter Typhoons.

The Saudi intervention came after it became clear the Serious Fraud Office was about to obtain access to Swiss bank accounts that investigators thought were linked to payments to agents.

Prince Bandar allegedly received more than £1bn of payments from BAE. The company and Prince Bandar have both denied wrongdoing.

In his judgment, Lord Justice Moses said that the threat was made directly to Jonathan Powell, chief of staff to the then prime minister Tony Blair. The government did not challenge reports that Prince Bandar made the threats, telling the court to base its judgment on “the facts alleged by the claimants”.

The judgment later stated “Had such a threat been made by one who was subject to the criminal law of this country, he would risk being charged with an attempt to pervert the course of justice.” Prince Bandar did not participate in the case.

Confidential documents released during the case showed that, following the Saudi warning, Mr Blair urged the scrapping of the probe in spite of a warning by Lord Goldsmith, then attorney-general, that it would send a “bad message”. The former prime minister also resisted suggestions that BAE might be allowed to plead guilty to lesser offences.

The ministry of justice said on Thursday it would press on with a [draft Constitutional Renewal] bill to give the attorney-general statutory powers to block corruption investigations on national security grounds. In this case, the government could only pressure the SFO.

Corner House Research, one of the two pressure groups that brought the High Court case, said the proposals were a “cynical” response.

BAE Systems declined to comment on a case in which it said it had “played no part”.

Lord Justice Moses told the court. “No-one, whether within this country or outside, is entitled to interfere with the course of our justice. We intervene in fulfilment of our responsibility to protect the independence of the director and of our criminal justice system from threat.”

The government declined to comment on Thursday night.

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3)
UK wrong to axe BAE probe

By Megan Murphy, Michael Peel and Sylvia Pfeifer in London
Financial Times
April 11 2008

The UK government suffered one of its most stinging legal humiliations yesterday after senior judges ruled it had broken its own laws when it caved in to Saudi Arabian threats by scrapping a criminal probe into arms deals between BAE Systems and the Gulf kingdom.

Two senior judges delivered a fierce rebuke to the government for "failing to recognise the rule of law" in a case – brought by two pressure groups – that triggered international condemnation of London's record on corruption. They accused it of allowing a foreign nation to "pervert the course of justice".

"So bleak a picture of the impotence of the law invites at least dismay, if not outrage," said Lord Justice Moses in the High Court in London, as he ruled that the Serious Fraud Office had illegally allowed threats by Saudi officials to derail the bribery probe, which was scrapped in December 2006.

The judge is widely expected to order the SFO to reconsider its decision to stop the case, which has since spawned probes by the US Department of Justice, the Swiss authorities and others. The SFO – which has investigations into BAE's activities in six

countries on four continents – said it was considering its response but British officials said they expected it would challenge such a decision.

The SFO suspended its bribery probe into BAE's "Al Yamamah" arms programme with the Saudi government - apparently after threats from Prince Bandar bin Sultan, former Saudi ambassador to Washington, that Riyadh would withdraw co-operation on intelligence and cancel the £20bn deal, to supply 72 Eurofighter Typhoons.

The Saudi intervention came after it became clear that the SFO was about to obtain access to Swiss bank accounts that investigators thought were linked to payments to agents.

Prince Bandar allegedly received more than £1bn of payments from BAE. The company and Prince Bandar have both denied wrongdoing.

In his judgment, Lord Justice Moses said that the threat was made directly to Jonathan Powell, chief of staff to then prime minister Tony Blair. The government did not challenge reports that Prince Bandar made the threats, telling the court to base its judgment on "the facts alleged by the claimants".

The judgment later stated that the threat was issued "with the specific intention of interfering with the course of the investigation . . . Had such a threat been made by one who was subject to the criminal law of this country, he would risk being charged with an attempt to pervert the course of justice". Prince Bandar did not participate in the case.

Lord Justice Moses dismissed comments by Mr Blair that there was the "clearest case" for bringing the BAE probe to a halt for public interest reasons.

Documents released during the case showed that Mr Blair urged the scrapping of the probe in spite of a warning by Lord Goldsmith, then attorney-general, that it would "look like giving in to threats".

The ruling is the latest embarrassment for London in a case that has spawned probes in the US and other countries, and put a spotlight on global efforts to tackle corporate bribery.

Investors in BAE Systems appeared to shrug off the news. Shares in the defence contractor ended down just under 1 per cent, in line with the market.
But investors will watch for any longer-term repercussions.

BAE said: "The case is between two campaign groups and the director of the SFO. It concerned the legality of a decision made by the director of the SFO. BAE Systems played no part in that decision."

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4)
New hierarchy feels heat of Moses' wrath

By Michael Peel, Legal Correspondent
Financial Times
April 11 2008

Thursday's explosive court ruling creates a big dilemma for a new generation of senior politicians, investigators and executives, who know how badly the decision to scrap the BAE Systems bribery probe has bruised their predecessors' reputations. Since the investigation into BAE's dealings in Saudi Arabia was sensationally scrapped 16 months ago, the posts of prime minister, attorney-general, Serious Fraud Office director and the company's chief executive have either changed hands or are about to do so.

Lord Justice Moses's stinging High Court judgment means the new incumbents must deal afresh with an investigation whose collapse led to international condemnation of Britain as being two-faced on corruption.

One person involved in the original decision to drop the inquiry described the judgment as "damning", adding: "It's a bashing of heads between the executive and the courts. The two really do not sit comfortably together on occasions and this is a prime example."

The immediate decision about how to respond to Thursday's ruling lies with the SFO. The court is widely expected to rule within weeks that the SFO director – who, by then, will be Richard Alderman – should reconsider his predecessor Robert Wardle's decision to drop the case.

This will be a baptism of fire for Mr Alderman, a senior tax investigator largely unknown to those working in the field of international corruption inquiries.

The situation is further complicated because people close to the SFO say the judgment will be welcomed by some within the organisation. Investigators had felt they were making progress on the case and were dismayed by its scrapping.

Another person put under pressure by the court ruling is Baroness Scotland, attorney-general, who, as the governor's chief legal officer, has a big responsibility for upholding the rule of law.

While papers released during the case showed that Lord Goldsmith, her predecessor, had made attempts to resist pressure to scrap the BAE case, Lord Justice Moses made the damning observation that the government had failed to protect the justice system from outside interference.

Symon Hill, a spokesman for Campaign Against Arms Trade – one of two groups that brought the court challenge – said the government's stance amounted to "one rule for the rich, another for the poor".

At BAE, the new management put in place over the past few years must reflect on a case that revealed in embarrassing detail how the company had tried to derail the investigation by writing to Lord Goldsmith about the damage it would cause commercially and to British-Saudi relations. The near-silence of BAE on Thursday and the other main parties was a sign of how much they all had to think about on a day when Lord Justice Moses's voice rang out uncomfortably loud and clear.

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5)
Row over national security claim

By Michael Peel, Legal Correspondent
Financial Times
April 11 2008

The BAE court ruling has brought to the boil a simmering controversy over the government's attempts to give itself a wide-ranging power to stop investigations and prosecutions on national security grounds.

Baroness Scotland, the attorney-general, now has the tricky task of defending her efforts to push through the reforms in the wake of a judgment that condemned the government for using national security exemptions too loosely.

Lawyers said the national security argument was the most striking part of a judgment whose attack on the government's legal failings read more like a US Supreme Court attack on an overweening president.

Prof Jeffrey Jowell QC, of University College London, said the case showed how judges were endorsing the idea that Britain had core principles of governance even though it lacked a written constitution. He said: "Because we are a democracy, we have certain constitutional principles that are required in any democracy worth the name."

The attorney-general's office insists it is doing no more than formalising an existing customary power of intervention, which the attorney-general has always had but never used.

Baroness Scotland's office said constitutional reforms would narrow her powers by – for example – removing the need for prosecutors to seek her consent to lay charges against British nationals and companies accused of bribing overseas public officials. The proposals will form part of an investigation by the Organisation for Economic Co-operation and Development, which said Britain might have broken international rules by dropping the investigation for commercial or diplomatic reasons.

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6)
BAE ruling sets courts and government on collision course

by Richard Norton-Taylor
The Guardian
Thursday April 10 2008

The high court's ruling today [10 April 2008] that the Serious Fraud Office (SFO) was wrong to drop its investigation into alleged bribery by BAE Systems in a Saudi arms deal is hugely embarrassing for the government.

It is also a sign the courts are no longer prepared to defer to ministers' assertions about the need to protect national security.

The SFO decision was taken late in 2006. Tony Blair said the Saudis had privately threatened to cut off intelligence cooperation with Britain unless the SFO dropped its investigation. Lord Goldsmith, the then attorney general, announced that Robert Wardle, the head of the SFO, had agreed to call it off.

Wardle may have felt he had little choice but to succumb to ministers' blandishments. The high court disagreed. The Saudis had no business interfering with the British legal system, the ruling suggests.

The SFO was told there could be "another 7/7" with the loss of "British lives on British streets" if the investigation went ahead.

Yet it never seemed credible that the Saudis would refuse to pass on important intelligence about terrorist plots that might kill lots of people in Britain. The Saudis have anyway exaggerated their intelligence capabilities, as Britain's security services know well.

Documents disclosed to the court made it clear the government's concerns were commercial, namely the lucrative sale of more than 70 Eurofighter Typhoon aircraft to the Saudis.

The government has now threatened to increase the power of the attorney general, giving the holder of the post – currently Baroness Scotland – the right to stop the courts from intervening at all whenever the government flies the flag of national security. Judges won't like that either.

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7)
BAE Systems
The law triumphs

Leader
The Guardian
Friday April 11 2008

Backhanders, slush funds and the machinery of death. Award-winning *Guardian* reporting has already established that the dealings of BAE Systems are decidedly unsavoury. Yesterday, however, the high court ruled that the favour shown to the firm and its Saudi clients was also unconstitutional. Lord Justice Moses pronounced that, by pulling the plug on a criminal investigation into alleged corruption into BAE's biggest arms deal, the authorities had disregarded their legal duties. When the Saudis demanded the probe be called off, no one explained that justice could not simply be swept aside. Instead Whitehall cravenly concluded that capitulation was nasty but necessary.

Although the notional defendant was the head of the Serious Fraud Office, the judgment made plain that responsibility went right to the top. The court signalled that its understanding was that the Saudi Prince Bandar "went into No 10 and said 'get it stopped'". Allegations that the same Prince Bandar had been paid £1bn in kickbacks from BAE were at the heart of the SFO inquiry. In these circumstances the then prime minister, Tony Blair, should have treated his threat to cut off security cooperation with scepticism. But, as the judges commented, there is "the suspicion" that the security issue was "a useful pretext" for ditching an SFO inquiry that was harming commercial interests. Mr Blair duly picked up his pen and took, as he put it, "the exceptional step" of writing to the attorney general, Peter Goldsmith, to spell out the damage. Lord Goldsmith withstood earlier attempts to bully him into dropping the case. But on receipt of the minute, the man who shifted his advice on the legality of invading Iraq proved to be Mr Blair's flexible friend once again. Suddenly persuaded, he spoke to the SFO, which also fell into line.

Had the Saudi threats been made by a defendant in this country, he could be charged with perverting the course of justice. In insisting that such blackmail is just as unacceptable when it comes from a foreign state, the court has struck a blow for the precious principle that the law must apply without fear or favour. The practical consequences remain uncertain. The SFO could appeal, though it may conclude that yesterday's closely reasoned assertion of the independence of legal process from political interference is something few judges would enjoy overturning. The high court has still to decide what remedy it will apply – whether to declare the decision illegal or to formally quash it. Either way, Whitehall could try to cook up an alternative rationale for halting the investigation, to see whether the courts would swallow it. But if Gordon Brown wants to show he has left the excesses of the Blair years behind, he needs to do better than that.

The anaemic constitutional reform proposals announced recently, however, suggest that few lessons have been learned. Last year Mr Brown said he wanted to restore confidence in the attorney general's office – implicitly admitting that BAE had tainted it. Last month, when plans to take the politically appointed attorney out of prosecution

decisions were presented, there was a sweeping national security exemption. The sort of decision ruled illegal yesterday could therefore happen again. Worse, the attorney could – unlike now – assume direct command of any case which he or she deemed to have a security dimension. With the attorney directly in charge, it would be far harder – perhaps impossible – to launch the sort of judicial review which shed such valuable light yesterday.

Mr Brown bills his plans as constitutional renewal, but on this point they could prove retrogressive. If he wants to show that there is substance behind the impressive rhetoric he has deployed on behalf of liberty, he must show he is serious about the rule of law. The first step towards doing that is reopening the BAE probe. The next is changing the law so that justice can never again be scuppered in the same way.

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8)
Cast off the cloak

The BAE ruling will check the government's ruse of invoking national security to avoid scrutiny

Eric Avebury and Susan Hawley

> (Lord Avebury, a Liberal Democrat spokesman on foreign affairs, is vice-chair of the parliamentary human rights group; Susan Hawley is an analyst for The Corner House, an anti-corruption campaign group.)

The Guardian
Friday April 11 2008

When Tony Blair intervened to get the Serious Fraud Office investigation into BAE's alleged corruption in Saudi Arabia stopped on grounds of national security, few people believed a legal challenge could succeed. When it comes to protecting the lives and security of the nation, the courts allow the executive "an especially wide margin of discretion", noted the judges in this case. Yesterday's judgment that the SFO director acted unlawfully in dropping the inquiry is therefore a major blow to the government – and its ability to sweep controversial issues under the carpet.

The ruling has seriously constrained the government's ability to invoke national security without scrutiny. The courts have increasingly been standing up to the government in relation to terrorism cases and slowly staking out the limits to its powers. But a challenge to a decision to quash a prosecution on national security grounds through a judicial review is unprecedented.

The high court has made clear that national security arguments cannot be used to override the rule of law. "It is obvious," it says, "that the decision to halt the investigation suited the objectives of the executive. Stopping the investigation avoided uncomfortable consequences, both commercial and diplomatic." The judges in effect accused the government of abusing national security arguments as a cloak for other more cynical motives.

Just two weeks before the judgment was delivered, the government mounted an attempt to preserve its powers. In a breathtakingly cynical move, it introduced draft legislation creating a power for the attorney general to halt prosecutions on national

security. The bill concentrates power for making such decisions in the hands of the executive and makes a judicial review of a decision virtually impossible.

Under the proposed law, the attorney general will not have to provide information to parliament that impacts on national security or international relations. If anyone questions that decision, the attorney general will merely have to get a minister to provide a certificate stating it is to be considered "conclusive evidence of act".
One of Gordon Brown's first acts on taking over from Blair was to launch a major series of consultations on constitutional renewal. It was seen as an attempt to distance himself from what were regarded as the worst excesses of Blair's rule. By letting these new powers for the attorney slip into the draft bill, Gordon Brown has shown himself to be no different to his predecessor.

Giving in to Saudi demands to drop the SFO inquiry looks grubby and self-serving, and has damaged Britain's reputation irreparably. The decision can only have given succour to those corrupt regimes whom Britain repeatedly lectures on cleaning up their act.

Last week the OECD visited the UK, in a form of visit reserved for those countries deemed not to be complying with its anti-bribery convention. That is a damning reflection on the government. But yesterday's judgment also offers an opportunity: it could decide it is serious about standing up for the integrity of the justice system and the independence of its prosecutors. It could decide to accept proper scrutiny of its national security decisions. It could decide that it means business on enforcing its corruption laws regardless of threats, regardless of who is accused, and regardless of who it upsets. Let us hope so.

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9)

BAE bribery: justice unbound

The High Court has launched a vital defence of the rule of law

Leader
The Times
April 11, 2008

There are moments when a statement of the obvious cuts through the fog of self-interest and evasion that clings to much of politics, and clears the way for a genuine fresh start. The High Court's stunning condemnation of the decision to abandon an investigation into alleged bribery by BAE Systems is such a moment. “No one,” Lord Justice Moses and Mr Justice Sullivan declared, “whether in this country or outside, is entitled to interfere with the course of our justice.”

It should never have fallen to their lordships to point this out. They did so after concluding that the Saudi Government issued a “blatant threat” to stop sharing intelligence with the UK if the Serious Fraud Office did not scrap its long-running inquiry into alleged corruption linked to the £43 billion Al-Yamamah arms deal. Instead of defying the threat, British law enforcement, the British Government and at least one British ambassador surrendered to it. Fifteen months on, the damage to the

rule of law and the reputations of the SFO and BAE is substantial and humiliating, but at least it can now start to be repaired. The same may not be true of the damage to Tony Blair's legacy.

Mr Blair has explicitly cited the Saudi threat as the reason for his defence of the SFO's decision. That threat may have been real, even if its significance has since been exaggerated. At the time, a year after the 7/7 bombings, it certainly gave Mr Blair better political cover than the need to safeguard further BAE contracts for 72 Typhoon figher jets, which were also at stake. But he failed entirely to acknowledge the risk that dropping the investigation posed to the international standing of British justice – a risk that the OECD and the United States have since underlined by launching their own inquiries.

Lord Goldsmith, the Attorney-General then, emerges little better from the affair. As the Government's chief legal adviser he should have pointed out that democratic governments seek to influence the judicial process at their peril. Instead, by meekly endorsing the Prime Minister, Mr Goldsmith came to embody a shameful blurring of the demands of justice and convenience.

Robert Wardle, the SFO director, took full responsibility for his decision and personally sought diplomatic advice before making it. The British Ambassador to Riyadh is reported to have warned him that British lives were potentially at stake should intelligence-sharing with Saudi Arabia cease. Hence Mr Wardle's conclusion that he was “powerless” in the face of the Saudi stance. Hence, also, the High Court's blistering riposte: “So bleak a picture of the impotence of the law invites at least dismay, if not outrage.”

This ruling demands urgent action of its targets. The SFO should reopen its investigation – or make public the concrete reasons for abandoning it. Gordon Brown should defend justice where his predecessor jeopardised it, by refusing to interfere and explaining, if necessary, that it would not be in his power to do so anyway. The Attorney-General needs to clarify how two sometimes incompatible roles will be combined in the future. And BAE, which has throughout the Al-Yamamah saga insisted it is blameless, should pledge publicly to reform a corporate culture that at the very least has depended on too cosy relationships with Government.

Whatever the implications of this ruling for Anglo-Saudi relations, the long-term health of British justice is more important. It is the bedrock of British civilisation – and prosperity.

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10)
A damning indictment of business and government

Leading article
The Independent
Friday, 11 April 2008

At last, some sound and principled sense has been spoken on the matter of the Serious Fraud Office, BAE Systems and the Saudi arms deal. Fortunately, this sound sense

comes from the High Court, in its judgment on the SFO's decision to drop its corruption inquiry into the multi-billion pound contract. Unfortunately, it took the indignation of two campaign groups to bring the case at all. The ruling thoroughly vindicates them. It should also shame not only the SFO, but the Government of the day.

The judgment is as disturbing as it is excoriating. The court found that the Saudis – as was widely mooted at the time – had threatened to end diplomatic co-operation with Britain and call off a future contract for BAE to supply Eurofighter aircraft, if the SFO pursued its investigation. BAE, in arguments accepted by the then Attorney General, Lord Goldsmith, had said that the inquiry would have seriously damaged UK-Saudi relations and so jeopardised national security.

The High Court replied with a lengthy written judgment which essentially dismisses this argument as rubbish. It said there was no proof at all that British national security would have been put at risk by anything the Saudis threatened to do. The purpose of the threat was simply designed "to prevent the SFO from pursuing the course of investigation he had chosen to adopt". In that, the judgment went on tersely, "it achieved its purpose".

This would have been ample condemnation in itself. But the final paragraph of the judgment goes further. The director of the SFO, it says, had submitted too readily to the Saudi threat because he, "like the executive" – i.e. the Government – "concentrated on the effects which were feared should the threat be carried out and not on how the threat might be resisted". It went on, in words that should be inscribed over the entrance to No 10 Downing Street: "No one, whether within this country or outside, is entitled to interfere with the course of our justice. It is the failure of Government and the defendant to bear that essential principle in mind that justifies the intervention of this court."

It is not clear what further judicial steps might be taken. Equally, it is apparent that there should be some – and the more swingeing and authoritative the better. For what the High Court found here is what very many people had suspected all along, that the Serious Fraud Office, at the prompting of the Government and under threat from a foreign country, flunked its duty to uphold the law.

The court's specific references to the Government and its responsibility only make its ruling all the more damning – and, it must be said, all the more frustrating. Tony Blair looks more and more the escape artist with every month that passes since he left office. As Prime Minister, he was the head of that Government; he is reported to have intervened personally in the decision to halt the SFO investigation. His Attorney General devised the justification.

Not for the first time, it appears that Mr Blair behaved as though the law did not apply to him if it obstructed the policies he wanted to pursue. Legality could be moulded to suit. We saw a similar slipperiness in the legal advice – given by the same Attorney General – to justify the war in Iraq. Yet both men are now out of office. Even with an impeachment procedure, they would now be beyond the law.

It seems unlikely that either will be called to account as they should be. And at least some of the mud that they have sloughed off so effortlessly will stick to Gordon Brown by association. Once again, he appears the unluckiest of politicians.

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11)
Courts offer clarity but not reality

Leader article
Daily Telegraph
11 April 2008

"No one, whether within this country or outside, is entitled to interfere with the course of our justice," was Lord Justice Moses' magisterial declaration as the High Court ruled the Serious Fraud Office acted unlawfully in dropping its corruption inquiry into the Al Yamamah arms deal with Saudi Arabia.

Paradoxically, in finding against the SFO, the court has probably hastened the day when such interference will become more, not less, frequent. For it will surely be the clinching argument in the intense debate within government over whether to formalise the powers of the Attorney General to halt prosecutions if national security is at risk. It was national security – as well as the need to safeguard an enormously lucrative (£43 billion) weapons contract – that led to the investigation being dropped in December, 2006.

Tony Blair was perfectly candid about his decision. To continue pursuing allegations of bribery in the negotiation of the contract between BAE Systems and the Saudi government would have caused "the complete wreckage of a vital national interest to our country".

More specifically, not only would tens of thousands of jobs have been lost in a strategic industry but vital intelligence co-operation between Riyadh and this country would also have been jeopardised.

Such considerations of realpolitik should, of course, have no bearing on the courts, nor have they had in this case.

The SFO's director Robert Wardle has been castigated for failing to show he had done all he could to resist outside pressure to shelve the inquiry, even though he was effectively ordered to do so by the then attorney general, Lord Goldsmith, acting at the behest of a government desperate not to offend our most important ally in the Gulf.

The precedent cited in defence of the Government's action – the statement of a former attorney general, Sir Hartley Shawcross, in 1951 that it was not in the public interest for every suspected criminal to be prosecuted – was, in reality, pretty thin.

Under the terms of the 2001 Anti-Terrorism, Crime and Security Act, the SFO had a clear duty to pursue this investigation.

And clarity rather than reality is what the law is good at (witness the Court of Appeal's decision to block the deportation of the terrorist suspect Abu Qatada so as not to infringe his human rights).

Sometimes the primacy of the law collides with political and commercial reality. In a parliamentary democracy, the elected prime minister must have the right, in exceptional circumstances, to take such hard decisions in the national interest.

The High Court has yet to say what further action it will take in this case. Whatever it is, Gordon Brown has been handed a sizeable new headache.

Given the implacability of the forces on both sides of this argument, it could well end in a rather messy stand-off. Not very satisfactory, perhaps, but then the real world frequently isn't.

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12)
PM accused of failing to aid BAE probe

By George Parker and Michael Peel in London and Stephanie Kirchgaessner in Washington
Financial Times
April 12 2008

Gordon Brown came under renewed pressure on Friday over the government's failure to help a US criminal investigation into alleged bribery by BAE Systems, the big arms company.

Mr Brown, who travels to Washington next week, faces criticism at home over the nine-month delay in responding to a request for information made by the US Department of Justice.

The DoJ began its inquiry after Britain scrapped its own investigation into BAE's dealings in Saudi Arabia, a decision the High Court denounced this week as unlawful and inviting "dismay, if not outrage".

Downing Street referred questions on the stand-off with Washington to the Home Office, which said it was still considering the US assistance request. This was received shortly after the DoJ launched its investigation last June.

An official said the time taken was "not unprecedented", although he was unable to cite a case that had taken longer.

The case was seized on by Nick Clegg, the Liberal Democrat leader, as further proof of "hypocrisy" by the prime minister, whom he accused of being tough on corruption in African countries but soft on it at home.

“It is a measure of Britain’s plummeting standing in the world when our government blocks our investigation whilst standing idly by as the Americans try to launch a related inquiry of their own,” Mr Clegg told the *Financial Times*.

“Given that the US authorities are even more inclined to invoke national security whenever they can, it speaks volumes that the US state department has not chosen to use Tony Blair’s excuse to stop their own inquiry.

“Gordon Brown now has no excuse not to co-operate fully with the US investigation.” In most cases, the DoJ and White House would issue a formal complaint if an ally failed to co-operate in an investigation.

But an observer in Washington said the close US relationship with the UK made it harder for the administration to take an aggressive stance.

Britain’s Serious Fraud Office, which dropped the original case against BAE, said it would not respond to this week’s High Court ruling until a planned follow-up hearing [on 24 April 2008] at which the judges will issue an order on what investigators should do.

Mr Brown expects the SFO to appeal against the initial ruling, while Mr Clegg is calling for it to reopen its BAE inquiry immediately.

Meanwhile, the government – with Conservative support – will press on with plans to give new statutory powers to the attorney-general to block prosecutions on national security grounds. Dominic Grieve, Tory shadow attorney-general, said that a national security block had to be retained.

The Attorney-General’s Office defended the planned new statutory powers to block investigations and prosecutions, saying they merely codified existing powers the attorney holds through legal custom. Those powers have never been used, according to the attorney-general’s office.

Campaign groups argue that any attempt by the attorney-general to intervene under existing law would be vulnerable to legal challenge. Corner House Research, the anti-corruption group, argues that enshrining the powers in statute is a cynical attempt by the government to forestall the kind of legal action that humiliated it this week.

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13)

Brown a ‘hypocrite’ on corruption

By George Parker and Jimmy Burns in London and Andrew England in Riyadh
Financial Times
April 10 2008

[UK Prime Minister] Gordon Brown was on Thursday [10 April 2008] accused of looking like “an appalling hypocrite” on corruption, as international pressure mounted on him to tackle the problem and update Britain’s bribery and corruption laws.

Mr Brown has lectured developing countries on tackling graft, but Thursday's High Court ruling on bribery allegations involving BAE Systems has focused attention on the UK's record.

Last week the Organisation for Economic Co-operation and Development sent a team to London to find out why Britain was failing to comply with international bribery and anti-corruption protocols, 10 years after promising to do so.

Although the OECD team will not report until October, one official close to the investigation said: "There is no sign of any change in Britain's anti-bribery legislation."

The Paris-based organisation fears that proposed laws [draft Constitutional Renewal Bill] to give the attorney-general the statutory power to direct the ending of prosecutions on national interest grounds could even take Britain in the opposite direction.

Vince Cable, Liberal Democrat deputy leader, said the Serious Fraud Office inquiry into allegations of bribery by BAE Systems in the 1985 Al-Yamamah arms deal with Saudi Arabia should not have been stopped.

He said Mr Brown's willingness to criticise corruption in other countries but failure to deal with at home left him "looking like an appalling hypocrite". He added: "His position on this is unsustainable."

The Department for Business insisted on Thursday that Britain's anti-corruption laws dealing with bribes offered by British companies abroad met OECD standards, but admitted they were "complex and fragmented".

The Law Commission would come up with proposals to improve the legal framework "later in the year". The UK cites a Transparency International survey showing it is regarded as the 12th least corrupt country in the world.

The government's role in halting the BAE Systems case dogged Tony Blair in his last months in Downing Street, along with Jonathan Powell, his chief of staff. Neither was available for comment on the case on Thursday.

The Conservatives, who were in power when the Al-Yamamah deal was signed, were also largely silent on the case.

However Dominic Grieve, shadow attorney-general, said the Conservatives would support the government's plans to give the attorney statutory powers to intervene in cases affecting the national interest.

A Saudi government adviser said officials would be watching developments, adding that if the SFO were to reopen the case, it would set back "all the progress that has been made".

A British source close to the negotiations between BAE and Saudi Arabia said: “Britain needs Saudi Arabia as a responsible partner against terrorism, as a major buyer of defence contracts, and a diplomatic partner. You change this at your peril.”

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14)
Brown has to regain our trust after the BAE judgment

Leader
The Observer
Sunday April 13 2008

When Gordon Brown became Prime Minister, he promised to be guided by his 'moral compass'. But exercising power often involves choosing not between polar opposites of right and wrong, but between greater and lesser evils.

What, for example, should a Prime Minister do when revelations due to be made in a high-profile court case risk compromising national security. Intervening would threaten judicial independence and violate constitutional principle, but failing to act could cost lives.

It is in those terms that Tony Blair presented his decision in 2006, along with then Attorney General Lord Goldsmith, to order the Serious Fraud Office to abandon its investigation of alleged corruption in a multi-billion-pound arms deal between Saudi Arabia and BAE Systems. The Saudi royal family had made clear that continuing the investigation would jeopardise intelligence co-operation, which could, in turn increase the risk of a terror attack on British soil. Mr Blair acquiesced.

But that decision, interpreted by Mr Blair as expediency for the greater good of the nation, was last week interpreted by the High Court as capitulation to blackmail, perversion of justice at the whim of a foreign state and a symptom of overweening executive power.

The High Court's version is more convincing than Mr Blair's. There is no evidence that Downing Street agonised over its decision or tried to stand up for judicial sovereignty. Instead, the government leapt on 'national security' as a pretext to kill off an inquiry that threatened bothersome diplomatic, political and economic consequences.

Would pressing ahead with the inquiry really have put Britain at risk? That we cannot know. Assurances from Mr Blair based on secret intelligence and legal validations from Lord Goldsmith are currencies devalued beyond use by the Iraq war. But we can say with some confidence that a state which threatens British lives so that it can preserve the financial affairs of its repressive monarchy should not be deemed a stalwart ally against terrorism.

Mr Brown has indicated, through a spokesman, that he supported Mr Blair's 2006 decision and that he will continue to oppose any investigation of alleged corruption in the Saudi-BAE deal. Meanwhile, the government has drafted legislation to enshrine in law the Attorney General's right to stop criminal proceedings on grounds of 'national

security', while surrendering the right to meddle in all other cases. In other words, the government will relinquish a power it never used and strengthen one it has clearly demonstrated it can abuse.

It is possible to conceive of rare situations when threats to national security require the use of extraordinary executive power over the judiciary. If we are to trust a Prime Minister to exercise that power, we must have confidence in his 'moral compass'. Mr Brown assures us he has one, but his stalwart adherence to Tony Blair's view of the BAE-Saudi case suggests he is not navigating by it.

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15)
Al-Yamamah: the case for the defence

By Jonathan Guthrie
Financial Times
April 16 2008

It is hard to feel indignant over rumours that a man fiddles his income tax if you believe he is a murderer. For this reason, High Court criticism of the government for quashing a probe into alleged corruption at BAE Systems has left me cold. The morality of making bombs and guns is monumentally murky. The way they are sold is an issue of lesser magnitude.

The government has nevertheless taken a beating in the media since judges ruled that the Serious Fraud Office acted illegally in halting the investigation into alleged secret commissions to Saudi bigwigs. It is accused of buckling to pressure from Prince Bandar bin Sultan, who supposedly threatened that Saudi Arabia would reduce co-operation with the UK in fighting terrorism.

It is hugely damaging to the government's image that "national security" was its overt reason for leaning on the SFO in December 2006. This made it look as if Tony Blair was buckling to bomb threats, albeit indirect ones. However, the government was forced in this direction by the law. An Organisation for Economic Co-operation and Development anti-corruption agreement signed in 1997 barred the suspension of bribery probes in most circumstances. The only straw the government could clutch was the right of the attorney-general to step in on national security grounds. In reality, keeping Saudi Arabia on side as a military ally and a customer for British arms loomed as large in its calculations.

Was it worth exposing past dodgy dealings if it cost the UK billions in weapons contracts and a valuable supporter in the Middle East? The government reasonably decided that it was not.

Another factor that should temper self-righteous condemnation of the government's actions is that a chunk of the SFO investigation was historical in scope. The £43bn arms deal – euphemistically called Al-Yamamah, or "the dove" – was struck in 1985. Viewing the activities of arms salesmen decades ago through the moral prism of the tree-hugging noughties would not have been a useful exercise. We all did things we

were ashamed of in the 1980s, as anyone who danced to Duran Duran while dressed as a pirate will testify.

A further complication is that BAE, while notionally a private company, also has some characteristics of a state body. This was particularly so in 1985, when it had not long been privatised. Margaret Thatcher, then prime minister, was closely involved in the Al-Yamamah negotiations. For her, the transaction had the double benefit of underpinning oil supply agreements and peeving the French. The relationship between the government and the weapons company is now in theory more hands-off. Labour nevertheless anointed BAE its national defence industry champion a couple of years ago. Government must perforce take a greater interest in the trading relationships of a supplier of jet fighters than of a manufacturer of underpants.

The government will keep pressure for reviving the SFO investigation under check via the courts and the powers of the attorney-general. This will have the paradoxical effect of pacifying the Saudis while reinforcing the assumption among cynics that BAE – which denies wrongdoing – paid dubious commissions with the connivance of the authorities.

The apologia given above for the government's actions needs some qualification. Its case is strongest in seeking to brush the historic portion of the Al-Yamamah deal under the carpet. But it is harder to defend its efforts to hush up claims concerning what has gone on since OECD anti-corruption rules passed into UK law in 2002. Around then, this column pointed out that many British business people paid bribes abroad, mostly of a petty kind. Pragmatism trumped probity when it came to speeding up planning decisions or winning an order. Scale and location mattered. A man who balked at hiring a yachtful of escort girls for a client in Monaco might slip a bank note between the pages of an official form in a dusty corner of Africa.

Now, increasingly, the jig is up for foreign bungs. Our moral universe is shrinking as a result of globalisation. Better communications mean malpractice is more likely to be exposed. Customers and shareholders are inclined to judge what international businesses do in hot countries by cold country standards. Quiescent authorities in a company's home jurisdiction are no guarantee of safety to directors who grease palms overseas. Under the Pax Americana, US authorities will intervene in any case with the remotest US connection. The details of Al-Yamamah could yet come to light as a result.

The dilemma faced by globetrotting business people – pay a bribe or lose a sale – should therefore arise less often. International companies can do their bit by agreeing and enforcing common anti-corruption standards. Just such a move is under way in the famously shady defence industry.

Corruption is bad business because it lumbers weak countries with products and services whose costs are inflated by bungs. This holds back development, reducing the appeal of such places as export customers. On a human level, the whiff of bribery can leave the accused tied up in Laocoön-like knots of disavowal and evasion. This is what has happened to the British government as a party to Al-Yamamah. Business people should take note. Doing bad stuff abroad is getting harder. Some day, selling bombs and guns to one-party states may even raise eyebrows.

16)
Court's judgment should fortify regulators

By Tom Winsor

(The writer was rail regulator 1999-2004 and is now a partner in White & Case, the global law firm)

Financial Times
April 17 2008

"To no man will we sell, deny or delay right or justice"

So says clause 40 of Magna Carta, granted by King John in 1215 at the behest of the barons of England. In last week's decision of the High Court in the Saudi arms case, the judges took 171 paragraphs to say pretty much the same thing. Their clarity and forcefulness, if not their brevity, approaches the vigour of the draftsman of the great charter of the 13th century, on which judicial independence has been based ever since.

That case was concerned with what the court called an abject surrender of the Serious Fraud Office to assumed threats of a foreign state, halting an investigation of alleged bribery in arms sales involving BAE Systems. It is also significant for independent authorities in the UK in their relations with politicians and others who apply improper pressure on the exercise of what is supposed to be independent judgment.

The court's decision is powerful: "The courts protect the rule of law by upholding the principle that when making decisions in the exercise of his statutory power an independent prosecutor is not entitled to surrender to the threat of a third party . . . Surrender merely encourages those with power, in a position of strategic and political importance, to repeat such threats."

What does this mean for other independent authorities? Economic regulators have enormous power over critical areas of the economy – the price, quality and security of supply of energy, water, communications and transport services. They have been set up by parliament to make decisions according to long-term, objective, economic, non-political criteria; their statutes are explicit about this. When the Conservatives invented the modern breed of regulators, they were conscious that if their independence were to be compromised by a government, it would deliver into the hands of ministers vast power which it was harmful for them to have. Today's politicians often rail against the "unelected" regulators. Jealous of regulators' independence and powers, ministers have steadily encroached upon them and worse.

In 2001, Stephen Byers, the then transport secretary, told me that if I intervened to prevent the administration of Railtrack, the government would ask parliament to legislate my independence away, to stop the rescue. But I was clear that my jurisdiction and independence were conferred with the authority of parliament, not ministers, and only parliament could remove them. Despite Mr Byers' threats, I offered Railtrack a lifeline, but they refused, mistakenly resigned to their fate. Ministers' merely telling Railtrack of their legislative resolve was evidently enough. In parliament on October 24 2005, the government conspicuously celebrated the making of those threats.

But last week, the High Court said that the rule of law required that an independent authority's decision must be "reached as an exercise of independent judgment, in pursuance of a power conferred by statute. To preserve the integrity and independence of that judgment demanded resistance to the pressure exerted by means of a specific threat". Ministers and compliance-inclined regulators should take note.

Regulators can lose their independence or jurisdiction in two ways. Either parliament legislates, or the regulators, by their behaviour, show that they will give way to improper pressure to act contrary to their statutory duties. The latter is just as effective as the former; once gone that independence can never be recovered.

Despite the policy perils, and the outright illegality, of submitting to improper political threats, regulators now too often bend the knee. Some blur the distinction between the will of parliament and the will of ministers, insisting that appointed regulators lack the democratic legitimacy of elected politicians. When challenged that his legitimacy comes from the highest democratic authority – parliament and the rule of law – one economic regulator recently said to me that he regarded the supremacy of the rule of law as a "scary concept". Such a fundamental error may suit control-obsessive ministers, but it does great harm. This decision of the High Court should fortify regulators when next they face interfering ministers. Their eager supplications should end.

Eight centuries ago, no sooner was the ink dry on Magna Carta than King John insisted that he had been forced to sign it under improper political pressure. Ironic or what?

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