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## Protecting Against the Terrorist Threat: Continuing the Fight and Confronting the Challenges Ahead

*The Honorable Kenneth L. Wainstein*

On September 11th of this year, President Bush spoke at the dedication of the new 9/11 Memorial at the Pentagon, and he discussed our military war on terror since 2001. Today, I will focus my remarks on the non-military part of that war—in particular, on the agencies in the law enforcement, homeland security, and intelligence communities and how they have responded to the 9/11 attacks.

In describing our country's response to those attacks, I hark back 60 years or so to December 1941 and to the words that have been attributed to Admiral Yamamoto, the commander of the Japanese battle fleet, as he sailed back from the surprise attack against Pearl Harbor. While his sailors and officers were celebrating their success, the Admiral remained somber. He recognized that, by provoking a country of such size and power, Japan had actually just sealed its fate. And he reportedly rendered that prediction by saying that they had "awakened a sleeping giant."

As we all know, Admiral Yamamoto was right. Once awakened to the true threat of Japanese and Nazi tyranny, America summoned her resolve, mobilized her resources, built a dominant military machine, and fought with grim determination until the Axis Powers surrendered.

Al-Qaeda's attacks on September 11, 2001, similarly awakened our country to a totalitarian threat—this time to the threat of violent Islamic extremism. And it similarly stirred us to mobilize our will and our resources to build the capacity to defeat that threat.

### Talking Points

- America has not been attacked at home since 9/11 thanks in a large part to the counterterrorism infrastructure that has been established over the past seven years.
- New departments and agencies offer new or enhanced counterterrorism capability. Among them: the Department of Homeland Security, the National Counter Terrorism Center, and the Terrorist Screening Center.
- The FBI is using its investigative and intelligence assets to detect and disrupt terrorist plots before they happen. The CIA has restored operational and analytical cadres and capabilities that were depleted after the collapse of the Soviet Union.
- New statutory and regulatory authorities such as the Patriot Act and the Foreign Intelligence Surveillance Act give officials the tools and capabilities they need to investigate and neutralize terrorists.
- Coordination across the federal government and beyond allows us to be quick, agile, and effective in our threat investigations.

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/HomelandSecurity/hl1100.cfm](http://www.heritage.org/Research/HomelandSecurity/hl1100.cfm)

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We are seven years into that building process now, and under President Bush's leadership we have seen some concrete results:

- We and our foreign partners have disrupted a number of high-profile terrorist plots, including a plot to destroy the Library Tower in Los Angeles, an attempt to blow up British airliners over the Atlantic Ocean, and a planned attack on Ramstein Air Base and Frankfurt International Airport.
- We and our allies have removed dozens of senior terrorist leaders from the battlefield, including the architect of the 9/11 attacks, Khalid Sheikh Mohammed, Abu Zubaida, and Abu Musab al-Zarqawi.
- We are seeing hopeful signs in Muslim communities around the world, with mainstream Muslim voices speaking out against al-Qaeda and recent polling showing Muslims increasingly rejecting al-Qaeda's vision and its campaign of indiscriminate violence—attacking mosques, bombing girls' schools and wedding ceremonies, and killing the innocent.
- We have succeeded in making it harder, costlier, and riskier for terrorists to raise and move money around the world, which is complicating al-Qaeda's daily operations and hampering its global reach.
- And most importantly, we have prevented another attack on our homeland for more than seven years.

### Nature of the Enemy

While we are making progress against the terrorists, this war on terror is far from over. This war is not like World War II or any of this nation's previous wars; it will not end at some defined time with the passing of a sword or the signing of surrender on the deck of battleship.

This war is different because al-Qaeda is different. Al-Qaeda is not like a nation-state whose power is defined by its armies, its land, or its industry—tangible national assets that are subject to destruction or capture by traditional military conquest. Al-Qaeda's power is much more diffuse, much less tangible, and therefore much more difficult to destroy.

Their power is in their message of hate and the alluring but false narrative that they are the defend-

ers of a religion under assault from the West—a message that resonates among some of the desperate and misguided throughout the world.

It is in their clever use of modern communications, with which they spread that message of hate and mobilize the operations that turn that message into violence.

It is in the financial support systems through which they receive funding from extremist supporters and corrupted charities.

It is in their network of cells and trained personnel that gives them a presence and an operational footprint throughout the world.

It is in their demonstrated ability to take advantage of weakly governed areas of the world to establish safe havens and operational bases—just as they did in the 1990s in Afghanistan; as they have done over the past few years in the border regions of Afghanistan and Pakistan; and as they are now trying to do in Yemen and the Horn of Africa.

It is in their strategic affiliation with regional terrorist groups such as al-Qaeda in Iraq, al-Qaeda in the Islamic Maghreb, and potentially others—a strategy that expands the group's reach into different regions of the world and helps to ensure their survival.

And finally, I would submit that the power of al-Qaeda lies largely in their patience. Al-Qaeda and its affiliated networks are not fighting for short-term political gains. They are prosecuting a long-term war to eradicate values such as freedom of religion and freedom of speech. They want to remove Western influence and institutions from the Muslim world and re-establish a totalitarian seventh-century caliphate from Spain to Indonesia. And they plan to carry out this war over the course of generations and centuries. For that reason, they can be patient, methodical, and brutally precise in their operations, and that makes them all the more dangerous.

For all these reasons, we long ago recognized that al-Qaeda would not be defeated overnight. We also recognized that this war would require building a new counterterrorism apparatus with new approaches and relationships, new authorities and tools, and a new organizational structure—in short,

a fundamental transformation of the government's counterterrorism architecture. The 9/11 attacks, and the horrific impact they had on our entire country, produced a clear mandate for the government to undertake this transformation and to build a whole new operational paradigm. That building effort started while the fires were still burning on September 11th, and it continues to this day.

## The Counterterrorism Transformation

We are seven years into that effort now, and great progress has been made. As we prepare for transition here in Washington, I would like to take a few moments to step back, take stock of these changes, and assess how they will equip the next President to carry on the fight.

### 1. Strategy of Prevention

In the aftermath of the 9/11 attacks, a first order of business was to articulate the strategy that would guide this transformation. It was clear once the towers were attacked that we were at war and that our paradigm had to change.

The President established the core principles to ensure that we were preventing further attacks on the homeland. Faced with fanatics who were willing to die for their perverted cause, we could no longer rely on the traditional enforcement paradigm of deterring terrorism largely through prosecution and punishment after an attack. Instead, we had to focus all our national assets and international relationships to detect and neutralize threats abroad before they matured into terrorist attacks at home. The President also called on all countries to counter the hateful ideology of our enemy with a message of tolerance and liberty, and he declared that those who harbored or supported terrorists would be treated as enemies. The President's message was clear: We were facing a new type of enemy that required a new type of counterterrorism.

### 2. Transformation of the Counterterrorism Architecture

In pursuit of that mission, we have overhauled our nation's counterterrorism architecture to a point that it is virtually unrecognizable from that which governed our operations for decades prior to 9/11.

#### a) *New Organizations and Agencies*

First, we have stood up a number of new departments and agencies, each representing a new or enhanced counterterrorism capability. These include:

- The Department of Homeland Security (DHS), which integrated 22 agencies that have a role in the protection and defense of our homeland and our people.
- The position of the Director of National Intelligence, who is responsible for leading a more closely integrated intelligence community and ensuring that the President has the most timely and accurate intelligence.
- The National Counter Terrorism Center, which serves as the government's primary agency for integrating and analyzing intelligence on terrorism, and also conducts strategic planning to better integrate our counterterrorism efforts.
- The Domestic Nuclear Detection Office (DNDO), which was established in DHS to coordinate our nuclear detection architecture, and is part of a broader mosaic of organizations and programs across government designed to build a layered defense to prevent al-Qaeda and like-minded terrorists from acquiring, developing, or deploying weapons of mass destruction.
- NORTHCOM (Northern Command), which was established as a new Combatant Command to focus military resources on the homeland defense mission.
- The Homeland Security Council at the White House, which was created to coordinate the homeland security policy function.
- The Terrorist Screening Center, which is the joint FBI/DHS entity that consolidates the various terrorist watch lists and provides 24-hour information and guidance to police officers, consular officials, and other government personnel for use when they encounter potential terrorist suspects.
- The Office of Terrorism and Financial Intelligence, which is a new division in the Treas-

sury Department that spearheads the effort to deny terrorists the financing they need to run their operations.

These new entities, along with the numerous other counterterrorism offices and agencies that have been established since 2001, have gone a long way toward institutionalizing our critical counterterrorism functions.

#### *b) Improved Capacities in Existing Agencies*

In addition to establishing new counterterrorism institutions, we have worked hard to strengthen existing ones.

- The Federal Bureau of Investigation has undergone a fundamental overhaul and re-orientation of its operations. In addition to investigating and prosecuting terrorists after the fact—as it has historically done quite well—the FBI is developing into a true national security organization that uses its investigative and intelligence assets to detect and disrupt terrorist plots before they happen. The FBI has vastly improved its preventive capacity with establishment of a National Security Branch; development of an intelligence process that has greatly increased its capabilities to collect, analyze, and report intelligence; and its implementation of recruitment criteria, training programs, and career tracks that are designed to build a strong intelligence-focused workforce. While Director Robert Mueller and the FBI are the first to say there is more work to be done, the Bureau has clearly made significant strides toward its goal of building a fully matured intelligence capacity.
- The Central Intelligence Agency has restored operational and analytical cadres and capabilities that were depleted after the collapse of the Soviet Union, and has effectively prioritized the mission of collecting intelligence on the plans and intentions of al-Qaeda and other global terror organizations.
- Even the U.S. Attorneys' Offices—which is where I spent much of my career—have re-oriented their outlook and their operations to support the prevention strategy. Each

office has specially trained national security prosecutors, and they now recognize that prosecution is no longer the be-all and end-all of any investigation, but is rather simply one tool among many tools that can be deployed in the effort to neutralize terrorist threats.

#### *c) New Authorities and Investigative Tools*

We have also worked with Congress to develop new statutory and regulatory authorities that give our operators the tools and capabilities they need to investigate and neutralize terrorists. There are a number of new authorities, including:

- First and foremost, the Patriot Act, which was passed only six weeks after 9/11 and reauthorized in 2006. That statute provided a number of critical investigative tools and it lowered—once and for all—the legal “wall” that had prevented our intelligence and law enforcement personnel from sharing information and coordinating operations against terrorist suspects.
- The Foreign Intelligence Surveillance Act, or FISA, which allows us to monitor communications between terrorist suspects overseas and here at home. We are very grateful to Congress for revising the FISA statute earlier this year and bringing it into line with modern communication technologies and with the threat we face from terrorists who make use of those technologies.
- Executive Order 12333, which was first issued by President Reagan, spells out the priorities and the lanes in the road for the intelligence agencies. This summer, President Bush amended that order to reflect the new responsibilities of the Director of National Intelligence and to emphasize the priority of prevention through integrated and collaborative intelligence work.
- Finally, there are the new Attorney General Guidelines that are scheduled to be issued in the near future. These guidelines will harmonize and consolidate the internal rules for the FBI's intelligence and criminal investigations, and they will clearly articulate both

the investigative authorities and the civil liberties limitations that govern the FBI's intelligence operations.

These guidelines are an important step in the evolution of the FBI. To date, FBI agents have had to learn and operate under a complicated set of five different guidelines that provided different rules for intelligence investigations and for criminal investigations. This was a legacy of the wall that had cleaved the FBI in two between intelligence and criminal operations.

I applaud the FBI and the Department of Justice for their ongoing efforts to merge the two sides of the Bureau and for getting these guidelines done. With these guidelines in place, the FBI will be much better positioned to maximize its operational advantage as a counterterrorism agency that can bring to bear both intelligence authorities and traditional law enforcement tools in the effort to investigate and disrupt terrorist plots.

*d) Improved Integration Among all Counterterrorism Partners*

In addition to working on the institutions and the authorities, we have also taken important steps to integrate our efforts across the federal government and beyond. As we all know, terrorism prevention requires the full participation of everybody in the national security apparatus—from the cop on the streets to the FBI analyst at Headquarters to the CIA officer overseas. We have pushed hard to foster coordination among all these players, and we can see it taking hold across the spectrum of counterterrorism activities.

We see it in the coordination we now have between our intelligence and law enforcement professionals:

- For example, in the way that the FBI, the CIA and the other intelligence agencies now work threat investigations jointly, fusing information collected overseas with that collected in the United States.
- In the fact that the CIA and the FBI—which had previously limited the flow of information to each other for legal, operational, and cultural reasons—are now sharing threat

information on a real-time basis through daily threat briefings, more extensive collocation of personnel, and joint participation in the NCTC and other fusion centers.

- In the way that the FBI and federal prosecutors are now sharing with the Intelligence Community that gold mine of intelligence that resides in their criminal investigations and criminal case files—information that had historically been utilized primarily for evidence in criminal prosecutions and underutilized as intelligence about the plans and capabilities of our enemies.

We also see this integrated approach in our partnership with the roughly 700,000 state and local police officers, who are our eyes and ears on the street. By tripling the number of the Joint Terrorist Task Forces—which are the FBI's federal-state operational task forces around the country—and establishing 66 fusion centers in 48 states, we have gone a long way toward integrating our state and local partners into the national security effort.

We see this integration in our enhanced coordination with our international partners. This international coordination includes taking new approaches like the Proliferation Security Initiative and its cooperative effort among 90 or so countries to mount a global program to interdict the shipment of weapons of mass destruction. It involves using existing mechanisms like the U.N. Security Council and the Financial Action Task Force to focus attention on shared responsibilities to address terrorism. Finally, it involves enhancing the mechanisms for regular operational coordination with our international partners, as reflected by the increase in the number of FBI Legal Attaché offices in foreign countries.

This enhanced coordination is helping to generate strong counterterrorism efforts around the globe. In addition to the stalwart support and cooperation of our traditional counterterrorism allies, we have seen a number of other foreign partners step up their efforts against terrorism over the past few years—including the Saudis, who have developed a comprehensive and effective counterterrorism program; the Filipinos,

who have waged an aggressive campaign against terrorists in the southern part of the archipelago; and the Indonesians, who have brought to justice more than 100 members of Jemaah Islamiya and other groups since the Bali bombings in 2002.

Finally, we see this integration in our growing partnership with the private sector—a partnership that is best exemplified by the important and patriotic role that a number of companies in the communications sector have played in the government's effort to monitor terrorist communications over the past seven years.

The importance of this integrated approach cannot be overstated. In fact, I can actually speak personally to this integration—and particularly to the integration of law enforcement and intelligence operations—from my experience in my previous position as the first Assistant Attorney General at the newly formed National Security Division in the Department of Justice. Congress established this new division to take advantage of the Patriot Act provision that lowered the wall that had kept criminal terrorism investigations completely separate from intelligence counterterrorism operations. This division institutionalized the end of the wall by consolidating the criminal attorneys who prosecute terrorists with the intelligence attorneys who help the Intelligence Community get the authority to surveil and collect intelligence about terrorists.

That consolidation means that we can now take a coordinated and comprehensive approach to every investigation and every terrorist suspect. It means that every morning, I was able to sit down with my chief prosecuting attorney and my chief intelligence attorney and we could look at each terrorist suspect from every angle—as a focus of surveillance so that we can collect intelligence about him and his plans and confederates, but also as a potential criminal defendant who could be arrested and prosecuted. This allows us to pursue intelligence collection against a target while at the same time building the criminal case that we may well need in the event we learn he is getting ready to strike and we need an arrest warrant to take him off the street. This is the kind of real-time coordination

that allows us to be quick, agile, and effective in our threat investigations, and it is exactly what we need if we are going to prevail in today's war against terrorism.

I have watched this integrated approach play out in any number of threat investigations over the past few years. It gives me no small satisfaction and pride to see agencies buck the turf-conscious, territorial stereotype and work as a team for the common goal of countering the terrorist threat.

It is also worth noting that, while this coordination is most evident in the investigative and threat disruption stages of our prevention effort—which is the primary focus of my remarks here today—it has also extended into the defensive, homeland-protection side of our operations. The best illustration of this is the successful disruption of al-Qaeda's plot to blow up transatlantic flights with liquid explosives in August of 2006. After we obtained the intelligence about the liquid explosives plot, it was shared among our agencies and our British and Pakistani counterparts, who then used it to orchestrate the plot disruption. At the same time, that intelligence was also channeled to the Transportation Security Administration, which used it to devise new security measures to thwart the use of liquid explosives. Once the plot was disrupted, TSA was then prepared to act immediately—to educate and sensitize the public, to work with the airlines and the airports, and to implement those measures literally overnight. All in all, this was an exceptional example of preventive action across the spectrum of government operations, and one that simply would not have been possible a few years ago.

#### *e) Protection of Civil Liberties*

In discussing this transformation, it is worth noting that the innovations and reforms I have just described have all been subject to a fairly intense national debate about the civil liberties implications of their implementation. This debate has been healthy, and it has helped to ensure that the reforms were designed with ample civil liberties safeguards—from the privacy protections

built into the Patriot Act and the updated FISA statute, to the limitations imposed on government officials and agencies by the Attorney General Guidelines and Executive Order 12333, and to the new privacy watchdog entities like the evolving Privacy and Civil Liberties Oversight Board and the new FBI Oversight Office at the Department of Justice. We welcome such measures, as we recognize that meaningful safeguards and oversight are critical to the continuing legitimacy of our counterterrorism efforts.

### **The Upcoming Transition**

So that completes my overview of the counterterrorism changes we have implemented under the President's strong leadership over the past seven years. These changes have been comprehensive and deep, and they have established a firm foundation for our ongoing counterterrorism efforts, one that is strong and lasting but also flexible enough to allow our successors to adapt and meet the constantly changing terrorist threat.

While I am very proud—and America can be proud—of the effort that led to these changes, we all recognize that there is more work to be done. I also recognize that we are approaching a time of transition, which carries with it an additional responsibility: the responsibility to make sure that the functions of government, and particularly those relating to our national security, are passed along to the next Administration with a minimum of operational disruption.

As the 9/11 Commission concluded, it is critical that all parties focus on an orderly and expeditious transition: that the new Administration plan ahead to ensure that candidates for critical positions are quickly identified and up to speed; that the Senate quickly proceed through the confirmation process for the national security positions; and that we, the outgoing Administration, make sure that our successors have a clear-eyed view of the terrorist threat and a comprehensive understanding of our capacity to meet that threat. As part of that understanding, it is important that they appreciate the thinking that went into the counterterrorism infrastructure that has been established over the past seven years, so that they can continue the process of building and strengthening our defenses against the terrorist threat. It is my hope that these remarks will, in some small way, assist in that transition process.

I can assure you that, from now through the balance of the transition, my colleagues and I will do everything we can to ensure that our successors are fully equipped to accept the responsibility of protecting our country and our citizens when they walk into the halls of government on January 20, 2009. It is a responsibility that I have been honored to share these past seven years, and one that I know our successors—whoever they are—will shoulder with pride and with honor.

—*The Honorable Kenneth L. Wainstein is Assistant to the President for Homeland Security and Counterterrorism.*