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After the Christmas Day Bomber: Staying on Offense in the War on Terror

The Honorable Mitch McConnell

Abstract: *America's elected leaders have no greater duty than that of protecting the American people from harm, and anyone who believes that the urgency of this responsibility has somehow faded or diminished since September 11, 2001, is horribly mistaken. We are very much at war, but there are all too many signs that the current Administration has a blind spot when it comes to prosecuting this war. Its handling of the Christmas Day bomber may have been the most egregious example, but it was no isolated case. Too often, the Administration's approach has been to announce a new policy or change an existing one not based on a careful study of the facts, but as a way to distance itself from the past policies, even those that worked, putting symbolism over security.*

For nearly four decades, Heritage has equipped lawmakers with the tools they need to advance a conservative agenda based on the principles of free enterprise, limited government, freedom, and a strong defense. That work is as important today as ever. Our nation faces many urgent challenges, and among the toughest, most persistent of these are those that we face in the ongoing war on terror.

More than eight years have passed since September 11th, yet we are continually reminded of the need to remain as vigilant now as we were in the weeks and months after that terrible day. The past few months have offered ample proof of that.

In September, we learned of a plot to bomb the New York City subway. Soon after that, there was the

Talking Points

- America is very much at war, but the current Administration has a blind spot when it comes to prosecuting this war. Its handling of the Christmas Day bomber may have been the most egregious example, but it was no isolated case.
- Treating terrorism as a law enforcement matter is precisely the attitude that kept us from seeing this threat when we should have. Reverting to it now is potentially disastrous.
- When a judgment call has to be made, our priorities should be clear: Keeping Americans safe should always win out, within the law.
- The war on al-Qaeda will continue for years to come. In order to prevail, we must continue to use all the reasonable tools that have served us well in the past and remain focused on the threat.

This paper, in its entirety, can be found at:
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tragic massacre at Fort Hood. Then, on Christmas Day, there was the failed attempt by a foreign-born terrorist to kill nearly 300 innocent civilians in a commercial airliner in the skies over Detroit.

Our elected leaders have no greater duty than that of protecting the American people from harm, and anyone who believes that the urgency of this responsibility has somehow faded or diminished since September 11, 2001, is horribly mistaken. We are very much at war.

Unfortunately, there are all too many signs that the current Administration has a blind spot when it comes to prosecuting this war. Its handling of the Christmas Day bomber may have been the most egregious example, but it was no isolated case.

Symbolism or Security?

Again and again, the Administration's approach has been to announce a new policy or to change an existing one not based on a careful study of the facts, but as a way of conspicuously distancing itself from the policies of the past, even the ones that worked. In short, it has too often put symbolism over security.

This is a very dangerous route, and it reflects a deeper problem: namely, the return of the old idea that terrorism should be treated as a law enforcement matter. An Administration that puts the Attorney General in charge of interrogating, detaining, and trying foreign combatants has a pre-9/11 mindset.

Again and again, the Administration's approach has been to announce a new policy or to change an existing one...as a way of conspicuously distancing itself from the policies of the past, even the ones that worked.

The Administration didn't wait long to signal its new approach. On his third day in office, the President announced that Guantanamo would be closed within a year. Well, one year later, the Administration is still trying to untangle the complex national security issues involved in fulfilling that pledge. Its own deadline has come and gone, and, thankfully, Gitmo is still open for business. But this was a dangerous precedent to set.

Indeed, the Administration's approach to Guantanamo was just an early glimpse of how it would approach other terror-related policies. Rather than study the practical consequences of fulfilling its

Rather than study the practical consequences of fulfilling its campaign pledges, [the Administration] would...hastily plow ahead and see what happened rather than study the issue and then announce a plan.

campaign pledges, it would choose again and again to hastily plow ahead and see what happened rather than study the issue and then announce a plan.

They did it again when they ended the CIA's enhanced interrogation program. Rather than looking closely at the implications of shuttering this vital program, the Administration simply ended it without even getting final sign-off from the CIA, an omission that former CIA Director Michael Hayden recently described—in an understatement—as “odd.” What's worse, we've learned in the wake of the attempted Christmas Day bombing that it took the Administration months to even set up a replacement program for the enhanced interrogation program it shut down at the CIA early last year.

Mishandling Trials for Terrorists

And now the Administration is at it again with civilian trials for terrorists. In November, Attorney General Eric Holder announced that Khalid Sheikh Mohammed, the self-avowed mastermind of the 9/11 attacks, would not be treated the way foreign combatants captured on the battlefield have been treated since Revolutionary times. No, the man responsible for the deadliest domestic terrorist attack in U.S. history would be tried in the same courtroom as a common criminal, just a few blocks from where the World Trade Center once stood—again, without consulting with local officials who know the situation best.

The Obama Administration likes to point out that the previous Administration tried some enemy combatants in civilian courts. That's right. It did. And it was wrong to do so. The enemy in this fight is adaptable. We must be too.

That's how you win a war: by changing tactics. That's precisely why Congress decided on a bipartisan basis to establish military commissions as the proper forum for trying enemy combatants. And that's why, if the Administration does not change its mind on trying 9/11 terrorists in Manhattan, we will do everything we can to deny them the funds they'll need to do so. That's my pledge.

Why would the Administration help rewrite the military commissions law if they didn't intend to use it for the very people, like the Christmas Day bomber, for whom it was written?

Mayor Michael Bloomberg and a number of Democrats have suggested that a military base would be the appropriate place to try KSM. I couldn't agree more, and I'll even recommend a venue: a \$200 million state-of-the-art-facility at Guantanamo Bay.

As recently as last year, Congress updated the Military Commissions Act with input from the White House. We realized civilian courts weren't the right setting, and we did something about it. We were flexible. The Obama Administration, on the other hand, is not.

My question is this: Why would the Administration help rewrite the military commissions law if they didn't intend to use it for the very people, like the Christmas Day bomber, for whom it was written?

"Ready, Fire, Aim"

Some have described the Administration's penchant for formulating new policies before thinking them through as a "ready, fire, aim" approach. Whatever you call it, it must not continue. The safety and security of our nation is at stake, and we will not hold the American people hostage to the good opinion of our critics in Europe or the pet theories of liberal academics.

The global war on terror is not a theory to be discussed. It is a war to be won against al-Qaeda and other extremists. And that means our policies must be formulated, first and foremost, with an eye toward defeating these enemies. Nothing is more important.

At first, many Americans were willing to give the Administration the benefit of the doubt about its approach. Most people probably viewed Guantanamo as the right place to hold and to try terrorist detainees and didn't quite understand the Administration's hasty decision to close it, but once it became clear that the Administration hadn't thought the decision through, most people expected it would have learned from its mistake.

Instead, the Administration has used the same hasty approach again and again. It has repeatedly announced a decision without a plan, and Americans are losing patience.

The attempted Christmas Day bombing should have been a wake-up call. Unfortunately, there's no evidence it was. The Administration still appears more interested in managing its message than explaining to the American people and to lawmakers on both sides of the aisle why an al-Qaeda-trained terrorist, fresh from Yemen and caught in the act of attempting to blow up an airliner, was handed over to a lawyer after a 50-minute interview.

Instead of addressing the substantive policy concerns many of us have expressed about this incident, the Administration has put anonymous sources on the telephone with reporters to take shots at their critics. These anonymous sources have leaked information aimed at rehabilitating and justifying the Administration's mishandling of the Nigerian bomber.

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Yet despite their best efforts, the fact remains that all the intelligence he possessed concerning the locations, training techniques, and communications methods of al-Qaeda in Yemen is perishable. Yemeni forces needed that information on December 25th, not six weeks later. Meanwhile, the American people are left to wonder whether, in place of interrogations, their safety depends on terrorists having families who can persuade them to talk.

The Administration did make one sensible move after the attempted Christmas Day bombing. It halted the transfer of detainees from Guantanamo to Yemen. But this is something we should have done a year ago. We were already aware of the high rate at

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which detainees released from Gitmo are returning to the fight. It shouldn't have taken a narrowly averted tragedy like the attempted Christmas Day bombing to change that policy. Anti-terror policies should be made before plots are hatched, not after.

The simple fact is this: The only thing that kept the Christmas Day bomber from succeeding was his own incompetence. And relying on incompetence is not the way to defeat al-Qaeda.

Many Americans were troubled by the Administration's response to the Christmas Day attack, and they're equally outraged by its decision to treat the Christmas Day bomber as a criminal defendant who deserved a lawyer instead of as a terrorist who could provide us with vital information to help stop new attacks. Americans wanted us to get every bit of information we could about al-Qaeda from this man. Instead, the Administration put a higher priority on reading him his Miranda rights and getting him an attorney.

**The Deeper Problem:
A Law Enforcement Mindset**

Which brings us to a deeper problem: namely, the Administration's apparent belief that terrorism is a narrow law enforcement—not a military and intelligence—matter. The fact is, the Administration's handling of the Christmas Day bomber should come as no surprise to anyone. The events of December 25th may have focused many people's minds on the practical consequences of a pre-9/11 mentality, but anyone who's paid attention to the Administration's terror-related policies over the past year can see a clear pattern at play here.

Since his very first days in office, the President has been placing the Attorney General in charge of key intelligence and military and defense matters.

The closing of the military detention facility at Guantanamo is being coordinated by the Attorney General. The special task force on interrogation and transfer policies is chaired by the Attorney General. The Interagency Task Force on Detainee Disposition is co-chaired by the Attorney General.

These are enemy combatants, yet instead of leaving the review of these policies in the hands of military and intelligence personnel, the President, by executive order, has handed all three over to his chief law enforcement officer. So it's no wonder that time and time again, we see a law enforcement mentality intrude into military and intelligence operations.

This is wrong. The Attorney General should not be running the war on terror.

Many of us were hoping the President would explain the reasoning behind the Administration's handling of the Christmas Day bomber in his State of the Union address. He did not. And since neither the President nor anyone else in his Administration has provided the answers Americans are demanding, I, along with several of my colleagues, have asked Attorney General Holder to testify before the Congress to explain the Administration's response to the attack.

So far, we haven't gotten a response, but Americans continue to be deeply troubled that our ability to obtain vital intelligence was ignored in this case—or, worse yet, not recognized—due to the Administration's insistence on informing a terrorist he had the right to remain silent and that we'd be happy to provide him a lawyer. Have they forgotten that the first thing KSM did when he was caught in 2003 was ask for a lawyer? Al-Qaeda knows what it's doing.

The Administration's preference for civilian courts for terrorists is another symptom of its law enforcement mindset. There is no doubt that al-Qaeda will use a civilian courtroom in New York or a new long-term detention facility inside the United States for the same recruiting and propaganda purposes for which they've used other courts and Guantanamo in the past. This fact alone eliminates the Administration's only justification for closing Guantanamo.

Treating terrorism as a law enforcement matter is precisely the attitude that kept us from seeing this threat when we should have. Reverting to it now is not only dangerous; it's potentially disastrous.

The bottom line is this: Treating terrorism as a law enforcement matter is precisely the attitude that kept us from seeing this threat when we should have. Reverting to it now is not only dangerous; it's potentially disastrous.

Undermining Confidence

Hasty decisions and sudden policy reversals rattle the confidence not only of the American people, but also of the brave Americans who execute these policies. And they rattle the confidence of our partners overseas. Just as the U.S. was slow to recognize the al-Qaeda threat, so too were many of the Muslim nations we now work with in defeating them. Some initially resisted being allied with us. Many had previously sent fighters to battle the Soviet Union in Afghanistan. When these governments are attacked and take on this fight, we must assist them.

Part of that cooperation involves doing everything we can to gain valuable intelligence from captured detainees. It's counterproductive to deny the intelligence community the ability to question terrorists, and we cannot send detainees held at Guantanamo back to places like Yemen where they can quickly re-enter terrorist networks.

No one denies that a balance must be struck between preserving civil liberties and protecting the homeland. No one wants to sacrifice one for the other. But in many cases, all that's involved is a simple question of judgment, and when a judgment call has to be made, our priorities should be clear: Keeping Americans safe should always win out, within the law.

Regrettably, that has not always been the first choice of this Administration. They've grappled with these questions. But Americans know that in this fight, in this global war on terror, getting the strategy partly right will only lead to partial success,

and as the attempted Christmas Day bombing showed all too plainly, partial success isn't good enough.

The Obama Administration is doing the right thing in Afghanistan. Our commitment and that of our partners has given Afghanistan and its government a real chance to succeed. But our partners need to know that the U.S. has the endurance to remain committed to both Pakistan and Afghanistan and to reverse the momentum of the Taliban in Afghanistan.

In this regard, the Obama Administration's announced deadline of July 2011 for the withdrawal of U.S. forces leaves our partners wondering about our long-term commitment. It also reflects the same mindset as the other decisions I've mentioned. The priority shouldn't be establishing an arbitrary deadline. The priority should be prevailing in this war, however difficult that may be.

Conclusion

The good news is this: If the Administration adjusts course, there is good reason to hope historians will look back on 2010 not only as a turning point in our fight with the Taliban, but also as the year in which America achieved a balance in the war against al-Qaeda, as the year in which the pendulum swung back into its proper place.

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To that end, Republicans will continue to advocate for a strong, principled foreign policy that keeps America on the offense in this war and provides our intelligence professionals and servicemen and women with all the tools they need. Part of that effort is pointing out mistakes as we see them.

The war on al-Qaeda will continue for years to come. In order to prevail, we must continue to use all the reasonable tools that have served us well in the past and remain focused on the threat. Republicans will work with the Administration to strike

the right balance in fighting terror both at home and abroad.

This is not too much to hope for, and it's not too much to expect. Bipartisanship is not always easy to

come by in Washington, but it is achievable, and in this war, my view is that it's absolutely necessary.

—*The Honorable Mitch McConnell (R-KY) serves as Minority Leader in the Senate of the United States.*