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## **“Towards a More Intelligent Counter-Terrorism Policy”**

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**Conference on “Protecting Your Civil Liberties”**

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In times like these, people frequently say that we need to readjust the balance between liberty and security. I have never liked that formulation, because it assumes that restrictions on liberty or privacy, or due process of law will necessarily make us safer.

On the other hand, conferences like this one tend to stress the liberties we are losing, without offering a constructive alternatives. So I have been asked to change hats, and instead of speaking from the perspective of a civil libertarian, consider the war on terrorism from the perspective of an intelligence officer who cares about civil liberties.

First, a disclosure. Before I became a college professor, I taught law at the U.S. Army Intelligence School. Before that, I was trained as both an infantry officer and a counterintelligence agent. Later I worked for the Senator Church’s Select Committee on Intelligence, which investigated domestic intelligence abuses by numerous agencies, including the FBI, CIA, NSA, and military intelligence. As a professor of politics, first at the John Jay College of Criminal Justice and then at Mount Holyoke, have made it my business to study how large institutions process information and make decisions. So, what I have to offer this morning is something of an interdisciplinary analysis.

Second, while reasonable people can disagree on how best to preserve liberty and enhance security, we can start by agreeing that we all have a fundamental right not to be

blown up by a suicide bomber. We can also agree that it is not enough to wait until the bomb goes off before beginning an investigation, and that the investigation of terrorist organizations must range well beyond gathering the evidence necessary to support a prosecution. It begins with past crimes and seeks to prevent future crimes, mainly by identifying and capturing the conspirators, so that they may stand trial.

### **Why intelligence agents are dangerous to liberty**

Where I begin to have difficulties, both as an intelligence officer and civil libertarian, is when people claim that the investigative tools of law enforcement are so inadequate to the task of combating terrorism that we must 1) turn the FBI into an intelligence agency, 2) turn the CIA and military loose within the U.S., or 3) create a brand new domestic intelligence agency, like Britain's MI 5.

My objections are in part historical. We tried the first two approaches during the Cold War, at a great cost to civil liberties and no discernible gain to national security. The third, creating a new domestic intelligence agency, which Senator John Edwards (D-NC) advocates, would only compound the excesses and inefficiencies of the first three.

Second, those who would unchain investigators from the culture of law enforcement, and the legal standards, judicial review, and legislative oversight common to law enforcement might protect us from some terrorist attacks, but at the cost of leaving us unprotected against our own government. When it comes to government, I am a conservative. I agree with James Madison, who wrote that "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must

first enable the government to control the governed, and in the next place, oblige it to control itself.”

The problem with relying too heavily on intelligence operatives, or soldiers, for that matter, is that they are not bothered by legal questions. They aren't interested in proving a case, or presuming innocence until they can prove someone's guilt to the satisfaction of others. They are action-oriented. They want to “neutralize” the enemy and they don't worry too much about “collateral damage.”

Let me put this bluntly. Despite a presidential order banning assassinations, the CIA has been out to kill bin Laden and his henchmen, at least since December 1998. It actually succeeded in killing one of his lieutenants in Yemen last year with a rocket fired from an unmanned aircraft. This kind of covert operation is what intelligence agencies do, especially when the president and the director secretly declare covert war on terrorist. Do we really want to bring that kind of mind-set home?

Intelligence agencies are not as intellectually rigorous with evidence as lawyers. They can't be. Despite their best efforts to appear accurate, intelligence professionals are always recommending action on the basis of uncertain information. As we have seen with efforts to kill Saddam Hussein, they often get it wrong and, when they do, innocent people suffer.

Intelligence agents operate in secret. Disclosure of their sources and methods could compromise their operations, so they insist on a degree of secrecy that largely eliminates accountability.

Well, I'm a Madisonian conservative. I don't trust anybody with unaccountable power. It's not that I think that members of our government are evil, although some may

be, but rather because I appreciate how even good people can often act unwisely. As Justice Brandeis observed, in the United States we have less to fear from tyrants than from “men of zeal, well-meaning, but without understanding

Does that mean we should do without intelligence agents, and rely solely on law enforcement? Of course not. But for safety reasons, I believe strongly that we should keep the CIA and the military out of domestic intelligence, and keep the FBI firmly imbedded in a law enforcement culture. Bureaucracies are creatures of habit, and I don't want military or CIA habits let loose within the United States. To do that would subvert the Fourth Amendment and end the rule of law.

Safety – safety from government – requires keeping our system of checks and balances intact, and even strengthening it in hard times, when the temptation to cut corners is greatest. Preserving safety from government may sometimes increase danger from terrorists. If so, that is a price we should be willing to pay.

### **Information overload**

That said, let me explain how an excessive emphasis on intelligence can undermine our war on terrorism. Think back, if you will, on our domestic successes against al Qaeda. The information that uncovered those cells did not come from the detention of 1,200 immigrants. It did not come from the 5,000 interviews of Arab immigrants and Arab-Americans that Attorney General Ashcroft ordered right after 9/11. Nor did it come from mining computer data banks for patterns of possible terrorist activity. It came largely from traditional law enforcement work, supplemented by leads from CIA, military, and foreign intelligence operations abroad.

For example, it was traditional law enforcement that broke Sheik Rahman's al Qaeda cell in New York, punishing the first World Trade Center bombers and preventing the bombing of the Lincoln Tunnel and other New York landmarks. Traditional law enforcement, by an alert Customs agent on the Canadian border, interdicted a plot to bomb the Los Angeles airport. And traditional law enforcement broke of a terrorist training camp in Oregon.

Of course, law enforcement did not prevent the September 11 bombings. But neither did intelligence work abroad. Both law enforcement and intelligence did know enough about two hijackers to trigger a more vigorous investigation, but that information was not shared and collated fast enough, which is always a problem with large bureaucracies of any kind, and was a special problem because of limited capabilities for sharing information across agencies and searching each others data banks.

Early on, the greatest flaw lay in the primitive search capabilities of FBI computers, which could search Bureau files just one name at a time. The FBI's internal communications were so backward that an important warning about "persons of interest" taking flight lessons went unread at headquarters until after September 11, despite warnings that an inordinate number of bin Laden's people were getting flight training. Worse, on September 11, when the bombers struck, the FBI had only one analyst devoting full time to the bin Laden threat.

Primitive computer skills was the earlier problem. Now information overload is the greater threat. Today numerous agencies are being linked together with the fiber-optic equivalent of the great Alaska pipeline. Too much irrelevant information, sent out indiscriminately by agents fearful of being blamed for not sharing enough, can be as bad

as too little information. And when this information turns out to be erroneous, as some of it necessarily will be, it can and will be used, over and over again, to trigger new investigations of innocent people. If any of you have suffered from an erroneous credit report, you know what I mean.

For example, assume for the sake of argument that there are 1,000 terrorists in a population of 300,000 million people. And let's say that the government's intelligence is extremely good, and right 99 percent of the time. That means that we have a good chance of catching 990 of the 1,000 terrorists. Very good, you might say, but finish the math. A one percent error rate also means that nearly 3 million people are in danger of being wrongly associated with terrorists. That's a serious danger, I submit, to people who want to live free.

### **Dragnet surveillance**

Which brings me to dragnet surveillance. Dragnet surveillance doesn't just hurt innocent people. It overloads the system, and makes it less able to identify and capture terrorists.

Dragnet surveillance may help people like John Ashcroft produce statistical evidence that they are doing everything they can, but it does not make us safer. During the Cold War, the FBI conducted 500,000 counterintelligence investigations of political dissenters, and never launched a single prosecution.

Security clearance investigations, like those about to be launched against thousands of HAZMAT truck drivers, are not likely to help, either. To the best of my

knowledge, no security clearance investigation ever caught a spy, although many have screwed up the lives of innocent people.

During the late 1960s, the U.S. Army had 1,500 plainclothes agents watching every demonstration of 20 people or more. The Army thought that if it collected enough data on civil unrest it could predict riots, but its attempt to create a computerized temperature gauge of civil unrest never worked. Neither will the Department of Homeland Security make its color-coded alert system work by monitoring the diffuse communications chatter of suspected terrorists.

John Poindexter is similarly naïve to think that his “total information awareness” system will detect patterns of terrorist activity by searching the behavior of millions of ordinary people. Such dragnet surveillance doesn’t work for the simple reason that you don’t find needles by adding more hay.

The same goes for dragnet detentions. Following World War I the Justice Department seized over 3,000 immigrants, thinking that would help them solve a string of anarchist bombings or prevent a Bolshevik revolution. The bombings went unsolved. As for the much feared revolution, the FBI found only three operable handguns among the 3,000 people it arrested.

During World War II, the government detained over 110,000 persons of Japanese ancestry on the West Coast, but did not uncover a single plot. At the same time, it allowed 158,000 persons of Japanese ancestry to remain free in the Hawaii Islands, which in no way endangered the war effort, even though those islands were our forward military base. Targeted detentions of specific individuals can work. Mass detentions of people,

based on their race, religion, or ethnicity, waste time and resources, as well as violate civil liberties.

### **What kind of intelligence does work?**

So what kind of intelligence does work? Informants can work, although an FBI informant living with two of the September 11 bombers failed to learn of their plot. Battlefield captives, like al Qaeda operatives seized in Afghanistan, can, and have, provided good leads. Improving language programs, and educating more Middle Easterners in the United States, are good strategies, but they take years to bear fruit.

At the moment, some people are demanding a radical expansion of the CIA's human intelligence program, which withered after the fall of the Berlin Wall. That may work in the collection of economic intelligence, but I really doubt whether American-trained spies will ever get close to Osama bin Laden or his suicide bombers. Our agents are too unsophisticated in the culture and languages of the Middle East and too steeped in their own cultures to operate networks there effectively. Super-spies like James Bond are the figments of overworked imaginations.

To the extent that anyone can infiltrate al Qaeda, it will be agents of Middle Eastern governments, and they will do it not by sending their agents undercover, but by recruiting persons already within terrorist camps to supply information.

After September 11, our government received lots of good information about al Qaeda from the Syrian government, which has its own reasons to fear Muslim extremists, even as it shelters Hezbollah. Unfortunately, we invaded Iraq and that source dried up. The invasion of Iraq was militarily successful, but also appears to be inciting more people

to attack Americans, which is not what we need. The invasion also took resources away from the reconstruction of Afghanistan, so that mercenary warlords and ex-Taliban are reestablishing their control everywhere but in Kabul. Meanwhile Osama bin Laden still lives somewhere on the Pakistani border, despite a \$25 million bounty on his head.

Perhaps it is time to ask why our leaders did not learn from the Russians, who successfully invaded Afghanistan, but could never occupy or control it, directly or through puppets.

The invasion of Iraq has also complicated matters for the Pakistanis who have been our best sources of intelligence about al Qaeda. If a backlash against our occupation of Iraq destabilizes Musharraf's regime, we could end up with a government of Islamic fundamentalists in control of nuclear weapons. That would not enhance our safety one bit.

Domestically and overseas, our best sources of human intelligence have always been "walk-in" informants, like the person who fingered Hussein's sons, or the brother who identified our phantom mail-bomber, Ted Kozlowski, from his writings in the *New York Times*. To encourage walk-ins, we need to be a lot less arrogant, and a lot more understanding of other cultures. Letting Arab immigrants know that we won't tolerate discrimination and harassment is an excellent strategy. Rounding them up was profoundly stupid. If you were an illegal alien in the United States today, would you come forward to offer information on potential terrorists? Would you trust this government not to jail and deport you?

### **Budgetary underload**

One of problems I have flagged is informational overload. Another, equally dangerous, is budgetary underload. As the report on 9/11 released by a joint Congressional committee yesterday documents, demands for more counter-terrorism resources continually ran into budgetary obstacles prior to September 11. This was true at the CIA, NSA, and the FBI. Budgetary underload prevented the FBI from being able to search its own files with speed and sophistication. Budgetary restrictions starved the immigration service of resources, kept the State Department from processing visa applications swiftly, and led the government to put detained immigrants behind bars, rather than monitoring them like parolees.

More recently, the invasion of Iraq, which is costing us nearly a billion dollars a week, is drawing attention and resources away from the war on terrorism, both abroad and at home. Rand Beers, who was in charge of analyzing the terror-related information for the White House until he quit in June, believes that the Bush “administration is making us less secure, not more secure. The difficult, long-term issues both at home and abroad have been avoided, neglected or shortchanged and generally underfunded.” In particular, Beers is concerned that not enough is being done to preventing port facilities from being blown up by bombs hidden in shipping containers. Nor are we doing enough to protect vulnerable chemical and nuclear plants from suicide attacks, or to fund the security functions of the Department of Homeland Security. But we are cutting taxes for the super-rich.

Another major flaw, of long standing, is our lack of investigators learned in the dialects of Arabic that al Qaeda’s terrorists use. Prior to September 11, intercepts of terrorist communications often went untranslated. For over a year after September 11,

our intelligence agencies tested prospective translators and agents only in classical Arabic, even though classical Arabic is rarely spoken in bin Laden's circles.

Even when the FBI and CIA found good translators or potential agents, it took a long time to get them security clearances. The investigators were too busy running dragnets, and no one had the authority – or courage – to waive this largely useless requirement.

Another impediment to the counter-terrorism effort has been an excessive emphasis on secrecy, not just in the requirement of slow-to-get security clearances, but in the over-classification and over-compartmentalization of information. This has always been an impediment to inter-agency cooperation and even internal-agency coordination, and seems to be metastasizing, as even the Department of Homeland Security develops its own categories of information it doesn't want to share widely.

### **Weakness at the top**

The greatest single flaw in our intelligence effort, however, and the one which most endangers Americans, is the tendency of political executives not to read intelligence reports in full, but to substitute their preconceptions instead. This administration, more than most, is prone to make decisions first and then cast around for information to support their policy. Consider, for example, how it decided to invade Iraq, and thereby endanger our unfinished war on bin Laden's terrorism.

From what we know to date, nothing in our intelligence reports of last winter supported the claim that Iraq posed such a clear and present danger to the security of the United States that an essentially unilateral, preemptive strike was necessary. For

example, we had no evidence of any stockpiles of chemical weapons, or of biological weapons that could be deployed in 45 minutes, as Prime Minister Blair claimed. We did know that Iraq had biological weapons over a decade ago, but the shelf life of such biologicals is very short, and we had no evidence they were being replaced during the 1990s, when arms inspectors were all over Iraq.

Similarly, claims of Iraqi assistance to al Qaeda could not be substantiated, while there were good reasons to believe that Hussein and bin Laden could never trust each other. Giving weapons of mass destruction to terrorists is a stupid idea, particularly when the terrorists despise you, as they despised Hussein, for running such a secular state.

Finally, the reports that Iraq was seeking yellow cake uranium in Niger were transparently false. The International Nuclear Agency proved that in two hours by running Google search of the names on those forged documents.

But if you read how the White House came to put that false information in Bush's State of the Union Address, you can understand why the greatest danger to our security lies in the manipulative approach this president has to information of any kind. White House officials are now admitting that neither Bush nor Condoleezza Rice actually read the relevant intelligence estimate in its entirety. A senior White House official told reporters that Bush was "briefed" on the report, but "I don't think he sat down over a long weekend and read every word of it."

Think about that for a moment. The strongest possible justification for a preemptive strike against Iraq, or any other hostile country, is its development of nuclear weapons. That is why Israel bombed Iraq's nuclear facility in 1981. Yet neither the president, his national security advisor, or his vice president admits to having read the

report in its entirety, down to the footnotes that revealed how dubious the CIA and the State Department thought the documents were.

Meanwhile, others in the White House did learn of the CIA's reservations, which is why Rice's deputy, Steve Hadley, had the speech attribute this false, but highly inflammatory, information to the British government.

Of course, Bush didn't just let his predilections get the better of him. He deliberately hyped and skewed the evidence for war, much as Lyndon Johnson did with his secret reports of the Tonkin Gulf affair. Which leads me to conclude that those of us who survived Johnson's war in Vietnam have a special obligation to those who did not, to those soldiers now dying in Iraq, and to those innocent people who will die in future terrorist attacks, be detained without trial, or wrongly accused of terrorist connections, to call this administration to account.