

“The Evolving Terrorist Threat and the NCTC Mission”

**Remarks Prepared for Delivery by
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It's a pleasure to be with you this morning. I know from attending these events, that the ABA breakfasts provide a terrific forum to address pressing legal and national security issues, and I appreciate being invited.

I am especially happy to be here with so many people I recognize from my former life as an attorney at DOJ and NSA. Now that I've left my lawyer role, I am free to complain about pesky legal rules and technicalities that tie our hands. I am really enjoying being able to turn to the lawyers at NCTC and saying – as I often heard when I served as the lawyer – to stop the hand-wringing and just get it done.

It's also nice to get a break from my normal routine. On a typical day, I would be coming out of a meeting right now. Similar to other national security officials, every morning at 7:30, I meet with our senior staff and analysts for a briefing on the latest terrorist threats facing the nation. It's a sobering way to start the workday. And it's a stark reminder that – despite the remarkable successes of the past year – the threat of international terrorism is very much with us.

In short, we've made significant progress against the threat from core al-Qaeda in Pakistan. But at the same time the threats from terrorists remain – they've evolved, becoming more decentralized and more diverse.

As we were reminded just last week – with the foiled plot out of Yemen – al-Qaeda's affiliates and allies are persistent and dangerous. Al Qaeda is determined to carry out attacks against our country. We have to remain vigilant and resolute.

That's what I would like to discuss with you today: the evolving threat and what we are doing to counter it.

My main point is simple. We face adaptive adversaries, so we must be adaptive

ourselves as we seek to confront and defeat them. And that requires the right tools – including legal tools – that are up-to-date, relevant to the fight, and flexible enough to keep pace with an agile, determined, and unpredictable adversary.

To understand the need for such tools, we must first understand the threat. So I'd like to begin by sketching out a brief overview of the evolving threat we face. Then I'd like to describe some of the ways that we can ensure our analysts, operators, and other counterterrorism professionals have the flexibility they need to counter this threat.

The past year has brought tremendous gains in the fight against al-Qa'ida in Pakistan. The killing of Usama bin Ladin and several of his top lieutenants has put al-Qa'ida core on the path to destruction. Key operational leaders like Ilyas Kashmiri and Atiya Abd al-Rahman have been taken out. The leaders that remain lack experience and are under siege – they have trouble recruiting and training, and communicating with other operatives.

We have al-Qa'ida core in the cross hairs – and they know it. Bin Laden knew it when he complained of “disaster after disaster” in the documents seized from his compound.

In short, the intelligence picture shows that al-Qa'ida core is a shadow of its former self. And the overall threat from the tribal areas of Pakistan is now clearly diminished.

At the same time, the threats facing us have become more diverse. As al-Qa'ida core struggles to remain relevant, the group has turned to its affiliates and adherents to carry out attacks and to advance its ideology.

These groups are from an array of countries, including Yemen, Somalia, Nigeria, Iraq and Iran. To varying degrees, these groups coordinate their activities and follow the direction of AQ leaders in Pakistan.

Many of the extremist groups themselves are multidimensional, blurring the lines between terrorist group, insurgency, and criminal gang. To further complicate matters, these groups are often subdivided into factions, some with local agendas and some with global aims.

AQAP

The primary example of the expanding threat can be found in Yemen, home to al Qaeda in the Arabian Peninsula, or AQAP. This group is the most operationally active – and the most dangerous – of the al Qaeda affiliates. Despite the death in September 2011 of Anwar al-Aulaqi, the US citizen who was the group’s chief of external operations, AQAP is still looking for opportunities to attack the US.

We saw this vividly last week with the foiled plot to use an explosive device to take down an airliner. And AQAP has already tried to carry out attacks against the US – in 2009 against an airliner bound for Detroit on Christmas Day, and in October 2010 a follow-on effort against cargo planes.

But the threat we face from AQAP is not just overseas. AQAP has made a concerted effort to encourage extremists here in the United States to carry out attacks on their own.

Somalia

We’re also concerned about the recent public merger of al-Shabaab in Somalia with al-Qa’ida. Right now, al-Shabaab is primarily focused on regional attacks. But its affiliation with al-Qa’ida, along with its cadre of foreign fighters, keeps the group prominent on our radar.

Nigeria / Boko Haram

In Nigeria, the extremist group Boko Haram has stepped up its campaign of violence, underscoring the expanding geography of today’s threat. After focusing mainly on Nigerian targets, the group last year began targeting foreign interests inside the country – as we saw last August with the attack against the United Nations headquarters in the capital, Abuja. Though the group has yet to carry out attacks outside of Nigeria, its recent targets suggest that some of its members may be adopting more of an “al Qaeda-like” agenda.

Shia Groups

And today’s threat picture also includes not just al Qaeda and its allies but groups like Lebanese Hizballah. In the past year, Hizballah has called for a more aggressive posture towards the United States.

Similarly, Iran's terrorist element, the Qods Force, has been involved in providing weapons, money, and training to groups that target US interests. The Qods Force also appears to have played a role in the recent plot to assassinate the Saudi Ambassador to the United States, a plot that raises concerns about Iran's reach into the United States.

Homegrown Extremists

And that brings us to the final point of my overview, the threats that we see right here in the United States. In the last several years, a number of homegrown extremists have been arrested on charges of plotting attacks here. A couple of months ago, a man was arrested for allegedly planning to detonate a bomb inside the Capitol building. Last summer, a member of the U.S. military was arrested for allegedly planning to kill fellow American soldiers near a military base in the United States.

We face real obstacles in detecting and disrupting the actions of homegrown extremists. Individuals who plan attacks – without traveling and with no direction from associates in the US or overseas – are difficult to find and stop. They can advance their plots with little or no warning.

As I hope this overview makes clear, the threat we face is persistent and evolving. Our experience has shown that when we make gains in one area, the threat adjusts and emerges in another. To stay on top of it, we must adjust as well.

A key to this – as I said at the beginning – is giving our counterterrorism professionals the flexibility to adapt to shifting conditions. As lawyers – particularly in the national security field – we appreciate that ensuring this flexibility requires providing our counterterrorism professionals with the clear legal guidance and the legal authority to do their jobs.

In the balance of my remarks, I'd like to highlight three areas where we are working to ensure that our laws provide the authority and the flexibility we need to counter the evolving threat I just described.

New NCTC Guidelines

The first area is directly linked to the organization I lead, NCTC. Our mandate is to integrate and analyze all terrorism information collected across the government – that includes information collected overseas and information collected within the

United States. Our analysts examine this information to make connections between pieces of data that at first blush may have no apparent link to a terrorist plot – and ultimately to help uncover terrorist plots.

The importance of that responsibility was underscored on Christmas Day 2009, when a Nigerian operative with ties to al Qaeda in the Arabian Peninsula tried to blow up an airliner bound for Detroit.

That attack taught us that we needed to get better at connecting isolated pieces of data that on their own might seem unremarkable – but that together may point to a developing plan. In order to enable our analysts to find these critical connections, we needed to improve their access to data that wasn't obviously terrorism-related but that could very well contain crucial terrorism information.

We recently took a major step forward in addressing this issue when the Attorney General approved new guidelines in March. These new guidelines update the procedures governing how NCTC stores and analyzes that kind of data.

As you may know, Executive Order 12333 provides that the Intelligence Community may collect, retain and disseminate information concerning U.S. persons only in accordance with procedures approved by the Attorney General. NCTC's previous Guidelines – adopted back in 2008 – were woefully inadequate.

Here's the main reason why: For some data sets, NCTC replicates the data so that all necessary information can be aggregated and searched in one place by NCTC analysts. For these replicated data sets, the 2008 Guidelines required NCTC to promptly review and delete any information that was not deemed to constitute terrorism information. However – as the reviews of the Christmas Day airliner attack and the shootings at Fort Hood in 2009 concluded – information that is not initially believed to be relevant may later become critical based on subsequent events or information.

For that reason, we determined that it made no sense to promptly delete information that could be important later on. In other words, certain data sets needed to be retained for a longer period of time in order to ensure that terrorism information was not deleted simply because its significance was not immediately apparent. Under our new Guidelines, we can keep such information for up to five years, if necessary.

Here's a hypothetical scenario that explains why the new guidelines are so

important. Let's say that a foreign national applies for a US visa. He lists an American friend as his point of contact on his visa application. At the time, neither of them has any suspected ties to terrorism. Now let's say that two years later, a clandestine source reports the foreign national has ties to AQ and may be planning an attack.

Under the previous guidelines, we would have deleted the visa information for the foreign national and the information about his American contact. Under our new guidelines, we're permitted to retain that information – giving our analysts a much better opportunity to make the critical connection between the two pieces of information. And by including this information in our own databases, we can use analytic tools to make these connections automatically and alert our analysts.

With this increased flexibility, NCTC's new Guidelines have also strengthened the safeguards that apply to this data. Access to the data is limited to people with a demonstrated need to know and to those who have been trained on the Guidelines. And the databases are subject to monitoring, recording and auditing requirements to enable effective oversight. We also can employ enhanced safeguards to restrict searches, access, or dissemination of sensitive data.

In short, NCTC's new Guidelines are an important milestone in our efforts to give analysts the tools they need to see the unexpected and to map out threats in their full complexity, while at the same time ensuring that Americans' civil liberties and privacy are protected.

Surveillance Laws

The second area where the intelligence community is working to ensure flexibility is in our surveillance programs. Since 9/11, our government has made substantial reforms to the laws governing electronic surveillance, adapting them for the realities of modern communications and removing barriers that unduly hindered our collection of intelligence.

One of the most prominent historical examples of this, of course, is the breaking down of the FISA "wall." Before that effort, law enforcement and intelligence officials were obligated to keep their distance from one another, even when working on the same targets. This hindered the work of our counterterrorism professionals, hobbling cooperation, slowing collection, and putting them at a disadvantage as they tracked an evasive adversary.

I have to believe that the FISA “wall” is what the WMD Commission had in mind when it criticized the government for adopting impediments that “ended up being either myths that overcautious lawyers had never debunked or policy choices swathed in pseudo-legal justifications.”

Especially important is the authority granted in 2008 with the addition of Section 702 of FISA that allows surveillance of non-US persons outside the United States without requiring a separate court order for each case.

This authority gives our counterterrorism professionals the agility and flexibility to react swiftly in the face of emerging threats. I can tell you that this tool has provided vital intelligence on the identities of terrorists, their plans, and their sources of support. By any measure, it has strengthened our defenses and made our country more secure.

It is important to emphasize here that the collection permitted under this authority is subject to rigorous oversight from all three branches of government. It must be authorized by the Attorney General and the Director of National Intelligence, and it is subject to procedures approved by the FISA Court to limit targeting and minimize information that is acquired. And Section 702 cannot be used to target US persons or people inside the United States.

This authority is set to expire at the end of the year. Given its immense value to the counterterrorism mission, we have made the renewal of this authority our top legislative priority. And we are working closely with Congress to get this done well in advance of the end of the year.

Prosecution

Finally, I’d like to discuss a third area where preserving flexibility is paramount, the prosecution of terrorism cases.

As both the Attorney General and Assistant to the President John Brennan have emphasized, when we capture and detain a suspected terrorist, we need to have a viable authority to keep him locked up. Our strong preference is to accomplish this through prosecution and conviction.

And we should make decisions about the system of justice – whether federal courts or military commissions – and about charges and prosecution strategy based on the particular facts and circumstances of each case. This pragmatic approach to

prosecutions is neither new nor radical – and it is the best approach to ensure that we incapacitate dangerous terrorists.

As you know, our criminal justice system has been criticized by some as an inappropriate venue for prosecuting suspected terrorists. But the fact of the matter is that our federal courts are a time-tested method for bring to justice those who pose a threat to our safety and security. Our courts are respected, both at home and around the world. And the argument that they are somehow inadequate or ill-suited to the fight against terrorism is contrary to the facts.

Since 9/11, the Justice Department has successfully prosecuted hundreds of suspected terrorists in our federal courts. This includes examples like Faisal Shahzad, who attempted an attack in Times Square in May 2010. Najibullah Zazi, who plotted in 2009 to conduct suicide attacks on the New York City subway. David Headley, who was linked to the 2008 Mumbai attacks. And it also includes Umar Farouk Abdulmutallab, the Nigerian operative who tried to bring down the airliner in the Christmas Day attack of 2009. The list goes on.

The criminal justice system can also be used to prosecute terrorists who were initially captured and interrogated by the military. An example of this is Ahmed Warsame, a Somali national accused of serving as a conduit between AQAP in Yemen and al-Shabaab in Somalia. After being captured by the US military last year, he was questioned for intelligence purposes for more than two months. Later, he waived his Miranda rights and proceeded to talk to law enforcement for several days. He was indicted in New York last summer on charges of providing material support to terrorists.

As these examples show, the criminal justice system has more than proven itself as an effective tool for keeping terrorists behind bars. And more than that. It has also proven itself as a valuable instrument for gathering intelligence.

Abdulmutallab, for example, disclosed important information to federal authorities during his debriefings, describing his path to radicalization, his travel to meet with extremists in Yemen, and the training he received there. These themes – radicalization, travel, and training – are perennial topics of inquiry for our analysts, and his first-hand accounts enhanced our understanding of them.

This is not to say that federal courts should be the only choice for prosecuting terrorists. Our military commissions are also an option. Like our civilian courts, our military commissions have protections in place to ensure a fair trial, and we

should not hesitate to use them when they are the most appropriate forum.

The point is that we shouldn't tie the hands of our counterterrorism professionals, including our prosecutors, by insisting that they use the same approach for every case. We should be relentlessly pragmatic – and give them the ability to assess the specific circumstances of each case and to render a decision based on the facts, the law, and the security interests of the United States.

This approach has served us well in the past. It is not an ideological position but a practical one based on our experience of what works.

Over the past decade, we have learned a lot about combating terrorism. Our dedicated counterterrorism professionals – analysts and operators, lawyers and agents – understand our adversaries and how to combat them, not just in war zones but also on the home front and in the courtroom. We should have faith in them and give them the freedom and flexibility to apply the full weight of their considerable expertise.

We should continue to ease unnecessary restraints on their use of information that has been lawfully obtained.

We should move forward with preserving the FISA authorities that are so crucial to their work.

And we should give them the latitude they need to determine how best to prosecute terrorist suspects.

While we've made real progress in our mission to defeat al Qaeda, the threat remains. This is not the time to place constraints on the skills that our counterterrorism professionals – and that the people of this nation – have done so much to secure. It is time instead to tap the full power of those skills, to press our advantage, and to use every lawful tool at our disposal. That is what our counterterrorism professionals deserve. It is what our country deserves.

Thank you. And now I'd like to open it up for questions.