



Remarks Prepared for Delivery by Attorney General Michael B. Mukasey at the Oregon Anti-Terrorism Conference and Training

**Portland , Oregon
Wednesday, August 13, 2008 - 9:00 A.M. PDT**

Good morning. I'd like to thank Karin Immergut for arranging this conference and for inviting me to be here. I know that putting together a conference like this one is a great deal of work, but of course it's nothing compared to the work her office, and all of you, put in every day to fulfill our joint mission of keeping America safe from another terrorist attack.

That goal cannot be achieved by the federal government alone, by any state government alone, or by any local police force alone. The key to protecting the American people is our network of prevention, and all of you are vital parts of that network.

We've seen examples of serious threats throughout the United States and other countries—in cities and towns large and small. The September 11 attacks were directed at New York and Washington, D.C., but before the attacks the hijackers were dispersed throughout the country, in places as far apart and as different as San Diego and Maine. This should remind us all that state and local governments throughout this country must stay vigilant in their efforts to detect terrorist threats in their communities.

But, I don't really need to remind you of this because Oregon has been, unfortunately, no stranger to terrorist plots. Remember the case of the "Portland Seven," from 2002. One of the first law enforcement officers to become suspicious of some of the suspects in that case was a sheriff's deputy in Skamania County. Those arrests demonstrated, very vividly, that in this fight, we need all the eyes and ears we can get.

Remember also that last year Earnest James Ujaama pleaded guilty to charges related to his attempts to set up a jihad training camp in Bly, Oregon. Ujaama's arrest ultimately helped us unravel that plot and led to the indictment and arrests of other terrorists in faraway places, such as Abu Hamza al-Masri in the United Kingdom; Oussama Abdullah Kassir in Prague, Czech Republic; and, Haroon Rashid Aswat in Zambia. The Ujaama case is a clear example that, number one, what might originally appear to be a local threat can often lead to much, much more; and that, number two, the importance of working together, and sharing information cannot be overstated.

Indeed, in many ways, that's why you are all gathered here today—federal, state, local, and private sector partners—because any one of you may play a part in preventing the next attack. Any one of you can find the evidence; or spot the suspicious person; or fix the vulnerability that means the next attack won't succeed. It's what you do every day; and before I go any further, I want to thank you for that.

In addition to the need for cooperation, we all understand the importance of long-term strategies to keep America safe. So I would like to talk to you today about what I see as some necessary steps as we begin the transition from this Administration to the next. This will be the first such transition since September 11, 2001. We know that those who helped perpetrate the outrage committed against us that day, and those who support and sympathize with their cause, will be watching our country during this time of transition. I am committed to making sure that we provide no cause for hope for those who seek to harm us—that, on January 21st, their analysis will be that our national defense remains strong and that we remain prepared.

Ensuring a smooth transition will require not only serious thought about the big picture, but also a dedicated focus on the details that make up that big picture. We must ensure that all of our country's security measures are attuned to the increased threat we face during this time of transition, and that we respond and adjust appropriately.

This morning, I would like to talk about two recent developments that will improve the Nation's security during this important period of transition and will give the next Administration some of the tools necessary to keep us safe.

First, as you may know, a little over a month ago, Congress took a vital step in passing the FISA Amendments Act of 2008, bipartisan legislation that will give our intelligence professionals critical long-term authorities to monitor foreign intelligence targets located overseas. The ability to intercept and evaluate the electronic communications of our country's enemies is one of the most important defensive weapons we have.

Each morning, FBI Director Robert Mueller and I receive a classified briefing on terrorist threats to our Nation and the rest of the civilized world. As someone who previously thought he knew something about terrorism, I can tell you that these briefings are sobering. We face an enemy with a presence, literally, in every part of the globe; yet who, in many places, is virtually undetectable. Because of that, I cannot overemphasize the importance of obtaining timely intelligence on our adversaries' capabilities and intentions.

The FISA Amendments Act modernizes the Foreign Intelligence Surveillance Act of 1978 and ensures that we will be able to obtain timely and critical intelligence about the communications of terrorists located overseas. Enacting this proposal into law required significant bipartisan leadership from both Houses of Congress and from the President. I was proud to work on this issue and to let others know how important it is to give our intelligence professionals the ability to monitor our enemies and to protect our homeland. This legislation will put critical national security surveillance activities directed at terrorists overseas on long-term institutional footing, while at the same time providing new and unprecedented safeguards for the civil liberties of Americans.

The second development I would like to speak to you about today is our effort to develop new Attorney General Guidelines for the FBI's activities in the United States. We are in the process of consulting with Congress on the content of these Guidelines, and hope to have the Guidelines implemented and made public within the next few weeks. I want to take this opportunity to tell you a bit about what these new Guidelines are—and what they are not.

Since the September 11 attacks, the FBI has undertaken the most significant transformation in its history. The FBI has long been, and must continue to be, the nation's preeminent law enforcement organization. But immediately following the attacks, it became clear that the Bureau's primary mission must be to detect and prevent terrorist attacks. Of course, the Bureau's national security mission and its law enforcement efforts are by no means mutually exclusive. Traditional criminal law enforcement techniques and authorities were used to confront the terrorist threat prior to September 11, and have proven valuable since.

There was, however, a wide and bipartisan consensus—a consensus reflected in the recommendations of two highly regarded blue-ribbon commissions and a joint congressional inquiry—that the Bureau needed to shift its national security focus from investigating crimes after they occur to collecting the intelligence necessary to detect and prevent attacks before they occur.

Over the past six years, under Director Mueller's leadership, the Bureau has made major institutional changes to transform its intelligence capabilities. FBI Headquarters now is structured to take on the national

security and counterterrorism mission, with a new National Security Branch that focuses on, among other things, intelligence, counterterrorism, and weapons of mass destruction. Director Mueller has also made important changes to the way that the FBI's national security personnel are recruited, trained, and promoted, to help develop a cadre of elite intelligence analysts and operators. I have worked closely with him on these issues since my confirmation.

The implementation of new Attorney General Guidelines will help in the Bureau's transformation into an elite national security organization. There are now five sets of rules that govern the FBI's investigative activities in the United States—to cite just two examples, there are separate guidelines that apply to criminal and national security investigations; these guidelines set forth what agents may and may not do in these investigations, and what approval levels may be required for the use of specific investigative techniques.

Some of these guidelines have been extensively revised in light of the Bureau's post-9/11 mission; most notably, the Bureau's current guidelines for national security investigations were overhauled in 2003. However, the main rules governing the FBI's conduct of criminal investigations, national security investigations, and foreign intelligence collection have continued to exist as separate regimes set forth in separate documents—one set of guidelines applies to criminal investigations, another set to national security matters, and so on.

As you might expect, this has resulted in different standards and procedures applying to comparable FBI activities, based solely on what label or category is attached to the activity—a result that makes no sense and which has confused the agents in the field. For instance, an effort to surveil a suspected terrorist could be reasonably thought of as either a criminal investigation (since engaging in acts in preparation of terrorism is a crime); a national security investigation; or an effort to collect intelligence.

Today, the rules concerning which investigative techniques may be used in such an effort, and what levels of approval are necessary to conduct them, vary depending on how the investigation is labeled. The new consolidated Guidelines aim to eliminate arbitrary differences in the standards and procedures that currently apply to an activity based on how it is characterized – that is, whether the activity is described as a “national security” or “criminal law enforcement” matter. Under the new guidelines, the investigative steps that the FBI may take in a particular investigation will not be driven by irrelevant factors, such as the type of paperwork the agent uses to open the investigation.

The revisions also aim to eliminate distinctions in the existing rules that make it, in practice, harder to gather information about threats to the national security than it is to conduct “ordinary” criminal investigations. To cite just one example, under the current guidelines, human sources -- “informants” or “assets”, as they are commonly called -- can be given affirmative tasks when the purpose is to follow leads and gather information about ordinary criminal activities, but not when the purpose is to gather information about threats to the national security. The new guidelines would provide the same latitude to recruit and task human sources in national security settings as in ordinary criminal investigative settings.

Similarly, the new guidelines would eliminate the artificial distinctions in the way surveillance may be conducted under different sets of guidelines. Right now, under the criminal investigation guidelines, the FBI may conduct physical and photographic surveillance based on a tip. An agent's options are more limited, however, under the national security guidelines. The new guidelines would eliminate this anomaly and others like it, and would ensure that an agent working a national security investigation has the same authorities to conduct surveillance as an agent working a criminal case.

The new guidelines would also provide more consistent rules about agents' access to information. Under the current guidelines, if the FBI receives a tip that a person is associated with organized crime, agents may look at commercial databases, but only those that are available to the public (as opposed to those reserved for

law enforcement). But if the tip relates to a threat to the national security, then agents may look at a broader universe of databases. The new guidelines will eliminate this distinction, and ensure that rules about access to information are consistent across categories of investigations.

The new consolidated guidelines will, in short, integrate more completely and harmonize the standards that apply to the FBI's activities. As a result, they will provide the FBI and other affected Justice Department components with clearer, more consistent, and more understandable guidance for their activities. They also will provide to the public in a single document the basic rules governing the FBI's domestic operations.

These new guidelines will also contain standards, procedures, and authorities to reflect that the FBI is an intelligence agency. The guidelines will help the Bureau carry out both intelligence collection and intelligence analysis in order to function as a key participant in the U.S. Intelligence Community.

For example, the new guidelines will recognize the need for the Bureau's intelligence activities to become more flexible, more proactive, and more efficient in order to best protect the homeland and contribute to the United States' crucial decisions. The revised guidelines will provide clear and comprehensive authorizations for the FBI to engage in intelligence analysis and planning—so we can gather, analyze, and use all lawful sources of information. They will recognize that our national security efforts require coordination and information sharing with other components and agencies with national security responsibilities. The new guidelines will also remove unnecessary barriers to coordination and cooperation, and will recognize the coordinated approach we have at the federal level and the frequency with which we work with our federal partners.

Some may object to these new Guidelines precisely because they expressly authorize the FBI to engage in intelligence collection inside the United States. There are two responses to this. The first is that this authorization isn't new; the FBI has long had the authority to collect intelligence in the United States, by statute and by executive order. This document clarifies the rules by which the FBI conducts its intelligence mission, but the FBI's intelligence mission is not a new development.

The second, and more important, response is that this mission is essential—and it is also precisely what we asked of the FBI after September 11, 2001. The terrorists who attacked us on that day did so from within the United States; and it is for that reason that there was clear-eyed and bipartisan recognition after the attacks that we needed to be able—and allowed—to collect intelligence in the United States. Indeed, there was a loud demand for it. As I mentioned, the 9/11 Commission, the Silberman-Robb Commission, and the Joint Congressional Inquiry into Intelligence Community Activities each concluded that the FBI had to become more nimble and effective at collecting and analyzing intelligence. I understand and agree with the central premise of these reports: which is that we have to take the concept of intelligence collection in the United States seriously.

As I mentioned briefly above, we are in the process of explaining the guidelines to Congress. Our staff has now met with each of the relevant committees to explain why this is an important undertaking and what changes we are making to the way the FBI will conduct its activities domestically. Perhaps equally importantly, we are explaining what works now, what we are keeping, and what we are not changing.

So, let me now mention to you a few things they will not permit. They will not alter the previous Department rules that forbid predicating an investigation simply based on somebody's race, religion, or exercise of First Amendment rights. The guidelines will require all activities to have a valid purpose, and will require the FBI to carry them out in conformity with the Constitution and all applicable statutes, executive orders, and Department of Justice regulations and policies.

Finally, the guidelines will include robust and effective oversight measures involving many Department of

Justice and FBI components, which have been adopted to ensure that all Bureau activities are conducted in a way that is consistent with these laws and policies.

All of these protections are important – not only to ensure that these powerful national security tools are used properly, but also that the American people perceive them to be used properly. Our system of government depends on the consent of the governed—the informed consent of the governed. The moment people believe we are not acting for their benefit, we imperil our authority to act at all. And the world today is simply too dangerous for us to lose the authority to act.

As we move forward, we will also learn from what has been successful. We've deployed resources at the national level, internationally and in communities across America, through programs like our Joint Terrorism Task Forces, or JTTFs, of which we now have more than 100. In JTTFs, federal, state and local officials work alongside one another, as one team, sharing data and working together on analysis – because it's easier to connect the dots when all of the dots are visible to everyone with an interest in connecting them. I know many of you are involved in the local JTTF here in Portland, and I know you can attest to the value of that partnership.

I'm proud of our teamwork and mutual respect on this and other joint operations; I hope everyone in this room today who works in law enforcement is as well. These kinds of partnerships are perhaps the best example of how the walls that previously divided us are simply gone; how law enforcement and intelligence work together to protect the Nation.

The terrorists who are out there have a long attention span. Their hatred for us has no expiration date.

And so we cannot stop in our efforts to fight them. We cannot turn aside and hope that someone else will take up the battle for us. It is up to each of us, in every community, together, to press on. I know we can succeed because I also hear the success stories every morning. I hear about what we are able to find out and to do, and what we have done. And I am committed to doing everything that I can do to make sure those success stories keep coming.

I thank you all for being here; I thank you for your hard work; and I thank you for your time.

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