SKATING ON STILTS

Why We Aren't Stopping Tomorrow's Terrorism

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Introduction | The Gift

A cold drizzle is falling on the Pentagon parking lot. The memorial for those who died here on 9/11 was dedicated in 2008—just a year ago—but it's almost deserted. In nearly four years at the Department of Homeland Security (DHS), I never managed to visit any of the 9/11 memorials. Now that I'm out of office, along with the rest of the Bush Administration, I have time to pay a quiet visit.

I don't like the place. Flat and unadorned, it feels like an extension of the vast Pentagon parking lot. The trees are scrawny, and the grounds are a utilitarian expanse of gravel and rain-slick paving stones. Beyond the sparse vegetation and a concrete wall, traffic hisses and thrums on a highway.

I think I know what the designers had in mind. They wanted everything understated and austere. There's a bench and a lighted pool of water for each victim who died here. Each bench bears a victim's name. The benches and the paths trace the course that Flight 77 must have taken—smack into the massive west wall of the Pentagon that looms nearby, gray in the rain.

The site is all about good taste and minimalism. Security is tight. The grounds look as though they're swept clean each night to remove any trace of the day's visitors, their litter, their mess, their grief.

But I'm not in the mood for good taste. The place feels cold and runic. Some benches arc toward the building; others arc away. Some of the pools have names in them; most don't. The benches are arranged by year, from 1998 to 1930.

I've come for a memorial; instead I've found some kind of puzzle.

I practice law for a living, but off and on I've spent years in government. This last tour has been a tough one. DHS was a startup, begun in the wake of disaster and assembled on the fly. Two years in, DHS suddenly realized that it needed a policy office, and I got the job. A startup within a startup, the office had to be built from scratch.

Everything was up for grabs—policies, procedures, authorities, personnel. I knew that wouldn't last; slowly the demand for routine would crowd out innovation. So in the midst of chaos—uncertain budgets, borrowed staff, no backup—I felt the pressure to push new ideas and policies into place as quickly as possible. Early on, what matters is how good your ideas are. Later, what matters is whether your ideas have been vetted with every office that thinks it has a stake in the decision.

So all at the same time, I had to build the office, recruit great people, solidify the budget, and put a solid policy structure under much of what DHS did.

I did that. Now I'm tired. I need time to clear my head.

So here I am, thinking about the people who died a few yards away—the people whose deaths drove me back into government. I am taking stock of what I've actually managed to do for their memory.

The place is nearly deserted. A handful of other people wander the paths. Two youngsters skip up to me. They want to know where the broken limestone is.

I look around. The place is as sterile as a French park. There's no place for anything broken.

"It's here somewhere. We have to find it for our class."

Great, I think. A puzzle and a scavenger hunt. I try sitting on one of the benches. It's sopping. My pants soak through. I stand.

That's enough. Time to go.

But the puzzle nags at me. The dates are easy enough. They're birth years. The benches arcing toward the building are for the passengers on Flight 77. The others are for victims who died in the Pentagon.

I look for my birth year—1947. Eleven dead. More than any other year. That seems fitting. By 2001, we baby boomers had shaped the

United States to reflect ourselves. We were what the attackers hated. This is our fight.

I'd known that from the start. On the day of the attacks, I looked out of my law office window and saw the smoke rising from the Pentagon.

I felt at least a bit of responsibility for our failure to stop the attacks.

In the 1990s, after a term as the National Security Agency's top lawyer, I spoke out in favor of keeping a wall between spies and cops. The idea was simple enough. Agencies like the National Security Agency (NSA) gathered intelligence on a global scale, and they rarely observed the legal constraints that applied to domestic policemen. To protect the civil liberties of Americans, it only made sense to separate intelligence gathered in that way from evidence assembled in a criminal investigation. With a wall between the two, criminal investigators from agencies like the Federal Bureau of Investigation (FBI) would be forced to observe the legal restrictions that went with criminal investigative tools. They wouldn't be tempted to take the shortcut of using intelligence that had been gathered with less attention to civil liberties.

That was the theory, anyway. In practice, the wall crippled our last, best chance to catch the hijackers before September 11, 2001. In August of that year, the wall kept the FBI from launching a full-scale criminal search for the hijackers—even though all of our security agencies were expecting an imminent al Qaeda attack, and even though both the FBI and the Central Intelligence Agency (CIA) knew that two dangerous al Qaeda operatives had entered the United States. The failure to track those operatives down wasn't a matter of incompetence or a failure to communicate, at least not in the last weeks. FBI criminal investigators spent the last part of August begging for a chance to track the terrorists. They were shut down cold—by lawyers who told them the wall simply could not be breached.

I wasn't the most enthusiastic proponent of the wall. I thought that the civil liberties dangers it was supposed to ward off were probably

more theoretical than real. But I saw no harm in building in an extra margin of protection for civil liberties. If nothing else, the wall would reassure privacy advocates in the courts, in the newspapers, and on Capitol Hill that intelligence would not be misused. It was insurance, not just for civil liberties, but for the intelligence agencies themselves. For both reasons, I thought, it was best to keep the wall high.

It made eminent sense inside the Beltway.

Until the world outside the Beltway broke through, just a few yards from where I'm standing.

Slowly, as I wander back and forth among the rows of benches, the puzzle starts to fall into place. The oldest passenger was seventy-one; the youngest was three. The names of family members who died together are engraved in each other's reflecting pools. Husbands died with wives. Parents with children. Most of the passengers, though, died alone. Which would be worse, I wonder, facing death without a hand to hold or knowing that your spouse will die with you?

Close to the entrance is a knot of benches for children—two girls traveling with their parents and three eleven-year-olds without family. What was the hijacking like for these youngsters, I wonder, imagining the chaos as the passengers were forced into the back of the plane. At that age, I'd just assumed that adults were in control. They were the ones who made the rules, the ones who could always protect you when things got bad. For the first time, and the last, all those comfortable childish assumptions about the world had broken down.

The birth-year arrangement means that a long barren stretch of gravel separates the eleven-year-olds from the twenty-two-year-olds who worked in the building. Bereft of flowers and personal touches, all of the benches seem a little lonely; off by themselves, the children's benches seem lonelier still.

In the wake of the attacks, I recanted my support for the wall. I testified to the 9/11 Commission about the risks of overprotecting civil liberties. But that didn't seem like enough. I wanted to do more. I seized a chance to work for the Robb-Silberman Commission that

investigated our intelligence failures in Iraq; I helped make recommendations about how to keep weapons of mass destruction out of terrorists' hands.

And finally in 2005 I joined the brainy, hard-charging Michael Chertoff at the Department of Homeland Security (DHS).

Wiser career decisions have been made; at the time, DHS was being widely mocked as disorganized and obsessed with duct tape and color schemes for terrorist warnings. But I've never turned down a chance to work in government with someone I respect, and bringing order to DHS policy was a chance to undo some of the harm that the wall had caused.

I had to decide where DHS policy could make the most difference. One place where the Department of Homeland Security had sole responsibility was the border. In fact, the one unquestionably good idea at the core of DHS was uniting border responsibilities that had been split among three cabinet secretaries. Neglected by all three, border security had collapsed under the weight of ever-increasing jet travel. Border officials were waving more and more visitors through our immigration and customs checkpoints with only a cursory look.

Al Qaeda sent twenty hijackers to carry out the 9/11 attacks. All but one got past our border defenses. Even stopping that one hijacker took an act of courage on the part of the border agent; in those days, keeping a Saudi traveler out of Orlando could easily trigger complaints about discrimination and lost tourism.

We had to rebuild those defenses—but without discouraging international travel. That would require clarity and determination. Already, the toughest measures were being stalled.

Civil liberties groups, far from feeling abashed at the role their doctrine had played in 9/11, were loudly fighting DHS's new security measures. They had an eager audience abroad; in fact, our allies in Europe had already forced DHS to rebuild the wall between law enforcement and intelligence, at least as far as border data was concerned. The Europeans had threatened to withhold data on transatlantic travelers unless DHS promised to keep that data from intelligence agencies—and even from other parts of the department.

I am beginning to see the appeal of this austere, cerebral memorial. I don't know most of the victims, and neither will others who come here. The memorial is not meant for memory but for connection. It tells us nothing but the names and the birth dates of the victims, but I see now that those are enough to build a web of connections. Just those facts drain some of the anonymity from the dead. They are all that's needed to pull us out of airy sentiment and make us feel instead the concrete loss the victims and their families suffered.

It's not much, in fact it's sadly impersonal, but it's more than most memorials can convey.

With Secretary Chertoff's full support, I fought back against the determined resistance of airlines, foreign governments, and civil liberties groups; we put in place a coherent border inspection strategy despite them. We hadn't won every battle when I left, but we were winning, and it looked as though the new Secretary and the new administration would keep up the fight. That was satisfying.

But satisfaction was not what I was feeling. I've never understood political memoirs that are a long tale of successes. In my experience, government rarely offers clear victories. The more ambitious your goals—if you want to do more than enjoy the limo rides, if you want to solve problems and reshape policies—the more likely you are to fail. In ways that hurt so bad you'll never forget them.

Maybe other government memoirists are better at putting their failures behind them. But I can't, maybe because I fear that my failures will end up costing the country as much as the failures that led to 9/11.

The same exponential changes that undercut border defenses are at work elsewhere. Moore's Law, which has predicted decades of exponential growth in computer capabilities, is creating scary new vulnerabilities here at home; soon a host of criminal and military organizations will be able to leave individuals bankrupt and countries without power or a financial system. Similar exponential changes in biotechnology will empower a generation of garage hackers who may

or may not end up curing cancer but who will certainly end up making smallpox at home.

Unlike jet travel, these technologies have not yet been misused on the scale of 9/11. And without three thousand dead, business, international, and civil liberties groups have been ferocious in opposing any action that might head off disaster. I struggled to sound the alarm, to prepare the country for computer network and biological attacks, but I failed more often than I succeeded.

That's over now. I've been relieved. The new administration has embraced civil liberties rhetoric with enthusiasm. Some of them seem convinced that they have a mandate to roll back any security measure that reduced privacy or inconvenienced the international community. I don't think that will happen with border security, but the new administration's deference to privacy groups and international opinion will make it far harder to do anything about the new threats.

Maybe, I think, they're right not to pick those fights. Maybe Americans are tired of battle, tired of remembering 9/11, tired of its lessons. Perhaps the fight against the new threats will just have to wait until something bad happens.

The rain is growing heavier. The low clouds are darker. The lights in the pools have begun to glow. I'm ready to leave.

Passing a bench, I see something: a tiny dot of color in the vast, sterile park.

It's a bit of glass, like a clear blue marble left in the kiln too long and melted into an oblong. It's easy to miss. I've already walked past it once. But it wasn't dropped at random.

It sits centered at the end of one bench. In this scrubbed, cerebral monument, it looks almost defiant, an act of personal rebellion against the clean lines and uniformity.

The name on the bench is Ronald Hemenway, electronics technician first class. He died at work in the Pentagon. He was thirty-seven—the right age to have a wife and young children still feeling the pain of his loss eight years later.

I imagine mother and child sitting together on the bench. They glance carefully around and slip the blue stone from a pocket. A child's hand centers it at the end of the bench, just so.

A gift of memory. For a father. For a family.

For all of us.

It is memory that will save the changes DHS has made at the border. We remember what weak defenses cost us.

But the memory of 9/11 may not save us from the new threats. When catastrophic terrorism returns, the terrorists will use weapons that have already been deployed—by governments, by business, by all of us. Like jet travel, the weapons will be technologies we value. If we do nothing, these technologies and the new powers they confer will eventually be used against us in shocking new ways.

I tried my best to manage those new risks as aggressively as we were dealing with border security. But with the new technologies, that was a lot harder; privacy groups, business, and the international community resisted change with fervor. And too often they won, blocking our efforts to head off the greatest risks.

Those are the failures I most regret. The lesson I learned from the wall and 9/11 was simple: The civil liberties advocates of the time did not know where to stop. They only stopped campaigning for the wall after it had killed three thousand Americans (and some didn't stop even then). They couldn't see the line between reasonable protections and measures that crippled our effort to fight terrorism. And they still can't. They and their allies in business and international organizations are natural conservatives, opposed to any change that might help government fight terrorism in new ways.

I'd chosen not to fight these entrenched interests in the 1990s. When I left the National Security Agency, I'd written a long article that endorsed a wall between spies and cops. I've spent years undoing that mistake.

Now I am leaving government again, and writing again—and hoping to keep others from making the same mistake.

Call it a gift of memory.

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