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# Foreword

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## FOREWORD

Greg Miller<sup>†</sup>

I'm not sure why I was asked to write the foreword for the *Journal of the National Security Forum* (JNSF) this year. I only know that I am a newspaper reporter who frequently quotes a certain professor at the William Mitchell College of Law, and that when this professor gives you an assignment there is no escape.

So what I thought I'd do is revisit the role I had last year at the National Security Forum, when I was invited to discuss the storylines that those of us who cover national security in Washington were expecting to see. Of course, when I look back on those projections now, what stands out is what I failed to anticipate. And the only consolation is that, by that standard, I don't think it was only me.

After the election of President Obama, it seemed reasonable to expect that the United States had entered a period that would be marked primarily by the rolling back of its most controversial counterterrorism policies. Obama pledged no let-up in the hunt for Osama bin Laden. But the focus was on dismantling programs—including the CIA's use of harsh interrogation measures—that were increasingly viewed as excessive if not illegal eight years after the 9/11 attacks.

Terrorism, however, is too complicated a phenomenon to cooperate with such simple pendulum swings. As 2010 approached, new plots and attacks surfaced involving an Army major in Texas, a young Nigerian with a bomb sewn into his underwear, and a Jordanian doctor who strapped on a suicide vest for a meeting with the CIA. They reminded us that the difficult decisions about how far a country should go to protect itself weren't over. The nation was still coming to terms with the course it had taken after 9/11. But neither that course nor the ensuing course corrections had guarded against the kind of attacks, nor against the kinds of attackers, that came next.

In the aftermath of these attacks, President Obama's national

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security advisers met to consider crossing a counter-terrorism threshold their predecessors had never breached by adding a U.S. citizen to the list of alleged terrorists that the CIA was authorized to kill.

Anwar al-Aulaqi, who was born in New Mexico but had gone into hiding in Yemen, was known mainly as a militant Muslim cleric until about a year ago. But then he was tied to two plots—one deadly and one close to being catastrophic—in the United States. Little is publicly known about the evidence against him, except that he corresponded by e-mail with Major Nidal Hassan, the Army psychiatrist accused of shooting thirteen people at Fort Hood, Texas; and that al-Aulaqi is thought to have helped al Qaeda on the Arabian Peninsula in the planning of its attempted bombing of a Detroit-bound flight.

The outcome of the administration's deliberations might be evident by now, depending on what has become of al-Aulaqi in the time since this foreword was written. If there were legal difficulties surrounding the case, it didn't take long for the administration to resolve them. Within weeks, word had leaked that al-Aulaqi had been added to the CIA list.

Other dilemmas the administration faced seemed more familiar: where to put "high-value targets" captured overseas; how to handle an alleged suicide bomber taken off an airplane in the United States; and when to read him his *Miranda* rights, if at all.

The first question—what to do with high-ranking al Qaeda or Taliban operatives taken into custody—did not come up much during the Obama administration's first year. Most who fit those descriptions, and could be located by U.S. spy agencies, were killed in an escalating campaign of Predator strikes.

But then Pakistani forces working with CIA counterparts captured the Afghanistan Taliban's No. 2, Mullah Abdul Ghani Baradar, in early January. Suddenly, CIA leaders who had enthusiastically backed the decision to take the CIA out of the business of holding prisoners were voicing frustration. CIA officers chafed as weeks went by without direct access to Baradar, a prisoner controlled by the Pakistanis who had directed the Taliban's offensives against American troops in Afghanistan. And even if the CIA could convince the Pakistanis to turn him over, there was nowhere to take him. No clear plan for what to do with such a high-value target. No system set up to replace Guantanamo Bay.

The William Mitchell College of Law publishes JNSF and convenes its National Security Forum each year to explore national

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security issues like these. The participants in this program know better than most that the terrorist threat is never static, and the measures to contain it are never perfect. As a reporter, I often struggle to grasp the broader contours of this subject, and I am indebted to the scholars on these pages for their willingness to share their expertise.

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## **PART I: TEN QUESTIONS**

The *Journal of the National Security Forum* (JNSF) Board of Editors posed ten questions on national security to a group of national-security law experts. Contributors were free to answer as many of the ten questions as they wished.

1. Would President Obama have the authority to hold a U.S. citizen without charge in a military brig for six months if that citizen—who lives in Minnesota—is suspected of links to al Qaeda following a one-month trip to Somalia?
2. Would it be legal for the Obama administration to launch a Predator strike on Osama bin Laden if he has been tracked to a house on the outskirts of Karachi, Pakistan?
3. Did members of the Justice Department's Office of Legal Counsel commit malpractice in 2002 by advising that the Geneva Conventions did not apply to al Qaeda and the Taliban?
4. Did members of the Justice Department's Office of Legal Counsel commit malpractice in 2002 by its written guidance to the Central Intelligence Agency on interrogation standards?
5. What statutory change is most necessary for American national security?
6. What change by Executive Order is most necessary for American national security?
7. How do the abuses of civil liberties under the George W. Bush administration compare to the internments of Japanese aliens and Japanese-Americans during World War II?
8. Does al Qaeda pose an existential threat to the United States?
9. What should the United States do if it confirms that Iran has nuclear weapons?
10. When will the United States cease to be the world's number-one power?

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