

CHAPMAN UNIVERSITY SCHOOL OF LAW

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**KEYNOTE ADDRESS:
“THE NEXUS BETWEEN DRUG
TRAFFICKING, TERRORISM AND
ORGANIZED CRIME”¹**

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SPEAKER:

SECRETARY MICHAEL CHERTOFF

¹ This speech was transcribed verbatim from a recording. Members of the Chapman Law Review edited the transcript to enhance reader comprehension. In order to retain the spirit and essence of the speech, the editors made only minor stylistic and grammatical modifications to Secretary Chertoff's statements. A question and answer session that followed Secretary Chertoff's remarks has been omitted for the purposes of this publication.

Dean Eastman:

Again, if I could have your attention. For those of you that don't know me, my name is John Eastman. I'm the Dean here at Chapman University School of Law for about twelve more hours. Let me take this opportunity to really acknowledge Kasey Phillips; she's done a phenomenal job organizing this symposium.

I would also like to thank the whole Editorial Board of Law Review; you all have been working very hard and I know you're going to be looking forward to some long sleep tomorrow—but not quite yet. Also, Donald Kochan and Ron Rotunda, the faculty advisors to the Law Review. They both deserve a round of applause as well.

Secretary Chertoff became Secretary of the Department of Homeland Security on February 15, 2005, and he served until the very end of the Bush Administration in that capacity. Now, he's had a rather extraordinary career prior to that. He served as a Circuit Judge on the Third Circuit Court of Appeal. He was Assistant Attorney General for the Criminal Division at the Department of Justice. As Assistant Attorney General, he helped trace the 9/11 Terrorist Attack of the Al-Qaeda Network.

Before joining the Bush Administration, Secretary Chertoff was a partner with the law firm of Latham and Watkins. From 1994 to 1996, he served as Special Counsel for the United States Senate Whitewater Committee. After that, he spent more than a decade as a Federal Prosecutor, including serving as United States Attorney for the District of New Jersey, First Assistant U.S. Attorney for the District of New Jersey, and Assistant U.S. Attorney for the Southern District of New York. As United States Attorney, he investigated and prosecuted significant cases of political corruption and worked on crime and corporate fraud. Secretary Chertoff, as a prosecutor, I suspect that the next Attorney General of the State might be calling on you for advice.

Secretary Chertoff graduated *magna cum laude* from Harvard College in 1975—we'd like to consider or call Harvard the Chapman University of the East Coast—and *magna cum laude* from Harvard Law School in 1978. He also served as a law clerk for Supreme Court Justice William Brennan from 1979 to 1983. Please join me in welcoming Secretary Chertoff.

Secretary Chertoff:

I hope I didn't chase the Dean out of office. For those of you who believe in cause and effect analysis, I show up and then twelve hours later you leave. So, I wish you the best of luck in public service and your campaign. It's a great privilege and a

great job. It's also a great responsibility, and it's important that people still want to get into the fray. These days are more and more difficult an environment for everybody.

So I thought I'd talk about the nexus between terrorism and the international drug traffic in organized crime, largely because, of course, this is a conference about drug wars, and this happens to be an area where there's a great drug war happening. We have a tendency to say everything is war, the war on poverty, the war on drugs, the war on this—but some of these areas really do have a war. There's repeated violence and destruction, and when we look at the intersection between terrorism and international drug trafficking, I think we really do have a war. So, what I thought I'd do is give you a little bit of a sense of change from the beginning of this decade through the next decade. I'll tell you right up front, I'm not recommending legalizing drugs. I think that would be a major mistake.

I first looked at the nexus between drug trafficking and terrorism when I was head of the Criminal Division at the Department of Justice. Some of you may remember that the FARC, the Revolutionary Army in Colombia, which was a left wing political organization, was very strong in the 1990s and the early part of this decade. It has lost a considerable amount of ground since then, partly because of our work with President Uribe of Colombia and his people in really reforming the military and pushing back against the FARC. But certainly they remain a potent force, and they were very potent in the late 1990s and the early 2000s.

We brought a series of indictments against the FARC for various terrorism-related violations which included, among other things, kidnapping people—including Americans—and holding them for ransom. But one of the things that emerged as we investigated was that the FARC had begun to migrate toward becoming a classic drug organization. What happened first was they began to encounter drug traffickers in the areas of Columbia that they controlled, and then they began to charge them a tax or a protection fee. This is similar to what organized crime often does in the United States. They don't directly engage in the sale of drugs, but they essentially reap the benefits by extorting money from the drug dealers, or taxing them and protecting them against being ripped off.

So the FARC began to move into the protection racket, but pretty soon that migrated into something a little bit more enabling. They'd be involved in managing staging areas, helping load airplanes, and ultimately they became full-fledged partners in drug trafficking. And, in fact, we had indictments issued

against the FARC that included both terrorism and drug trafficking charges. In many ways, that was the first concrete example of the intersection between a global criminal organization involved in the drug trade—one that has access to the modern tools of money, movement, communications, and travel—with terrorist organizations who benefit from the money and the enabling capabilities of the drug organizations, and who can provide violence and the support of violence, which of course is important for the drug organizations.

We've now seen this problem migrate from Colombia around the world. It's no secret in Afghanistan, for example, where the cultivation of poppies creates a major source for heroin. It's no secret that the Taliban has protected and, in fact, is cooperating with drug dealers, because they receive money from the drug dealing and the drug trafficking. That money enables them to buy arms and, not coincidentally, the drug activity winds up also hurting the West and the enemies of the Taliban, so they get a double bang for their buck. They have the ability both, in some general sense, to strike at their enemies and, in a more specific, narrow sense, to get the kinds of financing that they need in order to acquire the weapons and trading capabilities which allow them to be such lethal adversaries.

What we've now seen, however, is that this is moving into South America, as well in places apart from Colombia. For example, recent information tells us that there has been an increase in the movement of cocaine from South America into Europe. That's partly a reflection of some of the progress we've made in making it more difficult to bring drugs into the United States. Partly, it's a rise in demand in Europe, but what's interesting, for the purpose of my talk, is how it's getting there. And the way a lot of it is getting there is via North Africa. The cocaine moves out of South America, often through Venezuela, where, of course, Hugo Chavez is really a dedicated enemy of the United States and the West and, therefore, very happy to be in a neighborhood of drug trafficking. It then moves from Venezuela into North Africa, where it is staged and ultimately sent into Europe to be sold.

What we have learned is that in North Africa, groups affiliated with terrorism, including Al-Qaeda in the Maghreb (which is a North African group that is sympathetic and, in fact, formally linked with the core Al-Qaeda in Pakistan and Afghanistan), have become involved in protecting the loads when they arrive and while they're being held in staging to be ultimately shipped into Europe. And the reason for that, again, is perfectly obvious, because it's a source of money which enables

them to recruit and buy arms and further their own political goals. So, once again, we begin to see the capabilities of drug organizations, and the money they generate, to create an attractive partner for terrorist organizations. Terrorist organizations also have the ability to provide the violence and the security that is very important to the drug traffickers.

What I predict is going to happen is, at some point, some trafficker is going to look in the mirror and say: "You know, I'm not a drug trafficker. I'm a political insurgent." We're very close to having that cross-over of political ideology, no matter how far-fetched it is, beginning to engraft itself into the violence and the mayhem that is part of the drug trade. That, of course, is going to bring two dangerous adversaries together in a way which is only going to multiply the problems for those of us around the world who are trying to protect society.

Where this might touch this country most seriously is in Northern Mexico. I know people in California know this, but it's not that well-known in other parts of the country—there's currently nothing less than a war going on in Northern Mexico for the control and governance of the country. It is underway because the President of Mexico has done a courageous thing—he has recognized that tolerating the rule of drug organizations in various cities in Northern Mexico is not an acceptable alternative for a modern democracy. You cannot surrender parts of your country to organized crime or narcotics trafficking gangs. And so he made it his top priority when he came into office several years ago to take these groups on.

Not surprisingly, when you strike at organized criminal groups, they strike back. And the tactics that they've adopted in many of the cartels in Northern Mexico are directly derived from what they have seen on television or over the Internet in Iraq and Afghanistan. We have beheadings. We have kidnappings. We have bombings. We have torture. All the things that Al-Qaeda and the Taliban have done are now being used by these organized crime cartels.

The reason is quite explicit. It is to terrorize the population of Mexico so that either this President at some point will be forced to pull back, or when the next election comes, it is more likely to go to somebody who is either tacitly or overtly willing to make peace with the cartels. That would be a disaster for the United States. It would be the equivalent of putting Waziristan on our southern border. It's one of the reasons that, when I was Secretary, we put into effect a process of contingency planning against the remote—but nevertheless certainly not un-

thinkable—possibility that we might have an increase in cross-border violence coming from Mexico into the United States.

The short answer here, of course, is to support President Calderon in his effort. It's one of the reasons that President Bush pushed very hard for an initiative to send not only money but weapons, training, and modern technology to Mexico to help the Mexicans ramp up their own ability to fight the drug gangs. This policy is continuing into the current administration, which is also firmly committed to supporting Mexico in this endeavor. But, again, I want to put before you the notion that if one of these drug leaders one day decides that rather than thinking of himself as a thug, he'd rather think of himself as a political leader, we will have completed that merger between terrorism and organized criminality, which I think we've seen in its incipient phases in various places of the world.

It would be hard to complete this tour of the world and where we are with respect to terrorism, organized crime, and organized drug dealing without again returning to Venezuela. Venezuela is, in many ways, the laboratory for what I think we're going to see in the twenty-first century: Nation-states that bring together all the various strands that have posed security threats to people around the world, whether they be in the West or in Asia or in Africa. We know, for example, that Chavez tolerates, if not directly facilitates, a drug activity which then, of course, becomes passed on either to the United States or to Europe. We know that Chavez has embraced terrorism—he has close relationships with Hezbollah and Iran. He's increased the frequency of flights back and forth, and he has certainly facilitated the penetration of Iran and Hezbollah into Latin America.

Interestingly, about a year ago, I was told by a prosecutor investigating a Magistrate in Argentina who was investigating terrorist bombings in the 1990s that, as far back as the Iranian Revolution in 1979, Iran had planted and sought to inject into South America terrorist operatives, Hezbollah operatives, in order to build some kind of an internal network in South America, which they could use to further the aims of Hezbollah and their own revolutionary goals. So this idea of bringing together terrorism in South Asia and the Middle East and merging it with the activities going on in South America is not a new idea, but I would say that Chavez has really elevated the profiling and the level of mischief to an unparalleled height.

So that is the world I think that we're in, and it's one that has some very serious implications for where we go in the future. And, the question for us is, how do we deal with this? There are

several elements to a strategy, but the over-arching point is that we are no longer in an era where the wars that we fight are simply wars between nation-states. Since the seventeenth century, wars have been conceived of as the kind of conflict that only occurs between countries. That's a product of some of the treaty-making that occurred in the middle of the last millennium. It's also a product of the fact that we've all grown accustomed to our historical study of conflict as being that between nation states. I think, in the twenty-first century and in this millennium, we're going to see something quite different. War is going to involve not only state against state, but network against state and network against network. That is the configuration of modern society enabled by the communications, travel, and financial tools which make up globalization.

Another element that is more and more evident is the significance of ungoverned space in the globe, because what we see now is that there are many states that do not actually fully control the domain over which they have formal authority. We see it in Afghanistan. We see it in Pakistan. We see it in Somalia. We see it in Yemen. We see it even in certain parts of South America. And with the leverage the technology, travel, communications, and global finance bring to smaller and smaller groups, these ungoverned spaces are no longer merely a domestic law enforcement problem for the state in which they reside. They are now a global problem because ungoverned space becomes a platform from which people train, experiment, recruit, and ultimately launch attacks against the rest of the world.

So, in the twenty-first century, we have to consider all of these elements that have become neighbors of terrorism and of international organized crime and drug trafficking, and we have to have a strategy to deal with those. So let me outline for you what we have done and what I think we need to continue to do in terms of dealing with these kinds of issues. And, by the way, since I'm at a law school I'll say that one of the interesting lessons I learned in the last four years is how pivotal legal doctrine and legal authority is to a strategy for addressing all of these problems.

It might surprise you—it certainly surprised me—that war fighting is now increasingly a matter that involves legal advice. You can argue we've overly legalized the war fighting, but whether that's true or not, it's a matter of fact that more and more commanders in the field, whether they're in the intelligence business or the military business, look to the legal authorities to determine what they can do and what they can't do. One thing that's been a little bit challenging is that the legal authorities of

the twentieth century do not necessarily find themselves configured for the twenty-first century. Again, that bifurcated idea that you're either in a war between states or in a criminal/domestic-domestic/criminal effort, doesn't work anymore, particularly when you can have networks that can bring to bear the destructive force that used to be reserved only for the most powerful nation states. So all the strategic things I'm going to talk about now have real implications for the legal framework in which we operate, both domestically and overseas.

So what are the things we need to do, from a strategic sense, to deal with this global problem of terrorism and organized crime? Well, the first thing we need to deal with is the issue of ungoverned space. We've known for some time, and it's been openly discussed, that parts of the frontier area of Pakistan, in Waziristan, and across the border in Afghanistan, have become safe havens for terrorists. These are the places where recruits are brought, indoctrinated, trained, armed, and ultimately given the tools to go back to their home countries and carry out terrorist attacks.

What I think has emerged publicly more recently is that it's not just Pakistan and Afghanistan; Somalia, which is virtually ungoverned, has become a haven not only for terrorist groups that recruit from the West, but also for pirate groups, which is another species of international organized criminal activity. Yemen is now much more in the news because of what happened on December twenty-fifth, and I think people are now aware that there are parts of Yemen that are not firmly under the control of the central government. We're beginning to see this phenomenon of ungoverned space in North Africa, and even in certain parts of South America, where you have very weak governments that don't necessarily have control over the entirety of their physical domain.

How do you deal with this issue? Obviously, in the first instance, we want to enable central governments to exert the control and accept the responsibility they have for the business that goes on in their own borders. It is not acceptable to me, for example, for a country to say, when there's a platform for attacks within its borders, "That's not my problem. I can't do anything about it;" because, just as your neighbor who allows people to come into his territory and lob fireballs into your backyard, they can't simply evade the responsibility. So every country has a global responsibility to make sure its space is not a platform to leverage attacks against its neighbor or someone on the other side of the globe.

That means we need to think about what we can do to help central governments, and in many ways perhaps to compel them to accept responsibility for ungoverned space. In the first instance, it means providing them with the tools, if they're willing to use them. But in some instances it may mean the ability of the international community, or even individual nations, to take defensive steps against terrorist groups that are lodged in territory of other countries, if the country that has the authority refuses to exercise it. I think you see an example of this phenomenon in what the current administration has, I think, pretty openly acknowledged—the use of unmanned aerial vehicle strikes against individuals in parts of Pakistan and Afghanistan. That is a manifestation of this principle. I believe it's lawful, but I will tell you, you could probably get a debate about this from some people in Europe, and that's one of those areas where, again, we need to do some serious thinking about what the legal authorities are in the case of ungoverned space.

A second element of the strategy is to look at those elements that enable the movement of terrorists and criminals around the world. I've talked about this a couple of times already: the ability to travel, the ability to finance globally, and the ability to communicate globally. You can only fight a network with a network. The way you fight a network is to find the weak points that bring your opposing network together. That explains a lot of what we've done in the last eight or nine years to deal with terrorism. I think these are tactics, frankly, that are also useful against the international organized crime. One thing we've done is focused on finance. We have used the leverage the United States Government has to put certain financial institutions on what is, in effect, a black list that says we will not deal with them, and nobody who deals with us can deal with them. That's a way of crippling the flow of money to terrorist groups and to other groups that threaten the security of the United States and its allies.

On communications, our capability to intercept communications, and to learn from those communications what our enemies are planning, is a critical element of the strategy. It leverages that which is their strength into their weakness. It's one of the reasons that the most sensitive communications by terrorists are now often conveyed in the most primitive ways, because the fact is, the hardest kind of communication to intercept is that which one person carries on foot to another person, whispers in that second person's ear, and then it goes on like a game of telephone. So the ability to use our communications capabilities to frustrate theirs is very important.

A third element, and this is one we made a lot of progress on, is to focus on the issue of travel by terrorists or criminals. In this modern world where people have the ability to forge documents, the kind of travel security measures we had in the 1990s are simply insufficient to do the job of protecting our country, or any other country. So, when dealing with travel, we focused on three elements. How do we first secure documents to make them more robust? How do we make sure people can't use phony documents as weapons to get into the country and carry out attacks? The 9/11 Commission focused on these kinds of phony documents as a tool for terrorism. It's one of the reasons we strengthened and embedded chips in our travel documents. It's one of the reasons that we closed some of the loopholes that allowed people to cross our land borders using a wide variety of very insecure documents and forced them to use passports, or passport cards, or a small number of very similar secure documents.

A second element is recognizing that, even with good document security and watch lists, there are a lot of people out there who are terrorists whom we don't know about. We have no idea what their names are. We don't have them on a watch list because, unlike the fellow on December twenty-fifth, their father didn't come in and give him up. How do we detect those people? Well, one of the things we do is we find out a little bit about their behavior, what their biography is. Some of the commercial data which the airlines use in order to manage their own passenger flow and their frequent flyer programs and things of that sort, turns out to be very valuable in terms of giving us the ability to see whether a previously unknown terrorist is actually connected to someone whom we know to be a terrorist.

We once did as an exercise, a couple of years ago, an analysis going back to 9/11. We asked ourselves, if we had in September 2001 the kind of commercial information we now obtain from the airlines, could we have connected the dots among the terrorists? I think the answer is, with the exception of maybe two or three, we would have seen them all connected. They would have had a common paymaster who paid for the tickets. They would have had a common number that was used as a contact number. And, had we seen that, and knowing that a couple of those people were on a watch list, that would have very rapidly given us the capability to identify, I think, fifteen out of the nineteen as potential threats. To put it another way, the tools we now have in terms of people's biography give us an ability to stop the kind of thing that occurred on September 11, 2001, provided we're willing to use them.

A third enormous capability is the use of biometrics—fingerprints. Fingerprints are familiar to everybody from things like crime scene investigation. They’ve been a great law enforcement tool. They’re also a terrific tool for protecting us in terms of travelers. For some years now, we’ve used fingerprints that we collect from all non-Americans who come into the U.S. through our airports. We’ve used them to match people against databases that we have of foreign fingerprints so that if someone, for example, came in with a passport and a particular name, we got their fingerprints. Let’s say we said, “You can’t come in.” A year later they come back with their passport with a different name, we have them put their fingerprints on the reader. It shows that they have now changed their identity. That tells us something we would not have known but for the fingerprinting.

But, even more interesting, we are now in the process of collecting latent fingerprints from around the world, whether it’s in Iraq or Afghanistan, battlefields or safe houses. These are the residual fingerprints of people who have been in training camps or in safe houses or in other places where mayhem is being planned or carried out. By using those “latents” and putting them in a database, we can run the fingerprints of people who come into the country, or people who want to get a visa, against that database. We may not know the person’s name, but we’re going to know there’s something about where they’ve been that certainly raises a question. I’ll give you two concrete examples of how this works. First, soon after we put that program into effect, someone in another country came to get a visa to come to the U.S. We got their ten fingerprints. We ran them against the database, and we discovered that one of the fingerprints matched the fingerprint that had been taken off a piece of paper found in an apartment in Europe that had been the site for some bomb building for one of the plots that someone tried to carry out in the last several years.

Now it turns out there was actually an innocent explanation for why that fingerprint was there. You know, people can be in and out of an apartment. Sometimes someone would’ve been there afterwards and not at the time the bomb was being built. But that’s at least the kind of thing you want to know to ask the question. It may be in the end, when you ask the question, that the answer you get exculpates the traveler. But I’d sure rather know and ask the question than not know and find out that the guy coming in to the country used to be working in a bomb factory.

In a different example, we had a fellow in 2004 or 2005 who came into O’Hare Airport. He was turned away by the immi-

gration official who was on duty that day, but we captured his fingerprints. We discovered a couple of years later, when we ran through his fingerprints again, that the fingerprints were on the steering wheel of a truck bomb that was detonated in Baghdad. That told us that this individual, who had been turned away, became a suicide bomber two years later. So the ability to use biometrics is a huge capability, in terms of dealing with global travel, which is such a major part of global terrorism and organized crime.

Finally, let me conclude by saying the last element of the strategy is increasing the security of our own physical borders, whether it's our maritime borders or our land borders. The fact is, we have very large borders—thousands of miles. It is demanding and difficult to deal with the traffic that comes across the borders. There's a lot more to be done, but we've at least made significant progress. Up to now terrorists seem, generally speaking, to prefer to travel by air and come through ports of entry rather than to sneak across the border, but I wouldn't want to count on that always being the case. And, certainly, I wouldn't want to assume that in five years, depending on how things go in Mexico, that we're not going to begin to see some movement of terrorists across that border, which is why I think it's important that we continue to build on the progress we've made with fencing, doubling the border patrol, and building technology, in order to increase the ability to have control over our southern border.

This is probably not a really optimistic speech, but I do think it tells us a couple of interesting things. First of all, the kind of war we fight in the future is going to look an awful lot like what we've done with respect to international organized crime. In fact, the idea that you can separate these things into two domains is probably not realistic anymore. We're going to see a lot of movement back and forth. I like to say that the latter part of the twentieth century was a kind of digital age of dealing with these issues because it was binary. It was either war, which was dealt with by military, or it was crime, which was dealt with by law enforcement. But we're now in what we call a quantum age of dealing with security threats, where the same security threat can be a law enforcement issue and a military issue at the same time. The enemies of our safety and security move back and forth simultaneously across the whole spectrum, and therefore require us to be able to engage across the whole spectrum.

The second thing, which I think is probably pertinent to this audience, is this means more work for lawyers. I don't mean just prosecutors and defense attorneys. I mean thinking of what it

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means in our legal regime to deal with this very fluid situation. To ask questions about what our authority is to protect ourselves in ungoverned space overseas. What are the limits of what we should collect and shouldn't collect from people who are traveling in order to make sure that we're not putting our country in jeopardy? These are very challenging legal issues, and they require a lot of novel and out-of-the-box thinking. I don't know if it pays well, but it certainly provides a lot of opportunity for lawyers to do their work and apply their trade. And I suspect that a fair number of people in this room will, in one way or another, be engaged in doing this kind of work in the years to come.

