

**Prepared Statement of
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National Commission on Terrorist Attacks Upon the United States
before the Subcommittee on National Security,
Emerging Threats and International Relations
Committee on Government Reform
House of Representatives
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Chairman Shays, Ranking Member Kucinich, distinguished members of the Subcommittee. The Commission is honored to appear before you today. We are gratified by your deep and continuing interest in the Commission's work. We appreciate the opportunity to discuss with you again some of the Commission's recommendations, especially some which have not received as much attention as those involving reform of the structures of the Executive branch.

The Commission's findings and recommendations were strongly endorsed by all Commissioners—five Democrats and five Republicans. We share a unity of purpose. We hope that Congress and the Administration will display the same spirit of bipartisanship as we collectively seek to make our country and all Americans safer and more secure.

Reviewing the past several weeks

We want to begin by reviewing briefly the road we have traveled since July 22nd, the day the Commission presented its report.

- We believe we have made important progress. We are pleased with the overall direction of the debate. From the outset, we have had statements of support from the President, and from Senator Kerry.
- Members of the Commission have testified at 18 hearings since July 22nd.
- We thank the Congress for the opportunity to explain our work to the Congress and to the American people.
- We are gratified by the work of Senators McCain, Collins and Lieberman in support of our recommendations.
- Chairman Shays, we thank you and Representative Maloney for introducing a bill in the House that speaks to *all* of the Commission's recommendations. We believe, as you do, that we cannot prevail in the struggle against Islamist terrorism unless we adopt a comprehensive approach.

- We welcome the endorsement by the President and by the House leadership of the idea of a National Intelligence Director and a National Counterterrorism Center.
- We want to work closely with both the Administration and the Congress in the refinement of our proposals, and work for the adoption of as many of our recommendations as we can achieve between now and the adjournment of the Congress.

The President's National Strategy for Combating Terrorism

Mr. Chairman, in response to your letter of invitation, we start with a few comments about the National Strategy for Combating Terrorism and the Homeland Security Strategy put forward by the President. We find them, in general, to be helpful documents.

We make two points about the National Strategy for Combating Terrorism.

First, the President's strategy places a heavy emphasis on destroying the terrorist threat. So do we.

In our very first recommendation, we state that it must be the policy of the United States to deny terrorists the ability to establish sanctuaries. To deny, disrupt and destroy such sanctuaries, we want to work with friends and allies, if possible, and alone, if necessary. We believe strongly that Bin Ladin and his lieutenants must be captured or killed, and the al-Qaeda organization must be destroyed.

Second, the President's strategy speaks of many forms of terrorism. We concentrate on just one – Islamist terrorism. Moreover, we identify Islamist terrorism as the leading national security threat to the United States.

We believe we cannot succeed against terrorism by Islamist extremist groups unless we use all the elements of national power: military power, intelligence, covert action, law enforcement, economic policy, foreign aid, homeland defense, and diplomacy – both quiet diplomacy and public diplomacy. If we favor one tool while neglecting others, we leave ourselves vulnerable and weaken our national effort. This is not just our view: it is the view of all policymakers.

Secretary Rumsfeld told us that he can't get the job done with the military alone. For every terrorist we kill or capture, more rise up to take their place. He told us the cost-benefit ratio is against us. Cofer Black told us the CIA alone can't get the job done, either.

For this reason, the Commission made a whole host of recommendations in addition to a recommendation on the use of force. We are engaged in a struggle against a set of ideas with considerable resonance in the Arab and Muslim world. There are tens, if not hundreds of millions, of Bin Ladin sympathizers in the Arab and Muslim world. While

they may reject violence, they may also be sympathetic to many elements of Bin Ladin's message.

We need to find a way to reach this great majority of Muslims, from Morocco to Malaysia. Right now, we are not doing a very good job. Polls taken in the past year show that "the bottom has fallen out of support for America in most of the Muslim world. Negative views of the United States among Muslims, which had been largely limited to countries in the Middle East, have spread. "

If we do not change this dynamic, young Muslims who expect no improvement in their own lives or societies may well become the well-spring of support for Bin Ladin.

The President's strategy touches on these themes, concerning the "war of ideas." We believe they need to be given considerably greater emphasis.

We cannot defeat Islamist terrorism if we cannot persuade young Arabs and Muslims that there is a better course. We must project a message of hope, a message of support for educational and economic opportunity for them, their children and grandchildren.

The President's Homeland Security Strategy

The President's Homeland Security Strategy dates from July 2002. Since that date, the Department of Homeland Security has been created, and many steps have been taken.

We would concentrate on just two observations about the strategy. They relate, in both cases, to *implementing* the strategy.

First, homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. Assessment of critical infrastructure vulnerabilities must be completed by the Department of Homeland Security – and risk must then be factored in. Now, in 2004, Washington DC and New York City are certainly at the top of any such list. We understand the contention that every state and city needs to have some minimal structure for infrastructure response. But federal homeland security assistance should not remain a program for general revenue sharing.

Second, the American people understand that in a free society we cannot protect everything, everywhere, all the time. But they expect their government to make rational decisions about how to allocate limited resources. Since 9/11, we have put 90 percent of our transportation dollars against the threat to aviation security – even as we know that there are threats to maritime, rail and surface transportation.

-- Despite congressional deadlines, the Transportation Security Administration has developed neither an integrated strategic plan for the transportation sector nor specific plans for the various modes. Without such plans neither the public nor Congress can be assured we are identifying the highest priority dangers and allocating resources to the most effective security measures. DHS Under

Secretary Hutchinson has testified that such plans will be completed by the end of the year. We believe the Congress should hold DHS to that commitment.

- In making decisions about how to allocate limited resources to defend our vast transportation network, we believe strongly that TSA must use risk management techniques. This requires that the government evaluate the greatest dangers not only in terms of terrorist intentions as we understand them, but also taking into consideration the vulnerabilities of the nation's infrastructure and the consequences of potential attacks.

Civil Liberties

Mr. Chairman, we would like to highlight an important part of our recommendations, on the topic of civil liberties.

We can report to you that from the very beginning of the Commission's work, each Commissioner was conscious of the need to make sure that in our struggle against terrorism we do not compromise the very rights and liberties that make our system of government and our society worth defending.

Concern about the civil liberties of American citizens was one of a number of reasons that the Commission rejected the idea of moving the domestic intelligence and counterintelligence responsibilities of that agency and placing them in a new MI-5 type agency. We feared that such a new agency, not steeped in the respect for the rule of law and the Constitution that reflects the commitment of career professionals at the FBI and the Justice Department, would be more likely to trample on individual rights.

The Commission made three major recommendations with respect to civil liberties.

First, the Commission dealt with the critical and complicated privacy issues that are at the heart of the "information society" and at the center of necessary efforts to increase the amount of information gathered about terrorists. The Commission recommends improvements and enhancements in those information-gathering abilities and in information sharing. But we also recognize that with the enhanced flow of information comes a need to establish guidelines and oversight to make sure that the privacy of our citizens and residents is respected and preserved.

We believe -- as did the Markle Task Force in its excellent reports -- that we have the ability to gather and share information and protect privacy at the same time. But this requires leadership and co-ordination in the Executive branch. No one agency can deal with this problem alone. Instead, we recommend that the President lead a government-wide effort, through OMB and the National Intelligence Director, to set common standards for information use throughout the intelligence community. These standards would govern the acquisition, accessing, sharing, and using of private data so as to protect individual rights. The same technology that facilitates the gathering and sharing of information can also protect us from the misuse of that information.

Second, the Commission made observations on provisions of the PATRIOT Act relating to information sharing. The Commission commented on the “wall,” created through judicial ruling and Executive department regulations beginning in the 1980s, that had severely constrained the flow of information acquired through surveillance under the Foreign Intelligence Surveillance Act from the intelligence side of the FBI to the criminal side of the agency and to federal prosecutors.

We believe the provision of the PATRIOT Act that eliminated the “wall,” on balance, to be beneficial. Witnesses were virtually unanimous in telling us the provision was extremely helpful to law enforcement and intelligence investigations with little if any adverse impact on the rights of potential defendants.

However, we did propose a general test to be applied to the consideration of the renewal of other provisions of the Patriot Act. We believe that principle should also be applied to other legislative and regulatory proposals that are designed to strengthen our security but may impinge on individual rights. The test is a simple but important one: The burden of proof should be on the proponents of the measure to establish that the power or authority being sought would in fact materially enhance national security, *and* that there will be adequate supervision of the exercise of that power or authority to ensure the protection of civil liberties. If additional powers are granted, there must be adequate guidelines and oversight to properly confine their use.

The third recommendation of the Commission on civil liberties flows from the first two. Individual liberties and rights must be protected in the administration of the significant powers that Congress has granted to Executive branch agencies to protect national security. A central board should have the responsibility to oversee adherence to guidelines that are built into these programs to safeguard those rights and liberties.

We welcome the President’s Executive Order of August 27th creating a civil liberties Board as a positive first step in the direction of the Commission’s recommendations. We note, however, that such a Board will be strengthened significantly if it is created by statute. In addition, it will be strengthened if certain important refinements in its composition and powers are made.

- We do not believe the Board should be comprised “exclusively” of administration officials drawn from the very agencies the Board was created to oversee.
- Instead, we envisioned a bipartisan Board with members appointed directly by the President, with the aim of including outstanding individuals from outside of government who can provide a more disinterested perspective on this vital balance. Though the Commission did not take an explicit position on this issue, we believe those members of the Board should be Senate-confirmed.
- Such a Board will also need explicit authority to obtain access to relevant information, including classified information.

- Such a Board should also have broad authority to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately addressed.
- Lastly, such a Board should be transparent, making regular reports to Congress and the American public.

Mr. Chairman, such a Board of the kind we recommend can be found in the Collins-Lieberman bill in the Senate, and in the Shays-Maloney bill introduced in the House.

We believe we need a reorganization of government that will more effectively and efficiently protect us against terrorism. More specifically, we recommend a strong National Intelligence Director, and stronger and more intrusive measures for border security and transportation security. But if government is stronger, so must be the protections for individuals against government action.

Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.

Congressional Oversight

Finally, we want to point to our recommendation to streamline and make more effective the critical role of Congressional oversight.

This is perhaps the area that has received the least public debate, yet unless the greater authorities provided to the Executive Branch are matched by effective oversight by the Congress, the critical balance contemplated by our constitutional system will fall short of the public's justifiable expectations.

Mr. Chairman, we would be pleased to respond to your questions.