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S. 1867—A BILL TO ESTABLISH THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 1867

TO ESTABLISH THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, AND FOR OTHER PURPOSES

FEBRUARY 7, 2002

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S. 1867—A BILL TO ESTABLISH THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

THURSDAY, FEBRUARY 7, 2002

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:45 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Torricelli, and Stevens.

OPENING STATEMENT OF SENATOR LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order.

Today we are going to be considering legislation that Senator John McCain and I have introduced to establish an independent commission to examine and report on the facts and causes relating to the terrorist attacks of September 11, 2001.

As you probably know, Senator McCain has minor surgery this week and that is why he is not here, because otherwise he would be here testifying.

We introduced the legislation late last year because we felt that it was important to get the truth about how those attacks could have happened and whether there was anything the Federal Government might have done to prevent them. An independent and impartial commission, composed of knowledgeable citizens, we concluded was the best way to learn the lessons of September 11, so that we in Congress, together with the President and those serving with him in the Executive Branch have the information we need to make the best choices about protecting the future of the American people here at home. That is future security we are talking about.

Our proposal would create a National Commission on Terrorist Attacks Upon the United States that will be charged with constructing a full picture of the circumstances surrounding the attacks, including the Federal Government's preparedness and response. The commission would also be charged with formulating recommendations for ways to strengthen our defenses against future terrorist attacks.

Rarely in our history have events left scars on our national psyche as deep as those left in the aftermath of September 11, when more than 3,000 Americans were killed. The attack on Pearl Harbor was clearly one of those events, and it was followed by an inde-

pendent investigative commission and, in fact, Congressional investigations.

There have been many more recent commissions for serious, though less cataclysmic national security crises. Our military, for example, has investigated major terrorist actions in the past, as it did after the bombing of the *U.S.S. Cole,* in order to learn lessons that might prevent future tragedies. And that is exactly what we have in mind here, on a larger scale.

The most obvious question we have, of course, is how the terrorist plot succeeded despite the vast intelligence capabilities of our Nation. But we also ought to look into possible systemic deficiencies in other areas of our national security structure, including our counterterrorism capabilities, for example, our immigration and border control systems, our diplomacy, and our diplomatic activities.

The best way to achieve the unvarnished truth is to allow those who know the most about the array of subjects that must be explored to deliberate in an atmosphere free of politics.

Senator McCain and I have tried to create those optimum conditions with this commission. The initial months after September 11 were understandably and appropriately preoccupied with mourning and healing and then the aggressive and, thankfully, successful prosecution of the war in Afghanistan.

But now that the Taliban has been removed from power and the reconstruction of Afghanistan is underway, we can and should begin to pursue in earnest the process of finding answers to our questions. Determining the causes and circumstances of the terrorist attacks will ensure that those who lost their lives on this second American day of infamy will not have died in vain.

The commission we propose would, in that sense, pay tribute to the victims of September 11 but also would convey to their survivors and all Americans the message that their government is doing everything within its power to protect their future.

We are very fortunate to have with us this morning four witnesses who have served on commissions that assessed the growing threat of terrorism and who therefore have expertise particularly relevant to the work of a national commission looking into September 11. I look forward to their testimony.

Senator Stevens.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Thank you very much. I am sorry to say I have another meeting in just about 20 minutes, but I am very interested in this. I support the concept, Mr. Chairman, but I am not sure it is timely yet. I think this event was just so staggering on our national psyche that we may want to wait a little while before we create a commission like this. But I will be pleased to hear some of these statements, and I thank you very much.

Chairman LIEBERMAN. Thank you very much, Senator Stevens, for your support of the concept and I look forward to working with you on the timing. I think this is all about beginning a process that will take at least several months to go forward.

I am going to down the table of distinguished witnesses and start with the Hon. Dave McCurdy, who is before us today as President

of the Electronic Industries Alliance, and has served as a Commissioner on the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction. Dave, thanks for being with us.

TESTIMONY OF HON. DAVE McCURDY,[1] PRESIDENT, ELECTRONIC INDUSTRIES ALLIANCE, COMMISSIONER AND COMMISSION TO ASSESS THE ORGANIZATION OF THE FEDERAL GOVERNMENT TO COMBAT THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Mr. MCCURDY. Thank you, Mr. Chairman. It is always a pleasure to be with you and Senator Stevens, as well. And always good to be with my friends and colleagues on this side of the table, as well.

I assume you are starting on this side because I have more gray hair, but Dick and I may compete for the quality of the gray hair, but it is an honor to be here.

Chairman LIEBERMAN. You have become one of our gray eminences very early.

Mr. MCCURDY. It is amazing what will happen.

The commission proposed in your bill is charged with one of the most serious and significant tasks in our Nation's history. In the aftermath of the September 11 attacks, the United States is united in its resolve to take the war to the terrorist organizations, as well as the countries who harbor and support them. But not since World War II has the country rallied and come together to face a common enemy, albeit an amorphous and insidious variety.

Mr. Chairman, the most fundamental role and responsibility of the government and Congress is to provide for our common defense. And I add my commendation to President Bush, the administration, and Congress for their remarkable leadership and crisis management we have witnessed since the September 11 attacks.

And I share Senator Stevens note of caution that, even though we have completed the first phase of this war by eliminating the Taliban and al Qaeda hold on Afghanistan, there is still much to be done to successfully prosecute the campaign against terrorism. It is imperative that nothing interferes with or impedes the prosecution of the war or efforts to bolster the defense of our homeland.

Nevertheless, the requirements of this ongoing war must be balanced with the right of Americans to know why our intelligence, defense and law enforcement agencies were unable to prevent the attacks. Without question, now is not the time to point fingers or to look for scapegoats, but we must understand the causes, identify the weaknesses, and correct the lapses that allowed this catastrophe to occur.

The American people deserve a forthright and complete accounting of the circumstances of that day. Above all, we must do all we can to ensure that such attack never occurs again.

I know that the Chairman and the Senator know that when the National Security Act of 1947 actually was written, it was to ensure that we never had or suffered another Pearl Harbor type of

[1] The prepared statement of Mr. McCurdy with an attachment appears in the Appendix on page 26.

attack. And I think that is the principle that we need to keep in mind.

There are five Senate and five House committees that have jurisdiction and authority to conduct investigations and to review what happened. Arguably, there are even more, including this one. I certainly have the highest confidence in the leadership of these respective committees, particularly my former colleagues and current chairman, of the Intelligence Committee and Armed Services Committee, who I worked with on a daily basis.

However, in my opinion, a commission has the advantage of being independent, singularly focused, and able to work outside the glare of the media. For these reasons, I support forming the commission to investigate the terrorist attacks upon the United States.

In my experience, commissions work because they are not constrained by arbitrary jurisdiction or turf wars and politics, and thus have the ability to step back and take a more holistic view. In this instance, a commission can objectively collect facts, evaluate the evidence, and review the mission and effectiveness of the Federal, State, local and private organizations charged with our safety.

Commissions are valuable because they are generally non-partisan and when effectively chaired seek consensus based recommendations and solutions. Operating an effective commission on the September 11 attacks will not be an easy task, but there already has been much valuable forensic work performed by the intelligence community, law enforcement, and the media to build upon.

Based upon my experience with Congressional committees, presidential and Congressional commissions, war games, as well as my private sector experience in the technology industry, I believe there are numerous questions that this commission must investigate. It is especially important not to have any preconceived notions. And in this case, there are still many more questions than answers.

These questions include but are certainly not limited to the following: Is there a clear chain of command and authority? What are the organizational impediments to effective collection, analysis and dissemination of intelligence and information? Is technology being used to its fullest potential to provide effective information management? What indications and warning mechanisms were in place? How effective are they? What is the role of government versus private organizations? The list can go on, and I detailed more in my written statement.

A priority for this commission must be to complement rather than compete with the efforts of Congress. Similarly, cooperation with the relevant Executive Branch agencies will be essential. I am confident that these issues can be worked through. Indeed, both Congress and the administration deserve enormous credit for the actions already being taken, such as the establishment of the Homeland Security office to improve coordination, the Patriot Act, and the Airline Security legislation.

In addition, the President's budget proposal clearly makes homeland security a top priority. Still, this commission could serve a valuable role in looking at these additional measures and identifying areas that may need greater attention.

I am also confident that the failures that resulted in the terrorist strike will be revealed and addressed, but this outcome is not automatic. Bureaucracies have a natural tendency to fight the last war rather than the next one. A commission can be particularly helpful in taking a comprehensive view of the events of September 11 and fashioning recommendations that mitigate this tendency.

Mr. Chairman, Charles Darwin observed that it is not the strongest nor the most intelligent that survive, but the ones most responsive to change. The September 11 attacks were brilliantly evil, they were entirely outside the box of what we thought likely, and now it is our turn to adapt.

To win this war, government must change how it thinks and acts, and do a much better job of coordinating its assets. Thank you.

Chairman LIEBERMAN. Thanks, David, for that very thoughtful statement.

Next is Norman Augustine, Chairman of the Executive Committee of Lockheed Martin Corporation, a leader in America's corporate and civic life for a good long time now, and also I will mention, as part of that, a Commissioner of the U.S. Commission on National Security known as the Hart-Rudman Commission.

Thanks so much for being here.

TESTIMONY OF NORMAN R. AUGUSTINE,[1] CHAIRMAN OF THE EXECUTIVE COMMITTEE, LOCKHEED MARTIN CORPORATION AND COMMISSIONER, U.S. COMMISSION ON NATIONAL SECURITY

Mr. AUGUSTINE. Thank you, Mr. Chairman, and Members of the Committee. I particularly appreciate the opportunity to share my views on the proposed commission.

With the Committee's permission, I would like to submit for the record a long statement and I will just abstract it now.

Chairman LIEBERMAN. Fine, we will accept and print that longer statement in the record.

Mr. AUGUSTINE. I also probably should emphasize for the record that my comments this morning will be entirely my own, and I am not representing any of the organizations that I happen to be affiliated with.

It goes without saying that the issues that are addressed by S. 1867 are of great importance to the country. It was, as you said Mr. Chairman, my privilege to serve on the Hart-Rudman Commission for several years. Having done so, it unfortunately came as no great surprise to me or, I believe, my colleagues, that America was subjected to an attack of the general nature that we suffered on September 11.

I say this not because of any specific evidence of impending tragedy, but rather from a derived conclusion, if you will, from three basic considerations. The first of these was that it has been long evident that there are individuals and groups on this planet that have utter contempt for all that America stands for and have been very vocal about doing us harm.

[1] The prepared statement of Mr. Augustine appears in the Appendix on page 32.

The second consideration is that with the end of the Cold War, when one views America's military capability it would be seemingly futal for such enemies to attack America in a conventional fashion on the land, in the air, at sea, or even in space.

That leads to the third consideration, and that is in recent decades, we have witnessed a very fundamental change that largely has been brought about by the unintended consequences of advancements in science and technology. For the first time in history, individuals or very small groups can very profoundly impact much larger groups in a very adverse manner. It is not possible for the former, smaller groups to exert control over the larger groups, but they can certainly disrupt the stability that is enjoyed by these larger groups.

So in short, for individuals or groups that are seeking to extort or physically harm America, by far the most obvious avenue today, and presumably in the future, will be through terrorist actions. There are groups that, as we now all know, have such capabilities and are seeking further capabilities for such actions.

Clearly, we do have a great deal to learn and we have a great deal more to do if we are going to thwart terrorism and its consequences. The proposal that has been made to establish a commission to learn from the events of September 11 would appear to me to be a very logical undertaking. In the final assessment, though, I believe that its usefulness will, to a very large degree, depend on the quality and the judgment of the commissioners and of their staff, those who are involved in the endeavor. It will depend greatly on the perspective they take as they embark on such an undertaking.

Specifically, it would seem that there would be little to be gained simply by revisiting history for history's sake. In fact, doing so might even be divisive.

It is also important, I believe, that the commission not unduly burden those who already carry the heavy burden of responding to, preparing for, and hopefully avoiding future terrorist acts.

On the other hand, I believe that if those involved in the commission's work are able to take a rather forward looking perspective, take a rather broad perspective of lessons learned, lessons that could impact our future security, I believe that the commission can make a very significant contribution. It is apparent, from the wording of the legislation and, Mr. Chairman, from the wording of your statement, that the drafting of this legislation recognizes those considerations that I have just cited.

I would note one specific matter with regard to the proposed legislation. That is, it does not seem to make clear how much of the commission's work is to be conducted in full public view. Of course, America prides itself on conducting the affairs of its government under a spotlight, and that is to our credit in general. But at the same time, I can imagine many of the topics that the commissioners will be called upon to address will be topics to which we would just as soon our enemies not be privy.

I particularly address here those issues that do not truly fall under the existing legislation for protecting national secrets, but are extremely sensitive in today's world and probably deserve some

form of protection. It was not clear to me from the legislation how that would be dealt with.

In summary, I would just say that I believe a commission of the type that has been proposed can indeed be very beneficial, but only if it is conducted in a very sensitive and a very responsible fashion. And I would close, as did my colleague, David, by noting that we do live in a new world and I would use a quote, as he did, Jefferson's reminder that the price of liberty is eternal vigilance. This seems to have never been more true than it is today.

Thank you for this opportunity to share my views.

Chairman LIEBERMAN. Thanks very much, Mr. Augustine, and I look forward to having some exchange with you on some of the questions that you raised, which are well taken.

Next we have Professor Richard K. Betts, who is Director of the Institute of War and Peace Studies at Columbia University and a Commissioner of the National Commission on Terrorism, which if I have got my commissions right was the Bremer Commission.

Thanks for being here.

TESTIMONY OF RICHARD K. BETTS,[1] DIRECTOR, INSTITUTE OF WAR AND PEACE STUDIES, COLUMBIA UNIVERSITY AND COMMISSIONER, NATIONAL COMMISSION ON TERRORISM

Mr. BETTS. Thank you, Mr. Chairman. In the interest of time, I will summarize my longer, prepared statement.

My main points are that a national commission would perform an important function in coming to grips with the disaster of September 11, and such a commission should work best in addition to other efforts, such as Congressional investigations, not as a substitute for them.

The organization of the commission in the proposed bill seems to make good sense, with one exception. That is that there is a tension between the objectives in Section 3(c)(3) concerning balanced representation of different professional groups, and the procedures for appointment of members of the commission set out in Section 3(a).

In the coming months and years, there will be many rumors and half-truths leaking out to explain why the warning process failed before September 11, how organizational structures were unprepared, and so forth. There is a great need for an official postmortem that brings the full story out in a thorough, careful, balanced and non-partisan manner. The main benefit of a national commission, I think, would be political credibility, to provide a detailed and sober investigation that the public could have confidence is as objective as humanly possible.

There will be many exercises attempting to lay blame and it is important to have one serious effort that has high credibility in terms of two important criteria: Access to all relevant information and disinterest in scoring political points. In this matter, something I did not address in my statement, I would though like to associate myself with the last witness' emphasis on the need to conduct the most sensitive aspects of such a commission's work in reliable secrecy.

[1] The prepared statement of Mr. Betts appears in the Appendix on page 37.

My view is influenced by my own experience as a member of the National Commission on Terrorism established by Congress 3 years ago. That commission operated in a thoroughly bipartisan way. I say that as one of the four members of the commission appointed by the Minority Democratic leadership. Although it was a commission created by a Republican controlled Congress, there was never a hint that our effort involved grinding axes to embarrass the Democratic administration.

It would be unrealistic and undesirable to see a commission as the sole official solution to grappling with what happened on September 11. Neither presidential nor Congressional commissions ever completely settle the questions with which they are tasked. Other efforts, particularly Congressional investigations, can do things that a commission cannot. On a matter as crucial as September 11, some redundancy in investigation is not only unavoidable, it is useful.

Consider the investigations of the intelligence community in the mid-1970's. The process began with the Rockefeller Commission and expanded to investigations by select committees of the House and Senate, and all of these were useful in different ways.

S. 1867 does not have any truly serious deficiencies, in my view. My one reservation is about the process for appointing members of the commission. Section 3(c) of the bill sets out an excellent summary of the qualifications desirable for the commissioners to be selected. The current bill's Section 3(a) however, sets out a process that disperses appointment authority widely. That would seem, to me, to make it hard to carefully craft a group as a whole.

The President would be able to design some balance with his four allotted appointees, but the other 10 appointments are parcelled out to 10 different committee chairs, or 20 people in all, if the consultation with their ranking members is to be genuine. To get a good distribution of people from the military, diplomacy, business, law enforcement and so forth, it seems that the 10 or 20 chairpersons and ranking members or their staffs would have to caucus and do some horse trading. Otherwise, it appears that we could get a random assortment that might not be ideally suited to conducting a full, thorough and competent investigation.

Falling back on my experience with the Terrorism Commission, I would suggest considering some greater centralization of Congress' share of the appointments. One way to do this would be to give the final appointment authority to the majority and minority leaders of both houses. The committee chairpersons and ranking members could certainly make their preferences known and the leadership would be free to select many of them.

To conclude, a national commission, however well it does its job, will not bring us to closure in understanding how we should best move to prevent another September 11 catastrophe. That should not be the test of such a commission. September 11 was a watershed in national security policy, and figuring out and adjusting to the lessons will be a long process.

The right sort of commission can be a good start. It can clear away underbrush, answer some questions, even if not all, lay down a valuable set of markers to channel other efforts, and discredit

fast and loose attempts at easy answers. That will leave much to be done, but it will have done a lot.

Chairman LIEBERMAN. Thanks very much, Professor, again helpful testimony.

It is a pleasure to welcome Maurice Sonnenberg, an old and dear friend who also happens to be Senior International Advisor to Bear, Stearns and Company, and was Vice Chair on the National Commission on Terrorism. Welcome.

TESTIMONY OF MAURICE SONNENBERG,[1] SENIOR INTERNATIONAL ADVISOR, BEAR, STEARNS AND COMPANY, INC. AND MANATT, PHELPS AND PHILLIPS, L.L.P. FORMER VICE CHAIR, NATIONAL COMMISSION ON TERRORISM

Mr. SONNENBERG. Nice to be here. Thank you, Mr. Chairman and Senator Torricelli.

I have been asked to testify in the efficacy of the creation of a terrorist commission. Having served as Vice Chairman of the National Commission on Terrorism and having been on the Commission for the Roll and Capabilities of the Intelligence Community and the Commission for the Protection and Reduction of Government Secrecy, I do come with a point of view as to how these might be best structured.

A panel of this sort is of immeasurable importance in helping to better understand what basically were the factors that led up to the catastrophe of September 11. It also places into context sound bites such as "a failure of intelligence." While these are catchy phrases, they are gross generalizations designed to convey the impression that it must have been a systemic all-encompassing failure on the part of the Agency, the Bureau, and others in the intelligence community.

There may have been weaknesses in the intelligence community, but a more comprehensive analysis should also focus on the role of several governmental institutions, among them the White House, Congress, and the Department of Justice.

When looking at these matters, the commission must also address obviously such matters as impediments to law enforcement, immigration, border controls, financing of terrorist activities, intelligence sharing, and on and on.

The commission must obviously be established in a manner that supplements but does not replace the need for continued Congressional oversight, nor can it be allowed to compromise security, both at the National Security Council level and at the intelligence community level.

But what about the specifics of a commission. It must take some very talented people and a superior staff to assess information available both in open and classified sources. The individuals appointed to this commission should bring to the task a broad understanding of the subject as a whole, rather than overly detailed knowledge of a specific field. It goes without saying that everyone associated with this commission will require multiple clearances, especially in the instances where the investigation hinges on matters related to covert operations.

[1] The prepared statement of Mr. Sonnenberg appears in the Appendix on page 43.

The commission will require, as we had before, a specific location, frankly not known to the public. On all the commissions I served on, that was the case.

Congressionally mandated, our members were appointed, in our commission, by the majority and the minority leadership. In the other two commissions, the White House participated in the appointments.

As far as I know very few people knew the names of our commission members until the report was published. We had never had a leak. This I might add was true for the commission on the role and capabilities of the U.S. Intelligence community. And that comes up to the topic of the security of the commission and where they are housed.

Another reason that I am concerned about is the security in terms of the commission and staff members. We have got to check with law enforcement and intelligence community. We are now at a period after September 11. Do not underestimate the possibility that these commissioners could be jeopardized or pressured. And therefore, when this commission is set up, the idea of some secrecy behind where they meet and who they are, to some degree, must be looked at. I would do that in consultation with the proper law enforcement authorities.

Finally, let me say you may wonder why, after all of this, would I want this commission? First, I am certain that the White House, or some branch of the legislature, is going to set one up no matter what happens. Second, a commission of this sort will have substantial public consequences. The cynics say oh well, all these commission reports wind up on the shelf. Frankly, most do. There is, however, a great difference regarding this one. It is post-September 11. If well written and carefully conceived, it will carry the gravitas and influence a study of this nature should have.

The National Commission on Terrorism and the Hart-Rudman Report had some influence in focusing many members of the Congress, the media, and the press on the subject. The prescience of these reports made them unique and totally relevant to the legislation that passed after September 11.

A commission report on the so-called "monumental failure of intelligence" can help to inform and educate the public to better understand the complexity of these matters. That is not to say that a commission would be a fount of wisdom. But it might, by its very making, keep the public focused on this problem that is not about to end or, for that matter, in our lifetime. You can control terrorism but you can never totally eliminate it. The sooner the citizenry is fully cognizant of this, the less likely it will lose its sense of purpose and resolve.

That being the case, it is imperative that the public continue to be supportive of measures necessary to face this ongoing threat. The commission can be a valuable tool in this effort. Thank you.

Chairman LIEBERMAN. Thank you very much. It was excellent testimony, very constructive.

I should indicate for the record that Senator Thompson is home in Tennessee because, as is known, of the death of his daughter last week. He and I spoke yesterday and he is very interested in this subject and will be re-engaged with us next week.

I am delighted that Senator Torricelli is here. Senator Torricelli has introduced, along with Senator Grassley, legislation to create a commission on the same subject. For reasons known best to the Senate Parliamentarian, it has been referred to the Judiciary Committee, not here. But I wonder, my colleague, if you would like to deliver an opening statement at this time?

OPENING STATEMENT OF SENATOR TORRICELLI

Senator TORRICELLI. Thank you, Mr. Chairman, very much. I enjoyed the testimony and appreciate each of the witnesses appearing today. It is very good to see my neighbor from New York, Maurice Sonnenberg, here, and my former colleague, Dave McCurdy, who by all rights in my personal judgment, should have been a member of this institution but that is the way life works.

Chairman LIEBERMAN. Probably did better.

Mr. MCCURDY. It is nice on this side of the table, Senator.

Senator TORRICELLI. That is his gain and our loss. Mr. Betts, Mr. Augustine, thank you all for being with us today.

This is a subject about which I have extremely strong feelings. While, for some Americans, September 11 will soon become part of history, a painful event, but something that will take its place along with other tragedies in our generation. For those of us who live in New York, New Jersey, and Northern Virginia, it is something that is still unfolding every day. You cannot visit a community in my State without someone knowing a widow or an orphan, a parent. They wake up with this tragedy every single day. A loss child, a mortgage that cannot get paid, a family whose future has been changed.

I support this commission because if not for everyone else in the Nation, and if not for history, if not for assuring that it never happens again, if none of those reasons were valid, then we are left simply with this. Those people deserve an answer.

It is my own belief that the American people have remarkably low expectations for their government. They live their lives, they want as little contact with the government, usually, as possible. But at a minimum, they expect the government to keep them safe. In their homes from crimes and in the world from adversaries. And they trust that is being done.

It was not done. And there may be many reasons, there may be many excuses, there may be many legitimate problems, but it did not happen. And somebody has to provide an answer.

The President has made some remarkable appropriations requests for law enforcement, intelligence, and the military, historic changes in our level of expenditures that will radically change the finances of the U.S. Government. It may be the right recommendation. And Democrats and Republicans have competed with each other to endorse them more quickly than the next. That may be the right decision.

The simple truth is there is not a member of this Congress, and there is no one in the administration, who really knows. One cannot build structure of law enforcement or defense without understanding whether the foundation is sound.

These institutions upon which we would now rest our security and invest these new funds are the same institutions that failed on

September 11. I do not say that because the institutions should be abandoned or dismantled or discredited, simply that we need to understand what failed before we invest in them again. That is the purpose of this commission.

It is regrettable that the commission was not already formed. I genuinely believed that President Bush, in the weeks after September 11, would form a commission by Executive Order. This exercise in the Congress of legislatively creating a commission really should not have been necessary.

Faced with the same decision, Franklin Delano Roosevelt created the Commission on Pearl Harbor in 10 days. Faced with the national trauma of the Challenger accident, Ronald Reagan acted within weeks. Faced with the catastrophe of the assassination of President Kennedy and what it implied for the security of the Executive Branch and the international implications, Lyndon Johnson acted immediately with the Warren Commission.

This has been our history. This should not be the exception. In many ways, this is not as large a tragedy as each of those. In some respect, it is larger, the death of thousands in our greatest city and the capital of our country.

We are too close to the event and there has been too little investigation to know much of what failed on September 11. Let me quote from the *Los Angeles Times,* if I could, "In the last decade, suspected terrorists have repeatedly slipped in and out of the United States. They have plotted against America while in Federal custody. Key evidence that pointed to operatives and their plans was ignored until well after the attacks. The mixed signals now haunt a generation of U.S. intelligence and law enforcement officials who realize that their efforts to track terrorists linked to Osama bin Laden were undermined at times by bungled investigations and bureaucratic rivalries."

We now know that the FBI has known for at least 3 years that two bin Laden operatives trained to be pilots in the United States. One of them, a naturalized U.S. citizen from Egypt purchased a used military aircraft in Arizona in 1993. After he purchased the Saber 40 twin engine passenger jet for bin Laden for $210,000, he flew to the Sudan.

Federal authorities also knew that Ramzi Yousef, who planned and carried out the 1993 World Trade Center attacks later planned to blow up 12 U.S. jets over the Pacific. One of his co-conspirators in the Pacific plot told Philippine police that he hoped to hijack a passenger plane and crash it into CIA headquarters. He had attended U.S. flight schools. No one took this evidence, to contact U.S. flight schools or raise the possibility of such a conspiracy.

I know it appears easy after the attacks for people in my position or others to make it look easy. It was not easy. I understand it is difficult. Gathering intelligence from thousands or hundreds of thousands of sources, collating it, analyzing it, understanding it is difficult. Of course it is difficult. That is why we have a professional intelligence community.

Maybe analyzing it and coming to the right conclusion was difficult. Maybe it was impossible. I do not know. Nobody knows. That is why we need a commission.

It may be that to fight the war on terrorism and also undertake this review is difficult. It will involve some of the same people and some of the same resources. I suspect that is exactly the situation Franklin Delano Roosevelt had after Pearl Harbor. And I suspect the admirals of the Pacific raised the same objections. He ignored them and rightfully so.

How could America's mothers and fathers be asked to entrust the lives of their sons and daughters to fight a war if they did not have confidence in the military hierarchy. How could Americans be asked to sacrifice and trust the future of their country's security in a military establishment reeling from Pearl Harbor if we did not believe in their competence or their structure or their command? And so we fought the war and undertook the review at the same time.

No doubt the same arguments about the need for classified information were heard after Pearl Harbor and after the Kennedy assassination and after the Challenger accident, during the war that was being fought in Central America. But in each of those instances, each president from Reagan to Roosevelt reached a different judgment. We can analyze the problem and protect information because we needed to reach a national judgment.

It may be, as was testified, that all these commissions did not succeed. Some did. NASA was saved, the American space program redesigned, because a commission did an extraordinary job in a difficult moment in history of admitting where we were wrong, why lives were lost, because of failures of the government. It worked.

The Pearl Harbor Commission did restore confidence. People believed in the military establishment again. And I believe, for all the divisiveness of Central America, questions of strategic weapons, those commissions also succeeded in answering questions of highly classified materials, at a point where the Nation was very divided.

This commission not only makes sense, it makes overwhelming sense. It will be painful because it will involve truth that we do not want to face, failures of institutions we believe in, and of people and friends that we like.

In the final analysis, there is no choice. We owe this to the country. We owe it to the victims. And it is impossible to design a national security system to ensure that this never happens again without this review. We could not begin to appoint officials, redesign our security apparatus, and commit billions of dollars of new resources for the future unless we understand this failure of the past.

I am committed to making this happen. It is regrettable, for reasons I do not understand, that Senator Grassley and I have undertaken different legislation than Senator McCain and Senator Lieberman. I hope that is reconciled. The differences are narrow but they are real. As was testified here today, in our legislation we specifically give appointment authority to the majority and minority leaders and the President of the United States to assure that those six individuals, balancing their interests, can ensure that the commission accurately reflects the different parts of the intelligence, military and civilian authorities.

But we also specifically mandate the commission to look at the intelligence and law enforcement authorities involved, because

while this should be a broad look at the failures, obviously the responsibility most directly lies there and should be addressed.

I hope by the time this process has run its course that we have one bipartisan piece of legislation, but what is most important is that this gets done, and done quickly.

In a democratic government, to have the people of our country doubt the ability of those that they have chosen to lead to protect them is very troubling. Even to have our adversaries believe, when they have exhibited our vulnerability, and inflicted us with enormous pain, that we have not undertaken a review to fix the problems, continues to signal vulnerability.

For all these reasons I am very grateful that my colleague, Senator Lieberman, has called this hearing today. I think he has done a great service to the Senate and the country by beginning this process. And I am grateful to each of you and your participation today. After the Chairman has begun his own inquiries, I look forward to a discussion with you.

Chairman LIEBERMAN. Thank you, Senator Torricelli, for an excellent statement. I, too, share your hope that we can combine both bills. I think there were two major points of difference. One is in the form of the selection of the members, as you indicated, of the commission. The other is in the statement of jurisdiction because the bill that Senator McCain and I have introduced does mention intelligence but goes beyond that to other functions of government. I hope we can do that. I want to pick up and hope we can get together on a broad bipartisan, single approach to this.

I want to pick up in my first question on something my colleague said and begin it this way. Some of those, including the White House, who have opposed the creation of such a commission, to try to do it justice, have said that their main concern is that it would distract those who have responsibilities now, both military as Senator Torricelli indicated, also I presume in the intelligence community and other aspects of our government, from their daily responsibilities.

I must say that I am not convinced by that, both because of the historic precedents that my colleague states, the Roberts Commission after Pearl Harbor, the Warren Commission after the Kennedy assassination, the commission after the Challenger, etc.

And even more to the point of the experience of the witnesses, Mr. Augustine, if there had been a major problem of Lockheed Martin of some sort where things had not been going as you had wanted, and I am sure this never happens, or at one of the new economy industries that is part of your association, Mr. McCurdy, I am sure that though those people would continue to be working on the line, you would jump right in and find out what the heck went wrong here so you could stop it from happening.

Anyway, I wanted to ask your reaction to the notion that to create a commission of this kind might, in some sense, be negative because it would be a distraction for those who are at work now in these areas. Mr. Sonnenberg.

Mr. SONNENBERG. I understand the feeling of the White House on this, however a commission of this sort will impinge upon some of the time of some of the people who are called up. But then, if we look at the role of Congress here, I think it was Jim Woolsey

who once told me, you know Maurice, I had to go up there 104 times. Now that is not going to happen with this commission. We have 6 months. There is no way in the world we are going to fit someone in those days.

So my feeling is that, as Senator Torricelli rightfully points out, it is absolutely imperative in my mind to have this commission, but I do not think there will be an impingement of the type that I am hearing about now.

Chairman LIEBERMAN. Mr. Augustine.

Mr. AUGUSTINE. Yes, Mr. Chairman. I have served on both sides of commissions and I think it gets to be a question of degree. I think there is no reason that it has to be disruptive. But I think it could be disruptive. And it is going to depend on the responsibility of the people who are involved.

I think without question that if properly managed people can still do their jobs and respond to a commission of this type. In our own company the way we solve these things in a case of a major crisis, is we let one group of people worry about the ongoing activities and another worry about the crisis issues.

That is not an ideal solution, but I think it is an approach that we have to consider. I don't think any of this is what, in the vernacular, you would call a show stopper.

Chairman LIEBERMAN. Either of the other two witnesses want to comment?

Mr. MCCURDY. Mr. Chairman, I concur with my colleagues' statements. First of all, I want to commend Senator Torricelli for his comments. I think they were superb.

You can always make an argument to defer an investigation but quite frankly I concur with both of your sentiments that now is the time to at least initiate the study.

As I said in my written statement, there is an incredible amount of forensic evidence that has already been accumulated, much of that in the public eye and through the media. So there's a lot to build on.

As far as distraction, I think Mr. Sonnenberg said it well. There are such a large number of committees in both the House and Senate that have jurisdiction they could be truly distracted if they were called before all of those. If there is a deferral, I think the Congress should be focused on the actions of protecting from here forward, as they have been focusing, and allow a commission to take the time to reflect and look more holistically at a broader cross-section of jurisdiction.

Part of the challenges, and I do not think any of us are prepared to make judgments, but from our experience the issue is there is a lot of questions. Was it seamless? Everyone talks about creation of fusion centers and this new cooperative effort. It is easier in a wartime environment to do that. It is in the non-wartime situation that you ask those questions whether jurisdictions did cooperate properly. And you want to know that there is not a gap in those seams. There are always going to be seams, but you try to reduce those as much as possible.

So for those points, I think the commission is timely and appropriate.

One other point is about the political credibility, and I think my friend, Mr. Augustine, raised that. I think there is a great deal to be gained by that credibility. We cannot, as a Nation, afford to have this degenerate into partisan finger pointing on one side or the other.

And also, for those who argue that the internal reviews in the organizations themselves have taken place and therefore it is corrected, I would just point out there are a lot of accounting firms and other groups out there trying to do that to restore some credibility. But until it is raised to a higher level that has those kind of independent view, I am not sure the credibility is there.

Chairman LIEBERMAN. Yes, sir.

Mr. BETTS. The simple point is that the purpose of this commission is to learn something important about what went wrong. Presumably, that will help these busy people to do the jobs better that we do not want to distract them from unduly.

Chairman LIEBERMAN. Agreed. Congressman McCurdy, let me ask you this, as a former chair of the House Intelligence Committee, I am sure you can understand why the Intelligence Committees in both chambers are interested in investigating the role played by intelligence agencies leading up to September 11. Nevertheless, you have supported an independent commission as a way to complement rather than compete with Congressional efforts.

I wonder if you would expand a bit on that, about the different roles that might be played by both here.

Mr. MCCURDY. Clearly, the Intelligence Committees, who are chaired by very capable and experienced individuals, have an important role to play. I think you saw the commencement of that yesterday on the Senate side.

Again, these can be complimentary efforts. If you look at the intelligence definition of the community, that in itself implies jurisdictional boundaries. I believe that any commission of this nature needs to look beyond those, much broader than that.

Plus, my experience on commissions, and I have been on some actually for the CIA looking at issues of weapons of mass destruction prior to the presidential commission I was appointed to, there we had complete access to highly classified data. And the individuals on those commissions not only respected that, were experienced hands in dealing with classified information. And in the long term made recommendations that I think were helpful to the community as a whole.

So again, they can be supportive, complimentary, but also with the experience can stand back and make an objective judgment at the end with regard to causality and concerns about both organization and efforts to prevent it in the future.

Chairman LIEBERMAN. Let me ask a final question in the time I have left. Mr. Augustine, your written testimony and what you delivered orally today urges us to make clear in the law the extent to which the work of the commission must be conducted in public view and can be conducted privately.

My understanding is that existing law would allow a commission of this kind to hold closed hearings whenever it is dealing with classified information or information from law enforcement groups.

And I gather that law governed Hart-Rudman and the Bremer Commission.

I wonder if you, and then others if you wish, could reflect a bit on that or whether you think that we need to do something additional and specific in this proposed legislation, to protect the confidentiality of classified information?

Mr. AUGUSTINE. It is an important and broad topic. My belief is that there is a shortfall in the current system in this regard. In the case at hand, I can well imagine a commission like this would like to hypothesize future threats and discuss them, to discuss vulnerabilities that we have. Some of these are truly hypothetical. It is quite different from having information on a specific threat of designing a specific weapon. I am talking about purely conjectural discussions that generally would not be covered by our laws.

I would cite another example from recent experience. I served on the commission that reviewed the V–22 program in which, you will recall, 22 Marines died the year before last. One of the questions was how much of the problem was due to pilot error?

So you are talking about fragmentary evidence, incomplete evidence, but it is very important. You need to be able to discuss something that can be very damaging to an individual or to a group or an organization. You need to be able to talk about it, but there is not enough factual evidence that you can really have a public discussion.

We found it very inhibiting to be able to talk about issues like that in public, just because of the consequences on people—it had nothing to do with national security. It was human decency and the like.

Chairman LIEBERMAN. How about the experience that you had on the Bremer Commission, with regard to the authority that current law gives commissions to hold closed sessions when they are classified or law enforcement topics?

Mr. SONNENBERG. To be frank, in terms of the Bremer Commission, we never had a public hearing.

Chairman LIEBERMAN. That eliminated the problem.

Mr. SONNENBERG. That is not to say I understand the conflict between the openness of government and the necessity for secret, as Mr. Augustine has pointed out.

We did it, for example, on the Secrecy Commission, which was Senator Moynihan and Senator Helms. That commission, we had one public hearing and that involved the subject of FOIA, which you would expect to have an opening hearing on.

Now you might look at this in a different way. I understand the legislation is talking about a preliminary report in 6 months and then another one to follow. You might think about having some public hearings at that other end, thereby eliminating the problem of free discussion, over and above classified——

Chairman LIEBERMAN. You mean after the preliminary report?

Mr. SONNENBERG. I would think you might be able to do that. But remember what I said before, I am a little bit concerned, and that is why I want you to go to law enforcement and the intelligence community about the protection, and I am not being wild about this, about the protection of commissions. We are in a totally different era now and you will have to balance that.

Now the second half might be the area where you might want to think about public hearings on specific subjects. You have them laid out and say all right, we are going to hold a public hearing. Because by then, after the preliminary report, it is pretty well known what the commission is doing, who they are. So I think you have to work on it a little bit.

Chairman LIEBERMAN. Professor Betts.

Mr. BETTS. I do not think the issue is the authority to hold closed hearings or to keep information secret. The issue is the general impression that is conveyed or the expectations about how much this is expected to be an exercise in opening up to the public. If the latter dominates the expectations, I think that would seriously compromise the work of the commission.

Chairman LIEBERMAN. You would say that would be a mistake?

Mr. BETTS. Yes, I think perhaps, as Maurice has suggested, emphasizing the public aspects of the enterprise in the later phase would make more sense. You would avoid a chilling effect on the sharing of information with the commission. You would avoid any conceivable problems, as unfortunately has happened in some cases.

I remember many years ago, when Richard Helms was testifying at open hearings about ITT and Chile, and was asked whether the CIA had any covert operations. On the spur of the moment he decided to lie in order to protect secrecy and wound up having to go to trial over it.

For all those reasons, I think it would be good to establish the presumption that for the most sensitive and most important aspects of this investigation, many of which will involve very sensitive classified information, that it is all going to be very closely held until whatever time the resolution is reached and the public phase can be emphasized.

Chairman LIEBERMAN. David, and then we will finish up with Norm Augustine.

Mr. MCCURDY. Mr. Chairman and Senators, I concur. And I know, to many colleagues, this is somewhat of a surprise. But on the commissions that I have dealt with, we never had public hearings. Of course, in the Intelligence Committee we only had one public hearing in all the time I was involved there over 9 years.

So I think it would be very helpful for a commission of this nature that would be enduring a lot of scrutiny to be able to work together in not only a secure environment, but also a less public environment. Because there is going to be a lot of information that needs to be shared among commissioners and the staff. And I think the presumption should be that it would not be held in the open.

Chairman LIEBERMAN. Interesting. Mr. Augustine.

Mr. AUGUSTINE. I was just going to add that I think how you handle this depends very much on the specific circumstances. Years ago I chaired a commission that reviewed NASA as a whole during the period after the Challenger accident. We held all our meetings on television and it worked fine.

I think one has to view three categories of information. One, that is clearly covered by national security legislation, and you can discuss in private with no problem. Everything else that you possibly can should be discussed in public. But I say there is one exception,

a third group that is not sensitive by the definition of today's law but is certainly sensitive by the definition of today's world. Perhaps there should be a provision given to the members of the commission, which hopefully they will use only very selectively, by majority vote or by the chairman's decision, to deal with certain topics in private.

Chairman LIEBERMAN. That is very helpful. I appreciate, as I listen to the four of you, from your experience, that to get at the truth, which is what this is all about, of what might have been done to prevent the attacks of September 11, a lot of this is going to have to be in private.

There are categories where you may want to do some things in public, as you just said. But the report will then stand on its merits. I thank you. Senator Torricelli.

Senator TORRICELLI. Thank you, Mr. Chairman. I tell you, myself, while I think it is probably helpful to have one or two public sessions to give the country a view of what is expected and some insight into the discussions, because this is obviously a source of national anxiety while the report is being written and conducted.

It certainly does not trouble me that most of this would be done privately. It is the final product in which we are interested in. I think we simply need to have enough of a public face to assure the public it is being done and being done properly because of the current state of unease in the Nation.

I only had several questions really. First, in each of your experiences, the kind of people who should serve and where they should come from, this is obviously an enormous time commitment. It involves people who will have some expertise and background. It should also involve people who are not co-opted by their relationships with any of these institutions.

But I wonder if you would talk about the mix. Specifically, some of these that involve members of Congress. It is always difficult for me to believe that a member of Congress, on something this intense, with a short time frame, has enough time do this while meeting other responsibilities. I would appreciate it if you would address that.

And whether we should look for commissioners who can do this on a 6-month basis or a 1-year basis exclusively or almost exclusively. And then your experiences on the mix of personalities or experiences that these people should bring to a commission. I think that helps us answer how, indeed, we reconcile our legislation to get membership. I'll leave that to anybody.

Mr. AUGUSTINE. I will be happy to start. The first suggestion is no zealots. No people who have made up their mind in advance or have taken a position——

Chairman LIEBERMAN. That is a tough one to write in a law, but it is a good idea.

Mr. AUGUSTINE. But it is important. People who are willing to take an open mind, to learn, to change their mind, that is absolutely critical.

The second is people who are willing to work together as a team and try to arrive at a reasonable consensus. Avoid people who have a single issue that they are fascinated by.

And finally, with regard to your question, Senator, I think that to get people of the stature this commission would deserve and would require, it will be very hard to get people who could devote full time to it. And success is dependent on putting together an extremely good full-time staff. It does not have to be large, but it has to be very good. That means it has to have a good staff leader, chief of staff if you will.

I think one has to call on the commissioners on a part-time basis. It is, frankly, hopeless to get people of the kind you want who are available full time.

Senator TORRICELLI. I agree with that.

How about, as we go forward now, please also address this question about how you do the balance between having people who have experience with these institutions or issues but are not people so identified with the institutions that are being examined that the commission loses credibility.

Mr. SONNENBERG. First, I would add to Mr. Augustine's comment about the type of people. If full-time/part-time is the issue of getting the quality and the type of people you need, I doubt seriously you are going to find what you want full-time. You want these people who have had a depth of experience, knowledge of this material, and you are going to find them, unfortunately, on a part-time basis.

Now about the stature, I believe that someone who has what I would call a rather deep general view of the subject becomes important. That is what you have staff for. You get all those experts in house—who have the abilities to examine specific issues.

Your question again, Senator was, specifically you asked something just now?

Senator TORRICELLI. I asked a variety of them, but I tend to do that.

Mr. SONNENBERG. The last one.

Senator TORRICELLI. The last one was this issue of how you balance that you want people with expertise that know these institutions, but you do not lose credibility of them being so identified with the institutions. Whether or not you have seen that as a problem before.

Then I want people to come back to this issue of members of Congress as well, whether this has worked, who may have been members in the past.

Mr. SONNENBERG. With regard to that, that is a double-edged sword. Obviously, people who are identified with a community, let's say, retirees maybe or people who have been out in the business or the legal world or wherever, they have something valuable to contribute. You are going to have to do that on a very selective basis.

There are people, for example, who have been former agency and FBI personnel who are going to be extremely valuable on our commission. For example, on the Terrorism Commission, we had Jim Woolsey, and frankly he was quite good. In fact, he was excellent. We also had a fellow named John Lewis who had been at one time head of counterterrorism for the FBI. Exceedingly good.

Now were they experts in a specific field? One could say so. Were they attached to an agency or bureau? Sure, by history. But I do

not think that precludes them. As is pointed out, what you need really is an ability for all these people to get together.

Now with regard to members of Congress, I served on the Commission for the Roll and Capabilities of the Intelligence Community. We had a Senator and a Congressman. Frankly, we had a Senator who never showed up until the day the report came out. On the other hand, we had a very involved Congressman by the name of Porter Goss, who is now Chairman of the House Intelligence Committee. He showed up to most meetings. But he had some expertise, in addition, to contribute to that particular committee.

Now what I am saying is it all depends which member of Congress, or former member depending what they are doing, you put on.

Mr. MCCURDY. Mr. Chairman, I think the first criteria is that they need to be independent. They not only need to be independent thinkers, as I think Norm stated, they should also be independent of organization and somewhat—he said zealots, independent of ideology.

There are some, and I think we have all had experience with this, there are some who lobby to get on commissions. And maybe one of the best criteria is someone who does not want to be on the commission. There are those who lobby to get on the commission because they have a single interest. It is their business to be involved in non-proliferation or whatever. Sometimes they are not as prone to work to develop consensus positions either.

And so I think that is a judgment that has to be exercised by those making the appointments.

With regard to time, it would be a very time-consuming activity. I do agree that the staff is the key there.

With regard to Senators or members of the House, I also served on both types of commissions. And with all due respect to this institution, you are on a moment's notice and you have that beeper and it is a leash and it goes off constantly. There is always some interruption or someone trying to get a piece of your time. I think in some of these it is disruptive in a commission.

I think it should be a private group as much as possible.

And last, with regard to the issue of experience, I think you do not need—it is helpful to have the right mix. I think that one of the suggestions was maybe working with the leadership in a more consensus fashion. It is like the old baseball trading. You make sure that you have a shortstop and a third baseman, that you have someone who has experience in the intelligence community or law enforcement.

Because we all spend time shaking our heads at acronyms and the language of specific areas. You do not have time for complete tutorials. So there has to be some knowledge there.

And you often assign, in the commissions I have been involved in, Senator Specter and former Director Deutsch and others, they would actually assign two commissioners to go focus on specific issues. I focused on technology with regard to WMD. Someone else focused on the bioterrorism portion of it and biology. So again, it is nice to have that mix, aviation mix, and law enforcement mix.

So you have to do an initial assessment of the scope of the commission and try to fill those as much as possible. And then you supplement it with the staff. You fill the holes with the staff. Having a good staff director is absolutely critical.

Senator TORRICELLI. Given the desire of many institutions to protect themselves and their people, their reputations and their budget, it would be my belief that to do this without the ability to compel testimony and subpoena power with the force of law would be to make this a rather hollow exercise. We are not interested in simply providing cover for institutions, to provide comfort to the American people, but get genuine answers.

Does anyone disagree with this notion that you have to have subpoena power put in this to make this a meaningful exercise?

Mr. BETTS. I think the ideal is to have the power but never have to use it, to have it in your pocket.

Senator TORRICELLI. But nevertheless, it has to be given.

Just for the historic basis of this, as we are going forward to argue with this, there are arguments about the sensitivity of sharing classified information with such a commission, given the sensitivity of the situation. I do not ever remember that being a problem when we were going through the debates about the MX missile on the commission, or the wars in Central America, or even our missile technology and the redesign of the Challenger. It is extraordinary to me that it is arising now.

Do any of you remember there being problems of losses of classified information during those exercises that would give us pause now? Mr. Augustine.

Mr. AUGUSTINE. No, I do not ever remember a problem of a loss of sensitive information from a commission of which I am aware. But that really was not the point that I, at least, was trying to make. I think the commission has to have full access to all information and I think they will protect it if we pick commissioners properly.

Senator TORRICELLI. Actually, I was not responding to your point. I was responding to people down the street here.

Mr. AUGUSTINE. My concern is that there is information that is not covered by existing laws that we still do not want people living in caves to hear. That is the part I am talking about. I do not worry about the commissioners. They should have access to everything that is available.

Senator TORRICELLI. But I did not want, rhetorically, if Senator Lieberman and I take this to the Floor, people are going to rise and say well, to have this commission means sharing this classified information with commissioners and this involves certain risk. In my experience of watching this on everything from the defense of our Nation with strategic weapons to actual policy issues in combat with people on the ground, I never remember that this was ever a problem with a commission. Which raises whether that is an excuse or a reason not to have a commission.

Mr. MCCURDY. Again, the mix of the commissioners is vital there. My experience is, both in the Intelligence Committees in the Congress, where we dealt with highly compartmented—and there were times, quite frankly, and it may be a model even in commissions. There were times that only the chair and the ranking mem-

ber were alerted to certain things with regard to source and methods.

But if there is proper attention paid to the appointment of people, such as my colleagues here who I have the utmost respect for, most have held tickets before, classification and access, and probably maintained them. It would be helpful to have someone who is current in some of those, so you do not have to go through lengthy background checks.

I am on the advisory board for the Department of Energy in Nuclear Matters, with regard to the former Soviet Union. Those are areas, and again, people do not go out and advertise those. But I think the commissioners and the experience again, there is a wealth of resource out there in the private sector you can draw upon, people who are willing to spend the time, sacrifice the time to do this appropriately.

Mr. SONNENBERG. In all the commissions I have served on, three in the intelligence, and the President's Foreign Intelligence Advisory Board for 8 years, we never had a leak. What was interesting is once I had the National Security Advisor to the President come in and say you know, this is the only place around here where we have never had a leak. Now, having said that, I would not consider that important.

However, we did do one thing which would be of interest. In the National Commission on Terrorism, we looked at findings. That was relegated, the permission to look at those findings was with the chairman and the vice chairman. So even in a situation where you have this top priority classified material, higher than top secret, you can then divide that up with the chairman, vice chairman, whoever. That is how you prevent leaks.

In that case, I do not think there would have been a leak if the member had seen it because we all knew who the members were, but there is a way of handling that.

Senator TORRICELLI. So the panel, in any case, is confident that we can argue with some certainty that the history of these commissions is that indeed classified information has been protected and it has never previously been raised as a problem in Democratic or Republican administrations regarding any of these issues. And I think that is important for us.

I want to thank the panel. Mr. Chairman, thank you. This has been a very useful exercise.

Chairman LIEBERMAN. Thank you, Senator Torricelli, for your substantial contribution to the discussion. Thanks to the four witnesses for your time and for the help that you have given and some of the details of how this might work.

I must say, hearing your testimony reinforces my belief that the Nation would benefit from such a commission. Certainly the Nation's future security would benefit from such a commission.

This is not going to be an easy road ahead for this legislatively, both because though we talk about complementing some of the committees of Congress, there is a natural sensitivity about turf here. And because, at least for now, the administration appears to be opposed to this. But I do think there is no substitute for the most aggressive pursuit of the truth here. And I know that Senator McCain feels this way.

I look forward to working with Senator Torricelli, Senator Grassley and others to advance this idea and, in the first instance, to move as quickly as seems appropriate when we are ready to mark this bill up before our Governmental Affairs Committee.

Mr. SONNENBERG. May I make one last comment? The irony of this is the administration, if they participate in this commission, might find out that it is more helpful than not.

Chairman LIEBERMAN. Exactly my feeling, that this is a commission, as others, that I see working quite closely with the administration, not in an adversarial or confrontational relationship. And of course, going to the members, that is exactly the tone that you would hope, or I would hope, that the chair or the members of the commission would create right at the outset in their relations with the administration, even while they are involved in a very aggressive pursuit of the truth.

I thank all of you for your continuing public service, whether in or outside of the public service directly.

I am going to leave the record of the hearing open for 2 weeks, in case my colleagues want to either submit statements or perhaps even submit questions to all of you. But for now, thank you.

The hearing is adjourned.

[Whereupon, at 12:01 p.m., the hearing was adjourned, subject to the call of the chair.]

APPENDIX

PREPARED STATEMENT OF SENATOR BUNNING

Thank you, Mr. Chairman.

The attacks on September 11 painfully illustrated weaknesses in American national security. The fact that terrorists were able to hijack four American planes with box cutters, and then turn those planes into weapons is almost incomprehensible.

I am confident that America will recover from these cowardly acts. However, never again should we be caught off guard.

Major changes need to be made, including tightening security at our borders and ports, improving our intelligence gathering operations and strengthening our military.

We are moving in the right direction. The President has established the Office of Homeland Security, which is responsible for coordinating domestic security among the Federal agencies.

The administration has also requested additional money for our military in 2003, and Congress has held numerous hearings concerning the September attacks.

While we will never be able to completely insulate ourselves from another terrorist attack, we can and will take the necessary steps to increase our readiness, fortify our military and protect our citizens.

I look forward to hearing from our witnesses today about their experiences on past commissions.

Thank you, Mr. Chairman.

Testimony of
Dave McCurdy
President
Electronic Industries Alliance

Before the
Senate Committee on Government Affairs

Regarding
S. 1867, a bill to establish the
National Commission on Terrorist Attacks Upon the United States

February 7, 2002

I. INTRODUCTION

Thank you, Mr. Chairman for the opportunity to testify today on S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States. My name is Dave McCurdy, and I am currently President of the Electronic Industries Alliance (EIA), a partnership of electronic and high tech associations and companies whose mission is to promote the market development and competitiveness of the industry.

I am also a former Member of Congress from Oklahoma. During my 14-year tenure (1981-1995), I served as Chairman of the House Intelligence Committee, as well as Chairman of the Armed Services Subcommittee on Military Facilities and the Science Subcommittee on Aviation, Transportation and Materials. In addition, I have served as a member of the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (WMD Commission; July 14, 1999).

The commission proposed in S. 1867 is charged with one of the most serious and significant tasks in our nation's history. In the aftermath of the September 11 attacks, the United States is united in its resolve to take the war to the terrorist organizations, as well as the countries that harbor and support them. Not since World War II has the country rallied and come together to face a common enemy, albeit an amorphous and insidious variety.

The most fundamental role and responsibility of government and Congress is to provide for our common defense. I commend President Bush, the Administration and Congress for the remarkable leadership and crisis-management we have witnessed since the September 11 attacks. I share the note of caution, that even though we have completed the first phase of this war by

eliminating the Taliban and al-Qaida hold on Afghanistan, there is still much to be done to successfully prosecute the campaign against terrorism. It is imperative that nothing interferes with or impedes the prosecution of the war or efforts to bolster the defense of our homeland.

Nevertheless, the requirements of this ongoing war must be balanced with the right of Americans to know why our intelligence, defense and law enforcement agencies were unable to prevent the attacks. Without question, now is not the time to point fingers or look for scapegoats. But we must understand the causes, identify the weaknesses, and correct the lapses that allowed this catastrophe to occur. The American people deserve a forthright and complete accounting of the circumstances of that day. Above all, we must do all we can to ensure that such an attack never happens again.

There are five Senate and five House Committees that have jurisdiction and authority to conduct investigations and to review what happened. Arguably, there are even more, including this one. I certainly have the highest confidence in the leadership of these respective committees, particularly my former colleagues and current chairmen of the Intelligence Committees, Senator Graham and Congressman Goss and the Armed Services Committees Senator Levin and Congressman Stump. However, a commission has the advantage of being independent, singularly focused and able to work outside the glare of the media. For these reasons, I support forming a commission to investigate the terrorist attacks upon the United States.

In my experience, commissions work because they are not constrained by arbitrary jurisdiction or turf-wars and thus have the ability to step back and take a more holistic view. In this instance, a commission can objectively collect facts, evaluate the evidence and review the mission and effectiveness of the federal, state, local and private organizations charged with our safety. Commissions are valuable because they are generally non-partisan and, when effectively chaired, seek consensus based recommendations and solutions. Operating an effective commission on the September 11 attacks will not be an easy task, but there already has been much valuable forensic work performed by the intelligence community, law enforcement and the media to build upon.

Based on my government experience with congressional committees, presidential and congressional commissions, and war games, as well as my private-sector experience in the technology industry, I believe there are numerous questions that this commission must investigate. It is especially important not to have pre-conceived notions, and in this case there are still many more questions than answers. These questions include, but are certainly not limited to the following:

- Is there a clear chain of command and authority?
- Who is responsible and accountable at each level?
- Are the missions relevant and current?
- What are the organizational impediments to effective collection, analysis and dissemination of intelligence and information?
- Is technology being used to its fullest potential to provide effective information management?

- How much coordination is there between agencies?
- Was there clear direction from the command authority and managers?
- What indications and warnings (I & W) mechanisms were in place, how effective are they?
- How do you detect the meaningful signals from the noise?
- What was the relative prioritization of effort and resources?
- Were the domestic and foreign intelligence services provided the tools and latitude they needed to preempt, deter and prevent atrocities?
- Were there individual lapses or omissions?
- What is the role of government versus private organizations?
- What are the standards for security in the airline industry and were they followed?
- What is being done to remedy the problems?

A priority for this commission must be to complement, rather than compete with the efforts of Congress. Similarly, cooperation with the relevant Executive branch agencies will be essential. I am confident that these issues can be worked through. Indeed, both Congress and the Administration deserve enormous credit for the actions which have already been taken, such as the establishment of the Homeland Security Office to improve coordination, the Patriot Act, and the airline security legislation. In addition, the President's budget proposal clearly makes homeland security a top priority. Still, this commission could serve a valuable role in looking at these additional measures and identifying areas that may require greater attention.

I am also confident that the failures that resulted in the terrorist strike will be revealed and addressed. But this outcome is not automatic. Bureaucracies have a natural tendency to prepare to "fight the last war" rather than the next one. A commission can be particularly helpful in taking a comprehensive view of the events of September 11, and fashioning recommendations that mitigate this tendency.

Charles Darwin observed that it is not the strongest nor the most intelligent that survive, but the ones most responsive to change. The September 11 attacks were brilliantly evil; they were entirely "outside the box" of what we thought likely. Now it is our turn to adapt. To win this new war, government must change how it thinks and acts and do a much better job of coordinating its assets.

Revamping Our Intelligence Community

Improved coordination is crucial to winning the war against terrorism.

by **Dave McCurdy**

Accurate and timely intelligence is vital to success in any war. In the battle against terrorism, it will be critical.

Without question, now is not the time to point fingers. We stand behind the president, Congress, and our troops as we go forward on our mission to root out terrorism and bring those responsible for the atrocities of Sept. 11 to justice. However, it is fair for Americans to begin to examine why the federal agencies that make up the largest and best-funded intelligence community in the world were unable to prevent the attacks. How could Osama bin Laden and his al-Qaida terrorist network pull off such horrendous acts beneath the federal radar? More importantly, how can we ensure this doesn't happen again?

The answer is complicated. There are a host of problems plaguing our intelligence community and hampering its efficiency. The community's outstanding personnel are not to blame. However, it is completely inexcusable that we have not provided them with the best tools and information technology needed to do their jobs. Organizational and institutional dysfunction is an even larger problem. Intelligence and law enforcement agencies often fail to share vital information with one another. The Defense Department, which controls the bulk of intelligence funding, has historically exerted inordinate influence over intelligence priorities in support of its war-fighting mission. The intelligence community relies too little on human intelligence — spies, agents, and reliable informants. And it suffers from a dearth of linguists, analysts, and experts steeped in the customs, culture, and politics of the Middle East and Islamic world. We need to address all of these problems in order to fight terrorism on American soil and around the world.

Charles Darwin observed that it is neither the strongest nor the most intelligent that survive, but the ones most responsive to change. The Sept. 11 attacks were brilliantly evil; they were entirely "outside the box" of what we thought likely. Now it is our turn to adapt. To win this new war, the intelligence community will have to change how it thinks and acts and do a much better job of working together.

> "The Sept. 11 attacks were **brilliantly evil**; they were entirely 'outside the **box**' of what we **thought** likely."

Lack of coordination and communication. In 1992, Sen. David Boren and I, as respective chairmen of the Senate and House intelligence committees, called for a major overhaul of the intelligence community to address the new challenges and threats of the post-Cold War era. One of our greatest concerns was the lack of interagency coordination. One has to ask, if we can sign intelligence-sharing agreements with the Russians and Chinese, why can't the Central Intelligence Agency, Federal Bureau of Investigation, and defense intelligence agencies cooperate and communicate more effectively?

Others share our concerns. In 1995, the director of the CIA appointed me to a panel on weapons of mass destruction. We reported that the agencies responsible for protecting U.S. interests against such attacks suffered from a lack of oversight and coordination. In 1998, I also served on a similar commission created by Congress. We, too, warned of a glaring lack of interagency coordination.

To address the problem, Boren and I called for the creation of a new post — the director of national intelligence — to lead the entire community. Currently, the CIA director coordinates community activities. But his post lacks the authority, stature, and clout to set program priorities and allocate resources among agencies. For example, the part of the intelligence community funded and supported by the Defense Department is geared toward fighting conventional wars; it has little incentive during peacetime to focus on terrorism and other asymmetrical, low-intensity threats.

There are reports that Tom Ridge, the head of the new federal Office of Homeland Security, will coordinate intelligence information as it pertains to domestic preparedness. Ridge, the former governor of Pennsylvania, is an extremely well qualified and respected manager and will be a real asset. Yet his power to "coordinate" may not be enough. He needs real power to direct policy, priorities, and resources.

Ridge also needs to ask for the right set of tools to do his job. They should include the latest in information-management technology. If John Chambers, the chief executive officer of Cisco Systems, can literally "close the books" of his global company in just one hour, the head of the homeland defense office should have tools that give him real-time situational awareness about the activities of the agencies under his jurisdiction.

Several years ago the Defense Science Board, which advises the Defense Department about new technology,

created a task force to study terrorism, drug trafficking, the spread of weapons of mass destruction, and other transnational threats. In an internal report, it urged the department to adopt an integrated "system of systems" approach to the problem. It also called for the development of an interactive global information system, built with existing state-of-the-art technology, to track and respond to such threats. Unfortunately, the recommendation was not adopted due to classic competition among the service branches. If Sept. 11 taught us anything, it is that such a system should be built.

Improving technical intelligence. The United States has been the unmatched master of developing sophisticated intelligence collection technology. Few nations have the capacity to produce, much less operate, such technical marvels as the satellites operated by the National Reconnaissance Office (NRO) and the data-crunching supercomputers developed by the National Security Agency (NSA). They are rightly considered the crown jewels of U.S. intelligence.

The NRO and NSA are funded through the Defense Department and report directly to the secretary of Defense. Together with the Defense Intelligence Agency and the service branches' intelligence units, they get the bulk of our intelligence funding. In Washington as in the private sector, influence is proportionate to the size of your budget. It is no wonder that direct support for the war-fighting mission gets top billing over counterterrorism and other intelligence missions.

The CIA's technology budget pales in comparison. Yet George Tenet, its director, deserves credit for innovative thinking about how to leverage resources. For example, in 1999 the CIA helped create In-Q-Tel, a nonprofit venture capital firm that discovers and gives a boost to entrepreneurs developing information technologies that the CIA can use. In-Q-Tel, for instance, invests in companies that are developing ways to find non-indexed information on the Internet and to merge public and private information sources. The ability to mine such "open source" information is increasingly critical in the fight against al-Qaida and other unconventional threats.

By partnering with the private sector, In-Q-Tel is helping to equip the CIA with new tools much more effectively than under Washington's traditional acquisition and procurement system. It has been a remarkable success and should be expanded to other intelligence agencies.

Human intelligence and covert action. Some conservative commentators argue that our intelligence community's problems began during the Carter administration, when CIA Director Stansfield Turner made deep cuts in the agency's Directorate of Operations and human intelligence activities. They liken it to Secretary of State Henry Stimson's 1929 decision to close his department's code-breaking agency on the grounds that "gentlemen do not read each other's mail."

CIA critics, meanwhile, point to the covert activities that CIA Director William Casey pursued during the Reagan administration in direct contravention of congressional will and policy. Casey's breach of trust between the agency, policymakers, and the public led to further restrictions on covert action.

We need to steer a course between these two extremes. It is going to take hard-nosed covert action to fight global terrorism, and it will not be easy. Spying is not a part of our culture. And recruiting and training the right people to infiltrate suspected terrorist cells will be a hard, time-consuming job.

In the short run we will have to rely on support not only

Continued on page 35

Chronology of TERRORISM 1993 >> February 26

Terrorists linked to Osama bin Laden's al-Qaida organization detonate a bomb at the World Trade Center, killing six and injuring more than 1,000.

Six Islamic extremists were tried and convicted of the crime in a U.S. federal court.

Continued from page 33

from allied intelligence services, but from those of recent adversaries. Active cooperation from Pakistan and other regional countries is critical to success against bin Laden, al-Qaida, and the Taliban regime. Such reliance entails risks and raises concerns about control, reliability, and tactics that we might have considered unacceptable before Sept. 11. It also imposes costs. There is a healthy quid pro quo in spy circles. We might have to give information to get information. We might have to promise support for or turn a blind eye to some nations' policies toward third countries. But we have no choice if we are to conduct successful operations against the terrorist network responsible for the World Trade Center and Pentagon attacks. It will take pinpoint intelligence to produce tangible results on the ground in Afghanistan.

Success also depends on Americans' patience with and faith in their leaders. By necessity, much of this war will be conducted out of sight. Members of Congress and the media must respect the need for secrecy and non-disclosure. I am confident that the congressional intelligence oversight committees will be effective watchdogs and provide leadership on these issues. I was appalled to hear Rep. Robert Barr (R-Ga.) call in public for lifting the ban on assassinations. We should not discuss our sources and methods in public. The ban can be (and may already have been) lifted by a stroke of the president's pen. While the prohibition made sense following disclosure of abuses during the 1970s, a targeted and limited exception now seems reasonable.

EXTRAS
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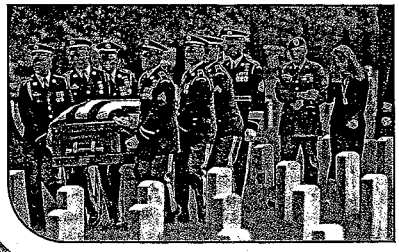
Future threats. As more information and evidence are gathered, it is becoming clear that there may be dozens of al-Qaida or anti-Western operatives and "sleepers" residing in the United States. The threat of additional suicide attacks remains high.

I have participated in six different war games since 1995, three for the CIA and three for the Army. In many, the "enemy" felt compelled to use weapons of mass destruction. There is mounting evidence of bin Laden's attempts to acquire them. The panels on weapons of mass destruction on which I have served concluded that biological and nuclear weapons are credible, realistic threats. They are not viewed as "unthinkable."

On Sept. 11, the world's lone superpower discovered it was vulnerable to terrorists who are willing to initiate a new kind of war. It took this disaster of monumental proportions to focus the intelligence community in a way that will enable it to effectively support our counteroffensive. Our country, people, values, and institutions are strong and resilient. But to win this new war, we will have to show a new adaptability in the way we think and act. We must provide domestic law enforcement and foreign intelligence services with the tools and the latitude they need to preempt, deter, and prevent further atrocities. ◆

Chronology of TERRORISM 1993 ▶▶ October 3

A rocket-propelled grenade downs a U.S. Army helicopter. Eighteen U.S. soldiers were killed in the crash and subsequent firefight between Army rescuers and Somali fighters. Bin Laden's military commander has claimed responsibility for training the Somalis who shot down the aircraft.



▶ **Dave McCurdy** is president of the Electronic Industries Alliance and executive director of the Internet Security Alliance. A former member of Congress, he served as chairman of the House Intelligence Committee.

Dealing with the Middle East

Our domestic security depends on bringing peace and stability to the region.

by **Bruce W. Jentleson**

Once again, the convulsive hatreds and explosive passions of the Middle East have riveted Americans' attention. This time, however, the violence is not "over there," but right here on U.S. soil. On Sept. 11, 2001, the Middle East came to us.

Assessing the threat. For the United States, the danger is all too clear and present. Yet as the initial shock wears off, we have begun to see divergent assessments of the threat in

Statement by

Norman R. Augustine

Mr. Chairman and Members of the Committee, thank you for the invitation to appear before you to share my views on "S.1867, a Bill to Establish a National Commission on Terrorist Attacks Upon the United States." I should emphasize at the outset that the comments I will offer are entirely my own and that I am in no way representing any of the organizations with which I am affiliated.

Needless to say, the issue addressed by S.1867 is of the utmost national importance. It was my privilege to serve for several years on the Hart/Rudman Commission and having done so it unfortunately came as no great surprise that America would be subjected to attacks of the nature suffered on September 11, 2001. I say this not because of any specific evidence of impending tragedy, but rather as a derived conclusion from three general considerations. The first of these is that it has long been evident that a number of individuals and groups on this planet hold America in utter contempt and have been quite vocal in stating their hatred for all which we hold dear. Second, with the end of the Cold War, America's military's capability is such that it would seemingly be futile for such enemies to attack America's forces in a conventional battle on the land, on the sea, in the air or

even in space. Third, in recent decades we have witnessed a fundamental change, largely brought about by unintended consequences of advancements in science and technology, whereby for the first time in history individuals or small groups can profoundly impact far larger groups in a very adverse manner. It is not possible for the former to exert control in this fashion . . . but it is possible for them to severely disrupt the stability enjoyed by the larger group. In short, for individuals or groups seeking to distort or physically harm America by far the most evident avenue today is through terrorist actions . . . and some groups clearly have and are further obtaining means for conducting such actions.

I have in the past suggested that a consequence of these considerations is to pose two major challenges to America and its government as it carries out its responsibilities to the American people in the twenty-first century. The first of these is the challenge of balancing our admirable <u>un</u>willingness to stand idly by while others on our planet suffer at the hands of bullies . . . while on the other hand avoiding simply becoming "911 America," on call to solve the world's problems. The second of these challenges is to defend America's homeland itself against attacks which now have the potential to produce enormous casualties, a concern that has not enjoyed high priority

throughout most of our nation's history due to our geographical location, our military capability, the limitations of our enemies and our national policies.

Among the concerns now confronting us as a nation is that, after a series of such events as we witnessed on September 11th, our citizenry might be prepared to forego many of the freedoms that we hold so dear. We of course have already been required to give up certain of the freedoms in our lifestyles, but to bow to terrorists in any extended manner would merely be to grant them victory. Yet, it may well be required that we sacrifice more in this regard than we would wish if we are to avoid repeated instances of major terrorist acts. A near-worst case, and unfortunately not an impossible case, would be one wherein our citizenry eventually is forced to become sufficiently inured to terrorist actions that the latter are viewed much as are the 40,000 deaths suffered in automobile accidents in America each year—a seeming price of living in society, a price which we tacitly accept as we go about our lives.

Clearly we have much to learn--and even more to do--if we are to thwart terrorism and its consequences. The proposal contained in S.1867 to learn from the events of September 11th, appears to be a logical undertaking.

In the final assessment, however, its usefulness will in large part depend upon the quality and judgment of the people and staff involved in the endeavor and the perspective they elect to embrace as they pursue their task. Specifically, there would seem to be little to be gained simply by revisiting history for history's sake--and in fact, such an undertaking could be counter-productive and even divisive. Furthermore, it would be important that the Commission not unduly burden those who bear the heavy responsibility of recovering from past terrorist attacks and preventing future ones. On the other hand, if those involved in the Commission's work are able to take a forward-looking perspective coupled with a broad view of lessons to be learned which can impact our future security, then they will have made a significant contribution. It is apparent from the wording of the legislation that its drafters were well aware of these considerations.

I would like to make two specific comments in regard to the proposed legislation itself. The first is that as written it appears to exclude the events associated with the Anthrax attacks of the past Fall, yet these attacks also offer important lessons. This exclusion presumably was elected for good reason, namely the events of September 11th and the attacks involving the postal system appear to be independent at least in so far as their excursion is

concerned. But the relatively limited Anthrax attacks may well have provided an extremely important wake-up call to America to a threat perhaps much greater even than that of the type witnessed on September 11th. I refer to the use of biological and chemical agents and nuclear devices by terrorists. It therefore needs to be clear what is the intent of S.1867 with regard to threats beyond those specifically observed on September 11th.

Second, the proposed legislation does not make clear how much of the Commission's work is to be conducted in full public view. America prides itself in pursuing the affairs of government under a spotlight and this is of course to our credit. At the same time, many of the topics the Commission will presumably wish to discuss are topics to which one would just as soon our enemies not be privy. Here I particularly address those issues that do not fall under the formal statutes governing national security but rather involve information that in today's world may nonetheless deserve protection.

In summary, I believe that a Commission of the type which has been proposed could indeed be beneficial, but only if conducted in a highly sensitive and responsible fashion. Clearly, we live in a new world. Thomas Jefferson's reminder that "the price of liberty is eternal vigilance" has never been more true.

Thank you for opportunity to appear before you today.

Richard K. Betts
Council on Foreign Relations and Columbia University

Statement for the U.S. Senate Committee on Governmental Affairs,
Hearings, February 7, 2002

On S. 1867, to Establish a National Commission on Terrorist Attacks Upon the United States

Thank you for inviting me to testify. My views come in part from many years of analyzing national security affairs, and from some thought about the role of past government commissions, but primarily from my experience as a member of the National Commission on Terrorism in 1999-2000. I have four main points:

- A well constituted national commission would indeed perform an important function in coming to grips with the disaster of September 11.
- Such a commission would work best in addition to other efforts such as congressional investigations, not as a substitute for them.
- The mandate and organization of the Commission in the proposed bill make very good sense, with one exception.
- The exception is that there is a tension between the objectives in Section 3 (c) (3), concerning the balanced representation of eminent people with different types of professional experience, and the procedures for appointment of members of the Commission set out in Section 3 (a).

Benefits of a National Commission

It is painfully obvious that a lot went wrong before September 11 in how the U.S. government coped with the potential for catastrophic terrorist attacks. The intelligence system did not get sufficient warning of the plot; the border control and immigration systems did not keep out or keep track of dangerous visitors; security arrangements for air travel failed to intercept the hijackers or keep them from gaining control of the planes; and more. Because of the classification of information and, perhaps, some plain confusion, we do not yet

have a full and integrated picture of *exactly what* went wrong. There will be many rumors and half-truths leaking out to explain why the warning process failed, how organizational structures were unprepared, and so forth. There is great need for an official post-mortem that brings the full story out in a thorough, careful, balanced, and non-partisan manner.

The main benefit of a national commission to examine the tragedy of the September 11 attacks would be political credibility. A commission of the sort described in S. 1867 would be ideally constituted to provide a detailed and sober investigation that the public could have confidence is as objective as humanly possible. In the next few years there will inevitably be many exercises attempting to explain the events and to lay blame for failure to prevent them. It is important to have one serious effort that has high credibility in terms of two important criteria: access to all relevant information, and disinterest in scoring political points. A commission with adequate authority and with members of the sort envisioned in Section 3 (c) of the bill would be well positioned to accomplish this purpose.

I believe this in part because of my own experience as a member of the National Commission on Terrorism established by Congress three years ago. That commission's report, issued fifteen months before September 11, stands up very well in light of the recent tragedy. Our commission produced a solid, clear, hard-hitting report with many correct judgments and useful concrete recommendations. The one misfortune is that more of our recommendations were not implemented sooner. Those recommendations, nevertheless, provide a baseline that remains useful in choosing priorities for further work as the war against terrorism evolves.

The National Commission on Terrorism operated in a thoroughly bipartisan way. (I say that as one of the four members of the Commission appointed by the Minority Democratic leadership of both houses of congress. The Commission's Chairman, Jerry Bremer, and the other members appointed by the Majority Republican leadership, did an excellent job in keeping the process on an even keel politically.) As a group of highly capable and responsible people from different backgrounds, we worked out our differences -- and there were a couple of tense moments -- to produce united recommendations. Amazingly, we also managed to do this without watering things down to some mushy lowest common denominator. Although it was a commission created by a Republican-controlled Congress, there was never a hint that our effort involved grinding axes to embarrass the Democratic administration in the executive branch. Our effectiveness owed much to the fact that despite having individual political views that ranged across the spectrum, none of the ten members of the Commission was a zealot. That in turn reflected the care with which Speaker Gingrich and Majority and Minority Leaders Lott, Gephardt, and Daschle selected the appointees.

The Commission Should Complement Other Investigations

If the commission envisioned in S. 1867 does as good a job, it will be an important contribution. It would be unrealistic and undesirable, however, to see such a commission as the sole official solution to grappling with what happened on September 11. Neither presidential nor congressional commissions ever completely settle the questions with which they are tasked. That is because questions important enough to provoke creation of a prestigious commission are necessarily so important that all centers of political power have to get their own oars in on them. That is as it should be in a democracy. Moreover, other efforts, particularly congressional investigations, can do things that a commission cannot do effectively. On a matter as crucial as September 11, some redundancy in investigation is not only unavoidable, it is useful.

Consider the investigations of the intelligence community in the mid 1970s. The process began with the Rockefeller Commission, which issued its report in June 1975, and expanded to investigations by select committees of the House and Senate which concluded a bit less than a year later. All of these were useful in different ways. The congressional investigations were able to go into certain matters in greater depth. The Church and Pike committees, however, were seen by some as politicized, and as attempting to use the investigation to embarrass the Ford administration. This impression was exaggerated (although I must admit that I have a vested interest in believing so, having been a staff member in the Senate investigation). But it was not entirely wrong, and in any case it is a political fact of life that congressional investigations will provoke suspicions of this sort. That is one of the natural costs of doing public business in a democracy. In the case of the controversial investigations of 1975-76, therefore, it was a good thing both analytically and politically that the Rockefeller Commission's report was also in the mix.

On highly controversial matters no national commission, no matter how well it performs, will be considered by everyone to be the last word. Even the Warren Commission, which investigated President Kennedy's assassination, left many skeptics, and the question was ultimately taken up again in a congressional investigation years later. Nevertheless, the Warren Commission was absolutely indispensable. Although conspiracy theorists could never be satisfied, the general public's confidence in the government's handling of the assassination could never have been as great without that commission.

Ultimately, the value of an investigation depends on subsequent executive decisions and legislation designed to fix the problems identified. A national

commission cannot take a problem off the table; it can only make recommendations. For better or worse, the executive branch and Congress are likely to insist on their own investigations and determinations. A good commission report, however, can clarify the agenda, shape some of the follow-on investigations, speed up and inform the parallel efforts within the government, and provide an authoritative baseline for concerned citizens outside the government to assess the progress of the overall effort.

As government work goes, that is a very, very good return on the few million dollars that the Commission would cost. We sometimes hear complaints that government commissions are a waste of money, and I realize that it would not sound good to your constituents to suggest that a few million dollars is peanuts. I believe it is true, nevertheless, that on average we get much less from most comparable government expenditures than we would get from a good commission.

Composition of the Commission

S. 1867 as now proposed does not have any truly serious deficiencies, in my view. My one reservation is about the process for appointing members of the Commission. I do not think it is necessarily a big problem, but it could limit the coherence and quality of the Commission by some measure.

Section 3 (c) of the bill as currently proposed sets out an excellent summary of the qualifications desirable for the commissioners to be selected. It is especially important that there be balanced representation not only of parties, but of experience and professional backgrounds, and that all members be genuinely accomplished leaders in their fields. To have some assurance that the group as a whole that is selected embodies such balance, there should be some concentration of the appointing power in order to enable some juggling of candidates for appointment in a manner that makes it easier to get a good mix.

The current bill's Section 3 (a), however, sets out a process that disperses appointment authority widely. That would seem to make it hard to carefully craft a group as a whole. The President would be able to design some balance with his four allotted appointees, but the other ten appointments are parceled out to ten different committee chairs -- and twenty people in all, if the consultation with ranking members is to be genuine. To get a good distribution of people from the military, diplomacy, business, law enforcement, and so forth it seems that the ten or twenty chairpersons and ranking members (or their staffs) would have to caucus and do some horse trading. Otherwise, it appears that we could get a random assortment. With all due respect, I would also speculate that having ten different centers of congressional power involved in the picking raises the odds of getting at

least a couple of commission appointees whose main qualifications are that they are cronies of the chairperson who chooses them, or who have personal agendas or axes to grind.

Falling back again on my experience with the National Commission on Terrorism two years ago, I would suggest considering some greater centralization of Congress'es share of the appointments. One way to do this would be to give the final appointment authority to the majority and minority leaders of both houses. The committee chairpersons and ranking members could certainly make their preferences known, and the leadership would be free to select many of them. (In this case too, the pairs of chairpersons and ranking members could also have the flexibility to nominate several people each, rather than just one.)

I apologize if these remarks sound presumptuous, in suggesting how Congress should use its own prerogatives. This issue, however, seemed to be the only potential problem I could detect in the planned formation of the Commission.

A Minor Point: Mandate of the Commission

Section 2 of the version of S. 1867 provided to me states that the purposes of the Commission include examining "the facts and *causes* relating to the terrorist attacks of September 11, 2001" and making "a full and complete account of the *circumstances* relating to the terrorist attacks." My reservation about this is only a nit-pick, and was not worth including in my summary of points at the beginning. Nevertheless, both the advantage *and* disadvantage of the language in Section 2 is that it could be read to leave the purview of the Commission wide-open. It would be good for the Commission to have a hunting license that allows it to go wherever necessary. It will also be necessary, however, for the Commission to focus its attention on the most critical aspects of the disaster: understanding the intelligence failure and whatever elements of structure and process within the government or outside organizations stood in the way of preventing the attacks.

Section 4 of the bill does more to suggest that focus. Perhaps there is little danger that the commission would dilute its efforts by dipping into every possible issue that might be covered by the language in Section 2. Not knowing who will serve on the Commission, however, it is conceivable that some might argue for investigating "root causes" of terrorism that U.S. policy did not adequately address. (There will certainly be some groups in the public who argue that it is necessary to do so.) That would be a mistake, because as important as root causes may be, they are a bottomless pit of controversial ideas about political, social, religious, psychological, and economic causes of hatred and blame. This question cannot be dealt with very well by this sort of commission, and any possibility that

an effort to do so might be made should be quashed. Perhaps I worry about leaving too broad a mandate because I recall our initial deliberations in the National Commission on Terrorism, when one member argued strongly that we could not avoid dealing with domestic as well as international terrorism because there were so many linked aspects of the problem. That judgment was in large part correct intellectually, but would have spread our effort thin. We decided against broadening the scope of our inquiry, and that kept the results coherent and focused.

This is not a significant problem. But if there is any risk of the Commission getting bogged down in deciding how it should focus its effort, it might not hurt to add a bit of language to Section 2 similar to that in Section 4, specifying organization and procedures within the U.S. government, and in other organizations such as those in the air travel industry, as the focus of concern.

Realistic Expectations

A national commission, however well it does its job, will not bring us to closure in understanding how we should best move to prevent another September 11 catastrophe. That should not be the test of such a commission. September 11 was a watershed in national security policy, and figuring out and adjusting to the lessons will be a long process. The right sort of commission can be a good start. It can clear away underbrush, answer some questions even if not all, lay down a valuable set of markers to channel other efforts, and discredit fast and loose attempts at easy answers. That will leave much to be done, but it will have done a lot.

Testimony of Maurice Sonnenberg
U.S. Senate Committee on Governmental Affairs
Re: S.1867
February 7, 2002

I have been asked to testify today on the efficacy of the creation of a terrorist commission pursuant to Senate bill 1867.

A panel of this sort is of immeasurable importance in helping to better understand what basically were the factors that led up to the catastrophe of September 11. It also places into context journalistic sound bites such as "a failure of intelligence". While these are catchy phrases they are gross generalizations designed to convey the impression that there must have been a systemic all encompassing failure on the part of the agency, the bureau and others in the intelligence community. There may have been weaknesses in the intelligence community, but a more comprehensive analysis should also focus on the role of several governmental institutions, among them the White House, Congress and the Department of Justice. When looking at these matters, the commission would also have to address such matters as impediments to law enforcement, immigration and border controls, financing of terrorist activities, intelligence sharing and so on.

The commission obviously must be established in a manner that supplements but does not replace the need for continued Congressional oversight. Nor can it be allowed to compromise security, both at the National Security Council and intelligence community level.

But now to the specifics of a commission. It will take some very talented people and a superior staff to asses information available both in open and classified sources. -The individuals appointed to the commission should bring to the task a broad understanding of the subject as a whole rather than an overly detailed knowledge of a specific field. It goes without saying that everyone associated with the commission will require multiple clearances, especially in those instances where investigation hinges on matters related to covert operations.

The commission will also require a specific site location not known to the public. When we had our Terrorist Commission meetings, they were convened in an unknown location; we never had public hearings. Congressionally mandated, our members were appointed by the Majority and Minority leadership. As far as I know very few people knew the names of our members until after the report was published. We had no leaks. This, I might add, was true for the Commission on the Roles and Capabilities of the U.S. Intelligence Community and the President's Foreign Intelligence Advisory Board. Another reason not to identify the membership is the real concern about possible threats and pressure as regards the security of commission staff and members.

Finally, let me say that you may wonder why after all of these events I still favor the setting up of a commission. First, I am certain the White House and/or some branch of the Legislature will establish one. Second, a commission of this sort will have substantial public consequences. The cynics will say all these commission reports wind up on the shelf. Most do. There is however a great difference regarding this one. It is post-September 11. If well written and carefully

conceived it will carry the gravitas and influence a study of this nature should have.

The National Commission Terrorism and the Hart-Rudman Report had some influence in focusing many members of Congress, the media and the press on the subject. The prescience of those reports made them unique and totally relevant to the legislation that passed after September 11th.

A commission report on so called "failure of intelligence" can help to inform and educate the public to a better understanding of the complexity of this matter. This is not to say that a commission would be a font of wisdom, but it might, by its very making, keep the public focused on this problem that is not about to end soon, or for that matter in our lifetime. You can control terrorism but you will never totally eliminate it.

The sooner our citizenry is fully cognizant of this, the less likely it will lose its' sense of purpose and resolve. That being the case, it is imperative that the public continue to be supportive of measures necessary to face this ongoing threat. This commission can be a valuable tool in this effort.

STATEMENT FOR THE RECORD
COMMITTEE ON GOVERNMENT AFFAIRS
UNITED STATES SENATE
Hearings on S1867
February 7, 2002
James Schlesinger

Mr. Chairman, Members of the Committee:

I regret that I am unable to appear on the panel to discuss S1867, legislation to establish a National Commission on the causes and implications of the September 11 terrorist attacks. I am on record (The National Interest, "A Test by Terrorism", Thanksgiving 2001, p. 5, at 6) suggesting that the President establish a National Commission, and have urged senior members of the administration to do so. In addition to the precedents of Pearl Harbor and the Kennedy assassination for which National Commissions were created, there is the additional precedent of the Challenger disaster, which helped to clarify the background to that regrettable event, and by identifying the O-rings as the culprit led to corrective action.

The country needs an authoritative review regarding how our own attitudes, habits, laws, and organization may have contributed to the stunning effectiveness of the terrorist attacks. Through such a careful examination, we could take those measures that would make us better prepared and better organized to anticipate or to frustrate other such future attempts.

Prior to the attack of September 11th, as a nation we have been unduly complacent. For some two decades, we have observed terrorist episodes, some of them state-sponsored, some of them non-state-sponsored, directed at allied nations, at Americans overseas, and additionally carefully prepared terrorist actions here in the

United States, such as the prior attack in 1993 on the World Trade Center itself. Nonetheless, we continued to act as if we were immune to major terrorist strikes at the United States—at the very same time that the motivation to strike the United States in asymmetric ways was increasing. Moreover, as a result of that complacency, we have been lax, not to say careless, in a variety of ways that have eased the problem for terrorists.

Let me briefly examine a few such areas.

1. **Intelligence.** I start with intelligence. At the outset we should understand that gathering intelligence is quite hard. Terrorist cells, composed of dedicated and fanatical individuals, are difficult to penetrate—even as we increase our emphasis on human intelligence. The Intelligence Community gave frequent, repeated, though generalized warnings about the terrorist threat. The Director of Central Intelligence has specifically focused on the threat represented by Osama Bin Laden and al Qaeda. Nonetheless, I fear that the Intelligence Community did not sufficiently study the technique that was employed by the terrorists on September 11—despite a number of prior episodes pointing in that direction. And, of course, the Intelligence Community was not able to pinpoint the timing of the September 11 attacks, which, as I indicated earlier, is extremely difficult to do.

Among the questions that the Commission might address would include the following: Were sufficient resources prior to September 11—including the resource of talented analysts—devoted to counter-terrorism? Was the signals intelligence effort appropriately sized and properly coordinated with other counter-terrorism work? Are we properly organized for counter-terrorism now that terrorism has become a priority

threat—or do we still remain unduly fragmented? Does the historic separation of domestic and foreign intelligence continue to make sense in this altered environment—or has it become obsolete? Finally, were we sufficiently alert to the widespread indoctrination and massive funding of anti-US and anti-West propaganda?

2. **Airport Security**. We need no reminder after 11 September regarding the devastating effectiveness of large aircraft employed by terrorists as missiles. We have over the years been alert to the possibility of aircraft being blown up. Unhappy as the latter may be, it is not nearly as devastating as the former. But airport security, such as it was, did not really attend to the former threat. We need to deal with that threat by effectively isolating the cabin from passengers (that is already well underway), by giving appropriate instructions to aircraft crews, and by some screening of foreign pilots who would fly over the United States.

We also need effectively to tighten airport security. That will not be accomplished by having National Guardsmen standing around. We need to keep unauthorized persons away from aircraft and from luggage—and to monitor those with appropriate access. We also need to have far better ways of screening passengers. Businessmen, retired citizens, who fly regularly, can be more quickly screened. Others, notably selected foreigners, should be subjected to far more stringent examination. Much of this can be accomplished through the effective use of information technology.

3. **The Open (and Vulnerable) Society**. Since the mid-sixties, the mood in this country has been to maximize openness and accessibility. We have, no doubt, gone too far, and one of the objects of the Commission would be to recommend a better balance. The precepts that guide our agencies of government need to be improved. We have been

too casual about issuing visas. Student and tourist visas are issued almost automatically. There has been no systematic checking of those on visas, and little enforcement of when visas have expired. The Immigration and Naturalization Service has concentrated its efforts on illegal Mexican or Central American workers who want to work in this country, and has not historically focused on those who one might suspect would seek to do this nation harm. The FBI has treated terrorism less systematically than it has organized crime. Though it is a very difficult task, protection of our borders against illegals can be improved. Our general stance needs to change. We should make it far, far harder for terrorists to enter the country and to inflict damage on us.

Mr. Chairman, to this point many questions have been addressed piecemeal—or not at all. The purpose of a National Commission would be systematically and comprehensively to address such questions—and to give a complete public accounting of the events leading up to 9-11. In my judgment, such a Commission would serve a high, indeed indispensable, national purpose.

A Test by Terrorism

James Schlesinger

THE EVENTS of September 11, undoubtedly the best planned and best executed terrorist act in memory, have transformed the domestic and international landscape. The media have regularly asserted that *everything has changed*—a judgment that apparently does not apply to the hyperbole of the press. Some things have changed; others have been re-inforced; and still others have been made visible that previously were unrecognized. What has changed domestically is a new and different focus and a rebirth of national unity, which could prove transitory. The public's illusion, despite most of a decade's intelligence warnings and commission reports, of American immunity to terrorism has been shattered. London, Paris, Rome and Tokyo may have been susceptible to terrorist acts, but in the public mind somehow this nation remained invulnerable. We now even recall prior acts of foreign terrorism on our soil that were quickly forgotten. We now recognize—and perhaps exaggerate—our own vulnerability to terrorism.

Internationally the impact has been equally dramatic. Public opinion in allied countries has again become strongly supportive of the United States. Gone are the cascading complaints about global warming, American unilateralism, ballistic missile defense and the rest. Suddenly the French recall 1944—and the Russians reminisce about the wartime alliance of 1941–45. *"Ich bin ein New Yorker"* is uttered as a chorus in Germany.

Public reaction in much of the Middle East has been quite different, however. While public demonstrations of delight were few, many felt that America had "gotten what it deserved." For far too many, Osama bin Laden has become something of a folk hero—an Arab Robin Hood successfully defying the American Sheriff of Nottingham. Demonstrations against the American bombing of Afghanistan have been widespread. While something less than Samuel Huntington's clash of civilizations, this disparity and reaction is instructive. It underscores both the internal fragility of particular nations in the Islamic world, and the overall fragility of the coalition that we are assembling in the wake of the September 11 attack.

Fundamentals

BEFORE TURNING to the many consequences of that act, we should reflect on some of the fundamentals of terrorism. Terrorism is truly a weapon of the weak. It is an act

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of defiance against a dominant power or a dominant establishment, based upon the tacit acknowledgment that direct confrontation is beyond the power of the terrorist. In this case, the need to turn to terrorism is in a sense a tribute to the basic strength of the United States; the motive for doing so is American pre-eminence.

The need to strike out against a stronger power has fostered the search for what is known as asymmetric warfare—the means to inflict significant damage on a stronger foe by attacking points of maximum vulnerability. And the possibility of asymmetric warfare, curiously enough, is a reflection of the trickle down of technology, developed in large degree by the United States, but increasingly available to those who would assault it. Terrorists today have available to them the fruits of Western technology; not only wide-bodied jet aircraft and flying lessons, but also the Global Positioning System, satellite photography, encryption, the Internet and jamming capabilities—all technologies that permit more sophisticated attacks than anything available in the past. The irony is that contemporary terrorists are making use of all those elements that are the product of the progressive civilization that the more dedicated or fanatical Islamists find so objectionable.

Countless studies have pointed to the necessity of asymmetric warfare for those who would damage the United States, especially since the failures of Saddam Hussein's Iraq in the Gulf War. Steady and persistent intelligence warnings have pointed to the dedication and malign intentions of bin Laden and his ilk—even if intelligence clearly failed to provide specific warnings regarding either the timing or the technique of the September 11 actions.

Catastrophic as those events were, they have had the beneficial effect of providing a useful wake-up call. The revelation of our vulnerability has made us keenly aware of the necessity of reducing that vulnerability. For some forty years, this nation has nurtured an ideology of ever greater openness—and suddenly we have been confronted with some of the consequences. Under this ideology we have become terribly lax. The September 11 terrorists were able all too easily to enter the country and to operate with surprising freedom. Tourist and student visas are given almost automatically—and their conditions are not enforced when they expire. Visa requirements can be waived. The Immigration and Naturalization Service devotes most of its energies to sweeps against illegal workers from Mexico and elsewhere—and devotes few resources to those who may wish to inflict damage on us. Our borders are porous and individuals with hostile intent can enter illegally, most notably from Canada. The nation, as Senator Dianne Feinstein has observed, is like a sieve.

Once here, these individuals confront security measures that are less than robust—certainly far less robust than in other industrial nations. That four sets of terrorists could move so readily through airport security, and apparently stow box cutters on some aircraft, tells us how flimsy airport security measures have been. Moreover, that access to the aircraft cabin was so easily obtained shows that both procedures and physical protection were wholly inadequate. After the theft, we are now taking steps to lock the barn door. These measures will be sufficiently effective, no doubt, that the next terrorist acts will employ something other than passenger aircraft. Still, in my judgment, the President needs to establish a national commission, like that after the *Challenger* disaster, to study the entire range of issues in order to learn what went wrong. This is fundamental.

A wake-up call has also sounded in another area. For years, analysts have

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been pointing to the possibility of biological warfare directed against the United States. Now, with the sending of anthrax spores through the mail, it is no longer a possibility, but a reality. On balance, this too has its beneficial aspect. *No one need die of anthrax attacks.* The public has been alerted. The disease is readily treatable when detected early enough. Public health officials are being provided the resources they need to store antibiotics, vaccines, and to make other preparations.

The American Response—So Far

THE BUSH Administration has reacted impressively. It has rallied the American public (as well as an international coalition). It has taken necessary measures. It has been steadfast. At times, some official statements went further in creating alarm than was necessary, but the administration has now struck the right balance between warning and reassuring the public.

In one area, however, we are obliged to do more. We have urged others to follow the money trail and to cut off the financial resources flowing to terrorists. But we must practice what we preach. The United States is not the only or even the first nation to be subject to terrorism. Britain, for example, has been subjected to repeated acts of terrorism by the IRA and its successors. Where does the money come from? From the United States—collection points, nominally for charity, can be found in all too many of the bars in Boston, New York and elsewhere. We owe it to the Brits—to say nothing about the consistency and credibility of our campaign against terrorism—to clamp down on those money flows.

The measures that we take domestically, though essential, are by far the easier part of the problem. The international position of the United States has been challenged—and the ultimate question is how does the United States respond to that challenge? As mentioned above, in the aftermath of the September 11 events, much of the world has rallied in support of the United States. Some did so with deep sympathy and with enthusiasm. Others, however, did so equivocally, and still others did so reluctantly. The immediate response that we have seen will undoubtedly be the high point of support. As actions are taken in response to the terrorist attack, support will gradually dwindle. The demonstrations against the U.S. bombing of Afghanistan are a harbinger of eventual disagreements with American policy. For the moment, the outside world has been shocked into attentiveness. There is a good deal of apprehension: *what will the Americans do?* How will it affect us and (most importantly for foreign leaders) public opinion in our countries?

In itself, that underscores an important point. While the international spotlight is on the United States, it is essential, if we are to preserve our international position, that the actions we take be regarded as successful—preferably highly successful. The first requirement in deciding what to do is to avoid actions that can be deemed a failure. We do not need a repetition of Desert One—or even a lesser muck-up like the bombing of the Chinese embassy in Belgrade. It is perhaps less important precisely what actions we take than that those actions be deemed impressive and successful.

The first set of actions seems almost mandatory, and indeed obvious: go after the Al-Qaeda network and the Taliban regime that has provided it protection. The entire international coalition expects such action—and will support it. Driving the Taliban from power should be relatively straightforward. The Russians, who are painfully familiar with the difficulties to be encountered in Afghanistan, agree

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that the Taliban can be removed.[1] But they admonish us that it cannot be accomplished by bombing alone. It will require U.S. ground forces in Afghanistan to weaken or destroy the elite forces that support the Taliban. That judgment is correct. But it will require sustained firepower from the air to protect the modest friendly forces on the ground—especially if they are led into traps by false intelligence.

I believe that such actions can and will be successful, and that the international coalition will stay with us throughout, though with diminishing enthusiasm. One admonition should be borne in mind, however. The removal of the Taliban should be accomplished as expeditiously as possible, not least because the situation in Pakistan is delicate. Some significant part of the Pakistani public vehemently disagrees with President Musharraf's decision to ally himself with the United States. The more quickly the removal of the Taliban becomes a *fait accompli*, the less will be the internal strain within Pakistan and the more secure will be our own arrangements in that country.

A further point to bear in mind is that actually capturing bin Laden may be neither quick nor easy, or even eventually be accomplished with certainty. One should recall that even in Panama we were unable to find and apprehend Manuel Noriega—until he foolishly located himself for us by taking refuge in the residence of the papal nuncio. But if finding bin Laden is time-consuming, or even if it is ultimately unsuccessful, the fall of the Taliban will be regarded internationally as an indication of American success.

The Next Stage

THE CRUCIAL—and difficult—question is what comes next, after the Taliban has been removed and bin Laden has been killed, captured or put on the run? It is then that the President will be obliged to make a decision that is laden with complexities and burdened by risks. We have asserted that the war on terrorism involves not only rooting out the terrorists themselves, but also those who harbor them. To do so is a demanding and a lengthy task, and, realistically, we must recognize that it can never be wholly successful. We may assert that we will root out all "terrorism with a global reach", but not all agree on just who are the terrorists and who are the legitimate resistance fighters. When and if we go after other nations—other than the obvious culprits in Afghanistan—we must expect international support to diminish and the international coalition to fray. That in itself poses a simple but critical question: Is the creation and preservation of an international coalition a means to an end, or an end in itself?

Our rhetoric about confronting those who harbor terrorists almost obliges us to take further action. We have regularly spoken of the "next phase." But unavoidably, that next phase will be fraught with difficulties. We must bear continuously in mind the injunction that failure would be far worse than taking no additional action. So, as we move into that next phase, *we must assure ourselves that the political and logistical problems that might preclude success have been meticulously examined and redressed in advance.*

The target of the next phase most discussed in Washington has been Saddam Hussein's Iraq. If it turns out that Iraq has been the source of the anthrax bacteria planted in various places in the United

[1] In 1998, the Russians strongly warned the United States of the threat posed by Osama bin Laden. They have repeatedly urged cooperative action against him and his organization—but the offer was rebuffed with the assertion that the Russians were only seeking to reassert themselves in Central Asia.

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States, that would clearly provide us with sufficient justification for action against Iraq to ease the concerns of most members of the coalition, though not all. We must anticipate vehement objection to any possible American action by some other nations, and particularly by Iraq's Arab neighbors. Such action might destabilize one or more of the moderate regimes in the region.

To move successfully against Iraq, one must have appropriate bases. Yet even Turkey has of late been moving toward warming its relations with Iraq, and, given its preferences, would wish to take no part in any such action.

The situation in Saudi Arabia is even more problematic. The Saudi regime has long practiced a balancing act, in which limited collaboration with its Western protectors is weighed against support for conservative elements within the Kingdom that resent the association with and the presence of those protectors. It has long been a fiction of many in the West that there is a substantial liberal opposition in Saudi Arabia seeking greater openness, transparency and tolerance. The real opposition comes from conservative elements that passionately believe that the Saudi government has gone much too far in accommodating Western "infidels." That has been the source of bin Laden's support. The great irony is that charitable contributions from Saudi Arabia go to support the religious schools outside of the country that are undermining the regime and seeking its overthrow.

Since it is scarcely in the American interest to weaken a government that is partly responsive to our desires, and even less so to contemplate what a successor government might look like (bin Laden himself would emulate Khomeini), careful assessment of the consequences in Saudi Arabia of any American decision is essential. The bases in Saudi Arabia are almost a necessity for successful action against Saddam Hussein. To be sure, bases in Israel might be a partial substitute, and the government of Israel likely would be amenable, but that raises difficult political questions even as it solves logistical ones. The fragility of Saudi Arabia and the delicacy of our own relations with its government underscore the need for caution. One must reiterate that any action taken against Saddam Hussein must be successful—or it should be avoided, at least for the time being.

Moreover, we must also bear in mind the question of oil supply and price—especially as the global economy sinks into recession. A move against Saddam Hussein immediately removes more than two million barrels a day of oil from the international supply, and would before very long have a sharp impact on prices. Moreover, being associated with a U.S. attack on an Arab country makes it extraordinarily difficult for other Arab oil-producing states to compensate for such a loss of supply—and no one aside from the Arab producers has the requisite spare capacity to attempt such compensation. The upshot of all these considerations is that any presidential decision must be carefully weighed on the basis of sound intelligence and a full spectrum of political and economic assessments.

THE TERRORIST actions of September 11 represent a testing of the United States—its strength, its will and purpose, its tenacity, in short, its international position. The episode poses the question as to whether the United States can be repeatedly attacked with impunity. We have no alternative but to react very forcefully to this episode. To do otherwise would weaken our international position, as well as expose the United States to a continuation, if not an increase, in such terrorist acts.

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THE NATION senses this. The public's response to this attack has been both impressive and gratifying. One rarely has seen such an immediacy of stalwart response, or such intensity of national unity as has been demonstrated over the past several weeks. But the administration has wisely emphasized that this will be a lengthy struggle, and so the key question is, will our national unity last? Will we, indeed, stay the course, even in the face of disappointments and future unpleasant surprises?

Many have compared the events of September 11 to those of December 7, 1941 at Pearl Harbor. One hopes that that will prove to be the case and that, as before, this country is ready for a lengthy campaign. But we should also remember that our engagement in 1965 in Vietnam started with a similar if less dramatic display of national unity—with the Tonkin Gulf Resolution and with General William Westmoreland brought back from Southeast Asia to address a cheering joint session of Congress. But then came the disappointments and the unpleasant surprises. National unity disappeared and the national will faltered. One trusts that that will not be the case in this complex, difficult and lengthy struggle. □

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II

107TH CONGRESS
1ST SESSION

S. 1867

To establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20 (legislative day, DECEMBER 18), 2001

Mr. LIEBERMAN (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this Act referred to as the "Commission").

SEC. 2. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September

11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(4) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 3. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 14 members, of whom—

(1) 4 members shall be appointed by the President;

(2) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Armed Services of the Senate ;

(3) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of

1 the Committee on Commerce, Science, and Trans-
2 portation of the Senate;
3 (4) 1 member shall be appointed by the chair-
4 person, in consultation with the ranking member, of
5 the Committee on the Judiciary of the Senate;
6 (5) 1 member shall be appointed by the chair-
7 person, in consultation with the ranking member, of
8 the Select Committee on Intelligence of the Senate;
9 (6) 1 member shall be appointed by the chair-
10 person, in consultation with the ranking member, of
11 the Committee on Foreign Relations of the Senate;
12 (7) 1 member shall be appointed by the chair-
13 person, in consultation with the ranking member, of
14 the Committee on Armed Services of the House of
15 Representatives;
16 (8) 1 member shall be appointed by the chair-
17 person, in consultation with the ranking member, of
18 the Committee on Energy and Commerce of the
19 House of Representatives;
20 (9) 1 member shall be appointed by the chair-
21 person, in consultation with the ranking member, of
22 the Committee on the Judiciary of the House of
23 Representatives;
24 (10) 1 member shall be appointed by the chair-
25 person, in consultation with the ranking member, of

1 the Permanent Select Committee on Intelligence of
2 the House of Representatives; and
3 (11) 1 member shall be appointed by the chair-
4 person, in consultation with the ranking member, of
5 the Committee on International Relations of the
6 House of Representatives.
7 (b) CHAIRPERSON.—The President shall select the
8 chairperson of the Commission.
9 (c) QUALIFICATIONS; INITIAL MEETING.—
10 (1) POLITICAL PARTY AFFILIATION.—Not more
11 than 7 members of the Commission shall be from
12 the same political party.
13 (2) NONGOVERNMENTAL APPOINTEES.—An in-
14 dividual appointed to the Commission may not be an
15 officer or employee of the Federal Government or
16 any State or local government.
17 (3) OTHER QUALIFICATIONS.—It is the sense of
18 Congress that individuals appointed to the Commis-
19 sion should be prominent United States citizens,
20 with national recognition and significant depth of ex-
21 perience in such professions as governmental service,
22 law enforcement, the armed services, legal practice,
23 public administration, intelligence gathering, com-
24 merce, including aviation matters, and foreign af-
25 fairs.

1 (4) INITIAL MEETING.—If 60 days after the
2 date of enactment of this Act, 8 or more members
3 of the Commission have been appointed, those mem-
4 bers who have been appointed may meet and, if nec-
5 essary, select a temporary chairperson, who may
6 begin the operations of the Commission, including
7 the hiring of staff.

8 (d) QUORUM; VACANCIES.—After its initial meeting,
9 the Commission shall meet upon the call of the chair-
10 person or a majority of its members. Eight members of
11 the Commission shall constitute a quorum. Any vacancy
12 in the Commission shall not affect its powers, but shall
13 be filled in the same manner in which the original appoint-
14 ment was made.

15 **SEC. 4. FUNCTIONS OF THE COMMISSION.**

16 The functions of the Commission are to—

17 (1) conduct an investigation into relevant facts
18 and circumstances relating to the terrorist attacks of
19 September 11, 2001, including any relevant legisla-
20 tion, Executive order, regulation, plan, practice, or
21 procedure;

22 (2) review and evaluate the lessons learned
23 from the terrorist attacks of September 11, 2001 re-
24 garding the structure, coordination, and manage-
25 ment arrangements of the Federal Government rel-

ative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this Act containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 5. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this Act—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

1 (2) SUBPOENAS.—Subpoenas issued under
2 paragraph (1)(B) may be issued under the signature
3 of the chairperson of the Commission, the chair-
4 person of any subcommittee created by a majority of
5 the Commission, or any member designated by a
6 majority of the Commission, and may be served by
7 any person designated by the chairperson, sub-
8 committee chairperson, or member. Sections 102
9 through 104 of the Revised Statutes of the United
10 States (2 U.S.C. 192 through 194) shall apply in
11 the case of any failure of any witness to comply with
12 any subpoena or to testify when summoned under
13 authority of this section.
14 (b) CONTRACTING.—The Commission may, to such
15 extent and in such amounts as are provided in appropria-
16 tion Acts, enter into contracts to enable the Commission
17 to discharge its duties under this Act.
18 (c) INFORMATION FROM FEDERAL AGENCIES.—The
19 Commission is authorized to secure directly from any exec-
20 utive department, bureau, agency, board, commission, of-
21 fice, independent establishment, or instrumentality of the
22 Government information, suggestions, estimates, and sta-
23 tistics for the purposes of this Act. Each department, bu-
24 reau, agency, board, commission, office, independent es-
25 tablishment, or instrumentality shall, to the extent author-

1 ized by law, furnish such information, suggestions, esti-
2 mates, and statistics directly to the Commission, upon re-
3 quest made by the chairperson, the chairperson of any
4 subcommittee created by a majority of the Commission,
5 or any member designated by a majority of the Commis-
6 sion.

7 (d) ASSISTANCE FROM FEDERAL AGENCIES.—

8 (1) GENERAL SERVICES ADMINISTRATION.—
9 The Administrator of General Services shall provide
10 to the Commission on a reimbursable basis adminis-
11 trative support and other services for the perform-
12 ance of the Commission's functions.

13 (2) OTHER DEPARTMENTS AND AGENCIES.—In
14 addition to the assistance prescribed in paragraph
15 (1), departments and agencies of the United States
16 are authorized to provide to the Commission such
17 services, funds, facilities, staff, and other support
18 services as they may determine advisable and as may
19 be authorized by law.

20 (e) GIFTS.—The Commission may accept, use, and
21 dispose of gifts or donations of services or property.

22 (f) POSTAL SERVICES.—The Commission may use
23 the United States mails in the same manner and under
24 the same conditions as departments and agencies of the
25 United States.

1 **SEC. 6. STAFF OF THE COMMISSION.**

2 (a) IN GENERAL.—

3 (1) APPOINTMENT AND COMPENSATION.—The
4 chairperson, in accordance with rules agreed upon
5 by the Commission, may appoint and fix the com-
6 pensation of a staff director and such other per-
7 sonnel as may be necessary to enable the Commis-
8 sion to carry out its functions, without regard to the
9 provisions of title 5, United States Code, governing
10 appointments in the competitive service, and without
11 regard to the provisions of chapter 51 and sub-
12 chapter III of chapter 53 of such title relating to
13 classification and General Schedule pay rates, except
14 that no rate of pay fixed under this subsection may
15 exceed the equivalent of that payable for a position
16 at level V of the Executive Schedule under section
17 5316 of title 5, United States Code.

18 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

19 (A) IN GENERAL.—The executive director
20 and any personnel of the Commission who are
21 employees shall be employees under section
22 2105 of title 5, United States Code, for pur-
23 poses of chapters 63, 81, 83, 84, 85, 87, 89,
24 and 90 of that title.

1 (B) MEMBERS OF COMMISSION.—Subpara-
2 graph (A) shall not be construed to apply to
3 members of the Commission.
4 (b) DETAILEES.—Any Federal Government employee
5 may be detailed to the Commission without reimbursement
6 from the Commission, and such detailee shall retain the
7 rights, status, and privileges of his or her regular employ-
8 ment without interruption.
9 (c) CONSULTANT SERVICES.—The Commission is au-
10 thorized to procure the services of experts and consultants
11 in accordance with section 3109 of title 5, United States
12 Code, but at rates not to exceed the daily rate paid a per-
13 son occupying a position at level IV of the Executive
14 Schedule under section 5315 of title 5, United States
15 Code.
16 **SEC. 7. COMPENSATION AND TRAVEL EXPENSES.**
17 (a) COMPENSATION.—Each member of the Commis-
18 sion may be compensated at not to exceed the daily equiva-
19 lent of the annual rate of basic pay in effect for a position
20 at level IV of the Executive Schedule under section 5315
21 of title 5, United States Code, for each day during which
22 that member is engaged in the actual performance of the
23 duties of the Commission.
24 (b) TRAVEL EXPENSES.—While away from their
25 homes or regular places of business in the performance

1 of services for the Commission, members of the Commis-
2 sion shall be allowed travel expenses, including per diem
3 in lieu of subsistence, in the same manner as persons em-
4 ployed intermittently in the Government service are al-
5 lowed expenses under section 5703(b) of title 5, United
6 States Code.

7 **SEC. 8. SECURITY CLEARANCES FOR COMMISSION MEM-**
8 **BERS AND STAFF.**

9 The appropriate executive departments and agencies
10 shall cooperate with the Commission in expeditiously pro-
11 viding to the Commission members and staff appropriate
12 security clearances in a manner consistent with existing
13 procedures and requirements, except that no person shall
14 be provided with access to classified information under
15 this section who would not otherwise qualify for such secu-
16 rity clearance.

17 **SEC. 9. REPORTS OF THE COMMISSION; TERMINATION.**

18 (a) INITIAL REPORT.—Not later than 6 months after
19 the date of the first meeting of the Commission, the Com-
20 mission shall submit to the President and Congress an ini-
21 tial report containing such findings, conclusions, and rec-
22 ommendations for corrective measures as have been
23 agreed to by a majority of Commission members.

24 (b) ADDITIONAL REPORTS.—Not later than 1 year
25 after the submission of the initial report of the Commis-

1 sion, the Commission shall submit to the President and
2 Congress a second report containing such findings, conclu-
3 sions, and recommendations for corrective measures as
4 have been agreed to by a majority of Commission mem-
5 bers.

6 (c) TERMINATION.—

7 (1) IN GENERAL.—The Commission, and all the
8 authorities of this Act, shall terminate 60 days after
9 the date on which the second report is submitted
10 under subsection (b).

11 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
12 MINATION.—The Commission may use the 60-day
13 period referred to in paragraph (1) for the purpose
14 of concluding its activities, including providing testi-
15 mony to committees of Congress concerning its re-
16 ports and disseminating the second report.

17 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated to the Com-
19 mission to carry out this Act $3,000,000, to remain avail-
20 able until expended.

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