

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HOW TO ADDRESS THE THREAT THAT CONFRONTS US TODAY

Mr. GREGG. Madam President, I want to talk a little bit about the issue of how we as a government and how we as a people are going to address what is clearly a threat that confronts us today in the area of terrorism.

Last week, the Commerce-State-Justice bill was on the floor, and a number of initiatives in the area of terrorism were included in that bill. I certainly thank the assistant leader for his strong support for that bill, for the elements which were in that bill, and his speaking on behalf of it at that time.

Let me review, so we can put in perspective where we stand as a government, what we have been doing and what we need to do in a number of areas, certainly not a comprehensive review but at least a preliminary review of what has to be done.

The Subcommittee on Commerce, Justice, State, and the Judiciary, on which I am the ranking member and Senator HOLLINGS is chairman, has held innumerable hearings on this issue over the last 5 years in an effort to try to get our arms around what is obviously an issue that is extremely difficult to get our arms around. It seems a bit hollow now in light of what happened on September 11, but there was an attempt at least to try to put some order into our effort at the Federal level.

Clearly, a dramatic amount still needs to be done, and the American people need to understand this is not going to be a simple exercise, an overnight exercise, or an exercise that can be completed in a week or a month or a year. Potentially it may take years before we as a nation are able to bring to the threat of terrorism some resolution which makes us more comfortable with our ability to manage it and deal with it, especially when there are individuals willing to kill themselves and take innocent lives in order to accomplish their goals.

Let us begin with the basic threat and how we should address it. The issue of terrorism needs to be addressed on three basic levels. First is the intelligence level, both domestic and international. Second is the apprehension, the catching, of people before they commit the crime, before they undertake the act. People need to understand this is different from what is the traditional law enforcement exercise.

In most law enforcement undertakings, we wait until the event occurs, until someone has committed an act which violates our laws, before we undertake to capture them or attempt to bring them to justice. In this instance, under the terrorism instance,

the whole mindset must shift in the area of apprehension to one of taking action before the event occurs because, as we have seen, when the event occurs it is so horrific or can be so horrific that it simply cannot be accepted as a consequence of not having taken action.

The third element is managing the crisis, managing the event. So it is intelligence, domestic/international; apprehension; and then, should an event occur, the managing of the event, both the immediate crisis and the aftermath, the consequences.

In the area of intelligence, it is very clear we have some significant needs. We can divide these needs fairly easily into the needs that involve using people in the gathering of intelligence and the needs that involve technology.

In the use-of-people area, we as a government in the 1990s, for a variety of reasons, basically decided we would no longer hire unsavory characters in order to get information. That was a mistake. It was known by a lot of people who were in the intelligence-gathering community to be a mistake when it was done. The decision to rely primarily on electronic surveillance and our capacity to use electronic surveillance as the main way of gathering information was a belief in a system that simply did not work, as has been proven to us. The penetration of small cells, which are for the most part clanish-oriented, usually family groups, is extremely difficult. It is extremely difficult under any scenario, but it is virtually impossible if we do not use people who are not necessarily persons of high character by our definition.

Therefore, we as a government made a decision, which was wrong, and we are trying to reverse it today. This Senate has actually spoken on this point in the bill and said the policy of the Government, which up until Tuesday, September 11, was not to hire such individuals for the purposes of on-the-ground intelligence, should no longer be pursued. The CIA and other agencies which have intelligence needs have the authority to proceed with using human intelligence and people they need to hire to accomplish that. That is exactly what we should be doing today.

Unfortunately, and I think we have to understand this, it takes months, years, an inordinate amount of time to put these people in place. These individuals with whom we are working in order to gather the human intelligence have to gather their credibility within the organizations they are trying to penetrate, and it literally can take years before those people will become effective. We can not suddenly turn a switch and say we have switched directions and we will be successful in this area. We need to at least begin by turning the switch and saying we are going to switch directions and start using human intelligence-gathering activi-

ties again, as we did through most of the cold war.

Second, in the electronics area it is very obvious that our intelligence-gathering communities, both domestic and foreign-oriented, whether they are CIA or FBI, have severe problems because of the limitations of law that have been placed on them in the area of intelligence-gathering capability and because of the way the commercial community works today. The bill that passed as a result of the amendment offered by Senator HATCH, Senator KYL, and Senator FEINSTEIN made some progress in this area in the area of wiretaps and the ability to, rather than focusing on the piece of equipment, focus on getting a court order that allows monitoring of the individual.

But there is a great deal more that needs to be done, and I expect within the next day or so we will see a package of proposals sent up here by the Attorney General. I hope we will act quickly. That package has been represented to me to be a package which has what is needed and what can be done without undermining our constitutional protections of search and seizure and other rights we have. The simple fact is, we do need to act in this area.

In addition, the area of encryption, time after time, for 4 years, we heard in our committee was the single biggest concern the FBI had in its capacity to adequately monitor what was going on among the terrorist community, those people who wish to promote terrorism. In the area of encryption we need to have a new regime. We need to have the cooperation of the community that is building the software, producing the software, and building the equipment that creates the encryption technology.

I have ideas how to do this so we do not undermine their activity to sell their product, and ideas that will allow us as a nation that wants to protect the civil rights of individuals and constitutional rights of individuals to do that, yet still allow our law enforcement community, when it sees a need, to be able to break a code. It allows the community to have the access to the keys to accomplish that under a strict structure which is legal and judicially controlled and therefore does not undermine the rights of the individuals who are producing this product or using the product but simply gets at the bad guys. I have a proposal to do that.

More important, we have to recognize this is not a domestic problem. These products are made internationally. I believe we have the right to use the market of the United States as leverage for the purposes of accomplishing the protection of America. We have a huge economic market in the United States. The people making these products want to sell their products in the United States, whether it is

this product or something else they make. I believe we should use the leverage of the American market as a way to say, if you are going to sell this type of equipment anywhere in the world, and you want to sell something in the United States also, you have an obligation to comply with our needs for our national security under a strict legal judicial structure.

I am hopeful we can set up a regime that will be fair, that will be subject to the judicial controls necessary to protect the constitutional rights of people who are law-abiding but will also give our intelligence community the access to the information they need when they know there is somebody out there using encryption technology for the purposes of pursuing a terrorist act in the United States. There is no excuse for anybody to be underwriting that type of activity in our country. That is the intelligence level.

The second level, as I mentioned, was the apprehension level. Apprehension is extremely difficult when you are dealing with the terrorist community. There is an entire law enforcement concept in this Nation that says we apprehend after the act occurs. Yet if we wait until after the act occurs in the area of terrorism, the harm is so extreme, as we saw in New York and in Washington, that it becomes very hard to justify allowing the event to occur before we have declared that the individual needs to be apprehended. We have to change our mindset and our approach, and in doing so we have to address our constitutional protections so you do not end up undermining that because it will make the terrorist successful.

The simple fact is we are going to have to adjust our approach in the area of law enforcement to one of apprehending before the event approaches rather than after the event.

Second, we are going to have to face the fact that our borders are incredibly porous and we have to set up a new regime for managing our borders which allows the proper flow of individuals back and forth so we can have the access that people, for example, from Mexico wish to have to work in the United States. But we also have to have controls so we know who is coming into our country.

Again, I think the Guest Worker Program discussed and in the works is a way to address that. I have some thoughts in that area. This will be a key element of the United States of how we apprehend individuals who are bent on committing acts of terror in our Nation, getting control over our borders.

The third element involved is crisis management and consequence management. Here the Federal Government needs to get its act under control. We have 46 agencies responsible for some element of terrorism or

counterterrorism. There is tremendous overlap; that is, regrettably, turf issues. There is often indecision and lack of communication of information. In fact, in the instance we had in New York, there may have been a specific lack of communication of information. We need a centralized management structure within our Federal Government.

We have proposed in the Commerce-State-Justice bill it be divided for the purposes of domestic terrorist acts—no military but domestic terrorist acts—into two areas. In the Justice Department, appointment of a Deputy Attorney General of Terrorism, with a cross-jurisdiction responsibility. Unless you have budget authority for this individual, there is no point in having such an individual.

The Justice Department for crisis management, the Federal Emergency Management Administration for consequence administration, they would essentially be coordinators of the issue of how we handle domestic terrorist events here in the United States. They would function as coequals, and would be sequential, however, in their response to an event.

This is just one proposal for how to do it. It is one that passed this Senate and has been strongly supported, for example, by the assistant leader, Senator REID. I thank Senator HOLLINGS for his support and Senator WARNER and Senator SHELBY, who participated in the hearings.

As I mentioned, this is just one approach to accomplishing this goal, but we need to accomplish this goal, and we need to accomplish it quickly. The key to accomplishing it, as I mentioned, is whoever is given the responsibility for managing the terrorist portfolio, that individual also has to have budgetary responsibility across departmental lines because the only way you control things in this Government is if you control the dollars. If you do not control the dollars, you are not going to be able to control the activity. With the drug czar, we saw a complete failure of just naming someone to a position and claiming he has responsibility when he never got the authority to do the job. We cannot afford that on the issue of terrorism.

This cannot be a public relations event. This must be an individual who has significant power and the responsibility and the capacity to carry out that responsibility because he has the power to do it.

My time has run out. I know there are other people who want to speak so I will yield the floor, but I do intend to speak further on this issue of how we manage our house on the issue of terrorism. There is a lot we need to do and a great deal that needs to be thought about in this area.

I especially thank the Senator from North Dakota for his courtesy.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair. (The remarks of Mr. SPECTER pertaining to the introduction of S. 1434 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. ALLARD. Madam President, I request 10 minutes in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COLORADO FEDERAL JUDICIAL NOMINEES

Mr. ALLARD. Madam President, I come to the floor today to speak about an issue of great importance to the State of Colorado. This is the nomination and confirmation of Federal judges.

I am pleased to announce that recently the President nominated two outstanding individuals to fill vacancies on the Colorado Federal District Court.

The first is U.S. Chief Bankruptcy Judge Marcia Krieger of Denver, the other is Colorado District Court Judge Robert Blackburn of Las Animas. Both are extremely well qualified. Both are sitting judges with extensive experience managing a case load. Both have had distinguished legal careers and are widely respected in our State. Both will make Colorado and the Nation proud as Federal judges.

Judge Krieger has been a Federal bankruptcy judge for the District of Colorado since 1994, and she was appointed Chief Judge for the Bankruptcy Court for Colorado last year.

Judge Krieger is a graduate of the University of Colorado School of Law and she currently serves as an adjunct law professor at her alma mater.

Judge Krieger has extensive private practice and litigation experience.

Judge Blackburn has been a Colorado State District Court Judge since 1988. He is a judge in the 16th Judicial District, in the southeast part of Colorado, a largely rural and agricultural area of the State.

He is graduate of the University of Colorado School of Law, and he has extensive experience in private practice and as a deputy district attorney. He has also been a cattle rancher in our State.

Earlier this year the President also nominated Mr. Tim Tymokovich of Broomfield to the 10th Circuit Court of Appeals. This appointment is important not only to Colorado, but also to the other five States in the 10th Circuit—Wyoming, Utah, Kansas, Oklahoma, and New Mexico.

Mr. Tymokovich is the former solicitor general for the State of Colorado, he has extensive litigation experience