SEE SOMETHING, SAY SOMETHING ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

H.R. 963

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SEE SOMETHING, SAY SOMETHING ACT OF 2011

FRIDAY, JUNE 24, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:06 a.m., in room 2141, Rayburn Office Building, the Honorable Trent Franks, (Chairman of the Subcommittee) presiding.

Present: Representatives Franks, Smith, Chabot, King, Nadler, Quigley, and Scott.

Staff present: (Majority) Holt Lackey, Counsel; Sarah Vance, Clerk; Grant Anderson, Legal Research Assistant; (Minority) David Lachmann, Staff Director; Keenan Keller, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. FRANKS Well, that buzzer means this meeting needs to come to order quickly.

Good morning and welcome to this Constitution Subcommittee hearing on H.R. 963, the "See Something, Say Something Act of 2011."

Information is the most important tool we have for preventing terrorist attacks, and an alert citizenry is the most important source of information about potential terrorist attacks. The more that our law enforcement and anti-terror professionals know, the better they can understand our enemy's plans and stop attacks before they occur.

Some of the most useful information available to these professionals comes from the ordinary Americans who see something out of the ordinary and alert the authorities. When citizens see suspicious activity that could be related to a terrorist attack, they should share that information without hesitation. This is why the Department of Homeland Security has made it a centerpiece of its anti-terror efforts to tell citizens if you see something, say something.

The question presented by this hearing is whether fear of frivolous litigation should discourage citizens from coming forward with information about suspicious behavior they observe. The answer in my judgment is a resounding no. When an American reasonably suspects that an act of terrorism may be in the works, his or her focus should only be on preventing that attack—not on avoiding civil liability. We must not allow our civil litigation system to get in the way of our anti-terrorism strategy.

Last week, the Attorney General argued that our civilian court system is, quote, our most effective terror-fighting weapon. Well, I would strongly disagree. Our most effective terror-fighting weapons are the eyes and ears of 300 million Americans who share a common goal of keeping our country safe.

The list of terror attacks that have been prevented or mitigated by brave citizens stepping forward and sharing their suspicions is long. The Unabomber's reign of terror was ended when his brother came forward with his suspicions. A private security guard helped minimize the death from the 1996 Olympic Park bombing in Atlanta. Street vendors who noticed suspicious smoke coming from a parked van prevented last year's attempted bombing of Times Square. Possible attacks on Fort Dix and downtown Dallas have been stopped in the planning phase because of tips from concerned citizens.

By contrast, I am not aware of any attack that has been prevented by a court order or a lawsuit. What we must never allow is for our court system to intimidate or interfere with our citizens' willingness to share information and prevent attacks. Unfortunately, some citizens who have come forward with their good faith suspicions of terrorist activity have been sued for coming forward and sharing their information. Passengers on a 2006 U.S. Airways flight who shared their suspicions about the behavior of some of their fellow passengers found themselves defendants in a lawsuit for their efforts.

Under our current law, citizens who suspect terrorist activity must at least consider the possibility that they will be sued if they are wrong. Worries about lawsuits should be the furthest thing from a citizen's mind when a terror plot may be in progress. Our citizens should rely on their own reasonable instincts and common sense and do the right thing.

The flow of information and the vigilance of our citizens are fundamental to preventing terrorist attacks. The message to our citizens should be clear: if you see something, say something. The message should not be: say something and we will sue someone.

H.R. 963 will make clear that our anti-terror strategy is based on citizens exercising their vigilance and common sense, not the fear of costly litigation.

And I look forward to our distinguished panel of witnesses.

And I yield now to the distinguished Ranking Member, Mr. Nadler, for his opening statement.

[The bill, H.R. 963, follows:]

I

112TH CONGRESS
1ST SESSION

H. R. 963

To amend the Homeland Security Act of 2002 to provide immunity for reports of suspected terrorist activity or suspicious behavior and response.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2011

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Homeland Security Act of 2002 to provide immunity for reports of suspected terrorist activity or suspicious behavior and response.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "See Something, Say Something Act of 2011".

SEC. 2. AMENDMENT TO THE HOMELAND SECURITY ACT OF 2002.

(a) IN GENERAL.—Subtitle H of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 451 et seq.) is amended by adding at the end the following:

"SEC. 890A. IMMUNITY FOR REPORTS OF SUSPECTED TERRORIST ACTIVITY OR SUSPICIOUS BEHAVIOR AND RESPONSE.

"(a) IMMUNITY FOR REPORTS OF SUSPECTED TERRORIST ACTIVITY OR SUSPICIOUS BEHAVIOR AND RESPONSE.—

"(1) IN GENERAL.—Any person who, in good faith and based on objectively reasonable suspicion, makes, or causes to be made, a voluntary report of covered activity to an authorized official shall be immune from civil liability under Federal, State, and local law for such report.

"(2) FALSE REPORTS.—Paragraph (1) shall not apply to any report that the person knew to be false or was made with reckless disregard for the truth at the time that the person made that report.

"(b) IMMUNITY FOR RESPONSE.—

"(1) IN GENERAL.—Any authorized official who observes, or receives a report of, covered activity and takes reasonable action in good faith to respond to such activity shall have qualified immunity from civil liability for such action, consistent with applicable law in the relevant jurisdiction. An authorized official as defined by section (d)(1)(A) not entitled to assert the defense of qualified immunity shall nonetheless be immune from civil liability under Federal,

State, and local law if such authorized official takes reasonable action, in good faith, to respond to the reported activity.

"(2) SAVINGS CLAUSE.—Nothing in this subsection shall—

"(A) affect the ability of any authorized official to assert any defense, privilege, or immunity that would otherwise be available; and

"(B) be construed as affecting any such defense, privilege, or immunity.

"(c) ATTORNEY FEES AND COSTS.—Any authorized official or other person found to be immune from civil liability under this section shall be entitled to recover from the plaintiff all reasonable costs and attorney fees.

"(d) DEFINITIONS.—In this section:

"(1) AUTHORIZED OFFICIAL.—The term 'authorized official' means—

"(A) any officer, employee, or agent of the Federal government with responsibility for preventing, protecting against, disrupting, or responding to a 'covered activity;' or

"(B) any Federal, State, or local law enforcement officer.

"(2) COVERED ACTIVITY.—The term 'covered activity' means any suspicious transaction, activity,

1 or occurrence indicating that an individual may be
2 engaging, or preparing to engage, in a violation of
3 law relating to an act of terrorism (as that term is
4 defined in section 3077 of title 18, United States
5 Code).".

6 (b) AMENDMENT TO THE TABLE OF CONTENTS.—
7 The table of contents for the Homeland Security Act of
8 2002 is amended by inserting at the end of subtitle H
9 of title VIII the following item:

"Sec. 890A. Immunity for reports of suspected terrorist activity or suspicious behavior and response.".

○

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, today's hearing is on the See Something, Say Something Act which revisits existing immunities granted by Congress and by other statutes to persons making reports to law enforcement and to law enforcement officers acting on those reports.

In the real world, this kind of community law enforcement cooperation has been one of the keys to success in fighting crime and terrorism. I am glad to see that there is a developing enthusiasm on this subject, even from my colleagues who have in the past opposed such efforts as the COPS program. This may be the beginning of a beautiful partnership.

The See Something, Say Something initiative is familiar to every New Yorker. Our police force has worked hard over many years to develop the trust and cooperation necessary to make their efforts more effective. The community-oriented policing program that we pioneered is a model for the country. So I strongly support efforts to encourage citizen involvement.

Coming from New York City and working here in Washington, I know a little something about being a terrorist target. You can walk to Ground Zero and to the Brooklyn Bridge from my office. I pass Times Square every day on the way to the office. My district has been bombed twice by international terrorists. Jewish communal institutions were targeted by terrorists in New York, and thanks to alert citizens and law enforcement, those plots were foiled. So New Yorkers are very familiar with the continuing threat of terrorism and with the necessity to form close partnerships between law enforcement and the community.

So what are my concerns today? The testimony we are going to hear today—or some of it at any rate—will continue an unfortunate pattern of demonizing the world's more than 1 billion Muslims. The rhetoric can be prettied up any number of ways but the result and the message remain the same, that law enforcement and the public need to target Muslims in order to keep us safe.

Wouldn't it be nice if that were all that were necessary? In the real world, it is not. In the real world, treating an entire community as inherently suspect is not only wrong, but law enforcement repeatedly tells us that it actually makes us less safe. I have been told that in meetings with local law enforcement, with Federal law enforcement, and in meetings with El Al Security, people who know something about security. It blinds us to other threats, to means by which terrorists can evade our scrutiny, and it undermines the community cooperation that gives law enforcement the eyes and ears on the street they need to stop terrorism before it occurs.

I recall how loudly some conservatives complained when the Department of Homeland Security issued a memo some years ago, withdrawn under political pressure, that identified certain right-wing elements as potential terrorist threats. After Oklahoma City, the shooting of doctors and the bombing of clinics and the widespread existence of private armed militias preparing to make war on the United States, it is not far-fetched for DHS to issue such a caution.

So we will hear a great deal of demonization of one group, and that testimony will be largely irrelevant to the legislation we are supposed to be considering today.

What would be useful would be to find out what is the current state of the law and where actual legal problems might exist. I don't know how much of that we are going to hear, but that, it seems to me, is the fundamental question we need to examine.

For example, I would love to hear from DHS which is promoting the See Something, Say Something program whether they believe the law needs to be changed and how, in fact, the bills before us change the law, if at all, both from common law tort law and from current statutes.

I want to welcome our witnesses and I look forward to their testimony on this very timely and important topic.

And I yield back.

Mr. FRANKS. I thank the Ranking Member, and I now recognize the Chairman of the full Committee, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Because of time constraints, I would ask unanimous consent to have my entire opening statement be made a part of the record, as well as a statement by Chairman Peter King of the Homeland Security Committee.

Mr. FRANKS. Without objection.

[The prepared statement of Mr. Smith follows:]

For Immediate Release: June 24, 2011 Contact: Kim Smith Hicks, 202-225-3951

Statement of Judiciary Committee Chairman Lamar Smith
Subcommittee on the Constitution
Hearing on H. R. 963, the "See Something, Say Something Act of 2011"

Chairman Smith: Ordinary citizens who remain alert and vigilant about their surroundings are America's first line of defense against terrorist attacks.

This is why the Obama Administration has launched the "See Something, Say Something" campaign to encourage Americans to report suspicious activity that may relate to terrorism.

I am proud to have joined with Senators Lieberman and Collins to introduce bicameral legislation to further this important goal. The House bill, H.R. 963, the "See Something, Say Something Act," creates immunity from civil suits for any individual who, in good faith, reports to authorities suspicious activity related to an act of terrorism.

Citizens who share information to stop a possible terrorist attack should be praised, not sued.

In the decade since the September 11 attacks, we have seen several terrorist plots foiled by citizens alerting law enforcement officials to their suspicions. Tragically, we have also seen deaths caused by terrorism that could have been prevented if people had felt more comfortable voicing their reasonable suspicions. Both of these outcomes have occurred in my home state of Texas.

In January, a Saudi national in Texas on a student visa Khalid Aldawsari placed suspicious purchases of the chemical Phenol, which can be used to make explosives. The North Carolina chemical company he used to place the orders noticed the suspicious purchases and reported them to the FBI.

The FBI's investigation uncovered purchases of other chemicals, which, combined with Phenol, can make the explosive T-N-P. An FBI search of his computer uncovered emails describing potential targets including reservoirs and dams, nuclear power plants, night clubs, and the Dallas home of former President George W. Bush. The FBI promptly arrested Aldawsari.

Like attempted attacks on Times Square and Fort Dix before it, Aldawsari's plot was prevented by an alert citizen who saw something, and said something.

By tragic contrast, 13 men and women were murdered by Major Nidal Hasan at Fort Hood, Texas. Perhaps this tragedy could have been avoided if more concerns had been raised about Major Hasan's extremism and his communication with jihadi cleric Anwar al-Awlaki.

Too often citizens are reluctant to share their genuine suspicions about possible terrorist activity.

Unfortunately, at least part of this reluctance may be based on fear of being sued for making such a report.

When the passengers of a 2006 U.S. Airways flight noticed behavior by six men who they genuinely believed to be suspicious, they alerted the crew. The crew shared the suspicions, and these men were removed from the plane.

The authorities ultimately determined that the six men did not pose a threat, and they were released. However, the men then sued the airport, the airline, the authorities, and the passengers who had voiced their sincere concerns.

The prospect of ruinous legal fees and potential damage awards discourages Americans from sharing their good-faith suspicions of terrorist activity.

Based on these concerns, Congress voted on a bipartisan basis in 2007 to protect Good Samaritans from this type of litigation in the transportation context. That bill only applies to reports of "any suspicious transaction, activity, or occurrence that involves, or is directed against, a passenger transportation system or vehicle or its passengers."

But, as the Lubbock, Times Square, Fort Dix, Fort Hood, and Oklahoma City incidents all demonstrate, terrorists' desire to attack is not limited to our transportation systems.

H.R. 963 extends protection from costly lawsuits to any citizen who reports suspicious terrorism-related activity in good faith, whether transportation is involved or not.

The bill also allows these Good Samaritans to recover attorneys' fees. Americans should not have to pay one cent of legal defense costs for helping to prevent a terrorist attack.

To protect against the next attack, we must encourage an open and honest sharing of information.

Intelligence officials and investigators cannot combat the terror threat alone. They need the help of alert citizens who see something suspicious and say something to authorities.

And when Good Samaritans act to safeguard their fellow citizens, the least we can do is protect them from being sued.

When our courts are used to silence concerned citizens, they become a weapon in the terrorists' hands.

Today's hearing will explore how H.R. 963 furthers all of these important anti-terrorism goals and makes America safer.

###

[The prepared statement of Mr. King follows:]

Congressman Peter T. King
Statement for the Record
House Judiciary Committee
Constitution Subcommittee
"See Something, Say Something Act of 2011"
June 24, 2011

I want to take this opportunity to thank Chairman Franks for holding this hearing on the critical issue of providing immunity from lawsuits to individuals who, acting in good faith, report threats to law enforcement. Alert and vigilant citizens who report suspicious activity provide a critical layer for homeland security. Those citizens, who are fulfilling a civic duty, should not suffer through frivolous litigation.

I first advocated for a See Something, Say Something immunity in 2007 after lawsuits were filed against passengers who reported suspicious behavior by six imams who were removed from a U.S. Airways flight. The imams had refused to take their assigned seats, were asking for seatbelt extenders without any need for them, and were exclaiming anti-U.S. statements. In response, I joined with Senators Susan Collins (R-ME) and Joe Lieberman (I-CT) to include language in The Implementing Recommendations of the 9/11 Commission Act of 2007 that protected citizens who reported threats to the nation's transportation systems. That legislation received the support of law enforcement and community groups, including: the Fraternal Order of Police, the National Sheriffs' Association, the National Troopers Coalition, and the National Association of Town Watch.

Following the 2008 terrorist attacks in Mumbai, India, several witnesses testifying before the Senate Committee on Homeland Security and Government Affairs, including Charles Allen, DHS's Chief Intelligence Officer; Donald Van Duyn, the FBI's Chief Intelligence Officer; and New York City Police Commissioner Raymond Kelly, endorsed the expansion of civil immunity beyond the transportation sector.

Today, the Department of Homeland Security's 'See Something, Say Something' awareness campaign runs throughout the nation. But if we are going to ask vigilance from our citizens, we should offer them protection in return. That is why in January, I introduced H.R. 495, The See Something, Say Something Act of 2011, with 17 of my fellow Members of Congress in order to extend protection to those who report suspicious activity anywhere. Senators Collins (R-ME) and Lieberman (I-CT) filed companion legislation in March.

Everyday citizens often serve as the last line of defense against terrorism. We saw this last year in Times Square, when a street vendor helped save countless lives by alerting NYPD officers to a smoking vehicle that was loaded with explosives. That report eventually led to the arrest of Faisal Shahzad.

We cannot allow ordinary citizens to hesitate from reporting their suspicions for fear of legal retribution. Congress has the obligation to remove any impediment to help protect the Homeland.

I would like to thank Chairman Smith for his hard work and support on this important issue, and thank the Committee for including my statement in the record.

Mr. SMITH. But I also would like to make some brief comments about this legislation.

Mr. Chairman, ordinary citizens who remain alert and vigilant about their surroundings are America's first line of defense against

terrorist attacks. This is why the Obama administration has launched the See Something, Say Something campaign to encourage Americans to report suspicious activity that may relate to terrorism.

I have joined with Senators Lieberman and Collins to introduce bicameral legislation to further this important goal.

Citizens who share information to stop a possible terrorist attack should be praised not sued. Too often citizens are reluctant to share their genuine suspicions about possible terrorist activity. Unfortunately, at least part of this reluctance may be based on fear of being sued for making such a report, and we saw that in the case of the passengers on the 2006 U.S. Airways flight. They noticed suspicious behavior. They reported it. Six individuals were taken off the plane. They were later allowed to go back on the plane but shortly thereafter they sued the passengers for reporting such activity.

H.R. 963 extends protection from costly lawsuits to any citizen who reports suspicious terrorism-related activity in good faith, whether transportation is involved or not. The bill also allows these Good Samaritans to recover attorney's fees.

To protect against the next attack, we should encourage an open and honest sharing of information. Intelligence officials and investigators cannot combat the terror threat alone. They need the help of alert citizens who see something suspicious and say something to authorities. And when Good Samaritans act to safeguard their fellow citizens, the least we can do is protect them from being sued. When our courts are used to silence concerned citizens, they become a weapon in the terrorists' hands.

Today's hearing, Mr. Chairman, will explore how H.R. 963 furthers all these important anti-terrorism goals and makes America safer.

I thank you for having the hearing, and I will yield back.

Mr. FRANKS. And I thank the distinguished Chairman.

And as you all know, a vote has been called and we are going to have to adjourn the meeting for the moment, and I hope that we will see you here after votes. Thank you.

[Recess.]

Mr. FRANKS. This meeting is called back to order. Thank you all for being so patient.

I just want to say for the record here that this is somewhat of a reaction to one of the opening statements. This bill will not lead to racial profiling. The bill provides immunity for Americans who report suspicious activity without regard to the sex, race, religion, or national origin of the party engaging in the suspicious activity or the party making the report. If a citizen had reported the Unabomber, Eric Rudolph, or Timothy McVeigh for serious and suspicious activity, this bill would have given that citizen immunity. The 2007 law that created similar immunities in the transportation context has not led to any known incidences of racial profiling. This bill is about creating immunity for citizens who report suspicious activity reasonably in good faith. It is not about racial profiling, and a report based on race alone would probably not be reasonable or in good faith. So I just wanted to put that down for the record.

And I so look forward to the testimony this morning from our distinguished panel of witnesses.

I want to remind Members that without objection, all of their opening statements will be made part of the record.

And we do, indeed, have a very distinguished panel of witnesses today.

Our first witness, Mr. Lawrence Haas, is a senior fellow for U.S. Foreign Policy at the American Foreign Policy Council, a former senior White House official, and award-winning journalist. Mr. Haas writes widely on foreign and domestic affairs. He is quoted often in newspapers and magazines and appears frequently on television and radio. Mr. Haas was communication director and press secretary for Vice President Al Gore and before that, communications director for the White House Office of Management and Budget in the Clinton administration. After his White House tenure, Mr. Haas served for 2 years as director of public affairs and special assistant to the president at Yale University. Welcome, sir.

Our second witness, Chief Chris Burbank, has been the chief of police at the Salt Lake City Police Department since 2006 and has been with the department since 1991. Chief Burbank has a bachelor of science degree in sociology from the University of Utah and is a graduate of the FBI's National Executive Institute. Chief Burbank served as a venue commander during the 2002 Salt Lake City Winter Olympic Games in which post he was responsible for planning, organizing, and implementing security for the downtown Olympic Square with more than 1,000 Federal and State and local law enforcement officers and troops from the Utah National Guard under his command. Welcome, Chief.

Our third witness, Dr. Zuhdi Jasser, is the President and Founder of the American Islamic Forum for Democracy. Dr. Jasser founded AIFD in the wake of the 9/11 attacks in the United States as an effort to provide an American Muslim voice advocating for liberty, freedom, and the separation of mosque and state.

Dr. Jasser is a first generation American Muslim whose parents fled Syria in the mid-1960's.

Dr. Jasser is a respected physician who served 11 years as a medical officer in the U.S. Navy. He is currently in private practice in Phoenix, Arizona, specializing in internal medicine and nuclear cardiology. He is past president of the Arizona Medical Association. Dr. Jasser is from my home State and a very beloved friend, and I welcome you, Dr. Jasser.

Each of the witness' written statements will be entered into the record in its entirety, and I ask each witness to summarize his testimony in 5 minutes or less. But to help you stay within that time limit, there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals that the witness' 5 minutes have expired.

Before I recognize the witnesses, it is the tradition of this Subcommittee that they be sworn. So if you would please stand.

[Witnesses sworn.]

Mr. FRANKS. Thank you and please be seated.

Now I would recognize our first witness, Mr. Haas, for 5 minutes, sir.

TESTIMONY OF LAWRENCE J. HAAS, SENIOR FELLOW FOR U.S. FOREIGN POLICY, AMERICAN FOREIGN POLICY COUNCIL

Mr. HAAS. Thank you very much, Mr. Chairman. Mr. Chairman, Members of the Subcommittee, thanks for the opportunity to appear before you today. I am honored to be here.

With only 5 minutes, I will be as crisp as I possibly can be.

I strongly support this legislation. I hope Congress and the Administration can enact it as soon as possible. I do believe that it draws the appropriate line between national security and personal protections. It will enable the American people and law enforcement officials to do precisely what it is we want them to do and, at the same time, apply these protections only to the extent that Americans make good faith efforts to play their roles honestly and not in cases in which people knowingly target groups or individuals with dishonest, unfair allegations or action.

Mr. Chairman, in light of the recent U.S. success in bringing justice to Osama bin Laden and reports of al Qaeda's weakened state, we may grow tempted to let our guard down, and I do believe that would be unwise for at least two reasons.

First, we face a terrorist threat that is far larger than the state of any one organization. It is a threat that involves a variety of interconnected groups and an underlying ideology which is known as jihadi or jihadist or jihadism, about which I write more in my testimony.

Second, efforts to attack the United States from outside or to foment anti-American feeling from within continue and actually are increasing at a rather feverish pace, and it is not just me who says so. In a speech earlier this year, the Deputy National Security Advisor Denis McDonough had this to say. "For a long time, many in the U.S. thought that our unique melting pot meant we were immune from this threat, this despite the history of violent extremists of all kinds in the United States. That was false hope and false comfort. This threat is real and it is serious." And he goes on to detail a bit about it related to al Qaeda and some of its subscribers within the United States.

The Secretary of Homeland Security, the Attorney General have also spoken in recent months about this growing threat from within the United States from American citizens or others who are living within the United States. Homegrown threats that are fueled by radical Islam are on the rise, and if I could just offer a few statistics.

Law enforcement officials arrested 22 jihadi suspects from May 2009 to November 2010. That was compared to 21 in the previous 7 years. Since September 11th, there have been more than 50 homegrown terrorist plots which have included plots to blow up the Brooklyn Bridge, an office building in Dallas, a Federal courthouse in Illinois, the transit system in Washington, D.C. and the trans-Alaska pipeline.

And you can just consider the news of recent weeks. Jihadi web forums posted a potential hit list of U.S. leaders in government, industry, and the media. The Department of Homeland Security and the FBI warned police across the country that al Qaeda retains a continuing interest in attacking oil and natural gas targets. We had the arrest of a Somali American man in Columbus on charges

of helping al-Shabaab. We have had two Iraqi men living in Kentucky who were arrested and charged with helping al Qaeda in Iraq and so on.

Mr. Chairman, you have already outlined how the American people have played a vital role in protecting the homeland. The Fort Dix incident, the potential bombing in Times Square, the recent action this year which led to the arrest of Khalid Aldawsari of Lubbock, Texas. We also know what can happen when we let our guard down, probably the best example being the case of the Fort Hood shooting where we ignored numerous hints of potential trouble from Army psychiatrist Major Nidal Malik Hasan leading to a shooting that left 13 dead and 38 wounded.

I want to make one final point as my time is running out. Congress has reacted well to pending problems. It reacted well in 2007 in response to the so-called "flying imams" case that you mentioned, Mr. Chairman, with legislation to protect people who report suspicious activity in the transportation sector. It responded well with regard to the problem of libel tourism just last year with legislation that it passed and President Obama signed.

With the See Something, Say Something Act of 2011, Congress has an opportunity to move from defense to offense, from reacting to proactive activity and to provide a more general protection for well-meaning citizens and officials in whatever context legitimate suspicions arise.

So with that, I thank you again for inviting me to testify. I would be happy to take any questions that you have later on.

[The prepared statement of Mr. Haas follows:]

TESTIMONY OF

LAWRENCE J. HAAS
SENIOR FELLOW FOR U.S. FOREIGN POLICY
AMERICAN FOREIGN POLICY COUNCIL

TO THE
SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ON H. R. 963:
"THE SEE SOMETHING, SAY SOMETHING ACT OF 2011"

June 24, 2011

Mr. Chairman, Ranking Member Nadler, Members of the Subcommittee, thank you for the opportunity to appear before you today. I am genuinely honored to be here.

I am Lawrence J. Haas, Senior Fellow for U.S. Foreign Policy at the American Foreign Policy Council, a non-partisan, non-profit think tank in Washington D.C., which was founded in 1982. Although I am confident that my colleagues at AFPC would agree with the views that I will express today, AFPC does not have an institutional position on the legislation that is the subject of this hearing. Consequently, I should make clear that I am speaking this morning as an individual.

Mr. Chairman, I want to congratulate Chairman Smith for proposing this important piece of legislation, and you for holding this hearing. I strongly support the legislation, and I hope that Congress and the Obama Administration can enact it as soon as possible. It will provide important protections for the people of the United States in what we hope will be their continuing role as our collective eyes and ears, and for the federal, state, and local officials who work to keep us safe. At the same time, the legislation makes clear that its protections apply only to the extent that Americans make good faith efforts to play their roles honestly – and not in cases in which people knowingly target groups or individuals with unfair allegations or action. In this way, the legislation draws an appropriate line between national security and personal protections.

As recent history has shown clearly, the nation needs the eyes and ears of all of its people if, collectively, we are to protect the homeland from terrorist attack. This is a job not just for government but for each and every one of us. We simply must ensure that our people and our

officials can make good faith efforts to do their part without fear that these efforts will be turned against them in the form of lawsuits from disgruntled parties. Anything less will weaken our homeland security while exposing well-intentioned people and officials to unfair risk to their finances and their reputations.

The threats continue

In light of the recent U.S. success in bringing justice to Osama bin Laden and reports of al Qaeda's weakened state, we may grow tempted to let our guard down. That would be unwise, for at least two reasons.

First, we face a terrorist threat that is far larger than the state of any one terrorist organization, however notorious it may be.

Al Qaeda may have engineered the attacks of September 11th, but the threats come from multiple directions. In her 2006 book, *Knowing the Enemy*, Johns Hopkins scholar Mary Habeck may have said it best:

> [T]he nineteen men who attacked the United States and the many other groups who continue to work for its destruction – including al-Qaida [sic] – are part of a radical faction of the multifaceted Islamist belief system. This faction – generally called 'jihadi' or 'jihadist' – has very specific views about how to revive Islam, how to return Muslims to political power, and what needs to be done about its enemies, including the United States.[1]

To the jihadists, Islam is everything. And in elevating Islam to this exalted, all-encompassing, unquestioned position, the jihadists reject the most cherished of Western values. They recognize no separation between church and state; in essence, religion is the state. They reject Western notions of personal freedom; people are "free" only to follow the dictates of Islam. They reject freedom of religion; all must follow the strict dictates of Islam and all Muslims must confront those who do not. They reject democracy because people should have no power to decide how they will be governed; Islam provides the answer to any such question. They reject equality between men and women; men rule over women, the latter of whom lack power to carve out independent lives.

Jihadism has roots in both of the main branches of Islam – the Sunni, to which most Muslims belong, and the Shia.

[1] Habeck, Mary, *Knowing the Enemy* (New Haven: Yale University Press), 2006, p. 4.

To be sure, Sunni and Shia governments eye each other warily and compete for regional dominance. The Sunni states of Saudi Arabia and Jordan, for instance, seek to thwart the regional hegemonic influence of Iran, a Shia state. Sunnis overwhelmingly dominated the Greater Middle East for decades until the Iranian Revolution of 1979, which replaced the Shah with a radical Shi'ite theocracy.

Having said that, jihadists of both strains have repeatedly demonstrated their willingness to enter "marriages of convenience" in order to pursue their shared agenda of attacking and weakening, among others, the United States. Shi'ite Iran provides funds for the Palestinian terrorist group Hamas, an offshoot of the Sunni Muslim Brotherhood. Iran also has worked with al Qaeda, a Sunni group. Hezbollah, the Lebanese Shi'ite militia, works closely with Hamas and other terrorist groups to pursue their shared commitment to destroy the State of Israel.

Second, efforts to attack the United States from the outside or to foment anti-American feeling from within continue at a feverish pace.

In a speech earlier this year, Deputy National Security Advisor Denis McDonough had this to say:

> For a long time, many in the U.S. thought that our unique melting pot meant we were immune from this threat – this despite the history of violent extremists of all kinds in the United States. That was false hope, and false comfort. This threat is real, and it is serious.
>
> How do we know this? Well, al Qaeda tells us. They're not subtle. They make videos, create Internet forums, even publish online magazines, all for the expressed purpose of trying to convince Muslim Americans to reject their country and attack their fellow Americans.
>
> There's Adam Gadahn, who grew up in California and now calls himself an al Qaeda spokesman. There's Anwar al-Awlaki, who was born in the United States and now exhorts Americans to violence from hiding in Yemen as part of al Qaeda in the Arabian Peninsula. And there's Omar Hammami, an Alabama native who joined the terrorist group al-Shabaab in Somalia and uses rap and hip hop in an attempt to reach young Americans.[2]

Indeed, home-grown threats that are fueled by radical Islam are on the rise. Law enforcement officials arrested 22 jihadist suspects from May 2009 to November 2010, compared to 21 in the

[2] Remarks of Denis McDonough, Deputy National Security Advisor to the President – As Prepared for Delivery, White House website, at http://www.whitehouse.gov/the-press-office/2011/03/06/remarks-denis-mcdonough-deputy-national-security-advisor-president-prepa.

previous seven years, according to the Congressional Research Service.[3] Since September 11, the *Wall Street Journal* reported in March, the nation has endured more than 50 home-grown terrorist plots, involving about 130 people – plots to blow up the Brooklyn Bridge, an office building in Dallas, a federal courthouse in Illinois, Washington's Metro mass transit system and the trans-Alaska pipeline.[4] Homeland Security Secretary Janet Napolitano told Congress earlier this year that plots to attack America increasingly come from U.S. citizens and residents "inspired by al Qaeda ideology,"[5] while Attorney General Eric Holder said he increasingly worries about "people in the United States, American citizens."[6]

Muslim Americans are concerned. Sixty-one percent of them said they were very or somewhat concerned about the potential rise of radical Islam in the United States, according to a 2007 Pew Research Center poll – perhaps for good reason. Eight percent of American-Muslims say they believe that suicide bombings to defend Islam are at least sometimes justified, the poll found, while five percent view al Qaeda favorably – with an additional 27 percent saying they didn't know or refusing to answer. Because Muslim Americans reportedly number two to three million people, those statistics are unsettling.

Consider the news of just recent weeks. Jihadi web forums posted a potential "hit list" of U.S. leaders in government, industry, and the media.[7] The Department of Homeland Security and FBI warned police across the country that al Qaeda retains a "continuing interest" in attacking oil and natural gas targets.[8] A Somali-American man was arrested in Columbus and charged with providing material support for the terror group al-Shabaab.[9] The FBI announced that a Minnesota man was one of two suicide bombers responsible for killing two African Union soldiers in Somalia.[10] Two Iraqi men who were living in Kentucky were arrested and charged with helping al Qaeda in Iraq carry out attacks against U.S. troops.[11] And a new book, *The Next Wave*, says

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[3] Bjelopera, Jerome P., and Randol, Mark A., "American Jihadist Terrorism: Combating a Complex Threat," Congressional Research Service, December 7, 2010.
[4] Editorial, "The Homegrown Terror Hearings," *Wall Street Journal*, March 11, 2001.
[5] Napolitano, Janet, "Understanding the Homeland Threat Landscape – Considerations for the 112th Congress," Testimony before the Committee on Homeland Security, U.S. House of Representatives, February 9, 2011.
[6] Cloherty, Jack, and Thomas, Pierre, "Attorney General's Blunt Warning on Terror Attacks," ABC News, December 21, 2010.
[7] "Jihadi Web forums suggest targets for terror," CNN.com, at http://articles.cnn.com/2011-06-16/us/terror.targets_1_adam-gadahn-targets-bulletin?_s=PM:US.
[8] "U.S.: Al Qaeda has interest in strikes on energy infrastructure," CNN.com, at http://articles.cnn.com/2011-05-20/us/terror.alert_1_tankers-imminent-terrorist-attack-attack-planning?_s=PM:US.
[9] "Somali-American charged with aiding al-Shabaab terror group," CNN.com, at http://articles.cnn.com/2011-06-09/justice/ohio.somalia.american.arrested_1_shabaab-terror-group-somali-american?_s=PM:CRIME.
[10] "FBI: Minnesota man was suicide bomber in Somalia," CNN.com, at http://articles.cnn.com/2011-06-09/world/somalia.suicide.bomber_1_shabaab-somali-american-suicide-bomber?_s=PM:WORLD.
[11] "2 Iraqis arrested in Kentucky, charged with aiding al Qaeda in Iraq," CNN.com, at http://articles.cnn.com/2011-05-31/justice/kentucky.iraqis.arrested_1_qaeda-iraqi-authorities-weapons?_s=PM:CRIME.

American-born jihadist cleric Anwar al-Awlaki probably played an important role in the September 11th attacks.[12]

Public involvement has proved vital

Mr. Chairman, the American people have played a vital role in protecting the U.S. homeland over the last decade.

In early 2007, a teenage clerk at an electronics store probably saved the lives of military personnel at Fort Dix, New Jersey, and maybe elsewhere. After two men asked him to transfer the contents of a videotape to a DVD, he became alarmed when he saw that the tape included scenes of jihadists using weapons and shouting slogans in Arabic. The clerk called the FBI, who tracked down and captured a group known as the "Fort Dix Six" as they were reportedly in the final stages of training for an assault on Fort Dix and maybe other installations.

Last year, a T-short vendor in New York's Times Square on a busy Saturday alerted police to smoke that was coming out of the backseat of a Nissan Pathfinder. Had the homemade bomb of propane, gasoline, and fireworks actually detonated rather than malfunction, it probably would have killed at least dozens of people. Faisal Shahzad was arrested two days later while on board an airplane that was about to leave for Dubai. Shahzad, who bragged that he had trained with Pakistan's Taliban and promised that "the war with Muslims has just begun," was sentenced to life in prison.

Early this year, a chemical supplier in North Carolina told the FBI that someone was buying Phenol, which can be used to make explosives. The FBI tracked down and arrested Khalid Aldawsari of Lubbock, Texas, and found e-mails in which he described potential targets that included "reservoirs and dams in Colorado and California, nuclear power plants, night clubs and the Dallas home of former President George W. Bush." Aldawsari had written in his diary, "It is time for Jihad."

Letting our guard down has proved lethal

Mr. Chairman, we also have seen what can happen when we let our collective guard down.

Perhaps the best example is the Fort Hood shooting by Army psychiatrist Maj. Nidal Malik Hasan in late 2009 that left 13 dead and 38 wounded. In the days after that shooting, we learned

[12] Lake, Eli, "Book links Awlaki to 9/11 attacks," *Washington Times*, June 19, 2011.

that, collectively, we had ignored all the following signals – or at least we were not sufficiently alarmed about them to take action:

- Hasan's fellow Army doctors expressed concern to their supervisors that Hasan had divided loyalties – to Muslims world-wide and to the United States. One complained about his "anti-American" rants.

- Hasan wrote 10 to 20 e-mails over the prior two years to a radical cleric in Yemen who promotes jihad, who served as an imam in a Virginia mosque that Hasan had attended, who preached at mosques that three future 9/11 hijackers attended, and who later praised Hasan's massacre as a "heroic act."

- In mid-2007, rather than speak on a medical topic as he was supposed to do, Hasan lectured his supervisors and other mental health experts about Islam, about suicide bombing, and about American Muslims who might be hesitant to fight in the Muslim countries of Iraq and Afghanistan.

- Hasan described himself as a "Palestinian," authored blog posts that described suicide bombing favorably, told classmates in his master's program that Islamic law trumped the Constitution, and proselytized about Islam to veterans under his care.

- Hasan told a friend the night before the shootings that he should quit the military because the Koran teaches "you're not supposed to have alliances with Jews or Christians or others," and he gave away his belongings and handed out Korans to neighbors hours before the shootings.

An opportunity for proactivity

Mr. Chairman, Congress has reacted well when presented with a compelling reason to update the U.S. legal system so that it can more effectively protect our rights and combat terrorism. The House Judiciary Committee has played an important role in that effort.

For instance, the legislation that is the subject of this hearing would broaden the protections that Congress provided in 2007 for individuals who report suspicious activity with regard to the transportation sector.

That action followed the controversy surrounding the so-called "flying imams" – six Islamic clerics who in 2006 were removed from a US Airways flight that was about to take off from Minneapolis because they were acting suspiciously. With the plane still on the runway, other

passengers reported that the clerics were not sitting in their assigned seats and had asked for seat belt extenders that they apparently did not need and that they could have used as weapons. After the passengers reported their suspicions, airline authorities removed the clerics from the plane so they could investigate further. The clerics then sued the passengers in question. Congress subsequently passed, and President Bush signed, legislation to give individuals immunity in cases like that.

Congress also passed, and President Obama signed, legislation last year to address the growing problem of what's called "libel tourism."

That is the practice by which individuals use the courts of nations that provide laxer freedoms of speech and of the press than U.S. courts to seek libel judgment against U.S. writers. The best-known case involved Saudi billionaire Sheikh Khalid Bin Mahfouz, who brought suit in Great Britain against New York author Rachel Ehrenfeld over her book, *Funding Evil: How Terrorism is Financed and How to Stop It*, in which she accused Mahfouz of financing terrorism. Mahfouz could sue in Great Britain, where writers enjoy far fewer legal protections than in the United States, because 23 copies of the book were sold through the internet to English residents. Ehrenfeld did not contest the suit, and the court entered a default judgment against her, ordering her to pay $225,000 in damages, destroy copies of the book, and apologize.[13] Instead, she mounted an effort in the United States to change federal and state laws to ensure that U.S. writers do not find themselves in such a situation. Several states passed their own laws, and the federal government then enacted The SPEECH Act, which prevents U.S. courts from recognizing judgments against U.S. writers from courts that provide fewer protections to writers than under U.S. law.

With the "See Something, Say Something Act of 2011," this Congress has the opportunity to move from defense to offense, to move from reacting to pending problems to proactively providing important protections for well-meaning citizens and officials in whatever context they may arise.

Conclusion

Since the attacks of September 11th, we have asked the American people as well as the federal, state, and local law enforcement officials who work to protect them to play important roles in helping to secure the nation's homeland. We fail them, and we fail ourselves, when we leave open the possibility that, in return, they can be left vulnerable to lawsuits that can do serious

[13] See Barbour, Emily C., "The SPEECH Act: The Federal Response to 'Libel Tourism,'" Congressional Research Service, September 16, 2010.

damage to their reputations and their finances. We should do better and, with this legislation, we can.

Mr. Chairman, Members of the Subcommittee, that concludes my testimony. Again, thank you for the invitation to testify, and I would be delighted to answer any questions that you may have.

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Mr. FRANKS. Well, thank you, Mr. Haas.
Chief Burbank, you are now recognized for 5 minutes, sir.

TESTIMONY OF CHRIS BURBANK, CHIEF OF POLICE, SALT LAKE CITY POLICE DEPARTMENT

Mr. BURBANK. Thank you very much.

The role of local law enforcement has evolved significantly over the past 10 years. We have been tasked with ever-increasing responsibilities, especially in our homeland security role, without relinquishing our traditional duty of providing for public peace and order. We as a profession have achieved numerous significant accomplishments in spite of continuing economic pressure and decreasing staffing levels. Domestic terrorist plots have been thwarted through attentive actions. Cities across the Nation have seen crime numbers steadily decline, especially violent crime. Salt Lake City, for example, during 2010 realized a 25-year low in part one crime. I am frequently asked for the reasons driving this decrease which seems counterintuitive in the face of recession.

Public order and community well-being are the responsibility of every citizen in the neighborhoods we serve. There was a point in history, however, in which the public relied upon and expected law enforcement to address disorder and criminal activity. In fact, people accepted the notion that the police knew best and rarely questioned the means of investigation if they resulted in the incarceration of criminals.

Police events transpired which called into question the integrity and professionalism of agencies throughout the United States. The public demanded increased oversight, input, and accountability. Civilian review boards emerged. Neighborhood watch and community partnerships expanded. Community policing became not only standard practice but an expectation. Citizen involvement and partnership places emphasis upon relationships and responsibility for public peace upon all participants.

While many factors certainly contribute to the steady decline of criminal behavior, we in law enforcement have become better partners and more effective stewards of public trust. We function best when we stand as a part of not apart from the community. In order to continue in a successful and productive direction, public trust and confidence in law enforcement must be safeguarded and nurtured.

The threat of terrorism, combined with substantial technological advances and enhanced community participation, has created an environment in which law enforcement is capable of collecting, retaining, and disseminating information in greater volume than ever before. Personal information concerning a suspicious individual in Salt Lake City can be shared with agencies within the region or across the country in minutes. While this increases our capacity to apprehend and interdict criminals, additionally it should accentuate the need for transparency, national standards, and oversight.

The goal of effective policing is to ensure public safety and minimize the impact of disorder by preventing criminal activity, not merely responding for documentation after the fact. To accomplish this, it necessitates contact based upon the Supreme Court established standard of reasonable suspicion. This standard, ingrained within police recruits requires officers to develop articulable facts suggesting criminal activity prior to conducting an investigative stop. Race, ethnicity, and religion cannot be utilized as factors to create suspicion. Allowing bias to influence enforcement actions erodes public trust and creates detrimental case law.

Improved hiring practices, effective training, and administrative accountability have helped minimize officer bias in police-generated encounters. A significant number of police contacts, however, are dictated through citizen calls for service and inherently adopt the bias of the reporting individual. For example, frequently in areas troubled by gang activity, people will report groups of minority juveniles dressed in sport attire as gang members. Unfortunately, from the moment we receive that call, a certain amount of bias is interjected. We do not have the ability to second guess the caller or refuse to respond. What if in fact they are correct and this group poses a threat to public safety? And if the description is accurate, for officer safety reasons, we cannot send a single officer. Violent gang members have a propensity to carry weapons, and so we send a minimum of two units. If the suspicions of the caller are incorrect, the perceptions of the community are the police are being heavy-handed and targeting minority youth, and we have yet to take any police action other than responding.

It is imperative that we remain mindful of the tremendous burden facing our law enforcement officers as they strive to protect the communities in which we reside. Considerable responsibility should accompany any expansion of police authority. I hold officers to an extremely high standard of conduct. The laws and legislation regulating their actions should receive no less attention.

We must never allow this or any other piece of legislation to be interpreted as lowering the traditional standards of qualified immunity. Law enforcement as a profession will suffer if granted immunity for taking actions that ignore clearly established law, constitutional rights of individuals, and legal standards of probable cause and reasonable suspicion.

Thank you.

[The prepared statement of Mr. Burbank follows:]

Chris Burbank
Chief of Police
Salt Lake City Police Department

Subcommittee on the Constitution
Hearing on H.R. 963, the "See Something, Say Something Act of 2011"

Friday, June 24, 2011
10:00 AM

Rayburn House Office Building
Room 2141

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Police events transpired which called in to question the integrity and professionalism of agencies throughout the United States. The public demanded increased oversight, input and accountability. Civilian review boards emerged, neighborhood watch and community partnerships expanded. Community policing became not only standard practice but an expectation. Citizen involvement and partnership places emphasis upon relationships, and responsibility for public peace upon all participants.

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Mr. FRANKS. Thank you, Chief.
Dr. Jasser, you are now recognized for 5 minutes, sir.

TESTIMONY OF M. ZUHDI JASSER, M.D., PRESIDENT AND FOUNDER, AMERICAN ISLAMIC FORUM FOR DEMOCRACY (AIFD)

Dr. JASSER. Thank you, Chairman Franks, Ranking Member Nadler, and Members of the Subcommittee. As the president of the American Islamic Forum for Democracy, we have been on the front lines of countering not the militant threat but the ideological fuel of which violence is only one symptom.

You have before you H.R. 963, the "See Something, Say Something Act of 2011." This act is the minimum our Congress can do to protect any citizen that reports anything and any law enforcement professional who acts upon suspicions in good faith.

The threat, as you heard from Mr. Haas and the Congressional Research Service, has only been increasing exponentially, and in the past 18 months, even today, we hear a report, "saved by citizen," reported about the two individuals in Seattle.

In theory, the Department of Homeland Security program, If You See Something, Say Something, is straightforward, but unfortunately it is in a vacuum. Secretary Napolitano's admonition to us was as citizens when she said, "we are simply asking the American people to be vigilant, recognizing that our security is a shared responsibility that all of us must participate in." I am sorry. But the reality is that when many of us on the front lines of reform and directly countering and exposing militancy and the ideas that fuel them end up being faced with the oppressive tactics of intimidation and the threats of lawsuits in the trenches of what is called "lawfare," we feel alone. The Nation leaves us alone and hangs us out to dry with little to no support other than from other activists and reformists that get it.

Secretary Napolitano may be in the perfect world, feel that it is a shared responsibility, but without limiting citizen exposure, without protecting our citizens, that shared responsibility is a pipe dream. When an international Islamist organization with vast, endless global funds in the UK threatened me and our organization simply for speaking the truth with a libel suit just for reporting the truth, I understood like never before what victims of "lawfare" must feel. That is libel tourism and this body protected us with other legislation. But that applies to all people that speak out that may be inhibited because of fears of intimidation in the legal sector.

There is a large chasm between the "seeing something" and "saying something." As we saw with the Times Square bomber, ultimately Aliou Niasse, a Senegalese Muslim, and Lance Orton, a T-shirt vendor—these two citizens saved thousands of lives in New York by simply reporting what they saw to law enforcement. But people like that should no longer be looked upon as heroes but simply as dutiful citizens, but they are looked upon as heroes because of the challenges that they have and because of the pressures that they can be under.

We saw young workers at Circuit City who ultimately reported a DVD they saw, and they said, quote—the workers said "I don't know what I should do because if I call someone, is that being racist." Their call to law enforcement led to the arrest and conviction of the Fort Dix Six.

The bill that we spoke about, this bill in 2007 protected passengers, and once this bill was passed in Congress to protect the passengers, a civil rights organization, CAIR, dropped its lawsuit against the passengers because of your protections.

Ultimately a former Federal air marshal said, "instilling politically correct fears into the minds of airline passengers is nothing less than psychological terrorism." As Muslims, our group was horrified that groups like CAIR and the imams, some of which we know locally, decided to sue and create, I think, an incorrect narrative in the minds of the American public about Muslims' approach to terrorism.

The only successful attack that has occurred on our soil since 9/11 should have been a wakeup call to the need for this act. The Fort Hood massacre was committed on November 5, 2009, and an Army psychiatrist, Major Nidal Hasan, killed 13 of our fellow soldiers and injured over 30.

However, it is interesting. That fear carried over hypocritically even into the Pentagon's report. 85 pages of an after-action report that was done in the comfort of months of analysis didn't even identify the word "Islam," "Muslims," "Islamism," "jihad." Nidal Hasan's name himself did not appear in the after-action report. So ultimately, how can we counter an ideology that we can't even name? And yet, the report said they wanted to punish some of the superior officers that did not report what they saw. When the brass and the best that our military has could not even describe it, how can you hold accountable the superior officers that Nidal Hasan was led by?

So ultimately, there was a culture of fear and a culture that needs protection. This law will not eliminate that, but it will certainly be a significant first step in giving them the protection necessary from legal retribution. We need to start to peel away those barriers.

Lastly to give you a snapshot of the pressures and the environment with which some of us work, the Council on American Islamic Relations in Michigan released a video to its members telling Muslims—very appropriately they said it is our Islamic responsibility to report any acts of violence that are impending, but they didn't say report to DHS. They said report to them, report to the mosques so that CAIR can gather the data and then give it to DHS. That is not See Something, Say Something. It is see something, give it to a civil rights organization so that they can determine if it is discrimination and then ultimately say something. That chasm, that large valley between see something and say something is what is happening out in the front lines and in the area of "lawfare" that we need to breach.

Ultimately protecting citizens reporting and law enforcement acting on those suspicions does not do anything to due process or to the constitutional protections. We just need to lift the denial that there is a problem, and we have to lift the denial that it is a very litigious society in which we live in.

I would ask you to please get familiar with "lawfare" as soon as possible so that you understand all of the fronts that we have to fight this battle, and limited or qualified immunity is a very necessary part of that. Ultimately, if you want our citizens to have no

pause or intermediary between "see something" and "say something," we need to protect them with legislation like this.

Thank you.

[The prepared statement of Mr. Jasser follows:]

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION

Hearing on: H. R. 963, the "See Something, Say Something Act of 2011"

TESTIMONY OF M. ZUHDI JASSER, PRESIDENT
AMERICAN ISLAMIC FORUM FOR DEMOCRACY

Friday, June 24, 2011, 10:00 A.M.
2141 Rayburn House Office Building

Subcommittee on the Constitution
H2-362 Ford House Office Building
Washington, DC 20515

INTRODUCTION

My name is M. Zuhdi Jasser. I am the President of the American Islamic Forum for Democracy (AIFD). As a proud American citizen and a devout Muslim, I have dedicated every ounce of time available away from my family and career to advocate for a proactive national strategy against the ideology that breeds terrorism. AIFD is a think tank and an activist American Muslim organization with a mission of "building the future of Islam through the separation of mosque and state." Terrorism is simply a tactic, a symptom of an underlying more pervasive ideology for which militancy and violence are only one means to achieve the goal of establishing an Islamic State. We believe that the underlying root cause of terrorism is the ideology of Islamism- the supremacist ideology held by those who seek the advancement of political Islam over all other forms of governance.

There are many fronts in this war of ideas between Islamists and Western secular democracies like the United States which is founded upon a Constitution that guarantees the individual rights of all under one law, with an Establishment Clause and the separation of church and state. This ideological battle is not one between Muslims and non-Muslims or between Islam and other faiths. I view this as a conflict within the Muslim consciousness between liberty and theocracy, between individualism and collectivism—much as the conflict our Founding Fathers had fought for within the Christian consciousness. So many Muslim families like mine immigrated to the United States because we are able to practice our faith more freely here than in any Muslim majority nations across the world and we want to be on the side of liberty.

THE THREAT

It is easy for us to sit here on Capitol Hill and discuss the importance of this bill in the vacuum of political discourse, but I think it is important to state clearly in this hearing that Islamist extremism whether born domestically or internationally is a significant threat to the United States.

As the Congressional Research Service demonstrated in its report *American Jihadist Terrorism: Combating a Complex Threat*, from September 11, 2001 to April 2009 there were 21 incidents of homegrown jihadist terrorist plots and attacks. From May 2009 to August 2010 there were 19 separate incidents of homegrown jihadist terrorist plots and attacks. [Appendix 1] The threat is growing exponentially and there is no reason to believe, even with the death of Usama Bin Laden, that this is going to diminish in the near future.

ENGAGED CITIZENRY

When it comes to national security and protecting our nation against the threat of terrorism, one of the most important fronts, if not the most important front, in this battle is the role of our citizenry. Acts of terror seek to instill fear in an entire nation through random unpredictable acts of violence against unarmed citizens in public places. Terrorists ultimately seek to change the political will of a populace to promote certain policies domestically or abroad.

Since terrorists do not wear uniforms and rely upon blending into a diverse population and since their primary target is other unsuspecting citizens, our primary line of defense and offense is the possibility that each and every American citizen could be an early warning system.

In fact, in July 2010, the Department of Homeland Security (DHS) led by Secretary Janet Napolitano launched the national "If You See Something, Say Something™" public "*awareness campaign of the indicators of terrorism and violent crime, to emphasize the importance of reporting suspicious activity to the proper state and local law enforcement authorities.*" [Appendix 2]. The "See Something, Say Something" campaign was originally implemented by New York City's Metropolitan Transit Authority with a $13 million DHS grant and is now an essential component of the department's strategy against terrorism. DHS has launched targeted campaigns in communities across the nation including faith based communities [Appendix 3] and at major sporting events including the NFL's 2011 Super Bowl and the 2011 Indianapolis 500.

According to Secretary Napolitano, *"We are simply asking the American people to be vigilant recognizing that our security is a shared responsibility that all of us must participate in."* [1]

This is easier said than done. The sentiment and the intention of the program is well founded and essential. However, it is incumbent upon us as a society to create a climate in our nation where that is true. Just because, our security apparatuses and leaders tell us as citizens to "say something" after we "see something" does not mean it will be so. For this program to have any

[1] Penny Starr, "Homeland Security Secretary Inspects Super Bowl Site, Says Fans Have 'Shared Responsibility' for Security at Game and Across the Country," *CNSNews.com*, February 4, 2011

hope in being effective, citizens cannot be thinking to themselves, "see something, stop, make sure the risk of legal exposure is limited, and then say something".

As an American Muslim who has been active daily in publicly 'seeing something' and 'saying something', in order to drive forward the public conversation about the threat and the reforms needed, I am very familiar with the public pitfalls and obstacles before citizens who choose to take public action against radicalism. I have been personally threatened with lawsuits in the United Kingdom by a international organization practicing a form of libel tourism to keep me from questioning Islamist finance operations. While there is other legislation to protect American organizations from libel tourism the tactics of intimidation against free speech and reporting are the same.

I hope this committee understands or can come to understand the importance of giving our citizens the legal protection they need so that we can begin to peel away reasons for any pauses between when we "see something" and "say something" to law enforcement. Similarly, on behalf of law enforcement in order that our law enforcement in good faith be able to act appropriately on any of their own leads or leads from concerned vigilant citizens, they also need to be protected from fear of endless litigation or "lawfare" as it has been dubbed by counterterrorism analysts. Qualified immunity is an essential component for both groups. Without protecting law enforcement, the concerns of citizens may often go unheeded by law enforcement because of fear of litigation.

OBSTACLES TO REPORTING

Secretary Napolitano's entire "See Something, Say Something" campaign is dependent upon an unencumbered reporting process from citizens and law enforcement. Let us not fool ourselves. There are many obstacles that do encumber free reporting by our population. Qualified immunity is absolutely necessary in order to begin to remove obstacles. Without it, many, if not, most citizens will be paralyzed legally by fear of retribution. This culture of fear has become the prevailing politically correct culture in response to the threat of Islamist terrorism. You should be aware of the following obstacles to free reporting from citizens and action from law enforcement.

1. Fear of being labeled 'bigoted', 'anti-Muslim', or 'Islamophobic' (not politically correct)
2. Fear of legal reprisals exacted by groups which use costly legal intimidation to stifle individual reporting as well as civic or public engagement.
3. Fear of being inaccurate over calling out behaviors of concern. Most citizens are not trained in counterterrorism, 'concerning behaviors' or what to report or not report. But "See Something, Say Something" demands they not be concerned about expertise. H.R. 963 does not supersede the protections of the constitution and trained law enforcement will still follow normal procedures to protect the accused.
4. Fear of inaccurately 'stigmatizing' the individual whose behavior they report.
5. As the terror threat continues to exponentially increase, the need for increased government resources and the call for further protections from government are only

increasing. Civil libertarians are appropriately concerned that we never "sacrifice liberty for security". So if we are to try to do our best to keep government out of our personal lives and still keep our nation safe, then we need to be able to rely more on our citizen reporting system. Those who feel that a legally protected "See something, Say something" program will infringe upon the rights of citizens offer no other solutions. If any groups are protesting against government monitoring of mosques, informants, etc. then the only alternative is to protect those citizens and law enforcement that act upon concerning behaviors.

6. Intimidation works not only due to the fear of the suit itself, but fear of financial ruin from the time and cost of lawsuits related to simply reporting suspicious activities. The groups that intimidate are able to do so because they are so well funded and backed compared to the average American citizen or reformist Muslim groups like AIFD.

We cannot allow all of these obstacles to paralyze our nation against the growing threat of Islamist inspired terrorism. These fears are retarding any type of open, pushback, and reform, against the ideologies of jihadism. So many people ask- where are the voices of moderate Islam openly countering the ideologies that fuel radical and political Islam? They are often silenced by the obstacles noted above. Limited immunity will not be a panacea. Certainly some of these obstacles will need broad based cultural change in the United States in addition to thoughtful, deep reforms.

This qualified immunity is necessary and is a demonstrably successful approach (admittedly a first step) toward improving the likely engagement of our citizenry in our counterterrorism efforts.

Let me operationalize this discussion for you with some real life scenarios:

CASE STUDIES

Case 1: "The Ft. Hood Massacre"

Background

Imagine for a minute, an Army psychiatrist scheduled to give a lecture on Post Traumatic Stress Disorder (PTSD) to other physicians instead gives a talk entitled *Is the War on Terror a War on Islam: An Islamic Perspective?*[2] Major Nidal Malik Hasan did just this in August of 2007.

"Hasan's presentation was so controversial that the instructor had to stop it after just two minutes when the class erupted in protest to Hasan's views."[3]

[2] Nidal Hasan as presented by Joseph I Lieberman, Chairman and Susan Collins, Ranking Member, *Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack*, (United States Senate Committee on Homeland Security, February 2011), 29

[3] Joseph I Lieberman, Chairman and Susan Collins, Ranking Member, *Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack*, (United States Senate Committee on Homeland Security, February 2011), 29

According to several accounts Hasan's presentation "*justified suicide bombings, offered a defense of Osama bin Laden and argued anger at the United States is justifiable.*"

This is just one of three presentations that Hasan pursued while a fellow at the Uniformed Services University of Health Science (USUHS) where he focused on justifying violent Islamist extremism. Further he was noted to breach boundaries with patients proselytizing them about Islam. His fellow doctors have recounted how they were repeatedly harangued by Hasan about religion and that he openly claimed to be a "Muslim first and American second."

Other officers reported that Hasan said *"his religion took precedence over the U.S. Constitution he swore to support and defend as a U.S. military officer."*[4]

The doctors, however, claimed they were too afraid of being punished by the Army for discrimination or other reasons if they reported Hasan.[5]

An officer cited ignorance and political correctness as driving a fear of discrimination complaints prompted people to look the other way. Hasan's evaluations mentioned nothing about his extreme religious views and he was not disciplined. He came off "as a star officer recommended for promotion to major, whose research on violent Islamist extremism would assist U.S. counterterrorism efforts."[6]

Even the Pentagon's brass, after reviewing, seeing, and dissecting the anatomy of an Islamist radical could not get themselves to mention the perpetrator's name, his theo-political ideology (Islamism), or any religiously charged terms like jihad, Islam, salafism, Islamism, or Muslim in their entire 84 page after action report, entitled, *"Protecting the Force: Lessons from Fort Hood"*. For the life of me, as a Muslim who loves my faith and is dedicated to reform against Islamism, I cannot understand how our nation can develop a strategy against an enemy whose ideology and characteristics we cannot even identify because of a fear of litigation, a fear of being called bigots, or a fear of being wrong about the nuances of a theo-political ideology.

While we are legitimately focused on trying to get our citizens on the front lines to report anything suspicious, when even our military's finest cannot get themselves past a culture of fear to identify the threat after the comfort of months of analysis, we have a vulnerability against terrorism that needs urgent repair. We cannot deny that fear of being labeled 'bigots', anti-Muslim, or Islamophobic drove the glaring omissions of Hasan's military colleagues. These omissions are not harmless.

As a physician, a former lieutenant commander in the U.S. Navy, and former chief resident at the National Naval Medical Center at Bethesda, I can also speak to the fact that physicians in training are being trained in the practice of medicine and not anti-Islamist counterterrorism, counter-radicalism and counter-insurgency. Yet the after-action report did call out Dr. Hasan's commanders for allowing him to move up the chain of command. Hasan's superiors are medical

[4] Joseph I Lieberman, Chairman and Susan Collins, Ranking Member, *Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack*, (United States Senate Committee on Homeland Security, February 2011), 30
[5] Nick Allen, "Fort Hood gunman had told US military colleagues that infidels should have their throats cut," *The Telegraph (UK)*, Nov. 8, 2009.
[6] "Senate Fort Hood Report Blasts Defense Timidity," *IPT News*, February 3, 2011.

professionals trained to evaluate his abilities as a physician and a psychiatrist. As we have all heard, his commanders were seriously concerned about his actions and the role his seemingly radicalized faith played in his everyday interactions with patients. Had they brought those concerns to his review process, they would have been vilified as Islamaphobes. Even had Hasan's superiors appropriately identified his behaviors, a military discharge is light years down the path of administrative counseling and punishment he would have received. Which begs the question, would a demoted Hasan have been any less of a threat? Immunity protection for Hasan's colleagues would have gone a long way towards beginning to change the environment that prevented anyone from saying anything about his actions, statements, and behaviors.

In his testimony before the US Senate Committee on Homeland Security, General Jack Keane, USA, Retired summed the situation up perfectly when he stated

> *"It should not be an act of moral courage for a soldier to identify a fellow soldier who is displaying extremist behavior, it should be an obligation." [Appendix 4]*

As an American Muslim, I am most fearful that our entrenched mindset of victimization and political correctness is precluding members of our military and our citizenry from meeting this obligation. H.R. 963 is an important step in rectifying this problem.

Outcome
On November 5, 2009, Major Nidal Hasan killed 13 service members and Ft. Hood personnel and injured 43 more. It is the most significant example of terrorism on US soil since the September 11, 2001 attacks.

Case 2: "The Flying Imams"

Background
In November 2006, a group of six imams were to travel on US Airways flight 300 from Minneapolis, MN to Phoenix, AZ following a conference of the North American Imams Federation.

During the boarding process, several passengers expressed concerns over the actions of the Imams. In the boarding area three of the Imams conducted prayers at the departure gate rather than in the airport chapel or quietly in their seats. Passengers also reported that the group made comments regarding "Allah" and "Saddam." On the plane, several of the Imams held loud conversations in Arabic and requested apparently unnecessary seat-belt extenders—which can be used as weapons. Finally some of the Imams conducted a post-boarding seating switch.

Several passengers expressed their worries to the crew confidentially with small notes. The crew had the Imams removed from the flight for rescreening. The pilot and Minneapolis law enforcement eventually made the decision to remove the Imams from the flight and detain them for questioning. [7]

[7] Bob Van Sternberg and Pamela Miller, "Nov. 22, 2006: Uproar follows imams' detention", *Minneapolis Star Tribune*, November 21, 2006

The airport episode appeared pre-planned, the American equivalent of the manufactured Danish cartoon controversy, in which Danish Islamists, who hoped to benefit from polarization, exaggerated victimization and sought a pretext for crisis.[8] Immediately upon arriving in Phoenix after this incident, Omar Shahin, president of the North American Imams Federation and a prominent Phoenix imam, told the Council on American-Islamic Relations (CAIR, an Islamist advocacy group) in a conference call *"Terrorism is not our problem it's their problem."*[9]

On March 12, 2007, the imams, CAIR, and attorney Omar Mohammedi, a former president of CAIR's New York chapter, filed suit not only against the airline and the Minneapolis Metropolitan Airports Commission but also against the anonymous "John Doe" passengers who alerted the crew to the imams' suspicious behavior.[10]

Congress passed legislation to protect the "John Doe" passengers in the Flying Imams case and the imams and their handlers at CAIR quickly dropped the suit against the John Doe passengers. HR 963 expands that immunity to all Americans. In the debate over the legislation Congressman Pearce said vigilant citizens are the most useful weapon in the war on terror.[11]

A former federal air marshal expressed the fear that the situation *"will make crews and passengers in the future second-guess reporting these events, thus compromising the aircraft's security out of fear of being labeled a dogmatist or a bigot, or being sued,"* and that *"Instilling politically correct fears into the minds of airline passengers is nothing less than psychological terrorism."*[12]

Outcome

The case of *Ahmed Shqeirat v. U.S. Airways Group* concluded in the Minnesota federal district court before Judge Ann Montgomery. The parties arrived at a settlement of the case on October 20, 2009 in a court-supervised conference. The amounts paid by the defendants remain confidential."[13]

Case 3: "The Fort Dix Six"

Background

The case of the Fort Dix Six is a victory for citizen reporting and should be heralded by DHS when discussing the "See Something, Say Something" campaign as an example of why it is important to report something suspicious.

In 2007, a teenage clerk at Circuit City in Mount Laurel, NJ was asked by two men to transfer a videotape to a DVD. When the teenager and another employee went into the back room and started the process of transferring the tape, they found themselves watching several men in *"fundamentalist attire"* and shooting *"big, f-ing guns,"* the teen later told co-workers. The teen

[8] Pernille Ammitzboll and Lorenzo Vidino, "After the Danish Cartoon Controversy," *Middle East Quarterly*, Winter 2007, pp. 3-11.
[9] M. Zuhdi Jasser, MD, "Exposing the 'Flying Imams'," *Middle East Quarterly*, Winter 2008.
[10] M. Zuhdi Jasser, MD, "Exposing the 'Flying Imams'," *Middle East Quarterly*, Winter 2008.
[11] "John Doe' protection to get floor vote," *Washington Times*, July 25, 2007
[12] "Marshals Decry imams' charges," *Washington Times*, November 29, 2006
[13] Scott W. Johnson, "The Flying Imams Win - and the rest of us lose," *The Weekly Standard*, Nov 9, 2009

frantically told his coworker what he had witnessed. And then he said, *"I don't know what to do. Should I call someone or is that being racist?"*[14]

As you can see from his quote, the fear of appearing to be a racist made this teenager doubt what action he should take. Luckily, he overcame that doubt and contacted law enforcement.

Outcome
16 months after the teenage clerk reported the video the FBI arrested a group of terrorists who became known as the "Fort Dix Six." At the time the FBI believed the "Fort Dix Six" were finalizing their plans for an assault on Fort Dix. The group was convicted on December 22, 2008. The case of the Fort Dix Six demonstrates that just one individual "Seeing Something and Saying Something" can save lives.

Case 4: Islamist Civil Rights group discourages direct reporting to law enforcement

Background
Melanie Alturk, an attorney for the Michigan chapter of the Council on American Islamic Relations (CAIR) was correct in her video[15] released in July of 2009 when she stated that "*Thwarting potential acts of political extremism is an Islamic obligation and a failure to do so places the entire community at risk.*" But that was a final cursory comment in a message where she and her organization do not instruct American Muslims to go directly to the FBI or Homeland Security but instead state that their "civil rights organization", an organization with whom the FBI has severed all relationships[16] with should be the gateway for all reporting of suspicious activity. She stated,

> *If you are approached by an individual asking you about organizations such as Al Qaeda or Jaish Mohammedi or asking you to make comments relating to jihad against America, committing acts of violence against civilians, encouraging the visitation of extreme websites, or any other suspicious activity, please do the following. Contact the imam or mosque president immediately. Leadership should write down the date and time the incident occurred, the parties involved and a detailed description of the individuals soliciting the statements. Mosque leadership should [then] contact CAIR-Michigan's office immediately so we can document the incident thoroughly. CAIR-Michigan will then proceed to contact the appropriate law enforcement agency. As a community we have an obligation to not only protect the image of Islam and Muslims but also to keep our country safe. The majority of individuals contacted are youth and new converts. Therefore we urge parents to discuss with their children the un-Islamic and unlawful nature of extremism. Urge them to contact mosque leadership immediately if anyone suspicious contacts them. Thwarting potential acts of political extremism is an Islamic obligation and a failure to do so places the entire community at risk. If you have any information please visit our website: www.cairmichigan.org.*

[14] Jana Winter, "Clerk Rings Up N.J. Jihad Clerks," *The New York Post*, May 13, 2007.
[15] "*Solicited by Extremists? Report Extremist Activity*," *CAIR Michigan, YouTube posting by* Michigan CAIR, July 1, 2009.
[16] Mary Jacoby, "FBI cuts off CAIR over Hamas questions," *IPT News*, January 29, 2009

Thus, this heavy-handed Islamist organization which uses its financial, media, governmental, and legal muscle to intimidate some concerned citizens as they did in the "flying imam case" not only uses the legal system to intimidate, but its legal advice to Muslims is to paradoxically use them as a gateway for the reporting of suspicious activity to law enforcement. Nothing speaks to the need to protect American citizens and law enforcement more from unnecessary litigation than this evidence that civil rights attorneys are unnecessarily inserting themselves in the "See Something, Say Something" process. This CAIR directive demonstrates the blatant attempts by groups like this at legitimizing their own existence by creating situations where law enforcement both fears them as well as depends upon them for information on suspicious activity. Limited liability protection will break this vicious cycle.

Muslims and non-Muslims alike need to know that they have limited immunity protection and can go directly to law enforcement without any concerns for reprisals and without fearing Islamist intimidation groups like CAIR or Muslim Advocates. Their filtering of the reporting process puts inappropriate, unqualified layers between the witness and law enforcement which can never be in the best interest of national security.

Outcome

This type of control separates, deepens, and instills fear in American Muslims and insidiously discourages them from cooperating with law enforcement. It basically tells them that if they see suspicious activity, they should first mention it to a civil rights group who will make sure there was no 'civil rights infringement' and then the duty to report to Homeland Security will be fulfilled. Alturk's assertion and the general assertion by groups like CAIR or Muslim Advocates that Muslims for example should only speak to law enforcement if they are accompanied by an attorney insinuates that law enforcement will more often than not default to discriminatory practices in its dealings with American Muslims. These groups propagate their own existence by fueling a culture of fear among Muslims from the government and among non-Muslims or reformist Muslims from civil litigation. Their raison d'etre is fueling American Muslim victimology in a way that separates American Muslims from the general population and most importantly creates a large chasm between the "see something" and "say something" upon which our Department of Homeland depends.

Case 5: Times Square bomber

Background

The case of Faisal Shahzad is the tale of a traitorous radical and alert citizens. Reports are that Aliou Niasse, a Senagalese Muslim, first noticed and pointed out the suspicious smoke coming from the vehicle. Then Lance Orton, a T-shirt vendor called the police, and Officers Wayne Rhatigan and Pam Duffy responded swiftly. Aliou Niasse and Lance Orton understood their obligation to report the potentially catastrophic danger to the people in Times Square.

Faisal Shahzad's attack on Times Square, had it been successful would have killed and injured thousands of people. Mr. Niasse and Mr. Orton's quick reactions and notification of police of smoke coming from a parked SUV could have literally been the difference between life and death. They had no way of knowing that Shahzad's bomb would not detonate. They saw

something, said something and police were able to clear the area quickly and protect New Yorkers.

Outcome
Shahzad a naturalized US citizen betrayed the oath that he swore to the United States to become what he described as a "Muslim soldier". His citizenship was a prize for the al Qaeda and Pakistani Taliban who gave him weapons training and taught him to make bombs. It can be argued that his activities in the weeks and months leading to the attack in Times Square should have flagged him for various branches within the security and counterterrorism apparatus, but in the end it was observant citizens who knew what did and did not belong on the block that successfully stopped harm from falling on the people.

Orton said it best when he answered a final media question by stating, "See Something, Say Something!"[17]

QUALIFIED IMMUNITY IS NECESSARY

The fulcrum of this program is a Nationwide Suspicion Activity Reporting (SAR) Initiative based upon information from citizens and private groups that allows our government to possibly connect the dots that we cannot on our own. But if we have fear and if we live in a culture of political correctness that will not happen.

Detractors to H.R. 963 have said that it is an invitation to report activities or people that look different? This is an erroneous conclusion that presupposes that law enforcement and counterterrorism officials will abandon their steadfast commitment to the Constitution. H.R. 963 removes obstacles to the general public coming forward, it does not remove the burden of proof and the rules of due process from the state.

The threat of Islamist inspired terror is a protean domestic threat that tests the very fabric of our nation. If we give government and homeland security too much power we risk compromising the very freedoms, our families came to this country to enjoy. The act of terrorism is a random violent attack upon unarmed civilians that is wholly intended to reap fear and chaos upon free and open societies so that the will of the people changes and their policies change. In the case of Islamists, it is to get liberty minded western democracies out of the way of the ascendancy of Islamism domestically and globally. There is nothing militant Islamists would want more than to see us change our legal foundations by targeting Muslim minorities (who, by the way, hold within them the primary solution to countering radical Islam), and ebbing away their freedoms so that theocratic and militant Islamism can reign ascendant.

The Islamists use our open system to operate freely and under the radar, recruiting individuals that do not fit any profile, propagating their jihadist ideas in cyberspace and wherever possible in various enclaves.

[17] Michael Schmidt, "T-Shirt Vendor Takes On New Persona: Reluctant Hero of Times Square," *The New York Times*, May 2, 2010.

The balancing act for our nation is knowing how to use the tools of our free society to keep our communities safe from what are unpredictable, seemingly random acts of terrorism.

Limited immunity protection for reporting citizens offers just the right balance.

Yet those of us working in counter-radicalization- not only immediate prevention of acts of terror like the Times Square incident where Faisal Shahzad came to knowledge of others hours before his act but how about months before or years before as could have been possible in the Nidal Hasan case? We need to lift the veil of denial in our nation and our communities. The vast majority of Muslims are peaceful and do not seek us harm. While the vast majority of Muslims are also central to the solution against radical Islam, in order to get to those solutions ***we need to remove obstacles that have prevented the implementation of pragmatic strategies in countering those individuals and groups that present concerning activities requiring the attention of counterterrorism experts.***

Islamism's militancy or violence is only one small aspect of their entire theo-political movement domestically and globally. A larger component of Islamism (political Islam) includes the attempt to collectivize Muslims as a political unit, requesting special privileges and accommodations not afforded all citizens but unique to Muslims by virtue of certain clerical interpretations of faith practice (or shar'iah- Islamic jurisprudence). The frontlines of this battle will not be fought in the field or by the military and homeland security. The frontlines of this ideological battle will often be in the courtroom and more importantly before the courtroom in the wider culture of fear of litigation and reprisals.

CONCLUSION

In conclusion, the most vital thing we need to do right now is to understand that while we view Lance Orton[18] and Aliou Niasse, as *heroes*, the Islamists who inspire, enable and protect terrorists view them as *villains*. Every one of the passengers on the flight from Minnesota to Phoenix that carried the "Flying Imams" were Lance Ortons, too - yet they were named in a lawsuit by CAIR. Bret Stephens asked in the February 16, 2010 *Wall Street Journal*, "Suppose that on Nov. 4, 2009- the day before he would open fire on his fellow soldiers at Fort Hood, killing 13 and wounding 30- Major Nidal Malik Hasan had been arrested by military police and charged with intent to commit acts of terrorism. Where would his case stand today?"[19] With context to any of those who may have reported him, would they have been accused of bigotry and sued for discrimination? Bret Stephens continues,

> In 2003, Capt. James Yee, a Muslim chaplain serving in Guantanamo, was arrested on suspicion of sedition and espionage. Eventually the charges were dropped, officially because of "national security concerns that would arise from the release of the evidence." The political fallout was swift. Sens. Ted Kennedy and Carl Levin demanded a full investigation. "This incident," wrote one terminally outraged blogger, "is particularly noxious at a time when we need to reassure patriotic Muslim-Americans that they are not going to come under clouds

[18] Barry Paddock "Heroic Times Square T-shirt vendor Lance Orton just 'an average guy'," by, *NY Daily News*, May 4, 2010

[19] Bret Stephens "Major Hasan: the Counterlife" *Wall Street Journal*, February 16, 2010.

> of suspicion for their faith or their identity—especially Muslims who are actually serving this country in uniform." Capt. Yee went on to write a book and cast a nominating ballot for Barack Obama at the Democratic National Convention. In another life, something similar may have been Maj. Hasan's fate. In another life, eight officers could be under a cloud for casting aspersions on him based only on his identity and beliefs. In another life, too, 13 men and women would be with us today. That they are not reflects more than the failure of eight fall guys. It is a failure, by people far more senior, to heed a more fundamental military command. It's called "Know thy Enemy."

The cottage industry of victimization to which Capt. Yee took his story and the silence of Dr. Hasan's colleagues both speak to the same culture of fear of intimidation of political correctness that dominates our nation and obstructs Secretary Napolitano's instruction to "See Something, Say Something." At the minimum, we need to ensure that for any courageous Americans with enough courage to raise a concern to law enforcement and for the courageous law enforcement who chase down those concerns they at least know that they have the protections of H.R. 963's limited immunity protection."

For every Lance Orton - whether he's a street vendor, or an Army psychiatrist, or anyone in between - can rest assured that if he or she sees something that seems suspicious, and they say something directly to law enforcement, they will have significant protections from a potentially ruinous civil lawsuit. And we need to ensure that Islamist groups and other obstructionist groups know that no matter how much money and resources they have, they will no longer be able to target and try to intimidate, endanger and financially ruin any American who dares to speak out when they see something suspicious.

We owe it to the Lance Ortons among us, and we owe it to ourselves, and our Founding Fathers, to afford them every legal protection we can.

APPENDIX 1

Figure 1. Homegrown Jihadist Terrorist Plots and Attacks Since 9/11: Terrorist Profile and Training

● no ● unclear ● yes

	Plots and Attacks[a]	Lone Wolf	Muslim Convert(s)	Suicidal or Sought Martyrdom	Radicalized in Prison	Intended or Actual Plotting or Training Abroad
May 2009-August 2010	Omar Hammami	○	●	○	○	●
	Jehad Mostafa	○	○	○	○	●
	Shaker Masri	○	○	●	○	●
	Zachary Chesser	○	●	○	○	●
	The Rockwoods	○	●	○	○	○
	Alessa and Almonte	○	●	○	○	●
	Faisal Shahzad	○	○	○	○	●
	Colleen LaRose	○	●	●	○	○
	Northern Virginia Five	○	○	○	○	●
	al-Shabaab Recruiting	○	○	●	○	●
	Ft. Hood (Nidal Hasan)	●	○	○	○	○
	David Headley	○	○	○	○	●
	Tarek Mehanna	○	○	○	○	●
	Hosam Smadi	○	○	○	○	○
	Michael Finton	○	●	○	○	○
	Najibullah Zazi	○	○	●	○	●
	Daniel Boyd, et al	○	●	○	○	●
	Abdulhakim Muhammad	●	●	○	○	○
	Newburgh Four	○	●	○	○	○
September 11, 2001-April 2009	Bryant Neal Vinas	○	●	●	○	●
	JFK Airport Pipeline Plot	○	○	○	○	○
	Fort Dix Six	○	○	○	○	○
	Daniel Maldonado	○	●	●	○	●
	Derrick Shareef	○	●	○	○	○
	Houston Taliban Plot	○	●	○	○	●
	Liberty City Seven	○	●	○	○	○
	Mohammed Taheri-Azar	●	○	○	○	○
	Sadequee and Ahmed	○	○	○	○	●
	Toledo, Ohio Plotters	○	○	○	○	●
	JIS Plotting in So. California	○	●	○	●	○
	Lodi Case (the Hayats)	○	○	○	○	●
	Albany Plot	○	○	○	○	○
	New York City Subway Plot	○	●	○	○	○
	Iyman Faris	○	○	○	○	●
	Ahmed Omar Abu Ali	○	○	○	○	●
	Virginia Jihad Network	○	●	○	○	●
	Hasan Akbar	●	○	○	○	○
	Lackawanna Six	○	○	○	○	●
	Jose Padilla	○	●	○	○	●
	Portland Seven	○	●	○	○	●

Source: CRS analysis of open source material related to homegrown jihadist plots and attacks since 9/11.

Notes:
a. Listed in chronological order. The four attacks are highlighted in bold and italics.

APPENDIX 2

Secretary Napolitano Announces Rail Security Enhancements, Launches Expansion of "See Something, Say Something" Campaign

Release Date: July 1, 2010

For Immediate Release
Office of the Press Secretary
Contact: 202-282-8010

Washington—Department of Homeland Security (DHS) Secretary Janet Napolitano today launched the first phase of DHS' nationwide "See Something, Say Something" campaign and announced a new national information-sharing partnership with Amtrak as part of the Department's nationwide Suspicious Activity Reporting (SAR) initiative during a whistlestop train tour —highlighting the public's role in keeping our country safe and the Obama administration's commitment to bolstering surface transportation security.

"Implementing a national suspicious activity reporting partnership with Amtrak and expanding the 'See Something, Say Something' campaign strengthens our ability to guard against terrorism and crime," said Secretary Napolitano. "These initiatives enable us to provide frontline security personnel with the latest information and intelligence to recognize behaviors and indicators associated with new and evolving threats."

Today's announcements came during a multi-stop train tour through New York City, Newark, N.J., Philadelphia and Washington. Secretary Napolitano was joined by Amtrak Police Chief John O'Connor as well as law enforcement leaders and elected officials. Secretary Napolitano also swore in John Pistole, former Deputy Director of the FBI, as TSA Administrator in a ceremony at New York City's Penn Station. He then joined for the remainder of the tour.

The "See Something, Say Something" campaign—originally implemented by New York City's Metropolitan Transit Authority and funded, in part, by $13 million from DHS' Transit Security Grant Program—is a simple and effective program to raise public awareness of indicators of terrorism, crime and other threats and emphasize the importance of reporting suspicious activity to the proper transportation and law enforcement authorities.

In the coming months, DHS will expand the "See Something, Say Something" campaign nationally with public education materials, advertisements and other outreach tools to continue engaging travelers, businesses, community organizations, and public and private sector employees to remain vigilant and play an active role in keeping our country safe.

The "See Something, Say Something" campaign complements the national SAR initiative—a partnership among federal, state, and local law enforcement to establish a standard process for law enforcement to identify and report suspicious incidents or activity and share that information nationally so it can be analyzed to identify broader trends.

The SAR initiative announced today is a new national information-sharing partnership with Amtrak in which DHS and the Department of Justice (DOJ) work with Amtrak to utilize the latest intelligence in law enforcement trainings on how to identify suspicious behaviors associated with new and evolving threats. Amtrak officers will also utilize an upgraded reporting system —made available by the Transportation Security Administration—to refer suspicious activity reports to DHS and the Federal Bureau of Investigation for analysis and follow-up.

"The Suspicious Activity Reporting Initiative establishes a unified approach at all levels of government to gather, document, process, analyze, and most importantly share information about terrorism-related suspicious activities," said Amtrak Police Chief John O'Connor. "The Amtrak Police Department is pleased to become a part of this network of law enforcement agencies and we look forward to working closely with federal, state and local authorities."

DHS will continue to work with Amtrak and DOJ to expand the Amtrak SAR effort to regional railways, freight rail carriers and other mass transit agencies.

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The SAR initiative and "See Something, Say Something" campaign are designed to generate thorough and responsible reports of suspicious activities and behaviors. The reporting system does not and will not focus on the gender or ethnicity of individuals. The law enforcement personnel who receive and respond to these reports under the DOJ National SAR Initiative (NSI) are trained officers and analysts. The NSI program has rigorous privacy and civil liberties safeguards, including a requirement that privacy protections are met before access to information is granted, as well as multiple levels of independent review. Training for Amtrak personnel on how to report suspicious activity is consistent with NSI guidelines.

For more information, visit www.tsa.gov or www.dhs.gov.

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This page was last reviewed/modified on July 1, 2010.

APPENDIX 3

Homeland Security partners with Jewish groups on security campaign

By Madeleine Morgenstern · June 13, 2011

WASHINGTON (JTA) – In its first partnership with a faith-based community, the U.S. Department of Homeland Security is working with Jewish organizations to expand awareness of suspicious behavior.

The "If You See Something, Say Something" campaign will distribute posters and customized announcements in synagogues, Jewish community centers and related agencies across the country.

Its thrust will be to educate the Jewish community to be on the alert for suspicious behavior and to report the community's concerns to local law enforcement. The campaign's rollout has already begun and will continue over the next several months.

"One of the main goals of the campaign is to encourage people to be vigilant, not to be fearful, but to be vigilant," said John Cohen, a senior Homeland Security official.

"People know what belongs in their community, they know when things look out of place. We're not looking for the public to make the determination of whether something is terrorist-related."

The Department of Homeland Security's special partnership with the Jewish community is based on the recognition that the community is a target for threats, Cohen said.

Two men were arrested last month in connection with an alleged plot to blow up Manhattan synagogues. And last October, two packages found on cargo jets addressed to Chicago-area synagogues contained explosive devices.

Meanwhile, three of the four men convicted last year of plotting to blow up synagogues in the Riverdale section of the Bronx, N.Y., in 2009 are slated to be sentenced Thursday.

Homeland Security Secretary Janet Napolitano met June 10 at the White House with Jewish leaders to discuss the new partnership and ways to expand Jewish vigilance.

Napolitano spoke at the meeting about the threat facing the Jewish community from radical Islamists and right-wing extremist groups, according to David Harris, the executive director of the American Jewish Committee.

Napolitano understands "very well what links these two groups is deep-rooted hatred," Harris said. "It's logical to go to the Jewish community and say 'let's partner.' "

Malcolm Hoenlein, the executive vice chairman of the Conference of Presidents of Major Jewish Organizations, said the new partnership is particularly vital given the reported escalation of threatening statements in the wake of the killing by U.S. forces of al-Qaida chief Osama bin Laden.

"This campaign is an opportunity to involve the grass roots of our community, and to emphasize the importance of security measures and empower them to do more," said Hoenlein, who was at the meeting with Napolitano.

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The emphasis of the new campaign is to have people report suspicious activity. A car parked in a strange way in front of a synagogue or an unknown person taking pictures could be cause to contact authorities, Cohen said. In addition to public education, the Department of Homeland Security is to provide more detailed materials and briefings to security personnel.

William Daroff, vice president for public policy and director of the Washington office for the Jewish Federations of North America, said the response from local Jewish leaders about the campaign has been uniformly positive.

"There's an understanding among Jewish communal leaders that the Jewish community is unfortunately often a target," he said.

The visuals and imagery for the campaign material was created specifically for the Jewish community with the help of the Secure Community Network, an initiative funded by the Jewish Federations of North America. One poster depicts what appears to be an abandoned backpack in a hallway leaning against a table with an ornate Star of David on it.

Posters and related material will be distributed to communities through local Jewish federations. The Department of Homeland Security will absorb the cost of the campaign.

The department is looking to expand the program to other faith-based communities, including evangelical Christians and Mormons, according to Cohen. The agency already has started partner campaigns with a number of organizations, including Amtrak and local transit agencies, and within all federal buildings under federal protection.

Homeland Security launched "If You See Something, Say Something" nationwide last year after originating the campaign with New York's Metropolitan Transportation Authority.

Paul Goldenberg, national director for the Secure Community Network, said the program is a way to "raise the bar of awareness."

"The 'See Something, Say Something' campaign empowers this community to directly participate in their own safety," Goldenberg said. "This program focuses on better protecting places where Jewish people come to worship, where they meet and where they socialize."

APPENDIX 4

A Ticking Time Bomb:
Counterterrorism Lessons from the U.S. Government's
Failure to Prevent the Fort Hood Attack

Written Testimony of
General Jack Keane, USA, Retired
Former Vice Chief of Staff of the U.S. Army

Hearing Before the
Senate Committee on Homeland Security and Governmental Affairs

February 15, 2011
10:30 a.m.

Dirksen Senate Office Building
Room SD-342

Washington, DC

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Chairman Lieberman, Ranking Member Collins, distinguished members of the Committee, thank you for inviting me to testify today about the most significant threat to the security of the American people that I have seen in my lifetime—radical, violent Islamist extremism. I commend this Committee, and the leadership of Senators Lieberman and Collins, for their ongoing work in identifying this dangerous ideology and developing ways to protect against it.

The most recent work of this Committee on this challenge to our national security is its investigative report on the Fort Hood massacre that took place on November 5, 2009. That report puts the key issue front and center and confirms what many of us feared after the attack. Self-radicalized violent Islamist extremists are not just here in America, they have penetrated the U.S. military, which is one of the last places you would expect to find people so violently opposed to this country and its citizens.

I would like to discuss my two reactions to this much needed and comprehensive report. First, I am shocked and stunned by what this report reveals about the failure of the Department of Defense (DOD) to come to grips with violent Islamist extremism and the danger it presents to our troops. Second, I wholeheartedly endorse the report's recommendations for reform in DOD to better protect against this threat.

I will start with my first reaction – just how unacceptable the military's failure to deal properly with Major Hasan's radicalization to violent Islamist extremism was. I reach this conclusion with great sadness. I was proud to serve in the Army, and, while I did, I was involved in helping the military devise policies to protect against racial extremism that turned deadly. And I know the military is full of people at all ranks who are dedicated to protection of the men and women in service. But this time, some of those people – including Hasan's superiors and colleagues – failed to do what was needed to root out a dangerous extremist.

I agree with the report's conclusion that Hasan's open displays of violent Islamist extremism was a violation of military rules calling for good order and discipline. I'll list some of the obvious signs that Hasan should have been discharged that are mentioned in the report:

Hasan's ideology conflicted with standard military obligations, and his repeated statements that he could not support combat against enemies of this country because they shared his religious beliefs demonstrated that he did not belong in the United States military.

It is hard to imagine why Hasan was not removed when, after one of his superiors tried to convince him to leave the military, his displays of violent Islamist extremism worsened. While he was a resident at Walter Reed Army Hospital and a fellow at the military's medical graduate school, Hasan dedicated three projects to the motivations for Islamist extremism instead of medical subjects or psychiatric issues.

Here is a list of things Hasan said and did that, when you add them up, shows he was an extremist who had no place in our armed services:

- He made three off-topic presentations about violent Islamist extremism when he was supposed to be making medical presentations as an Army doctor.
- He gave a class presentation promoting the false argument that U.S. military operations are not based on legitimate security considerations, but instead are a war against Islam.

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- The same class presentation was so supportive of Islamist extremism that it was stopped immediately by the instructor when the class of military officers erupted in opposition to Hasan because they thought he was justifying suicide bombers.
- He proposed to give a research survey to Muslim U.S. soldiers which implicitly questioned their loyalty, and actually included a question that asked if they thought they were expected to help enemies of the U.S. because they are Muslims.
- He told several classmates that he thought *Shari'ah* law takes precedence over the U.S. Constitution, despite the fact that as an officer he took an oath to protect the Constitution.
- He stated three times in writing that Muslims in the U.S. military were a risk of fratricide.

One time his class presentation was so alarming that his classmates, who were all officers, erupted in protest because they thought Hasan was endorsing the views of Islamist extremists and justifying suicide bombers. The instructor and a classmate who were there that day both called Hasan "a ticking time bomb". The saddest and most frightening fact is that Hasan's written presentations warned that Muslim-Americans in the military who had become radicalized to violent Islamist extremism were at risk of killing fellow soldiers. He put it in writing and that should have been a sign that he might put it into practice.

I want to caution here that I know that our military includes thousands of brave and patriotic Muslim-Americans who serve this country with honor. Some have given their lives in service to our country. When Hasan concluded that Muslim-Americans might commit fratricide, he was not talking about them, but he was giving a warning about himself. As the report states, Hasan's extremism was not a secret. The officer who assigned him to Fort Hood told commanders there, "You're getting our worst".

What should have Hasan' military superiors done? They should have been able to put the information together and conclude that Hasan believed the same things that the violent Islamist extremist enemies of this country believe, and that meant he should have been out of the military.

But instead of removing Hasan, his superiors promoted him, graduated him from his residency and fellowship, assigned him to Fort Hood and even approved him for deployment to the conflict in Afghanistan. Instead of moving Hasan out, his military commanders moved him up. This is exactly the opposite of what responsible officers should have done.

This brings me to another critical problem revealed in the report—that the military personnel evaluation system broke down when it came to Hasan. I was again shocked to learn from the report that even though Hasan was a poor performer, ranked in the bottom quarter of his class, his evaluations made him sound like a superstar.

During the period when his radicalization to extremism was so visible that it literally stopped a class, he received excellent performance evaluations and was enthusiastically recommended for promotion. Perhaps the most troubling aspect of this is that Hasan's obsession with Islamist extremism—which was so alarming that it should have gotten him thrown out of the Army—was described as a strength in his evaluations.

The report describes a series of reasons given by the military for failing to deal properly with Hasan. I don't find any of the reasons credible. A pair of related reasons is that some of Hasan's superiors believed his views were not problematic and others actually believed he

provided valuable insight into Islamist extremism. This was a terrible misjudgment, because the truth was that Hasan's views were problematic precisely because he was an extremist. It is hard to understand why senior officers did not see that.

There were other more mundane administrative reasons why Hasan was retained and advanced. For example, he was passed on to the fellowship because he was the only applicant for his slot and those involved felt they might lose the fellowship unless it was given to Hasan. When others objected to Hasan getting the fellowship after the fact, he was kept because it was too much trouble to rescind the fellowship once it was offered. For another example, Hasan was assigned to Fort Hood (even though there were concerns about his ability), because some thought that base was so large and well staffed that there would be many Army psychiatrists around Hasan to monitor and report on his work.

All this attention to small bureaucratic matters show that superiors could not see the big picture—Hasan was a dangerous extremist who should not have been in the military at all.

So why did Hasan's superiors fail to take the action that was necessary? That brings me to my second reaction to the investigative report, which is my agreement with the report's recommendations about changing military policies and training to identify the threat of violent Islamist extremism among service members and to require that it be reported and dealt with.

When I testified at a hearing before this Committee at the beginning of its investigation, I said this: "It should not be an act of moral courage for a soldier to identify a fellow soldier who is displaying extremist behavior, it should be an obligation." That is as true today as it was then. Unfortunately, the report reveals that the military to this day still does not have policies and training which identify what violent Islamist extremism is and what our men and women should do when they see it.

I know that a lot of good people in the military have reviewed the Fort Hood attack to determine lessons learned, and some of their work and recommendations do move us forward. But we have to directly address the exact threat we face exactly, and that threat is violent Islamist extremism. Over a year after the Fort Hood attack, this direct and honest step still has not been taken by the military. Instead, the military avoids labeling our enemy for what it is, rather subsuming it under ambiguous terms such as "extremism" or trying to call it something completely different such as "workplace violence." That is not acceptable, because it leaves our service members vulnerable to more attacks from these extremists.

The military's unwillingness to confront the threat of Islamist extremism directly is all the more puzzling and out of character because in the past, the military has moved swiftly to respond to threats. During the Cold War the military enacted and implemented sophisticated subversion and espionage policies to deal with the ideology and tactics of our enemies. When racism and gang violence infiltrated our armed services, the military moved promptly put in place policies and training designed to clearly inform service members on exactly what was prohibited and instructed them to report service members whose words or conduct indicated that they may be dangerous. That sort of clarity in policy in training is needed now for the threat we are faced with now—violent Islamist extremism.

Clarity is all the more important here because of the complexity of dealing with someone, like Hasan, who commingles dangerous extremism with religion. Unless service members clearly understand the difference between legitimate religious observance and dangerous extremism,

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everyone in the military is in an unfair position. It is unfair and ineffective to place service members who have not been trained to identify Islamist extremists in a position where they have to decide if someone is an Islamist extremist. The reason is that service members are understandably reluctant to interfere with the practice of religion and that they are, rightly, trained by the military to respect religious observance. But that should never mean that violent Islamist extremism should be tolerated. The DOD's failure to identify the enemy clearly causes service members at all ranks to avoid dealing with extremists properly, just as they avoided the need to deal with Hasan.

The lack of clarity is also deeply unfair to the thousands of Muslims who serve honorably in the U.S. military. If service members clearly understand the difference between their religion, and the dangerous radicalism of violent Islamist extremism, the patriotic Muslims in our armed services will be protected against unwarranted suspicion. In fact, it was just that sort of awful, untrue stereotype about Muslim soldiers that Hasan himself believed and promoted in his statements and projects. The best way to defeat that stereotype is to educate our service members about the difference between the legitimate, peaceful observance of Islam, which is respected and protected, and the violent Islamist extremism which should lead to reporting, discharge and law enforcement intervention.
I endorse the changes that this report recommends because they do what needs to be done to fix the problems I have just described. They are necessary to make – and they are not hard to make.

First, military policies regarding religious discrimination and religious accommodation should make clear that violent Islamist extremism is not permitted and is not the same thing as the protected, peaceful practice of religion. This change would establish the important distinction that was not understood by those who failed to deal with Hasan.

Second, currently existing military policies on extremism should be modified to state explicitly that Islamist extremism is one form of extremism that is not allowed.

Third, service members should be trained and educated about violent Islamist extremism.

And fourth, protections against violent Islamist extremism need to be enforced. There needs to be an expectation in the military that, when you see a fellow service member exhibiting signs of violent Islamist extremism, you report it, and if you are a commander and you find out about it, you take action. Perhaps the right action for the commander is further investigation, perhaps the right action is discipline, perhaps the right action is counseling if the soldier in question is not radicalized too deeply, perhaps the right action is discharge, and perhaps the right action is immediate reporting to intelligence or law enforcement if the threat of harm is imminent. But it is right to act and wrong to ignore this problem, and military policies and training need to reflect that.

I know from my experience that the changes this report recommends could be made and implemented in a month if DOD chose to do so. That sort of urgency is necessary because our men and women in the military are vulnerable to a known danger and because DOD has an equal responsibility to protect its thousands of brave and patriotic Muslim-American service members from unwarranted suspicion by colleagues who have never be trained about what violent Islamist extremism is and how it differs from the peaceful exercise of Islam.

I welcome this Committee's hard work to protect them and hope that DOD will act immediately to follow the recommendations in the investigative report.

Mr. FRANKS. Well, thank you, Dr. Jasser, very much, and I thank all of you for your testimony.

And I will now begin the questioning by recognizing myself for 5 minutes.

Dr. Haas, first, how important are citizen reports to helping to thwart terrorist plots? And do you believe that this bill's requirements that reports be made in good faith based on reasonable suspicion provides sufficient protections against reports that are made for abusive or other inappropriate reasons?

Mr. HAAS. Well, to take these in reverse order, my reading of the legislation is that it draws the appropriate line between providing important protections for people who make good faith efforts while making very clear that it does not protect people who knowingly target groups or individuals. Now, of course, I appreciate what the chief said about the application, the practical application, of any piece of legislation, and I defer to him on how precisely it should be applied. But my reading of the legislation is that it draws a common sense line between improving our national security, protecting our national security and yet at the same time not opening the door to profiling.

Now, with regard to your first question, I think the evidence is quite clear. We just have example after example where individuals have stepped in where law enforcement has not seen something and one thing has led to the other, and we have saved literally hundreds if not thousands of lives. So I think the evidence is really quite clear on that.

Mr. FRANKS. Thank you, sir.

Chief Burbank, as you know, a narrower version of this legislation was limited to the public transportation context and signed into law in 2007. Do you know of any evidence that the 2007 law has led to law enforcement ignoring clearly established law or the constitutional rights of individuals or legal standards of probable cause and reasonable suspicion? I know that is the concern and I understand that concern. Do you know any of examples like that?

And do you oppose H.R. 963, and if so, what would you do to help us fix it?

Mr. BURBANK. Well, let me say this, that I am not opposed to the legislation. I think we just need to be cautious because our citizens—and we could not as police officers, especially local law enforcement, do our job without the assistance of the public in which we serve. So it is vital that we have an exchange of information that takes place. But our citizens are not trained in standards of reasonable suspicion or probable cause, and so it is important and contingent upon us to ensure that law enforcement, as they receive this information, that they vet the information, that they look at it responsibly and not just arbitrarily throw things in a database or make reports that go on that can have significant impact into the future and also, as you mentioned earlier, potentially cloud our ability to sort through information. And so, again, it is implementation and the careful implementation that do we have the checks and balances in place to ensure that we are just not arbitrarily taking information and saying, yep, that is valid information and we are going forward with it.

Mr. FRANKS. Thank you, sir.

Dr. Jasser, you testified that an Islamic civil rights group instructed citizens not to directly report suspicious behavior to authorities. Can you comment on how today's legislation would encourage, in particular, American Muslim populations to directly report suspicious activity to law enforcement officials?

Dr. JASSER. Yes, I think that is very important, Chairman. To me as a citizen, there are two options. Either we start moving toward a society where government has to interfere more—and by virtue of what these civil rights groups are doing, they say we don't want government monitoring mosques, et cetera. Well, I could not agree more. I don't want the government in my private life. Well, if we don't want that, then we need to empower and protect citizen reporting. It is either one of two things. Either citizens report because terrorism works by blending into the community by random acts that nobody can predict or government will sadly end up sacrificing liberty for security.

So ultimately, while the group—you know, I do want to qualify one thing. They did not tell people not to go to Homeland Security, but they said the way to do it is through CAIR. And ultimately, what that does is consolidate their power so that even though that group, by the way—the FBI has cut off all communications through a communique to them basically saying we will no longer communicate with you because of Hamas, et cetera. They still end up controlling a lot of the information and reporting, and many Muslims who feel that they don't want to go through them end up saying, well, they are the group that is leading our community. Whether we like them or not, we are going to report to them. And I think it becomes more of a tribalism, if you will. And if we are going to fight that and protect reformists and protect Muslims that will break that cycle, we need to provide legal protection for them.

Mr. FRANKS. Yes, sir.

My last question is to you, Dr. Jasser. How will encouraging open discussion of potential terrorism-related transactions or activities or occurrences, and open discussion more generally, further your efforts to provide a voice for American Islam?

Dr. JASSER. Yes. I think the Fort Hood example couldn't have expressed it more. Here you had a doctor. I came out of that environment at Bethesda Naval Hospital, and I can imagine what happened. It has been 15 years since I have been there. But ultimately, here was a doc who was supposed to be talking about PTSD and ended up talking about why militant Islam is valid and why it is a war against Islam and starting citing scripture, and nobody said anything because they are not trained in counter-terrorism but also because of the environment that they didn't want to be labeled as discriminatory or racist against Muslims.

In our environment, if we are going to separate mosque and state and begin to have a dialogue about the beautiful aspects of our faith that is the solution to terrorism, if we are going to have that dialogue, we need an environment in which we can say, well, what is spiritual Islam and what is radical, what is political Islam. What is the ideology fueling this movement? Nidal Hasan did not become radical overnight. This was a process of radicalization. And again, what would have been the environment if he had been arrested a

few weeks before November 5? What would be the case in the court system today?

Look at Chaplain Yee and others. Mr. Yee himself has become part of a cottage industry of victimization, and nobody really looked at the fact that many of the facts in his case were not released because there were national security concerns of some of the information he was transmitting.

So at the end of the day, I will tell you my work needs an open environment. And again, it doesn't stigmatize Muslims. It allows Muslims to have an internal debate that we are not a monolithic community, that we have ideas that need reform and other ideas that need lifting up because if we are going to counter Islamism as an ideology, we need to have a dialogue not between Islam and the rest of the world, but within the Muslim community for reform and modernization.

Mr. FRANKS. Well, thank you, sir. Thank you all very much.

I now recognize the distinguished Ranking Member for 5 minutes.

Mr. NADLER. Thank you.

Mr. Haas, we all agree that we want people, if they see something, to say something. That is not under discussion. But how does this bill, H.R. 963, the bill before us, alter the liability structure of law enforcement officers in a manner that differs from current law? I mean, what does it actually change?

Mr. HAAS. Well, I am, to be honest with you, sir, far more focused on how it provides the important protections for average Americans. I am not an expert in terms of the existing liabilities——

Mr. NADLER. Okay, but the key is, as far as I can tell, it doesn't change much, if at all.

Chief Burbank, can you answer the question? What additional protections, if any, does this bill give that current law does not, current normal tort law and so forth?

Mr. BURBANK. Qualified immunity currently exists for law enforcement, and I don't see it changing that standard. My concern is the perception that the standard is being changed by this, and that is what we need to safeguard against.

Mr. NADLER. Do you think that the perception that this bill would change the standard is a bad perception?

Mr. BURBANK. In speaking with law enforcement officials and officers, the expectation is that there is now more protection.

Mr. NADLER. That there will be more protection.

Mr. BURBANK. Yes, that they will be more protected. And I can't stand here before you and say that protecting officers is a bad thing. I mean, we need to ensure——

Mr. NADLER. The current law—does it sufficiently protect officers?

Mr. BURBANK. I believe it does, yes.

Mr. NADLER. You believe it does.

Does this bill—forget the perception—would it in fact add protection in any way?

Mr. BURBANK. I do not believe that it specifically does.

Mr. NADLER. And is that for members of the public too or just for law enforcement?

Mr. BURBANK. That is speaking strictly for law enforcement.

Mr. NADLER. Now, what about members of the public?

Mr. BURBANK. Well, I believe that this does extend a little more to members of the public as far as qualified immunity which in other——

Mr. NADLER. How does this extend to members of the public beyond regular tort law? In other words, under normal law that we have, if you see something and you are in good faith and you report it and you have no malice, you are protected. You have that qualified immunity. How does this add to that?

Mr. BURBANK. You are getting into an area of law where I would be——

Mr. NADLER. Can anybody answer that question?

Dr. JASSER. Mr. Nadler, I am not an attorney, but what I can tell you is that in 2007, the qualified immunity was passed by your body to the passengers that report——

Mr. NADLER. No. I understand that, but the question is some of us believe that what we did in 2007, while harmless, didn't in fact change anything even for passengers.

Dr. JASSER. Well, if it didn't change anything, Mr. Nadler, then CAIR and the imams would not have dropped the lawsuit against——

Mr. NADLER. Well, maybe they had a perception but it didn't change the underlying law. I mean, people can act on misperceptions. I am trying to ask—and apparently no one can answer the question—if we are actually changing the underlying law. Apparently for law enforcement, the answer is no. For regular citizens, no one really can answer that.

Dr. JASSER. I believe it raises the threshold of the amount that you have to prove that it was in good faith or not. I think that without this added language——

Mr. NADLER. You think it raises the threshold. Okay.

Now, either Mr. Haas or Chief Burbank, are law enforcement officers still required to exercise the level of care required for reason of suspicion under *Terry v. Ohio*?

Mr. BURBANK. Absolutely.

Mr. NADLER. They are. Okay.

Does this bill impose any additional investigative burden on law enforcement due to lack of training and discerning suspicious from otherwise ordinary behavior?

Mr. BURBANK. No. I do not believe it does.

Mr. NADLER. Let me ask you one other question. What has been your experience of how the prejudices of individual citizens can impact the responses of police officers?

Mr. BURBANK. We are subject to every call that comes into the police department in 911 or otherwise that the citizen who is making that report—their individual bias potentially can be in that call for service. And so we rely upon the training and experience of our officers as they go on these calls to sort those things out. But we do not have a choice, as I mentioned in my testimony, to differentiate or tell Mrs. Jones I am sorry we are not coming out today because we don't believe your report to be valid or credible.

Mr. NADLER. And let me ask one other question, Chief Burbank. Do you have any experience with lawsuits arising out of tips to the police?

Mr. BURBANK. Personally no, I do not.

Mr. NADLER. Are you aware of this being an issue in other jurisdictions?

Mr. BURBANK. Not an issue that rises to the level of frequent discussion in meetings with other chiefs of police. But I have heard of them, yes.

Mr. NADLER. Now, we are often told that focusing especially vigorous law enforcement attention on certain communities or outright racial or religious profiling—some people say that is an effective and necessary law enforcement tool, that we place our communities at risk if we allow political correctness to prevent law enforcement from doing so. Would you comment on whether you think that is correct or incorrect? Are we sacrificing a useful investigative tool if we don't do that?

Mr. BURBANK. That is absolutely incorrect. When we make enforcement decisions or take investigative action based upon race, ethnicity, religious belief, then it is wrong because we lose sight of what our ultimate goal is, and the standards of reasonable suspicion and probable cause rely on us to articulate what is the underlying criminal behavior that we can see that allows us to interject ourselves in someone's life. And when we ignore that, when we don't take that, then the volume of information that potentially is there is overwhelming. We need to always refer back, what is the criminal behavior that we are focusing on or looking at in order to interject ourselves as law enforcement into someone's life.

Mr. NADLER. And finally, Dr. Jasser, do you agree with that?

Dr. JASSER. Absolutely. This is not going to change any of the constitutional protections that a citizen has, but what it does is for those of us on the front lines, Mr. Nadler, it allows us to remove the obstacles. It protects citizens and at least tells us that government is not going to hang us out to dry and let us be—we can't deny the fact that we are a litigious society, and that if there are protections that citizens in good faith—I don't think this bill protects malignant citizens that report by virtue of profiling. I don't think it does at all. This simply raises the bar so that things reported in good faith are not going to be afraid of being dragged into court simply because they report it.

And I will tell you a lot of the suing that is done is not done because they think they can win. It is done because they want to tie up organizations like ours or others in financial ruin so that we don't have the ability to continue to do the reform and the counterterrorism that we are doing.

Mr. NADLER. My time has expired. Thank you.

Mr. FRANKS. Well, thank you, Mr. Nadler.

And just for point of clarification, this bill is broader than the 6 U.S.C. 1104 which was passed in 2007 as part of a transportation bill. The 2007 provision granted immunity only for reports of a suspicious transaction, activity, or occurrence that involves or is directly against a passenger transportation system or vehicle or its passengers. Now, this bill, by contrast, provides immunity for re-

ports of any suspicious transaction, activity, or occurrence whether or not it involves transportation.

It is appropriate in my mind and important to expand these immunities beyond the transportation context because, obviously, terrorists do attack other areas besides transportation systems. So just for point of clarification.

And with that, I would yield 5 minutes to the gentleman from Iowa, Mr. King.

Mr. KING. I thank the Chairman for yielding and all the witnesses for your testimony. I am probably going to go down a path here that is maybe a little bit different than you might have anticipated.

As I listened to the testimony and in particular that of Dr. Jasser, whom I have heard speak in the past—and I very much appreciate all of your contributions to this country, and yours is, of course, included in that, Dr. Jasser.

It is just interesting to me to hear the perspective that you bring from this from your perspective and how much your voice contributes to a broader view of how we address this American civil society in the face of the enemies that we have internally and without. I think you have added a lot of understanding to it.

I will probably go further than most will on this Committee, but when the word "profile" comes up, I remember preparing to board an El Al airliner and not going through a body search or anything of the intensity that TSA puts me through but simply an interview where they looked in my eyes and asked me a series of questions and, once satisfied, said okay. And I might not even known that I was being profiled, but they were asking a lot of smart questions, and if I had given the wrong answer to probably any one of those, I might have gone through a lot more examination.

And I hear the expressions that we have here on this panel, our concern about how this bill doesn't authorize profiling. I am of the view that everyone in this country, if they are going to function in our society, has to profile. People put labels on themselves by the clothes they wear, their speech mannerisms, their tattoos, their body piercings, all kinds of things, the signs that they carry around this city. They just scream at us and say "profile me." This is my position. Get my message. We know we don't have time to hear what goes on inside a person's head.

I watched the—what shall I say—the flying imams leverage a point and end up with a settlement in Minneapolis that I think was completely unjust and sent the wrong message and intimidated a lot of people not to report and not to see something, say something.

I just asked someone to pull an article. This is a thing from memory that may not be considered to be in context here. But this is an article in San Francisco dated June 2nd of this year, and it is about how fire crews and police could only watch a man drown in the bay because they had not received the proper training to go pull this man out of the bay by San Francisco. And finally, a witness—it says in one article, another one it says a volunteer—pulled the man's lifeless body out of the 54 degree water.

I think of one of my brothers who pulled a person out of a swirling eddy below a damn who was drowning, in fact, did die, and he

didn't wait for training. He went in and pulled that man out and did everything he could to save his life. I can think of an occasion in my own life that way, not to speak about it into the record.

I am just concerned that the culture of this country has gone to this point of being so overloaded with this litigious society that you have referenced that we have lost track of our duty to our fellow man and fellow woman, that we have lost respect for our own culture and our own civilization to the point where when something needs doing, we should go do that, do the right thing regardless of the litigation consequences. And I think it is sad that we have to come before this Judiciary Committee and carve out the narrowest of exceptions for specific circumstances when the society and the culture should always instinctively support the people that do the right thing for the right reasons regardless of whether profiling needed to be part of that conclusion that they drew.

And I would ask Dr. Jasser. I know that you have thought about this deeply, and I would be very interested in what you might have to comment about what I have said.

Dr. JASSER. Thank you, Mr. King.

Yes. I cannot underscore enough how much—you know, you raise the issues that this bill just does one thing, which is raises the bar of liability protection. But the issue is much deeper. It is one of education. And I think one of the other things that See Something, Say Something is not—it is done in a vacuum—is that we need to educate our population. What are we looking for? So many people, when they uncover a cell in the neighborhood, say, oh, he seemed to be a normal guy, but you know, he was doing this and that and I didn't realize it and they never reported it. The same thing with the Fort Hood issue. So many things could have been reported. The Times Square bomber. Citizens saved that but then once the reporter started looking at his history, there were many neighbors and others that could have reported things months in advance that did not. And once we start educating our population about things to look for—it is not that we are asking them to spy on one another. We are just reporting things that are public.

And I think it is interesting. The UK—there is a website called directgov where they tell citizens to report radical websites to the government, and it is a reporting system where they see something, say something on the Web. And cyber jihad is a significant thing.

And right now, I guarantee you there are a lot of citizens afraid to report because they see what happens to groups like ours, the way we get stigmatized and targeted as anti-Muslim when in fact there couldn't be anything more pro-Muslim than weeding out radicalism within our community. So if we are going to breach the chasm of ignorance and educate our population, we need to protect them and say, you know, the cultural change you are talking about doesn't happen overnight. This legislation is one step toward doing that.

Mr. KING. And if the Chairman would just indulge for one concluding question, I would appreciate that.

This comes to mind as I listened to this. When the issue of Juan Williams came up and he was dismissed from NPR, what were your thoughts on that?

Dr. JASSER. You know, I will tell you my thoughts were that here you have somebody dismissed simply because he said something that was on his mind. Now, did his comments—were they bothersome? You know, I have Muslims in my own family that wear hijab and look very ethnic, and we are proud of that. So, yes, that is a conversation we have to have. But at the end of the day, to dismiss somebody for saying that he felt it but didn't feel it was right I think was a limitation and a squashing of free speech.

And we have to be careful in this country and that by political correctness and protecting minorities like us, like Muslims, that we then start suppressing free speech to where we can't educate our population. You can't educate a community that can't even talk about it, and you have to be able to talk about fears, talk about what is discrimination, what is not, what is ideology. You remember Islam and Islamism is not a race. It is an ideology. Actually true racial profiling, which is wrong and against our Constitution, doesn't work because what we are fighting is an ideology. So if you are going to educate our communities, you have to be able to talk about it. And he got punished just for speaking out.

Mr. KING. I would argue it doesn't go against the Constitution, but I appreciate your response and the tone with which you delivered it. It is constructive.

And I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. FRANKS. Mr. Haas, I know that you were jumping to get in there here.

Mr. HAAS. I just wanted to say briefly that you are talking, Congressman, about two different aspects of this. You are talking about the cultural level and we are talking about the legal level. Obviously, with regard to the legislation here, we are talking about the legal level. But, of course, they are connected. And to the extent that there is a legal liability, it seems to me we are sending a cultural signal. What was dangerous about the case of the flying imams, when those passengers were potentially liable—and we can debate whether they were, in fact, liable. I heard before Congressman Nadler said he didn't think the 2007 legislation was necessary. That is a separate debate. But to the extent that there was a widespread perception that there was a legal liability, it seems to me the government is sending a cultural signal that it does not take this reporting as seriously as it should.

You have very appropriately responded to the particulars of that situation. You responded to the particulars of the libel tourism situation. It seems to me with this legislation you could send a much broader signal that we are really serious about your responsibilities and your ability, your legal ability, to do the right thing, to see something and then to say something. To the extent that we continue to play catch-up and we are sort of playing Whac-A-Mole—that is, a situation comes up and we pass a law; a situation comes up, we pass a law—it seems to me we are always one step behind. I think this legislation can put us one step ahead.

Mr. FRANKS. Thank you, Mr. Haas, and thank you, Mr. King.

Mr. KING. I just wanted to say that there is another component of this discussion that I don't believe I articulated very well, and that is our duty as citizens to see something, say something and

when appropriate do something on the spot because it is the right thing without regard to not having the right license or training or a permission slip from government.

Thank you and I yield back.

Mr. FRANKS. Thank you, Mr. King.

Mr. Scott, you are recognized for 5 minutes, sir.

Mr. SCOTT. Thank you, Mr. Chairman.

Chief Burbank, is it possible in applying this to prevent profiling on the basis of race, religion, or national origin, or does something like this actually promote racial profiling?

Mr. BURBANK. I think we have to be careful that we are not conducting profiling. I think a definition needs to be made here. Profiling for criminal behavior is absolutely appropriate and is done every single day in effective law enforcement. You observe behavior and you say this leads me to believe that criminal behavior is taking place, very similar to the El Al description. They are looking at do eyes divert. Is someone perspiring? Those are the indicators of someone lying, not how they are dressed, the color of their hair, their eyes, or do they pray or not.

Mr. SCOTT. Does objective, reasonable, good faith—does that include racial prejudice?

Mr. BURBANK. No. I think it is just something that we need to, as we implement this, ensure that we are not allowing that to take place.

Mr. SCOTT. Exactly what are we protecting people from with the bill? Has anyone ever been found liable for making a criminal justice tip in good faith with objectively reasonable suspicion? Has anyone ever been found liable?

Mr. BURBANK. Not in my jurisdiction that I am aware of.

Mr. SCOTT. Dr. Jasser, has anyone been found liable?

Dr. JASSER. Ask U.S. Airways and the Minneapolis security and others that ended up paying unknown amounts settling that case. Ask many of the victims of——

Mr. SCOTT. Wait a minute. What was the finding? You have people who have made reports and hassled people without good faith and without any objectively reasonable suspicion. They may be found liable. Is that right?

Dr. JASSER. They still would be found liable, but——

Mr. SCOTT. Okay. Now, if you are found to have made your report in good faith with objectively reasonable suspicion, has anyone in those circumstances with those findings been found liable?

Dr. JASSER. That simple assumption you made is that people can have the financing and the time to go through a court to prove that they did it in good faith.

Mr. SCOTT. Well, let's first of all get to the answer to the question. The fact is no one has ever been found liable who made a good faith—based on objectively reasonable suspicion—no one has ever been found liable. Is that right?

Dr. JASSER. Well, the thing is I have demonstrated cases to you, sir, of the Fort Hood incident and others that people said their fear of litigation is what prevented them from reporting. There are cases of libel tourism of people that had been found liable for saying things that they were not protected from until the libel tourism

bill was passed. But I am not aware of a specific case. You know, it is almost a chicken or the egg——

Mr. SCOTT. Was that under United States law?

Dr. JASSER. I am sorry, sir.

Mr. SCOTT. The case you mentioned.

You have gone around the case. The fact is that no one has ever been found liable for a good faith tip based on objectively reasonable suspicion. That is a fact.

Now, who has the burden of proof in a lawsuit to prove good faith or objectively reasonable suspicion under the bill? Is it part of the prima facie case or an affirmative defense?

Dr. JASSER. I don't know the answer to that question, sir.

Mr. SCOTT. Under what circumstances in American jurisprudence is someone with a winning case, that is, someone who can show that the tip was made based on bigotry, not in good faith, and without any objectively reasonable suspicion—if you have those facts, should you be able to bring a lawsuit?

Dr. JASSER. Can you restate your question?

Mr. SCOTT. If you have someone who you believe has made a racist tip to law enforcement not based on good faith and without any objectively reasonable suspicion, should you be able to bring a lawsuit?

Dr. JASSER. Absolutely. As I said, this legislation doesn't——

Mr. SCOTT. Who with a legitimate lawsuit has to bet their house on the outcome of the litigation? What plaintiffs have to incur if they find they can't prove their case, although they in good faith believed it. We are not talking about frivolous lawsuits because Rule 11 takes care of that. In a good faith lawsuit, why should plaintiffs have to bet their houses on the outcome of the case? Who else has to do that?

Dr. JASSER. But on the one hand, you are saying the legislation doesn't add anything. On the other hand, we are saying that it actually makes them have to bet their house. So it is one or the other. If this legislation does change the bar——

Mr. SCOTT. It doesn't change the bar. It means if you have a winning lawsuit, you have to bet your house on the outcome of the case. For example, you believe it is true and you bring it and the witnesses change their stories or something happens and you lose your case. Why should you have to pay attorney's fees and costs to the defendant for having brought what you in good faith thought was a legitimate lawsuit?

Dr. JASSER. Because we have a threat that is increasing. And I can tell you from my——

Mr. SCOTT. Who else in American jurisprudence—what other plaintiffs have to pay attorney's fees and costs?

Dr. JASSER. I think it would help decrease the litigiousness of society if we did do that, but from this perspective, I can tell you that——

Mr. SCOTT. Does that mean you can't think of any plaintiff that has to bet a house in order to bring a lawsuit?

Dr. JASSER. I cannot, sir. I don't know.

Mr. SCOTT. In an automobile accident, if you bring a losing lawsuit, you don't have to pay attorney's fees. Is there any plaintiff

that has to come into court fearing that they might lose their house if they lose the lawsuit?

Dr. JASSER. I think if you ask any of the families of the 13 victims at Fort Hood, they would have liked this type of system available to them.

Mr. SCOTT. This would be the only case in which a plaintiff in American jurisprudence would have to risk attorney's fees and costs in order to have the right to bring a winning lawsuit. Is that right?

Dr. JASSER. Again, we are in a state of war against an ideology that is threatening us, and if we continue to embolden the courtroom attacks and oppressive tactics by groups—I think if you talk to families that were victims from people like Nidal Hasan, they will tell you that that is a small price to pay to protect our Nation.

Mr. SCOTT. So what we are deterring is not the reports, good faith, objectively reasonable suspicion standards. What we are deterring is people in good faith bringing a lawsuit against someone who in bad faith, without any reasonable suspicion, made a complaint and caused them to be jailed or otherwise—miss a plane or whatever in bad faith. They would be deterred from bringing a lawsuit because unlike any other plaintiff in American jurisprudence they would have to risk their house in the situation where they might not win the case for one reason or another.

Dr. JASSER. Mr. Scott, since 2007 since transportation passengers were protected, is there any examples I am missing of people that have had to risk their house and didn't because of the protection of passengers?

Mr. SCOTT. Well, the question is whether or not a plaintiff with the facts. And you can't say anybody didn't make a complaint because they had a good faith, objectively reasonable suspicion and didn't make a complaint. What we are talking about is American jurisprudence. We do not require plaintiffs to bet houses in order to bring a lawsuit except in this case.

Mr. FRANKS. I just want to thank the witnesses for your testimony. I appreciate all the efforts that you make to make our society and our country a safer place to live, and I wish you all the very best.

I want to remind the Members that they, without objection, will have at least 5 legislative days to submit to the Chair additional written questions for the witnesses which we will forward and ask the witnesses to respond as promptly as they can so that their answers may be made part of the record.

And without objection, all Members will have 5 legislative days with which to submit any additional materials for inclusion in the record.

Again, I thank the witnesses and I thank the Members and observers.

And this hearing is now adjourned.

[Whereupon, at 11:25 a.m., the Subcommittee was adjourned.]

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