

TESTIMONY OF
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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

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-gadah-n-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-shirt 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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