

Testimony
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Mr. Chairman, Madam Vice Chairman, I am delighted to appear before the Committee this morning and to give you my thoughts on the issue of intelligence collection, civil liberties and the Constitution. That is a vast – and very important – subject, and I am very pleased that the Committee is taking a systematic look at these fundamental issues.

We all recognize that intelligence has never been more important to our national security. It has also never been more important to understand the role of intelligence and how it relates to our basic civil liberties.

We must never forget that our nation was founded by men who wished to free themselves from the yoke of tyranny and the abuses of their rights as Englishmen, as they saw them. At the core of our government is the Bill of Rights. We are in a war with terrorism but we must find a way to fight and win that war consistent with the preservation of our fundamental civil liberties. To do otherwise undermines the very principles upon which our government is based and gives terrorists a victory they haven't earned.

It is also important to understand that the rest of the world looks to us for leadership on these issues. Among the reasons given by the President for the invasion of

Iraq was not only to replace a brutal dictator but also to plant the seeds of democracy in a region of the world that has known little democracy. If we are seen as little different from those we just overthrew, we give ammunition to our most virulent critics that this is a war against Islam, that we do not respect those who have different religious beliefs, and that democracy is a sham.

Intelligence is the key to understanding the threat we face and fashioning an appropriate response to it. Good intelligence helps identify not only the short term threats but also the long term trends that causes terrorism in the first place. It is central to the determining how we wage the war.

Secretary Rumsfeld recently asked a series of very good questions in his memo that leaked. The answers to those questions must be grounded in rigorous intelligence collection and analysis. Intelligence must play a critical role in determining what is and what is not working in our policy toward Iraq – and in every other major foreign policy challenge we face.

Central to the intelligence function is the issue of the integrity of the intelligence process. We are asking a great many questions about intelligence in connection with the 9/11 attacks and the decision to invade Iraq. Those same questions should be asked about our current situation. If we believe the intelligence process failed going into Iraq, we must make sure there are no intelligence failures as we develop and implement our next

steps in Iraq. I commend this Committee for the leadership it has taken asking these hard questions.

In addressing the terrorist threat we must ask what influences the terrorist. We must win not only the shooting war but also the political and moral war that, in the end, will give us the most secure peace. And that's where our values intersect with intelligence policy. How can we fight and win while remaining as a beacon to those in the Muslim world who seek to develop a genuine democracy with strong security and police forces that do not abuse their own people.

I was always struck, Mr. Chairman, by the lessons we learned when we obtained the KGB archives, as published in The Mitroyken Archives, by Christopher Andrew. We learned that they were terrific in the collection of intelligence information about the West, but they were terrible on analysis. The reason, of course, was that they couldn't tell Stalin the truth. We need to make sure that we have not only adequate collection but also a process that assures that unvarnished analysis reaches our most senior policymakers.

Let me now turn to some specifics the Committee has asked me to address.

First, the Patriot Act. I do not have detailed knowledge of how the Patriot Act has functioned. My impression – based on conversations with current officers in the intelligence and law enforcement agencies – is that it is working well. The changes that made it easier to share information between the law enforcement and intelligence

communities were big steps in the right direction. It is my understanding that much progress has been made in sharing information between the agencies but that much remains to be done.

In another example, the broadening of the purpose for which electronic surveillance can be conducted under the Foreign Intelligence Surveillance Act has resulted in the collection, analysis and dissemination of very valuable intelligence that was not previously available. At the working level, however, there are still lots of problems and sharing of information still requires attention.

At the same time, I recognize that expanded powers create the risk that over-zealous application could begin to infringe on our civil liberties and intrude unnecessarily into our lives. I have seen news reports that the Administration is giving some thought to a revision of the Patriot Act. I am not aware of the specific revisions they want to make but I urge proceeding with great caution. I believe that the current law should be thoroughly reviewed and understood before enacting changes that could erode civil liberties. In short, I support those who call for careful Congressional review and, to the maximum extent practicable, wide public debate about how the Patriot Act has worked before making any further adjustments in the law.

With respect to civil liberties, Mr. Chairman, I believe some of the most important issues are beyond the scope of this hearing and this Committee. Those are the manner in which we have treated U.S. defendants in U.S. criminal courts, and here I am speaking

particularly about Zacarias Moussaoui. I am troubled by some of the procedural steps taken by the prosecutors in that case. I cannot believe that our long-run interests are well served by, for example, refusing to let him have access to potentially exculpatory statements by terrorists whom we have captured.

I am also troubled by the unilateral detention of hundreds of individuals at Guantanamo. I am aware that DoD has adopted procedures designed to assure fair trials. But I doubt that those rules will deflect the criticism leveled against us by many of the very people we must convince to support the cause of democracy.

The fact that we are doing this entirely by ourselves, rather than through an internationally recognized criminal court, does several things.

First, it permits our critics to say that we are making a mockery of our own assertions about due process and the rule of law. Second, it creates a rallying point among radical Islam that this is a war between the United States and Islam, that we are not following the tenets of our own justice system and are denying these individuals their basic human rights. Third, it makes the United States, and the United States alone, a target for retaliatory strikes. I believe it is only a matter of time before terrorists seek to take Americans as hostages or do other acts demanding the release of these individuals in Guantanamo.

I therefore believe that at the earliest opportunity, the United States should seek to create an international tribunal, along the lines of the tribunals prosecuting war crimes in central Africa and the Balkans, and turn these prisoners over to international tribunals.

Organizational Considerations.

A key aspect of the relationship between intelligence and civil liberties is the manner in which our intelligence services are organized. I know there is much talk of organizational changes, and one occasionally hears, “We need a Goldwater-Nichols Act for the intelligence community.” That is, of course, shorthand for recognition that only Congress can make the organizational changes many people believe are needed. As you know, the Goldwater-Nichols Act sought to achieve fundamental reform in the organization of the Department of Defense by aligning accountability, responsibility, authority and incentives. It has been a great success and I think could serve as a useful model for organizational change in the intelligence community.

Many have called for the creation of a Director of National Intelligence with greater authority over the key elements of the intelligence community, namely, CIA, NSA, NRO, and NIMA. I believe that is a good idea and requires serious consideration. At the same time, the concentration in a single individual of greater authority over organizations that, by necessity, operate in the shadows with tremendous capacity to collect and analyze information on individuals and organizations, must be done with the utmost care. There are essentially two models; one, leave the DCI largely as is but give him or her greater execution authority. The other is the creation of a DNI. Regardless of

which is selected, I believe it is possible to design a system that gives greater central authority to an individual but at the same time has safeguards and oversight systems to assure that our fundamental civil liberties are preserved.

As part of this reorganization, I believe serious consideration should be given to the establishment of a domestic security service. I have reluctantly come to the conclusion that law enforcement and intelligence are such fundamentally different functions of government that they cannot reside in a single agency. Law enforcement investigates and prosecutes criminals. Intelligence identifies the trends and factors and predicts the behavior of those individuals who would do us harm. So long as domestic intelligence remains part of the FBI, I believe the law enforcement side of the FBI will always dominate.

I therefore support what is sometimes called the “tear-away jersey option;” namely that the FBI should create as soon as possible a “service within a service.” That is, an intelligence service within the FBI that in the future could be separated from the FBI and established as a domestic security agency responsible for the clandestine collection of information on threats to our national security that may manifest themselves within the geographical confines of the United States. The manner in which the U.S. Air Force emerged from the U.S. Army in 1947 is a good example to follow.

In my view, the service should not have arrest authority. It should, however, report to the Attorney General. I am aware that many in the civil liberties community

believe that the agency should have arrest authority, in the belief that the best guarantee of our civil liberties is the prospect that information collected may ultimately be introduced in a court of law. In my view, the same considerations would apply to an agency without arrest authority. They may begin an investigation that becomes a criminal investigation and would have to be handed off to the law enforcement authorities and so, in the course of collecting intelligence this new domestic agency would also have to respect the rules of evidence. Moreover, I think an agency that does not have arrest authority is inherently less threatening to civil liberties than one that can also arrest and put people in jail.

I recognize these proposals are controversial but I believe that we should begin now to consider them because I believe they are so important to the preservation of our national security and our civil liberties.

Thank you and I look forward to your questions.