

Statement of
The Honorable Orrin Hatch

United States Senator
Utah
August 19, 2004

"The 9/11 Commission Report and Recommendations for the
Future of Federal Law Enforcement and Border Security"

Let me begin by adding my voice to those who have expressed their appreciation of the members of the 9/11 Commission and their staff for their hard work in putting together a thorough report that includes many thoughtful recommendations.

Thank Senator Gorton and thank you Representative Hamilton.

We also owe a debt of gratitude to all of the witnesses who appeared before the Commission, especially the representatives of the families of those who perished in the horrific and unjustified attacks of nearly three years ago.

The first responsibility of government is to protect its citizens and we must never shy away from this duty.

Today the Judiciary Committee begins its discussion of the portions of the 9/11 Commission's Report and recommendations that relate to areas under our jurisdiction such as border security and the role of the FBI in the field of counterintelligence.

Our colleagues on the Government Affairs Committee, led by Senator Collins and Lieberman, have asked for our Committee's perspective on matters within our expertise and I thank them.

In addition to those recommendations that are designed to help our law enforcement and homeland security agencies identify, thwart, and apprehend terrorists, we on the Judiciary Committee have a special role in implementing and overseeing any recommendations aimed at protecting our civil liberties. I expect, for example, that today's hearing will help us gain a better understanding of the Commission's recommendation calling for the creation of a new civil liberties board.

Similarly, we must take to heart the Commission's recommendation with respect to our obligation to provide humane treatment for those detained as suspected or captured terrorists. The abuse of prisoners such as occurred at Abu Ghraib is contemptible as well as counterproductive to our efforts to stop Islamist terrorism at its countries of origin.

Much attention that been focused on the now-famous organizational chart on page 413 of the Commission Report proposing the National Intelligence Director, the National Counterterrorism

Center, and the three, dual-hatted deputies. As significant as the debate today over the structural issues is, it must not be allowed to crowd out an equally important public policy discussion of those recommendations that urge America to stand up for and defend our core values and ideals with our foreign neighbors and work to bring about long term changes in the underlying economic and political conditions that foster Islamist terrorism in certain regions.

We must not be under any illusion that we can reach accommodations with Islamist terrorist organizations like Al Qaeda. The Commission found that these groups do not hold views "with which Americans can bargain or negotiate there is no common ground - not even respect for life -- on which to begin a dialogue... [They] can only be destroyed or utterly isolated."

The deadly attacks on 9/11 required our country to adopt new laws to protect the public. I find constructive the Commission's observation that "a full and informed debate on the Patriot Act would be healthy." In this regard, I would note that the Commission also found that, (s)ome executive actions that have been criticized are unrelated to the Patriot Act. The provisions that facilitate the sharing of information among intelligence agencies and between law enforcement and intelligence appear, on balance, to be beneficial."

The 9/11 Commission Report documents the negative repercussions of the so-called wall that existed before enactment of the Patriot Act between intelligence and criminal investigators. Even if the Commission is accurate in its assessment that the July 1995 procedures establishing the wall by Attorney General Reno "were almost immediately misunderstood and misapplied," there can be no doubt, as chapter eight of the Report lays out in great detail, that creation of the wall between intelligence and criminal investigators impeded rigorous following of leads that may have prevented the 9/11 attacks.

The Commission's Report catalogs that on August 29, 2001 one frustrated FBI criminal investigator prophetically e-mailed across the wall to a FBI intelligence officer the following message after being denied the ability to access and use information about one key Al Qaeda operative:

"... someday someone will die - and wall or not - the public will not understand why we were not more effective and throwing every resource we had at certain 'problems'."

Never were more truer words written. But our job is to learn from our past mistakes in order to protect the American public in the future.

If we carefully review the lessons contained in the 9/11 Commission Report and fairly evaluate its recommendations, we will be able to better marshal our resources and carry out our Counterterrorism program more effectively and reduce the risk of terrorist attacks against Americans at home and abroad.

For example, the Commission's Report compellingly demonstrates the importance of border security and tracking international travelers. Under Secretary Hutchinson will help us understand the Administration's views in this critical area.

Also of great interest to the Judiciary Committee is the Commission's recommendation relating to the future of the FBI in the war against terrorism. The 9/11 Commission Report found that the FBI and Director Mueller have cooperated with the Commission. Recently, the FBI issued its formal response to the Commission's recommendations and, in each instance, was either implementing it or reexamining its current policy in light of the recommendation.

I would like to commend President Bush for his leadership in making certain that the key senior Administration officials are giving the bi-partisan 9/11 Commission Report the respect and consideration it merits.

It appears to me that, by and large, all of the Committees in the House and Senate are attempting to approach the Report in a bipartisan manner despite the fact that we are deep into the election cycle and despite the fact that some of the Commission's recommendations are somewhat complex and controversial such as those pertaining to changes in Congressional oversight of terrorism programs.

I hope that this spirit of bi-partisanship continues this morning so that we can go about the serious business of adopting the set of policies and laws that best protects the American public from terrorism while preserving our traditional rights and liberties as American citizens.