

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
September 13, 2004

Senate Judiciary Subcommittee on Terrorism, Technology and Homeland Security
Hearing on "A Review of the Tools to Fight Terrorism Act"

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Mr. Chairman, I was pleased to work with you on the hearing you held on June 22, 2004, on subpoena powers and pre-trial detention of terrorists. I agree with you that how we fight the war on terrorism is absolutely critical. Protecting our citizens from further attacks is vital. We must also strike the appropriate balance between liberty and security. Hearings such as this one allow us to discuss these issues with experts and amongst ourselves. The exchange of a wide variety of views is crucial if we are to make reasoned judgments in the best interest of the American people.

One important recommendation of the 9/11 Commission was that the burden of proof for retaining a particular governmental power should be on the Executive Branch -- to explain that the power actually materially enhances security and that there is adequate supervision of the Executive's use of the power to ensure protection of civil liberties. If a power is granted, there must be adequate oversight. The Commission stated that we must find ways of reconciling security with liberty, "since the success of one helps protect the other."

I must convey my disappointment, therefore, that this hearing is focused once again on proposals to grant new powers to the government. We still have not held a hearing on how the Patriot Act is being used and a real debate on whether some of the most controversial provisions could be improved to better balance the needs of law enforcement with the civil liberties and privacy of the American people. The Department of Justice still has not provided adequate answers to questions from Sen. Feinstein and others on how these powers are being used. If we act on proposals to give the government more power without first conducting meaningful oversight and analysis of powers the Department of Justice already has been given, we will be doing the public a great disservice.

Many of the proposals contained in the Tools to Fight Terrorism Act would significantly expand current law. These new proposals include a new, broad subpoena authority that bypasses the grand jury system in terrorism cases, an expanded presumptive right to pre-trial detention for people charged with any terrorism related crime, a broader definition of material support for terrorism, and an expansion of the Foreign Intelligence Surveillance Act that would limit the

discretion of the FISA court. I note also with some concern that this bill does not seem to take into account the important testimony given by witnesses at the June hearing.

The expansion of federal power in this bill, of course, will not improve existing programs aimed at helping our first responders and local law enforcement. Local first responders and local law enforcement are on the front lines of combating terrorism. The 9/11 attacks demonstrated the need to invest in our first responders and law enforcement and to ensure they have the resources and tools to protect our communities. COPPS funding, Byrne Grants, and Local Law Enforcement Block Grants are just some of the ways that we help our communities in the fight against terrorism.

As we adjust our laws to help the nation better address terrorist threats, we must remember that an essential tenet of any plan to keep Americans safe is a dedication to safeguard the civil rights and liberties that define this great Nation. We must balance the legitimate needs of law enforcement against the freedom of all Americans, the immense majority of whom are innocent of any association with terrorists.

The proposals contained in the Tools to Fight Terrorism Act are certainly worthy of discussion, but they should not be rushed into law. Those provisions of the PATRIOT Act that are subject to the sunset provision do not expire until the end of 2005. It is my view that we should only enact new powers as part of our consideration of the renewal of the PATRIOT Act next year unless there is a clear showing that the new power is needed immediately.

Thank you, Mr. Chairman.