

Statement of

# **The Honorable Russ Feingold**

United States Senator  
Wisconsin  
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Senate Judiciary Committee  
Hearing on "Securing America's Safety: Improving the Effectiveness  
of Anti-Terrorism Tools and Inter-Agency Communication"  
Wednesday, January 20, 2010

Statement of U.S. Senator Russell D. Feingold

Mr. Chairman, I join all members of this committee in my horror at what almost happened on Christmas Day on the Northwest flight from Amsterdam to Detroit. The passengers and crew on that flight deserve enormous credit for helping prevent a disaster. While the attempt did not end in the tragedy that it could have, we must treat this as a wake-up call. We must understand how and why Abdulmutallab was able to board that flight, and what steps we can take to prevent the next such attempt.

But we must also approach our task calmly and thoughtfully, and not treat this as an opportunity to score political points. Congress needs to work with the executive branch to find the right answers to these questions - and not just lay blame or take actions that are politically expedient but ultimately ineffective. And as President Obama said last week, we "will not succumb to a siege mentality that sacrifices the open society, liberties and values we cherish as Americans. Because great and proud nations don't hunker down and hide behind walls of suspicion and mistrust. ... We will define the character of our country. Not some band of small men intent on killing innocent men, women and children." We must heed his call.

By all accounts, the President was right to characterize this as a systemic failure. And I agree with him that some very tough questions must be asked to repair and improve the counterterrorism systems that are now in place. This is not the time for excuses, nor is it the time for pointing fingers. It's time to fix the problem.

At the outset, the attempted bombing underscores the importance of denying al Qaeda safe havens in countries like Yemen, an issue I have been working on for years. The threat from al Qaeda in Yemen, as well as the broader region, is increasing and our attention to this part of the world is long overdue. Just to take one example, in 2003 as our Armed Forces were advancing toward Baghdad, 23 al Qaeda members escaped from a prison in Yemen. This serious security lapse got very little attention.

Local conditions in places like Yemen - as well as Somalia, North Africa and elsewhere - enable al Qaeda affiliates and sympathizers to recruit followers and plan attacks. As a result, while we

should aggressively pursue al Qaeda leaders, we will not ultimately be successful if we treat counterterrorism merely as a manhunt with a finite number of al Qaeda members in the world. Nor can we jump from one perceived "central front" to the next. We must develop a comprehensive, global counterterrorism strategy that takes into account security sector reform, human rights, economic development, transparency, good governance, accountability, and the rule of law. Without this broader framework we are likely to alienate local populations and embolden our enemy.

So I am pleased the President will increase his focus on Yemen. Any serious effort against al Qaeda in Yemen will require strengthening the weak capacity of the government as well as its legitimacy in the eyes of its citizens.

This incident also underscores management failures in the Intelligence Community. As the President and other administration officials have explained, we failed to anticipate fully the threat to the homeland from Al Qaeda in the Arabian Peninsula, despite knowing that they sought to strike us and that they were recruiting operatives to do so. And our failure to prioritize this threat contributed to the failure to uncover this plot. Clearly, there should be institutional responsibility for and more resources devoted to high priority threats, as the President has directed. But we also need to determine how those priorities are identified, in advance of a particular plot being uncovered. And we need better strategic intelligence on safe havens if we are to develop informed counterterrorism policies across the board, not just efforts to thwart particular plots.

That is why I have proposed the creation of a bipartisan commission to fully integrate, and thus make effective use of, all the ways in which we anticipate threats and crises around the world. That means not only the Intelligence Community, but the State Department and others in our government who gather information openly. That legislation has twice passed the Intelligence Committee, and has passed the full Senate as part of the intelligence authorization bill. It is a critical priority. Our analytical attention and institutional resources cannot forever be reacting to the latest plot. We need global capabilities and stronger strategic intelligence, to anticipate where al Qaeda is, or could be operating, before the next Abdulmutallab gets on a plane.

In some ways those issues are beyond the scope of this committee's hearing. But I don't think we can talk about our response to this attempted bombing without putting our counterterrorism efforts in a larger, global context. Now I will move on to the issues that will be the more central focus of this hearing.

The Christmas Day plot obviously raises serious questions about our watch listing and screening processes that we need to examine. President Obama has confirmed that the U.S. government had the information it needed to watch list Abdulmutallab, but it didn't happen. We need to consider whether watch list procedures need to be changed, and if so whether the problem is one of implementation - that is, of allocating sufficient resources and appropriately prioritizing the watch list process - or, rather, a problem with the watch list policies themselves. And we need to take into account the fact that the watch list includes both foreigners and Americans and that, if the standards for getting on a watch list are loosened, that would likely lead to more innocent Americans being mistakenly stopped at the airport. We all know the stories - in fact, the New York Times just ran a piece on an 8-year-old boy who has run into problems at the airport since he was an infant - and that kind of problem will only get worse if we dramatically expand watch

lists by minimizing identification criteria or lowering the threshold. And it's not at all clear that it would have done anything to prevent Abdulmutallab from getting on that airplane. The government had enough information to watch list Abdulmutallab - it just didn't put all the pieces together.

We also need to look at the breakdown in the visa revocation process. There needs to be clear authority and streamlined processes for reviewing and revoking visas when we have intelligence that someone may be seeking to harm the United States. We should also consider ways to strengthen the visa application process. Intelligence sharing to support these efforts is necessary.

But I am troubled by the new policy of requiring heightened screening of everyone traveling from or through certain countries, or who is a citizen of one of those countries. I'm not sure it is the most effective allocation of resources, particularly if it means that we will have fewer resources for looking into people who have actually done something suspicious. It also risks alienating governments and populations that can be allies in defeating al Qaeda and its affiliates. We must recognize the serious foreign policy implications of singling out countries and individuals whose citizens do not have a history of seeking to attack us and question the effectiveness of screening millions of people because of the behavior of one individual. The end result could be exactly what we are seeking to avert, so if more narrowly tailored solutions will prevent future attacks and help us avoid unsustainable burdens on airport security personnel, they should be pursued. In this case, enhanced screening of individuals already identified by government personnel as potential threats likely would have worked, had anyone looked at all the information about Abdulmutallab that the U.S government had already obtained.

I have also heard concerns from some constituents about the use of imaging technologies at the airport. It appears that these machines can be an important part of our airport security screening system, and might have helped stop Abdulmutallab if he had been screened by one. But I can understand the privacy concerns that have been raised. Should this technology be incorporated into standard airport security measures, we must ensure that TSA's privacy rules remain in place and that they are enforced. TSA already allows passengers to request a pat-down search instead of going through the full body imaging machine. Additionally, TSA policy is that it does not save or store the images the machines produce. One question for Congress may be whether we need to enshrine these rules in law. We also must ensure that these machines are properly tested before they are deployed and that we focus precious resources on the most effective technology. In this instance, explosive detection monitors may have been more effective than body imaging technologies.

Finally, there is the question of how to deal with this particular individual. I support the administration's decision to charge Umar Farouk Abdulmutallab in federal court. Richard Reid, the so-called shoe bomber, was prosecuted by the Bush Administration in federal court and is imprisoned in our federal prison system today. I see no reason to treat this case any differently.

In fact, we have a strong record in our federal courts. More than 200 terrorism defendants have been prosecuted in the federal court system since 9/11, and federal prisons securely hold more than 300 inmates whose cases were terrorism-related. Compare that with the record of the military commissions set up by the Bush administration, where only three people have been convicted. In addition, of the three people who have been held as enemy combatants in the

United States, two were ultimately transferred into the criminal justice system and one was released. Some argue that we can't get useful intelligence in the context of the criminal justice system, but that is simply inaccurate. In fact there are several examples of people who have been charged with terrorism-related crimes in federal court and have cooperated with the U.S. government, including several of the Lackawanna Six, and most recently David Coleman Headley who was indicted for involvement in the Mumbai attacks.

Mr. Chairman, this hearing is an opportunity for us to make our country stronger, by coming together to evaluate how we can enhance our defenses while maintaining the principles that America was founded on. I hope we will all approach it with calm deliberation, and not turn this into a political blame game.