

9/11

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October 20, 2004

The Honorable Peter Hoekstra
House of Representatives
Washington, D.C. 20515

Dear Representative Hoekstra:

Congress has promptly considered the recommendations of the 9/11 Commission, and we have been asked for our views of the bills now under consideration in conference committee. We are pleased to have the opportunity to respond.

The coming week offers the American people a concrete test of congressional and presidential leadership on one of the most important issues confronting the country. Either the status quo will be changed in a meaningful way, or it will not. Congress and the President have the opportunity to prove they can come together to make America safer. There is also an extraordinary opportunity to reach out a hand of cooperation – even in this difficult moment – across the aisle and unite in a common cause to make our country safer.

We want to draw your attention to a few critical issues which we regard as essential to implementing our recommendations. We believe these matters must be addressed satisfactorily if a conference report is going to win our support.

National Intelligence Director. First, we agree generally with the White House (as stated in its letter to conferees of October 18) with respect to the authorities of the National Intelligence Director. The powers of the NID must be well defined and clear. Relationships to other senior officials must not be left ambiguous.

The National Intelligence Director must have authority to approve and submit a unified budget for national intelligence that reflects priorities chosen by the National Security Council, and a significant role in determining the budgets for intelligence agencies outside the National Intelligence Program, including those within the Department of Defense. The NID must also have authority to apportion funds appropriated for national intelligence to the national intelligence agencies and authority to reprogram those funds as needed in

accordance with the normal reviews and approvals of OMB and the appropriate oversight committees of the Congress.

The National Intelligence Director must have full authority over the non-military personnel in the intelligence community. This must include authority to set community-wide personnel standards, and the ability to transfer personnel among intelligence community agencies, including DOD intelligence agencies. The NID must possess true “hire-fire” authority over the intelligence community and component agency heads. Personnel in key jobs must know that they will be held accountable by the National Intelligence Director.

The intelligence elements of the Federal Bureau of Investigation must be part of the National Intelligence Program budget under the overall supervision of the National Intelligence Director. Lack of collaboration between the FBI and other intelligence agencies crippled pre-9/11 efforts to find eventual hijackers in the U.S. and recognize their intentions. The Bureau’s intelligence and counterterrorism efforts must be conducted as part of a unified national effort.

The National Intelligence Director must also be empowered to set common standards for information use and intelligence sharing throughout the community. The failure to share intelligence across the government was a serious handicap before 9/11. This authority is critical to our nation’s future security.

If the National Intelligence Director does not have strong authorities, then we do not believe such a position should be created. Half-hearted reform would leave us worse off than we are today.

The NID must be distinct from the head of the CIA, so that the CIA can receive the management attention it needs.

We differ with the White House on the question of secrecy for the aggregate intelligence budget. We believe the overall budget number should be unclassified. The benefits of transparency for congressional oversight and public review are significant. No analysis or testimony provided to the Commission demonstrates a need for continued classification of the overall intelligence budget.

National Counterterrorism Center. Second, the proposed National Counterterrorism Center must be the place where all elements of counterterrorism intelligence operations planning and intelligence are coordinated and unified. We see this innovation as a fundamental change in the way counterterrorism agencies should work together. This model cannot succeed unless its most innovative features have firm statutory protection. The House bill moves part of the way there. The Senate bill is preferable. Clear assignment of responsibility for net assessment, for operational planning (not just “strategic” planning), and a direct relationship of the NCTC Director to the President as well as to the NID – these are the essential ingredients for a different and better way to manage counterterrorism efforts across the U.S. government. We believe that the

Director of the NCTC must be a Senate-confirmed position. The NCTC should not become part of any single agency or department, or it will be unable to perform its critical and essential role of interagency coordination. It is in the NCTC that the unity of effort -- fusing military, diplomatic, intelligence, covert action, economic, law enforcement and all actions of the government in a coherent counterterrorism effort -- must occur.

Privacy and Civil Liberties Oversight Board. Third, the Privacy and Civil Liberties Oversight Board must be independent and statutory. While we agree that the board should be in the executive branch, we cannot view a board as independent if it is composed of the very people whom it is meant to oversee. Its membership must be Senate-confirmed, have strong investigative powers, and the ability and requirement to report to Congress and the public.

Information Sharing. Fourth, the information sharing effort needs the more detailed guidance provided by the language in the Senate bill. The White House prefers less direction on this topic. We think the experience before 9/11, and even the record three years hence, has shown the necessity for strong legislative guidance.

Transportation Strategic Plan. Fifth, the Commission's most important single recommendation on transportation is the completion of an overall Transportation Strategic Plan for assigning roles and missions and setting priorities for the allocation of security resources. The Senate bill largely conforms to the Commission recommendation and we support its adoption.

Homeland Security Grants. Sixth, homeland security grants should be based strictly on an assessment of risks and vulnerabilities. Specifically, pending grant applications should be prioritized on a nationwide basis, based on their potential to lessen the threat to population centers and critical infrastructure. Risk-based grants should supersede state minimum funding levels, and states should be required to allocate funds within their jurisdictions according to risk, in accordance with their State homeland security plans. Section 5003 of H.R. 10 is preferable to the Senate provision, and we believe it should be strengthened further in accordance with the goals outlined above.

Border Security. Seventh, to strengthen border security, the legislation must provide for a meaningful terrorist travel strategy. This means enhancing current classified and unclassified counterterrorism efforts aimed at terrorist travel, and ensuring through technology and training of border officials that travel documents are screened for counterterrorism purposes. The legislation should also provide a clear mandate to (1) develop a system for integrating screening measures in our border and transportation security systems; (2) complete the first-generation biometric entry-exit system at U.S. borders; and (3) advance international collaboration, especially in airport pre-screening. Together with steps to establish standards for secure identification, especially for birth certificates, we believe these are the most important elements to strengthen border security and deny terrorist access to the United States.

With respect to these border security recommendations measures above as recommended by the Commission, we believe the Senate and House bills represent excellent steps forward. Relatively modest refinements will produce superb legislation.

Additional measures. Finally, we believe strongly that this bill is not the right occasion for tackling controversial immigration and law enforcement issues that go well beyond the Commission's recommendations. We note in this regard that some of these provisions have been advocated in response to Commission recommendations. They are not Commission recommendations. In particular we note provisions in the House bill, including sections 3006-3010 and sections 3031-3033. If it is possible to reach broad agreement on these provisions, we do not oppose them. But we do not believe they should hold up the conference report. We are concerned that there simply is no time left to resolve these issues during the last days of the 108th Congress. Some provisions seem particularly inappropriate at this late moment – Sections 3006, 3007, and 3032. We note strong concerns that the White House has expressed.

We believe we are better off with broad bipartisan agreement on key recommendations of the Commission in support of border security than taking up a number of controversial provisions that are more central to the question of immigration policy than they are to the question of counterterrorism. We urge consideration of these provisions in separate legislation.

We are willing to provide more detailed comments, and we wish to contribute in every possible constructive way in order to find consensus.

We believe the shape of a consensus and agreed solution is clear.

We call upon each of you, and upon the President, to seize this historic opportunity on the most important security issue confronting the nation.

We call upon the conferees to complete swift action on the conference report and send it to the President for his signature.

Sincerely,



Thomas H. Kean
Chair



Lee H. Hamilton
Vice Chair