

**“A Ticking Time Bomb: Counterterrorism Lessons From the U.S. Government’s  
Failure to Prevent the Fort Hood Attack”**

**Senate Committee on Homeland Security and Governmental Affairs**

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**Written Statement Submitted by**

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Chairman Lieberman, Senator Collins, and distinguished members of the Senate Homeland Security and Governmental Affairs Committee. I am honored for the opportunity to testify today about aspects of the important Report<sup>1</sup> that the Committee recently issued examining the failures that led to the Fort Hood tragedy and making structural recommendations to ensure that such an incident will not be repeated. And I am humbled to be addressing you in the presence of friends and relatives of the brave women and men who lost their lives on that awful day.

My goal this morning is to elaborate on some of the Report's findings, with an eye to making constructive suggestions about how to move forward. Specifically, I intend to offer my thoughts on three aspects of the Report: (1) certain challenges to the achievement of meaningful "jointness" on the Joint Terrorism Task Force (JTTF) (2) the proper role of the Federal Bureau of Investigation (FBI) as well as local and other federal officials as part of a larger counter-terrorism architecture designed to understand and combat a dynamic threat that increasingly includes a "homegrown" dimension; and (3) some preliminary thoughts on the organization of counter-radicalization efforts and on some lessons learned from the British experiment with domestic counter-radicalization.

All of these topics figure prominently in my research and scholarship as a law professor focused on issues of intelligence and counter-terrorism. My analysis is also informed by my practical experience as the founding head of the New York City Police Department's intelligence analysis arm and as a current member of the Director's Advisory Board at the National Counterterrorism Center (NCTC). As an official in New York City, collaborating with FBI officials day to day – and sometimes night to night – one could not help but be impressed by their dedication and professionalism. As an academic, my knowledge of the FBI and my appreciation for its critical role in keeping the country safe have deepened. Whatever critical observations that follow reflect my considered judgments about how best to improve our counter-terrorism efforts going forward, building on the many remarkable successes that the FBI, NCTC, and many other federal and local and state institutions have achieved.

## I. "Jointness" and the JTTF

It is axiomatic in the post-9/11 world that "jointness" is a critical feature of counter-terrorism.<sup>2</sup> A generation before that – before the 9/11 Commission identified a lack of

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<sup>1</sup> See Joseph I. Lieberman, Chairman & Susan M. Collins, Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs, *Special Report: A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack*, (Feb. 2011), available at [http://hsgac.senate.gov/public/files/Fort\\_Hood/FortHoodReport.pdf](http://hsgac.senate.gov/public/files/Fort_Hood/FortHoodReport.pdf). Throughout this statement I refer simply to the "Report."

<sup>2</sup> It should be noted that jointness does not exhaust the universe of possible productive relationships between various institutional actors. The office that I helped create at the NYPD was part of the Department's Intelligence Division, whose very existence was, in a sense, predicated on the idea that inter-agency competition (alongside jointness) might produce the best overall counter-terrorism regime. As an NYPD colleague with extensive experience in intelligence matters liked to put it, "there is no intelligence sharing, only intelligence trading."

information sharing between agencies as a contributing factor to the attacks – the JTTF already stood for the recognition that counter-terrorism requires close collaboration between a wide variety of federal and sub-national actors.<sup>3</sup> But as the Report reveals, the precise meaning of jointness at the JTTF remains elusive.

Broadly speaking, jointness on the JTTF could mean something very robust – in which case the role of detailees from local government and other federal agencies would amount to “agenda setting” – injecting their own distinctive perspectives on the terrorist threat and the means to combat it. Or it could mean something more modest – with detailees contributing at the margins to the efficacy of an otherwise FBI-driven enterprise. In my view, this second, more modest view, prevails in practice, for a number of interrelated reasons.

First, JTTFs operate within the core competence of the FBI. The JTTF is the place where FBI agents apply their most fundamental know-how (the investigation of federal crime) to what has become the organization’s priority issue (terrorism). Thus, it is unsurprising that the FBI asserts its preeminence in this area in relation to JTTF detailees. Second, with the exception of unique offices (such as in New York City), JTTFs are dominated by FBI personnel. Third, and related, detailees to JTTFs (especially state and local personnel) may be functionally “federalized,” losing touch both with the professional sensibilities and priorities they had cultivated in their home agencies and (over time) with their ability to reach back into those organizations to serve as effective go-betweens.<sup>4</sup> To some degree, this process is inevitable. After all, detailees work on FBI systems in support of FBI investigations. It also may be that certain local detailees to JTTFs “go native.” As veteran counter-terrorism official (and former NYPD Deputy Commissioner) Mike Sheehan has written, describing the allure of federally-issued cars and cell phones, “the perks at FBI are just too good for most cops to resist.”<sup>5</sup> At the same time, access to classified information on the JTTF may make it more difficult for local officials to interact meaningfully with their home offices.<sup>6</sup> More generally, detailees may be pressed into the service of the JTTF’s day-to-day mission, and come to be viewed by management not solely

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<sup>3</sup> See, e.g., Joe Valiquette & J. Peter Donald, *The Early Years: Celebrating 30 Years and the Beginning of New York’s Joint Terrorism Task Force*, FBI (Nov. 29, 2010), <http://www.fbi.gov/newyork/stories/the-early-years/the-early-years/> (observing that the New York JTTF began in April 1980 as a collaboration between the FBI and NYPD and quoting FBI Director Mueller to the effect that “The New York JTTF was the first of its kind, and today, it remains among the very best of its kind. It has long been the ‘gold standard’ by which other JTTFs are modeled.”).

<sup>4</sup> See Samuel J. Rascoff, *The Law of Homegrown (Counter) Terrorism*, 88 TEX. L. REV 1715, 1743 (2010).

<sup>5</sup> See MICHAEL SHEEHAN, CRUSH THE CELL: HOW TO DEFEAT TERRORISM WITHOUT TERRORIZING OURSELVES 176 (2008).

<sup>6</sup> The Report adds an ironic twist, noting how certain detailees have been deprived of key access to data on the JTTFs. *See Report* at 73. These detailees live (or have lived – the Report notes progress in solving this particular problem) in a kind of limbo, not quite treated as equals in the JTTF and at the same time not easily able to interact with their home agencies.

(or even mainly) as liaisons to home agencies or as the bearers of a unique set of investigative skills, but as additional personnel to augment a habitually strapped staff.<sup>7</sup>

None of this is to deny the obvious: that the presence of local and federal detailees on JTTFs continues to have tangible benefits for our national security. For example, having police officers on the task force plainly enhances the ability of FBI investigators (who, after all, frequently have careers that take them from one part of the country to the next every few years) to navigate a new city, and having immediate access to an Immigration and Customs Enforcement (ICE) detailee obviously contributes to the sophistication of JTTF interviews in certain contexts. But these sorts of benefits are hard to quantify in systemic terms and are qualified by a concept of jointness in which detailees operate as junior partners in an FBI-dominated environment.<sup>8</sup>

## II. Intelligence and Homegrown Terrorism

If the absence of robust jointness on the JTTF represents a strategic problem, it is one that is contained. That is because, as mentioned above, the investigatory focus of the JTTF plays to the core institutional strengths of the FBI as a law enforcement agency. Even without robust local and other federal participation, JTTFs are positioned to discharge this vital mission. But the same cannot necessarily be said when it comes to the intelligence mission of the FBI, a mission that is now central to the organization's counter-terrorism function.

The story of the FBI's transformation from a law enforcement agency to one that also collects and makes sense of its own intelligence (especially relative to the domestic aspects of terrorism) is, by now, familiar. As the Report emphasizes by noting the ongoing uncertainty that attends the meaning of the FBI's being "intelligence-driven," that transformation remains incompletely realized. This problem has deep historical roots, for the post-9/11 challenge of embracing an intelligence mission does not represent a break with the agency's past, so much as the latest chapter in an evolving story that has taken place over the century that the FBI has been in business. Periods of enthusiasm for intelligence gathering untethered to criminal predication (the years during and immediately following World War I, for example, or the well-documented excesses of the 1960s and 1970s)

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<sup>7</sup> To take one striking example, the celebrated journalist and playwright Larry Wright tells of a visit that two JTTF members paid to his Austin, Texas home to investigate certain calls that had been placed from the residence to overseas phone numbers of interest. One was an FBI agent, the other a JTTF detailee from the Food and Drug Administration (FDA) who was, in Wright's telling, visibly anxious at the prospect of being sent out to investigate a terrorism lead that had no connection to the distinctive competence of the FDA. Lawrence Wright, *My Trip to Al Qaeda* (HBO television broadcast Sept. 7, 2010), available at <http://www.hbo.com/documentaries/my-trip-to-al-qaeda/index.html>.

<sup>8</sup> Furthermore, there may be instances where this sort of ad hoc jointness not only does not meaningfully add to, but in fact actively detracts from, the overall effectiveness of the national security mission. For an FBI agent to assume that a detailee from this or that home agency represents an entire government bureaucracy may invite a false sense of security. The Report serves as a cautionary illustration of precisely this point. See *Report* at 70-73.

historically gave way to decisions to prioritize the law enforcement function of the FBI. By reinstating the “criminal standard” Attorneys General Harlan Fiske Stone (in 1924) and Edward Levi in (1976) effectively (if temporarily) ended the FBI’s participation in the intelligence business. As the Report rightly emphasizes, the effect of the most-recently issued Attorney General’s Guidelines (by Judge Mukasey in 2008) as well as the FBI’s internal Domestic Investigations and Operations Guide is to return the FBI to the mission of gathering intelligence by reference to the existence of threats, rather than solely as an incident to the investigation of alleged criminality.<sup>9</sup>

This latest return to intelligence gathering is especially pertinent when it comes to understanding the emerging and still imperfectly understood phenomenon of homegrown terrorism. Without intelligence, it is impossible to assess properly the degree to which homegrown terrorism is on the rise in the United States. The FBI and its leadership, of course, clearly understand this imperative. But as the Report observes, and my academic and practical experience confirms, the FBI has not yet surmounted the significant organizational challenges of creating an intelligence capability sufficient to the task at hand.

First, as the Report makes plain, the task of integrating the work of intelligence analysis into the FBI’s counter-terrorism mission remains incomplete. Analysis is arguably the signal difference between traditional investigation, which is reactive to leads, and intelligence, which involves an iterative dialogue between analysts and collectors.<sup>10</sup> As I discovered when Police Commissioner Kelly assigned me the task of creating and running an intelligence analysis unit, fostering the conditions under which high-caliber analysts can succeed in an office culture that is naturally suspicious of “desk-jockeys” is a major challenge. (In a sense the FBI, like the NYPD, has it harder than the CIA in this regard. When it comes to overseas intelligence, analysts and collectors are separated by oceans. In the domestic arena, they are separated by cubicles.) But it is a necessary goal if the transformation to an intelligence agency is to be accomplished. As the Report highlights, this critical benchmark remains unattained.

Second, the distinctive perspectives and capacities of state and local officials have not been sufficiently leveraged as part of the FBI’s intelligence mission. The FBI’s commitment to intelligence is embodied by its strategy of “domain management.” As the FBI’s 2011 National Information Sharing Strategy describes it, “[d]omain awareness describes the landscape in which the FBI carries out its daily mission while providing context and a more-informed sense of the environment in which the threat conducts its activities.”<sup>11</sup> That more informed sense of the environment – critical to taking the measure of the ground-up processes that give rise to homegrown terrorism – is precisely where local agencies brim over with expertise. Police officers possess this knowledge by virtue of their expansive mission, their (frequently lifelong) familiarity with the terrain in which they

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<sup>9</sup> See generally Samuel J. Rascoff, *Domesticating Intelligence*, 83 S. CAL. L. REV. 575 (2010).

<sup>10</sup> Certain intelligence analysts may be embedded on investigative squads, in which case they are probably best thought of as participants in the traditional law enforcement mission of the FBI.

<sup>11</sup> FBI, NATIONAL INFORMATION SHARING STRATEGY 5 (2011), *available at* <http://www.fbi.gov/stats-services/publications/national-information-sharing-strategy-1/national-information-sharing-strategy-2011>.

operate, and their intimate working relationships with and in their communities. Indeed, as I have argued elsewhere, police do not gather intelligence about communities so much as effectively “co-produce” intelligence with communities.<sup>12</sup>

However much jointness is prized in connection with the FBI’s terrorism investigatory work, it ought to figure much more prominently with respect to its intelligence mission. The role of locals in the intelligence arena<sup>13</sup> ought to come closer to the ideal of “robust jointness” discussed above, both because of the relative newness of the intelligence mission to the FBI, and owing to the relative strengths possessed by state and local police officers in this area. Tapping into the pre-existing knowledge of local officials on issues related to “domain management” would help avoid the potentially costly duplication of effort. As my fellow witness Phil Mudd recently pointed out, insofar as intelligence is concerned with coming to understand “unknowns,” it is “a really inefficient way to use resources.”<sup>14</sup>

The job of fashioning a sound counter-terrorism architecture that leverages the distinctive capacities of federal and local officials is not the sole responsibility of the FBI. The Department of Homeland Security (DHS) also has a role to play,<sup>15</sup> even if it remains unclear how DHS-led Fusion Centers will be integrated into a larger domestic counter-terrorism framework.<sup>16</sup> In short, there is still much work to be done by the FBI as well as its federal and local partners to conceptualize and implement meaningful jointness in the intelligence area.

### III. Counter-Radicalization

The Report appropriately identifies the need for greater attention to counter-radicalization at home. As the British Home Office puts it, describing a counter-radicalization program that has served as an important inspiration for contemporary American efforts, “We need to prevent people from supporting violent extremism or becoming terrorists in the first place.” Taking as my starting point the Report’s call for greater attention to counter-radicalization as part of a larger strategy of addressing homegrown terrorism, and based on my ongoing research into American and British approaches to counter-radicalization, some early lessons can be teased out. Specifically, a successful counter-radicalization strategy must be attuned to questions about government authority and legitimacy in this area, concerns about the role that security plays in defining governmental attitudes towards Muslim citizens (and vice versa) and debates about what

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<sup>12</sup> See Samuel J. Rascoff, *The Law of Homegrown (Counter) Terrorism*, 88 TEX. L. REV 1715 (2010).

<sup>13</sup> There is currently no equivalent to the JTTF on intelligence matters.

<sup>14</sup> *Frontline: Are We Safer?* (PBS television broadcast Dec. 1, 2011), available at <http://www.pbs.org/wgbh/pages/frontline/are-we-safer/interviews/philip-mudd.html> (interviewing Phillip Mudd).

<sup>15</sup> So does the NCTC’s Interagency Threat Assessment and Coordination Group (ITACG).

<sup>16</sup> See, e.g., JOHN ROLLINS, CONG. RESEARCH SERV., ORDER CODE RL34070, FUSION CENTERS: ISSUES AND OPTIONS FOR CONGRESS (2008), available at [www.fas.org/sgp/crs/intel/RL34070.pdf](http://www.fas.org/sgp/crs/intel/RL34070.pdf).

sorts of groups ought to serve as government interlocutors. As discussed below, in addition to these issues which have been prominent in debates about the British Prevent strategy, practicing counter-radicalization inside the United States raises its own distinctive policy and legal issues.

## 1. Organizing for Counter-Radicalization

The Report offers a sound blueprint for how to think about organizing American counter-radicalization efforts in a serious way. The White House must supply overall strategic leadership and direction, the NCTC ought to continue its critical role in providing coordination of disparate stakeholders, and implementation ought to be decentralized, allowing the full gamut of governmental and non-governmental actors to take the lead on different aspects of counter-radicalization. Specifically, three sets of “non-traditional” actors must be involved in the implementation of counter-radicalization if it is to be a success.

First, successful counter-radicalization requires a “whole-of-government” approach.<sup>17</sup> This means going beyond traditional security and law enforcement-focused agencies and enlisting the participation of institutional actors that have historically not been part of the national security apparatus – the Department of Education, for example. Second, state and local officials have a critical role to play here. While there is no agreed-upon definition of “radicalization,” there is consensus that patterns of radicalization vary widely across the country. To be successful, counter-radicalization efforts must be attentive to variety at the local level. This sort of sensitivity to context is precisely the sort of ground-level knowledge traditionally possessed by local government. Third, and most important, the bulk of the heavy lifting in this area must be shouldered by non-governmental actors: communities, organizations, and individual leaders who take it upon themselves to make a difference. As discussed in greater detail below, an approach to counter-radicalization that puts communities at the center is more likely to succeed and to endure.

## 2. Lessons from Prevent

Conversations about American counter-radicalization are dominated by the analogy to the United Kingdom, and specifically to the so-called Prevent strategy. This is understandable, in view of the sophistication and dynamism that the Prevent leadership has brought to this enormously knotty and delicate area. Prevent has been a lightning rod for critics of different stripes from its inception, and its proper orientation continues to be contested.<sup>18</sup> In his recent speech to the Munich Security Conference, Prime Minister David Cameron signaled a different approach to counter-radicalization from the one that British

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<sup>17</sup> See *Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 111th Cong. (2010) (statement of Michael Leiter, Director of the National Counterterrorism Center), available at [http://www.nctc.gov/press\\_room/speeches/2010-09-22D-NCTC-Leiter-Testimony-SHSGAC-Hearing.pdf](http://www.nctc.gov/press_room/speeches/2010-09-22D-NCTC-Leiter-Testimony-SHSGAC-Hearing.pdf).

<sup>18</sup> See Home Office, *Review of the Prevent Strategy*, available at <http://www.homeoffice.gov.uk/counter-terrorism/review-of-prevent-strategy/> (observing that “the current Prevent strategy is not as effective as it could be”).

officials have been pursuing for roughly the last five years.<sup>19</sup> This approach would emphasize the government's role in advocating on behalf of core British values (notably, tolerance and commitment to the rule of law) rather than supporting certain Islamic teachings and institutions as an antidote to violent extremism.<sup>20</sup>

Notwithstanding the criticisms that have been mounted against the strategy – or in fact, precisely because of them – Prevent supplies a useful starting place for thinking about some of the challenges that may lie ahead and that ought to inform choices that are made about how to craft an American counter-radicalization program.

a. Effectiveness

First, and most fundamentally, Prevent has been criticized by a wide range of officials and commentators for failing to achieve its stated strategic goal – and possibly even exacerbating the problem it attempts to solve.<sup>21</sup> Two reasons have been put forward most frequently. First is that governments are simply not adept at performing counter-radicalization. An initiative like Prevent requires immense amounts of insight into the radicalization process in order to succeed. Even if the right sort of expertise were marshaled, there is certainly no saying that the government could calibrate its interventions effectively. As Professor Scott Atran has recently cautioned, “appeals to moderate Islam are about as irrelevant as older people appealing to adolescents to moderate their music or clothes.”<sup>22</sup>

The second reason why the government may fail at counter-radicalization has to do with the messenger, not the message. The problem here is that the government may lack credibility within the Islamic community.<sup>23</sup> Evidence suggests that proximity to the government – being identified with one of its counter-radicalization programs – may undermine the credibility of the actor or group in question. As a Parliamentary Report critical of Prevent recently put it, the problem of government efficacy at counter-radicalization “is exacerbated by the possible risk that any organisation endorsed by Government or local authorities—however ‘radical’—stands to lose its credibility once ‘approved’ by the authorities.”<sup>24</sup>

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<sup>19</sup> See David Cameron, U.K. Prime Minister, Speech at Munich Security Conference (Feb. 5, 2011), available at <http://www.number10.gov.uk/news/speeches-and-transcripts/2011/02/pms-speech-at-munich-security-conference-60293>.

<sup>20</sup> See Rachel Briggs, *Community Engagement for Counterterrorism: Lessons from the United Kingdom*, 86 INT'L AFF. 971 (2010).

<sup>21</sup> See David Stevens, *In Extremis: A Self-Defeating Element in the “Preventing Violent Extremism” Strategy*, 80 POL. Q. 517, 518 (2009) (“[T]his arm of PVE is, at best, barking up the wrong tree; at worst, [it is] fueling extremism.”).

<sup>22</sup> See Scott Atran, *The Romance of Terror*, GUARDIAN, July 19, 2010, available at <http://www.guardian.co.uk/commentisfree/belief/2010/jul/19/terrorism-radical-religion>.

<sup>23</sup> See Stephen J. Schulhofer et. al, *American Policing at a Crossroads* (NYU Sch. of Law, Public Law Research Paper No. 10-55, Aug 23, 2010).

<sup>24</sup> See COMMUNITIES AND LOCAL GOV'T COMM., PREVENTING VIOLENT EXTREMISM, 2009-2010, H.C. 65, available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomloc/65/6502.htm>.

## b. Securitization

A second lesson of Prevent is that government must be sensitive to concerns about the tendency of counter-radicalization to effect a fundamental transformation in the relationship between Muslim citizens and the state – what is commonly referred to as “securitization.”<sup>25</sup> A related worry, which is itself connected to the whole-of-government approach discussed above, has to do with the penetration of security-minded approaches among government officials who are not experienced in this area. As one scholar has recently put it, “organizations traditionally geared towards countering terrorism and the culture of secrecy that this engenders find themselves forced to operate with agencies and ministries geared towards social work, which by its very nature is far more open.”<sup>26</sup>

## c. “Shared Values”

A third fault line that has been exposed by Prevent is the manner in which counter-radicalization raises difficult questions about the groups with whom the government ought to be engaging. Some have expressed the view – apparently now endorsed by the Prime Minister – that only those groups which strongly embody core values ought to be potential government interlocutors.<sup>27</sup> As a recent study puts it, “traditional Salafist ambivalence on such crucial subjects as Jihadists’ condoning of suicide terrorism has called this avenue of counter-radicalization into question.”<sup>28</sup> Meanwhile others take the position that counter-radicalization must enlist the support

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<sup>25</sup> See PREVENTING VIOLENT EXTREMISM REPORT, *supra* note 24, at 53 (mentioning public discomfort with the increasingly security-based relationship between law enforcement and public services). American aspects of this phenomenon were discussed at a recent Congressional hearing on homegrown terrorism. See *Working with Communities To Disrupt Terror Plots: Hearing Before the Subcomm. on Intelligence, Information Sharing and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 111th Cong. 29-30 (2010) (statement of Rep. Jane Harman, Chairwoman, H. Comm. on Intelligence, Information Sharing and Terrorism Risk Assessment) (“Mr. Elibiary, you used some words that got my attention -- securitizing the relationship with minority communities or disparate communities, you said, is counterproductive . . . I don't think any of us is trying to securitize relationships. I think we're trying to build trust.”); see also *id.* (statement of Mohammed Elibiary, President, The Freedom and Justice Foundation) (“The securitizing the relationship is when . . . the only conduit available currently for the community to engage with is to offer a tip.”).

<sup>26</sup> See Raffaello Pantucci, *A Contest to Democracy? How the UK has Responded to the Current Terrorist Threat*, 17 DEMOCRATIZATION 251, 256-7 (2010). Pantucci goes on to express concern about the manner in which the expansion of Prevent beyond the traditional national security apparatus of the state had negative side effects, including “drafting of individuals who do not see (or wish to see) themselves as security agents into those sorts of roles.” *Id.*

<sup>27</sup> A similar sort of debate has gone among American intellectuals, with Paul Berman expressing the view that Islam is fundamentally incompatible with political liberalism and Marc Lynch taking the position that the government must be willing to reach out to illiberal (and even anti-liberal) voices within the Islamic world in order to realize its security objectives. See e.g., Marc Lynch, *Veiled Truths, The Rise of Political Islam in the West*, FOREIGN AFF., July/Aug. 2010.

<sup>28</sup> See THE RADICALIZATION OF DIASPORAS AND TERRORISM (Bruce Hoffman et al., eds., 2007), available at [http://www.rand.org/pubs/conf\\_proceedings/2007/RAND\\_CF229.pdf](http://www.rand.org/pubs/conf_proceedings/2007/RAND_CF229.pdf).

of more radical elements within the community, so long as their radicalism does not spill over into violence.<sup>29</sup>

### 3. Some Distinctively American Challenges

If Prevent supplies a useful starting place as well as a source of lessons learned for American counter-radicalization initiatives, there are certain distinctive features of American society and government that place limits on how much the British example can teach us. At the level of society, American Muslims are simultaneously more prosperous, better integrated and more culturally diverse than their British counterparts. This does not mean that it is inconceivable that radicalization will continue to take place here. Indeed, a leading terrorism expert recently suggested that the view “that the American ‘melting pot’ theory provided a ‘fire wall’ against the radicalization and recruitment of American citizens and residents” represents “wishful thinking.”<sup>30</sup> But it does mean that devising and implementing a counter-radicalization program that works inside the United States necessarily entails custom tailoring efforts to suit the vibrancy and complexity of American Muslim life.

Concerning values and law, American norms are sufficiently different from British norms that aspects of Prevent, if imported into the American context, might threaten collision with certain basic rights. One such tension (the subject of a forthcoming academic article of mine) is with the First Amendment’s Establishment Clause. That is because counter-radicalization may imply the “establishment” of what I refer to as “Official Islam” – a governmentally-sponsored or sanctioned account of “mainstream Islam” which is offered in place of radical doctrinal alternatives.<sup>31</sup> For the government to formulate (or to pick from among rival options<sup>32</sup>) and endorse a preferred conception of Islam<sup>33</sup> – in effect to play the role of Islamic theologian and missionary – raises potential concerns under the Establishment Clause doctrine that the Supreme Court has developed over the last sixty years. While it is certainly not clear how a court would come down in adjudicating the legality of various aspects of counter-radicalization, the overall effect of counter-

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<sup>29</sup> See, e.g., Robert Lambert & Jonthan Githens-Mazer, *The Demonisation of British Islamism*, GUARDIAN, Apr. 1, 2009, available at <http://www.guardian.co.uk/commentisfree/belief/2009/mar/31/religion-islam>.

<sup>30</sup> See *The Evolving Nature of Terrorism: Nine Years after the Attacks: Hearing Before the H. Comm. on Homeland Sec.*, 111th Cong. (2010) (statement of Bruce Hoffman), available at <http://www.bipartisanpolicy.org/sites/default/files/Hoffman%20Testimony%20091510.pdf>.

<sup>31</sup> See LORENZO VIDINO, COUNTERING RADICALIZATION IN AMERICA: LESSONS FROM EUROPE, U.S. INST. OF PEACE SPECIAL REP. NO. 262, at 11 (2010) (arguing that the United States “must be prepared to intervene in ideological and theological matters.”).

<sup>32</sup> It is typical to refer to “civil wars” or “wars of ideas” within Islam. See Zeyno Baran, *Fighting the War of Ideas*, 84 FOREIGN AFF., Nov./Dec. 2005, 68, 68; Laurie Goodstein, *American Muslims Make Video to Rebut Militants*, N.Y. TIMES, Aug. 1, 2010, at A23 (“The video is one indication that American Muslim leaders are increasingly engaging the war of ideas being waged within Islam.”).

<sup>33</sup> See, e.g., Michael Hirsh, *America’s Blind Side*, NAT’L J., Oct. 20, 2010, available at <http://nationaljournal.com/member/nationalsecurity/america-s-blind-side-20101030> (“[A]s long as America fails to develop a counter-narrative to radical Islamism, it will continue to play a game of global whack-a-mole as the culprits get closer to home.”)

radicalization might be to create a policy of Erastianism<sup>34</sup> – the assertion of governmental control over, and the active management of, a set of religious institutions and ideas.

#### IV. Conclusion

The Report admirably calls attention to a range of lessons that ought to be learned from the Fort Hood tragedy. I am particularly encouraged by the Report's – and the Committee's – emphasis on issues relating to the design and implementation of a domestic counter-terrorism architecture that is suited to the emerging threat environment. I would welcome the opportunity to participate in any way that the Committee might deem helpful and in the meantime I look forward to answering your questions. Thank you for your time.

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<sup>34</sup> Erastianism is “so called after the sixteenth-century Swiss-German theologian Thomas Erastus, whose polemics against the ecclesiastical power of excommunication contained the seeds of the notion that the civil authority must control the Church.” Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2189 (2003). See John H. Mansfield, *Promotion of Liberal Islam by the United States*, in ENEMY COMBATANTS, TERRORISM, AND ARMED CONFLICT LAW 85 (David K. Lennan ed., 2008) (viewing the American promotion of liberal Islam overseas as an example of Erastianism).