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STATEMENT OF  
ERIC E. STERLING, PRESIDENT,  
THE CRIMINAL JUSTICE POLICY FOUNDATION,  
ON  
THE RISKS OF HASTY ANTI-TERRORISM LEGISLATION  
September 20, 2001

Ladies and Gentlemen, having been born in Manhattan and grown up in New York, with my family still there, I remain, like millions of others, in a state of shock and disbelief at the horror of the attack we have endured. No one I know is killed, missing, or hurt, but I have many friends and acquaintances who are not so lucky. I don't have the words to adequately characterize the enormity of the despicable acts that have been directed against us. There is no reason to believe that the architects of such wanton killing have been satiated by the blood of thousands of innocents, or the grief of hundreds of millions. We must respond.

Before we can plan and adopt our appropriate national response, we first must understand. We must understand what allowed these acts to happen, and why. We must understand the ways in which our security forces, our intelligence agencies, and our laws were inadequate to protect us -- before we respond. We must fully understand what we are trying to accomplish -- before we decide that our present means and laws are inadequate. Sadly, understanding takes time, but as President Bush has told the world, America will decide when to act. Taking the necessary time to understand what we need to do does not dishonor our dead -- indeed, the opposite -- haste, legislative sloppiness, and retreat to rhetoric and cliches -- dishonors them.

Many of my colleagues today stand here to warn of the danger to our way of life, to our liberties, to our Constitutional heritage, from such haste. My perspective is different. I warn against the danger of ineffectiveness. I am here today because I have participated in a congressional stampede for action. In 1986 I was counsel to the House Judiciary Committee when Len Bias, the basketball star, died from a cocaine overdose. I had been responsible for writing anti-drug laws since 1979. In August 1986, I saw the committees of the House of Representatives undertake

major revisions of numerous laws in a few weeks in its declaration of war on drugs.

After 48 hours of consideration, Congress wrecked a 15-year effort to reform the Federal criminal sentencing laws. One consequence was that experienced Federal judges left the bench. Scores of other judges refused to try drug cases any longer.

As a consequence of other provisions, our relations with Latin America were hurt by adoption of the hastily-conceived drug certification law. We hastily created a money laundering law so broad that it is used frequently for criminal conduct that is not money laundering. In fact, Congress declared that drugs were a national security problem.

The crucial step that Congress omitted in 1986 was first gaining an understanding of the problem, and how to address it. The consequence of failing to understand the problems – drug addiction, drug-related crime, organized crime, corruption, drug-related death and disease – is that the problems haven't gotten better, and, in many instances much worse. The death rate from drugs has increased by 50 percent since 1986. Drugs are cheaper, more potent, and more plentiful.

This failure is not from lack of effort. Our Federal anti-drug spending has increased seven-fold from less than \$3 billion per year to almost \$20 billion per year. The number of Federal drug prisoners has increased from 12,000 to over 80,000.

A very real danger is that in the next few days Congress will pass laws and create programs that won't reduce the threat. Congress will have, like the millions of volunteers who have given blood and money and labor to the rescue effort, satisfied its need to do something.

In 1986, our haste satisfied the congressional need to do something; it is a natural need of those in public service at a time of crisis. Members of Congress made powerful speeches and talked about war and the courage of police officers and DEA agents, like the murdered Enrique Camarena. But Members of Congress in such times rarely demonstrate courage – they cast votes in near unanimity. America must demand a higher standard than merely letting Members of Congress and the public feel good because they have done something.

Fifteen years later, none of the legislative blunders of 1986 have been fixed, notwithstanding a near-universal agreement of their ineffectiveness, their great cost, and the evidence they have been counter-productive. The mistakes of congressional haste are not easily corrected.

We are in great danger, not merely from terrorists, but from ourselves. The cry is for Congress to adopt an enormous package of legal revisions this week, in 48 hours, or next week. If Members of Congress truly respect their office, they will

categorically reject such a demand.

Should we expect that all Members, most Members, any Members of Congress will read, word by word, the package of new laws they are considering? How many Senators and Representatives will base their remarks on anything other than bullet-point summaries prepared by young staffers, relying upon briefing points prepared by party leaders or the Justice Department? When it comes time to vote, how many Members of Congress will have thought about the history of such efforts, about the implications of such measures, or about the price in lost liberty to be paid by innocent Americans? Will Congress attempt to actually quantify the gains in security?

Restraint, reflection, and analysis are the steps toward understanding what must be done.