- A Major Risk of Hasty Anti-Terrorism Legislation is Ineffectiveness

Statement of Eric E. Sterling at the Press Conference on the Release of the "In Defense of Freedom" Statement, September 20, 2001 *Hartford Courant*

I can't adequately characterize the enormity of the despicable acts that have been directed against us. My family and friends in New York City are safe, but I have many friends who are not so lucky, and I hold them in the Light. 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 act to protect ourselves, and we must respond to the attacks against us.

Most members of the coalition signing the statement, "In Defense of Freedom," warn of the danger to our liberties, and to our Constitutional heritage from hasty ratification by Congress of the Attorney General's proposed legislation. I share those fears, but my perspective is different. I warn against the danger of ineffectiveness because I have participated in previous Congressional races to action.

Before we can plan and adopt an 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. Taking the necessary time to understand what we need to do does not dishonor our dead. Indeed, to act in haste, with the resulting legislative sloppiness, and to resort to rhetorical cliches, dishonors them.

I am here today because I played a major role in the legislative stampede in 1986 after Len Bias, the basketball star, died from a cocaine overdose. I was counsel to the House Judiciary Committee and had been writing anti-drug laws since 1979. In August 1986, I saw the principles of careful legislating I had been taught cast aside. I saw the House of Representatives, in a declaration of war on drugs, undertake major revisions of numerous laws in the course of a few weeks. In September, the Senate followed suit, dispensing with hearings and the opportunity for analysis and reflection.

In 1986, after only a few hours of committee consideration, mandatory minimum drug sentences were approved, which led to the wreckage of a 15-year effort to reform Federal criminal sentencing laws. One consequence was that experienced Federal judges left the bench. Scores of senior 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. A hastily created money laundering law was adopted. It is so broad that it is used frequently for criminal

conduct that is not money laundering.
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, the nature of the drug trade, the economics of the drug trade, 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 in 1986 to almost $20 billion this year. The number of Federal drug prisoners has increased from 12,000 to over 80,000.
After fifteen years, none of the legislative blunders of 1986 have been fixed, notwithstanding a near-universal agreement on their ineffectiveness, their great cost, and the evidence they have been counter-productive. The mistakes of congressional haste are not easily corrected.
A very real danger is that in the next few days Congress will pass laws and create programs that won't reduce the threat of terrorism. The risk is that only agencies that have ineffectually fought terrorism so far will get added powers and more money.
Like the millions of volunteers who have given blood and money and labor to the rescue effort, Congress will have satisfied its need to do something. The desire to act is a natural desire of those in public service, especially at a time of crisis. But in 1986, I saw the congressional need to do something lead to the hasty development and passage of the Anti-Drug Abuse Act.
At this time, we think of the courage of others – of police officers, fire fighters, and of passengers on hijacked aircraft. Members of Congress are eager to honor such courage, and to associate themselves with it. In 1986, they remembered the courage of a murdered DEA agent, Enrique Camarena. In the 1988 Anti-Drug Abuse Act, Congress named a funding program after Edward Byrne, a murdered New York police officer. A flood of words about courage will pour out of word processors, onto the floor of the House and Senate, and into the TelePrompTers.
But the President and congressional leaders are not interested in congressional courage. They want displays of unity. The congressional leadership bundles numerous provisions – some meritorious, and others worthless or worse – into a single package, hundreds of pages long, daring a skeptical Member to vote no. In such times, Members of Congress rarely demonstrate courage – they cast their votes in near unanimity. The recent death threats made against Rep. Barbara Lee (D-CA) illuminate the potential price of such courage if the anti-terrorism response is packaged in a single bill.
America must demand a higher standard than merely letting Members of Congress and the public feel good because Congress passes a tough-sounding bill. Members o

Congress must insist on the opportunity to process legislation in discrete sections so that separate provisions can be debated separately. Members of Congress must not be forced to vote for odious or worthless provisions because they are part of the package labeled as the fight against terrorism.

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 and their votes on anything other than bullet-point summaries prepared by young staffers, relying upon briefing points prepared by party leaders, or by 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, analysis, and reflection are the necessary steps toward understanding what must be done. These steps are not luxuries.