



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 14, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to the Department's representatives following their appearance before the Committee on May 5, 2004. The subject of the Committee's hearing was "Aiding Terrorists: An Examination of the Material Support Statute."

We hope this information is helpful to you. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Answers

Answers to Questions submitted by Members of the Committee to the Honorable Christopher Wray and the Honorable Daniel Bryant from the May 5th, 2004, Hearing on "Aiding Terrorists: An Examination of the Material Support Statute."

2/15/05

Look up Intel Reform changes made in Intel Reform PL 108-458

6603(b) definition of material support or resources

6603(f) nothing abridges rights under 1st
Amend

Hearing of the Senate Committee on the Judiciary
"Aiding Terrorists: An Examination of the Material Support Statutes"
May 5, 2004

Questions for Assistant Attorney General Christopher Wray from Senator Leahy:

1. In his testimony, Assistant Attorney General Bryant proposed several amendments to the material support statutes, including expanding the definition of material support so that it includes "any tangible or intangible property or service."
 - a. Both of the outside expert witnesses at the hearing stated that the term "intangible service" was so vague that they did not know what it meant, and Mr. Rosenzweig suggested that it was perhaps "just a drafting error and [DOJ] didn't mean it." Was the suggestion to amend the definition of material support to include "intangible property and service" just a drafting error or does the Department support such an amendment?

ANSWER: Assistant Attorney General Bryant's testimony on this point has been misinterpreted, and I thank you for the opportunity to clarify the record. The Department does not support, and has never supported, amending the definition of the term "material support and resources" in 18 U.S.C. § 2339A(b) to include "intangible services." Rather, the Department supports the amendment to 18 U.S.C. § 2339A(b) contained in section 6603(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458, enacted December 17, 2004), which made clear that the term "material support or resources" means any property, tangible or intangible, or service, except for medicine or religious materials.

*modification
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- b. If the Department does support this language, how would it propose to define, and what would be some examples of, "intangible property" and "intangible services"? How does your proposed expansion of the definition preclude the potential for the application of the statute in "outlandish or remote circumstances," as Professor Robert Chesney wrote in his statement, that, as a matter of prosecutorial discretion, may not be brought but which create a window for abuse.?

ANSWER: As indicated above, the Department does not support amending the definition of "material support or resources" in 18 U.S.C. § 2339A(b) to include "intangible services." Rather, the Department supports the amendment to 18 U.S.C. § 2339A(b) contained in section 6603(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, which made clear that the term "material support or resources" means any property, tangible or intangible, or service, except for medicine or religious materials.

With respect to the meaning of the term "intangible property," that term is defined in *Black's Law Dictionary* as "property that has no intrinsic and marketable value, but is merely representative or evidence of value, such as certificates of stock, bonds, promissory notes, copyrights, or franchises." *Black's Law Dictionary* (6th ed. 1990) at 809. I do not believe that the clarification of the definition of "material support or resources" contained in the Intelligence Reform and Terrorism Prevention Act of 2004 in this regard will lead to the application of the statute in "outlandish or remote circumstances" as the provision of intangible property to designated foreign terrorist organizations (FTOs) could help those organizations further the violent aims and goals of the organization and thus threaten the vital interests and national security of the United States. Moreover, I do not believe that the statute as it was previously drafted could have been applied in "outlandish or remote circumstances" either. Because material support or resources of any kind is fungible and frees up resources that can be used to promote violence, the provision of any material support or resources to a designated FTO facilitates and furthers the organization's unlawful and violent activities regardless of the benign intent of the donor. Referring, however, to Professor Chesney's suggestion that Congress should consider amending the material support statutes to expressly preclude the possibility of prosecution "for pure advocacy in a situation not complying with the *Brandenburg* standard of incitement to illegal conduct," the Department supports the amendment to 18 U.S.C. § 2339B contained in section 6603(f) of the Intelligence Reform and Terrorism Prevention Act of 2004, which clarified that nothing in that statute should be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.

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- c. Assistant Attorney General Bryant said that the current definition of material support "potentially may not include all of the possible types and forms of support." As head of the criminal division, do you believe there is any real, not potential, need for an expansion of the definition? Specifically, have there been any situations in which the Department was not able to prosecute a person who supported terrorist activities because the definition of material support was not broad enough, and there was no other statute under which to charge the person? If so, please describe those situations.

ANSWER: I believe that there was a definite and real need for the expansion and clarification of the definition of material support contained in section 6603(b) of the Intelligence Reform and Terrorism Prevention Act of 2004. As Congress found when first enacting Section 2339B, any type of support, whether as property or services, given to an entity designated as an FTO furthers the violent aims and goals of the organization and threatens the vital interests and national security of the United States. See Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. 104-132, § 301(a), 110 Stat. 1214 (1996). This is true even if the material support is not outwardly violent or lethal in nature or directly related to

violent activities because the support permits the FTO to more efficiently allocate its resources to enhance its ability to commit terrorist acts.

By limiting "material support" to an enumerated list of largely physical assets, the statute previously permitted such organizations to freely obtain critical property, services, and assistance that might not have been explicitly listed and unduly hampered effective prosecution. Given the flexible, adaptable and varying nature of FTOs, it is very difficult to anticipate all of the types of support that potentially could arise in future investigations and cases. Without discussing particular former or current investigations, the Department has encountered subjects who were engaging in activities that benefit the FTO but did not clearly fall into one of the previously enumerated types of "material support."

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examples

As a result, when such cases were indicted and brought to trial, the Department was forced to expend considerable resources litigating not the merits of the case, but rather the bounds of the definition of "material support." For example, in United States v. Sattar, the court held that Lynne Stewart and Ahmed Abdel Sattar could not be prosecuted under Section 2339B for providing "communications equipment" to the Islamic Group (IG) because they used their own communications equipment in furtherance of the organization's goals rather than providing the equipment itself to the organization. See United States v. Sattar, 272 F. Supp. 2d 348, 358 (S.D.N.Y. 2003). The Sattar court further concluded that Stewart's and Sattar's provision of themselves to the FTO could not constitute providing "personnel" under Section 2339B. In the end, the government superseded the original indictment and charged Stewart and Sattar with violating Section 2339A on the theory that they conspired to provide and conceal personnel (Sheik Rahman) to the IG by smuggling his communications out of his prison, knowing that they would be used in a 18 U.S.C. § 956 conspiracy to kill or maim people abroad. Simply defining "material support" to include any property or service, as was done in the Intelligence Reform and Terrorism Prevention Act of 2004, will eliminate much of this unnecessary litigation and increase the efficacy of Section 2339B.

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2. In the Lackawanna case, the Department prosecuted six men for providing material support in the form of "personnel" on the grounds that they attended an al-Qaeda affiliated training camp. Similarly, defense attorney Lynne Stewart has been charged with providing her own self as "personnel."

- a. Is it the Department's view that anyone who provides services to or is hired by a designated terrorist organization is providing themselves with "support" in the form of personnel?

personnel

ANSWER: Section 6603(f) of the Intelligence Reform and Terrorism Prevention Act of 2004 amended 18 U.S.C. § 2339B to provide that "[n]o person may be prosecuted under this section in connection with the term 'personnel' unless that

person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with one or more individuals (who may be or include himself) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control." This provision is entirely consistent with the guidance that was previously found and remains contained in the United States Attorney's Manual.

Therefore, it remains the Department's view that an individual who knowingly provides himself to work under the direction or control of a designated FTO, or to direct the operation of that organization, is providing that organization with personnel for purposes of the material support statutes.

- b. In answer to a question by Senator Hatch, you stated that, in order to prosecute a sleeper cell individual for providing himself as personnel, you would need to show, for example, that, "The person went and trained in a terrorist training camp, intending to conduct terrorist activities." Do you agree then, that when a defendant is charged under the statute with providing himself as "personnel," due process requires proof that the defendant intended to facilitate the harmful ends of the organization? Please explain why or why not. If not, how does the Department reconcile prosecution in such cases with the Supreme Court precedent prohibiting guilt by association?

ANSWER: No, I do not agree that, when a defendant is charged with violating 18 U.S.C. § 2339B by providing himself as "personnel" to a designated FTO, the government must prove that the defendant intended to facilitate the harmful ends of the organization. Rather, as section 6603(c) and (f) of the Intelligence Reform and Terrorism Prevention Act of 2004 made clear, the government must prove that the defendant knowingly provided himself to work under the direction and control of the organization and did so with the knowledge that the organization had been designated as an FTO by the Secretary of State or had engaged or engages in terrorism or terrorist activity.

Neither the Due Process Clause nor the First Amendment requires proof that the defendant specifically intended to facilitate the unlawful acts of the organization. As the Ninth Circuit explained in rejecting such arguments in *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1134 (2000), "Material support given to a terrorist organization can be used to promote the organization's unlawful activities, regardless of donor intent. Once the support is given, the donor has no control over how it is used." And, addressing the contention that 18 U.S.C. § 2339B infringed on the freedom of association, the Ninth Circuit explained that the statute "does not regulate speech or association per se. Rather, the restriction is on the act of giving

material support to designated foreign organizations." *Id*; see *Humanitarian Law Project v. U.S. Dep't of Justice*, Nos. 02-55082, 02-55083 (9th Cir. Dec. 21, 2004) (*en banc*) (rejecting First Amendment challenge to 18 U.S.C. § 2339B "for the reason set out in *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1134 (9th Cir. 2000)"), see also *United States v. Lindh*, 212 F. Supp. 2d 541, 570 (E.D. Va. 2002) ("The First Amendment's guarantee of associational freedom is no license to supply terrorist organizations with resources or material support in any form, including services as a combatant. Those who choose to furnish such material support to terrorists cannot hide or shield their conduct behind the First Amendment."). One can associate with a foreign terrorist organization without providing that organization with personnel in violation of 18 U.S.C. § 2339B as "one can readily associate with others without also committing himself to the direction or control of the organization." *Lindh*, 212 F. Supp. 2d at 572 n.76.

- c. Section 9-91.100 of the U.S. Attorney's Manual sets forth the Department's prosecutive policy on two of the terms in the "material support" definition -- "personnel" and "training." Does the Department have an official policy on any of the other terms in that definition, such as the term "expert advice or assistance"?

ANSWER: Most of the terms listed in the "material support" definition are self-explanatory, including currency, personnel, monetary instruments, financial securities, financial services, lodging, communications equipment, safehouses, false documentation or identification, weapons, lethal substances and explosives. As set forth in the amendment to 18 U.S.C. § 2339A(b) contained in section 6603(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, the Department interprets "expert advice or assistance" to include the provision of any advice or assistance derived from scientific, technical, or other specialized knowledge, regardless of whether such expertise relates to violent or benign skills or conduct. However, "expert advice or assistance" is not intended to prohibit persons from simply advocating in support of FTOs or their causes.

3. I would like to clarify your position regarding the appropriate level of intent required for conviction under section 2339B. In answering one of my questions about whether a repairman could be prosecuted under the material support statute, you said, "If he goes to someone's house and repairs the guy's telephone or his computer . . . but he doesn't know the guy is a sleeper or has no idea that the guy is going to be using the phone or the computer for terrorist activity, then there would be a significant issue, to say the least, as to his intent." You contrast this with a repairman who is asked specifically to fix a phone so that members of a terrorist organization can communicate and who says he will "come over and fix the phone to help you just do just that." Your statements support the view that, in order to be prosecuted under section 2339B, the individual must intend to further the unlawful acts of the organization -- in this case, that the repairman must know that the support provided, fixing the phone, is going to be used to further terrorist

activity.

a. Do you stand by that statement? If not, please explain.

ANSWER: I appreciate the opportunity to clarify the requirements of section 2339B, one of the Department's most important tools in the fight against terrorists and their supporters. As one Senator said, "Most important is the provision in this bill that will cut off the ability of terrorist groups such as Hamas to raise huge sums in the United States for supposedly 'humanitarian' purposes, where in reality a large part of those funds go toward conducting terrorist activities." 142 Cong. Rec. S3380 (daily ed. April 16, 1996) (Sen. Snowe).

My quoted statements accurately reflect the intent requirements of section 2339B that were clarified by section 6603(c) of the Intelligence Reform and Terrorism Prevention Act of 2004. The second repairman clearly satisfies the necessary level of intent: He has provided material support to individuals whom he knows are members of a designated FTO. The first repairman, by providing the same expert assistance, has not violated section 2339B because he does not know that the recipients of that assistance are members of a designated FTO. In the words of the statute, he has not "knowingly provide[d] material support or resources to a foreign terrorist organization."

The intent requirement of section 2339B is satisfied by the knowledge that the recipient of the "material support" is either a member of an FTO that has been designated as a "foreign terrorist organization," or, alternatively, knowledge that the organization engages in terrorist activities or terrorism as those terms are defined in section 212(a)(3)(B) of the Immigration and Nationality Act or section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989. The statute does not require that the provider either intend or know that the support he provides will be used for terrorist activity. Indeed, Congress' express reason for enacting section 2339B implicitly rejected such a requirement. See Pub. L. No. 104-132, § 301 (1996) ("[F]oreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.") Money and other resources are fungible; when given to terrorist organizations, they allow these organizations to flourish even if the resources are not specifically used to further terrorist activity. Thus, using the material support statutes to prosecute terrorists *and* those who knowingly support them is a critical part of our strategy to identify, disrupt, and deter future terrorist attacks. As Sen. Feinstein said, "I simply do not accept that so-called humanitarian works by terrorist groups can be kept separate from their other operations. I think the money will ultimately go to bombs and bullets, rather than babies, or, because money is fungible, free up other funds to be used on terrorist activities." 141 Cong. Rec. S7661 (daily ed. June 5, 1995).

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- b. Given your statement, would you support applying a *mens rea* requirement to the material support element of section 2339B requiring proof that the defendant intended to further unlawful acts, in addition to applying a *mens rea* requirement to the foreign designated terrorist organization element of the statute, which the Department has already said it supports.

ANSWER: No, that would be 18 U.S.C. § 2339A. The Department does not support defining the *mens rea* element of section 2339B as requiring proof that the defendant intended to further unlawful acts. Rather, the Department supports the amendment to section 2339B contained in section 6603(c) of the Intelligence Reform and Terrorism Prevention Act of 2004, which clarified that the *mens rea* element of the material support offense under section 2339B requires proof that: (1) the defendant knowingly provided support to the organization in question; and (2) the defendant either knew that the organization was a designated FTO or knew that the organization has engaged or engages in terrorism or terrorist activity, as those terms are defined by relevant provisions of federal law. *See, e.g.,* 8 U.S.C. § 1182(a)(3)(B); 22 U.S.C. § 2656f(d)(2).

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- c. If you do not support revising Section 2339B to require that the defendant intends to further unlawful acts, then please explain what interest we have in criminalizing support to a group that is designed and intended to encourage the group to pursue lawful, nonviolent means to its ends. For example, could you prosecute someone for sending a terrorist group a book on non-violence? What about activities that aid the lawful activities of a designated terrorist organization, such as sending children's books to a day care center run by such an organization? Under your construction, could a hotel clerk be guilty of providing lodging to a member of a designated foreign terrorist organization, if he knows that the person is a member of the organization or that the organization at some time conducted unlawful activities, even if he has no intent to further the illegal acts and is merely working to make a living?

ANSWER: The Department does not support revising section 2339B to require that the defendant intends to further unlawful acts for the following three reasons.

First, because material support of any kind is fungible and frees up resources that may then be used to promote violence, the provision of any material support facilitates and furthers the organization's unlawful and violent activities regardless of the benign intent of the donor. As the Ninth Circuit recognized in rejecting the argument that 18 U.S.C. § 2339B is unconstitutional because it proscribes the giving of material support even if the donor does not have the specific intent to aid in the organization's unlawful purposes, "Material support given to a terrorist organization can be used to promote the organization's unlawful activities, regardless of donor intent. Once the support is given, the donor has no control over

how it is used." *Humanitarian Law Project v. Reno*, 205 F. 3d 1130, 1134 (2000).

Even support designed and intended to encourage a group to pursue lawful, nonviolent means to achieve its ends may be used to further the organization's violent aims. For example, a terrorist organization could use the knowledge derived from training in the art of peaceful negotiation to pretend to negotiate peacefully while the organization gains time to plan a terrorist campaign.

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Second, some terrorist organizations use their humanitarian activities as an integral part of an overall program that includes murdering innocent civilians and assassinating government officials. For example, one expert on terrorist organizations, Matthew Levitt, describes in " Hamas from Cradle to Grave," *Middle East Quarterly*, Winter 2004, at 3-15, that this foreign terrorist organization is one unified body, and that its social welfare organizations, supported by numerous charities, answer to the same leaders who set Hamas political and terrorist policy. Levitt describes how Hamas charity committees, mosque classes, student unions, and sport clubs serve as places where Hamas activists recruit Palestinian youth for terrorist training courses in Syria and Iran, or for suicidal terrorist attacks. And, he discusses how a single soccer team from the Jihad mosque in Hebron has produced several Hamas terrorists responsible for five suicide bombings in 2003.

Even more frightening, Levitt explains how Hamas charities, social service organizations, hospitals, schools, and mosques openly laud suicide bombings. Hamas-run schools and summer camps begin indoctrinating children as early as kindergarten for later use as suicide bombers. As Levitt notes, Palestinian children raised in this environment make willing terrorist recruits. This program is accomplished in significant part by the multi-faceted nature of Hamas, which gains strength through its humanitarian and charitable activities in the community.

Thus, even if individuals are providing material support, such as money, for groups like the Hamas, and are somehow able to ensure that this money is spent by these FTOs only for humanitarian activities, such as a school, the problem remains that this money enables these groups to gain more general support, loyalty, and popularity among the local people and to earn a measure of legitimacy. This support and legitimacy then allows groups such as Hamas to recruit suicide bombers, as well as accomplices to provide critical services such as transportation, lodging, and local intelligence for terrorist operations. Accordingly, even those who are providing material support with the sincere hope and assurance that their money is not being used directly for terrorism are nevertheless providing groups such as Hamas with the type of overall support they need in order to operate successfully as terrorists.

Third, the 9/11 Commission Report demonstrates how important it is to wall

off charitable funds and other charitable activities from terrorist organizations. The *Report* describes how charities were a major source of funding for Osama Bin Laden and al Qaeda. Also, in the words of the *Report*, charitable organizations "provided significant cover, which enabled operatives to travel undetected under the guise of working for a humanitarian organization".

With respect to the hypotheticals raised in this question, I do not believe that it would be appropriate for me to speculate as to whether the activities described in these scenarios would run afoul of the statute. Such an answer could prejudice prosecutorial decisions that I may be called on to make in the future. Moreover, such determinations must be made on a case-by-case basis and involve the examination of facts and circumstances not referenced in your question.

- d. Muslims are required to donate money to charities as part of their obligation to their religion. How can we strike a balance in section 2339B to ensure that those who support only peaceful initiatives of proscribed organizations, and have absolutely no intent to further terrorism, are not prosecuted for their donations?

ANSWER: The Department believes that it strikes the right balance under 18 U.S.C. § 2339B to require proof that: (1) the defendant knowingly provided support to the organization in question; and (2) the defendant either knew that the organization was a designated foreign terrorist organization or knew that the organization has engaged or engages in terrorism or terrorist activity, as those terms are defined by relevant provisions of federal law.

If an individual provides support to a designated foreign terrorist organization without knowing that the organization has been designated as a foreign terrorist organization and without knowing that the organization in question has engaged or engages in terrorism or terrorist activity, then that individual should not be held criminally liable. If, however, an individual provides material support to a foreign terrorist organization knowing that the organization has been designated a foreign terrorist organization or knowing that it has engaged or engages in terrorism, then he or she should be held criminally liable, even if that individual only intended to support the organization's non-violent activities, for the reasons described in the previous answer.

It is also worth pointing out that Muslims and those practicing any other faith remain free to contribute to the wide variety of charities around the world that have not been designated as foreign terrorist organizations under section 219 of the Immigration and Nationality Act or as specially designated global terrorist entities under Executive Order 13224.

- 4. In 2002, officials of the University of California at San Diego directed two

student groups to remove links from their Web sites to the Web sites of groups that the State Department had identified as "terrorist organizations." The American Association of University Professors (AAUP) and others petitioned the school to reverse course, arguing that its construction of the term "material support" was overbroad and would prevent any professor, student, or campus news organization from using links for scholarly and reportorial purposes. As AAUP wrote to the University, "Americans have a right to inform themselves of any group, no matter how abhorrent its positions. Acts in furtherance of terrorism are prohibited; speech is not."

- a. Do you agree with the University's original position or with AAUP?

ANSWER: Without viewing the Web sites in question, it would be inappropriate for me to speculate as to whether the University or the AAUP was correct in this instance. I certainly agree with the AAUP, however, that 18 U.S.C. § 2339B prohibits the act of providing material support to a designated foreign terrorist organization and does not proscribe speech protected by the First Amendment. See 18 U.S.C. § 2339B(i) ("Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States."). Furthermore, the AAUP is correct to the extent that it is not necessarily the case that linking one's Web site to the Web site of a designated foreign terrorist organization would run afoul of 18 U.S.C. § 2339B.

- b. Are there modifications we can make to the definition of "material support" to prevent it from reaching people who exercise their constitutional right to freedom of expression?

ANSWER: The Department supported the amendment to the material support statute contained in section 6603(f) of the Intelligence Reform and Terrorism Prevention Act of 2004, which clarified that nothing contained in the statute shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States. The Department believes that 18 U.S.C. § 2339B, as it is currently drafted, does not infringe the exercise of First Amendment rights, such as the freedom of expression or freedom of association. The Department also believes that section 2339B, as it existed before the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, did not infringe on the exercise of First Amendment rights.

5. In March, the district court in the case *U.S. v. Al-Arian* interpreted section 2339B to require proof that the defendant (1) knew that the organization he was supporting was a designated foreign terrorist organization or had committed unlawful activities that caused it to be so designated; and (2) had a specific intent that his support would further the organization's illegal activities. 2004 U.S. Dist. LEXIS 4227 (M.D. Fla. 2004). The court stated that it did not believe this standard would impose a great burden in the typical case and that, often, such intent will be easily inferred: "For example, a jury could

infer a specific intent to further the illegal activities of a FTO when a defendant knowingly provides weapons, explosives, or lethal substances to an organization that he knows is an FTO because of the nature of the support. Likewise, a jury could infer a specific intent when a defendant knows that the organization continues to commit illegal acts and the defendant provides funds to that organization" *Id.* at 40.

Do you agree with the court that such a standard would pose merely a slight burden for the government but the impact on protecting constitutional rights would be significant? If not, why not and what do you think the burden would be of such an intent requirement? Can you provide any specific examples of how such a requirement would have hindered any of your prosecutions?

ANSWER: The Department strongly disagrees with that portion of the district court ruling which you cite. On March 12, 2004, the district court in *United States v. Al-Arian* issued rulings on various defense motions to dismiss the indictment, rejecting most of them. Although the issue of the proper interpretation of Section 2339B *mens rea* requirement was not squarely addressed in the motions or responses, the court nonetheless determined that, in order to avoid Fifth Amendment personal guilt problems, in a prosecution under Section 2339B, the Government must show that the defendant knew or had a specific intent that the support would further the illegal activities of a Foreign Terrorist Organization. On April 26, 2004, the Government filed a motion with the court seeking reconsideration of this portion of its decision. In that motion we propounded the view that the phrase "knowingly provides" requires proof that (1) the defendant knows the identity of the organization to which he provides "material support" and (2) that he "knows" either its designation as an FTO or that it engages in terrorist activities that would warrant such a designation. On August 4, 2004, the district court denied the Government's motion and reaffirmed its prior ruling. The court first stated that section 2339B raises due process concerns under the Fifth Amendment by tying criminal liability of the defendant to the criminal activities of the FTO. Requiring proof of specific intent on the part of the defendant to further the illegal activities of an FTO ensures that the defendant is convicted based on his or her personal involvement in unlawful conduct and not solely on the criminal activities of others. The court next determined that proof of specific intent was also required to prevent section 2339B from being unconstitutionally vague under the First Amendment because the statute reaches a substantial amount of protected conduct. Last, the court held that the specific intent requirement relieves any concern that section 2339B's blanket prohibition of tangible support to FTOs infringes on the right to freedom of association.

At the outset, it is important to note that regardless of the weight of the burden of proof on the Government that a specific intent standard would impose, importation of such a standard is improper under the plain language of the statute as well as inconsistent with congressional intent. In contrast to Section 2339A,

which proscribes providing material support knowing or intending that it is to be used to commit terrorist activities, Congress made clear that a violation of Section 2339B consists only of knowingly providing material support to an FTO. In enacting Section 2339B, Congress was determined to strictly prohibit terrorist fundraising in the United States, and to ensure that this country could not be used as a staging ground for those who seek to commit acts of terrorism against persons in other countries. H.R. Rep. No. 104-383, at 43 (1995) (legislative history pertaining to a bill that was a predecessor of AEDPA). And it specifically found that foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct. AEDPA, 301(a)(7), 110 Stat. 1247. In other words, material support furthers an FTO's terrorist activities, either directly as in the case of explosives or, because it is fungible and therefore frees up other FTO resources to further terrorism. Thus, Congress meant to hamstring international terrorism by proscribing *all support*, even seemingly minimal support or support given with the naive intention that it not assist terrorism. Hinging criminality on the donor's intent eviscerates Congress's purpose. Indeed, Congress clarified the knowledge requirement in section 6603(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 by specifically providing that the defendant either must know that the organization is a designated foreign terrorist organization or know that the organization has engaged or engages in terrorism or terrorist activity, as those terms are defined by relevant provisions of federal law.

specific intent only required where actus reus of crim offense is based on membership or affiliation

Most importantly, a specific intent standard is unnecessary to protect the statute against constitutional challenge. Specific intent to further illegal activities is only required where the *actus reus* of the criminal offense is based on membership or affiliation with certain groups or persons. See *Scales v. United States*, 367 U.S. 203 (1961). Section 2339B, by contrast, does not predicate guilt on association, but rather on personal conduct—that is the personal provision of material support. Thus, there is no due process *Scales* concern. Even if *Scales* were applied, however, section 2339B's knowingly requirement is sufficient to ensure personal guilt. A contributor who knowingly provides material support to an organization that he knows is an FTO provides that organization with something that can further its terrorist goals directly or indirectly whether he specifically intends to further those activities or not. Because he knows that the recipient of the support is an FTO or an entity that engages in terrorist activities, such a defendant could hardly be surprised to learn that such a contribution is not an innocent act. Thus, it is unnecessary also to require that the defendant specifically intend to further terrorist activities with his contribution.

No due process Scales concern

The *Al-Arian* court's own example reinforces this point. In its memorandum opinion, the court gave as an example of sufficient *mens rea* a situation in which a defendant knows that the organization continues to commit illegal acts and the

defendant provides funds to that organization knowing that money is fungible and, once received, the donee can use the funds for any purpose it chooses. *Al-Arian*, 308 F. Supp. 2d 1322 at 10 (M.D. Fla. March 12, 2004). This very fact pattern illustrates the application of the knowingly scienter already contained within Section 2339B. A specific intent standard need not be imposed upon the statute to arrive at the same point.

We would note that the court's reasoning in the *Al-Arian* case, with respect to overbreadth and vagueness under the First Amendment and freedom of association, was categorically rejected by the Fourth Circuit Court of Appeals sitting *en banc* in *United States v. Hammoud*, 381 F.3d 316 (4th Cir. 2004).

While the burden of proving specific intent may be slight in certain circumstances, it would substantially hinder prosecution in others. Section 2339B was originally passed because of the difficulty of proving the donor intent to further particular crimes under Section 2339A. Furthermore, many terrorist organizations, such as Harakat al Muqawama-al Islamiyya, a.k.a. Hamas, or the Islamic Resistance Movement, the Partiya Karkeran Kurdistan (PKK), a.k.a. the Kurdistan Workers Party, and the Liberation Tigers of Tamil Eelam (LTTE), use their resources both to fund lethal terrorist activities to intimidate and coerce one segment of a population and to supply social services such as orphanages and schools to win over the hearts and minds of another segment. Imposing a specific intent requirement would grant people who provide support to such FTOs knowing of their deadly activities an easy escape hatch. As explained above, Congress has already determined that even innocently provided donations further the FTO's violent aims and threaten the security of the United States. Thus, it is wholly inappropriate to permit people who knowingly provide support to an FTO to evade prosecution simply based on their declaration that they intended only to support the organization's humanitarian activities.

6. On its face, 8 U.S.C. § 1189 provides little due process protection for organizations that the Secretary of State is considering designating as Foreign Terrorist Organizations. In *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001), the D.C. Circuit held that U.S.-based organizations must be notified and provided an opportunity to challenge their designation at some point in the process. How can we modify section 1189 to ensure that organizations have adequate and fair process before they are included on the list of proscribed organizations, including access to the relevant evidence supporting their designation?

notice to
organizations

ANSWER: The Department does not believe that 8 U.S.C. § 1189 needs to be modified to ensure that organizations are given due process before they are designated by the Secretary of State as a foreign terrorist organization. To begin with, foreign organizations with no cognizable presence in the United States are not entitled to the protections of the U.S. Constitution. See, e.g., *People's Mojahedin*

Organization of Iran v. Department of State, 182 F. 3d 17, 22 (D.C. Cir. 1999). And, with respect to those entities with a sufficient presence in the United States to be protected by the Due Process Clause, the D.C. Circuit held in 2001 that 8 U.S.C. § 1189 is constitutional so long as the process required by the statute is supplemented by additional procedures that the statute neither requires nor precludes. See *National Council of Resistance of Iran v. Department of State*, 251 F. 3d 192 (D.C. Cir. 2001). These procedures include: (1) notice of an impending designation and those unclassified items upon which the Secretary of State proposes to rely in designating the organization as a foreign terrorist organization; and (2) an opportunity for the organization to present, at least in written form, such evidence as that organization may be able to produce to rebut the administrative record or otherwise negate the proposition that it is a foreign terrorist organization.

The D.C. Circuit, however, also recognized the possibility that alerting a previously undesignated organization to its impending designation could harm the nation's foreign policy goals in particular cases. It therefore also held that the State Department does not have to provide an organization notice of its impending designation in cases where the State Department is able to make a showing of particularized need. See *id.* at 208.

The Secretary of State has implemented the D.C. Circuit's guidance on how to constitutionally apply 8 U.S.C. § 1189 to organizations with a constitutional presence of the United States, and these procedures were upheld by the D.C. Circuit in *People's Mojahedin Organization of Iran v. Department of State*, 327 F. 3d 1238 (D.C. Cir. 2003). The Department therefore sees no need to incorporate that guidance expressly into the statute.

7. Individuals have a Fifth Amendment due process right to defend themselves against every element of a crime. How can we tailor 18 U.S.C. 2339B to ensure that individuals who are prosecuted for giving material support to proscribed organizations are permitted to exercise their constitutional right to challenge every element of their crime when the statute currently does not allow them to collaterally challenge the designation of a foreign terrorist organization?

ANSWER: The Department does not support modifying 18 U.S.C. § 2339B in this manner. Rather, the Department supports the decision of Congress to preclude defendants in material support prosecutions from collaterally challenging the designation of a foreign terrorist organization and, instead, to provide for the centralized review of such designations in the D.C. Circuit upon a timely petition for review filed by the designated organization.

The centralization of judicial review and the express preclusion of collateral attacks on the designation of foreign terrorist organizations serve important government interests. Foreign terrorist organization designations have a major

impact on foreign relations, and it is vital that judicial challenges to such designations be resolved quickly and authoritatively. *See, e.g., United States v. Sattar*, 272 F. Supp. 2d 348, 367 (S.D.N.Y. 2003) ("Centralized review under the statute is important because designations have significant foreign relations implications that Congress could reasonably conclude should be resolved by a court that is able to develop a unified body of relevant law."); *see also United States v. Afshari*, 2004 WL 2924339 (9th Cir. Dec. 20, 2004) ("[T]he scheme avoids the awkwardness of criminalizing material support for a designated organization in some circuits but not others, as varying decisions in the different regional circuits might."); *cf. Humanitarian Law Project v. Reno*, 205 F. 3d 1130, 1136-37 (2000) (holding that challenge to adequacy of judicial review of designation must be reviewed in D.C. Circuit). Additionally, because all challenges to the designation of foreign terrorist organizations involve classified information, centralized judicial review in the D.C. Circuit minimizes the chances that such information will be inadvertently disclosed both because the State Department is located in the District of Columbia and because the D.C. Circuit's Clerk's Office routinely handles classified information.

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Moreover, it is important to recognize that defendants in material support cases do not have a due process right to challenge collaterally the Secretary of State's designation of a foreign terrorist organization. The propriety of an organization's designation as a foreign terrorist organization is not an element of the criminal offense of providing material support to a designated foreign terrorist organization. It is the fact of the designation, rather than its propriety, that triggers the criminal ban on the provision of material support. For example, the United States District Court for the Southern District of New York has stated: "The element at issue in this case is simply whether [the Islamic Group] was designated as an FTO, and the defendants thereafter knowingly provided, or conspired to provide, material support or assistance to it, not whether the Secretary of State correctly designated [the Islamic Group] as an FTO." *United States v. Sattar*, 272 F. Supp. 2d 348, 364-65 (S.D.N.Y. 2003). *See also United States v. Afshari*, 2004 WL 2924339 (9th Cir. Dec. 20, 2004) ("[The element of the crime that the prosecutor must prove in a § 2339B case is the predicate fact that a particular organization was designated at the time the material support was given, not whether the government made a correct designation.") (emphasis in original). Consequently, because "[t]he correctness of the designation itself is not an element of the offense . . . the defendants' right to due process is not violated by their inability to challenge the factual correctness of that determination." *Sattar*, 272 F. Supp. 2d at 368. *See also United States v. Afshari*, 2004 WL 2924339 (9th Cir. Dec. 20, 2004) ("Section 1189 provides for the organizations to seek review of the predicate designation, and that review was had in this case. Therefore, due process does not require another review of the predicate by the court adjudicating the instant § 2339B criminal proceeding.").

8. According to news articles, President Bush has asserted that, by including an expiration date, Congress was saying that "maybe the war on terror won't go on very long." In fact, in his radio address on April 17th, he said, "Some politicians in Washington act as if the threat to America will also expire." On what basis has the Administration asserted that the PATRIOT Act sunset was inserted because Congress thought that the war on terror would be over, rather than for the real purpose, which was to ensure meaningful oversight about how the government is using these sweeping powers?

ANSWER: Like every member of this Administration, I appreciate the important oversight responsibilities exercised by Congress and am committed to working with Congress to fulfill those duties. As the scope of the 9/11 Commission's work demonstrates, a broad array of factors affects the Government's capacity to detect, disrupt, and prevent acts of terrorism. The President's remarks were based on a belief, shared by all of us dedicated to the war on terror, that members of the law enforcement and intelligence communities require a correspondingly broad set of tools to flexibly and aggressively confront terrorists and their supporters. In a world where our enemies' determination does not flag and their sophistication grows, removing any one of these tools from our agents' investigative arsenal dangerously hinders their ability to protect the American people from terrorist attacks.

Toward that end, I believe we can all agree that there were shortcomings in the structure and tools provided to the law enforcement and intelligence communities prior to the passage of the USA PATRIOT Act. I cannot emphasize enough how vital that Act has been to the Justice Department's efforts in the investigation and prosecution of terrorists, and in the protection of the American people from future terrorist attacks. Those of us on the front lines of the war against terrorism are very grateful that you recognized the value of the tools provided by the Act and therefore voted in its favor together with an overwhelming bipartisan majority of your colleagues.

9. You testified that, "Since September 11, we have charged 310 defendants with criminal offenses as a result of terrorism investigations," and that "179 of those have already been convicted."

- a. Of the 310 defendants charged, describe the applicable criminal program category for each case.

ANSWER: We are only able to determine program categories for cases that are entered into Executive Office of United States Attorney's (EOUSA) case management system. Since the "310 defendants charged" is information that comes from the subset of cases tracked by the Criminal Division, and differs from the

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terrorism and anti-terrorism cases tracked through EOUSA's case management system, we are unable to provide the specific program categories for these 310 defendants (the number of which is now 375).

- b. Would you classify these matters as international or domestic terrorism cases or some combination of both? Please explain your answer using explicit definitions and the source of those definitions.

ANSWER: All of the cases have an international nexus. The cases referenced in my testimony reflected those cases identified by the Criminal Division as terrorism or anti-terrorism cases since September 11, 2001. These cases include certain investigations conducted by Joint Terrorism Task Force (JTTF) agents and any other cases known to the Criminal Division in which there is evidence that an individual was engaged in terrorist activity or associated with terrorists or foreign terrorist organizations.

It should be noted that the Criminal Division tracks a subset of cases that are reported through the case management system of the United States Attorney's Offices (USAO). The USAO's case management system reflects that, during FY 2003, 661 terrorism and anti-terrorism defendants were convicted. For purposes of this system, "Terrorism" cases include International Terrorism, Domestic Terrorism, Terrorist Financing, and Terrorism-Related Hoaxes; and "Anti-Terrorism" cases include Immigration, Identity Theft, OCDETF, Environmental, and Violent Crime--all in cases where the defendant is reasonably linked to terrorist activity or where the case results from activity intended to prevent or disrupt potential or actual terrorist threats.

- c. Of the 310 defendants, how many were charged with an offense that constitutes a "Federal crime of terrorism," as defined in 18 U.S.C. 2332b(g)(5)?

ANSWER: Of the 310 defendants that I referenced in my testimony, 84 were charged with an offense that constitutes a "Federal crime of terrorism" as defined in 18 U.S.C. § 2332b(g)(5).

The fact that a particular defendant was not charged with such an offense or publicly linked to terrorism by the FBI does not mean that law enforcement had no concerns or evidence regarding his connection with terrorism. Likewise, the fact that an alien was deported rather than prosecuted does not mean that he had no knowledge of, or connection to, terrorism. In certain cases, a defendant's knowledge of, or connection to, terrorist activity may not be sufficient to prove a terrorism crime beyond a reasonable doubt, or proving a criminal offense may require the disclosure of sensitive sources or classified information. In situations like these, the best alternative from a national security and law enforcement

perspective is to pursue other disruption options, including prosecution for non-terrorism offenses and removal from the United States.

- d. For each of the 310 charged, please list the statutory citation of the major offense charged.

ANSWER: This information for most of the 310 (now 375) defendants charged is included on the attached chart. The chart does not include information that is presently under seal, classified or otherwise non-public.

- e. For each of the 179 convicted who has already been sentenced, please provide the actual sentence imposed.

ANSWER: This information for most of the 310 (now 375) defendants charged is included on the attached chart. The chart does not include information that is presently under seal, classified or otherwise non-public.

- f. In how many of the cases in which a conviction was obtained and a sentence imposed was section 3A1.4 (Terrorism) of the U.S. Sentencing Guidelines either: (i) sought by the government, or (ii) applied by the court.

ANSWER: Neither the Criminal Division nor the Executive Office for United States Attorneys routinely collects this information.

10. Recent data compiled by the Transactional Records Access Clearinghouse (TRAC), reflects that, for all the FBI matters that were classified as international terrorism cases by the Justice Department -- and in one way or another were acted upon during the six months following September 11 -- federal prosecutors declined to prosecute 61% of them. The TRAC data also reflects that the proportion of terrorism matters rejected by federal prosecutors is higher than for all matters handled by the FBI. Considering the fact that international terrorism must be the single most serious threat confronting the FBI, the comparatively high declination rate is surprising. According to TRAC, during the first months of FY2002, half of the referrals were turned down because Assistant U.S. Attorneys decided there was a "lack of evidence of criminal intent" or that "no federal offense [was] evident."

*Declination
Rates*

- a. Do you agree that there is a substantial declination rate for international
- b. What do you believe is the reason for the declination rate in these important cases?
- c. Can you provide information on what happens to an international terrorism referral after it has been declined? For example, is the subject

or the target of the investigation otherwise addressed? If so, in what specific ways?

ANSWER: The highest priority of terrorism enforcement is the prevention of terrorist acts. As a result, investigations are initiated at the first indication of possible terrorist activity. Focusing first on activity within the United States: Although the TRAC analysis refers to a high number of terrorism investigations reported by the FBI, that number is not further broken down to reflect the number of intelligence investigations, which are not likely to result in referral for prosecution, and the number of criminal investigations. Focusing on criminal investigations, subsequent investigation often establishes that the initial information was inaccurate and that no criminal activity was underway. In other instances, insufficient evidence may be developed to support a criminal prosecution, but the information developed may be used to support a deportation action. Additionally, in some instances prosecution by local authorities may prove to be a more effective way of dealing with the conduct uncovered in the course of the investigation. Notwithstanding the fact that, under these and other circumstances, a federal prosecution may not result, the federal investigation has served a salutary purpose. Focusing on the international terrorism area, the State Department maintains statistics on all international terrorist acts worldwide. These statistics demonstrate that for the decade of the 1990's, there were an average of 137 terrorist acts per year against Americans. The overwhelming bulk of these offenses are directed against Americans overseas. These statistics serve to demonstrate why the number of terrorist investigations and prosecutions is relatively low when compared against all federal law enforcement activity. It is the nature of terrorist activity, with its potentially catastrophic consequences, and not the quantity of terrorist acts that renders this area of law enforcement so critical. For example, a single terrorist act such as the bombing of Pan Am Flight 103, the bombing of the Murrah Federal Building, or the recent attacks on the World Trade Center and the Pentagon can have staggering consequences. Since most international terrorism offenses against Americans occur overseas, they are particularly difficult to investigate. Additionally, in some instances they are dealt with effectively by the country in which they occur and U.S. prosecutive action is neither necessary nor possible. Additionally, in some instances murders of Americans overseas are the subject of investigative activity by the FBI which results in the development of evidence indicating clearly that the attack lacked a jurisdictional element necessary to the initiation of the prosecution under 18 U.S.C. § 2332, murder of an American as part of terrorist activity. In such instances, there is no U.S. jurisdiction and it is necessary that the matter be declined.

11. Since September 11, 2001, has the Department of Justice been unable to prosecute any international terrorism case because of an actual or perceived loophole in the federal criminal code -- in other words, because no applicable federal statute existed to address the conduct? If so, please provide what detailed information

you can about the problem without, of course, disclosing any information that would jeopardize an ongoing investigation.

ANSWER: The Department is constantly reviewing criminal statutes for possible loopholes or gaps in our investigative or prosecutorial arsenals that need to be closed or filled. As you know, one area for improvement we identified in connection with terrorism cases concerned the material support statutes. We are pleased that in enacting the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458), Congress did provide some needed improvements to the material support statutes.

12. You observed in your statement that the recent tragedy in Madrid is another grim reminder that our enemies continue to plot such catastrophic attacks.

- a. Given that (i) an unprecedented number of FISA wiretaps have been authorized since September 11, 2001, (ii) the government learned of possibly relevant but untranslated FISA tapes that forebode the September 11 attacks after September 11, and (iii) the press is reporting that the fingerprints of an American were allegedly found on evidence at the scene of the Madrid bombings, do you know whether or not the U.S. gleaned any information from FISA wiretaps that implicated, mentioned or pertained to the bombing plot? If so, was the information timely translated? Was it timely provided to the Spanish authorities?

ANSWER: FBI Director Mueller has made clear his interest in having all material derived from the FBI's use of FISA authority reviewed and analyzed as quickly as possible. Since the majority of this material is in languages other than English, FBI Language Services Section personnel meet with the FBI's National FISA Manager and other management officials every two weeks to discuss national operational priorities and the most effective utilization of finite linguist resources. The operational plan established by this meeting is modified almost daily based on ever-shifting investigative priorities. These tactics ensure that all of the highest priority intelligence collected in a foreign language is reviewed immediately and that any outstanding work is limited to matters assigned a lower relative priority.

The FBI currently has sufficient translation capacity to promptly address all translation needs with respect to its highest priority, CT operations, often within 12 hours. While there are instances in which the FBI is not able to address translation needs as quickly as it would like, such as when the language or dialect involved is initially unidentifiable, this usually pertains to lower priority matters.

Conventional digital systems used to collect FISA-derived materials were not

designed to measure the average time between intercept and initial monitoring. Recognizing the tactical value of having such aging reports for command and control purposes, a nationally integrated FISA statistical collection and reporting system has been developed and is undergoing a test and evaluation process to validate the mapping of meta data. It is clear, however, based on information provided by FBI field office managers, that the vast majority of communications in a foreign language relating to terrorism operations are being afforded full review by a qualified linguist within, at most, a few days of collection.

In respect to the specific matter cited in your question, we cannot comment as that matter remains open and pending.

- b. On March 2, 2004, I sent a letter to the Attorney General regarding the acquittal in Germany of Abdelghani Mzoudi, one of the 9-11 conspirators. I expressed concerns I had about published reports that the U.S. government had failed to provide important assistance to the prosecution. On a similar vein, regarding the Madrid bombings, can you assure me that the Department is fully supporting the Spanish government in the investigation and prosecution of those involved in that heinous terrorism plot?

ANSWER: We can assure you that this Department and this Administration stand firm with Spain and every ally in the war on terror to prevent and to prosecute such despicable acts of terrorism.

- 13. I am deeply concerned by recent reports of a substantial increase in acts of violence against Muslims in the United States. I believe it is critical that the Department of Justice take aggressive measures to safeguard the civil rights and safety of Muslims and those who are perceived to be Muslims.

- a. How many investigations has the Department of Justice opened concerning allegations of an act of violence in 2003 or 2004 against Arab-Americans, Muslims, Sikhs, South -Asian Americans and other individuals perceived to be of Middle Eastern origin?

ANSWER: The Department of Justice opened 125 such investigations in 2003. The Department had opened 100 such investigations in 2004.

- b. Please list all cases in which Federal charges have been brought against individuals accused of an act of violence in 2003 or 2004 against Arab-Americans, Muslims, Sikhs, South -Asian Americans and other individuals perceived to be of Middle Eastern origin.

a. Please list all cases in which Federal charges have been brought against individuals accused of an act of violence in 2003 or 2004 against Arab-Americans, Muslims, Sikhs, South -Asian Americans and other individuals perceived to be of Middle Eastern origin.

ANSWER: Federal charges have been brought in the following cases:

1. **United States v. Irving David Rubin and Earl Leslie Krugel (C.D. Cal.).**
§ 371 conspiracy to violate § 844 & § 924 complaint filed 12/12/01,
§§ 844, 2332, 922 & 924 charges indicted by superceding indictment 8/1/02.
On 11/13/02 Defendant Rubin died from self-inflicted injury in prison.
On 2/4/03 guilty plea by Krugel to one count § 241 and 844 as disposition of
criminal conduct. But, defendant Krugel breached his plea agreement by
failing to provide truthful information about other crimes.
Trial is pending for the remaining counts of the superceding indictment. No
date set yet. Sentencing for the offense to which Krugel pled guilty to be set
after that trial. Defendants conspired to bomb Los Angeles mosque and the
California offices of the Muslim Public Affairs Council and an Arab
American member of the United States House of Representatives.
2. **United States v. Matthew John Burdick (E.D. Cal.).**
18 U.S.C. § 111(a)(1), § 1001, 922(g)(1), § 924(c)(1), 21 U.S.C. § 841.
Indictment 10/30/02. Defendant shot and wounded Sikh postal carrier with a
pellet gun in Sacramento. Plea 5/28/03 to one count 18 U.S.C. 111(a)(1).
9/17/03 sentenced to 70 months in prison and ordered to pay \$25,395
restitution.
3. **United States v. Daniel J. Middleman (D.C.).**
18 U.S.C. § 245 and §875 indictment 10/7/04. Plea 1/26/05 to 18 U.S.C.
§ 875.
Defendant allegedly sent threatening e-mail from Iowa to president of Arab-
American Institute in Washington, D.C.
4. **United States v. Robert Goldstein (M.D. Fla.).**
Complaint filed 8/23/02, Information and Plea 4/3/03 to 18 U.S.C. § 241,
26 U.S.C. §5 861(d) and 18 U.S.C. § 247. 6/19/03 sentenced to 151 months in
prison.
United States v. Hardee.
Plea 10/9/02 to §241 information, Sentenced to 41 months incarceration on
5/1/03.
United States v. Shannahan.
26 U.S.C. § 5861 (illegal firearms possession). Indicted 10/17/02.
Plea 4/16/03 to 26 U.S.C. § 5861(e). Sentenced to 56 months in prison.

United States v. Kristi Goldstein.

Plea 2/26/03 plea to 26 U.S.C. § 5861 (illegal firearms possession). 6/13/03 sentenced to 37 months in prison. Defendants plotting to destroy mosques and Islamic centers in Florida.

5. **United States v. Charles D. Franklin (N.D. Fla).**
§ 247 complaint filed 3/28/2002. Superseding indictment 6/21/02.
Plea 11/8/02 to § 247(a)(1). Plea withdrawn by Franklin.
Conviction 2/20/03 to one count § 247(c) [interference with worshipers because of their ethnicity], sentenced 5/19/03 to 27 months imprisonment, three years supervised release and ordered to pay \$63,668.75 restitution.
Defendant intentionally crashed truck into Tallahassee mosque.
6. **United States v. Rolnik (D. Mass).**
Plea 6/6/02 to § 245 information; sentenced 8/28/02 to 2 mos community confinement & \$5,000 fine. Defendant placed telephone call from Boston, leaving threatening message on voice mail of the president of the Arab-American Institute in Washington, D.C.
7. **United States v. Justin Scott-Priestley Bolen (E.D. Mich.).**
§ 3631 information plea 2/6/02, sentenced 5/14/02 to 10 months incarceration. Defendant placed telephone call to Pakistani family's home in Detroit, leaving threatening message on their voice mail.
8. **United States v. Michael Bratisax (E.D. Mich).**
§§ 247 and 875 indictment on 11/4/04.
Defendant sent two e-mail threats to Islamic Center of America in Detroit from defendant's home in New York state. Pending arraignment.
9. **United States v. John Barnett (E.D. Mich).**
§§ 247 and 875 indictment on 11/4/04. Trial set for 3/21/05.
Defendant sent e-mail threat to Islamic Center of America in Detroit from defendant's home in New York state.
10. **United States v. George M. Doyle, II (D. Neb.).**
§ 247 information filed 6/8/04, plea 11/17/04, sentenced to 10 days incarceration with apology to victims.
Defendant allegedly left threatening voice mail messages on the answering machine of the Islamic Center of Omaha.
11. **United States v. Dale T. Ehr Gott (D. Nev.).**
18 U.S.C. § 875 indictment 3/4/04, re-trial set for 1/13/05 after 9/14/04 mistrial.

Plea to violating 18 U.S.C. § 245 on 1/13/05, sentenced to 1 year probation, 50 hours community service.

Defendant allegedly sent threatening interstate e-mail communication from Reno to D.C office of Council on American-Islamic Relations.

12. **United States v. Leonard Arthur Stern (D. Nev.).**
18 U.S.C. § 875 and § 1001 indictment 8/11/04; pending trial 6/7/05.
Defendant allegedly transmitted threatening communications to an Arab American individual and subsequently provided false statements to the FBI denying knowing the Arab American or participating in transmitting the threatening e-mails to the individual.
13. **United States v. Jason Kitts and Travis Kitts (E.D. Tenn.).**
§ 245 complaint filed 9/27/01, § 245 Information and Guilty pleas on 9/11/02. 12/10/02, Travis Kitts sentenced to 36 months in prison and Jason Kitts sentenced to 20 months in prison. Defendants assaulted two Indian resident managers of a motel in Alcoa.
14. **United States v. Norman Lee Warden (E.D. Tex.).**
18 U.S.C. § 922 (possession of firearm by felon) plea 10/15/02, sentenced to 37 months in prison on 1/23/03. Subsequent, local prosecution resulted in guilty plea to setting fire and 16 year prison sentence. Defendant set the gas pumps on fire at a convenience store owned by a Middle Eastern man, leaving a threatening note at the scene.
15. **United States v. Curtis William Murrillo (E.D. Tex.).**
18 U.S.C. § 245 indictment returned 5/26/04. Defendant acquitted 11/10/04. Defendant charged with assaulting an Iranian-American man who was a patron at a McDonald's restaurant.
16. **United States v. Jared Bjarason (W.D. Tex.).**
18 U.S.C. § 247 and § 875 Indictment returned 5/19/04. Defendant pled guilty to both charges on 9/30/04. 12/21/04 sentenced to 18 months in prison, 2 years supervised release and ordered to perform 150 hours of community service.
Defendant allegedly sent e-mail threatening to burn down Islamic Center of El Paso mosque unless hostages were freed in Iraq.
17. **United States v. Joe Luis Montes (W.D. Tex.).**
47 U.S.C. § 223 plea 12/4/01, sentenced to 2 years probation, \$500 fine on 1/30/02.
Defendant made threats over the telephone to Indian employees working at truck stop in Hewitt.

18. **United States v. Nunez-Flores (W.D. Tex.).**
18 U.S.C. § 844(i) complaint filed 9/21/04. Indicted 11/20/04 on § 247, § 844(i), § 924(c). Docket call hearing scheduled for 2/14/05.
Defendant allegedly threw an incendiary device, "Molotov Cocktail" at the Islamic Center of El Paso Mosque.
 19. **United States v. James Herrick (D. Utah).**
§ 245 plead guilty 10/24/01, sentenced to 51 months on 1/7/02.
Defendant set fire to a Salt Lake City Pakistani-American restaurant. The defendant pled simultaneously in a related local prosecution and was sentenced to 5 years to life, concurrent to the federal sentence.
 20. **United States v. Patrick Cunningham (W.D. Wash.).**
§ 247 indicted 9/26/01, plea 5/9/02. 12/17/02, sentenced to 78 months in prison. Defendant attempt to set fire to parishioner's automobiles and then shot at them outside their Seattle mosque.
 21. **United States v. Wesley Fritts (W.D. Wisc.).**
§ 876 & § 2332 plea 3/4/02 to § 2332, sentenced 5/13/02 to 21 months incarceration. Defendant mailed fake anthrax and a threat to an Arab-American restaurant in Janesville.
 22. **United States v. Thomas Iverson (W.D. Wisc.).**
§ 844 indicted 11/7/01, plea 1/31/02, sentenced 4/12/02 to 27 months incarceration.
Defendant telephoned a bomb threat to a Jordanian liquor store and to the 911 operator in Beloit, Wisconsin. The defendant thereafter pled guilty in a local prosecution to a state hate crime, receiving a 2 year sentence of incarceration consecutive to the federal sentence.
- c. Please list all State prosecutions of individuals accused of an act of violence in 2003 or 2004 against Arab-Americans, Muslims, Sikhs, South-Asian Americans and other individuals perceived to be of Middle Eastern origin, in which the Department of Justice has provided substantial assistance. For each such case, please also describe the nature of that assistance.

ANSWER: We do not keep records on State prosecutions in a form that would enable us to provide a full and up-to-date response to this question. Cases being prosecuted at the local level are monitored, and aided in varying degrees on a case-by-case basis, by a combination of attorneys in Main Justice, FBI agents in the field, FBI agents in headquarters, and assistant U.S. attorneys throughout the country.

14. At the hearing, I asked you about the Justice Department's procedure for licensing lawyers to represent groups that are challenging their designation as terrorist organizations. You responded that you were not in a position to address the licensing issue, but would be happy to follow up in writing. Please describe the procedure and, specifically, discuss how the Department decides whether to license a lawyer, and how it decides who, in particular, to license. In addition, please explain what would happen if the Department refused to license an attorney for the group. Would the group still be entitled to challenge its designation? If so, could the Department prosecute an attorney who gave his or her "expert advice or assistance" to the group so that it could bring such a challenge?

ANSWER: Under Section 219 of the Immigration and Nationality Act, the list of Foreign Terrorist Organizations (FTOs) is designated by the Secretary of State, in consultation with the Attorney General and the Secretary of the Treasury. The Treasury Department's Office of Foreign Assets Control (OFAC) administers the regulations that address economic sanctions imposed on FTOs. See 31 C.F.R. Part 597. Consistent with 18 U.S.C. section 2339B(a)(2), section 597.201(b) of the regulations provides that, except as otherwise authorized by OFAC, any U.S. financial institution that becomes aware that it has possession or control over any funds in which an FTO or its agent has an interest shall: (1) retain possession of or maintain control over such funds; and (2) report the existence of such funds to OFAC.

attys who
assist FTOs
challenge their
designation:
Go Ask
OFAC

Another section of the OFAC regulations addresses the provision of legal services to an FTO. Section 597.505 provides that "[s]pecific licenses may be issued, on a case-by-case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses through a U.S. financial institution" for certain legal services provided by U.S. persons. The regulation enumerates six categories of legal services that are authorized, provided that related payments and reimbursements through a U.S. financial institution must be specifically licensed. 31 C.F.R. § 597.505(a)-(f). For example, OFAC may license the receipt of payment of legal fees for representation of an FTO seeking judicial review of its designation before the U.S. Court of Appeals for the D.C. Circuit. (Judicial review of the designation is authorized in the INA, 8 U.S.C. § 1189(b)). As can be seen, these standards are discretionary. Because this is an OFAC process, we respectfully refer the Committee to OFAC for a description of how specific licensing decisions are made.

Questions for Assistant Attorney General Christopher Wray from Senator Grassley:

You testified that the Justice Department has charged 310 defendants with criminal offenses as a result of terrorism investigations, and 179 persons have been convicted, since 9-11.

- 1) For each of the 310 persons charged with crimes as a result of terrorism investigations please provide the following information:
- A) Citizenship and country of origin.
 - B) The criminal violations the person was charged with.
 - C) The date that the person was charged with each criminal violation.
 - D) Name of judicial district where charges were filed, and location where arrest took place, if different.
 - E) Name of the law enforcement agency that made the referral to the Justice Department.
 - F) A list of the charges the law enforcement agency recommended that the Justice Department file (as opposed to the criminal violations that ultimately were filed).
 - G) Name of the terrorist group and/or foreign power the defendant is suspected of being, or known to be, a member of, linked to or otherwise in any way associated with.
 - H) A general description of the criminal activity involved in the case.

ANSWER: The total number of individual defendants is now 375. Most of these are listed on the attached chart, along with much of the requested information, including in most cases the criminal violations each person was charged with; the date that each person was initially charged; the name of the judicial district where the charges were filed; and in some cases, the popular name of the case or the terrorist group the defendant is suspected of being linked to. Note that the Criminal Division has compiled more information about cases as we have moved away from the immediate response to the 9/11 attacks, so there is less information reflected on the chart for cases developed from the "PENTTBOM" investigation of those attacks. The chart also does not include information that is presently under seal, classified, or otherwise non-public, such as certain individuals' suspected or known links to terrorist groups or activity. The Criminal Division does not collect the remaining information requested in the question.

- 2) Is the figure of 179 persons convicted contained within the set of 310 defendants charged?

ANSWER: Yes, the number of defendants convicted, which is now 195, is within the total of 375 defendants charged.

A) If so, how many of the remainder of the 131 persons were acquitted, how many had their charges dropped by the Justice Department, and how many of their cases are still pending? For each of these persons, please specify what happened and provide the information requested in A through H in question 1.

ANSWER: The defendants now in this category are listed among the defendants on the attached chart, along with much of the requested information, including in most cases whether the defendant was acquitted, the charges against him or her were dismissed by the Department, or the case is still pending (including cases in which the defendant is a fugitive); the criminal violations each person was charged with; the date that each person was initially charged; the name of the judicial district where the charges were filed; and in some cases the popular name of the case or the terrorist group the defendant is suspected of being linked to. The chart does not include information that is presently under seal, classified, or otherwise non-public, such as certain individuals' suspected or known links to terrorist groups or activity. The Criminal Division does not collect the remaining information requested in the question.

B) If not, how many of the 310 defendants have been convicted, acquitted, had the charges dropped, or their cases are still pending?

- i) For the defendants convicted, please provide the information requested in A through H in question 1, as well as each person's name, any aliases and date of birth.
- ii) For the persons who were acquitted, whose charges were dropped, or their cases are still pending, please provide the information requested in A through H in question 1 (but not their name, any aliases or date of birth).

ANSWER: Please refer to the attached chart for this information.

C) For each of the 179 persons convicted, please provide the following information:

- Name, date of birth, citizenship and country of origin.
- The criminal violations the person was charged with.
- The date that the person was charged with each criminal violation.
- Name of judicial district where charges were filed, and location where arrest took place, if different.
- Name of the law enforcement agency that made the referral to the Justice Department.
- A list of the charges the law enforcement agency recommended that the Justice Department file (as opposed to the criminal violations that ultimately were filed).
- Name of the terrorist group and/or foreign power the defendant is suspected of being or known to be a member of, linked to or otherwise in any way associated with.
- A general description of the criminal activity involved in the case.
- Whether they plead guilty to charges in a plea agreement, or whether they were convicted by a jury.

- The charges they either plead guilty to or were convicted of by a jury (as opposed to the charges filed against them).
- The length of the prison sentence the persons received.

ANSWER: Most of the convicted defendants -- now totaling 195 -- are listed on the attached chart, along with much of the information you request, including in most cases the criminal violations each person was charged with; the date that each person was initially charged; the name of the judicial district where the charges were filed; and in some cases the popular name of the case or the terrorist group the defendant is suspected of being linked to. The chart does not include information that is presently under seal, classified, or otherwise non-public, such as certain individuals' suspected or known links to terrorist groups or activity. The Criminal Division does not collect the remaining information requested in the question.

3) Why and how has the Justice Department classified the investigations leading to charges against these 310 persons as "terrorism investigations"?

ANSWER: These cases, which are tracked by the Criminal Division, include certain investigations conducted by Joint Terrorism Task Force (JTTF) agents and any other cases known to the Criminal Division in which there is evidence that an individual was engaged in terrorist activity or associated with terrorists or foreign terrorist organizations. The charges and convictions tracked by the Criminal Division reflect not only "terrorism" charges such as violations of the material support statutes, 18 U.S.C. §§ 2339A and 2339B, but also non-terrorism charges such as immigration, firearms, and document fraud violations that have some nexus to international terrorism.

It should be noted that the Criminal Division tracks a subset of cases that are reported through the case management system of the United States Attorney's Offices (USAOs). The USAOs' case management system reflects that, during FY 2003, 661 terrorism and anti-terrorism defendants were convicted. For purposes of this system, "Terrorism" cases include International Terrorism, Domestic Terrorism, Terrorist Financing, and Terrorism-Related Hoaxes; and "Anti-Terrorism" cases include Immigration, Identity Theft, OCDETF, Environmental, and Violent Crime -- all in cases where the defendant is reasonably linked to terrorist activity or where the case results from activity intended to prevent or disrupt potential or actual terrorist threats.

A) Did the Department/FBI obtain warrants under the Foreign Intelligence Surveillance Act during any of the investigations leading to charges against these 310 persons? If so, has information obtained under FISA been used, i.e., filed with the court in support of the criminal charges.

B) For each FISA warrant obtained for any of the 310 defendants, how many defendants were working on behalf of Saudi Arabia and/or were Saudi nationals? Also, please identify by name all the other foreign powers or countries they are working on behalf of or are from.

ANSWER: The Department component that handles FISA matters is the Office of Intelligence and Policy Review (OIPR), not the Criminal Division. The Criminal Division does not maintain a list of FISA warrants or a list of when FISA-derived evidence has been used in these or other cases. However, some examples of prosecutions in which the government has used (or publicly stated its intention to use) FISA-derived evidence include the Arnaout/BIF case (#63 on the chart), the Charlotte Hizballah case (##72-74), Sami Al-Hussayen (#128), the Infocom case (##130-136), the Portland cell case (##155-161), the Sattar/Stewart case (##162-165), the Al-Arian/PIJ case (##147-154), and the Hassoun/Youssef case (##16-17).

4) You stated that terrorist cells have been broken up in Buffalo, Charlotte, Portland and Northern Virginia.

A) Please list all other cities where the government has broken up or otherwise disrupted a terrorist cell since 9-11, please specify if the lead agency was not the FBI, and identify that agency.

B) Please state the current status of each member of the cell in each city: under investigation, arrested, charged with a crime, deported, declared an enemy combatant, etc.

ANSWER: The government has also broken up terrorist cells related to the Seattle, Washington area (James Earnest Ujaama and Mustafa Kamel Mustafa, aka Abu Hamza al-Masri) and Columbus, Ohio (Iyman Faris and Nuradin Abdi). The FBI, along with the relevant Joint Terrorism Task Forces, was the lead investigative agency in those cases. The requested information is provided on the attached chart. The chart does not include information that is presently under seal, classified, or otherwise non-public, including information about persons under investigation but not yet publicly charged.

5) Mr. Wray testified that the following material support statutes have been a crucial part of the Justice Department's prevention strategy: 18 U.S.C. Sec. 2339A; 18 U.S.C. Sec. 2339B; International Emergency Economic Powers Act (IEEPA), 50 U.S.C. Sec. 1701 *et seq.*; and seditious conspiracy, 18 U.S.C. Sec. 2384.

A) Since 9-11, how many persons have been charged with each of these offenses? For each person charged with one or more of the offenses listed above, please provide the following information:

- Citizenship and country of origin.
- Which of the specified criminal violations the person was charged with.
- The date that the person was charged with each criminal violation.

- Name of judicial district where charges were filed, and location where arrest took place, if different.
- Name of the law enforcement agency that made the referral to the Justice Department.
- A list of the charges the law enforcement agency recommended that the Justice Department file (as opposed to the criminal violations that ultimately were filed).
- Name of the terrorist group and/or foreign power the defendant is suspected of being or known to be a member of, linked to or otherwise in any way associated with.
- A general description of the criminal activity involved in the case.
- Whether the person was convicted, acquitted, their charges were dropped or the case is still pending.
- If the person was convicted, whether they plead guilty to charges in a plea agreement, or whether they were convicted by a jury.
- The charges they either plead guilty to or were convicted of by a jury (as opposed to the charges filed against them).
- The length of the prison sentence the persons received.

B) For the persons convicted, please also provide their name, any aliases and date of birth.

ANSWER: Of the defendants now listed on the attached chart, 84 have been charged with one or more of the offenses you list. Those defendants are listed on the attached chart, along with much of the requested information, including in most cases the defendant's name; the criminal violations charged to each person; the date that each person was initially charged; the name of the judicial district where the charges were filed; in some cases the popular name of the case or the terrorist group the defendant is suspected of being linked to whether the person was convicted, acquitted, their charges were dropped or the case is still pending; if the person was convicted, whether he pleaded guilty or was convicted by a jury; the charges to which he pleaded guilty or was convicted of; and the length of the prison sentence each defendant received. The chart does not include information that is presently under seal, classified, or otherwise non-public, such as certain individuals' suspected or known links to terrorist groups or activity. The Criminal Division does not routinely collect the remaining information requested in the question.

6) The President's Budget of the United States Government for Fiscal Year 2005, issued by the Office of Management and Budget, states that the Department of Justice has "Prosecuted and gained convictions in more than 1,000 terrorism-related and anti-terrorism cases" since 9-11. Mr. Wray testified that the Justice Department has charged 310 defendants with criminal offenses as a result of terrorism investigations, and 179 persons have been convicted, since 9-11.

A) Please explain the data source used by the Justice Department for its calculation, and why it is different from the Presidential budget document.

B) What is the difference between a "terrorism-related" case and an "anti-terrorism" case? How do those categories differ from the category Mr. Wray referred to, "criminal offenses as a result of terrorism investigations?"

ANSWER: As stated in my response to Question 3 above, the cases to which the Department official referred are tracked by the Criminal Division and include certain investigations conducted by Joint Terrorism Task Force (JTTF) agents and any other cases known to the Criminal Division in which there is evidence that an individual was engaged in terrorist activity or associated with terrorists or foreign terrorist organizations. The charges and convictions tracked by the Criminal Division reflect not only "terrorism" charges, such as violations of the material support statutes, 18 U.S.C. §§ 2339A and 2339B, but also non-terrorism charges such as immigration, firearms, and document fraud violations that have some nexus to international terrorism.

The Criminal Division tracks a subset of cases that are reported through the case management system of the United States Attorney's Offices (USAOs).

C) For the figure of 1,000 terrorism-related and anti-terrorism cases, how many are terrorism-related cases and how many are anti-terrorism cases?

ANSWER: The Criminal Division collects detailed information only on the 375 cases that we track, most of which are listed on the attached chart.

D) For each of the 1,000 cases, please provide the following information:

- Whether it was a terrorism-related case or an anti-terrorism case.
- Citizenship and country of origin of defendant.
- Which of the specified criminal violations the person was charged with.
- The date that the person was charged with each criminal violation.
- Name of judicial district where charges were filed, and location where arrest took place, if different.
- Name of the law enforcement agency that made the referral to the Justice Department.
- A list of the charges the law enforcement agency recommended that the Justice Department file (as opposed to the criminal violations that ultimately were filed).
- Name of the terrorist group and/or foreign power the defendant is suspected of being or known to be a member of, linked to or otherwise in any way associated with.
- A general description of the criminal activity involved in the case.
- Whether the person was convicted, acquitted, their charges were dropped or the case is still pending.
- If the person was convicted, whether they plead guilty to charges in a plea agreement, or whether they were convicted by a jury.

- The charges they either plead guilty to or were convicted of by a jury (as opposed to the charges filed against them).
- The length of the prison sentence the persons received.

E) For the persons convicted, also please provide their name, any aliases and date of birth.

ANSWER: The Criminal Division only collects detailed information on the cases that we track, which are summarized in the attached chart.

Questions for Assistant Attorney General Daniel Bryant from Senator Feingold:

1. In September 2003, the U.S. Department of Justice disclosed that it had not yet used section 215 of the USA PATRIOT Act. On March 9, 2004, I sent a letter to the Attorney General asking him to clarify whether section 215 has been used since September 18, 2003. (Copy of letter attached.) I have not yet received a response to that letter. Please provide a response to the letter forthwith.

ANSWER: The Department responded to your March 9, 2004, letter on June 2, 2004. In addition, the Attorney General's semi-annual reports on FISA, including the report on business records under section 215 have been transmitted to the House and Senate Committees on Intelligence and the House Committee on the Judiciary. The Senate Committee on the Judiciary receives its reports through the Office of Senate Security, which has also received copies of these reports.

2. As you know, there is a significant history of the Administration not adequately consulting with Congress before proposing and urging passage of anti-terrorism legislation. The PATRIOT Act was proposed just days after the September 11th attacks, without consultation with Congress, and the bill was passed and signed into law within six weeks after the attacks. In January 2003, a draft "PATRIOT II" bill was leaked. There was no consultation with Congress before that draft was put together, nor has there been any since. Recently, the President has been campaigning for various additional powers that were first outlined in the "PATRIOT II" bill leaked over a year ago. It is unfortunate that this discussion is occurring in a political campaign rather than in thoughtful consultation between people of good will who hold differing, but valid, views. You are the head of the Office of Legal Policy at the Department, which I presume is heavily involved with the development of anti-terrorism legislative initiatives. Will you commit to consulting with Congress, particularly the House and Senate Judiciary Committees, before the Administration takes a position on legislation proposing additional "PATRIOT II" powers or proposes additional "PATRIOT II" powers?

ANSWER: The Department welcomes the opportunity to consult with Members of Congress on efforts to give prosecutors and investigators the tools need to prevail in the war against terrorism while at the same time preserving our nation's fundamental commitment to the protection of civil rights and civil liberties. In this regard, the Department works with Members of Congress on new ways to detect and prevent terrorism. At this time, however, the Department has not formally transmitted any such proposals to Congress.

Question for Assistant Attorney General Christopher Wray from Senator Feingold:

3. As we discussed at the hearing, last October, the Department reported that as of April 1, 2003, it had sought, and courts had ordered, delayed notice warrants 47 times.

(a) As of the date of your response to these questions, or some reasonable recent date, how many times has the Department sought and received authorization to execute a delayed notification search since enactment of the PATRIOT Act?

ANSWER: The Department is currently querying various U.S. Attorney's Offices for this information and will forward it under separate cover as soon as it is compiled.

(b) How many of the delayed notification warrants issued since passage of the Patriot Act were granted because contemporaneous notification would have "seriously jeopardized an investigation or unduly delayed a trial"?

ANSWER: The Department is currently querying various U.S. Attorney's Offices for this information and will forward it under separate cover as soon as it is compiled.

(c) How many of the delayed notification warrants issued since the PATRIOT Act was passed were used in non-terrorism criminal matters?

ANSWER: The Department is currently querying various U.S. Attorney's Offices for this information and will forward it under separate cover as soon as it is compiled.