

Testimony of

The Honorable Patrick Leahy

March 4, 2003

This is our first oversight hearing of the 108th Congress, and I want to thank the Chairman for organizing this session, which I hope will be the first of a series of hearings that will build on the productive oversight activities we began in the last Congress, including the first comprehensive oversight of the FBI in decades.

I first want to note that we are holding this hearing on domestic anti-terrorism efforts at an auspicious time.

The CIA and its dedicated field operatives in Pakistan have achieved a major triumph in our struggle against terrorism, with the capture earlier this week of Khalid Shaikh Mohammed, the suspected mastermind behind the 9/11 attacks. Our people in the field work in difficult and dangerous conditions, and we owe them a profound debt of gratitude.

This is a complex struggle being fought on many fronts, and that is why our hearing this morning is so important.

Need for Oversight

Our oversight duties are at the core of our constitutional responsibilities to the American people. It is sometimes said that in war, and in emergencies, democracy is the first casualty. Our Constitution, with its separation of powers, was designed to prevent that. Our Founding Fathers created the Senate as a check on Executive power. The American people don't just want to feel safer; they want to be safer, and congressional oversight helps improve government's effectiveness and accountability.

As part of this process, last week Chairman Grassley, Chairman Specter and I released a detailed report based on the oversight that the Judiciary Committee conducted in the 107th Congress. That report distilled our bipartisan findings and conclusions from a wide range of detailed hearings, classified briefings and other oversight activities. What we found over that two-year effort underscores the pressing need for continued reform of the FBI.

I had urged the Chairman to make this an all-day hearing, and I regret that we will have so little time this morning for exchanges with our three distinguished witnesses. There certainly is enough ground to cover to justify Senator Specter's suggestion to the Chairman that each of our witnesses appear in separate hearings. As Senator Specter said on the floor last week, having all these important witnesses on a single panel practically guarantees that the hearing "will not exactly be fruitful."

I also hope that we will hear soon from other voices so that we can better assess, for example, whether state and local law enforcement agencies and other first responders are getting the

information and resources they need to protect against terrorist attacks on American soil, as well as how federal law enforcement authorities are using the new government powers delineated by the USA PATRIOT Act.

First Responders

When terrorists strike, first responders are and will always be the first people we turn to. We put our lives and the lives of our families and friends in the hands of these officers, trusting and knowing that when called upon they will protect our families and secure our communities. On September 11, the first lifesavers on the scene at the World Trade Center and at the Pentagon were our heroic firefighters, police officers and rescue workers. Many of these real-life heroes made the ultimate sacrifice to save others. Their heroism will always remind us of how important it is to support our state and local public safety partners. During the past two years, we have asked our first responders to defend us as never before on the front lines against the dark menace of domestic terrorism. They have been asked to be the federal government's vanguard partners against terrorism, but this partnership has largely become a new unfunded mandate on them and on our communities and states.

It has been enormously frustrating to them and to those of us in Congress who have advocated on their behalf to encounter, first, a stone wall of silence from the Administration about its intentions to honor the increasingly desperate requests for first-responder funding, and later, a constant undercurrent of resistance to the meager help that we have begun to provide.

We read almost daily about the Administration's apparent eagerness to provide untold billions of additional dollars for foreign governments in the war on terrorism.

But our first responders are told to make do with a small fraction of those sums.

Last month, the President signed an omnibus appropriations law that again shortchanged first responders. With the White House staff looking over the shoulders of Republican congressional negotiators on the bill, the made cuts, line by line, from the level of first-responder funding that the Senate Appropriations Committee and the full Senate had unanimously approved last year.

The Office of Domestic Preparedness (ODP) equipment grants dropped from \$1.047 billion to \$410 million - a cut of \$637 million. ODP training grants were cut by \$50 million, and exercise grants were slashed by 50 percent.

Spending for firefighters was cut by \$150 million. In total, the Omnibus Appropriations bill cut nearly \$1 billion in funding for federal programs that directly assist first responders.

These reductions are unfathomable, and they are inexcusable. No federal agencies are doing the jobs that we need first responders to do.

The federal government knows that and is asking first responder agencies to carry much of the load of the nation's new homeland security mission. The federal government should also do a decent job of helping states and towns perform this mission.

The Administration initially praised the little that the omnibus spending bill does for first responders, but in recent days the White House has backtracked from that.

In recent days, the President has seemed to acknowledge that domestic counterterrorism programs have been shortchanged.

But real progress at the moment still seems elusive. The President's FY 2004 budget proposals for the Departments of Justice and Homeland Security continue to shortchange what we need to prevent and fight domestic terrorism.

The centerpiece of the President's new budget plan, for example, is the elimination of taxes on corporate dividends, costing about \$364 billion over the next decade. Yet the Administration cannot find even mere \$5 billion of that sum in his FY 2004 budget plan for the nation's first responders.

I am encouraged by reports I have heard that the President this week will expedite the release of a small portion of the Office of Domestic Preparedness grants for this fiscal year, and that will help our first responders.

But the money that the President reportedly plans to release is not new; these are funds that Congress already appropriated for Office of Domestic Preparedness grants. Quick turnaround of these funds will help, but adequate resources for our first responders will help far more.

First responders were among our first casualties in this new war. Since then, our demands on first responders have been heavy, and unrelenting. They are overworked and exhausted.

They are doing their duty, and we need to do ours, by helping them as they help us. I will be asking our witnesses to help us to include \$5 billion in his upcoming supplemental budget request to support our nation's police officers, firefighters and emergency personnel - our first responders.

DOJ Secrecy in Drafting Sequel To USA PATRIOT Act

Last month, a secret draft bill entitled the "Domestic Security Enhancement Act of 2003" was leaked to the press and posted on the Web. This is the so-called sequel to the USA PATRIOT Act.

It was not the first time in the last two years that members of this Committee have learned what the Justice Department is doing by reading about it in the morning paper. Unfortunately, the Department - and the entire Administration - prefers to shroud its every move in secrecy.

For months, Department officials have hidden the fact that they were drafting another anti-terrorism package.

A member of my staff called the Department just five days before the draft bill was leaked, after hearing yet another rumor of its existence; she was told point-blank that there was no bill in the works. Five days later, we have an 86-page bill and 33-page sectional analysis. That was either some very fast work by the Department, or an out-and-out misstatement. I hope the Attorney General will have an explanation for us this morning.

The substance of the proposal, as leaked, mirrors the secretive and autocratic process with which it was produced. We do not yet know whether we went too far, or not far enough, in authorizing new government powers in the USA PATRIOT Act, both because it has been little over a year since its passage, and because the Administration has been exceptionally uncooperative with the Senate and House oversight committees about how it is using these new powers.

Yet the leaked proposal would go much farther in granting the government more surveillance powers over American citizens, while drastically curtailing the ability of Congress, the courts and the American people to find out what the government is doing .

Whatever this stealth bill is ultimately called, let it not be called "USA PATRIOT II." There is nothing patriotic about the secret, evasive, partisan and divisive process that produced it.

If there is going to be a sequel to the USA PATRIOT Act, the process of writing it should be open and accountable. We should have a free and open debate about any additional powers that law enforcement may need to preserve Americans' security, and any additional checks on the powers of law enforcement that may be needed to preserve Americans' fundamental liberties. Good ideas will prevail in such a debate, and bad ideas will be rejected. That is the American way.

I urge the Justice Department to consult with us - with Republicans and Democrats, together - before, not after, any proposals are formally transmitted to Congress.

Homeland Security/Reorganization

I think that all of us on this Committee can agree that Secretary Ridge faces a daunting task in bringing together so many disparate agencies into one cohesive Department.

I believe he has the talent and the energy that will be so important in meeting this challenge, and I am eager to hear of his plans, particularly as they pertain to securing our borders.

We must be sure not to accept simply the appearance of progress when real improvements in our safety are needed. Coordinating the work of the various government agencies that are responsible for different aspects of homeland security is an important step forward.

But reorganization alone will not make us safer. Our borders remain vulnerable, and we must invest both in new personnel and in retaining the personnel who have worked with such dedication over the last year and a half to prevent those who would harm us from entering our nation.

I am concerned that the President's budget - with an increase of less than 3 percent for border security - fails to provide the resources we need, especially considering the transition costs that will inevitably arise from the merger of INS, Customs, and other agencies.

Senator Daschle and I, along with several other Democratic Senators, have proposed authorizing additional border security personnel in S. 22, the Justice Enhancement and Domestic Security Act of 2003.

I will want to know whether Secretary Ridge supports this approach and whether he will work with us to see that provision enacted, or whether he thinks that the status quo is sufficient.

Conclusion

I again thank the Chairman for holding this hearing, and I look forward to hearing from our witnesses. I will submit my full statement for the record.

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