

Testimony of

The Honorable Orrin Hatch

June 25, 2003

I want to welcome everyone to this hearing, especially our distinguished witnesses. As we continue to strive as a nation to combat the grave terrorist threat we face, it is more important than ever that we exercise vigilant, but responsible, oversight with respect to our law enforcement agencies. We need to do all in our power to ensure that these agencies are able to investigate, detect and prevent terrorist attacks on our country, without threatening or undermining our country's cherished freedoms, and I am committed to this process. In fact, this is one of several oversight hearings I intend to hold in the coming weeks. As I have announced, FBI Director Mueller will appear before us on July 23. I am working to arrange a hearing with Asa Hutchinson, Under Secretary for Border and Transportation Security at DHS. And later this year, I will hold a general oversight hearing with the Attorney General.

The subject of today's oversight hearing is the Department of Justice Office of Inspector General's report on the September 11 detainees. It is apparent from the IG's report that, in response to the September 11 attacks, well-meaning law enforcement officials, working around the clock under great stress and amid very difficult conditions, made mistakes. There are valuable lessons to be learned from the report.

My intention here today is to conduct a forward-looking hearing. We need to examine the mistakes that were made with respect to the 9/11 detainees, with an eye toward ensuring that the problems do not arise in the future, should we ever face a similar catastrophic emergency. To this end, we will hear from the component parts of the Department of Justice - the Bureau of Prisons and the Federal Bureau of Investigation. I had hoped to have a witness here from the Border and Transportation Security division of the Department of Homeland Security, but was prevented because of scheduling conflicts. However, as I mentioned, we expect to hear from Under Secretary Hutchinson in the next several weeks. I am hopeful that the witnesses here today will offer us, based on their first-hand experiences during the 9/11 investigation, the knowledgeable perspectives we need to begin our critical assessment of the IG's report and recommendations.

I want to express my deep appreciation to Inspector General Fine and his staff who has worked so hard to prepare the comprehensive report that is before us. The report contains a number of critical findings and recommendations which we must examine carefully to ensure that we will be better prepared, if we as a Nation face another devastating attack on our soil.

As we consider these criticisms - with 20/20 hindsight nearly two years after the 9/11 attacks - it is important to recognize the monumental challenges our country, the government, and in particular, the Justice Department faced in the immediate aftermath of the September 11 attacks.

In the days following the attacks, our country did not know whether or not we faced additional, even more devastating attacks. It was not clear how imminent any such attack might be, how extensive the Al Qaeda network in the United States was, or whether those individuals who had contact with the 9/11 hijackers were co-conspirators or unwitting accomplices. The government's response was one that I believe was correct: aggressive investigation and enforcement efforts against all persons who surfaced in the thousands and thousands of leads generated from the 9/11 investigation.

It is also important to acknowledge that the 762 detainees who are the subject of the IG's report were illegal aliens who had no right to be in this country. They were individuals who had violated our nation's immigration laws. And they were individuals who well-intentioned law enforcement agents believed at the time may have had ties to, or knowledge of, terrorism or terrorists.

But let me be clear: neither the fact that the Department was operating under unprecedented, trying conditions, nor the fact that the 9/11 detainees were in our country illegally, justifies entirely the way in which some of the detainees were treated.

The IG report highlights a number of significant problems, many of which related to the Department's hold until cleared policy. I believe that the Department's decision to detain illegal aliens who were suspected of having ties to,

or knowledge of, terrorism or terrorists until they were investigated thoroughly, was fully justified by the emergency at hand. The stakes were simply too high to proceed any other way. There are countless examples of illegal aliens being released on bond to the streets of the U.S., or returned to their country of origin, only to commit future serious crimes against innocent Americans.

So while I do not take issue with, or second guess, the policy, I do question the manner in which it was implemented. As the IG report makes clear, in implementing the hold until cleared policy, officials failed to take adequate steps to distinguish promptly between aliens who were legitimate subjects of the 9/11 investigation and those who were encountered coincidentally as a result of 9/11-generated leads. And because the clearance process was plagued by administrative logjams and paperwork overload, a number of detainees who turned out to have no links to terrorism were held longer than they should have been.

Perhaps the clearest message in the IG report is that the component parts of the Department of Justice and Main Justice did not effectively and efficiently communicate and share information with one another: logjams were not identified in a timely fashion; other pressing concerns and legal issues were not promptly raised to the highest levels within Main Justice.

The IG report also illustrates that the problems caused by the classification of detainees and the inefficient clearance process were magnified by the conditions in which some of the detainees were confined. Aliens classified as high interest detainees, who were housed at the Metropolitan Detention Center (MDC) in Brooklyn, were subjected to highly restrictive confinement policies for long periods of time.

But without a doubt, the most disturbing aspect of the IG's report relates to the allegations of abuse and mistreatment of several detainees who were housed in the MDC. Let me state this unequivocally: Abuse of inmates - no matter what the actual or potential charges - is wrong. It cannot be tolerated. And should any of the allegations in the IG's report be sufficiently corroborated, the responsible parties should be prosecuted to the fullest extent under the law. Inspector General Fine, I am pleased to hear that you are continuing to investigate these matters, and I implore you to do so vigorously.

Although our nation remains a target of terrorists, we now have the ability and the resources - some 20 months after 9/11 - to assess our performance and to institute needed reforms. The time has come.

As noted in the IG report, the Departments of Justice and Homeland Security need to develop a crisis management plan that clearly identifies their respective duties should another national emergency occur; specific standards should be adopted that will improve the ability of our law enforcement, immigration and intelligence agencies to classify subjects of terrorism investigations appropriately and to process and complete clearance investigations expeditiously; and most certainly, corrective actions should be taken to ensure that all detainees are treated with appropriate respect and restraint.

I was pleased to learn several weeks ago that the Justice Department has instituted, or is in the process of instituting such reforms. I strongly urge you to continue these efforts. With commitment and dedication, I am confident that the Department of Justice and its component parts, as well as the Department of Homeland Security, can eliminate the likelihood that the problems highlighted in the IG report will occur in the future.

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