

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Ranking Member, Senate Committee on the Judiciary
Hearing on Protecting Our National Security from Terrorist Attacks:
A Review of Criminal Terrorism Investigations and Prosecutions
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Today's hearing is the first in a series of oversight hearings to review America's progress in the fight against terrorism. Chairman Hatch and I envision these hearings as a bipartisan effort to review the effectiveness of our anti-terrorism laws; to evaluate the Administration's proposals for additional law enforcement authority; and to assess the impact of these measures on Americans' privacy and civil liberties.

I expect the Attorney General to participate in these hearings, and I am disappointed that we will not be hearing from him today. Unlike other senior Administration officials who regularly participate in oversight hearings, Attorney General Ashcroft has appeared before this Committee only once this year, and then only for a short time. This is a curious omission given his recent acknowledgment, in a letter to me, that regular and vigorous oversight by Congress provides an important assurance that investigations are conducted in accordance with the law and the Constitution.

I understand that the Attorney General is a busy man, but he has found time to travel the country to make other appearances, most specifically in leading a nationwide public relations campaign attempting to blunt criticism of the USA PATRIOT Act. Surely he can spare a few hours of his time for the Senate and for this oversight Committee. I know that Members on both sides have questions for him. When I chaired this Committee we made every effort to accommodate his busy schedule, and I am confident that Senator Hatch would do the same.

One of the focal points for this series of hearings will be the PATRIOT Act, which Congress passed two years ago this month, in the wake of the 9/11 attacks. Since its passage, the PATRIOT Act has raised concerns with citizens around the country and across the political spectrum. To date, anti-PATRIOT resolutions have been passed by more than 190 communities in 34 states.

Recently, the Justice Department dismissed the many local government resolutions condemning the PATRIOT Act by saying: "[H]alf are either in cities in Vermont, very small population, or in college towns in California. It's in a lot of the usual enclaves where you might see nuclear free zones, or they probably passed resolutions against the war in Iraq."

It is unfortunate that the Justice Department felt it appropriate to ridicule these grass-roots efforts to participate in an important national dialogue. The opportunity to engage in public discourse is one of the essential rights of Americans, and I am proud that Vermont towns are among those dedicated to thinking about and acting on these important issues. More importantly, the concerns expressed in my home state are being echoed by Americans in all 50 states. These communities represent millions upon millions of Americans, not just a few liberty-and-privacy-conscious Vermonters, as the Justice Department has insinuated. Impugning Vermonters, dedicated librarians and United States Senators for asking questions and raising concerns does not advance the debate or instill public confidence in the Ashcroft Justice Department's use of the vast powers it wields. In fact, it achieves the opposite.

In a democracy there will always be an inherent tension between government power and privacy rights, and the threat of terrorism has magnified that tension. When you overlay that with excessive government secrecy, and the lack of cooperation and accountability that have characterized the approach taken by this Administration in its dealings with the Congress and the public, you further compound the tension and the risks to our free society. First, undue secrecy undermines the system's built-in checks and balances. And over time it corrodes the public's faith that their government is not crossing the line and treading on the rights and freedoms of the American people.

While we have another two years before some of the powers we granted in the PATRIOT Act expire, it is not too soon for this Committee to take a hard look at how those powers are being used: What is working, what is not, and what can we do better?

The PATRIOT Act has become the most visible target of public concerns about governmental overreaching, but those concerns extend even further, as will these hearings. The next hearing in this series will address a broad array of civil liberties issues, including issues relating to the 9/11 detentions that the DOJ Inspector General raised in his excellent report earlier this year. Later hearings will examine other issues raised by the fight against terrorism, which I hope will include the treatment of so-called "unlawful combatants," information-sharing with our State and local partners, and the pressing needs of our first responders.

Instead of the Attorney General, we will hear today from the recent nominee to head the Criminal Division and two U.S. Attorneys. This hearing has been in the works for some time, and the witnesses were selected by Senator Hatch more than two weeks ago, yet we still did not receive their testimony in a timely fashion. I do not blame the witnesses, who I assume are busy on substantive matters. But I am disappointed in the Administration's lackadaisical approach to these oversight matters. When the Attorney General did not timely submit his testimony for a hearing of the House Judiciary Committee in May 2002, Chairman Sensenbrenner cancelled that hearing.

I thank our Chairman for allowing all Senators to make a short opening statement, and suggest that he then proceed immediately to questions so that we can use the time we have today most effectively. That will also give us all time to read and consider the late-arriving testimony of the Administration representatives in due course, and to follow up as appropriate.

I hope today's hearing sheds some light on how the Administration is conducting the fight against terrorism. Let me briefly highlight just a few of the many areas that I hope our witnesses will cover.

First, I believe we need an explanation regarding the FBI's recruitment of language translators. I authored a provision in the PATRIOT Act to expedite the hiring of translators to support the FBI's counterterrorism operations. In July of this year -- in response to an oversight question that I had posed in July 2002 -- the Department informed me my provision had proven unnecessary and was never implemented. But just last week, the FBI announced that it needed to recruit more translators. I want to hear from our witnesses why the PATRIOT provision was not used, and why the Department has made such inconsistent statements about the need for translators.

Second, I am concerned that the Department of Justice may be exaggerating its success in fighting terrorism, by classifying cases as "terrorism" related even when they have little or nothing to do with terrorism. According to the Transactional Records Access Clearinghouse ("TRAC") at Syracuse University, in fiscal year 2003, of 616 defendants convicted in cases that the Department classified as "terrorism" cases, only 236 were sentenced to prison terms, with the median prison sentence being only two months. Two months is a very short sentence for any kind of terrorist act, which suggests that something else is really involved in these so-called "terrorism" cases. In addition, I understand that once people started focusing on this data, the Department of Justice decided not to make it publicly available anymore. That is not the way to engender confidence or understanding. Rather, it is a foolproof way to generate suspicion and distrust.

Third, I would like to hear about the progress in prosecuting Zacarias Moussaoui. I want to better understand why the Department sought to dismiss all charges against this admitted terrorist, and why it so sharply criticized the Federal judge who instead imposed lesser sanctions for the Administration's refusal to follow the law and abide by court rulings.

Finally, there are areas where bipartisan scrutiny has already led to several bills that I would hope our witnesses today support:

? We should consider the Grassley-Leahy-Specter "Domestic Surveillance Oversight Act." This bill does not in any way diminish the government's powers, but instead ensures the ability of the Congress and the public to monitor the government's use of surveillance and other investigative tools.

? Senators Craig, Sununu, Durbin, Reid and I are cosponsoring the "PATRIOT Oversight Restoration Act," a bill that would simply expand the PATRIOT Act's existing sunset provision to cover a number of additional provisions that focus on privacy issues, law enforcement powers and information-gathering tools.

? We should consider the "FBI Reform Act," which Senator Grassley and I introduced in July. There are several focused reforms in the bill, one of which Director Mueller acknowledged support for during his last appearance before the Committee on July 23.

? We should strengthen the reserves of our first responders, who are critical partners of the FBI in the terrorism fight. The "First Responders Partnership Grant Act," which I introduced at the outset of this Congressional session, would expand the Federal money available to our State and local partners by between \$4 billion and \$5 billion a year, so that they could fund overtime and pay for equipment, training and facility expenses to support first responders.

Others, such as Senator Durbin, Senator Craig and Senator Feingold, have additional legislative proposals as well.

I look forward to further discussion of these items, and to hearing from our witnesses here today and from the Attorney General in the near future.