

Testimony of

The Honorable James Comey

April 14, 2004

STATEMENT

OF

JAMES B. COMEY
DEPUTY ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

PREVENTING AND RESPONDING TO ACTS OF TERRORISM:
A REVIEW OF CURRENT LAW

PRESENTED ON

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Good morning Chairman Hatch and Members of the Committee. Thank you for giving me the opportunity to appear before you today and discuss the vital tools of the USA PATRIOT Act and the efforts of the Department of Justice in the war on terror. I am grateful to you and to this Committee for your strong support of the Department of Justice. The Department has had many successes in the war on terror, in battling corporate fraud, in stemming violent gang and drug crime, and in preserving the civil rights and liberties of Americans. That success has come from the commitment of the people of the Department, from strong leadership and from your dedication to our cause.

Since assuming my current post, I've met with hundreds of the Department's employees to talk about their work and their efforts to help safeguard the lives and liberties of Americans. It's been said by many wiser than I that we live in challenging times. Fortunately, at the Department of Justice, our people are up to the challenge. They are simply the best of the best. These are people who chose public service and they are committed to serving the cause of justice.

As I stated, the Department of Justice's number one priority continues to be the prevention, investigation, and

prosecution of terrorist activities against U.S. citizens and U.S. interests. Following the tragedy of September 11, 2001, Congress overwhelmingly passed, and on October 26, 2001, the President signed the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act" ("USA PATRIOT Act" or "Act"). This legislation provided our nation's law enforcement, national defense, and intelligence personnel with enhanced and vital new tools to prevent future terrorist attacks and bring terrorists and other dangerous criminals to justice. Over two and one-half years have passed since the catastrophic attacks of September 11, 2001, but the danger is still clear. Survival and success in this very real war on terrorism demands that the Department of Justice continuously improve its capabilities to protect Americans. The United States of America is winning this war on terrorism with unrelenting focus and unprecedented cooperation. For example, the Department of Justice secured convictions of nine individuals in the Virginia jihad case on terrorism-related charges, including conspiracy to levy war against the United States and conspiracy to provide material support to the Taliban and Lashkar-e-Taiba. As the Attorney General stated, "[those] convictions are a stark reminder that terrorist organizations are active in the United States. We will not allow terrorist groups to exploit America's freedoms for their murderous goals."

As our work continues, a debate also continues. Much of that debate surrounds civil liberties after September 11th and particularly the USA PATRIOT Act. Good people will always disagree about policy issues, particularly when they touch on the powers of government. All citizens should question the power of government and demand explanations. But because I believe the USA PATRIOT Act is wholly constitutional and just plain smart, I feel strongly those tools should remain on the books for our prosecutors and agents to use. Having served as a prosecutor, I've used many of those tools and know how valuable they are. I firmly believe that if the American people understood how we use these important provisions, their reaction would be the reaction I've gotten all across the country, "I certainly would not want to take that out of your toolbox."

What the USA PATRIOT Act did was to equip federal law enforcement and intelligence officials with the tools they needed to mount a seamless, coordinated campaign against our nation's terrorist enemies. The USA PATRIOT Act eased legal restraints that impaired law enforcement's ability to gather, analyze, and share critical terrorism-related intelligence information. The Act also enhanced America's criminal laws against terrorism, and clarified that existing laws against terrorism apply to the new types of attacks planned by al Qaida and other international terrorist organizations.

As I've discussed privately with a number of Senators and Members of Congress, the USA PATRIOT Act did something absolutely critical to our national security and that is breaking down the wall between the intelligence investigators responding to al Qaida and other terrorist threats and the criminal investigators responding to those same threats. That changed our world and has made us immeasurably safer. The USA PATRIOT Act authorized government agencies to share intelligence so that a complete mosaic of information could be compiled to understand better what terrorists might be planning and to prevent attacks from happening. Prior law and policy sharply limited the ability of law enforcement and intelligence agents to share information, which severely hampered terrorism investigators' ability to "connect the dots." The USA PATRIOT Act, however, brought down this "wall" and greatly enhanced foreign intelligence information sharing among federal law enforcement and national security personnel, intelligence agencies, and other entities entrusted with protecting the nation from acts of terrorism. This increased ability to share information has been invaluable to the Department in terrorism investigations and has directly led to numerous arrests, prosecutions, and convictions in terrorism cases.

The removal of the "wall" separating intelligence and law enforcement personnel, for example, played a crucial role in the Department's successful dismantling of a Portland, Oregon terror cell, known as the "Portland Seven." Members of this terror cell had attempted to travel to Afghanistan in 2001 and 2002 to defend the Taliban and al Qaida by taking up arms against United States and coalition forces fighting there. Utilizing sections 218 and 504 of the USA PATRIOT Act, however, the FBI was able to conduct Foreign Intelligence Surveillance Act (FISA) surveillance of one of the suspects to detect whether he had received orders from an international terrorist group to reinstate a domestic attack plan on Jewish targets that the lead defendant had once discussed and in turn, keep prosecutors informed as to what they were learning. This gave prosecutors the confidence not to arrest the suspect prematurely while they continued to gather evidence on the other members of the terrorist cell. Ultimately, prosecutors were able to collect sufficient evidence to charge seven defendants and then to secure prison sentences for the six defendants taken into custody ranging from three to eighteen years.

Section 213 of the USA PATRIOT Act codified and made nationally consistent an important tool by expressly authorizing courts to issue delayed notification search warrants. Court-authorized delayed-notice search warrants are a vital aspect of the Justice Department's strategy of prevention - detecting and incapacitating terrorists before they are able to strike. In some cases, if criminals are tipped off too early to an investigation, they might flee, destroy evidence, intimidate or kill witnesses, cut off contact with associates, or take other action to evade arrest. Under the Act, courts can delay notice only when immediate notification may result in death or physical harm to an individual, flight from prosecution, evidence tampering, witness intimidation, or serious jeopardy to an investigation.

Section 215 of the USA PATRIOT Act allows the Foreign Intelligence Surveillance Court to order production of business records. Under long standing authority, grand juries have issued subpoenas to many varieties of businesses, including libraries and bookstores, for records relevant to criminal inquiries. The USA PATRIOT Act authorized the FISA Court (or a designated magistrate) to issue similar orders in national security investigations. And while these judicial orders could be issued to bookstores or libraries, section 215 does not single them out.

The USA PATRIOT Act has also strengthened the nation's criminal laws against terrorism, providing prosecutors with a solid foundation to pursue what has become the Department's highest priority. A critical element in our battle against terrorism is to prevent the flow of money and other material resources to terrorists and terrorist organizations. By using the statutes Congress provided against material support of terrorism, the Department has successfully disrupted terrorist planning at the earliest possible stages, well before such violent plans can become reality. Utilizing the terrorist financing and material support provisions created by Congress, the Department has charged more than 50 individuals and obtained 28 convictions. In addition, using the material support statutes, the Department has obtained convictions yielding lengthy prison sentences, as in the case of Mohammed Hammoud, the main defendant in the Charlotte Hizballah case, who was ultimately sentenced to 155 years in federal prison.

Lastly, prior to enactment of the USA PATRIOT Act, the federal prohibition on attacking transportation carriers was a patchwork of federal statutes with gaps that had the potential to hamper terrorism investigations. Section 801 of the Act filled in these gaps by creating a new crime of attacking a mass transportation system. Among other things, it now is illegal to destroy a mass transportation vehicle or place a biological toxin near a mass transportation vehicle. Since the passage of the Act, the Department has used section 801 in at least two cases.

The USA PATRIOT Act also removed a number of significant legal obstacles that prevented law enforcement from effectively investigating terrorism and related criminal activity. It has greatly improved the Department's ability to disrupt, weaken, thwart, and eliminate the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish perpetrators of terrorist acts. In the past, investigators had to waste precious time petitioning multiple judges in multiple districts for search warrants. Section 219 of the USA PATRIOT Act, however, streamlined this process, making nationwide search warrants available to law enforcement in terrorism cases. Law enforcement already has used this authority on numerous occasions.

I would also like to discuss some of the critical protections for civil liberties encompassed within the USA PATRIOT Act and long-standing law. The Act provides for ample judicial, congressional and public oversight to ensure that the civil rights and civil liberties of all Americans are protected. First, the USA PATRIOT Act preserves the historic role of courts by ensuring that the vital role of judicial oversight is not diminished. For example, the provision for delayed notice for search warrants requires judicial approval. In addition, under the Act, investigators cannot obtain a FISA pen register unless they apply for and receive permission from federal court. The USA PATRIOT Act actually goes farther to protect privacy than that Constitution requires, as the Supreme Court has long held that law enforcement authorities are not constitutionally required to obtain court approval before installing a pen register. Furthermore, a court order is required to compel production of business records, in national security investigations.

Second, the USA PATRIOT Act respects important congressional oversight by placing new reporting requirements on the Department. Every six months, the Attorney General is required to report to Congress the number of times section 215 has been utilized, as well as to inform Congress concerning all electronic surveillance under the Foreign Intelligence Surveillance Act. Under section 1001 of the USA PATRIOT Act, Congress receives a semiannual report from the Department's Inspector General detailing any abuses of civil rights and civil liberties by employees or officials of the Department of Justice. It is important to point out that in the Inspector General's most recent report to Congress, he reported that his office has received no complaints alleging misconduct by Department employees related to the use of a substantive provision of the USA PATRIOT Act.

Finally, the USA PATRIOT Act fosters public oversight of the Department. In addition to the role of the Inspector General to review complaints alleging abuses of civil liberties and civil rights, the Act provides a cause of action for individuals aggrieved by any willful violation of Title III or certain sections of FISA. To date, no civil actions have been filed under this provision.

I believe that if people would take the time to have a reasoned discussion about the tools used by law enforcement in the war on terror, they would realize that the USA PATRIOT Act was not rushed, it actually came 10 years too late. As the Attorney General stated on November 8, 2001, the Department of Justice has been called to "the highest and most noble form of public service--the preservation of American lives and liberty." Now, more than two years after the attacks of September 11, the Department continues to respond to this call with enthusiasm, and with a profound respect for this country's tradition of civil rights and liberties.

Mr. Chairman, thank you for holding this important hearing today. I hope that the work we do today, and the work that we will continue to do, will help the American people understand how vital the tools of the USA PATRIOT Act are in our efforts to root out terrorism and keep Americans safe.

I would be pleased to answer any questions you may have. Thank you.