

Statement of

# **The Honorable Orrin Hatch**

United States Senator  
Utah  
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"DOJ Oversight: Terrorism and Other Topics"

Before I make my introductory remarks concerning this hearing, I want first to say a few words about President Ronald Reagan. He took office during a difficult time in America's history and helped usher in an era of both peace and prosperity. You can not do any better than that.

As we face new challenges from terrorists both at home and abroad, we would do well to emulate President's Reagan unfailing qualities of dignity and courtesy as well as his reliance on traditional American values, including his remarkable ability to communicate a sense of confidence and optimism about the future of our country.

As we work to thwart the new threat posed by terrorists, we must not forget the fact that our Nation has a history of defeating determined adversaries through the leadership of men like President Reagan and the perseverance of many citizens in many nations over a sustained period of time, we prevailed against fascism and communism and have made many old enemies into new allies.

Today's oversight hearing will mark the seventh hearing at which our Committee will have an opportunity to explore the effectiveness and the preparedness of the federal government to prevent and respond to terrorism on American soil.

Let me welcome our distinguished witness, the 79th Attorney General of the United States and former colleague on this Committee, John Ashcroft.

The Attorney General and his colleagues in the law enforcement and intelligence communities face challenging times in defending our country from terrorists.

Prosecuting terrorists after they have attacked our civilians does not bring back lost lives to grieving families and it is certainly an imperfect deterrent as these extremists are often bent on taking their own lives in these suicide missions.

Instead, as has been widely acknowledged over the last three years, the key is to prevent terrorism before it occurs and, when possible, interdict the terrorists on their homelands before they come to America to carry out attacks.

And that is exactly what the Department of Justice is doing - taking the battle to the terrorists by using every available tool. Let me commend you, Mr. Attorney General, for your Department's efforts to protect this great Nation.

Unfortunately, no one can guarantee 100 percent success in warding off all future terrorist attacks, but we must try to do so. The American public appreciates the commitment and energy that the Department of Justice brings to this task each and every day.

In recent weeks, we have been reminded about the dangerous nature of the situation we currently face. The Attorney General and the Director of the FBI publicly stated that credible intelligence, from multiple sources, indicates that al Qaeda plans to attempt an attack on the United States in the next few months.

Another very troubling development involves the terrorist conspiracy revealed by the Department's recent response to my April 22, 2004 letter requesting information on the detention of enemy combatant and American citizen Jose Padilla.

According to the Department of Defense, we now know that Jose Padilla received training in a terrorist camp in Afghanistan, including with an al Qaeda explosives expert. We are told that he served as an armed guard of what he understood to be a Taliban outpost in Kabul.

There is also reason to believe that Mr. Padilla discussed plans to detonate a dirty bomb or, alternatively, to blow up multiple apartment buildings using natural gas lines in New York,

Washington, D.C. or Florida with high level al Qaeda operatives, including Khalid Shaykh Muhammad.

As my colleagues may recall, last year U.S. law enforcement and intelligence agents, working together with Pakistani intelligence agents, captured Khalid Shaykh Muhammad, who was al Qaeda's leading operational planner and organizer. He is believed to be the mastermind behind the September 11th attacks.

Given our democratic society's strong tradition of protecting civil liberties, all of us -- especially Members of this Committee -- have an interest in the general procedures and policies, as well as the specific facts and circumstances, under which any American citizen may be designated and detained as an enemy combatant.

Our system of checks and balances is designed to place limits on the powers of each branch of government. But the unabashed and self-proclaimed goal of terrorists to obtain and use weapons of mass destruction against American civilians compels us to rethink the adequacy of our legal structure to prevent further terrorist attacks. We live in a dangerous world and our Commander-in-Chief must have the proper amount of authority to act decisively to protect the public.

I think the information released last week about Mr. Padilla provided useful information to the Congress and the public about the nature of these new terrorist threats. Having said that, I am also mindful that some have raised legitimate questions about a system that, to date at least, limits the ability of the designated enemy combatants and their legal representatives to develop a defense and get their side of the story out.

Nevertheless, I am also concerned that these new terrorists, who do not wear conventional military uniforms and are unaffiliated with nation-states, and whose ultimate goal is nothing less than to destroy our way of life, would like nothing more than the opportunity to use all our traditional due process protections to drag out the proceedings, tie the government prosecutors in knots, and make publicized political speeches.

Frankly, questions can be raised about the decision to try Zacarias Moussaoui in a criminal proceeding in an Article III court. A strong argument can be made that Mr. Moussaoui is the quintessential enemy combatant and deserves to be tried by a military commission.

We need more debate and discussion on the question of whether those designated as enemy combatants should be tried, and afforded attorneys, only after they are determined to be of no intelligence value or have exhausted their intelligence value.

As well, we need more discussion about where and by whom the line should be drawn between permissible aggressive interrogation techniques, and when interrogation becomes torture and whether torture is ever justified. We have all read the recent press accounts on these issues with great interest.

While I hope that one day al Qaeda will be defeated and formally surrender, it is possible the day will never come when many of those detained at Guantanamo will agree to lay down their arms against the American people. This poses perplexing problems for a democratic country whose history suggests that wars end with finality for all combatants.

Let me take a moment to speak about the Patriot Act. This legislation was a measured attempt to help protect Americans from terrorist attacks and is consistent with our traditional civil liberties. Despite the negative predictions of some, the Patriot Act has not eroded the civil liberties that we Americans hold dear.

As I understand it, the Department's Inspector General has consistently reported in three semi-annual reports that it has received no complaints alleging misconduct by DOJ employees in their use of substantive provisions of the Patriot Act. Let me repeat--no complaints. Nevertheless, if we can improve and fine tune the Patriot Act, we should do so.

Despite the enormous task of defending against terrorist attacks, the Department remains committed to ensuring that its traditional law enforcement responsibilities are met. Recently, the Department reported that violent crime has fallen 3.2 percent nationwide.

The Department continues its vigorous enforcement of civil rights violations. And, in fiscal year 2003, the Department provided almost \$7 billion to state and local governments for various law enforcement initiatives, including \$2.78 billion for training emergency first responders and purchasing equipment, as well as research and development of counterterrorism technology.

Finally, let me say that on the Committee's mark-up agenda is S.1700, the DNA legislation. I believe that the Committee will report and the Senate should adopt this important bi-partisan bill, which has already passed the House by a wide bi-partisan vote.

This bill will help bring justice to thousands of victims of crimes, including many rape victims that have fallen through the cracks in the system due to the substantial backlog of rape test kits. In addition to using DNA technology to help bring about convictions, DNA tests can also be appropriately used to help exonerate those wrongfully charged or wrongfully convicted of crimes. I will work to bring this bill to the President's desk for his signature.

I look forward to hearing your testimony today. I hope to continue our bi-partisan commitment to enacting measures that may be needed to win the war against terrorism and to work together on the full range of programs the Department implements.