

Statement of

The Honorable Orrin Hatch

United States Senator
Utah
June 22, 2004

"Tools To Fight Terrorism: Subpoena Authority and Pretrial Detention of Terrorists"

I want to thank Senators Kyl and Feinstein for holding this hearing today to examine the need to add laws to our arsenal of tools designed to protect the American public from acts of terrorism.

Senator Leahy, the Ranking Democrat Member of the Senate Judiciary Committee, and I--as well as other Senators in the subcommittees--have worked together for a long time to examine the adequacy of the current legal tools involved in the war against terror. Since last September, the Senate Judiciary Committee, including its subcommittees, has held 19 hearings related to terrorism. I am confident that we will continue to work together in the future as we continue this series of hearings.

Today's hearing highlights the need for our pre-trial detention statute to include a presumption against release for those charged with a terrorist-related crime. In addition, the Subcommittee will exam the need to expand the administrative subpoena authority for terrorism investigations.

Current law provides that a defendant charged with certain major crimes of violence and drug trafficking offenses is presumed to be a danger and will be detained unless that person can demonstrate that they are not dangerous. Unfortunately, there is no similar presumption of detention under current law for a person charged with terrorist crime. To apply presumptions of detentions to drug traffickers and violent criminals but not to terrorists defies common sense.

Additionally, current law provides certain federal officials who are conducting certain federal investigations the authority to request, on an official basis, documents from businesses. There are many areas where the law provides authority to the government to obtain documents by administrative subpoenas, such as in cases involving drug dealers, health care fraud, and environmental crimes. Moreover, for example, the Federal Food, Drug, and Cosmetic Act allows FDA inspectors to make warrantless searches, during the normal course of business hours of literally tens of thousands business establishments and inspect and copy literally millions of pages of business records maintained by producers and distributors of foods, drugs, medical devices and cosmetics.

As I evaluate the debate in the war on terror and the need to provide additional authorities to law enforcement to fight this battle, I often look to existing legal authorities to determine whether additional authorities are needed in the terrorism arena. When deciding whether a new authority should be extended into the terrorism arena, I believe a good rule of thumb is if the tool is good a one to use against drug dealers; it is probably a helpful tool in the fight against terrorism.