

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Hearing of the Senate Judiciary Subcommittee on
Terrorism, Technology and Homeland Security
"A Review of the Tools to Fight Terrorism Act"
Monday, September 13, 2004

As we mark the third anniversary of the September 11 attacks, we still have seen no accountability on behalf of the Administration for those events. The Bush Administration resisted this Committee's efforts to examine what led to the tragedy, resisted creation of a Department of Homeland Security, resisted formation of the 9/11 Commission, resisted the efforts of the 9/11 Commission while it was carrying out its task, and continues to resist important recommendations of the 9/11 Commission. This Administration squandered the unity of the American people, the political parties and our international allies in the months and years that have intervened.

Terrorism was not a priority of this Administration as it assumed governing responsibility in January 2001. After the attacks of 9/11, we were told that this Justice Department would "expend every effort and devote all necessary resources to bring the people responsible for these crimes to justice." Three years later, it is appropriate to ask whether even that promise has been kept.

This summer has not been a good one for the Justice Department. In recent days, we have witnessed the unraveling of the Department's first post-September 11 prosecution of a terrorist sleeper cell in Detroit, following on the heels of a growing list of losses and questionable cases. Problems have cropped up in a number of other high-profile cases as well - aptly detailed by the Baltimore Sun:

? In May, Lawyer Brandon Mayfield was held for two weeks as a material witness after the FBI mistakenly said his fingerprint matched one found on a plastic bag connected to the deadly terror bombings in Madrid, Spain. The Department has yet to address what went wrong with the process and how it can be fixed. I provided my views to the Department on the outdated and misused material witness statute three months ago, but have received no response.

? In June, a Saudi college student in Boise, Idaho, was acquitted of charges of providing material support to terrorists by creating Web sites that prosecutors claimed helped terrorists raise funds and drum up recruits. "There was no clear-cut evidence that said he was a terrorist, so it was all on inference," a juror reportedly said after the verdict. The material witness statute is just one of the PATRIOT Act provisions that needs fixing, but the bill under discussion today would simply expand this flawed law.

? Also in June, the Supreme Court rightfully denounced the Government's policy of indefinitely holding a citizen without due process. As a result, the Government is reportedly negotiating to release Yaser Esam Hamdi, a U.S. citizen held incommunicado for two and a half years while the government proclaimed compelling national security interests required his indefinite detention as an enemy combatant. The Jose Padilla case is in a similar quagmire. The Attorney General first indicated that Padilla was arrested because he was the "dirty bomber" who would have detonated a crude nuclear device in the United States. This year the Justice Department radically revised its description of Padilla, indicating that he was casing apartment buildings. Still more than two years after the terrifying and dramatic announcement of his arrest, he has yet to face charges for his crime and may never have to.

? In August, two leaders of a mosque in Albany, N.Y., were released on bail after a federal judge concluded they were not as dangerous as prosecutors alleged. The evidence included a notebook found at an Iraqi terrorist camp that investigators initially said referred to one man as "commander"; FBI translators later said the reference probably means "brother." I have pressed the Department for months now on the translator issues at the FBI and urged Senator Hatch to explore this issue in a full Committee oversight hearing. None is on the agenda.

The fact is, there have been only a few real criminal victories in the war on terrorism, and these have been overshadowed by seemingly half-hearted prosecutions. Justice Department officials say their record since the 2001 attacks reflects a successful strategy of catching suspected terrorists before they can launch deadly plots, even if that involves charging them with lesser crimes. I certainly cannot contest that lesser crimes are being charged. Of the approximately 184 cases disclosed as International Terrorism matters, 171 received a sentence of one year or less. But is that making us safer? What exactly happens to a suspected terrorist who spends six months in prison and then is deported to his country of origin in the midst of a confrontation that has no end in sight? Does it really squelch deadly plots?

The Administration recently announced the deportation of a Jordanian citizen who worked for the Holy Land Foundation of Richardson, Texas, which was known to provide financial support to the terrorist group Hamas. An immigration judge denied bail and found that the defendant engaged in terrorist activity. Yet there was no indictment of this man. He will return home to Jordan, his birthplace, with the blessing of the U.S. Government. Our terrorist financing laws are appropriately tough and are meant to punish and deter -- the potential sentences start at 10 years' imprisonment. Why aren't they being used?

The Administration has yet to answer pointed questions about the deportation of Nabil al-Marabh to Syria, a state sponsor of terrorism. Al-Marabh was at one time Number 27 on the FBI's list of Most Wanted Terrorists, and experienced prosecutors wanted to indict him. Why was he released?

Finally, the press reported earlier this summer that the number of federal agents working on the September 11th investigation has reportedly dropped from 70 to 10. And the sole case connected with those attacks, against Zacarias Moussaoui, has yet to be resolved.

I suggest we start asking hard questions about the Department's policies and practices based on existing laws. We should first see where things stand with the single most important legislation on this topic since September 11: The USA PATRIOT Act.

Recognizing that some of the most controversial provisions of the PATRIOT Act will "sunset" at the end of 2005, the 9-11 Commission wrote that the burden of proof for retaining a particular governmental power should be on the Executive branch, to explain how the power actually materially enhances security and whether there is adequate supervision of the Executive's use of the power to ensure protection of civil liberties. The Commission said that a full and informed debate on the PATRIOT Act would be "healthy" because of concerns regarding the shifting balance of power to the Government. Before expanding these provisions we are due an accounting and an explanation why information-gathering provisions the Justice Department has contended to be vital are so seldom used.

I told the Attorney General in his one appearance in the past 18 months, actions speak louder than words. Adding more ways to say killing innocent people in the name of terrorism is a serious crime, or giving federal law enforcement yet easier access into our personal lives, is like adding locks on Fort Knox. Real tools to fight terrorism involve concrete legal strategies, effective use of resources, information sharing, and a government and people united.