

Testimony of  
**The Honorable James Comey**

Deputy Attorney General  
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STATEMENT OF JAMES B. COMEY  
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OF THE UNITED STATES  
BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

"A Review of Counter-Terrorism Legislation and Proposals"

September 22, 2004

Good morning Chairman Hatch, Senator Leahy and Members of the Committee. Thank you for giving me the opportunity to appear before you today to discuss the vital tools of the 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.

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" ("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. Three 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 demand 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 the 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 PATRIOT Act. People are curious about how the PATRIOT Act impacts them. That is in part why we are all here today - because as Henry Clay once noted, "[t]here is nothing wrong with America that cannot be cured with what is right in America." Good people will always disagree about policy issues, particularly when they touch on the powers of government. Indeed, all citizens should question the power of government and demand explanations. But because I believe the PATRIOT Act is wholly constitutional and just plain smart, I feel strongly these 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 America's toolbox."

What the 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 PATRIOT Act eased legal restraints that impaired law enforcement's ability to gather, analyze, and share critical terrorism-related intelligence information - the kind of information that is needed to prevent terrorist attacks from happening in the first place. 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 Qaeda and other international terrorist organizations.

As I've discussed privately with a number of Senators and Members of Congress, the PATRIOT Act did something absolutely critical to our national security: it broke down "the wall" between the intelligence analysts responding to al Qaida and other terrorist threats and criminal investigators responding to those same threats. That has changed our world and has made us immeasurably safer. The 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." In fact, you had situations in which FBI criminal and intelligence investigators, working in the same building and on the same matters, couldn't share information with one another. The PATRIOT Act, however, brought down this "wall" and greatly enhanced foreign intelligence 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. In the last month, for example, the Department announced indictments in Dallas, Chicago, and Miami that were significantly aided by the information sharing changes of the PATRIOT Act.

The removal of the "wall" separating intelligence and law enforcement personnel also played a crucial role in the Department's successful dismantling of a Portland, Oregon terror cell, known as the "Portland Seven." Had it not been for the effective new tools of the PATRIOT Act, this case may have been known as the "Portland One." Here's what happened: Members of this terror cell had attempted to travel to Afghanistan in 2001 and 2002 to defend the Taliban and al Qaeda by taking up arms against coalition forces. Utilizing sections 218 and 504 of the PATRIOT Act, however, the FBI was able to conduct FISA surveillance of one of the suspects. FBI agents learned that he had received orders from an international terrorist group to attack Jewish targets. Agents were able to share this information with prosecutors and keep them apprised of their surveillance activities. This gave prosecutors the confidence not to prematurely arrest the suspect while they continued to gather evidence on the other members in the terrorist cell. Ultimately, prosecutors were able to collect sufficient evidence to charge seven defendants. Six of the defendants were convicted and sentenced to prison terms ranging from three to eighteen years. These terrorists sit in prison cells today, and the PATRIOT Act helped us to put them there.

Section 213 of the PATRIOT Act codified and made nationally consistent an existing and 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, take other action to evade arrest, or accelerate the execution of a terrorist plot. 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.

The Department uses section 213 to investigate a wide variety of serious crimes, including domestic and international terrorism, drug trafficking, organized crime and child pornography. Today, the Department is delivering to the House and Senate a report entitled, "Delayed Notice Search Warrants: a Vital and Time-Honored Tool for Fighting Crime." The report sets forth how delayed-notice search warrants actually work, why they are critical to the success of criminal investigations of all kinds, and what setbacks law enforcement would suffer if this well-established and important authority were limited or eliminated. Please let me bring two examples from our report to your attention.

First, in *United States v. Odeh*, a recent narco-terrorism case, a court issued a section 213 warrant to search the contents of an envelope that had been mailed to the suspect of an investigation. The search confirmed that the suspect was operating a hawala money exchange used to funnel money to the Middle East, including to an individual associated with someone accused of being an operative for Islamic Jihad in Israel. The delayed-notice provision allowed investigators to conduct the search without fear of compromising an ongoing wiretap on the suspect and several of his confederates. The suspect was later criminally charged and notified of the search warrant.

A delayed-notice warrant issued under section 213 was of tremendous value in Operation Candy Box, a multi-jurisdictional Organized Crime and Drug Enforcement Task Force (OCDETF) investigation targeting a Canadian-based ecstasy and marijuana trafficking organization. In 2004, investigators learned that an automobile loaded with a large quantity of ecstasy would be crossing the U.S.-Canadian border en route to Florida. On March 5, 2004, after the suspect vehicle crossed into the United States near Buffalo, DEA agents followed the vehicle until the driver stopped at a restaurant just off the highway. Thereafter, one agent used a duplicate key to enter the vehicle and drive away while other agents spread broken glass in the parking space to create the impression that the vehicle had been stolen. A search of the vehicle revealed a hidden compartment containing 30,000 ecstasy tablets and ten pounds of high-potency marijuana. Because investigators were able to obtain a section 213 warrant, the drugs were seized, the investigation was not jeopardized, and over 130 individuals were arrested on March 31, 2004 in a two-nation crackdown. Without the delayed-notification search warrant, agents would have been forced to reveal the existence of the investigation prematurely, which almost certainly would have resulted in the flight of many of the targets of the investigation..

Section 215 of the 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 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 (though, historically, terrorists and spies have used libraries to plan and carry out activities that threaten our national security). In fact, obtaining business records is a long-standing law enforcement tactic. Grand juries have for years issued subpoenas to all manner of businesses, including bookstores and libraries, for records relevant to criminal inquiries. In the 1990 Zodiac gunman investigation, for example, a New York grand jury subpoenaed records from a library in Manhattan. Investigators believed that the gunman was inspired by an occult Scottish poet and wanted to determine who had checked out the poet's books. More recently, in 1997, in the Gianni Versace murder case, a Florida grand jury subpoenaed records from public libraries in Miami Beach.

The 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 since 9/11 charged 84 individuals and has obtained 35 convictions or guilty pleas. 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. (Also, please let me take the opportunity here to note that the Department testified last week before Senator Kyl's Subcommittee on Terrorism, Technology and Homeland Security in support of S.

2679, the "Tools to Fight Terrorism Act of 2004," which would, among other things, improve existing law by clarifying several aspects of the material support statutes.)

The 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. But speed can help save lives. That's why section 219 of the PATRIOT Act streamlined this process, making nationwide search warrants available to law enforcement in terrorism cases. Law enforcement already has used this authority on numerous occasions. For example, a noteworthy use of section 219 occurred during the anthrax investigations following 9/11, when FBI agents applied for a warrant to search the premises of America Media, Inc., in Boca Raton, Florida - the employer of the first anthrax victim. Using section 219, agents were able to obtain a search warrant from the federal judge in Washington, DC who was overseeing the wide-ranging investigation. Investigators saved valuable time by petitioning the federal judge who was most familiar with the pending case.

I would also like to discuss some of the critical protections for civil liberties encompassed within the 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 PATRIOT Act preserves the historic role of America's courts by ensuring that the vital role of judicial oversight is not diminished. For example, the provision for delayed notice for search warrants requires a judge to approve not only the search -- but also the delay in notification. In addition, under the Act, investigators cannot obtain a FISA pen register to identify the phone numbers of a suspected terrorist's possible co-conspirators unless the prosecutor first applies for and receives permission from federal court. Furthermore, a court order is required to compel production of business records in national security investigations.

Second, the PATRIOT Act respects important congressional oversight by keeping in place important reporting requirements on the Department. In particular, semiannually the Attorney General is required to report to Congress the number of times section 215 has been utilized, in addition to the long-standing requirement to inform Congress concerning all electronic surveillance under the Foreign Intelligence Surveillance Act. Under Section 1001 of the 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 just last week the Inspector General reported to Congress that, with the possible exception of one matter, "none" of the complaints alleging misconduct by Department employees are related to use of a provision of the PATRIOT Act. In fact, in all his reports since the time the PATRIOT Act was enacted, the Inspector General has yet to report a single civil rights violation related to use of the Act.

The 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.

And just last month, the President went another step further and did even more. In keeping with one of the recommendations in the 9/11 Commission's report, he created the President's Board on Safeguarding Americans' Civil Liberties within the executive branch. It includes officials such as the new Privacy Officer and the Officer for Civil Liberties at the Department of Homeland Security. Because of the authorities held by the Board's members, such as the ability to bring charges against civil rights violators, the Board's members have the power to identify and address civil liberties problems quickly and decisively. And I am pleased to note that the President designated the Deputy Attorney General as the Chair of the new Board. I convened the Board for its first meeting earlier this month.

I believe that, having considered the tools used by law enforcement in the war on terror, one must conclude that enactment of the PATRIOT Act was not rushed; it actually came 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, three 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 PATRIOT Act are in our efforts to root out terrorism and keep Americans safe.

I am pleased to answer any questions you may have. Thank you.