

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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Mr. Attorney General, thank you for being here, and thank you for being so accessible to the Committee. And I want to thank Sen. Leahy for making sure that we have these opportunities for regular oversight of the Department.

As members of this committee are aware, I strongly support the decision to try Khalid Sheikh Mohammed and other 9/11 plotters in our federal criminal courts. We have a great track record of successfully trying and convicting terrorists in civilian courts. The military commission system is largely untested, and these cases could easily get bogged down in years of legal challenges. The best way to bring these terrorists to justice swiftly is through our civilian courts. It has been nine years since 9/11, and it is inexcusable that these men have not yet been brought to justice for what they did.

Whatever one might think of using the military commission system, it is simply not yet ready to start handling prosecutions. The Military Commissions Act requires that the Secretary of Defense issue rules to govern those proceedings, and that has not yet happened. It hardly seems possible to start using military commissions without the rule book. The military commission system is also the subject of a constitutional challenge in the D.C. Circuit that is at only the beginning stages of litigation, and anyone charged in a military commission prosecution could bring yet another legal challenge to the system itself before any trial begins. In fact, when a military commission defendant named Salim Ahmed Hamdan challenged a prior version of the military commission system, his case wound up in the Supreme Court after years of litigation. It strikes me as not only possible, but very likely, that the first few military commission trials will be subjected to legal challenges, and that any trials would not begin for several years.

The federal criminal system, on the other hand, is available now. It has been tested for literally hundreds of years, and we know it works because hundreds of people are sitting in federal prison today after being convicted of terrorism crimes in our federal courts. We know that our federal judges and prosecutors have the experience needed to take on these cases because they've done it, again and again. Indeed, the Department has achieved significant successes in the Zazi and Headley cases just in the past few months. Both were serious terrorism cases, and in both cases the Department used the criminal justice system to obtain intelligence and ultimately guilty

pleas. So I support the Attorney General's decision and believe it is the best decision for the security of this country.

I am glad also to have the opportunity to raise several issues with you that are important to my constituents in Wisconsin. First, thank you for your work to reinvigorate the Antitrust Division after years of neglect. You and Assistant Attorney General Varney have made it clear that the nation's antitrust laws are going to be enforced, and this means improved competition and real protection for consumers. I am especially grateful for the focus on antitrust issues in agriculture and the partnership the Department has forged with USDA to hold workshops, including one focusing on the dairy industry planned for June in Wisconsin. Your department has returned the proper balance after too many years of looking the other way or misinterpreting the law to allow the biggest and most powerful entities in our economy to abuse their market power.

I also want to emphasize the importance of COPS Hiring Grants in the Recovery Act. I am a longtime supporter of COPS grants and am pleased that the Recovery Act allowed my state to hire or re-hire 58 officers. Each of these positions, though, were in city or tribal police departments. Sheriffs' departments in Wisconsin did not receive any COPS hiring dollars in the stimulus. While these jobs were certainly needed in the jurisdictions where funding was provided, it is important that the money be distributed fairly between cities and counties. I understand that the methodology used to distribute these grants is under review, which is a step in the right direction, and I will continue to press the Department of Justice on this issue.

I also want to take this opportunity to emphasize the importance of the John R. Justice Prosecutors and Defenders Incentive Act. Prosecutors and public defenders in Wisconsin have been telling me that they are having a harder and harder time attracting and retaining qualified attorneys in their offices. Many of these public servants have had to resort to taking a second job to pay their law school debt off, and I am told that many local prosecutor and public defender offices typically have attrition rates between 30 and 50 percent. This is a serious problem in our criminal justice system, and is one of many reasons that I cosponsored and voted for this bill, which was championed by Senator Durbin, in 2008. This bill creates a much-needed student loan repayment program for prosecutors and public defenders that would help reduce the enormous debt burden of many of these hard-working public servants. It concerns me, however, that the Department has not yet issued guidelines for this important program. I hope the Department will work quickly to ensure the speedy launch of this loan assistance program.

Finally, I would like to raise an issue that I believe is often unaddressed or ignored by our criminal justice system: mental illness. Our prisons were never intended and are not equipped to be treatment facilities for the mentally ill, but unfortunately, that is what they have become. Wisconsin has started taking a serious look at this issue, and recently convened a task force of law enforcement officers, corrections staff, district attorneys, state legislators, and social service providers with the goal of developing a strategic plan to improve Wisconsin's responses to people with mental illness in the criminal justice system. This initiative was led by Chief Justice Shirley Abrahamson, who was able to obtain funding from the Council for State Governments (CSG) to organize this task force. CSG receives Department of Justice funding for this and other mental health initiatives as a result of the Mentally Ill Offender Treatment and Crime Reduction

Act (MIOTCRA). The Wisconsin task force could serve as a model for other states, and I hope the Department will take a look at what Wisconsin has been doing, and prioritize resources for mental health initiatives.