

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee,
Hearing On “Oversight of the U.S. Department of Justice”
November 8, 2011

We welcome Attorney General Holder back before the Judiciary Committee as we continue our important focus on oversight.

When Attorney General Holder was here in May, details were just emerging about the successful military and intelligence operation that killed Osama bin Laden, providing a measure of justice and closure for Americans resulting from the horrific attacks of September 11th. That was not an isolated success; during the last couple of years, the Obama administration has successfully reinvigorated, retooled and refocused our national security efforts.

The Attorney General is a key member of that national security team. Under his leadership, the Justice Department last month foiled an assassination attempt in the United States of the Saudi Ambassador to the United States and prevented an act of terrorism on U.S. soil. Last week, four men in Georgia were arrested in a domestic terrorism plot, accused of planning to use guns, bombs, and the toxic poison ricin to kill Federal and state officials. Earlier this year, the Christmas Day bomber was convicted in Federal court, pleading guilty and facing a possible life sentence.

We must ensure that we do all we can to assist efforts to bring terrorists to justice by providing the administration with the full array of authorities and options we need in our counterterrorism efforts. In my view, a view that I know is shared by the Director of National Intelligence and the Attorney General, it is shortsighted for Congress to hamstring the Government’s efforts. Between September 11, 2001, and the end of 2010, 438 suspects were successfully prosecuted by the Bush and Obama administrations on terrorism charges in Federal courts. Military commissions have resulted in only six convictions since September 11, five of which resulted from plea bargains.

The Attorney General and the administration must have all options available concerning terrorism cases, including the ability to prosecute terrorists in Federal criminal courts. As a former prosecutor, I have confidence in the abilities of our Federal counterterrorist enforcement agents, our prosecutors and our Federal justice system to bring terrorists to justice, as they have demonstrated time and again. There is an extraordinary record of accomplishment. We must continue to give the FBI and the men and women of the Justice Department the tools, flexibility and support they need to do their jobs.

The record over the last three years with respect to crime has also been outstanding. Despite the recession and economic challenges we are facing from Europe, natural disasters and shocks to the global economy, and despite the persistence of unacceptably high unemployment, the Justice Department, working with its state and local law enforcement partners, has done a good job heading off a surge in crime. Over the past three years, crime rates have fallen rather than rising as expected in hard times. On that front, too, the work of the dedicated men and women in law

enforcement, from the Justice Department to state and local officers, should be recognized and commended.

As we proceed, and we will each have questions today about matters that concern us and areas in which we hope to see improvement, the American people should not lose sight of the big picture and the job the Justice Department is doing to keep us safe and secure.

Let me now speak briefly about a few matters concerning open government. For five decades, the Freedom of Information Act (FOIA) has given life to the American value that in an open society, we must carefully balance the public's right to know and the Government's need to keep some information secret. Recently, I shared my concerns with the Attorney General – as did Senator Grassley – about a Justice Department proposal that would have allowed the Government to misrepresent whether certain sensitive law enforcement records exist in response to FOIA requests. I commend the Attorney General for being responsive to the concerns that a number of us raised about this proposal. His decision last week to promptly withdraw the proposal was the right thing to do and honors the President's commitment to openness and transparency in our Government.

I also appreciate how much more cooperative this Justice Department has been and how much more responsive it has been than had been the case during the previous administration. An exception, however, has been the failure to provide this Committee with the legal justification underlying drone strikes against an American citizen overseas. We know that justification exists; we know the administration carefully considered this matter. There is no reason, in my view, to withhold it from the American people's elected representatives.

This morning there will be more questions about the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) gun trafficking investigations along our southern border. Attorney General Holder has repeatedly reiterated and reinforced that longstanding Department of Justice policy prohibits the transfer of firearms to known criminals without the proper monitoring or controls by law enforcement. The Attorney General requested an investigation by the Office of Inspector General last February. The Department has made available to Congress more than 4000 pages of documents and a dozen witnesses for interviews as part of its continuing responsiveness to congressional inquiries. Administration officials have testified at 17 congressional hearings about these matters, including six held before this Committee.

I urge that, as they engage in important oversight, Senators remain mindful that these matters also involve ongoing and highly sensitive criminal investigations. We must respect the need for law enforcement and prosecutors to do their jobs to address the serious threat of violence posed by these brutal drug cartels. I do not think anyone wants to hamper the efforts of law enforcement agents against the Mexican cartels, including the ongoing criminal investigation and prosecution related to the tragic murder of Agent Brian Terry.

We are working with the Department of Justice on a series of important legislative initiatives, including reauthorizing the Second Chance Act, the Trafficking Victims Protection Act, the Civilian Extraterritorial Jurisdiction Act, reform of the Electronic Communications Privacy Act, and reauthorization of the Violence Against Women Act. These issues have in the past been the

subject of bipartisan cooperation and consensus. I hope they can be, again. I would like to see us break through the partisan gridlock.

Later this week, the Committee will move forward on the Respect for Marriage Act, a bill I was proud to join in introducing with Senator Feinstein and others that will repeal DOMA (the Defense of Marriage Act), and restore the rights of all lawfully married couples. I thank Attorney General Holder for his support of our efforts to end the Federal Government's unequal treatment of lawful marriages. The time has come for the Federal Government to recognize that all married couples deserve the same legal protections.

I thank the men and women of the Department of Justice who work hard every day to keep us safe and uphold the rule of law. I thank Attorney General Holder for returning to the Committee and look forward his testimony.

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