

Testimony of

The Honorable Russ Feingold

December 4, 2001

Welcome to the third of four hearings on DOJ Oversight: Preserving Our Freedoms While Defending Against Terrorism. This hearing will focus on the issue of individuals detained in connection with the September 11th attacks investigation. This hearing will explore the importance of the Attorney General providing a full accounting of who is being detained and why, as well as other basic information about the status of individuals detained since September 11th. We will also consider the Department of Justice's plan to question 5,000 individuals of Arab and Muslim backgrounds in connection with the investigation.

The terrorists struck the heart of our nation's financial capitol when they struck New York City and took the lives of thousands of Americans. In the shadow of where the World Trade Center once stood is the Statue of Liberty, standing tall and proud, with a torch raised to the skies. She shines her light on a city and a nation struggling to cope with this tragedy and working to prevent any such horrific act from ever happening again.

Most important, Lady Liberty is a reminder of why Americans, and immigrants, who like my forefathers and those of probably everyone in this room, arrived on our shores desiring to be Americans one day, love our nation, and are proud to be a part of it. Her beacon at the golden door to America is a beacon of freedom, a beacon of hope, and a beacon of justice.

I fear that America's beacon of freedom and justice is threatened, as we face almost daily revelations of extraordinary steps by the Justice Department that snub the rule of law and threaten to erode fundamental constitutional rights.

As my colleague Senator Kennedy eloquently stated last week, no Senator and no American has a monopoly on wanting to bring the perpetrators of the September 11th attacks to justice and doing all we can to prevent future acts of terrorism and the loss of American lives. I fully support our law enforcement officials in their tireless efforts to leave no stone unturned as they strive to protect our nation from future attacks.

But as we move forward in our fight against terrorism, Congress, especially this Committee, has a responsibility to ensure that the constitutional foundations of our nation are not eroded. The beacon of freedom must continue to shine on our nation.

During the course of the investigation of the September 11 attacks, the Justice Department has detained over 1,100 individuals. The Justice Department recently began releasing some information about the people who have been detained on federal criminal charges or immigration violations. But we still do not have a full picture of who is being detained and why. And there are reports that detainees have been denied their fundamental right to due process of law, including access to counsel, and have suffered serious bodily injury. We simply cannot tell if those cases

are aberrations or an indication of systemic problems, if the Justice Department will not release further information about those being held in custody.

The Attorney General has repeatedly and strongly asserted that he is acting with constitutional restraint. But the Department of Justice has a responsibility to release sufficient information about the investigation and the detainees to allow Congress and the American people to decide whether the Department has acted appropriately and consistent with the Constitution.

Within a week of September 11th, the Department began releasing information on the numbers of people who have been detained as part of the investigation. On October 31st of this year, I, along with Chairman Leahy, Senator Kennedy and Representatives Conyers, Nadler, Scott, and Jackson-Lee, sent a letter to the Attorney General requesting information about the detainees. We wanted to know who is being detained and why; the basis for continuing to hold individuals who have been cleared of any connection to terrorism; and the identity and contact information for lawyers representing detainees. We also wanted information regarding the government's efforts to seal proceedings and its legal justification for doing so.

In early November, the Department announced it would no longer release comprehensive tallies of the number of individuals detained in connection with the September 11 investigation and that it would limit its counts to those held on federal criminal or immigration violations. Thus, it would no longer keep track of those held on state or local charges, nor would it indicate how many people have been released after being detained.

Just before Thanksgiving, the Department provided copies of the complaints or indictments for about 46 people held on federal criminal charges. It also provided similar information on about 49 people held on immigration violations, but redacted their identities. Last week, the Attorney General announced the number and identities of all persons held on federal criminal charges and the number, but not the identities, of persons held on immigration charges. The total number of detainees is roughly 600 individuals. But the Department continues to refuse to identify the 548 persons held for immigration violations, or provide even the number of material witnesses, or the number and identities of persons held on state or local charges.

I am not satisfied with this response but we now know a lot more about the detainees than we knew at the end of October. This illustrates the crucial role of congressional oversight as a check on the executive branch.

The Department has cited a number of reasons for its refusal to provide additional information. Very troubling is the Department's assertion that those being held for immigration violations have violated the law and therefore "do not belong in the country." But without full information about who is being detained and why, we cannot accept blindly an assertion that each detainee does not deserve to be in the country. Do all of these immigration violations merit detention, without bond, and deportation? I doubt it, as some are very minor violations that under normal circumstances could be cleared up with a phone call. I hope that today's hearing will shed some light on this issue.

The Department also says it is protecting the privacy of the detainees by refusing to release their identities, and they are free to "self-identify" if they want. But as we will hear this afternoon,

some of these individuals have been denied access to lawyers or family, for days or weeks at a time. So, it rings hollow to suggest that detainees are in a position to self-identify. My strong sense is that people in detention cannot just call the New York Times or this Committee if they want the public to know the circumstances of their cases. Our witnesses today should help us to assess whether the option of self-identification is a real option.

As this hearing will bring into focus, there are concerns that the Department's investigation has employed a clumsy, dragnet approach, which is increasingly proving to be offensive to the Arab and Muslim American communities and has come under criticism by a number of highly respected former FBI officials. I sincerely hope that the extraordinary effort to question immigrants from certain Arab and Muslim countries does not become counter-productive. In a rush to find terrorists, the Department appears to have disrupted the lives of hundreds of people, most of whom will prove to be wholly innocent of any connection to terrorism. Just as important, the trust of communities whose help is so crucial to preventing future attacks is being severely undermined.

We will hear today from Ali Al-Maqtari who was detained by federal officials in Tennessee for almost two months for a minor immigration violation that would not usually merit detention. We will also hear from his lawyer, Michael Boyle, who will discuss his experience in representing Mr. Al-Maqtari and the experience of his colleagues who are representing detainees. Following Mr. Boyle, we will hear from Mr. Goldstein, who will talk about the challenges he faced in his representation of Dr. Al Badr Al Hazmi, a radiology resident in San Antonio, Texas, who was detained following the September 11 attacks for nearly two weeks. Finally, Nadine Strossen, of the American Civil Liberties Union, will talk about why disclosing basic information about the status of the detainees is imperative and comment on the implications of questioning over 5,000 young men from Arab and Muslim countries.

This Friday, December 7th, our nation will mark the 60th anniversary of the bombing of Pearl Harbor, a day that President Roosevelt then said "would live in infamy." While our nation made great strides for mankind as a result of our victory in World War II, we also lost something of ourselves when we interned over 120,000 Japanese Americans and thousands of German and Italian Americans. We later came to regret those acts. I do not suggest that what is now going on rivals that deplorable action taken in the name of national security. But I do think we need to learn a lesson from this history to question our government when it appears to be overreaching. Such questions are not unpatriotic and should not be viewed as an inconvenience by the Executive Branch. They are a crucial tool for Congress to play its constitutional role in protecting the great heritage of this country and the rule of law.

I will now turn to the ranking member, Senator Hatch, for his opening statement. Before I do, I want to thank the Chairman and Senator Kennedy for their leadership on this issue. I also want to thank Senator Hatch for his cooperation with Senator Leahy and myself in putting this hearing together.