

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
June 8, 2004

Opening Statement of Senator Patrick Leahy,
Ranking Member,
Senate Judiciary Committee
Oversight Hearing
Attorney General John Ashcroft
June 8, 2004

Welcome, Mr. Attorney General. It is good to have you back before the Committee, and we are pleased to see you have recovered so swiftly from your surgery earlier this year. It has been a long time since our last oversight hearing with you. Fifteen months have passed since your last, brief appearance in March last year.

Sparse And Grudging Cooperation

Mr. Attorney General, I must speak frankly about an issue that has emerged as a basic problem during your tenure. There are two words that succinctly sum up the Justice Department's accountability and its cooperation with congressional oversight on your watch. Those two words are "sparse," and "grudging." Even those of us who have served through several presidents cannot recall a worse performance record when it comes to responsiveness.

Too often we on this Committee, on both sides of the aisle, get the sense that under your direction and example, the Justice Department and its agencies consider oversight by Congress to be nothing more than a nuisance.

But lack of oversight has costs and consequences, and we are beginning to reap them. Why is oversight important? Beyond the fact that the Constitution prescribes such checks and balances among the three branches of government, proper oversight - with cooperation from Executive agencies - helps make government work better. It also contributes to accountability. How is the Justice Department using all of the tools this Congress has provided in the USA PATRIOT Act? With the lack of oversight cooperation we have received, and with the secrecy that shrouds several aspects of the law, how would any of us know the real answer to that question, or dozens of other questions on other vital topics?

Now more than ever, the American people need the Justice Department and the FBI to be as good as we need them to be in combating terrorism. Congressional oversight is an essential ingredient in identifying problems and forging solutions.

Just days ago we learned of Justice Department involvement in devising legal arguments to minimize our obligations under such U.S. laws and international agreements as the convention on torture. Yet a letter I wrote to you last November, well before most of these abuses came to light, went unanswered for months, and when we are lucky enough to get responses, the premium is on unresponsiveness. Few of the answers we get are worth much more than the paper they are printed on. We often learn more about what's really happening in the Justice Department in the press than we do from you.

Could the Administration's cooperation with Congressional oversight have prevented such disasters as the prison abuse scandal? The answer is obvious.

What We Know

So in the meantime, the problems and the questions just keep on piling up.

In the 1000 days since the catastrophic attacks of September 11th, we have learned little from our Justice Department. We know this:

? Osama bin Laden remains at large;

? At least three senior al Qaeda operatives who helped plan the 9/11 attacks, including the suspected mastermind of the plot, are in U.S. custody, but there has been no attempt to bring any of them to justice;

? The Moussaoui prosecution has bogged down because the prosecution refuses to let the defense interview witnesses in U.S. custody;

? A German court acquitted two 9/11 co-conspirators, in part because the U.S. Government refused to provide evidence for the cases;

? Three defendants who you said had knowledge of the 9/11 attacks did not have such knowledge; the Department retracted your statement, and then you had to apologize to the court for violating a gag order in the case;

? The man you claimed was about to explode a "dirty bomb" in the U.S. had no such intention or capability, and because he has been held for two years without access to counsel, any crimes he did commit might never be prosecuted;

? Terrorist attacks on Capitol Hill and elsewhere involving the deadly bioterror agents anthrax and Ricin have yet to be solved, and the Department is defending itself in a civil rights action brought by a man who you publicly identified as a "person of interest" in the anthrax investigation;

? U.S. citizens with no connection to terrorism have been imprisoned as material witnesses for chunks of time -- with an "Oops, I'm sorry" when a "100 percent positive" fingerprint match turns out to be 100 percent wrong;

? Non-citizens with no connection to terrorism have been rounded up on the basis of their religion or ethnicity, held for months without charges and, in some cases, physically abused;

? Interrogation techniques approved by the Department of Justice have led to abuses that have tarnished our nation's reputation and likely given strength and driven hundreds, if not thousands, of new recruits to our enemies;

? Your Department turned a Canadian citizen over to Syria who was tortured;

? Documents have been classified, unclassified, and reclassified to score political points rather than for legitimate national security reasons;

? Statistics have been manipulated to exaggerate the Department's success in fighting terrorism; and

? The threat of another attack on U.S. soil remains high, although how high depends on who, in the Administration, is talking and what audience they are addressing.

Unfinished Business After 1,000 Days

Your testimony here comes about 1,000 days after the September 11th attacks and the subsequent launch of your efforts against terrorism. As National Security Advisor Condoleezza Rice acknowledged in her testimony before the 9/11 Commission, the terrorist threats to our nation did not begin in September 2001. Yet preliminary findings of the 9/11 Commission suggest that counterterrorism simply was not a priority of the Justice Department before September 11th. In fact, just one day before the attacks, you rejected the FBI's request to include more money for counterterrorism in your budget proposal. Arab language translators were so sorely lacking that when we did intercept information, we did not have the capacity to learn from it. The FBI lacked computer analysis capability to make sense of the valuable information we did have, such as an informant's claim that he and other al Qaeda operatives had been sent to the United States to hijack planes. The strong concerns of FBI agents like Coleen Rowley in Minnesota and Kenneth Williams in Phoenix were falling on deaf ears. The Justice Department failed to understand and apply the correct standard to get a search warrant for the computer of Zaccarias Moussaoui, who was in federal custody in August 2001. We were more concerned about Mexican immigration along our southern border than with securing American borders from terrorists. We were not coordinating effectively with international allies or our own State and local law enforcement agencies. And while you have recently been sharply critical of the so-called "wall" between criminal investigators and intelligence agents, you did nothing to "lower" it during your first seven full months in office. The President is fond of saying that September 11 changed everything, as if to wipe out all the missteps and misplaced priorities of the first year of this Administration.

Now, 1000 days later, there is ample cause for concern about whether, even now, the Justice Department is using its increased resources well and is setting its priorities toward the right goals.

Another Suspected Terrorist Goes Free

After the attacks you promised a stunned nation that its Government would "expend every effort and devote all necessary resources to bring the people responsible for these crimes to justice."

Last week we learned from press reports that you chose to deport rather than prosecute Terrorist No. 27 on the FBI's Most Wanted List. This is one of the most disturbing and frankly, stunning, revelations to emerge from the home front in the war on terrorism. According to the Associated Press, seasoned prosecutors like Chicago U.S. Attorney Patrick Fitzgerald believed that a prosecution was viable. Instead, the Justice Department declined this case on the ground that the United States could not effectively prosecute terrorists without giving away intelligence sources and methods. And instead, this suspected terrorist was deported and turned loose where he presumably could still wage jihad against us.

This was not the only instance since September 11 that the Government has chosen an easy option instead of effective criminal prosecution. I hope that you can explain how mere deportations, dragnets, detentions contrary to international law and definitional charges to inflate "terrorism" statistics serve to make American safer in the long run.

Mr. Attorney General, you have spent much of the past two years increasing secrecy, lessening accountability and touting the Government's intelligence-gathering powers under the PATRIOT Act. I and others here in Congress from both sides of the aisle worked together in unparalleled cooperation to pass the PATRIOT Act shortly after September 11.

But now I must ask, to what end? The threshold issue really is: What good is having intelligence if we cannot use it intelligently? Identifying suspected terrorists is only a first step. To be safer, we must follow through. Instead of declining tough prosecutions, we need to bring the people seeking to do us harm to justice. That is how our system works. Instead, your practices seem to be built on secret detentions and overblown press releases. Our country is made no safer through self-congratulatory press conferences when we face serious security threats.

A Responsibility To Deliver Justice

In December 2001, you announced the indictment of Zacarias Moussaoui and told the world that al Qaeda would now "meet the justice it abhors." At that moment, those who watched the Twin Towers fall in New York City, the destruction of the Pentagon and the carnage in a field in rural Pennsylvania, embraced your promise that "the awesome weight of justice against the terrorists who blithely murdered innocent Americans" would now be brought to bear.

But in the 1000 days since the attacks, the public justice we yearn for has eluded the very criminal justice system we hold up as a successful symbol of democracy to the rest of the world. We need to know why our Government is unwilling or unable to investigate and prosecute the crimes of September 11. From the moment that maniacal scheme was hatched and through its implementation on that terrible day, those responsible in any way must be identified and held accountable.

The Government agency that bears the name of Justice has yet to deliver the justice for the victims of the worst mass murder in this nation's history. The 9/11 Commission is working hard to answer important questions about the attacks and how the vulnerabilities in our system that

allowed them to occur, but it cannot mete out punishment for those involved. Neither the 9/11 Commission nor this Committee can do the job of the Justice Department.

You spoke recently about efforts that are under way in a number of nations to transform their criminal justice systems from an inquisitorial system to one modeled after our own -- a system that relies on evidence and adversarial proceedings. But you are not allowing our system to work.

The United States should not be afraid or reluctant to accord those charged with heinous crimes basic due process. Our prosecutors and criminal investigators are ready, willing and able to do their jobs. We have techniques to provide security for sensitive information through the Classified Information Procedures Act, the Foreign Intelligence Surveillance Act and other provisions. This Administration's expansion of all manner of government secrecy has, however, served to undercut the mission of the Justice Department.

There are times and occasions when the United States must act militarily. There are aspects of this effort that must be undertaken diplomatically in the international community and the President is belatedly discovering the benefits of diplomacy and alliances. But our criminal justice system is another dimension of our efforts against those who commit terrorist acts against the United States and our citizens. The skilled and hard-working men and women of the Justice Department and the FBI deserve so much credit for all they do, day and night, month after month, to protect the security of the American people. But under your leadership the Justice Department seems to have all but abandoned the field on so many of these cases. Instead, you deploy the Justice Department's resources to deny justice to the American victims of terrorism who have sought compensation in the courts, while failing to implement the victim compensation program that Congress called for nearly four years ago.

For 1000 days now, the families of the victims of September 11 have waited for the killers of their loved ones to pay the price for their crimes. As you yourself recognized, the indictment of Zaccarias Moussaoui was an important step in securing justice for the victims of September 11. Unfortunately, it appears to have been the last step.

A Time for Accountability

Mr. Attorney General, since September 11 you have blamed former Administration officials for intelligence failures that happened on your watch; you have used a tar brush to attack the patriotism of Americans who dare to express legitimate concerns about constitutional freedoms and civil rights; and you have refused to acknowledge these problems, even when your own Inspector General exposed widespread violations of the civil liberties of immigrants caught up in your post-September 11 dragnets.

Secretary Rumsfeld recently went before the Armed Services Committee to say that he should be held responsible for the abuses of Iraqi prisoners on his watch. Director Tenet is resigning from the Central Intelligence Agency. Richard Clarke went before the 9/11 Commission and began with his admission of the failure that this Administration bears for the tragedy that consumed us on 9/11. I am reminded this week as we mourn the passing of President Reagan that one of the acts for which he will be remembered is his concession that while his heart told him that the

weapons for hostages and unlawful funding of insurgent forces in Nicaragua should not have been acts of his Administration, his head convinced him that they were and that he took responsibility.

We need checks and balances. There is much that has gone wrong that your Administration stubbornly refuses to admit. For this democratic republic to work, we need openness and accountability.

Mr. Attorney General we all know that your style is to come to attack. You came before this Committee shortly after 9/11 to question our patriotism when we sought to conduct congressional oversight and ask questions. You went before the 9/11 Commission to attack a Commissioner by brandishing a conveniently declassified memo in so unfairly slanted a presentation that the President himself disavowed your action. I challenge you today, however, to abandon any such plans for this session and begin it, instead, by doing that which you have yet to do: Talk plainly with us and with the American people about not only what is going right in the war on terrorism, but also about the growing list of things that are going wrong, so that we can work together to fix them. Let us get about the business of working together to do a better job protecting the American people and ensuring that wrongdoers are effectively brought to justice.