

Testimony of
The Honorable Christopher Wray

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STATEMENT OF
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UNITED STATES SENATE

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INTRODUCTION

Mr. Chairman, members of the Committee, thank you for asking us here today. I am pleased to be able to discuss with you the Justice Department's efforts in the investigation and prosecution of terrorists, and in the protection of the American people from future terrorist attacks. I am also pleased to discuss how the anti-terrorism tools, overwhelmingly passed by the Congress, have been crucial to those efforts, and particularly how they have helped prosecutors and agents on the "front lines" of the war on terrorism.

We have enjoyed key successes: Since the attacks of September 11th, we have charged 284 defendants as a result of terrorism investigations; to date, 152 have been convicted or have pled guilty. The United States government has broken up terrorist cells in Buffalo, Charlotte, Detroit, Seattle, and Portland; five defendants in Portland recently pled guilty to conspiring to travel to Afghanistan to fight for the Taliban and Al Qaeda after September 11th. The communication and cooperation between government agencies has been exceptional and continues to improve. Our friends and allies overseas have been working closely with us to investigate and prosecute a number of major cases; for example, our cooperation with German prosecutors assisted in the conviction of Mounir el Motassadeq in Germany for helping the Hamburg-based Al Qaeda cell behind the September 11th attacks. Through interagency and international cooperation, over half of Al Qaeda's leadership worldwide has been captured or killed. We are dismantling the terrorist financial network: \$133 million in assets have been frozen in 660 accounts around the world, and investigations of terrorist financing have led to 27 convictions or guilty pleas to date. Our manpower has increased dramatically: Over 1,000 new and redirected FBI agents have been dedicated to counterterrorism and counterintelligence, and positions for 250 new Assistant U.S. Attorneys have been authorized. And, thankfully, we have so far not seen another major attack on

American soil since September 11, 2001, though we are all aware that our enemies continue to plot such attacks and will not willingly give up trying to strike us at home.

The Patriot Act has been vital to our success, and this Committee should be proud of its role in passing this critical legislation. Of particular importance, the Act has improved communication and information sharing among the agencies tasked with fighting terrorism, allowed law enforcement to adapt to terrorists' technologically sophisticated methods, and given investigators and prosecutors stronger tools to identify, pursue, disrupt, prosecute, and punish terrorists. The capabilities afforded to us by the Patriot Act have been and will continue to be critical in bringing terrorists to justice and in ensuring the safety of our country against terrorist attacks.

Information Sharing

Two of the Patriot Act's most important provisions helped to knock down barriers that had limited law enforcement officials from sharing information with the intelligence and military communities. Before passage of the Patriot Act, many statutory provisions had been interpreted to require these groups to form two separate huddles that could not readily talk to each other; as a result, the collective defense against terrorism was weaker than it should have been. As the recent 9/11 Congressional Joint Inquiry Report confirms, before September 11th our capacity to "connect the dots" was hampered by the difficulty of coordinating throughout our own government. Now, criminal investigative information that contains foreign intelligence or counterintelligence, including grand jury and wiretap information, may be shared with national security and intelligence officials. For example, during the investigation and prosecution of several significant terrorism cases (including the 1993 attack on the World Trade Center, the 1998 embassy bombings in Africa, the millennium bombing plot, and the 2000 attack on the U.S.S. Cole), the U.S. Attorney's Office in the Southern District of New York accumulated extensive intelligence and grand jury information that can aid, and has aided, many ongoing terrorist cases. Since the passage of the Patriot Act, that U.S. Attorney's Office has shared this wealth of terrorist information with intelligence and law enforcement agencies, helping them further their own investigations.

Similarly, information obtained under the Foreign Intelligence Surveillance Act (FISA) is now shared far more readily between criminal and intelligence officials. This ability to review the complete scope of information applies retrospectively as well as to developing investigations. Thus, the Attorney General has instructed all U.S. Attorneys to review intelligence materials for previously collected information that could support a criminal prosecution; as a result, thousands of intelligence documents have been reexamined, and many criminal investigations have been initiated or strengthened.

Such enhanced information sharing has proved effective: For example, it led directly to the indictment of Sami Al-Arian and other alleged members of the Palestinian Islamic Jihad (PIJ) in Tampa, Florida. PIJ is believed responsible for over 100 murders, including those of two young Americans in Israel: 20-year old Alisa Flatow, who was killed in a bus bombing, and 16-year old Shoshana Ben-Yishai, who was shot on the way home from school. Information sharing, along with close cooperation with Russian law enforcement, also contributed to the capture and indictment in New Jersey of Hemant Lekhani, the arms dealer charged with attempting to sell

shoulder-fired anti-aircraft missiles to terrorists for use against American targets. Information from previous intelligence investigations assisted in the criminal investigation of Ilyas Ali and his cohorts in San Diego, California, who have been charged with conspiring to exchange tons of hashish for anti-aircraft missiles, for sale to Al-Qaeda. This ability to share vital intelligence and law enforcement information has disrupted terrorist operations in their early stages, has led to more arrests and prosecutions for terrorism offenses, and ultimately saves American lives.

Technology

The Patriot Act also brought the law up to date with current technology, so we no longer have to fight a digital-age battle with antique weapons. Terrorists, like drug dealers and other organized criminals, have employed modern technology to conduct and conceal their activities. They are now trained to thwart surveillance by rapidly changing cell phones. The Patriot Act simply leveled the playing field by allowing terrorism investigators to adapt to these methods. Section 216 clarified that the authority to use pen registers and trap-and-trace devices--long used for performing surveillance on phones--may be sought from a court for Internet communications. "Roving" wiretaps, when approved by a court, allow investigators to conduct electronic surveillance on a particular suspect, rather than a particular telephone. This technique has been used for over a decade to investigate ordinary crimes, including drug offenses and racketeering; thanks to the Patriot Act, terrorism investigators now have the same valuable tool.

Stronger Tools

The Patriot Act has also given prosecutors and investigators stronger tools with which to deter and disrupt terrorist activity. For example, the Act increased the maximum sentences for a number of terrorism-related offenses, ensuring that convicted terrorists and supporters of terrorism are punished appropriately and kept incapacitated for a substantial period of time, and that others are deterred from committing or supporting terrorist acts. Strong penalties also now lead to more information and cooperation from those with links to terrorist operations. Since September 11th, we have obtained criminal plea agreements from a considerable number of individuals who must, and will continue to, cooperate with the government in its terrorist investigations.

The prosecution of Abdel-Ilah Elwardoudi and Karim Koubriti illustrates the Patriot Act's success in achieving these goals. After a lengthy trial, a jury convicted both of conspiring to provide material support to terrorists. Koubriti and Elwardoudi face up to ten and fifteen years in prison, respectively, for this offense; Elwardoudi faces a stiffer penalty because some of his criminal conduct, unlike Koubriti's, was committed after the Patriot Act was enacted.

Another important tool has been the court-approved delayed notice search warrant. This warrant allows investigators, with court approval, to delay notifying the target of a search for a limited time while the warrant is executed. Authority to delay notice can be used only upon the issuance of a court order in narrow circumstances, such as when delay is necessary to protect witnesses and cooperators, to avoid the disclosure of undercover operations, or to prevent the removal or destruction of evidence. This is a valuable tool, the use of which has long been upheld by courts nationwide in investigations of organized crime, drug offenses, and child pornography. The Patriot Act simply codified the case law in this area to provide certainty and nationwide consistency in terrorism and other criminal investigations. For example, in a recent narco-

terrorism case, a court issued a delayed notice warrant to search an envelope that had been mailed to the target of an investigation. The warrant allowed officials to continue the investigation without compromising an ongoing wiretap. The search confirmed that the target was funneling money to an affiliate of the Islamic Jihad terrorist organization in the Middle East. The target of the warrant was then charged and notified of the warrant. Similar warrants were also used in the investigation of a charity suspected of illegally channeling money abroad. Authority to delay notice can be used only upon the issuance of a court order in narrow circumstances, such as when delay is necessary to protect cooperators and witnesses, to avoid the disclosure of undercover operations, or to prevent the removal or destruction of evidence.

Several provisions of the Patriot Act that streamline procedures for terrorism investigations also have had profound effects. Before the Patriot Act, a court could only issue certain warrants--for example, those authorizing searches or the use of pen registers and trap-and-trace devices--that were enforceable within its own district. This created unnecessary delays and burdens when investigating terrorist networks, which often span a number of judicial districts; time-sensitive investigations were delayed by the need to obtain additional warrants in every district where terrorist activity was being investigated. The Patriot Act authorized courts to issue search warrants and pen register orders that are enforceable nationwide in terrorism investigations. For example, this aided authorities investigating Sami Omar Al-Hussayen, a Ph.D. candidate in computer science in Idaho who, according to the indictment, had set up a website promoting violent jihad for an organization in another state. The judge where the case was being brought, who was most familiar with the case, approved the search warrant; this allowed agents to execute simultaneous searches in different districts, thus preserving potential evidence. Such coordination is extremely important in cases where one suspect may be able to warn others of an impending search.

By fostering better information sharing, responding to advances in technology, and providing stronger tools for the investigation and prosecution of terrorists, the Patriot Act has been indispensable to our efforts to deter and disrupt terrorist activity. Anything that weakens the Patriot Act will seriously undermine our ability to prevent future acts of terrorism. One troubling proposal to do so is the Otter Amendment, recently passed by the House, which seeks to impair our use of delayed notice warrants. Under that amendment, terrorists may learn of our investigations before we can learn enough to identify and disrupt their plots. Premature notification of a search warrant can result in the intimidation of witnesses, physical injury -- even death -- destruction of evidence, and flight from prosecution. It would put us in a worse and less safe position than before the Patriot Act was enacted. I strongly oppose this and any other measure that will hamstring our front-line agents and prosecutors in the war on terrorism.

DISPELLING MYTHS

The Patriot Act has come under fire recently from a number of groups. Unfortunately, their criticisms have in many instances misled the public as to what the Patriot Act enables the government to do. The resulting and persisting myths notwithstanding, the American people should know that almost all of the actions the Department takes under the Patriot Act are reviewed by independent federal judges. Moreover, to date, no provision of the Act has been held unconstitutional by any court. I believe that the Patriot Act has helped preserve and protect liberty and freedom, not erode them. By a nearly unanimous vote in this body, Senators agreed

that these new enhancements are critical to the war on terrorism, and that they respect civil liberties.

The Library Issue

As you know, several groups including the ACLU, have claimed that Section 215 of the Patriot Act allows the government to investigate the library habits of ordinary citizens. This misinformation has apparently led a number of librarians to warn patrons needlessly of possible government monitoring. This overreaction has only led to further public confusion and misunderstanding about the scope of the Patriot Act.

The suggestion that federal agents are snooping on innocent citizens' reading habits is inflammatory and simply untrue. First, the Patriot Act explicitly protects Americans' First Amendment rights by providing that an investigation may not be conducted "of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States." Second, terrorism investigators have no interest in the reading habits of ordinary Americans. As the Attorney General pointed out recently, as of September 18, 2003, this provision had never been used. The House Judiciary Committee also concluded in its October 17, 2002, press release that its "review of classified information related to FISA orders for tangible records, such as library records, has not given rise to any concern that the [government's] authority is being misused or abused."

But historically, terrorists and spies have used libraries to plan and carry out activities that threaten our national security. For example, Brian Patrick Regan, who was convicted last February of offering to sell U.S. intelligence information to Iraq and China, used a computer at a local public library to look up addresses for Iraqi and Libyan embassies overseas. Similarly, in a recent domestic terrorism criminal case, a grand jury served a subpoena on a bookseller to obtain records showing that a suspect had bought a book giving instructions on how to build a particularly unusual detonator that had been used in several bombings. This was important evidence identifying the suspect as the bomber. We should not allow libraries or any other businesses to become safe havens for terrorist planning, financing, or communication. The Patriot Act ensures that business records can be obtained in a national security investigation with the approval of a federal judge. Under the Patriot Act, the government can now ask a federal court to order production of the same type of records available through grand jury subpoenas, but only after the government shows that the records are sought for an authorized foreign intelligence investigation or to protect against international terrorism or clandestine intelligence activities. Moreover, Congress also exercises careful and ongoing oversight: Every six months, the Attorney General must "fully inform" Congress of how Section 215 has been used.

Foreign Intelligence Information

Critics have also attacked Section 218 of the Act, which allows the use of surveillance under FISA whenever a significant purpose of the investigation is foreign intelligence collection. Critics have suggested that pursuant to Section 218, the FBI may now conduct a secret search or secretly record telephone conversations without a showing of probable cause. This characterization of the Act is misleading.

Section 218 was passed to ensure an integrated investigation of terrorist activity by intelligence and law enforcement agents. As I described earlier, before the Patriot Act, a perceived "wall"

inhibited information sharing and coordination between the two groups. Intelligence investigators were afraid that consultation with law enforcement investigators would mean that they would be unable to obtain or continue intelligence-related surveillance. Section 218 recognizes the need for, and legality of, full coordination between the two groups by permitting the use of FISA whenever foreign intelligence is a "significant purpose" of a national security investigation. And Section 504 of the Patriot Act specifically permits intelligence investigators to consult with federal law enforcement officers to coordinate efforts to investigate or to protect against threats from foreign powers and their agents.

As with other Patriot Act provisions, safeguards exist to ensure that Section 218 is not abused, most notably the fact that a surveillance or search under FISA can be ordered only if the government demonstrates, to the satisfaction of a federal court, that there is probable cause to believe that the target is a foreign power or an agent of a foreign power. Last November, the Foreign Intelligence Surveillance Court of Review upheld the constitutionality of Section 218 and the Department's procedures implementing it. The court held that "FISA as amended is constitutional because the surveillances it authorizes are reasonable."

The various misconceptions that have been perpetuated about the Patriot Act are disturbing and simply wrong. The Department is very aware of its responsibility to protect civil rights while protecting the country from future terrorist attacks, and we want to ensure that the American people understand the safeguards embedded in the Patriot Act. As you know, the Attorney General and the U.S. Attorneys have spoken about these concerns recently in communities across the country, and the Department has set up a Web site to address the issue as well. We encourage the members of the Committee and all Americans to review the site, lifeandliberty.gov, to learn more about how the Patriot Act protects our nation's security while protecting the personal liberties we so dearly cherish.

CLOSING

Mr. Chairman, I thank you again for inviting us here and giving us the opportunity to discuss how the Patriot Act is being used every day in the field to fight terrorism. I would also like to thank this Committee for its continued leadership and support. With your support we will continue to make great strides in our battle to defeat those who would do this country harm.

After you hear from my colleagues, Mr. Fitzgerald and Mr. McNulty, I will be happy to respond to any questions you may have.