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THE WAR AGAINST TERRORISM: WORKING TOGETHER TO PROTECT AMERICA

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BEFORE THE

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THE WAR AGAINST TERRORISM: WORKING TOGETHER TO PROTECT AMERICA

TUESDAY, MARCH 4, 2003

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:48 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Grassley, Specter, Kyl, DeWine, Sessions, Graham, Craig, Chambliss, Leahy, Kennedy, Biden, Kohl, Feinstein, Feingold, Schumer, and Durbin.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. Good morning, and welcome to the Committee's important hearing examining the war against terrorism and the coordinated efforts of the Department of Justice and the Department of Homeland Security to protect America. I want to welcome all three of our distinguished witnesses who are here before us today. It is indeed an honor to have before the committee Attorney General John Ashcroft, Secretary Tom Ridge, and Federal Bureau of Investigation Director Bob Mueller. I understand that each of you is extremely busy, and I want to express my appreciation for your taking time to appear before us today.

I also want to take a moment to acknowledge Secretary Ridge's appearance since it is his first occasion to testify before this committee since his confirmation at Secretary of the new Department of Homeland Security. So I am happy and we are all happy to see you here before the committee, Tom.

Today's hearing will focus on the war against terrorism and coordinator efforts to disrupt and disable terrorist organizations and to protect our country from terrorist attacks. I am committed to legitimate oversight to examine critical issues related to our country's war against terrorism. Senators Leahy, Grassley, and Specter issued an oversight report last week on issues surrounding the Foreign Intelligence Surveillance Act, and I have responded to the Senators providing certain observations on that report. It is my hope that in the coming months that Director Mueller can return before the committee to address significant oversight issues surrounding FISA, and we will hold that hearing, and I am sure that the Director will return. I believe there are important issues relating to implementation of the November 18, 2002, Foreign Intelligence Review Court's decision, as well as the internal Justice De-

partment and FBI reforms, which this committee should address in greater detail in a later oversight hearing. So we intend to go into these matters even though they probably won't be gone into in as much detail here today, although it depends on our colleagues.

We all recognize that these are challenges times for our country, and that the American public, I believe, appreciates your leadership, your commitment, and heroic effort to protect our country and our people from devastating terrorist attacks.

As we recognize here in Congress and as the American people should know, every day through your efforts you are saving American lives. Now, I know that you cannot trumpet each and every one of your successes without compromising sensitive intelligence, covert operations, and strategic planning. I was just in the Intelligence Committee today listening to some of our leaders in the efforts in counterterrorism. And I am really pleased with the efforts that have gone on, that are going on, that in many ways the public will never know, but real efforts to try and help protect our country and our people.

Your efforts to win this war have borne fruit on many, many occasions. Just last Saturday, United States law enforcement and intelligence agents, working together with Pakistani intelligence agents, captured a significant Al-Qaeda terrorist, Khalid Shaikh Mohammed, the Al-Qaeda senior lieutenant who served as the operations manager and alleged mastermind behind the September 11th attacks, as well as numerous other deadly attacks against Americans worldwide. This latest success is indeed significant. It represents a striking example of the President's and this administration's commitment and efforts in the global war against terrorism. The apprehension of Khalid Shaikh Mohammed is just one more success in a string of successes by you and others in the law enforcement and intelligence communities aimed at disrupting and eliminating Al-Qaeda from the face of this earth. So I want to commend each of you, as well as the many hard-working agents who are fighting this global war, for this latest accomplishment.

Now, even with this recent accomplishment, however, I recognize that there is more to be done. Now, it goes without saying that Americans are experiencing very trying and anxious times. It has been almost a year and a half since terrorists attacked our country, killing almost 3,000 people. The enemy is unlike any that we have faced before: deadly, well-financed international terrorists whose tentacles reach into every corner of the globe and who are ready to give their lives in order to destroy other people's lives. Make no mistake: the threat to our country continues today. Terrorist organizations exist within our borders and throughout the world. They are fanatics committed to the destruction of America and will do anything to harm our country and our people.

Terrorists will use any means to defeat America. Their means to their gruesome ends will evolve. And our ability to respond must evolve, and we must embrace new tools and new approaches. We must ensure that law enforcement, intelligence, and homeland security agencies are given the tools and the resources needed to protect our country.

So I look forward to hearing from each of you and your assessments of our country's global war against terrorism, your efforts to

implement initiatives and programs needed to protect our country, and your ideas of areas where more is needed to address current needs. I do in the hope of continuing our bipartisan commitment to enacting measures to win the war against terrorism and make our country safe. Our commitment to working together hopefully is unwavering, and I personally will do whatever is necessary to see that we do work together. The American people expect nothing less from us, and I intend to see that we do what has to be done.

So I want to thank you, and I am going to turn to the ranking member, Senator Leahy, for his opening statement, and then we will turn to your statements starting with Attorney General Ashcroft.

Senator SCHUMER. Mr. Chairman, just before Senator Leahy, I was glad to hear that Mr. Mueller will come back for a separating hearing. But I would ask that—this is such an important issue. We are creating a whole new agency. And we have 3 hours here for all three witnesses together. Many of us won't even get to ask any questions. If we could make time, I think it is important enough to have each witness come individually and give us some time, because I have so many questions. I know every one of my colleagues does on both sides of the aisle. It seems that we are not giving this the attention time—and I am sure the witnesses would be willing, if we accommodated their schedules, to come back individually.

Chairman HATCH. Well, we will certainly take that under consideration. Let me tell you, 3 hours from these three gentlemen is like the world up here. I think we will have time for everybody to ask questions. We are going to have 7-minute rounds, and we will see how far we go. But certainly I have asked the FBI Director, Mr. Mueller, to come back at a later time when we can discuss the FISA issues, which are among the most important issues that this committee is concerned about. But we will certainly take that under consideration.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman HATCH. Let me just say I will put the rest of my remarks, my more extensive remarks in the record.

[The prepared statement of Senator Hatch appears as a submission for the record.]

Chairman HATCH. Senator Leahy?

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Mr. Chairman, I am glad we are having the hearing. I do agree with Senator Schumer. We are going to want more from these gentlemen, and I know it is hard to accommodate schedules, but it is doable. And we should do it. We find how helpful this can be. As you know, last Congress we started the first comprehensive oversight of the FBI that we have had in decades. For years and years, long before Director Mueller, Director after Director felt that they did not have time. We found the time, and I think everybody benefited by it.

I also want to applaud the CIA, the FBI, the other dedicated field operatives in Pakistan. I think all of us were relieved to see the capture of Khalid Shaikh Mohammed, the suspected mastermind behind the 9/11 attacks. The headlines are great. We can all an-

nounce it. It is the operatives, as all three of you know, in the field that are putting their lives on the line to make this work, and I wish there was a way that we could thank each one of them personally. Obviously, they don't want us to thank them by name or who they are, but it is wonderful work.

Our oversight duties are at the core of our constitutional responsibilities to the American people. It is sometimes said that in war and in emergencies, democracy becomes the first casualty. Our Constitution, with its separation of powers, was designed to prevent that. The American people don't want to just feel safer. They want to be safer. And congressional oversight and the checks and balance can make that possible.

Last week, Chairman Grassley and Chairman Specter and I released a detailed report based on the oversight that the Judiciary Committee conducted in the 107th Congress. We found, in that 2-year effort, a pressing need for further oversight and reform.

I think Senator Specter and Senator Schumer both suggested that each of these witnesses appear in separate hearings. I think that is important. We don't want this just to be a photo op. We want it to be something that we really come out safer.

I have spoken with Governor Ridge about the question of first responders when terrorists strike. The first responders are the first people we turn to. When somebody picks up their phone and calls 911, it is not going to ring at the desk of any one of you. It is going to be the local fire department, the local sheriffs, the local police, who receive the call. As we saw at the World Trade Center and at the Pentagon, these were the people that were the first responders. They have been asked to be the Federal Government's vanguard partners against terrorism, but it has become largely to this point an unfunded mandate on their communities and their States. It is frustrating to them and to those of us in Congress who have advocated on their behalf to encounter, first, a stone wall of silence about the administration's intention to honor the increasingly desperate requests for first-responder funding, and then we had a constant undercurrent of resistance to the meager help that we have begun to provide.

I mention this because we can find billions and billions and billions and billions and billions of dollars to give to countries around the world if they would just say they will support us in a war against Iraq. It may well be important. We have a war here at home, and we ought to be able to find just as many billions of dollars to help those people, those Americans, who are fighting it.

In the Appropriations Committee, we passed a bill, which, incidentally, had administration people watching every single line of it, yet it came through with a cut of $637 million to the Office of Domestic Preparedness. Training grants were cut by $50 million. Exercise grants were slashed by 50 percent. Spending for firefighters was cut by $150 million. In total, the bill cut nearly $1 billion in funding for Federal programs that directly assist first responders.

I am glad to see the President, even though this was watched carefully by the White House, now says that first responders have been shortchanged, and I hope that we will get the money back in. We need money here at home. We need money for those whom we call upon to be our first responders.

Attorney General Ashcroft, I am glad you are here, because last month a secret draft bill entitled "The Domestic Security Enhancement Act of 2003" was leaked to the press as a sequel to the USA PATRIOT Act. Now, this draft, we have asked about it. We have asked if it was there, and yet it is something that both Republicans and Democrats read about in the paper first. None of us saw it. In fact, a member of my staff called the Department just 5 days—just 5 days—before this bill was leaked to the press. She was told point-blank there was no bill in the works. Five days later, we have an 86-page bill, along with a 33-page sectional analysis. I know they are good down at the Department of Justice, but neither this administration nor anybody else could put together a 86-page bill of this complexity with a 33-page sectional analysis in 5 days. Somebody lied to a member of my staff. Not you, Mr. Attorney General, I want to hasten to add. But somebody who reports directly to you lied to her. And I think that this is not a good way to do things. If we are going to have such a piece of legislation and we are going to give it to all the newspapers first, we ought to at least be willing to tell the oversight committees that it is in the works.

Attorney General ASHCROFT. Mr. Chairman?

Senator LEAHY. Could I just finish?

Attorney General ASHCROFT. Mr. Chairman? Well, I would be very happy to respond.

Chairman HATCH. Go ahead.

Attorney General ASHCROFT. The charge has been made that there are individuals in the Justice Department that are lying. And I want to be sure that I have time to respond to that, and I don't need to do it now. But I just want to make sure——

Chairman HATCH. Certainly. We will certainly make sure that——

Senator LEAHY. I will venture that that is in my questions. I will make very clear what I said. I am not suggesting you, Mr. Attorney General, but when we ask people who are in the position where they are supposed to know, when they report directly to you, they tell us there is no such bill, 5 days later a very complex bill that has taken months to be drafted is leaked to the press, if they are not telling us an untruth, boy, they are way out of the loop—way, way out of the loop, in a position where they should not be.

I think it shows a secretive process in producing this. We do not know whether we went too far or not far enough in authorizing new Government powers in the USA PATRIOT Act. It has been only a year since its passage. The administration has not responded to questions asked by the Republican chairman of the House Judiciary Committee, nor by members of this committee.

But this leaked proposal would go much further in granting the Government more surveillance powers over American citizens, while drastically curtailing the ability of Congress, the courts, and the American people to find out what the Government is doing.

This is one of the reasons why Congressman Dick Armey and I joined together to put sunset clauses in parts of the PATRIOT Act, because we couldn't get answers as to how it was going to be used.

Whatever this new stealth bill is called, let's not call it USA PATRIOT II. It is not patriotic when it is done this secretively. If there is going to be a sequel, let's find out what it is going to be,

and let's make sure we fully debate it. Good ideas will prevail in such a debate. Bad ideas will be rejected. That is the American way.

I don't envy any one of you for what you have to do. You have among the most difficult jobs imaginable. But I would add—we have seen so many promises made of money for homeland security here in this country, and then the money doesn't show up in the budget. Please look at it again. If we can promise $10 billion to Turkey and tens of billions of dollars to other countries in the Gulf region to back us on the war, we ought to be able to find at least a small fraction of that to give to firefighters and police officers and medical personnel here in America who have to defend us.

I will put my full statement in the record.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman HATCH. If I could just make one comment, the money was not appropriated until 3 weeks ago. So it is pretty hard to criticize——

Senator LEAHY. What I was saying was the fact that I agreed with President Bush who said that the appropriation bills that came out had less money than should be in there. The concern I have, however, is that the White House scrubbed every single line of that bill when it was coming out, and then they said—after there had been so much criticism of adequate money not being in there, that is when they said there should be more.

Chairman HATCH. Well, that is fine, but I just want to observe that we had almost 2 years since 9/11 to have appropriations that would have gotten these people going a lot faster than they are. But about 3 weeks ago, we finally were able to get that done. I think we have got to be careful how we couch some of our comments.

But let's turn to Senator Ashcroft—General Ashcroft, and then we will turn to Secretary Ridge and then finally Mr. Mueller.

STATEMENT OF HON. JOHN D. ASHCROFT, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Attorney General ASHCROFT. Good morning, Chairman Hatch and Senator Leahy and members of the Judiciary Committee. I am honored to have this opportunity to again be with you. The United States of America is winning the war on terrorism with unrelenting focus and unprecedented cooperation.

Let me quote Stephen Flatow, the father of a terrorist victim. I am quoting him. "When you know the resources of your Government are committed to right the wrong committed against your daughter, that instills you with a sense of awe. As a father, you can't ask for anything more."

Stephen Flatow's daughter, Alisa, was a 20-year-old American student killed allegedly by the Palestinian Islamic Jihad when a terrorist drove a van of explosives into Alisa's bus.

The resources of the U.S. Government are dedicated to righting the wrong against Alisa and the thousands of other American victims of terrorists. Most importantly, we are focused intensely on preventing such wrongs from destroying more innocent American lives.

As I testified 8 months ago, America's defense—the defense of life and liberty—requires a new culture of prevention, nurtured by cooperation, built on coordination, and rooted in our constitutional liberties. The excessive constraints imposed in the late 1970's that erected barriers to cooperation between Government agencies, that segregated law enforcement and intelligence gathering, and prohibited information sharing, those barriers must be replaced systematically.

Our survival and success in this long war on terrorism demands that we continuously adapt and improve our capabilities to protect Americans from a fanatical, ruthless enemy. I will continue to seek the assistance of Congress as we build a culture of prevention and ensure the resources of our Government can be dedicated to defending Americans.

Let me share three reasons why the United States is winning this war and illustrate those points with some examples.

First, the Central Intelligence Agency and the Federal Bureau of Investigation have set new standards for cooperation and coordination. The FBI's domestic intelligence operations are substantially strengthened by the CIA's information sharing, intelligence analysis, and operational coordination.

For example, the capture of Khalid Shaikh Mohammed by Pakistani authorities, in coordination with the CIA, is a severe blow to Al-Qaeda that could destabilize their terrorist network worldwide. Khalid Shaikh Mohammed, the "brain," is the Al-Qaeda "mastermind" of the September 11th attacks and Osama bin Laden's senior terrorist attack planner. Next to bin Laden, Khalid Shaikh Mohammed was the FBI's Most Wanted Terrorist.

May I be clear here. The Department of Justice's overriding priority is preventing future terrorism, not just prosecuting past crime. Khalid Shaikh Mohammed's capture is first and foremost an intelligence opportunity to prevent new terrorist attacks from killing more innocent Americans.

Today, the world's premier intelligence agencies, the CIA and FBI, are moving rapidly to exploit that intelligence opportunity. The CIA and FBI are cooperating thoroughly to share information from "the capture," analyze that intelligence, and coordinate followup operations. And when I say today, I don't just mean today. I mean from the instant the opportunity matured in the capture. I know my phone was ringing at 1:30 in the morning Sunday morning with the request for consultation in regard to our exploitation of this opportunity. Under our new standard of FBI-CIA cooperation and coordination, Khalid Shaikh Mohammed's capture means the FBI can better prevent terrorism and save American lives.

Second, the new FBI, America's domestic counterterrorism force, integrates fully intelligence and law enforcement capabilities to protect American lives. Today we have unsealed charges against two Yemeni citizens, Mohammed Ali Hasan Al-Moayad and Mohshen Yahya Zayed, the result of an extensive FBI undercover operation. They are charged with conspiring to provide material support to Al-Qaeda and Hamas terrorists through Moayad's worldwide fund-raising operation. As the complaint alleges, the FBI undercover operation developed information that Al-Moayad person-

ally handed Osama bin Laden $20 million from his terrorist fundraising network.

As set forth in the complaint, in November of 2001, the FBI's International Terrorism squad began working with a confidential informant who had known Al-Moayad for over 6 years. According to the complaint, during several meetings with the FBI informant, Al-Moayad boasted "jihad" was his field and trumpeted his involvement in providing money, recruits, and supplies to Al-Qaeda, Hamas, and other terrorist groups, and he said he received money for jihad from collections at the Al Farouq mosque in Brooklyn. Al-Moayad also claimed to be Osama bin Laden's spiritual adviser.

On January 7, 2003, Al-Moayad and Zayed flew from Yemen to Frankfurt, Germany, to meet with the FBI informant. According to the Government's complaint, Al-Moayad allegedly went to the meetings intending to obtain $2 million from a terrorist sympathizer who wanted to fund Al-Qaeda and Hamas.

Again, the complaint details that at meetings with FBI informants in Frankfurt last month, Al-Moayad confirmed that the $2 million contribution would be used to support the mujahideen fighters of Al-Qaeda and Hamas. Zayed even "swore to Allah" that Zayed would get the money to Al-Qaeda and Hamas if anything happened to Al-Moayad.

This extensive FBI counterterrorism operation blended human intelligence sources, advanced electronic surveillance, deep undercover operations, terrorist financing savvy, and criminal subpoenas and search warrants—with seamless law enforcement and intelligence cooperation added to those components. We find ourselves in a position to unseal that complaint today.

The breadth and talent of the team fielded in this case literally spanned the globe—from New York City police to prosecutors in Frankfurt, Germany. This is the new FBI, focused on preventing terrorism, integrating intelligence and law enforcement, and delivering results. Director Mueller and FBI agents around the world have transformed their intelligence and counterterrorism operations to achieve this prevention mission. Their results make Americans safer and bring justice to the full network of terror, often in ways that the public does not see and that cannot be disclosed.

Third, the Justice Department is prosecuting the war on terrorism by integrating our law enforcement and intelligence capabilities as authorized under the PATRIOT Act. The Department recently indicted Sami Al-Arian and seven co-conspirators, several of whom were leaders of the Palestinian Islamic Jihad. The indictment details that Al-Arian served as the secretary of the Palestinian Islamic Jihad's governing council called the "Shura Council." He was also identified as the senior North American representative of the Palestinian Islamic Jihad.

As the allegations in the indictment detail, the Palestinian Islamic Jihad is responsible for the murder of over 100 innocent people, including 20-year-old American student Alisa Flatow, whose father I quoted at the beginning of my testimony.

Seized items described in the indictment include:

A fax to Al-Arian and several associates on April 9, 1995, the day Alisa Flatow was killed. The fax announced the death of Khalid Al

Khatib, the Palestinian Islamic Jihad killer who carried out the suicide bombing that killed Alisa.

Also seized and described in the indictment, the wills of suicide bombers in the computer files of Al-Arian's purported charitable organization; and also seized, a fax containing the names of Palestinian Islamic Jihad suicide bombers killed and the names and account numbers of those who were to receive money on their behalf, their having committed suicide, money to come from the Palestinian Islamic Jihad.

Yet, prior to the passage of the PATRIOT Act, the prosecutors in this case did not have the ability to participate fully in this investigation that ultimately led to RICO and material support charges against Al-Arian and his associates.

Today, Americans are safer because we have transformed the rules of engagement for investigating and prosecuting suspected terrorists within our borders.

First, and the Congress to be commended for its passage, the passage of the PATRIOT Act in October 2001 allowed for information sharing between law enforcement and intelligence and allowed us to implement our new FISA guidelines;

Second, on November 18, 2002, the Foreign Intelligence Surveillance Court of Review reversed the district level FISA court and upheld our new FISA guidelines for information sharing;

Third, we have tasked the U.S. Attorney's Offices to review all intelligence material that may provide the basis for criminal charges against terrorists and terrorist financiers.

As the FISA Court of Review noted—that is the appeals court of the FISA court, and it has only issued one opinion in its existence, and I quote: "Effective counterintelligence requires the wholehearted cooperation of all the government's personnel who can be brought to the task." I am continuing to quote: "A standard which punishes such cooperation could well be thought dangerous to national security."

This dangerous standard existed until we reformed the law. You helped in the PATRIOT Act. We rewrote the FISA procedures and directed prosecutors to change their practices. Senator Hatch, I want to thank you personally for your strong support and your leadership in eliminating this dangerous standard.

I also would like to thank the American people for their continued role in protecting the country from terrorism. We have no suffered another major attack in this country, and it is to the credit of an alert, vigilant, and supportive public as well as thousands of unsung and dedicated public servants that Senator Leahy mentioned—they are to be commended and thanked—and some whose stories cannot be told as a result of national security concerns, many of whom I am privileged to work with on a daily basis, and they deserve my thanks and, I believe, the thanks of this Nation.

Now I would like to turn to a brief overview of additional results of our integrated prevention strategy.

First, we are gathering and cultivating detailed intelligence on terrorism in the United States: hundreds and hundreds of suspected terrorists have been identified and tracked throughout the U.S.; our human sources of intelligence have doubled; our counterterrorism investigations have doubled in 1 year; 18,000 sub-

poenas and search warrants have been issued; over 1,000 applications in 2002 were made to the FISA court targeting terrorists, spies, and foreign powers who threaten our security, including 170 emergency FISAs.

Second, we are arresting and detaining potential terrorist threats: four alleged terrorist cells in Buffalo, Detroit, Seattle, and Portland broken up; 211 criminal charges brought to date; 108 convictions or guilty pleas to date, including those of shoe-bomber Richard Reid, "American Taliban" John Walker Lindh, and one member of the Buffalo cell; 478 deportations linked to the September 11th investigation.

And we are dismantling the terrorist financial network: 36 designated terrorist organization; $124 million in assets frozen and over 600 accounts frozen around the world; 70 investigations into terrorist financing with 23 convictions or guilty pleas to date.

Fourth, we are disrupting potential terrorist travel: more than 50 major airport sweeps in Operation Tarmac with more than 1,200 arrests for ID and document fraud and other crimes; nine major alien smuggling networks disrupted; hundreds of terrorists and criminals stopped through the National Entry-Exit Registration System, NSEERs—a mandate of the Congress, I might add, which we are now fulfilling—including 8 suspected terrorists, with at least one known member of Al-Qaeda apprehended as a result of that effort; 551 aliens stopped at the border who were wanted criminals, had committed past felonies or violated other laws; 46 felons identified through domestic enrollment—the special registration—who were in the country illegally, including cocaine traffickers, child molesters, and individuals convicted of assault with a deadly weapon.

Fifth, we are building our long-term counterterrorism capacity: a 270-percent increase in counterterrorism funds, thanks to the appropriations of the Congress; over 1,000 new and redirected FBI agents dedicated to counterterrorism and counterintelligence; 250 new Assistant U.S. Attorneys; 56 Joint Terrorism Task Forces; a 337-percent increase in Joint Terrorism Task Force staffing; and Fly Away Expert Teams for rapid deployment to hot spots worldwide.

As I said, these are just some of our actions to date. Today, Director Mueller will be providing you with details regarding the fundamental reforms at the FBI that make terrorism prevention the Bureau's No. 1 priority.

Finally, I would like to point out that throughout this process, the Department of Justice has acted thoughtfully, carefully, and within the Constitution of the United States, that framework for freedom. Time and again, the actions on the war on terrorism have been subjected to thorough judicial review, and time and again, the Department has successfully defended legal challenges, including: detaining enemy combatants—sustained; detaining the enemy at Guantanamo Bay—sustained; sharing FISA information—sustained; withholding the names of sensitive immigration detainees—sustained; freezing assets of purported charities that fund terrorists—sustained.

The President's powers to protect the American people are rooted in the Constitution and they are sustained in our courts. The ac-

tions we take against the terrorist threat will always be rooted in the Constitution while accounting for the adapting and changing methods of our terrorist enemies.

As the President stated in a recent visit to the FBI, "There is no such thing as perfect security against a hidden network of cold-blooded killers. Yet, abroad and at home, we are not going to wait until the worst dangers are upon us." We will work.

Our strategy and tactics are working. Listen to the recorded conversation between charged terrorist cell member, Jeffrey Battle, and an FBI informant on May 8, 2002. This is instructive about whether or not what we do and what you do really makes a difference. Battle is part of the alleged Portland, Oregon, cell.

In his conversation unsealed in court, Battle explained why his enterprise was not as organized as he thought it should have been, and now I quote: "...because we don't have support," Battle says. "Everybody's scared to give up any money to help us. You know what I'm saying? Because that law that Bush wrote about, you know, supporting terrorism, whatever, the whole thing...Everybody's scared...He made a law that says for instance I left out of the country and I fought, right, but I wasn't able to afford a ticket but you bought my plane ticket, you gave me the money to do it...By me going and me fighting and doing that they can, by this new law, they can come and take you and put you in jail."

Very frankly, I was stunned at the understanding of those involved in terror of the impact of the law passed by the U.S. House of Representatives and Senate and sent to the President for his signature. They are getting the message: We are gathering and cultivating detailed intelligence on terrorism in the United States. They understand our effort. We are arresting and detaining potential terrorist threats. We are dismantling the terrorist financial network, and we are disrupting potential terrorist travel, and we are building our long-term counterterrorism capacity. We are winning the war on terrorism.

I thank you for this opportunity to be with you, and I will be happy to respond to questions.

[The prepared statement of Attorney General Ashcroft appears as a submission for the record.]

Chairman HATCH. Thank you, General.

We will turn to you, Secretary Ridge.

STATEMENT OF HON. THOMAS J. RIDGE, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Secretary RIDGE. Mr. Chairman, Senator Leahy, and distinguished members of the committee, it is a distinct pleasure and a privilege to appear before you today in what is, as Senator Hatch has noted, my first opportunity to testify before the Congress as the Secretary of Homeland Security. I also appreciate the opportunity to appear with my colleagues, Attorney General John Ashcroft and FBI Director Bob Mueller, two extremely distinguished public servants and two of my closest allies in the ongoing campaign to enhance the safety and security of our American homeland. Thank you for this opportunity to highlight the activi-

ties and the accomplishments and the work of the Department of Homeland Security.

Last Saturday, the 1st of March 2003, we integrated nearly two dozen agencies or entities into the Department of Homeland Security. With them came some 180,000 dedicated Federal workers who have all been serving their country with distinction from various departments within the Government. This momentous milestone means that there is now real muscle on the skeleton of a Department that was created back in January. With these agencies and these people come tremendous capabilities, as well as challenges.

In order to better protect our borders, Under Secretary Asa Hutchinson has launched a well-conceived and much needed plan to combine the forces of the Customs Service, the Immigration and Naturalization Service, the agricultural inspection functions of the Animal and Plant Health Inspection Service, and the Federal Protective Service. His initiative, based on the vision articulated in the Homeland Security Act, combines the four entities into two: a Bureau of Customs and Border Protection, and a Bureau of Immigration and Customs Enforcement. This is an important step that will leverage the operational expertise of all those involved and move us toward a future where there will be one organizational face at our borders rather than several.

This realignment of resources has already demonstrated its benefit. Last week, customs, immigration, and agriculture border inspectors reported to three separate port directors who in turn reported up three separate chains of command to three separate Cabinet Secretaries. Today, these inspectors now report to one interim port director, who reports through a unified chain of command to one Cabinet Secretary.

Two weeks ago, we rolled out the Department's Citizen Preparedness Program. The public response has been overwhelming, with our ready.gov website receiving more than 2.5 million visits per day since becoming operational. This program provides immediate and practical guidance to the millions of Americans who, to their credit, know that preparation makes sense and saves lives.

As of the 1st of March, we have entered into a number of Memoranda of Understanding that consolidate previously dispersed national incident support functions into the new Department of Homeland Security. We have taken responsibility and control of the Domestic Emergency Support Team, the Strategic National stockpile, and America's National Disaster Medical System and Teams. Restructuring these authorities gives the Department the ability to manage major domestic incidents by establishing, again, a single, comprehensive, and coherent national incident management system.

Also ahead of us are other challenges as well as opportunities to work more efficiently and effectively. We are making good progress on a regional structure that will help to enhance overall accountability and efficiency. That plan is still under development. When we have a better idea of how the regions will be organized, we look forward to presenting the final plan to Congress.

We continue to build and refine our partnerships with other Federal departments, State and local governments, and the private sector. There is no Federal plan that will ensure our homeland se-

curity. It must be a national plan that involves all Americans. And it must go beyond even this, working closely with our neighbors and allies overseas to build an international plan and an international response. We are working to build such a plan.

While this work goes on, we must continue to carefully tend to all the critical missions of the Department of Homeland Security, especially those that are not directly security-related.

We have the support of our partners, like the gentlemen and colleagues who join me here today, and we have the support of Congress, which has been critical in getting us to this point.

I certainly appreciate the opportunity to be here today to testify and to talk about the work we are doing to make America a safer home for us, for our children, and for generations to come. I thank you for inviting me to appear before you today, and I look forward to answering your questions.

[The prepared statement of Secretary Ridge appears as a submission for the record.]

Chairman HATCH. Thank you, Mr. Secretary.

We will turn to the FBI Director, Mr. Mueller, at this point.

STATEMENT OF HON. ROBERT S. MUELLER III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Director MUELLER. Thank you, Chairman Hatch and Senator Leahy and members of the committee. President Bush recently reemphasized to all FBI employees that the FBI has no greater priority than preventing terrorist attacks against the United States. And since the attacks of September 11th, the FBI has embraced this challenge and transformed itself to address the current threat facing this country.

Before I outline for the committee the advances the FBI has made in the past 18 months, I do want to assure the American people and the members of this committee, particularly the members of this committee who played such a vital role in enhancing the FBI's counterterrorism efforts through the USA PATRIOT ACT—I want to assure you that the FBI is committed to carrying out its mission in accordance with the protections provided by the Constitution. Every FBI agent is trained to recognize that the responsibility to respect and protect the law is the basis for their authority to enforce it. Respect for constitutional liberties is not optional. It is mandatory. And the FBI could not be effective and would not exist without it.

The FBI's efforts to identify and dismantle terrorist networks have yielded major successes over the past 18 months. We have charged over 200 suspected terrorists with crimes, half of whom have been convicted to date, and the rest are awaiting trial. And, moreover, our efforts have damaged terrorist networks throughout the United States and overseas.

Last month, I testified before the Senate Select Committee on Intelligence that the Al-Qaeda network will remain for the foreseeable future the most immediate and serious threat facing this country. And while this remains true, the arrest of Khalid Shaikh Mohammed in Pakistan only 3 days ago is a significant blow to the leadership of the Al-Qaeda network. While Osama bin Laden main-

tains worldwide name recognition as the leader of Al-Qaeda, Khalid Shaikh Mohammed is the operational or was the operational mastermind. His terrorist plots—believed to include the 1993 World Trade Center, the USS Cole bomb delivered by boat, and the September 11th terrorist attacks delivered by air—have resulted in the death of thousands of innocent people.

I would like to congratulate and thank our Pakistani partners on this major victory in the war on terrorism, as well as thanking our brethren in the intelligence community. But, most particularly, I want to thank the Pakistanis for their efforts that led to the capture of Khalid Shaikh Mohammed. I can assure you both here and throughout the country that any and all resources of the FBI will be brought to bear to exploit the intelligence information that may become available as a result of this arrest.

We must not lose sight, however, of the fact that there are many groups committed to international terrorism which offer Al-Qaeda varying degrees of support. Nor will we discount the threat from single individuals sympathetic or affiliated with Al-Qaeda, acting without external support or surrounding conspiracies.

And despite the arrest of Khalid Shaikh Mohammed, Al-Qaeda and other terrorist networks are adept at defending their organizations from U.S. and international law enforcement efforts. As these terrorist organizations evolve and change their tactics, we, too, must evolve. Accordingly, over the past 18 months, we have brought momentous changes to the FBI, including the incorporate of an enhanced intelligence function. These changes will better enable us to defend against this terrorist threat.

Mr. Chairman, to effectively wage this war against terror, we have augmented our counterterrorism resources and are making organizational enhancements to focus our priorities. I would like to review some of those changes with the committee, beginning with the FBI's analytical program.

To give new focus to analysis, last year I created an Analysis Branch in the Counterterrorism Division and assigned it the mission of producing strategic assessments of the terrorist threat to the United States. To date, the Analysis Branch has produced nearly 30 in-depth analytical assessments.

Since 9/11, the FBI has increased the number of counterterrorism analysts by 61 percent. And through fiscal year 2004, our proposed increase will result in the quadrupling of the number of analysts beyond that or those that we had prior to September 11th. Recognizing in the short term that we could not get to where we needed to be overnight, Director Tenet detailed 25 of his analysts to the FBI to provide an immediate infusion of expertise into our program while our hiring initiative was underway.

We have also implemented a number of initiatives aimed at enhancing training for our analytic work force, including the creation of the College of Analytical Studies, which, in conjunction with the CIA, has begun training our new intelligence analysts.

Now, these improvements to our analytic program had to be made as quickly as possible to address our immediate needs. I now want to ensure our ability to collect and analyze this intelligence for the long term.

The centerpiece of this effort is the establishment of an Executive Assistant Director for Intelligence who will have direct authority and responsibility for the FBI's national intelligence program. Specifically, this individual will be responsible for ensuring that the FBI has the optimum strategies, structure, and policies in place first and foremost for our counterterrorism mission.

Furthermore, intelligence units staffed with reports officers will be established in every field office and will function under the authority of the Executive Assistant Director for Intelligence. And these reports officers will be responsible for identifying, extracting, and collecting intelligence from FBI investigations and sharing that information throughout the FBI and throughout the other law enforcement and intelligence entities.

We have established since September 11th a number of specialized counterterrorism units, including what is called CT Watch, a 24-hour counterterrorism watch center; a Communications Analysis Section; a Document Exploitation Unit; and enhanced the Special Technologies and Applications Unit to making it a section; and, finally, we have also set up a Terrorism Financing Operations Section. All of those entities assist us in addressing the counterterrorism mission.

Let me turn for a moment to information sharing and our operational coordination initiatives. If we are to defeat terrorists and their supporters, a wide range of organizations must work together. And I am committed to the closest possible coordination with the intelligence community and other Federal Government agencies and our essential partners at the State and local level.

We are taking steps to enhance our cooperation with Federal, State, and local agencies by expanding the number of Joint Terrorism Task Forces. Where we had 35 prior to September 11th, we now have 66 as of today. These task forces partner FBI personnel with hundreds of investigations from various Federal, State, and local agencies in field offices across the country and are important for multipliers aiding our fight against terrorism.

We established here at headquarters the National Joint Terrorism Task Force staffed by representatives from 30 different Federal, State, and local agencies.

And to strengthen our cooperation with State and local law enforcement, we are introducing counterterrorism training on a national level. And we are providing specialized counterterrorism training to in excess of 200 agents and training technicians from every field office in the country so that they in transparency can train the estimated 27,000 Federal, State, and local law enforcement officers, hopefully this year, training them in basic counterterrorism investigations.

We also established an Office of Law Enforcement Coordination. This was created to enhance the ability of the FBI to forge cooperation and substantive relationships with all of our State and local law enforcement counterparts. I brought in a former chief of police to head up this particular office.

Let me turn for a second to the reforms in the FISA process. Whatever problems—and there were problems in the FISA process prior to September 11th. We believe we have taken substantial steps to address those problems. We have created a FISA Unit re-

sponsible for ensuring that FISA applications move expeditiously through the FISA process. This unit is developing and implementing an automated FISA management system, and it will oversee the expeditious distribution of FISA court orders and warrants to the appropriate field offices, telecommunications carriers, Internet service providers, and other specified persons.

The FBI's National Security Law Unit and the Department's Office of Intelligence Policy and Review are collaborating on a number of procedural and legal initiatives that are streamlining and simplifying the process by which FBI agents obtain FISA authority.

Since September 11th, attorneys from the National Security Law Unit have conducted approximately 70 training sessions on FISA-related issues. These sessions, which have been held at Quantico, at headquarters, and in the field, have been attended by agents and supervisors in groups as small as 20 and as large as several hundred. In addition, we are in the process of implementing the Deputy Attorney General's mandate to establish a comprehensive training curriculum on FISA and related matters for all Justice Department lawyers and FBI agents who work on foreign intelligence and counterintelligence investigations.

Since September 11th, we have made full and very productive use of the emergency FISA process whereby we can often establish electronic surveillance within hours of establishing probable cause that an individual is an appropriate FISA subject. Thanks to the efforts of our agents and the attorneys in the National Security Law Unit and the Office of Intelligence Policy and Review, in the 1-year period from September 11th to September 19, 2002, we have obtained more than double the number of emergency FISAs as compared to the total number of emergency FISAs we obtained in the prior 23-year history of the FISA statute.

Let me spend a moment, if I might, Mr. Chairman, on information technology. We are also swiftly addressing the shortcomings of the Bureau's information technology. Over the years, we have failed to develop a sufficient capacity to collect, store, search, retrieve, and, most particularly, analyze and share information. Mr. Chairman, you are aware of the problems the FBI has experienced because of outdated technology. Thanks to support from Congress, the FBI has embarked on a comprehensive overhaul and revitalization of our information technology infrastructure. That process is well under way, but our technological problems are complex and they will be remedied only through careful and methodical planning and implementation. We have made substantial progress in the past 18 months, and we have laid the groundwork for significant progress in the months and the years ahead. And I would be happy to explore that in more detail in response to questions.

Before I conclude, Mr. Chairman, I would like to take this opportunity to pledge our support for the Terrorist Threat Integration Center. As you know, this center will merge and analyze terrorist-related information collected domestically and abroad. This initiative will be crucially important to the success of our mission in the FBI, and it will take us to the next level in being able to prevent another terrorist attack on our Nation.

I have provided additional details in my prepared statement and would be happy to respond to any questions the committee may have on the FBI's role in the Terrorist Threat Integration Center.

Mr. Chairman, I have outlined for you just a few of the significant enhancements the FBI has implemented since the terrorist attacks of 2001. We have a far more in-depth briefing on these initiatives and others, as well as an online demonstration of our new analytical tools, that is available at FBI headquarters to all members of the committee. And I invite each of you to come to headquarters for this presentation at your earliest convenience.

Mr. Chairman, let me conclude by saying that the nature of the threats facing the United States homeland continues to evolve and so does the FBI. We have made significant strides toward enhancing our operations, and I appreciate the opportunity to explain some of them to the committee today.

While we have come a long way in the past 18 months, we still have a long way yet to go. I look forward to working with the committee in the months ahead to further enhance our ability to combat terrorism and to ensure the strongest, most effective FBI possible?

Thank you, Mr. Chairman, for the opportunity to make this statement today, and let me finally say that I look forward to whatever suggestions the committee may have. We certainly do not have a monopoly on how things can be improved, and we look forward to working with this committee to further improve the Federal Bureau of Investigation.

[The prepared statement of Mr. Mueller appears as a submission for the record.]

Chairman HATCH. Well, thank you. I think all three of your statements have been very informative, and I think the public at large will benefit greatly from hearing what you have had to say. In particular, Mr. Mueller, I am appreciative of your humble approach to things, because you have always said, "Help me to do my job better, if you can. We are open. We will listen." And I personally appreciate that, and I have appreciated the service you have given.

I appreciate you other two greater leaders as well. You have had a tiger by the tail, Senator Ashcroft, and we appreciate it. And now there is no question about the tigers you have by the tail, is all I can say. So you have a rough time.

What we are going to do is we are going to go to Senator Kyl first, then to the ranking member, and then I am going to go to Senator Specter, and I will give him my time and he will take his time for 14 minutes, and then I will come to two, if they are available, over the Democrat side for 14 minutes, 7 minutes each.

Now, given the interest in this hearing, I am going to ask, out of consideration for other members of the committee, that each member stay within the 7-minute allocation of time for questioning. If we do, then every member on the committee can get at least one round of questioning, and possibly more. Each minute any of you go over takes time from your fellow Senators. So I would like us all to be as courteous as we can to our fellow Senators by staying within that 7-minute time limit. So this little instrument here will tell me when 7 minutes is up. That one there, when the red light

comes on, I hope you will stop because I will probably interrupt you so that we can give everybody a chance.

We will turn to you, Senator Kyl, first and——

Audience Participant. Mr. Chairman——

Chairman HATCH. We are not going to have statements——

Audience Participant. On the matter of judiciary and courts, judges are used as a terrorist organization against us, not today, not yesterday, but 50 years, and with both administrations, Democratic and Republican Parties, and who is going to investigate this matter?

Chairman HATCH. All right. We are going to have to—we will take that into consideration. We are going to have to move ahead with the committee hearing. I don't want any further outbursts by anybody, and if there are, we will have you removed from the room. But if you will just relax and sit back, we will keep you in the room. If not, we will have to have you removed.

Senator Kyl?

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you very much, Mr. Chairman, and I very much appreciate your willingness to defer to me. As it sometimes occurs, we have commitments that require our presence elsewhere, and I must leave to focus on an issue that is of concern, especially, Secretary Ridge, to you, and that is the illegal immigration which results in huge costs both to our law enforcement community, State law enforcement community, and to, as it turns out, our hospitals which have to care for illegal immigrants and bear a cost of about $1.5 billion a year. That will take me away in just a moment, so I appreciate the Chair deferring to me.

It frequently makes news when someone criticizes the law enforcement community when there are failures, and, of course, we can't stop every attack. But it is always good to hear good news, and the exception to this, with the recent capture of Khalid Shaikh Mohammed, and General Ashcroft, your testimony containing a lengthy and impressive review of successes of law enforcement is welcome. And I commend all three of you for the efforts that you have engaged in and hope that you will convey to those who work with you our appreciation.

Director Mueller, my first question is to you. There are a number of terrorist attacks that have been averted or prevented as a result of the cooperation of law enforcement agencies and our intelligence work, both here and abroad. Could you just give us an idea of the number of attacks that have been averted that we can't talk about in terms of where they occurred, what was happening, and so on? But it is important at least to know that we have been successful.

Mr. MUELLER. Senator, several months ago we tried to add up the number of terrorist attacks around the world that may have been averted by not only the efforts of the FBI and the CIA, but also the efforts of our counterparts overseas. And when we did so, it was well in excess—it was in excess of 100. We think by this time it is probably well in excess of 100 when you take into account arrests that have taken place, for instance, in Great Britain with regard to risin in the last few months, in Spain. We also are look-

ing with some anticipation to determine what information we may obtain from whatever was seized with Khalid Shaikh Mohammed in hopes of exploiting those materials with the expectation that we will be able to avert additional attacks with that exploitation.

Senator KYL. The next question is both to Attorney General Ashcroft and to Director Mueller. It has to do with the Foreign Intelligence Surveillance Act which prevents the FBI from conducting surveillance unless there is probable cause to believe that the suspect is either a foreign power or an agent of a foreign power, and as a result the FBI cannot get an order to surveil individual foreign terrorists, notwithstanding the fact that recent intelligence reports cite increased risk of lone wolf attacks.

And Senator Schumer and I have a bill which will allow the FBI to monitor the lone wolf terrorist under FISA even if not linked to a foreign power, so long as the FBI has probable cause that the person is engaged in or preparing for international terrorism.

This question is for both of you. FISA was originally passed in order to deal with Soviet spies in the rather hierarchical kind of terror groups that existed then like the Red Army faction and so on, whereas today we are dealing with a movement of Islamic terrorism that sometimes does not involve a membership card in a particular organization. Could both of you confirm the administration's position on the bill that Senator Schumer and I have which permits the surveillance of even the lone wolf terrorist? General Ashcroft?

Attorney General ASHCROFT. Well, first of all the administration believe that would be a step in the right direction. It is a good bill. It is what ought to be done. Right now we have the ability, if there are two or more involved, so the change in the law is not that great. But we do know that single, lone wolf terrorists act and can act in ways that are very, very damaging. Without referring to any case, for example, someone who decided on his or her own motive or involvement to begin an assault on a population with a weapon to disrupt say a train station is someone that could cause serious damage while acting alone. It is our judgment that the requirement that the person be involved in international terror is enough of a predicate to be a responsible basis for involving us in the kind of coverage that is available, and we believe the proposal is a good one and should be enacted.

Senator KYL. And, Director Mueller, you are also concerned about the lone wolf terrorist?

Mr. MUELLER. I support, quite obviously, what the Attorney General said in terms of the utility of this change in the bill. We have had problems in the past in attempting to identify sufficient information to link an individual to an agent of a foreign power, a particular terrorist group. And this would overcome some of those hurdles that we have had in the past.

We have in our threat analyses, our summary of threats facing the United States, identified the lone wolf as an individual who we cannot dismiss, and one that we would have to look out for, particularly when we know that Al-Qaeda is a very loosely integrated organization, and quite often you cannot until some time down the road identify particular ties to that particular organization.

Senator KYL. Thank you for that.

Mr. Chairman, I think that the yellow light suggests that I am just about out of time, so could I request that the other three questions that I have for our panelists be accepted for the record, and I again very much appreciate your willingness to defer to me at this time.

And again, I thank all of you, and I hope that you will express to your colleagues, the many people who work for you and for us, that we appreciate very much their hard work in protecting us. Thank you.

Chairman HATCH. Well, thank you, Senator.

We will turn to Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. Before I start I might note that sometimes happens in some of these hearings, there are interruptions. I just want to commend you for the way you handled the most recent one, being respectful to those who are guests here, but also being very respectful to what has to be done in a hearing.

Chairman HATCH. Thank you, Senator. Appreciate that.

Senator LEAHY. Governor Ridge, I mentioned earlier my concern about support, Federal support for State and local first responders. We have discussed this on other occasions. Before the National Governors Association President Bush, rather surprisingly, blamed the Republican controlled Congress for shortchanging the Homeland Security programs to guard against terrorism. He said he was disappointed that Congress did not respond to the $3–1/2 billion that we had asked for. Of course then the members of the President's own party came back and said that the White House was intimately involved in negotiating the details of the omnibus spending bill and had signed off on every cent in there.

Be that as it may, it did cut a billion dollars off the Federal program. We now have State and local authorities asking—I mention this because today is town meeting day in Vermont. It is an amazing part of democracy. And last night in one town, Middlebury had theirs in the evening. The long-term moderator has now been elected Governor of our State; he was still there to be moderator. And was treated no differently than anybody else at the town meeting. It works.

But they are asking on some of the first responder questions they are getting, do we cut the school budget? Do we cut the snow removal budget? What do we cut to pay for our new requirements? A lot of fire departments in Vermont, are telling me and I am sure they are in other states, they are having members being called up by the National Guard to go to the Middle East, and they want to know where the money is. So, the President will have an emergency supplemental, and there can be money in there for law enforcement agencies, fire departments, EMS units. Should he include at least $5 billion in that supplemental? I mean a lot of people in the Congress have asked for it. Senator Daschle has. I have. Others. Should he include $5 billion in there?

Secretary RIDGE. First of all, I would like to ask the Chairman if my entire text of my prior remarks could be included as part of the record? I edited.

Chairman HATCH. Without objection, we will put the entire text in.

Secretary RIDGE. Thank you very much.

Senator first of all, we have, with the support of Congress, appropriated $3.5 billion. While that did not meet the hopes and aspirations of a lot of people, it still is a substantial investment in first responder capacity. our job will be to get those dollars out the door as quickly as possible, hopefully beginning as early as the end of next week, the end of this week. Second, the President has said that we need to build this national capacity over a period of time. We are going to do that. The President has requested an additional $3.5 billion in the 2004 budget.

I would say, in response to your question, that right now it is a little too early for me to determine what if anything we will ask for within the supplemental if it comes to the Hill. But I would say to the Senator that I hope, regardless of whether we ask for additional money in the supplemental or money in the 2004 budget, that we could provide the State and locals a little bit more flexibility than some of the earmarking would allow.

One of the things the Department of Homeland Security is trying to do and to convince our colleagues in public service, the Governors and the mayors, is to develop local plans and statewide plans, and then allow us to fund those plans, so that they specifically earmark and delineate where those dollars are to go.

Senator LEAHY. Let me ask you this, and actually you would be a good one to know about the needs. The needs of Pennsylvania when you were Governor, are different than the needs of Missouri when General Ashcroft was Governor, or the State of Vermont or Utah or anywhere else. And you know you have to have some flexibility.

Secretary RIDGE. Correct.

Senator LEAHY. But if you had $5 billion, could you use it?

Secretary RIDGE. Well, I think if we have—any additional money could be used, to be determined. I would echo a hope and an aspiration that the 3.5 that we are going to get out the door as quickly as possible could be quickly joined by another 3.5 in the President's 2004 budget, which would get us $7 billion.

Senator LEAHY. Let me ask you this. We have authorized increases in Immigration personnel at our northern border. Before the September 11th attacks I think it suffered a lot of neglect. Now, we have a two-way thing on the Northern border. Canada is our largest trading partner, and a strong, good ally of the United States. We want to have easy movement back and forth. I live an hour from the Canadian border. I know how important it is both for commerce and for families—a lot of us have relatives in Canada—to be able to move back and forth easily. But we also know we need stronger border personnel. The Attorney General, the Director of the FBI, they are concerned about what might come across a border that historically has been a very open one. In today's Burlington Free Press in Vermont they talk about organized smuggling groups coming down in a low-flying helicopter. Our State's public safety commissioner says our border is not secure. Professional smugglers can be smuggling any type of contraband. We know what happened on our Southern border. Heavily armed Cuban commandoes came in flying the flag, and actually landed, pulled ashore and walked up and down the street, finding out who they could turn themselves in to.

Will you assure me, as you have in the past, will you assure me that we will start working very hard on this? We have one of your three major INS facilities in Vermont. If that was attacked it could create all kinds of havoc throughout, havoc that would affect every aspect of law enforcement. Will you work with us to make sure that we get more security at those borders?

Secretary RIDGE. Senator, you certainly have that pledge. Frankly, we are grateful for the support. I believe it was your amendment to the PATRIOT Act that provided the designation for additional complement to be added to the border patrol in the north and further inspectors. I think we are about three-quarters of the way there with the dollars we got in the 2003 budget. We are also in the process of continuing to develop a 21st century smart border agreement with our Canadian allies so that we can encourage and facilitate the flow of legitimate goods and people, but also use other means to apprehend and discourage the illegitimate flow of goods and people that we do not want into this country.

So I think in the months and the years ahead, a combination of these good people, with the complement that you have authorized and supported, along with some new technology, we will do a much better job at facilitating that goal at our borders, both north and south.

Senator LEAHY. Thank you.

Mr. Chairman, I will submit my other question for the record. I would hope the Chairman would work with me to make sure the questions are responded to.

Chairman HATCH. I would be glad to do so, Senator.

Senator LEAHY. Thank you.

Chairman HATCH. We turn to Senator Grassley now for 7 minutes, and then to Senator Feinstein for 7 minutes, and then to Senator Specter.

Senator GRASSLEY. Thank you. I hope I can get to each one of you with one question and then submit the rest of the questions for answer in writing.

First of all, I want to compliment the Chairman for holding an oversight hearing. I hope this is the first of many oversight hearings because I think oversight is very, very important.

Secretary Ridge, I will start with you. As you know, I recently held a Finance Committee hearing on border security that revealed several serious problems. Two of those problems really stick out. The first problem was that undercover agents got into the country at ports of entry using really unsophisticated fake IDs and other phony documents. The second problem is enforcement on public lands at the borders. More than 40 percent of the Southern border is park land, and the Northern border has more than 500 miles of public land. About a quarter of a million illegal aliens cross the Southern border every year, but only a handful of park rangers are out there to stop them. Who knows how many terrorists could join the smugglers and immigrants to get into the country.

The day of the hearing that I held, you made a comment on the news that these issues needed to be resolved and that you would work with me.

So first I want to ask about the park lands at the borders. The National Park Service is just not equipped, staffed or trained to

protect the borders enough. Security is a big, big priority right now with everybody. The Park Service needs the help of Homeland Security. You have got ports of entry pretty well secured, at least I hope you do, and I think that you are working hard in that direction. But what can your department do to help stem the flow of illegal aliens on the rural public lands along our borders?

Secretary RIDGE. Senator, the collaboration that has historically existed between the Border Patrol and other departments and units that come into the new Department of Homeland Security has been good. We believe, however, that our ability to reconfigure the border units, the border bureaus, one dealing with protection, the other dealing with enforcement, will give us some additional personnel that we can apply to the borders and to work with the Park Service to cover what heretofore has been uncovered or rarely covered territory.

One of the meetings I have later on this week is with the Director of the Park Service. We recognize that there is a gap there, and it is our responsibility in the Department of Homeland Security to find ways to fill the gaps. One will be, obviously, more personnel, we believe through the reorganization that we are developing. But in time, we think detection technology should be deployed in some of these less inhabited or uninhabited areas.

Senator GRASSLEY. Thank you.

Director Mueller, I know that you are working hard to transform the FBI. Unlike many of my colleagues floating new ideas, I still think that the FBI should be in charge of counterterrorism. What concerns me today is the FBI's internal cultural problems that you have heard me talk so much about. The FBI cannot reform, I think, unless these problems get fixed. These are the same issues that have stopped the FBI in the past from being effective in counterterrorism. You inherited many problems. You have an opportunity and, as I know, you feel a duty to fix them. The example of this that troubles me, there is just one example that troubles me right now, is your Assistant Director at OPR, Mr. Jordan, and Unit Chief John Roberts. As you know, I have been concerned that Bob Jordan retaliated against John Roberts after Mr. Roberts went on 60 Minutes to talk about longstanding problems, especially the double standard in discipline. You have told me that you will not allow retaliation, and I have your memo here from November 2001, that says exactly that. But I also happen to have with me the Inspector General's report about the case involving Jordan and Roberts. The way I see it, an accounting is needed. This is an opportunity for you to declare an end to the double standard by holding Mr. Jordan accountable for a violation at least in spirit of the memo that you issued November 2001. Otherwise, the double standard will be alive and well, and agents will fear retaliation for speaking the truth about the problems. If that happens, I think my faith in the ability of the FBI to reform would erode because that atmosphere hurts the FBI's overall effectiveness.

I am also very troubled that Bruce Gephardt, the FBI's Deputy Director, sent an e-mail that said Mr. Roberts had, quote, "brought discredit to the FBI badge." In my letter to you last week I asked how someone who had done what Mr. Jordan has could still be in charge of the office or OPR. And now there is a story in the media,

I think just yesterday, suggesting he misled me, misled Senator Leahy, misled Chairman Hatch in December. I am not saying that he lied, but I do not think he was forthcoming. You have had some time to think about this I hope, so I would like to hear what your plan is for Mr. Jordan and what you think of Mr. Gephardt's e-mail.

Mr. MUELLER. Well, Senator, quite obviously, I share your concern about a double standard and protections for whistleblowers. I think with regard to the issue of Mr. Jordan, when the issue arose, I did, as I have in the past, asked the Inspector General to look at that issue. And I have reviewed the Inspector General's report, and I point out on the one hand it concludes that Jordan did not intentionally retaliate against Special Agent Roberts, but it did raise issues with regard to Mr. Jordan's judgment in that context.

Because of the seriousness of the issue, and because I am looking for guidance on what is the appropriate way to handle this, I had a meeting with the Inspector General yesterday, and I informed the Inspector General that in reviewing the report and looking at the issues relating to judgment, it was my belief that that in and of itself was not sufficient to take any action, but that I should look at that in the context of Director Jordan's handling of the office, his record for integrity and judgment throughout his career, which is substantial, and to continue to look at that position and how he is operating that position, and that is what I intend to do.

I will tell you also, Senator, that as you are aware, I know, that Mr. Roberts, who I respect and is respected by many agents in the FBI, also has indicated that Bob Jordan is making substantial changes to OPR that were long overdue. And if you look at Mr. Jordan's record in OPR in the short time that he has been there, he has reduced the backlog substantially. He has made substantial improvements to make our OPR better, and not only better across the board, but also to eliminate the appearance of a double standard.

Senator GRASSLEY. I think that is a slap on the wrist and that you are sending a very bad message to everybody else, that there is going to be a double standard continued. Thank you.

Chairman HATCH. Well, thank you, Senator Grassley. We will turn to Senator Kohl then. Let me get this lineup. Senator Kohl will go for 7 minutes, and then we are going to go to Senator Specter for 14. He has my time as well as his. And then we will go to Senator Feinstein for 7, then Senator Feingold for 7. So you will have 14 minutes on that side. And I have to leave for a few minutes to take a phone call, so if either of you will continue to operate that way.

We will go to Senator Kohl, then Senator Specter.

Senator KOHL. Thank you, Mr. Chairman.

I would like to talk about the Homeland Security Advisory System, gentlemen. When a decision is made, as it was recently, to raise the alert level from yellow to orange, that determination puts the entire country on a heightened state of alert. News reports at that time suggested that prompting the change were serious threats to New York and Washington, D.C. And yet there may have been entire areas of the country where the danger level of terrorist activity had really not changed at all. Surely one cannot sug-

gest that every part of the country has the same level of risk. In fact, it is likely that more than half the country live in areas that did not need to go on a heightened state of alert at all. The threat level certainly varies depending upon whether you live, for example, in rural Wisconsin or in a major urban area.

So I ask what can be done to improve the advisory system so that we know which regions of the country are truly at risk and which regions are not?

Secretary RIDGE. Senator, thank you for your inquiry, because as you know, the decision itself to raise the threat level and to give the law enforcement community and security personnel around the country a warning based on our threat analysis is a very difficult and complex one, as it is. It is not a decision that is undertaken based upon a single piece of information, and it has not historically been done on a given day. It is really something that occurs after multiple sources, credible sources are reviewed, plot lines are examined, and then once the President's Homeland Security Council has had an opportunity to review it, to make a recommendation, and then we made that decision.

There is an ability within the existing advisory system to regionalize, either in terms of geography or economic sectors or the like, the threats. Literally there is that flexibility within the system, and we will certainly—it is coming close to its first year anniversary—take a look at the system itself, see how it has been utilized during the past year—we think it has been utilized rather effectively—to determine what additional flexibility we could create within the system to respond to the concerns that you have expressed and many others have expressed, including your colleague to your right. Senator Biden expressed a concern about regionalization in more specificity with regard to the use of the warning system.

I will tell you 2 weeks ago, 3 weeks ago, there was enough general information from credible sources about potential targets that we would interpret as being national in nature, warranted our taking the warning system from yellow to orange, and not regionalizing it. In the past we have sent out specific warnings, you will recall, not through the threat system, but we did identify some credible threats to the financial sector many, many months ago, and dealt with that specifically.

So the flexibility is there. We have had the system up and operating for about a year. We obviously want to go back and take a look and see if we can build more flexibility, but it is threat-driven, information-driven. Unless we have that kind of specificity that drives us to a specific decision and a specific determination, our instinct is to put out the general warning rather than a specific one.

Senator KOHL. Mr. Ashcroft?

Attorney General ASHCROFT. Thank you, Senator. I would like to just add that the purpose for the threat advisory system is to prevent terrorism. And one of the things that we have learned is that those individuals who many not be at the focus of the attack are in a position to sometimes participate in preventing an attack. We know that individuals first got on airplanes in Maine, and then transferred to airplanes that eventually were part of the tragedy in New York. We watched as individuals took flight training and did

other things all across the country. So in terms of prevention, we have found that individuals are all across the country who have represented a part of a threat that is very serious. While I think it is fair to say that some part of the country be as vulnerable to the specific attack for prevention purposes, a high level of alert can be very helpful to us.

Second, I think it is pretty clear that when we put the alerts out, that various parts of the country respond in different ways to meet the local needs. So the Director of Homeland Security has very appropriately indicated that we have the ability to tailor the threats. We also want to make sure we are always enlisting the aid of the entire Nation, for frequently those who perpetrate attacks stage, plan, develop, train and take actions in settings that are not the focal point of the attack. And so that we find yes there is a differential risk. We hope that even by making the announcement we drive the risk down by having an alert public, which we know from intelligence the terrorists, when they see alertness and vigilance and a high level of security, they defer, default or abandon their plans.

I think we can ask for help from citizens all across the Nation, and it has been helpful. That is one of the reasons that it sometimes, even for areas that are not likely perhaps to be the subject of attack, they can help in preventing an attack. That is our No. 1 priority.

Senator KOHL. Mr. Mueller, do you have a comment?

Mr. MUELLER. No. I would follow with what the Attorney General and Secretary Ridge said.

Senator KOHL. One more question, gentlemen. Most Americans live in communities that do not have important national landmarks like the Sears Tower or Golden Gate Bridge, and yet they are concerned about the chance of a terrorist attack against their water sources, power plants and bridges. When I surveyed Wisconsin sheriffs and chiefs of police, 40 percent reported that they feel that risk of a terrorist attack in their jurisdiction. But they report that they are unsure how to evaluate the risk to their local infrastructure and how to protect their skills, for example, or the shopping malls. And if they conclude that their communities are at risk, they tell us they cannot afford to pay for the protection that is necessary.

These are real concerns I believe that impact our communities on a daily basis. So how can we help them protect their population? Does the Federal Government need to do perhaps a better job of informing, educating, and when appropriate, funding our State and our local officials?

Secretary RIDGE. Senator, the President and the Congress have recognized that concern at the State and local level in the passage of the Homeland Security Act, when it included in the new department an Information Analysis and Infrastructure Protection Unit, whose precise mission is to map the critical infrastructure around the country, develop means of risk assessment, vulnerability assessment, come up with prescriptive measures when they deem appropriate. That process began in the Office of Homeland Security and resulted in the President's National Strategy for Critical Infrastructure Protection, and part of the responsibility of the new de-

partment will be working with your State and local leaders based on the theory of managing the most serious risks, those piece of infrastructure that have the greatest possibility of catastrophic damage and injury to a community, and then coming up with the means and methods to protect them if they are not already protected.

But that concern that you have expressed and has been expressed by people across the country is part of the responsibility of the new department, and specifically the Infrastructure Protection Unit within the department.

Senator GRASSLEY. [Presiding.] Thank you, Senator Kohl.

Now, Senator Specter.

Senator SPECTER. Thank you very much, Mr. Chairman.

Attorney General Ashcroft, there was a considerable amount of publicity given recently in the past 10 days to a situation which arose when Pakistani aliens, who had overstayed their visits, sought to go to Canada, which they thought had a more lenient record on permitting them to stay. And the Canadian officials were so over burdened, that they could not accommodate the people and told them to come back in 2 weeks. And when they then returned to the United States, they were immediately arrested and deported to Pakistan, according to these news reports. The concern I have is if people who are here illegally are genuinely trying to get out of the country. What is the harm in letting them do so unless there is some specific reason that individuals involved might be terrorist suspects? Of course if they were terrorist suspects the action probably would have been taken by the Department of Justice, Immigration, which has been under your control until very, very recently. Is there any problem in letting people leave the country voluntarily like the Pakistanis who have overstayed their visas without subjecting them to arrest?

Attorney General ASHCROFT. To my knowledge, we did not prevent them from leaving the country. They went to Canada and they were allowed to go to Canada. According to your report, the Canadians could not accommodate them, so it is not our position that people cannot leave the country. It is our position that people who have overstayed their visa cannot stay in the country, and that they should live within the rules provided for those who visit the United States, and if they overstay and fail to observe the law, we ask them to leave. That is what deportation is about. And if they do not leave or they find themselves incapable of leaving, then we assist them in leaving, and that is why we have moved forward in that respect.

Senator SPECTER. Attorney General Ashcroft, I do not want to spend any more time on this because very limited time, and I want to devote my principle time to questions on Foreign Intelligence Surveillance Act with Director Mueller. But I would ask you to take a look at this very extensive article in the New York Times for February 25th. The facts they recite are at variance with what you have said. And I once found another newspaper article which was wrong, so the article may be incorrect, but I would like you to take a look at that, and let us have a response in writing as to whether their factual representations are wrong, because I am relieved to hear you say that if people want to leave and they are

just coming back because they cannot be accommodated because of the press of business in Canada, that they will not be arrested or deported.

Attorney General ASHCROFT. Well, let me just indicate I will be happy to review the article. If they are coming back with a view toward being gone, that is one thing. If they are coming back because they just need a place to stay, that is another. I have to say that this has been transferred from the Justice Department by and large now with the Immigration and Naturalization Service to the gentleman on my left.

Senator SPECTER. Well, since you mention that, I am going to ask Secretary Ridge to read the article and do the same thing with respect to his perspective policy.

But, Mr. Secretary, do you prefer to be called Governor or Secretary? Mr. Secretary?

Secretary RIDGE. Governor.

[Laughter.]

Senator SPECTER. Mr. Secretary, I would ask you to review the article too with respect to what policy you would have.

Secretary RIDGE. Sure. Thank you.

Senator SPECTER. Director Mueller, I have spoken extensively about the FBI's attitudes, standards under the Foreign Intelligence Surveillance Act, and I had hoped to have a more extensive opportunity to discuss this with you today. Senator Hatch has said that we will have another hearing where you will be back on a more protracted basis. It is not hard, it is impossible in the course of 14 minutes to really explore this subject, but I have been asked to cosponsor legislation to take away counterintelligence from the FBI. There is a growing school of thought in the Congress that the FBI is a super law enforcement agency, but when it comes to counterintelligence the FBI has not measured up, and I have declined these invitations to support that legislation, but I am considering it.

When we had your oversight hearings, I questioned you extensively about congressional oversight because of my dissatisfaction when I co-chaired an oversight subcommittee on the Department of Justice. And you were effusive in your agreement that there ought to be oversight and response for the Federal agencies.

When FBI Agent Coleen Rowley came in and blew the lid off of the practices of the Bureau on the Foreign Intelligence Surveillance Act with her 13-page letter, she then came in to testify with you on June the 6th, and testified that the standard which the FBI Field Office In Minneapolis was using was a 51 percent more likely than not, and we went through on that day, June 6th, a detailed examination with both you—I went through with you and Coleen Rowley, about the standards which are summarized in a Supreme Court decision by then Justice Rehnquist, now Chief Justice, that probable cause is established by, quote, "circumstances which warrant suspicion," close quote, and then based on totality of the circumstances. That standard was not applied by the FBI on the application for the warrant for Zacarias Moussaoui under Foreign Intelligence Surveillance Act. And we now know from what has been gleaned, that had the FBI gotten into Moussaoui's computer in combination with the Phoenix FBI memo which was lost in the

shuffle at FBI Headquarters, with the FBI not knowing what it knew, that 9–11 might well have been prevented.

After that hearing on June 6, we then convened closed-door hearings on July 9th, and on July 9th I questioned 7 individuals from the FBI, including attorneys, and they had not heard about the hearing of June 6th. They had never heard about the Gates case, and they were applying the wrong standards.

And then I wrote you a letter on July 10th reciting the appropriate standard and then pointing out to you the very next day after the hearing, "In a closed-door hearing yesterday, 7 FBI personnel handling FISA warrant applications were questioned, including 4 attorneys. No one was familiar with Justice Rehnquist's definition from *Gates* and no one articulated an accurate standard for probable cause."

I didn't get any response until a nonresponsive letter came in from John Collingswood, which was received in my office more than 2 months later, on September the 12th, which was a nonresponse, not dealing with my questions.

My first question to you, Director Mueller, is, when you acknowledge the constitutional authority of congressional oversight and you get a letter on a matter of utmost importance where the FBI personnel responsible for getting warrants under the Foreign Intelligence Surveillance Act, which might cutoff another Zacarias Moussaoui, do you not feel you have an obligation to respond?

Mr. MUELLER. I do, Senator, and I wish we had gotten a response to you sooner. We set about after that hearing looking at our definitions of probable cause, the definition that we teach down at Quantico, the definition that is in the legal handbook for special agents, and we reviewed that and believe that is consistent to what we find in *Illinois* v. *Gates*. There was a period of time in which we were going to put out a much larger missive to our agents to explore not only probable cause, but other aspects of the FISA process. We determined not to do that in August of that year and determined instead to expand, in response to your suggestion and your concern, to expand on the definition of probable cause as it is put forth in *Illinois* v. *Gates*.

Senator SPECTER. Director Mueller, if you are saying that you wanted to put out a memorandum which covered other subjects, I find that unacceptable. What happened between June 6, when you and Agent Rowley came in, and July 10th when we interviewed 7 of your key personnel, who apply the standard for the Foreign Intelligence Surveillance Act? Let me rephrase the question. Is it not entirely possible that there could have been something in transit like Zacarias Moussaoui, where these people who did not know the appropriate standard and did not know about Gates would be applying the wrong standard, and another Zacarias Moussaoui would slip through the cracks?

Mr. MUELLER. Senator, at the hearing, I know you asked a number of attorneys whether they were aware of *Illinois* v. *Gates*, and I know you asked one of the attorneys to give the definition. *Illinois* v. *Gates* is a 1983 case. They may not have had on their mind that particular case. Nonetheless, it is important for every FBI agent and every FBI attorney to have the standard of probable cause as it is espoused in *Illinois* v. *Gates*. And in the legal hand-

book for special agents at that time and afterwards there is the standard set forth according to *Illinois* v. *Gates*, No. 1.

Second, in response to what had happened prior to September 11th, it was important for us to assure that every time we get a request for a FISA warrant it is given due consideration. And I get briefed twice a day now since September 11th, and in those briefings I discuss what FISA warrants are outstanding and what response we have received from Department of Justice. And to the extent that there is any concern about the adequacy of probable cause, I look at it myself, along with advisers. So we have put into place procedures, since September 11th, to try to assure that what might have happened prior to September 11th does not happen again.

Senator SPECTER. Director Mueller, you are wrong on the facts. Those agents who testified in the closed-door session—and you have had access to that transcript, and we published excerpts in the report which we filed last week, were applying a standard of more probable than not, 51 percent, and that is a wrong standard. That is not a standard of suspicion under the totality of the circumstances. They were applying the wrong standard. Do you disagree with that? I do not see how you can. It is there in black and white.

Mr. MUELLER. Well, in the dialog and the colloquy with the attorney, the attorney says "it is not a preponderance of the evidence, but it is more likely, more probable than not." Query whether that is appropriate or not. It may well not be, but that has not been decided by the courts.

Senator SPECTER. Why do you say it may well not be? More likely than not is not the standard. Rehnquist dealt with that specifically in *Gates*.

Mr. MUELLER. I misstated. It is more probable than not, and there is some discussion as to whether or not more probable than not equates to a preponderance of the evidence. The attorney in your questioning said, it is not a preponderance of the evidence. He did say more probable than not. And if you look at *Lafebre* and you look at the treatises, there is some discussion as to whether more probable or not is the same as a preponderance of the evidence.

Senator SPECTER. Well, let us talk about that for just a minute. More probable than not is exactly the same as preponderance of the evidence. In a civil case the standard is a preponderance of the evidence, and that is defined as more probable than not, distinguished from a criminal case which is proof beyond a reasonable doubt. And more probable than not and preponderance of the evidence was handled by your Minneapolis Field Office as being 51 percent.

Now, look here, I am not saying you are responsible for what happened with Zacarias Moussaoui because you became Director in September a few days before 9–11. But I am saying that you are responsible, when you appear before the Judiciary Committee in a hearing and you hear this discussion about your Minneapolis Field Office being wrong, and you do not personally take steps to correct it, and these come in more than a month later and they do not know the standard. And if you try to split a hair between more

probable than not than preponderance of the evidence, I would like to hear it.

Mr. MUELLER. I am not trying to split hairs, Senator. Prior to the hearings in the summer of last year, I had understood that we had to do a better job in our FISA process, and I had put into place procedures prior to the summer of last year to assure that whenever we have an issue relating to probable cause, it is addressed at the highest levels in the FBI. I am not trying to split hairs on this. I will tell you, as you know better than I perhaps, that in *Illinois* v. *Gates* they say that the probable cause standard—and I will quote—"is a fluid concept, not readily or even usefully reduced to a neat set of legal rules."

And we could debate it. I invite you down. I would like to have an additional more extensive dialog on the probable cause standard, but I believe at the time in July that we had those hearings, we had in our legal handbook the appropriate standard under *Illinois* v. *Gates*.

Senator SPECTER. Well, we are going to have a more extensive dialog because the Chairman has said that we are going to have another hearing. And when you quote Justice Rehnquist, then Justice Rehnquist, now Chief Justice, saying that it does not lend itself to any precise mathematical definition, that is true, but he goes back to the *Cranche* case in 1813, Chief Justice Marshall, on suspicion under the circumstances and the totality of the circumstances.

One final word, Mr. Chairman. I had a situation when I was District Attorney in Philadelphia. On June 13th, 1966 *Miranda* v. *Arizona* came down, and every police interrogation put prosecutions at risk, and I had a 54-page slip opinion from Chief Justice Warren. And I put out guidance 4 days later, before Friday. I did not want the weekend to pass and had the Philadelphia police officers on the street questioning people without giving the Miranda warnings and getting the Miranda waivers.

And you are the Director of the FBI, and when a Senator calls it to your personal attention in a hearing, and a month later they are applying the wrong standards, and I write you the next day, and it takes until September 16th for the Bureau to put out a memorandum which is hard to figure out and does not accurately quote Gates, I just think something is really fundamentally wrong, and it goes to the most important issue facing America today, and that is to apprehend terrorists. And I compliment what the Department of Justice and the FBI are doing generally on that, and what Secretary Ridge is doing. I think we are on the right track. But I think when you have a major gap as identified here, you are accountable, Mr. Director.

Thank you, Mr. Chairman.

Chairman HATCH. Do you care to respond?

Mr. MUELLER. Well, I do not disagree, Senator, at all that I am accountable, and I can tell you that I do not mean to swap stories about district attorney versus prosecutor, but when I was a prosecutor in 1983, when *Illinois* v. *Gates* came out, and I was Chief of the Criminal Division, I am sure I put out a memo just the way you put out a memo because *Illinois* v. *Gates* did away with the

Aguilar-Spinelli two-prong approach. I am sure I did at that point in time.

Senator SPECTER. Well, did you put out a memo? I would like to swap that story.

Mr. MUELLER. Well, I am sure I did back in 1983 when the case came out.

Senator SPECTER. Well, I would like to see the memo. I will produce mine.

[Laughter.]

Mr. MUELLER. I will try to find mine.

Senator SPECTER. We are a couple of public servants, Director Mueller, and I respect you, and you have perhaps the most important job in Washington today next to the President, but there has to be a sense of urgency on these matters. And we are dealing with life or death, and there is a gap of time when your people did not know the standard.

Mr. MUELLER. Every night I go to bed, Senator, understanding that every day in this job I deal in life and death.

Chairman HATCH. Well, let me just add that I think Senator Specter is doing all of us a favor in raising these important issues, but let us also understand that Director Mueller inherited a tremendously important job in a tremendously trying time with all kinds of problems that pre-existed, and I just do not know anybody who could have done a better job under the circumstances, and I think that what Senator Specter is saying here is, is that we want to do even better if we can. And I respect my dear colleague from Pennsylvania very much, but I also respect you, Director Mueller. I have watched what you have done won there, and you have brought about a sea change, which has been necessary, in my opinion, since 9–11, and you deserve an awful lot of credit for it.

Now, I know that you are striving for perfection, but like all of us up here, I doubt seriously that you have reached that yet, so there is still room, and there is room for all of us too. For instance, we did not get the moneys to law enforcement. That is our job. We did not do that until about 3 weeks ago, so there are lots of ways we can find fault all the way around. But let me just say we are proud of what you are doing, and I am proud of what Senator Specter is doing in trying to make sure that we have the very best law going for us at every time. So let us just work together and see what we can do to make things work perfectly if we can.

Mr. MUELLER. Well, Senator, if I might respond, I am absolutely open to any suggestions. As I said in my opening statement, we have made substantial changes I believe, but we have got a long ways to go, and to the extent that there are suggestions, whether it be from the good Senator Specter or others on the committee, I welcome them. I look forward to working with each member of this committee to make the FBI a better organization, and will continue to do so.

Chairman HATCH. Well, we appreciate that.

Senator Kennedy has graciously agreed to allow Senator Feinstein to go next, and then we have another 7 minutes on that side. Senator Kennedy, do you want Senator Feingold, or do you want me to come back to you?

Senator KENNEDY. Come back to me.

Chairman HATCH. After Senator Feinstein, we will come back to Senator Kennedy, and we will take 14 minutes on this side.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I have three quick questions, one somewhat off the subject, for the Attorney General, one on bioterrorism and one on port security.

Let me begin if I may with you, General Ashcroft, and I think you know I am going to ask this question. On January 8th you were good enough to see me, and we had an opportunity to discuss reauthorization of the Assault Weapons Ban, which expires in September of 2004. As you know, I asked you this question in your confirmation hearing. You said you would be supportive of reauthorization. The President, in his campaign has said he was supportive of not only reauthorization but also legislation prohibiting the importation of large-capacity ammunition devices.

The question that I want to ask you today is would you in fact, and would the administration in fact, be supportive of reauthorizing the assault weapons legislation, along with the clip ban first. Second, including your legislation which you proposed when you were a member of this committee, to prohibit juveniles from possessing assault weapons. And then third, and perhaps I should leave this for a second question but whether you would consider a strengthening of the legislation?

Attorney General ASHCROFT. Thank you, Senator Feinstein.

As the President stated in his campaign, the administration supports the current assault weapons ban. As you know, the original law required a study to determine the effects of the law in reducing crime. That study, conducted by the National Institute of Justice from 1994 to 1996, and released in March 1999, concluded that, and I quote, "The ban's short-term impact on gun violence has been uncertain," close quote. And then the study recommended further study, and we will continue to study what impact the ban has had on reducing crime.

Senator FEINSTEIN. My question was a little different. My question was, will you be supportive of reauthorization with the ban on the importation of large-ammunition feeding devices, and of your proposed legislation to prohibit possession by juveniles of these weapons?

Attorney General ASHCROFT. The administration supports the current law. Those proposals go beyond the current law, and we will have to review those proposals and any other proposals that go beyond the current law to determine their effect on gun crime.

Senator FEINSTEIN. Thank you very much.

I would like now to turn to bioterrorism. When I was Chairman of the subcommittee, we played a role in the bioterrorism bill specifically, requiring that any lab that possesses dangerous agents like anthrax, smallpox, and 35 other agents, register to possess these agents, require background checks on lab scientists, and require a periodic update, actually every 2 years, of their possession of these deadly pathogens.

My concern, Governor Ridge, is that the new rules put out by HHS do not require laboratories handling the world's most dangerous pathogens, to fully upgrade their security until September 12th of this year. And my question to you is, have you reviewed

these rules? Do you believe security at research labs handling these agents is adequate? Bear in mind that we did have that one episode at Texas Tech, where you had, I think it was plague missing, which turned out to be destroyed, fortunately. But nonetheless we have a very weak system in place.

Secretary RIDGE. Senator, your initiative to, one, not only create a national registry, but also to assure that the facilities that do research on these agents and these pathogens are themselves secure, has led the Department of Homeland Security and the Department of Health and Human Services to have several discussions about this very important subject. The last discussion I had with Secretary Thompson and his team is that they in fact had been sending out teams from HHS to review the pathogens, to take a look at the facilities, and also to examine with their own eyes the security measures that had been recommended, put in place or need to be completed. I think the date of September of this year—and I am not familiar with the specific language of the regulation since it was promulgated by HHS—is a realistic assessment as to the time it will take for these universities and labs to complete the security precautions and meet the standards that HHS has set pursuant to your initiative.

Senator FEINSTEIN. Thank you, Governor. As you know, and I think Mr. Mueller knows, when this committee held hearings following the anthrax situation, and I came down to FBI Headquarters, there is no specificity in terms of how many labs possess anthrax in this country. The estimates ran anywhere from 12 to over 20,000. Are we going to be able to narrow that down to know exactly, and do we know exactly, how many labs in this country utilize anthrax?

Secretary RIDGE. Senator, I believe the intent behind your initiative, and certainly the effort that has been undertaken by Secretary Thompson, is to identify with that kind of precision not only the number of labs, but the contents that they have within those labs regarding the pathogens and agents, that potentially abused could cause the kind of horror and death and destruction that everybody is concerned about. I mean that is the intent behind the initiative, and Secretary Thompson and his team are moving forward rather aggressively on it.

Senator SPECTER. [Presiding.] Senator Feinstein, Senator Hatch has asked me to take the chair. He had to depart, and has asked me to be very close on time because we have to excuse the witnesses at 12:30, and there are other senators who will not be questioning.

Senator FEINSTEIN. All right, fine. I will yield then.

Senator SPECTER. I am sorry to interrupt, but that is the order of the day.

Senator Kennedy now has 7 minutes, and then we will proceed to the other side of the aisle.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Mr. Ridge, I want to just draw to your attention that we still have not developed in the vaccine program a compensation program. That has not been developed, and as a result there are very few people that are actually being vaccinated with anthrax and

smallpox in the country. We have to do that. It can be done very easily and quickly.

I have talked to Secretary Thompson. I have talked to the Chairman of our committee, Senator Gregg about it. We need to get ourselves together to pass one.

As you know from what the military has done, there are very few side incidents as a result of this, but there have been some, and we have to give the assurance that if people are going to be vaccinated, if they are going to lose time at work and they are going to lose income, they are going to be compensated for it.

Using traditional workman's compensation isn't going to work. We have got to get something that is going to work. We haven't done it. It is essential if these programs are going to be brought and get done. So I would invite your active involvement. We want to work with the administration to get the job done, but it hasn't gotten done yet and time is moving on.

Secretary RIDGE. Senator, I appreciate your observation and the sense of urgency that accompanies it. I think the single largest impediment to facilitating the immunization that we all think is important to inoculate those who would be called upon to inoculate is the compensation program.

I know that Secretary Thompson has been working with OMB and others, and I was under the impression that either they had delivered or were close to delivering a compensation plan for review of the Congress. I will check on it and report back to you today.

Senator KENNEDY. And it doesn't have to be complicated. We have got other pieces of legislation that we could pattern legislation after and get it done. If others are trying to bring in other tangential issues, it is going to get complicated, but it is important. And then eventually in bio-shield, we will have to deal with this issue, but that is further down the road. Let's try and get this done.

Could I raise with General Ashcroft—and let me welcome all of you here—on the matter with asylum seekers the case which I think you have read about in the newspapers, the Guatemalan woman who fled severe human rights violations. Her husband was an ex-member of the Guatemalan military. She had been repeatedly raped and threatened with death. She sought the help of the Guatemalan government, but it failed to protect her. This is the matter of what they call the RA regulation.

We had important protections under Attorney General Reno in terms of particularly women who had suffered the most egregious kinds of situations in terms of brutality. We understand now that your Department has taken a different position, or not, on these matters?

Attorney General ASHCROFT. Let me see if I can recollect what I believe has transpired in that matter without commenting on the merits of the case because the matter is before me as Attorney General.

Attorney General Reno brought the case out of the immigration appeals setting into her own authority for decision, during which time she began a process of reviewing the regulations. After regulations were reviewed, the case was sent back to the Board of Immigration Review and the regulations which were being formulated have been placed on hold, given the transfer of the authority in the

Department of Justice to the Department of Homeland Security for handling immigration matters.

I have, as a result, pulled this matter—before the transfer, I pulled this matter back for my own personal decisionmaking and the regulations are now under consideration at the Immigration and Naturalization successor in the Department of Homeland Security, with the assistance and collaboration, I believe, of the Justice Department on those regulations.

The decision made regarding this specific case will be made by me as Attorney General in my responsibilities in handling appeals. The regulation is in the process of formulation and it is being developed by the Department of Homeland Security with the assistance of the Justice Department.

Senator KENNEDY. Well, just basically, as I understand it, cutting to the chase on this, she obtained asylum in 1996, but the Board of Immigration Appeals reversed that decision. The Board found that she did not meet the criteria for asylum because her abuse was not perpetrated by her government and because her husband's abuse was directed at her individually rather than a larger social group.

That was what was changed by Attorney General Reno, vacated, in order to protect her from being forced to return after she was able to escape the murder threats from her husband, the beatings that had taken place and the rest. That is what is going to be back before you, whether that position that was taken by the previous administration will be taken.

I urge you to sustain the earlier—I know my colleague, Senator Leahy, and others are interested in it. It is, I think, an extraordinary matter, particularly when we have these kinds of situations that are—many women are the victims of these honor killings, sexual slavery, and domestic violence. If we are going to be denying them protection under the new policy, I think it is a dangerous alteration and change and we ought to know about it.

Let me just ask you in a general way, between Secretary Ridge and Attorney General Ashcroft, who is in charge of our immigration policy now.

Secretary RIDGE. As of March 1, Senator, that responsibility is transferred to the Department of Homeland Security.

Senator KENNEDY. I notice that Attorney General Ashcroft, as I understand it, is still issuing regulations on immigration policy. Your Department has ceased now from any kind of regulations?

Attorney General ASHCROFT. I think we are assisting by way of assistance in regulations. I don't believe we will be promulgating regulations generally. There is a part of the appellate process for review of immigration decisions which stayed at the Department of Justice.

The most recent of the regulations we have issued was a result of the disaggregation of the regulations, some which would stay Department of Justice regulations relating to those appeals, the others being the rest of the immigration regulations which would have followed the entire function, absent that appellate function, over to the Department of Homeland Security.

Senator KENNEDY. Well, as I understand it, last Friday the Justice Department issued a final rule asserting that it continued to

have jurisdiction over substantial areas of immigration. I think it is going to be important to know where responsibility is going to lie in terms of the regulations.

Attorney General ASHCROFT. Absolutely.

Senator KENNEDY. Let me get to the——

Senator SPECTER. Senator Kennedy, your time has expired, too.

Senator KENNEDY. I would like to submit questions, if that would be possible.

Senator SPECTER. Of course, and I am reluctant to interrupt you and it may be that there will be extra time because there are no other Senators present. Senator Chambliss is next in line.

In the absence of any other Senators, if you want to proceed with another question, why don't you do that?

Senator KENNEDY. Well, I would, just on the Haitian refugees. I guess, General Ashcroft, if I could, just on this part, even in the areas of the Haitian refugees when they are found to have been granted asylum, even when there is no fear of their fleeing, they are continuously detained, unlike any other group. The question is why.

To be honest about it, I haven't given you the question before. It is a technical question, but enormously important. If you want to give me an answer, I would welcome it. If you want to give me——

Attorney General ASHCROFT. I can give you a general response, but then I will be pleased to followup in writing.

Senator KENNEDY. All right.

Attorney General ASHCROFT. The detention for those who are in violation is based upon a potential that they flee. When you have mass migrations and there are pending applications, from time to time our Government has decided that those who are the subject of pending applications provide such a risk of non-compliance in the event the application is denied that an unusual or a different policy is adopted.

I will be pleased to respond to you fully in regard—I believe you are making reference to a group of Haitians that came about——

Senator KENNEDY. Haitians that have been actually granted asylum, and this matter is being appealed. It is many months in terms of appeal, and without any fear of fleeing, they are continually detained. It is the only group that we do that to. It seems to be to be unfair.

Attorney General ASHCROFT. I will be happy to report back.

Senator KENNEDY. I will followup with a question that will spell this out in detail, but if you could look at it, I would appreciate it.

Attorney General ASHCROFT. Thank you.

Senator KENNEDY. I thank the Chair.

Senator SPECTER. Thank you, Senator Kennedy.

Senator Chambliss is up next and will be chairing in the last portion of the hearing. Senator Hatch had agreed with the witnesses to conclude the hearing by 12:30.

Before I depart, Secretary Ridge, one inquiry about the coordination of analysis of intelligence information. I was pleased to see the President has issued an executive order coordinating all of those matters with the Central Intelligence Agency.

You and I have had extensive discussions in the past, with my view having been and still is that the appropriate institution for that responsibility is the Office of Homeland Security. We are going to be considering that in the Governmental Affairs Committee, where I also serve.

We will be taking a look at what the experience has been, and especially as to what the budget has been, so much of the budget controlled by the Defense Department, but we will be anxious to see how it all works out. Institutionally, you have got the responsibility and there are many of us who feel you ought to have the authority.

Senator Chambliss, the floor is yours, and the presiding officership.

Senator CHAMBLISS. [Presiding.] Thank you, Senator.

Gentlemen, let me first of all just say that as an oversight committee it is our job, of course, to look over your shoulder, to criticize you when you need to be criticized. We probably go overboard in doing that all too often, and I have certainly done my share of it.

But when you have successes, we need to compliment you and the success we had over the weekend in fighting the war on terrorism was a joint effort on behalf of all of you, as well as Director Tenet. And I am sorry he is not here to hear this, too, because when you do have success, we need to thank you for the good job you are doing.

I hope you will express to all the folks who are working under you our appreciation for their continuing efforts. They have got a long way to go, but this is the kind of success that sure makes all of us feel better, as I know it makes you and our Commander-in-Chief feel much better about the war that we are waging.

All of you know that my main focus over the last year-and-a-half has been on the issue of information-sharing from a primary intelligence perspective. We have debated and argued over what should go into the bill creating, Secretary Ridge, your department, and I couldn't be more pleased to have that department stood up than to have it done over the past weekend. I just wish it had been three or 4 months ago, but we are glad to get it up and going now, with the dragging on of the legislation that we had to go through.

With respect to information-sharing, I want to direct this, Director Mueller, to you and to Secretary Ridge primarily. Bob, you know that I have had this problem regarding the stovepipe mentality within all agencies. Senator Specter has again reminded us this morning of some of the practical problems that we had regarding memos that were issued in your department.

I want you to tell me how you are carrying out the fact of getting away from that stovepipe mentality, sharing information internally as well as horizontally with other agencies.

Secretary Ridge, I have had some conversations with some of your folks about the establishment of a plan for sharing of information all the way down to the State and local level. I would like for you to tell us where you are with that, what is your time line on that.

If I could hear from both of you, please.

Mr. MUELLER. Let me go ahead and start and talk about what we are doing in the Bureau. One of the things we have not done

in the past is take information we have and put it in reports. In the intelligence community, traditionally there have been reports officers. So you take information, bits of intelligence, strip off the sources and methods, and produce an intelligence product for the intelligence community.

Since September 11, we have established a reports officer corps to do that, and we want to extend that all the way to the field so that we have in each of our field offices reports officers that can take information and put it in the format that will enable it to be distributed not just amongst the Federal agents, but also the State and local agents.

Senator CHAMBLISS. Are those reports officers still in the process of being established or have you already got that done?

Mr. MUELLER. We already have, I think, 12 to 15. We have got another 20 back at headquarters that are in the background phase, and we hope to extend that throughout the country.

We also have dramatically increased our analysts, taking in 25 analysts from the CIA that have helped us since September 11. And with that analytical capability, with the reports officer capability, that gives us the individuals, the people, that can assist us in the flow of information.

But what is critical to our success is to have the data base structure and the foundation so that our data base information goes into a modern data base that can be the foundation for not only exchanging information within the FBI, but disseminating information throughout the Federal law enforcement arena as well as the State and local arena.

Hopefully, by the end of this year we will be in that position where we have a modern data base structure where most of the information can be made available to others in the intelligence arena or the law enforcement arena, and we by the same token can have access to other data bases.

So a substantial portion of our success will be dependent on having an IT structure that enables us to share information horizontally, as opposed to doing it by paper vertically, which is our current situation.

Secretary RIDGE. Senator, we have been tasked in the Department of Homeland Security to develop a protocol to share with State and local law enforcement the kind of information that is inherent to our basic responsibility, and that is dealing with the vulnerability of critical infrastructure. The three individuals who primarily will be leading that department have been identified. They have not been publicly announced. They have been going through the process of being vetted so they can take on that position.

We will work in conjunction with our colleagues at the FBI, with whom we have got a very close daily collaborative working relationship, to develop that protocol because there are times when we deal with the same groups, but provide information either to disrupt terrorist activity or information they need to secure a particular piece of infrastructure.

So the responsibility to develop that plan and that protocol is ours. It will be also reflected in the kind of organization we ultimately set up. As we mentioned earlier in my remarks, we are talking about reconfiguring many of these agencies in a more re-

gional approach as part of that consideration as to whether or not we would go to a regional approach, whether that facilitates our ability to collaborate with the State and local officials, including law enforcement officials, and our ability to facilitate the analysis of both information and the protection of critical infrastructure.

So it is very much on our minds. It is one of the highest priorities of this unit. We have identified the individuals who will be leading the unit. We continue to work with our colleagues in the FBI to develop a protocol that will meet our mutual needs.

Attorney General ASHCROFT. Senator, might I just add a couple of things? The number of joint terrorism task forces at the FBI has been expanded, and they are key to this information-sharing so that you have representatives of law enforcement working together all around the country.

The second point that I would make that I think is very important about what the FBI is doing is that there is underway a program for training the FBI in sharing information and training local officials in receiving and exchanging information. Within the next 18 months, I believe we will be on target for training about 40,000 people in that exercise.

So if you want to do something, you train for it and you put it in your institution, and Director Mueller has done that very, very thoroughly not just in the way the reports are configured and distilling the information to make it available for transmission, but actually training and using the structure to get the word out.

Senator CHAMBLISS. I want to go to Senator Feingold because my time is up, but let me ask you just a quick yes or no on that particular issue.

Mr. Attorney General, is the funding for that training of those State and local officers over and above the $3.5 billion that has been allocated to our first responders?

Attorney General ASHCROFT. I believe that it is.

Senator CHAMBLISS. Thank you.

Senator Feingold.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman.

Let me first sincerely commend the three of you for many of the recent successes in the fight against terrorism, particularly the recent arrest of Khalid Shaikh Mohammed. I think it was a very heartening moment for all Americans.

One of the most vital responsibilities of Congress is to ensure that the powerful tools we give to law enforcement are used effectively and appropriately. And while it is a start, one hearing with Attorney General Ashcroft, Secretary Ridge and Director Mueller does not end the Senate's role of oversight. I just want to echo Senator Schumer's, I think, very appropriate request that each of you, if at all possible, return for a separate hearing. I hope we can have a commitment to that effect.

Let me also underline what Senator Leahy said about a sequel to the USA PATRIOT Act. At a hearing last year, I asked a deputy assistant attorney general at the Department about rumors that such a bill was being considered. She testified that various pro-

posals were being considered, but nothing concrete had been developed.

She also did agree, General, that the Department would provide us with some sense of where you were heading on this. So I was concerned and really fairly disturbed to learn recently that a draft bill has been prepared and circulated within the administration. It is absolutely crucial that you consult with Congress in a timely manner in developing such legislation.

As you know, I thought we moved too quickly even on the USA PATRIOT Act, but at least there was some justification for such unusual haste in that case. I think it is harder to argue that in this case, given the fact that we asked for an opportunity to participate months ago. So let me respectfully urge you to start communicating with us today if you have legislative proposals that you would like us to consider in this regard.

Let me also comment briefly, General Ashcroft, on what you said about the Department's successes in court. I just want to clarify a few points. You said the Department's withholding the names of people detained for immigration violations after September 11 was sustained. In fact, a Federal court ruled that the Department should release the names of the immigration detainees and that decision is currently on appeal.

On the issue of closing immigration hearings, there is, in fact, a split between the Federal appellate circuit courts. While the Third Circuit has upheld the Department's closing of immigration hearings, the Sixth Circuit ruled against the Department, finding that a blanket policy of closing hearings without a particularlized showing of why an individual's hearing should be closed is, quote, "odious to a democratic society," unquote. So I remain troubled by the positions the Department has taken in these cases and I respectfully urge you to reconsider them.

Secretary Ridge, I am glad you mentioned that prevention was the leading priority, as it must be. I am concerned that in our fight against terrorism, this administration is not doing enough for our Nation's first responders, the men and women who work on the front line of our neighborhoods and communities.

If our fight against terrorism is going to be effective, we need to ensure that the necessary resources are delivered to them, and I am extremely concerned that the new money we provided in the latest budget for first responders is only about $1.3 billion out of a budget of over $390 billion. That is not sufficient for a top priority; it is not enough to ensure that our first responders will be able to successfully confront the new challenges facing them.

Let me turn to one other subject for my questions. The FBI and a few police departments have had a long and troubling history of spying on law-abiding Americans, like civil rights activists and anti-war protesters, Americans who were simply exercising their First Amendment rights to political expression.

Police departments in cities like New York, Los Angeles, San Francisco and Seattle participated in these abusive surveillance tactics, and recently the Denver Police Department has joined the list. It has been revealed that the Denver police spied and maintained files on over 200 organizations and over 3,200 people. The police labeled nuns, peace activists and other activists as, quote,

"criminal extremists," unquote, maintaining information in a computer data base that could be then shared with neighboring police departments.

Mr. Attorney General and Mr. Mueller, as I hope you can appreciate, in an era of terrorism being labeled a criminal extremist, or even tagged as a suspicious person in the government data base, can have very serious consequences. Consent decrees played an important role with regard to these issues. They placed important restrictions on police spying activities, for example, requiring a police officer to have specific information about criminal activity before investigating a political group.

General the draft of PATRIOT Act II, however, would automatically end these consent decrees that were put in place to protect Americans' First Amendment rights. Mr. Attorney General, can you cite an example of a terrorist plan that went undetected because local police had their hands tied by a consent decree placing limits on their domestic spying capabilities?

Attorney General ASHCROFT. Senator, with your permission, I would like to respond to the suggestion that there is a PATRIOT Act II. When individuals indicate to you that if there is a proposal, we will confer with you, I believe they are right. There is not a proposed Terrorist Act II from the Justice Department. No final discussion has been made with the Attorney General about proposals. No final discussion has been made with the administration about proposals.

Now, let me just say that we constantly are thinking of things that ought to be considered, and we believe that it is in the interests of the country that we think expansively and that we have a thorough and clear debate about them, considering the pluses and the minuses. And we don't believe that it is appropriate to never mention anything unless it has already been decided that it is totally OK. You can't do that; consideration requires that.

So if someone leaks the fact that there are items under consideration or that there is a matter of discussion, that doesn't mean anything out of the ordinary. I hope that characterizes the fact that we are constantly considering how to improve.

I want to assure you that there has been no bill decided on, no proposal decided on. I am keenly aware that the administration cannot pass legislation. Only Members of the Congress can pass legislation. It would be the height of absurdity for me to have a secret matter that I hoped to make a law without telling Congress. I mean, I simply don't understand that. So we will confer, but I will prefer, if I can, to weed out things that I believe are inappropriate before I come to the Congress with an idea.

Senator FEINGOLD. General, I would really urge you to do that, and let me just say that you know my view that the last time we had a USA PATRIOT Act that the kind of discussion and airing of the issue simply did not happen. There is a debate about whether it could have happened. I appreciate your commitment to it happening in this case. The fact is there are some specific proposals or possible proposals out there. I don't think it is too early for people like you and me and others to start discussing whether they are a good idea.

I am wondering if you could respond to my specific question in the few seconds I have, which is can you cite an example of a terrorist plot that went undetected because local police had their hands tied by a consent decree placing limits on their domestic spying capabilities?

Attorney General ASHCROFT. I cannot.

Senator FEINGOLD. Thank you, General. And, of course, I look forward to discussing these provisions and perhaps we could followup with a conversation about the items that we saw at least in this draft, whatever this draft is. There are enough items there that people are raising concerns about that the conversations and consultations should begin now, in my view.

Attorney General ASHCROFT. Well, I don't believe that I should start to consult and defend things which I believe are indefensible or are not a part of something that I would seek to propose. I guess that is my view. Until I have something that I think is appropriate, I don't know that I should engage in some discussion about something that we don't believe is appropriate.

We could agree on a lot of these things that, hey, those don't belong in our discussion.

Senator FEINGOLD. I look forward to engaging in it as soon as possible. Thank you, General.

Attorney General ASHCROFT. Thank you.

Senator CHAMBLISS. We have got 14 minutes left and we have got two 7-minute questioners left.

So, Senator Schumer.

Senator SCHUMER. Thank you, and I very much appreciate all three of you being here. I have a couple of questions I would like to ask.

First, I want to followup on what Senator Feinstein had asked you, General Ashcroft. As you know, she authored the assault weapons ban in the Senate and I was the author in the House. You mentioned you support the current ban. Would the administration support reauthorizing that ban, extending it, because if not, it will expire? Will you work for that? What happens if in the House they decide to bottle it up? Three questions. Would you support reauthorizing it?

Attorney General ASHCROFT. As the President stated during his campaign, the administration supports the current assault weapons ban. The original required a study. That study indicated that the results of the ban on gun violence were uncertain. We are continuing the study. The administration supports the current law.

Senator SCHUMER. But you are not saying whether you would support a reauthorization bill that we hope we can pass?

Attorney General ASHCROFT. The administration supports the current law.

Senator SCHUMER. OK, thank you. Next question—and I am sorry to be quick here, but we don't have much time. And Senator Hatch is not here, but I want to reiterate strongly my request to him earlier. This is one of the most important subjects we face. We have three of the most important gentlemen here and I would say that we simply don't have enough time in 7 minutes to cover the waterfront on so many of these issues.

To not only have all three together, but to limit the time to 12:30, doesn't really give justice to the importance of this. I am going to renew my request strongly, hopefully joined by others here, that we be allowed to have each of you come at your schedules—I don't care if we have to do it in the evening—so that we can ask questions.

I take it none of you would object to coming back. Is that fair to say?

Secretary RIDGE. Correct.

Senator CHAMBLISS. You won't have any disagreement on our side, I am sure.

Senator SCHUMER. OK, great. So let the record show all three have agreed that they would come back. Fair enough?

Secretary RIDGE. Fair enough.

Senator SCHUMER. Will whoever doesn't want to come back raise their hand?

[Laughter.]

Senator SCHUMER. Let the record show none of these three fine gentlemen has raised his hand.

This one is for Secretary Ridge, and congratulations on your appointment. My question is about homeland security, where I have real worries, and let me just ask you one. I have been very concerned about nuclear weapons being smuggled into this country, not so much dirty bombs, although I am very concerned with that—that is harder to guard—but real nuclear material and bombs.

Senator Warner and I, obviously in a bipartisan move, had put in first the homeland security bill and then in the supplemental appropriation a proposal to fund research for detection devices that could be placed on every crane that loads or unloads a container, on every toll booth where containers come through the Canadian and Mexican borders, to develop these detection devices, which can be done according to every expert.

The administration didn't oppose the language, but opposed putting any money in and we ended up with $15 million, which is not enough. And God forbid, one of these weapons is smuggled into our country. I wear this flag everyday in memory of the people who died in my city on 9/11 and elsewhere. This would even be worse.

Can we get the administration's support to find the dollars in the supplemental appropriation so that we can develop these kinds of detection devices? No one objects to it in substance; they just say there is no money for it.

Secretary RIDGE. Well, Senator, first of all I am not familiar with the specifics of the legislation. I will certainly make myself familiar, but in the 2003 budget that we inherit in the Department of Homeland Security we do have several hundred million dollars that will be assigned to Science and Technology Unit.

One of our highest priorities is examining some of the research that is being presently conducted either in the national labs or the university research labs to see if there is anything out there that we could prototype to address the concern that you have.

So I will just make it a point of personal interaction to get back with you, one, to reexamine the legislation. I am not sure at this time we need more money. Because of the 2003 budget, we do have

dollars in the Department of Homeland Security and we will see how they mesh, and if there is a concern, I will get back to you.

Senator SCHUMER. I don't want to carry on an argument here because time is so limited. The experts say it will cost about $250 million, total, to do this. The total budget for research for everything, I don't think is that. And so I think, with all due respect, we need some more money for this.

And it was not the Senate, not the House, not Democrats here, not Republicans here, but the administration in the personage of OMB who basically knocked out the dollars. I had an agreement. Ted Stevens supported our amendment and put it in the Senate bill. So I hope you would look at that.

Secretary RIDGE. Let me review. We did get ample funding. We did get some dollars transferred, I think, from DoD and I think it is important for me to take a look at whether or not they are eligible to begin that very considerable research initiative that you are talking about. It is something that we have as one of the highest priorities within the department. Let me review it and get back to you.

Senator SCHUMER. Could you get back to me in writing?

Secretary RIDGE. Absolutely.

Senator SCHUMER. One final question. I am very worried—I am worried about so many things these days, as we all here—about shoulder-held missiles that can shoot down an airplane, God forbid. And not only are hundreds killed, but commerce basically comes to a standstill.

Some of us here, Senator Boxer and I, have proposed that we spend money—we propose taking it out of the anti-missile defense, which is a longer-range threat, but it could come from anywhere, and outfit every commercial airliner with the wherewithal to prevent the stinger from hitting. We do this in our military planes. El Al Airlines does this. Obviously, they are most concerned with security.

I am wondering if the administration would support such a proposal to do this. It is expensive, but the alternative if, God forbid, it happens is even more expensive.

Secretary RIDGE. Senator, literally within hours, if not the next day after the failed effort to use the MANPADs overseas against the El Al airliner, we convened a group of representatives from all the agencies that had anything to do, knowledge or experience, with the MANPADs themselves, the broadest possible group of agencies to come up with counter-measures and to look at the existing technology, its cost, and to basically do some work to see whether or not—it is an extraordinarily expensive acquisition at this time, but to see whether or not there can be some modifications to the existing technology that might be deployed.

So, again, that is an issue that as soon as it occurs we recognize the considerable impact on lives and on commercial aviation and on the economy and the catastrophic consequences. We have taken a look at some counter-measures and that is part of the internal discussion, but there has certainly been no commitment one way or the other to deploy them on commercial airliners.

Senator SCHUMER. Thank you, Mr. Chairman. I just would ask, No. 1, that I be allowed to submit questions in writing which the

witnesses can answer. And, second, I would just reiterate to the Attorney General I am disappointed that the administration will not come out and say they will support an extension of the assault weapons ban and respectfully ask you to consider doing that.

Senator CHAMBLISS. Senator Edwards.

Senator EDWARDS. Thank you, Mr. Chairman.

Director Mueller, thank you for taking the time last week to—we spent an afternoon together, you and some of your folks, and it was very useful and I appreciate it very much. I want to commend you and all the good people working hard at the FBI. You have a very good group of people there. They are dedicated and they care about what they are doing, and that was obvious in the time that I spent there.

We still have a structural disagreement about the best way to do domestic intelligence, but I want to work with you. I want to continue to talk to you, and at least speaking from my side I found the afternoon we spent together very useful and thank you for doing that.

Mr. MUELLER. Thank you, Senator. Thank you for coming down.

Senator EDWARDS. Thank you.

Secretary Ridge, I want to actually followup in a broader way on an area that Senator Schumer just asked about. As you know very well, there are thousands of these 40-ton containers coming through our ports everyday, any one of which can hold something that could do us great harm—a dirty bomb. Senator Schumer mentioned the possibility of a nuclear weapon. A minuscule number of those are actually inspected.

The Coast Guard estimated this past December that in order to adequately strengthen the ports would cost—this is their estimate—$963 million right away. The budget passed, I think, included $250 million. In addition to that, there is a customs container security initiative to screen cargo in foreign ports, not our ports, but in foreign ports. President Bush's Customs Commissioner asked for $57 million for that initiative. The administration, though, requested nothing and the program got just, I believe, $12 million.

With the Coast Guard and the Customs Commissioner saying we need a much bigger investment in port security, and with thousands of these big containers coming in through our ports everyday, with only, as you well know, a small percentage of them being actually inspected, are the Coast Guard and the Customs Commissioner wrong?

Secretary RIDGE. Senator, first of all, the cargo security initiative, I believe, ended up with the support of Congress getting additional dollars beyond the $12 million that you talked about. I have had a good conversation with Commissioner Bonner because we think this is one of the most effective ways to deal with commercial shipping and container traffic. And I am glad you are supportive of the program because we think it will make a considerable difference in the long run.

There are various estimates as to the dollars we need to secure our ports. I will not second-guess the amount of money that either Rob Bonner or Commandant Collins have suggested. We do have some flexibility that you have given us in the new Department of

Homeland Security to move some money around some of the individual line items.

Again, it is a matter of going about the business of building capacity not in a single year but over the next several years, and I am confident that we can get it done. The measure that Congress passed at the end of last session—I think the Maritime Transportation Security Act—vested in the Coast Guard the responsibility to do vulnerability assessments and come up with protective measures. That is a process that is ongoing so we can confirm the cost associated with those protective measures.

At an appropriate time, if we can't fund the kind of effort that we think is needed, then it would be the appropriate time to make a specific inquiry back to you. I am not going to suggest that their preliminary assessments are inaccurate, but we haven't done the complete vulnerability assessment that Congress directed yet.

Senator EDWARDS. Well, you understand our concern.

Secretary RIDGE. Sure.

Senator EDWARDS. You know this as well as anybody, better than most. The threat exists today and we are concerned about making sure we do everything today.

Can I ask you a specific question about this? Would you support a supplemental request for more funding for port security?

Secretary RIDGE. Senator, we are going to support a request for additional dollars to assist us. I am confident once we have completed vulnerability assessments and what we think is the appropriate Federal role to secure those various ports—and we have begun that process, Senator. We began that in the Office of Homeland Security.

The President has just released a critical infrastructure protection strategy that calls on the Coast Guard and the new department to make these assessments, to see what the costs are, and then a decision is to be made at that time.

In the meantime, the Coast Guard has considerably enhanced the number of patrols. The collaboration at the local ports has been substantially enhanced and it is certainly far better security than ever before. The cargo security initiative is in here. We are working with our friends in Canada and Mexico at a couple of ports on a pilot program.

So we have many initiatives dealing with port security, the ultimate cost of which is to be determined. We will have determine whether we can absorb it in the Department of Homeland Security and, if it is an appropriate Federal cost, come back to you for a specific amount.

Senator EDWARDS. Can you tell me today what percentage of these 40-ton containers are being inspected?

Secretary RIDGE. I think Commissioner Bonner, I believe, probably testified 3 percent, 4 percent, and the Coast Guard did that as well. But I think it is very important, Senator, to emphasize that these are not random searches, that there is an algorithm, there is a method by which these specific vessels are targeted. And so it is not as if they are randomly targeted. They are targeted for very specific reasons. So you take the targeting initiative, the cargo security initiative and some of the other enhancements at our ports and we continue to enhance our security. I just need to disabuse

everyone of the notion of just randomly boarding ships. They board them for very specific reasons and it is based on targeting information.

Senator EDWARDS. Let me ask about one other area very quickly. I know our time is about to run out. This is about border security, if I can shift subjects just briefly.

Secretary RIDGE. Sure.

Senator EDWARDS. I have read some reports, at least, that we have one Border Patrol agent for every five miles on the northern border. As you know, we have also had serious problems with visa over-stays both before and after 9/11. Various people have complained about both of those problems and concerns about both those problems, and I know you are also concerned about both of those issues.

First, I am working on and have legislation to address the issue of more Border Patrol agents and more INS agents, both inspectors and investigators, so that we can deal with both the issue of patrolling our border and the issue of making sure we identify those who are over-staying and do something about them.

Can you tell me whether you think we are doing enough and how much money we should be spending to deal with those two specific issues dealing with our border security?

Secretary RIDGE. Senator, the Congress has been very supportive the past two budgets in assisting the new department in ramping up and increasing the number of both inspectors and Border Patrol agents. I think in the PATRIOT Act your colleague, Senator Leahy, called for a substantial increase of Border Patrol agents particularly on the northern border. I think with your financial support in the 2003 budget, once we get those people hired, we will be about 80 percent there.

I think if you take a look at the reorganization plan that we have just began discussing and putting into effect as of March 1, the opportunity to blend some of the Customs inspectors and the INS inspectors and some of the Customs investigators and Border Patrol investigators gives us an enhanced capacity to do the kinds of things that you are worried about.

One of the advantages of the flexibility that Congress gave us in the bill to reorganize in the Department of Homeland Security is we think we can put more people working with the Border Patrol to considerably enhance their capacity to do their job.

Again, you have been very supportive; Congress has been very supportive with the resources we need to hire new people. And I look forward to the opportunity to talk to you about how the reorganization affects our ability to do a better job at the borders.

Senator EDWARDS. Well, my time is up, and thank you very much for coming. I continue to be concerned about whether we are doing enough on both fronts, both port security and border security, but we will continue to work with you to make sure that we are doing what we need to do to provide the funding that needs to be done in both those areas.

Secretary RIDGE. Thank you.

Senator EDWARDS. Thank you, Mr. Secretary.

Secretary RIDGE. Thank you.

Senator CHAMBLISS. Gentlemen, we are getting you out almost on time. We thank you for being here. As Senator Schumer said, I expect we will see you again and we will look forward to that. Thanks, guys, for the great job you are doing.

I ask unanimous consent to enter Senator Kohl's statement in the record. Without objection, that is done.

[The prepared statement of Senator Kohl appears as a submission for the record.]

The record will remain open for 7 days for any written questions that are to be submitted to these three gentlemen.

With that, the hearing is concluded.

[Whereupon, at 12:35 p.m., the committee was adjourned.]

[Submissions for the record follow.]

[Additional material is being retained in the Committee files.]

SUBMISSIONS FOR THE RECORD

Department of Justice

STATEMENT

OF

JOHN ASHCROFT
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

PROTECTING THE UNITED STATES FROM TERRORIST ATTACK

PRESENTED ON

MARCH 4, 2003

STATEMENT OF
ATTORNEY GENERAL JOHN ASHCROFT
CONCERNING
PROTECTING THE UNITED STATES FROM TERRORIST ATTACK

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

March 4, 2003

Good morning. Chairman Hatch, Senator Leahy, members of the Committee, thank you for inviting me to appear before you today to discuss the Department of Justice's efforts to protect America from terrorist attack. I also want to thank each of you for your support, guidance, and leadership in this mission. The Congress wisely provided many of the tools we have used in our successes, and I share the gratitude felt by our nation for your efforts.

Since September 11, 2001, the Department of Justice's overriding priority has been to lead the federal government's fight against terrorism here in America. This fight has required us to transform the Department, updating our tools and shifting our focus from the investigation and prosecution of already completed criminal acts to the prevention of further acts of terrorism. Together with the intelligence community, we have remade ourselves into our nation's "first preventers," if you will, committed to detecting, disrupting, and dismantling terrorist networks before they strike. God willing, our prevention efforts will save us the horrible burden of ever having to respond again to the kind of carnage we witnessed on September 11.

I want to assure the Committee that, as was the case with the Congress and the USA-Patriot Act, we have carefully crafted our post-September 11 policies to foster prevention while protecting the privacy and civil liberties of Americans. As I have often said, we at the Department must think outside the box, but inside the Constitution. I take seriously the concerns of civil libertarians, for I, too, believe that protecting America does not require the sacrifice of those very freedoms that make us Americans. Yet, we must remember that our nation is an experiment in what Edmund Burke termed "ordered liberty." Ordered liberty means neither license nor Big Brother. Rather, the concept embraces liberty and security as complementary, mutually reinforcing values. Without security, there is no liberty; without liberty, no security. Put another way, the concept of ordered liberty acknowledges that for liberty to thrive in America, America must be secure.

Almost without exception the courts have endorsed the Justice Department's view of ordered liberty. For instance, appellate courts have upheld the Executive Branch's authority to detain enemy combatants, close sensitive immigration hearings, and coordinate our law enforcement and intelligence activities. We have been careful in our approach, ever mindful of constitutional liberties, and we are confident that we are striking the appropriate balance.

Mr. Chairman, the Justice Department's efforts have paid enormous dividends over the past seventeen months. The September 11 investigation, the largest criminal investigation in U.S. history, moves ceaselessly forward. I assure the Committee that we will not rest until we track down and bring justice to every person involved in the September 11 attacks. Thousands of

FBI Agents have participated in the investigation. They have covered more than 337,400 leads, and produced more than 165,000 FBI 302 reports of investigation. Nearly 300 Agents and 85 Support employees have been detailed to more than 30 Legal Attache offices overseas to assist in pursuing leads and coordinating the investigation with our international colleagues. The FBI Laboratory has received more than 585 submissions of evidence from the crash sites and related searches, representing approximately 6,332 items of potential evidence. In addition to the pending Zacarias Moussaoui prosecution, to date the 9/11 investigation has resulted in criminal charges against 211 individuals, 108 convictions, and the deportation of 478 individuals.

In addition to the PENTTBOM investigation, our prosecutors and agents have used every tool at our disposal, including those provided in the USA-Patriot Act, to pursue other terrorism-related activity. Our efforts have resulted in numerous arrests, indictments, and convictions. For example, John Walker Lindh, the "American Taliban," pled guilty to providing services to the Taliban and to carrying an explosive while engaged in the commission of a felony. Lindh was sentenced to 20 years' imprisonment. And Richard Reid, the al-Qaeda "shoe bomber" who attempted to destroy American Airlines Flight 63, pled guilty to all pending charges and was sentenced to life imprisonment on January 30, 2003.

We have also disrupted [alleged] terrorist cells throughout the country.

- Six men were charged in Buffalo, New York, for providing material support to al-Qaeda. In the early summer of 2001, these men [allegedly] had participated in

weapons training at a terrorist training camp in Afghanistan known to be used by al-Qaeda. While they were at the camp, Osama Bin Laden visited and delivered a speech to the trainees about anti-American and anti-Israeli sentiment and general al-Qaeda doctrine. One of the defendants has pleaded guilty and is now cooperating in the investigation.

- Four individuals indicted in Detroit, Michigan, were charged with conspiracy to engage in fraud, misuse of visas and identification documents, and providing material support to terrorists. The indictment alleges that these individuals sought to obtain false identifying information to help terrorists enter the United States, attempted to find security breaches at Detroit Metropolitan Airport, and tried to obtain firearms for terrorists to use. Their trial is scheduled to begin on March 18, 2003.

- Six individuals in Portland, Oregon, were charged with engaging in a conspiracy to join al-Qaeda and Taliban forces fighting against United States and allied soldiers in Afghanistan. Five of these individuals left the United States to travel to Afghanistan in October 2001 – after the 9/11 attacks – to join the Taliban and al-Qaeda forces battling American soldiers.

- And Earnest James Ujaama was charged in Seattle, Washington, with conspiracy to provide material support to terrorists. Mr. Ujaama allegedly designed web sites

advocating violence against American interests and sought to establish a terrorist training camp at a farm in Bly, Oregon.

The Justice Department makes no distinction between those who carry out terrorist attacks and those who knowingly finance organizations. We continue to pursue financiers of terrorist barbarism as aggressively as those that actually perpetrate such horrible crimes. To date:

- The United States has designated 263 groups and individuals as terrorists or terrorist supporters.

- With our allies worldwide, we have frozen over $124 million in assets and over 600 accounts from around the world.

- We are pursuing more than 70 terrorist financing investigations, with 23 convictions to date.

- In Detroit, we recently obtained an indictment charging 11 people with racketeering and cigarette tax evasion charges, including allegations that a portion of the illegal proceeds was intended for Hizbollah, a designated foreign terrorist organization.

- In North Carolina, a jury convicted brothers Mohamad Hammoud and Chawki

Hammoud of, among other charges, providing material support to a foreign terrorist organization. The Hammouds smuggled millions of dollars worth of cigarettes from North Carolina to Michigan and funneled proceeds from such sales to the Middle East to help finance Hezbollah's terrorism.

- A federal jury in Boston convicted Mohammed Hussein on charges of running an unlicenced foreign money transmittal business – Barakaat North America, Inc. – in violation of section 373 of the Patriot Act. The al-Barakaat network was affiliated with and received financial backing from al-Qaeda.

- And recently in Chicago, Enaam Arnaout, the head of Benevolence International Foundation, pleaded guilty and admitted that he fraudulently obtained charitable donations and funneled the money to individuals engaged in violence and terrorism.

Mr. Chairman, we have also built upon close working relationships with international allies to leverage our antiterrorism efforts throughout the world. For example, in Germany recently, Mounir el Motassadeq was convicted for helping a key al-Qaeda cell behind the September 11 terrorist attacks against our nation. In response to Germany's request for assistance, the Justice Department provided information, including documents, a witness, and access to an individual in U.S. custody convicted of terrorism offenses.

Mr. Chairman, perhaps the most effective provisions of the USA Patriot Act are those that altered outdated statutory restrictions so that intelligence and law enforcement agencies have greater freedom to coordinate their efforts and to share information gathered about terrorists. One important development, with which the Act's provisions amending the Foreign Intelligence Surveillance Act (FISA) were consistent, was dismantlement of the false "wall" that had been built between intelligence and law enforcement. That wall was finally cleared away on November 18, 2002, when the Foreign Intelligence Surveillance Court of Review issued a decision endorsing the Justice Department's March 6, 2002 Intelligence Sharing Procedures. These procedures had been devised to give full effect to the USA Patriot Act.

As the Committee is aware, the Justice Department uses its FISA tools to collect intelligence information to protect our country from foreign threats, including terrorism. Of course, specific details regarding our use of FISA are appropriately classified, and I am limited in what I can say in public about these matters. I do not want to disclose to our foreign adversaries what it is that we do to detect and thwart their activities.

We strive to use FISA as efficiently and effectively as possible, and endeavor to present applications to the Court -- each one of which the Attorney General, Deputy Attorney General, or Acting Attorney General must sign -- in a highly professional manner. We only present applications to the court that we conclude are fully vetted and are justified by the facts and the law with due regard to our obligation to protect the privacy of Americans from unwarranted intrusions.

Since 9/11, we have used FISA aggressively to obtain the information we need to protect the national security, but we have done so in accordance with the law and our ethical obligations. For example, in calendar year 2002, we presented more than 1,000 applications to the FISA court targeting terrorists, spies and foreign powers who threaten our security. In addition, we have made full use of statutory provisions that allow the Attorney General to approve FISA surveillances and searches on an emergency basis. Since 9/11, more than 170 Attorney General emergency FISAs have been authorized. By way of comparison, in the preceding twenty years, only 47 Attorney General emergency FISAs were authorized. The Act requires us to present applications to the court soon after an emergency approval, and the number of emergency FISAs increased so substantially after 9/11 that we had to seek an amendment from the Congress to give us more time to prepare the required pleadings. Even so, the substantial increase in the number of emergency and other FISAs has required the dedicated professionals who work in this area to put in long hours to ensure compliance with the law.

The benefit of this new FISA regime cannot be overstated. Today, our intelligence and law enforcement communities can coordinate intelligence and law enforcement efforts to protect the country from terrorists and foreign spies. Such coordination is vital to keeping the country safe, and several significant law enforcement actions have resulted directly from the new FISA regime. For instance, I announced just recently the arrest of Professor Sami Al-Arian and other members of the Palestinian Islamic Jihad, a designated foreign terrorist organization, following the return of a 50-count indictment by a federal grand jury in Tampa, Florida. The indictment charges a total of eight defendants under RICO with operating a racketeering enterprise from

1984 until the present that engaged in a number of violent activities. In addition, the indictment charges conspiracy within the United States to kill and maim persons abroad, conspiracy to provide material support and resources to the Palestinian Islamic Jihad, conspiracy to violate emergency economic sanctions, engaging in various acts of interstate extortion, perjury, obstruction of justice and immigration fraud. If convicted, the defendants face up to life in prison. The eight individuals named in this indictment played a substantial role in international terrorism, providing material support to foreign terrorist organizations.

Mr. Chairman, in the wake of the September 11 terrorist attacks, the need for an increased protective presence on and beyond our nation's borders has also become clear. In recognition of this need, the Justice Department quickly implemented the Patriot Act's new immigration-related tools and developed new initiatives to secure our borders and keep track of those who would come to our nation bent on doing harm. Many of these tools have just been turned over to the new Homeland Security Department that will headed up by Secretary Ridge. Let me take a moment to summarize some of our efforts in this area.

- Prior to its incorporation on March 1, 2003, into the Department of Homeland Security, the INS had already begun implementing the National Security Entry-Exit Registration System that Congress authorized in 1996. NSEERS requires that foreign visitors who are identified as presenting elevated national security concerns be fingerprinted using state-of-the-art digital technology. Those fingerprints are run against a database of known terrorists, wanted criminals, and

convicted felons. NSEERS registrants are also required to report to an immigration office after 30 days to verify they are doing what they said they would do and staying where they said they would stay. And finally, they are required to confirm their departure when they leave the country. As such, NSEERS is the crucial first step in fulfilling the Congressional mandate to develop a comprehensive entry-exit system 2005.

The NSEERS program has already yielded impressive success in the war against terrorism and in the enforcement of our immigration laws. Thus far, NSEERS has allowed immigration officials to track the entry, exit, location, and activities of more than 81,000 foreign visitors from 149 different countries. To date, NSEERS has led to the apprehension of 8 suspected terrorists and over 500 other aliens at the border who presented law enforcement threats. This includes aliens who have committed serious felonies in the United States in the past and are inadmissible, aliens with fraudulent documents, and individuals who had previously been deported.

- The FBI for a long time had been sharing information in its NCIC files with immigration officials and the State Department so that those agencies can determine whether a visa applicant has a criminal history record. Consistent with the Patriot Act, the FBI is now providing such information to the agencies in extract form, which immigration officials and the State Department can download

into their databases. In addition, I have directed that all of the Department's investigative components include in the NCIC database the names, photographs, and other identifying data of all known or suspected terrorists.

- Pursuant to section 416 of the Patriot Act, we have implemented and expanded the foreign student visa monitoring program known as the Student and Exchange Visitor Information System. SEVIS enables schools to electronically transmit student data to immigration offices and the State Department so that immigration officials will be able to take appropriate action when a student visa holder falls out of active student status. SEVIS became fully operation in January of this year.

- Finally, immigration officials have given effect to the Patriot Act's mandate by quickly working to install the Integrated Intelligence Surveillance System at 55 northern border sites. When this computer-aided detection system is completed ISIS will provide 24-hour-a-day, 7-day-a-week, border coverage through ground-based sensors, fixed cameras, and other technology.

Recognizing that many terrorists use false immigration and identification documents, the Justice Department has cracked down on document fraud across the nation. In Maryland, for example, Rasmi Subhi Saleh Al Shannaq, former roommate of two of the September 11 hijackers, was arrested by INS and Joint Terrorism Task Force agents. This apprehension led to 45 arrests in a visa fraud scheme. In Virginia, Luis Martinez-Flores and Herbert Villalobos pled

guilty to fraud for helping hijackers obtain identification documents. And approximately 1200 airport workers have been charged with falsifying documents and violating immigration laws as the result of investigations conducted at more than 45 airports nationwide.

Mr. Chairman, as you can see, the Justice Department has taken every possible step, used every tool at its disposal, and employed every authority under the law to prevent acts of terrorism and to protect innocent American lives. I assure you that we will continue to fulfill our duty with enthusiasm, and with a profound respect for this country's tradition of civil rights and liberties.

Before closing, I want to thank FBI Director Mueller and the men and women of the FBI and the Department of Justice for their tireless work to defeat terrorism and defend freedom. I also want to thank Director Tenet and Secretary Ridge for their teamwork and dedication to the American people. And finally, Mr. Chairman, I want to thank you very much for your unwavering leadership on these important issues. I know I speak for my fellow panelists in saying that this hearing affords us a valuable opportunity to assure the American public that its public servants are doing everything in our power to protect our nation.

I would be pleased to respond to your questions.

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

March 4, 2003 Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Hearing on

"The War Against Terrorism: Working Together to Protect America"

Good morning and welcome to the Committee's important hearing examining the war against terrorism and the coordinated efforts of the Department of Justice and the Department of Homeland Security to protect America. I first want to welcome our three distinguished witnesses who are here before us today. It is indeed an honor to have before the Committee, Attorney General John Ashcroft, Secretary Tom Ridge, and Federal Bureau of Investigation Director Bob Mueller. I understand that each of you is extremely busy, and I want to express my appreciation to you for appearing before us today.

I also want to take a moment to acknowledge Secretary Ridge's appearance here since it is his first occasion to testify before this Committee since his confirmation as Secretary of the new Department of Homeland Security. I am happy to see you here before our Committee.

Today's hearing will focus on the war against terrorism and coordinated efforts to disrupt and disable terrorist organizations, and to protect our country from terrorist attacks. I am committed to legitimate oversight to examine critical issues relating to our country's war against terrorism. Senators Leahy, Grassley and Specter issued an oversight report last week on issues surrounding the Foreign Intelligence Surveillance Act, and I have responded to the Senators providing certain observations on that report. It is my hope that in the coming months that Director Mueller can return before the Committee to address significant oversight issues surrounding FISA. I believe there are important issues relating to implementation of the November 18, 2002 Foreign Intelligence Review Court's decision, as well as internal Justice Department and FBI reforms, which this Committee should address in greater detail at a later oversight hearing.

We all recognize these are challenging times for our country, and that the American public appreciates your leadership, commitment and heroic efforts to protect our country and our people from devastating terrorist attacks.

Your efforts to win this war have borne fruit on many, many occasions. Just last Saturday, United States law enforcement and intelligence agents, working together with Pakistani

agents, captured a significant Al Qaeda terrorist, Khalid Sheik Mohammed, the Al Qaeda senior lieutenant who served as the operations manager and alleged mastermind behind the September 11th attacks, as well as numerous other deadly attacks against Americans worldwide. This latest success is indeed significant – it represents a striking example of the President's and this Administration's coordinated efforts in the global war against terrorists. The apprehension of Khalid Sheik Mohammed is just one more success in a string of successes by you and others in the law enforcement and intelligence communities aimed at disrupting and eliminating Al Qaeda from the face of this earth. I want to commend each of you, as well as the many hard-working agents who are fighting this global war, for this latest success.

Even with this recent accomplishment, however, I recognize that there is more to be done. Now it goes without saying that Americans are experiencing very trying and anxious times. It has been almost a year and a half since terrorists attacked our country, killing almost 3000 people. The enemy is unlike any we have ever faced before – deadly well-financed international terrorists whose tentacles reach into every corner of the globe and who are ready to give their lives to attack and destroy America. Make no mistake – the threat to our country continues today: terrorist organizations exist within our borders and throughout the world; they are fanatics committed to the destruction of America; and will do anything to harm our country and our people.

To overcome this continuing threat, we all must work together. Throughout our country's history, our people, its leaders, and Congress have demonstrated time and time again that when we work together – when we harness the full energy and commitment of our country – we can overcome any adversity or any enemy to our people.

Here in Congress, we have worked together to defeat the terrorist enemy and make our homeland safe and secure. Shortly after the September 11th attack, the Administration showed leadership by sending comprehensive anti-terrorism legislation to Congress. We put aside partisan differences and passed the PATRIOT Act with a nearly unanimous vote in the Senate. That Act provides the Justice Department with much-needed tools to combat terrorism. It was a measured response that balanced the need to protect American lives with the need to preserve our cherished liberties. Despite the dire predictions of some extremist groups, the PATRIOT Act has not eroded the civil liberties that we hold dear as Americans. On the contrary, the PATRIOT Act is enabling the Justice Department, the FBI and the Department of Homeland Security to save American lives and protect what is perhaps the most important civil liberty: the freedom from future terrorist attacks.

Last year, Congress also worked together on the president's proposal to create a new Department of Homeland Security. Once partisan disputes were put aside, the new agency was created, consolidating various functions throughout our government into a single department dedicated to protecting our homeland. This past weekend, on March 1, over 170,000 employees from over 20 separate agencies were transferred to the new Department of Homeland Security. Again, I want to commend you Secretary Ridge and express my commitment to work with you and others at the new Department to face the coming challenges.

Under the leadership of our distinguished witnesses, the Justice Department, the Department of Homeland Security, the FBI, and other agencies in the government, have worked to make our citizens safer. As we recognize here in Congress – and as the American people should know – every day, through your efforts, you save American lives. Now, I know that you cannot trumpet each and every one of your successes without compromising sensitive intelligence, covert operations and strategic planning. But you have demonstrated since September 11th that you will employ a variety of legal techniques to win the war against terrorism by: (i) capturing Khalid Sheik Mohammed and other top Al Qaeda operatives in order to disrupt terrorist operations worldwide; (ii) using FISA surveillance authority to gain intelligence or execute search warrants against members of terrorist organizations; (iii) prosecuting members of terrorist cells in Buffalo, Portland or Seattle; (iv) apprehending and disabling a lone-wolf terrorist planning to detonate a dirty bomb; (v) disrupting the flow of funds that are the lifeblood of terrorist groups; (vi) sharing intelligence information among each other to identify terrorists or protect vulnerable targets; (vii) securing our homeland from cyber attacks which could have a devastating impact on our information infrastructure; and (viii) apprehending terrorists before they can carry out their deadly plans by implementing an entry-exit registration system and increasing enforcement of our immigration laws.

Yet we hear little in the media recognizing your efforts. Instead, so-called civil liberties groups that oppose the Administration and Congress' efforts make shrill attacks against the very people who are protecting our cherished freedoms. I do not share their view. Of course, we must, and will, adhere to the requirements of our Constitution; however, we should not impose burdens and restrictions which go far beyond constitutional requirements when doing so only provides refuge for criminals and terrorists committed to taking American lives at any cost.

I have said before, and will say again, this Committee will assure that the Justice Department, the Department of Homeland Security, and the FBI are fulfilling their important missions within the four corners of the Constitution, whether this means that reforms need to be implemented or deficiencies need to be corrected. But the Committee will focus its oversight efforts on forward-looking and objective examinations that will fix real problems.

Terrorist fanatics are committed to destroying our country and will use any means to accomplish their goal. Their means to their gruesome ends will evolve. Their tactics will change. And our ability to respond must evolve and must embrace new tools, and new approaches. We must ensure that law enforcement, intelligence and homeland security agencies are given the tools and resources needed to protect our country.

I look forward to hearing each of your assessments of our country's global war against terrorism, your efforts to implement initiatives and programs needed to protect our country, and your ideas of areas where more is needed to address current needs. I do so in the hope of continuing our bi-partisan commitment to enacting measures to win the war against terrorism and make our country safe. My commitment to working together is unwavering and I will do whatever is necessary. The American people expect nothing less from us.

Thank you, and I will turn to the Ranking Minority member, Senator Leahy, for his opening statement.

# # #

PREPARED STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Even with the good news of this weekend's arrest of Al Qaeda leader, Khalid Sheikh Mohammed, some have predicted that another major terrorist attack is inevitable. Preventing the seemingly inevitable is a daunting task and yet we need to do all we can to succeed. Today we will assess the progress we have made to prevent a future attack and discuss ways to make this country a safer place.

For example, we need to do a better job helping state and local government protect our communities. These agencies are responding by coordinating their infrastructures, forming task forces, and upgrading their communications capabilities. But we all know that state governments across the country are facing serious budget crises. Wisconsin is one of those states and officials there are wondering how the federal government plans to help the state prepare for a possible terrorist strike.

Another ways to assist state and local law enforcement is to provide them with more targeted information under the Homeland Security Advisory System. Different regions of the country will face different threats at different times. We can help them prepared accordingly to assess threats and targets if the federal government gives them more specific information and the training to use it effectively.

In addition it is far too easy for terrorists to obtain certain chemicals and poisons—such as ammonium nitrate or cyanide—that can be used to launch a devastating terrorist attack. We need to do more to ensure that the wrong people do not get a hold of these substances. I look forward to working with this panel to get it right.

Finally, while we pass more laws, we must be mindful that our best intentions will lead to failure if we do not consider the impact of these new laws and regulations on our freedoms.

Thank you.

U.S. SENATOR PATRICK LEAHY

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Statement of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Hearing On
"The War Against Terrorism: Working Together to Protect America"
March 4, 2003

This is our first oversight hearing of the 108th Congress, and I want to thank the Chairman for organizing this session, which I hope will be the first of a series of hearings that will build on the productive oversight activities we began in the last Congress, including the first comprehensive oversight of the FBI in decades.

I first want to note that we are holding this hearing on domestic anti-terrorism efforts at an auspicious time.

The CIA and its dedicated field operatives in Pakistan have achieved a major triumph in our struggle against terrorism, with the capture earlier this week of Khalid Shaikh Mohammed, the suspected mastermind behind the 9/11 attacks. Our people in the field work in difficult and dangerous conditions, and we owe them a profound debt of gratitude.

This is a complex struggle being fought on many fronts, and that is why our hearing this morning is so important.

Need for Oversight

Our oversight duties are at the core of our constitutional responsibilities to the American people. It is sometimes said that in war, and in emergencies, democracy is the first casualty. Our Constitution, with its separation of powers, was designed to prevent that. Our Founding Fathers created the Senate as a check on Executive power. The American people don't just want to feel safer; they want to be safer, and congressional oversight helps improve government's effectiveness and accountability.

As part of this process, last week Chairman Grassley, Chairman Specter and I released a detailed report based on the oversight that the Judiciary Committee conducted in the 107th Congress. That report distilled our bipartisan findings and conclusions from a wide range of detailed hearings, classified briefings and other oversight activities. What we found over that two-year effort underscores the pressing need for continued reform of the FBI.

I had urged the Chairman to make this an all-day hearing, and I regret that we will have so little time this morning for exchanges with our three distinguished witnesses. There certainly is enough ground to cover to justify Senator Specter's suggestion to the Chairman that each of our

witnesses appear in separate hearings. As Senator Specter said on the floor last week, having all these important witnesses on a single panel practically guarantees that the hearing "will not exactly be fruitful."

I also hope that we will hear soon from other voices so that we can better assess, for example, whether state and local law enforcement agencies and other first responders are getting the information and resources they need to protect against terrorist attacks on American soil, as well as how federal law enforcement authorities are using the new government powers delineated by the USA PATRIOT Act.

First Responders

When terrorists strike, first responders are and will always be the first people we turn to. We put our lives and the lives of our families and friends in the hands of these officers, trusting and knowing that when called upon they will protect our families and secure our communities. On September 11, the first lifesavers on the scene at the World Trade Center and at the Pentagon were our heroic firefighters, police officers and rescue workers. Many of these real-life heroes made the ultimate sacrifice to save others. Their heroism will always remind us of how important it is to support our state and local public safety partners. During the past two years, we have asked our first responders to defend us as never before on the front lines against the dark menace of domestic terrorism. They have been asked to be the federal government's vanguard partners against terrorism, but this partnership has largely become a new unfunded mandate on them and on our communities and states.

It has been enormously frustrating to them and to those of us in Congress who have advocated on their behalf to encounter, first, a stone wall of silence from the Administration about its intentions to honor the increasingly desperate requests for first-responder funding, and later, a constant undercurrent of resistance to the meager help that we have begun to provide.
We read almost daily about the Administration's apparent eagerness to provide untold billions of additional dollars for foreign governments in the war on terrorism.

But our first responders are told to make do with a small fraction of those sums.

Last month, the President signed an omnibus appropriations law that again shortchanged first responders. With the White House staff looking over the shoulders of Republican congressional negotiators on the bill, the made cuts, line by line, from the level of first-responder funding that the Senate Appropriations Committee and the full Senate had unanimously approved last year.
The Office of Domestic Preparedness (ODP) equipment grants dropped from $1.047 billion to $410 million – a cut of $637 million. ODP training grants were cut by $50 million, and exercise grants were slashed by 50 percent.

Spending for firefighters was cut by $150 million. In total, the Omnibus Appropriations bill cut nearly $1 billion in funding for federal programs that directly assist first responders.
These reductions are unfathomable, and they are inexcusable. No federal agencies are doing the jobs that we need first responders to do.

The federal government knows that and is asking first responder agencies to carry much of the load of the nation's new homeland security mission. The federal government should also do a decent job of helping states and towns perform this mission.

The Administration initially praised the little that the omnibus spending bill does for first responders, but in recent days the White House has backtracked from that.

In recent days, the President has seemed to acknowledge that domestic counterterrorism programs have been shortchanged.

But real progress at the moment still seems elusive. The President's FY 2004 budget proposals for the Departments of Justice and Homeland Security *continue* to shortchange what we need to prevent and fight domestic terrorism.

The centerpiece of the President's new budget plan, for example, is the elimination of taxes on corporate dividends, costing about $364 billion over the next decade. Yet the Administration cannot find even mere $5 billion of that sum in his FY 2004 budget plan for the nation's first responders.

I am encouraged by reports I have heard that the President this week will expedite the release of a small portion of the Office of Domestic Preparedness grants for this fiscal year, and that will help our first responders.

But the money that the President reportedly plans to release is not new; these are funds that Congress already appropriated for Office of Domestic Preparedness grants. Quick turnaround of these funds will help, but adequate resources for our first responders will help far more. First responders were among our first casualties in this new war. Since then, our demands on first responders have been heavy, and unrelenting. They are overworked and exhausted. They are doing their duty, and we need to do ours, by helping them as they help us. I will be asking our witnesses to help us to include $5 billion in his upcoming supplemental budget request to support our nation's police officers, firefighters and emergency personnel – our first responders.

DOJ Secrecy in Drafting Sequel To USA PATRIOT Act

Last month, a secret draft bill entitled the "Domestic Security Enhancement Act of 2003" was leaked to the press and posted on the Web. This is the so-called sequel to the USA PATRIOT Act.

It was not the first time in the last two years that members of this Committee have learned what the Justice Department is doing by reading about it in the morning paper. Unfortunately, the Department – and the entire Administration – prefers to shroud its every move in secrecy. For months, Department officials have hidden the fact that they were drafting another anti-terrorism package.

A member of my staff called the Department just *five days* before the draft bill was leaked, after hearing yet another rumor of its existence; she was told point-blank that there was no bill in the works. Five days later, we have an 86-page bill and 33-page sectional analysis. That was either some very fast work by the Department, or an out-and-out misstatement. I hope the Attorney General will have an explanation for us this morning.

The substance of the proposal, as leaked, mirrors the secretive and autocratic process with which it was produced. We do not yet know whether we went too far, or not far enough, in authorizing new government powers in the USA PATRIOT Act, both because it has been little over a year since its passage, and because the Administration has been exceptionally uncooperative with the Senate and House oversight committees about how it is using these new powers.

Yet the leaked proposal would go much farther in granting the government more surveillance powers over American citizens, while drastically curtailing the ability of Congress, the courts and the American people to find out what the government is doing.

Whatever this stealth bill is ultimately called, let it not be called "USA PATRIOT II." There is nothing patriotic about the secret, evasive, partisan and divisive process that produced it.

If there is going to be a sequel to the USA PATRIOT Act, the process of writing it should be open and accountable. We should have a free and open debate about any additional powers that law enforcement may need to preserve Americans' security, and any additional checks on the powers of law enforcement that may be needed to preserve Americans' fundamental liberties. Good ideas will prevail in such a debate, and bad ideas will be rejected. That is the American way.

I urge the Justice Department to consult with us – with Republicans and Democrats, together – before, not after, any proposals are formally transmitted to Congress.

Homeland Security/Reorganization

I think that all of us on this Committee can agree that Secretary Ridge faces a daunting task in bringing together so many disparate agencies into one cohesive Department.

I believe he has the talent and the energy that will be so important in meeting this challenge, and I am eager to hear of his plans, particularly as they pertain to securing our borders.
We must be sure not to accept simply the appearance of progress when real improvements in our safety are needed. Coordinating the work of the various government agencies that are responsible for different aspects of homeland security is an important step forward.

But reorganization alone will not make us safer. Our borders remain vulnerable, and we must invest both in new personnel and in retaining the personnel who have worked with such dedication over the last year and a half to prevent those who would harm us from entering our nation.

I am concerned that the President's budget – with an increase of less than 3 percent for border security – fails to provide the resources we need, especially considering the transition costs that will inevitably arise from the merger of INS, Customs, and other agencies.

Senator Daschle and I, along with several other Democratic Senators, have proposed authorizing additional border security personnel in S. 22, the Justice Enhancement and Domestic Security Act of 2003.

I will want to know whether Secretary Ridge supports this approach and whether he will work with us to see that provision enacted, or whether he thinks that the status quo is sufficient.

Conclusion

I again thank the Chairman for holding this hearing, and I look forward to hearing from our witnesses. I will submit my full statement for the record.

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TESTIMONY OF
ROBERT S. MUELLER III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

March 4, 2003

Good morning Chairman Hatch, Senator Leahy, and Members of the Committee.

In a recent appearance at FBI Headquarters, President Bush re-emphasized to all FBI employees that "the FBI has no greater priority than preventing terrorist acts against America." Since the attacks of September 11, 2001 the FBI has embraced this challenge and transformed itself to address the current threat facing this country.

Before I outline for the Committee the advances the FBI has made in the past 18 months, I want to assure the American people and the members of this Committee -- who played such a vital role in enhancing the FBI's counterterrorism efforts through the USA Patriot Act -- that the FBI is committed to carrying out its mission in accordance with the protections provided by the Constitution. Every FBI agent is trained to recognize that the responsibility to respect and protect the law is the basis for their authority to enforce it. Respect for Constitutional liberties is not optional, it is mandatory. The FBI could not be effective -- and would not exist -- without it.

The FBI's efforts to identify and dismantle terrorist networks have yielded major successes over the past 18 months. We have charged over 200 suspected terrorists with crimes -- half of whom have been convicted to date. The rest are awaiting trial. Moreover, our efforts have damaged terrorist networks and disrupted terrorist plots across the country. In the past month alone, the FBI has arrested 36 international and 14 domestic suspected terrorists;

Last month, I testified before the Senate Select Committee on Intelligence that the Al-Qaeda network will remain for the foreseeable future the most immediate and serious threat facing this country. While this remains true, the arrest of Khalid Shaikh Mohammed, or KSM, in Pakistan only three days ago is a significant blow to the leadership of the Al-Qaeda network. While Osama Bin Ladin maintains worldwide name recognition as the leader of Al-Qaeda, KSM is the operational mastermind. His terrorist plots -- believed to include the 1993 World Trade Center bomb delivered by truck, the USS Cole bomb delivered by boat, and the September 11th terrorist attacks delivered by air -- have resulted in the death of thousands of innocent people. We will never know the number of lives saved by taking this man into custody.

I would like to congratulate and thank our Pakistani partners on this major victory in the war on terrorism. I assure you that any and all resources of the FBI will be brought to bear to exploit the intelligence formation that becomes available as a result of this arrest.

We will not lose sight, however, of the fact that there are many groups committed to international jihad which offer Al-Qaeda varying degrees of support. Nor will we discount the threat from single individuals sympathetic or affiliated with al-Qaeda, acting without external support or surrounding conspiracies.

And despite the arrest of Khalid Shaikh Mohammed, Al-Qaeda and other terrorist networks are adept at defending their organizations from US and international law enforcement efforts. As these terrorist organizations evolve and change their tactics, we, too, must evolve. Accordingly, the past 18 months have brought momentous changes to the FBI -- including the incorporation of an enhanced intelligence function -- that will better enable us to defend against the terrorist threat.

ADAPTING TO MEET THE EVOLVING TERRORIST THREAT

Mr. Chairman, to effectively wage this war against terror, we have augmented our counterterrorism resources and are making organizational enhancements to focus our priorities. I would like to review some of those changes with the Committee, beginning with the FBI's analytical program.

Analytical Program

- To give new focus to analysis, last year I created an Analysis Branch in the Counterterrorism Division and assigned it the mission of producing strategic assessments of the terrorism threat to the United States. To date, the Analysis Branch has produced nearly 30 in-depth analytical assessments.

- Since 9/11, the FBI has increased the number of CT analysts by 61 percent. Through FY04, our proposed increase will result in quadruple the number of analysts that we had pre-9/11. Recognizing that we could not get to where we needed to be overnight, Director Tenet detailed 25 of his analysts to the FBI to provide an immediate infusion of expertise into our program while our hiring initiative is underway.

- We have also implemented a number of initiatives aimed at enhancing training for our analytic workforce, including creating the College of Analytical Studies, which, in conjunction with the CIA, has begun training our new intelligence analysts. By the end of the year, we expect over 200 analysts to have completed the six-week training course.

Executive Assistant Director for Intelligence

- These improvements to our analytic program had to be made quickly to address our immediate needs. I now want to ensure our ability to collect and analyze intelligence for the long term.

- The centerpiece of this effort is the establishment of an Executive Assistant Director for Intelligence who will have direct authority and responsibility for the FBI's national intelligence program. Specifically, the EAD/I will be responsible for ensuring that the FBI has the optimum strategies, structure, and policies in place first and foremost for our counterterrorism mission. The EAD/I will also oversee the intelligence programs for our counterintelligence, criminal, and cyber divisions. He or she will also ensure that we are sharing information with our federal, state and local partners.

- Furthermore, intelligence units staffed with Reports Officers will be established in every field office and will function under the authority of the EAD/I. The Reports Officers will be responsible for identifying, extracting, and collecting intelligence from FBI investigations and sharing that information throughout the FBI and to other law enforcement and intelligence entities.

Specialized Counterterrorism Units

To improve our system for threat warnings, we have established a number of specialized counterterrorism units. These include:

- CT Watch, a 24-hour Counterterrorism Watch Center, to serve as the FBI's focal point for all incoming terrorist threats;

- The Communications Analysis Section to analyze terrorist electronic and telephone communications and identify terrorist associations and networks;

- The Document Exploitation Unit which identifies and disseminates intelligence gleaned from million of pages of documents or computers seized overseas by intelligence agencies;

- The Special Technologies and Applications Section to provide technical support for FBI field office investigations requiring specialized computer technology expertise and support;

- The interagency Terrorist Financing Operations Section devoted entirely to the financial aspects of terrorism investigations and liaison with the financial services industry;

Information Sharing and Operational Coordination Initiatives

If we are to defeat terrorists and their supporters, a wide range of organizations must work together. I am committed to the closest possible cooperation with the Intelligence Community and other federal government agencies and our essential partners at the state and local level.

- Joint Terrorism Task Forces (JTTFs)
  We are taking steps to enhance cooperation with federal, state, and local agencies by expanding the number of JTTFs from 35, as of 9/11, to 66 today. The JTTFs partner FBI personnel with hundreds of investigators from various federal, state, and local agencies in field offices across the country and are important force multipliers aiding our fight against terrorism.

  Furthermore, over a 90-day period beginning in March, we will provide 500 JTTF agents and state, and local law enforcement personnel with specialized counterterrorism training and, by the end of the year, basic counterterrorism training to every JTTF member. This is in addition to the training initiative I mentioned previously that will reach nearly 27,000 federal, state, and local law enforcement.

- The National JTTF
  In July 2002, we established the National JTTF at FBI Headquarters, staffed by representatives from 30 different federal, state, and local agencies. The NJTTF acts as a "point of fusion" for terrorism information by coordinating the flow of information between Headquarters and the other JTTFs located across the country and between the agencies represented on the NJTTF and other government agencies.

- JTTF Training
  To strengthen our cooperation with state and local law enforcement, we are introducing counterterrorism training on a national level. We will provide specialized counterterrorism training to 224 agents and training technicians from every field division in the country so that they, in turn, can train an estimated 26,800 federal, state, and local law enforcement officers this year in basic counterterrorism.

- JTTF Information Sharing Initiative (JTTF ISI)
  The JTTF ISI involves field offices in St. Louis, San Diego, Seattle, Portland, Norfolk, and Baltimore. This pilot project, which was first initiated in the St. Louis office, will integrate extremely flexible search tools that will permit investigators and analysts to perform searches on the "full text" of investigative files—not just indices. An analyst or investigator will be able to smoothly transition from searching text, to reviewing results, to examining source documents, to developing link diagrams, to generating map displays. In order to ensure proper

security, four graduated levels of security access are being built into the system.

- The Office of Law Enforcement Coordination (OLEC)
  The OLEC was created to enhance the ability of the FBI to forge cooperation and substantive relationships with all of our state and local law enforcement counterparts. The OLEC, which is run by a former Chief of Police, also has liaison responsibilities with the White House Homeland Security Council.

- The FBI Intelligence Bulletin
  The Bulletin, which is disseminated weekly to over 17,000 law enforcement agencies and to 60 federal agencies, provides information about terrorism issues and threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public, contacts which could result in the discovery of critical information about those issues and threats.

- Outreach
  Furthermore, FBI analysts are making unprecedented efforts to reach out to the intelligence, law enforcement, government, and public sector communities. In addition to enhancing our relationships with agencies related to WMD, as I mentioned previously, we have established working relationships with a host of non-traditional agencies, including the Army Corps of Engineers and Bureau of Land Reclamation. We have also expanded our relationship with such groups as the Transportation Security Administration and the US Coast Guard.

FISA Reforms

- We created a FISA Unit responsible for ensuring that FISA applications move expeditiously through the FISA process. This unit is developing and implementing an automated FISA management system, and it oversees the expeditious distribution of FISA Court orders and warrants to the appropriate field offices, telecommunications carriers, Internet service provides, and other specified persons. With the FISA management system on line, we will have the ability -- for the first time -- to transfer FISA applications between the field offices, FBI headquarters, and the Office of Intelligence Policy and Review in a secure electronic format and to monitor the progress of each application to prevent the processing delays that have, at times, been a source of frustration for our investigators.

- The FBI's National Security Law Unit and the Department's Office of Intelligence Policy and Review are collaborating on a number of procedural and legal initiatives that are streamlining and simplifying the process by which FBI agents obtain FISA authority.

- Since September 11, 2001, attorneys from the National Security Law Unit have conducted approximately 70 training sessions on FISA-related issues. These sessions, which have been held at Quantico, at Headquarters, and in the field, have been attended by agents and supervisors in groups as small as twenty and as large as several hundred. In addition, we are in the process of implementing the Deputy Attorney General's mandate to establish a comprehensive training curriculum on FISA and related matters for all Justice Department lawyers and FBI agents who work on foreign intelligence and counterintelligence investigations. This curriculum is being compiled by DOJ's Criminal Division and Office of Intelligence Policy and Review, and the FBI, in consultation with the CIA and the Department's Office of Legal Education (OLE). The training will cover, among other things: the role and function of the FISA Court; the definitions of critical terms and concepts, such as "foreign power," "agent of a foreign power," "foreign intelligence information," and "probable cause"; FISA's new "purpose" and "coordination" provisions; the process of generating a FISA application and obtaining an order from the FISA court; and the proper minimization, use and sharing of FISA-derived information.

- Since September 11, 2001, we have made full -- and very productive -- use of the emergency FISA process whereby we can often establish electronic surveillance within hours of establishing probable cause that an individual is an appropriate FISA subject. Thanks to the efforts of our agents and the attorneys in NSLU and OIPR, in the one year period from September 11, 2001 to September 19, 2002, we have obtained 113 emergency FISAs, compared to the 46 emergency FISAs we obtained in the prior 23 years since the FISA statute came into existence.

Other Initiatives

- To prevent terrorists from acquiring Weapons of Mass Destruction, we have undertaken a number of initiatives. We are coordinating with suppliers and manufacturers of WMD materials in an effort to help them voluntarily report any suspicious purchases or inquiries.

- To protect US citizens abroad, we have expanded our Legal Attache and Liaison presence around the world to 46 offices. Our presence has enhanced the FBI's ability to bring investigative resources to bear quickly in the aftermath of terrorist acts, such as the October 2002 shooting of USAID officer Laurence Foley in Amman and bombing of a disco in Bali. We also assist foreign liaison in following up terrorist leads around the world.

- To augment local field office investigative capabilities, Flying Squads were established to provide for specialized personnel to respond to fast-breaking situations and provide a surge capacity in support of FBI Rapid Deployment Teams.

The counterterrorism measures I have just described essentially complete the first phase of our intelligence program. We are now beginning the second phase that will focus on expanding and enhancing our ability to collect, analyze, and disseminate intelligence.

Information Technology

We are also addressing the shortcomings of the Bureau's information technology. Over the years, we have failed to develop a sufficient capacity to collect, store, search, retrieve, analyze and share information. Mr. Chairman, you are aware of problems the FBI has experienced because of outdated technology. Thanks to support from Congress, the FBI has embarked on a comprehensive overhaul and revitalization of our information technology infrastructure. That process is well under way, but our technological problems are complex, and they will be remedied only through careful and methodical planning and implementation. We have made progress in the past 18 months, and we have laid the groundwork for significant progress in the months and years ahead.

- The Trilogy Program.
  The first major step in the right direction is our Trilogy Program. The Trilogy Program was designed as a 36-month effort to enhance our effectiveness through technologies that facilitate better organization, access and analysis of information. The overall direction of the Trilogy Program is to provide all FBI offices with improved network communications, a common and current set of office automation tools, and easy-to-use, re-engineered, web-based applications.

  The original plan for Trilogy was development and deployment over 36 months from the date of the contract awards for the infrastructure and applications development, May and June 2001, respectively. The events of September 11, 2001 impacted many aspects of the FBI, including the Trilogy Program. Recognizing the urgent need for improved information technologies, I ordered that Trilogy implementation emphasize those capabilities most urgently needed to support the FBI's priority cases. The resulting improvements are significant.

  - The infrastructure enhancements required to support Trilogy are in place. This architecture includes new network printers, color scanners, local area network upgrades, desktop workstations, and Microsoft Office applications.

- The full upgrade will provide wide area network connectivity, new encryption devices to protect our data and new operating systems and servers. Completion of these activities is expected by the end of this month.

- We also recognized that, outside of the Trilogy Program, we have a critical need to share Top Secret and Sensitive Compartmented Information (TS/SCI) data internally, primarily among analysts. We are planning a phased implementation at FBI Headquarters followed by deployment within the Intelligence Community of a system that will markedly increase our ability to conduct strategic analysis.

TERRORIST THREAT INTEGRATION CENTER (TTIC)

Mr. Chairman, I would like to take this opportunity to pledge my strong support for the President's initiative to establish a Terrorist Threat Integration Center (TTIC) that will merge and analyze terrorist-related information collected domestically and abroad. This initiative will be crucially important to the success of our mission in the FBI, and it will take us to the next level in being able to prevent another terrorist attack on our nation.

TTIC will focus on terrorist threat analysis. It will not conduct collection, though it will establish requirements for agencies. The TTIC proposal does not authorize any additional collection of any kind. TTIC will analyze information both foreign and domestic to provide a comprehensive threat picture.

TTIC participants will continue to be bound by all applicable privacy statutes, Executive Orders, and other relevant legal authorities for protecting privacy and our Constitutional liberties.

Information technology and information handling procedures will be designed consistent with the protection of our Constitutional liberties, and participants will continue to be answerable both to internal agency oversight and Congressional oversight.

TTIC will institutionalize the process we currently go through to produce the Daily Threat Matrix. As it becomes fully operational, it will be the focal point for requests for terrorist threat analysis.

The FBI views the TTIC as an important resource. The TTIC will provide all-source, integrated analysis to the FBI, DHS, and other federal intelligence and law enforcement agencies, which, in turn, can quickly share the analysis with state and local law

enforcement who are essential partners in the fight against terrorism. We recognize that the two-way flow of information between federal and local law enforcement is necessary to continuously sharpen both the collection and analysis of threat-related information. Once again, the dozens of FBI JTTFs around the country provide an effective channel to share the TTIC's analytical products with our partners in state and local law enforcement. The FBI is committed to working with the Department of Homeland Security to push information and analysis out of the TTIC to other federal agencies, and to state and local officials.

TTIC will be headed by a senior U.S. Government official, who will report to the Director of Central Intelligence. This individual will be appointed by the Director of Central Intelligence, in consultation with the Director of the FBI and the Attorney General, and the Secretaries of Homeland Security and Defense.

As soon as an appropriate facility is available, the FBI's Counterterrorism Division, the Director of Central Intelligence's Counterterrorist Center, and TTIC (which will include significant participation by DHS), will relocate to a single new facility in order to improve collaboration and enhance the government's ability to thwart terrorist attacks and bring terrorists to justice.

Co-location of the CIA's and FBI's counterterrorism operational elements will:

- Speed the creation of compatible information infrastructure with enhanced capabilities, expanded and more accessible databases, and greater network sharing on counterterrorism issues.

- Enhance interaction, information sharing, and synergy among U.S. officials involved in the war against terrorism.

- Potentially allow the FBI and CIA each to manage more effectively their counterterrorism resources by reducing overhead and redundant capabilities.

- Further enhance the ability of comprehensive, all-source analysis to guide our collection strategies.

Co-location will afford greater opportunity for the FBI and the Intelligence Community to enhance the coordination of operations against terrorist targets inside and outside the United States. For this reason, the FBI strongly supports and looks forward to the expeditious implementation of plans to co-locate the FBI's Counterterrorism Division (CTD) with the CIA's Counterterrorism Center (CTC), the Department of Homeland Security, and other U.S. agencies participating in the TTIC.

Mr. Chairman, let me conclude by saying that the nature of the threats facing the US homeland continues to evolve and so does the FBI. We have made significant strides towards enhancing our operations and I appreciate the opportunity to explain those to the Committee today. While we have come a long way in the past 18 months, we have a long way yet to go. I look forward to working with the Committee in the months ahead to further enhance our ability to combat terrorism and to ensure the strongest, most effective FBI possible.

Statement of
Secretary Tom Ridge
Department of Homeland Security
Before the Senate Committee on the Judiciary
March 4, 2003

Mr. Chairman, Senator Leahy, distinguished members of the committee. It is a distinct pleasure and privilege to appear before you today in what is my first opportunity to testify before the Congress as the Secretary of Homeland Security. I appreciate the opportunity to appear with my colleagues, the Attorney General and FBI Director Mueller, two distinguished public servants, and two of my closest allies in the ongoing campaign to enhance the safety and security of our American Homeland. Thank you for this opportunity to highlight the activities and accomplishments of the Department of Homeland Security over the brief 40 days since we came into being. I hope also to talk about ongoing efforts, and address future plans within the Department.

To say it has been a busy six weeks at DHS would be a profound understatement. The men and women of the Department have been, and still are, pressing forward with skill, tenacity and clear understanding of the importance of the work they do. As a result of their efforts, I am proud to say that what was little more than a bold idea and an ambitious legislative undertaking four months ago is now a real and functioning Department.

Last Saturday, the first of March, 2003, we integrated nearly two dozen agencies or entities into the Department of Homeland Security. With them came some 180,000 dedicated Federal workers who have all been serving their country with distinction from various departments within the government. This momentous milestone means that there is now real muscle on the skeleton of a department that was created back in January. With these agencies and these people come tremendous capabilities, as well as challenges. We are a Department that must now set about the business of melding this collection of capable but diverse organizations into a cohesive, effective and efficient team. And we must do it without losing focus, for even an instant, on the critical mission that is ours.

But we have not simply been waiting for March 1 to arrive. Since January we have undertaken a number of initiatives to enhance our Homeland Security today, and into the future.

In order to better protect our borders, Undersecretary Asa Hutchinson, with my strong support, has launched a well conceived and much needed plan to combine the forces of the Customs Service, the Immigration and Naturalization Service, the agricultural inspection functions of the Animal and Plant Health Inspection Service and the Federal Protective Service. His initiative, based on the vision articulated in the Homeland Security Act, combines the four entities into two, a Bureau of Customs and Border Protection, and a Bureau of Immigration and Customs Enforcement. This is an important step that will leverage the operational expertise of all those involved and move us toward a future where there will be one organizational face at our borders, instead of the current three. This realignment of resources has already demonstrated its benefit. Last week, customs, immigration and agriculture border inspectors reported to three separate port directors who in turn reported up separate chains of command to three separate cabinet secretaries. Today, these inspectors now report to one interim port director, who reports through a unified chain of command, to one cabinet Secretary.

Two weeks ago we rolled out the Department's Citizen Preparedness program. The public response has been overwhelming, with our ready.gov website receiving more than 2.5 million visits per day since becoming operational. This program provides immediate and practical guidance to the millions of Americans who, to their credit, know that preparing makes sense. I ask you to encourage your constituents to visit our web site www.Ready.gov or call 1-800-beready as an important first step in ensuring they and their loved ones are prepared for an emergency, whether it's brought on by the forces of evil, or simply the forces of nature.

As of 1 March, we have entered into a number of Memoranda of Understanding that consolidate previously dispersed, national incident support functions into DHS. We have taken responsibility and control of Domestic Emergency Support Team, the Strategic National Stockpile, and America's National Disaster Medical System and Teams. Restructuring these authorities gives the Department the ability to manage major domestic incidents by establishing a single, comprehensive, and coherent national incident management system.

More important than the accomplishments that lie behind us though are the milestones and challenges that still lie ahead.

We are beginning the budgetary cycle for Fiscal Year 2004, another first for our new Department. The President's budget, requesting some $36.2 billion dollars clearly communicates this administration's commitment to investing in our Homeland Security. It contains a 7.4% increase over the funds our agencies received in FY 03, calls for $18 billion to secure our borders, $6 billion dollars for emergencies and first responders, $829 million for assessing and preventing threats, and $803 million for science and technology. In order to ensure those, and our current funds, are properly managed we have established policies and procedures for integrating financial management and accounting functions for all our incoming organizational elements.

Also ahead of us are other challenges as well as opportunities to work more efficiently and effectively. We are making good progress on a regional structure that will help to enhance overall accountability and efficiency, but the plan is still under development. When we have a better idea how the regions will be organized we look forward to presenting a final plan to the Congress. And we are working with the Office of Personnel Management to design a personnel management system that will maximize the productivity, morale and efficiency of our most precious resource -our workforce.

We continue to build and refine our partnerships with other Federal Departments, State and Local governments and the private sector. There is no *Federal* plan that will ensure our Homeland Security, it must be a *National* plan that involves all Americans. And, it must go beyond even this, working closely with our neighbors and allies overseas, to build an international plan and an international response. We are working to build just such a plan.

While this work goes on we must continue to carefully tend to all the critical missions of the Department of Homeland Security, especially those that are not directly security related. Please be assured that we will continue to provide the level of service we have all come to expect.

We have the support of our partners, like the gentlemen who join me here today, and we have the support of the Congress, which has been critical in bringing us to this point.

The challenges before us are substantial, but we will overcome them because we must. Our American homeland is safer today than it was a year ago, but we live in dangerous times and we cannot count on times to change. That is why the Department of Homeland Security was created, that is why we are moving forward.

I appreciate the opportunity to be here today to talk about the work we are doing to make America a safer home for us, for our children and for generations to come. Thank you for inviting me to appear before you today, and I look forward to answering your questions.