

Statement
United States Senate Committee on the Judiciary
Oversight of the USA PATRIOT Act
April 5, 2005

The Honorable Charles Grassley

United States Senator , Iowa

STATEMENT OF SENATOR CHARLES GRASSLEY
UNITED STATES SENATE JUDICIARY COMMITTEE
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Mr. Chairman, thank you for scheduling this oversight hearing on the PATRIOT Act. As you may know, I have resisted efforts to make changes to the Act before it was ripe for review. Now is that time, and I'm glad we have this opportunity to discuss how effective the Act has been and if provisions of the Act need to be modified. It would also be appropriate to discuss any proposed expansion of the Act.

I appreciate Attorney General Gonzales and Director Mueller making themselves available to answer our questions. With sixteen provisions of the PATRIOT Act sunseting at the end of the year, it is fitting that the AG and FBI Director explain how these provisions have been helpful in the war against terror.

In 2001, I supported the PATRIOT Act, because I believed it provided the right balance between assisting our law enforcement agencies with the means to combat terror while also protecting the civil liberties that we Americans hold so dear. The Act struck this important balance, giving federal authorities more effective tools to fight terrorism. The Attorney General said it well in a speech before the National Association of Counties, “without security, government cannot deliver, nor can the people enjoy, the prosperity and opportunities that flow from freedom and democracy.”

Now that it is time to consider renewing the provisions of the Act that are about to sunset, we should remember that the Act has been instrumental in helping Federal authorities thwart terrorist activities since September 11, 2001. The Act has been critical to our war on terror because it made two fundamental changes to the way we do business. First, the Act tore down the wall that prevented federal law enforcement and the intelligence community from sharing information regarding terrorists. The 9/11 Commission highlighted the ill advised nature of a system where communications between agents conducting intelligence investigations and the criminal prosecution units at the Department of Justice were prevented.

The second change was updating the surveillance tools used by federal investigators in terrorism cases. We must remember that the surveillance statutes updated by the PATRIOT Act had been enacted decades ago when the rotary telephone was the primary communications technology. In some traditional criminal areas, the federal courts had sanctioned the use of new surveillance tools. In fact, many of the tools addressed in the PATRIOT Act have been in use for years in drug trafficking, child pornography, and

white collar fraud cases. It made no sense that federal law enforcement investigators would be able to use these tools in those criminal cases, but not in the war against terror. The PATRIOT Act changed this, giving federal investigators tools appropriate for the 21st century. These two changes have resulted in a more secure America, so we should think long and hard before we decide not to renew them.

In the three and a half years since the PATRIOT Act was enacted, there have been numerous terrorism-related prosecutions resulting in convictions. Virtually all of the actions taken by the Federal government under the PATRIOT Act have been reviewed by independent Federal judges with no provision in the Act being successfully challenged in federal court.

Frankly, any discussion of renewing the PATRIOT Act's surveillance provisions must of necessity include talking about oversight of the Act. Where the Congress has expanded the government's authorities to conduct surveillance, it is inherent that the Congress makes sure that the government has not misused that authority. So it is my position that any bill regarding the PATRIOT Act include adequate oversight and reporting measures. Chairman Specter, Senator Leahy, and I introduced a bill last Congress, the "Domestic Surveillance Oversight Act," to allow Congress and the public to better monitor the terrorism investigations of federal agencies. This was an important piece of legislation that should be added to any bill to renew and/or revise the PATRIOT Act.

Additionally, I am particularly proud of two legislative initiatives which I co-authored that were a part of the PATRIOT Act. Those legislative efforts helped law enforcement officials identify and detect the transfer of illicit funds by international criminals through the banking system. These provisions have helped to shut off the spigot that allows tainted money to flow through the U.S. banking system and finance terrorist activities in the United States and around the world. As the Senate considers renewal of the PATRIOT Act, I will be taking the opportunity to also discuss my Combating Terrorist Financing and Money Laundering bill. Although the Committee was unable to consider my bill during last Congress, I hope that it will be enacted this year.

Further, I am concerned about the working relationship between the FBI and other law enforcement agencies on terrorists financing investigations. In early 2003, as the Department of Homeland Security (DHS) had just begun operation, Secretary Ridge and Attorney General Ashcroft signed a Memorandum of Agreement (MOA) which terminated Operation Green Quest and transferred lead responsibility and control of all terrorist financing investigations to the FBI. Operation Green Quest began shortly after the 9/11 attacks and was transferred from the Customs Service to Immigration and Customs Enforcement (ICE) when DHS was created. By all accounts, it was a major success, yielding 38 arrests, 26 indictments, and the seizure of \$6.8 million in terrorist assets in its first nine months of existence. Yet, the FBI succeeded in killing the program and ensuring that no similar initiative could be started by ICE in the future.

The MOA represented a significant victory for the FBI in the turf battle surrounding the creation of DHS. In theory, the MOA is supposed to preserve "the significant expertise

and capabilities of ICE” in terrorist financing investigations. However, I understand that the way this MOA is being implemented and enforced has created a disincentive in the field for ICE agents to focus their efforts on investigations related to terrorist financing. I know of at least one instance, for example, where ICE spent significant resources pursuing an investigation and coordinating with the FBI every step of the way, only to have FBI headquarters use the MOA to step-in at the last minute, demand control of the investigation, and unnecessarily delay a critical wiretap request. This delay may well have prevented the collection of vitally important information related to terrorist financing, and for what purpose? So, that the FBI can protect its turf?

I have also heard that this is not an isolated incident, that there may be other cases involving similar turf problems. Congress needs to take a hard look at this MOA and the way the FBI is enforcing it. Is it necessary to ensure a unified approach to terrorist financing investigations? Or does it simply serve to protect the interest of the FBI in expanding its own jurisdiction? As Chair of the Finance Committee, I am particularly interested in making sure that the elements of the Treasury Department, ICE, and the FBI are all working together smoothly to stop terrorist financing activity, not battling each other for jurisdiction. Therefore, I intend to inquire about some of these cases in the coming weeks. I hope that Attorney General Gonzales and Director Mueller will welcome an honest look at these questions and cooperate fully with requests for information on these issues.

Mr. Chairman, I once again want to thank you for holding today’s hearing, and of course I want to express my gratitude to the Attorney General and Director Mueller for their willingness to answer our questions today.