



Senator Feinstein Raises Concerns about the  
Justice Department's Anti-Terror Efforts  
September 13, 2004

*Washington, DC – At a hearing of the Judiciary Subcommittee on Terrorism, Technology and Homeland Security, Senator Dianne Feinstein (D-Calif.), ranking member of the subcommittee, today raised concerns about whether the Justice Department is effectively using the tools it has to combat terrorism and if it is providing adequate information to Congress about its anti-terror activities. The following is the prepared text of Senator Feinstein's statement:*

“Today the Judiciary Subcommittee on Terrorism, Technology and Homeland Security will hear testimony concerning the ‘Tools to Fight Terrorism Act of 2004,’ a bill introduced by my colleague and friend, Chairman Kyl, which incorporates the efforts of many in the Senate.

For example, Title III of the bill incorporates the ‘Anti-Terrorism and Port Security Act of 2003,’ legislation I developed with Senator Kyl last year, and, working with Senators Biden and Specter have modified to more directly address criminal justice concerns in the area of port security.

I want to take this opportunity to welcome our witnesses today, Assistant Attorney General Dan Bryant of the Office of Legislative Counsel of the Department of Justice, and Barry Sabin, the Chief of the Department of Justice's Counterterrorism Section. In addition, I want to welcome Professor Jonathan Turley of the George Washington University School of Law.

I look forward to all of your remarks on this important subject.

Before we begin, I want to briefly discuss two concerns which are highlighted by today's hearing, and hope that you will respond to them in your testimony and in your answers to our questions.

The first concern is that the Department of Justice may not be effectively using the tools it currently has available. Recent public reports of the collapse of high-profile terrorism prosecutions points towards a lack of effective prosecution, rather than a lack of tools. The tendency of the Department to loudly and publicly trumpet arrests and indictments in terrorism cases does not seem to be matched by results in prosecutions.

I believe it is critical that Congress make sure that the law enforcement and intelligence agencies have all of the necessary legal authorities to effectively and successfully investigate and respond to terrorism. But I also think it important that we not always look to increasing the legislative authorities available to law enforcement or intelligence as both the cause and solution to problems in effectively guarding against terrorism. I hope our witness will address that concern.

My second concern is one of oversight. Since September 11<sup>th</sup>, 2001 Congress has acted quickly and decisively to pass legislation which has added to the authorities available to Executive Branch agencies. Most notably, the USA-Patriot Act contained far reaching reforms and changes. That said, many of those reforms were, and remain, controversial and untested.

Specifically, sixteen provisions of the Patriot Act were of such concern that we incorporated sunset provisions into the text of the act – those sixteen are scheduled to expire at the end of 2005. I believe that is a good schedule, and should give us time to carefully consider each of those provisions. However, such consideration requires participation by the Executive Branch, most notably the Attorney General and the Director of Central Intelligence.

To that end, I have repeatedly requested that the Department of Justice undertake what I consider to be a task they should have begun without prompting – carrying out an objective, comprehensive review of the effect and efficacy of the sixteen provisions set to expire next year. I think it is not only reasonable, but prudent, to make this effort. Who knows what we will find – maybe we need to repeal some of the provisions, maybe we need to strengthen them. But the bottom line is that if we want to be safer from terrorists, we need to honestly and competently appraise, and then reappraise, the tools now available to us.

I have raised this issue numerous times, including directly speaking to the Attorney General. At least one report has been issued, but it falls far short of being a comprehensive analysis of the sunset provisions – in fact, the report, issued this past July, is simply a compendium of success stories related to the USA-Patriot Act generally.

Similarly, one of the most controversial tools available to the Department of Justice is Section 215 of the USA-Patriot Act, the so-called ‘library provision.’ Last year the Attorney General announced it had not been used. In April, my staff received a briefing on that provision (among others) and was promised by representatives from Mr. Moschella’s office that an update of the status of that section would be provided.

Then, on Friday, June 18, 2004, the *Washington Post* reported that the FBI had, in fact, sought to use that very controversial provision.

On my behalf my staff asked for a classified account of the issue raised in that story. No response was forthcoming, and two weeks ago we were notified that no response would be provided except that contained within the general quarterly report.

Such an approach is not acceptable. It does not serve the needs of our counterterrorism efforts, and it fosters a climate of suspicion and cynicism. The Attorney General has, appropriately, been given new, and more powerful, authorities to respond to the threat facing us. But those authorities are best used within the context of careful oversight

I hope our witnesses will address both these concerns, and I look forward to an interesting hearing.”

###