



U.S. Immigration
and Customs
Enforcement

February 4, 2005

News Release

DHS ASSISTANT SECRETARY DISCUSSES PROGRESS IN WAR ON TERROR AT DUKE LAW SYMPOSIUM

WASHINGTON, D.C. – Michael J. Garcia, Department of Homeland Security (DHS) Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE), delivered the keynote address at a special symposium on counter-terrorism and national security at the Duke University Law School in Raleigh-Durham, N.C., on Friday, February 4.

Garcia's remarks focused on his experience investigating and prosecuting terrorism cases as a federal prosecutor in New York in the 1990s and the role of law enforcement as a critical tool in the nation's counter-terrorism and homeland security missions.

The symposium features a distinguished group of experts who are involved with the investigation and prosecution of terrorists. The symposium is sponsored by Duke Law's Program in Public Law. A Webcast of the symposium will be available from the Duke Law Webcasts page at <http://www.law.duke.edu/webcast>.

A full symposium schedule is available online at <http://www.law.duke.edu/features/2005/terrorism.html>. A complete text of Garcia's remarks as prepared follows.

ICE

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

**Michael J. Garcia, Assistant Secretary
U.S. Immigration and Customs Enforcement (ICE)**

**Remarks As Prepared For
“Meeting the Threat: A Symposium on Counter-terrorism”
Duke University Law School
February 4, 2004**

Thank you. It is a great honor to speak with you here today at Duke’s symposium on counter-terrorism. I know many of your guests and panelists and know that each one of them could teach a course on counter-terrorism. Many of them are or have been on the front lines of investigating or prosecuting terrorists or protecting our homeland or national security.

Although I am now the Assistant Secretary for Immigration and Customs Enforcement at DHS, my own involvement in this effort started in 1993 with the bombing of the World Trade Center by Ramzi Yousef and his associates. It was, at the time, considered the single most devastating terrorist attack on U.S. soil in our history. Six people were killed.

Since then we have had a terrible education in international terrorism.

I would like to start not at September 11, 2001, now a globally recognized milestone in our war on terror, but instead will begin at a much earlier milestone, September 1, 1992 -- the day international terrorism arrived on our shores.

On that date, Ramzi Yousef and Ahmad Ajaj arrived at JFK Airport in New York from Pakistan. They traveled together from Peshawar to Karachi and then split up for the flight to New York, checking in separately and getting separate seats in first class for the flight to the United States. Then as later, terrorists believed they would get less scrutiny upfront in the aircraft.

In New York when the plane landed, there was a carefully orchestrated scene. Yousef dressed flamboyantly in a silk suit of striking colors walked off the plane, held up an Iraqi passport (in fact, a stolen blank that he had used to create his Yousef identity), and immediately claimed political asylum. He had been tortured by Hussein’s regime, he said.

Ajaj proceeded to primary inspection. He was dressed in a suit and tie with a Newsweek under his arm. He had a Swedish passport -- Sweden being a visa waiver country he needed nothing else to enter the U.S., and claimed to be a visiting journalist.

Ajaj’s Swedish passport was a stolen document that had been photo-substituted; inspectors discovered that Ajaj’s picture had been pasted over the original and sent him to secondary inspection. In secondary, his luggage was examined. He had printed and handwritten materials on terrorism -- everything from how to make pipe bombs to rockets. It was, as he would later call it, a virtual encyclopedia. He also had videotapes showing the mixing of chemicals. One had a dramatization of the bombing of a U.S. Embassy as a lead-in to the bomb-making tutorial.

He had all the necessary forms and materials for terrorist travel: five or so other passports, numerous fraudulent identification documents and back-up material such as school and other records that could be used

to create new identities. It was perhaps the most extensive collection of terrorist materials ever seized by U.S. law enforcement.

Ajaj also had his legitimate Jordanian passport which he quickly produced and with which he claimed political asylum, or more accurately, restated a claim he had made in the United States before mysteriously disappearing into Afghanistan in April 1992. Both Ajaj and Yousef claimed to be traveling alone.

Ajaj was detained and charged with passport fraud; his belongings seized and turned over to investigators.

Yousef sparked interest as well. He struck inspectors as dangerous and they recommended detention. They were overruled. Yousef was fingerprinted and photographed, given an appearance date for his immigration hearing, and sent off into the night. Six months later he and five or six co-conspirators would drive a van loaded with urea nitrate into the underground parking garage at the World Trade Center complex.

At first, the bombing was thought to be a transformer explosion. Although once it was established that it was a bombing, remarkable progress was made in the investigation, particularly remarkable in that law enforcement was so utterly unprepared for the event.

There were two JTTF squads in the FBI's New York field office (there are now 20). None of the agents had done any international terrorist investigations and most had never done any criminal investigations at all, they were from the intelligence side of the house. Some mistakes were made. For example, JTTF agents in New York returned at least half of the Ajaj terrorist kit to Ajaj's immigration lawyer a few months after his arrest on passport fraud, including letters addressed to unknown recipients that were still sealed.

As for being a multi-agency task force, there was half-hearted participation by a very few other state and federal law enforcement agencies but most of the non-FBI personnel who worked the investigation would join the JTTF immediately after the bombing.

The U.S. Attorney's office for the SDNY also lacked any experience in this arena. Of course we had no terrorism or national security unit. We had no prosecutors with experience investigating or prosecuting international terrorism. Instead the lead was given to experienced organized crime attorneys who had prosecuted major mob cases and violent drug conspiracies. And to two very junior general crimes assistants with a great deal of experience in writing complaints for cases no senior unit in the office wanted. One of those being me.

Intel agents with no terrorism cases; prosecutors with no terrorism litigation working with a statute book with no criminal laws that fit this new type of crime.

There were no terrorism statutes: such as the use of weapons of mass destruction and acts of terrorism transcending national borders – those criminal violations would be added later, after the verdicts in the 1993 bombing.

We used what was there. Primarily damaging and destroying by explosive a building used in interstate or foreign commerce. Figuring that was a safe bet with a World Trade Center. We used a statute prohibiting damaging or destroying vehicles owned by the government based on Secret Service cars destroyed in the parking garage. Some of these crimes carried death sentences with an alternative of any term of years. The death penalty provisions had all been found unconstitutional and never remedied, unlike the RICO statute.

We were left with any term of years – language that would lead to extensive litigation after sentences of 240 years were later imposed.

In our efforts to charge every crime available, we added travel act violations and even immigration fraud charges. It is not much remembered now that Mohammad Salameh was convicted, in addition to all other counts, of special agricultural worker fraud.

As I mentioned earlier the investigation was remarkably successful, despite the lack of experience in terrorism of agents and prosecutors and the absence of statutes tailored to terrorism. The case broke with the identification of the VIN number on the van that housed the bomb and tracing that rental van back to Mohammed Salameh. From there, typical association evidence such as phone, bank and travel records linked the co-conspirators together and to the crime.

After a six-month trial, all four defendants were found guilty of all charges.

It was the beginning and led to a number of changes:

- Changes for investigators: The JTTFs became more robust as a multi-agency task force and a close relationship developed between those agents and the prosecutors working terrorism cases.
- Changes for prosecutors: A new unit was formed at SDNY terrorism and organized crime; long-term commitment made not only to continuing the major investigations such as the search for other co-conspirators in WTC but cases looking into potential terrorist activity as the program became more proactive.
- Laws changed: Terrorism statutes were enacted, the death penalty statute was amended.
- And with the indictment and meticulous chronicle of the co-conspirators conduct that came out at trial, there was a realization of the need to use all of our statutes and authorities in the effort against terrorists.

This last was particularly evident in the use of immigration charges, almost all of the WTC bombers had immigration fraud

- passport fraud
- saw fraud/benefits fraud
- asylum fraud
- student visa without ever attending school
- importance of forensics, particularly explosives and chemistry and problems with the crime labs that were explored by later IG report

This was a successful prosecution against four of the WTC co-conspirators and despite the back and forth over the 240-year sentence, each will spend the rest of their life in prison.

But Ramzi Yousef, the mastermind of the 1993 WTC attack, had fled the U.S. on the night of the bombing and at the time of the verdict in that first trial remained a fugitive. It was thought he was hiding in Afghanistan where he and Ajaj had attended a terrorist training camp.

Instead, Yousef surfaced in Manila, where he had once again assembled a bomb factory. Fortunately, this time a fire had attracted the attention of the local Philippine police. Yousef, true to form, fled the country leaving behind associates who were arrested by the local authorities and eventually turned over to the U.S.

Ramzi Yousef's luck ran out a month later in Islamabad where he was captured by Pakistani officials and almost immediately extradited to the U.S. When caught, he was surrounded by improvised explosive devices, including cotton treated with an explosive compound and stuffed inside the head of a doll.

Examination of the evidence in Manila and Pakistan, particularly a detailed schedule recovered off Yousef's laptop computer, revealed that Yousef was about to launch a new wave of attacks against the United States, by planting twelve bombs aboard U.S. jetliners timed to explode while those planes were airborne and full of passengers on their way to the U.S.

There would have been two waves of near simultaneous explosions. Yousef claimed he was a few weeks away from launching this attack.

In fact, Yousef had taken a test run, planting a bomb aboard a flight from the Philippines to Japan – a successful test that killed one person and endangered the safety of a 747.

The trial of Yousef and his two co-conspirators in the airline bombing case broke new ground in terrorist investigations and prosecutions. There was no crime scene in the U.S. All evidence, all fact witnesses, had to be brought to us in District Court from overseas.

The FBI legal attaches, agents stationed overseas, played a crucial role in this investigation. From a basic routing function – routing requests from U.S.-based agents to their counterparts in the foreign countries – these agents became active investigators working with those counterparts to retrieve evidence and send it back to the U.S. And the program expanded as a result. On my first visit to Jordan, I was accompanied by the FBI legal attache covering that country; he was stationed in Rome. Now the FBI and my agency, ICE, have agents stationed in many of the countries in the Middle East and in dozens more countries worldwide.

We used the new statutes, weapons of mass destruction, acts of terrorism transcending national boundaries. It was one of the first -- if not the first -- prosecution, to do so.

We used certifications to allow us to introduce foreign business records like hotel records, without having to call custodian from overseas. The importance of those records cannot be underestimated. In the Philippines they actually kept security logs of who entered and left Yousef's building. And operators took the names and logged them for outgoing calls, both the caller and callee.

And we successfully litigated novel extraterritorial jurisdiction issues.

End of the convictions of all defendants on all counts and validation of an effort to prove a case involving an act of terrorism aimed at the U.S. from abroad where all the overt acts in that conspiracy took place overseas. It was a crime in which no Americans were killed.

One of the defendants in that case was Wali Khan Amin Shah. He was a commander in the Afghan war against the Soviets and a close associate of Osama Bin Laden. Another indicted co-conspirator in the airline bombing case, indicted in 1995 with a \$5,000,000 price tag on his head, was Khalid Sheikh Mohammed. He would, of course, go on to plot the 9/11 attacks.

The 1995 airline bombing case, was as far as I know, U.S. law enforcement's first real brush with al Qaeda and Osama bin Laden. Over the next few years bin Laden would go public with his threats against the

United States. In June 1998, bin Laden was charged, in a sealed indictment in New York, with plotting to kill Americans. In August of that year, bin Laden's East Africa cell orchestrated the simultaneous bombings of the U.S. Embassies in Kenya and Tanzania.

More than 200 were killed, mostly Kenyans and Tanzanians. Many of the dead were teenagers studying at a secretarial school across from the Nairobi embassy compound in a building that was leveled in the blast.

Four defendants stood trial in New York for these attacks. Bin Laden was charged with the embassy attacks.

This was a death penalty case for two of the four defendants -- The first one in New York in more than 30 years.

Again all the evidence was brought back to a U.S. courtroom from overseas. There were many issues regarding the use of classified information and litigation under Classified Information Procedures Act or CIPA.

We worked closely with the intelligence community and showed that their information could be either used or protected under CIPA from disclosure. It was a very productive partnership and a long way from the days when we met the CIA analysts studying the WTC bombing for the first time after the verdict.

Once again all defendants were convicted, this time on more than 300 counts. The jury in the death phase was unable to reach a verdict and, under federal law, a life sentence without parole was imposed.

One of the mitigating factors at least some of the jurors gave weight to was the idea that by not imposing the death penalty in this case we would send a message to bin Laden and other terrorists that could prevent future attacks. The date was mid-July 2001.

On September 11, eight weeks later, bin Laden gave his response. One of the FBI agents I called as a witness in the death penalty phase of that trial was on his way to the office when he saw the towers in flames. He ran in to help and was killed in the collapse. He was one of 3,000 victims. So was a man who survived the first bombing, who we interviewed as a potential witness and who would regularly attend the trial. He always said he was concerned about going back into those towers.

Are criminal investigations and prosecutions enough? Clearly not. Not now not then. Eliminating the Afghan sanctuary, a sanctuary that was the launching pad for each of the terrorist attacks I just spoke about was indispensable to the war on terror, for example. Intelligence gathering and dissemination is critical as well.

But these necessary and valuable initiatives or efforts cannot be considered mutually exclusive. In preventing attacks we do not always forego later prosecution of the conspirators. By labeling information as intelligence we do not necessarily bar it from ever being used in court.

We still must approach terrorist cells and plots, the risks of terror in the United States, with traditional law enforcement tools, albeit in new ways.

So I will take the final few minutes this afternoon to speak about what we are doing that at the new department and agency I work in now. It's a department that was formed to address the vulnerabilities exposed by 9/11.

We do that at ICE with many of the tools we realized were so valuable in the counter-terrorism fight – that is, immigration and customs laws.

We have many tools to fight terrorist financing, which is one of the most important ways to get at these conspiracies. According to 9/11 commission report, we are still not sure where the money came from for those attacks. The 9/11 attacks cost an estimated \$500,000. The first WTC attacks probably cost \$20,000.

At DHS, we take a more comprehensive approach using the old Customs financial shop. Look at unlicensed money brokers under new PATRIOT act authorities and other ways terrorists could possibly earn, move, and store assets. In one case in New Jersey, millions of dollars went through these brokers into Pakistan. There was no tracing the money overseas. ICE brought felony charges, seized money, and shut the business down.

We also enforce export control laws aimed at keeping weapons and sensitive technology out of the hands of terrorists and state sponsors of terror: violations I knew nothing about back in the days of the bin Laden embassy bombing investigation.

We address vulnerabilities in our border security exploited by alien smugglers. We go after those organizations and now, with the Customs financial crimes expertise, we seize money and other assets from these criminal enterprises. We've seized millions of dollars in Phoenix alone this past year.

ICE has a new compliance enforcement program aimed at ensuring that visitors, students or tourists, comply with the terms of their entry documents. The 9/11 Commission found that had we prior to that attack ensured some consequences for routine violations of those laws, law enforcement would come in contact with several 9/11 hijackers and might have disrupted the entire plot. We work now to ensure those consequences.

We look to investigate benefit fraud: SAW, asylum, and other benefit programs.

We use our more than 56 foreign offices around the world to help investigate what are by definition crimes that transcend borders.

Last year we used our authorities to lead more than 300 JTTF cases in the now 100 JTTF locations nationwide.

At ICE we are trying to take this comprehensive approach to the fight against international terrorism that builds on some of those lessons learned in the '90's and in the aftermath of 9/11.

Many nights I would come out of the U.S. attorney's office in lower Manhattan and see the Twin Towers lit up and I felt a certain connection to those buildings from the first case. Shortly after 9/11, I sat on a wall near Ground Zero and tried to imagine what it had been like before. I couldn't. The landscape had been irrevocably changed -- as it has changed in our fight against international terrorism.

But there are landmarks still there -- Milestone investigations and prosecutions dating back to that September night in 1992. There are lessons, successes and failures. For some we have paid a terrible price.

I am confident that we have learned, that we have improved our capabilities; I see things every day, at airports, seaports, and the border, in law enforcement generally, that show vast improvement in our security.

Balances are being struck in favor of national security in a way far different from the approach used to make the decision to release Ramzi Yousef into the United States.

I hope this brief overview of part of the history of investigating and prosecuting terrorists here in the U.S. has provided some insight into that process. As those cases progressed from the garage beneath the WTC, to an apartment in Manila, to our embassies in East Africa and back again to Ground Zero in lower Manhattan.

Once again, I am very honored to be here today. And to continue to be part of America's response to international terrorism as part of the new DHS.