

U.S. SENATE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON TERRORISM, TECHNOLOGY, AND HOMELAND  
SECURITY

HEARING — “A REVIEW OF THE TOOLS TO FIGHT TERRORISM ACT”

SEPTEMBER 13, 2004

STATEMENT OF CHAIRMAN KYL

Good morning, and welcome to today’s hearing of the Senate Judiciary Committee’s Subcommittee on Terrorism, Technology, and Homeland Security. This hearing will focus on S. 2679, the Tools to Fight Terrorism Act, a bill that I recently introduced with several other members of this Committee and the Senate leadership.

Since the terrorist attacks of September 11, congressional committees and executive agencies have conducted extensive reviews of our nation’s antiterrorism safety net. We’ve had numerous hearings in the House and Senate Judiciary Committees, a Joint Intelligence Committee Inquiry, the 9/11 Commission hearings and report, and the Justice Department has conducted extensive evaluations of its own antiterrorism capabilities. These hearings have uncovered numerous flaws and gaps in our antiterrorism system. We have found, for example, that in many cases antiterror investigators still have less authority to access information than do investigators of other crimes that, while serious, pale in comparison to the threat posed by international terrorism. We have also seen that some of the federal code’s criminal offenses and penalties are far too light, or too narrow in their scope, in light of the contemporary terrorist threat.

Yet, despite all of these hearings and inquiries, Congress has enacted no major antiterror legislation since the passage of the USA Patriot Act almost three years ago.

To give just a brief description of the nature of the TFTA and the legislative process behind it, here are a few examples of some of the most important provisions in this bill:

- § 102 – identical to a bill introduced in 2002 by Senator Schumer and me – allows FBI agents to seek warrants for surveillance of suspected lone-wolf terrorists, such as alleged 20th hijacker Zacarias Moussaoui.
- §§ 112 and 113 – which are the same as a bill introduced by Senator Chambliss – improve information sharing among federal agencies and with state and local authorities, avoiding the types of barriers between criminal and intelligence investigators that impeded pre-September 11 searches in the United States for 9/11 hijackers Khalid al-Midhar and Nawaf al-Hazmi.
- § 106 – identical to a bill introduced by Senator Hatch – punishes hoaxes about terrorist crimes or the death of a U.S. soldier, imposing penalties commensurate with the disruptions and trauma inflicted by such hoaxes.
- Title II – identical to a bill introduced by Senator Cornyn – imposes stiff 30-year mandatory-minimum penalties for possession of shoulder-fired anti-aircraft missiles, atomic and radiological bombs, and variola virus (smallpox) – penalties sufficient to deter middlemen who might help terrorists acquire these weapons.
- Title IV – identical to a bill introduced by Senators Biden and Feinstein – creates a set of criminal offenses tailored to the unique challenges of guaranteeing the security of our nation’s seaports.

TFTA is divided into five titles, which consist of all or part of 11 bills that currently are pending in the House or the Senate. Every provision of TFTA previously either has been introduced and is pending as a bill in Congress, or addresses a matter that has been explored in a congressional committee hearing. Collectively, the provisions of TFTA have been the subject of 9 separate hearings before House and Senate committees and have been the subject of 4 separate committee reports. Collectively, if you add up all of the time that the various bills included in TFTA have been awaiting enactment since they were first introduced in either the House or the Senate, as of today the components of this bill have been pending for 14 years, 7 months, and 9 days.

With today’s hearing, I hope give this legislation an additional opportunity for review.

## The Witnesses

I am pleased to introduce the witnesses who will testify before us today. Dan Bryant is the Assistant Attorney General for the Office of Legal Policy in the Department of Justice. Mr. Bryant began his legal career at the Justice Department in 1987. In 1995, he became a counsel to the House of Representative's Judiciary Subcommittee on Crime, and was promoted to Majority Chief Counsel of that Subcommittee in 1999. Mr. Bryant was appointed Assistant Attorney General for the Justice Department's Office of Legislative Affairs in 2001, and has served in his current position since 2003.

Barry Sabin is the Chief of the Counterterrorism Section of the Justice Department's Criminal Division. Mr. Sabin previously served nearly a dozen years in the United States Attorney's Office in Miami, Florida, where he held the positions of Chief of the Criminal Division, Chief of the Major Prosecutions and Violent Crimes Section, and Deputy Chief of the Economic Crimes Section. His most recent position in that office was First Assistant United States Attorney. He has held his current position since 2002.

I would like to note that Mr. Sabin's office recently received some high praise in the report of the September 11 Commission. As that report noted:

The Department of Justice also has dramatically increased its focused efforts to investigate and disrupt terrorist financing in the United States. The Terrorism and Violent Crimes Section \* \* \* formed a unit to implement an aggressive program of prosecuting terrorist-financing cases. \* \* \* \* The Terrorist Financing Unit [of the Counterterrorism Section] coordinates and pursues terrorist-financing criminal investigations around the country and provides support and guidance to U.S. Attorney's offices on terrorist-financing issues.

In stark contrast to the dysfunctional relationship between the FBI and DOJ that plagued them before 9/11, the two entities now seem to be working cooperatively. The leadership of [the FBI's Terrorism Financing Operations Section] praises the CTS Terrorist Financing Unit [ – Mr. Sabin's unit – ] for its unwavering support.

Finally, I am pleased to also introduce Professor Jonathan Turley, the Shapiro Professor of Public Interest Law at George Washington University Law School. Professor Turley is a nationally recognized expert on constitutional and national security law. In addition to a large number of academic works in these areas, Professor Turley has served as counsel in a variety of high-profile national security cases in both criminal and civil courts, including espionage cases in both federal and military courts. Professor Turley is a frequent witness on constitutional and national security issues in Congress and has served as a consultant on such issues for state legislatures. His academic writings and public appearances have made him, according to a recent study, one of the top 100 most cited public intellectuals in the nation and one of the top two most cited law professors.

I thank you all for appearing before us today.