

REFLECTIONS ON EVENTS AND CHANGES AT THE DEPARTMENT OF JUSTICE

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Few have had the profound privilege to serve their country as I have during my career of public service. It has been an even higher honor to serve in a time of national crisis. Such was my tenure as the eightieth Attorney General of the United States.

The privilege of serving as Missouri's State Auditor, Attorney General, Governor, and Senator had been mine. I expected the end of my Senate career to mark the end of my career in public service. But when President George W. Bush asked me to continue my service to the nation as the United States Attorney General, I welcomed the opportunity to lead the only agency in government with a value as its title. "Justice" to me is a peerless value—a dedication to securing the rights and freedoms of America and each of its citizens.

Little did I know that during my time as Attorney General, we would experience the most devastating terrorist attack ever on American soil, and our country would be plunged into a war unlike any before. The war on terrorism became the overriding focus of the Department of Justice and my mission as Attorney General became clear: to transform a peacetime Justice Department ill-prepared for the challenges of 9/11, into a wartime Justice Department focused on the defense of life and liberty by ushering in a new culture of prevention. And despite these unprecedented challenges, I remained committed to protecting our constitutional liberties.

After being nominated by the President to serve as Attorney General, I did not have the luxury of being able to focus fully on preparing for the job. It became clear that the President's

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recently-defeated political opponents, along with their liberal allies such as the American Civil Liberties Union, the People for the American Way, and the National Organization for Women, were preparing to oppose my confirmation with all their might.

A brutal confirmation process followed, with an all-out assault only previously seen during the confirmation battles of Judge Robert Bork and then-Judge Clarence Thomas. In many ways my confirmation became a proxy fight over the political divisions of the day. Ultimately, the Senate approved my nomination on February 1, 2001, on a 58-42 vote. With the confirmation battle over, I was eager to focus on the job at hand. I knew there was much work to be done at the Justice Department, and particularly at the Federal Bureau of Investigation.

In studying the tenure of my predecessor, Janet Reno, it became clear an Attorney General could easily be distracted from a planned agenda by the crises at hand. Attorney General Reno's term was best known for things on which I am sure she did not plan to focus. The shooting at Ruby Ridge, the disaster involving the Branch Davidian Compound at Waco, the deportation of Elian Gonzales, investigations of Clinton scandals—these were the issues with which the public identified the Justice Department.

We began our Administration with a clear goal to focus the Justice Department back on its mission:

[T]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; to administer and enforce the Nation's immigration laws fairly and effectively; and to ensure fair and impartial administration of justice for all Americans.¹

The Department of Justice is a massive bureaucracy with roughly 110,000 employees spread out over thirty-nine separate component organizations. We entered the Department focused on a series of strategic goals including protecting America against the threat of terrorism, enforcing federal criminal laws, preventing and reducing crime—violent and gun crime

1. U.S. DEP'T OF JUSTICE, STRATEGIC PLAN: FISCAL YEARS 2001–2006, at ii (2006).

in particular—and protecting the liberties and interests of the American people.²

We learned first-hand on Day One how events can overtake the best-laid plans. After walking the entire building to meet and shake hands with as many employees as possible, I attended a small reception welcoming me to the Department. During the reception, then-FBI Director Louis Freeh pulled me aside and asked for a private word. It was then I learned of the spy Robert Hanssen. The next seventeen days were focused on building an airtight case against Hanssen until his arrest on February 18, 2001.

The distraction of the Hanssen matter was quickly followed by a series of brushfires threatening to burn broadly: a stand-off at the Indianapolis Baptist Temple which contained the seeds of the previous Justice Department's encounter with David Koresh and the Branch Davidian Compound in Waco, a national debate about my voluntary personal devotional sessions held prior to the workday in the Attorney General's office, and a botched prosecution of Oklahoma City bomber Timothy McVeigh. All of these matters would soon seem inconsequential when America was attacked and our nation was at war.

I. THE ATTACK OF SEPTEMBER 11, 2001

In the history of our nation, few days are as defining as September 11, 2001. On that day, a small number of my staff and I were flying on a small Citation jet to Milwaukee, Wisconsin to read with a group of schoolchildren as part of the President's initiative to focus on literacy. Many remember that the President himself was reading to schoolchildren in Sarasota, Florida when he learned about the attacks.

While flying over Michigan, we received an urgent message from the Justice Department Command Center with the news that two commercial airliners had struck the World Trade Center towers. I turned to my staff and said, "The world has changed forever. The country will never be the same." Because our plane did not have enough fuel to return to Washington, we landed in Milwaukee to refuel as quickly as possible. While on the ground we learned about the third plane that had hit the

2. *Id.* at i.

Pentagon and a fourth that was off course in Pennsylvania, potentially headed toward the Capitol. After refueling, I ordered our pilot to return to Washington despite a directive for all planes to remain grounded. Refusing advice from air traffic control to land in Detroit and then again in Richmond, Virginia, we finally had to wait just outside Washington, D.C. until an Air Force fighter jet could escort us in safely, because there was a shoot-down order for any planes entering Washington, D.C. airspace. We could see black smoke pouring toward the sky from the Pentagon while approaching the nation's capital and while landing. We would soon learn that our close friend Barbara Olson was on the plane that had crashed into the Pentagon. Barbara's husband, Ted Olson, was the Solicitor General of the United States and a key member of the Justice Department leadership.

After landing, we first joined the mass exodus of humanity leaving Washington. I had been directed to operate from a remote, undisclosed location. But traffic was so congested that I appealed that directive and headed to the Strategic Information Operations Center (SIOC) at the FBI, where I would spend most of my waking hours over the next several weeks. It was there that we launched the largest criminal investigation in the history of the world. And it was there that we quickly came to realize the need for a comprehensive overhaul of how the United States deals with the threat of terrorism.

The next day, the President assembled top officials to assess the damage and plan our response. It was there that the President turned to me and said, "Don't ever let this happen again." That statement became the guidepost for the remainder of my time as Attorney General: "Never again."

Soon after the meeting with the President I gathered the leadership of the Justice Department. Our mission was clear: Investigate the attack and those who carried it out, do everything within our power to prevent another attack (we lived under the daily expectation that a second wave was imminent), and evaluate the law and develop new, modern tools necessary for law enforcement to counter the twenty-first-century threat of terrorism. My framing instruction to the Department was that in all of our efforts we be prepared to think outside of the box, but never outside of the Constitution.

II. USHERING IN A CULTURE OF PREVENTION

Our immediate focus was the need to change the culture of the Department of Justice from a model prioritizing prosecution of terrorism to a model prioritizing the prevention of terrorism. During the National Security Council meeting the Wednesday after 9/11, we had already established we were likely dealing with an attack from al Qaeda. It is hard to imagine now, but at the time most Americans were unfamiliar with the terrorist group. In the discussions about our immediate response, questions were raised about possible complications to any future prosecutions. It was then I articulated our new priority:

We simply can't let this happen again. Prosecution cannot be our priority. If we lose the ability to prosecute, that's fine; but we have to prevent the next attack. Prevention has to be our top priority. . . . The chief mission of U.S. law enforcement is to stop another attack and apprehend any accomplices and terrorists before they hit us again. If we can't bring them to trial, so be it.³

Although this may seem like an obvious strategy, it was a radical departure from the mission of the Justice Department since its inception. Everything the Justice Department did was designed to bring prosecutable cases forward and to achieve convictions in a courtroom. Thus the law, tactics, and mindsets of the hardworking men and women of the Justice Department—the culture—was built around a model of prosecution.

The first step in moving from a peacetime Department of Justice to a wartime Department of Justice focused on prevention was to reorganize based on new priorities. Counterterrorism funding was tripled. Over 1000 new and redirected FBI agents were assigned to counterterrorism and counterintelligence. Hundreds of new Assistant United States Attorneys were hired. Joint Terrorism Task Forces, composed of federal, state, and local law enforcement officials focusing on the terrorist threat, were tripled in number and scope.⁴

Resources alone were not enough to combat this new threat. What was required was a change in the approach to terrorism. In

3. JOHN ASHCROFT, *NEVER AGAIN: SECURING AMERICA AND RESTORING JUSTICE* 133 (2006).

4. U.S. DEP'T OF JUSTICE, *PRESERVING LIFE AND LIBERTY: THE RECORD OF THE DEPARTMENT OF JUSTICE 2001–2005*, at 15–18 (2005).

a traditional criminal prosecution, a crime has been committed and the prosecutor's job is to prove the facts necessary to convict a person for committing that crime—or, alternatively, to catch that person in the act and both prevent the crime and gather enough evidence to prove the crime was about to be committed.

In myriad ways, however, the traditional approach to fighting crime is not relevant to preventing terrorism. What if the terrorist is not deterred by the threat of prosecution, because the terrorist is willing to sacrifice his life while committing the crime? Or what if the crime results in the deaths of hundreds or even thousands of innocent Americans? Waiting to prosecute a few terrorists after the fact is not a reliable or appropriate strategy.

On November 8, 2001, we announced our wartime reorganization strategy to enable the Justice Department to wage the war on terrorism. In announcing publicly that we had shifted our goal away from traditional prosecution to an orientation focused on prevention I stated:

When terrorism threatens our future, we cannot afford to live in the past. We must focus on our core mission and responsibilities, understanding that the department will not be all things to all people. We cannot do everything we once did, because lives now depend on us doing a few things very well. . . . The attacks of September 11 have redefined the mission of the Department of Justice. . . . Defending our nation and defending the citizens of America against terrorist attacks is now our first and overriding priority.⁵

In those first days after the attacks, one of the first things to crystallize as an immediate strategic necessity was the Department's push to remove potential threats at the earliest possible moment. That meant taking the "Spit on the Sidewalk" approach employed by Attorney General Robert F. Kennedy against organized crime in the 1960s and applying it to terrorism investigations. New York Mayor Rudy Giuliani had very effectively used a similar strategy. Giuliani's strategy toward crime prevention involved cracking down on relatively minor offenses with the goal of preventing more serious crimes. During Mayor Giuliani's tenure, crime dropped to record lows in New York City.

5. ASHCROFT, *supra* note 3, at 135–36.

For too long the Department's approach to terrorism investigations had been to let a situation develop until the latest possible moment so that terrorism charges could be brought. After 9/11, we realized our enemy was highly sophisticated, cunning, and technologically advanced. The risks of waiting for terrorists to get further along in the planning of an attack were too great in the face of the potential devastation to life and liberty. Wherever possible, we moved quickly to bring charges for immigration violations, credit card fraud, identification and document fraud, human smuggling, or any number of provable crimes that would remove the threat from our communities before suspected terrorists could bring more sinister plots to fruition.

For instance, the arrest of Jordanian national Rasmi Subhi Saleh Al Shannaq, a roommate of the 9/11 hijackers Nawaf Al Hazmi and Hani Hanjour, involved the discovery and dismantling of a large visa fraud scheme. Another example is Operation Tarmac, the Justice Department's security sweeps of more than fifty major airports across the United States. More than 1200 arrests were made for identification and document fraud and other crimes. At Dulles International and Reagan National Airports, federal law enforcement agents arrested ninety-four workers on charges of fraudulently obtaining airport security badges, falsifying Social Security applications, and immigration violations. The badges these individuals fraudulently obtained allowed them to enter secure areas where planes were loaded.

III. REORGANIZING THE FBI TO PREVENT ATTACKS

The most urgent priority in reorganizing the Justice Department to meet the wartime threat was the transformation of the FBI. The FBI was and still is the world's leading forensic investigative organization. No crime fighting organization could reconstruct the evidence of a crime to build a case and get a conviction in court better than the FBI. But that was no longer enough.

The FBI had to overhaul its counterterrorism activities to disrupt and prevent terrorist attacks. Under the leadership of Director Robert Mueller, the Bureau transformed its operations, expanded intelligence capacities, modernized its business practices and technology, and greatly improved its coordination with its partners at every level of government. It became crystal clear that the 700,000 state and local law enforcement officers with "feet on the street" were an essential asset to national se-

curity. With their help, the FBI cultivated detailed information on terrorism in America.

The FBI established a number of operational units that continue to provide new or improved capabilities to address the terrorist threat, including the 24/7 Counterterrorism Watch and the National Joint Terrorism Task Force to manage and share threat information. We established the Terrorism Financing Operation Section to centralize efforts to stop terrorist financing. "Fly Teams" were created to lend counterterrorism expertise wherever it was needed in real time. The FBI's Terrorist Screening Center and the Foreign Terrorist Tracking Task Force helped identify terrorists and keep them out of the United States.

Prior to September 11, 2001, the FBI produced few raw intelligence reports and lacked the capacity to provide a comprehensive daily terrorism threat briefing. In the three years following 9/11, the reformed counterterrorism and intelligence operations produced more than 3000 intelligence products including "raw" reports, intelligence memoranda, in-depth strategic analysis assessments, special-event threat assessments, and focused Presidential briefings. The FBI in coordination with other members of the U.S. intelligence community began producing daily briefings including the Director's Daily Report and the President's Terrorist Threat Report.

For too long, our law enforcement and intelligence bureaucracies resisted sharing information. But our post-9/11 defense required all of our government agencies to work together in a new way. Hoarding intelligence and evidence that could lead to the disruption of a threat if only the right eyes could see it was no longer an option. Anti-Terrorism Task Forces (ATTFs) were established in each of the ninety-four U.S. Attorneys' districts across America. Led by the U.S. Attorney, the ATTFs combined all of the federal, state, and local law enforcement assets in each district. By having the U.S. Attorney, Immigration and Customs Enforcement, the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, and state and local police all sitting at the same table sharing information gathered in various criminal investigations, they could quickly connect the dots, revealing plots that, if left undetected, could have devastating results.

The actions of the ATTFs led to the disruption of a Portland, Oregon terrorist cell. Six terrorist members of the Portland cell

plotted to travel to Afghanistan to wage Jihad against United States forces. Instead, they traveled to federal prison.

In northern Virginia, eleven individuals were charged with various crimes including conspiracy to levy war against the United States and conspiracy to contribute services to the Taliban. One was sentenced to life in prison, another to 85 years, and another to 97 months. Six pleaded guilty and accepted prison terms ranging from 46 to 240 months.

In Charlotte, North Carolina, the work of an ATTF produced the convictions of twenty individuals involved in a massive interstate cigarette smuggling operation with the purpose of funding Hizballah. The leader of that ring was sentenced to 155 years in prison.

IV. DISMANTLING THE TERRORIST FINANCIAL NETWORK

A critical tool in protecting the lives and liberties of American citizens and innocent people around the world is tracking terrorism funding and choking off the supply lines of the blood money that makes terrorism possible. The Justice Department aggressively pursued not only those who would carry out terrorist attacks, but also those who provide financing, equipment, personnel, or other support to terrorists and terrorist organizations.

At the request of the Justice Department, the State Department designated forty entities as terrorist organizations, enabling the freezing of their assets and funds. During my tenure, the Justice Department collaborated with the Treasury Department to freeze more than \$136 million in financial assets of organizations that support terrorism. In Chicago, Cleveland, Syracuse, Brooklyn, and other localities across the United States, the Justice Department took action against individuals and organizations involved in funding or supporting terrorism. For instance, we discovered that the Benevolence International Foundation, a charitable organization, was in reality a conduit for funding Islamic fighters in Chechnya, Bosnia, Sudan, and other places. The Department indicted Enaam Arnaout, the foundation's executive director, for conspiring to obtain charitable donations fraudulently to provide financial assistance to organizations engaged in violence. Arnaout pleaded guilty to a racketeering charge and is currently serving a ten-year prison sentence.

V. REFORMING IMMIGRATION ENFORCEMENT

Before the transfer of immigration enforcement to the Department of Homeland Security in March 2003, the Justice Department established and implemented several initiatives to strengthen immigration enforcement to protect better the American people from terrorists who may try to exploit our open borders and freedom of travel. The Department deployed the National Security Entry-Exit Registration System (NSEERS), which required visitors with a visa to register at the port of entry and again upon exit, with periodic status updates depending on the length of stay. Prior to NSEERS, once a person arrived here legally, there was no system in place to keep track of where he was going and if he departed on time. NSEERS provided the technological ability to scour our terrorist databases in real time and alert enforcement personnel to known terrorists or those affiliated with terrorists trying to gain entry into the United States. NSEERS quickly led to the apprehension of eleven suspected terrorists, including one known member of al Qaeda. NSEERS also stopped the entry of more than 700 aliens who had committed serious felonies or other violations that made them inadmissible to America. NSEERS identified over 100 felons in the United States, including individuals convicted of narcotics trafficking, child abduction, sexual abuse, assault with a deadly weapon, and murder.

There was an additional benefit from NSEERS as well. There is strong evidence that our enforcement efforts caused thousands of individuals who were in the United States illegally to “self-deport.” Because it became clear we were actually enforcing the immigration laws, many chose to return to their home countries voluntarily before they could be deported.⁶

6. Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT’L L. 155, 159–60 (2008) (“The effectiveness of attrition through enforcement was first demonstrated in 2002 and 2003, with the implementation of the NSEERS by the U.S. Department of Justice. In the wake of the September 11th attacks on the World Trade Center, the Department of Justice launched NSEERS to screen and register aliens from Al-Qaeda-associated countries and aliens from anywhere in the world whose backgrounds or travel patterns suggested a higher risk of potential involvement in terrorism. . . . [T]he central fact was undeniable; the credible threat of enforcement had resulted in mass self-deportation. It was stunning proof that attrition through enforcement works. When the risks of being detained and/or prosecuted go up dramatically, illegal aliens make the rational decision to leave the United States on their own.”).

The Department also implemented the Student and Exchange Visitor Information System (SEVIS) to keep track of student aliens in the United States and to make sure they were complying with the terms of their visas.

VI. OBTAINING THE MODERN TOOLS NEEDED BY LAW ENFORCEMENT

In addition to reorganizing the Department of Justice from within, it was clear law enforcement needed new tools to detect and prevent terrorism. Our enemy had cutting-edge technology, while law enforcement struggled to use decades-old legal tools that had not been updated to match the rapid advances in technology. The law often lags behind technology and changed circumstances, and legislation often does not pass until the enormity of a problem cries out for action. Such was the case with the laws relating to organized crime, drug trafficking, and terrorism. There is often an attitude about the law: If it's not broke, don't fix it. And by the time you know it is broke, it is long overdue.

Within hours of the attacks and the realization that we were at war, the Justice Department began analyzing what legal tools investigators and prosecutors needed to prevent terrorists from striking again. The September 11 attacks occurred on a Tuesday. By that Saturday, September 15, the Justice Department had a legislative proposal. We were able to move so quickly for three reasons. First, many of the provisions of the PATRIOT Act had been considered by Congress in 1996 and unwisely rejected. Second, many of the tools we were seeking were not new ideas. They were tools allowed in the fight against organized crime and drug trafficking, but not terrorism. And finally, while the normal legislative process can move sluggishly—sometimes for good reasons—here the country could ill afford the luxury of a slow process. We were focused on the imminent threat of another attack.

Congress introduced the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) after more than a month of careful and deliberate consideration. Despite what one might think after a great deal of revisionist history, the PATRIOT Act garnered overwhelming bipartisan support, passing easily in the House of Representatives (357-66) and passing nearly unanimously in the Senate (98-1). The President

signed the PATRIOT Act into law October 26, 2001—an amazing accomplishment given the attacks had happened just six short weeks earlier. The PATRIOT Act contained more than one thousand antiterrorism measures that have helped law enforcement investigate, prosecute, and most importantly, prevent acts of terror.

In the years leading up to 9/11, America's justice resources shaped a system that was designed to separate our law enforcement functions from those that involved gathering intelligence for national security purposes. That system became known as "the wall." The reasons for creating this wall were well intentioned. Law enforcement powers should be limited, and evidence gathered in intelligence operations potentially could taint evidence gathered for the purposes of criminal prosecution since the constitutional safeguards involved in criminal prosecutions are not always present during national security-related intelligence gathering. This well intentioned effort, however, far exceeded any constitutional requirement. And, when the United States Foreign Intelligence Surveillance Court of Review considered the wall and its limitations on electronic surveillance of an agent of a foreign power, it concluded that this wall was not constitutionally mandated and that the wall was dangerous to national security.⁷

7. *In re Sealed Case*, 310 F.3d 717, 743 (FISA Ct. Rev. 2002) ("The false premise was the assertion that once the government moves to criminal prosecution, its 'foreign policy concerns' recede. . . . [T]hat is simply not true as it relates to counterintelligence. In that field the government's primary purpose is to halt the espionage or terrorism efforts, and criminal prosecutions can be, and usually are, interrelated with other techniques used to frustrate a foreign power's efforts. Indeed, the Fourth Circuit itself, rejecting defendant's arguments that it should adopt a 'solely foreign intelligence purpose test,' acknowledged that 'almost all foreign intelligence investigations are in part criminal investigations.' . . . The method the court endorsed for determining when an investigation became primarily criminal was based on the organizational structure of the Justice Department. The court determined an investigation became primarily criminal when the Criminal Division played a lead role. . . . Putting aside the impropriety of an Article III court imposing such organizational strictures . . . the line the *Truong* court adopted—subsequently referred to as a "wall"—was unstable because it generates dangerous confusion and creates perverse organizational incentives. That is so because counterintelligence brings to bear both classic criminal investigation techniques as well as less focused intelligence gathering. Indeed, effective counterintelligence, we have learned, requires the wholehearted cooperation of all the government's personnel who can be brought to the task. A standard which punishes such cooperation could well be thought dangerous to national security." (quoting *United States v. Truong Dinh Hung*, 629 F.2d 908, 915 (4th Cir. 1980)) (footnote omitted) (citations omitted)).

In 1995, the Justice Department had both reinforced and enhanced this wall between prosecutors and intelligence officials. Not only could different agencies, such as the CIA and FBI, not communicate freely, but the intelligence division of the FBI was even prohibited from certain kinds of information sharing with the criminal division.

The concern about this wall had our attention well before 9/11. In May 2001, soon after arriving at the Justice Department, Deputy Attorney General Larry Thompson issued a directive to the FBI not to underestimate the potentially harmful effects of the wall. The most important tool provided by the PATRIOT Act was the tearing down of the wall between intelligence officials and law enforcement so they could finally share information and connect the dots.

The information sharing authorized by the PATRIOT Act rebalanced the scales, putting the good guys on an equal footing with the bad guys who had been able to evade law enforcement for too long. It now seems unthinkable that there ever was such a prohibition that endangered the lives and liberties of our citizens. But the prohibition existed across administrations through the last quarter of the twentieth century. It frustrated the people to whom we entrust our safety and our freedom. This is what U.S. Attorney Patrick Fitzgerald had to say about the wall:

I was on a prosecution team in New York that began a criminal investigation of Usama Bin Laden in early 1996. The team . . . had access to a number of sources. We could talk to citizens. We could talk to local police officers. We could talk to other U.S. Government agencies. We could talk to foreign police officers. Even foreign intelligence personnel. And foreign citizens. And we did all those things as often as we could. We could even talk to al Qaeda members—and we did. . . . But there was one group of people we were not permitted to talk to. Who? The FBI agents across the street from us . . . assigned to a parallel intelligence investigation of Usama Bin Laden and al Qaeda. We could not learn what information they had gathered. That was “the wall.”⁸

8. *Protecting Our National Security From Terrorist Attacks: A Review of Criminal Terrorism Investigations and Prosecutions Before the S. Comm. on the Judiciary*, 108th Cong. 124–25 (2003) (statement of Patrick J. Fitzgerald, U.S. Attorney for the Northern District of Illinois).

The USA PATRIOT Act brought down this “wall” separating intelligence officers from law enforcement agents.

The PATRIOT Act was vital to the success of the investigation into Hemant Lakhani in Newark, New Jersey. Lakhani was attempting to sell shoulder-fired missiles to terrorists for use against American targets. The indictment against Lakhani alleged that he brokered the initial purchase of one shoulder-fired missile and was arranging for the purchase of fifty more. Lakhani was caught in recorded conversations saying he supported the use of the missiles for shooting down American commercial airlines and that bin Laden “straightened them all out,” and “did a good thing.”⁹ The investigation would not have been possible had American intelligence and foreign intelligence officials not been able to share intelligence and coordinate with law enforcement.

The PATRIOT Act also stiffened the penalties for terrorism, giving prosecutors enhanced tools to take terrorists off the streets for a long time. The Act enhanced the penalties for crimes likely to be committed by terrorists, such as arson, destruction of energy facilities, material support to terrorists, and the destruction of national defense materials. The PATRIOT Act also helped stem the flow of money to terrorists, improved laws protecting against cyber-terrorism, and filled gaps in criminal law by creating a new crime of attacking a mass transportation system. Prosecutors used the new material-support provisions to prosecute more than 110 individuals and cut off terrorism funding.

The PATRIOT Act also removed a number of significant obstacles that had prevented law enforcement from effectively investigating terrorism and the criminal activity that often accompanies and supports terrorist operations. For instance, terrorism investigations often span several federal districts. With time being of the essence and with law enforcement frequently having only a brief window of opportunity to prevent a terrorist attack, it was no longer feasible to waste time petitioning several judges in multiple districts for search warrants related to the same investigation. To address this problem, the Act al-

9. Attachment A to Complaint at 1, *United States v. Lakhani*, Mag. No. 03-7106 (D.N.J. Aug. 11, 2003), *available at* <http://f11.findlaw.com/news.findlaw.com/hdocs/docs/terrorism/uslakhani81103cmp.pdf>.

lowed out-of-district warrants in certain terrorism cases. This tool was essential to the Department's success in stopping the northern Virginia Jihad operation.

The Act also allowed law enforcement to conduct investigations without tipping off terrorists. In some cases, if criminals learn of an investigation too early, they may flee, destroy evidence, intimidate or kill witnesses, stop contacting associates, or take other evasive actions. Federal courts, in narrow circumstances, have allowed law enforcement to delay for a limited time telling the subject of the investigation that a search has been executed. The delay gives law enforcement the ability to identify the criminal's associates, coordinate the arrest of multiple subjects without tipping them off beforehand, and eliminate threats to our communities. The PATRIOT Act extended to terrorism investigations that decades-old provision of criminal law which had been crucial in drug and organized crime cases and provided a uniform national standard for the use of delayed-notification search warrants.

Finally, the PATRIOT Act brought the law up to date with current technology so that our investigators would no longer have to fight a digital-age battle with rotary phone legal authorities. The Act allows federal agents to track terrorists using a multi-point wiretap, a tool that had been in use for decades in tracking drug traffickers and mobsters. Instead of requiring law enforcement officers to apply for a separate warrant for every phone, fax, and communication device used by a single terrorist, the warrant applies to all of the communications devices used by the subject, making it harder for terrorists to evade detection.

In addition to working with Congress to provide much-needed legal tools to law enforcement, I ordered a review of our investigative guidelines concerning national security and criminal investigations. In May 2002, I issued revised guidelines concerning FBI criminal investigations, undercover operations, the use of confidential informants, and the consensual monitoring of communications. These guidelines explicitly established the protection of the American people as the central mission and number-one priority of the FBI. The guidelines emphasized early intervention and aggressive investigation to prevent terrorist acts and eliminated unnecessary red tape that could prevent FBI field offices from effectively detecting, investigating, and preventing terrorist activities. It came as a shock

to many that under the old guidelines the FBI was not even allowed the same freedom as ordinary schoolchildren to surf the Internet without a predicate investigation. The revised guidelines changed that.

In October 2003, I issued revised guidelines for FBI investigations of international terrorism, espionage, and other national security threats. These classified guidelines included provisions for sharing information related to national security with other federal agencies and with knowledgeable and necessary state, local, and foreign authorities.

The 9/11 attacks were trained for and planned in Afghanistan and Pakistan, researched in Germany, and staged and carried out in New York, Virginia, Massachusetts, and Pennsylvania. They were financed from sources around the world. It was thus imperative that we share information as consistently and fully as possible among all agencies around the globe to counter the global dimensions of terrorist activities.

These are just some of the many legal tools that we sought and obtained from Congress as we attempted to increase our capacity to counter the threat of terrorism.

VII. SUCCESSES IN THE WAR ON TERROR

Since 2001, the Justice Department has been successful at identifying, prosecuting, and incarcerating terrorists as well as those who provide them with financial assistance and other support. America is safer today than it was before 9/11 because our law enforcement system has been refocused to put terrorist prevention first.

Because our strategy was not to wait until terrorists killed Americans to bring criminal charges but rather to make arrests early to get them off our streets or to use immigration tools to deport them, it is difficult to say how many plots we disrupted—and how many American lives we saved. We know, however, that British national Richard Reid is currently serving a life sentence in prison after pleading guilty to attempting to ignite a shoe bomb while on a flight from Paris to Miami. We know 184 passengers and 14 crewmembers lived because Reid did not succeed in blowing up the plane. Americans and other citizens of good will endorsed and implemented the prevention strategy in that case, saving hundreds of lives. Reid's prosecution makes us all safer.

We know that six men from the Lackawanna, New York area pleaded guilty to charges of providing material support to al Qaeda, based on their attendance at an al Qaeda terrorist training camp overseas. We may never be able to say with certainty what they were planning to do when they returned to New York. Instead of living in one of our communities, however, they currently are serving terms ranging from seven to ten years in prison.

Iyman Faris currently is serving twenty years in prison for terrorism violations stemming from his efforts to “case” a New York City bridge for al Qaeda and to provide information to al Qaeda on the tools necessary for possible attacks on U.S. targets.

Ahmed Omar Abu Ali is serving thirty years in prison for terrorism violations in connection with his membership in an al Qaeda cell and his efforts to plot the assassination of the U.S. President as well as conspiring to attack and destroy civilian airliners.

And Zacarias Moussaoui is serving six consecutive life terms after pleading guilty to various terrorism violations, admitting that he conspired with al Qaeda to hijack planes and crash them into prominent U.S. buildings as part of the 9/11 attacks.

These prosecutions—and the many other individuals that we prosecuted on lesser charges or deported pursuant to their violation of immigration laws—made our country safer by taking players in the terrorist network out of the picture as soon as possible.

CONCLUSION

Some people assert that the war on terrorism involves a balance between national security and individual civil liberties. I reject that notion. In my view, there is no value as high as our liberty or freedom. Security does not merit our profound respect as an independent value. It is a most important means to achieve and enhance the values of liberty and freedom. It is the purpose of security to enrich freedom, not counterbalance it. Security is not pursued to constrain liberty; rather, it is employed to protect it.

I do not believe that fighting terrorism aggressively and protecting civil liberties are mutually exclusive goals. We must not underestimate the threat of our enemies, but must never go beyond the limits of the Constitution in countering it. Those were the instructions that I gave those with whom I worked at the

Justice Department, and I believe that our work was done in a good faith effort fully consistent with our American traditions and the Constitution.

To this day we have not had another attack on American soil. For America's safety, I thank God, as well as the men and women of law enforcement who worked hard to rebuild our justice system to focus on prevention. In some ways, I consider our success a validation of the strategy of prevention that we embraced sitting in the FBI's Strategic Information Operations Center while New York City and the Pentagon were still burning.

Political battles are nothing new to Washington, D.C., and will continue for some time over a few of the strategic aspects of the war on terror. I know, however, that we left the Justice Department better prepared to keep America safe, and I remain grateful for the honor to be a part of the important work of ensuring American life and liberty.