



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

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AUG 8 2008

Mr. Kevin Bankston  
Electronic Frontier Foundation  
454 Shotwell Street  
San Francisco, CA 94110

Dear Mr. Bankston:

In processing your request dated January 13, 2005, the Office of Information and Privacy located one document that originated with the Criminal Division and referred that document to this Unit for review and direct response to you.

We have reviewed this document and have determined to release it in its entirety. A copy is enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Rena Y. Kim" with a stylized flourish at the end.

Rena Y. Kim, Chief  
Freedom of Information/Privacy Act Unit



# Department of Justice

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STATEMENT

OF

ALICE FISHER  
DEPUTY ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM  
AND GOVERNMENT INFORMATION  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

CONCERNING

IMPLEMENTATION OF THE USA PATRIOT ACT

PRESENTED ON

OCTOBER 9, 2002

**Testimony of Alice Fisher  
Deputy Assistant Attorney General, Criminal Division  
United States Department of Justice  
on October 9, 2002**

**Before the Senate Judiciary Subcommittee on  
Technology, Terrorism and Government Information  
United States Senate**

Chairman Feinstein, Ranking Member Kyl and distinguished members of the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, I am honored to appear before you to testify about the Department of Justice's implementation and use of the important anti-terrorism provisions in the USA PATRIOT Act. I want to thank this Subcommittee's members, who helped to develop and enact the USA PATRIOT so swiftly in the wake of last September's attacks. As Deputy Assistant Attorney General of the Criminal Division, with responsibility over the Terrorism and Violent Crimes Section, I have been personally involved in seeing that the tools Congress provided in the Act have been used as intended: to enhance the ability of law enforcement to bring terrorists and other criminals to justice.

The unprecedented and heinous attacks on our nation, in which over three thousand innocent civilians were killed in New York City, in Pennsylvania, and at the Pentagon, occurred just over one year ago. At that time, the President pledged to the American people that we would not relent until justice was done and our nation was secure. Members of this Committee, and the Congress in general, joined the President as key partners in this important undertaking. Congress's swift and comprehensive response, through passage of the USA PATRIOT Act, provided us with vital new tools, and updated those tools already at our disposal, that have been

instrumental to our efforts to combat terrorism in the most extensive criminal investigation in history. As the President stated when he signed the USA PATRIOT Act on October 26, 2001, we took "an essential step in defeating terrorism, while protecting the constitutional rights of Americans." One year later, I am pleased to report that we have used these tools effectively, aggressively and responsibly.

As the Attorney General told the Senate Judiciary Committee in July, the Department's single and overarching goal since September 11 has been to prevent future terrorist attacks on the United States and its citizens. We have been aggressively implementing the USA PATRIOT Act from the outset. Following its passage, we immediately sent field guidance to United States Attorney's offices, advising them of the Act's new authorities and urging their use, where appropriate, in investigating and prosecuting terrorism and other criminal acts. We have followed up with additional guidance and training over the past year, and we consult informally with federal prosecutors and investigators at work in the field investigating suspected terrorists. Our manual proved invaluable in ensuring that prosecutors around the country could immediately benefit from and utilize the new law enforcement tools provided by the Act.

Law enforcement has been engaged in an ongoing cooperative effort to identify, disrupt and dismantle terrorist networks. We are expending every effort and devoting all available resources to intercept terrorists and defend our nation. Never was this so apparent as last Friday, a defining day in the war on terrorism, when we neutralized a suspected terrorist cell in Portland, Oregon, convicted attempted suicide bomber Richard Reid, and saw John Walker Lindh, an American captured fighting for the Taliban in Afghanistan, sentenced to twenty years' imprisonment. In the last six weeks, we have charged 17 individuals involved in terrorism-

related activities. In addition to Portland, we have broken up terrorist cells in Detroit and Buffalo, and we have charged an individual with attempting to set up an Al Qaeda terrorist training camp in Oregon. Enhanced penalties authorized by the USA PATRIOT Act have proven an important tool in all of these cases.

Today, I will provide a brief summary of the Department's work to date implementing the new powers authorized by the USA PATRIOT Act. I cannot, of course, disclose information that might compromise or undermine ongoing criminal investigations and prosecutions. However, I can discuss a number of areas in which the Department of Justice, in conjunction with other departments and agencies, is making meaningful headway in the war on terrorism. In particular, over the past year, the Department has used the following important new authorities and tools provided by the Act:

- we have charged a number of individuals with crimes under 18 U.S.C. §§2339A and 2339B, which prohibit providing material support to terrorists or terrorist organizations, and carry enhanced penalties;
- we have used newly streamlined authority to use trap and trace orders to track communications of a number of criminals, including the terrorist kidnapers and murderers of journalist Daniel Pearl, as well as identity thieves and a four-time murderer;
- we have used new authority to subpoena information about Internet users' network addresses to track down terrorists and computer hackers;
- we have used newly authorized nationwide search warrants for terrorist investigations at least three times, including during the ongoing anthrax investigation;
- we have utilized provisions in the Act to foster an unprecedented level of cooperation and information sharing between government agencies; and
- we have saved precious time and resources through a provision that permits officials to obtain court orders for electronic surveillance pertaining to a particular

suspect, rather than a particular device.

I will focus my testimony on four key areas in which the USA PATRIOT Act has aided law enforcement efforts: (1) it updated the law to reflect new technology; (2) it removed obstacles to investigating terrorism; (3) it strengthened criminal laws and enhanced penalties; and (4) it facilitated increased intelligence sharing, gathering and analyzing. The fifth key area, protecting our borders, falls within the bailiwick of the INS, which is also presenting testimony today.

1. **Updating the Law to Reflect New Technology**

First, the USA PATRIOT Act allowed us to modernize our badly outmoded surveillance tools. Terrorists engaged in covert multinational operations use advanced technology, particularly in their communications and planning. While terrorists who were plotting against our nation traveled across the globe, carrying laptop computers and using disposable cell phones, federal investigators operated under laws seemingly frozen in an era of telegrams and switchboard operators. Prior to September 11, we operated both at a technological disadvantage and under legal barriers that severely restricted our surveillance capabilities. In particular, we did not have sufficiently sophisticated abilities to monitor communications in either the digital or analog world, and law enforcement officials operated under onerous rules that hindered their ability to conduct investigations in a timely manner. The USA PATRIOT Act modernized existing law, and gave investigators crucial new tools to deal with these problems. We have put this new authority to good use.

Prior to the USA PATRIOT Act, for example, federal law required officers to spend critical time going through the burdensome process of obtaining wiretap orders to access

disclose records to law enforcement in emergencies presenting a risk to life or limb, have made it much easier for third party communication providers to assist law enforcement without fear of civil liability. The latter authority, for example, allowed us to track down a student who posted electronic bulletin board threats to bomb his high school and shoot a faculty member and several students. Afraid of being sued, the owner and operator of the Internet message board initially resisted disclosing to federal law enforcement officials the evidence that could lead to the identification of the threat-maker. However, after he was told about the new USA PATRIOT Act emergency authority, he voluntarily disclosed to law enforcement Internet addressing information that was instrumental in the student's timely arrest and confession and in preventing the student from potentially carrying out his violent threats.

Finally, the USA PATRIOT Act has brought the federal wiretap statute into the 21<sup>st</sup> century by adding terrorism crimes to the list of offenses for which wiretap orders are available. These provisions have proven extremely useful to law enforcement officials. At least one recent wiretap order has been issued based on this expanded list of terrorism offenses. We believe that these enhancements will bring more terrorists to justice and prevent them from inflicting major damage on the infrastructure of telecommunications providers.

## **2. Removing Obstacles to Investigating Terrorism**

Second, the USA PATRIOT Act has removed various obstacles to investigating terrorism and has greatly enhanced the Department's ability to thwart, disrupt, weaken, and eliminate the infrastructure of terrorist organizations. Section 219, for example, which allows federal judges to issue nationwide search warrants for physical searches in terrorism investigations, has enabled investigators to avoid expending precious time petitioning multiple judges in multiple districts

criminals in the most extensive criminal investigation in history. Critical to our efforts is the enhanced ability to prosecute and punish terrorists captured abroad as well as those arrested within our borders. These provisions have proven to be powerful new weapons in our fight against international terrorism as well as other kinds of international criminal activity.

Enhanced criminal laws relating to terrorist financing, for example, have provided an effective tool in getting law enforcement inserted into the early stages of terrorist planning. Title III of the USA PATRIOT Act provides law enforcement with important new authority to investigate and prosecute the financing of terrorism. We can now seize terrorist assets, both foreign and domestic, if the property or its owner is involved in, related to, or in support of acts of domestic or international terrorism. It is now a crime for anyone subject to U.S. jurisdiction to provide anything of value – including their own efforts or expertise – to organizations designated as “foreign terrorist organization.” This is true regardless of whether the persons providing such support intend their donations to be used for violent purposes, or whether actual terrorism results. If someone subject to U.S. jurisdiction provides, or even attempts to provide, any material support or resources to Hamas, Hizballah, Al Qaeda, the Abu Sayyaf Group or any of the other designated groups, that person can be prosecuted. And our prosecutors do not have to prove that the support actually went to specific terrorist acts. The Department has used this provision in prosecuting a number of Al Qaeda associated individuals and in breaking up terrorist cells in this country. For example, John Walker Lindh, the American citizen who joined the Taliban and was captured by military forces in Afghanistan, was charged with 10 counts, including a total of six relating to providing material support to individuals and to organizations that commit crimes of terrorism. Lindh, who pled guilty to providing services to the Taliban and



secrecy and wiretap rules.

The Act also allocated funds to the FBI to help facilitate information sharing with the INS and State Department via the National Crime Information Center (NCIC). Access to these files has enabled agencies to better determine whether a visa applicant has a criminal history record. The importance of this system cannot be underestimated. It is the nation's principal law enforcement automated information sharing tool. On April 11, 2002, the Attorney General issued a major directive on the coordination of information relating to terrorism that requires all investigative components within the Department of Justice to provide the names, photographs, and other identifying data of all known or suspected terrorists for inclusion in the database. Since enactment, the FBI has provided the State Department with over 8.4 million records from these databases, and has provided 83,000 comprehensive records of key wanted persons in the databases, as well as information regarding military detainees in Afghanistan, Pakistan, and Guantanamo Bay to the INS.

The USA PATRIOT Act has also improved the effectiveness of the Foreign Intelligence Surveillance Act by permitting the authorization of physical searches and electronic surveillance of foreign powers' employees for up to 120 days, as opposed to the previous 45 days. This additional leeway gives government investigators targeting potential terrorist activity additional time and helps clear court dockets for more far-reaching terrorism related cases and other complex federal prosecution. While the details of FISA operations are classified, I can tell you that this improvement has saved critical time that law enforcement previously spent continuously renewing court orders. Additionally, section 218, which broadened the applicable standard under which law enforcement could conduct FISA surveillance or searches, has reduced officers' need

to weigh constantly the purposes of their investigation, and has allowed for increased collaboration between law enforcement and intelligence personnel.

### **Conclusion**

I would like to conclude by thanking the members of this Committee for your efforts in so swiftly developing and passing the USA PATRIOT Act in the wake of last year's attacks on our nation. Your response enabled those of us whose mission it is to combat terrorists at home and abroad to do so with a wide array of new measures that have greatly enhanced our ability to carry out this work. We look forward to continuing to work with the Committee in this collaborative effort. I thank you for your invitation and welcome any questions that you may have.