

**U.S. POLICY ON TERRORISM IN LIGHT OF THE
FALN MEMBERS' CLEMENCY**

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
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FIRST SESSION
SPECIAL HEARING

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**U.S. POLICY ON TERRORISM IN LIGHT OF
THE FALN MEMBERS' CLEMENCY**

TUESDAY, SEPTEMBER 21, 1999

U.S. SENATE,
SUBCOMMITTEE ON COMMERCE, JUSTICE, AND STATE,
THE JUDICIARY, AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Judd Gregg (chairman) presiding.
Present: Senator Gregg.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF NEIL J. GALLAGHER, ASSISTANT DIRECTOR FOR NATIONAL SECURITY

OPENING REMARKS

Senator GREGG. We will start this hearing. I appreciate the courtesy of our witnesses this morning in coming to this hearing.

We are interested today in talking about the effects of the pardons and clemencies granted the Puerto Rican terrorists by the President and domestic terrorism policy.

As a committee, this committee has dedicated an immense amount of time to the issue of terrorism. I think it is safe to say that we have been attempting to lead a coherent effort within the Government on this issue, which is critical. My view is that the single biggest threat that this Nation faces, in a military or physical sense, is a terrorist threat.

We have attempted to develop a coordinated national policy on terrorism and, with the assistance of the Attorney General's Office and the FBI and the Secretary of State, I think we have made very good progress and have put in place a national terrorism policy. We have up and running a group of initiatives in the area of trying to get ready for what will inevitably be—unfortunately everybody seems to have concluded—an ongoing threat. Most likely there will be a terrorist event at some point in the future, potentially using weapons of mass destruction.

So the decision by the President to release these 16 people, who have been convicted of acts of terrorism, especially acts of conspiracy to undermine our Government, throws into question our national policy on terrorism, in my opinion. I think stated most

bluntly: what is the point of catching the terrorist if you are going to let him go?

Deterrence, in my opinion, is as much a part of fighting terrorism as is the intelligence to stop them before they act. Clearly, the misdirected, although theoretically well intentioned, attacks on Sudan were an attempt at deterrence of one type. When you catch a terrorist and go through the many hours that it takes to catch a group like this group, and the man-hours that were involved in this are overwhelming, you expect those folks, once they are convicted, to serve their sentences. So this decision by the President, in my opinion, calls into question the whole effort on how we are approaching the fight on terrorism in this country, and whether we have taken our foot off the gas pedal and stepped on the brakes relative to making an effort to try to control terrorist activity.

There are a lot of questions in this area. It is more of a policy—although I have some specific questions on the specific terrorist act—it is more of a policy discussion on terrorism. And thus, we have asked these two gentlemen to join us this morning, from the U.S. Attorney's Office in New York, Mr. Fitzgerald, and from the FBI, Mr. Gallagher.

Our hope is that they can shed some light on where we are going here, and what this means, what the implications of this action of clemency and these pardons are for our overall terrorism policy.

Mr. Gallagher, we will start with you. If you want to make an opening statement that would be fine. If not, we will go to questions, but we would like to get an opening statement from both of you first, if you want to make one. You do not have to.

STATEMENT OF NEIL J. GALLAGHER

Mr. GALLAGHER. Thank you, Mr. Chairman.

With your permission, I would like to begin with a very simple definition, and it is the definition of terrorism utilized by the FBI.

Senator GREGG. Why do you not introduce yourself for the record, as to what your position is within the FBI, so the people will know.

Mr. GALLAGHER. Yes, Mr. Chairman. My name is Neil Gallagher. I am the Assistant Director of the FBI's National Security Division, which has responsibility for counterintelligence and counterterrorism. I am a 26-year veteran of the FBI and, during the period of 1988 through 1993, I was in charge of the FBI's counterterrorism program.

So I have a background in counterterrorism and am a career FBI agent.

TERRORISM DEFINITION

Again, with your permission, I would like to begin with a very simple definition of terrorism utilized by the FBI, and rather well accepted throughout the United States Government. Terrorism is the unlawful use of force or violence against persons or property to influence or intimidate a government, the civilian population, or any segment thereof in furtherance of political or social objectives.

FALN AND MACHETEROS

Utilizing that definition, I would like to go into the background of when we first learned of the existence of both the FALN¹ and the Macheteros. The FALN first came to our attention on October 26, 1974 when a communique was issued related to five bombings in New York. Since then, over the remainder of that decade, the FALN engaged in a series of 72 actual bombings resulting in five deaths, 83 injuries, and over \$3 million in property damage.

In 1978, the Macheteros first came into public knowledge when they issued a communique relating to the ambush assassination of a Puerto Rican police officer, Julio Rodriguez. In their statement, they explained that although they took credit for the murder, they indicated that they did not intend to kill the police officer. They just intended to take his weapon, his uniform, and his car.

After that, rather than talk about the numbers of the Macheteros incidents, let me just relate a couple of brief incidents that they engaged in.

In 1979, they had eight bombings on one day of U.S. Government facilities in Puerto Rico.

On December 3, 1979, they ambushed a U.S. Navy bus, killing two and wounding nine.

On January 12, 1981, they destroyed nine U.S. jet fighters that were located in Puerto Rico.

On April 21, 1981, they committed a robbery of a Wells Fargo truck in San Torse, Puerto Rico, resulting in the theft of \$348,000.

On May 16, 1982, they ambushed four sailors returning to their ship, killing one.

On October 30, 1983, they conducted a rocket attack against the Federal building which housed the FBI office in Puerto Rico, barely missing the FBI office.

On September 12, 1983, they were involved in the robbery of a Wells Fargo depot up in West Hartford, Connecticut, resulting in the loss of approximately \$7.1 million.

On October 28, 1986, they had 10 simultaneous bombings at U.S. Government facilities in Puerto Rico.

On July 22, 1988, they bombed a U.S. Army/Navy recruiting station in Puerto Rico.

And on July 24, 1989, they had two bombings at a shopping plaza mall in Puerto Rico.

INDICTMENTS

I would like to spend a few minutes talking about the events that resulted in the incarceration of the FALN subjects. That was an indictment that was brought down in April of 1980.

When you look at that indictment and the subsequent prosecution and convictions, I would point out four different parts to it. One was that they were charged with seditious conspiracy relating to 28 different bombings, most of which were in the Chicago area, a highly populated area.

On November 3, 1976, the FBI and Chicago Police located a bomb factory in the Chicago area, at 2659 West Hadden Street in

¹FALN is the acronym for the Fuerzas Armadas Liberacion Nacional Puertorriquena which is translated as the Armed Forces of Puerto Rican Nationalists.

Chicago. In that bomb factory, at one point, there were over 211 sticks of dynamite. The bomb factory was located in a very highly populated residential area.

On March 15, 1980, they had an armed takeover of the Carter-Mondale Chicago Headquarters. Though there were no injuries, I would suggest that this was by sheer luck, given the fact that they went in armed and took control of the people in the headquarters.

The actual event that resulted in their apprehension and led to the indictment occurred on April 4, 1980. If it were not for the good work of an Evanston, Illinois police officer, and if it were not for a citizen calling in some strange activity, there would have been an armored car robbery that day. Fortunately, that did not occur, and I can provide some more details later on that. That would suggest that there was a planned violent activity that was prevented because of good police work.

On August 30, 1985, the FBI arrested 20 members of the Macheteros related to the \$7.1 million armored car robbery. Of those 20 individuals, seven were convicted, six pled guilty, and four remain fugitives. Unfortunately most of the \$7.1 million was never recovered. We know that some of the money went to Cuba and a good portion of the money was utilized for additional activities of the Macheteros terrorist organization.

CURRENT THREAT ASSESSMENT

When you look at either the Macheteros or the FALN, you must ask yourself, "do they still represent a threat to the United States and to the people of the United States?"

The arrests that occurred in Chicago in 1980 and the arrests that occurred in Puerto Rico of the Macheteros in 1985 had the desired effect. It struck at the infrastructure of that organization. The subsequent prosecution sent a strong message neutralizing two terrorist organizations that for a period of over a decade had threatened the security of the United States.

At the same time, as a result of the prosecutions, admittedly, the FALN kept very low. You did not hear a lot about them. Their focus became the release of their comrades from prison.

That was broken in December of 1992 with a bombing of a U.S. military recruitment center in Chicago, Illinois. As we learned about the details of that bombing, we learned that the FALN was attempting to gauge the response of the Puerto Rican population to a renewal of an armed struggle against the activities of Puerto Rican independence. In March of 1999, an individual was convicted for that bombing.

With respect to the Macheteros, on March 31, 1998, there was a bombing at a new aqueduct project in Puerto Rico that the Macheteros took credit for. On June 9, 1998, there was a bombing of a branch of the Banco Popular bank in Puerto Rico.

Several weeks later, on June 25, 1998, there was a similar device located at another Banco Popular branch. There was a police officer who responded to a report of a suspicious device at the bank. It appeared to be a flashlight. When he picked up the flashlight, it went off in his hands, killing him.

The Macheteros issued a communique indicating that they were not responsible for that bombing. However, that seems extremely

suspicious, given the location of the device and the similarities between the two explosive devices in a period of about 3 weeks.

In closing, going back to the definition of terrorism, from an FBI perspective certainly the Macheteros and the FALN are terrorist organizations. They today represent a threat against the United States.

Thank you, Mr. Chairman.

Senator GREGG. Mr. Fitzgerald.

DEPARTMENT OF JUSTICE

STATEMENT OF PATRICK J. FITZGERALD, CHIEF OF THE ORGANIZED CRIME AND TERRORISM UNIT, UNITED STATES ATTORNEYS FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. FITZGERALD. Thank you, Mr. Chairman, good morning.

Senator GREGG. If you could also introduce yourself, please.

Mr. FITZGERALD. Yes, sir. My name is Pat Fitzgerald. I am a chief of the Organized Crime and Terrorism Unit of the United States Attorneys Office for the Southern District of New York. As part of that job, I both supervise and participate in the investigation and trials of matters involving terrorism, especially international terrorism.

At the outset of my remarks, I should say that the defendants who were the subject of the clemency offer were never charged with any crimes in the Southern District of New York, and therefore I do not have detailed knowledge of the nature of the criminal acts or the contents of the clemency petitions filed on their behalf.

It is, however, my understanding that today's hearing will not address the crimes of these particular defendants or the clemency decision itself, but rather potential future consequences of the decision on other cases and our counterterrorism efforts generally.

The Department of Justice addresses the terrorist threat to the United States and its people by aggressively applying a broad range of counterterrorism statutes to activities occurring both within the United States and outside. In light of the potential consequences of terrorist acts, one paramount objective of the FBI and the Department of Justice is to prevent such acts from occurring. To that end, we seek to apprehend terrorists before they strike through the initiation of criminal investigations as early as possible in the chain of conspiratorial events.

AGGRESSIVE ENFORCEMENT

When terrorist acts do occur, we use all available resources in an effort to identify the perpetrators and effect their apprehension and successful prosecution. We also seek to charge all participants in a terrorist plot with the most serious criminal charges that the available evidence and law will sustain.

The Department's commitment to an aggressive counterterrorism program is demonstrated by enforcement actions in the Southern District of New York and other judicial districts.

In my district, by way of example, the dedicated and effective response of law enforcement to the bombing of the World Trade Center on February 26, 1993 resulted in the prompt identification, apprehension, and successful prosecution of six participants in the

bombing, including the so-called mastermind, Ramsi Yousef. All six defendants were convicted and have been sentenced to 240 years in jail without the possibility of parole.

Following the bombing of the World Trade Center, proactive investigative efforts by the Joint Terrorist Task Force, operated by the FBI in conjunction with the New York City Police Department and other agencies, allowed us to charge and apprehend a sizable group of terrorists before they were able to carry out their plans to bomb the Holland and Lincoln Tunnels, a bridge, and other landmarks in the New York area, including the FBI building and the United Nations. Ten defendants, including the leader, Sheik Omar Abdel Rahman, were convicted after a 9 month jury trial of seditious conspiracy and other charges and sentenced to jail terms ranging from 25 years to life in jail, all without the possibility of parole.

Similarly, through effective coordination with foreign authorities, it was possible to prevent the bombing of a dozen U.S. commercial airlines flying Asian-Pacific routes, and to prosecute successfully within the United States three of the prime movers involved in that plot, including then fugitive Ramsi Yousef.

Two of three of these terrorist defendants have been sentenced to date, both to life imprisonment, again without the possibility of parole.

Most recently our office, working with the FBI, obtained charges against Osama Bin Laden, the leader of the Al Qaeda terrorist organization and 16 other defendants for their involvement in the bombings of the U.S. embassies in Nairobi, Kenya and Dar es Salaam, Tanzania on August 7, 1998, and for conspiracy to murder U.S. nationals living abroad.

The commitment of the Department of Justice, which has resulted in these and other law enforcement efforts and successes in the terrorism area, remains steadfast and is not and will not be diminished by the President's recent decision to grant clemency to certain members of Puerto Rican separatist groups who were convicted of criminal acts. Our vigorous counterterrorism efforts will continue unabated.

CLEMENCY DECISION

Although the President's clemency decision did not impact the resolve and efforts of law enforcement, we recognize the potential that terrorist groups or our law enforcement counterparts in other countries might misconstrue the decision as signaling a lessening of our commitment to address terrorism aggressively.

The degree to which that will occur, if at all, is of course speculative. However, to the extent that anyone interprets the decision as reflecting a lessening of resolve, they seriously miscalculate both the intent and actions of the Department of Justice.

The clemency decision can also be expected to prompt arguments at trial or in sentencing proceedings by defense counsel in other terrorism cases that their clients and their criminal acts should not be regarded as seriously as the Government urges. We are firmly resolved to deal with any such arguments so as not to diminish our ability to obtain convictions and maximum sentences for all terrorist defendants.

We have no greater responsibility in enforcing this Nation's laws than to protect our citizens from terrorist actions and plots, and to apply the full force of the criminal laws to terrorist defendants. Our past efforts demonstrate our commitment in this area, and it is our resolve that those efforts will continue and wherever possible be enhanced in the future.

Senator GREGG. Thank you, Mr. Fitzgerald.

Thank you both for your testimony, which we appreciate because it did throw a little more light on where you are, and certainly the background of this case, but also generally the background of how you are approaching terrorism and the prosecution of it.

SHEIK RAHMAN'S CONVICTION

Let me ask you a few preliminary questions, Mr. Fitzgerald. The Sheik Rahman's conviction: He was not present when the bombs were exploded at the World Trade Center, and he did not deliver the bombs to the World Trade Center, did he?

Mr. FITZGERALD. There was no evidence to suggest that. He was blind, so we would never contend that he was the person who put the bomb down.

Senator GREGG. He was, however, convicted of seditious conspiracy?

Mr. FITZGERALD. Yes, Mr. Chairman.

Senator GREGG. And he was convicted of other charges, also?

Mr. FITZGERALD. He was convicted of conspiring to kill the president of Egypt and soliciting attacks on the president of Egypt and soliciting attacks by others on the United States military.

Senator GREGG. But he was not physically present at any time that any acts of violence were undertaken, is that correct?

Mr. FITZGERALD. He was convicted of conspiracy and solicitation offenses for participating in agreements to carry out acts of violence. He was not convicted of any specific acts of violence.

OSAMA BIN LADEN'S INDICTMENT

Senator GREGG. Mr. Bin Laden, who we now have got an indictment against in absentia, he was not present at the bombings in Nairobi or Dar es Salaam, was he?

Mr. FITZGERALD. The indictment does not allege that he was present in either Kenya or Tanzania for the actual bombings.

Senator GREGG. He, however, was indicted, I presume, again for seditious conspiracy?

Mr. FITZGERALD. No, he was indicted for different conspiracy charges. Seditious conspiracy requires the people who were part of the conspiracy to conspire within the United States. So Osama Bin Laden was indicted for a number of offenses, including conspiracy to kill Americans overseas, conspiracy to bomb overseas, and he was actually charged with the actual bombings.

CHARGES AGAINST TERRY NICHOLS

Senator GREGG. Are you familiar with the Terry Nichols case?

Mr. FITZGERALD. No, I am not, other than from the newspapers.

Senator GREGG. Mr. Gallagher, are you familiar with what Terry Nichols were charged with?

Mr. GALLAGHER. I was one of the on-scene commanders at Oklahoma City.

Senator GREGG. Was he present, deemed to be present at the time of the bombings?

Mr. GALLAGHER. I do not think the trial established that he was present with Tim McVeigh at the time of the bombing.

Senator GREGG. So he also was a conspirator who was not physically involved in the act of violence?

Mr. GALLAGHER. That is correct, Mr. Chairman.

Senator GREGG. Now part of the logic of the President's PR on the clemency was that these folks were not found guilty of actually killing people. They were just found guilty of seditious conspiracy. Is it not reasonable to say that Mr. Bin Laden, Sheik Rahman, and Mr. Nichols were also not—Mr. Bin Laden not having been convicted yet, but not charged in that case—were not physically present during the acts of violence for which they were charged or convicted?

Mr. FITZGERALD. We have never contended that any of those people were present at the scenes of the actual explosions.

INCONSISTENCY OF PARDON WITH TERRORIST POLICY

Senator GREGG. The issue of how we deal with terrorists that we think are going to occur in the future, but terrorists who presently exist in our prison or who we presently have under charge, is impacted by this clemency order; is it not? And this pardon order.

Because cannot Sheik Rahman and Mr. Nichols and potentially Mr. Bin Laden, if we can ever bring him to trial and he is convicted, cannot they all make the same claim, that they were not present and, therefore, should be granted clemency, as the FALN have made?

Mr. FITZGERALD. I think they could all make that claim. As a legal matter in the courtroom, it should be irrelevant. I do not want to talk about Mr. Bin Laden's case, since he is not before a court yet. But as for Sheik Omar Abdel Rahman, even though we never alleged nor proved that he was present at the scene of the crime, he was convicted and that conviction was affirmed. He was convicted of seditious conspiracy. That was affirmed by the Second Circuit Court of Appeals.

Senator GREGG. Of course, all of these FALN members, I believe, were convicted of seditious conspiracy. My point is that we now have in prison some, and are trying to capture and try, some people who have committed some heinous acts or been participants in orchestrating heinous acts against Americans, as the FALN did, as was outlined by Mr. Gallagher.

My question is for future terrorism policy: Are these people not now put in the position, with these clemencies having been granted, of being able to claim the exact same status as the FALN people, and, therefore, be able to claim that they should be granted a pardon?

I do not expect you to answer that question, because you are not the President. But if I were making the case of these folks, that would be my case to this President. What is the difference? They are all convicted of almost the same crime, which is that they were not physically present, but that they had a role in developing the

event. That was the logic for which this clemency was granted. If you follow that logic to its natural conclusion, then almost all the major terrorists which we have in prison or are trying to charge could claim clemency and should be granted it by this President if he is going to be consistent, which I hope he will not.

Mr. Fitzgerald, you said that the practical implications of this clemency may be that terrorists will misconstrue and foreign governments will misconstrue our resolve. And this really worries me. I think it should worry the FBI. I am sure it does.

We, on this committee, have spent a lot of time funding FBI Legats overseas, and there has been considerable discussion on this in this committee. It has been hard to get a consensus around that. This question is to you, Mr. Gallagher. In light of Mr. Fitzgerald's comments that this may be misconstrued, and I go to a foreign government and I say, Mr. Jones over here, we believe we can convict him of seditious conspiracy. We would like to extradite him to the United States. Is that foreign government not going to say why should we send him to the United States? You are just going to let him go on clemency?

Mr. GALLAGHER. That is one possibility, Mr. Chairman.

Senator GREGG. Is it not going to make your credibility, in trying to pursue terrorists overseas, much more difficult when you have got this sort of a treatment of a domestic terrorist event?

Mr. GALLAGHER. From just a purely law enforcement perspective, the FBI, on any given day, is reaching out to law enforcement and intelligence agencies throughout the world in our effort to counter terrorism. We solicit the cooperation of these agencies, not just to go against the one person who may be the one who places the bomb, but also to go against the infrastructure that will support the terrorist organization. So to that degree, your comments are accurate.

Senator GREGG. When the decision was made to move to clemency by the President, to give a pardon to these people who—how many people had they killed? Or were killed as a result of their activities?

Mr. GALLAGHER. The FALN bombings have resulted in the deaths of five and injuries to 83.

Senator GREGG. When the decision was made to move towards a pardon of these individuals, was there any attempt, any communication between—well, that is a privileged matter.

FALN COOPERATION WITH LAW ENFORCEMENT

Did the FBI have the opportunity to talk to these individuals before clemency was granted, to ask them questions about who was the trigger man? In other words, were you given access to these people, to use the leverage of clemency to determine more information?

Mr. GALLAGHER. I cannot speak to the issue of clemency, but at the time of their arrest back in 1980, the FBI attempted to obtain information and interview the individuals who were arrested. For the most part, all of the FALN subjects refused to cooperate with the investigation.

Senator GREGG. And did they continue to refuse to cooperate throughout the term of their incarceration?

Mr. GALLAGHER. Yes, Mr. Chairman.

Senator GREGG. So when they were released, you had not received cooperation as to who was actually the trigger people in these events?

Mr. GALLAGHER. That is correct, and there are also other events, such as the FALN bombings in New York, that have never been charged and that remain unresolved.

Senator GREGG. Is it not almost black letter police law, or police procedure, that before you release someone for clemency or give someone a pardon or grant someone a commuted sentence, that you get their cooperation when there are outstanding investigations that involve death?

Mr. GALLAGHER. Prior to a prosecution, if we are talking about making a recommendation either to the U.S. Attorneys Office or through the U.S. Attorneys to the court for a reduced sentence, cooperation is quite often a critical element.

Senator GREGG. Would it not have been the minimum level of courtesy for the White House to have said to the FBI: we are going to give clemency to these people, but you can talk to them first, to try to get their cooperation?

Mr. GALLAGHER. Unfortunately, Mr. Chairman, that would cause me to get into the area that I believe is covered by executive privilege.

Senator GREGG. Did you ever talk to these people prior to the clemency?

Mr. GALLAGHER. The FALN subjects?

Senator GREGG. Correct.

Mr. GALLAGHER. No, sir.

Senator GREGG. So I am going to presume that you were never given that courtesy by the White House? I think it is a safe presumption.

Does the Department have a criteria for clemency?

Mr. GALLAGHER. I would have to defer to the Department of Justice. The FBI does not have a criteria for clemency.

Senator GREGG. Do you know if the—

Mr. FITZGERALD. I do not know what the criteria are, whether there is a formal policy.

Senator GREGG. Let me read to you from what I have been able to glean is the criteria—the process for commuting computation petitions. There is one section that I am interested in.

It says:

SERIOUSNESS AND RELATIVE RECANTNESS OF THE OFFENSE

When an offense is very serious, a suitable length of time should have elapsed in order to prevent denigrating the seriousness of the offense or undermining the deterrent effect of the conviction. In the case of a prominent individual or notorious crime, the likely effect of a pardon on law enforcement interests or upon general public should be taken into account.

That appears to be the protocol for granting a pardon and clemency procedure, under Presidential Directive 1-2.112, Standards for Considering Pardon Petitions.

Would not the phrase "likely effect of the pardon on law enforcement interests or upon the general public" include the issue of releasing people who have knowledge of who killed, was it six people?

Mr. GALLAGHER. Five people were killed.

Senator GREGG. Five people, and wounded 83 other people, allowing law enforcement to receive their cooperation? Would not that phrase, you presume, include that concept?

Mr. GALLAGHER. Again, Mr. Chairman, you are asking me to speak on behalf of the White House. I can only speak for the FBI and law enforcement.

Senator GREGG. Well, I would just note for the record that this language seems to be pretty clear, that law enforcement is supposed to be assisted in its investigations prior to pardons being granted.

EFFECT ON FUTURE PROSECUTIONS

Now the question becomes, in the future, when we deal with a terrorist group, is prosecution going to be affected by the fact that clemency might occur? I notice you seem to think, Mr. Fitzgerald, that is not the case.

Mr. FITZGERALD. I would say that in any future prosecution, when we are presented either with a terrorist act within our jurisdiction or a terrorist plot, there will be no change in the way we proceed, that the FBI and the U.S. Attorneys Office will proceed to identify, seek to apprehend, charge aggressively, and prosecute anyone who is responsible for participating in a plot or an act and to seek maximum sentences. Our intentions and our resolve will be unchanged.

Senator GREGG. I think that is good news. The fact is, law enforcement will continue to enforce the law.

You said these individuals were convicted without the ability to get parole; is that correct?

Mr. FITZGERALD. Yes, under the new law that was passed in, I think, 1987, parole was abolished in the sentencing guidelines. So the sentences under the new law do not allow for parole.

DIFFERENCE BETWEEN PAROLE AND CLEMENCY

Senator GREGG. What is the difference between parole and clemency? Is not clemency even a lesser degree of restraint than parole?

Mr. FITZGERALD. To be honest with you, I am not familiar with the terms of the clemency offered the individuals that you are talking about, so I do not know.

Senator GREGG. Theoretically, if someone is granted clemency and someone is put on parole, who has more freedom when they get out of jail?

Mr. FITZGERALD. It actually depends on the clemency restrictions and the parole restrictions and comparing them. Honestly, I have no idea what restrictions there are on these people.

Senator GREGG. Would you have any thoughts on that, Mr. Gallagher?

Mr. GALLAGHER. I go back to a statement made by Ojeda Rios, who is the leader of the Macheteros. He was charged in connection with the \$7.1 million Wells Fargo robbery. He was out on bail. He issued a communique announcing that he was going to return to his clandestine ways and has not been seen since.

So when you talk about conditions being placed on a terrorist, we have to assume that the terrorist will abide by all of the restrictions that may be placed on them, though well intended. In the

case of Ojeda Rios, he continues to lead a terrorist organization in exile.

IMPACT OF CLEMENCY ON CRIMINAL JUSTICE

Senator GREGG. You made the point, and I think it was a telling point that—although I think Mr. Fitzgerald's comments on the fact that this may be misconstrued overseas and the implications—the clemency will affect trial procedure. I think that is an important point because it does mean that you are going to have smart defense attorneys basically claiming that there is no status difference between Osama Bin Laden, if we ever get him into court, and the FALN and the charges should, therefore, be treated as subject to clemency.

I think the point that you made, Mr. Gallagher, at the end of your comments, the statement was that you consider the FALN to represent today a threat to the United States. It is a fairly telling statement, and my question to you is: Do you think clemency should be granted to individuals when they have threatened the institution of freedom known as the United States?

Mr. GALLAGHER. Again, Mr. Chairman, I offer my apologies. That appears to get into the area of executive privilege because it is giving what may be the FBI opinion on the process of granting clemency. I will have to stop with that.

Senator GREGG. The President sent us legislation, and he has made the statement publicly, and in fact last week he was encouraging Russia to get tough on terrorists. The legislation was get-tough-on-terrorist legislation. It was the Anti-Terrorism and Effective Death Penalty Act of 1996.

My question is is it getting tough on terrorists to give a group of terrorists who kill five people, injure 83, cause millions of dollars of damage, and openly threaten the institution of free government through violence—is that getting tough on terrorists, to give them clemency?

Mr. GALLAGHER. That is a question, in the sense that you just posed it, for the White House, not for the FBI. The FBI will maintain its resolve in combating terrorism. We will continue to use the law enforcement approach to try to prevent terrorism from occurring inside the United States, and we will continue to aggressively pursue organizations like the Macheteros and the FALN.

Senator GREGG. Well, do you think these folks are going to become law-abiding citizens with no further interest in terrorist activity?

Mr. GALLAGHER. My concern is that the release of these individuals could possibly have both a psychological and operational impact on an active terrorist organization.

Senator GREGG. Reinvigorate it maybe?

Mr. GALLAGHER. It may reinvigorate them. With the FALN having a lull for a period of a decade, to allow their individuals to be released may reinvigorate them.

Just the other day, on September 13 in Puerto Rico, Ojeda Rios issued a communique with respect to the ongoing dispute over the Island of Vieques off Puerto Rico. He stated that, if this debate continues on unresolved, the Macheteros will not stand by with their arms crossed. And at the end of his communique he issued a chal-

lenge to the FBI, in addition to other U.S. Government agencies. So the real prospect of additional terrorism, either directed or supported by the Macheteros or the FALN, exists today.

Senator GREGG. That was this week that he issued that?

Mr. GALLAGHER. September 13, 1999.

Senator GREGG. When was the clemency granted?

Mr. GALLAGHER. Well, I do not have the actual date of the clemency, because I have not seen the document.

Senator GREGG. They were released September 10 and this communication occurred on September when?

Mr. GALLAGHER. September 13, 1999.

Senator GREGG. So we have 3 full days then we received a—

Mr. GALLAGHER. A challenge because the Macheteros have targeted the United States Navy to highlight the ongoing debate over the Island of Vieques. In the communique, they have also mentioned the FBI. There has not only been a rocket attack against the FBI facility in Puerto Rico, but today there is an FBI agent who was involved in the attempted arrest of Ojeda Rios that is blind in one eye as a result of a shoot-out that occurred during the arrest attempt.

Senator GREGG. So we got 3 days of peace for this clemency, and we now have a threat that has been reasserted.

Mr. GALLAGHER. The threat has been reasserted by the Macheteros.

Senator GREGG. Governor Keating, who was a former FBI agent and is governor of Oklahoma, made this statement relative to the clemency. He said this type of action will encourage terrorism worldwide. We should never make deals with terrorists.

Do you think that that is a reasonable statement of policy?

Mr. GALLAGHER. With respect to whether it will encourage terrorists?

Senator GREGG. Right.

Mr. GALLAGHER. My concern is that it would have a psychological impact on at least these two terrorist organizations. And you have to consider the possibility that it could have a similar psychological impact on other terrorist organizations.

I can recall sitting down with representatives of the Southern District of New York at the early stages before the prosecution of Sheik Rahman, and one of the reassuring aspects of it was the aggressiveness of the prosecutors out of the Southern District that were going to take on the infrastructure that would plan to bomb New York City. It was not only those individuals who had placed the bomb, but the entire infrastructure that would allow an organization like that to exist on U.S. soil.

Senator GREGG. Is there anything further either of you wish to add?

Mr. FITZGERALD. No, thank you, Mr. Chairman.

Senator GREGG. I think both of you have summarized the problem rather starkly and, as I see it, the problem is that this clemency, first, was ill-conceived. Second, it cannot be justified. Third, it creates very serious problems for those pending terrorist cases and for the terrorists we already have in jail. It gives them credibility to claim clemency under the same act. Fourth, it is going to undermine our ability to deal with foreign governments and foreign

police forces, and undermine their confidence in our willingness to not only convict terrorists but to keep them in prison. And fifth, it appears that we have granted clemency to a group of people who really were not asked to cooperate before they were given clemency, which I find staggering, to identify who caused these crimes beyond themselves; who did this killing beyond their own group. Clearly, there is no confidence—at least it appears to me from the testimony this morning—that these folks are going to be a problem in the future with some sort of terrorist act, or that their associates will not undertake some sort of terrorist action.

And so, as a general statement, it seems to me that the granting of clemency in this area has really shredded our efforts to have a coherent, cohesive, and tough policy against terrorists.

We have been set back significantly, I would suspect, in our capacity to one, pursue terrorists; but two, once we get them in prison, keep them there by this action. Obviously, in these specific instances, we have been set back completely because they are out, and they should never have been out. But with other people who are hopefully going to be apprehended and convicted, like Mr. Bin Laden, it undermines our credibility in holding them in jail.

So I do think this has done a disservice which may come back to haunt us as a Nation.

CONCLUSION OF HEARING

I appreciate your time for coming here and testifying, and I think that it has been an opportunity to get some of these issues out that I think were important to discuss, and I thank you for doing that.

Mr. FITZGERALD. Thank you, Mr. Chairman.

Mr. GALLAGHER. Thank you.

Senator GREGG. Thank you.

[Whereupon, at 10:45 a.m., Tuesday, September 21, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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