

Testimony of

# **The Honorable Patrick Leahy**

March 21, 2002

Today we resume our FBI oversight hearings that began last summer with a focus on the FBI's readiness to deal with the law enforcement challenges of today as well as tomorrow. These hearings are vital because, as we begin this new millennium, the FBI faces unprecedented challenges and also wields unprecedented power. With the stakes so high for the American people, it is the Committee's responsibility to ensure that the FBI is as great as it can be, and this series of bipartisan FBI oversight hearings is a fundamental part of the process.

## **The Inspector General's Findings**

Specifically, today we consider the FBI's belated production -- and, as the important and thorough report by the Inspector General revealed this week - also the destruction of documents in the Oklahoma City bombing case. Even more troubling is the report's conclusion that senior FBI personnel failed to notify either the prosecutors on the case or high-ranking Justice Department officials, including the current FBI Director Robert Mueller, who was then serving as the acting deputy attorney general, about the belated document production problems until one week before the scheduled execution date for Timothy McVeigh.

Significantly, the Inspector General's report revealed that the destruction of relevant FBI documents was not disclosed to the court, the prosecutors on the case, or the defense until after the execution took place. I agree with the conclusion in the Inspector General's report that "the court and defense counsel should have been informed of the FBI's destruction of documents, in addition to being given the belated documents, while McVeigh's stay of execution was being litigated." (report, p. 173). It is unlikely that any of the destroyed documents, if produced, would have changed the outcome of the case, but that does not excuse the FBI's conduct. The observations of the presiding judge in the case about the FBI's conduct are illuminating: He described the FBI as "an undisciplined organization or organization that is not adequately controlled or that can't keep track of its information." (Id., at 131). Yet, in denying the request for a stay of execution, he noted that "It is the function of others to hold the FBI accountable for its conduct here, as elsewhere." (Id.).

This report raises three significant issues for this Committee's review. First, there are structural and management problems at the FBI which need fixing. You cannot blame a computer or a filing system when senior FBI agents in charge of the Oklahoma City bombing case are aware of document production problems almost five months before the scheduled execution. FBI headquarters officials were also aware nearly three months before the scheduled execution, yet did not disclose these problems to the FBI Director, to senior Justice Department officers, or to prosecutors on the case until a week before the scheduled execution. This appears to be yet another example that the "circle the wagons" mentality has been alive and well in parts of the FBI. When you learn about a problem, you cannot bury your head in the sand and hope it goes away. Efforts to contain a problem under a cloak of secrecy have a tendency to aggravate the

problem. This Committee will look to Director Mueller to consider appropriate administrative action against the FBI managers who did not promptly tell FBI headquarters, Justice Department officials, and the prosecutors on the case about the document problems.

The silver lining in the Inspector General's report is the conduct of two lower-level employees, who, in contrast to the managers, did the right thing here. The FBI financial analyst and the intelligence research specialist who first discovered the document production problem in January 2001 promptly informed their superiors in the chain of command, but did not go around them. As the report notes, "the FBI could do well to use this as an opportunity to help remedy a long-standing FBI problem - the belief among FBI employees that bringing problems to management's attention only results in problems for the employee." (Id., p. 139).

Second, the information management and technology problems at the FBI substantially contributed to the belated document production. While we all are relieved that the Inspector General found no intentional misconduct, the report documents a number of fundamental flaws in the handling of information by the FBI that contributed to the failure to produce documents in the Oklahoma City bombing case: "antiquated and inefficient computer systems;" "inattention to information management;" "inadequate quality control systems;" misfiling, mislaying or losing documents by FBI personnel; failure by field offices to follow instructions and respond to leads; inaccurate and misleading communications among FBI offices; and a system and procedures for handling documents that "was -- and still is -- inordinately cumbersome and badly in need of change." This litany of problems is startling, and I am pleased to give the FBI an opportunity today to tell us about what the FBI is doing to address these problems.

We all appreciate the efforts of Director Mueller to correct the management and information management problems at the FBI, and I hope he appreciates the fact that congressional involvement can help achieve constructive change. In the Emergency Supplemental Appropriations Act passed in January, Congress gave the FBI \$745 million, with more than \$417 million of that dedicated to computer and information technology. Congress is poised in this year's budget process to give the FBI another \$245 million. That would amount to a billion-dollar infusion of funds into the FBI, or a 25 percent budget increase since September 11. Just throwing more money at, and granting increased powers to, the FBI, without focusing on and fixing the management and information technology problems that exist, is a certain prescription for future failures - and one that this Committee is no longer willing to write.

Finally, we have to apply the lessons of Oklahoma City to the new challenges facing the FBI in fighting terrorism. The management and document handling flaws documented in the Inspector General report are chilling and raise the critical question of whether the same flaws hampered the FBI's sharing of counterterrorism information before the September 11 terrorist attacks. It is fair to conclude that the FBI does not know what it knows. How, then, can it effectively analyze or share critical information? That is simply unacceptable when this country faces the threat of terrorist attacks.

#### Legislative Action Is Necessary

The Inspector General's report demonstrates the need for enactment of S.1974, the Leahy-Grassley FBI Reform Act, to charter the authority of the Justice Department's Inspector General to review allegations of FBI misconduct and to strengthen FBI information management and

technology and to protect FBI whistleblowers. Prior recommendations by the Inspector General in three separate reports on information management improvements were not acted upon by the FBI. Our legislation would require the Attorney General to report to the House and Senate Judiciary Committees on steps being taken to implement a 10-point plan for FBI information technology -- ensuring that, this time, the recommendations are not disregarded.

#### Continued Oversight Is Important

The need for sustained, bipartisan oversight is clear from this week's report as well as from last week's delivery by the Immigration and Naturalization Service of visa confirmations for two of the terrorists who were responsible for the September 11 attacks. The President and the Attorney General recognize the problem, and the Attorney General, yet again, has directed the Inspector General to initiate an inquiry. Judge Webster is completing his evaluation of FBI security in the wake of the Hanssen espionage disaster. Deputy Attorney General Thompson is conducting an independent review of FBI management, and Director Mueller has already started reorganizing the Bureau. We intend to hear from Judge Webster, Deputy Attorney General Thompson, and Director Mueller later this Spring.

Special reports, reform legislation and bigger budgets are important, but they are no substitute for sustained, focused and bipartisan Congressional oversight. That is why Senator Hatch and I have jointly requested additional resources to carry out the Judiciary Committee's oversight duties of the law enforcement agencies whose missions - all the more since September 11 - are so important to the American people, to our civil liberties, to our public safety and to our national security.

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