

Testimony of

The Honorable Patrick Leahy

May 8, 2002

This hearing marks the continuation of the Judiciary Committee's series of bipartisan FBI oversight hearings that began last summer. We have considered the report of former Senator John Danforth on the Waco confrontation, the Webster Commission report on FBI security in the wake of the Hanssen espionage case, and the Justice Department Inspector General's report on the belated disclosure of FBI documents in the Oklahoma City bombing case. We have heard the important perspectives of FBI agents and senior officials about what they believe the FBI must do to address morale and accountability problems, and to improve the Bureau's security and counterespionage programs, computer systems, and information management practices. The Members of this Committee have paid close attention and on April 25, voted unanimously to report to the full Senate for consideration, the FBI Reform Act of 2002, S. 1974.

The risk of catastrophic terrorism - as we know so vividly from the 9/11 and anthrax attacks - has made amply clear that nothing is more critical to the safety of the American people than a well-organized and skillfully managed FBI that uses its power and resources effectively while adhering to the Constitution and the rule of law. The FBI has two key and overlapping missions: protecting our national security by rooting out spies and terrorists, and protecting our public safety by investigating criminal activity. Today's hearing looks at how the FBI can reorganize and refocus its efforts to perform both missions with the resources made available by the President and the Congress.

Pre-Sept. 11 Issues: In my view, you cannot plan for the future effectively without knowing what went wrong in the past. Before we can learn any lessons from recent experience, we need to develop the lesson plan by examining what happened. In devising a new counterterrorism strategy for the FBI to prevent future terrorist attacks, we need to determine whether any institutional flaws in the FBI impaired the government's ability to prevent the 9/11 attacks. That is why I wrote to the Attorney General on October 25, 2001, requesting that relevant material be preserved, and on November 8, 2001, I recommended asking Judge Webster's Commission to review the FBI's pre-9/11 performance. While the Attorney General did not commission an outside review, this Committee has an obligation to understand the lessons of the 9/11 attacks for reorganizing the FBI and refocusing its mission.

This grave duty can only be discharged by the Committee responsible for oversight of the entire Bureau - its national security functions, its other law enforcement tasks, and the support structure within which both are performed. When Judge Webster came before us to describe the deficiencies in FBI security that allowed Robert Hanssen to spy for the Russians undetected for more than 20 years, he described the "institutional" vulnerabilities of the FBI as "shocking" and "devastating"- this from a former FBI and CIA Director. Likewise, when the Justice Department Inspector General told us that "widespread failures by the FBI" led to the belated disclosure of documents in the Oklahoma City bombing case, the FBI's current Executive Assistant Director

for Administration, Bob Chiradio, testified that the Director had made the IG's report "recommended reading for all FBI management and supervisory personnel."

In each case the FBI's knee-jerk response before those reports came out was to minimize its responsibility. The American public was told Hanssen was 'too smart to get caught.' The American people were told that computers, not people, caused the delay in the production of documents in the Oklahoma City case. Yet, the Webster Commission and IG reports made clear that FBI security flaws enabled Hanssen's spying, and that bad judgment as well as computers contributed to the production delays in the Oklahoma City case. Indeed, in both cases it was more than that - a major participating cause was the deeply imbedded culture of the FBI.

Today we are still in the same position regarding the 9/11 attacks as we were before the Webster Commission and IG reports. The American people are being told that the conspirators were too clever to have been caught. We are being told that the hijackers avoided detection because they combined meticulous planning and extraordinary secrecy with discipline, fanaticism and extensive knowledge of how America works. We hear that nothing short of a member of the inner circle turning himself in would have provided sufficient foresight to have prevented the attacks.

Those explanations may indeed be correct. No one would blame the American public, however, for wanting to examine those explanations. There may be more to the 9/11 story than the skill of the enemy - just as there was more to the story of Hanssen than his intellect and more to the story of the Oklahoma City documents than computers. When senior FBI officials concede in testimony before this Committee that the FBI does not know all that it knows, we are left to wonder whether the FBI effectively used relevant information that it knew before the watershed events on 9/11.

Continuing press reports allege the FBI failed to pursue pre-9/11 leads effectively, including warnings about two hijackers and, just last week, a report of concerns of the FBI's Phoenix office about the possibility of terrorists at U.S. flight schools a few months before the 9/11 attacks. The FBI provided to the Committee a single paragraph from the otherwise classified Phoenix report that states:

"Phoenix believes that the FBI should accumulate a listing of civil aviation universities/colleges around the country. FBI field offices with these types of schools in their area should establish appropriate liaison. FBIHQ should discuss this matter with other elements of the U.S. intelligence community and task the community for any information that supports Phoenix's suspicions. FBIHQ should consider seeking the necessary authority to obtain visa information from the USDOS on individuals obtaining visas to attend these types of schools and notify the appropriate FBI field office when these individuals are scheduled to arrive in their area of responsibility."

I hope that the Director will help us get to the bottom of this incident, including finding out exactly what was said in the FBI report, to whom it was sent, and whether any action was taken in response to that FBI report.

Other provocative questions also need to be pursued. Shortly before the 9/11 attacks, the FBI reportedly was notified that an individual who had met with individuals implicated in the bombing of the USS Cole had entered the United States with an associate. The FBI began to search for these men, but did not find them before they hijacked the plane that flew into the Pentagon. When Attorney General Ashcroft testified last October, I asked if there was a procedure for putting such names on a watch list for the airlines. He said there was not. The next questions, of course, are "Why not?" and "Is there now such a procedure?" Other questions are what steps did the FBI take to find the two men, and how long did it take to enlist other agencies in the search? If the names had been placed on an airline watch list, or the FBI had the information earlier, would it have increased the chances of disrupting at least part of the attack?

Here are some things we already know about FBI operations that potentially limited our nation's defenses against terrorism before 9/11:

- The Bureau's information management and computer systems were so flawed that the FBI had no real way to know what information it had in its possession.
- Some FBI field offices operated so independently that their information was not shared with other parts of the Bureau that needed it, let alone with other agencies.
- In 1999 the leadership of the FBI's counterterrorism program had been split between two divisions, with terrorism analysts placed under an Investigative Services Division manager with little national security or intelligence community experience.
- The FBI lacked the strategic analysis capability to gather information from current and past cases, reach out for information from other agencies, look for patterns, analyze risks, plan strategy for its own operations, and meet the needs of organizations responsible for security measures.
- The FBI had no comprehensive terrorism watch list to bring together the names of all suspected foreign terrorists known to the FBI and other federal agencies.
- The FBI did not put any names of terrorist group members in the National Crime Information Center file that was designed years earlier to provide information about suspected terrorists to other federal, state, and local law enforcement agencies.
- The FBI lacked the translators and the Agents with foreign language skills necessary to develop sources, conduct effective interviews, read foreign documents, and monitor electronic surveillance in international terrorism cases.

The American people and the U.S. Congress should not be hearing about information such as the Phoenix memorandum as it is periodically leaked to or uncovered by the media. The American people deserve a full accounting of this matter.

Senator Hatch and I have made a joint request for additional funding to examine the events leading up to the September 11 attacks and what steps are needed to make sure that our law enforcement is in a position not to let history repeat itself. That request has been blocked by

Minority Leader Lott. An examination of FBI operations before 9/11 are essential, not to lay blame, but to learn lessons and to be in a position to evaluate the FBI reorganization plans.

I look forward to discussing with the Deputy Attorney General and Director Mueller the reasons for the reorganization and other management actions they have underway. The Director has already restored unity of command under a new Executive Assistant Director for Counterterrorism/Counterintelligence, sought to strengthen FBI analysis by creating an Office of Intelligence, posted the identities of terrorist group members on the NCIC, and ordered the development of a comprehensive Terrorism Watch List to serve the law enforcement and intelligence communities. These are all important steps.

At the same time, I am concerned about new management issues that directly affect the FBI's counterterrorism role. For example, the Department appears to be developing two counterterrorism intelligence organizations - an FBI Office of Intelligence that brings together terrorism information from other agencies and other countries for a comprehensive FBI Terrorism Watch List and a separate Main Justice Foreign Terrorist Tracking Task Force that reports to the Deputy Attorney General. This new Main Justice Task Force plans to spend nearly \$20 million for its own intelligence analysis projects, databases, and lookout list. Why is this Task Force reporting to the Deputy Attorney General, rather than to the FBI Director, who has the daily responsibility alongside the CIA Director to brief the President on terrorist threats? Would the best course be to make the Task Force mission and assets a vital part of the new FBI Office of Intelligence?

Another example, is the Justice Department's maintenance of two separate systems for using the Internet to share information among law enforcement agencies and first responders - the FBI's Law Enforcement OnLine (LEO) and the Justice Management Division's Regional Information Sharing System (RISS). Has the time come to bring these programs together to meet the requirement for a unified, secure Internet system for sharing critical homeland security information with first responders?

Our nation's counterterrorism and homeland security efforts are too important to allow these organizational issues to remain unresolved.

Criminal Investigation Issues: Turning to the FBI's other criminal investigative work, the Committee needs to consider the preliminary ideas of the Director and the Deputy Attorney General for de-emphasizing certain FBI missions. On March 6, Director Mueller said that the FBI is "developing a comprehensive strategy to permanently shift resources to the fight against terrorism and in support of a massive prevention effort."

The FBI cannot be all things to all people. Too often our first response to any new and important law enforcement problem has been to assign the problem to the FBI.. Too many carjackings? Too much domestic violence? Too much simple drug possession? Too many drive-by shootings? The answer has long been to create federal penalties and put the FBI on it. Over and over again, whenever the nation has faced a new or emerging crime problem, America has turned to the FBI to solve it, even though we have other fine Federal, State and local police and investigative agencies fully capable of addressing such problems.

It is a testament to the overall confidence we have in the FBI that we turn to the Bureau so reflexively, but the FBI cannot be as effective at focusing on problems that only the FBI can handle when the attention of field agents is constantly diverted to problems that are important, but can be handled by other agencies.

I know the Director is confronting hard decisions about how to refocus the FBI's mission and reorganize the Bureau, and this Committee may ask tough questions about the decisions he makes. But if recent history has taught us anything, it is that asking the tough questions is in the best interest of the American people.

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