

Testimony of

The Honorable Patrick Leahy

July 23, 2003

Statement of Senator Patrick Leahy,
Ranking Democratic Member, Senate Judiciary Committee
"Oversight Hearing: Law Enforcement and Terrorism"
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I want to welcome our distinguished witnesses this morning, and thank you both for coming. I know that I speak for everyone in this room when I say that I appreciate your dedication and hard work in these difficult times. All of the employees of the FBI and the Department of Homeland Security who work tirelessly to keep this country safe and strong have my deep gratitude and unwavering support.

Director Mueller, I have anticipated your testimony for months now and look forward to hearing your views on a number of issues. At our Committee's last oversight hearing, back on March 4th, Chairman Hatch said he would ask you to testify again soon regarding the FBI's use of its authorities under the Foreign Intelligence Surveillance Act ("FISA"). I did not know then that the FBI would not re-appear on the Committee's agenda for nearly five months, or that our limited time together would again be shared with another senior Administration official. Nor did I know that the hearing would be a free-ranging discussion, as opposed to a more focused look at the many significant issues surrounding FISA. But any opportunity for oversight - no matter how overdue and diffuse - is appreciated. Much has happened in recent months, and there is much to cover this morning.

I would like to take a moment to welcome Undersecretary Hutchinson, who has always made himself available to this Committee. Among other things, your appearance will allow members of the Committee to ask both you and Director Mueller about the Justice Department Inspector General's two recent reports alleging, among other things, the abuse of immigrants being held in Federal custody. I am deeply concerned by the allegations in these reports that Muslim and Arab immigrants being held on civil violations of our immigration laws are being subject to abuse. I hope that you both can explain to the Committee today the role that you are playing in addressing these charges, and the changes, if any, that the FBI and Department of Homeland Security will make in response to these reports.

I know we are all interested to know what progress the FBI has made on the road to reform. Director Mueller, you once said that it is "critically important" that you hear criticisms of the FBI, so that you can improve it. I could not agree more. Now more than ever, the FBI must be open to new ideas, to criticism from within and without, and to admitting and learning from past mistakes.

During the last Congress, our Committee unanimously approved the Leahy-Grassley FBI Reform Act of 2001. Unfortunately, our bipartisan efforts were stymied by an anonymous Republican hold, which prevented the bill from being considered on the floor. We did, eventually, succeed in passing some of the bill's reform provisions as part of the Department of Justice authorization act, but other needed reforms were senselessly blocked. These reforms remain as important and urgent as ever, and yesterday Senator Grassley and I re-introduced them as the FBI Reform Act of 2003.

Although Director Mueller has spoken publicly about changes within the FBI, and has taken the added step of commissioning a review of the Bureau's Office of Professional Responsibility, there are still reports of poor agent morale, double standards in discipline, and an internal climate that chills employees from coming forward and making appropriate disclosures. A growing chorus of senior FBI agents are alleging that they were retaliated against for exposing misconduct and wrongdoing within the Bureau. The FBI Reform Act addresses these and other problems which I hope to discuss with Director Mueller this morning.

I also hope that we will also have time this morning to devote to the original focus of this hearing - the FBI's use of its surveillance powers under the USA PATRIOT Act. As Director Mueller knows, I worked closely with the Justice Department in crafting that law, because of the Administration's claim that these new powers were needed to prevent terrorism, and because I trusted the Department's promise that it would use these powers appropriately. But to borrow a phrase from former President Reagan, it is often useful to "trust, but verify."

In this regard, several members of this Committee - Senator Grassley, Senator Specter, Senator Feingold, Senator Edwards, and I - have introduced the Domestic Surveillance Oversight Act, S. 436. This bill does not in any way diminish the government's powers, but it does allow Congress and the public to monitor their use. We cannot fight terrorism effectively or safely with the lights turned out and with little or no accountability.

Along the same lines, while I appreciate that this is an open hearing today, I hope that Director Mueller will be able to shed some light on one of the Bush Administration's most closely-guarded secrets - the status of the so-called PATRIOT II legislation. Does it exist? Have you seen it? Can anyone on this Committee expect to see it and comment on it before it is officially dropped in our laps?

[I look forward to hearing Director Mueller's report on how the FBI's increased focus on terrorism - and resulting decreased attention on other crimes - has affected other Federal, state, and local crime-fighting agencies. Similarly, what progress has been made - and what still remains to be done - in improving information-sharing with State and local law enforcement? I continue to believe that first responders are not receiving the assistance they need to fight crime and protect our communities.]

On another subject, Katrina Leung, an FBI confidential informant, and James Smith, her former FBI handler, were indicted earlier this year in an espionage case that implicates serious security lapses at the FBI. Senators Grassley, Specter and I asked Chairman Hatch in April for a hearing to examine issues raised by this case. Though our request was refused, perhaps in this forum,

Director Mueller, you can shed light on any systemic problems that may still be present within the FBI that led to such a dangerous security breach.

[I am also interested in hearing more about the Evansville, Indiana, men who were arrested as material witnesses following the September 11 attacks, and later released, with the apologies of the FBI, after it became clear that they had been wrongly accused. Several members of this Committee have voiced concerns about the Department's aggressive post-9/11 use of the material witness statute. I believe that this statute, as currently drafted, invites confusion and abuse, and would be interested in hearing the FBI Director's views on whether it needs fixing. I should note that I wrote to Attorney General Ashcroft about this on June 3rd, but I have yet to receive a reply.]

In addition to addressing the two recent DOJ Inspector General reports, I hope that Mr. Hutchinson can also update the committee on his Department's progress in implementing the Congressionally-mandated entry-exit system to track foreign visitors to the United States. As a representative of a border state, I know firsthand the importance of balancing security and commerce, and I look forward to hearing from the undersecretary how that balance is being drawn here.

I would also appreciate an update on the Department's progress in increasing the number of border personnel guarding our border with Canada. As Mr. Hutchinson knows, I have been involved for many years in seeking additional personnel at our Northern Border - to promote both security and trade - and included provisions in the USA PATRIOT Act to triple the personnel in place along the border.

I thank the Chairman for holding this hearing, and I look forward to hearing from our witnesses.

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