

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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I commend the Chairman for arranging this hearing and I thank him for his accommodations in scheduling it.

I want to thank and welcome each of our witnesses, particularly my old friends Lee Hamilton and Slade Gorton. And let me say that as the Commission's chair and vice chair, Governor Kean and Congressman Hamilton offered extraordinary leadership in guiding this investigation through difficult shoals and bringing the Commission to its constructive and unanimous findings and recommendations. I have heard the high praise that you and other Commissioners have had for the Commission's staff, and I join you in that praise. The Report you together have produced is an exceptional product that deserves the Nation's attention, and it deserves the Congress's prompt consideration.

Decisions Facing ALL Americans

Senator Gorton once remarked that the commissioners checked their politics at the door, and the quality of the Commission's Report bears this out. By working so effectively in a non-partisan fashion, the 9-11 Commission has given us all a chance for a fresh start in tackling the issues the Report has identified. We should not squander that chance, and we should use the Commission as our model in striving for bipartisanship in making these decisions. After all, terrorists do not attack Democrats or Republicans or Independents; when they strike, they attack all of us as Americans.

I also want to commend the tireless efforts of the families and survivors of the 9-11 attacks, who fought so hard to ensure that this Commission was established. Like the commissioners, the victims groups put partisanship aside and pushed for an open, deliberate and accountable investigation, moving us forward in a constructive manner to better protect this Nation. Members of several victims groups are here today, and I want to personally thank them and welcome them here. I also want to submit for the record the written statement of Donald Goodrich of Bennington, Vermont. Mr. Goodrich, who lost his son, Pete, is the Chairman of Families of September 11. He could not be here today, but he has come to work closely with me on victims' issues, and I want to express my deep appreciation to him.

We cannot overstate the importance of oversight. I commend the Commission for fighting for full access to documents and official testimony, and for acknowledging in its final report the importance of open government. The report stated that secrecy can harm oversight, noting that democracy's best oversight mechanism is public disclosure.

Today's hearing will focus on two areas of great significance in this Committee's oversight jurisdiction: FBI reform and border security. Both are topics that are well-known to this Committee and that have been of particular concern to me. With my home state of Vermont sharing 90 miles of our international border with Canada, I am familiar with the challenges and concerns facing us in securing our borders after September 11.

FBI On The ABCs

The attacks of 9-11 did not create the problems the Commission has identified; they simply brought them into sharp relief. As someone who comes from a law enforcement background, several of them are problems that have concerned me for some time, and I know that they have concerned others on this Committee. Addressing some of these deficiencies was my first and my highest priority when I became chairman of the Judiciary Committee just a few months before September 11.

During that summer, it was already clear that the FBI over the years had lost its way on some of the fundamentals - the ABCs, if you will - starting with Accountability; Basic tools like computers, technology and translators; and "Culture" issues, like the treatment of whistleblowers and a resistance to sharing information outside the Bureau.

We began bipartisan hearings on reforming the FBI just weeks before September 11, and a new FBI Director pledged his commitment to correcting these longstanding problems. Director Mueller has made significant progress on several fronts, but the Commission's Report strikes several familiar chords, showing that there is much ground yet to cover before we can say that the FBI is as effective as Americans need the Bureau to be in preventing and combating terrorism. We continued the hearings on FBI reform after September 11th, and we sharpened our focus on the relevance of these longstanding problems to the newly declared war on terrorism. Our inquiry constituted the most intensive FBI oversight in many years, and it generated wide-ranging, bipartisan recommendations for reform.

The Commission Report identified many of the same failures within the FBI that we had highlighted in those hearings. It recognized, as do I, that Director Mueller has already taken certain steps to solve structural problems, and that, perhaps most important, he is striving to change the culture within the Bureau. These are important steps, but as the Commission pointed out, we need to ensure that changes put into place now will survive the current leadership of the Bureau and its component parts. Past attempts at FBI reform have died on the vine through lapses in leadership and lax congressional oversight.

Inadequate FBI Tools and Technology

I want to discuss two particular areas that gravely concern me: the FBI's foreign language translation program, and its information technology systems. These are the nuts and bolts of effective law enforcement and counter-intelligence, but we know now that in the months leading up to September 11th they were in sorry shape. Three years and many millions of dollars later we need to know what progress has been made and what more remains to be done.

Our FBI witness, Maureen Baginski, said recently that she was optimistic about the status of the FBI's foreign translation program, and I hope that she can share some good news with us today. Last spring, despite claims of "near real time" translation of wiretaps, the FBI could not state with any certainty how much time passes between the time a telephone call is taped and when it is translated. Is there still a vast backlog of material needing to be translated? The FBI sought an unprecedented number of new FISA wiretaps last year; how is this impacting critical FBI resources?

The FBI's longstanding problems in mastering the computer technology that is essential to modern-day law enforcement has been another great failing. The Trilogy solution, by all accounts, has been a disaster. By now, two phases of Trilogy have been completed, and all agents at last have their own computers and can send e-mails to one another. Of course, this is hardly a noteworthy accomplishment in the information age -- especially \$500 million to \$600 million later.

What troubles me most, however, is that FBI agents are still trying to "connect the dots" using pencil and paper. The long-anticipated Virtual Case File System - which would at last put intelligence at the fingertips of the agents in the field -- is far behind schedule and vastly over budget. VCF should have been operational long ago, but the completion date keeps getting extended. In May, Director Mueller assured us that VCF would be deployed by the end of the year. But a month later - in June - we were told there would be further delays. By the time VCF is finally implemented, will it be "state of the art" or dreadfully outdated?

There are other critical areas in need of reform within the FBI. Some we learned about from the 9-11 Commission, some we learned about from our own oversight efforts and in reports by the DOJ Inspector General. But some critical problems have come to light only through the courageous voices of whistleblowers. Senator Grassley and I spend a great deal of time listening to reports from whistleblowers because we firmly believe that they may provide us with information critical to our national security. As a result of Enron and related corporate scandals, I worked with Senator Grassley and others in Congress to give broad protection to whistleblowers in the private sector, but, incredibly, Congress has not acted to protect those who come forward from the FBI to report problems that might impact our ability to prevent terrorist attacks.

The FBI Reform Act that Senator Grassley and I introduced in July 2003 is drawn from the FBI Reform Act that had been unanimously approved by this Committee a year before, only to die on the Senate floor by an anonymous hold on the other side of the aisle. It addresses several outstanding problems in the Bureau, and acting on these reforms is long overdue. Among other things, the FBI Reform Act would protect FBI whistleblowers from retaliation and greatly improve congressional oversight of the Bureau.

Striking A Balance On Border Security

The Commission's report includes sobering evidence suggesting that three years after the attacks, our borders are not nearly as secure as they should be. As a Senator from Vermont, I know how important border security issues are to my constituents and the urgency both they and I feel about acting to protect our borders.

Let me be clear: I do not believe that America's response to terrorism should be to close our borders and isolate ourselves from the world. To the contrary, it is in our national interest to have visitors from around the world have positive experiences in the United States, and to go back home to tell their friends and neighbors about the beauty of our land, the fairness of its people and the vitality of its democratic principles. It is also in our national and economic interest to promote legal immigration to our country. If we are going to have an immigration policy that embraces the world, however, we need to be smarter about the way we police our borders, and I believe the report points us in a number of intelligent directions.

First, I could not agree more with the Report's review of this Congress' pre-9-11 treatment of the Northern Border. While our Southwest border was patrolled by four Border Patrol agents for each mile of border, our border with Canada had only one agent for every 13.25 miles. Even after we had evidence that terrorists were seeking to enter the United States from Canada, Congress turned a deaf ear to the needs of the Northern Border. It was only after the September 11 attacks that Congress finally acted, approving my proposal in the USA PATRIOT Act to triple the number of Border Patrol agents, INS Inspectors, and Customs agents stationed at our border with Canada. Even then, the Administration dragged its feet implementing the language, and years more passed before the tripling was finally achieved. Now that it has, I look forward to hearing from the Commissioners what additional steps should be taken to police the Northern Border.

Second, I applaud the Commission's focus on the issue of tracking terrorist travel. The Commission believes that if we had a system in place before 9-11 that analyzed terrorists' travel strategies, we might have intercepted between four and 15 of the hijackers. Since the attacks, a terrorist travel intelligence collection and analysis program has been put in place, and I agree with the Commission's recommendation that it be expanded. I also agree that frontline personnel at our consulates and our borders should receive training in spotting suspicious patterns of travel. Agents from our Customs and Border Patrol and Immigration and Customs Enforcement agencies should be trained to recognize suspicious travel documents, and we should have someone with document expertise at every port of entry and consulate.

Third, we should continue to work toward "expanding our borders" by placing more U.S. personnel in overseas airports, and working with other nations to share information more freely about persons who may pose a threat. "The further away from our borders that screening occurs, the more security benefits we gain," the Commission rightly states, arguing that "at least some screening should occur before a passenger departs on a flight destined for the United States." Additionally, if countries will share their own "watch lists" with our consular officers and our inspectors, we will gain additional leads about suspicious travelers. As the Commission puts it, "[e]xchanging terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits." Enhancing this sort of coordination and cooperation-- and securing the ability to operate in as many foreign airports as possible -- are two of the many reasons why it is essential that we have leaders who can work closely and respectfully with other countries.

Finally, I agree with the Commission's recommendations that we "should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding

qualified travelers." Our goal should be to have a U.S. VISIT system that screens foreign travelers as thoroughly as possible in the shortest possible time. Biometric capabilities promise to enhance our security procedures, and substantial efforts are underway. We already collect biometric information as part of U.S. VISIT. In addition, the U.S. has been involved in setting international standards for biometric passports for foreign visitors as well as U.S. citizens--a process that will likely set the stage for a broader domestic biometric program. But I am concerned that the process to date for finalizing international standards has largely occurred outside of congressional and public view, in negotiations by U.S. representatives and others in the International Civil Aviation Organization. This is troubling because technology and deployment choices will determine whether we have an effective screening system that is not only secure, but also adequately protects privacy and civil liberties. There are many issues to consider and much work to be done before such a system can be deployed, and Congress should be involved and invest in this process. I recently sent several questions to DHS requesting details on its biometric screening plans and will include them in today's record. I look forward to hearing about those details.

Support All States Rather Than Pit Large Against Small

The Commission recommended that homeland security assistance be "based strictly on an assessment of risks and vulnerabilities." But the 9/11 report did not suggest any specific changes in homeland security funding formulas.

I understand the Commission's frustration with the current level of homeland security assistance. I am frustrated too. But I believe the real problem is that the Bush Administration and Congress have failed to provide enough overall funding for first responders, and as a result the states are fighting over insufficient resources. The Hart-Rudman Terrorism Task Force Report found that our nation will fall approximately \$98.4 billion short of meeting critical emergency responder needs through this decade's end if current funding levels are maintained.

We should be looking to increase the funds to our nation's first responders. But instead President Bush proposed cutting \$800 million to our police, fire and rescue squads in this year's budget by reducing overall first responder funding from \$4.3 billion last year to only \$3.5 billion this year. Shortchanging our nation's first responders will not make us a safer nation.

I strongly believe that every state - rural or urban, small or large - has basic domestic security needs and deserves to receive Federal funds to meet those needs. After the terrorist attacks of September 11, 2001, we worked together to try to meet the needs of all state and local first responders from both rural and urban areas. Our fire, police and rescue teams in each state in the nation deserve support in achieving the new homeland security responsibilities the Federal government demands. Indeed, the Commission recognized this fact in their report when they declared that: "We understand the contention that every state and city needs to have some minimum infrastructure for emergency response."

All states, including smaller states, have basic needs in equipping their first responders. Larger states have even greater needs. Instead of pitting large states against small states, as the Administration has done by shortchanging overall resources for first responders, the needs of both should be recognized and addressed. These funds help police, fire and rescue squads meet

the new homeland security responsibilities the federal government is asking them to meet.

Conclusion

The Commission rightfully found that Congress must subject itself to dramatic changes to strengthen government accountability. Specifically, I acknowledge the Commission's pointed rebuke to Congress about the need to engage more proactively in its constitutional oversight function. I have always believed in open and accountable government -- including vigorous oversight -- and will continue my support of this critical function of the U.S. Congress.

The Commission has rendered to history its careful reconstruction and analysis of the events of September 11th. The Commission has given to us the task of carefully considering its recommendations, drawn from those events - recommendations that, in several ways, would help the FBI get back to mastering its ABCs. We owe our fellow citizens, and the families of those whose lives were lost or forever changed by those attacks, our full and respectful consideration of these findings and these recommendations.