

Testimony of  
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July 27, 2005

Prepared Statement of  
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National Commission on Terrorist Attacks Upon the United States  
before the Senate Committee on the Judiciary  
July 27, 2005

FBI Reform

Chairman Specter, Ranking member Leahy, distinguished members of the Senate Committee on the Judiciary: I am honored to appear before you today regarding the progress of reform at the FBI.

At the outset, I want to commend you for holding this hearing. Reform at the FBI benefits from your attention. Director Mueller needs your oversight. The spotlight you shine, and the guidance you provide, will help reform move forward.

I. Recommendations by the 9/11 Commission for Reform at the FBI

First, I would like to review briefly the recommendations of the 9/11 Commission with respect to the FBI, and the extent to which they have been implemented.

The Commission found significant shortfalls in the Bureau's capabilities. Chief among them was inadequate information sharing: the FBI's culture of law enforcement impeded its ability to gather and disseminate intelligence on terrorists before 9/11.

? The FBI was not able to link the knowledge of its agents in the field to national priorities.

? Information sharing was severely hindered by a computer system installed in 1995 that was based on 1980s technology.

? Two-thirds of the FBI's analysts were unqualified for their tasks; the Bureau never assessed the terrorist threat at home before 9/11.

? Key memos, such as the Phoenix memo expressing a concern about the "possibility of a coordinated effort by Usama Bin Laden" to send students to the United States to attend flight schools, and a memo related to Zacarias Moussaoui, were not called to the attention of senior FBI officials.

? Outside the Bureau, the FBI could not overcome bureaucratic rivalries to share information with other parts of the intelligence community.

When we prepared our recommendations, we considered whether or not to support the creation of a new domestic intelligence collection agency, or "MI-5" as the British model is called. We recognize that the United States is the only major democracy that combines law enforcement and domestic intelligence at the national level. After much discussion, we decided against an MI-5 model. We decided it would be:

- too risky to civil liberties;
- take too long to set up;
- cost too much money, and
- sever the important link between the criminal and counterterrorism investigative work of the FBI.

Our consideration of this question also came at a time when significant reorganization - the creation of a Department of Homeland Security - was already underway. We did not want to overload the circuits,

We reviewed in detail Director Mueller's reforms since the 9/11 attacks. In our view, those reforms were moving in the right direction--and they still had a long way to go. In the end, we thought it was important to strengthen and institutionalize these reforms, not sidetrack them by creating a new entity.

We made recommendations for rebuilding the FBI into a world-class counterterrorism intelligence collection and prevention organization. We made the following recommendations for the FBI:

? Create an intelligence cadre--a specialized and integrated national security workforce--and make significant personnel reforms in recruitment, hiring, training and career advancement in order to develop this cadre;

? Ensure that this workforce is focused on the counterterrorism mission--and in particular, make sure that national priorities are being carried out in the field.

? Integrate analysts, agents, linguists and surveillance personnel in the field, so that a dedicated team approach is brought to bear on national security intelligence operations.

? Align the budget structure according to the Bureau's four main programs: (1) intelligence; (2) counterterrorism and counterintelligence; (3) criminal; and (4) criminal justice services - for better transparency; and

? Report regularly to Congress, in detail, on the qualifications of its analysts, and on the progress and ability of each field office to appropriately address FBI and national program priorities.

? We also made a critically- important recommendation to improve information sharing. We recommended that the President lead a government-wide effort to bring the major national

security institutions into the information revolution and coordinate the resolution of legal, policy and technical issues across agencies to create a trusted information network.

## II. The Intelligence Reform and Terrorism Prevention Act of 2004

Congress responded favorably to our report, and stayed in session during the August recess. This Committee, and others, held hearings on our work. Congress spent the fall writing legislation. On December 17, President Bush signed into law the "Intelligence Reform and Terrorism Prevention Act of 2004," enacting several of our key recommendations.

The Act put into law our proposals regarding FBI reform:

? On an intelligence cadre, the Act requires that the FBI develop, train and reward a national intelligence workforce consisting of agents, analysts, linguists and surveillance specialists.

? On personnel reforms, the Act requires that the Bureau recruit and retain individuals with backgrounds in intelligence, international relations, language, technology, and other relevant skills. The Act also creates a career service for intelligence and allows for a reserve force to be created. It requires completion of intelligence community assignments and an advanced training course in order for agents to advance to higher level intelligence assignments.

? To focus the FBI on the counterterrorism mission, all agents must be trained in national intelligence matters, and they must be given meaningful national intelligence assignments.

? On a dedicated team approach, the Act requires that the FBI ensure that certified intelligence officers directly supervise each Field Office Group. Each Bureau Operational Manager at the Section Chief and Assistant Section Chief level must also be certified intelligence officers.

? On budgets, the Act requires the FBI to establish a budget structure that reflects the four principal missions of the FBI.

? On information sharing, the Act created the position of program manager for counterterrorism information sharing. That programmer manager has responsibility for ensuring better information sharing across and within the federal government, among state and local authorities, and also within the private sector.

? On information technology, the Act requires the FBI to maintain a state of the art and up to date information technology system.

? Finally, the Act sets reporting deadlines for the FBI to report to Congress on reform efforts.

## III. Reform to Date - Status Report

The provisions in the Intelligence Reform Act require Director Mueller to press forward with reform at the FBI. He faces formidable challenges. He needs to create a first-class domestic intelligence-gathering service, consistent with our laws and civil liberties, within the FBI. He needs to make the cultural and structural changes necessary to accomplish such a transformation.

? He needs to convert 56 field offices into fast moving, forward leaning centers focused on intelligence needed to spot terrorists and prevent future attacks. Prevention of terrorism, Mueller has said repeatedly, is now the FBI's top priority.

? He needs to hire and train new special agents and intelligence analysts with specialized knowledge and turn them into a dedicated intelligence workforce.

? He needs to create a better balance in information sharing. Everyone understands the "need to know" principle to protect information and save lives. The "need to share" principle is just as important if we are going to save lives.

How far has Director Mueller come in making these changes? He has offered his perspective this morning, and I find his perspective a valuable one. Let me offer some additional views.

National Academy of Public Administration. In January of 2005, when the National Academy of Public Administration delivered its report examining the progress of reform at the FBI, the panel declared that "substantial progress" had been made in transforming the Bureau into a strong domestic intelligence entity. The panel praised Director Mueller for taking major steps to integrate intelligence into the FBI's mission.

WMD Commission. Other reports have been more critical. In March 2005, the President's Commission on the Intelligence Capabilities of the Intelligence Community regarding Weapons of Mass Destruction, or WMD Commission, stated that the FBI's intelligence program was not fully integrated either within the Bureau or across the broader Intelligence Community. It found, for example, that the FBI has failed to give its new intelligence directorate control over intelligence operations in the field, and that unnecessary turf battles are being fought between the FBI and CIA.

The WMD Commission recommended creating a new National Security Service within the FBI, comprising both the Bureau's Counterterrorism and Counterintelligence Divisions and the Directorate of Intelligence. This recommendation has now been accepted by the President. The intelligence-related aspects of the new Service, though not operations, come under the authority of the Director of National Intelligence.

Inspector General Report. In May 2005, the Department of Justice's Office of Inspector General updated its review of the FBI's counterterrorism intelligence analytical capability. Three years ago, it had reported that this capability was "broken," but now it finds both "significant progress" in hiring and training intelligence analysts. Yet according to the report, substantial problems remain:

? The FBI does not have a good sense of the number of analysts needed for its mission. The likelihood that analysts will "jump ship" and go to another agency has increased. 22% of the FBI's current intelligence analysts reported that they do not plan on staying with the Bureau as analysts beyond the next five years.

? Although newly hired analysts are well qualified, the FBI's intelligence analyst training is deficient in the areas of assessment and dissemination, and analysts are spending up to a third of their time on unrelated administrative work.

? Finally, the FBI still subordinates intelligence functions to investigative functions.

There is concern about the effects these problems may have on the FBI's efforts to build a well-qualified analytical corps. The Office of the Inspector General's report recommends that all FBI special agents undergo mandatory training on the role and capabilities of analysts, and that the analysts themselves need more extensive and rigorous training. The FBI says that these recommendations are already being implemented, and that in particular substantial funds are being devoted for training of counterterrorism special agents, analysts, and other personnel.

#### A. Information Sharing

Information sharing both within and outside the FBI has improved, but it is still not adequate.

Press reports from May of this year, for example, indicate that New Jersey officials and the New York Police Department are not sharing information with the FBI. They, in turn, believe they do not get the information they need from the FBI. There are reports of a rivalry between the FBI and the Department of Homeland Security, with the result that information is not shared between agencies or with local law enforcement.

Perhaps the most disturbing report on the progress of reform at the FBI has been the failure to install a new information technology system. Before 9/11, FBI field offices did not have compatible computer systems. Each division at headquarters had its own system, making effective and rapid information sharing impossible. Director Mueller presented a comprehensive plan for remedying this deficiency. The FBI was authorized to spend \$170 million on the third phase of a three-step technology overhaul known as the "Trilogy" project.

As of March 2005, the Bureau had spent \$158 million of this money, a quarter of it on usable equipment and programs, and the rest on the "Virtual Case File." This is a program to link FBI field offices around the country, so that geographically-dispersed agents can share leads and collaborate on cases in real-time. The program, however, has proved unworkable and been scrapped.

The problem is not just that hundreds of millions of dollars appear to have been lost. Valuable time has been lost. Almost four years after the 9/11 attacks, the FBI still does not have a comprehensive workable system for sharing information.

It is appropriate to ask how long it will take to implement a new information technology system. According to Director Mueller, it may take 3 and a half more years to install one. It is appropriate to ask whether we can wait that long.

#### B. Leadership

The information technology setback at the FBI is indicative of a broader problem: there has been considerable turnover at the leadership level of the FBI over the last few years. The figures are disturbing:

? The average tenure of Senior Executive Service officers at the FBI is 13 months; none have served longer than Director Mueller.

? The median level of a special agent in charge is 15 months; only four have served longer than Director Mueller.

? Since 9/11, the FBI has had six different chiefs of its Counterterrorism Division.

? In the last two years there has been frequent changeover in the Bureau's top computer job.

This revolving door in management has to have serious consequences on the FBI's reform efforts.

### C. Summing Upon the Record on Reform

Overall, the record on reform at the FBI is mixed. Director Mueller believes that he has succeeded on some big issues. He has made substantial progress in making counterterrorism the FBI's number one priority, and directing this effort centrally from headquarters. He has sought to transform the FBI's culture. But the institution is proving resistant to change. At this point in time, we cannot say that Director Mueller has yet succeeded in creating a first- rate, modern, expert, and cohesive domestic security unit.

Progress has been made, but we need to ask whether it is enough. We should not underestimate the challenges facing Director Mueller. We should support his efforts to meet these challenges - but we also need to assess whether or not the progress made over the past four years warrants our continued confidence that the necessary changes will be made, and that they will be made soon enough.

But we do not have a limitless amount of time. The terrorists will not wait until our domestic security systems are fully reformed before attacking us where we are most vulnerable once again.

### IV. Assessing the Future of Reform: What to Watch For

I believe there are several areas which we should watch carefully in order to assess just how far the FBI has come since 9/11 in order to determine whether we have come far enough.

#### A. Analysis

The collection of intelligence is not worth much if it is not adequately translated into realistic threat assessments. The FBI performed no such analysis of the threat to domestic security from

terrorism before 9/11. Doing this job well must be a priority. We cannot decide what actions to take - we cannot set priorities on the application of resources - if we cannot assess the nature of the threat.

The Bureau needs to establish itself as a premier agency for analysis. In order to do this, it must give analytic capability the attention and respect that it deserves.

The 9/11 Public Discourse Project, on which I serve as a Board member, recently held a public forum covering the topic of FBI reform.

-- During this forum, long-term senior intelligence analyst John Gannon commented that at the FBI if you are not an agent you are "furniture."

-- He noted there is a lack of appreciation for analysts within the FBI that is reflected in inadequate resources being spent on developing and maintaining analytic expertise.

-- There need to be strong programs in place to recruit, train and evaluate analysts. Analysts need to see the commitment of FBI leadership to career paths for them that are attractive in terms of status and compensation.

-- Attrition rates for analysts - a chronic problem for the FBI - show some recent improvement. But we can and must do better.

## B. Information sharing.

We must ensure that the FBI is sharing the right information with the right people in a timely fashion. The 9/11 Commission stressed the absolute importance of better intelligence sharing; the Intelligence Reform Act accepted these recommendations; the WMD Commission endorsed such provisions.

The Virtual Case File debacle has been discussed at length. The problem of information sharing is not just technical. The problem, in part, is also the nature of the FBI's mission.

In its counterterrorism efforts, the FBI combines both its conventional law enforcement role and its new preventative intelligence gathering role. One is designed to punish those who commit terrorist attacks, and seeks evidence that is legally admissible in court. The other is designed to prevent terrorist attacks before the fact, and seeks information to thwart planned attacks, regardless of whether it is legally admissible. This is one reason why cooperation between the FBI and the CIA, for example, was so problematic in the past.

The legal barriers that supported this separation of intelligence roles have now been eliminated. But institutional and cultural barriers to information sharing remain.

Breaking down these barriers is a high priority. You can change the law, you can change the technology, but you still need to motivate institutions and individuals to share information.

For this reason, Congress created the position of a program manager for counterterrorism information sharing across the federal government, and with state and local agencies, and as

appropriate with the private sector. As of today, this office exists, and a veteran intelligence expert fills the position. Yet he has no staff, funding, or other resources to do his job.

If we are to solve the information sharing problem at the FBI and elsewhere, it cannot be delegated down the line.

-- The success of information-sharing needs the personal attention and support of Director Mueller.

-- It needs the personal attention and support of the Director of National Intelligence.

-- It needs the personal attention of the President of the United States.

-- Standing in the way of information sharing is history, culture and the sheer inertia of government. You cannot overcome those barriers without the strongest possible support from the highest levels.

### C. FBI management

For reform to succeed, we need to see greater stability in management responsibilities. We cannot afford to leave vitally important infrastructure projects up to the supervision of contract managers. As former Attorney General Thornburgh recently told us, flux at the leadership level simply compounds the difficulty of having Director Mueller be the focal point of all information coming through the system.

### D. The National Security Service and Director of National Intelligence

The president has now mandated that the FBI will have a National Security Service. The creation of a new and special entity within the Bureau dedicated to gathering information on terrorists and preventing attacks should make permanent the reforms that were already underway and help ensure there is no backsliding.

The Director of National Intelligence has been given considerable authority over the new National Security Service within the FBI. Working out the specifics of what the DNI will be responsible for, and what the Director of the FBI will be responsible for in this new service, must be a priority.

We want stronger intelligence at the FBI, but not FBI operations under the control of intelligence. The guiding principle should be intelligence under the authority of the DNI, and operations under the authority of the FBI Director and Attorney-General.

### E. FBI relations with the CIA

The domestic and international intelligence divide between CIA and the FBI was a serious shortcoming before 9/11. According to FBI and CIA leadership, much progress has been made in cooperation. The CIA and FBI recently signed a memo of understanding outlining their respective roles inside the United States. The CIA also has provided significant numbers of



analysts to help train FBI analysts and enhance the analytical capability of the FBI.

The relationship between the FBI and CIA must be seamless. We can no longer tolerate any failure to share databases on terrorists between agencies. For example, we have been working on the question of a unified terrorist watchlist for several years. We're not there yet. We need to get there.

#### F. The FBI's relationship with foreign domestic intelligence services

Information sharing with foreign security services is critical to defeating the terrorists. Director Mueller and Director Negroponte will need to ensure that exchanges of information are efficient and timely. As the FBI improves its analytic capability, and increases its knowledge of suspect individuals in the U.S. and overseas, it must have appropriate systems and rules in place for the effective sharing of this information with trusted allies. This will be an effective tool to help prevent the kind of attacks that occurred in London recently.

#### G. Setting priorities for State and Local law enforcement

As I mentioned earlier, if we do not have good analysis of the threat, we do not have the ability to set priorities for the use of our resources. The FBI must perform domestic threat assessments, and share these with state and local authorities. I hear complaints all the time that the federal government-- in particular the FBI -- is slow to share information, and does not communicate the nature of the threat. State and local law enforcement authorities do not know what to do, or where to put their resources.

The FBI chairs a number of joint terrorism task forces in major cities in the U.S. These standing committees bring federal, state and local capabilities to bear against the terrorist threat. The task forces are a good step toward ensuring cooperation at all levels of government. For them to be successful, the flow of information must not just be a one-way street from state and local authorities to the federal government. Success requires the FBI both to share information and involve state and local law enforcement authorities in joint operations.

Success also requires the FBI and DHS to coordinate a unified message to state and local authorities.

#### H. Civil liberties

As the FBI becomes more deeply involved in gathering intelligence domestically, questions will inevitably arise about the impact its activities are having on civil liberties. Enhanced FBI intelligence collection is vital to the security of this nation, but so is a deep respect for our civil liberties.

Director Mueller and Director Negroponte's leadership will be critical here. They must insist loudly, clearly, by word and deed, on law enforcement, terrorism prevention, and the protection of civil liberties.

Congress must play an active role in oversight as the FBI's role expands. And the new Privacy and Civil Liberties Oversight Board must be vigilant as well.

## V. Conclusion

When we issued our report a year ago, we stated the following:

Our recommendation to leave counterterrorism intelligence collection in the United States with the FBI still depends on an assessment that the FBI--if it makes an all-out effort to institutionalize change--can do the job.

We stand by this statement still. Director Mueller is clearly making a strong effort to effect change. The obstacles are immense. We applaud the progress he has made so far; we urge him to forge ahead. We should give Director Mueller as much support as he needs to get the job done. We should be helpful and constructive.

The FBI has been reforming itself for four years. Everyone recognizes that there are still significant deficiencies in:

- ? the FBI's analytic capabilities;
- ? information sharing with other agencies and with local law enforcement; and
- ? information technology capabilities.

We still see bureaucratic rivalries between the FBI and other agencies.

It is fair to ask how long the FBI will take to reform itself.

Director Mueller's timeframe for effecting reform at the FBI is not infinite.

The United States has not been attacked at home since 9/11, yet we all understand that the threat of terrorism remains very real.

The threat to reform is also real. That threat is inertia and complacency. We need to maintain a sense of urgency to push reform efforts along as fast as possible.

This Committee, and this Congress, need to continue to provide careful oversight of Director Mueller's reforms, and to provide to him your expert guidance. He needs your support for reform - and he and the FBI also need a strong push from the Congress and other friends of reform.

A strong and effective domestic intelligence function is not an option for the United States -- it is an obligation. Our nation's security depends upon its success.

Thank you.