

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 2, 2006

Statement of Senator Patrick Leahy,
Ranking Member, Committee on the Judiciary
Hearing on FBI Oversight
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Mr. Chairman, thank you for convening today's FBI oversight hearing. This is another opportunity to continue our efforts to remake the FBI into a modern domestic intelligence and law enforcement agency.

As you know, oversight of the FBI to help make the Bureau as good as the American people need it to be was one of my highest priorities when I chaired the Committee in the period just before, and then in the wake of, the attacks of 9/11. After the attacks, Congress acted quickly to address the new challenges facing the Bureau, by giving it new tools to combat terrorism, by funding information technology, and by pushing to correct institutional and management flaws that prevented FBI field agents from operating at their full potential. As recognized by Inspector General Fine, the Government Accountability Office, and others, the FBI has improved. Yet we continue to see some of the same problems that this Committee identified years ago in those earlier hearings, and that we and the 9/11 Commission sought to correct. Today, four-and-a-half years after 9/11, it troubles me deeply that the FBI is still not as strong and as equipped as it must be to fulfill its core missions.

Director Mueller, you, your leadership team and the hard-working men and women of the FBI deserve -- and have -- the constant appreciation of all of us as Americans, for all that you do and for the sacrifices that you make. For decades -- and especially since 9/11 -- the men and women of the FBI have toiled tirelessly, while under great pressure, to carry out the Bureau's duties. Constructive oversight of the FBI's work by Congress is an invaluable tool to help keep moving us toward the goals that we all share for the Bureau. That is why you and we are here today.

Domestic Surveillance

Since 9/11, the Bureau has made great strides in enhancing its intelligence gathering capabilities. I was disappointed to learn, however, that the FBI has been using that capability to conduct domestic surveillance on law-abiding American citizens, simply because they happen to oppose the government's war policy in Iraq. In March, the Seattle Post-Intelligencer reported that federal antiterrorism agencies, including the FBI, conducted surveillance on longtime Quaker peace activist Glen Milner during the 2003 Seafair festival. A Freedom of Information Act lawsuit recently filed by the ACLU has also revealed communications between the FBI and other law enforcement agencies about the surveillance of several other domestic peace groups. The FBI cannot simply dismiss these very serious concerns by citing Inspector General Fine's recent report on the Bureau's conduct during the 2004 nation political conventions. That report does not address these other incidents of domestic surveillance.

According to the documents obtained in that lawsuit, these are not isolated events. The documents show that the FBI has infiltrated political, environmental, antiwar and faith-based groups elsewhere across the country.

The FBI's participation in domestic spying -- at the expense of the privacy and civil liberties interests of our citizens -- is also evident in a recent report on the Bureau's surveillance activities. According to a recent report by Inspector General Fine, the FBI reported more than 100 possible surveillance violations to the Intelligence Oversight Board

during the past two years. These violations included cases in which FBI agents tapped the wrong telephone, intercepted the wrong emails or continued to listen to conversations more than a year after a warrant had expired.

Now we learn that the FBI wants to search the personal records of prominent Washington reporter Jack Anderson, just a few months after his death, to look for documents that may have been classified at some distant point in time.

All of this should concern all who value privacy rights and the free exchange of ideas in our society.

Information-Sharing, Terrorist Screening Center, And Terrorist Watchlist

I have closely followed the FBI's challenges in analyzing and disseminating the intelligence data in its possession. The failure of our intelligence and law enforcement agencies to share information that might have warned of a pending terrorist attack was cited as a key problem in the investigations that followed the 9/11 attacks. Last month, the GAO issued a report finding that, despite more than four years of legislation, Executive Orders and presidential directives, the Bush Administration has yet to comprehensively improve the sharing of counterterrorism information among dozens of federal agencies -- including the FBI. In fact, numerous deadlines set by both President Bush and by Congress to better coordinate information sharing have not been met.

According to the GAO's report, the FBI does have several initiatives underway to promote information sharing, including the establishment of 103 joint terrorism task forces around the country. While commendable, this effort is not fully effective because, as the GAO found, there are no government-wide standards on how to handle the sensitive counterterrorism information that the FBI must share with its law enforcement partners.

The Terrorist Watchlist produced and disseminated by the FBI's Terrorist Screening Center has been plagued by too many entries and inaccurate and incomplete information. Earlier this year, the Washington Post reported that the National Counterterrorism Center, which provides data for the watchlist, maintains a central repository of 325,000 names of international terrorist suspects. The Terrorist Screening Center provides these names to the Transportation Security Agency for its no-fly list, the State Department for its visa program, the Department of Homeland Security for border crossings, and the National Crime Information Center for distribution to police.

If being placed on a list means in practice that you will be denied a visa, barred entry, put on the no-fly list, or targeted for prosecution, then the sweep of this list and the apparent absence of any way to clear oneself certainly raises privacy concerns as well as law enforcement problems. The FBI must take steps to better ensure the accuracy of the watchlist and to protect the privacy of the growing number of law-abiding Americans whose names have been improperly listed there.

Virtual Case File And Sentinel

It is no secret that I, like many Americans, am greatly concerned about the FBI's handling of the now defunct Trilogy project and the prospects for its replacement -- the Sentinel project. The sad saga of the Trilogy project is well known to everyone in this room. The project, which was intended to modernize the FBI's information technology infrastructure, was plagued by numerous schedule delays and cost increases from an estimated \$380 million to an estimated \$458 million to upward of \$596 million, before it was finally scrapped last year.

In March, the GAO issued its report to Congress on the Trilogy case management project. That report found that weak controls on the parts of the FBI and the General Service Administration resulted in the Bureau paying more than \$10.1 million in unallowable costs and in the FBI being unable to account for more than 1,400 pieces of missing equipment, valued at about \$8.6 million. The GAO also cautioned in its report that if these control weaknesses go uncorrected, future contracts, including those related to Sentinel, will be highly exposed to improper payments and similar problems.

As the Director knows from the recent Appropriations subcommittee hearing, I find it intolerable that Congress, and this Committee in particular, was not given the full story on Trilogy until the entire project collapsed under its own

weight. Taxpayers are out millions of dollars, and we have lost several crucial years in getting this essential task completed.

In March, we learned that Sentinel will cost the American taxpayers \$425 million to complete and that this system will not be fully operational until 2009. The GAO's recommendations will be critical as we move forward with the Sentinel project and attempt to manage the already skyrocketing costs of that replacement program. I remain very concerned about this project. This time around, I expect transparency and accountability. The Bureau's effectiveness hangs in the balance, and the American people cannot afford another fiasco.

Counterintelligence And Counterterrorism

There are also other weaknesses in the Bureau's critical counterintelligence and counterterrorism efforts. I continue to be troubled by the relatively low level of counterterrorism experience of some of the FBI's mid-level and senior counterterrorism officials. Director Mueller recently told us that candidates for mid-level Special Agent positions within the FBI are vetted through a process in which subject matter expertise is considered and preferred, but is not mandatory. In other words, counterterrorism experience is not a prerequisite to promotion to managerial positions within the Bureau.

Given that the FBI's top priority since 9/11 is to protect the United States from terrorist attacks, I believe that is critical that we have managers within the FBI who have significant counterterrorism experience. The FBI simply cannot continue to foster a culture that places a lower value on intelligence functions than investigative efforts.

Conclusion

Since 9/11, the FBI has made significant strides to adjust to the threats and challenges of our time. I commend Director Mueller and the Bureau for all that they have accomplished, but there is much more work to do. I look forward to engaging our witnesses on how best to move forward.

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