

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

September 17, 2008

STATEMENT OF SENATOR PATRICK LEAHY,

CHAIRMAN, SENATE JUDICIARY COMMITTEE

HEARING ON OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

SEPTEMBER 17, 2008

We gather this morning on Constitution Day, the 221st anniversary of our nation's founding charter. It is fitting that we continue our oversight of the Department of Justice. Today we examine the effectiveness of the Federal Bureau of Investigation in carrying out its critical role and responsibilities in keeping us secure while upholding the rule of law. We welcome back the FBI Director and thank the hard-working men and women of the FBI for upholding their motto: Fidelity, Bravery, and Integrity.

I thank Director Mueller for joining me in Vermont last month where together we visited the Joint Terrorism Task Force and the Internet Crimes Against Children Task Force based in Burlington. We talked with members of the Federal, state, and local law enforcement organizations who work cooperatively on these task forces. They are working everyday to keep us safe from terrorists and to keep our children safe from those who would do them harm and we appreciate it.

In commemorating the 100th anniversary of the FBI earlier this year, Director Mueller said:

"It is not enough to stop the terrorist - we must stop him while maintaining his civil liberties. It is not enough to catch the criminal - we must catch him while respecting his civil rights. It is not enough to prevent foreign countries from stealing our secrets - we must prevent that from happening while still upholding the rule of law. The rule of law, civil liberties, and civil rights - these are not our burdens. They are what make us better. And they are what have made us better for the past 100 years."

I agree. That is why we are here, to conduct the oversight needed to be sure that the FBI carries out its responsibilities while maintaining the freedoms and values that make us Americans.

We learned last month that the Attorney General was planning to revise the guidelines for the FBI's investigative activities. Allowing the FBI authority to use a vast array of intrusive investigative techniques with little or no predicate facts or evidence raises concerns and may potentially lead to the kinds of abuses we have seen with national security letters and with other vast grants of authority with minimal checks in the past.

Senator Specter and I requested a delay in the approval and implementation of the Attorney General's new guidelines. The Department of Justice only agreed to a limited delay and pointed to today's oversight hearing as a key opportunity to explore questions or concerns. However, the Attorney General has refused to provide us with copies of the proposed guidelines. Senator Specter and I sent another letter to Attorney General Mukasey last week, requesting that the Committee be provided copies of the proposed guidelines in advance of today's hearing in order to allow for a meaningful exchange with Director Mueller on this issue. The Department again said no, indicating that they could not share guidelines that have not been finalized. The Attorney General's response is straight out of Joseph Heller's novel *Catch-22*. The Attorney General is saying he cannot give us copies of the proposed guidelines until they are finalized, but once they are finalized they are no longer proposed and subject to change.

Also impairing our ability to make progress today is this administration's refusal to cooperate in oversight. As of yesterday morning, we still had not received the answers to our questions from our last oversight hearing with the FBI Director last March--those questions have been pending more than six months.

Even as we try to get a handle on the Administration's latest expansion in the FBI's investigative authority, we are reminded of the problems that followed other recent expansions of the FBI's investigative powers. Last month, Director Mueller apologized for the misuse of "exigent letters," in violation of the law, to obtain phone records from reporters. I hope that the Director will be able to assure us, and the Inspector General will confirm, that appropriate steps have been taken to prevent a repeat of that abuse.

I am glad finally to be hearing of progress in getting through the backlog in the FBI's name checks for citizenship. I hope the FBI will do its part to ensure that applications for citizenships are processed in time for new citizens to participate in this year's election.

We also have to work together to ensure that adequate resources are being dedicated to investigating public corruption and corporate fraud - types of crime that the FBI is uniquely suited to investigate and

that must be comprehensively prosecuted to restore the public's faith in our government and our economy.

I am also concerned that the FBI's Cold Case Initiative has apparently not yet led to a single prosecution for Civil Rights Era crimes and look forward to the Director's explanation of that effort.

In the area of violent crime, despite modest progress last year following several years of increases in crime, crime rates have remained essentially stagnant in this decade after years of consistent and substantial declines in crime in the 1990s. I hope the Director will join me, Senator Biden and others in supporting state and local law enforcement and collaborative efforts directly involving our communities to combat violent crime.

I applaud Director Mueller's efforts to recommit the FBI to its best traditions through his personal example and leadership. I appreciate the Director's openness to oversight and accountability. That distinguishes him and his agency from much of the Department of Justice and this administration.

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CLOSING STATEMENT OF SENATOR PATRICK LEAHY,
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Many of us on both sides of the aisle have raised questions and concerns about whether the Attorney General's proposed new guidelines for the FBI's investigative activities would give the FBI sweeping new authority with minimal checks to prevent the kinds of abuses we have seen in such areas as national security letters.

This hearing could have been more productive in addressing those concerns if the Department of Justice had agreed with my request and Senator Specter's request to provide copies of the proposed guidelines. Like the limited briefings that have been given to staff, the exchange today was a good start, but not as meaningful as we would have wanted and it should have been.

I was pleased that this hearing began with Director Mueller promising this Committee that the FBI will be vigilant in investigating whether fraud or lawbreaking contributed to the ongoing financial crisis, the worst we have experienced since the Great Depression and one that has exposed the American taxpayers to trillions in losses and the devastation of homeowners and investments and lives across the country.

The Wall Street mess has many causes but it illuminates several problems we have seen before over the last eight years. They include incompetence in White House appointments to regulatory agencies that are supposed to be the public's on-the-scene watchdogs; squandering faith in market mechanisms by winking at increasing signs of excess and corner-cutting by rich and powerful corporations; and indifference to the widening gap between the super-rich and ordinary Americans, and to the lack of affordable housing. The Bush Administration has ignored those and other fundamentals of responsible economic and fiscal policy, and we need leadership that can make a fresh start to turn a bad situation around before it gets even worse.

I thank Director Mueller for appearing today before the Committee and for his openness to oversight and accountability. I look forward to working with an Administration where the Director's approach and responsiveness is not the exception, but the rule.

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