

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
September 16, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On Oversight Of The Federal Bureau Of Investigation  
September 16, 2009

Today we hold our second hearing this Congress on oversight of the Federal Bureau of Investigation. We welcome Director Mueller back to the Committee. Congressional oversight is one of our most important responsibilities, and one that this Committee has continued to fulfill in this Congress.

I appreciate Director Mueller's continued dedication to working with Congress to ensure that the FBI is able to effectively pursue its critical missions in law enforcement and national security while maintaining the freedoms and values that define us as Americans.

Last month, Attorney General Holder announced a heightened role for the FBI with the formation of a High-Value Detainee Interrogation Group (HIG) to interrogate the most dangerous and high-value terrorist suspects. This group, bringing together experienced professional interrogators, analysts, subject matter experts, and linguists from across the intelligence community, the law enforcement community, and the Department of Defense, will be housed within the FBI. The HIG is being created to improve the ability of the United States to interrogate dangerous terrorists effectively, and in a manner consistent with the law. It sends a welcomed signal that the administration has chosen to house the HIG within the FBI, an agency with a long history of proven success in interrogation without resorting to extreme methods that violate our laws and our values, and fail to make us any safer.

When Director Mueller was before the Committee in March, I noted his important statement last year commemorating the 100th anniversary of the FBI. His words may be fitting now more than ever in light of the FBI's new responsibilities. He 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 trust that Director Mueller will maintain this commitment as the FBI plays an integral leadership role in the formation and administration of this interrogation policy group.

The Committee will soon turn to discussion of the expiring provisions of the USA PATRIOT Act, and what needs to be done in that regard. During the past few years, audit provisions included in the previous Patriot Act statutes brought to light the misuse of certain tools provided by the Patriot Act. For example, National Security Letters allow the Government to collect sensitive information, such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I noted that, with no real limits imposed by Congress, the FBI could store this information electronically and use it for large-scale data-mining operations.

We now know that the NSL authority was significantly misused. In 2008, the Department of Justice Inspector General issued a report on the FBI's use of NSLs, revealing serious over-collection of information and abuse of the NSL authority.

I have also closely tracked the use of section 215 of the original Patriots Act, which authorizes an order for business records. I have long believed that greater oversight of section 215 orders is required, including broader access to judicial review of the nondisclosure orders that are so often issued with section 215 demands for records.

Finally, I have raised concerns over the misuse of "exigent letters" to obtain phone records and other sensitive records of Americans, including reporters, without a warrant, without emergency conditions, and without a follow-up legal process. Director Mueller has assured us that appropriate steps have been taken to prevent a repeat of that abuse and has helped address concerns that records illegally obtained with these exigent letters may have been inappropriately retained by the government.

I hope he will agree with me that, as we consider the reauthorization of expiring provisions of the Patriot Act, we should keep in mind the proven effectiveness of audits, reviews and continuing oversight by Congress to ensure effectiveness without abuse.

Our oversight also includes review of the FBI's traditional, and vital, law enforcement role. The FBI has just released the 2008 crime statistics, and the work of law enforcement and the trend lines are to be commended. I hope that the preliminary indications for this year show the continuation of these trends despite the economic downturn and financial crisis and that the assistance to state and local law enforcement we were able to include in the economic stimulus and recovery legislation is helping to keep crime down throughout the country.

In May, Congress passed and the President signed into law the Fraud Enforcement and Recovery Act to give investigators and prosecutors the resources they need to aggressively detect and prosecute the mortgage fraud and financial fraud that contributed to the massive economic crisis. I appreciate the Bureau's assistance in developing and supporting this important piece of legislation. We need a similarly aggressive approach to combating health care fraud, another insidious form of fraud that victimizes the most vulnerable Americans and drives up the cost of health care for all of us. I applaud the Department for its commitment to reducing waste and excess in the health care system by investigating and prosecuting this kind of fraud.

I thank Director Mueller for returning to the Committee, for his responsiveness to our oversight efforts, and for his personal example and leadership in returning the FBI to its best traditions. I thank the hardworking men and women of the FBI and look forward to the Director's testimony.

#####