

Testimony of  
**The Honorable Patrick Leahy**

June 6, 2002

Last week FBI Director Mueller and Attorney General Ashcroft made extraordinary and, in the case of the Attorney General, unexpected announcements of changes in the organization of the FBI and the guidelines for its investigations. As the oversight committee for the Department of Justice and its agencies, including the FBI, this committee shares the common goal with the Department of Justice of ensuring the safety and security of the American people. I look forward to hearing from the Department and the FBI why these changes, in the forms announced, are necessary to prevent future terrorist attacks. This oversight Committee has both the duty and the responsibility to the American people to evaluate these changes and their justification.

Ten days earlier Inspector General Glenn Fine issued a critical report on the handling of visas of two 9/11 hijackers by the Immigration and Naturalization Service and made 24 recommendations to address deficiencies in INS practices and procedures. These suggestions, too, may be justified, and this oversight Committee has the job of examining whether identified deficiencies are being fixed.

At the same time, the American people have been barraged with new reports about the government's performance before the 9/11 attacks, including charges and countercharges of mistakes by the FBI and CIA, the handling of the Phoenix Electronic Communication, the critical letter from FBI Agent Coleen Rowley in the Minneapolis FBI office, and a report that the Attorney General turned down a proposal to increase the FBI Counterterrorism budget by \$58 million shortly before the 9/11 attacks. Director Mueller has confronted this mounting evidence and candidly admitted what we all now realize - that no one can say for sure whether the 9/11 attacks might have been disrupted if all the dots had been connected and all the leads been followed. I commend the Director for the candor of his recent statements. We do not want a return to the worst aspects of J. Edgar Hoover's FBI when no one at the FBI could admit or learn from mistakes and anyone who raised a question did so at his or her personal peril.

The Judiciary Committee is the standing committee of the Senate responsible for oversight of the Justice Department. We are accountable to the Senate and the American people for ensuring that FBI, the INS and other Department components are effectively organized with adequate resources under proper policies and leadership. This committee considered the nominations of the FBI Director, the INS Commissioner, the Inspector General, and the Attorney General. This committee has a continuing responsibility to examine the stewardship of these agencies. I noted at our May 8 hearing that the first hearing I announced and chaired as the new chairman of the Judiciary Committee was our June 20 hearing on FBI oversight last year, which began our series of FBI oversight hearings. Now, more than ever, in the age of terrorist attacks on our shores, close oversight of the FBI and our other law enforcement and intelligence agencies is not an option; it is an imperative.

I wrote to the Attorney General and the Director on October 25 last year, as we were enacting the USA PATRIOT Act, to ask what internal reviews they were conducting in connection with the events of September 11 and counterterrorism efforts. I told both the Attorney General and the Director to preserve documents and information from before September 11 and that they share with us important matters they uncover as they conduct an internal review of the events leading up to the tragedy of 9/11. I was disappointed to learn only this week that the Justice Department Inspector General conducted an inquiry into the FBI's Phoenix Electronic Communication as early as last October. We will want to hear from Inspector General Fine about the circumstances and results of his earlier inquiry about the handling of the Phoenix E.C.

Even more disappointing was the Justice Department's failure to advise the Committee that its review of FBI Guidelines after 9/11 had uncovered issues that called for revision. Instead, the Committee is presented with a fait accompli reflecting no congressional input whatsoever. From his comments over the weekend, it seems that Chairman Sensenbrenner and our counterparts on the House Judiciary Committee were likewise surprised by the unilateral actions taken by the Attorney General in revising these longstanding guidelines.

ATTORNEY GENERAL'S FBI GUIDELINES. After the Attorney General's news conference last week, the Department did post the 100 pages of new investigative regulations on its web site. While the Department may tell us that these changes are relatively straightforward and reflect good common sense, we will need to examine the fine print to determine whether that is indeed the case. Of course, had we been consulted by the Department earlier in the process, that examination would have likely been concluded by now. I understand the need to re-examine policies, but caution that we should not throw out decades of wisdom just because of a bad week or two in the press. I agree with Chairman Sensenbrenner that, "These important safeguards of American privacy and freedom should not be significantly altered without careful consideration and a full explanation of the reasons for any changes."

We in Congress have shown in our bipartisan work on the USA PATRIOT Act, the Aviation and Transportation Security Act, the Border Security and Visa Reform Act and the Bioterrorism Preparedness Act that the Congress is committed to working together with the Administration in the best interests of the nation. Why the Department of Justice continues to insist on acting unilaterally and without consulting with the Congress is a mystery to me, and it is needlessly disruptive to the overall effort.

The regulations on surveillance of Americans not suspected of any crime are there for a reason. They were intended to change the "culture of the FBI"-- something Members of Congress from both sides of the aisle and the Administration have all recently emphasized.

The regulations on the handling of confidential informants were also carefully crafted. Just last month, a Boston FBI Agent was convicted of federal crimes based on his improper handling of Mob informants that directly contributed to two men spending years in jail for a murder that the FBI knew they did not commit - just to protect that informant. Now, two weeks later, we are planning on simultaneously loosening both the headquarters control and the rules for handling informants. These controls are there for a reason. Again, while we still need to read the fine print, I think that we should be very careful about just calling a big press conference and discarding hard-learned lessons. This hearing is just the beginning of oversight on these issues.

FBI REORGANIZATION. I appreciate Director Mueller's consultation with the leaders of the House and Senate Judiciary Committees and with other Members of Congress before he announced Phase 2 of his reorganization last week. I look forward to hearing from Director Mueller more details of the reorganization plan. I believe that the steps he is taking to refocus and redesign the operational structure of the FBI to prevent terrorist attacks are the right ones. I want to commend the hard-working men and women of the Bureau and of the other agencies of the Department of Justice who are working tirelessly and conscientiously, in the best traditions of patriotism and public service, to protect the American people and our way of life.

No flow chart or press conference can fully reassure the American people that our government institutions are up to the present challenges, particularly in the face of new and daily revelations of past lapses. The job of proving to the American people that our government institutions are up to the job is a process that involves responding to legitimate questions posed by the oversight committees of the Congress.

The Director has outlined 10 clear priorities for the FBI. I agree with the Director that the Bureau cannot continue to devote scarce manpower and technical surveillance resources to cases that properly fall within state and local jurisdiction. An example is the report this week of an extensive, year-long Department of Justice and FBI investigation of the operators of a brothel and prostitution ring in New Orleans. According to press reports, FBI agents were listening to 90 calls a day on wiretaps that continued for months and amounted to more than 5,000 phone calls. The U.S. Attorney reportedly claimed it was a Federal case because prostitutes flew in and out of town and some lived in other cities. Clearly, there are plenty of state and local laws against prostitution. The local prosecutor has apparently declined the Federal prosecutor's offer of the embarrassing list of wealthy establishment "johns" to prosecute and has decided to spend his resources elsewhere. Director Mueller's new priorities make clear that the FBI also has more urgent things to do at the moment, and I would encourage the Department of Justice to do the same.

Reform of the FBI and of other DOJ components to deal more effectively with counterterrorism is an important and immense task. The problem is not going to be solved by any one branch of government. We need to carefully look at what went wrong in the past and roll up our sleeves together and work together to address these problems. Congress must be a full partner in that effort.

Two months before the 9/11 attacks, this committee began comprehensive oversight of the FBI. This series of hearings, of which today's hearing is a part, have focused on problems and constructive solutions to those problems, many of which are reflected in the FBI Reform Act reported unanimously by the Committee. These problems included the gross inadequacy of the FBI's information management and computer systems, the massive security failure in the Hanssen case, the resistance of Bureau officials to admitting mistakes and acting to correct them, and the problem of a double-standard in Bureau discipline for senior executives. Senior FBI managers testified at those public hearings and laid out in detail the measures needed to get the Bureau back on track, including wholesale revamping of FBI internal security practices and the design, development, and execution of a new FBI-wide computer network. The idea on both

sides of the aisle was that by examining the mistakes of the past, we could avoid repeating them. That effort is more vital today than ever before.

The Department of Justice, the FBI, this committee and others must stay the course in making the FBI as effective in the war on terrorism as the American people are depending on it to be.

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