

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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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 important hearing on FBI oversight. This is a constructive opportunity to continue our efforts to remake the FBI into a modern domestic intelligence and law enforcement agency. Congress immediately rose to the post-9/11 challenges facing the Bureau by giving law enforcement agencies new tools, by funding information technology, and by pushing for key management and systemic changes at the Bureau. We have also had time to evaluate and adjust. Just last week, we unanimously passed out of the Committee the USA PATRIOT Act Reauthorization Bill, to extend law enforcement powers, while adjusting safeguards to address privacy and civil liberty concerns. Today, we have a panel of distinguished witnesses to help us evaluate the Bureau's progress, and I look forward to their input.

After 9/11, we all realized the FBI had a lot of work to do. The 9/11 Commission recommended crucial changes, such as creating an effective intelligence group, enhancing information sharing, improving linguistic capabilities, and addressing management concerns in hiring, training and advancement. The FBI has improved, as recognized by Inspector General Fine, members of the 9/11 Commission and others, such as the National Academy of Public Administration. But those evaluations also show substantial impediments to information sharing, effective use of analysts and expertise in domestic intelligence operations, and improving linguistic capabilities.

You, your leadership team and the hard-working men and women of the Bureau deserve the constant appreciation of all of us as Americans for all you do and for the sacrifices you make to do it. Especially after 9/11, the people of the FBI have invested untold overtime hours, working under great pressure, to handle the expanded duties that landed on the Bureau's doorstep that day. Constructive oversight is an invaluable partnership tool that can help the Bureau become as effective as the American people need it to be in thwarting terrorism and in its many other essential missions. And that is why you and we are here today.

Translators

I have followed the challenges faced by the FBI translation program for years and have tracked this effort closely since 9/11. Recognizing that the FBI would need to hire additional linguists with fluency in Middle Eastern, Central Asian and other languages and dialects, I added

provisions to the original USA PATRIOT Act to facilitate the hiring of additional translators at the FBI.

Over the past year, the Office of Inspector General has issued two reports on the translation program. The first was a full audit and the other was the result of an investigation into the security of the operation after allegations of lax controls and possible espionage were leveled by a former contract linguist. I thank Mr. Fine and his staff for the significant effort they have made in this area, both to produce the reports and to ensure that public versions are made available in due course. These reports have proven invaluable to those of us who believe vigorous oversight and government transparency are essential accountability tools in making the FBI as effective as the American people need the Bureau to be, and I hope these reports will be valuable to the Bureau in charting further improvements.

This morning the Inspector General released an update to his 2004 audit. He gives credit where credit is due and acknowledges that the FBI is making progress. We all recognize that it is extremely difficult, as a starting point, to find linguists who are skilled in languages uncommon in the United States. I recently spoke directly with Director Mueller about the translation program, among other oversight topics. I appreciate that the Bureau is working hard to address this challenge, but I remain troubled by the fact that it takes the Bureau, on average, 16 months to hire a contract linguist.

Numerous additional problems continue to plague the translation program. First, the number of hours of unreviewed counter-terrorism audio is increasing. Counter-terrorism recordings are as important as they sound; they include data gathered under foreign intelligence surveillance warrants. Even after the FBI adjusts the numbers to account for double counting, and after it consolidates data from field offices, the numbers still show a marked increase - from about 4,000 hours of unreviewed counter-terrorism audio recordings in April 2004, to more than 8,000 hours in March 2005.

Second, the amount of unreviewed counter-intelligence audio recordings remained somewhat constant, but the Inspector General found that field offices are still failing to review all of the high priority intelligence data within 24 hours.

Finally, with regard to quality control, new guidelines require a higher level of review and certification of translated material, but there apparently still is no nationwide system in place to implement these guidelines and monitor the quality of translations.

I want to see this program succeed. An efficient and versatile translation program is critical to the Bureau's ability to prevent terrorist attacks. We need to see more sustained progress in this area before we can be satisfied that the Bureau is meeting its responsibilities.

Information Sharing, Terrorist Screening Center, And Terrorist Watch Lists

A January 2005 report by the National Academy of Public Administration found that the FBI's information sharing practices, while improved, are largely ad hoc and lack mechanisms, such as penalties or incentives, to enforce or promote information sharing. That is a problem. Other weaknesses in the information sharing infrastructure are the current challenges with the Terrorist Screening Center and the Virtual Case File project.

After 9/11, there was broad agreement that the nation needed an accurate, reliable and comprehensive terrorist watchlist. The Terrorist Screening Center (TSC) was established in 2003 with the FBI as the lead agency, and it was charged with consolidating 12 terrorist watchlists. The consolidation has taken longer than anticipated, but the FBI has made notable progress. But as a recent report by Inspector General Fine shows, significant concerns remain. TSC's operations have been hampered by inadequate training, rapid turnover among the employees staffing at the 24-hour call center, and deficient information technology. And if a terrorist disaster struck, there are questions about whether TSC's continuity plans would provide sufficient redundancy to ensure access to the very information that would be so critically needed at such a time.

The watchlists have also been plagued by inaccurate and incomplete entries. Names that should have been included in the list were not. Innocent individuals have been detained or prevented from airline travel due to list errors.

I am also concerned about whether the consolidated list is being used effectively. For example, the watchlist uses four risk-based handling codes to designate how law enforcement agencies should respond when encountering individuals on the list. A sample reviewed by the Inspector General showed that the majority of watchlist names - including nearly 32,000 individuals described as "armed and dangerous" - are designated for the lowest handling code, which does not require law enforcement encountering those individuals to contact the TSC or any other law enforcement agency. Some of these 32,000 individuals were also described as "having engaged in terrorism," "likely to engage in terrorism if they enter the United States," "hijacker," "hostage taker," and "user of explosive or firearms." It is unclear to me how individuals so described could be designated for the lowest handling. These designations raise significant concerns that law enforcement agencies may be caught unawares or may miss opportunities for updating TSC on the movements of such individuals.

There have also been repeated stories of plane diversions because terrorist suspects from the no-fly list have been allowed to board planes. If a person is so dangerous as to be on a no-fly list, then mid-flight is much too late to respond. Our screening processes must make sure that the list is effectively used to prevent the individuals from boarding planes in the first place.

Virtual Case File/Sentinel

It is no secret that many of us are greatly concerned about the FBI's handling of the Virtual Case File (VCF) project. The FBI bit off more than it could chew, failed to develop a finite and final list of project requirements, poorly chose to issue a contract without milestones and associated

penalties, had inconsistent leadership, and lacked the capabilities and procedures necessary to manage the project well. As the Director knows from two appropriations subcommittee hearings, I found intolerable the fact that Congress - and this Committee in particular --- was not given the full story on how poorly the project was progressing until the entire project collapsed under its own weight. Taxpayers are out more \$100 million, we have lost several crucial years in getting this essential task completed, and we have been told that the work product is not salvageable, with only "lessons learned" to show for this great expense.

I am also disturbed by recent reports from the General Accountability Office that an audit of the project has been substantially delayed by the FBI. Weeks go by before meetings are scheduled and GAO has had to wait several months, and in at least one case, as long as nine months, to receive requested documents. The Bureau has provided the wrong documents and has imposed other delays by requiring DOJ and FBI attorneys to screen documents before their release, and by limiting direct contact between the GAO and individuals involved in the project. Some of this sounds familiar to me. I have often been told that the FBI's answers to my questions are tied up in DOJ reviews. I hope that the FBI will make adjustments to reduce these delays. The GAO's audit will be critical as we move forward with the four-year replacement project - Sentinel ? and attempt to manage the already skyrocketing costs.

While we are still waiting for the FBI to share with Congress the Sentinel cost estimates received quite some time ago, the numbers reported in the press are not encouraging. U.S. News & World Report reported it to be as much as \$792 million, which would be several times larger than the amount previously dedicated to VCF -- \$170 million - and more than the cost of the entire Trilogy project -- \$581 million. The Bureau has disputed this figure, but it is hard to verify figures without access to the hard numbers. When I asked Director Mueller about the costs in a recent hearing, he suggested that he would rather discuss the issue in private, given procurement sensitivities. Director Mueller and I have met in private and those numbers were not forthcoming, but I hope that when the numbers are revealed, they are not in this expensive neighborhood. We remain very concerned about this project, we expect transparency and accountability, and there is no patience for another fiasco.

Counterintelligence and Counterterrorism

There are also other weaknesses in the Bureau's counterintelligence and counterterrorism efforts. The 9/11 Commission recently organized a series of panels as part of its Public Discourse Project to assess developments since its monumental report. Those discussions revealed that there are an insufficient number of intelligence analysts and significant weaknesses in programs to train and retain them. A former CIA intelligence officer pointed out that FBI culture continues to place a lower value on intelligence functions than investigative efforts, and that the Bureau inadequately invested in analysts' expertise or integrated them into positions of authority, influence and leadership.

I am also concerned about reports that many top counterterrorism officials at the FBI do not have a detailed understanding or experience in counterterrorism. While other capabilities, such as leadership skills, are critical to the counterterrorism effort, I would also like to see a core competence in counterterrorism within the FBI's personnel resources. There appears to be some difficulty to filling counterterrorism posts. The discussions at the Public Discourse Project also

reveal that the Bureau has 200 unfilled counterterrorism positions and is facing difficulty finding analysts and agents to fill those posts.

Conclusion

The FBI has undertaken a significant organization overhaul since 9/11. The times and threats have changed, and the Bureau has been adjusting in several key areas. The Bureau has made significant strides and I want to underscore and commend Director Mueller and the Bureau for that. But there is much work to do. I look forward to engaging our witnesses on how best to move forward.