

**Hearing Transcript
Director Robert S. Mueller III
Federal Bureau of Investigation**

**before the Committee on the Judiciary
U. S. Senate
Washington, D.C.**

June 6, 2002

SEN. LEAHY: So people understand what we're going to do here today, we are going to have two panels. Mr. Fine, good to have you here, too, and the director of the FBI, and then the inspector general, Glenn Fine will testify. We'll have questions there. Once this panel is finished we will go off and we'll take a break and then we'll do the second panel, which will be Ms. Rowley. I'd note that I've been reminded that there will be a vote around 11:00. We will take a break at that time for about 10 minutes just to go and vote and come back.

Last week, FBI Director Mueller and Attorney General Ashcroft made some extraordinary -- actually, in the case of the attorney general, unexpected announcement of changes in the organization of the FBI and the guidelines for its administration. Now, the Congress and the administration share a common goal. The goal, of course, is ensuring the safety and security of our country. I look forward to hearing from the department and the FBI why these changes are necessary changes they propose to prevent future terrorist attacks. And they may be right, but this oversight committee has both a duty and a responsibility to review these changes and their justification.

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

But 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 the CIA, the handling of the Phoenix electronic communication, the critical letter from FBI agent Coleen Rowley in the Minneapolis 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.

Now Director Mueller has confronted this mounting evidence, and he's candidly admitted what we all now realize: that today we can't say for sure whether the 9/11 attacks might have been stopped if all the dots had been connected and all the leads been followed. And I commend the director for the candor of his recent statements. I don't want a return of the worst aspects of the 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 peril.

Now the Judiciary Committee has always been 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 the FBI, the INS and other department components are effectively organized, with adequate resources, with proper leadership. This committee considered the nominations of the FBI director, the INS commissioner, the inspector general and the attorney general. We have a continuing responsibility to follow what they've done.

We started hearings -- oversight hearings on June 20th (sic), and now, more than ever, in the age of terrorist attacks on our shores, close oversight of the FBI and our other law enforcement/intelligence agencies is not an option, it's an imperative.

I wrote to the attorney general and the director on October 25 last year, as we enacted the U.S. Patriot Act, to ask what internal reviews they were conducting in connection with the events of September 11th. I told both the attorney general and the director to preserve any documents and information they had from before September 11th, especially those documents and information that had been overlooked prior to September 11th, 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.

MR. MUELLER: I think it's to make certain that we cover both bases. That for purposes of the court, the court needs to know where there are other outstanding investigations relating to those targets. And consequently, it is important that the searches be done by the case agent who is most familiar with the facts of the case but also more broadly in headquarters to assure that nothing is overlooked.

SEN. LEAHY: In fact, the (Woods ?) procedure tells the case agent to do that.

MR. MUELLER: I believe -- I am not intimately familiar with the (Woods ?) procedures, but I believe that's the case.

SEN. LEAHY: Well, so if they don't do the search, either in the field or headquarters, they actually violate the (Woods ?) -- the FBI's own procedures.

The reason I bring this up is, if we're talking about new procedures, I would hope that we're following the procedures that are already in place. I mean, this is a case where we're going to go back and forth whether there could have been a FISA application on Moussaoui, whether there could have been the kind of searches that in hindsight we all wish had been done, but yet all the information was there, and I think they could have gone to it.

MR. MUELLER: Mr. Chairman, I think there's -- the searches are done for the FISA under the (Woods ?) procedures, as I understand it -- and I would have to go back and review and make certain, but go through and search the names to determine whether any of the names that are going to the subject of the scrutiny in the FISA have turned up in any other investigation, as opposed to picking up a piece of information from an EC which relates, for instance, to flight schools. And what we have to do a better job of, both technologically and with the analytical capability that I'm suggesting that we are establishing, is to pull out pieces of information from an EC that may relate to flight schools, and be able to put that together with other pieces from other investigations, not just focusing on the targets, the names of the individuals who are the subject of the scrutiny, which I believe, if I'm not mistaken, the (Woods ?) procedures are in part directed towards.

SEN. LEAHY: Well, in fact it would make just common sense that it's going to be a lot more than just the names. I mean, it's the type of things they're doing, method of operation and so forth, that could be very, very important. I mean, people can change names very easily. What they're trying to accomplish, though, is what we're interested in. Is that not correct?

MR. MUELLER: That's correct.

SEN. LEAHY: And you've talked in your organization -- reorganization of forming "flying squads" to coordinate national and international terrorism investigations. The attorney general has announced new FBI investigative guidelines to allow field offices more discretion to open these terrorism cases without headquarters approval; in fact, be able to keep them open for as much as a year before they're reviewed at headquarters. Were you involved in crafting these new guidelines?

MR. MUELLER: Well, I know we in the FBI, we had individuals who consulted with and participated in discussions with the Department of Justice, yes.

SEN. LEAHY: Did you sign off on them?

MR. MUELLER: I was aware of the guidelines, yes.

SEN. LEAHY: Senator Grassley and I wrote to the attorney general asking that he personally guarantee full whistle-blower protection for Special Agent Rowley. I'll let Senator Grassley speak for himself how he felt about the response.

I think he was disappointed by it. Can you personally assure this committee unequivocally there be no retaliation of any kind against either Coleen Rowley or Kenneth Williams or any FBI employee because they provide information to the Congress or the inspector general or any supervisory FBI official about counterterrorism efforts?

MR. MUELLER: Absolutely. I issued a memorandum on November 7th reaffirming the protections that are afforded whistle blowers, in which I indicated I will not tolerate reprisals or intimidation by any bureau employee against those who make protected disclosures. Nor will I tolerate attempts to prevent the employees from making such disclosures. In every case where there is even an intimation that that is --

that one is concerned about whistle-blower protections, I immediately alert Mr. Fine and send it over, so that there is independent review and independent assurance that the person will have the protections warranted.

When I go around the country and talk to the various offices, one of the things I say is that the good news always comes to the top; it does not come to the top. What does not come to the top is the bad news. What does not come to the top are those things that need to be changed. What I need to know are those things that are broken that need to be fixed. And I -- throughout those discussions in the field offices or with individuals, I reiterated: I want people around me who will tell me what is happening. I want people in the field to tell me what is happening. I cannot get out to talk to every one of the 11,000 agents or the 27,000 total employees, but I need to know what's happening throughout the field. And I encourage, welcome the criticism, the insight, the suggestions, whether it be from the organization or from without the organization.

SEN. LEAHY: And the reason I ask, of course, Mr. Director, is that the FBI is currently exempted from the Whistleblower Protection Act, so we have to rely on your assurance. And I accept your assurance.

Senator Hatch.

SEN. HATCH: Thank you -- thank you, Senator Leahy.

Mr. Mueller, as I understand it, the Patriot Act has worked quite well so far, but there is one area where you're having difficulties, and that's FISA requests, where currently, to get a warrant, there's a requirement of proof of assistance or association, excuse me, with a foreign power. Am I right on that?

MR. MUELLER: There is a requirement under the FISA statute that we demonstrate a belief that the person who is under scrutiny and for whom we wish to obtain court-ordered interception is a, quote, "agent of a foreign power." And that has been defined as including an individual who is associated with a terrorist group.

SEN. HATCH: How many of these approximately 20 terrorists that we've -- that we have -- have been very concerned about participated in the September 11th matter -- how many of those could you have gotten a warrant again (sic) -- a warrant (to surveil ??)?

MR. MUELLER: Well, prior to September 11th, the 19 or the 20 hijackers -- it would have been very difficult, because we had -- I mean, looking at it, trying to go back, we had very little information as to any one of the individuals being associated with --

SEN. HATCH: -- a foreign power.

MR. MUELLER: -- a particular -- a particular terrorist group. One of the issues in the Moussaoui set of circumstances was whether or not the evidence was sufficient to show that Mr. Moussaoui was associated with any particular terrorist group.

If you talk to the agents, and I know we've had Ken Williams and other agents up briefing the Congress, I believe the agents will tell you that one of the problems they have in this area, which we believe Congress ought to look at, is the requirement that we tie a particular terrorist to a recognized terrorist group or foreign power. Or the foreign power -- agent of a foreign power.

SEN. HATCH: I think that you probably would have had a difficult time showing that any of them were agents of a foreign power.

MR. MUELLER: A terrorist group, a defined -- and it's a loose definition -- a terrorist group has been defined as an agent of a foreign power. Our problem comes in trying to show that a particular individual is connected to a specific, defined, in a variety of ways, terrorist group. I mean, once we get a connection with al Qaeda, for instance, even though it is not a foreign power, al Qaeda is a sufficiently distinct group so that we can get the FISA that we need. But we have problems where you have a lone wolf, for instance, who may be out there who we think is a threat, but we have difficulty tying to any particular defined terrorist group.

SEN. HATCH: Well, if we try to change that, I presume a lot of civil liberties groups and persons will be very much against making that change.