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CONFIRMATION HEARING ON THE NOMINATION OF ROBERT S. MUELLER, III TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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NOMINATION OF ROBERT S. MUELLER, III TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

MONDAY, JULY 30, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 1:07 p.m., in room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feingold, Schumer, Edwards, Hatch, Thurmond, Grassley, Specter, Kyl, and Sessions.

Chairman LEAHY. I want to welcome Robert Mueller and his family. Actually, before I start my statement, Mr. Mueller, because of the age of some and knowing they may not have quite the staying power that the rest of us have, why don't we change order slightly. Why don't you introduce your family. Both Senator Hatch and I and Senator Specter and Senator Feingold have already met them, but would you please introduce them?

Mr. MUELLER. Thank you, Mr. Chairman. To my left is my daughter, Melissa; my wife, Ann; next to her is my daughter, Cynthia, holding Robert Charles; and next to Robert Charles, glaring at me, is my granddaughter, Campbell, with her father, Chris Donley; and two friends to my left, another Campbell, and Carolyn Howe, good enough to help us with the young ones today.

Chairman LEAHY. You are blessed with a fine family, and as I mentioned earlier, just so everybody will understand, we expect that perhaps the attention span of some will be less than that of the Senators or the nominee, so feel free to slip out that back way at any point.

OPENING STATEMENT OF HON. PARTRICK J. LEAHY. A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman. LEAHY. We are, as I said, beginning the hearings today on the nomination of Robert S. Mueller, III, to be Director of the Federal Bureau of Investigation, frankly, among the most important positions in our Government. He has had an outstanding career in law enforcement, served as a Federal prosecutor in three different U.S. Attorneys' Offices. He served in Main Justice under both Republican and Democratic administrations.

For Mr. Mueller and for this committee and for the Nation, this is more than a job interview because we are at a crucial juncture

for the FBI. Well beyond an interview, in many ways this hearing will be a redefinition of the job of FBI Director.

The committee wants to forge a constructive partnership with the Bureau's next Director. We do this to get the FBI back on track. Congress sometimes has followed a hands-off approach about the FBI. Until some of the problems we see are solved, we are going to need a hands-on approach.

The rights of all Americans are at stake in the selection of an FBI Director. He has extraordinary power to affect the lives of ordinary Americans. By properly using the investigative powers, the FBI can protect the security of all of us to combat sophisticated crime, espionage and terrorism.

But these same powers the FBI has, if they are unchecked, they can undermine our civil liberties, our freedom of speech and association, and the right to privacy. If the FBI leaks information, they can destroy the lives and reputations of people who have not been charged or had a trial. And, worse, such leaking can be used for political intimidation and coercion.

By respecting constitutional safeguards for criminal suspects, the FBI can help ensure that persons accused of Federal crimes receive a fair trial and that justice is served. Our paramount standard for evaluating a new Director is his demonstrated adherence to the Constitution as the bulwark of liberty and the rule of law. This is necessary to assure the American people that the FBI will exercise its power and exercise it in a proper fashion.

Now, many in our country have lost some confidence in the Bureau. That is more than just a PR problem, because if you erode public trust, then you erode the ability of the FBI to do its job, because if people mistrust the FBI, they are going to be less likely to come forward and report information that law enforcement may need. Mr. Mueller, you have been in the position of being an active prosecutor and trial lawyer. If there is not respect and confidence in the FBI, then judges and jurors are going to be less likely to believe the testimony of FBI witnesses.

In fact, if you lose trust in the FBI, then if agents make innocent or minor mistakes in the future, people are going to wonder whether there some kind of sinister factor behind this. FBI agents perform forensic and other critical work for many law enforcement agencies on the Federal, State, and local levels. So if you have a decline in public confidence, it has a ripple affect on the cases local and State prosecutors have to handle.

Now, constructive and bipartisan oversight of the FBI can greatly improve its effectiveness. Reviews by Inspectors General and other outside experts are important, but the ultimate test is accountability to all the people through the Congress. So we will ask the nominee about his views on congressional oversight. And the questions being asked about the FBI are directed at three interrelated issues: the Bureau's security and information technology problems, management problems, and insular culture. We have been looking at each of these, beginning in the hearings I started in June.

In the national security field, our country depends on FBI counterintelligence to protect the most sensitive intelligence and military and diplomatic secrets from foreign espionage. We were told

at one of our hearings that there were no less than 15 different areas of security at the FBI that were broken. In the testimony of their own experts, we were told those areas need to be bolstered, redesigned, or in some cases established for the first time. So we want to hear about that.

The FBI needs to join the 21st century. That is axiomatic. But we find that much of their computer systems are obsolete. In fact, we were told the FBI's computer systems have not been updated for over 6 years; that more than 13,000 desktop computers are so old they cannot run on today's basic software; that the majority of the smaller FBI fields offices have internal networks that work more slowly than the Internet connections somebody might have on a dial-up system at home; and that the investigative data bases are so old that FBI agents are unable to store photographs or graphical or tabular data on them.

I can't help but think that the hard-working, dedicated men and women in the FBI who are out across the country trying to fight crime deserve better, and they should have the computer network tools that most people take for granted and most of the graduates of the FBI Academy have probably been using from the time they were in high school.

These are not problems of money. We have poured a lot of money into the FBI. It is a management problem. So I am glad to see a nominee who has seen the FBI up close for so many years as Acting Deputy Attorney General, as Assistant Attorney General, and in three U.S. Attorneys' Offices, and we will ask about his management ideas and abilities.

We want to know about the FBI Director's relationship with the Attorney General in the overall management structure. Sometimes in the past, Directors have had too much of the final word on management of the Bureau. Now, we don't want political interference, but the Attorney General is still the boss. And I have told Attorney General Ashcroft that there won't be an inch of daylight between the two of us on that aspect.

We received testimony in our oversight hearings that too often the independence that is part of the FBI's culture, and a respected part, has instead, though, crossed over into the line of not being independence but arrogance. Senator Danforth expressed concern to this committee about entrenched executives at the FBI who have created a closed and insular culture resistant to disclosure of mistakes. And we heard testimony from experienced FBI special agents who told us of a "club" mentality among some Bureau executives who resist criticism or changes that threaten their careers. In fact, Senator Danforth recommended that the new Director should be prepared to clean house if necessary.

If there is only one message I could leave in that respect, it is that senior management has got to know that it is better to admit mistakes and correct them than to cover them up and wait for us to find them.

To give you one example, of the idea the FBI can admit no mistakes: in the weekly newsletter for FBI employees, the FBI reported on our committee's July 18 hearing. But, interestingly enough, they only reported the testimony of the two senior executives from the FBI who told us what they were doing to fix infor-

mation technology and security problems, but the newsletter didn't talk about the four other FBI agents who testified about problems of a double standard in adjudicating discipline and about retaliation within the FBI. They left that out. Ignoring the testimony doesn't make it go away. If the FBI tries to suppress information that things have gone wrong, it is never going to fix them.

That is why I support the change made by Attorney General Ashcroft to give the Justice Department's Inspector General full authority over the FBI. The Director has to make clear that FBI executives should reward not discourage participation in Inspector General and other oversight inquiries.

We have heard disturbing testimony about retaliation against agents who are tasked to investigate their colleagues or who discuss issues with Congress. I think a clear message must go to the FBI employees that the Director will not tolerate retaliation against agents who conduct internal investigations or who bring information about wrongdoing to the Congress.

The internal FBI study that we released at the committee's last hearing found a double standard at work, with senior FBI executives receiving a slap on the wrist for the same kind of conduct that would result in serious discipline for lower level employees. The most vivid example occurred when seven senior executives submitted false travel vouchers so they could fly to Washington for the retirement dinner of a Deputy Director. The average agent would have lost his or her career for doing that. The senior executives received only a letter of censure. Two of them actually received promotions and cash awards.

Those of us who have had careers in law enforcement—and there are several of us in this committee who have long thought that the FBI was the crown jewel of law enforcement agencies. Some of that jewel has lost some of its luster, and we want to restore it. So, frankly, Mr. Mueller, you have both a great challenge and a great opportunity to restore public confidence in the Bureau. I think it is safe to say all of us want you to do that. We need to forge a strong and constructive oversight partnership with the leadership of the Department of Justice and the FBI to shape reforms. We can find the solutions to make the FBI the premier law enforcement agency that the American people want and expect it to be and an agency that can hold out that bright promise to the men and women who are going through your training programs. They are among the best in this country, and let's make sure they are going into the best Bureau possible.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT, ON THE NOMINATION OF ROBERT S. MUELLER, III, TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Today, the Judiciary Committee begins hearings on the nomination of Robert S. Mueller III to be Director of the Federal Bureau of Investigation. Mr. Mueller has had an outstanding career in law enforcement, serving as a Federal prosecutor in three different U.S. Attorneys' Offices and in Main Justice under both Republican and Democratic Administrations. We welcome Mr. Mueller and his family here today.

For Mr. Mueller, for this Committee and for the Nation, this is more than a job interview. This is a crucial juncture for the FBI. We aim to forge a constructive partnership with the Bureau's next director to get the FBI back on track. Congress

sometimes has followed a hands-off approach about the FBI. Until the Bureau's problems are solved, we will need a hands-on approach for awhile.

The rights of all Americans are at stake in the selection of an FBI Director. The FBI has extraordinary power to affect the lives of ordinary Americans. By properly using its extraordinary investigative powers, the FBI can protect the security of us all by combating sophisticated crime, terrorism, and espionage. But unchecked, these same powers can undermine our civil liberties, such as freedom of speech and of association, and the right to privacy. By leaking information, the FBI can destroy the lives and reputations of people who have not been charged or had a trial. Worse, such leaking can be used for political intimidation and coercion. By respecting constitutional safeguards for criminal suspects, the FBI can help ensure that persons accused of Federal crimes receive a fair trial and that justice is served. Our paramount standard for evaluating a new Director is his demonstrated adherence to the Constitution as the bulwark of liberty and the rule of law. This is necessary to assure the American people that the FBI will exercise its power effectively and fairly.

The American public has lost some confidence in the Bureau. This is not just a PR problem. This erosion of public trust threatens the FBI's ability to perform its mission. Citizens who mistrust the FBI will be less likely to come forward and report information about criminal activity. Judges and jurors will be less likely to believe the testimony of FBI witnesses. Even innocent or minor mistakes by the FBI in future cases may be perceived in a sinister light that is not warranted. Since FBI agents perform forensic and other critical work for many law enforcement agencies on the Federal, state and local levels, the repercussions of this decline in public confidence in the FBI has rippled far beyond Federal criminal cases.

Constructive, bipartisan oversight of the FBI can greatly improve its effectiveness. While reviews by Inspectors General and other outside experts are important—the ultimate test is accountability to the people through the Congress. Therefore, I will ask the nominee about his views on congressional oversight and, especially, his willingness to join this partnership and provide the information this Committee needs to oversee the Bureau on behalf of the American people.

The questions being asked about the FBI are directed at three inter-related issues: the Bureau's security and information technology problems, management problems, and insular "culture." The Committee is in the midst of examining each of these areas at oversight hearings that began in June shortly after I became Chairman.

In the national security field, our country depends on FBI counterintelligence to protect the most sensitive intelligence, military, and diplomatic secrets from foreign espionage. We were told that there were no less than 15 different areas of security at the FBI that were broken and needed to be "bolstered, redesigned, or in some cases established for the first time." The Committee will want to hear the nominee's views on the steps he will take to move forward with security improvements.

The FBI needs to join the 21st Century. This is the information age, but the FBI's information technology is obsolete. The Committee has been told that the FBI's computer systems have not been updated for over 6 years; that more than 13,000 desktop computers are so old they cannot run on today's basic software; that the majority of the smaller FBI field offices have internal networks that work more slowly than the Internet connections many of us have at home; and that the investigative data bases are so old that FBI agents are unable to store photographs, graphical or tabular data on them.

Hard-working, dedicated FBI agents trying to fight crime across this country deserve better, and they should have the computer and network tools that most businesses take for granted and many Americans enjoy at home.

The security and information technology problems facing the FBI are not a problem of money. The Congress has poured money into the FBI. This is a management problem and it can no longer be ignored. The nominee has seen the FBI up close for many years—as Acting Deputy Attorney General, as Assistant Attorney General, and in three United States Attorneys' offices. The Committee will want to know what management objectives he brings to this job, based on his past experience, and what other resources he will draw on to bring about needed changes.

It is especially important to understand how the nominee views the FBI Director's relationship with the Attorney General in the overall management structure at the Department of Justice. Too often in the past Directors have had the final word on management of the Bureau. Of course, there are legitimate concerns about political interference with investigations, as Watergate demonstrated. The FBI Director is not, however, unique in having to resist such interference. Both the FBI Director and the Attorney General have that duty, and they should work together to ensure the integrity of both investigations and prosecutions.

The FBI "Culture" Needs An Overhaul. We are receiving testimony in our oversight hearings showing that, too often, the independence that is part of the FBI's culture has crossed the line into arrogance. Senator Danforth expressed concern to this Committee about entrenched executives at the FBI who have created a closed and insular culture resistant to disclosure of mistakes and to reforms. His concern was echoed in testimony the Committee heard from experienced FBI Special Agents, who told us of a "club" mentality among some Bureau executives who resist criticism or change that threatens their careers. Senator Danforth recommended that the new director should be prepared to clean house if the extent necessary to implement needed changes.

If there is one message that a new Director should get from recent problems, it is that FBI executives need to be more willing to admit their mistakes. Too often their response is to protect the Bureau from embarrassment or shield self-serving executives from criticism and needed change. A new Director must understand that this type of conduct risks a far greater cost in the lost of public confidence, as compared with admitting mistakes when they occur.

Let me cite one example that occurred just this week. In its recent weekly newsletter for FBI employees, the FBI reported on the Judiciary Committee's July 18 hearing. But the newsletter reported only the testimony of the two senior FBI agents, who told us about what they were doing to fix the security and information technology problems at the FBI. Their testimony was also the only testimony posted on the FBI website. Yet, the testimony of the four other FBI agents who testified about problems of a double standard in adjudicating discipline and about retaliation within the FBI was ignored—not mentioned in the newsletter nor posted on the website. Ignoring the testimony will not make it disappear. This kind of attitude makes it much harder to make the changes that need to be made. If the FBI tries to suppress information that things have gone wrong, it will never get them fixed.

To ensure full investigation of mistakes, I support the change made by the Attorney General to give the Justice Department's Inspector General full authority over the FBI. I hope the nominee will look favorably on an amendment to the Inspector General statute that makes this regulatory change permanent. A Director must make clear that FBI executives should reward—not discourage—participation in Inspector General, and other oversight, investigations of Bureau performance.

We have heard disturbing testimony about retaliation against FBI Agents who are tasked to investigate their colleagues or who discuss issues with the Congress, either directly or through cooperation with the General Accounting Office, which assists in congressional oversight. It is important that a new Director send a clear message to FBI employees that he will not tolerate retaliation against agents who conduct internal investigations or who bring information about wrongdoing to the Congress directly. I will want to hear from the nominee about his ideas for ensuring that such retaliation in the workplace and in promotions stops.

Internal investigations must also lead to fair and just discipline. Here the recent record is troubling. A internal FBI study that we released at the Committee's last hearing found a double standard at work, with senior FBI executives receiving a slap on the wrist for the same kind of conduct that would result in serious discipline for lower level employees. The most vivid example occurred when seven Senior Executives submitted false travel vouchers so they could fly to Washington for the retirement dinner of a Deputy Director. They received only letters of censure for a voucher fraud offense that could cost an average Agent his or her career. Two of them actually received promotions and cash awards. In another case, the argument was asserted within the Justice Department that the FBI Director may not be disciplined because he is a Presidential appointee and that, in any event, the FBI Director should not be disciplined for exercising poor judgment. The Committee will be interested in hearing from the nominee about his adherence to the basic principle that all public officials should be held equally accountable.

The FBI has long been considered the crown jewel of law enforcement agencies. Today, it has lost some of its earlier luster. The next FBI Director has both a great challenge and a great opportunity to restore public confidence in the Bureau, and this Committee stands ready to help. We need to forge a strong and constructive oversight partnership with the leadership at the Department of Justice and the FBI to shape the reforms and find the solutions to make the FBI the premier law enforcement agency that the American people want and expect it to be.

Chairman LEAHY. Senator Hatch?

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Mr. Chairman. It is an unusually great pleasure to welcome Mr. Mueller, our nominee, to the committee today. I always enjoy reviewing the many excellent nominees for high office who come before this committee, but I particularly relish those super-extraordinary few who not only have stellar qualifications but seem to be an exceptionally perfect fit for the job for which they have been nominated. We have such a nominee before the committee today. Indeed, it is hard to imagine another nominee whose unquestioned experience, good character, and reputation would so perfectly match the requirements of this new position.

Now, I do not say this lightly. I consider the FBI to be one of the most important agencies of the Federal Government and the post of the FBI Director to be one of the most consequential in the world today. The FBI Director is trusted to command huge resources that touch the lives of people around the globe. He is charged with protecting the most important resource in America, our people, against criminal activity that is increasingly sophisticated and resourceful. And the Director holds a term, 10 years, that exceeds that of any elected Federal representative. The Director thus has great power and great insulation from the popular will, a combination that requires this committee to be especially vigilant in its confirmation review.

But after examining Mr. Mueller's record, meeting with him privately, and hearing from many people who know him, I am extremely pleased that President Bush has chosen Bob Mueller for this position. I have the utmost confidence Mr. Mueller has the judgment, the integrity, and the dedication to purpose that will make for an excellent FBI Director.

I have a full written statement that I would like to submit for the record, Mr. Chairman.

Chairman LEAHY. Without objection.

Senator HATCH. But I would like to mention that, as I reviewed your responses to the committee questionnaire, Mr. Mueller, I was particularly struck by two items on your long list of professional accomplishments. The first is your military record, a matter about which I was not previously aware. During the Vietnam War, Mr. Mueller served as a rifle platoon commander and eventually as an Aide-de-Camp to the Commanding General to the 3rd Marine Division. He was awarded the Bronze Star, two Navy Commendation Medals, the Purple Heart, and the Vietnamese Cross of Gallantry.

The second particularly notable item is that in 1995, after 2 years as the senior partner at the distinguished firm of Hale and Dorr, Mr. Mueller left to join the Homicide Section of the U.S. Attorney's Office in the District of Columbia, and this after he had served as head of the Criminal Section in the Department of Justice. When I saw that, I was reminded a bit of a man whom all of us admired a great deal, even though some of us disagreed with his clients on certain issues, Charles Ruff, who died last year. Chuck also left a prestigious firm, Covington and Burling, in the early 1990's to serve his community, in his case as D.C. Corporation Counsel. I think the move was Chuck's way of giving some-

thing back, even though he had already given a great deal to the American people. And it also seems to me that, Mr. Mueller, your record of service to the community and to the country is one that anyone would be proud of.

There is no doubt that you will need to muster all of your experience, training, and character to execute this new assignment. You will step into the FBI, an organization of nearly 28,000 employees, at a time of some disruption caused by several high-profile embarrassments, all of which I am sure will be mentioned during this hearing, and maybe mentioned more than once.

Regardless of whether these incidents are isolated rather than systemic, they will nevertheless prove challenging, if for no other reason than the fact that they have garnered significant public attention and have fueled significant public concern.

Of course, you will not be starting from scratch and you will not be working alone. You will be the inheritor of the hard work of another extraordinary public servant, Director Louis Freeh. Director Freeh accomplished a great deal during his tenure to modernize and restructure the FBI so it can handle the challenges of the future. But as Senator Leahy has pointed out, even he was unable to get it all done in the time that he was there. He did reinvigorate the Bureau with the core values of obedience to the Constitution, respect for all those it protects, compassion, fairness, and uncompromising integrity.

Another tremendous advantage you will have is the support of the Bush administration and Attorney General Ashcroft in particular. Attorney General Ashcroft has already demonstrated his genuine concern for and dedication to the FBI by taking dramatic and important steps to remedy some of the perceived challenges faced by the Bureau. The review headed by William Webster, the former FBI Director himself, the management study to be conducted by Arthur Andersen and the expansion of jurisdiction of the Justice Department's Inspector General all demonstrate that General Ashcroft is determined to uncover any opportunities to improve the FBI and is determined to help you take the Bureau to new heights of professionalism.

Now, I hope and expect that Congress will be another source of support. Of course, Congress—and this committee in particular—has an important oversight role that involves asking tough questions and demanding complete answers. The Congress should be careful to act in ways that encourage positive change and avoid distracting the Bureau from its mission. One tool I want to give to the new Director is the benefit of an independent review of the agency by a blue-ribbon panel of outstanding outside experts from a variety of fields. So I have joined with Senator Schumer in sponsoring the Schumer-Hatch FBI Review Commission Act of 2001, which would establish a mechanism for a first-rate group of experts from a variety of fields like management, technology, intelligence, and others to do a thorough review of the FBI and make strategic recommendations for improvements. Such an independent group, with no turf to protect or axes to grind, could really help bring the best practices of the corporate and scientific worlds to bear on all of the challenges currently being faced by the FBI.

One frustration that you will undoubtably feel is that when the FBI does its job well, we will never hear about it. The newspaper headlines will never read, "Millions of Americans Slept Safely Again Last Night." The Washington Post will never publish a story proclaiming that, "Another Day Passes Without Nuclear Terror in any U.S. City." Nevertheless, the main focus of the FBI is to prevent crime by gathering intelligence, compiling evidence, and assisting in prosecutions. Indeed, between October 1993 and October 1999, the FBI prevented more than 40 potential acts of terrorism, including the planned detonation of two enormous propane gas tanks near Sacramento, California, which would have resulted in the deaths of at least 12,000 of our citizens. There are others that had the equal potential to do tremendous damage.

I again applaud President Bush for his choice of you, Mr. Mueller, to be FBI Director. You are a principled and dedicated public servant with a proven record in law enforcement and management. You have a no-nonsense style which I think has served you very well and has helped you to inspire others to do their best work for the American people. Now, I have every confidence that you will prove to be an excellent FBI Director, and I know that will happen.

I want to thank the chairman for this hearing, and I urge the committee and the full Senate to move forward with Mr. Mueller's confirmation with all deliberate speed, and I just want to thank you for being willing to serve your country in this way, and I want to thank your family, your wife in particular, the rest of your family, because this is taking on an awful lot of responsibilities, and sometimes it means many, many days and nights away from home and many, many hours away from home. So we appreciate you as well, and, again, Mr. Chairman, thank you for allowing me to make these comments.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, ON THE NOMINATION OF ROBERT S. MUELLER, III TO BE FBI DIRECTOR

One of the greatest pleasures of working on the Judiciary Committee is reviewing a nominee for high office who not only has extraordinary qualifications but also is a perfect fit for the job to which he or she has been nominated. Of course, this Committee reviews a lot of candidates who are qualified, competent and dedicated to public service. But once in a while, a nominee comes along who exhibits an extra measure of fitness for the job. We have such a nominee before the committee today in Robert S. Mueller, III. It is hard to imagine anyone whose unquestioned experience, good character and reputation would so perfectly match with the requirements of his new position.

I do not say this lightly. I consider the FBI to one of the most important agencies of the government, and the post of FBI Director to be one of the most consequential in the world. The FBI Director is trusted to command huge resources that touch the lives of people around the globe. He is charged with protecting the most important resource in America—our people—against criminal activity that is increasingly sophisticated and resourceful. And the Director holds a term—ten years—that exceeds that of any elected Federal representative, and is 2 years longer than any president can serve in office. The Director thus has great power and great insulation from the popular will—a combination that requires this Committee to be especially vigilant in its confirmation review. But after examining Bob Mueller’s record, meeting with him privately, and hearing from many people who know him, I am extremely pleased that President Bush has chosen Bob Mueller for this position. I have the utmost confidence that Mr. Mueller has the judgment, integrity and dedication to purpose that will make for an excellent FBI Director.

MR. MUELLER'S BACKGROUND

Mr. Mueller is a decorated military hero who has spent most of his professional career prosecuting criminals and earning a reputation for no-nonsense management. As I recently reviewed his responses to the Committee questionnaire, I was particularly struck by two items on his long list of professional accomplishments. The first is his military record, a matter about which I was not previously aware. During the Vietnam war, Mr. Mueller served as a rifle platoon commander and, eventually, as an aide-de-camp to the Commanding General of the Third Marine Division. He was awarded the Bronze Star, 2 Navy Commendation Medals, the Purple Heart, and the Vietnamese Cross of Gallantry. And his military service did not end there. After the war, Mr. Mueller served in the Marine Corps Reserve until 1980, achieving the rank of Captain.

The second particularly notable item is that in 1995, after 2 years as the senior partner in distinguished firm of Hale and Dorr, Mr. Mueller left to join the homicide section of the U.S. Attorneys office in the District of Columbia. When I saw that, I was reminded, a bit, of a man whom all of us admired a great deal (even though some of us disagreed with his clients on certain issues): Charles Ruff, who died last year. Chuck also left a prestigious firm—Covington and Burling—in the early 1990's to serve his community—in his case, as D.C. corporation counsel. I think the move was Chuck's way of giving something back, even though he had already given a great deal to the American people. And it also seems to me that Mr. Mueller's record of service to community and to country is one that anyone would be very proud of.

Mr. Mueller graduated from the University of Virginia law school in 1973, after which he spent 3 years working on small litigation matters as an associate at Pillsbury, Madison & Sutro in San Francisco. He left in 1976 to become an Assistant U.S. Attorney in San Francisco, first in the civil division and later in the criminal division. There he tried cases involving narcotics, money laundering, tax evasion, bank robbery, and major fraud. He also spent 9 months prosecuting the Hells Angles motorcycle club. He rose in the ranks to become supervisor of the Special Prosecutions Unit and then interim Chief of the Criminal Division.

In 1982, Mr. Mueller transferred to the U.S. Attorney's office in Boston, Massachusetts, as Chief of the Criminal Division. For the next 6 years, he prosecuted narcotics, public corruption, and espionage cases, among others. And he served as First Assistant U.S. Attorney, as the court-appointed U.S. Attorney, and then as Deputy U.S. Attorney. In 1988 he joined the firm of Hill and Barlow as a litigation partner. During his 10 months there, he practiced civil law including contract disputes and some criminal defense.

Mr. Mueller became an Assistant to Attorney General Richard Thornburgh in May 1989. His focus was advising the A.G. on criminal matters. He also served as the liaison between the A.G.'s office and the FBI, the DEA, and other Federal agencies.

President Bush nominated Mr. Mueller in September 1990 to be the Assistant Attorney General for the Criminal Division. He served in that position until 1993, handling the high-profile investigation of Pan Am 103, the prosecutions of Gotti and Noriega, and the BCCI and BNL matters.

In 1993, he became a senior partner in the Washington office of the Boston firm Hale and Dorr. As I mentioned earlier, he gave up that prestigious and lucrative position in 1995 to join the homicide section of the District of Columbia's U.S. Attorney's office. He tried a number of cases there, and became chief of the homicide unit in 1996.

In August 1998, the Justice Department asked him to serve as the interim U.S. Attorney for the Northern District of California, where he turned a troubled office around and rebuilt it into one of the nation's best. Under his leadership, the number of criminal prosecutions nearly doubled in 2 years. He increased the office's focus on environmental crime and public corruption. And he showed himself to be a visionary leader in developing governmental responses to the burgeoning area of computer crime. He was later nominated and confirmed as U.S. Attorney there, where he supervises 100 attorneys. From January until May 2001, he served as the Acting Deputy Attorney General.

By any measure, Mr. Mueller's resume alone makes him an excellent candidate to be FBI Director. But the icing on this cake is the reputation he has earned while holding those jobs. Mr. Mueller has earned a reputation for, among other things, a no-nonsense toughness when it comes to managing an office.

CURRENT FBI CHALLENGES

There is no doubt that Mr. Mueller will need to muster all of his experience, training, and character to execute his new assignment. He will step into the FBI—an organization of over 27,800 employees—at a time of some disruption caused by several high-profile embarrassments, including the handling of the McVeigh documents, the belated discovery of the Hanssen spy case, and the troubled Wen Ho Lee investigation. Regardless of whether these incidents are isolated rather than systemic, they will nevertheless prove challenging—if for no other reason, because they have garnered significant public attention and fueled concern.

DIRECTOR FREEH'S LEGACY AND ATTORNEY GENERAL ASHCROFT'S SUPPORT

Of course, Mr. Mueller will not be starting from scratch and will not be working alone. He will be the inheritor of the hard work of another extraordinary public servant, Director Louis Freeh. Director Freeh accomplished a great deal during his tenure to modernize and restructure the FBI so it can handle the challenges of the future. He reinvigorated the Bureau with the core values of obedience to the Constitution, respect for all those it protects, compassion, fairness, and uncompromising integrity. He also made specific reforms in the area of ethics. In 1996, Mr. Freeh established a new Office of Law Enforcement Ethics and enhanced ethics training at the Bureau. In 1997, he established an enhanced and independent Office of Professional Responsibility to investigate allegations of employee misconduct. And in 1998, he opened this issue to the public by beginning the practice of releasing to the news media annual reports on disciplinary actions taken by the OPR.

Director Freeh's legacy goes far beyond these specific actions. His tenure will be noted for the successful investigation and resolution of the World Trade Center bombing in 1993, the Alfred P. Murrah Federal Building bombing in 1995, the so-called Unibomber case, and the Embassy bombings in East Africa in 1998. Even more profound—and largely ignored by the media and the public—are the preventative successes under Director Freeh's watch. Between October 1993 and October 1999, the FBI prevented more than 40 potential acts of terrorism, including the planned detonation of two enormous propane gas tanks near Sacramento, California, which could have resulted in over 12,000 deaths. Other notable projects of Director Freeh's in the area of national security include the creation of the National Infrastructure Protection Center, the Strategic Information Operations Center, the Counterterrorism Division, the Weapons of Mass Destruction Operations Unit, and the National Domestic Preparedness Office.

The list of Director Freeh's other accomplishments would go on and on. His successes in several areas are too numerous to mention, including the areas of violent crime, organized crime, drug trafficking, health care fraud, crimes against children, and civil rights. He also significantly improved the Bureau's training programs, relationship with the CIA, and coordination with foreign governments. As you can tell, I am a big fan of Director Freeh and the great work he did as FBI Director. And I am confident that his legacies will in many ways enable Mr. Mueller to achieve even greater things in the future.

Another tremendous advantage Mr. Mueller will have is the support of the Bush Administration and of Attorney General Ashcroft in particular. Attorney General Ashcroft has already demonstrated his genuine concern for, and dedication to, the FBI by taking dramatic and important steps to remedy some of the perceived challenges I mentioned a minute ago. For example, Attorney General Ashcroft established an independent review board headed by William Webster to examine the FBI's procedures, including security measures, in the wake of the Hanssen case. He recently contracted with Arthur Anderson to conduct a management study of the FBI. And he expanded the jurisdiction of the Justice Department's Inspector General to include oversight over the FBI—an important step in ensuring the integrity of the Bureau and its employees. These actions demonstrate that Attorney General Ashcroft is determined to uncover any opportunities to improve the FBI and is determined to assist Mr. Mueller in taking the Bureau to new heights.

FBI REVIEW COMMISSION ACT

I hope and expect that Congress will be another source of support for Mr. Mueller. Of course, Congress—and this Committee in particular—has an important oversight role that should and must involve asking tough questions and demanding complete answers. But Congress should be careful to act in ways that encourage positive change and avoid distracting the Bureau from its mission. One tool I want to give to the new Director is the benefit of an independent review of the agency by outside experts from a variety of fields. I have joined with Senator Schumer in sponsoring

the Schumer-Hatch FBI Review Commission Act of 2001, which would establish a mechanism for a first rate group of experts from a variety of fields like management, technology, intelligence and others to do a thorough review of the FBI and make strategic recommendations to the new Director for improvements. Such an independent group, with no turf to protect or axes to grind, could really help bring the best practices of the corporate and scientific worlds to bear on the challenges currently facing the FBI.

I know there will be a lot of suggestions for improvements to the FBI. Some are underway, others are being developed. We in Congress are right to scrutinize the plans for reform and to be vigilant in our oversight. We will not blindly accept changes, but will question and test them to ensure they will address the problems which exist. Through this process, and by working in collaboration with the Justice Department and the new FBI Director, I hope Congress will prove to be a constructive part of a revitalization of the FBI.

FOCUS ON FUTURE SUCCESS

One of the reasons why the FBI's public image has been harmed by the recent stories is that, when the FBI does its job well, we never hear about it. This is the nature of law enforcement work in general, and of the FBI's in particular. The newspaper headlines will never read "Millions of Americans Slept Safely Again Last Night." The Washington Post will never publish a story proclaiming that "Another Day Passes Without Nuclear Terror in any U.S. City." Nevertheless, the main focus of the FBI is to prevent crime by gathering intelligence, compiling evidence, and assisting in prosecutions. It is my sincere hope and expectation that, during the next few months and throughout Mr. Mueller's term as Director, all of the various parties with an interest in the FBI will maintain this focus on crime prevention and will measure their words and actions against the goal of ensuring future success.

CONCLUSION

I applaud President Bush for his choice of Bob Mueller to be FBI Director. He is a principled and dedicated public servant with a proven record in law enforcement and management. His no-nonsense style has served him well and has helped him inspire others to do their best work for the American people. I have every confidence that he will prove to be an excellent FBI Director.

I thank the Chairman for this hearing, and I urge the Committee and the full Senate to move forward with Mr. Mueller's confirmation with all deliberate speed.

Chairman LEAHY. What I intend to do is to give the Senators here today an opportunity to give opening statements, and we will go back and forth following the early bird rule.

Mr. Mueller, I hope as you hear these statements, comments both good and bad, that you won't change your mind. The President spent a lot of time on this nomination. Attorney General Ashcroft has spent a lot of time. I happen to agree with both the President and the Attorney General that they made a great choice, so don't change your mind no matter what we say here.

Senator Feingold?

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you very much, Mr. Chairman. Thank you. Welcome, Mr. Mueller, and congratulations on your nomination. I do applaud you, Mr. Chairman, for holding the hearing so soon after the President sent Mr. Mueller's nomination to the Senate. I rescheduled the meetings I had planned in Wisconsin this morning and returned to Washington sooner than usual in order to participate in the hearing. And that is because, of course, this nomination should receive speedy consideration. Our Nation's leading law enforcement agency has no leader and is reeling from a series of missteps and mismanagement. The FBI is in desperate need of strong leadership.

But from what I have learned so far, I believe Mr. Mueller may well be the right person for the job.

I appreciated your taking the time to meet with me last week. I was impressed by your sense of purpose and readiness for the job. As I said during our meeting, I think this is an enormously challenging undertaking. But it is also really a great opportunity for you to show this committee and, more importantly, our Nation some real results.

You are arriving at the FBI at a very difficult time. The Bureau's setbacks and missteps in recent years form a now familiar and, unfortunately, fairly lengthy list: the missing McVeigh documents, the Hanssen case, Los Alamos and the Wen Ho Lee case, the years-late production of the tapes in the Birmingham bombing, problems in the FBI lab, Richard Jewell and the Olympic bombing, charges of racial bias in promotions at the FBI.

We know, of course, on the other hand, that the history of the FBI includes some storied successes. Maybe the greatest triumph of the FBI, as was suggested by the statement that Senator Hatch just made, has been the terrorist attacks that never happened. While the FBI over the years has had its lapses in respecting the civil liberties of some Americans, and those episodes should continue to serve as a cautionary note for those who wish to give unfettered power to any law enforcement agency, perhaps the greatest achievement of the Bureau has been that it has done so well in solving crime and foiling conspiracies while operating in a Nation that so respects individual liberty.

Moving beyond the specific missteps of recent years, I would emphasize the following more general concerns:

First, I am very troubled by what appears to be an agency with no internal or external accountability. It strikes me that the management structure has to be reshaped so that the mistakes are discovered earlier and corrected more quickly and directly.

Second, there are a number of areas where the FBI can improve its level of professionalism. Coordination between State and Federal law enforcement should be strengthened and improved. There should not be a competition for glory in high-profile investigations. The goal is to stop crime and catch criminals, not to get headlines or credit.

I firmly believe that for the most part, the FBI has been a model law enforcement agency. But, obviously, the high-profile problems that have come to light in recent years suggest even bigger problems that could possibly linger under the surface. These issues have to be addressed—if for no other reason than to restore the public's trust and confidence in the Bureau. It is up to you not only to find out what has happened in the past and take appropriate action, but to learn from these mistakes and make sure they don't happen again.

You have impressed me as a person who has deep respect for the Bureau and its history and for the dedicated professionals who work there, but who is also willing to look at the Bureau with a very critical eye and a willingness to shake things up, to demand a high standard of integrity and fairness and professionalism in all aspects of its work. I think you will find that the Senators on this committee will support you and work with you to help the FBI

overcome these recent black eyes and then resume its place in the forefront of American law enforcement.

So I plan to ask you some questions later about how to meet some of these challenges, but I certainly look forward to your testimony. And thank you again, Mr. Chairman.

[The prepared statement of Senator Feingold follows:]

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN ON THE NOMINATION OF ROBERT MUELLER TO BE THE FBI DIRECTOR

Thank you, Mr. Chairman. Welcome, Mr. Mueller, and congratulations on your nomination.

Mr. Chairman, I applaud you for holding this hearing so soon after the President sent Mr. Mueller's nomination to the Senate. I rescheduled the meetings I had planned in Wisconsin this morning and returned to Washington sooner than usual in order to participate in this hearing. This nomination should receive speedy consideration because, as we all know, our nation's leading law enforcement agency has no leader and is reeling from a series of missteps and mismanagement. The FBI is in desperate need of strong leadership.

From what I have learned so far, I believe Mr. Mueller may well be the right person for the job.

Mr. Mueller, I appreciated your taking the time to meet with me last week. I was impressed by your sense of purpose and readiness for this job. As I said during our meeting, I think this is an enormously challenging undertaking. But I also believe it is an enormous opportunity for you to show this Committee, and more importantly our nation, some real results.

You are arriving at the FBI at a very difficult time. The Bureau's setbacks and missteps in recent years form a now familiar and unfortunately fairly lengthy list: the missing McVeigh documents, the Hanssen case, Los Alamos and the Wen Ho Lee case, the years-late production of the tapes in the Birmingham bombing, problems in the FBI lab, Richard Jewell and the Olympic bombing, charges of racial bias in promotions at the FBI.

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Moving beyond the specific missteps of recent years, I would emphasize the following more general concerns. First, I am very troubled by what appears to be an agency with no internal or external accountability. It strikes me that the management structure must be reshaped so that mistakes are discovered earlier, and corrected more quickly and directly. Second, there are a number of areas where the FBI can improve its level of professionalism. Coordination between state and Federal law enforcement should be improved and strengthened. There should not be a competition for glory in high profile investigations. The goal is to stop crime and catch criminals, not to get headlines or credit.

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You have impressed me as a person who has deep respect for the Bureau and its history and for the dedicated professionals who work there, but who is also willing to look at the Bureau with a very critical eye and a willingness to shake things up, to demand a high standard of integrity and fairness and professionalism in all aspects of its work. I think you will find that Senators on this Committee will support you and work with you to help the FBI overcome these recent black eyes and resume its place in the forefront of American law enforcement.

So, I plan to ask you about how you plan to meet some of these challenges, and I look forward to your testimony. Thank you again, Mr. Chairman.

Chairman LEAHY. I thank you, Senator Feingold, and I thank you for rearranging your schedule, as others have, to be here.

Normally I would go next to Senator Specter, but Senator Thurmond, who is the most senior member of not only the Senate but of this committee, is here and we will follow our usual courtesy, and I will defer to Senator Thurmond.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Mr. Chairman, I am pleased we are holding this hearing today on the nomination of Bob Mueller to be FBI Director. The FBI is the premier law enforcement organization in the world, and we should be proud of the work that its dedicated agents do every day in the fight against crime.

However, the Bureau today faces some serious challenges. It must address management problems and accounting flaws that recently have received a great deal of public scrutiny. Moreover, the culture of the FBI needs to be more open and cooperative.

I think that Mr. Mueller is an excellent choice to lead the Bureau at this critical time. He is a career Federal prosecutor with extensive experience in management. He has a proven record of success, and I am confident that he will be a fine Director. I look forward to his quick confirmation.

Chairman LEAHY. Thank you, Senator Thurmond.

Senator Specter?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Mueller, I join my colleagues in welcoming you here. The FBI Director arguably may be the most powerful man in the United States because the FBI Director has a statutory term of 10 years, which is 2 years longer than the maximum a President may serve. And the FBI Director commands an enormous array of investigators and has really broad discretion, even in one instance where the FBI Director declined to turn over national security information to President Clinton because Director Freeh concluded that the President himself was under a criminal investigation. That is a standard and a sequence which I intend to question you about as to whether the Director has that kind of extensive authority, and I think it worth noting that in our long office meeting and my call to you again last week, I have tried to alert you to the questions which I intend to ask.

This hearing I think is really important as it will or could set the standards for what is appropriate congressional oversight. When we have had hearings involving Justices of the Supreme Court of the United States, a decade later and more, the Justices have commented about what happened at their confirmation hearing. It is a little different because the Justices are appointed for life, but these hearings do make an imprint. And it is an opportunity for the Senators who have had some background and experience to tell you what we think oversight means and, candidly, to get commitments from you.

I believe that Director Freeh did about as good a job as could be done under the circumstances that he worked under. I analogize Director Freeh to the Dutch boy at the dike, running around putting his fingers in all the holes. But nobody could keep all the water from coming through. And I believe that there is a culture of concealment in the FBI, and I think they are concerned about an institutional image. And I believe that is going to be very, very difficult for anyone to deal with, even someone who has demonstrated the tenacity which you have.

And you and I have gone over in some detail the lines of questioning that I intend to ask about how you would solve the problem of the Waco documents for pyrotechnics used in April 1993 and not disclosed on voluminous documents until August 1999, or how in the McVeigh case subordinates in the FBI knew about documents which were not turned over to McVeigh's lawyers. Now, there is no doubt that was a horrible crime and it merited the death penalty, but that does not gainsay the obligation of the FBI and the prosecution to turn over those documents.

Then there is the issue of oversight and the initiatives which you will have to take. There was a dynamite memorandum in the FBI file from December 1996, which recited a contact between top FBI officials and top Department of Justice official, where the Department of Justice official said that they had to go easy on the campaign finance investigation, because the Attorney General's job might hang in the balance. That document was not disclosed until a wide-ranging subpoena for the LaBella report by the subcommittee, which I chaired, brought it to light. And I believe that the FBI had an absolute mandatory duty to turn that over to the Oversight Committee, and it was not done.

My yellow light is on, and I will conclude before the red light goes on. But there were are quite a number of cases on specifics that I intend to ask you about, and I do this in the context of having great admiration for the FBI. I was trained by the FBI when I was an investigator for the Office of Special Investigations many years ago, and used FBI investigators in the prosecution of cases in Philadelphia, notably the Teamsters prosecution, and I admire the record that you bring here, having volunteered after being the Assistant Attorney General in charge of the Criminal Division to just try cases. And when from time to time I am asked about my favorite job, it is not Senator, not DA, but Assistant DA, a prosecutor. You will not have that luxury much longer, Mr. Mueller. I think you will be confirmed based on all I know today, although no commitments. But this hearing I think will be very important for America to set standards of congressional oversight. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Specter. And I would note that I will try to keep fairly well on schedule. We will keep the hearing going long enough for everybody to have a chance to ask whatever questions are necessary.

Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you, Mr. Chairman.

Congratulations, Mr. Mueller. As I told you in my office, I appreciate very much the time you took to spend with me when you were first appointed, and before I begin my statement, I want you to know that I have read your statement that you are going to present today, and I am pleased with many of the points that you have made. I believe your comments are responsive to the letter that I sent you last Friday. And I also want you to know that I am not oblivious to the praise that you have received, and the very good response that you have gotten from the press with your appointment, as well as the President for selecting you.

Mr. Chairman, Senator Hatch, thank you for holding today's hearing. The FBI is in desperate need of a director who will make drastic changes to the Bureau's management culture. This person must be able to sweep out the culture of arrogance and replace it with a culture dedicated to truth and honorable service to the American people.

Three weeks ago you and I had a chance to meet and discuss this culture, Mr. Mueller. The purpose of that meeting, as well as today's hearing, was to examine whether you have the qualifications and determination necessary to address this and other problems facing the Bureau. In the three short weeks since that meeting, the FBI's culture of arrogance has continued to raise its ugly head. These most recent FBI blunders are further eroding public confidence at the FBI, whether or not it is up to the task the Nation has called upon the Bureau to do.

Just a week after our meeting, the national papers were filled with headlines that the FBI could not find their guns, the FBI has lost or had stolen 440 firearms, 171 laptops. This, of course, is inexcusable. The Inspector General is currently conducting an investigation to determine the extent of the damages, but we do know that one of those lost guns was used in the commission of a homicide, and at least one of the laptops contained classified information about two espionage cases. These losses reflect a need for fundamental reform.

How can the public have confidence in a law enforcement agency that allows its weapons and secrets to fall into the hands of criminals and spies?

A day after that revelation, the public learned that the FBI played favorites, because we had a hearing before this committee. Four senior FBI agents testified that the Bureau has dual standards for disciplining employees. According to these men, Senior Executive Service employees are given slaps on the wrist for their infractions, while the rank and file agents are often punished to the letter of the law. And I thank you for responding to this in your opening statement, as I have already read.

Retired Special Agent John Werner, who investigated the Ruby Ridge cover-up, testified before this committee, that, quote, "in the first investigation of Ruby Ridge, SES Inspectors sought to protect certain fellow peers from administrative discipline by conducting a sloppy and incomplete investigation. At the same time, they were most willing to hang lower level employees out to try." He further testified that "this double standard has debilitated rank and file employees' morale and,. . .is one of the reasons quality agents are

disinclined to enter the Career Development Program." End of quote.

How can the public have confidence in the FBI when honest, hardworking agents might be discourages from taking part in management of the Bureau? How can the public have confidence that the FBI will reform when a certain segment of the SES personnel is motivated by self-interest and self-preservation?

Most recently, last Thursday, the public saw a good example of how some SES employees abuse power. The Washington Times reported that a group of FBI managers staged a conference entitled, quote, "Integrity in Law Enforcement", end of quote, that was merely a sham and a cover, so that senior FBI manager could attain improper reimbursements for traveling to a birthday party for veteran agent Larry Potts. According to The Washington Times, "more than 140 persons, including as many as 9 FBI executives and special agents-in-charge of the bureau field offices, attended that October 9th, 1997 party."

The Washington Times further reported that "no one was disciplined other than to receive letters of censure." How can public have confidence in the FBI when senior agents are not punished for this kind of behavior?

The most recent scandals are just more evidence of problems. The FBI is suffering from management culture so arrogant, that ignoring the rules and covering up is the order of the day.

But not all the news is bad. In the weeks since our meeting, two things have happened that have given us hope that the problems at the FBI can be resolved. One of those is Attorney General Ashcroft's decision on the Inspector General, and the other one is the initiation and clarification of actions that the new FBI Director can take to initiate reform.

That is the end of my statement. I congratulate you, make note of the fact that you have done very well in leading reform in the U.S. Attorney's Office in San Francisco, and if you are approved, hopefully, that you will take decisive action at the FBI.

Since I did not get through my statement, I would like to have the entire thing put in the record.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA ON THE NOMINATION OF ROBERT MUELLER FOR DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman, Senator Hatch, thank you for holding today's hearing on the nomination of Robert Mueller to be Director of the FBI. The FBI is in desperate need of a director who will make drastic changes to the Bureau's management culture. This person must be able to sweep out the culture of arrogance and replace it with a culture dedicated to truth and honorable service to the American people.

Mr. Mueller, 3 weeks ago, you and I met in my office to discuss the culture at the FBI. The purpose of that meeting, as well as today's hearing, was to examine whether you have the qualifications and determination necessary to address this and other problems facing the Bureau. In the three short weeks since that meeting, the FBI's culture of arrogance has continued to raise its ugly head. These most recent FBI blunders are further eroding the public's confidence that the FBI is up to the task their nation has called upon them to do.

Just a week after our meeting, the national papers were filled with headlines that the FBI couldn't find their guns. The FBI has lost or had stolen from them nearly 450 firearms and 184 laptop computers. This is inexcusable. The Inspector General is currently conducting an investigation to determine the extent of the damages, but we do know that one of the lost guns was used in the commission of a homicide

and at least one of the laptops contained classified information about two espionage cases. These losses reflect a need for fundamental reform.

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How can the public have confidence in the FBI when the honest hard-working agent is discouraged from taking part in the management of the Bureau? How can the public have confidence that the FBI will reform, when a certain segment of the SES personnel is motivated by self-interest and self-preservation?

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The Washington Times further reported that "no one was disciplined other than to receive letters of censure." This lack of discipline directly counters the letter of the law. In 1994, Director Freeh issued a "Bright Line" memo dictating that voucher fraud and the making of false statements would result in dismissal. Had the rank and file done this, they would have been fired. It appears that some senior managers believe they are above the law.

How can the public have confidence in the FBI, when its senior agents are not punished for this kind of behavior?

These most recent scandals are just more evidence of the problems I outlined in my letter to you, which I'm submitting for the record. The FBI is suffering from a management culture so arrogant that ignoring the rules and covering up is the order of the day.

But, not all the news is bad. In the weeks since our meeting, two things have happened that give us hope that the problems at the FBI can be resolved.

First, I am pleased Attorney General Ashcroft has given the Justice Department's Office of Inspector General the power to conduct independent oversight of the FBI. This is a reform initiative I have long advocated. The Attorney General's order directs that major allegations of misconduct will no longer be handled by the FBI's Office of Professional Responsibility, but will instead by handled by the DOJ's Office of Inspector General. This is essential for reform.

Along these same lines, Senator Leahy and I will soon be offering a bill that will make permanent what the Attorney General's order accomplished regarding oversight of the Bureau and the reporting of misconduct by FBI employees. It would also create a Deputy Inspector General, whose sole responsibility will be oversight of the Bureau. This bill is critical to having reform at the FBI.

Second, there has been some clarification about what actions the new FBI Director can take to initiate reform. When we met in my office, I asked you how much of a free hand you would have in cleaning up the FBI. You didn't know the answer then, but I've since received a response from a letter I wrote the Attorney General asking for the answer. In that letter, the Assistant Attorney General for Legislative Affairs outlined the extent to which, if you are confirmed, you will be able to institute department-wide reforms and make staffing changes, including changes at the senior staff and management level.

Specifically, Assistant Attorney General Bryant writes that "the FBI Director's authority in this area is broader than most of his counterparts in other Department components." According to the letter, the new FBI Director can reassign SES members within the first 120 days following the appointment of a non-career supervisor. The ability to move bad apples is critical to reform.

Mr. Mueller, you have sterling credentials and a great deal of experience. I'm impressed by the way you reformed the U.S. Attorney's Office in San Francisco. A

similar overhaul is needed at the FBI. The new director must be committed to fundamentally changing the Bureau's management culture.

Chairman LEAHY. All statements are put in the record in their entirety.

Senator Thurmond has another hearing to go to. He will be leaving, and we go then to Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman, and it is great to see Mr. Mueller, nominated to take one of the most important positions in our country. It is a position that requires, in my view, serious experience, great integrity, and a proven record of accomplishment. And you have all of those things, Bob.

When I was in the Department of Justice, I was there 15 years, 12 years as United States Attorney, Bob Mueller's reputation was known throughout the Department of Justice, and he was known not for any political reason, but because he was recognized as a professional's professional, a man whose skill at doing the job assigned to him was second to none.

The Clinton administration recognized that when they kept him in high positions of authority. He served as United States Attorney twice, I believe, high positions within the Department of Justice. He has personally prosecuted some of America's most significant criminal cases, and as such, he has had to work on a day-to-day basis closely with the FBI, as a prosecutor has to do.

And in that position as a prosecutor, you are close to it but not quite a part of it. I know from my conversations with you Bob, that you know the great strengths of the Bureau, and you love this agency greatly, but you also know it has some problems, and I think you have had firsthand experience with those and can deal with them. No doubt about it, your experience in the Department of Justice and managing agencies will help you in dealing with the budget. How to manage a widespread large agency is a challenge for anyone. You need some experience from that perspective, and you have that.

But most of all, Mr. Chairman, there is no doubt in my mind, that there is no more professional prosecutor, no more professional person in America with experience in the Department of Justice, ready to handle the job of FBI Director than Bob Mueller.

Your Marine experience is going to be needed, and I know you will be able to handle that job well.

The FBI does need improvement. They need some review. I support hearings that have looked into that. I have generally supported Senator Grassley's very strong convictions that changes are needed, and his view that there is a culture of arrogance too much present within the top echelons of the FBI. And I believe that is unfortunate, because by and large the agents, every day, doing their work throughout this country, are some of the finest people you will meet anywhere, any time. They love their country. They love the honor of being an FBI agent, and they do a special job.

I remember trying a pretty big case, lasted about 5 weeks, and had a young female agent, who had worked her heart out on it, and she was being cross-examined. And the lawyer said, "Well, who all

are special agents of the FBI? You call yourself a special agent." And she said, "Basically the agents of the FBI." And he says, "All of them?" She said, "Virtually all of them." And then he said, "Well, it's not so special, is it?" And she replied, looking him dead in the eye, "It is to me, sir." And I think most agents believe that it is a special calling and a great honor to carry that badge. And we ought not to denigrate them in their work because errors have occurred.

As I told Chairman Leahy earlier, we do need reform, we do need good leadership. We do need your skills at this time, and we expect that you will exercise your strong convictions to improve this agency. But it is important that we not damage one of the premiere law enforcement agencies in the world, the premiere agency, in my view. I think in some ways much of what was done with IRS was good, but there were some things done in those hearings that probably went too far and damaged that agency, and I do not believe that is necessary here. I believe we can maintain the kind of reform that is necessary without damaging the FBI.

They have a front-line challenge when it comes to public corruption in America, terrorism, bank fraud and embezzlement, huge threats on the integrity of the Federal Government system that come at us from frauds and cheats and embezzlers from every angle. That is a core responsibility. So we need the agency strengthened, not weakened, and I look forward to working with you in that regard.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. So far, Mr. Mueller, you have heard more uniformity of thinking on this committee than you normally will. I will move now to Senator Kyl?

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman. I think that is a testament to the President's great good judgment in nominating Mr. Mueller.

I am very glad that Senator Jeff Sessions got to precede me. You could not have a more authentic and ringing endorsement than from Senator Sessions, who more than anyone else on this committee, has been there, and knows the qualifications of Bob Mueller. So I appreciate, Jeff, the comments that you made, and I think that does reflect, as the chairman said, the view that we have.

Mr. Mueller, I read your statement, and on page 3—there has been a lot of emphasis here about the positions of—or the difficulties that the FBI has had, and I share the view. When you first called me and told me of your nomination, I said, "Well, Louis had his problems," and he has had a great difficulty managing the agency with all of the problems that people have noted.

But you also refer to the notable success stories of the agency. And as the former chairman of, and now ranking member of, the Terrorism and Technology Subcommittee, we are privy to a lot of that. The public generally does not get to hear about the success stories because it is all classified, we cannot talk about it. But Louis Freeh testified each year before our subcommittee that each

year there were about a dozen major terrorist incidents that were thwarted by the good work of the FBI and other law enforcement agencies. And we need to bear in mind that whatever we do, has to be able to maintain that kind of quality work.

We just held a hearing in our subcommittee on the NIPC, the National Information Infrastructure Protection Center, dealing with cyber crime and terrorism, and we are hoping that some improvements there can be made, and we will be having to talk to you more about that.

But my point is simply this: that because of the problems with the FBI, we have got to regain the confidence of the American people to support some things that the FBI needs to continue to fight this war against terrorism and crime. The techniques of criminals and terrorists are changing. They are using the computers now, the information infrastructure, and we have got to be able to keep up the pace here. And part of what you and I have talked about, and Director Freeh have talked about, is the need to modernize both the law and the FBI's capability of keeping track of these criminals. You have noted the need to upgrade the computer systems, which are woefully inadequate now. The other side, the bad guys, have better stuff than the FBI. That cannot be.

The same thing is true with the law. By using computers now, messages can be transmitted a lot faster than the FBI can run through each jurisdiction, getting various kinds of warrants that may be needed to intercept the information, which is why the previous Director has asked for trap-and-trace authority, administrative subpoena authority, and some other changes in the law just to keep up with the evolving technology. We have not been able to get those things because, among other things, the FBI has been under enough of a cloud that people just have not felt comfortable cooperating to that extent.

We need to do our job and give you those kind of resources, but it will be a lot better, a lot easier, when the public has confidence that the FBI has turned the situation around and can handle this new authority, can handle this new authority with the proper respects for the Constitution, the citizens and the law, that that kind of rather far-reaching authority does give to the FBI.

You have been described as a no-nonsense kind of man. That is exactly the kind of person we need in this position at this time, and I am very much looking forward to working with you to restore the credibility of the FBI. That is half of it. But to enable the FBI to continue to do all the great things that it has also been doing, not all of which always are in the public eye.

Thank you, Mr. Chairman.

Chairman LEAHY. Mr. Mueller, would you please stand and raise your right hand. Do you swear or affirm that the testimony you will give before this committee will be the truth, the whole truth and nothing but the truth?

Mr. MUELLER. I do.

Chairman LEAHY. Mr. Mueller, you have heard the opening statements of the members so far. You must know that in this committee, on both sides of the aisle—you have met with most of us, not all of us—there is an enormous amount of respect for the FBI; at the same time a great concern for some problems that have aris-

en. I know so many FBI agents personally, many I worked with when I was a prosecutor. At least one is a very close friend, boyhood friend of my son, whom your son-in-law apparently knew in college. I have seen FBI agents who have put their lives on the line for all of us. As has been mentioned by Senator Kyl, there are a lot of things they have done that the public does not know about, and frankly, we cannot let the public know about, because in the areas of terrorism we have been successful, and we want to be successful a second time, a third, and fourth, and fifth time. So we want to preserve all of that, but we also want to remove some of the problems that each one of us have mentioned to you.

I referred in my opening statement to testimony from four FBI agents who testified at our last hearing. Mr. Mueller, I apologize I began on that, I did not allow you to give your opening statement. Obviously, obviously you should, and I do apologize. And you have as much time as you want even if it comes out of my time after that.

Mr. MUELLER. I was getting ready for the first question, Mr. Chairman.

Chairman LEAHY. No, no, no. I mean this is not an antagonistic committee, as you probably have gathered. I hate to take all the suspense out of it for the press, but please go ahead with yours.

STATEMENT OF ROBERT S. MUELLER, III, OF CALIFORNIA, NOMINEE TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. MUELLER. Thank you. Thank you, Chairman Leahy, Senator Hatch, members of the committee. Thank you for the extraordinary courtesy and support that you have extended to me over the past several weeks. I want to especially express my appreciation to you, Mr. Chairman, for your willingness to schedule this hearing and begin the formal consideration of my nomination.

I was deeply honored when President Bush decided to nominate me for the position of Director of the Federal Bureau of Investigation. In my view, the FBI is the finest law enforcement agency in the world. Its highly skilled and dedicated work force and its investigative tools and resources are unmatched in law enforcement. I consider it the highest privilege to be asked to lead such an outstanding organization.

Mr. Chairman, I have spent nearly my entire professional life in law enforcement. I have either personally prosecuted or supervised the prosecution of just about every type of Federal criminal offense, including homicide, drug trafficking, organized crime, cyber crime, major frauds, civil rights and environmental crime. I care deeply about the rule of law. In a free society a central responsibility of government, I believe, is to protect its citizens from criminal harm within the framework of the Constitution. I have been fortunate indeed to have been able to spend much of my career in pursuit of that goal, and this is why I'm thankful to have the opportunity today, if you choose to confirm me, to serve as Director of the Federal Bureau of Investigation.

As several senators have mentioned, one can hardly overstate the significance of the FBI in the life of every American, from the prevention of mass murder by international terrorists, to the pains-

taking search for a missing child, the Bureau is on the front line every day in the battle against terrorism and violent crime. Whether it is fraud in our health care system, foreign or economic espionage, crimes against children on the Internet, public corruption, civil rights violations, bank robbery, tracking down serial killers, or simply conducting a background check on a prospective gun purchaser, the FBI is vital to the preservation of our civil order and our civil rights.

And while new technologies create new possibilities for the global economy, they also present new opportunities for enterprising criminals. Here, as well, the FBI is responsible for ensuring the security of our technological infrastructure and for bringing cyber criminals to justice.

But it is more than just a mission of the FBI which has brought it such distinction in its nearly 100-year existence. It is the people. Throughout the Nation, thousands of young men and women dream about serving in the FBI. This is a credit to the dedication, professionalism, and training of the men and women who are proud to serve in the FBI and who often risk their lives on behalf of us all.

Every year the FBI conducts thousands of investigations encompassing nearly millions of contacts with other law enforcement agencies, the courts, witnesses, and crime victims. The vast majority of these endeavors result in successful prosecutions free of constitutional error. As a Federal prosecutor who has tried many cases, I have relied upon the FBI's investigative efforts on countless occasions.

Yet, despite all of the positive things that can be said about the FBI, and have here today been said about the FBI, we all know that the Bureau's remarkable legacy of service and accomplishment has been tarnished by some serious and highly publicized problems in recent years. Waco, Ruby Ridge, the FBI lab, Wen Ho Lee, Robert Hanssen and the McVeigh documents—these familiar names and events remind us all that the FBI is far from perfect and that the next director faces significant management and administrative challenges.

We must, and we will, confront these challenges squarely and forthrightly. At the same time, we must acknowledge that these problems do not tell the whole story of the FBI in recent years. The FBI has had an astonishing success during the same period; successes, including the investigations into the downing of Pan Am 103, and the World Trade Center, Oklahoma City, and African embassy bombings. Of course, given the nature of the work it does, many of the FBI's most notable successes are stories that never can publicly be told.

Most importantly, we must not let the recent problems obscure the fact that the men and women of the FBI have continued, throughout this period of controversy, to do an outstanding job. The day-to-day work of thousands of skilled agents and employees is responsible for countless successes that will never make the headlines. Their sacrifice for the cause of public safety, often at great personal risk, must not be lost in the tumult of criticism and publicity.

Nevertheless, it is critical to the continued success and improvement of any organization to acknowledge and learn from its mis-

takes, and the FBI is no different. The success of its law enforcement mission lies in the preservation and protection of the public trust. And it is clear that these highly publicized problems have, indeed, shaken the public's trust in the FBI. That shaken trust, in turn, inevitably affects the morale of the men and women who serve at the Bureau.

All institutions, even great ones like the FBI, make mistakes. The measure of an institution is in how it responds to its mistakes. I believe the FBI can, and must, do a better job of dealing with its mistakes. If I have the honor of being confirmed by the Senate, I will make it my highest priority to restore the public's confidence in the FBI, to re-earn the faith and trust of the American people. The dedicated men and women of the FBI deserve nothing less, and as director, I would tolerate nothing less.

I am encouraged that Attorney General Ashcroft has already taken several significant steps to address these challenges:

First, the Department has retained the services of a major management consultant firm to undertake a comprehensive review of the management structure and information systems of the FBI.

Second, the Attorney General has called upon former FBI and CIA Director William Webster to conduct a review of the Bureau's security program to try to ensure that the lapses which allowed former Special Agent Robert Hanssen to betray his country do not happen again.

Third, the Department's inspector general has been directed to conduct an investigation of the Hanssen matter to determine how his criminal activity was able to go undetected for such a long period of time.

Fourth, the inspector general, in addition, is conducting a review of the document production failures in the McVeigh case.

And, fifth, the inspector general's jurisdiction has been expanded to include oversight of the FBI.

I believe that these measures are an excellent start in a long-term process of modernizing the management practices of the FBI and, if confirmed, I look forward to receiving the recommendations of these various reviews.

But as we examine the mistakes of the past, we must be resolved to respond quickly and forthrightly to the mistakes of the future. Three elements are critical to a proper response:

First, we must be willing to admit immediately that a mistake has occurred. This includes providing timely information to the appropriate committees of Congress. And for matters involving cases and courts, immediately informing the court and defense counsel as appropriate. Failure to admit one's mistakes contributes to the perception of institutional arrogance.

Second, those responsible for the mistake must be held accountable. This does not mean punishing employees for simple errors in doing their jobs. Nobody is perfect, and we want to encourage people to come forward immediately when mistakes are made, but we must hold people accountable, and we cannot tolerate efforts to cover up problems or to blame others for them.

If confirmed, I will be committed to inculcating a culture which understands that we all make mistakes and that we must be forthright and honest in admitting them and correcting them as quickly

as possible. We must tell the truth and let the facts speak for themselves. The truth is what we expect in our investigations of others, and the truth is what we must demand of ourselves when we come under scrutiny.

It is also very important that there be no double standards in accountability. I know there have been allegations that senior FBI officials are sometimes treated more leniently than more junior employees. Any such double standard would be fundamentally unfair and enormously destructive to employee morale. If anything, senior FBI officials should be held to a higher standard than other employees, for, after all, they should serve as examples. I commit to this committee, to the employees of the FBI, and to the American people that there will be no such double standard should I become director of the FBI.

And, third, every significant mistake must be examined to determine whether broader reform is necessary. We must learn from our mistakes or we will be bound to repeat them.

Of course, Mr. Chairman, my goal would be to minimize mistakes through proper management. Let me, therefore, turn to some additional management priorities that would guide me if confirmed. Underlying these priorities is my belief that the core asset of the FBI is its employees. I am committed to providing the leadership, and management, and energy necessary to enable these talented and dedicated people to do their jobs as effectively as possible.

First and foremost of these management priorities is leadership. It will be critical to recruit, encourage and select the highest quality leadership. In my experience in prior positions, and I am sure it would be the same if confirmed as director of the FBI, is that selecting the very best people will result in a management team that reflects the diversity of our society.

Second, I will want to review carefully management structures and systems. I am concerned about the span of control, the degree of decentralization, and whether responsibilities are clearly defined. Management structures and systems must help managers, agents, and employees do their jobs, not hinder them.

Third, I believe there is a need to rebuild infrastructure, to upgrade the information systems and to upgrade the systems and procedures to integrate modern technology. Every FBI manager, indeed, every agent needs to be computer literate, not a computer programmer, but aware of what computers can and cannot do to assist them with their jobs.

Fourth, the FBI needs to review continually its priorities and its allocation of resources to make sure it is able to meet the challenges of tomorrow, as well as of today. Its investigative priorities today are national security, particularly counterterrorism, organized and violent crime, civil rights enforcement, public corruption, high-tech and cyber crime, and white collar crime, including health care, fraud, and other complex frauds. We must anticipate the challenges the Bureau will be facing 10 and 20 years into the future and prepare now to meet those challenges. This will require continuous revision and restructuring of these investigative priorities.

And, fifth, the FBI must develop the respect and confidence of those with whom it interacts, including other law enforcement

agencies, both domestic, and international, and Congress. Most agents with whom I have worked have pride in the FBI, but are in no way arrogant. Nonetheless, any perception of Bureau arrogance must be dispelled. Close relationships are founded on mutual trust and respect. We must understand and acknowledge that State and local police departments are the backbone of law enforcement in this country, and Federal law enforcement is privileged to work side-by-side with them. We must understand and acknowledge the need to work closely with and obtain the support of Congress in order to appropriately perform our duties. With humility, with humility, the FBI must earn the respect and confidence of other law enforcement agencies, the Congress and, most importantly, the American people.

As I go about implementing changes to accomplish these objectives, I welcome the thoughts of those currently at the Bureau, as well as the results of the various reviews I mentioned above. I have already benefited from considerable experience with the FBI, as well as from detailed discussions with many people, including members of this committee.

Finally, you should know that I understand the necessity to move quickly on administrative and management issues. In prior positions, I have made changes swiftly, as soon as I was confident that I had the benefit of all views and was convinced that the proposed changes would, indeed, improve the organization. I intend to move quickly to make appropriate changes should I be confirmed.

Mr. Chairman, the President has honored me with this nomination. You and the members of this committee have added to that honor by the courtesy and respect you have shown me in my meetings with you. If confirmed, I look forward to working with this committee to protect and preserve the rule of law. I cannot promise perfection, but I can commit to you and to the dedicated men and women of the FBI that I will do my very best to earn your faith and your respect.

And to the American people whom we all serve, I will commit to preserve the legacy of the FBI—now and in the future an institution deserving of the highest level of their confidence and their trust.

Thank you, Mr. Chairman, for the opportunity to appear before you and the committee today.

Thank you, sir.

[The prepared statement and biographical information of Mr. Mueller follow.]

STATEMENT OF ROBERT S. MUELLER, III

Chairman Leahy, Senator Hatch, Members of the Committee, thank you for the extraordinary courtesy and support you have extended to me over the past several weeks. I want to especially express my appreciation to you, Mr. Chairman, for your willingness to schedule this hearing and begin the formal consideration of my nomination.

I was deeply honored when President Bush decided to nominate me for the position of Director of the Federal Bureau of Investigation. In my view, the FBI is the finest law enforcement agency in the world. Its highly skilled and dedicated workforce and its investigative tools and resources are unmatched in law enforcement. I consider it the highest privilege to be asked to lead such an outstanding organization.

Mr. Chairman, I have spent nearly my entire professional life in law enforcement. I have either personally prosecuted or have supervised the prosecution of just about

every type of federal criminal offense, including homicide, drug trafficking, organized crime, cybercrime, major frauds, civil rights and environmental crime. I care deeply about the rule of law. In a free society, a central responsibility of government, I believe, is to protect its citizens from criminal harm within the framework of the Constitution. I have been fortunate indeed to have been able to spend much of my career in pursuit of that goal. And this is why I am thankful to be here today and to have the opportunity, if you choose to confirm me, to serve as the FBI Director.

One could hardly overstate the significance of the FBI in the life of every American. From the prevention of mass murder by international terrorists to the painstaking search for a missing child, the Bureau is on the front line every day in the battle against terrorism and violent crime. Whether it is fraud in our health care system, foreign or economic espionage, crimes against children on the Internet, public corruption, civil rights violations, bank robbery, tracking down serial killers, or simply conducting a background check on a prospective gun purchaser, the FBI is vital to the preservation of our civil order and our civil rights.

And while new technologies create new possibilities for the global economy, they also present new opportunities for enterprising criminals. Here, as well, the FBI is responsible for ensuring the security of our technological infrastructure and for bringing cybercriminals to justice. But it is more than just the mission of the FBI which has brought it such distinction in its nearly 100-year existence. It is also the people. Throughout the nation, thousands of young men and women dream about serving in the FBI. This is a credit to the dedication, professionalism and training of the men and women who are proud to serve in the FBI and who often risk their lives on behalf of us all.

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Mr. Chairman, the President has honored me with this nomination. You and the members of this Committee have added to that honor by your courtesy and respect in my meetings with you. If confirmed, I look forward to working with this Committee to protect and preserve the rule of law. I cannot promise perfection, but I can commit to you and to the dedicated men and women of the FBI that I will do my very best to earn your faith and respect. And to the American people whom we all serve, I will commit to preserve the legacy of the FBI—now and in the future an institution deserving of the highest level of their confidence and trust.

Thank you Mr. Chairman for the opportunity to appear before you and the members of the Committee today.

SENATE QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**

   Robert Swan Mueller, III

2. **Address: List current place of residence and office address(es).**

   Residence: San Francisco, CA 94118

   Office: United States Attorney's Office,
   Northern District of California
   450 Golden Gate Ave., Box 36055
   San Francisco, CA 94102

3. **Date and place of birth**

   DOB: August 7, 1944
   POB: New York, New York

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business addresses).**

   Wife: Ann Cabell Standish (maiden name)

   Occupation: Teacher, most recently at St. Patrick's School, Washington, D.C., from 1991 to 1998.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   University of Virginia Law School, Charlottesville, VA; 1970-1973. Degree: Juris Doctor (granted 1973)

   New York University Graduate School of Arts and Sciences, New York, NY; 1966-1967. Degree: Masters in International Relations (granted 1972)

   Princeton University, Princeton, NJ; 1962-1966. Degree: Bachelor of Arts and Sciences (granted 1966)

6. <u>Employment Record</u>: **List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

8/98 to date	United States Attorney Northern District of California San Francisco, CA
1/01 to 5/01	On detail as Acting Deputy Attorney General United States Department of Justice Washington, DC
5/95 to 8/98	United States Attorney's Office District of Columbia Washington, DC 11/96 to 8/98 - Chief, Homicide Section 5/95 to 11/96 - Special Litigation Counsel, Homicide Section
1/93 to 5/95	Senior Partner Hale and Dorr Washington, DC, and Boston, MA
5/89 to 1/93	United States Department of Justice Washington, DC 9/90 to 1/93 - Assistant Attorney General for the Criminal Division 5/89 to 9/90 - Assistant to the Attorney General for Criminal Matters
9/88 to 4/89	Litigation Partner Hill & Barlow Boston, Massachusetts
1982 to 8/88	Office of the United States Attorney District of Massachusetts Boston, Massachusetts 4/87 to 8/88 - Deputy United States Attorney 10/86 to 4/87 - United States Attorney (Court appointed)

	1985 to 10/86 - First Assistant United States Attorney
	1982 to 1985 - Chief, Criminal Division
1976 to 1982	Office of the United States Attorney Northern District of California San Francisco, CA
	1981 to 1982 - Interim Chief, Criminal Division
	1980 to 1981 - Chief, Special Prosecutions Unit
	1977 to 1980 - Assistant United States Attorney, Criminal Division
	1976 to 1977 - Assistant United States Attorney, Civil Division
1973 to 1976	Litigation Associate Pillsbury, Madison & Sutro San Francisco, CA
	1976 - On leave for four months to the San Francisco Public Defender's Office.
Summer 1972	Summer Law Clerk Pillsbury, Madison & Sutro San Francisco, CA
Summer 1971	Research Assistant to Professor Mason Willrich University of Virginia Law School Charlottesville, VA

7. **<u>Military Service</u>: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

4/75 to 6/80	United States Marine Corps Reserve Rank: Captain Serial Number: 0105600 Honorable Discharge
1967 to 1970	United States Marine Corps Rank: First Lieutenant Serial Number: 0105600 Honorable Discharge

Assignments:

Marine Corps OCS, Basic School, Army Ranger School and Army Jump School (1967 - 1968).

Rifle Platoon Commander, and at end of tour Aide-de-Camp to the Commanding General, Third Marine Division, Vietnam (1968 - 1969).

Executive Officer/Guard Officer, Headquarters Marine Corps (1969 - 1970).

Decorations: Bronze Star, 2 Navy Commendation Medals, Purple Heart, Vietnamese Cross of Gallantry

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

University of Virginia Law Review

American College of Trial Lawyers

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association

California Bar Association

Massachusetts Bar Association

District of Columbia Bar Association

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Lobbying: I have belonged to the ABA, but am not currently a member.

Other: I am a non-resident member of the Lowes Island Club, Sterling, Virginia; The Country Club, Brookline, Massachusetts; and The Olympic Club, San Francisco, California.

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

U.S. District Court for the District of Columbia (5/2/94)

United States Supreme Court (1991)

Commonwealth of Massachusetts (10/9/85)

U.S. District Court for the District of Massachusetts (12/23/85)

First Circuit Court of Appeals (8/1/83)

State of California (6/18/74)

U.S. District Court for the Northern District of California (6/18/74)

Ninth Circuit Court of Appeals (6/18/74)

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

None.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

My last physical examination was in September 2000. My health is generally excellent, however, please see the attached letter from Dr. Peter R. Carroll of the University of California at San Francisco.

14. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or**

appointed. State (chronologically) any unsuccessful candidacies for elective office.

None, other than those reflected in paragraph 6 above.

15. <u>Legal Career</u>:

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I never served as a clerk.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Please see statement below.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

Please see statement below.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Please see statement below.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your**

appearances in court varied, describe each such variance, giving dates.

Please see statement below.

2. **What percentage of these appearances was in:**
   (a) **federal courts:** 95%
   (b) **state courts of record:** 5%
   (c) **other courts.**

3. **What percentage of your litigation was:**
   (a) **civil:** 15%
   (b) **criminal:** 85%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

   Approximately 50. Please see statement below.

5. **What percentage of these trials was:**
   (a) **jury:** 98%
   (b) **non-jury:** 2%

From 1973 to 1976, I practiced as a litigation associate with the San Francisco law firm of Pillsbury, Madison & Sutro, 225 Bush Street, San Francisco, CA. I worked under the supervision of a partner on smaller litigation matters for clients such as Standard Oil and Pacific Telephone. I also represented timber companies on property tax matters before various county boards of equalization. I often appeared in both state and federal courts on civil motions. During this time I was the trial attorney on several small cases in state court, including one jury trial.

In 1976, while still an associate with Pillsbury, Madison & Sutro, I spent four months on leave from the firm to the San Francisco Public Defender's Office. I served as an Assistant Public Defender, representing defendants in relatively minor criminal cases. I had several criminal jury trials while at the San Francisco Public Defender's Office.

In December 1976, I joined the United States Attorney's Office for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA, as an Assistant United States Attorney in the Civil Division. I served in the Civil Division

for one year, defending the United States as lead counsel in a wide variety of matters, including tort cases and administrative actions. While in the Civil Division I had several non-jury trials.

In 1977, I transferred from the Civil Division to the Criminal Division in the San Francisco United States Attorney's Office. From 1977 until 1982, I prosecuted criminal cases in federal district court in San Francisco. I tried narcotics, money laundering, tax evasion, bank robbery, and major fraud cases, among others. In 1979-1980, I served as chief prosecutor in a nine month trial against members of the Hells Angels motorcycle club (which ended in a hung jury on the RICO charges). I am not certain how many jury trials I had during this period, but believe I had approximately 20. During this time I served first as the supervisor of the Special Prosecutions Unit and then as the interim Chief of the Criminal Division.

In April 1982, I transferred to the United States Attorney's Office for the District of Massachusetts, One Courthouse Way, U.S. Courthouse, Boston, MA, as the Chief of the Criminal Division. From 1982 through 1988, I served as the First Assistant United States Attorney, as the Court appointed United States Attorney, and then as the Deputy United States Attorney after the new United States Attorney was nominated by the President. During this time I prosecuted a number of federal criminal cases, including narcotics, public corruption, and espionage cases. I appeared in federal district court daily. Again I am not certain of the number of jury trials I had during this period, but I averaged approximately two to three jury trials per year. Some of the more significant jury trials are listed in paragraph 16 below.

In August 1988, I left the United States Attorney's Office in Boston and joined the law firm of Hill and Barlow, One International Place, Boston, MA, as a litigation partner. Between August 1988 and May 1989, when I left Hill and Barlow to join the Justice Department, I represented a number of clients in civil matters, principally contract disputes, and other clients in criminal matters relating to grand jury appearances or potential criminal charges. I appeared in both federal and state courts regularly. During this time I had one federal civil jury trial, which was settled during trial.

In May 1989, I became an Assistant to Attorney General Richard Thornburgh at the Department of Justice, 10th & Constitution Avenue, N.W., Washington, DC. My responsibilities included reviewing memoranda, correspondence and other documents relating to criminal matters. I undertook special assignments for the Attorney General. I also served as liaison between the Attorney General's Office and the FBI, the

DEA, and other federal agencies in matters touching on law enforcement interests.

In September 1990, I was nominated by President Bush for the position of Assistant Attorney General for the Criminal Division. I was subsequently confirmed by the Senate and served as Assistant Attorney General until January 1993. In that position I was responsible for developing and enforcing the federal criminal laws, supervising approximately 800 attorneys and support staff with a budget of $73 million (FY 1993), and overseeing significant federal investigations and prosecutions. Among those investigations and prosecutions were the Pan Am 103 investigation, the Gotti and Noreiga prosecutions, and the BCCI and BNL matters. During my tenure, the Criminal Division developed policies on corporate sentencing guidelines, strategies for health care and money laundering prosecutions, and established the Computer Crimes Section.

During my time at the Justice Department, I did not appear in court, except for one Supreme Court argument.

From January 1993 until May 1995, I was a Senior Partner in the Washington, DC office of the Boston law firm of Hale and Dorr, 1455 Pennsylvania Avenue, N.W., Washington, DC. I represented corporations and private individuals in civil litigation, conducted internal investigations for corporate clients, and represented individuals and corporations in criminal investigations. During this period I appeared in court regularly, but had no trials.

In May 1995, I joined the Homicide Section of the United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, DC. In November 1996, I became Chief of that unit. While in the Homicide Section, I supervised a number of homicide investigations, including the vehicular manslaughter prosecution of Georgi Makharadze, the First Secretary of the Republic of Georgia Embassy, and the Starbucks murders. I also had nine homicide jury trials in which I was the lead and, in most cases, the sole attorney representing the government. All went to verdict.

In August 1998, I was asked by the Justice Department to serve as the interim United States Attorney for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA, and in 1999 I was nominated for that position by President Clinton. I was confirmed by the Senate on October 7, 1999. I am currently serving in that position where I supervise approximately 100 attorneys and a budget of $17 million. Since joining this Office I have had no trials, although I handled, with others, the prosecution of three individuals for the

killing of two persons whom they believed were cooperating with a federal narcotics investigation.

From January until May 2001, I served on detail during the transition as the Acting Deputy Attorney General at the Department of Justice, 10th & Constitution Avenue, N.W., Washington, DC.

16. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) **United States v. Louis A. Wilson, et al.**

Prosecution of Louis Wilson, his brother Ralph Wilson, and another individual for the murder of a cooperating witness on the eve of the federal trial in which the witness was to testify. All three were convicted (although the conviction of one was reversed on appeal for lack of evidence).

Docket number: 96-0319 (NHJ)

Dates of representation: 4/96 to 6/97

Court: U.S.D.C., Washington, DC

Judge: Norma Holloway Johnson

Leonard E. Birdsong, Esq.
Chavers & Birdsong, Chartered
1250 Eye Street, N.W.,
Suite 801
Washington, DC 20005
202-682-3000

Reita Pendry, Esq.
David A. Howard, Esq.
Assistant Federal Public Defenders
625 Indiana Avenue, N.W.
Suite 550
Washington, DC 20004
202-208-7500

Richard Seligman, Esq.
Suite 910
601 Indiana Avenue, N.W.
Washington, DC 20004
202-745-7800

(2) United States v. Bogle

Federal Court homicide conviction of defendant who came from Los Angeles to Washington to kill a person he believed was responsible for the death of the defendant's brother and while doing so, shot at and wounded a responding Park Police officer.

Docket number: 95-0298-NHJ

Dates of representation: 6/95 to 4/96

Court: U.S.D.C., Washington, DC

Judge: Norma Holloway Johnson

Opposing Counsel:

Richard K. Gilbert, Esq.
307 G Street, N.W.
Washington, DC 20001
202-898-0857

(3) United States v. Aaron Morris

D.C. Superior Court homicide prosecution of babysitter for strangling and beating to death three-year-old girl left in his care. Defendant convicted of manslaughter.

Docket number: F-1223-95

Dates of representation: 6/95 to 3/96

Court: D.C. Superior Court

Judge: Reggie Walton

Opposing Counsel:

Ms. Julia Leighton, Esq.
Rudy Acree, Esq.
Public Defender Service
451 Indiana Avenue, N.W.
Washington, DC
202-626-8364

(4) Dupree, et al. v. Walker, et al.

While a partner at Hill & Barlow, I represented Thomas and Frederick Dupree in a series of lawsuits with their former partner, Christopher Walker, arising from their joint participation in a number of real estate development projects in the Washington, DC, area. The case went to trial on charges of breach of contract and breach of fiduciary duties. I was lead trial counsel. The case was settled in the middle of trial, with the Duprees receiving a substantial monetary settlement.

Docket number: 87-3088-MA

Dates of representation: 9/88 to 4/89

Court: U.S.D.C., D. Massachusetts

Judge: A. David Mazzone

Opposing Counsel:

James S. Dittmar, Esq.
Hutchins, Wheeler & Dittmar
101 Federal Street
Boston, MA 02110
617-951-6600

(5) **United States v. Ouimby, et al.** (1988).

I was the lead prosecutor in the tax fraud prosecution of Laban and Eugenia Quimby, tax advisors who used complex offshore structures to create false deductions and sham loan transactions for their clients. Both were convicted and sentenced to periods of incarceration.

Docket number: Cr. 87-321-F

Dates of representation: 10/87 to 5/88

Court: U.S.D.C., D. Massachusetts

Judge: Frank H. Freedman

Opposing Counsel:

Leonard H. Cohen, Esq.
Cain, Hibbard, Myers & Cook
66 West Street
Pittsfield, MA 01201
413-443-4771
Attorney for Laban Quimby

Edmund Lyons, Esq.
Edmund Lyons Law Firm
1526 Gilpin Avenue
Wilmington, DE 19806
302-777-5698
Attorney for Eugenia Quimby

(6) **United States v. Doherty, et al.**, 675 F. Supp. 712 (D. Mass. 1987), 867 F.2d 47 (1st Cir. 1989).

I was the lead prosecutor in the federal prosecution of a number of police officers who participated in the theft and sale of police entrance and promotional examinations. The principals were convicted of racketeering offenses; the others were convicted of various counts of conspiracy, mail fraud, and perjury.

Docket numbers: U.S.D.C. -- 86-240-Y
1st Cir. -- 87-1681, 87-1740, 87-1683, 87-1685, 87-1687, 87-1688, 87-1682, 87-1739, and 87-1686

Dates of representation: 10/85 to 8/88

Courts: U.S.D.C., D. Massachusetts
1st Circuit Court of Appeals

Judges: U.S.D.C. -- Young
1st Circuit -- Campbell, Bownes, Breyer

Principal Opposing Counsel:

Michael A. Collora, Esq.
Dwyer and Collora
600 Atlantic Avenue
Boston, MA 02110
617-371-1000

George F. Gormley, Esq.
655 Summer Street
Boston, MA 02210
617-478-2750

Thomas C. Troy, Esq.
Troy & Baccari
274 Main Street
Reading, MA 01867
781-944-3800

Richard M. Egbert, Esq.
99 Summer Street, #1620
Boston, MA 02110
617-439-6020

(7) United States v. Picciandra and United States v. Lucid, 788 F.2d 39 (1986).

I was the prosecutor in the federal prosecution of Michael Picciandra, a narcotics trafficker, and Russell Lucid, his attorney, who were convicted of conspiracy and tax violations relating to the laundering of Picciandra's drug proceeds. Both were convicted and sentenced to periods of incarceration.

Docket numbers: U.S.D.C. -- 84-39-MA
1st Cir. -- 84-1707 (Picciandra);
84-1708 (Lucid)

Dates of representation: 4/84 to 3/86

Courts: U.S.D.C., D. Massachusetts
1st Circuit Court of Appeals

Judges: U.S.D.C. -- A. David Mazzone
1st Cir. -- Breyer, Aldrich, Rosenn

Opposing Counsel:

Edward J. Lee, Esq.
Edward J. Lee Law Offices
65 Franklin Street
Boston, MA 02110
617-350-6882
Attorney for Russell Lucid

Steven A. Sussman, Esq.
Kerllenevich Law Offices
6 Beacon Street, #400
Boston, MA 02108
617-557-9905
Attorney for Michael Picciandra

(8) **United States v. Zehe**, 601 F. Supp. 196 (D. Mass. 1985).

I and another Assistant United States Attorney prosecuted Alfred Zehe, an East German scientist, for espionage offenses relating to his efforts to obtain classified information on the Navy's submarine detection capability. Zehe pled guilty, was sentenced to a term of incarceration, and was thereafter returned to East Germany in an exchange of intelligence operatives.

Docket number: 83-296-N

Dates of representation: 11/83 to 4/85

Court: U.S.D.C., D. Massachusetts

Judge: David S. Nelson

Co-Counsel:

Honorable Richard G. Stearns
United States District Judge
U.S. District Court
1 Courthouse Way, #7130
Boston, MA 02210
617-748-9283

Opposing Counsel:

Honorable Nancy J. Gertner
United States District Judge
U.S. District Court
1 Courthouse Way, #2300
Boston, MA 02210
617-748-4119

(9) **United States v. Mastrojanni, et al.**, 749 F.2d 900 (1984).

Investigation and prosecution of a cocaine distribution organization operating on Martha's Vineyard and in Springfield, MA. The minor defendants pled guilty. The principal defendants were convicted of various narcotics trafficking offenses after a five month trial, although the two ringleaders were acquitted on the continuing criminal enterprise charges.

Docket numbers: U.S.D.C. -- 82-231 (D. Mass., July 29, 1983); 82-231K (D. Mass., Sept. 21, 1983)
1st Cir. -- 83-1910, 83-1913, 83-1925, 83-1966, 84-1027 to 84-1029

Dates of representation: 5/82 to 10/84

Courts: U.S.D.C., D. Massachusetts
1st Circuit Court of Appeals

Judges: U.S.D.C. -- Keeton
1st Cir. -- Coffin, Aldrich, Skelton

Principal Opposing Counsel:

Max D. Stern, Esq.
Stern, Shapiro, Weissberg & Garin
90 Canal Street
Boston, MA 02114-2022
617-742-5800
Attorney for Pioggia

Honorable Nancy J. Gertner
United States District Judge
U.S. District Court
1 Courthouse Way, #2300
Boston, MA 02210
617-748-4119
Attorney for Barkett

Andrew H. Good, Esq.
Silverglate & Good
83 Atlantic Avenue, 3rd Floor
Boston, MA 02110
617-523-5933
Attorney for Mastroianni

Steven A. Sussman, Esq.
Kerllenevich Law Offices
6 Beacon Street, #400
Boston, MA 02108
617-557-9905
Attorney for Sagan

(10) **United States v. Brandes, et al.** (1980).

I led a team of four prosecutors in this nine month retrial of several Hells Angels indicted for a variety of racketeering offenses. The second jury was unable to reach a verdict after approximately one month of deliberations. The racketeering charges were thereafter dismissed.

Docket number: 79-0226-SC/WHO

Dates of representation: 6/79 to 7/80

Court: U.S.D.C., N.D. California

Judge: William N. Orrick

Principal Opposing Counsel:

Honorable Richard A. Hodge
Alameda County Superior Court
Department 80
201 13th Street
Oakland, CA 94612
510-208-3926

Richard A. Hodge was lead counsel in this multi-defendant case. He was attorney for James Brandes, the lead defendant.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question; please omit any information

protected by the attorney-client privilege (unless the privilege has been waived).

Please see the attached list of significant investigations and prosecutions.

In addition, I have served as an advisor to the Special War Crimes Prosecutor in Addis Ababa, Ethiopia.

Ia OTHER SIGNIFICANT INVESTIGATIONS AND PROSECUTIONS

A. Office of the United States Attorney, Northern District of California (1998-2001)

1. United States v. Rausini, et al. (2000 - pleas)

   Homicide prosecution of three drug traffickers responsible for killing two of their co-conspirators whom they believed to be cooperating.

B. Office of the United States Attorney for the District of Columbia (1995-1998)

1. United States v. Alston, et al. (1996 - trial)

   Homicide prosecution of three individuals for shooting to death one person and injuring another in the course of a drug robbery in a park. All three defendants convicted.

2. United States v. Smith, et al. (1996 - trial)

   Homicide prosecution of three individuals for the shooting to death of an individual who came to the defense of his retarded friend who was being harassed on a playground. Two convicted; one acquitted.

3. United States v. Taylor, et al. (1996 - trial)

   Homicide prosecution of three individuals for the shooting to death of an individual during a home invasion to steal money and drugs. Two principal defendants convicted of murder; third defendant, charged with being an accessory after the fact, acquitted.

C. Department of Justice (1989-1993)

1. United States v. Doggett, 505 U.S. 647 (1992)

   Argued the government's position before the United States Supreme Court in speedy trial case where the defendant claimed unconstitutional post-accusation delay.

D. **Office of the United States Attorney, District of Massachusetts (1982-1988)**

1. United States v. Nazzaro (1988 - trial)

   Conviction of police captain for mail fraud and perjury arising from his use of stolen civil service examinations to obtain promotion.

2. United States v. Johnson (1986 - trial)

   Prosecution of attorney for failure to file tax returns. Defendant acquitted.

3. United States v. Levasseur, et al. (1986 - investigation)

   Coordination of fugitive investigation and subsequent apprehension of Raymond Levasseur, Thomas Manning, and their associates, a terrorist group responsible for the murder of a New Jersey state trooper, and a series of bank robberies and bombings.

4. Macheteros Investigation (1985)

   Wire interception conducted as part of multi-district investigation leading to indictment in Hartford, CT, of leaders of the Macheteros, a Puerto Rican terrorist organization.

5. United States v. Wilson (1985 - trial)

   Specific items tax prosecution of accountant. Defendant convicted.

6. In Re Extradition of John Lincoln Tamboer (1985)

   Extradition of narcotics trafficker to Colombia. First extradition from U.S. to Colombia under new treaty.

7. United States v. Manzoli (1984 - Plea)

   Net worth tax prosecution of massage parlor operator.

8. Financial Investigations Task Force (1982)

   Participation in the formation of task force to investigate bank compliance with currency transaction reporting requirements and to use Currency Transaction Reports as investigative predicates.

9. United States v. Hasbrouck (1982 - trial)

Prosecution for refusal to register with Selective Service. Defendant convicted.

E. Office of the United States Attorney, Northern District of California (1976-1982)

1. United States v. Bosque (1982 - trial)

Conviction of Brinks guard for the $1.8 million robbery of a Brinks truck.

2. United States v. Conley, et al. (1981 - trial)

Perjury convictions of two Santa Barbara financiers who laundered proceeds from oil fraud through banks in Anguilla, B.W.I., and Switzerland. One conviction reversed on appeal.

3. In Re Extradition of Amos Dawe (1981)

Extradition of Amos Dawe to Hong Kong to face charges that he masterminded multi-million dollar bank fraud with complicity of the Moscow Norodny Bank.

4. United States v. Raymond Hackett, et al. (1980).

Prosecution of Raymond Hackett and a co-defendant for conspiracy to import 58 pounds of cocaine from Bolivia. Both were convicted and sentenced to substantial periods of incarceration.

4. Financial Investigations Task Force (1980)

Formation of task force of agents from IRS, DEA, FBI, and Customs to use current currency Transaction Reports as investigative predicates.

5. United States v. Guerra, et al. (1979 - pleas)

RICO prosecution of cocaine distribution organization following wire interception. Defendants pled guilty.

6. United States v. Bachrach, et al. (1979 - trial)

Prosecution of LSD manufacturing and distribution organization. Defendant convicted.

7. United States v. Peterson (1979 - trial)

Specific items tax prosecution of Silicon Valley entrepreneur. Defendant convicted.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   While at Hale and Dorr, I participated in a 401(k). This has now been rolled over into an IRA. The assets in the IRA are listed in the schedule included in the attached Financial Statement. I also participate in the Federal Thrift Savings Plan.

   I do not anticipate receiving receipts or benefits from previous business relationships.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   I will consult with the Ethics Office in the Department of Justice regarding any potential conflict of interest arising from my or my wife's financial holdings.

   I do not believe any categories of litigation or financial arrangements I had with my previous law firms will present conflicts-of-interest.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.**

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See Financial Disclosure Report (SF-278) which will be provided once it has been approved.

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for.)**

   The financial net worth statement is attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   No.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   While with Hill & Barlow from September 1988 through April 1989 I advised other associates in the firm on their criminal pro bono matters.

   In 1994, while in private practice with Hale and Dorr, I briefly served as an advisor to the Special Prosecutor for War Crimes in Addis Ababa, Ethiopia.

   From 1988 to 1990 I served on the Vestry of Trinity Church, Boston, Massachusetts.

2. **Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

   From 1974 to 1984, I was a member of the Olympic Club in San Francisco, CA. The Olympic Club restricted full membership privileges to males only. While a member of the Olympic Club, I did not try to change its policies. The Olympic Club no longer restricts membership privileges. I rejoined the Olympic Club in 2000.

   For most of the period 1982 to the present, I have been a member of the Country Club in Brookline, MA. Until 1989, the Country Club restricted full membership privileges to males. It no longer has such a restriction. The Club membership admissions procedures now provide that, "[N]o distinction, discrimination or restriction is to be made on account of a candidate's religion, national origin, race or sex." While a member of the Country Club I supported the change in policy, but took no active role in effecting that change.

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In 1998 my wife and I had a summer membership in the Chevy Chase Club in Chevy Chase, MD. The by-laws read, "The Club shall not practice or allow to be practiced any form of discrimination in granting membership or guest privileges based upon the race, color, creed, sex or national origin of any person or persons."

University of California
San Francisco

UCSF

Department of Urology
School of Medicine

533 Parnassus Avenue, U575
San Francisco, CA 94143-0738
tel: 415/476-1611
fax: 415/476-8849

June 20, 2001

Re: Robert Mueller

To Whom It May Concern:

Mr. Robert Mueller was seen and evaluated at the University of California, San Francisco UCSF Comprehensive Cancer Center on April 17, 2001 for the first time. Mr. Mueller had been diagnosed with very localized prostate cancer. This diagnosis was confirmed here at UCSF. On the basis of extensive imaging and analysis of the prostate biopsy, Mr. Mueller has a localized, small volume prostate cancer. He is an excellent candidate for a variety of different treatment options and has a very, very high likelihood of cure with any. Although he's a candidate for watchful waiting, treatment should be considered. I believe he will tolerate treatment exceedingly well and have a high likelihood of cure as mentioned.

I do not believe his diagnosis or its treatment will, in anyway, impact on his ability to function and carry on his responsibilities normally. Treatment can be delivered in a very limited period of time and early and full recovery is expected.

Please contact me should you require additional information.

Sincerely,

Peter R. Carroll, M.D.
Professor and Chair
Department of Urology
Ken and Donna Derr-Chevron Chair in Prostate Cancer

PRC:pc

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	12,	016	00	Notes payable to banks—secured			
U.S. Government securities—add schedule	10,	222	00	Notes payable to banks—unsecured			
Listed securities—add schedule	699,	083	00	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule Northern Trust	236,	556	00
Real estate owned—add schedule San Francisco, CA	860,	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	100,	000	00				
Cash value—life insurance							
Other assets—itemize:							
TIAA (retirement-spouse)	50,	178	00				
Thrift Savings Plan	37,	896	00				
				Total liabilities	236,	556	00
				Net worth	1,532,	839	00
Total assets	1,769	395	00	Total liabilities and net worth	1,769,	395	00

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	No			Are any assets pledged? (Add schedule.)	No		
On leases or contracts	No			Are you defendant in any suits or legal actions?	No		
Legal Claims	No			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	No						
Other special debt	No						

Robert S. Mueller, III

Schedule

U.S. Government Securities:	Value
U.S. Treasury Notes	$10,222
Listed Securities:	
Abbott Laboratories	$9,462
American International	$7,848
Amgen	$11,434
Anheuser-Busch	$4,187
Automatic Data Processing	$12,775
Chevron	$37,310
Cintas	$13,086
Cisco Systems	$10,873
Colgate Palmolive	$11,808
Elan	$6,000
Ethan Allen Interiors	$5,207
First Data	$6,410
General Electric	$126,603
Genuity	$337
Gillette	$4,373
Home Depot	$11,340
Imation	$465
IBM	$167,418
Johnson & Johnson	$10,082
Merck	$13,957
Minnesota Mining	$22,920
Molex	$9,730
Northern California Muni	$12,574
Paychex	$10,761
Pershing Govt Account	$19,463
Pfizer	$22,028
Phoenix Growth Fund	$43,659
Proctor & Gamble	$6,500
SBC Communications	$8,000
Schwab California Muni	$3,919
Staples	$6,629
Starbucks	$9,212
State Street	$4,989
Stryker	$16,227
Sysco	$16,560
Wal Mart	$4,734
Walgreen	$10,203
Total	**$699,083**

Chairman LEAHY. Thank you, Mr. Mueller. I appreciate very much your statement. You seem to have anticipated many of the questions that I, and others, might be asking. That also reflects your candor in the lengthy meeting we had when we went over these issues—and the meetings I know you have had with other Senators. In the reports I have had, they have all been very candid.

So I take a great deal of comfort in your answers, not just what you are saying here to the committee, but I would hope, beyond this committee. I would hope the thousands, thousands of extraordinarily talented and dedicated men and women in the FBI would take a great deal of comfort in them too. Ultimately, their ability to carry out their mission rests in your hands, and I think that you have sent a signal, a very good one, and it should be one of great comfort to them.

You said the President has honored you with this appointment. That is absolutely right. He has. It is a grave responsibility on the part of the President and one I think he has carried out very well. He is also the chief magistrate of this country, and he has to put a great deal of his own credibility on the line in appointing you. And so you have a great duty not only to the President, but to all Americans in carrying out that responsibility.

I referred in my opening statement to testimony from four FBI agents who testified at a hearing last week. There is a widespread perception in the FBI that there is a double standard applied in meting out internal discipline. They spoke to something you have already referred to in your statement. The members of the Senior Executive Service typically receive lesser punishment than line agents for the same offense. Obviously, that is bad for the morale of the line agents. It would breed cynicism and mistrust.

Former Director Freeh attempted to deal with this problem last August when he abolished a special disciplinary mechanism for FBI senior managers. I believe Director Freeh did the right thing, as he did in many other areas, but I don't think that has completely solved the problem. Is this a problem that needs to be addressed by you, as director?

Mr. MUELLER. To the extent that there is any perception that there is a double standard, yes, it definitely has to be addressed. As you indicated, Mr. Chairman, I think former Director Freeh began that process with assuring that there is no difference between the standards of discipline for senior management in the FBI and employees of the FBI.

However, beyond that, I think it important that as one contemplates leaders in the FBI, we appoint leaders in the FBI who are held to a higher standard. And when the leadership of the FBI fails or makes mistakes, the discipline should be just, fair, but absolutely consistent with the discipline which would be meted out by an individual of lesser rank.

Likewise, I believe that it is important to inculcate in the FBI a standard whereby its leadership is held to not just the standard of every agent, but to a higher standard, inasmuch as I pointed out in my statement, I believe the leaders serve as examples for others in the FBI.

Chairman LEAHY. What I worry about is if we do not, and if we do not show willingness to correct mistakes or to acknowledge mis-

takes. You just said in your statement not every—people are not perfect. Obviously, mistakes get made, and usually you learn from the mistakes, but if there are serious mistakes, sometimes the first reaction can be, it is a human one, to hide the mistakes. But both you and I have served in law enforcement, and we know that in law enforcement, especially, if you hide your mistakes, usually somebody innocent is hurt by it.

For example, the documents the committee reviewed about the January 2001 decision on Ruby ridge revealed that some FBI agents were disciplined in January 1995 by the then director, when they should not have been. Senator Specter and I conducted pretty extensive hearings on Ruby Ridge. But I look at this report of January, I see nothing has been done to correct the situation, despite the personal embarrassment I am sure that discipline caused for those FBI agents.

Another example, is that there have been reports of a CIA officer who was initially suspected of espionage before they realized that Hanssen was the real culprit. This agent was forced to go on leave from his job at the CIA, caused great stress for himself and his family. The treatment his family received was harsh. Among other things—the members of the family were told this was a capital offense. Now he has been cleared of all wrongdoing. He has been allowed to return to his work at the CIA. His back-pay, full security clearance restored. The FBI totally regrets this happened, but they have not notified him or his family that he is no longer suspected of any wrongdoing.

Can you take a look into some of these matters?

Mr. MUELLER. I certainly would, Mr. Chairman. I go back to time as a prosecutor, and it was important, in my mind, to conduct investigations quickly and thoroughly, understanding that an investigation done by the FBI, often in consultation with the U.S. Attorney's Office, puts individuals under a microscope and can damage reputations, can damage careers, and it is critically important to do investigations quickly. And if the allegations prove not to be true, to make certain that those who were under scrutiny are told of that immediately and to the extent possible any appropriate response given to that individual who has been exculpated from the allegations.

Chairman LEAHY. Just an inquiry by the FBI can cause a lot of people's heartbeat to rise, even if they are not suspected of anything. If they are told they are a suspect, and their family and their friends are told they are a suspect, and then afterward it is the case where they are not, we cannot treat it like the old Gilda Radner line of "oh, never mind." Somebody has got to do more than that.

I recall when we had a terrible shootout along the New Hampshire-Vermont border, coincidentally, on a weekend when Director Freeh was visiting. A young man, one of the Federal agents on the border was shot and grievously wounded. Several others were killed. We went to the hospital, Director Freeh and I. Just the two of us drove up to the hospital to visit this young man. What I didn't know was that the hospital was under an audit on Medicare questions by the U.S. Attorney's Office at that time. We had several people who thought they were about to be arrested immediately be-

cause the two of us were walking down the halls. Director Freeh was not aware of the investigation, nor was I, but I heard afterward that the Cardiac Unit of the hospital almost had an overload that day.

[Laughter.]

Chairman LEAHY. So I am just suggesting that that is an innocent-type thing, but if somebody is really a target, and it turns out they are not the person, like a Richard Jewell and situations like that, somebody has to clear that up. I am not suggesting we do not continue with investigations—obviously not—but mistakes have to be cleared up.

Now, last week when we had a hearing, and I talked to you about this earlier, FBI headquarters issued a weekly report to the field, a report on our committee's July 18 hearing. It described the testimony of two of the six FBI current or retired employees who testified, and they put two of the testimonies on their website. They said absolutely nothing about the testimony of those in the FBI who testified about the existence of a double standard or discipline and retaliation within the FBI. It almost seems that FBI headquarters thinks that if they ignore bad testimony, it is going to go away. This bothered me, as there were some from headquarters who sat through the testimony of all six and knew that was a mistake.

I would hope, I would hope that somehow, and I fully expect you to be confirmed, but when you get down there, point out you are going to improve the best of the best. But if some of us ask questions up here, do not ignore the questions, look for the answers.

I do not know if you want to refer to that at all.

Mr. MUELLER. Probably, Mr. Chairman, to say that I do think that it is important that everybody in the Bureau look at both the good and the bad in order to address it. It is not only me, as the director of the FBI, should I be confirmed, but it is also senior management and the FBI agents who come forward with those items that need changing and to directly confront criticisms that are made at whatever level of the FBI, and as I indicated in my statement, address those criticisms. And where there are criticisms that are valid, take such steps that are necessary to change that which needs changing.

Chairman LEAHY. And will you give your commitment that if you are ever pressured politically by the Republicans or Democrats to affect an investigation, that you will resist that pressure with all your might?

Mr. MUELLER. Absolutely.

Chairman LEAHY. Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Mr. MUELLER. May I just add, if I might?

Chairman LEAHY. Sure.

Mr. MUELLER. It is critically important for the FBI to investigate crimes, allegations of crimes thoroughly, professionally, objectively, and without interference politically or otherwise. And when it does that, it then has the credibility of the American people. And so to avoid political pressures it is absolutely critical for the FBI to do its job, as that job is expected to be performed by the American people.

Chairman LEAHY. I thank you for that. And I hope, I hope the Senate will always stand here ready to protect you from both sides of the aisle in that regard.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Mr. Mueller, the FBI rarely works alone in criminal investigations. In a significant number of its cases, the FBI operates in tandem with a number of Federal, State and local law enforcement agencies, and sometimes the other agencies' involvement is due to overlapping jurisdiction in some cases, but in some instances, the other agencies come to the FBI for technical assistance or support. Now, the specialized areas of computer crime and DNA testing immediately come to mind, but I know there are many others.

Would you please explain to the committee your view of the role the FBI should play in assisting other agencies, particularly the State and local agencies in criminal investigations?

Mr. MUELLER. I, in the past, I have been fortunate to work with the FBI and to see it work with other Federal organizations closely and with State and locals. An example would be the Pan Am 103 investigation, which the FBI and the Scottish police worked diligently over 3 years to bring the investigation of that disaster to the point where there could be indictments. And when you are dealing with foreign law enforcement agencies, it is sometimes exceptionally difficult because they work under a difficult legal system.

I have had occasion to see in the District of Columbia here what was called the Cold Case Squad, where you had homicide detectives from the Metropolitan Police Department work closely with the FBI to investigate homicides that could not be solved immediately. I think every one of those—each of those instances, and myriad others, where the FBI works closely with the State and locals, you have an ability to combine the best of both agencies—the technological wherewithal of the FBI, sometimes the street smarts and other abilities of the State and local law enforcement agencies, and that should be the goal of the FBI in performing its law enforcement functions.

Senator HATCH. One of the areas of prosecution for which you are particularly known is that of computer and intellectual property crime. As U.S. attorney for the Northern District of California, you created a section called the Computer Hacking and Intellectual Property or CHIP.

Recently, Attorney General Ashcroft recognized your success in the most sincere and flattering way possible, by announcing the formation of nine additional CHIP units around the country. As you know, a subset of this area, criminal copyright enforcement, is of key importance to this committee. We have devoted considerable energy over the past several years to Internet enforcement in particular.

In 1997, we enacted the No Electronic Theft or the NET Act, combining criminal penalties for certain noncommercial Internet parts. In 1998, we passed the Digital Millennium Copyright Act, or the DMCA it is called, which helps combat trafficking in hacking devices designed to defeat technological protections for copyrighted material.

We also enacted the Digital Theft Deterrence and Copyright Damages Improvement Act to speed the implementation of the NET Act and to improve online theft deterrence generally, and we have even earmarked additional funding for DOJ, specifically for the investigation and prosecution of cyber crime.

The committee's work is starting to bear fruit in the form of criminal prosecutions of Internet piracy. So far this year the number of NET Act prosecutions appears to be up, and we have just recently seen the first criminal prosecutions brought under the DMCA.

Just this week, the DOJ announced a—the Department of Justice—announced a series of new prosecutions of Internet crimes. I commended the Department of Justice for what I hope is a commitment to cyber crime enforcement, and I hope this becomes a priority for the FBI as well.

Would you please outline for us, if you can, your plans, as FBI director, on protecting the Nation's computer infrastructure and intellectual property.

Mr. MUELLER. If I may go back briefly to what I saw when I took over as U.S. Attorney in San Francisco, we had Silicon Valley in my district, and one of the great issues was how do you protect—not protect, but how do you combat high-tech crime. And the first thing I had to do was determine what do you mean by high-tech crime, and I came to the conclusion that it should be broken down in four ways: first of all, computer intrusions, denial of service attacks; second, theft of intellectual property, economic espionage; third, frauds on the Internet and distribution of child pornography on the Internet; and, fourthly, the theft of high-tech components such as computer chips, hard drives, and the like—all of which are critical to the high-tech industry.

We put together a unit in San Francisco and in San Jose because it was important to develop the expertise in the United States Attorneys, the Assistant United States Attorneys who would be handling these cases. It was important that we developed the relationships between the FBI agents who had the expertise to do these cases, the Assistant United States Attorneys who were doing these cases, and the community. In addressing high-tech crime, it is critically important that we developed the relationships with those victims of high-tech crime in the high-tech industry. And, consequently, we will support—should I be confirmed as the Director of the FBI, the FBI will support not only the unit that was set up in the Northern District of California, but also the other units to be set up, announced by the Attorney General last week.

One other point I might make, and this goes to the issue of working closely with the State and local authorities. There are too few investigators with the skills we need to address this. And one of the developments that has been useful is what has been known—or called a computer forensics lab, which was established in San Diego with a number of contributing, participating agencies, both Federal and local. And it is that type of combined enterprise that we are going to have to adopt if we are to address this new wave of separate technological crime in the future.

Senator HATCH. Thank you. Mr. Mueller, as you know, the 2002 Winter Olympics in Salt Lake City, they are going to be the largest

planned public safety and law enforcement operation in our country in the foreseeable future. The law enforcement community, including the FBI, has been working on the plans and preparations for several years. And one of the unique and forward-thinking aspects of the plans is the invention of the Utah Olympic Public Safety Command, which for the first time has combined the Federal, State, and local law enforcement and emergency management agencies under one entity to ensure coordinated development and execution of the Olympic public safety plans.

Now, I have studied the public safety issues and have received the intelligence and securities briefings on them. In May of this year, I held a Judiciary Committee field hearing in which 11 top law enforcement and emergency management officials from the Federal, State, and local levels discussed the importance of cooperation among the various agencies in preparing for the Winter Olympics in 2002.

Now, I feel very confident that the people who are working on this project are taking their jobs seriously. They are focused and I think on the right priorities. However, I am convinced that it takes leadership from the very top of all organizations to ensure successful execution, so I want to have your assurance that you will treat the FBI's role in the Olympics as one of the Bureau's top priorities, that you will support and encourage your agents' efforts, and that you will provide meaningful leadership to this important national and international event.

Mr. MUELLER. I will, Senator. I would expect to be personally involved in those preparations so that I can assure myself that the Bureau would be doing everything it can do to contribute to the joint effort.

Senator HATCH. OK. Now, we understand that the FBI is now requiring polygraphs for managers handling national security matters. Are you willing to continue that approach?

Mr. MUELLER. Yes.

Senator HATCH. And would you be willing to take a polygraph yourself if that were the case?

Mr. MUELLER. Yes, indeed, it is my belief you don't—this may be my training from the Marine Corps, but you don't ask people to do that which you're unwilling to do yourself. I have already taken that polygraph.

Senator HATCH. The only reason I ask that question is because I knew you had, and I just think it is important for people to——

Chairman LEAHY. How did you do?

Senator HATCH. Yes, how did you do?

[Laughter.]

Mr. MUELLER. I'm sitting here. That's all I can say.

Senator HATCH. We just hope you had a good examiner, that is all.

I understand that you took steps to address securities fraud, and what role do you see the FBI playing in addressing securities fraud in this country?

Mr. MUELLER. Again, when I went out to my district in San Francisco, with Silicon Valley being a substantial component of the responsibilities there, securities fraud was something that we felt needed to be addressed. And, consequently, after having some feel

for how the problem needed to be addressed, again, I set up a unit, brought a very talented individual in from the Southern—actually, the Eastern District of New York who had done these types of cases, assigned agents to these cases, and developed a very close relationship with the counterparts in the SEC, and thanks to the work of that unit and those in it, there have been a number of substantial prosecutions that flow from it.

Securities fraud is often very difficult to investigate, hard to prosecute, but the damage done to investors by securities fraud is substantial. And the FBI should play a substantial role along with the SEC in addressing it, and I would expect that the Bureau would continue to accord manpower to address that particular priority.

Senator HATCH. Well, thank you so much. I think there is no question I am going to support your nomination. I am very proud of you, proud of your willingness to serve and to give even more of an effort for your country. And I am proud of your family, as well, for supporting you.

Chairman LEAHY. What Senator Hatch means is that he and I will waive seeing the results of the polygraph test.

When you speak of the Marines, I swear I have heard from virtually every Marine I know around the country about your nomination. And as Mr. Mueller knows, when he called me at my farm house in Vermont the day that he had been announced by the President, I was on the other line with my son, who is a former Marine, who told me I better take that call. So you already had a lobby effort going in our family.

Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman.

Mr. Mueller, the FBI has been accused of working too independently of prosecutors, particularly in deciding what evidence should be transferred to prosecutors. In other words, the FBI sometimes appears to be making its own decisions about whether evidence is potentially relevant and whether a case should be pursued when these are decisions that should be made by prosecutors. We have seen this arise most recently in the Timothy McVeigh case where we still do not fully know why all the documents were not turned over in a timely manner after repeated requests from the FBI Director.

Unfortunately, we also know that this was not the only occasion, the McVeigh situation, not the only time this ever happened. There was the 1963 bombing of the 16th Street Baptist Church in Birmingham, Alabama. In that case, it was not until very recently that the FBI finally turned over all audiotapes and other evidence to prosecutors who were seeking to prosecute the remaining defendants in that cowardly, horrific bombing. It is believed that people inside the FBI, as high as the Director himself, J. Edgar Hoover, blocked the distribution to prosecutors of critical information that could have led to the prosecution of those responsible for this heinous act.

Now, you are, of course, in a unique position, having been on the other side of this equation, the Federal prosecution side. Mr. Mueller, do you share this concern? And if so, what steps will you take to facilitate better communications and working relationships

between the FBI and Federal and State prosecutors to ensure that justice is served?

Mr. MUELLER. I do, being a prosecutor, I do share the concern, Senator. There is no prosecutor that wants to walk into a courtroom without knowing absolutely everything there is to know about the case. And in the past, I have had occasions where this has been an issue. The Pan Am 103 prosecution, the Noriega prosecutions, are examples were there are issues involving national security information that may bear on a particular prosecution. But there may be very valid reasons for keeping certain of the information from the prosecutors that go into the court, although the prosecutors would not want that to happen.

In those circumstances, we have had mechanisms to assure that that information is scrubbed to make absolutely certain that there is no Brady information, exculpatory information that should be given to the defense. And there are mechanisms such as the Classified Information Procedure Act that enables us to keep certain of that information classified. The issue comes up in cases like that.

More often, on a day-to-day basis, one of the problems that I do think the FBI has is the inability to produce quickly documents, and that I do believe is attributable in part to its antiquated filing system.

FBI agents will tell you that when they go out and take notes of an interview, they come back, pull off the notes from the sheet of paper, fold it up, put it in what's called a 1A envelope, and that 1A envelope is then put in an evidence locker along with 150 or 200 other 1A envelopes. When the prosecutor asks for everything in that case, often the agent has to go, pull out that envelope, open the envelope, pull out a piece of paper, take it to a copy machine, copy it, and get it to the prosecutor—a disincentive to producing that which should easily be produced.

My hope is, earlier rather than later, that the FBI could be somewhat paperless; in other words, notes, when an FBI agent comes back with handwritten notes, which FBI agents will, they're imaged into a data base, coded so that in the future anything, any document, any picture, any report, any fingerprint report, for instance, or fingerprints themselves, will be imaged into the data base and be immediately accessible so that you do not have the problem such as you saw with the prosecution of the McVeigh documents.

In that circumstance, the agents, FBI management, the prosecutors, can all be assured that you have the foundation for production of the documents.

Senator FEINGOLD. Thank you for that answer very much. I would like to turn now to an issue we talked about when we met last week, and that is the electronic recordings of interviews. I understand that currently FBI agents memorialize all interviews as written reports or 302s and the field notes are then destroyed systematically. And I think you were getting into some of this area here.

Electronic recordings of interviews, audio or visual, however, can be helpful to a jury in determining the credibility of the evidence, particularly confessions. A recording allows the listener to hear intonation and whether questions are asked in a suggestive or coer-

cive fashion. This is a particularly growing concern as the FBI increases its operations overseas. I understand that the FBI interviews non-English-speaking persons through translators, but memorializes the interviews simply by way of a written report in English.

Are you willing to consider requiring FBI agents to record interviews electronically, which is a practice that would be consistent with the practice of many law enforcement agencies around the country?

Mr. MUELLER. The short answer, Senator, is yes. If I may explain, the Bureau had a longstanding policy, as I understand it, of having no recordings of interviews. That policy was changed—I'm not certain how recently—to allow recordings of interviews upon the approval of the special agent-in-charge of the office. And, consequently, my understanding is it's not a hard and fast rule as it was previously.

Having worked homicides in the District of Columbia, I have seen the advantage of the use of recording of interviews. On the other hand, day in and day out FBI agents interview thousands if not hundreds of thousands of people. If they're doing background investigations for people like me, for instance, they interview any number of people, and it would be, I think, counterproductive to require recording and transcribing of all such interviews. But certainly the practice has been changed. We will continue to look at it, particularly in an instance where it is important that a confession or critical evidence relating to a terrorist attack needs to be deciphered accurately with no room for error.

Senator FEINGOLD. I look forward to continuing to discuss this as time goes on, and now I would like to go to a different topic.

Some people believe that the FBI historically has had some difficulty distinguishing between people engaged in peaceful political dissent and those individuals who for political purposes engage in violent activity. For example, there are the Palmer raids, the McCarthy era abuses, COINTELPRO, neutralization of civil rights, anti-war, and other activists, investigation of activists opposed to our Nation's Central America policies, and now, according to some people, the targeting of Arab Americans.

First, do you share this concern and how will you distinguish between political dissent activity and criminal activity when determining whether to initiate or continue investigations? And then I would like you to also address what steps you will take as Director to ensure that the Bureau does not infringe on fundamental First Amendment rights and restricts itself, of course, to investigating only criminal activity.

Mr. MUELLER. I do share the concern, Senator, and it has been my practice as a prosecutor, when working closely with the FBI or any other agencies, to focus on what predication there is for further investigation. In my own view, the investigative process is a series of steps that one must go through, always looking at each of the steps as to whether or not you have got sufficient reason to go forward to the next step. If there is an allegation and there are minimal tasks, investigative tasks can be done to determine, prove or disprove that allegation, they should be done before you issue a grand jury subpoena. And, consequently, I would insist that when-

ever we are undertaking an investigative enterprise, that there be adequate predication for the steps we take to pursue that investigation.

One of the things I probably will be discussing at more length while we are here, and that is the issue of span of control, and how do you assure, as Director of the FBI, that such concern, oversight, is being demonstrated at the local level. And as I mentioned in my statement, I do have concern about span of control. In an organization as large as the FBI, you have to have transparency of information all the way to the top. And there has to be focus on what is a priority, what is critical, so that those leaders at the top are prioritizing information they're getting. In order to do that in an organization as large as the FBI, you have to have the computer infrastructure. And that is one of the reasons that I will as soon as possible push hard to get the infrastructure that enables the information, which is the lifeblood of the FBI, in a form where it can be transparent to the managers at the local level and at the national level, so that you are able to look and assure and provide the oversight necessary that predication is being looked at, demonstrated, before a particular important investigation is going forward or a class of investigations is going forward.

Senator FEINGOLD. Thank you very much and good luck.

Mr. MUELLER. Thank you.

Chairman LEAHY. Thank you.

Just to bring us up to date where we are, I have been informed that a number of flights have been delayed this afternoon of Senators coming back to Washington. What we are going to do is go to Senator Specter now for his round. I have discussed this with the Senator from Alabama also. When he is finished, we will take a short recess to allow everybody a chance to stretch, if nothing else, and then we will come back and begin with Senator Sessions.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Mueller, when we met several weeks ago, I commented to you about this memorandum from Director Freeh to Mr. Esposito dated December 9, 1996, and a copy has been furnished to you. And the critical paragraph is paragraph 4 which says as follows: "I also advised the Attorney General"—this is a reference by Director Freeh to a conversation he had with Attorney General Reno. "I also advised the Attorney General of Lee Radick's comment to you that there was a lot of 'pressure' on him and PIS"—the Public Integrity Section—"regarding this case because the 'Attorney General's job might hang in the balance' (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely."

This memorandum did not come to the attention of the Judiciary Committee until a subpoena was served in April 2000 for the LaBella report and any other documents in possession of the FBI relating to the campaign finance investigation. When I saw this memorandum, I asked Director Freeh why he did not turn it over to the oversight committee, and he responded that he thought it would seriously impair his relationship with the Attorney General. He declined to testify, and my efforts to get a subpoena from this committee were unsuccessful.

When Attorney General Reno testified, she said that she didn't recollect any such conversation, but if such a conversation had occurred, then she would have done something about it.

Now, mid-2000 investigation is hardly any way to pursue oversight on an event which happened in December 1996. Now, if such a matter were to arise, assuming your confirmation as Director of the FBI, would you sua sponte on your own make a disclosure to, say, the chairman and ranking member of the Senate Judiciary Committee or some other oversight body?

Mr. MUELLER. Well, I have had an opportunity to think about this, what I consider to be a very difficult issue, Senator. And if I might, let me just state that I understand, firmly believe in the right and the power of Congress to engage in its oversight function. It is not only a right, but it is a duty. And there are occasionally concerns relating to law enforcement, relating to privacy interests, that are some, as I say, concern to the Department of Justice and would be to the FBI.

In responding to oversight, I would be guided by three principles.

First, I would always try to accommodate the requests of Congress consistent with law enforcement, my law enforcement responsibilities, accommodate in a variety of ways, whether it be through summaries substitutions, redactions, or the like, and I've had some experience in doing that when I was Assistant Attorney General in charge of the Criminal Division.

Second, I believe that Congress is entitled to a straightforward articulation of the reasons why a particular document could not be given to the oversight committee in its entirety.

And, last, oversight—or I should put it another way, accommodation should never be sought to avoid embarrassment or for any other reason other than a legitimate reason relating to a valid basis for keeping an item confidential.

Senator SPECTER. With all due respect, Mr. Mueller, that doesn't answer my question. I consider this to be ground zero. If there isn't oversight by the Judiciary Committee on a matter of this sort, then oversight is meaningless. If you limit oversight to the chairman and the ranking member, that is a very limited amount of oversight. Maybe you can limit it just to the Senate. I wouldn't presume to get involved in your duties to the House of Representatives. But the chairman and the ranking member are of sufficient credibility and reliability as the Director of the FBI or the Attorney General or Mr. Esposito, to whom this memorandum was addressed. This document and these factors were in the hands of quite a number of people in the FBI. And Senator Leahy and Senator Hatch, or whoever may hold those positions, are people of responsibility and trust.

Let me add to the mix another factor, but I intend to come back to it, and I intend to press a flat answer. In February 1997, Director Freeh told me that there was a request by the President through the National Security Counselor—and I discussed this matter with you, because these are weighty matters and I don't think we ought to propound the questions and expect an answer in the course of a hearing, just something you haven't had a chance to think about. But as I said to you, FBI Director Freeh said that

the information was not provided to the President because the President was under a criminal investigation.

Now, I did not find out at that time what the quality of the evidence was as to a criminal investigation, nor did I find out what the national security information was. But had I known about this memorandum, which identified a top Department of Justice official, Mr. Lee Radick, saying that there was pressure on him regarding this case because the Attorney General's job might hang in the balance, or words to that effect, in combination with the two, that is a matter which I would have pressed for disclosure.

Without returning to the first question, Mr. Mueller, do you think that the Director of the FBI has the authority to withhold national security information from the President, even if the President is under a criminal investigation? Considering the fact that obviously as long as the President is in office, he is the President and he is the Commander-in-Chief and we have a constitutional process for changing that which we undertook 2 years ago, the matter could be reported to the Speaker of the House of Representatives for possible impeachment if it rises to the level to conceal the information, not disclose it, then it comes to the Senate, there are constitutional provisions. I think it takes a lot of fortitude, also known as "guts," to not show that information to the President. And what's your view on that? Is that a proper exercise of the authority of the Director of the FBI?

Mr. MUELLER. Let me take the second question, and then I will come back to, if I could, the issue——

Senator SPECTER. OK. They are interrelated, so I wanted to——

Mr. MUELLER. Surely.

Senator SPECTER [continuing]. Get them both on the table at the same time.

Mr. MUELLER. Again, I think these are exceptionally difficult issues, amongst the most difficult issues that any Director has to face. But with regard to the—it's not necessarily a hypothetical because apparently they are the facts, but the factual scenario that you painted of national security information not having been provided to the President and whether or not as a result of or as a consequence of required oversight from the Congress, there should have been some discussion of that with Congress.

The problem—well, let me go back and say there are circumstances where the FBI is required to do very difficult investigations of individuals within an administration. Often it is as a result—has been the result of appointment of an independent counsel. In the future, it may well be as a result of the appointment of a special counsel by the Attorney General. And there may be occasions where information comes to the attention of the FBI that, as Director, the decision or the view is that to disclose that information to a target would hamper or undercut the investigation. And I would expect that being a component of the Department of Justice, that any decision as to whether or not that information should be disclosed to the target would be made in conjunction with the Attorney General. But the decision may well be that that information should not be disclosed.

If it is national security information, on the other hand, that bears upon the security of the United States, I think we have an

obligation to assure that anything within those materials that bears on the national security finds its place in the national security structure.

Now, if there is a request from Congress for that information, then, again, in consultation with the Department of Justice, we would find a way to accommodate the concerns of Congress.

Senator SPECTER. But when you use a hypothetical of a request from Congress, Congress can't make a request when it doesn't know anything about it.

Mr. MUELLER. Well, what you're asking is whether I would sua sponte discuss that with Congress, not discuss it with the Attorney General, and I think it would depend on the circumstances.

Senator SPECTER. No, I think you should discuss it with the Attorney General. But I believe, of course, the facts—well, you might have a distinction there. It was a rocky road between the Director of the FBI and the Attorney General. And this all turned upon the appointment of independent counsel where the record is full of the fact that Director Freeh wanted independent counsel and Attorney General Reno resisted, a matter of long, contentious hearings right here in this room.

Mr. Chairman, may I borrow a little time?

Chairman LEAHY. Go ahead.

Senator SPECTER. So maybe—well, we are backing up questions—would you not discuss it with the Attorney General?

Mr. MUELLER. No. Absolutely, I am a component of the Attorney General, or not of the Attorney General, a component of the Department of Justice, and as, I think, Senator—as Mr. Chairman pointed out at the outset, the Attorney General's the boss. Absolutely I would discuss it with the Attorney General.

Senator SPECTER. You are a little more than that, as Director of the FBI, Mr. Mueller. You have got a 10-year term, and you cannot be removed except for cause. And in a context of this sort, it better be a mighty good cause for somebody, the Attorney General or the President to try to remove you. But the ultimate decision came down to Director Freeh, as I understand the facts and I pursued the facts. So the question is, two questions pending, Mr. Mueller are—well, I will just ask one at a time under a questioner's rule. Would you, as FBI Director, exercise the authority to withhold information from the President on national security matters, because the President was the subject of a criminal investigation?

Mr. MUELLER. There may be an occasion where it's possible, yes.

Senator SPECTER. OK. You are the Director of the FBI when this information comes to you about somebody in the Public Integrity Section who is opposing the appointment of Independent Counsel. He is the principal person fighting appointment of Independent Counsel. The record is replete of that. Mr. Radick testified before the subcommittee on Department of Justice oversight, that he did not believe in the Independent Counsel Statute, was not going to enforce it. And here he has a conversation with the top FBI official, and the Director takes it up with the Attorney General, and recounts Radick's statement about a lot of pressure on him, because the Attorney General's job might hang in the balance. Are you going to inform the Judiciary Committee Oversight, at least the

chairman, ranking member, at the time this memo was drafted, correct?

Mr. MUELLER. I'm not certain what I would do in that circumstance, but I cannot tell you today that I absolutely would. This relates to conversations between the FBI Director and the Attorney General. And I also believe, in addition to the responsibility of the FBI Director to act as a component of the Department of Justice, there may well be some confidentiality concerns relating to the conversations between the FBI Director and the Attorney General. And I would hope that as a result of a memorandum like this—and I'm not certain it didn't happen as a result of a memorandum like this, that some action would be taken. But if action had been taken as a result of this memorandum, and as a result of the conversations that Director Freeh had with the Attorney General, I am not certain that it would be necessary or required to, sua sponte, on my own, without consultation with the Department of Justice or the Attorney General, to turn this memorandum over to this committee, whether it be the chairman or the ranking member.

Senator SPECTER. Well, Mr. Mueller, no action was taken. Lee Radick's statement is known. He continued to oppose the appointment of Independent Counsel. That matter was not brought to the attention of the Judiciary Committee, and the Attorney General was reappointed, and there was a very, very contentious matter which lasted for years, right through the year 2000 in July, when the subcommittee terminated its investigation. And I am only giving you my opinion, but I do not believe that that confidentiality reason has any weight at all. It is not worth its salt. There is not a confidentiality relationship between the FBI Director and the Attorney General when it comes to a matter of this import, about somebody easing off on an investigation, and that is what oversight is all about. And very candidly, it is not good enough for me, if I do not have your assurance, that this is the sort of a thing you will disclose to the chairman and ranking member.

Chairman LEAHY. Did you want to add to that? Because I think then we are going to take our recess.

I would note for the record, on this, as I recall, Mr. Radick said he did not recall that conversation having taken place. I realize the memo speaks is based on hearsay. But to ask a question about what you might do in the future is perfectly legitimate. I do not think the hearing here should be considered to establish exactly what did happen.

But in any event, we will recess for 5 minutes.

Senator SPECTER. Mr. Chairman, before we recess, Mr. Radick testified that he recalled pressure, and he recalled the Attorney General's job hanging in the balance. He did not recall the connection between the two. And Mr. Esposito and Mr. Radick sat side-by-side at the witness table, both under oath——

Chairman LEAHY. In fairness——

Senator SPECTER [continuing]. And gave contradictory reports.

Chairman LEAHY. In fairness to Mr. Mueller, this is a hearing on his confirmation, and not a hearing on what Mr. LaBella, Mr. Radick, Ms. Reno or others might have recalled or might not have recalled.

In any event, we will stand in recess for 5 minutes.

[Recess from 3:06 p.m. to 3:21 p.m.]

Chairman LEAHY. What we will do now, as I said earlier, we will go to Senator Sessions of Alabama, then we will go to Senator Edwards of North Carolina, and if other members come, they will have the opportunity to ask questions. Otherwise, we will go back to Senator Hatch and myself.

And I appreciate Senator Sessions—has been here right from the get-go on this—for his patience.

Senator SESSIONS. Thank you. This is a very important hearing. We have got a very important nominee and nomination matter to settle and talk about, and I think it is good we take some time, and I thank you, Mr. Chairman, for doing that.

Mr. Mueller, with regard to Senator Specter's questions, I was a participant on the subcommittee with him and heard the testimony, and I have been a line prosecuting United States Attorney. My respect for the Attorney General is unbounded. I know you always, if you have a problem, want to talk to the Attorney General, if it is a serious problem. But in this case the allegation was that the Attorney General's own hand-picked Chief of Public Integrity told a high official in the FBI that the Attorney General had to go, in effect, soft on this case because her job might be on the line. And I do not know what the answer to that is, precisely what you should do, but under those circumstances, I hope that you will keep your options open, because you have a 10-year appointment. That is for a reason, so that if something serious occurs, and there has been a threat to the orderly operation of justice, that you would use that independence for a good reason. And I do not know what the answer would be, but I think you should keep your options open.

Mr. MUELLER. May I respond to that, Senator?

Senator SESSIONS. Please.

Mr. MUELLER. I do not exclude the possibility that the circumstances would be such that I would feel it necessary to circumvent the ordinary course of proceedings by—which would be to go to the Attorney General first before I made perhaps a disclosure to Congress. But I am not precluding the possibility that given the necessary independence of the Bureau in investigation, that there might not come a time where one seeks an alternative where one believes that political pressure is being brought to bear on the investigative process. That may be somewhere else in the Executive, beyond the Attorney General. It may be Congress, but I would look and explore every option if I believed that the FBI was being pressured for political reasons. And if that were the situation as described here, I would explore other alternatives or a variety of alternatives in order to make certain that justice was done.

Senator SESSIONS. Well, we hope that we do not have that happen again, and I think you answered well.

Let me mention a couple of things that are important to me. Senator Feingold asked about the 16th Street church bombing case in Birmingham, where tapes were not produced to Former Alabama Attorney General Bill Baxley years ago, when he did the first prosecution of the case. And something I have written the FBI about. I would like to know how it was that decision occurred and why

those tapes were only produced recently. And to date, the answers we have gotten, I believe, are not satisfactory.

Will you look at that and give it a fresh look, and make sure that we have the information we need? And one of the things that I think Senator Grassley is raising in his use of the words "arrogance" and "defensiveness" is that sometimes you need to admit your error if there was an error. And I think it would be healthy to review that in a fresh way, and if an error was made, I would like to see you say an error was made.

Would you do that?

Mr. MUELLER. Absolutely, Senator.

Senator SESSIONS. Another matter that has come to my attention in recent months is that the FBI is building a new office in Birmingham, or wants to do that. The city of Birmingham has a redevelopment project. They have a piece of property that they want the FBI to build on for $800,000, but the FBI seems determined to go to a higher-rent district with a $5.5 million real estate purchase. I have questioned that. Will you look at that?

Mr. MUELLER. I will.

Senator SESSIONS. In fact, I will just, for my two cents worth, add here that I think 4.5 or more million dollars is a lot of money. I am not sure that all the millions being spent on high level security for the FBI buildings is justified. I do not know why a terrorist would want to bomb the FBI Building more than they would the Mayor's office in Birmingham, or the Senator's home that can be found in Alabama. So I just think we need to look at that. There is a lot of money going into setbacks and underground garages and all of this stuff, that to me, is hitting the taxpayers awfully hard. You may be able to save a lot of money for a lot of the things you need to be doing from the building budget if you will look at it.

Mr. MUELLER. I will.

Senator SESSIONS. Senator Feingold asked you about the coordination partnership between the United States Attorney and the FBI agents in working a case toward prosecution. I believe that cases go best when FBI and prosecutors work together handily. There seems to be some view that the FBI does the investigation and takes it fully complete to the U.S. Attorney. You have been the prosecutor for a long time. What is your view of the proper role and partnership between the investigative agents and the prosecutors?

Mr. MUELLER. As you mentioned, it's partnership, and the best cases are made with the FBI agents working closely with the Assistant United States Attorneys from the outset of the case, and it did not use to be the case 10, 15, 20 years ago, but it's much more the case today. That's exactly the way it should be done, and ideally, if it is a case that cuts across jurisdictional lines, you have the FBI working with other Federal or local law enforcement officers from the outset with the Assistant United States Attorney.

Senator SESSIONS. And with regard to your comments about the fact that everybody makes errors in a case, I think that was a good observation. Young FBI agents working their hearts out, are going to make some errors in some cases that they work on. There was this fear in years past that careers could be ruined if there were ever an error made. And I remember my Chief Assistant United States Attorney, and a great prosecutor, Ruddy Farb, would always

tell the agent, "Son, if you've got a problem, you come to me, and we'll tell the truth. And I'm not going to let them do anything to you over there." Because there was a concern that if they made an error, that somebody in the hierarchy would be too hard on them, for an honest error. Do you think sometimes that is a factor in the lack of willingness to come forward with and admit an error?

Mr. MUELLER. Yes. I do think that's a factor, and the bedrock principle ought to be to tell the truth.

Senator SESSIONS. The sooner the better.

Mr. MUELLER. Sooner the better.

Senator SESSIONS. As you said earlier. I started a task force dealing with bankruptcy fraud cases. Bankruptcy is a Federal Court matter. The Senate is moving forward on bankruptcy legislation now. Many people file false forms or they lie under oath, and they cheat legitimate creditors and hide money for themselves that should be going off to pay legitimate debts.

Will you look at making that a national priority? This is a Federal Court matter. The integrity of Federal Court is an FBI function of the highest order I think, and I think those cases should not be treated as some sort of little commercial dispute. Many of them are blatant fraud.

Mr. MUELLER. I—I will do so. I will tell you that in our district, we've got a—a close relationship with the Bankruptcy Court judges, and we take bankruptcy fraud seriously, and we try to do a number of them at the same time, so that the word goes out that you cannot lie, cheat or steal in Bankruptcy Court, for purposes of deterrence.

Senator SESSIONS. Absolutely correct. And I appreciate you saying that, and bankruptcy provides tremendous benefits for those who file bankruptcy. We simply ask them to tell the truth and not to cheat people by filing bankruptcy.

I know you have been involved over the years in public corruption, and you mentioned the rule of law. I am convinced that the American justice and legal system is one of the great engines of our progress, one of the great protectors of our liberty, that everybody has an equal right to bid on a contract. The low bidder should get it if they qualify. That people should not have to pay bribes or pay off politicians to get work and that sort of thing.

As a practical matter, it is my observation that it is extremely difficult for a state prosecutor or a state police officer to investigate a judge, or the mayor, or the state senator, or whoever. Do you feel that public corruption prosecution should be a high priority of the FBI?

Mr. MUELLER. It is, and it should be, always. Regardless of technological advances and the like, the FBI's role in addressing public corruption, as well as civil rights, for instance, it's critically important and should always be a top priority.

Senator SESSIONS. Well, in my tenure as United States Attorney, judges, mayors, county commissioners, all kinds of public officials were investigated almost exclusively by the FBI and prosecuted by our office. And I think there is a higher level of integrity today in the Southern District of Alabama than there was before that started. It has been a good thing for that district.

And one more question. You mentioned priorities. I remember when, under President Reagan and under, really, the driving leadership of Rudy Giuliani as Associate Attorney General, law enforcement coordinating committees were set up in each United States Attorney's district, and each one of those met with the top law enforcement officials there, and they studied the law enforcement problems in that district, and they made priorities for law enforcement in those districts. Local priorities did not always agree with the top priorities in Washington of the FBI. There was very little if any La Cosa Nostra in the Southern District of Alabama. And that was a top priority of the FBI.

Will you respect and give credit to FBI agents and supervisors who participate in the priorities of their district, even if they do not necessarily fit in with the top priorities in Washington?

Mr. MUELLER. I think that's always a problem with U.S. Attorneys who are in a particular district. Mine, the Northern District of California, is 3,000 miles away from the Department of Justice, but the Department of Justice and Headquarters have certain priorities. It's important to meld the priorities of the Department with the priorities of the particular district, both for the assistant—not the assistant—but for the United States Attorneys, as well as for the FBI.

And one of the things I would like to look at, should I be confirmed, is the setting of priorities and the allocation of manpower to address those particular priorities. I understand they're known as stovepipes. And often—not often—but occasionally, the allocation of priorities and stovepiping of personnel can detract from the effectiveness in law—of law enforcement in a particular district. And consequently, one of the things I would like to look at is how we can better incorporate the priorities in a particular district with the national priorities of the FBI, understanding that that was a problem as a United States Attorney.

Senator SESSIONS. It is a constant problem, as you know, and I think maybe one of your top four priorities ought to be local priorities, and something like that so that we do not have your agents in the FBI not getting proper respect, credit and recognition for cases just because they are not in the top national priority.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Sessions, and again, I appreciate you for standing by for the time to do that.

Senator Edwards.

Senator EDWARDS. Thank you very much. Good afternoon, Mr. Mueller, and welcome. I am pleased to have you here today. I have read an awful lot about you over the course of the last few weeks, and have been very impressed with what I have seen.

As my colleagues have talked about, I do not think we would ever want to understate the extraordinary achievements of the FBI over its history. But there are very serious problems, some of which I know have been discussed at length before I got here this afternoon, the Robert Hanssen spy case, the failure to turn over documents in the Timothy McVeigh care, the problems with laptop computers and weapons, cataloging those, keeping track of them. And I think these are very, very serious problems for an agency that we

consider the top law enforcement agency in the world. And I think they are unacceptable. I hope you view them as unacceptable also.

But I have great faith, based on what I have seen and heard, in your ability to go in and change the situation and help restore the reputation, the integrity of the FBI.

I have something, a very specific area I want to ask you some questions about today, which is the area of terrorism and counterterrorism specifically, something I have great interest in.

I have become convinced that terrorism presents the most serious security threat to our country over the course of the next decade. And while we have done a lot of good work in this area, there is still a lot of good work to be done to make sure our national security is protected against terrorism. And I have been actually, specifically, working on a set of proposals that address what I see as the issues raised by terrorism and the appropriate responses.

There are three areas that I would like to talk to you about this afternoon if I can. First is the issue of agency coordination. As I know you are aware, there are a number of Federal agencies that are involved in the issue of terrorism, but the FBI has a very important role in coordinating not only between the various Federal agencies, but also with state agencies and local officials. And one of the criticisms that has been raised by some in the administration, is the failure to effectively coordinate these efforts. I personally think some of that criticism has probably been overstated, but I think it is a serious question. I think the responsibility of the FBI to coordinate these activities is very, very important. And I am going to ask you to comment on that in just a moment if I can, but let me just mention the other two areas.

The second area which I think is also very important to our national security is the area of computer security and the threat of cyber terrorism. You know, one of the things that has happened over time is we have become increasingly reliant on technology to provide vital services in our community, you know, whether it is wastewater treatment plants or provision of power, electricity, emergency services. I mean there is a lot of good things that come from the use of technology. But unfortunately, it also creates the opportunity for a terrorist attack and a disabling, potentially, terrorist attack. I mean, a terrorist attack could cutoff power, major power supplies in some of the metropolitan areas of this country.

As I know you are aware, the NIPC, the National Infrastructure Protection Center, is located at the FBI, within the Counterterrorism Division, and it is its mission to detect, warn against and investigate potential threats to our critical infrastructures. Some have complained that since it is physically located there, although it is supposed to be an interagency operation, that the FBI has dominated it. I would comment just in passing that I think it is very important, as I discussed just a minute ago, in terms of having coordination between the agencies. It is also very important that that vital Center be well coordinated between the various Federal agencies.

And the third area is border security. In my State of North Carolina, along with a lot of other states, we face the unique challenge of trying to protect our seaports against the possibility of terrorism. And the FBI has a Joint Terrorism Task Force. They cooperate

with Federal, state and local agencies. They work together to keep borders and seaports safe. The role of these task forces, from what I have seen, is actually fairly loosely defined, but I think it is very important that we do everything in our power and that the FBI fulfill its critical responsibility in the area of protecting our borders and protecting our seaports.

So those are the thing I am concerned about. We all know how critical the FBI is to our counterterrorism activity. These three specific areas are things that I am interested in and concerned about, but if you would, I would love to have your comments about them.

Mr. MUELLER. I share your belief that the major threat that we have, and the threat that the Bureau needs to worry about most is terrorism, certainly in the foreseeable future.

The first point, agency coordination, the improvements that have been in the last 5, 6, 8 years in the relationship between the FBI and CIA, I think is absolutely critically important in terms of addressing the threat of terrorism, because unlike many of the crimes we face, it has a national as well as an international dimension. And when you—the FBI generally has jurisdiction of the border except in some unique circumstances where there's a terrorist attack and Americans are killed, but after that it's the CIA. And it's critically important that the decisionmakers in the United States have the benefit of the expertise of both agencies in a coordinated fashion. And I think there have been tremendous improvements there, and that is a foundation that I think we have to buildupon.

Likewise, the other agencies that have a role in counterterrorism we have to develop on the local level as well as on perhaps the state level and national level, the team concept of addressing terrorism, because often the intelligence will be at the local level. Some of the other intelligence will be at the state or the national level. And it's critically important that they be put together so that we have a view of the puzzle.

And so I will be supportive of the FBI participating in the local terrorist task forces. I think they have had tremendous successes. The one in New York has had successes over a number of years, and I think that's the way to do it.

Let me speak for a second about the cyber crime threat or the cyber threat to the United States. I have heard what you just alluded to, is that NIPC is perceived by some as not being as open to all of the participants as it should be. In order for any joint intelligence or law enforcement enterprise to work, there has to be a feeling of equality and total participation of each of the persons that are a participant in that task force. And to the extent that there is a perception that there is less than that in NIPC, then that is something that I would want to address.

It may be attributable to the fact of the location at the FBI. It may be attributable to the number of people. It may be attributable to leadership, but there are things that one can do to convince all of the participants that they are equal participants and have equal benefit out of that enterprise. And I would hope to be able to accomplish that.

Senator EDWARDS. And the third area was border and seaport security.

Mr. MUELLER. I had taken that in the context of the Joint Terrorism Task Forces on the local level. Often the Joint Terrorism Task Force has not only the FBI, but the local police, as well as Customs, perhaps Coast Guard participating, and in fact, INS in certain areas. And consequently, the FBI has to work with others, others whose responsibilities may be more primarily based on assuring the security of our borders, such as the Immigration or the Customs Service, or even the Coast Guard, where the FBI may take a lesser role, but it's still critically important for the FBI to play a role in that context.

Senator EDWARDS. Well, let me tell you, it is very encouraging to hear you say that you recognize what an extraordinary threat it is to our national security, this threat of terrorism. And that, obviously, the FBI plays a very, very important role in protecting our national security in that regard. And the fact that you are focused on it, and you consider it critical, I find very encouraging, and I look forward to working with you. Thank you, Mr. Mueller.

Chairman LEAHY. Thank you, Senator Edwards.

And we have been joined by Senator Schumer, who will go next. I understand Senator Schumer may have been welcoming a new constituent to the city.

Senator SCHUMER. I was indeed, Mr. Chairman. It was a great—it was a great moment. He has kept his touch, and they had 20 saxophonists on stage playing "Stand by Me." It was a great time.

Chairman LEAHY. And he found a parking space? I always understood it was a difficult thing in New York City.

Senator SCHUMER. My wife is the traffic commissioner, so I will try to put in a good word, appointed, I would remind my Republican colleagues, by Mayor Giuliani. Back when she was appointed she said, "I would like to thank the Mayor for showing faith in me and my abilities despite the baggage I carry."

[Laughter.]

Senator SCHUMER. And I was truly baggage. Anyway, thank you, Mr. Chairman, and I want to thank you for holding this hearing and just for your general—I mean, I think our committee has had a great start, not to denigrate the time that we had under our previous chairman, but it is off to a great start under your leadership. We are really doing many, many things in many different areas, and I think we all thank you for that.

I would like to thank Mr. Mueller for being here and for his time.

Mr. Chairman, I have made no secret about the sort of person I think we need now at the FBI, and that is someone devoted to both the rule of law and being an outstanding manager. If Richard Jewell and Wen Ho Lee raised questions about the management of investigations, the McVeigh documents and the Hanssen affair raised questions about the management of internal information. And now we even have questions about whether the Bureau can manage its own guns and its computers.

The common thread here is management, which is why I believe we need a person with administrative experience and the willingness to take on sacred cows. I have great confidence that Bob Mueller is that person. I believe that the FBI's employees are top notch, as top notch as they have ever been, but an Agency that has had to expand its field of endeavor very quickly, I heard as I

walked in, my colleague, Senator Edwards talking about terrorism, something the FBI did not really have as a major item of its agenda, counterterrorism, until the early 1990's, and as it has grown larger, it has not been managed as well as it might.

And so I applaud Mr. Mueller's selection, somebody who knows the Agency, who is a no-nonsense prosecutor, who seems to, in his career, been apart from any political considerations. I think Mr. Mueller is just what the doctor ordered. And I think, at the same time, he will reinforce the strength of the personnel, and buck them up, and keep them solid and keep them strong. And so I think it is an excellent choice, and I applaud the President for choosing Mr. Mueller.

But while I applaud the selection, I think it is only the beginning of what we need to do to change the FBI, not the end. While Bob takes the reigns and begins to grapple with the day-to-day reality of running the Bureau. Senator Hatch and I, and I know my colleague has talked about this a little bit, but we believe that the FBI could also benefit from a more global and thoughtful review by outside independent law enforcement experts. Bob will be in the midst of the trees, and somebody else may have to be looking at the forest, a view from the outside, a view from the top.

We have introduced the FBI Reform Commission Act, which will set up a blue-ribbon commission to thoroughly examine all aspects of the FBI's operation, structure, information management, oversight, training and culture. The commission will then recommend systematic reforms for consideration by Congress and the Bureau. Our proposal is beginning to gain cosponsors. It is obviously bipartisan, sponsored by two people who care a lot about this agency, and I hope that we can take it and other bills on the subject up soon. This is not an examination of one particular mistake or a series of mistakes. It is, rather, a top-to-bottom overview of where the FBI has been, what it ought to be, and where it ought to go.

In the meantime, Mr. Chairman, while we hopefully wait for that type of commission if our law passes to come up with its recommendations, turning over the keys to Bob Mueller is a great start, as I mentioned. Anyone who has the support of both Senator Boxer and Attorney General Ashcroft has to be doing something right.

I have known Mr. Mueller for many years. When I chaired the Crime Subcommittee in the House, Bob was head of the Criminal Division in the DOJ. We worked well together on part of the BCCI case and a variety of other matters. I admire his heroism as a decorated Marine, his stellar career as a front-line prosecutor of everyone from the Hell's Angels to East German spies, but at this particular moment it is even more important that Mr. Mueller has significant management experience, more than any of his predecessors. He has run a variety of different offices, large and small, in the Agency, oversaw the investigations and prosecutions of Manuel Noriega, John Gotti, Pan Am Flight 103 and BCCI.

So I think he is a great choice, and to boot, I guess we can claim you as a New Yorker. I do not know if you have spent more of your years there than in any other State——

Mr. MUELLER. A couple of days, actually.

[Laughter.]

Senator SCHUMER. A couple of days. But we will take credit——

Chairman LEAHY. He is going to vote for you anyway, so do not——

[Laughter.]

Senator SCHUMER. Mr. Mueller has been called shy, low key, and someone who shuns the limelight, but at the same time tough as nails and no nonsense. For an agency in desperate need of results, not just headlines, that is exactly the right mix.

Let me conclude by restating my view as somebody who has supported the FBI throughout my career that the FBI may be a little bit down, but certainly not out. We expect it to come roaring back. It is an agency, as I said—I said it before, but I would repeat it—it seems its parts are greater than its sum right now. The individuals are just terrific. Somehow, when you put it all together, it does not quite work as well in many areas as it might, but I am confident, under Mr. Mueller's leadership, it will be. It is still the gold standard in law enforcement, and with only rare exceptions, as I said, its 11,000 agents are as dedicated, trustworthy, and effective as ever. I believe the FBI will turn the corner.

With that, Mr. Chairman, I want to thank you for allowing those of us who could not be here exactly on time to make opening statements. I will ask a few questions, if I have a little time left. I take it we are getting 10 minutes now.

Chairman LEAHY. Yes.

Senator SCHUMER. Great. Thanks.

As I have discussed in my opening statement, Senator Hatch and I have introduced a bill that would set up this independent blue-ribbon commission to take a top-to-bottom look at the FBI and examine global issues, like structure, information management, oversight, training, culture. We think this kind of broad view would be helpful to you as you get started because you are going to have to bear down on the day-to-day job of running the Bureau, while the commission will have the luxury of focusing on the broader institutional and cultural issues that may have given rise to recent problems.

This commission is intended as a friend of the Agency, not as an adversary. What I would like you to do is comment on our bill and tell us what you think a commission like this should focus on.

Mr. MUELLER. Senator, I must say at the outset that it is the administration that determines whether there is support for a particular bill. I can also say at the outset that I have reached out, and will continue to reach out, to—not just persons in the Bureau, but persons who have been in the Bureau previously, but also persons in large corporations, CEOs, who have run successful corporations to try to identify those management structures that worked well and would work best at the FBI. I, also, am looking forward to receiving the report of the consultant firm that is charged with looking at the FBI from top to bottom.

All of that being said, however, I would welcome the insight from any other individuals, assuming it is a combination of individuals with experience in management and private industry, law enforcement, and other walks of life to, again, look at the Bureau and give me advice and other top management, advice as to how the Bureau should be improved.

Senator SCHUMER. Thank you. Thank you, Mr. Mueller, and hopefully we will give you that type of commission, and that is the kind of open-minded approach that I think we need.

Let me turn to another area, something that has recently happened in the Justice Department that has troubled me greatly. Attorney General Ashcroft recently announced a major policy change with regards to records of gun sales known as NICS, the NICS audit logs, and these records are needed to investigate battle-apple firearm dealers intent on putting guns in the hands of anyone who will pay, including convicted felons, the mentally ill, people who commit domestic violence.

The records are also essential. There is virtually no other way to catch a straw buyer, somebody who pays someone else who doesn't have a record to go buy the guns for them. Until now, these records were maintained for 6 months. The Attorney General decided they should be destroyed almost immediately within 24 hours. A, there appears to be no good reason for this change in policy. I do not know anybody who has shown any abuse of the system.

And, second, when we came out with this report a couple of years ago that 1 percent of the dealers put 50 percent of the guns used in crimes into circulation, I thought it was a major breakthrough because the people I had opposed on the gun control issue had always said enforcement should be No. 1. We do not need more laws, we need enforcement. And here was something that almost vindicated them. It did not say every gun dealer was bad. It did not say most of them were bad. It said there were a small number of bad apples, and if you went after them, you could prevent bad people from getting guns and allow law-abiding citizens who wanted to continue to have guns to have them, a policy that I have always supported.

And now all of a sudden we are just destroying the ability to go after those bad dealers. And the kind of grand compromise that I was hopeful that this Justice Department, and this President, and this Attorney General could put together seems to be going out the window because there is a group of idealogues who are against all records, even though we hold IRS records for a very long time, we hold just about every other record for a very long time.

So I realize you have not been present for the discussions on this policy shift, but several well-placed sources have informed me that the FBI opposed the Attorney General's decision to destroy these records so quickly and that opposition was generated out of a simple concern that destroying NICS records will handcuff law enforcement.

Are you aware, at all, in your stint as an adviser to the Attorney General, about the FBI's position on this? I realize they would not take an official position, but an informal position or informal positions that others in the Justice Department may have taken?

Mr. MUELLER. No, I am not aware. The positions have not been part of the policy. I do have some concern I will tell you about one thing that you have said, and that is that sources have told you sort of outside the mainstream as to what somebody in the Bureau thought. That bothers me, I will tell you, because—and I will tell you some of the reasons why it bothers me.

I do believe that there's a difference between a policy debate and the basic investigative work of the FBI. And the basic investigative work of the FBI, in my mind, should be objective, it should be without any political influence, and without—and in order to have credibility, cannot be seen as favoring one side or the other.

Senator SCHUMER. Right.

Mr. MUELLER. On the policy side, I do believe that the President and the Attorney General have the right to make policy. They can ask the FBI for input into that policy, but I have some concern about the FBI being made a political football in a policy dispute because I do think it may well undercut the credibility of the Bureau when it comes to needing the credibility of the American people to believe that the FBI investigates facts objectively and without any political influence.

Senator SCHUMER. Yes. No, I certainly agree with you that there is a great difference between the ability to investigate and the ability to make policy. But on a policy as important as this, this is not just solely the responsibility of the executive branch, and that type of information would be very useful to my colleagues here. We have been trying, at least I have, and I think there are others who disagree with me, to bridge this gap we have had on guns. This was an important way to maybe do it.

And so the fact that the President made a decision, I respect that, but I do think it is perfectly within the prerogatives of those of us on this side of Pennsylvania Avenue to know all of the policy recommendations, pro and con. This is not an issue of national security. It is a policy debate. If anything, the security of people may end up on the other side. So I don't have a problem with that.

We requested the documents, Senator Kennedy and I, another member of the committee—I do not know if he has been here today—from Department of Justice and FBI last week. Do you see anything wrong with us being given those documents?

Mr. MUELLER. I am not familiar with the request or the documents, but I do believe that the Bureau should do everything possible to accommodate the requests of Congress. If there are documents that relate to the policy, that are generated by the FBI, then I believe the Department of Justice and the FBI should do everything possible to accommodate the request of Congress, consistent with its law enforcement responsibilities.

Senator SCHUMER. Well, I hope we can work together on this issue, and I hope maybe that—you cannot publicly do that, but you can quietly be a voice within the FBI and within the Justice Department to prevent a decision like this from taking effect. If not, we are going to try to legislatively deal with it.

I do want to ask your judgment, not on the specific issue, but generally, as somebody who has had such a depth of experience, which is one of the reasons many of us here are so fond of the choice of you as director, does it not make sense that destroying these records quickly could—I am not saying will—but could subvert the FBI's effort to keep guns out of the hands of criminals and go after the bad dealers?

Mr. MUELLER. It could. I am not familiar with the debate or what evidence there is, what study there has been of the impact of the change, but, yes, it could.

Senator SCHUMER. Thank you. I appreciate your candor there. Let me go on to another subject, if my time has not yet expired.

An issue that is of great concern to me is those—I am pro-choice, as you know. I passed a law in the House. It passed here in the Senate called the FACE Act, which I did not regard as pro-choice or pro-life. I regard it as pro-law. That people who believe they had a message from God that was different than the message that others of us have received should not take the law into their own hands, blockade clinics, protest, yes; blockade, no, and of course not threaten doctors, et cetera.

Can you commit, and I asked the same question of Attorney General Ashcroft, when we were examining his nomination, can you commit to keeping the same level of intensity and funding of personnel when it comes to investigating the kinds of crimes of violence, threat of violence at these pro-choice clinics, these family planning clinics as was maintained under your predecessor? I do not even know what Director Freeh's views were on choice, but I know he was committed to doing this, and did.

Mr. MUELLER. Yes, I am committed to enforcing all of the laws and allocating the manpower to do it in critical situations.

Senator SCHUMER. Thank you.

My time has expired. I thank the chairman for his generosity.

Chairman LEAHY. Thank you.

Mr. Mueller, so that people can plan, of course, we will stop if questions stop, but otherwise we will recess at 5 o'clock because we will have votes this afternoon. I know some Senators want to go to the floor prior to the vote. Some of the FBI's problems could be part of management structure has become too unwieldy. I am trying to think back when you gave your opening statement, you sort of spoke about management being possibly out of control or spun out of control I believe were your words.

We have the former New York police commissioner and then Customs Commissioner Ray Kelly testify at our hearings that a regional structure can make a large law enforcement organization more manageable—they can be reporting to regions rather than everybody reporting to headquarters—and probably provide more effective oversight of field operations than simply having a periodic multi-year review.

Well, and I do not expect you to tell us that if you are sworn in next week how you are going to totally reorganize the FBI, but is this something that would be considered?

Mr. MUELLER. Absolutely. I did read Commissioner Kelly's testimony with some interest, and I know he suggested that you have a regional structure with a West Coast, I believe, Mid-America and East Coast some form or regional structure. As I did indicate in my opening statement, the span of control is a substantial issue.

I would look at that proposal with a view to whether it goes toward affording appropriate span of control. But on the one hand, I do not want to put in place yet another level of bureaucracy. So I would look at it, consider it, and see whether that is what we need to assure effective span of control.

One of the contributing factors to ability to manage is to have the software and the information immediately accessible to you, and I would hope to have the technological infrastructure be such

that I would be able to review, as would the intermediate managers, review the work on critical cases or critical classes of cases by turning on your computer and using the mouse to click on a series of cases to see what has been done the last 3 days, what you expect to be done in the next 30 days.

When you are talking about span of control, it is a combination of putting in place, in my mind, a management structure, but also having the tools that give you transparency all the way down to the field level.

Chairman LEAHY. I think that probably the most notable case on this, and this actually goes to everything from the level of control, but also what the equipment and computers are for document retrieval. Of course, it would be the Timothy McVeigh case, something you and I have already discussed. But here is a case of a horrendous crime, I would say one of the most serious crimes that I can remember in my lifetime here in the United States. Anybody watching that trial realizes there is no question of McVeigh's guilt. He ultimately confessed to having done this.

The FBI did a magnificent job of pulling together pieces of this, that, and the other thing. It sort of made me think some of the reconstruction they did, something you are very familiar with, the Pan Am 103, finding even the tiniest of things, and doing something that only an organization like the FBI could do.

But then we had this situation where the director of the FBI sent a very clear order, and I believe followup orders, that all materials were supposed to be turned over to the prosecution. Director Freeh did the absolute right thing in doing that. Whether people liked the discovery order or not, it had been agreed to and there we were. But yet, just before the execution, it was found that this ordered was not followed out, putting Attorney General Ashcroft in a very difficult position. He had no question about Mr. McVeigh's guilt, nor do I, but he had to hold off the execution for a month, and I think justifiably, to restore credibility to the system.

Now, you were involved in that, and you and I have discussed this involvement. The weekend press raised a question whether you had responded quickly or not. I am certainly satisfied with the response that you gave me in our meetings, but I just wonder if you might want to go into that.

What were the problems that you saw in getting the order carried out, No. 1; and, second, how did you determine the time line of when to notify the Attorney General?

Mr. MUELLER. As to the contributing factors to that, I think there are two: One is the lack of an infrastructure to have all documents coded and readily available to be produced with—in that particular case. And there was a huge volume of documents spread around any number of offices in this country and internationally, and certainly if we had had the computer capability, it would have been much easier to assure that we had all of the documents.

A second aspect of it, I believe, was accountability. And one of the issues that I think I do see is overlapping areas of responsibility in various areas of the FBI. And when you have overlapping areas of responsibility, it is very difficult to have accountability. And I believe, in that instance, we saw perhaps a failure of accountability down to the lowest levels.

And one of the issues that I do wish to address is to ascertain where there are those overlapping areas of responsibility. It has been my practice in the past to identify areas of responsibility, put somebody in charge of that area of responsibility and hold that individual accountable for discharging that responsibility. And I want to make certain that where that is done within the Bureau, there is clear accountability.

Turning to the issue of the time line, upon hearing about the issue, I heard about it I believe on a Wednesday afternoon. On that Friday, the decision was made to put over the execution of Mr. McVeigh. When I heard about it on a Wednesday afternoon, the initial response, and I believe I talked to the prosecutor that night or the following morning, the initial thrust of what I was concerned about is to make certain that defense counsel were aware of this immediately so that defense counsel could make its or their own interpretation of whether these documents contained any Brady or exculpatory information. It was the belief of the agents and the prosecutors that there was no exculpatory information there, but I did believe that it was important that the defense counsel have adequate opportunity to see it and wanted to make certain that they were given the opportunity. And as soon as any document was retrieved thereafter, it was turned over to defense counsel.

I was not aware, I don't believe, at the outset the extent of the commitment to turn over documents until the following morning. And I actually had brief discussions with Mr. Ashcroft's staff on Wednesday afternoon, I think it was, about it, but I did not have an opportunity to fully brief the Attorney General until the following day, at which point I did have an opportunity to brief him more expansively than the fact that I had mentioned previously to his staff, that there was an issue. And, thereafter, the discussions ensued as to what was the appropriate response we would take to the fact that these documents had come to our attention.

Chairman LEAHY. My last question, and then I yield to Senator Hatch: I remember as a young prosecutor going to a briefing by the FBI. They had come to Vermont to brief a number of prosecutors and others in law enforcement, and seeing this great chart, organizational chart, they had, which had then-Director Hoover, and with a line down to the President, and a line down to the Attorney General, and I guess to the rest of the Government. It was the first time I heard the expression "SOG" or Seat of Government, which was not Washington, but was wherever the FBI headquarters were at that time.

I then recollect later on, when I was vice president of the National District Attorneys' Association, going with the president of the NDAA and a former president to meet with Mr. Hoover, and subsequently with Attorney General Mitchell that day, and seeing a number of editorial cartoons in the director's office, most of them very critical of past Attorneys General, all praising Mr. Hoover, and excoriating past Attorneys General and Presidents, with the exception of Mr. Mitchell, who was currently Attorney General, but probably would get his turn eventually.

It made a lasting impression. I will not go into other aspects of that meeting, but it was obvious, of course, the FBI director and

the Attorney General have not always had a close relationship, and that has occurred even more recently.

How do you see your relationship with the Attorney General, not only the current Attorney General, but as I think Senator Specter and others have pointed out, you have a 10-year term, with subsequent Attorneys General?

Mr. MUELLER. This is the most difficult issue I think that a director of the FBI has to address, in that the FBI has its ultimate responsibility to the American people to be independent, to pursue its investigations without any favor to one political party or the other or to any particular individual, no matter how powerful that individual should be.

And on a day-to-day basis, on the other hand, I do believe that, absent extraordinary circumstances, the director of the FBI, and the FBI, is a component of the Attorney General—or not the Attorney General—of the Department of Justice, reporting to the Attorney General. And there should be a close relationship on, for instance, policy matters, there should be a—there is a reporting structure, and there is a requirement in almost every matter that the Attorney General be apprised of that. And, again, I report, in essence, to the Attorney General and then to the President.

There may be circumstances—there have been in history—where it is important for the FBI and the Director of the FBI to put the people above that reporting structure and the interests of the people above that reporting structure. And I hope that I do not have occasion to meet such a situation, but there is the possibility, perhaps even the probability, that I will.

If there is an occasion where I believe that for reasons of political influence or the influence of the powerful that the Bureau is asked to do something that is inappropriate, wrong under the Constitution, that under those circumstances I have an obligation to find a way to address that. It may be going elsewhere in the administration. It may be going to Congress. It may be going to the American people. I don't know what the exact answer is. But I hope I do not have to face that situation because it will be the hardest decision that I, should I be confirmed as Director, would have to make.

Chairman LEAHY. Your answer may be a model answer for all your successes. I appreciate the answer.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman. I think I will reserve my time and go to Senator Specter.

Chairman LEAHY. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Mueller, there have been many, many requests made to the FBI and a long litany of letters. Let me summarize them with just one which I wrote to Director Freeh on November 30, 1999, when I chaired the subcommittee on Department of Justice oversight. "I am very much concerned about the repetitive problem that the FBI fails to produce records that are then discovered at a much later date. I know you will recall the incident in September 1997 when the CIA advised the Governmental Affairs Committee of certain information in FBI files concerning foreign contributions which the FBI had not disclosed. There was a hearing in the Intelligence

Committee where a lot of chairs were broken over that. A Senator had made a request for information from the FBI. The FBI had not disclosed it. And then the CIA found in its files the information which they had gotten from the FBI that the FBI didn't know that it had. I would like you to take a look at that specific instance."

Then the letter goes on. By letter dated November 24, 1999, I wrote asking for an explanation about the failure of the FBI to turn over records pursuant to subpoenas in the Ruby Ridge hearings. "With respect to Waco, there has been a series of belated disclosures. Last August, it was disclosed that incendiaries had been fired at the compound contrary to Attorney General Janet Reno's previous testimony. Shortly thereafter, the FBI discovered extensive documents in Quantico which had not been previously disclosed. A few days ago, the press reported another incident where the FBI found documents long after they were supposed to have been produced, some 4 days after the Department of Justice attorneys had advised a Federal judge in Waco that there were no such records. The Department of Justice has recently advised that Attorney General Reno's testimony before the Judiciary Committee on June 8th was incomplete because she did not have access to certain FBI records. Similarly, Mr. Neil Gallagher has sought to correct his testimony before the Governmental Affairs Committee on June 9, 1999, because he was not aware of certain FBI documents when he testified. On the eve of our Judiciary Subcommittee hearing on Wen Ho Lee on November 3, 1999, we were given important documents at the last minute, which had been in the FBI files since November 19, 1997, and December 10, 1999."

I would ask unanimous consent that the full text of the letter be put in the record.

Chairman LEAHY. Without objection.

Senator SPECTER. And the full text of the letter of January 3rd to Director Freeh from me be put in the record.

Chairman LEAHY. Without objection.

Senator SPECTER. Along with the memo of December 9, 1996, which I asked you about before, which had not been put in the record.

Chairman LEAHY. Without objection.

Senator SPECTER. And the reasons given by the FBI consistently are that there were pending investigations. The Wen Ho Lee matter, which is very elaborate, and that I will try to deal with tomorrow, because it is so extensive, was not responded to by the FBI for a whole series of reasons. Every time the matter looked as if the FBI would respond, the FBI didn't respond. There was a search warrant executed in April 1999, and then the matter was held in limbo until December 1999 when Wen Ho Lee was indicted, manacled, placed in solitary confinement, and we still haven't had an answer as to what occurred which made such a radical change for the man being at liberty and then being treated as a greater menace than Public Enemy Number One.

Let me summarize the law which is set forth by the Congressional Research Service, from April 7, 1995, and this is all obviously something that you have access to, but I just want to read a couple of extracts, fairly long, but I think they are very, very important.

Congressional Research Service: "A review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years from the Palmer raids in the Teapot Dome to Watergate, and through Iran-contra and Rocky Flats, demonstrates that DOJ has been consistently obligated to submit to congressional oversight regardless of whether litigation is pending so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere." And I am skipping some.

"In the majority of instances reviewed, the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken formally or informally, and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, the investigating committees were provided with documents respecting open or closed cases that includes prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations, and the surveillance and arrest of suspects and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar sensitive materials."

My first question, Mr. Mueller, is: Do you agree with the Congressional Research statement as to the applicable law on what Congress and this committee would be entitled to obtain by way of oversight?

Mr. MUELLER. It was an awfully long statement. The thrust of it that——

Senator SPECTER. And I only read a small part.

Mr. MUELLER. I absolutely agree that Congress is entitled to oversight of the ongoing responsibilities of the FBI and the Department of Justice. You mentioned at the outset the problems that you have had over a period of getting documents in ongoing investigations. And as I stated before and I'll state again, I think it is incumbent upon the FBI and the Department of Justice to attempt to accommodate every request from Congress swiftly and, where it cannot accommodate or believes that there are confidential issues that have to be raised, to bring to your attention and articulate with some specificity, not just the fact that there's ongoing investigation, not just the fact that there is an ongoing or an upcoming trial, but with specificity why producing the documents would interfere with either that trial or for some other reason or we believed covered by some issue of confidentiality.

And if I might add, Senator, when I was here before in the Criminal Division, we had two cases where Congress was exercising, justifiably so, its oversight responsibility, BCCI and BNL, and we reached the accommodation or the accommodations specified or described in the excerpt which you read. And I would expect that we would always have that ability to accomplish the accommodation that is necessary for Congress to discharge its responsibilities in oversight.

I might also add, with regard to your previous questions, the ones that you had the last time, that I do not believe that it would

be appropriate to withhold a memo on the basis that it would in some way interfere with the relationship between me and anybody else in the administration.

Senator SPECTER. Well, are you now saying, Mr. Mueller, that you would, in fact, have turned over this memo of December 9, 1996, on your own to the Senate oversight committee?

Mr. MUELLER. I am not saying, Senator, that on my own I would have turned that over. I certainly believe that it—that it could have and perhaps should have been turned over with appropriate redactions. But if the Senator is asking me if the information in that memorandum was such that I, without going through the Attorney General or talking to anybody else, should go to Congress, I can't say with definitiveness now at this time I would. I have said that I can see that there might be occasions where I do not believe that the independence of the Bureau is served by bringing to the attention of the Attorney General some matter because of the possibility of political influence and that I would have to seek some other recourse. And that recourse might well be coming to Congress sua sponte or might well be going to elsewhere in the administration. But I cannot put myself, without all the facts, back into the position of the decisionmaker at the time of the drafting of this memorandum and say with you right now concretely that I would have come to the committee without going through the Attorney General or taking some other route.

Senator SPECTER. Well, when you say you would not do it on your own, or the Latin expression, sua sponte, the committee, the Judiciary Committee, couldn't ask you about pressure on the Department of Justice subordinates because the Attorney General's job might hang in the balance, which is the language in this memo. This is something that would have to be disclosed by the FBI Director who knew about it. When you say that you would not decline to do so because of an embarrassing relationship, you are coming part way, but you are still not saying enough to make congressional, Senate oversight worth a tinker's dam.

If this committee, if those two men, the chairman and the ranking member, can't have access to this memorandum, I don't think Senate oversight is worth a tinker's dam.

Mr. MUELLER. I am making a distinction, Senator, if I might, between a request from the Senate for that memorandum, in which case I would believe that it quite probably should and would be turned over, and at the time of this—and the distinction being—and the situation where the information of this memorandum or the information described in this memorandum is in the hands of the head of the FBI Director. And the FBI Director, if that's what you're asking me, without going through the Department of Justice, without taking any other step, goes directly to the oversight committee. I'm making that distinction. I'm saying in the case where there has been a request for this memorandum, I would expect that the request of the committee to get this memorandum would be accommodated.

Senator SPECTER. Well, Mr. Mueller, that doesn't answer the question at all.

Chairman LEAHY. I have a feeling the Senator will probably be going back to this question.

Senator SPECTER. Well, I hope not. Mr. Mueller brought it up. I didn't. Mr. Mueller chose to reopen the question. I didn't. I'm on a very different point, which I'll come back to tomorrow since the red light is practically burned out over there.

Chairman LEAHY. Well, I hope the Senator knows I have tried to give him as much leeway and will continue to.

Senator SPECTER. I am not unaware of that. I used to have the gavel on Ruby Ridge and extended to Senator Leahy—as a matter of fact, sat right here during the Ruby Ridge hearings.

Chairman LEAHY. Could I suggest this, that prior to the hearing tomorrow, that maybe the nominee and the Senator from Pennsylvania may want to chat to make sure that we are not talking at cross-purposes. I think the Senator from Pennsylvania is asking a perfectly valid and important question. I believe that the nominee, though, is also in a situation where he is trying to give a very clear idea of what would be his conduct and what would be his touchstone during tenure as head of the FBI.

I think this is very important because I don't think there is any question but that Mr. Mueller will be confirmed. But I also feel that the Senator from Pennsylvania has asked a very valid question, and I am wondering if maybe the two could make sure we are both speaking on the same level and then get an answer.

Now, maybe it will be an acceptable answer, and maybe it will not, but at least make sure we are both speaking on exactly the same level. Would that be fair?

Senator SPECTER. Mr. Chairman, I would be glad to do that. This is not a matter which I am posing to Mr. Mueller for the first time today.

Chairman LEAHY. I understand that.

Senator SPECTER. We talked about it, and then I called him up last week to talk to him about it further, because I am not—to have a meaningful answer, it has to be something that the Director-designate is focused on.

Let me just say this, and we will pick it up privately, and perhaps again on the record. When you say you would respond to a request, again, if we don't know about it, we can't make a request. This was turned up by the FBI in response to a broad-ranging subpoena on the LaBella memorandum, which is another item we couldn't get from the FBI, like pulling bicuspids. And when you say you wouldn't disclose it on your own without going through the Justice Department, the Attorney General, I respect that. I think you ought to go to the Attorney General, that you ought to say, Attorney General Reno, this memo was in the file, and I think it ought to go to the Judiciary Committee.

And fine, but if she says no, I think you have got the duty to turn it over. You have got a 10-year term. You have got more power than the Attorney General, and we found out earlier today, you have got more power than the President.

Chairman LEAHY. Gentlemen, we understand—go ahead, and this will be the last word.

Mr. MUELLER. I agree. I should go through the Attorney General to try to get it disclosed. I agree with you on that, Senator.

Senator SPECTER. But if the Attorney General says no——

Chairman LEAHY. Now, gentlemen, if there's further——

Senator SPECTER. If the Attorney General says no——

Chairman LEAHY. Gentlemen, if there's further questions, I would ask the two to make sure they are fully understanding what each are asking, and I do know the Senator from Pennsylvania has asked his question privately before. Let's hold that for tomorrow because this is too important an issue, and I think the Senator from Pennsylvania has asked a very important question. It is too important an issue to have any doubt in either person's mind what it is. And if the Senator would be willing to do that, I would appreciate it.

Senator SPECTER. I will repeat my affirmative reply. I hate to repeat myself, but it is yes, again.

Chairman LEAHY. I appreciate that.

The Senator from New York, who will have the last word on this, and then we will recess.

Senator SCHUMER. Thank you, Mr. Chairman. Just one question, a general question.

It is generally regarded, maybe incorrectly—I don't think so; I hope so, but I don't think so—that the FBI has some trouble, trouble that it didn't have 10 or 15 years ago, I guess, maybe even 5 years ago. And many of us who, as I said, have been friends of the FBI scratch our heads and say, What is the trouble? What is the cause of it, et cetera?

Would you just care, so we can understand your thought process, what you think is—why have there been so many more, quote, mistakes, public mistakes than in the past? Why is that friends of the FBI feel compelled to say we ought to look at it in a new way? What do you think—just a general question, which you can take where you like, what do you think has happened? Why isn't it—why is there—I don't want to prejudge the question, but is there some trouble? And what do you think is causing it?

Mr. MUELLER. I do think there are things that need to be changed. I basically believe that the FBI has outgrown its management structure, that over the years there have been a number of responsibilities that have been laid on the shoulders of the FBI, and the response, quite understandably, is to put more special agents on it. But at the same time, there has not been a similar buildup of the support of not only the special agents but the management and the leadership within the FBI to support the additional manpower. And, consequently, there has been an erosion of management oversight. There has been an erosion, I believe, of accountability. There has been a—how do I want to say—an erosion of clear responsibilities within—for accomplishing certain things and in some large part that failure to keep the management structure or to have a management structure adopted to the new responsibilities of the FBI has contributed to the mistakes.

Senator SCHUMER. So you don't disagree with the analysis that, if not the top job, one of the top jobs is the management structure?

Mr. MUELLER. I don't disagree with that at all.

Senator SCHUMER. And you believe that the personnel that they are getting to apply, the newer, younger ones, are every bit as qualified as the old-timers who have been there a long time?

Mr. MUELLER. Yes, they are superb. And, again, the agents and most if not all of the managers I have had occasion to work with

are dedicated, hard-working, respectful, and respected law enforcement individuals.

Senator SCHUMER. Right. One more question. You know, it seems to me that when the FBI takes a particular task, it still does a great job. I mean, I am familiar with the terrorism one because I had been calling for them to do more on it, and then the World Trade Center, we had that terrible accident in my city, and they did a great job. They had to shift resources. And you haven't heard of flubs in that area. In fact, you have heard of great successes, the most recent when they found that fellow coming through, I think it was, Vancouver over the American border, and they could have saved thousands of lives or hundreds of lives by what they did.

So it seems when there is a focus, they still do every bit as excellent a job as they always did. Are there some places that have lost some parts of the FBI, where that focus from the top has been lost or the mission is not clear or has become dissipated? Is that one of the problems, too?

Mr. MUELLER. Well, I think you—in brief answer to your question, I think one has to continually look at the priorities and map out the manpower and where your manpower is within the organization and where it's going to be 5 years down the road. But each one of those successes—each one of those successes has taken and drained resources from the FBI. The World Trade Center bombing, the African embassy bombings, the McVeigh bombing—all of those have taken resources and the FBI has thrown resources at those particular incidents, as well as others, and done a superb job in investigating and supporting the prosecution of it.

What does not come and is not publicized is when you're taking those resources, you are not filling in the back side. And what has been sacrificed is the infrastructure, the support that is necessary for the day in, day out FBI agent to do the job and perform its responsibilities.

Senator SCHUMER. That is a great answer. It is one that seems consonant, at least from my outside view of what is happening.

Mr. Chairman, thank you.

Chairman LEAHY. Thank you. I thank all the Senators for their cooperation, and I especially thank Mr. Mueller and his family.

We will stand in recess until 10 tomorrow morning.

[Whereupon, at 4:39 p.m., the committee was adjourned, to reconvene at 10 a.m., Tuesday, July 31, 2001.]

NOMINATION OF ROBERT S. MUELLER, III TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

TUESDAY, JULY 31, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Biden, Kohl, Feinstein, Durbin, Cantwell, Hatch, Grassley, Specter, and DeWine.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. So we can reconvene, let me just say how we will proceed. We will begin with the two Senators from California who will give the formal introduction of Mr. Mueller. With their airplane schedules yesterday and because I started somewhat earlier than usual—because we are in what we hope is the last week of the session before the August recess—they would have had to interrupt the hearing to do it yesterday. We thought this would make more sense.

I spoke with Senator Specter, and I know he has met with Mr. Mueller and will have a series of questions. We are trying to organize the time for that. Senator DeWine is here. Senator Grassley I believe is going to come right after the introductions, when we will actually begin the questioning. Senator Hatch is, as so many times happens, at a Finance hearing where there is a person from Utah who is up for a confirmation and is to be introduced.

So having put some of that on the record to describe what is going on, I am delighted to yield to Senator Feinstein, who is a valued member of this committee. We will hear from her first.

Senator Feinstein, we are delighted to have you here, and I do appreciate the information you and Senator Boxer have given me in the discussions I have had with both of you about Mr. Mueller. They have been extremely helpful.

Senator Feinstein?

PRESENTATION OF THE NOMINEE BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I am very honored to be here today to say a few words about Robert Mueller,

the President's choice to become the next Director of the Federal Bureau of Investigation. I strongly believe he is the right man for the job and the times.

The job of FBI Director is not an easy one under any circumstances. The Director oversees 11 divisions and 4 offices at FBI headquarters, 56 field offices, 400 satellite offices, and more than 40 foreign liaison posts. The Director will oversee a budget of more than $3.5 billion per year and will supervise more than 11,000 special agents and 16,000 support personnel.

But the person who takes over the post of FBI Director this year is going to face an even more daunting challenge. Overall crime rates may have gone down, but criminals have never been so sophisticated or enterprising. New and ever-involving developments in technology make it easier for criminals to evade and even monitor law enforcement agents who are looking for them.

Terrorist cells, drug cartels, and other sophisticated criminal organizations are becoming better and better at learning the ways of law enforcement and changing the way they do business to avoid detection and capture.

To be successful, law enforcement too must be willing and able to change in order to keep up and use cutting-edge technology.

The FBI's handling of several recent controversial cases puts pressure on the new FBI Director to make some necessary changes and to produce results. These include the missing McVeigh documents, the Hanssen spy case, the Ruby Ridge investigation, the Wen Ho Lee investigation, and 440 missing firearms and 171 missing laptops. It is a job that I believe demand someone who can remain focused on the core mission of the Bureau, solving crimes and catching criminals, while at the same time focus also on turning inward and on fixing some of the problems we have seen within the Bureau itself.

So I believe that Robert Mueller is the right man for this time. I believe he has a very good organizational sense. I believe he will be a hands-on manager, and I think we will see increasingly where Washington, rather than the SAC, will take responsibility in major incidents.

Mr. Mueller has spent most of his working life serving the people of this country, first as a Marine and later as a Federal prosecutor. He led the Criminal Division in the Department of Justice, and he served as Acting Attorney General earlier this year.

I became familiar with his work during his time as United States Attorney in my hometown of San Francisco. As a matter of fact, the Mueller family lived directly across the street from me for a substantial period of time.

When Mr. Mueller arrived as U.S. Attorney in 1998, that office had been criticized for a number of failings: not enough prosecutions, internal misconduct, sloppy management, among other things. In just 3 years, however, Robert Mueller nearly doubled the number of criminal prosecutions. He increased the amount of money collected in civil cases from just $7 million to $200 million.

So this is just one example of what people mean they say that Robert Mueller is a man who can come in and whip an operation into shape. No nonsense, no excuses. Just results.

When he led the Criminal Division in Justice in the early 1990's, he oversaw the investigation into the Pan Am bombing, and he also saw that that brought General Manuel Noriega out of Panama into an American jail and mob boss John Gotti. These were both two high-profile, complicated cases that demanded careful attention.

During his tenure at Justice, DOJ's Criminal Division established the Computer Crimes Section, early evidence that Mr. Mueller understands the need to adapt in order to combat new methods of crime. He has worked under both Democrats and Republicans, and he has been praised by both.

I want to just quote U.S. District Court Judge Charles Breyer, who said of Mr. Mueller, "He is a true professional. He is not guided by a particular ideology. He is guided by a sense of what the law is and what is fair." And most impressively, I think he is a man who left a $400,000 job as a partner in a Boston law firm to come back to Washington and prosecute murder cases, and he has never looked back.

I think truly of all the fine talent in the United States, Bob Mueller is the best at this particular point in time. I think we are going to see a hands-on Director, filled with integrity, and I think he is going to establish his credibility up here with our committee, Mr. Chairman, and on the entire Hill.

Thank you very much.

Chairman LEAHY. Not prejudging anything, but reading between the lines, I would say that you have at least one vote on this committee after hearing Senator Feinstein's comments.

Senator Boxer?

PRESENTATION OF THE NOMINEE BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Thank you so much, Mr. Chairman, Senator Hatch, and nice to see you, Senator Specter and Senator DeWine. It is certainly a great pleasure to be here this morning. I will make a brief comment. I will really concentrate on the way I came to know Mr. Mueller and why I think, as Senator Feinstein says, he is the right person at this time for this job.

Nearly 2 years ago, this committee considered Mr. Mueller's nomination to be U.S. Attorney for the Northern District of California. I recommended him for this job to President Clinton, and I want to tell you why. I don't think it is—I mean, everyone knows it is unusual for a United States Senator who is a Democrat to recommend someone with impeccable Republican credentials for such a position, or vice versa, for a Republican Senator to choose a Democratic nominee. But this is a nominee who is quality, and he doesn't have a political bone in his body that I can tell. He is here to do a job, and that is so important, particularly at this particular point in time.

As Senator Feinstein said, in 1998, when the position of U.S. Attorney for the Northern District of California became vacant, morale at the office was at an all-time low. Cases were tremendously backlogged. Its focus was scattered. And, most important, I think, than all of this, the office had lost the public's confidence. There had been some terrible press reports of what was going on. It was just a really, really bad time. And I give Janet Reno a lot of credit,

then-Attorney General Janet Reno, for tapping Robert Mueller, who was then the chief of the Homicide Division of the U.S. Attorney's Office here in the District, to fill that position on a temporary basis. I thought it was a visionary choice of hers.

Right away, Mr. Mueller reached out to me, reached out to my staff. He told us of his plans to reinvigorate morale in the office and to restore the public's trust. He made an immediate impact, Senators. He began by requiring—and this is pretty bold. He began by requiring everyone to submit their resignations, and no one was rehired to their previous position. That should tell you, Mr. Chairman and Senator Hatch, not only of the severity of the problems in the office, but of Mr. Mueller's no-nonsense approach to his job.

Mr. Mueller proceeded to appoint an unprecedented number of women to top management positions. He opened an office in the Silicon Valley to ensure that the U.S. Attorney's Office would address one of their biggest problems in Northern California—high-tech crimes. He committed resources to the previously neglected problems of health care and securities fraud, as well as to environmental crimes. And he did so without a lot of fanfare or press conferences. He did it behind the scenes. But he did it so effectively, Members, that the changes became very apparent.

The public couldn't help but take notice of the increased efficiency and effectiveness in the office, the heightened morale of those who worked there. He began to restore the public trust and confidence of law enforcement.

So, Mr. Chairman, 7 months later, I decided that Robert Mueller was the best person to have that job of U.S. Attorney on a permanent basis, and I asked President Clinton to nominate him for that position. Again, politics played no role in my decision, nor did it play any role in Robert Mueller's performance.

I don't believe that partisan politics should have any place in selecting U.S. Attorneys, and I certainly don't believe it should in the selection of a Director of the FBI. In some respects, the problems facing the U.S. Attorney's Office for the Northern District 3 years ago mirror those facing the FBI now. Clearly, the FBI is a much grander scale. You can't compare it exactly. But the similar types of problems exist.

So I say, in closing, that this is why I think Robert Mueller is the perfect candidate for this job. I wish him so much good luck. This is not easy. This is so difficult. But I think it is a measure of this particular individual that he is willing to step up to the plate, and I feel very good inside that he is going to be very successful.

Thank you for treating him with such respect, all of you, and for welcoming him here to the Senate.

Chairman LEAHY. Thank you very much. I thank both Senators. I know you both have other commitments. Senator Feinstein, of course, as a member of the committee, is welcome to join us here.

Mr. Mueller, please take your earlier seat. The witness has already been sworn, and under our early bird rule, we will now go to Senator DeWine.

Senator DEWINE. Mr. Chairman, thank you very much.

Mr. Mueller, you and I met the other day, and I appreciated the opportunity to talk with you. Good to see you again.

Mr. MUELLER. Good morning, Senator.

Senator DEWINE. I would like to talk a little bit about an issue you and I talked about the other day, and that is the whole issue of crime, technology, and how we make sure that gets down to the local law enforcement agencies. I know that you established the first computer crime unit in the Department of Justice a few years ago, and I certainly applaud that initiative. Technology truly is the key to fighting crime in this century, and it is so important that we share information to enhance the ability of computer systems to fight crime right down into each community in this country.

Our national systems for criminal histories, fingerprints, DNA, ballistics are only as good as the information that goes into them, only as good as the information that comes from our local communities and local law enforcement agencies.

Several years ago, I wrote the Crime Identification Technology Act, and Chairman Leahy and Senator Hatch were very instrumental in getting that bill passed.

I wonder if I could just ask you about your commitment to making sure that local law enforcement agencies, the people who ultimately end up dealing with 90 to 95 percent of our crime problems in this country, have the ability to access your data bases, have the ability to get in and get out, have the ability to put in information, and also have the ability to get that information out.

Mr. MUELLER. To the extent that the FBI's responsible for maintaining data bases accessed by State and local law enforcement, I will do everything I can to make that access swift and certain. My own experience is that there is often a disconnect between those who write the data bases and those who have to use the information on those data bases. And, too often, the user is not taken into account wen you construct a data base, operate a data base. You have the engineers and the programmers who are putting together the data base, but you have those sitting at their desks in a local police department that have to use it. And with the advent of Windows and user-friendly systems, there is no reason in this day and age why access to that information shouldn't be swift and certain, particularly with the fact that we have sufficient backbone in terms of networks to handle that traffic.

On the other side of the—apart from access to the data bases, it's also important, I believe, for the Bureau to work closely with the State and locals in addressing computer crime, for instance, and there are a number of ways we can do this. One way is to work together to construct or put together a computer forensics laboratory, as has been done in San Diego, where you have State, local, and a number of Federal experts all working together to analyze hard drives that have been seized in searches and the like. And that has a number of benefits.

But, second, it's very important for us to exchange training, in other words, for the FBI to perform its traditional role of assisting in training State and locals, and for the FBI to learn from State and locals. So there are a number of ways I think we have to work together to address the technological improvements that we're all seeing.

Senator DEWINE. You and I talked the other day a little bit about international parental kidnapping and my concern in regard

to that. We have really seen in the last few years an upsurge in the number of incidents of what we call parental kidnapping, where one parent kidnaps a child and takes a child out of the country.

Many of the so-called left-behind parents have talked to me, and they frankly feel they have not received sufficient assistance from the State Department nor from the Department of Justice. And I have talked to the Attorney General about this, but I would just like to talk to you a minute about it and ask you whether or not you believe that the FBI in the appropriate case will be able to put some emphasis on this problem.

Mr. MUELLER. I've had some experience in my district with those problems in which parents will come to the FBI or go to the local district attorney and a warrant will be outstanding, and we used unlawful flight to avoid prosecution warrants to attempt to remedy the situation. We can do that.

The network of LEGATs overseas are extremely helpful, I believe, and can be extremely helpful in gathering information as to the whereabouts and the circumstances of the parent who absconded with the child.

On the other hand, we are constrained to operate within the legal systems of the foreign countries, and the FBI can just do so much. We do want to make the resources of the FBI and the expertise of the FBI available, whether it be in the UFAP context or in assisting in obtaining information as to the location or whereabouts of those individuals.

Senator DEWINE. Yesterday, I know you talked about the FBI's own internal technology and the security for that, and I just wonder how quickly you think you will be able to implement, fully implement the technology update plan that the FBI has.

Mr. MUELLER. There's a 3-year technology update plan called Trilogy, and the good news about that is it's laying the foundation, whether it be the networks or the software, the hardware, the user interfaces for bringing the FBI agent into the modern era, and I will be pressing hard on that.

There are other areas which build on that, and, in particular, in my own mind it is access to documents. It is the storage and easy retrieval of documents, of imaging documents when they come in immediately so that you have ultimately what is referred to in the private sector as a paperless office. But you need the basic structure upon which to build these additional advances, and the good news is that the FBI is moving ahead with the assistance of Bob Dies, who came in from the FBI—or not the FBI, from IBM, to modernize. The not-so-good news is that once we have that structure in place, there's a lot more to do.

Senator DEWINE. You and I talked the other day about the whole question of the FBI's cooperation with other Federal agencies, but also about the FBI's cooperation with local law enforcement agencies.

How does the head of the FBI set the right tone, and have the impact on the culture of the FBI to continue what I have seen has been an improvement? I have seen a significant improvement over the years in the FBI's working with local law enforcement. But

there is always room for more improvement. I just wonder if you could address how you intend to set that tone for the FBI.

Mr. MUELLER. I do think it's improved tremendously over the last few years. I think I've seen that myself.

I guess there are a number of ways that I have in the past and I think would in the future do that. One is outreach. You sit down with representatives, members of State and local, whether through their organizations or where you travel, and hear their complaints and address their complaints. Whenever you hear a complaint from State and local that an FBI agent or a special agent-in-charge has stolen an investigation, which you occasionally find, it has to be addressed. And the emphasis always has to be on cooperative efforts and in understanding that we are but one of a number of law enforcement entities that are instrumental in addressing crime in this country and that we have something to bring to the table, but the other law enforcement agencies have as much, if more, to bring to the table in any particular investigation.

And the last thing, I think, is the FBI can and should allow others to trumpet its successes. There's always, I guess, a tendency to go out and say look how good we are and look how we did it. In my own mind, the praise that makes the biggest difference is that that comes from others with whom you've worked. And my hope would be that we could operate on that principle.

Senator DEWINE. Good. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Feinstein?

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

I would like to followup on a question Senator Schumer asked you yesterday regarding the Attorney General's criminal background check records under the Brady Act being kept for only 24 hours, and yesterday Senator Schumer indicated that several sources had told him that the FBI had disagreed with that decision. And your discussion centered around whether it is appropriate for internal disagreements to be aired before Congress.

Without getting into that discussion again, I would like to read from an official FBI document published last month titled "National Instant Background Check System Operations Report." This is November 30 through December 31, 1999. In that document, on page 25, under "Recommendations," we read, and I quote, "It is clear that the ability of the National Instant Criminal Background Check System to stop prohibited persons from acquiring firearms would be improved, among other things, by longer retention of records. The Advisory Policy Board concurs with the FBI to have a 1-year retention of records."

Despite this recommendation for a 1-year record retention, the Department of Justice eventually bowed to outside pressure and implemented a final rule reducing the record retention period to just 90 days. This reduction to 90 days occurred on January 22, 2001. That is just 6 months ago. Yet now Attorney General Ashcroft has announced that records will not be kept for 1 year, as this official FBI document recommended, or even for the 90 days established earlier this year. Instead, records will be kept for just 24 hours, a timeframe that you admitted yesterday might—and I think certainly would—impede law enforcement's ability to monitor

the system and catch bad gun dealers that put most crime guns onto the streets.

Let me ask this specific question: Given the time limits on the background checks themselves, 3 business days under current law, have already resulted in a failure to prevent thousands of sales to felons, do you think it is appropriate to further jeopardize the system by weakening the ability of law enforcement to audit the system for problems?

Mr. MUELLER. Senator, I've got to say that I have not participated in the debate on the NICS system. I am generally familiar with the NICS system, but have never had occasion to use it, implement it myself, have not been briefed on it by the FBI, and am unaware of any studies one way or the other as to the harm done or not done by either lengthening or shortening the time period for the maintenance of the records.

I'm aware of the statute that says that the records should be destroyed, but I cannot say one way or the other what the effect of any particular period would be on law enforcement, basically because I am ignorant of the underlying factual material and I have not been part of the debate.

In answer to the question yesterday, I responded it could because I cannot rule out any possibilities. But it is from a basis of ignorance that I respond.

Senator FEINSTEIN. Well, I think the point I want to make is that those of us on this committee that are very dedicated to see to it that law enforcement has the time it needs and are really affronted by this change, we view it as unnecessary. There has been no demonstrated in convenience to anyone that I know of. And if you weigh the benefit of keeping a gun out of the hand of a felon, that has to have a substantial benefit. So I am going to ask this question again in writing to you, let a month go by, and then ask it again, if I might.

The Intelligence Committees of the House and the Senate met this morning with the Vice President, and one of the subjects that came before the committee was the issue of cyber crime. And I would like to ask this question: One problem with investigating cyber crime is that an attack through the Internet will often pass through multiple jurisdictions. For example, an attack may start at a computer in San Francisco and then pass through computers in Chicago, Houston, Miami, and Washington before ultimately interfering with a computer in New York. Law enforcement seeking trap and trace authority needs today to get court orders from each jurisdiction through which the attack passed. That is a very onerous task.

Would you support efforts that would allow law enforcement to get trap and trace authority in the cyber crime context in just one court order?

Mr. MUELLER. I think that sounds like something that would be exceptionally beneficial. I can tell you that the way the Justice Department responds to those issues now is that we have in every U.S. Attorney's office individuals dedicated to handling cyber crime cases. There's an initiative that was announced last week to beef that up in certain particular offices, but those individuals form a network that is in constant contact with each other and expedites

the obtaining of such orders. That is not as beneficial, however, as having the ability to go into one court and having nationwide service based on one particular court order.

So we do the best we can under the circumstances, but in that area, as in probably a number of other areas, when it comes to addressing cyber crime, we will be looking to Congress to give us some assistance.

Senator FEINSTEIN. Last May, the administration proposed a variety of modest changes to consolidate our policies to combat terrorism. Essentially, the President suggested transferring from the FBI to FEMA the responsibility of working with local officials in preparing for and responding to a catastrophic attack. The FBI would remain in charge of investigating terrorist incidents and of crisis management.

Do you know whether this proposed change has been implemented yet? If not, do you know when it will be? And do you agree with it?

Mr. MUELLER. I understand that FEMA will be expanding to encompass some of the activity that previously had been undertaken by the FBI. I am not familiar with the specifics, and I'm not certain of the timing. But when I was here as acting deputy, the issue was discussed there, and I'm familiar with the—the fact that FEMA would be expanding its undertaking to provide training to state and locals, and perhaps the FBI would be doing less than that.

I believe that when it comes to allocating responsibilities to address a threat such as terrorism that one ought to look at the various responsibilities and make certain that they fit and are within the appropriate agency.

The one concern I believe we had with regard to the FBI is that we wanted to make absolutely certain that when it comes to a terrorist attack and it comes to authority over the crime scene, that there would be no question but that those who were responsible for conducting the investigation would be in charge of the crime scene. But with that assurance, I think the expansion by FEMA of the training and other such responsibilities was appropriate.

Senator FEINSTEIN. Thank you. I would like to ask a quick question, because California is a big copyright state, and the loss is about 20 billion a year from copyright piracy. I am very pleased to say that while you were U.S. Attorney for the Northern District, you, of course, headed, and in many ways had been a leader in, an effort to combat this sort of cyber piracy. As a matter of fact, your office was one of the first to pursue enforcement of the criminal provisions of the Digital Millennium Copyright Act, and you also pioneered the establishment of a special Computer Hacking and Intellectual Property Unit to focus on cyber crime prosecutions, training and outreach. In fact, the Attorney General recently traveled to Silicon Valley to announce the formation of 10 new CHIP units in 9 cities, all of which was patterned after the program you established in San Francisco.

Can you assure us that prosecuting cyber piracy will be a priority at the FBI? And would you care to comment on how you believe the FBI can be most effective in combatting criminal violations of our intellectual property laws and other forms of cyber crime?

Mr. MUELLER. Yes. I mean the answer is yes. I can assure you that would be a priority at the Bureau. I am quick to say though that we cannot take—cannot conceivably take every case that is out there with regard to the pirating of software or a movie or a videotape, and consequently, I do believe that the FBI has to prioritize its cases so that it takes those cases where it obtains, as a result of a prosecution, the greatest form of deterrence. Now, that can be in a single case or it can be in a set of cases which are smaller, but when prosecuted together, serve the goal of deterring others for committing the same type of crime.

Senator FEINSTEIN. One last question on this subject. And I am asking these because—I will be very candid with you—a number of people in California have asked me to ask these questions. They are real concerns. I want to ask specifically about the Digital Millennium Copyright Act and the No Electronic Theft Act, which provides safeguards against digital piracy and the theft of intellectual property.

I certainly believe that proper and adequate enforcement of these laws through both civil and criminal enforcement measures is important in maintaining an environment in which the widespread distribution of legitimate high-value digital content can take place.

Now, I would like to ask do you agree that these two bills are working? Do you see need for this committee to take action in this area to provide any greater assurances, or do you feel that the FBI needs any additional legislation to allow you to perform adequately in this area?

Mr. MUELLER. Senator, I confess that I am not as intimately familiar with each of those bills as I should be. I know that we have had cases on at least one of those. They are relatively recent, so I'm not certain that we have a substantial track record on how effective they are and what is missing that we need down the road. But I certainly would be looking at that, and to the extent that we need either additional investigative tools or additional statutes to address the problems or amendments to the statutes, then I would be happy to provide them.

I will say that, particularly in Silicon Valley and in our district, enforcement of those laws are critically important. And part of the effective enforcement of those laws is to have dedicated Assistant United States Attorneys and FBI agents who are knowledgeable of the provisions and understand what evidence is necessary to have a successful prosecution under those statutes. We have done that, I think, with our approach in the Northern District of California, and the expectation is, with expanding that program across the country, other districts will have that same degree of expertise.

Senator FEINSTEIN. Perhaps you would be willing then, within a reasonable period of time, like 6, 8 months, to take a good look at both those bills and see what the national experience, law enforcement experience is, and make some recommendations or some comments to this committee.

Mr. MUELLER. Surely.

Senator FEINSTEIN. I would like to ask you to do that.

Mr. MUELLER. Yes, ma'am.

Senator FEINSTEIN. Thanks, Mr. Chairman.

Thank you. I would note that it is very legitimate for the witness to say that there are areas that either are outside his expertise or he is developing expertise.

I think it is fair to say that if confirmed, Mr. Mueller will be back before this committee on more than one occasion, and we will have a chance to look at some of these issues. I would also note that it would be my intention, with the backing, I believe, of the ranking member and others, to periodically, not too often that it is a burden on anybody, but periodically have some informal meetings of members of the committee, both parties, with the Director. We used to do that. I would like to get back to that, especially sometimes we will be discussing classified material and we can do it in one of our secure rooms here. It can be an off-the-record discussion, but will allow us to express our concerns and he to express his, in probably more candor than could be done in some of these sessions, especially on some of the areas of terrorism and cyber crime where there are issues a lot of us would like to explore, but we would not in an open session.

Senator Grassley is here. What I am doing is those senators who did not have a chance to question yesterday on the first round, today will have the full 10-minute round. Senator Grassley.

Senator GRASSLEY. Thank you. Good morning, Mr. Mueller. I apologize because yesterday I had to leave for another meeting, and I think you were very responsive to some of the questions that I sent you in a letter last week, both in your opening statement, and as a lot of my colleagues, who shared some of my same concerns, asked you questions. So I will try not to be repetitive of questions that were asked yesterday as best I could determine that through my staff.

First, as you know, in my letter I raised the matter of cultural problems at the FBI. In regard to this issue you have stated that the FBI has failed to, quote, "provide adequate infrastructure to meet the buildup in manpower and responsibilities," end of quote. I want to be sure if I understand clearly your point, because while I would agree the Bureau has had problems managing its rapid growth, when I talk about cultural arrogance at the FBI, I am not talking about this as a resource issue. I am talking about attitude, demeanor and approach to things. It is the kind of arrogance that places image above substance, exemplified by the FBI's fondness for holding press conferences in very high-profile cases before the investigation is complete and all the facts are in, and it gives fuel, I think, to the mistaken notion that those within the Bureau are somehow above accountability and reproach.

This arrogance is a common thread that is woven into a majority of the problems the FBI has experienced over several years, so with that in mind, my question: do you believe there is a culture problem within the Bureau, and if so, how do you plan to approach it as a way of correcting things?

Mr. MUELLER. I do think there is a problem. I attribute it to a number of factors——

Senator GRASSLEY. Maybe not a cultural problem. Is that the inference I should——

Mr. MUELLER. No, not necessarily. I have a hard time getting my hands around what one means by culture. In other words, one asks

a cultural problem. My question is, OK, what feeds that perception of a cultural problem, because I need to know what feeds it in order to be able to address it.

Senator GRASSLEY. OK, legitimate.

Mr. MUELLER. And certainly one of those areas is—and it's not—it's a problem, it's not—and it's a problem that has to be addressed and addressed, and that's infrastructure. That does not necessarily take care of the perception of the arrogance as you have pointed out. And part of that, I think, is because the perception is there because there has been at least the appearances of defensiveness, a unwillingness to admit mistakes quickly, immediately, forthrightly, and once mistakes are admitted, to be absolutely truthful in terms of what happened and how we're going to rectify it.

And as I pointed out in my statement yesterday, I think it is absolutely unacceptable to try to cover up and not disclose something that needs to be disclosed, and more importantly, or as importantly, it's unacceptable to try to shift blame to somebody else. And to the extent that that has been the case in the past, it is something that I want to address and eliminate.

I know in your letter you talked about the cultural problem and tying it into arrogance. And defensiveness I think can feed that. I know in talking with state and local law enforcement over the years, that there is perceived arrogance of the FBI. Some of it is attributable to the perception that the FBI will come in and take a case, elbow a state and local out of it, and then take the credit for it, whether it be by press conferences or otherwise.

In the past I have had opportunities to work with state and local and foreign law enforcement on a number of occasions, and the posture agents should take is that "We have something to bring to the table; if it makes some sense to have us, an investigation that can be done by the state and locals, we ought to be there to assist." And on the other hand, it is more—rather than us taking credit for it, I would much prefer to have, at the conclusion of an investigation, that the state and locals stand at the podium, do the press conference, and thank the FBI. I am not a great one for press conferences, and I think in the 3-years I've been U.S. Attorney I think I've had two. And I think you do your job quietly, and if you do it professionally and well, then others will give you credit for it. So to the extent that there may be the perception of arrogance along those lines, I would hope to dissipate that perception.

Other factors contributing I think to the perception that the FBI is not always forthcoming is that there are areas where, I believe, people need to have their responsibilities well defined and be held accountable when they do not perform those responsibilities. There are some areas that in the brief time I've had since being considered for this position, I've seen where there's overlapping responsibility, and where there are overlapping responsibilities it is too easy to avoid accountability and to point fingers at others, and one needs to address that and assure that you eliminate those overlaps of responsibilities.

Those are just some responses. I could go on for a period of time, but that's——

Senator GRASSLEY. Why do I not move on, because I want to still keep on this theme or arrogance. In my letter I raise the issue of

access to documents, and I know that it has been raised also by Senator Specter. The FBI, I think, has a poor history of cooperation in producing and providing access to documents. And I want to be sure that I understand how you perceive this problem. Now, we can debate classified documents. We can talk about the issues of privacy and confidentiality. But what I cannot conscience is the deliberate pattern of denying, delaying or simply not complying with legitimate requests. Time and again the FBI has shown contempt for any public or private entity that dares to question its motives and performances. And now I am going to refer to, Senator Danforth raised this issue with his alarming testimony on June the 20th, where we learned that during the course of the investigation of FBI actions at Waco, FBI personnel, quote, "were not cooperative," again quote, "were cavalier or resistant in turning over evidence," and again quote, "there was a lack of openness and candor, complicated my investigation," meaning Senator Danforth's investigation.

This is, to me, an all-too-familiar pattern that I have witnessed in regard to getting information as a senator, but in regard to the problem of the McVeigh documents, you have stated, quote, "If only the FBI had a computer capability, we would have been able to produce the documents." I fully support the FBI's efforts to upgrade information systems, but I have been around too long to buy into the fact that the dog-ate-my-homework sort of excuse. Again, if you think these problems are resource related, then I think you are missing a big picture, and that is, for whatever reason, FBI managers make deliberate decisions not to provide documents that are requested of them. So I ask you, how will you change the Bureau's penchant for denying legitimate access to FBI documents and witnesses?

Mr. MUELLER. I do not recall—I may well have, because I believe it's part of the problem, access to—a ready access to documents I think is part of the problem. But I have not said that that's all of the problem. Accountability, responsiveness is a substantial part of the problem. And my own way of handling matters like this is to make persons accountable. If there is an undertaking such as the Danforth undertaking or an investigation by a committee of Congress, I would expect to have somebody responsible for assuring that we are responsive on that particular issue, responsive in terms of meeting the requests of—and accommodating the requests of the committee, and where we are unable to, or believe that there is some confidential interests that are implicated, to be able to state honestly and directly to the committee what should be done to accommodate the committee's request.

In the past where I have had Assistant United States Attorneys, who believe that it is important to only give to defense counsel that which is appropriate under the rules, I have required of them that they take the posture that you provide just about whatever you have that will assist the defendant regardless of the rules, and to be open. I would like to, and expect to, foster a change in the perception so that you do have the feeling at the end of the day that the FBI has been responsive. We may disagree occasionally on what should be produced, but I have always found that it is—the best practice is to sit down with defense counsel and hash out and

then directly discuss that which is on the table, so you identify your disagreements and there is no perception that someone is hiding the ball.

Senator GRASSLEY. Mr. Chairman, was that a 10-minute period of time?

Chairman LEAHY. Yes.

Senator GRASSLEY. Well, then I will have to submit the rest of my questions for answer in writing.

I thank you, sir.

Chairman LEAHY. We will have other rounds if the Senators would like, but I would also note that several senators are going to have to submit written questions, because I am putting this on a fast track. Should you be confirmed prior to the answer of those, do I have your commitment that all of those questions will be answered in full?

Mr. MUELLER. Yes, sir.

Chairman LEAHY. Thank you. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Mueller, thank you for already answering a variety of questions, both today and yesterday, related to technology and cyber crime. I will try to be specific in my questions. Sorry, I was not here yesterday for your statement, but I have a copy of that.

The glaring inconsistency within the FBI, in my mind, seems to be that the internal information systems are not where they need to be. We have all heard examples of that this morning and I am sure yesterday as well. And yet the FBI has continued in its efforts with Carnivore, which has been plagued with a variety of privacy concerns. I see an inconsistency there. I do not know if you have made statements yet about what kind of review of resources, and allocation of resources, you intend for those two tasks, or if you think that maybe some of the Carnivore resources should actually be spent on improving your IT information system, particularly given the concerns that so many privacy entities have about Carnivore?

Mr. MUELLER. I am sensitive to the concerns of relating to privacy as a citizen. But also having sat down and talked with a number of the privacy groups here, when I was assistant—when I was Acting Deputy Attorney General, I am sensitive to the concerns about what is called DCS 1000, previously known as Carnivore, and other technological advances. There is, I think, a—there are two separate paths though that we're looking at. On the one hand the investigative tools and the investigative expertise developed by the FBI, and the new technologies I think is next to none. I think they have made rapid advances. There are privacy concerns that we have to address, but nonetheless, I do not think that the FBI is behind in its ability to investigate attacks on computers, denial-of-service attacks on computers and the like.

On the other hand, the technological infrastructure whereby the ability to scan and put documents into a data base and have them automatically retrievable, I think is behind what you would find in a business, in a law firm, and that's an area that we really need to look at so that you pick up that side of the technology piece, so that we can respond better to our responsibilities.

Likewise, the internal mechanisms and controls that could be benefited by new technologies, whether it be e-mail or case tracking systems, have to be modernized so that we can have greater control and understanding of the caseload that we have.

Senator CANTWELL. Did you say that you did not think that the FBI was behind the curve in investigating cyber crime activities?

Mr. MUELLER. I think we are on the cutting edge. We need additional expertise. We need—we could always use additional agents, we could always use additional technology. But I do believe the FBI, at least in my district as I've seen it, does a very capable job, given the tools, the limited tools it has—and we could always use some more statutes—does a good job in investigating those crimes.

Senator CANTWELL. Well, we in the Northwest we have had a series of violent anti-technological terrorist activities. In fact, one was associated with the University of Washington, an arson that took place there. One of the special agents in charge of the FBI's Seattle office, basically responded to the challenge of investigating the crime by saying, "We don't have an organizational structure to attack, no finances, no memberships, no meetings."

So part of the challenge is that so much of this is the organization basically exists online. I think at least in that agent's mind, additional resources or new laws might be considered. I do not know if you have a comment on that.

Mr. MUELLER. I think that is where the privacy rights of individuals perhaps intersect with the desire and the requirements of appropriate law enforcement. I am not familiar with the specific facts of that case, and I am not familiar with the specific investigative tools that that special agent is addressing in saying that we could use more, and I am not certain whether what we seek is unavailable under the current statutes.

Senator CANTWELL. We would be happy to provide you information that we have. We will submit a further question on that.

With regard to Carnivore, specifically, there has been so much concern about how this issue has been approached by the FBI. I do not know if you saw yesterday's New York Times article about the organized crime case and the concerns about privacy, but one of the issues that has been raised is the new process in which the FBI undertook the investigation in this case against Mr. Scarfo's business.

Basically, the FBI used a new key logger system that is calling into question—I guess I would frame this in the perspective that this is the second time we have seen the FBI in a court case on the violation of privacy. In fact, Justice Scalia was quoted in the article basically saying, "What limits are there upon this power of technology to shrink the realm of guaranteed privacy?," and that the court has to confront this fundamental issue. So my question is, is it your intention to make available the information about how this key logger technology worked?

Mr. MUELLER. I am not familiar with that new technology, have not had occasion to use it in our district. I read the same article that the Senator read with interest because it was the first I had ever heard of it. Until I know more about it, I really don't think I can commit one way or the other.

I do believe when there are advances in technology that it is important to balance the privacy interests affected with the investigative take that you might get from that technology. I am not familiar with the circumstances of this case, and I am not familiar with the technology.

Senator CANTWELL. Well, given that there was a lot of concern about the FBI's—what happens in searching for information using the Carnivore system—is that so much information is gathered. Now the FBI has switched to this key logger system, and the public and the privacy advocates have concern about what system is being used. When you say to somebody you are collective every keystroke that was used this by individual, (and maybe people are not very empathetic to Mr. Scarfo's situation, but there might be somebody down the road that they would be very empathetic) that every keystroke was being tracked.

Do you plan to review Carnivore when you take over as FBI Director?

Mr. MUELLER. I have already had meetings with privacy groups on it. I have, and will continue to look at it and evaluate it and hope to, down the road, that the technology overtakes the necessity for using it. I would make the point, however, that——

Senator CANTWELL. Would you undertake a formal review of Carnivore?

Mr. MUELLER. There has already been a—I would look at the formal reviews that have already been done to determine whether there is a necessity of doing another formal review. My understanding is that the information that DCS–1000 is utilized for is done generally, for the most part, and it may be as much as 75 or 80 percent of the time, if not 90 percent of the time, by the Internet service provider itself, which has that technology. So that the DCS–1000 is for that particular smaller ISP that does not have the technology and that every time that it is used, and it has been used very seldom, I understand, it is used pursuant to court order.

So there are protections, I believe, and likewise with the logger system. I am not certain that it was—I am not certain of the facts of the case, but I am more comfortable and would—where there is the court that is directing the use of it and supervising the use of the new technology, and I'm not certain whether that was the case pursuant to, say, a search warrant in the case that was reflected in the papers yesterday.

Senator CANTWELL. Just as in wiretapping, I do not know that it bothers the general public that the phone company has access to the phone lines or that an Internet Service Provider has access to that data. What they are very concerned about is that a law enforcement agency might have free access to that information and that it being collected, in a way that might give them more information or information about other individual that happen to have communicated. So I hope that that review, whether formal or informal, is something, Mr. Chairman, that this committee continues to be involved with the FBI Director on.

Mr. MUELLER. I am sorry, if I might, one last—I was passed a note indicating that, and I was unaware of it, the DOJ is conducting a review now which I certainly would look at once the Department of Justice has completed its review.

Senator CANTWELL. Thank you, Mr. Chairman.

Chairman LEAHY. I think Senator Cantwell raises a very good question. In an era of encryption, we do not want some of these new technologies to be the back-door clipper chip that we have already said we were opposed to. This committee was quite concerned when Carnivore first came to our attention because we felt that the FBI might be going well beyond what all of us understood could be done under the law. We will look at how the FBI uses the capabilities presented by new technologies.

But with some of the Fourth Amendment and other issues that come up here, you should anticipate that there will be increased oversight from the committee on these aspects and increased concern, again, on both sides of the aisle. I appreciate your answers here this morning.

Senator Kohl of Wisconsin?

Senator KOHL. Thank you, Mr. Chairman.

Good morning, Mr. Mueller. I believe that you are going to make a fine Director of the FBI, and we all look forward to working with you. I enjoyed meeting with you last week, and I came away impressed by your command of the challenges facing the Bureau.

In addition, your career demonstrates an impressive commitment to public service and to your country. As you know, the job ahead of you is a daunting one. A lot of ink has been spilled cataloguing all of the problems with the FBI. You are familiar with all of the criticism and the theories about what has gone wrong and why, so there is really no need today to repeat them, except to say that many of us are very concerned that the public is losing faith in Federal law enforcement because of these incidents.

But as you know, there is good news and bad news. The good news is that within the FBI we still have the best crime-solving agency in the world. When we discussed your plans for the FBI, you commented that the core function of the Bureau has always been, and remains, investigations. Despite the public problems, the FBI's ability to conduct important investigations is beyond questions, and you are right about that.

But the bad news is that the FBI has stumbled badly recently. In a world where technology advances outpace law enforcement, the FBI needs some forward thinking and planning. We hope that you will give us some good concrete ideas about how we can help the FBI stay one step ahead of emerging threats.

I would like to ask you just a couple of questions, Mr. Mueller. You have been responsible for managing offices of only a few hundred employees and a budget of about $17 million. In your new job, however, you will be in charge of an agency with more than 27,000 employees and a budget of more than $3.5 billion. Now that is a pretty good increase over what you have done before. You will be dealing with a big bureaucracy and will not have the authority that people like CEOs have in the private sector.

Given these constraints, do you think it is realistic, Mr. Mueller, to expect big changes quickly?

Mr. MUELLER. It is, as a number of people have pointed out, a substantial undertaking. There have been a number of people who have asked why I want to do the job because they perceive it being somewhat substantial.

I do think that one can relatively quickly, over several weeks/months, learn the institution and learn the people, learn what are the larger problems, whether it be span of control, what are the larger personnel problems and in a relatively short period of time. And I don't want to specify any particular period of time, but certainly within months start to make substantial changes.

As I am want to say, the most critical decisions I will make are the decisions on people—who one puts into positions of leadership. And those changes take some time to, No. 1, determine if there needs to be change, and, No. 2, if you are going to change, who is the best person to fit a particular slot, but that is not an extraordinarily time-consuming undertaking.

On the other hand, changing the organizational structure, making substantial changes to the span of control I think will take additional time because I will want input. I will want input from the management consultant firm that is looking at the Bureau. I would want input from the various reviews that are being done. And I am, as I mentioned to you, I want to go out and talk to a number of people who have run organizations of this size or larger and incorporate their views on how you can best manage an organization like the FBI, and I do think that will take a longer time than perhaps making some personnel changes.

Senator KOHL. All right. There is the reality, as you know, and also the perception. Sometimes the perception is just as serious, in terms of the public out there throughout the country, as the reality. In connection with that, I would like to ask you this question:

Public institutions like the FBI and the Congress seem to be held in lower esteem and are open to more criticism today than at any time in the past. Americans know more about public figures and the Government than ever before. Maybe that is because 24-hour news coverage and multiple full-time news stations turn every problem, oftentimes, into a huge scandal.

I do not want to imply that the issues we have been reading about concerning the FBI are not extremely serious, but I am willing to guess that today's FBI employees are every bit, if not more, intelligent, qualified, and hardworking, in most cases, than has ever been true before.

Mr. Mueller, it is hard to compare, but do you really think the FBI is worse today than it has ever been or does the close media scrutiny play a large part in the perception that the FBI is broken and needs to be fixed?

Mr. MUELLER. I don't believe the FBI is worse today than it has ever been. The strength of the FBI is its people—the special agents, the employees, the managers. And over the years that I have been a prosecutor and worked together closely with members of the FBI all I have seen is an enhancement in their expertise, integrity, willingness to do the job, and there have been a number of successes that I have mentioned yesterday and would mention again. One is Pan Am 103—an unbelievable undertaking by superb FBI agents and could not have been done maybe 10 or 15 years ago because these agents had not only the technology, I mean, the ability to pick a small piece of a timer and put it into the puzzle of that prosecution was truly remarkable.

And I have huge respect for, faith in the FBI agents with whom I've worked and 99 percent of the FBI agents out there. I think it is a wonderful institution. I think it has problems. I think a number of those problems are attributable to disparate factors and have to be addressed, the principal one perhaps being that the FBI has grown over the years, but its management structure has not grown to support it. The FBI has grown over the years, but it support structure has not grown to support it. The FBI agents have been—there have been more FBI agents brought on to address particular problems, but the technological infrastructure to assist them to do their job has not been forthcoming, and that is what we hope to solve.

Senator KOHL. So do I hear you saying that you believe the FBI is as effective and as dedicated as it has ever been before? There are problems out there. Problems are magnified sometimes, but there are problems out there, and they need the kind of leadership that you hope to bring, not only in terms of your ability to organize, and reorganize, and motivate, but might I also suggest that they also need a leader who is properly, in the best sense of the word, a cheerleader for the fine and outstanding organization that it is and for the service that it renders to this country?

Mr. MUELLER. I wouldn't be sitting here, Senator, seeking the job if I didn't think absolutely that.

Senator KOHL. Thank you. Mr. Mueller, you must be aware that the Bureau requires that all agents' guns be stored with a safety lock when they are not in use. Yet a recent consumer study found that 30 out of 32 safety locks that are available on the market failed the most basic safety tests. For example, most of the locks fell off the guns when they were dropped or were easily picked with basic items around the home.

Do you know whether the locks used by the FBI pass these basic safety standards and would you agree that the FBI's locks, as well as all of the locks that are available in the marketplace, should pass these basic safety standards?

I do not know if you are familiar with what I am talking about, but there is evidence out there, and it has been printed in the newspaper, that 30 out of 32 of the basic safety locks that are being sold do not pass safety standards. Are you familiar with that?

Mr. MUELLER. I am not familiar with this issue, but—I am not, but I would be happy to answer whatever portions of the question I can.

Senator KOHL. OK. Well, I guess I am asking you because there is some difference out there in the marketplace. As a matter of fact, I think even the President has been reluctant to take up the suggestion that I am making, that all of the safety locks that we sell out in the marketplace should pass basic safety standards. As simple as that sounds, and I would presume you would agree with that.

Mr. MUELLER. I would have no reason to disagree with that statement, Senator, but I must say that I am not familiar with the issues relating to safety locks. I would hope that if the FBI, and I don't know whether the FBI uses safety locks, but if the FBI was using safety locks, I would want the FBI to have safety locks that worked.

Senator KOHL. Yes, that is fine. I hope you do not get in trouble. [Laughter.]

Mr. MUELLER. Unfortunately, given my ignorance, that is——

Senator KOHL. One last question. A particular concern in Wisconsin that we discussed for a minute last week, I would like to get just a public comment from you.

According to recent FBI statistics, Milwaukee has 50 less agents than Charlotte, 23 less than Buffalo, and 20 less than Indianapolis, which are cities with comparable or smaller populations than Milwaukee. As a result, the number of FBI-led arrests in Milwaukee lags far behind even much smaller cities, despite the fact that Milwaukee has all of the same crime problems of other major cities. And with our proximity to Chicago, in particular, we are subject to their drugs and gang problems as well.

As you said to me in the office, I would like to hear you say it here, if I might, will you pledge to work to reevaluate the FBI's allocation of resources—I am not asking for a promise to move a certain number of agents by a certain time, but rather that you give Wisconsin and Milwaukee a fair evaluation and provide us with the resources as you determine we deserve them.

Mr. MUELLER. Yes, sir, I would absolutely do that. And I did, in response to a question yesterday from Senator Sessions, discuss the necessity for there being some flexibility on local priorities vis-a-vis national priorities. And how that can be worked into the system of allocation of priorities I am not, myself, personally familiar, but it has been a concern of mine, as a United States attorney, and will be a concern of mine should I be confirmed as Director of the FBI.

Senator KOHL. I thank you. And, Mr. Mueller, you are a very impressive man. I thought that when we met. I have continued to feel that way. I have watched the proceedings here yesterday and today, and you will have all of the support from my office that you could ask for.

Mr. MUELLER. Thank you, sir.

Senator KOHL. Mr. Chairman, thank you.

Chairman LEAHY. Thank you, Senator Kohl.

As far as the question of trigger locks are concerned, I have tried out some of the commercial ones—I own a number of guns, as most Vermonters do—but I tried out a number of them that do not work worth a hoot. I agree with you. If you are using them, get some that work. I would suggest people, if they are concerned, do what I do in my home. We have a steel gun safe bolted to the floor, and everything is kept there and locked up. It is also a recommendation I would make, though we no longer have young children around, to anybody who has young children.

You probably will not be required to carry a side arm in your new position, but if you do, I would suggest the same thing. The easiest thing to do is just have somewhere to lock them up at home. In fact, in that regard, I would like to revisit the issue of Attorney General Ashcroft's proposed changes to the National Incident Criminal Background Check System because Senator Schumer and Senator Feinstein raised issues on that.

It is my understanding that the Attorney General proposed these changes to address the privacy interests of law-abiding firearm purchasers, but he still wants to meet the law enforcement require-

ments of the Department. My further understanding is the proposed regulations on background check records would not impact on the retention of records, where a person is denied approval under the NICS system. For example, if the attempted purchaser has a criminal record or is under age, then the record of that denial would be kept indefinitely for law enforcement officers to investigate and prosecute as a violation of the Brady law.

In addition, the proposed regulations would create a new individual audit log for Federal firearm licensees. It would allow the FBI to share NICS information on individual gun dealers upon request of the ATF. The proposed regulations would not change the existing NICS records retention requirements on firearm dealers. In fact, ATF inspectors would use these records and be kept on location at firearm dealers. They could trace and investigate crime guns or guns used in a crime or review for fraud during their inspections and so on. They could still use the NICS transaction number in all background checks.

Now, I agree with Attorney General Ashcroft that we should protect the privacy of law-abiding citizens. I am one, and a lot of other people are. You fill out all of the forms if you buy a gun, but you do not expect all that material, once they have checked on you and find out you are law-abiding, you do not expect the papers to be sitting around there forever. I believe we need to maintain an accurate auditing system for background checks, and I think we can do both and keep firearms out of the hands of criminals and children.

So maybe the thing I might ask, I would just ask you to work with members of this committee and the Attorney General to ensure that the National Incident Criminal Background Check System maintains an accurate auditing system, but also that we protect the legitimate rights of gun owners. So I assume you are perfectly willing to work with us on that.

Mr. MUELLER. Absolutely.

Chairman LEAHY. Another area, though, that is more apt to have longer-range consequences is on some of our new search and seizure procedures. The Supreme Court recently had occasion, as you know, to look at the issue of thermal imaging under the Fourth Amendment, where—for those not familiar with it—you use devices outside of somebody's home, and basically what you are doing is checking heat levels in the home. You can use it to determine when somebody moves from room to room. In this particular case, as I recall, it was checking to see whether they had lights on that might be used to grow marijuana. But the main point was somebody sat outside the home, looked inside the home, and the Supreme Court felt that the procedures used in that case did not fulfill the Fourth Amendment protections and that there was not adequate basis for this search.

My guess is we are going to see more such issues because we have new kinds of surveillance technologies. It is not like the old days you had to look in a window or you had to get into the house. Electronically, whether it is thermal imaging or whether it is other types of surveillance, we are going to find things that perhaps you or I would not even be able to anticipate today.

Now, as a former prosecutor, I understand the benefits of surveillance. In my career, we used surveillance a lot to catch criminals.

I am sure you have too. But we have also got to protect America's sense of privacy. You can wiretap telephones, but you have to follow very specific procedures to do that.

I would ask you to look at the procedures in place for law-enforcement access, for example, to electronic information because much of it is stored in the hands of third parties. I think this has been touched on by some of the questions asked here by Senator Cantwell and others. We live in an era where privacy becomes less and less for a number of reasons. A lot of the privacy we give up willingly, but I think we give up some of it surprisingly, and I think Americans would be surprised to know how little privacy they have in some areas. But I think we should work closely together on this because my guess is the courts will be looking at this more and more, as they should, rightly should, to make sure that we are protected in the electronic age.

So I would ask you to look at this issue, whether it is keystroke surveillance, thermal imaging or how you deal with the proliferation of companies that hold our data. This is important because of our wide use of the Internet.

Mr. MUELLER. I would be happy to look at that and work with the committee on those significant issues. The use of the thermal imaging system that was addressed by the Supreme Court is one of those technological advances where ultimately law enforcement needed guidance from the Supreme Court. It was not, if I recall correctly, a unanimous decision.

Chairman LEAHY. That is right.

Mr. MUELLER. And it was a close issue. And there are going to be those issues where there is a law-enforcement tool, there are privacy interests implicated, and yet one doesn't know where the line is. We do have to look at each of those issues and be cognizant of the privacy interests involved.

It has been my habit in the past to sit down and listen to and get the input from a number of different people with different concerns, whether it be privacy interests or defense counsel. And when concerns are expressed and we can address those concerns, I would like to be responsive to those concerns and do so without the necessity of perhaps going to a court or a third party.

Certainly, I would be—look forward to sitting down and working through some of these issues with the committee, as I would with others who are interested in the development of that new technology.

Chairman LEAHY. And I am not suggesting, of course, by any means that law enforcement become kind of Luddite. There are going to be new technologies and they should be available, but also within the constraints of what have been our search and seizure law. I helped rewrite the wiretap laws. We came into a digital age, and knowing that it is no longer the old age of the sheriff standing on the roof of the pickup truck and pinning the allegator clips to a telephone wire going through. It is a far more complex thing today, and I think we worked out something that reflected the appropriate balancing of interests, and we can do that.

We are not trying to stop, neither you nor I want to stop, new technology, but we also do not want intrusive technology used without the appropriate privacy safeguards in place.

I see Senator Specter, and I assured him earlier that at 11:30 we would turn back to him. Then, if there are not other Senators with questions, after Senator Specter is finished, we will recess the hearing.

Senator Specter?

Senator SPECTER. Well, thank you very much, Mr. Chairman.

Thank you for stopping by this morning, Mr. Mueller, so we could talk about some of the issues which we discussed yesterday. We spent, as you know, the better part of an hour, and I think we are pretty close together, but let us talk for a few minutes on the record.

Mr. MUELLER. Right.

Senator SPECTER. I had raised the issue of this memorandum, dated December 9, 1996, where Director Freeh recounts a meeting between a top FBI official, Mr. Esposito, and a top Department of Justice official, Mr. Lee Radek. And the key part of the memorandum contained the language that Mr. Radek commented to Mr. Esposito that there was a lot of "pressure" on him, Mr. Radek, and the Public Integrity Section regarding the Democratic National Campaign Finance investigation because "the Attorney General's job might hang in the balance," or words to that effect.

And where we ended up yesterday was on the point as to the status of congressional oversight, and we were talking about whether the FBI Director should have turned it over to at least the chairman and ranking member of Judiciary. And he had said that the Director ought to take it up first with the Attorney General, and I would agree with that totally, but if the Attorney General then disagreed about its being turned over to the Judiciary Committee, it seemed to me that the FBI Director had a duty to do that. The FBI Director is in a very unique position, having a 10-year statutory term.

And this memorandum was written at a time when there was an outstanding question as to whether Attorney General Reno would have been reappointed by President Clinton to be Attorney General for a second term. And had the Judiciary Committee and Congress known about Mr. Radek's position, it might have had a very profound influence on the appointment of independent counsel—any suggestion that there was a decision based, in part, on the Attorney General's status.

And I think when we talked this morning you concurred—you will say it yourself in a moment—on separation of powers, that Congress does have a right to know about a matter of this importance, after the Director has run up the chain of command to the Attorney General, if there is not agreement to turn it over, that there would be a duty by the Director to turn it over for Judiciary Committee oversight.

Is that fairly accurate?

Mr. MUELLER. I think, Senator, I believe there may be occasions, and it is hard on this with just fact specific. But there are occasions where if I thought that an investigation was being interfered with, hampered, for political reasons or other reasons, in an unwarranted way, I think my obligation would be to speak closely to—talk to the Attorney General about that, and ask the Attorney General to turnover whatever was either responsive or important to the Con-

gress to do its duty. And if it was a matter of substantial consequence, and I was turned down by the FBI—not by the FBI—was turned down by the Attorney General, I would have options on hopefully where to go with that, but I would think I'd have an obligation to inform the Senate of that, and produce those documents.

Senator SPECTER. Thank you for that response, Mr. Mueller, because I think this is one of those really extraordinary examples where congressional oversight would have been extraordinarily important, and I am glad that we have come to a meeting of the minds on that.

We then discussed this morning at some length the business about having records turned over to the Judiciary Committee. And I gave you a copy of a draft report on Wen Ho Lee that our subcommittee had prepared, and I appreciated your reviewing that very extensive document, running some 185 pages. And the Wen Ho Lee case was a matter of, I think, compounding errors. There was a request for a warrant under the Foreign Intelligence Surveillance Act, where the FBI Director sent a top official to talk to the Attorney General, and the Attorney General delegated it, and then the FISA warrant was rejected, and there was not a followup either by the Attorney General or the FBI Director, and we have since legislated on the subject that when the FBI Director asks the Attorney General a matter of that sort, there has to be a response in writing by the Attorney General, and the FBI Director has a statutory obligation to followup.

The Wen Ho Lee investigation then languished for about 14 months until November or December 1998, and at that time, with the Cox Commission about ready to come out with a report, the Secretary of Energy Richardson, then acted in a hasty manner, I think precipitously, had a lie detector test given to Wen Ho Lee by a private agency, a dispute as to what that showed, and then a failure of the FBI to move Wen Ho Lee away from access to confidential documents, and finally a search warrant in April 1999, and then no activity against Wen Ho Lee until December when he was arrested. And we still have not had a chronology as to exactly what the FBI and the Department of Justice and the Department of Energy did in that intervening time. It seems to me extraordinary that he would be at liberty for all that time, April to December, and then manacled and put in solitary confinement. And then we could not get any records because the matter was under investigation, prosecution, continuing investigation, but principally prosecution, and then a guilty plea taken to only one count of a 59-count indictment.

And that illustrated the necessity for oversight, and I had read you the Congressional Research Report, and I want to go over that with you for just a minute here. The part first where Congressional Research says, quote, "demonstrates that the Department of Justice has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that the Congress is not delayed unduly in investigating misfeasance, malfeasance or maladministration in DOJ or elsewhere," close quote, so that even if there is a pending prosecution, congressional oversight has standing and can get information, and we talked about the one exception, which I concurred with you, if there is a executive privi-

lege, not a matter of co-equal branches, that is a matter for the Judiciary to conclude. But I wanted to get your record comment as to the appropriateness of congressional oversight even if there is a pending prosecution or a pending investigation.

Mr. MUELLER. I think I would say that yes, congressional oversight is appropriate, even if there is a pending prosecution or investigation. And I think it incumbent upon the executive to attempt to accommodate the request of the oversight committee, absolutely. And I think each situation has to be addressed. It may be a very important one, it may be not so important. Each situation one has to look to, and it is incumbent upon us to attempt to accommodate the necessity of the oversight committee to have the information it needs. And one of the factors may well be that there is an ongoing prosecution or investigation, but we have an obligation to accommodate in what ways we can.

Senator SPECTER. The Congressional Research memorandum then covered a point of significance when it stated, quote, "In all instance, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews memoranda." Again, I think we are of a same mind, that that is an appropriate function for congressional oversight?

Mr. MUELLER. Well, I note that they comment about what has been done in the past. I guess I am not certain about specifically what the question is.

Senator SPECTER. Well, the question is, would you agree with the Congressional Research conclusion that congressional oversight is appropriate to be provided with documents respecting, quote, "open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews and memoranda."

Mr. MUELLER. In appropriate cases, absolutely.

Senator SPECTER. Well——

Mr. MUELLER. And I have had occasion myself to be in a position of accommodating a committee of Congress, who asked for many of those same things, and, yes, in appropriate cases. My concern is making an overall generalization that in every case this should be the way that we intersect in terms of responding to legitimate oversight of committees.

Senator SPECTER. Well, you used the word "appropriate" twice, and I would agree with you that Congress has a responsibility to proceed in a rational way with a purposeful request. The Congress—and you and I talked about this this morning at some length—I believe under the law has the last word. If a prosecution is to be prejudiced, the law is, as I understand it, that Congress has the last word. And if Congress has the responsibility for legislation and you get involved in some complex matters, but if it is pressed all the way, we talked about the possibility of a member being under investigation, and there you might have to go to the Speaker or the majority leader, the congressional oversight might have to be redefined. But I just want to establish that you concur that Congress does have the last word on congressional oversight, absent executive privilege.

Mr. MUELLER. Well, it's the assertion of executive privilege, yes. And the ultimate arbiter, when there is a clash or disagreement be-

tween the executive and the legislative, I believe the courts are the final arbiters of that, and I think I mentioned the American Tel and Tel case, in which it specifically describes the balance between the two co-existent branches of—co-equal branches of government, Congress and the executive, and encourages accommodation. And I would hope that we would never get to the point where the—where the senator or the committee would say, "We have the last word." I would hope to be able to accommodate you so that we never reach the point that requires either the executive or the senate to go and seek the advice of a court.

Senator SPECTER. Well, I would hope we would too, and I think we will be, but in the Wen Ho Lee case we had that extraordinary circumstance, and we did not get the documents. And the case went downhill all the way. And I think congressional oversight can be of help, as you and I discussed today.

Let me turn to—would you like me to conclude, Mr. Chairman, and come back for another round? I have just a few more minutes. I know Senator Durbin is here.

Chairman LEAHY. I want to accommodate both because I think we can finish this whole thing before the noon caucuses, and Senator Durbin, what is your schedule? I have also told the Senator from Pennsylvania I would accommodate him as much as needed, because I thought he had important questions.

Senator DURBIN. I promise to be very brief.

Chairman LEAHY. I wonder if the Senator from Pennsylvania would mind doing this, yield to——

Senator SPECTER. I would be glad to.

Chairman LEAHY.—Senator Durbin for his questions, and then go immediately back to you.

Senator SPECTER. I would be glad to, Mr. Chairman, certainly.

Senator DURBIN. Thank you very much, and Mr. Mueller, thank you for coming, and submitting yourself to this humbling process. And I am very impressed with your credentials, and I am certain that I speak for the vast majority of senators, Democrat and Republican. We feel that you are the right person for the job, and it is a big job. We met in my office to talk about some aspects of it, and in a very brief time, I was impressed by your candor and your insight.

I would like to address an issue, which no one, as the head of any agency, would readily invite questions on, but one I think is inevitable. And that is this whole question of the Inspector General. There are some 57 Federal agencies with an Inspector General on board. This person is really a watchdog, I am sure a pain in the neck for the directors and secretaries who are being subject to their inspection, and yet I think an important part of the process, because as I view it, each of these Inspectors General, tries to take a detached view of the agency and its management, and then come to Congress and make a report as to what they consider to be shortcomings, whether it is something very serious or something just at a managerial level. But it has created a counterbalance to many of these departments and their people who are leading them.

I think, as I review this, that the Federal Bureau of Investigation tried throughout its history to avoid political contact and political involvement, the feeling being, under Mr. Hoover and some others,

that as long as they were separate and apart and not subject to political influence, they would be far more professional in their conduct. As a consequence, a fortress mentality emerged at the FBI that really separated them from the political process.

Several years ago my colleague from Pennsylvania, Senator Specter, raised this whole possibility of an Inspector General at the FBI. It is a thing that I started looking into, and Senator Specter was kind enough to co-sponsor legislation with me for the creation of a separate Inspector General.

I might add that in the Treasury Department, the IRS has its separate Inspector General, in addition to the IG for the Department of the Treasury.

What is your thinking about, I mean, in terms of whether or not the FBI should have a separate Inspector General or some other approach that could give Congress the assurance that even with the best of your management, that agency will be subject to the same type of scrutiny that 57 other Federal agencies face?

Mr. MUELLER. The FBI has its own Office of Professional Responsibility for—and as I'm sure the Senator is aware, last week or the week before, the Attorney General relaxed whatever remaining restrictions there were on the IG's—the DOJ IG's ability to undertake investigations of the FBI, and consequently, I see the Inspector General from the Department of Justice working very closely with the FBI Office of Professional Responsibility to allocate responsibilities.

If I were the Attorney General I might have some concern about a separate Inspector General feeding the perception that the FBI was a separate institution accountable only to itself. And I'm not certain I my own mind whether or not what the accountability you seek cannot be discharged by an Inspector General with appropriate personnel in the Department of Justice, as opposed to establishing another Inspector General in the FBI.

Senator DURBIN. Well, as much pride as I have in authorship, I am trying to achieve a goal, and let me ask you if that goal might be achieved by changing the relationship between the Inspector General for the Department of Justice and the FBI as an agency, because the current—I should not say the current—but historically, that Inspector General appears to have been waved off, or at least shunned, when it came to the kind of inspection that we would demand in virtually every other agency. So I am asking you a pretty tough thing here. You want to be the Director of the FBI and manage the agency, and I am asking you what steps will you take then to assure me or other members of the committee and Congress, that there will be a healthy relationship with an Inspector General who is part and parcel of the management of the FBI?

Mr. MUELLER. Me, I can assure you that I believe that for instance I should have weekly, if not weekly, every other week meetings with the Inspector General to review the cases, in the same way that the Attorney General meets with the Inspector General. I think there ought to be a close relationship. I will say that I am not certain that the FBI would say that the Inspector General has been waved off in the past. The Inspector General in the Bureau has done—not in the Bureau—but the Inspector General in the Department of Justice has undertaken some wide-ranging and thor-

ough investigations of the FBI. To the extent that the Inspector General in the past was hampered by having to go to the Attorney General and specifically requesting authority, that has been removed.

So I do believe that if there is an instance of—which the Inspector General believes needs to be investigated in the FBI, there are no longer any constraints on that Inspector General's ability to do that.

Senator DURBIN. I think there are two things that are playing against your conclusion. The first is this historic feeling that the FBI is a different agency, the FBI is not going to be subject to the same level of scrutiny and inspection as other agencies of the government, and I hope you agree with me that that attitude has to change.

Second, we have cut the resources for the Inspector General's Office in the Department of Justice, as we have dramatically increased the number of employees in that department. So as we have given more and more responsibilities to the Department of Justice, the Inspector General has not kept up with personnel to be able to take assignments, whether it is with the FBI or other agencies. So that is a funding issue that we need to address in Congress, but I hope one you will be sensitive to.

I do not know what my time situation here is, but I want to just, if I can, touch briefly on two other issues. And one I raise with virtually everyone who comes before us in the field of law enforcement. That is the issue of racial profiling. And I have been heartened by the comments made by Attorney General Ashcroft, as well as every other person that has come before us as part of his administration, that they are bound and determined to do something about racial profiling. I think that is absolutely essential, and it should not be partisan at all. This is something as a Nation that we should make as our goal to end that sort of thing.

And yet, let me just draw, as I did with Congressman Hutchinson the other day, this one statistic, set of statistics to your attention. It is, 12 percent of the American population are African-American. The Director of Drug Control Policy, has said in the past, General McCaffrey, that 13 percent of the drug users in America are African-American. 12 percent population, 13 percent of the drug users are African-American. And yet despite this, 35 percent of those arrested for drug possession are African-American. 55 percent of those convicted for drug possession are African-American. And over 60 percent of those incarcerated are African-American. The statistics are equally compelling when it comes to those of Hispanic descent in terms of incarceration all the way through the process.

The reality is there is a racial disparity in our country's criminal justice system. Despite the fact that five times as many whites use drugs as African-Americans, you could never tell it from the prison population. This is something we all have a responsibility to be sensitized to. Do you acknowledge this? And if so, what do you hope to do about it?

Mr. MUELLER. Well, I acknowledge that racial profiling is abhorrent to the Constitution, it is abhorrent in any way, shape or form. And I would make certain that from the first day an FBI agent sets

foot in the academy in Quantico that that refrain is repeated as part of the training, and as one goes through the ranks, continuous retraining, and focus on the fact that the FBI, in order to be the preeminent law enforcement organization in the country if not in the world, has to have a unblemished record with regard to addressing and strongly attacking any indication of racial profiling.

The FBI has the responsibility of enforcing the civil rights of this country, and it cannot do so effectively, efficiently and with the credibility of the American people, if it itself is not absolutely the example of law enforcement in this area.

Senator DURBIN. Then let me ask you, as my last question, on the promotion of diversity within the FBI, do you feel that the FBI employment level now, in terms of minority employment, is reflective of America?

Mr. MUELLER. I am not that familiar with it, but let me just say this. I believe that we have to make every effort to recruit from the diverse areas of our society, and we ought to make every effort we can to make certain that the FBI, through all the ranks, reflects the diversity in our society.

Senator DURBIN. I give you these statistics, and let me say Congress has—my office, all of us, have the same responsibility that I am asking of you at the FBI, just so we can use it as a point of reference if there are future hearings on how we are doing, what progress we are making. In 1997 at the FBI, all minorities combined accounted for 15.3 percent of all FBI special agents; 5.6 percent African-Americans, 6.9 percent Hispanic, and 2.2 percent Asian, the rest, 84.7, were white.

As of the 2000 census the numbers indicate that African-Americans represent 13 percent of our Nation's population, 5.6 percent of the special agents at the FBI; Hispanic-Americans 13 percent of the population, 6.9 percent of the agents at the FBI; and Asian-Americans close to 4 percent, while 2.2 percent are agents at the FBI. So clearly, when we are dealing with the issue of racial profiling and promoting diversity, all of us, including the FBI, I hope will be more sensitive to recruiting and training and retaining minorities who can really help to give us that kind of balance. I hope you would agree with that.

Mr. MUELLER. I agree with that.

Senator DURBIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Let Senator Specter, who yielded for Senator Durbin, let him finish his questions, go to Senator Biden, if that is all right.

Senator BIDEN. Go to me now, Mr. Chairman?

Chairman LEAHY. Well, Senator Specter has a few more minutes to finish his questions, is my understanding. Am I correct?

Senator SPECTER. Mr. Chairman, I think I can finish them in another 10-minute round.

Chairman LEAHY. Why don't we—if Senator Biden has——

Senator BIDEN. No, I will just submit my questions. And I have to leave. I will be happy to submit them.

Senator SPECTER. Well, let me yield to Senator Biden since he has to leave.

Chairman LEAHY. OK.

Senator BIDEN. I would ask unanimous consent that my statement be placed in the record, and I will just ask two very brief questions and submit a copy.

Chairman LEAHY. And I would note also for the record, all statements anybody wants to submit, the record will be kept open for that and for further questions.

Senator BIDEN. One of the things that happens, as you know, Mr. Mueller, is when things start going wrong, they all go wrong. And although I think the FBI—I know the FBI has made some serious mistakes, and you and I had a very long discussion in my office about what I privately thought—presumptuous of me, but after doing for 28 years, what I thought you were about to face as the Director.

I think it should be stated, which is obvious and I am sure everybody agrees, that the vast majority of the FBI agents, the overwhelming majority of the FBI agents—overwhelming—are among the most honorable women and men I have ever encountered in public life. And up until very recently, it has been the standard to which every other law enforcement agency in the world has prepared. In the world. And so one of the reasons for my disappointment is I am such a big fan. I have in year before when I chaired this committee, I don't think it is an exaggeration to say one of the reasons why the FBI's budget is what it is, I will bet you that 50 percent of the reason occurred on my watch, opposed by Presidents of the United States at the time.

So I think you are going to—anything that isn't working right in law enforcement, whether or not you are responsible for it, you are going to be held responsible for it. I figure you have already figured that out by now.

Mr. MUELLER. I understand that.

Senator BIDEN. But I hope we keep a balance here. There needs to be, in my humble opinion, a greater balance and a little injection of reality into the FBI right now, but the place from which you come as U.S. Attorney dealing with the FBI and with local law enforcement I hope will equip you with some ballast here.

I have two points and questions that I want to ask. I have been disturbed for years since I have in large part, to my discredit in some cases, been responsible for most of the major drug legislation that we have on the books, including one I have been trying to correct for over 17 years—that is not true—yes, about 17—about 13 years, that Senator Moynihan and I, neither of whom have ever been accused of being insensitive to racial issues, both of which have come from—in my case, from the civil rights side of the agenda. We're the guys that wrote the crack cocaine legislation because we were told by all the medical experts at the time that this epidemic which, in the early 1980's, Moynihan predicted was coming from the Bahamas and no one would pay attention to it. The Center for Disease Control wouldn't focus on it. The agencies wouldn't focus on it. Nobody focused on it.

Prior to that, it used to be for every one woman that was addicted to drugs, there were four men. Crack cocaine became the great equalizer, responsible for the spread of AIDS in a whole range of ways because women were prostituted in order to continue to have their daily hits, and sometimes 20, 24 hits a day.

And so we passed this law putting the minimum mandatory for crack cocaine. A white kid out in suburbia in a $400,000 home doing a line of cocaine at night with his father or with his friends or by himself, if caught, would not go to jail, but the 21-year-old who got picked up for crack cocaine on the corner got 5 years. And we have been trying to change that in the Sentencing Commission for years. As a matter of fact, one of the people I recommended to be the Chairman, a Scrantonian, an acquaintance and friend of the Senator from Pennsylvania, wrote a report urging us to rectify this at one time a 100-to–1 disparity that existed.

I would ask you to take a look at—even though you are not the drug director and you are not DEA, but your voice will be listened to as FBI Director—this racial disparity in the context of a couple specific things, one of which is the degree to which crack cocaine is responsible for the number of African-Americans and Hispanic Americans, minorities in jail. It is a much easier hit. It is a much easier hit for the police department. I am not criticizing them. You know, they see it in the street. A transaction takes place in the street. They arrest in the street, and mandatory sentencing, jail.

And the second thing I would ask you to take a look at, because I am asking the DEA to take a look at it as well—and I will ask Mr. Walters when he comes before us when I hold his hearing—the chairman has asked me to hold his hearing—is the second piece. Although there is a 13-percent usage rate among African-Americans comprising 12 percent of the population and in many cases up to 60 percent of the folks in jail, that on its face is a glaring disparity. And I am sure not a small part of it relates to racial disparity.

But one of the things that has been proffered—and I want to know what the answer is. I don't expect you to know it—is the degree to which African-Americans arrested for a drug charge resulting in jail relates to trafficking as opposed to consuming. Are you with me?

Mr. MUELLER. I am with you.

Senator BIDEN. Because a lot of the younger people used in this business by white organizations—it doesn't have to be a black organization—are African-American youth and African-American young men.

I don't know what the numbers are. All you got to do is go down Aramingo Avenue in Philadelphia and find out where most of the money is going. It is not going into the hands of black organized crime units. It is going into the hands of other units, but you will see an awful lot of African-Americans being used, in the literal sense used. So I would like to know at some point and ask you to think about in a coordinated effort with your counterpart at DEA to take a look at that to see what this—because the most important thing for us to do to get this whole question of racial profiling and then in my view racial disparity across the board into focus is to have the hard facts as best we can accomplish them.

So I would ask if you would be willing—I am not asking you to be responsible for it, but I am asking you if you would be willing to join with DEA and join with the national drug director to take a look at that.

Mr. MUELLER. Yes, Senator, absolutely.

Senator BIDEN. Now, the second and last question that I have for you is that I am of the view—and, again, you know, sometimes when you work very hard on something and you get it passed and it takes years to do it, you very much as a legislator want to be convinced it worked. You want to be convinced all your hard work really meant something. Sometimes we are just dead wrong. At least I am. Sometimes I work on a piece of legislation that I help pass or am responsible primarily for getting the attention of my colleagues and getting it passed, and it turns out not to be as efficacious as I thought it was going to be. And I have tried in my career to acknowledge what doesn't work, whether it was the Violence Against Women Act, when we back and looked at it to see what worked and what didn't work, jettison what didn't work and add to what you needed to do.

And that takes me to the local COPS program, and my question is: You having worked as a U.S. Attorney have worked with local law enforcement. How critical do you believe to the FBI is genuine cooperation and sufficient staffing and expertise at the local level to you being able to carry out your charge as Director of the FBI? In other words, how important are local cops?

Mr. MUELLER. The job cannot be done without a close working relationship with local police officers. As I said in my statement, local police officers are the backbone of law enforcement in this country, State and local police officers. And to the extent that we hope to have any successes—and if you look at the successes we have had in terrorist cases or white-collar crime cases or violent crime cases, more often than not the success will be a joint effort of State and local working with the FBI, where the FBI has expertise perhaps and some talents to bring to the table, but the knowledge of the community, the knowledge of the streets, the interrogation or the interviewing techniques of the State and locals are absolutely critically important to the completion of the investigation and the successful prosecution.

Senator BIDEN. Mr. Chairman, thank you very much. I would like to end on a positive note here, from my perspective, anyway. Having had oversight over the FBI or been part of the oversight process for 26 years, there is one very good thing that has happened to the FBI, and it is better today than it ever was, and that is the coordination with local law enforcement. I would argue that that one factor is one of the most significant factors in dealing with the reduction of violent crime in America than anything else. So for all the things you are not doing, I would argue that the Bureau has done that pretty well.

And, I ask my colleagues, just check with your local police. It used to be when you would say, "I am bringing in the FBI, Senator Biden, I am going to get the FBI to come help you," it was similar to saying, you know, "I am from the Federal Government, I am here to help."

Today, I get asked. Today, they want it. Today, the relationship seems, at least in my personal experience, to be working very well. I hope you keep it up. I am sure you will.

I thank you, Mr. Chairman. I thank my friend from Pennsylvania.

Chairman LEAHY. I would note that this is not always what you hear from local police, and it is, though, the goal to reach, and there are some significant areas of improvement. Some of the smaller law enforcement agencies will still want to be heard.

Senator Specter, you have been waiting patiently.

Senator SPECTER. Thank you, Mr. Chairman. I would like to associate myself with Senator Biden's comments, especially the one about crack cocaine, and acknowledge his leadership as chairman. I would associate myself, I think, with all of his comments except for the opening statement that he had only had two brief questions.

[Laughter.]

Senator BIDEN. The questions were brief. The statements were long.

Senator SPECTER. But I am always glad to defer to Joe Biden.

Mr. Mueller, on the issue of what you are going to do, computerization or whatever the techniques are to get the records produced, how will you tackle that specifically? And let me give you just one illustration of what happened at Waco, April 1993, and it wasn't disclosed until August 1999 that there were records about the pyrotechnics, the devices which were incendiary. The other aspect of that matter is that when Attorney General Reno and FBI Director Freeh testified before a House committee, there was an FBI agent present who knew there were pyrotechnics used and did not correct the testimony of the Attorney General or the FBI Director or tell them that they were incorrect when they said there were no pyrotechnics. So it is a two-part question.

First, how do you deal with the mechanization of the FBI to be sure that you will have those kinds of records available in a timely way? This goes to McVeigh and many, many other lives.

Mr. MUELLER. Well, two things. Actually, the platform for making records readily available, as most law firms would see now, is the imaging of documents and coding of documents and easy retrieval from a data base. If, for instance, you had all the documents relating to Waco in a data base that had been—where they had been imaged, and once they had been scanned, even read it, you could run a search on pyrotechnic and find every document in which that word appears. And so if there is an issue, a question about were pyrotechnics used, you don't have to go through 10,000 documents, track down 4, 5, 10, 15, 50 FBI agents to determine whether or not they were used.

Senator SPECTER. But suppose you don't know the word or you don't have a reason to think pyrotechnics were used. It is just a matter of having the relevant records available that happened in Waco in April 1993.

Mr. MUELLER. Well, you can do any number of searches to pull out that which is more specific. I mean, the computerization of records today would be exceptionally helpful in responding, I think, to the requests, specific requests of Congress.

Going to the point about not correcting the testimony, quite obviously, if there is some error on testimony, it should be corrected immediately. If there was—as a result of a mistake, if I make a mistake here, and somebody—I walk out in the hall and somebody says, Now, Mr. Mueller, you told the Senate committee "x," I think if you look at this document it is "y," then I have got an obligation

as soon as possible to rectify that mistake and to explain to you why it was made.

Senator SPECTER. Well, in the absence of correcting the mistake—and we covered this on Ruby Ridge—where matters are not disclosed, what is your response going to be when somebody deliberately does not correct a mistake or deliberately does not disclose important information as it appears in Ruby Ridge?

Mr. MUELLER. There are a range of sanctions, and I would take action, absolutely. I mean, the bedrock principle for the Bureau has to be candor and truthfulness, whether it be in response to oversight, whether it be in response to Assistant United States Attorneys, whether it be in response to defense counsel, with the structure itself.

Senator SPECTER. What kind of action?

Mr. MUELLER. It depends on the circumstance. I mean, anybody that lies, absolutely anybody who lies deserves the strongest sanction, up to and including a dismissal from the FBI.

Senator SPECTER. Mr. Mueller, the Hanssen case is an illustration, along with Aldrich Ames, of very, very enormous damage done. I chaired the Intelligence Committee at a time when Aldrich Ames was detected. And the CIA Inspector General, Fred Hitts, testified before the Intelligence Committee as follows: "Although we found no reason to believe that the Directors of Central Intelligence who served during the relevant period were aware of the specific deficiencies described in the special assessment, I believe Directors of Central Intelligence are obligated to ensure that they are knowledgeable of significant developments related to crucial agency missions."

Now, this has been interpreted, when he used the word "ensure," that there was absolute liability on the Directors. And there was a very heated reply given by the former Directors—Director Gates, Director Webster, and Director Woolsey—that it was unfair to hold them responsible when they did not know about Ames or have reason to know. And the thrust of Inspector General Hitts' point was that when you are dealing with national security, it is incumbent upon the Director to take whatever action is necessary to find out, and that when it was a matter of that magnitude, it is not sufficient that he didn't know or have reason to know that he has an obligation to find out.

Now, that is a pretty tough standard, but do you think it is appropriate?

Mr. MUELLER. I can't speak to the circumstances of that exchange. What I can tell you, Senator, is that I believe anything that happens or does not happen in the Bureau, should I be confirmed, is my responsibility. If I did not assure that there is sufficient security for the computers, to assure that there is no additional Hanssen, then that is my responsibility. I need to learn the institution from top to bottom because I am going to be responsible for that which does happen and that which does not happen within that institution.

Senator SPECTER. Well, responsibility and accountability are words that you can articulate, but CIA Inspector General Hitts imposed a very tough obligation. I think it would be applicable both to the FBI Director and the CIA Director, that when you are deal-

ing with a Hanssen or you are dealing with an Ames, you have got a duty to find out. And I don't know quite how you discharge that duty, but it is a very, very heavy burden, which I think someone who is the Director of the FBI has.

Let me go on to two other very brief questions, Mr. Mueller. One is—and I discussed this with you—that I hear complaints from time to time, too frequently, about FBI agents asking someone who has been arrested against whom the Federal Government has a case if they have some information about some other person who is a public figure, with the suggestion that the case against the individual under arrest will go easier if that individual is able to target and identify somebody who is well known.

This is not a situation where there is a question of a co-conspirator to implicate somebody else where there is a predicate to believe is involved in a matter, but just somebody out of the blue, the person under arrest against whom a case is built knows X, who is a prominent person. Obviously that is a very, very bad tactic.

What can be done by the Director to preclude that sort of thing being done?

Mr. MUELLER. I must say, Senator, in all the years I've worked with the FBI, I've never seen an occurrence of that. And if that—I will tell you that I think there are precautions within the system to assure that that is very, very—well, very, very rare circumstance because if somebody is indicated, the conversations generally with the cooperators come out in trial, as well they should. But that, a general targeting, without predication, is anathema to the Bureau, and to the extent that any incident such as that comes to the attention of the Director, it should be dealt with firmly.

Senator SPECTER. My final question, Mr. Mueller, is about FBI leaks, and I wrote to FBI Director Freeh on June 8th this year asking, saying, "I am interested to know whether you have initiated any investigation on the leaks which have appeared in the press concerning an alleged investigation of Senator Robert Torricelli, and if so, what that investigation has disclosed." And I have had no response. I would like to have that made a part of the record, Mr. Chairman.

Chairman LEAHY. It will be.

In fact, I should note that also Senator Feinstein and I along with the Senator from Pennsylvania have asked similar questions, and my recollection is we have not gotten an answer either.

Senator SPECTER. Well, I was told—and I wasn't here for the entire sessions, had other obligations—that the question about Senator Torricelli had not been asked. But what do you think about that and what action can the FBI Director take to try to preclude these leaks which are so prevalent?

Mr. MUELLER. Generally speaking—not being familiar with that, the facts of that particular investigation, but generally speaking, I abhor leaks. They are detrimental to the mission of the FBI. They are detrimental to most particularly the individual who is the subject of them. I think you set a standard of very harsh treatment when an investigation is conducted and somebody is determined, has been determined to have leaked.

I know that in the 3 years I have been U.S. Attorney in San Francisco, I believe we developed a reputation as an office in work-

ing closely with the FBI of not countenancing leaks in any way, shape, or form on ongoing investigations and being scrupulously careful to assure that any public statements that are made are made at the appropriate time and with the appropriate information as that is allowed under the regulations put out by the Department of Justice. And I will do everything in my power to assure that those regulations are abided by and that any breach of those regulations is treated firmly.

Senator SPECTER. As I say, I don't know what was done. All I know about the Senator Torricelli matter is what I have read in the papers myself. But I did not know whether the FBI has conducted any inquiry. But, if confirmed, will you conduct an inquiry on those leaks?

Mr. MUELLER. I will look at it to determine whether there is predication. If predication for that, absolutely, I will conduct an inquiry.

Senator SPECTER. Thank you. Thank you very much, Mr. Mueller, for being so forthcoming.

Mr. MUELLER. Thank you, sir.

Senator SPECTER. Thank you, Mr. Chairman.

Chairman LEAHY. I thank the Senator from Pennsylvania both for rearranging his schedule yesterday and again today to come back and wrap this up.

I will close with this. The question you asked on leaks is one that bothers me. I look at cases like Wen Ho Lee, which Senator Specter has talked about; Richard Jewell, who was announced to the public—I mean, the public just assumed he had tried to blow up the Olympics because the FBI leaks and stories that came out. Tom Stewart, who was a decorated Navy flier and investment banker, who won last year a $6 million settlement against the FBI because the agency leaked false and damaging information against him.

Not only is this wrong, but the three of us know as prosecutors, if you are doing it against the wrong person, it takes attention away from who is the real person. Everybody is focusing on the wrong person, and the real culprit might escape detection.

So I would ask you to move this into a real priority. They are getting too much the idea that the "guilty accused," as somebody once said, but that is not the way our Constitution is. People's names and reputations can be ruined. You can imagine if you own a small business and all of a sudden it is announced, well, the FBI is looking at You. You know what that does. And the smaller the area, the harder it is.

I will also put a number of questions in the record, primarily on some management issues. Because I am putting them in the record, I would not want you to think that they are not of significance to me. They are on everything from how the IG works to how people are disciplined. I would like you to look at them, and I would like a response. Obviously we are not going to delay things for such responses because I don't want a quick and easy response. I want you to have time to do it.

I will put this nomination on the agenda for our exec meeting on Thursday of this week. I think you understand from what you have heard from this committee how the committee will vote. But I hope you also understand that, in doing that—and this is probably as di-

verse a group of Senators as you are going to see here in the Senate—that we are putting a lot of faith in you and a lot of hope in you as Americans and as U.S. Senators. We all share the same goals for our country, and you are given one of the most crucial places to fulfill those goals, because what we are saying is what 250 million other Americans would say. You have got to be our chief law enforcement officer of the FBI. You have got to set the standard for everybody else. I think you know how in small States like mine law enforcement looks up to the FBI. I know in my years as a prosecutor, some of the proudest things was when officers who had to report to my office, would come and say, "I have been accepted at the FBI Academy, I am going to the training program." There wasn't a single one of those officers afterward I didn't go in their office and see on the wall that plaque. Usually the plaque from there along with pictures of their family, and actually the two of them together says a lot.

So you understand that you have to give that image, the image of the best and the most honest. And I think, frankly, you are going to be helped in that by your own experience and your own background, which is extraordinary.

And if I might say on a personal note, I think you benefit by your family, by your wife and your children and your grandchildren, because ultimately that is the bedrock all of us can go back to.

So, Mr. Mueller, I appreciate your being here. I wish you well.

Mr. MUELLER. Thank you for your courtesies, Mr. Chairman, and I can't leave without saying, yes, my wife and my family, I would not be here without their support over the years and the reliance upon them. So thank you, sir.

Chairman LEAHY. With that final word, we stand adjourned.

[Whereupon, at 12:25 p.m., the committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of Hon. Joseph R. Biden, Jr., a U.S. Senator from the State of Delaware

Today, the Committee considers the nomination of Robert S. Mueller III to be the director of the Federal Bureau of Investigation. I have met with Mr. Mueller, I have reviewed his record, and while I have several questions for the nominee I intend to support his nomination.

At the outset, I would like to thank Chairman Leahy for moving so quickly on President Bush's nomination. I understand the Committee announced its intention to hold confirmation hearings for Mr. Mueller the very day his nomination was officially received in the Senate. It has been the Judiciary Committee's practice over the last

28 years to address the nominations of FBI directors expeditiously. This is a tradition that reflects the importance of the post to which Bob Mueller has been named.

Today's FBI is a $3.5 billion, 28,000-person operation—a sprawling agency spanning 56 field offices, 400 satellite offices, and more than 40 foreign liaison posts. The FBI has 11,400 Special Agents and over 16,400 other employees.

We have entrusted the FBI with vast powers, powers designed to ensure that the Bureau has the tools and the resources it needs to lead our Nation's fight against domestic terrorism, violent crime, organized crime, drugs, and other law enforcement priorities. The twenty-first century FBI also must be ready to confront new threats: cybercrimes, health care fraud, environmental crimes, and new terrorist groups that have the potential to threaten Americans here at home as never before.

While the priorities of the FBI may have grown and changed, its mission and our high expectations for it remain the same. The FBI must pursue tough, aggressive

law enforcement, but it must also work within the confines of the Constitution's guarantee of individual liberties respecting both the spirit and the letter of the law.

Unfortunately, despite the historic drops in violent crime the country has benefitted from over the past eight years, despite all of the counterintelligence successes of the Bureau, despite the vast resources this Congress and the American people have dedicated to the FBI's success, today's Bureau finds itself awash in a culture of arrogance, and amongst a populace that increasingly does not trust its work. Few Members of Congress have been as supportive of the FBI as have I, but that support becomes increasingly difficult to defend as more and more management issues come to light.

With that in mind, it is our job in the hearing today to ensure that the nominee before us embodies the ideals we expect the FBI to uphold, and to ensure he is the right man for the daunting task of restoring confidence in the Bureau's operations.

As I have required of all nominees to the FBI Director post, I believe that the Committee must inquire as to whether Mr. Mueller has:

First, the strong moral character and appropriate personal and professional background required to be Director of the Nation's chief law enforcement agency;

Second, the qualities necessary to maintain the FBI's independence from partisan political influences;

Third, a healthy respect for the individual rights guaranteed by our Constitution along with a commitment to ensuring the FBI always respects the rule of law; and

Fourth, an ability to lead and inspire the FBI's thousands of heroic agents and employees to continue to make the Bureau the finest law enforcement agency in the world.

During my 28 years in the Senate and my membership on this Committee, I have come to recognize the position of FBI Director as one of the most difficult and sensitive within the entire Federal government.

Those of us committed to aggressive law enforcement must insist on strict adherence to high standards of conduct. We must insist on an FBI director who knows how to lead, how to institute reforms when reform is necessary, how to give our citizens faith that their liberties are being protected at the same time their laws are being enforced so as to keep them secure.

Robert S. Mueller comes to the committee with a reputation for tough prosecution, integrity, and dedication. He has been appointed to high law enforcement posts by two different presidents in two different parties—a rare feat. The first President Bush named him Assistant Attorney General for the Criminal Division; President Clinton named him to be U.S. Attorney for the Northern District of California. Through May of this year, Mr. Mueller served as Acting Deputy Attorney General.

Mr. Mueller, you are clearly qualified for this difficult task. I congratulate you on your nomination, I welcome you and your family here today, and I look forward to asking you specific questions about your goals and your vision for the FBI.

Statement of Hon. Mitch McConnell, a U.S. Senator from the State of Kentucky

I would first like to congratulate Mr. Mueller on his nomination to be the Director of the Federal Bureau of Investigation. Although highly-publicized problems at the Bureau over the last few years have taken some of the luster off its reputation, the FBI remains the world's preeminent law enforcement organization. Its successes over the years are both legion and legendary, and its agents and employees are some of our finest public servants. I am very happy for him to have this opportunity, and after carefully reviewing his background and experience, I am confident he will make the most of it.

Now, his job, as he well knows, will not be an easy one. As I alluded to, Americans have been troubled by the Bureau's high-profile missteps and mistakes over the last eight years or so. Indeed, even as Americans hoped the FBI's troubles were behind it, it was reported on the day he and I recently met that hundreds of Bureau firearms and lap top computers had been stolen or lost over the last several years. The number and significance of these incidents illustrate systemic problems in the Bureau's operations.

But I believe that many of these problems can be solved by strong and effective management from the top. The performance of Attorney General Ashcroft bears this out. In his short tenure, he has proven to be an able manager, being both proactive

and appropriately reactive, particularly with respect to the Bureau's operations. For example, he created the DOJ's Strategic Management Council to provide leadership on long-range planning, and he has directed the Council to comprehensively review the FBI in order to improve its performance. Attorney General Ashcroft has also, on his own initiative, wisely broadened the authority of the DOJ's Office of Inspector General to include investigations of Bureau personnel. While by no means a panacea, this important change should go a long way to remedying some of the ills that have plagued the Bureau for years.

Like the Attorney General, I believe Mr. Mueller will provide strong and effective leadership. Mr. Mueller has both impressive management and law enforcement experience. He has been a career federal prosecutor for most of the last twenty-five years, so he is well-schooled in avoiding the problems and pitfalls inherent in criminal investigations and prosecutions. But Mr. Mueller has also managed offices and units of all sizes and complexities, from supervisor of a Special Prosecutions Unit and chief of a homicide unit, to Chief of the Criminal Division with two U.S. Attorneys' Offices, to U.S. Attorney, to Assistant Attorney General for the DOJ's Criminal Division. He even helped run the Department of Justice itself earlier this year as Acting Deputy Attorney General during a critical period when General Ashcroft was by himself, "home alone", so to speak.

And to the extent the FBI's institutional culture has been an impediment rather than an asset, it is important to note that Mr. Mueller knows the Bureau well, both from his long career as a federal prosecutor and from serving as liaison between DOJ and the FBI, when he was an Assistant to Attorney General Richard Thornburgh. But Mr. Mueller is not "of"the FBI, and therefore I believe institutional loyalty will not blind him to making the hard decisions when he needs to.

In closing, Mr. Chairman, I hope the FBI's best days are ahead of it. I am optimistic that Mr. Mueller and the Attorney General will work well together. Both are committed to vigorously enforcing the law without regard to politics or partisanship. And both recognize that a well run agency is instrumental to that end. I look forward to hearing Mr. Mueller's testimony and seeing him get quickly to work. Thank you.

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