

ROBERT MUELLER VISITS SENATE JUDICIARY COMMITTEE

Oops, missed Pat Leahy's opening statement, but the hearing is being streamed here. After babbling about how poor Curt Weldon was the victim of a nasty FBI leak, Specter is at least asking some specifics about the anthrax investigation.

Leahy interrupts Mueller just as he's pitching his great anthrax investigation.

Leahy: I've thought about throughout this time. You briefed me in Vermont. These weapons that were used against the American people and Congress—are you aware of any facility in the US that is capable of making the anthrax besides Dugway in UT and Batelle in OH? Other than those two?

Mueller: Fifteen in the US and 2 overseas.

Leahy: Are there any other facilities capable of making this anthrax?

Mueller: I do believe there are. I would have to get back to you.

Leahy: At some point we're going to take a break and please get me that information, because I know of no others besides those two. I'm aware of the article from September 4 reporting a program of secret research on biological weapons, project has been embraced by Bush Administration. Weapons used against Americans were right after that.

Now into questions.

Leahy: You commented on corporate scandals. There will be investigations regarding possible fraud or lawbreaking in those areas?

Mueller: 1400 investigations and 24 investigations looking at larger corporations who may have engaged in "misstatements."

Leahy: The USG is on the hook for 800 billion to 1 trillion—almost as much as the Iraq war—and I suspect that everyone wants to know if there was fraud.

Leahy: New guidelines. You say no broad new authorities. We're unable to get a review of that, we have not been briefed. It's been as superficial briefing as possible. I was surprised by your statement. Under the proposed guidelines, line FBI agent would be able to use several new intrusive methods at threat assessment level.

Specter: Did you personally review the evidence and conclude there was proof beyond a reasonable doubt.

Mueller: Yes.

Specter: WRT the hairs on the mailbox, why no effort to swab Ivins for DNA until the time he committed suicide.

Mueller: I would have to get back to you.

Specter: I'm going to send you a letter. When you anticipate designating an independent group of experts.

Mueller: We are asking NAS to identify experts to serve on panel.

[Note: what about the non-scientific evidence???)

Mueller: I will consider whether you can name people.

Specter: What's there to consider.

Mueller: I'm not familiar with how NAS does these reviews.

Specter: If we want to have an independent group, would you turn over the evidence?

Mueller: Open to third party review, especially when it comes to the science.

Specter: I'm asking for you to let this committee to participate in this objective

group.

Specter complaining that he was in the middle of giving FBI more authority with PATRIOT when he discovered the warrantless wiretap program.

Mueller: It was not our program. My understanding was that Congress had been briefed.

Specter: We're the principal oversight officers for the FBI.

Specter: I can't get an answer from General Mukasey on the Weldon letters, what am I supposed to do, go into his office and look myself? Self help? Bob Mueller comes from a long line of trial lawyers. I looked over the anthrax evidence and I have grave doubts about the sufficiency of evidence for beyond reasonable doubt. If we don't pave the way for the newspapers to tell us how are we going to find out?

[Note: this is the same Arlen Specter who whined that Schumer used too much time in asking Comey about the hospital confrontation. He has gone way over.]

Leahy: If Ivins is the one who sent the letter, I do not believe in any manner that he is the only person involved in this attack on Congress and the American people. I believe there are other people involved either as accessories before or after. I believe there are others out there who could be charged with murder.

Mueller: I have told you that in the investigation to date we have followed every lead to find out if anyone else was involved, we would pursue that.

DiFi: The full committee wasn't briefed on warrantless wiretap program until 2006. Your comment that members were fully briefed, that's not accurate.

DiFi listing interrogations that don't use torture that have good results, including Abu Zubaydah.

DiFi: On the 27th of November in 2002, legal counsel Spike Bowman received a memo, he did not receive it for months. Legal analysis of interrogation techniques. It goes on to say that information received through these methods would not be introduced in US, maybe not in military tribunals. Intent of user for judge or jury to decide. Those who employ these techniques may be indicted if the user had requisite intent.

DiFi hitting on the fact that the FBI was warned, but didn't collect information to support war crimes cases. Also trying to find out when Mueller first became aware.

DiFi: Did this Spike Bowman memo ever get to the AG or the President?

Mueller: I don't think so.

Grassley's birthday.

Grassley: Unanimous consent to have my statement made part of the record, documents and letters. Major developments in anthrax investigation. After years of focusing on Hatfill. Ivins committed suicide. This is one of the longest investigations in FBI history. There will probably never be a trial. Congress and the American people deserve a full accounting. Unanswered questions. A thorough Congressional investigation is needed. I appreciate director referring to NAS, but the NAS would not be reviewing interview summaries, GJ testimony, other investigative documents. The Academy would not be reviewing the detective work. Wrote to AG and Mueller seeking answers, I have not received a reply. 18 questions. Highlight one: when the FBI first learned of Ivins' late night access to lab? Those records available from early in investigation. Shouldn't his late-night lab access have led you to focus on him earlier in investigation instead of focusing on Hatfill. When did FBI obtain those records.

Mueller: Have to get back to you. Drafted answers.

Leahy: I have to emphasize, the getting back to

us is very difficult to us here. The answers go to DOJ, they sit on them, and we never get the answers. They sit on them, it's a dark hole over there. Grassley has asked legitimate questions over the last year. As Chair, I insist we do get the answers. Some questions can be answered this morning. I will ask you to get on the phone and get answers.

Mueller: One second. [confers] I have some limited information but I'd prefer to confirm it over the break.

Grassley: Shouldn't that have caused you to focus on Ivins instead of Hatfill.

Mueller: Key disclosure was when we were able to match the genetic markers, spring 2005. At that time, it triggered a number of investigative steps. It was at that juncture that the investigation took on a new focus.

Grassley: FBI waited years to set the record straight after FBI switched directions. Why did you wait until after settling Hatfill's suit and clearing Hatfill's name?

Mueller: Generated appropriate steps during the investigation. Lawsuit focused on leaks.

Mueller: We had to eliminate people who had gotten the anthrax. While it shifted focus of investigation, we had to determine who was responsible, anybody who may have had anthrax. There were a number of persons who had been employed by USAMRIID.

Grassley: was anyone punished for those leaks?

Mueller: One person canceled as a result of confirming something, one ongoing investigation.

Feingold: FBI has made some grave mistakes in recent years, particularly with NSLs, the FBI doesn't have the ability to police itself. As Leahy already described, guidelines allow assessment, which allow physical assessment, pretext, recruiting of informants, all with no reason for suspicion whatsoever. So long as it's a national security threat or collecting foreign

intelligence, you can pick someone from the street. Since no reason for suspicion is required, I believe this makes racial profiling possible. These guidelines contain an exception for national security cases. Do you agree that it would be ineffective for the FBI to engage in racial profiling.

Mueller: Absolutely.

Feingold: When these are finally published, I believe there will be a public outcry. Why can't you solicit the feedback of people?

Mueller: input from ACLU, privacy interests, draft of guidelines, elicited suggestions, have had an openness that's far different than before.

Durbin: Guideline question. In most instances, there has to be factual predicate. Is national origin or religion a sufficient factual predicate in investigations related to terrorism.

Mueller: No.

Durbin: Torture and investigative techniques. I called you to mention that I was going to bring up. 2005, I asked about reports about FBI agents witnessing detainee abuses.

[Just out walking the dog—what'd I miss?]

Whitehouse: DOJ review of investigation of warrantless wiretap. More detail in two-part series [referencing Gellman]. Oath of office confers duties and responsibilities. Greatest failing still pursued by extremists who have controlled White House decision-making. Expects agencies to bow before the will of the White House, even when honor, duty, and statute confer responsibilities. Leads to dangerous culture where yes-men and toadies become Constitutional norm.

[Goes on to applaud Mueller for his role in putting duty over obedience.]

Whitehouse: I will say the new guidelines

unhinges the FBI from some of its traditional roles. It would be helpful in addition to sharing the new guidelines to allow some senior folks to come and brief those members who are interested what the affirmative protocols is in those investigations. I suspect the guidelines are written in the negative, and don't disclose the administrative function that oversees them.

Cardin: We need to find a way in addition to the NAS investigation to give people more confidence in investigation.

Cardin: I represent MD and with it Ft. Detrick. MDers have a right to be concerned that those working in Detrick are working safely. Ivins had security clearance until July 10. Why was his security clearance maintained to such a late point. Did the FBI recommend that his clearance be changed? Did we not have credible information.

Mueller: I would have to get back to you on a specific timeline. There was no overt action until November 2007. At time when search warrant was requested, we advised USAMRID of our concerns. At that point, while his security clearance maintained, his access to relevant spaces at USAMRID. No longer had access to compounds he had access to prior to that day.

Cardin: I would appreciate it if you would confirm that to the committee. Info we received it was a counselor raising issues about his mental statement.

Mueller: If there are privileged records we do not have access to them.

Cardin: Important that clearance be monitored.

Cardin: 2008 elections. Actions to prevent repeat of activity from 2006 and 2004 elections, voter fraud that took place in close proximity to elections, makes it hard to ensure voters can participate. What role with the FBI play to be constructive in enforcement of our laws.

Leahy: Assessment that allows an agent to

conduct indefinite 24-hour overview. Why not include policies in regulations?

Mueller: Framework. Techniques that could be used in any situation.

Grassley: If the FBI had the lab access records in 2002, why did it take so long to analyze them?

Mueller: We obtained thousands of lab records.

Grassley: According to info released by FBI, material in envelopes contain silicon. Scientists in Sandia conducted blind tests, unlike materials in attack envelope, flash contained no silicon. Can you explain who silicon ended up in envelopes?

Mueller: Issue of silicon at outset, not outside sample, but part of growth process. I'll get back to you.

Grassley: Why should we have to wait to get document requests until internal oversight is done? Are you held up by DOJ policy?

Mueller consulting with lawyer. Huh.