

**Opening Statement of Chairman John D. Rockefeller IV
Hearing on Proposed Attorney General Guidelines
for FBI Domestic Investigations
September 23, 2008**

The Committee will come to order.

Today the Senate Intelligence Committee examines issues related to the proposed Attorney General guidelines governing the activities of the Federal Bureau of Investigation within the United States.

In early August, Attorney General Michael Mukasey contacted me and other leaders of the congressional intelligence and judiciary committees to inform us that he would soon issue a new set of guidelines for the FBI to consolidate and harmonize five existing sets of investigative guidelines.

These guidelines pertain to general crimes investigations, national security investigations, the collection of foreign intelligence information, and reporting on civil disorders and demonstrations.

The Attorney General later agreed to postpone issuing those proposed guidelines until after Congress held hearings this month to examine them.

I appreciate the Attorney General's decision to consult with Congress and his willingness to seek comments on the proposed guidelines not only from the Hill but also from selected representatives of civil liberties organizations on a read-and-return basis. I regret, however, that the proposed guidelines have not been publicly released for broader debate and comment. Circulating the actual proposed guidelines would be a constructive step in generating additional review and commentary.

The Justice Department's decision to prohibit the Committee from retaining a copy of the draft guidelines in preparing for this hearing and to restrict their public distribution has been unhelpful and has unnecessarily complicated our review of them. In light of the recently documented abuses in the FBI's use of National Security Letters and continued concerns, going back to 9/11, with the Department's ability to carry out the national security mission, the Committee wants to ensure that new guidelines are not only effective but subject to sufficient oversight.

Last week, Federal Bureau of Investigation Director Robert Mueller testified on the proposed guidelines before the House and Senate Judiciary Committees, as part of broader oversight hearings of the FBI. It is important, nevertheless, that

the Intelligence Committee also consider the proposed guidelines as their most important features concern the intelligence activities of the FBI.

Our witnesses today are Assistant Attorney General Beth Cook and FBI General Counsel Valerie Caproni. Both are able public servants and the experts within the Department on these issues. We welcome their appearance before the Committee.

I regret, however, that neither the Attorney General nor the Deputy Attorney General was available to accept our invitation to join our witnesses in testifying on this important topic.

Over the last 32 years, since Attorney General Edward Levi issued the first set of guidelines to establish direction and control over the internal security activities of the FBI, Attorney General guidelines have been a signature pronouncement of the nation's top legal officer.

As the Levi guidelines have been revised over the years, and emerging investigative issues have been addressed, these guidelines have represented what the Attorney General thinks is the appropriate balance between the government's duty to prevent crime and deter threats to the national security and the protection of the rights of Americans under the Constitution and the rule of law.

In striking that balance, the guidelines have been highly important to the Congress. As the Inspector General of the Department of Justice observed in a report on the FBI's compliance with existing guidelines, the adoption of the Levi guidelines were a factor in the decision by Congress, in the late 1970's and early 1980's, not to enact a statutory charter for the FBI. Simply put, the guidelines have given Congress confidence that the nation's highest law officer had acted and would continue to act to ensure that FBI abuses exposed in the 1970's would not be repeated.

Over the course of time, Attorneys General have not only amended the original guidelines but have issued additional sets of guidelines. With respect to the Justice Department's new proposal, it may be appropriate, as our witnesses will no doubt urge, to consolidate and make consistent the five sets of Attorney General guidelines, particularly in the area of checking leads and conducting investigations involving international terrorism, where the guidelines overlap to the greatest degree.

This Committee has pushed the Department of Justice and the FBI to make improvements in the FBI's work as an intelligence agency. Consolidated and clarified Attorney General guidelines could represent an improvement for FBI

agents and analysts if they are carefully written with appropriate safeguards to prevent abuse and ensure accountability.

The Department of Justice and the FBI, however, need to make the case why FBI agents need greater latitude to use sensitive investigative techniques, such as physical surveillance and pretext interviews that may mislead law abiding American citizens, particularly outside of the terrorism context, without the factual predicates, higher level approval, and periodic review and renewal that have been required not only before 9/11 but in Attorney General guidelines issued since then.

We also will want to hear whether sufficient safeguards are built into the proposed guidelines, and resources provided, to protect the constitutional and legal rights of Americans through appropriate oversight authorities given to the National Security Division and other components of the Department of Justice.

Before turning to the Vice Chairman for his opening remarks, I want to take a few moments to acknowledge the exemplary work of two members of our committee who will be retiring from the Senate at the end of this Congress.

John Warner and Chuck Hagel have contributed immeasurably to the oversight work of the Intelligence Committee. They are among the hardest working and most knowledgeable members ever to sit on the Committee. Over the many years of their service, at countless hearings and business meetings, Senator Warner and Senator Hagel have been strong, independent advocates for strengthening our Intelligence Community and keeping America strong. They both have displayed a remarkable ability to hone in on the crux of complex problems and doggedly pursue sensible solutions, often times taking note of an important point that the rest of us had missed. The collective knowledge and wisdom of the Senate Intelligence Committee will lessen upon their departure.

I now turn to Vice Chairman Bond for any remarks he would like to make.