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Nomination and Confirmation of the FBI Director: Process and Recent History

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Summary

The Director of the Federal Bureau of Investigation (FBI) is appointed by the President by and with the advice and consent of the Senate. The statutory basis for the present nomination and confirmation process was developed in 1968 and 1976 and has been used since the death of J. Edgar Hoover in 1972. Over this time, five nominations have been confirmed and two have been withdrawn by the President before confirmation. The position of FBI director has a fixed 10-year term; the officeholder may not be reappointed. There are no statutory restrictions on the authority of the President to remove the FBI director. One director has been removed by the President since 1972. The current FBI director, Robert S. Mueller III, was confirmed by the Senate on August 2, 2001. This report will not be updated.

Federal statute provides that the FBI director is appointed by the President by and with the advice and consent of the Senate.[1] When there is a vacancy or an anticipated vacancy, the President begins the appointment process by selecting and vetting his preferred candidate for the position. The vetting process for presidential appointments includes an FBI background check and financial disclosure. The President then submits the nomination to the Senate, where it is referred to the Judiciary Committee. The Judiciary Committee usually holds hearings regarding nominations to FBI director. The committee may then vote to report the nomination back to the Senate favorably, unfavorably, or without recommendation. Once reported, the nomination is available for Senate consideration. If the Senate confirms the nomination, the individual is formally appointed to the position by the President.[2]

Prior to the implementation of the current nomination and confirmation process, J. Edgar Hoover was director of the FBI for nearly 48 years. He held the position from May

[1] 28 USC 532 note.

[2] See also CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki.

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10, 1924 until his death on May 2, 1972.[3] The current process dates from 1968, when the FBI director was first established as a presidentially-appointed position requiring Senate confirmation in an amendment to the Omnibus Crime Control and Safe Streets Act of 1968.[4] This measure had been introduced and passed in the Senate twice previously,[5] but had never made it through the House. Floor debate in the Senate focused on the inevitable end of Hoover's tenure (due to his advanced age), the vast expansion of the FBI's size and role under his direction, and the need for Congress to strengthen its oversight role in the wake of his departure.[6]

The 10-year limit for any one incumbent was added in 1976 as part of the Crime Control Act of 1976.[7] As with the previous measure, the Senate had introduced and passed this provision twice previously,[8] but it had failed to clear the House. The remarks of Senator Robert C. Byrd suggest that the goal of the term limit was to afford some protection to the FBI director from political control by the President:

> [T]here is no limitation on the constitutional power of the President to remove the FBI Director from office within the 10-year term.... However, the setting of a 10-year term of office by Congress would, as a practical matter, preclude — or at least inhibit — a President from arbitrarily dismissing an FBI Director for political reasons, since a successor would have to be confirmed by the Senate.[9]

Between 1972 and 2004, five nominees for FBI director, including the latest, Robert S. Mueller III, were confirmed by the Senate, and two nominations were withdrawn by the President. Each of these nominations is shown in **Table 1** and discussed below.[10]

L. Patrick Gray III. On the day after the death of long-time director J. Edgar Hoover, L. Patrick Gray was appointed acting director.[11] President Richard M. Nixon nominated Gray to be director on February 21, 1973. Over the course of nine days, the Senate Committee on the Judiciary held hearings on the nomination. Although Gray's

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[3] For further information on the history and development of the FBI, see the FBI history Web page, available at [http://www.fbi.gov/fbihistory.htm].

[4] P.L. 90-351, sec. 1101; June 19, 1968; 82 Stat. 197, at 236. The statute did not apply to Hoover, the incumbent at that time, but was worded to apply to future directors, beginning with his successor.

[5] S. 603, 88th Congress (1963) and S. 313, 89th Congress (1965).

[6] See *Congressional Record*, vol. 114, May 14, 1968, pp. 13181-13184.

[7] P.L. 94-503, sec. 203; Oct. 15, 1976; 90 Stat. 2407, at 2427.

[8] S. 2106, 93rd Congress (1974) and S. 1172, 94th Congress (1975).

[9] Sen. Robert C. Byrd, remarks in the Senate, *Congressional Record*, vol. 122, July 26, 1976, p. 23809.

[10] This information does not include acting directors. The FBI's list of its directors and acting directors can be found on the Internet at [http://www.fbi.gov/libref/directors/directmain.htm].

[11] U.S. President (Nixon), "Acting Director of the Federal Bureau of Investigation," *Weekly Compilation of Presidential Documents*, vol. 8, May 8, 1972, pp. 819-820.

nomination was supported by some in the Senate,[12] his nomination ran into trouble during the hearings as other Senators expressed concern about partisanship, lack of independence from the White House, and poor handling of the Watergate investigation.[13] The President withdrew the nomination on April 17, and Gray resigned as acting director on April 27.

Clarence M. Kelley. Clarence M. Kelley was the first individual to become FBI director through the nomination and confirmation process. A native of Missouri, Kelley was a 21-year veteran of the FBI, becoming chief of the Memphis field office. He was serving as Kansas City police chief when President Nixon nominated him on June 8, 1973. During the three days of confirmation hearings, Senators appeared satisfied that Kelley would maintain nonpartisan independence from the White House and be responsive to their concerns.[14] The Judiciary Committee approved the nomination unanimously and reported it to the Senate on June 26. Kelley was confirmed by a unanimous vote the following day. He was sworn in by the President on July 9.[15] Kelley remained FBI director until his retirement on February 23, 1978.

Frank M. Johnson, Jr. With the anticipated retirement of Clarence Kelley, President Jimmy Carter nominated U.S. District Court Judge Frank M. Johnson, Jr. of Alabama, on September 30, 1977. Johnson faced serious health problems around the time of his nomination, however, and the President withdrew the nomination on December 15.[16]

William H. Webster. In the aftermath of the withdrawn Johnson nomination, President Carter nominated U.S. Court of Appeals Judge William H. Webster to be director on January 20, 1978. Prior to his service on the Eighth Circuit, Webster had been U.S. Attorney and then U.S. District Court Judge for the Eastern District of Missouri. After two days of hearings, the Judiciary Committee unanimously approved the nomination and reported it to the Senate. The Senate confirmed the nomination on February 9, 1978, and Webster was sworn in on February 23, 1978.[17] He served as Director of the FBI until he was appointed as Director of the Central Intelligence Agency (CIA) in May 1987.

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[12] See, for example, Sen. Roman L. Hruska, "The Nomination of L. Patrick Gray to be Director of the FBI," remarks in the Senate, *Congressional Record*, vol. 119, Feb. 21, 1973, p. 4863 and Sen. Lowell P. Weicker, Jr., "The Nomination of L. Patrick Gray III," remarks in the Senate, *Congressional Record*, vol.119, Mar. 20, 1973, p. 8685.

[13] See, for example, Sen. Robert C. Byrd, "Political Partisanship Should Have No Place in the FBI," remarks in the Senate, *Congressional Record*, vol.119, Feb. 19, 1973, p. 4349 and Sen. Robert C. Byrd, "Executive Privilege and Mr. Gray," remarks in the Senate, *Congressional Record*, vol.119, Mar. 19, 1973, p. 8352.

[14] See Mary Wilson Cohn, ed., *Congressional Quarterly Almanac: 93rd Congress 1st Session....1973* (Washington: Congressional Quarterly, 1974), pp. 376-377.

[15] U.S. President (Nixon), "Director of the Federal Bureau of Investigation," *Weekly Compilation of Presidential Documents*, vol. 9, July 16, 1973, pp. 893-894.

[16] Carolyn Mathiasen, ed., *Congressional Quarterly Almanac: 95th Congress 1st Session ... 1977* (Washington: Congressional Quarterly, 1977), p. 568.

[17] U.S. President (Carter), "Director of the Federal Bureau of Investigation," *Weekly Compilation of Presidential Documents*, vol. 14, Feb. 27, 1978, pp. 396-397.

William S. Sessions. On September 9, 1987, President Ronald W. Reagan nominated William S. Sessions, Chief Judge of the U.S. District Court of Western Texas, to replace Webster. Prior to his service on the bench, Sessions had worked as chief of the Government Operations Section of the Criminal Division of the Department of Justice and as U.S. Attorney for the Western District of Texas. Following a one-day hearing, the Judiciary Committee unanimously recommended confirmation. The Senate confirmed the nomination, without opposition, on September 25, and Sessions was sworn in on November 2.[18]

Sessions has been the only FBI director removed from office to date. President William J. Clinton removed Sessions from office on July 19, 1993, citing "serious questions ... about the conduct and the leadership of the Director" and a report on "certain conduct" issued by the Office of Professional Responsibility at the Department of Justice.[19] Some Members of Congress questioned the dismissal,[20] but they did not prevent the rapid confirmation of Session's successor.

Louis J. Freeh. The President nominated former FBI agent, federal prosecutor, and U.S. District Court Judge Louis J. Freeh of New York as FBI director on July 20, 1993, the day following Session's removal. The Judiciary Committee held one day of hearings and approved the nomination. The nomination was reported to the full Senate on August 3, and Freeh was confirmed on August 6. He was sworn in on September 1, 1993,[21] and served until his voluntary resignation, which became effective June 25, 2001.

Robert S. Mueller III. On July 18, 2001, President George W. Bush nominated Robert S. Mueller III to succeed Freeh. Mueller had recently served as the U.S. Attorney for the Northern District of California in San Francisco, and he served as the Acting Deputy U.S. Attorney General from January through May of this year. The former Marine had also been U.S. Attorney for Massachusetts and served as a homicide prosecutor for the District of Columbia.[22] Under President George Bush, Mueller was in charge of the Justice Department's criminal division during the investigation of the bombing of Pan Am

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[18] U.S. President (Reagan), "Federal Bureau of Investigation," *Weekly Compilation of Presidential Documents*, vol. 23, Nov. 9, 1987, pp. 1261-1263.

[19] U.S. President (Clinton), "Remarks on the Dismissal of FBI Director William Sessions and an Exchange With Reporters," *Weekly Compilation of Presidential Documents*, vol. 29, July 26, 1993, pp. 1373-1374.

[20] On the floor of the Senate, Senator Orrin G. Hatch praised Sessions's service and characterized the Administration's reasons for removing the director as "vague." Sen. Orrin G. Hatch, remarks in the Senate, *Congressional Record*, daily edition, vol. 139, July 21, 1993, p. S9124. See also Jan Austin, ed., *Congressional Quarterly Almanac: 103rd Congress 1st Session....1993* (Washington: Congressional Quarterly, 1994), p. 309.

[21] U.S. President (Clinton), "Remarks on the Swearing-In of Federal Bureau of Investigation Director Louis Freeh," *Weekly Compilation of Presidential Documents*, vol. 29, Sept. 6, 1993, pp. 1680-1682.

[22] U.S. President (Bush, G.W.), "Remarks on the Nomination of Robert S. Mueller to be Director of the Federal Bureau of Investigation," *Weekly Compilation of Presidential Documents*, vol. 37, July 9, 2001, pp. 1012-1013.

Flight 103 and the prosecution of Panamanian leader Manuel Noriega.[23] On August 2, after two days of hearings, the Judiciary Committee approved, and the full Senate confirmed, Mueller's nomination.[24]

Further information on the nomination and confirmation of individual FBI directors can be obtained from the Senate hearings and reports listed below.

Hearings

U.S. Congress, Senate Committee on the Judiciary, *Nomination of Louis Patrick Gray III, of Connecticut, to be Director, Federal Bureau of Investigation*, hearings, 93rd Cong., 1st sess., Feb. 28, 1973; Mar. 1, 6, 7, 8, 9, 12, 20, and 22, 1973 (Washington: GPO, 1973).

_____. *Nomination of Clarence M. Kelley, of Missouri, to be Director of the Federal Bureau of Investigation*, hearings, 93rd Cong., 1st sess., June 19, 20, and 25, 1973 (Washington: GPO, 1973).

_____. *The Nomination of William H. Webster, of Missouri, to be Director of the Federal Bureau of Investigation*, hearings, 95th Cong., 2nd sess., Jan. 30 and 31, 1978; Feb. 7, 1978 (Washington: GPO, 1978).

_____. *Nomination of William S. Sessions to be Director of the Federal Bureau of Investigation*, hearings, 100th Cong., 1st sess., Sept. 9, 1987 (Washington: GPO, 1990).

_____. *Nomination of Louis J. Freeh to be Director of the Federal Bureau of Investigation*, hearings, 103rd Cong., 1st sess., July 29, 1993 (Washington: GPO, 1995).

Reports

_____. *William H. Webster to be Director of the Federal Bureau of Investigation*, report to accompany the nomination of William H. Webster to be Director of the Federal Bureau of Investigation, 95th Cong., 2nd sess., Exec. Rept. 95-14, Feb. 7, 1978 (Washington: GPO, 1978).

_____. *William S. Sessions to be Director of the Federal Bureau of Investigation*, report to accompany the nomination of William Sessions to be Director of the Federal Bureau of Investigation, 100th Cong., 1st sess., Exec. Rept. 100-6, Sept. 15, 1987 (Washington: GPO, 1987).

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[23] Peter Slevin, "Nominee Vows to Restore Faith in FBI," *Washington Post*, July 31, 2001, p. A4.

[24] "Robert S. Mueller, III, to be Director of the Federal Bureau of Investigation," *Congressional Record*, daily edition, vol. 147, Aug. 2, 2001, pp. S8680-S8691.

Table 1. FBI Director Nominations and Confirmations, 1973-2004

Nominee	Nominating President	Date of Nomination[a]	Committee Action[b]	Final Disposition[c]	Elapsed Time[d]
J. Patrick Gray III	Richard Nixon	Feb. 21, 1973	Hearings: Feb. 28, 1973; Mar. 1, 6, 7, 9, 12, 20, 21, 22, 1973.	Nomination withdrawn by the President. Message received Apr. 17, 1978.	
Clarence M. Kelley	Richard Nixon	June 8, 1973	Hearings: June 19, 20, 25, 1973. Approval and favorable report to the Senate: June 26, 1973.	Confirmed (96-0): June 27, 1973. Sworn-in: July 9, 1973.	19 days
Frank M. Johnson, Jr.	Jimmy Carter	Sept. 30, 1977		Nomination withdrawn by the President. Message received Dec. 15, 1977.	
William H. Webster	Jimmy Carter	Jan. 20, 1978	Hearings: Jan. 30, 31, 1978. Approval and favorable report to the Senate: Feb. 7, 1978.	Confirmed (without objection): Feb. 9, 1978. Sworn-in: Feb. 23, 1978.	20 days
William S. Sessions	Ronald Reagan	Sept. 9, 1987	Hearing: Sept. 9, 1987. Approval and favorable report to the Senate: Sept. 15, 1987.	Confirmed (90-0): Sept. 25, 1987. Sworn-in: Nov. 2, 1987.	16 days
Louis J. Freeh	William Clinton	July 20, 1993	Hearing: July 29, 1993. Approval and favorable report to the Senate: Aug. 3, 1993.	Confirmed (unanimous consent): Aug. 6, 1993. Sworn-in: Sept. 1, 1993.	17 days
Robert S. Mueller III	George W. Bush	July 18, 2001	Hearing July 30, 31, 2001. Unanimous approval and favorable report to the Senate: Aug. 2, 2001.	Confirmed (98-0): Aug. 2, 2001.	15 days

[a] Date nomination was received by the Senate as indicated in the *Journal of the Executive Proceedings of the Senate* or the *Congressional Record*.
[b] Some hearings information provided in this column was obtained from the respective hearings documents listed in this report. Additional committee action information is taken from committee reports, the *Journal of the Executive Proceedings of the Senate*, and the *Congressional Record*.
[c] Information provided in this column was obtained from the *Journal of the Executive Proceedings of the Senate*, the *Congressional Record*, and the *Weekly Compilation of Presidential Documents*.
[d] Includes all days from nomination to confirmation.

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