Forged Under Fire—Bob Mueller and Jim Comey’s Unusual Friendship

The inside story of how the most surreal night of the War on Terror united the retiring FBI director and his evident successor.

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The sun had already been up for over an hour by the time James Comey and Bob Mueller approached the West Wing of the White House shortly after 7 AM on March 12, 2004. Neither had slept much in the previous week. The weather was windy and cool; the thermometer hovered just over 40 degrees as they prepared to brief the president. The two-minute ride up from the Hoover Building to the White House complex that morning hadn’t left them much time to gather their thoughts, but there was still a level of calm about them as they alighted from the black Suburban on West Executive Drive, just steps from the Oval Office.

The enormous Old Executive Office Building, once home to the nation’s entire State and War Departments, loomed over the back of the SUV. A stream of White House staff passed back and forth between the two buildings, their coveted ID badges slipped into shirt pockets or dangling from their necks. At that hour, many were on the way to or from the White House mess, the navy’s small cafeteria in the basement of the executive mansion. Comey, introspective by instinct, paused for a moment, considering what lay ahead; Mueller, never much for reflection, did not.

As they crossed the threshold into the White House, both men fully expected it to be the last time they would enter the building, the last time they would brief the president, the last time their motorcade would pass through the White House gate without a pause, zipping past the Jersey barriers and gawking tourists straining to see through the tinted windows. Sitting in their desks at the Justice Department and the Bureau were letters of resignation, which they expected to submit over the weekend; a dozen other Justice and Bureau officials would join them. They would have submitted the letters already, except that the attorney general’s chief of staff had asked them to wait until the hospitalized John Ashcroft had recuperated enough to resign as well.

By Monday, Mueller and Comey believed, their security details would be gone; they’d be left alone to face what would inevitably be a media conflagration reminiscent of the infamous Saturday Night Massacre in October 1973, when Richard Nixon had forced the dismissal of independent prosecutor Archibald Cox, which led to the resignations of Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus, the former acting FBI director. This storm would be different: The entire leadership of the Justice Department and the FBI would go in one fell swoop over a controversy that no one would talk about and no one outside of a small group in government even knew that was brewing.
That dramatic week had united the two men—both career public servants—deepening a friendship forged in the crucible of the highest levels of the national security apparatus after the 9/11 attacks.

The two men are deeply alike, sharing a background and core principles. Both educated at Virginia universities with a strong public service tradition (Mueller at the University of Virginia; Comey at William & Mary). They both achieved early success in the Justice Department and found subsequent life at private law firms lucrative but unfulfilling. Just years apart in the 1990s, they both gave up their top-tier private law firm jobs to return to the trenches of prosecuting criminals—Mueller as a junior prosecutor in Washington, DC, and Comey in Richmond, Virginia. Both men were rising stars mentored and guided by Eric Holder in the 1990s during Holder’s time in the Justice Department under the Clinton administration.

Now, today, President Obama’s decision to appoint Jim Comey the next head of the FBI—to take over after Bob Mueller’s remarkable 12 years as director—brings a strong sense of continuity to the nation’s chief domestic law enforcement agency. Both known as Republicans but primarily as apolitical prosecutors, Comey and Mueller are set to begin a new chapter of a friendship that stretches back over a decade, as one man hands over the reins of one of the most critical agencies in the war on terror to the other.

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Although they’d been aware of each other for years, sharing their similar orbits, Comey and Mueller were first brought together professionally by then-FBI director Louis Freeh in the opening days of the Bush administration.

After a tumultuous and contentious tenure as Clinton’s FBI director—and sometimes chief critic of the scandal-plagued president—Freeh was eager to leave his post. The private sector was calling as his six sons neared college age. Yet frustrated by the Clinton administration’s unwillingness to prosecute the bombers of Khobar Towers, who had killed 19 US Air Force personnel in 1996, Freeh didn’t want to step down as FBI director until he’d seen that case through.

From the earliest days, Freeh believed that the Clinton administration didn’t want to solve the Khobar bombing—it did not want to admit the guilty party was Iran because it didn’t want to have to retaliate against the Iranian regime, just as it had earlier measured attacking Osama bin Laden in the wake of the ’98 Embassy bombings against its need for allies in the Pakistani government.

Freeh believed Wilma Lewis, the U.S. Attorney for the District of Columbia, who had jurisdiction on Khobar Towers, was dragging her feet and he decided to wait out his opponents. He spent the final year of the Clinton administration courting Comey, then a federal prosecutor in the Eastern District of Virginia, to take over the investigation. As the Bush administration took office in 2001, Freeh asked Bob Mueller, who was acting as John Ashcroft’s deputy attorney general, to transfer the case to Comey.
When he finally did so, Mueller called Comey with a warning: “Wilma Lewis is going to be so pissed.” Indeed, Lewis blasted the decision, as well as both Freeh and Mueller personally, in a press release, saying the move was “ill-conceived and ill-considered.” But Freeh’s gambit paid off.

Within weeks, Comey had pulled together the indictment. During a National Security Council briefing at the White House, under the watchful gaze of Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, and National Security Advisor Condoleezza Rice, Comey presented overwhelming evidence of Iran’s involvement.

On the eve of the expiration of the statute of limitations, fourteen individuals were indicted for the attack. Freeh, who stepped down the next day, said the indictment was “a major step toward making sure that those responsible are brought to justice, as well as a testament to the value and necessity of international law enforcement cooperation to counter the danger in today’s world.”

Mueller, now 68, and Comey, now 52, would become close partners and close allies throughout the years ahead.

Mueller became FBI director following Freeh, starting just a week before the September 11th. Comey took over as the U.S. Attorney for the Southern District of New York, the most important U.S. Attorney’s Office in the country, later that fall. The New York job put him squarely in the center of the unfolding war on terror and would, over the next five years, put him on a path to being one of the most significant players in the U.S. government.

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An oversized-presence—six foot eight inches tall and gregarious, with a warm smile—Comey moved to New York in December 2001, ahead of his wife and five children. The night before his first day in the job, he walked over from his temporary apartment to look at Ground Zero, still smoking and lit by powerful floodlights as the round-the-clock operation continued. Then he walked the few blocks uptown to the U.S. attorney’s hulking office, lit beautifully at night. “It was strange, amazing, and scary,” he recalls.

Within two years, he’d joined Mueller in Washington, becoming Ashcroft’s deputy attorney general in December 2003. He and Mueller spent many hours together, developing a close partnership—and watching together the disarray in the government over how to respond to the unfolding war on terror. They shared a horror at the poor quality information infiltrating the upper reaches of government.

“When I started, I believed that a giant firehose of information came in the ground floor of the U.S. government and then, as it went up, floor by floor, was whittled down until at the very top the president could drink from the cool, small stream of a water fountain,” Comey says. “I was shocked to find that after 9/11 the firehose was just being passed up floor by floor. The firehose every morning hit the FBI director, the attorney general, and then the president.”
One morning the government’s top secret threat briefing—known internally as the “Threat Matrix” cited in its standard, concise, generalized form, “a threat from the Philippines to attack the United States unless blackmail money was paid.” When Comey asked for further information, FBI agents produced an e-mail reading: “Dear America, I will attack you if you don’t pay me 999999999999999999999999999999999999999999 dollars. MUHAHAHA.” “Anyone looking at that could tell it was written by a thirteen-year-old and it wasn’t serious,” Comey recalls. In the post-9/11 environment of leaving no stone unturned, the FBI ran the kid down and passed the lead to its in-country Legal Attache, who handed it over to the local Philippine police, who dutifully went and knocked on his parents’ door.

In another incident, an NSA or CIA subcontractor (sources differed on which agency was the primary contact) provided a series of coordinates hidden in Al Jazeera images that supposedly consisted of a list of likely terrorist targets. Transatlantic flights were canceled because of the supposed intelligence. Asa Hutchinson, then the head of the Transportation Security Administration, spent the holidays on the phone, giving a personal go or no-go to individual flights based on updated information. Comey, though, doubted the threat’s veracity. One set of the supposed coordinates traced back to Tappahannock, Virginia, a tiny town of two thousand people that had once been part of his territory in the Richmond U.S. Attorney’s Office. ”If the information is so reliable, how come it’s tracing out to be farmland in Tappahannock, Virginia?” Comey asked incredulously in one briefing. “How reliable could it be?” He walked out of the meeting, still fuming that some P. T. Barnum was trying to pull a hoax and profit from obviously vacuous leads. He turned to an aide and said, “Someone should get locked up for that.” Nothing ever came of the Tappahannock threat, or, indeed, of nearly any of the threats that consumed the minds of the intelligence leaders. Altogether, the U.S. government was trying to chase down upwards of five thousand threats a day, more of them like the Filipino e-mail than like the 9/11 plot.

During one briefing, Comey turned to Mueller and asked, “What are we doing, Bob? Is every lead going to make it into the Threat Matrix?” The answer, for years, was yes.

The twice-daily threat briefings, the flood of intelligence reports throughout the rest of the day, the kneejerk responses, panicked lurches, and fruitless raids had a profound effect on the principals involved. One night, after another day spent running down a possible terrorist weapon of mass destruction, Comey was dropped off by his security detail at his house outside Washington. A light burned inside; upstairs his five kids were already asleep. As he walked up the path to his front door, he paused for a moment and tested the wind’s direction, mentally calculating whether radioactive fallout from Washington would blow toward his family. *I wonder whether my kids will be safe until the morning,* Comey thought; then he realized just how paranoid he had become. As he recalls, “Your mind comes to be dominated by the horrific consequences of low-probability events.”

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It was the events of the winter of 2004 that brought the two men to the precipice, though, demonstrating the strong moral compass that centers them both as government officials.
In the wake of 9/11, Dick Cheney, via George Tenet, had asked the National Security Agency head, General Michael Hayden, “Is there anything more you can do?” Hayden had replied with a wink and a nod: “Not with my current authorities.” At the Office of Legal Counsel, John Yoo quickly provided a generic outline of the president’s inherent surveillance powers, which could be used to expand the NSA’s capabilities as of October 4, 2001. The result, a new NSA wiretapping program code-named Stellar Wind, was a “special access program,” an extremely high level of classification that meant only a small group was even aware of it. The PATRIOT Act had may have made it much easier for the FBI to get warrants for domestic eavesdropping, but it still had to get them. Cheney’s office was unhappy with the restrictions on the FBI imposed over time by FISA, yet the law, perhaps the key component of the post-Hoover and post–Nixon intelligence reforms, was explicitly the “exclusive means” for intelligence wiretapping within the United States. There was not supposed to be any wiggle room. And yet, in the haze of the weeks after 9/11, the Bush administration had launched a new program that threw FISA’s strict rules out the window. “I knew the Terrorist Surveillance Program would prove controversial one day. Yet I believed it was necessary,” President Bush later wrote.

In fact, the Terrorist Surveillance Program (TSP) had caused consternation in the Justice Department almost since its inception. Others in government had inklings that something strange was going on. People would occasionally mention “the vice president’s special program.” John Bellinger, the legal adviser to the National Security Council, confronted the vice president’s lawyer, David Addington one afternoon, saying, “I know you’re up to something.” Addington scowled: “If there were such a program, you’d better tell your little friends at the FBI and CIA to keep their mouths shut.” Senior officials who were “read in” to the program usually received their briefing either from Addington or from Vice President Cheney himself — an odd situation, given that the vice president’s office didn’t officially have any surveillance oversight. Larry Thompson, Ashcroft’s deputy, had refused to sign off on warrants that relied on information from the program; because he wasn’t allowed to know what the program entailed, he didn’t feel comfortable approving the intelligence it generated. Even in the heat of the post-9/11 world, Stellar Wind seemed a bridge too far.

When Jim Comey arrived at the Justice Department in the fall of 2003, the new head of the Office of Legal Counsel, Jack Goldsmith, had pulled him aside: “I’m glad you’re here. There’s a lot I have to tell you.” After Comey was confirmed by the Senate as Justice’s number two in December, Goldsmith returned with a laundry list of programs he felt warranted more oversight. Top on Goldsmith’s list was the Terrorist Surveillance Program, which required renewal by the attorney general every forty-five days. Two years after the TSP had started, though, festering doubts about it within Justice had come to the fore. The more Goldsmith and his deputy Pat Philbin learned about how the program worked, the more they worried. In fact, Goldsmith, who took over OLC from Jay Bybee just weeks before Comey’s arrival at Main Justice, concluded that the surveillance program “was the biggest legal mess I’d seen in my life.”

As a result, he asked for permission to let Comey into the loop. After initial administration resistance, Hayden came down to Main Justice on February 19, 2004, to meet the new deputy attorney general. “I’m so glad you’re getting read in,” he said, “because now I won’t be alone at the table when John Kerry is elected president.” Comey’s internal alarms went off: What
The stressed Comey had few people he could turn to for advice; almost no one was allowed to know the program existed, and disclosing the program’s existence to someone outside that circle could send him to prison. In fact, there was only one person in government whom he could confide in and trust: Bob Mueller. The two men met for a long conversation on the afternoon of March 1 to discuss the deputy attorney general’s concerns; that conversation, sources say, was the first time Mueller was made aware of the pending stumbling blocks.

On Thursday, March 4, Comey met with Ashcroft for an hour to raise the legal team’s myriad concerns. Though Ashcroft was in overall agreement with the notion of taking a tremendously aggressive approach to fighting terrorism, he also realized the tremendous dangers of making the Justice Department knowingly complicit in active lawbreaking. Given the department’s — and the FBI’s — mandate, to do so would constitute a fundamental sort of corruption. He gave his team his full backing; he would not reauthorize the program if the administration didn’t agree to make substantial changes. Within hours, though, Ashcroft was struck by acute gallstone pancreatitis and rushed to the hospital. Drifting in and out of sedation over the coming days, the nation’s chief law enforcement officer came close to death. With Ashcroft unable to fulfill his duties, Jim Comey suddenly found himself legally acting as attorney general. The entire weight of the decision now rested on his shoulders.

On Saturday, the Justice Department first presented its concerns to the White House. Addington was furious, but as Goldsmith acknowledged, Bush was “free to overrule [us] if he wants.” On Tuesday, White House counsel Alberto Gonzales summoned Goldsmith back to 1600 Pennsylvania Avenue. The Thursday deadline for the forty-five-day reauthorization was forcing the matter; without a presidential signature, the program would come to a screeching halt. Mueller had met privately with his staff that morning to review the concerns; at noon, he and the other leaders of the intel community — Hayden and the CIA’s deputy director, John McLaughlin — met privately with Cheney in the office of White House chief of staff Andy Card. That afternoon, Cheney convened the same group again, this time with the troublesome trio from the Justice Department: Comey, Goldsmith, and Philbin. There was an extensive show-and-tell by briefers from the CIA and the NSA in support of the program, including oversized chart after oversized chart, each one emphasizing how critical Stellar Wind was to the nation’s security. The message was clear: If the program didn’t continue, thousands would die, and it would all be Jim Comey’s fault.

“That’s not helping me,” Comey told the room while he shifted anxiously in his chair.

At one point, Comey said he couldn’t find a legal basis for the program. Yoo’s original memo, he explained, was specious on its face. “Others see it differently,” a scowling Cheney replied.

“The analysis is flawed — in fact, fatally flawed. No lawyer reading that could reasonably rely on it,” Comey said, his hand sweeping across the table dismissively.
Addington, standing in the back of the room, spoke up. “Well, I’m a lawyer,” he snapped, “and I did.”

Responded Comey, “No good lawyer.”

The room went silent.

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The next morning began as every day did. Comey and Mueller assembled in the FBI operations center, reviewed the day’s threats, and zipped up to the White House to brief the president. Sitting in the Oval Office, President Bush himself was just about the only person still in the dark over the looming showdown. In the hallway, Comey spotted homeland security advisor Fran Townsend, who knew surveillance law better than nearly anyone in government and served on the staff of National Security Advisor Condoleezza Rice. He pulled his onetime colleague from the Southern District of New York U.S. Attorney’s Office aside.

“Yesterday there was a meeting in Card’s office about a surveillance program. Condi wasn’t there. Is she aware of what’s going on?” he asked.

“I think this is something I am not a part of,” Townsend replied. She could tell that her old friend was in trouble, but she couldn’t help. “I can’t have this conversation.”

Comey’s circle of allies was shrinking fast. Riding down Pennsylvania Avenue in the back of Mueller’s SUV, the FBI director and the acting attorney general sat quietly. Comey thought, A freight train is heading down the tracks, about to derail me, my family, and my career. He glanced to his left at his fellow passenger, thinking, At least Bob Mueller will be standing on the tracks with me.

That night, Mueller was at dinner with his wife and daughter when he got a call from Comey. The FBI director didn’t hesitate: “I’ll be right there.”

The Bureau security detail at George Washington University Hospital had been under strict orders from John Ashcroft’s wife not to allow any phone calls through. When Andy Card’s office had called that afternoon, the caller hadn’t been connected, but when President Bush himself had called the command post, the agents on duty didn’t have the stomach to turn down a call from the commander in chief. At some point since that morning, Bush had learned that there was a problem with the TSP reauthorization. He had called Ashcroft’s hospital room to say he was sending over Andy Card and Alberto Gonzales.

(In President Bush’s 2010 memoir, Decision Points, he commented publicly about the showdown for the first time. He wrote that he knew neither that Ashcroft had been hospitalized nor that Jim Comey had stepped in as acting attorney general. According to government records, however, Comey and Mueller briefed the president as part of their regular reviews of the Threat Matrix while Ashcroft was hospitalized. The attorney general normally would have attended those briefings. It is hard to believe that the question of Ashcroft’s absence was never raised
during those meetings. As one senior government official explains, “Every meeting I’ve ever been in where a deputy unexpectedly appears in place of his principal, he offers an explanation as to the principal’s absence.”

After hearing of the President’s call, the attorney general’s wife, Janet, called David Ayres, Ashcroft’s chief of staff, to warn him of the imminent White House arrivals. Ayres called Comey, who at that moment was driving home on Constitution Avenue with his detail of U.S. marshals. Comey ordered his driver to the hospital; they drove “Code 3” all the way—grill lights flashing, siren wailing, engine revving.

Comey’s first phone call, at 7:20 p.m., was to Mueller.

After hanging up with Comey, Mueller instructed the FBI agents guarding Ashcroft not to remove Comey and the other Justice officials from the hospital room. Gonzales and Card would likely have Secret Service agents with them, and the Bureau’s agents were to prevent any interference. Under no circumstances was the security detail to allow anyone to speak to Ashcroft alone. The FBI director had just ordered his agents to use force, if necessary, to prevent the Secret Service and the White House from removing Justice Department officials from a hospital room. As motorcades and officials converged on the hospital, the thought was on everyone’s mind: Just how much further would this situation spiral out of control?

Comey beat Card and Gonzales to the hospital and ran up the stairs. The White House duo arrived minutes later and marched straight to Ashcroft’s bedside. The FBI security detail, who moments earlier had been working one of the quietest assignments they’d ever had in an otherwise empty wing of the hospital, were suddenly very nervous.

Rallying, the drugged Ashcroft explained why he wouldn’t sign off on the reauthorization and chided the administration: “You drew the circle so tight I couldn’t get the advice I needed.” He finished by pointing to Comey: “But that doesn’t matter, because I’m not the attorney general. There is the attorney general.” Jack Goldsmith said later that it was such an amazing scene he thought Ashcroft would die on the spot.

A moment of tense silence passed.

Then Card and Gonzales left, saying only, “Be well.”

Mueller arrived at the hospital moments after the departure of the White House aides. He conversed briefly with Comey in the hallway and then entered Ashcroft’s hospital room.

“Bob, I don’t know what’s happening,” Ashcroft told him.

“There comes a time in every man’s life when he’s tested, and you passed your test tonight,” Mueller replied.

A phone call came into the command post from Card, summoning Comey to the White House. Given the night’s events, he refused to go without a witness, solicitor general Ted Olson. Mueller
left the FBI detail with instructions not to allow anyone to see the attorney general without Comey’s personal consent.

Frantic meetings stretched late into the night at both the Justice Department and the FBI. Senior staff had been recalled. Cars had been abandoned wherever convenient. The core team was all on the same page; they were closely linked as friends and colleagues, and both Rosenberg and Dan Levin, Ashcroft’s counselor, had done stints at Bob Mueller’s chief of staff. These were executives familiar with the pressure of the post-9/11 “Threat Matrix,” the daily looming prognoses of Armageddon. Even though not all of them knew the precise details of what was unfolding, Comey and Mueller made it clear that they would not tolerate having the president continue a program that was illegal.

Across the upper ranks of the Justice Department and the Bureau, letters of resignation were drafted. Comey’s read, in part, “I and the Department of Justice have been asked to be part of something that is fundamentally wrong.” If Comey went, Mueller went; if Comey and Mueller went, so would the top ranks of both agencies. Chris Wray, the assistant attorney general in charge of the Criminal Division — the same post Mueller had once held — stopped Comey in the hallway at Main Justice to say, “Look, I don’t know what’s going on, but before you guys all pull the rip cords, please give me a heads-up so I can jump with you.”

By the time Comey finally made it to the White House, around 11 p.m., word had reached Andy Card that an uprising of epic proportions was under way. The news changed the dynamics of power in the room as they met.

“I don’t think people should try to get their way by threatening resignations,” Comey said to the chief of staff in the mostly empty White House that night. “If they find themselves in a position where they’re not comfortable continuing, then they should resign.”

At his OLC office in Main Justice that night, Jack Goldsmith found himself staring up at the painted portrait of a former attorney general that coincidentally hung over his desk: Elliot Richardson. The Saturday Night Massacre was inescapably present.

As the leaders of the Justice Department went to bed early on the morning of the eleventh, five time zones ahead, in Madrid, a cell of al-Qaeda members fanned out across the capital region and planted thirteen bombs targeting the commuter trains. By the time the U.S. government awoke, 191 people were dead in 10 separate explosions, and some 1,800 Spanish commuters were wounded. Waking up that day, each player in the unfolding saga knew exactly what the stakes were in the unfolding showdown. Thousands would die. It was all Jim Comey’s fault.

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Thursday was D-Day and H-Hour, the final deadline to reauthorize the program. The government’s response to the Madrid bombings was beginning, and Mueller, Comey, and most of the senior leaders of Justice and the Bureau were preparing to resign when a call came from Ashcroft’s chief of staff with a plea: The attorney general isn’t well enough to join you in resigning yet and he can’t be left hanging alone; hold on until Monday, when he can join you.
That delay, which ultimately gave both sides of the debate enough time to resolve their differences, was all that stopped what would have been one of the most explosive Washington scandals in recent memory.

During the disturbing terrorism briefings on Thursday, the crisis was never mentioned. President Bush left to give a speech in New York, still unclear as to the extent of the crisis unfolding among the men arrayed on his couches in the Oval Office.

Mueller had become the key negotiator in the stalemate and returned to the White House within hours to meet with Andy Card. After forty minutes with the chief of staff, he stopped by Gonzales’s office and then returned to Justice to meet with Comey. He then called Gonzales to update him on the situation.

Why the head of a component agency of the Justice Department, a figure several layers down the organization chart, came to be the central negotiator in the TSP scandal speaks volumes about Mueller’s role in Washington. The dispute was between the Office of Legal Counsel, the attorney general, the vice president, and the National Security Agency. Mueller should not have been involved, except that Comey knew him to be honest and trustworthy to a fault; his personal integrity was beyond reproach, his sense of values and the primacy of the Constitution second to none. The White House people likewise knew and trusted him, which was why they’d opened the back channel to him in the first place. But his central role placed Mueller in a tough spot. His deputy director, Bruce Gebhardt, recalls the pain and turmoil of the week, saying, “That was probably the darkest week we spent together. You could see him agonize.”

Yet Mueller’s involvement drastically raised the stakes for the White House also. It could probably weather the loss of the deputy attorney general politically; no one outside of Washington knew who Jim Comey was, or even really what his position entailed. The Office of Legal Counsel was an obscure entity, powerful within the executive branch but unknown outside of it. The loss of the FBI director would be devastating, however. “No president wants the director of the FBI to resign. That’s the ultimate H-bomb,” former attorney general Dick Thornburgh says. The political implications would be profound.

Those who were close to Mueller at the time said that he was careful to “stay in his lane” as the crisis continued. It wasn’t for him to decide whether the policy should be reauthorized. It was his job only to uphold the Justice Department’s responsibility for protecting the Constitution. He had laid out his position on the tyranny of the law the year before, during a rare speech to the American Civil Liberties Union defending the Bureau’s track record. “We live in dangerous times, but we are not the first generation of Americans to face threats to our security,” he explained. “Like those before us, we will be judged by future generations on how we react to this crisis. And by that I mean not just whether we win the war on terrorism, because I believe we will, but also whether, as we fight that war, we safeguard for our citizens the very liberties for which we are fighting.”

As the FBI director said to Jack Goldsmith in the midst of the crisis, “Your office is the expert on the law, and the president is not.” If the Justice Department refused to reauthorize the Stellar Wind program and the White House proceeded anyway, he couldn’t remain in his post. As
former attorney general Richard Thornburgh, who has known Mueller for more than twenty years, explains, “People are smart not to test him on those issues.”

In fact, Mueller overall sees little gray in the world; he’s a black-or-white guy, right or wrong. His father, who was the captain of a World War II navy sub chaser, impressed on him early the importance of credibility and integrity. “You did not shade or even consider shading with him,” Mueller recalls, and ever since, matters of honor and principle had been simple.

“Occasionally he’ll be a pain in the ass because he’s so straitlaced,” his counselor and old college friend Lee Rawls once told me. “There have been a couple of instances I’ve advocated cowardice and flight, and he wouldn’t have it.”

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The following morning, Friday, Comey and Mueller walked into the White House for what they thought was the last time. The afternoon before, Addington had rewritten the reauthorization of the program so that it no longer had to be signed by the attorney general and instead was okayed by Gonzales’s signature. The change had no true legal weight, but it allowed the administration to continue.

After the morning brief wrapped up, President Bush called Comey back as he walked out of the Oval Office — in his mind, for the last time. “Jim, can I talk to you for a minute?” Bush asked.

Mueller said, “I’ll wait for you downstairs.”

In Bush’s private dining room a moment later, the two men sat. The president was warm and kind, saying that Comey should let him take the burden of the program’s reauthorization. “As Martin Luther said, ‘Here I stand, I can do no other,’ ” Comey, who had been a religion major at the College of William and Mary, quoted, hoping to connect with the religious president. They spoke at length. Comey was shocked that Bush knew so little of what had transpired that week; his advisers had never let on.

“I think you should know that Director Mueller is going to resign today,” Comey finally said.

Now it was Bush’s turn to shift uncomfortably. His face made clear the shock he felt. No one had told the president that his FBI director was about to walk out.

As Comey went downstairs to meet Mueller, a Secret Service agent informed the director that the president needed to see him. Now it was Comey’s turn to wait anxiously in the anteroom.

Mueller and Bush met in the Oval Office, and Mueller refused to budge from his position. The Stellar Wind program as instituted was illegal. Simple as that. Black and white. The president had already reauthorized the program in Addington’s memo the day before, without Justice’s approval, and that meant that the president was currently on the wrong side of the law. Whereas the administration viewed the surveillance program as a necessity for the nation’s security, Mueller felt just the opposite: The nation’s security rested with its primacy of law. As he said in
speech he gave later, “The rule of law, civil liberties, and civil rights — these are not our burdens. They are what makes all of us safer and stronger.” If President Bush didn’t change course, Mueller had no choice, he said. He hadn’t sworn to serve George W. Bush. He had sworn to protect the Constitution from all enemies, foreign and domestic.

President Bush blinked first. The commander in chief told the FBI director at the end of their discussion, “Tell Jim to do what Justice thinks needs to be done.”

Mueller walked out of the office, his shoulders slumped from the stress, but he’d won the day. He and Comey went back to their SUV. While the FBI director’s longtime driver, John Griglione, waited outside the vehicle, Comey and Mueller conversed in the back seat. Then they drove out the gate. Contrary to what they had thought just two hours earlier, they would, return to the White House.

Comey and Mueller spent much of the ensuing days dealing with Stellar Wind fallout, meeting multiple times a day with various officials, including George Tenet and Vice President Cheney. In the end, President Bush signed an amended directive a week after the March 11 showdown.

The crisis over, Comey and Mueller shared a dark laugh. “This was easy,” they said to each other.

When news of the bizarre night finally leaked in the summer of 2007 and Comey testified before Congress about the events, Congress asked Mueller for his notes from that night. By that point, though, Ashcroft had left office and Gonzales had been promoted to be Mueller’s new boss. Comey had left office in the summer of 2005, seven months into Gonzales’s tenure. The FBI director released a detailed but heavily redacted record of some twenty-three meetings about the subject, which included his observation that Ashcroft was “feeble, barely articulate, and clearly stressed” during the hospital visit.

Gonzales, already caught up in his own scandals related to the firings of U.S. attorneys and the politicization of the Justice Department, resigned within a month of the Stellar Wind fiasco coming to light. Mueller, ever the loyal Marine, has never openly discussed his view of the showdown. When pressed by Congress, after Comey’s testimony, he admitted only that the visit to the hospital was “out of the ordinary.

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A year after the showdown over the Terrorist Surveillance Program and soon after announcing that he would leave the Justice Department for the private sector in August 2005, Jim Comey ventured up the Baltimore-Washington Parkway to Fort Meade, Maryland, the headquarters of the National Security Agency, to speak to its staff in honor of Law Day. His driver was the same one who had raced him to George Washington Hospital the year before.

Comey, who had studied religion at William & Mary, began his remarks with the example of biblical exegesis (the study of texts) to explain how legal analysis and intelligence collection were closely related. “It involves a maniacal focus on the meaning of words, the history of words,
the biases of historical observers, the biases of contemporary scholars,” he told the assembled crowd. “Words carry great freight, words telegraph outcomes and often foreclose discussion.”

But then, preamble concluded, Comey moved to the heart of his speech. As is often the case in the shadowy world of the intelligence community, there were two audiences for his speech. At the time, nearly no one in attendance knew about the crisis that had nearly put the Justice Department and the NSA on a collision course and had threatened to upend George W. Bush’s presidency in the midst of his reelection campaign. Much of Comey’s speech, though, was directed at the few people in the room who were quite aware of what had transpired. “It can be very, very hard to be a conscientious attorney working in the intelligence community. Hard because we are likely to hear the words, ‘If we don’t do this, people will die,’” he told the crowd, standing at the podium and looking out at the darkened faces before him. “‘No’ must be spoken into a storm of crisis, with loud voices all around, and with lives hanging in the balance. . . . It takes an understanding that, in the long run, intelligence under the law is the only sustainable intelligence in this country.”

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Now, after years apart—during which Jim Comey worked at Lockheed Martin and the hedge fund Bridgewater before leaving this spring to teach law in New York—the two men appear destined to reunite this summer as the torch passes on the seventh floor of the hulking J. Edgar Hoover Building on Pennsylvania Avenue.

Mueller’s term as director has been seen as largely successful—even amid criticism in recent weeks over the FBI’s handling of the ricin letters sent to government leaders and its investigation of the men responsible for the Boston Marathon bombings—and the Obama White House has been eager for someone who will continue the path Mueller has laid out, transforming the FBI from a 20th century domestic law enforcement agency to a 21st century international intelligence agency.

To find that person, the Obama administration evidently didn’t have to travel far—choosing one of Mueller’s most trusted allies as his replacement.

The move has special resonance amidst President Obama’s push to bring the remaining threads of the war on terror’s extralegal programs—including the secret armed drone strikes and a push to resolve the remaining lingering prisoners at Guantanamo.

The FBI has a decidedly mixed history on civil liberties—the worst abuses and privacy invasions of J. Edgar Hoover’s years still resonate with many civil liberty advocates—and in choosing Comey President Obama has given a strong indication of his expectation of the Bureau’s respect for constitutional standards.

Speaking earlier this month at Comey’s alma mater’s 2013 Commencement, Mueller told the graduates of William & Mary, “I did not really choose public service. Rather, I more or less fell into it early on, perhaps not fully appreciating the challenges of such service.”
“The way in which you choose to serve does not matter—only that you work to better your country and your community,” Mueller said, bedecked in the green and black gown of the school that taught Thomas Jefferson and James Monroe.

But Mueller cautioned the graduatating students that one attribute mattered more than any other in a life of service: “Regardless of your chosen career, you are only as good as your word. You can be smart, aggressive, articulate, and indeed persuasive. But if you are not honest, your reputation will suffer. And once lost, a good reputation can never, ever be regained.”

With Comey evidently set to inherit the Bureau shaped and built by Mueller in the 12 years since terrorists attacked the World Trade Center, the Pentagon, and Flight 93, the retiring director at least knows he’ll be leaving the FBI in the hands of someone with a strong sense of right and wrong.

Garrett M. Graff is the author of The Threat Matrix: The FBI at War, excerpts of which have been adapted for this piece.