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FBI OVERSIGHT

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BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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FBI OVERSIGHT

TUESDAY, DECEMBER 6, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 9:33 a.m., in room 226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Grassley, Kyl, Sessions Cornyn, Leahy, Kohl, Feinstein, and Feingold.

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

Chairman SPECTER. Good morning, ladies and gentlemen. The Judiciary Committee will now proceed with the oversight hearing.

We welcome the distinguished Director of the Federal Bureau of Investigation. We have been trying to schedule this session since the arrests were made of terrorists in Great Britain in August.

The issues raised by those arrests and the continuing threat of terrorism constitute an enormous problem for the United States. I think it continues to be our number-one problem, to protect the homeland from terrorist attacks.

In that light, we are very concerned about the success on the interfacing of the various intelligence agencies in the United States. I think there is very forceful evidence that, had there been appropriate communication between the FBI and the CIA, 9/11 might well have been prevented.

Now we have a more complicated intelligence field, with the Director of National Intelligence added to the mix with FBI, CIA and the Department of Homeland Security, and we are very anxious to see exactly how things are working out.

There are continuing suggestions that the United States would be better served if the Nation had a counterintelligence unit, like in the mold of Britain's MI–5, and there is constant analysis as to whether there might be a better way to organize the FBI, and that is a subject we will be looking into.

On November 9, less than a month ago, Dame Eliza Manningham-Buller, the Director-General of MI–5, gave a detailed account of the terrorist threat facing Britain. She revealed that MI–5 was currently investigating "some 200 groupings or networks, totaling over 1,600 identified individuals" believed to be involved in nearly 30 plots to attack Britain. We would be interested in a similar accounting by Director Mueller.

We are interested to know how the administration's Terrorist Surveillance Program is working. That program, disclosed almost a year ago on December 17, 2005 by the New York Times, has been a source of considerable attention by this Committee with our effort to structure some legislation and procedures which would have the traditional safeguards of a warrant where probable cause is established before there is wire tapping, before there is a search and seizure. That is a work in process.

Regrettably, the Judiciary Committee has never been briefed on the Terrorist Surveillance Program, and we should have been. It is very difficult for us to conduct oversight when we deal with Director Negroponte of National Intelligence.

I talked to Mr. Negroponte, tried to get him to come to a hearing here. He agreed, and then for some reason it was not carried out, just as we worked with Secretary Michael Chertoff.

But we do have oversight authority with the FBI, and we do want to know how well the Terrorist Surveillance Program is working so that we can make an evaluation as best we can on limited information. Since, as I say, we are not privy to being briefed as to the success of the program contrasted with the invasion of privacy, our committee cannot make an evaluation. Some of that may have to be conducted in a closed session and we are prepared to do that to get at those facts.

We want to know how successful the FBI has been in thwarting terrorist attacks. There are periodic reports in the media, but we do not have really a good handle on that. We need the details on how the Patriot Act is working; there again exists a delicate balance between our needs for effective law enforcement and protection of civil rights.

We will be inquiring into what is happening with the technology, inquiring into a briefing by Congress on the anthrax case. The FBI has had a hand in making arrests, later turned over to the CIA, in a complex series of transactions involving Rendition.

I have requested of the Department of Justice that two reports be made available to this committee, as has Senator Leahy in a separate letter, regarding interrogation methods. We will be pursuing that with you.

Your role is not as extensive, but the FBI was involved in the arrest of Mahir Arrar, a Syrian-born Canadian citizen, where Canada has issued a detailed report saying that there was an inappropriate action by the United States.

We are also concerned, and the oversight with you again is not as extensive as with the Department of Justice, as to what is happening in the Maggi Kahn case, where the allegation is made that in interrogation procedures, that there was torture.

The Department of Justice is taking the position that they cannot countenance a disclosure of the interrogation techniques because al Qaeda might learn from those techniques how to prepare their agents to withstand those techniques, which is, in my view, an untenable position.

If someone is challenging what has happened and makes a case that the line has been passed, how can we deal with it if he is foreclosed from testifying as to what has happened?

So, these are a very, very wide range of subjects. Senator Leahy and I were discussing with the Director for a few minutes in the anteroom the failure of the Director to submit questions for the record from our May hearing.

As disclosed, the Director made a prompt submission of those to the Department of Justice and they have not been approved or disapproved. They have simply not come forward. That is just not tenable and makes a major restriction and restraint on this oversight hearing when we do not have those written responses to prepare for.

But we appreciate the work you have done, Director Mueller. We appreciate your availability when we called. We appreciate sitting down on an informal basis. But there is no substitute for these formal oversight hearings where it is on the record and the American people can have some insights as to what is happening on the very important job you have on protecting security, and also balancing civil rights.

I now yield to the distinguished Ranking Member.

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

Senator LEAHY. Thank you, Mr. Chairman.

On this last point, I met with Attorney General Gonzales last week, along with Bruce Cohen, the Chief Counsel, and Ed Pagano, my Chief of Staff, and I raised this issue, that the Department of Justice is doing a disservice to the Director of the FBI in not clearing these answers quicker.

We might get frustrated at not getting the answers, but I pointed out to the Attorney General that the frustration is with Justice when it takes that long to clear answers you have given them.

I said that the alternative is going to be that when he comes up here next year, is that the hearing will go on much, much longer if we think we cannot get the answers to these questions.

I mean, the other alternative is, we are here into the evening, asking the questions right here. We submit the questions as a courtesy and service to you and to the Department, and they are not helping.

But having said that, I am glad we are doing this. Again, I commend the Bureau's skilled workforce, the agents, technicians, the men and women on the front line behind the scenes that work year after year to protect our communities.

I also am well aware that, as the elected representatives, we have a solemn duty to conduct meaningful oversight. It is a valuable tool to make the FBI as good as the American people need it to be in countering terrorism, but also in strengthening law enforcement.

Now, I take this responsibility seriously, as does the Chairman. For this reason, oversight of the FBI and the Department of Justice will again be one of my highest priorities as Chairman of the Senate Judiciary Committee during the next Congress as it was when I last had the privilege of chairing this committee.

The recent revelation that the Bush administration, since 9/11, has been compiling secret dossiers on millions of unwitting, totally

law-abiding Americans who travel across our borders highlights the importance of diligent oversight.

It is incredible that the administration is willing to share the sensitive information that they pick up on law-abiding, innocent Americans. They want to share it with foreign governments, and even private employers, while refusing to allow the citizens it is gathered on to see or challenge the so-called terror score they have assigned them based on their travel habits and schedules.

You might be the most law-abiding person in the world, and all of a sudden they do not get a job. They have no idea why they did not get the job, and it is because this government has compiled a secret dossier on them and made a mistake somewhere on it.

Lord knows, with the poor track record of some of the departments in this administration with keeping secret the data they have, like the Veterans Administration and others, it is worrisome. If it is done poorly or without proper safeguards and oversight, data banks do not make us safer, they just further erode Americans' privacy.

The administration has gone to unprecedented lengths to hide its own activities from the public, while at the same time collecting an unprecedented amount of data on private citizens. I think data banks like this are due for meaningful oversight, and I can assure you we are going to have it.

One of the greatest challenges facing the FBI today is striking a successful balance between fulfilling its core counterterrorism missions while respecting and preserving the democratic principles and freedoms that have made America such a great, great, and very resilient Nation.

Now, I have repeatedly sought, for the last couple of years, answers from not only the FBI, but others, regarding reported, and in some instances documented, cases of abuse of detainees in U.S. custody. Just recently, I wrote to the Attorney General about press reports after years of denials.

After years of denials, the Central Intelligence Agency now admits the existence of additional classified documents detailing the Bush administration's interrogation and detention policy for terrorism suspects, something that the Chairman has already alluded to.

When the Director appeared before this Committee in May of 2004, I asked him if FBI agents had witnessed objectionable interrogation practices in Iraq, Afghanistan, or Guantanamo Bay. He gave a purposely narrow answer, saying no FBI agent witnessed abuses in Iraq.

Well, documents released by the FBI in December of 2004 made clear the FBI agents witnessed abusive treatment of prisoners at least at Guantanamo Bay, and the Director's own answers to subsequent questions have shed some more light on the subject.

Now, the Congress and the American people deserve to learn the relevant facts about the Bush administration's interrogation policies and practices. I hope the Director will continue moving away from the Bush administration's policy of secrecy and concealment on this issue toward the responsiveness the American people deserve.

In private conversation with the Director, I pointed out that I was gratified to see in some of the publicized instances where the CIA was using techniques that we would not agree to as Americans, that the FBI agents said that this was not acceptable to them and made it very clear it was not acceptable to them.

It troubles me deeply, though, that 5 years after 9/11 that the FBI is still not as strong as it should be. The FBI lags far behind when it comes to the number of agents who are proficient in Arabic.

The Washington Post reports only 33 FBI agents have at least a limited proficiency in Arabic, and only 1 percent of FBI agents have any familiarity with the language at all. The FBI is supposed to be a world-class intelligence agency, and this is a very significant part—especially now—of the world.

I am worried about the FBI's new paperless case management system, Sentinel. We are told that it was going to cost American taxpayers $425 million, but still will not be operational until 2009.

On Monday, the Department of Justice's Office of Inspector General issued a report finding that the FBI would need an additional $56.7 million just to pay for Phase II of Sentinel, and there are serious concerns about the impact this will have on the FBI's non-IT programs. So, we cannot afford another fiasco like Trilogy.

Last, on a positive note, since 9/11 the FBI has made significant strides to adjust to the threats and challenges of our time. The Director who came in just days before 9/11 and was handed probably the worst challenge of any Director in the history of this country, in the history of the FBI, has worked hard. There are hard-working men and women in the FBI who work very, very hard to adjust to an entirely new world.

There is work to be done. I think if the Bureau makes mistakes, they should acknowledge it, learn from them, move forward, and know that we are in a new century, a new world, and those will be the areas that I will be looking into as we go forward.

Mr. Chairman, thank you for the additional time.

Chairman SPECTER. Thank you very much, Senator Leahy.

[The prepard statement of Senator Leahy appears as a submission for the record.]

We, on occasion, turn to other members for opening statements. We have such a good turnout for you, Mr. Director, that I am reluctant to spend too much time on it. But if anybody has anything special that they would like to say on the panel, we would entertain it at this time. [No response]. I see everybody is anxious to hear your testimony, Director Mueller.

We appreciate your being with us today. The Director brings an outstanding resume to this position. He has been the Director of the FBI since September 4, 2001 just one week prior to 9/11.

He has a unique position, in that he has tenure. He has a tenured term of office, so it is longer than the presidential appointment, which gives him quite a degree of independence, which is very, very important.

Director Mueller has an outstanding academic background. He is a graduate of Princeton, has a masters in International Relations at New York University, and a law degree from the University of

Virginia. He has served as the leader of a rifle platoon in the Marine Corps in the Vietnam war, and is a decorated veteran.

He has a unique record as a prosecuting attorney, having been an Assistant U.S. Attorney, then the Assistant Attorney General in charge of the Criminal Division, a very prominent position in the Department of Justice.

Then after being with a prestigious Boston law firm, he came back to be litigator in the Homicide Section of the District of Columbia's U.S. Attorney's Office, which is quite a line of activity; real devotion to being a prosecuting attorney.

As those of us who have been Assistant Prosecutors know, that is the best job, better than being the U.S. Attorney, which he later was in San Francisco. He now comes to this position, where he has served with real distinction.

We welcome you here, Director Mueller, and look forward to your testimony.

STATEMENT OF ROBERT S. MUELLER III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Director MUELLER. Thank you, Mr. Chairman. If I may, my remarks today will be 10 minutes at the most.

Chairman SPECTER. Take whatever time you need.

Director MUELLER. Thank you.

Good morning to the Senators who are here. Senator Leahy was here. I look forward to working with you, Senator Leahy. I would like to start by acknowledging and thanking you, Mr. Chairman, for your leadership of this Committee over the last 2 years and, of course, I look forward to continuing to work with you in the new year.

I have submitted, Mr. Chairman, a formal statement which provides substantial detail about the transformation and the accomplishments of the FBI in the 5 years since the terrorist attacks of September 11.

Chairman SPECTER. That will be made a part of the record.

[The prepared statement of Director Mueller appears as a submission for the record.]

Director MUELLER. Thank you. Thank you, sir. As reflected in that statement, each branch of the FBI—the National Security, the Criminal Investigations, Science and Technology, Office of Chief Information Office, and Human Resources branches—has demonstrated the ability and the willingness to embrace change for a better, stronger, and more effective FBI.

The accomplishments set forth in my statement include terrorist acts that have been thwarted, espionage activities intercepted, cyber intrusions detected, corrupt government officials convicted, violent gangs dismantled, and corporate fraud uncovered.

Examples of our counterterrorism efforts include: in Lackawanna, New York, six individuals arrested and pleading guilty to providing material support to al Qaeda after undergoing weapons training in an al Qaeda camp in Afghanistan; an Ohio truck driver, Lyman Farris, admitting to casing a New York City bridge for al Qaeda, and researching and providing information regarding the tools necessary for possible attacks on U.S. targets; and in New

York as well, Mohammed Babbar pleading guilty to providing material support to a foreign terrorist organization; and last, more recently, in Torrence, California, four men indicted last year, charged with plotting to attack U.S. military recruiting facilities and synagogues in the Los Angeles area.

While fighting terrorism, we continue to fulfill our crime-fighting mission as well. Public corruption is the top criminal priority for the FBI. Over the last two years, our investigations have led to the conviction of over 1,000 government employees involved in corrupt activities, to include 177 Federal officials, 158 State officials, 360 local officials, and more than 365 police officers.

In addition to public corruption, we continued to investigate, disrupt, and dismantle violent gangs, to investigate and combat world proliferation of child pornography and sexual exploitation of children facilitated by the Internet, and to root out fraudulent accounting schemes and other financial crimes perpetrated by corporate executives, as evidenced by the recent convictions of senior management of the Enron Corporation.

These accomplishments are by no means exhaustive, but the do provide a vivid illustration of the extraordinary work d1 day in and day out across all of the FBI programs by the men and women of the FBI.

Along with my longer statement, I have provided the Committee with a time line setting forth milestones in the FBI's national security efforts. I have also provided an organizational chart that reflects the most recent changes to FBI executive management structure.

The recent creation of an Associate Deputy Director and a Chief Human Capital Officer are positions within the FBI that have improved the administrative functions of the Bureau.

In addition, we have established a Weapons of Mass Destruction, or WMD, mission or directorate.

The directorate's mission is to prevent and disrupt the acquisition of WMD capabilities for use against the U.S. homeland by terrorists or other adversaries, including nation states.

More than 5 years have now passed since the terrorist attacks of September 11, and I do believe that the FBI is effectively organized and strategically focused to fulfill our mission as both a law enforcement and a domestic intelligence agency.

I believe that our successes, some of which I have just described, are the best evidence of our capabilities in both arenas. In addition, we are ever mindful that our duty is to protect the Nation, while at the same time preserving civil liberties.

As the Committee knows, independent reviews of the FBI's national security programs have found that it is the FBI's adherence to the constitution and the rule of law that make it the appropriate agency to handle intelligence collection in this country.

In a report issued July of 2004, the 9/11 Commission expressed concern that abuses of civil liberties could occur in a new domestic intelligence agency if one were to be created. In addition, the 9/11 Commission recognized the value of integrating, not segregating, law enforcement and domestic intelligence.

The Commission noted that, because the FBI can have agents working criminal matters and agents working intelligence inves-

tigations concerning the same international terrorism target, the full range of investigative tools can be used against a suspected terrorist.

Nearly a year later, the Commission on Weapons of Mass Destruction also examined the FBI's dual role. In its report in 2005, the Commission noted that the FBI's hybrid nature is one of its strengths.

In today's world of transnational threats, the line between criminal activity and national security information is increasingly blurred, as is well illustrated by the use of illegal drug proceeds to fund terrorist activity.

And, like the 9/11 Commission, the WMD Commission urged continued coordination between the FBI's national security and criminal programs to help ensure continued attention to civil liberties.

Mr. Chairman, although maintaining criminal justice and national security capabilities within the FBI is the most effective approach to protecting this Nation, we also recognize the importance of adopting best practices from other agencies.

Indeed, we established our Directorate of Intelligence, and as we did so a high-level executive from Britain's MI–5 was detailed to us for a substantial period of time to advise us as we sought to improve and enhance our domestic intelligence program. We have found his insights and suggestions to be invaluable as we have grown.

Prior to the terrorist attacks in 2001, as you have alluded to, Mr. Chairman, various walls existed, real and perceived. They no longer exist today. Legal walls that prevented the integration of intelligence and the criminal tools in terrorism investigations were broken down by provisions of the U.S. Patriot Act, for which credit is due to this committee, and the Foreign Intelligence Surveillance Court.

Yet, we cannot overlook the importance of the breakdown of cultural walls that hampered coordination between the FBI, other members of the intelligence community, and our 800,000 partners in State and local law enforcement.

Since September 11, we have increased the number of Joint Terrorism Task Forces from 35 to over 100. We have established the National Joint Terrorism Task Force with 40 member agencies.

We have established the Office of Law Enforcement Coordination, led by a former police chief, to facilitate information sharing and coordination between the FBI and our State and local partners. We have personnel assigned to the interagency National Counterterrorism Center.

We have established the Terrorist Screening Center; established the Foreign Terrorist Tracking Task Force; established the Terrorist Explosive Device Analysis Center; established six regional computer forensics laboratories; established the National Gang Intelligence Center; and established 13 new legal attaché offices in places such as Baghdad, Beijing, and Kabul. Finally, we are participating in the development of State and Regional Intelligence Fusion Centers along with our partners at DHS.

The sum result of each of these initiatives is that the FBI's approach to our partners has shifted from providing information on a need-to-know basis to a need-to-share basis. We are well aware

that our partnerships with other Federal agencies, State and local police, and our international allies have been the key to our effective response to terrorism.

In addition to the enhancements to our coordination and cooperation with our partners, we have improved our internal capabilities as well. For example, since September 11 we have increased the number of language analysts by 82 percent.

We have doubled the number of intelligence analysts from over 1,000 to over 2,000. Since September 11, we have disseminated over 20,000 intelligence information reports, over 800 intelligence assessments, and 400 intelligence bulletins.

We have increased from 30 percent to 100 percent the number of field offices with secure, top-secret space known as SCIFs. We have deployed nearly 30,000 new desktop computers, as well as high-speed, secured networks to enable personnel around the country to share data, including audio, video, and image files.

Mr. Chairman, I hope that my remarks this morning, as well as the documents I have provided the subcommittee, adequately portray some of the progress of the Bureau during the past 5 years.

Before I take the committee's questions, I would like to take a moment to address the concerns that have been raised by Senator Leahy about the funding for the FBI's information technology project known as Sentinel.

In short, there are no cost overruns and there are no budget shortfalls. The total projected cost of $425 million for all four phases of Sentinel has not changed. The recent report of the Office of Inspector General highlights the fact that the President's budget request includes $100 million of the $157 million needed to fund Phase II of Sentinel.

We have negotiated this request for money with the administration and set aside from our existing resources $57 million that was not included in the President's request. We work closely with our appropriations committees to identify those funds and have ensured that our operational programs are not negatively impacted.

As this Committee has been briefed, the Sentinel project is on budget, with Phase I scheduled to be delivered in spring of 2007 as projected.

In closing, Mr. Chairman, I would like to remind each member of this Committee of my standing invitation for each of you to visit FBI Headquarters and be fully briefed on whatever aspects of the FBI you would wish to be briefed on, or to visit our FBI offices in each of your States to observe our transformation for yourselves.

It is the dedicated men and women of the FBI who have made our transformation possible, and we, indeed, together, are proud of the progress, but understand that we still have a ways to go.

Again, I thank you for the opportunity to be here today. I am happy to answer any questions that you might have, Mr. Chairman.

Chairman SPECTER. Thank you very much, Director Mueller.

We will now proceed with 5-minute rounds by the members. We will have more than one round and see how it goes, but I know there will be a great many questions.

Mr. Director, I begin with the Terrorist Surveillance Program disclosed on December 16 of last year. It caused a great deal of con-

cern about intrusion on privacy, without the traditional court authorization.

What assurances can you provide to this Committee and the American people that the program is worthwhile? Have arrests been made? Have terrorist cells been broken up? Be as specific as you can to tell us what the program has achieved.

Director MUELLER. I am not going to be able to satisfy, here, your desire for specificity. I can tell you that that program—

Chairman SPECTER. Well, would a closed session enable you to be more responsive to that question?

Director MUELLER. Well, the program is classified. It is compartmented. I can tell you that we have given a full briefing to the Intelligence Committee that is responsive to the questions you are asking.

Chairman SPECTER. We are very interested in that, Director Mueller, but not as interested as a full briefing to this committee.

When we asked the Director of the CIA for a briefing, he tells us he reports to the Intelligence Committee. So, I am not too anxious to hear that you report to the Intelligence Committee. I am anxious to hear your report to this Committee because this Committee has oversight jurisdiction over the FBI.

Director MUELLER. I understand that, Mr. Chairman. Whatever briefing we give on the specifics of that program would have to be classified, and it is compartmented. I would be happy to, if given approval to give such a briefing, give you the same briefing that we have given to the Intelligence Committee, but I am not the person who makes the decision on that briefing.

Chairman SPECTER. So a closed session would not do any good.

Director MUELLER. All I can tell you, sir, is that the information is classified. It is compartmented. If given the permission to provide such a briefing, as we have briefed the Intelligence Committee, we are happy to do so, sir.

Chairman SPECTER. Well, my question is not too complicated. A closed session would not do any good.

Director MUELLER. The program is classified, sir.

Chairman SPECTER. Well, I will not repeat the question. Senator Leahy said he might. That means he will.

Well, we are going to pursue that, Director Mueller. That is not what I view as a satisfactory response by the administration. I understand that is the best response you can make, but it would do no good to go into closed session when you start talking about being compartmentalized. But this committee's oversight functions cannot be carried out with that kind of response by the administration.

Moving on, the Patriot Act was worked out, after very extensive negotiations, between this Committee and the administration. Then the President issued a signing statement saying that the President would respond to the reporting requirements as the President saw fit, in line with his constitutional responsibilities.

I believe that that is an unconstitutional response because the Constitution says Congress passes laws and submits them to the President for a signature or a veto, especially in the context where we have negotiated it, and where there has been a give and take

between the administration and the Congress as to what the Patriot Act ought to consist of.

But the question that I have for you is, have the reporting requirements of the Patriot Act been fulfilled or has the executive branch withheld information based on their contention of inherent Article 2 power?

Director MUELLER. I have no reason to believe that we are not fulfilling the requirements of the Patriot Act with regard to reporting. I have heard nothing with regard to not providing that information, as is required under the Patriot Act, regardless of the basis upon which that might be done.

Chairman SPECTER. Well, that, Director Mueller, is an answer in the negative. You do not have any reason to believe that.

Do you have reason to believe that the Patriot Act has been fully complied with on the reporting requirements?

Director MUELLER. Yes. Well, I would say I have not looked at the reporting requirements and not, myself, looked and seen what has been filed. I would be happy to do that. I have every reason to believe that, yes, we are putting together the information and providing the reporting as requested.

Chairman SPECTER. Well, we would appreciate it if you would look at them and give us your assurances on that question.

Director MUELLER. All right.

Chairman SPECTER. Before my red light goes on, I have one further question. That is, there was an extensive study made as to what intelligence analysts are doing. This goes to the issue as to whether the FBI is really moving into the intelligence field. The analysts are allegedly spending only half their time on analysis and not really working through the counterintelligence phase. Is that true?

Director MUELLER. No, I do not believe that is true. I think that was true at the outset, certainly right after September 11. I think we have grown substantially, both in the number of analysts and the quality of the analysts that we have hired.

Chairman SPECTER. Director Mueller, you were right in the midst of finishing the answer to the question as to whether your analysts are really full-time on the job.

Director MUELLER. I would say, again, Mr. Chairman, there will be anecdotes where there is an analyst here and an analyst there who is not, but we have, since September 11, established field intelligence groups in every one of our 56 field offices to which the analysts are assigned.

We understand the necessity of having analysts be somewhat detached so they can do the analytical work that is necessary, and I believe we are effectively utilizing analysts at this point in time. I do believe that studies have been done by others who would support that.

That does not mean that we do not have additional work to be done, but we have come a long way since September 11 and we are using analysts the way analysts are meant to be used.

Chairman SPECTER. Director Mueller, check on the Department of Justice survey of last year of more than 800 FBI analysts, two-thirds of those employed with the FBI. The study found that, on average, the analysts were spending only half-time actually doing

analytical work. Would you check on that and supplement your answer?

Director MUELLER. I will check on that. Yes.

Chairman SPECTER. Thank you.

Director MUELLER. Thank you, sir.

Chairman SPECTER. Senator Leahy?

Senator LEAHY. Thank you.

Director MUELLER. I am sorry. Senator Specter, can I respond to one other thing that I learned while the lights were out?

Chairman SPECTER. Yes, of course you may.

Director MUELLER. That is, in terms of the reporting requirements under the Patriot Act, we are up to date on our reporting requirements under the Patriot Act. In other words, in response to your question as to, were we withholding information as a result of the signing statement of the President, I am saying, as far as the FBI is concerned, in our reporting requirements, we are fulfilling each one of our reporting requirements that are required by the Patriot Act.

Chairman SPECTER. You are giving your assurance as Director that the reporting requirements of the Patriot Act are being complied with, and the President or the executive branch has not exercised any of the limitations included in the signing statement to withhold information?

Director MUELLER. Not as to the FBI. I can speak as to the FBI only.

Chairman SPECTER. And they have not gone through the Department of Justice, like the response to written questions delayed until last week, before responding to my inquiries?

Director MUELLER. Well, they do go through the Department of Justice. Excuse me just one second.

[Pause]

We would have to check with Department of Justice and make certain they are out of the Department of Justice and to the committee, but we have fulfilled our reporting requirements.

Now, you make a good point in terms of, it does go through the Department of Justice, and I would have to check to make certain that they have been forwarded by the Department of Justice.

Chairman SPECTER. Is your coordination with the CIA as good as your coordination with the Department of Justice?

Director MUELLER. They are both equally good, Mr. Chairman.

Chairman SPECTER. I cannot hear you.

Director MUELLER. They are both equally good. We have very good relationships both with the CIA, as well as the with the Department of Justice.

Chairman SPECTER. Equally good and equally bad.

Senator Leahy?

Director MUELLER. I would characterize the relationships as exceptionally positive and mutually supportive.

Chairman SPECTER. I raise it in a serious vein because your communications with the Department of Justice do not appear to be too good. You submit answers to questions in July, we get the responses on November 30, 7 months later. We are talking about reporting requirements. You cannot be sure as to what happened after you report through the Department of Justice.

That raises a very serious question as to communications. There are a lot more reasons to have difficulties communicating with the CIA than with the Attorney General. So, check it out and let us know.

Director MUELLER. I will check it out, Mr. Chairman. I will do that.

Chairman SPECTER. Yes.

Senator Leahy?

Senator LEAHY. Would you please make it a point to have somebody get back to both Senator Specter and myself and tell us, on the reporting, whether it ever got out of the DOJ?

Director MUELLER. We will check on that.

Senator LEAHY. Thank you.

I do not think I am unique in saying—not a unique American—that I am shocked at the revelation that, since 9/11, the U.S. Government has been secretly assigning terror scores to millions of law-abiding Americans who cross our borders. Like so many other millions of Americans, I cross our border quite often, sometimes driving an hour from my home in Vermont into Canada.

Now, data mining technologies have a place in our security regimen. I am not denying that. But the Department of Homeland Security's Automated Targeting System, ATS, shows what some of the dangers can be in just blanket surveillance of law-abiding Americans.

There have been press reports that the Department of Homeland Security shares information contained in this database with the FBI and others. If you do this without proper safeguards and oversight, then it does not make us more secure, it just erodes our liberties. We will ask further questions next year.

Can you please explain to the American people why the administration is secretly compiling dossier's of people's travel habits and then assigning terror scores to them? For example, when I drive across the Canadian border to visit relatives.

Director MUELLER. Well, Senator, I am not familiar with the program, therefore, I am not in a position to describe it and to be able to report on it. It is a DHS program. We may well get information from that program.

Senator LEAHY. I want to back up. You mean, they are assigning terror scores to every single American, law-abiding though they may be, and they are not passing those on to the FBI?

Director MUELLER. I am not certain what information they are passing on, Senator Leahy, and I would have to get back to you on that. My understanding is, from the same reports you have, DHS uses this at the borders. And they may well pass on information to us, but I am not familiar with the conduit of that information or the basis for developing the scores, and I would have to get back to you on that.

Senator LEAHY. Are you aware of a legal authority for this program?

Director MUELLER. I am not. I do not know what the legal authority is.

Senator LEAHY. Thank you.

During the May 2 oversight hearing, you testified about the Investigative Data Warehouse, IDW.

Director MUELLER. Yes.

Senator LEAHY. This was put up after 9/11. It now contains over half a billion FBI and other agency documents, with nearly 12,000 users, Federal, State, local law enforcement who can access this through the FBI network.

Now, like you, I have long advocated to use technology in the FBI to carry out your programs. But I am worried, partly because I read about the ATS program and their data mining. Does this have adequate security? Does the IDW database share information or otherwise interface with the ATS data mining program?

Director MUELLER. The ATS data mining program? I am not familiar with what you are referring to, sir.

Senator LEAHY. We were just talking about the ATS.

Director MUELLER. Do you mean DHS?

Senator LEAHY. What DHS calls ATS. I realize we are using acronyms. This is the one that checks on everybody crossing our borders. You have the Department of Homeland Security's Automated Targeting System. Does your database interface with that?

Director MUELLER. I do not believe so, but again, I would have to go back and check. I do not believe so.

Senator LEAHY. Well, this is very important to me. I wish you could get back to me in the next few days and let me know directly.

Director MUELLER. I will do so. I will do so.

Senator LEAHY. Because there are also Federal privacy laws here.

Has the Bureau filed a notice in the Federal Register about a program publicly released, a privacy impact statement, for IDW?

Director MUELLER. I know we have a privacy statement. I would have to check as to whether it has been publicly disclosed. We adhere to the requirements of the Privacy Act.

Again, I would encourage you and your staff to visit us and we would be very willing to give you a full briefing on what IDW is, what the records are in IDW, and the intersection the IDW has with other such databases.

Senator LEAHY. Yes. Because I am not sure I am getting the answers here, and I am not sure you are prepared to give the answers, partly because, as you said, you are not sure just what goes back and forth there.

I really think this is extremely important, because if we are having database after database after database with things that talk about Americans, and then we see what happens when there are mistakes—sometimes getting in airplanes, Senator Kennedy, the second most senior member of the U.S. Senate, has been stopped several times boarding a flight that he has been taking for 40 years back home to Massachusetts because he is on some terrorist watch list.

Congressman John Lewis, who faced enough problems during the civil rights era, has been stopped. A one-year-old child has been stopped because the child mistakenly gets on and the parents are not allowed on until they get a passport for the child.

Nuns have been stopped. Having gone to Catholic school, I can sometimes understand, but not at this level. Maybe there was terror struck into us at the age of 8, 9 or 10 by them, but they should not be on a terrorist list.

I just worry, as we get these intersected, you are going to have kids who are looking for college loans, you are going to have people who are trying to get a job, somebody trying to get a security clearance, and they are told, no, we cannot tell you why you are not getting it, and somebody is going to be mistakenly on a list. So, I raise this because we will have a lot of questions next year.

We will do the review down at the Department headquarters, but we will do a review that the American public will know. We will do it carefully so that the classified information is not released, but there is a growing concern in this country that our government knows too much about us and may be doing things with that information that none of us want done. I am talking about the millions upon millions of totally law-abiding Americans, like that 1-year-old child.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Leahy.

We will now proceed, on the early bird rule, calling on Senators in order of arrival.

Senator Sessions, you are recognized.

Senator SESSIONS. Thank you.

Director Mueller, congratulations on your hard work. I know there are problem areas, and I will ask you about some of those, but you have—indeed, every U.S. Attorney's Office has—a terrorist specialist in every field office of the FBI, which covers the entire United States.

The speed and accuracy and responsiveness of FBI agents to information that might connect to terrorism, would you not agree, is light years ahead of what it was before 9/11?

Director MUELLER. Yes, sir. As Senator Leahy pointed out, we did not have databases such as IDW on September 11, the ability, as some would say, to connect the dots. We do have that ability today and it is attributable to the growth of not only the database structure, but also of the networks and the ability to communicate that information and make it available to persons whose business it is to prevent terrorist attacks.

Senator SESSIONS. And the wall that separated the FBI and CIA was removed by the Patriot Act. Has that enabled you to be more effective in protecting this country from terrorist attack?

Director MUELLER. Of all the things that have occurred, pieces of legislation that have been passed since September 11, the Patriot Act is the one piece of legislation I would point to as making a dramatic, substantial difference in our ability to work cooperatively with each other in sharing information and preventing terrorist attacks.

Senator SESSIONS. Well, I think that is quite clear. The American people want more. They also will criticize you for not maintaining information and not sharing it with the person at the airport so they can identify somebody who might be a terrorist if they happen to get by the system, and then they will complain that you are maintaining information that somehow might oppress somebody's rights.

Let me just say this to you, just briefly, on that subject. It is easy to criticize your program, the Automated Targeting, the TSP, the warehouse, the IDW, and these efforts to make our aircraft safer,

to make us safer from those who would come into this country to attack us.

But let me ask you, when these programs are established, just briefly, are legal counsel consulted before these programs are initiated, whether it is in the FBI, DOJ, or Department of Homeland Security?

Director MUELLER. Absolutely. Every one of the databases and programs is reviewed by legal counsel. We have a specified privacy officer whose responsibility it is to do that. The Department of Justice has a Privacy Office whose responsibility is to do much the same thing. We had, in the last month, the members of the Privacy Board come and review what we were doing and they were provided briefings on IDW and the other databases that we maintain to do our work.

I might also add that with regard to IDW, we did show and did give access and did a briefing on IDW to the media, so we believe that it is an appropriate database, and we also believe that it passes all privacy concerns.

Senator SESSIONS. Well, if you do not maintain those records and somebody slips by and kills a lot of Americans, you will be hauled in here to be criticized for it, there is no doubt about that.

And you are prepared to brief the Committee on the programs under your jurisdiction, if we have additional questions, in confidence if that is appropriate?

Director MUELLER. To the extent that I can, in confidence, but if it is classified that might present an additional hurdle. But I am prepared to brief whichever committee—including, quite obviously, the Judiciary Committee—to the extent that I am allowed to under the applicable rules.

Senator SESSIONS. Well, this is what I would suggest. I suggest you continue those programs that you believe are appropriate and that you believe are legal and the counsel have approved. If a court says it is not proper, I would expect you to stop it, and I know you would.

I would just say this. I would wait to see what Congress does. My impression is, the pattern in Congress is to bring officials up and accuse them of all kinds of things, but then not offer legislation to stop it. Is it not true that if Congress disapproves one of these programs, we can shut off funding and require it to be stopped?

Director MUELLER. I believe that to be the case, sir.

Senator SESSIONS. So it will be up to us. If we think something is going wrong, let us have a debate on it. Let us have legislation offered that will stop it. Then I would expect you to explain to the American people what risk this Nation is incurring if it is stopped.

Director Mueller, I remain concerned about the interoperability of the Crime Information System computers between Homeland Security and the FBI, that you managed much of. I have asked you about this previously.

For example, we now believe that there are 597,000 absconders on immigration charges, people who were arrested and have absconded. Now, if you are caught in Alabama or Massachusetts for reckless driving and you do not show up for court, your name goes into the system. Petty larceny, your name goes into the system.

But the fact is, only 75,000 of the 597,000 absconders, as I understand it, have been entered into this system. You have committed to creating an interoperable system that somehow will work. Where are we on that?

Is it not true that if we really expect the American people to believe that we are serious about immigration enforcement, those who have absconded, jumped bail, have not shown up for their deportation or their hearing, that they ought to be entered into the NCIC so that if they are arrested anywhere else in the country they would be known to be illegally here and be subject to deportation?

Director MUELLER. My understanding, Senator, is that in August of 2003, NCIC established an immigration violator file. As of November 20—

Senator SESSIONS. NCIC is under your jurisdiction?

Director MUELLER. It is. It is. It is, quite obviously, a system that State and local law enforcement, as well as Federal law enforcement, use to determine whether the person they are looking at has a record or is otherwise being pursued by Federal authorities.

My understanding is that, as of November 20, there were over 200,000 records in that database. Of those, over 100,000 are deported felon records and another 107,000 are absconder records. So my belief is that NCIC has a number of those absconder records.

I do not know what portion of the universe of absconder records there may be in DHS, but my belief is that, to the extent that DHS wishes us to put those records in NCIC, they are being put in NCIC.

Senator SESSIONS. Well, my records indicate only 17 percent, 75,000 of the 500,000 entire population of absconders, are now in NCIC.

Director MUELLER. We would have to reconcile the figures you have, sir, with the figures that we have. I would be more than happy to do that so we are both on the same page.

Senator SESSIONS. Thank you.

Chairman SPECTER. Thank you, Senator Sessions.

Senator Kohl?

Senator KOHL. I thank you, Mr. Chairman.

Director Mueller, I would like to discuss the alarming increase in violent crime across our country. Unfortunately, no city has been afflicted more in the past year than my own City of Milwaukee.

Violent crime in Milwaukee has risen 32 percent in 2005; robberies were up 36 percent; aggravated assaults were up nearly 32 percent; and most concerning of all, homicides increased by 40 percent.

We all agree that we must find out what is causing this problem and fix it, and that means Federal, State and local officials working together to get the problem under control.

Part of the problem is that we are not giving our States and localities the help that they need. Year after year, we see a concerted effort by this administration to end the COPS program and gut funding for juvenile justice and prevention programs.

Virtually everyone in the law enforcement community agrees that this has been a major contributing factor to the rise in violent crime. For exmaple, the Milwaukee police department received $1

million from the COPS program in 2002, but by last year they had gone down to no funding at all for this program.

As a result, between 2002 and 2005, the Milwaukee police department's forces were reduced by 55 police officers, leaving it with nearly 200 vacancies in a force of 2,000. Years of decreases in funding have led to fewer cops on the beat and increases in violent crime.

Another part of the problem is the lack of juvenile prevention at intervention programs. The deputy police chief in Milwaukee was recently quoted as saying, "We have a lot of young people involved in robbery, some are 10 and 11. A lot of the kids that we see never know anything but violence."

Juvenile crime accounted for a large part of the recent increase in overall crime in Milwaukee in 2005, and again it has come on the tail end of the administration's efforts to eliminate prevention programs that have proved successful in the past.

While FBI resources have been diverted to focus on the threat from terrorism, and I understand that, nevertheless, this administration has not replaced those resources and now we are faced with the results of neglecting these problems. We need to make our communities safe again.

So I would like to ask you four questions, and perhaps you can respond to each one. First, will you please commit to coming to Milwaukee soon to discuss the dramatic rise in crime with State and local officials to see what can be done to help get this problem under control?

Second, in July you said that the Bureau was analyzing possible causes of the surge in violent crime across the country. Will you commit to direct those undertaking that effort to focus specifically on what is going on in my City of Milwaukee, or if that overall report has already been completed, will you commit to taking a look at Milwaukee, giving me regular updates on your progress?

Third, if the need exists, will you commit to adding Federal agents to the Milwaukee area on a permanent basis? And fourth, Director Mueller, without commenting on any specific program, would you agree that an increase in the State and local police forces and a renewed focus on juvenile prevention programs must be a part of any strategy to address this problem not only in Milwaukee, but across our country?

Director MUELLER. Senator, I share your concern about the spikes in crime around the country. As the Chairman pointed out, I spent time as a homicide prosecutor here in Washington, DC. The one thing you take away from that, is the devastation to a community from violent crime, particularly homicides and assaults.

We have, in areas where we have ratcheted back—we have ratcheted back and had to by reason of our priorities—the number of agents we have addressing the drug problem, smaller white-collar criminal cases, but we have not allocated resources away from violent crime.

To the contrary, I have tried to build up our contributions to reducing violent crime in our cities through the Safe Street task forces, cold case squads, and the like. I believe that the future and the success is dependent on working closely together on task forces

with State and local law enforcement, as well as Federal agencies, not just the FBI, but ATF and the like.

I support the funding for State and local law enforcement agencies. I would like to see that funding, in part, directed towards the task force concept because I believe we could be more effective together when we work on task forces.

In response specifically to your questions, I was recently in Milwaukee. I would have to see when my schedule will allow me again to be in Milwaukee. I know the Department of Justice has teams going out to various cities—I am not certain whether Milwaukee is one of them—to look at the causes of crime. We have agents who are participating in that. I will take a specific look at Milwaukee, but I cannot promise, necessarily, that I can be in Milwaukee in the near future.

As I indicated as to your second question as to what is being done to look at the causes of this uptick, I know Department of Justice is looking at this, with teams traveling around the country. I would be happy to update you on their findings.

I cannot promise additional Federal agents. I often get requests. There probably is not a Senator here that would not want more FBI agents in their particular States.

I will talk to our SAC out there to get a better view of what is happening there and make certain—and I believe it is a high priority on his list, but I will again talk to him—but cannot make a promise to give additional agents there at this point in time.

Last, I think I addressed the fact that I do believe that there has to be a coordination in terms of funding of State and local police departments. My hope is that funding in some way ties in with State and local police officers being participants and task forces.

Too often, the State and local police officers—and rightfully so—have a very realistic concern about issues within their communities. The first officers that are taken off, are those taken off of task forces.

But I think task forces are one of the best tools for addressing crime, cyber crime, and particularly violent crime. I am supportive of funding so that we can work more closely together with State and local law enforcement in these areas.

Senator KOHL. Thank you very much.

Chairman SPECTER. Thank you, Senator Kohl.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman. I wanted to ask you a little bit about the violence that we are seeing along our border between the United States and Mexico. Particularly of concern to me is the violence among drug cartels in Nuevo Laredo and the various kidnappings and other problems associated with that violence.

I have discussed this matter with our ambassador to Mexico, Tony Garza. I have addressed it with Attorney General Gonzales. And, as you probably know, he sent a Violent Crime Impact Team to Laredo. I have also discussed this with officials from the Government of Mexico.

First of all, can you confirm for me that the FBI does, in fact, have membership on the Violent Crime Impact Team?

Director MUELLER. I believe we do. I would have to check on that. I know we are participating in a number of task forces down there. I would have to get back to you as to what our participation is. I believe we probably are, but I would have to get back to you and confirm that we are.

Senator CORNYN. I cannot imagine you would not be, but apparently there were some questions raised. I would appreciate that.

Director MUELLER. That is fine.

Senator CORNYN. Are you prepared at this point to update us on what is happening as far as the kidnappings of American citizens in Nuevo Laredo?

Director MUELLER. Without getting into the details because it is an ongoing investigation, if you are talking about a recent, relatively highly publicized kidnapping, we are still participating in the investigation of that. It was not totally successful, but it has had some limited success.

Senator CORNYN. From a 30,000-foot level, could you give us a general idea about the FBI's participation?

Director MUELLER. We participate on Safe Street task forces. Whenever there is a kidnapping, we specifically will have agents participating in the investigation. From 30,000 feet, the view does not look good of what is happening in Laredo Nuevo.

Where there are incursions into the United States, we quite obviously have jurisdiction to act, and we act as quickly as we possibly can. We will in put whatever resources are needed to address the investigation.

Our concern is reciprocity across the border and having identified individuals with whom we can exchange information and work cooperatively because of the difficulties of law enforcement, and indeed the military, on the other side of the border operating.

My hope is that, with the elections over and the new government in, that with a pledge to address violence of the cartels, we will enhance our ability to have counterparts across the border which will enable us to work together to address the problems there.

Senator CORNYN. Hope springs eternal, I guess. That is obviously a huge concern.

At your last appearance, on another note, we discussed a report that found significant non-compliance with the Attorney General's guidelines in the use of confidential informants.

You will recall, the report found one or more guidelines violations in 87 percent of the confidential informant files examined, including a 49 percent non-compliance of FBI agents giving proper instructions to informants.

There have been a number of high-profile cases. In my State, a large case in Ft. Worth had a problem with the misuse of informants in which the IG found misuse of informant Katrina Leong—I believe I am pronouncing that name correctly—a Chinese spy. I have been seeking information about an ICE informant who had been involved in multiple murders while under ICE's control.

Can you tell us what has been done in the Agency to improve compliance with the guidelines? Are there any other tools that you need in order to effect compliance?

Director MUELLER. There are several levels of concern with regard to informants. Of the cases you mentioned, one of them, the

ICE case, is not ours. That is a DHS case, so I would not be familiar with that.

Katrina Leong was a source for a number of years in the counterintelligence arena, but that case was handled out of California and it has gone through the judicial system there. It pointed out weaknesses in our handling of informants that we have remedied in the meantime, not only in the counterintelligence program in terms of our review of our assets, but also across the board.

The IG pointed out, in a number of instances—those you alluded to—where our files were not being documented. The scrutiny was not being given. We have put into place programs to assure that that is done with appropriate follow-up.

Last, we have in development now a software package that will enable us to do assessments and to do what in the past has been an extraordinary amount of paperwork, but do it digitally in a secure system, to give us a better overview of the sources that we use across the board.

So both in terms of isolated incidents, we have changed our procedures to minimize the chance of that happening again. In terms of documenting the files and doing what is necessary to assure that we are documenting what we are doing with files, we have put into place procedures and we are moving ahead with a digitized system that will better enable us to have oversight over the program as a whole.

Senator CORNYN. Thank you. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Cornyn.

Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Welcome, Mr. Mueller. I listened very carefully to your response to Senator Kohl. I recall, the last time we met I asked you about the priorities of the FBI. You listed combatting significant violent crime as number eight out of eight priorities. There are 28,331 fewer criminal cases opened by your Agency in 2004 than in 2000. That is a drop of 45 percent.

Violent crime is rising in the United States, by your own statistics, at its highest rate in 15 years. Local and State law enforcement officers are telling your Inspector General that violent crime is getting worse and there is reduced FBI involvement in violent crimes in their jurisdictions. I can tell you this is true in the big cities in California.

I think you have got a real need for a mission reevaluation. I think you have to take into consideration, the President has zeroed out the COPS program. JAG burn grants are gone. Gang crimes are substantially on the rise. I am very interested in this, so I watch for FBI activity in this area and have seen very little.

I believe the President, in 2007, added one agent. I believe your funding level for FBI criminal case agents has decreased by almost 1,000 agents, or 18 percent, since 9/11. I think you have got a real problem on your hands, and I question your priorities in that regard. I think violent crime has to be raised in the FBI priority list.

Would you comment?

Director MUELLER. Yes, Senator. The priorities on the national security side are counterterrorism, preventing another terrorist attack, counterintelligence, with which you are familiar in terms of

the service on the Intelligence Committee and the importance of that program, given the threats from outside the United States, and cyber crime and attacks on our infrastructure, and the like. Those are the three national security priorities that we have.

On the criminal side, the first priority is public corruption, in the belief that if we do not investigate these cases, they perhaps will not be investigated. Second, is civil rights. The third priority is organized crime, because if we do not do organized crime, organized crime crosses borders. Those in local jurisdiction do not have the wherewithal to address organized crime. That is our No. 3 criminal.

Senator FEINSTEIN. Could I say one thing on that point?

Director MUELLER. Yes, ma'am.

Senator FEINSTEIN. Gangs are killing more people in this country than organized crime ever did, or ever will. That is just a fact. They are spreading all across the country. They are being operated out of prisons. It is an extraordinarily serious problem. I think, to have this on a low level, is a big mistake.

Director MUELLER. In other words, organized crime and violent crime are the two priorities we have and they intersect with each other because you can have organized gangs of criminals that we address under RICO and those tools that we have used traditionally in the past.

The other priority is, there are substantial white-collar criminal cases. If we were not doing the Enron cases, if we were not doing the Worldcom cases, if we were not doing the Quest case, they would not be done.

Consequently, I believe violent crime is tremendously important. My hope is that we will have, and get in the future, additional resources to put in that priority. But I think our priorities are appropriately aligned, although I would very much appreciate additional resources to be put into the violent crime arena.

Senator FEINSTEIN. Well, this Senator does not agree with the priorities, let me just put it that way. I represent a big State. It is a deep concern in big cities. I want to register that with you very publicly. I think the FBI has a role in fighting violent crime, crime that is taking place on a major scale. So, I will leave you with that.

Let me, in response to the Chairman's questions, ask you a couple of questions that I think you probably can answer here.

Have terrorist acts been prevented as a result of FBI activities?

Director MUELLER. Yes.

Senator FEINSTEIN. Terrorist acts in this country?

Director MUELLER. Yes.

Senator FEINSTEIN. Can you give us a number?

Director MUELLER. I can give you examples, not necessarily a total number.

Senator FEINSTEIN. Well, would you give us what you can in this venue, please?

Director MUELLER. I can tell you the Torrence case that I mentioned, which is a California case. Individuals who obtained weapons, had developed an al Qaeda-like philosophy, although had no ties to al Qaeda, operating at the outset in prison until several of them got out.

Last year, they came together and robbed gas stations to obtain money to obtain weapons. They were in the process of obtaining weapons so that they could, on September 11 of last year, go into military recruiting stations and shoot them up, and then on Yom Kippur, as worshippers came out of synagogues, shoot up the worshippers. That was a terrorist attack that was well along the way to being undertaken. That is one example.

Another one that would have an impact on this country is the case where 24 individuals were arrested in August in the U.K. Their plans were to obtain explosives and get them on airplanes and blow the airplanes out of the skies, along the lines of what happened with Pan Am 103.

That is a case that we worked with the CIA, we worked with our counterparts in the U.K., MI–5, Scotland Yard, and with our counterparts in other countries. If that attack had been allowed to go forward, it would have been devastating on the United States and on the United States' citizens. Those are but two.

There are a litany of them. I believe I listed a number of those in my longer statement of similar cases that we have addressed since September 11. I can name, just off the top of my head, the group in Lackawanna, the group in Northern Virginia.

There was a group out of Portland, Oregon, although that group was training here to go into Afghanistan to fight. So, I listed a number of them in my longer statement, but I can provide you a fuller statement if you would like.

Senator FEINSTEIN. I pick it up from the Intelligence perspective, but I think it is also important that this Committee have an understanding. My time is up, but I would just ask you to watch that violent crime rate. This affects regular Americans every day, shopping, walking, going to the park. It is a real problem. The FBI has a role in it, and I do not think you can abdicate it.

Thank you, Mr. Chairman.

Director MUELLER. I absolutely agree with you. We are not abdicating it. I am looking for ways to enhance our presence.

Chairman SPECTER. Thank you, Senator Feinstein.

Senator Grassley?

Senator GRASSLEY. Director Mueller, I just have one issue I want to discuss with you in the 5 minutes I have, and that is the anthrax investigation. I wrote the Attorney General October 23 about your Agency's refusal to brief Congress on the investigation into the 2001 anthrax attacks, which obviously targeted this Congress, and specifically Senator Leahy.

It has been 5 years since those attacks and over 3 years since any Congressional briefings on the investigation. This investigation is one of the largest efforts in FBI history, I am told.

Congress has a right and a responsibility to get some detailed information about how all those resources are being used and why there seems to be so little progress in the case.

Several of my colleagues on the committees—

Feinstein, Schumer, Feingold—have all agreed to co-sign a briefing request letter that I have circulated, along with Congressman Reichert of New Jersey. I hope that Senator Specter and other members of the Committee would also sign the letter.

But regardless, I need to keep asking these questions until I get some answers. I asked dozens of questions in my letter to the Attorney General. I do not intend to repeat all those questions today, but I will be submitting those questions for the record. I believe this Committee has an obligation to make sure that it gets full and complete answers to those questions.

The main reason that the FBI has cited for refusing to brief Congress is the fear of leaks from members and staff of Congress. But one of the issues that we in Congress need to investigate is actually the leaking by the Justice Department and the FBI.

As you know, Steven Hatfeld is suing the FBI for leaking his name to the press as a person of interest in the investigation. He is also suing the New York Times. We recently learned that two of its sources for the New York Times story were FBI agents.

So could you please explain why the FBI can leak information about someone who has never been charged with anything to the New York Times, but the FBI will not brief Congress about one of the most extensive FBI investigations ever?

Director MUELLER. Senator, I abhor leaks, whether it be from the FBI or any other entity. I have taken steps, when I have learned of leaks, to investigate such leaks.

My understanding is that your letter did go to the Attorney General and the Attorney General responded by letter of October 31 in which the Justice Department took the position that, according to longstanding DOJ policy, where you have a grand jury investigation and nonpublic information has been developed in the course of the investigation, that that type of extensive briefing could not be given.

We periodically meet with the victims of that horrific occurrence and provide them some insight into the allocation of resources to successfully bring the persons responsible to justice.

We have offered that to other victims, or those such as Senator Leahy and Senator Daschle, but this is not the type of briefing I know you are asking. But I do believe that that is the subject of the letter from the Attorney General on October 31.

Senator GRASSLEY. How many FBI personnel have been reprimanded or punished for leaking information in the anthrax case, and how many leaks on this case from the FBI or the DOJ sources do you think occurred?

Director MUELLER. I believe there are at least two leaks, based on what I have read in the newspapers as well. That information comes from others, or persons to whom we would not have had access in our investigation. Specifically, I am talking about the reporters themselves. No one has at this point been punished because we have not been successful in identifying the source of some of those leaks, but that is not for want of trying.

As to the underlying investigation, I will tell you that we are still pursuing it as forcefully as we possibly can. We have 17 FBI agents still assigned to it, and 10 postal inspectors assigned to it. It is ongoing and we will continue to press forward.

Senator GRASSLEY. Before my time is up, there are some questions in that letter to the Attorney General that do not involve grand jury investigation.

I am going to give you a clip from Joseph Billy, the FBI Assistant Director for Counterterrorism, that said, "I am not aware of a declination to brief the Congress on the anthrax investigation." Another quote was, "I believe that we have regularly kept those that we are accountable to informed about the progress in the case."

This looks like an example of the FBI's left hand not know what the right hand was doing. You are telling me that you will not answer questions about the anthrax investigation, while someone else is telling the public that you are keeping us fully informed. Could you set the record straight? Which is it?

Director MUELLER. I would be happy to look at that clip. I was not aware that there was that clip out there, Senator.

Senator GRASSLEY. He is the FBI Assistant Director of Counterterrorism.

Director MUELLER. Yes.

Senator GRASSLEY. I do not have another question, but Chairman Specter, I think we have a right to be briefed. I hope you will take a look at my letter and see if we can get a briefing on this anthrax investigation.

I think we owe it to people like Senator Leahy, who have put their lives on the line or had their lives threatened, at least, to be brought up to date while this was going on.

Chairman SPECTER. Senator Grassley, I think you are right. I have it on my list for a second round, which I do not have to pursue since you have done such a good job. I will be glad to co-sign your letter.

Senator LEAHY. I have avoided making many public comments about the anthrax case, especially on the five-year anniversary. I might note, at least two people who touched the envelope that I was supposed to open died. Five people died in all. My family was put under police guard until we said we really did not want that. It disrupted our lives enormously.

I read in the paper, the FBI flew down the families of victims to Washington for a briefing. I know I was not invited to that briefing. I came out unscathed. The letter that I was supposed to open stopped before it got here.

My sorrow is mostly for those who died just doing their job in trying to deliver a letter to me. But I also know how disruptive it was of my family and my own life. For me personally, I can handle that. I faced death threats and all when I was a prosecutor.

But I am not satisfied with this investigation. I am not satisfied with the briefings I have had. I am not satisfied with the information I have received on it. I suspect, along with Senator Grassley, I will in the coming months be asking more questions. Thank you.

Chairman SPECTER. Thank you, Senator Leahy.

Director Mueller, what is the problem with getting a briefing on this issue?

Director MUELLER. On?

Chairman SPECTER. On the anthrax issue, the anthrax investigation.

Director MUELLER. Well, as set forth in the letter from the Attorney General, there are aspects of the investigation that are grand jury matters at this point. There are aspects of the information that can, and should not, be disclosed, even to victims.

Yes, we can give an over-arching briefing as to how many people we have on it, but you are asking for something more. It is the Department's policy that, where you have an ongoing investigation such as this, a grand jury investigation, that such a thorough briefing should not be given.

Chairman SPECTER. Well, Director Mueller, I would ask you to take a look at the legal authorities on the proposition that we asked both the Attorney General and Deputy Attorney General McNulty. If there is solid authority for Congressional oversight on pending investigations, you could invoke the grand jury secrecy cloak here in a little different area, but are there matters where the grand jury secrecy cloak would not be involved?

Take a look at the authorities which were cited, and the exchange of letters that I directed, both to Attorney General Gonzales and Deputy Attorney General McNulty, that Congress does have authority for investigations on pending matters. We have that authority. Take a look at it and supplement your answer, please.

Director MUELLER. Let me also say, Senator, I am very sympathetic to what Senator Leahy says. Both of us in our careers have spent a great deal of time with victims, and the frustration of victims in not having the information they feel that they need to put what is happening into a context.

I am very sympathetic and will take your words and go back and again discuss it with the Attorney General. But do not for a moment think that I do not understand your concerns, Senator Leahy, and your desire to learn more about the facts of what has happened and what we have been doing.

Chairman SPECTER. Senator Grassley, do you have a supplemental comment?

Senator GRASSLEY. There was a grand jury inquiry when we were briefed 3 years ago. It seems to me, if we could be briefed then with a grand jury investigation, we could be briefed today with that same grand jury investigation going on.

Chairman SPECTER. Director Mueller, include Senator Grassley's latest point in your response.

Director MUELLER. I will.

Chairman SPECTER. Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman.

Good to see you again, Mr. Director. Thank you for being here today. I have been in politics a while, but I have to say I was a little appalled by some of the statements made in the recent months by the President and the Vice President, and even the Attorney General, characterizing those who have raised concern about the NSA's warrantless wire tapping program as unpatriotic and opposing wire tapping terrorists.

In October, President Bush said the following: "If you don't think we should be listening in on the terrorists, then you ought to vote for the Democrats." Even after the election, the Attorney General said the critics of the NSA program "argue nothing could justify the government being able to intercept conversations like the one the program targets," and he said that "critics' definition of freedom is both utterly divorced from civic responsibility, in itself a grave threat to the liberty and security of the American people."

Now, these statements are blatantly false, offensive, and outrageous. Mr. Director, do you know of anyone in this country, Democrat or Republican, in government or on the outside, who has argued that the U.S. Government should not wire tap suspected terrorists?

Director MUELLER. No.

Senator FEINGOLD. Thank you for that answer. I also do not know a single person who has said the U.S. Government should not wire tap suspected terrorists. Of course it should. The President and the Attorney General should have the decency and the honesty to stop suggesting otherwise.

As you well know, the issue is not whether the executive branch should wire tap suspected terrorists, it is whether it should have to follow the laws passed by Congress when it actually conducts these wire taps.

So let me ask you another question. Do you agree with the Attorney General that anyone who has raised questions about the legality of the NSA's wire tapping program poses—and let me quote the Attorney General again—"a grave threat to the liberty and security of the American people"?

Director MUELLER. I do not think it is appropriate for me to comment on what the Attorney General has said. He is much more familiar with the program than I am.

Senator FEINGOLD. Do you believe independently of the Attorney General's statements, that people that make those statements are a "grave threat to the liberty and security of the American people"?

Director MUELLER. Again, I am going to refrain from commenting on what the Attorney General said.

Senator FEINGOLD. I just asked you for your independent opinion of whether these types of individuals are—

Director MUELLER. I would find it very hard to divorce my independent opinion from—well, I go back to saying I think it is inappropriate for me to comment on what the Attorney General has said. That is his. I think he ought to be asked about those comments.

Senator FEINGOLD. What I am asking you now, Mr. Director, is whether or not you believe people who have questioned the legality of the NSA wire tapping program pose a threat. I have taken the Attorney General's quote out of it now.

Director MUELLER. I believe that Congress should look at all aspects of the program and understand the context in which technology has developed exponentially, and there is a necessity to address new ways of giving us the tools you need to be successful in thwarting terrorist attacks. There can be different ways of doing that.

There can be arguments on both sides, but Congress needs to grapple with the issues of this expanding technology and give us the tools we need to expeditiously do that which you said at the outset, which is to wire tap putative terrorists' conversations so we have the information we need do our jobs.

Now, in the midst of that, there are people who believe the same underlying proposition that you set forth at the outset, but may disagree on the tools to do that.

Senator FEINGOLD. Well, I can certainly say if that had been the statements during the campaign, Mr. Director, I would not have any problem and I would not be making these comments right now. It is time for this administration to stop exploiting the terrorist threat to justify its power grab.

Congress needs to understand fully why the administration decided to violate the FISA Act. We need to have a serious dialogue about whether FISA has shortcomings that need to be addressed.

I do not think we can do that when, instead of the kinds of things you just said, which is a reasonable statement of the issue, the President and the Attorney General are falsely accusing their critics of sympathizing with terrorists. That kind of political scare tactic has got to stop. I appreciate the fact that you have not engaged in this kind of inflammatory rhetoric.

I would like to make a final point in this. A number of administration officials over the past few months have talked about the need to modernize FISA to make it technology neutral and address some of the anomalies that have been created by changes in the communications infrastructure, which you were alluding to. That sounds like a reasonable goal. Senator Feinstein and others are working on accommodating that.

The problem is, the legislation the administration has presented as supposedly modernizing FISA really does no such thing. I think, to me, it pretty clearly guts FISA entirely. It wipes out 30 years of law and replaces it with a blank check for the President to wire tap whoever he wants. Now, that is typical of the kind of over-reaching misrepresentations made by some in this administration.

I would simply like to urge you, Mr. Director, to convey to your colleagues that if they truly want to work with the next Congress to accomplish goals that all of us can agree on, that they try a new approach. They have to stop over-reaching and come to the table willing to have an honest discussion about changes that they believe need to be made in light of technology advances.

I am very open to those kinds of reasonable arguments. Honest discussion of these issues has been sorely lacking in recent years and it is going to be absolutely critical if we are going to work together to move this country forward.

Mr. Director, will you deliver that message?

Director MUELLER. Yes, sir.

Senator FEINGOLD. I thank you.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Feingold.

Senator Kyl, you have joined us. I will turn to you for questioning.

Senator KYL. All right. Thank you, Mr. Chairman. I would be happy, if you want to go ahead, to defer.

Chairman SPECTER. No, no. You take your first round.

Senator KYL. All right. Thank you.

Welcome, Mr. Director. First of all, we have, over the years, responded to a lot of recommendations of the Department of Justice with regard to changes in the law to better fight the terrorists.

Are there ideas that you have today for additional tools to fight the terrorists that you would like to share with us, or would you be willing to provide those for the record?

Director MUELLER. I can mention two off the top of my head, but there may be others that I would like to get back to you on.

One, is I go back to administrative subpoenas. I have mentioned this before to the Committee on several occasions in the past. It would ease our burden in terms of our ability to get the information we need to swiftly determine whether or not a threat is a valid threat and the persons who may be implicated deserve further attention.

Second, one of the threats we face in the terrorism arena are individuals who are not necessarily aligned with a terrorist group overseas which would be a designated foreign entity, but is deserving of the use of the FISA process to immediately and very quickly determine whether or not the communications—whether it be communications over cell phones, telephones, or the Internet—and make those readily available. We are constrained still by Title 3.

One of the developments that we would like to explore is utilizing the FISA process where we have individuals who do not necessarily meet the current prerequisites under FISA, but still present that threat, the kind of threat that we saw that led to Oklahoma City, and give us the FISA tool for addressing that threat in the United States.

Senator KYL. In regard to that latter point, even though we provided something called the "Masawi fix" to deal with a person that could not be connected specifically to a known terrorist organization, we have now eliminated that requirement but we still require the person to be foreign-born.

Director MUELLER. Right.

Senator KYL. That is to say, not to be a U.S. citizen. So, something to deal with somebody who is not a foreign person would be useful.

Director MUELLER. A McVeigh, for instance.

Senator KYL. Yes.

Just to remind us—I have forgotten the statistics now—but there are 200 or 300 administrative subpoena authorities existing in our government today for various agencies, from the post office, to Social Security, and so on. Can you remind us of how common that is and why it is useful in the context that you mentioned it?

Director MUELLER. Just to name a few, in health care fraud, child pornography, drug cases the DEA has authority. The ability that we would have to immediately, when we get word there is a piece of information in a motel, or in a hotel, or at a bank that we need rather quickly, issue an administrative subpoena has a number of benefits, in the sense that it is an order to produce the documents, not just a letter, as you have with the national security letter.

There also is the enforcement possibility by the courts. Those are the benefits to us, the speed, the ability to get that information quickly, and also to have the authority of the courts, which we do not have with the national security letter.

On the other hand, from the perspective of the recipient of the letter they have an opportunity to contest if it is over-broad; if there are some reasons why one should not comply, there is the opportunity then to go to court and get that resolved. Both parties would have the right to appeal whatever initial decision is made.

So from the perspective of speed, and second in terms of getting a swift resolution to the issues that may be raised, it is a very useful tool. That is used, as you have pointed out and we have indicated, in any number of other areas far less important to the overall weal of the country than preventing terrorist attacks.

Senator KYL. Indeed, we will work with you on that, then.

Finally, just a quick status report, if you would, on the work to combine the IDENT and IAFIS fingerprint systems, so important, among other things, for our border security.

Director MUELLER. When Mike Chertoff came in and took over the Department of Homeland Security, we broke a logjam in terms of establishing two separate systems. We are well along the lines of addressing the complaints that first found a home in the IG reports as to two separate systems.

I would have to get back to you on where we are in the continuum of developing that, but there certainly is will on both sides to get that accomplished, understanding that a ten-print is the idea and that there ought to be a merging of, and a development from, the two-print to the ten-print and a merging of the databases and utilizing the ultimate IAFIS database to the benefit of both the Bureau, State and local law enforcement, as well as Department of Homeland Security.

Senator KYL. Thank you very much.

Chairman SPECTER. Thank you very much, Senator Kyl.

Director Mueller, there have been media reports that the FBI is assisting the British investigators on the allegations relating to the international poisoning case. Is the FBI assisting in that investigation?

Director MUELLER. Let me just say, we have provided assistance in a couple of instances where there were questions that Scotland Yard wanted asked of individuals in the United States. That is one way we have been assisting.

Also, our laboratory has been providing some guidance and substantial expertise in the U.K. But to the extent that we can add some assistance in terms of our understanding of Polonium 210, we have provided that to Scotland Yard.

Chairman SPECTER. Well, that is certainly something to be pursued with all the resources available on an international basis, beyond our cooperation with the British generally. If the reports are true, it is really an extraordinary case and it has potential for application far beyond Great Britain, with the subtleties of the action taken, if true.

So to whatever extent assistance is requested there —I know in law enforcement you do not stick on strictly jurisdictional lines, but that is something we commend you for pursuing.

Director MUELLER. Any request from the U.K. on that case, we would try to accommodate.

Chairman SPECTER. Then we can doubtless have some better oversight than we have on the anthrax investigation.

Director MUELLER. Was that a question, sir?

Chairman SPECTER. No, that was a statement.

Director MUELLER. Yes, sir.

Chairman SPECTER. There was a report in the Washington Post on October 11 that, after 5 years beyond 9/11, the FBI still has only 33 Arabic-speaking agents. Is that true?

Director MUELLER. Well, I think it ought to be put into context, Mr. Chairman. We have within the Bureau almost a couple of hundred agents with some capability in Arabic.

Chairman SPECTER. How many?

Director MUELLER. Two hundred. I am sorry. Middle Eastern languages, as is pointed out, 159 in Arabic. But what we measure, are those that are at Level II in proficiency. There the story was accurate in terms of, in Arabic.

Chairman SPECTER. Only 33.

Director MUELLER. We have a total of 52 who are proficient in Middle Eastern languages, which include Farsi, Turkish, and Urdu, for instance.

Chairman SPECTER. Director Mueller, when you combine that with the answers which we finally did receive on November 30 to the May 2 questions submitted for the record, you had responded that, of the 7,028 hours of recordings that needed translating, more than 46 percent—33,240 hours—could not be interpreted due to obscure language and dialects so that you cannot interpret what is on the recordings. I see a puzzled look on your face. Is that inaccurate?

Director MUELLER. Well, I would have to go back and look at it. We have, in addition to the agents who are Level II or higher, 411 linguists in Middle Eastern languages.

Now, in the past we have had issues with regard to particular esoteric dialects, but when we have had a case, particularly a Priority One case, which is a terrorist case, that presents a short-term threat, we have reached out to other agencies, whether it be DoD or CIA, to obtain whatever translation ability we need. I would have to go back and see what those figures reflect.

Chairman SPECTER. Well, Director Mueller, we had the famous situation, if true—and apparently it is—that there was a recording on September 10, the day before 9/11, that there would be an attack and it was not transcribed until the day after, September 12. Now, it is obviously a difficult matter with the dialects and the complications.

The recruiting of people skilled in these lines is not an easy matter. Can the Congress be of any help to you on funding or any assistance in getting the people that we need to make these interpretations, translations?

Director MUELLER. The Congress can always be of help to us in funding. In fact, I do want to mention one point there, because if we do not get back to the computer systems, I do want to get back to that.

But in terms of funding, we are looking, and have tried a number of approaches to attract persons to be agents. We have gone through thousands of individuals and are continuing to try to attract and to recruit agents with various Middle Eastern language skills.

We have put together recently another task force. We have enlisted some outside help to do that. I hope, by the time I am in next year to testify, that we will have some results and improvements.

If I might spend a moment just on the issue with regard to Sentinel, and what I raised and what Senator Leahy raised earlier about the $57 million.

Chairman SPECTER. Go ahead.

Director MUELLER. I tried to point out that the total for Phase II, which has always been the total for Phase II, is $157 million. I think it was $150 million, and then for some reason it went up to $157 million.

When we sat down to get the budgeting on this, the administration was willing to give us $100 million. In negotiations with OMB, we had to find the $57 million in previous-year monies and the like, which we have done.

But with a continuing resolution—we are in a continuing resolution phase at this juncture—the Senate mark-up is for $80 million of the $100 million requested. The House mark-up is for the full $100 million that we have requested.

We have to go to Lockheed Martin and enter into the contract for Phase II in February. My concern is that we would be precluded, I believe, legally to entering into that contract if we do not get the monies authorized by Congress in advance of them.

So we have the $157 million that has been requested, but when you ask, can Congress help on the funding, Congress could help on the funding by including the continuing resolution the $100 million we need to augment and supplement the $57 million we have set aside for Phase II of Sentinel.

Chairman SPECTER. Congress could be of assistance to the FBI if Congress would fulfill its appropriations function. That is a yes answer, Director.

Senator LEAHY. Mr. Chairman, I agree on that.

Director MUELLER. I had to think it through.

Chairman SPECTER. I was on the floor yesterday on the issue of the Subcommittee which I chair on appropriations, Labor, Health, Human Services, and Education. There are so many important programs where we have held hearings and reevaluated what we need, and we have been stymied in bringing our bills to the floor and we have been stymied in having conferences.

What you have just talked about, the difference between the House and the Senate, these differences are created in order to have negotiating room to make concessions. I think it highly likely that the $100 million figure would have been the result in conference.

I have a long list of complaints about that. My squash partner today complained about NOAA on ocean funding. On the lower level, they are going to have people discharged. It is a highly deplorable situation.

But if there is an effort made, Senator Leahy can confirm, to pick out the FBI, much as it is needed, that would set off a chain reaction of hundreds—probably thousands—of items.

I am interested to hear this because it will give us additional ammunition—Senator Leahy and I are both on appropriations—to try to get our colleagues to do the work necessary to finish these bills.

Senator LEAHY. Well, also, I might say, Mr. Chairman, it requires leadership to do it. We have completed action on many of the appropriations bills at the Committee level, but even though

the law required us to get all these done by the end of September, we spent a great deal of time with major debate on gay marriage, flag burning, Terry Schiavo, and all those things, which may be fine and good, but it would have been nice if we had done the business that the law requires us to do, and the American people expect us to do first, and then take the time on some of these things.

They easily could have passed every one of these appropriations bills if the leadership of the House and the Senate wanted to. Frankly, I think one of the reasons the American people have changed the leadership is because they knew they did not do their job.

Director MUELLER. Well, I know both are on appropriations committees. As Senator Leahy suggested at the outset, we ought to learn from our mistakes, and I believe we have done so. I think the IG's most recent report indicated that we have learned. We are continuously being monitored in the Sentinel program by the IG, by the GAO, by this committee, and by the appropriations committees and others.

I believe everybody believes this project is worthwhile. I believe they believe it is on target. It does have risks, but we do need the money to go forward. I would not want to have to delay the project, which is important to the Bureau, because we did not have the funding necessary to start Phase II at the time that we had indicated that we needed to.

I might also say that this has been the subject of discussions with the appropriations Committee since we indicated that we were entering into this contract with Lockheed Martin.

Chairman SPECTER. I have one final question before yielding to Senator Leahy.

Senator LEAHY. I am going to have to leave, but go ahead.

Chairman SPECTER. No, you go ahead.

Senator LEAHY. No, go ahead. Go ahead.

Chairman SPECTER. No, no. You pick it up and I will ask it when you finish.

Senator LEAHY. If I might, I am going to have to leave for another thing. But I have asked for answers from the Department of Justice, and the FBI, and others regarding what we have seen reported—and actually in some instances documented—cases of abuse of detainees in U.S. custody.

According to press reports, the CIA disclosed the existence of two interrogation documents. One was a presidential directive regarding the CIA's interrogation methods and detention facilities located outside of the United States, and an August 2002 Department of Justice memorandum to the CIA General Counsel regarding CIA interrogation methods, the so-called second Bybee memo. This has turned out an ongoing FOIA lawsuit.

Have you reviewed either the presidential directive regarding the CIA's interrogation methods in secret detention facilities or the second Bybee memo?

Director MUELLER. No, sir.

Senator LEAHY. Would you be able to provide these documents to the committee?

Director MUELLER. I do not have them and have not seen them.

Senator LEAHY. I want to ask you then about a practice that is euphemistically known as "extraordinary rendition", or some have more accurately called it torture by proxy. Press reports have described cases in which suspects are arrested, or in some cases kidnapped on foreign soil—I am not going to go into the case of one arrested on American soil—and then, without any judicial process they are flown to third countries for the purpose of detention and abusive interrogation.

A German citizen named Khalid al Masri was snatched off the streets in Macedonia and was flown to Afghanistan, where he was tortured and held for five months in a secret prison.

Director, has the FBI participated, directly or indirectly, in any extraordinary rendition since you have been Director?

Director MUELLER. Not as you describe them. I am not familiar with the al Masri case. I will tell you that we participate in renditions where we have an outstanding piece of paper—and by that I mean either an indictment or a complaint against an individual—and we locate that individual in a foreign country, and generally with the cooperation of the government, that person is rendered back to the United States. We had a recent example of that.

Senator LEAHY. Rendered to the United States?

Director MUELLER. Back to the United States. Those are the renditions that we engage in. So I want to be clear, when you are talking about renditions, that we do engage in this type of rendition where a person is, generally with the cooperation of the foreign government, rendered to the United States, even though there is no extradition treaty.

We had a recent case involving Bangladesh, with whom we have no extradition treaty, but we did have charges against an individual and we worked cooperatively with that government to have that person rendered back to the United States.

Senator LEAHY. Was the FBI involved with the Canadian citizen who was sent to Syria?

Director MUELLER. We were.

Senator LEAHY. You know the case I am referring to?

Director MUELLER. I think you are discussing the Arrar case?

Senator LEAHY. Yes.

Director MUELLER. I am somewhat limited in what I can say about that case because it is in litigation. I can say that we did participate here in the questioning of Mr. Arrar. We did not make the decision as to which country he should be deported to.

Senator LEAHY. Of course, some might say, as a Canadian citizen on his way to Canada, you might have sent him to Canada. Just think how much better off we all would be had that been done. I just throw that out rhetorically.

You talk about people coming here. Has the FBI been involved in identifying or locating persons who were subsequently rendered to other countries?

Director MUELLER. I am sorry, sir. Could you repeat the question?

Senator LEAHY. Has the FBI been involved in identifying or locating persons who were subsequently rendered to other countries by the CIA?

Director MUELLER. I do not believe so. I do not believe so, but if I could get back to you on that, if I could spend some time looking at the question and assure that I fully understand it.

Senator LEAHY. Are you investigating any of the allegations that have been made by al Masri and others concerning possible violations of U.S. laws?

Director MUELLER. No.

Senator LEAHY. Well, you and I will have further discussions on this, you can imagine.

Let me just tell you one thing that bothers the heck out of me. Here is an article in a newspaper that has always been pro-law enforcement. I am going to give you this. It says, "FBI Agent's Story Threatens Rooney Case".

Let me tell you what that is. You are probably familiar with it. We have a young woman from Arlington, Virginia, Michelle Gardner Quinn, 21 years old. She was a UVM senior. She is out with friends of hers in Burlington, Vermont, probably one of the safest cities in this country. She met up with somebody and, at least as it appears, within hours she was brutally murdered. A person has been arrested.

I had talked to law enforcement officers, State law enforcement officers during that time simply to make sure, if there was anything that they needed and were not getting from the Federal Government, I would be happy to make calls for them.

Obviously I was not going to get involved in the investigation; they are highly competent. They assured me they were getting all the help they needed, but if they need more, they would call.

Then, last month, an FBI agent wrote an article for a local paper, another paper, detailed the murder investigation and all the evidence in this case in a very self-congratulatory fashion: look what we did. An FBI agent did this.

Now, as I said, State, local, county, and Federally, people cooperated beautifully in this matter in a horribly, horribly tragic thing, something that just stunned the State of Vermont.

I was in Vermont at the time that the press accounts down here. Local press accounts were significant. It was just a horrible thing. It brought the community together in a way, hoping to get this.

He detailed this. Of course, the defense attorney, doing as a defense attorney should, immediately raised this as a Motion to Dismiss, which the courts denied, saying that it would taint any future jury. The court ruled the right way. But it just raises another issue, a major issue, on appeal.

Now, if I had had an investigator in my office when I was a prosecutor, I would have fired them on the spot. What in heaven's name was this agent—has this come to your attention?

Director MUELLER. Yes, it has. It has been referred for investigation.

Senator LEAHY. This is something you would never do. I mean, you have had experience as a prosecutor and everything else. I mean, were you as shocked as I was?

Director MUELLER. Let me just say, it is very unfortunate this occurred. On the one hand, I have heard, as I think you have, that the cooperation was excellent and the cooperation of all contributed

to identifying and arresting the individual who was responsible for this terrific tragedy.

We have apologized to the Burlington police department, to the Vermont State Police, and other partners in that investigation that this occurred.

Senator LEAHY. That is what they have told me.

Director MUELLER. We have referred this for investigation to determine what policies may well have been violated by this agent.

Senator LEAHY. Well, I would assume that it would be FBI policy, if you are in the middle of an investigation or involved in an investigation that has not even gone to trial, you do not have an FBI agent going and writing an article or paper saying, look at what a great job we have done.

I mean, I do not mind people bragging after the conviction is over. But can we say, at least in the abstract, that it would be totally against your policy?

Director MUELLER. Yes.

Senator LEAHY. All right. I think that would be the same.

Director MUELLER. That is what the investigation is looking into, exactly that, the disclosure of sensitive information during the course of an investigation.

Senator LEAHY. I must admit, and I have been asked about this by the press, who defended the FBI and everybody else as being highly professional, and said that this had to be an aberration. But I cannot emphasize enough how upset we were in Vermont, how demoralized the police officers were. These people canceled vacations. They worked around the clock.

In my experience in our State of Vermont, I have never seen law enforcement work so hard on a matter as this, and with great cooperation from the Bureau and everybody else. To see this happen is just awful. So I leave it at that, but I want you to know that this is not a matter of just passing concern to me.

Director MUELLER. Thank you.

Senator LEAHY. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Leahy.

Director Mueller, following up on what Senator Grassley had asked about leaks: there was a leak three weeks before the last election about an investigation into Congressman Curt Weldon, who represents Delaware County in the Philadelphia suburbs.

Director MUELLER. Yes, sir.

Chairman SPECTER. Following the leak in the newspapers, there was a search and seizure, highly publicized in advance, on Congressman Weldon's daughter's property. I know that this is a matter which is under investigation by the Department of Justice because it was raised in a meeting I had with Attorney General Gonzales.

To have that kind of a disclosure 3 weeks before an election, is extraordinarily unfairly prejudicial. Whatever investigation the Federal authorizations have is a very important matter, obviously, and has to be pursued.

It does not matter who was under investigation, whether it is a Member of Congress, or anyone; that is outside of the realm. But to have the timing in such a highly prejudicial way casts a real question-mark on what is going on.

To what extent can you shed any light on that leak, on efforts to determine the source of the leak or efforts to stop those leaks? The FBI has gigantic power, which we all know. When I was District Attorney in Philadelphia, the common parlance was that the D.A. has the keys to the jail. But the disclosure of a pending investigation can be disastrous.

Comment?

Director MUELLER. I was exceptionally disappointed—and that is being charitable—in terms of my response upon hearing about the leak. It is unfair, in advance of an election. But as importantly to us, it adversely affected the investigation and, consequently on that and several other matters that occurred at about the same time, we have initiated investigation.

I am periodically updated on those particular investigations and believe that we are having some success. But there are a serious of investigations. We have undertaken some by our inspection side, some—at least one—we are looking at as a criminal investigation.

Chairman SPECTER. You think you are having some success—

Director MUELLER. I do believe that we are having success.

Chairman SPECTER. [Continuing]. On the Weldon investigation?

Director MUELLER. I do not want to specify a particular investigation. There are a series of investigations that we undertook at the same time. I think it is fair to say, although I usually say I can neither confirm nor deny an investigation, in this particular case we are pursuing it. By that, I mean Congressman Weldon.

Chairman SPECTER. Well, all right. That is reassuring to hear, Director Mueller.

Well, it is 11:42. You have been here a long time. You had a very good turnout from Senators. This is a right tough week to attract the attention of Senators, but you have given us very many important messages.

I would like you to go back to the executive officials, as I will, to see if you cannot brief this Committee on the aspects of the Terrorist Surveillance Program which come within your jurisdiction. Much of it does not come within your jurisdiction, but what does come within your jurisdiction, I think this Committee is entitled to have the oversight function.

The comments you made about the appropriations process are very, very, very serious. I will publicize them among my colleagues as to the impact that it has on a really vital program. We need you to get the technology up to date because your ability to track terrorists and interface with the other investigative branches depends upon the technology.

Director MUELLER. Yes.

Chairman SPECTER. Thank you very much, Director Mueller.

Director MUELLER. Thank you.

Chairman SPECTER. That concludes our hearing.

[Whereupon, at 11:45 a.m. the hearing was concluded.]

Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 14, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Director Robert S. Mueller III, following Director Mueller's appearance before the Committee on December 6, 2006. The subject of the Committee's hearing was "Oversight of the Federal Bureau of Investigation." We hope this information is helpful to the Committee.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of these responses. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

Richard A. Hertling
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter
Ranking Minority Member

Responses of the Federal Bureau of Investigation Based Upon the December 6, 2006 Hearing Before the Senate Committee on the Judiciary Regarding FBI Oversight

Questions Posed by Senator Specter

TERRORIST SURVEILLANCE PROGRAM

1. I understand that you are bound by the constraints of information classification when speaking about particulars of the Terrorist Surveillance Program (TSP). However, could you respond to the following questions about the efficacy of the TSP?

a. Has the FBI made any arrests as a result of a lead generated from the TSP?

i. If so, how many?

ii. Can you provide a general description about the circumstances of the arrest(s)?

b. Have any terrorist plots targeting the United States been foiled through the TSP?

i. If so, how many?

ii. Can you provide a general description of the plot(s) being planned?

c. Have any FISA orders been sought by the FBI after and/or granted as a result of a TSP intercept? If so, how many?

d. Have any FBI cases been opened as a result of a TSP intercept?

i. If so, how many?

ii. Can you provide a general description of the case(s) opened following the TSP intercept?

These responses are current as of 2/8/07

Response to subparts a through d:

A full briefing on all aspects of the Terrorist Screening Program as it affects the FBI was provided to the Senate Select Committee on Intelligence.

As Director Mueller has testified, leads from that program have been valuable in identifying would-be terrorists in the United States and providing us leads concerning other individuals who warrant investigation.

REFORMING THE FBI IN THE MOLD OF BRITAIN'S MI5

2. A May 2005 Justice Department Office of Inspector General survey of more than 800 FBI analysts (two thirds of the total employed by the FBI at the time) found that, on average, analysts were spending only half their time doing analytical work (Audit Report 05-20).

a. What is being done to better utilize intelligence analysts both within the FBI's National Security Branch and in criminal cases?

Response:

The FBI's National Security Branch (NSB) is developing a workforce environment with defined career paths that will attract and retain intelligence personnel with critical skills and competencies needed to protect the nation against current and emerging threats. Currently, the FBI has more than 2,200 Intelligence Analysts (IAs), who are assigned across the FBI. Career paths that reward and develop technical experts in intelligence operations are essential to our ability to retain a world-class national intelligence workforce. In developing career paths for Intelligence Career Service (ICS) members, the FBI is using a competency-based approach to drive the intelligence workforce human resources continuum of selection and hiring, training and development, performance management, career progression, retention, and Intelligence Officer Certification.

Part of our strategy began with a snapshot of the current NSB workforce and an assessment of what the workforce must look like in the future. The NSB is working with the FBI's Human Resources and Training and Development divisions, and with other appropriate FBI divisions and the Office of the Director of National Intelligence (ODNI), to reengineer and refine an overall workforce,

which will integrate ODNI human resource standards and processes and fill gaps to meet future needs.

We are conducting an ICS Competency Model/Job Task Analysis for each of the three job series that make up the FBI's ICS: IAs, language analysts, and investigative specialists. These analyses, which began in October 2006, are based on an employee's job series, grade, and work assignment, and are being conducted in accordance with the Uniform Guidelines on Employee Selection Procedures. For each competency developed, we will identify proficiency levels, measurable behavioral indicators, and related developmental opportunities. The contract to conduct this analysis was awarded to a firm that specializes in conducting human resource evaluations to establish business processes. We are committed to enhancing career paths for our ICS personnel, and the ongoing analysis is the first step in this complex process. Contract deliverables for FBI ICS competencies and their developmental opportunities are expected in 2007. The contractor has consulted with the Office of Personnel Management and ODNI regarding competency development; ODNI's common set of core competencies for analysts and collectors will inform the entire process of competency development and job task analysis. The NSB will use these results, in conjunction with the FBI's human resources and training components, to further develop our analytic cadre.

The FBI will develop specific performance measures after completion of both the SA and IA competency profiles, ensuring that they reinforce and are integrated with the ODNI's efforts to establish core competencies applicable throughout the Intelligence Community (IC). As part of the overall career development model for the NSB workforce, the FBI completed an inventory of career development opportunities, and identified gaps are being addressed based on this survey. The FBI will coordinate these profiles with the IC Chief Human Capital Officer.

The FBI is implementing several workforce programs to build its national security capabilities. These programs, which are designed to establish and enhance national security workforce specialties and to create training and developmental opportunities for IAs, will be developed in close coordination with the ODNI, to ensure that IC joint duty requirements and other functionally specific cross-community career paths are addressed. During 2006, the number of IAs in each Field Intelligence Group (FIG) was reviewed and recommendations were made for the assignment of the appropriate number of Supervisory Intelligence Analysts (SIAs), leading to the use of 25 IA positions for SIAs. A support relief position

for SIAs is being established that will parallel the relief position for SAs. In 2006, 53 IA positions were added to FIGs to provide essential administrative support.

In addition to these initiatives, we are providing numerous training opportunities to elevate the stature of our intelligence professionals and to acknowledge the importance of our intelligence mission. Mirroring the successful SA hiring process, the FBI has implemented an aggressive schedule for hiring IAs and having them enter on duty at Quantico. We have also developed a course for supervisors assigned responsibility for the FIGs. The first FBI Managers of Analysts Course, a four-day workshop, was held at the National Academy in Quantico, Virginia, in August 2006. This workshop provides managers with a set of tools and managerial techniques they can use to enhance the quality of the analytic products they generate. It addresses such issues as the role of analysts in the intelligence cycle, categorizing various types of analysis, how to avoid analytic traps and mindsets, selecting and characterizing evidence, meeting the needs of various customers, elements of effective warning, and understanding analysts and their core competencies. Directorate of Intelligence (DI) personnel will hold discussions on the intelligence production and review process and the promotion process during the final portion of the workshop. The second iteration of this class, which was renamed "Managing Analysis," was held in November 2006. We plan on significantly increasing training for this critical group during the next six months.

Through the Kellogg School of Management, we have implemented joint-training seminars with SAs, IAs, language analysts, and surveillance specialists, entitled Navigating Strategic Change. The major theme for these seminars is accelerating the FBI's integration of the intelligence process into FBI operations. Topics discussed include strategic leadership, change implementation, and the role of intelligence in criminal as well as counterterrorism and counterintelligence cases. We identified 3,011 eligible FBI participants at the start of the program and, halfway through the program, 1,511 SAs, IAs, language analysts, and surveillance specialists had completed the 2.5-day Navigating Strategic Change course and 42 senior and mid-level executives had completed the five-day Leading Strategic Change course.

The FBI also continues to offer to our employees the opportunity to participate in Joint Military Intelligence College (JMIC) courses, and 43 employees are currently active in the JMIC program. Each academic year, 20 to 40 employees are enrolled in JMIC courses part-time and IAs are invited to pursue the Master of Science in Strategic Intelligence (MSSI) Program. Two employees are currently

attending the full-time MSSI Program, which began in August 2006, and one employee is pursuing a bachelor of science in Intelligence Program full time. In addition, we are partnering with the University Education Program for future academic semesters in order to include the field divisions.

b. What is being done to ensure analysts have a stake in the work conducted by FBI Special Agents and JTTF officers?

Response:

Many of the efforts of the past several years have focused on building a team environment for SAs and IAs. Because training has played a key role in helping SAs and IAs understand their integrated roles, we have established several opportunities for joint training. Joint exercises between new IA and new SA classes emphasize that both play key roles in executing the FBI's intelligence mission. As we mentioned in response to subpart a, above, mid-level management SAs and IAs also participate together in the 2.5-day seminar on Navigating Strategic Change at the Kellogg School of Management and in a Managing Analysis course, which emphasizes the role of IAs and their core competencies.

This training has enhanced the collaboration between SAs and IAs outside of the classroom. Increasingly, SAs in field offices and at FBI Headquarters (FBIHQ) are paired with IAs on some of our most critical programs, and IAs sit side-by-side with SAs on field office squads and in the FIGs embedded in each field office.

As the FBI's Intelligence program matures, the role of the IAs continues to increase. IAs are now tasked with duties that go far beyond "supporting" SA's investigations and are, instead, part of a team that is identifying threats and driving our investigations. This IA role ensures that FBI analysts have a stake in the FBI's mission.

c. Do you agree with the findings of the May 2005 OIG audit? Have you conducted additional surveys to determine whether its conclusions are accurate? If so, what were the results? Do you intend to conduct further audits?

Response:

Even prior to the review of our analyst program by the Department of Justice (DOJ) Office of the Inspector General (OIG), the FBI had underway efforts to enhance and strengthen our analytic capabilities. Much of our work over the past several years has been aimed at addressing the concerns that were raised in this review. Specifically, we have worked to improve recruitment, hiring, and retention. We are also working to enhance the IA career path. As part of this effort, we have hired the Human Resources Research Organization to develop and validate a set of competencies for the IA position. This work will allow us to further refine our training, performance, and promotion measures for the IA position. We believe this will have a far-reaching positive impact on the FBI's IAs.

While we have not conducted any additional surveys, we have participated in the ODNI's Climate Surveys in 2005 and 2006. The 2005 survey revealed the commitment of FBI employees to the FBI's national security mission and to protecting the country. This survey also demonstrated that, while FBI IAs still experience some degree of frustration with their work environment, most are satisfied with the organization and its mission and remain committed to the FBI. Additionally, this survey indicated that IAs are very satisfied with their co-workers (both agent and non-agent) and believe the FBI provides an opportunity to contribute to a larger, well-defined mission, with 87% indicating that the work they do is important and 84% saying, "the people I work with cooperate to get the job done."

The FBI will continue to address the concerns raised in the 2005 survey. The results of the 2006 survey should be available in the next few months, and we will analyze those results to identify areas for improvement. We will continue to participate in this survey process and are committed to developing an intelligence workforce that is ready to meet the challenges facing the FBI.

3. On November 9, 2006, Dame Eliza Manningham-Buller, Director General of Britain's MI5 gave a detailed account of the terrorist threat facing Britain. She revealed that MI5 is currently investigating "some 200 groupings or networks, totaling over 1600 identified individuals" who are believed to be involved in nearly 30 plots to attack Britain. Given this recent statement, please describe to the committee [the following.]

a. [T]he number of groups or individuals being investigated by the FBI in terrorism cases.

b. [T]he number of suspected plots known to the FBI.

c. [T]he kinds of groups being investigated-e.g., fundraisers versus operational cells, or Al Qaeda affiliates versus homegrown groups.

Response to subparts a through c:

The responses to these questions are classified and are, therefore, provided separately.

IMPACT OF CHANGES IN SUPPLEMENTAL PATRIOT BILL

4. During the debate over reauthorization of the PATRIOT Act, I introduced a bill (S.2369) along with Senator Leahy to correct some of the provisions contained in the conference report negotiated with the House of Representatives. One provision of concern was the provision governing challenges to the so-called "gag" or non-disclosure requirement that accompanies National Security Letters and orders issued pursuant to Section 215 of the Patriot Act. Under the conference report, the recipient of an NSL or a Section 215 order can challenge the "gag," but there is a conclusive presumption requiring courts to uphold the "gag" if the government makes a good-faith certification that disclosure may endanger the national security of the United States or interfere with diplomatic relations. Our bill eliminates this "conclusive presumption" to give courts more discretion in reviewing the "gag" requirement.

a. Why shouldn't we trust Article III judges to make sound decisions about disclosure or nondisclosure?

Response:

The provisions adopted in the USA Patriot Act Improvement and Reauthorization Act of 2005 (the Act) to modify the so-called "gag" provisions of the National Security Letter (NSL) statutes and Section 215 of the PATRIOT Act were not the result of any distrust of Article III judges. To the contrary, they are carefully crafted provisions that conform to constitutional allocations of power. When the Executive Branch certifies that there should be non-disclosure of an NSL or a 215 order because disclosure would interfere with a criminal, counterterrorism, or counterintelligence investigation or endanger the life or physical safety of any person, that certification is fully reviewable by an Article III judge because the judiciary is fully competent to evaluate those possible harms. On the other hand, when the Executive Branch certifies (via a high level executive official) that disclosure of an NSL or 215 order might endanger national security or interfere with diplomatic relations, the Executive is making an assessment in an area that is at the core of the Executive Branch's Constitutional authority. In those instances (i.e., national security and foreign relations), the Executive Branch is better able to assess the risk caused by disclosure.

b. Would this change negatively impact the FBI's use of NSLs or Section 215 orders?

Response:

As indicated above, we believe the Executive Branch is best able to assess the harm to national security or to diplomatic relations that could be caused by disclosing the existence of an NSL or a 215 order, and that the statute should not be further amended.

SEAPORT PROTECTION

5. In your response to submitted questions from our May 2, 2006 hearing, you indicated that the FBI is working with the Coast Guard to alleviate coordination issues in the protection of our nation's seaports.

a. Have the FBI and the Coast Guard completed a new Memorandum of Understanding (MOU) regarding counterterrorism responsibilities in costal and littoral regions of the United States?

b. If not, is it in progress and are you confident that, in the meantime, should exigent circumstances occur, you and the Coast Guard could effectively work together to mitigate the threat?

c. Are you currently working under any documented guidance?

Response to subparts a through c:

The Maritime Operational Threat Response (MOTR) Plan was signed by the President on 11/8/06 and has been employed during maritime threat responses and fused into applicable training exercises at the national, state, and local levels with success. The FBI and United States Coast Guard agree that the MOTR Plan's coordination mechanisms have dramatically improved the operational response to maritime threats and incidents. In completing their preliminary analysis of the MOTR Plan's implementation, the Center for Naval Analysis noted that operations under the Plan have demonstrated increased unity of effort and interagency coordination.

RENDITIONS

6. The FBI's Inspection Division has conducted an internal review of the FBI's role in the Arar case and concluded that the FBI was not involved in the decision to remove Arar to Syria. In a response to a question posed by Senator Leahy during our hearing, you said, "...we did participate here in the questioning of Mr. Arar. We did not make the decision as to which country he should be deported to."

a. While your answer to Senator Leahy suggests the FBI may not have made the final decision concerning Mr. Arar's deportation, was the FBI involved in any way in the decision to send Mr. Arar to Syria?

b. If so, in what capacity was the FBI involved?

c. Which agency made the final decision in Mr. Arar's deportation?

Response to subparts a through c:

DOJ responded to this inquiry during a classified briefing on 2/1/07. In addition, a report by the Department of Homeland Security (DHS) OIG is pending.

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7. At our hearing, you indicated the FBI has participated in the rendition of suspects removed from other countries and returned to the U.S. to face charges here. Can you confirm that the FBI has not participated in the rendition of any suspects to third countries for purposes of interrogation or detention?

Response:

The FBI has not participated in the rendition of suspects to third countries.

TECHNOLOGY UPGRADES/SENTINEL PROGRAM

8. In a previous appearance before the committee, you discussed the timing of completion of the Sentinel project. It is supposed to be completed by 2009. Is that still the anticipated date of completion?

Response:

Yes. The anticipated completion date for the development of the Sentinel System is still the end of 2009.

9. At our hearing, you discussed the potential impact of the lack of appropriations on the FBI's ability to keep Sentinel within its projected cost and timeframe. Please elaborate on the potential problems created by a failure to appropriate current funds for this project.

Response:

Under the third Continuing Resolution (Pub. L. No. 109-383), the FBI had neither funding nor authority to proceed with Phase 2 of Sentinel. Sentinel is estimated to cost $157 million in Fiscal Year (FY) 2007. The FBI requested $100 million for Sentinel in the FY 2007 budget, and has identified the remaining $57 million from prior year funds that remain available.

On 2/15/07, the President signed into law Pub. L. 110-5, 121 Stat. 8, "Revised Continuing Appropriations Resolution, 2007," which will provide for full funding of the FY 2007 request. Given this funding, the Sentinel program will proceed on schedule.

TRAC STUDY

10. The Transactional Records Access Clearinghouse (TRAC) at Syracuse University recently found that federal prosecutors "rejected" 87% of the international terrorism cases referred to them by the FBI in the first 9 months of FY 2006. It is my understanding that the FBI and the DOJ have challenged this claim.

a. Would you please explain your objections to the TRAC study?

Response:

The FBI objects to the methodology of the Transactional Records Access Clearinghouse study because it uses inaccurate figures, relies on a faulty assumption that every referral from an investigative agency should result in a criminal prosecution, and ignores the reality of how the war on terrorism is being conducted, particularly regarding the value of early disruption of potential terrorist acts with proactive investigation and prosecution. For example, the report criticizes the number of international terrorism referrals from the FBI that were not prosecuted, based on the apparent assumption that all referred cases should lead to prosecution. Often, in fact, matters are referred to prosecutors to assist in further investigation through the use of criminal investigative tools that require legal process such as subpoenas and surveillance orders.

b. Do you keep your own statistics on these international terrorism cases?

Response:

The FBI investigates Federal criminal violations, while DOJ attorneys prosecute these violations. The FBI has been advised by DOJ's National Security Division (NSD) that, after the attacks of 9/11/01, DOJ's Criminal Division and Executive Office for United States Attorneys began maintaining statistics concerning terrorism and terrorism-related cases with an international nexus. The statistics formerly maintained by the Criminal Division are now maintained by DOJ's NSD.

c. If not, what metrics do you use to measure success in combating international terrorism?

Response:

The response to this question is classified and is, therefore, provided separately.

TERRORIST SCREENING EFFORTS

11. Multiple watchlists that existed before 9/11 have now been consolidated into the terrorist screening database (TSDB) maintained by the FBI's Terrorist Screening Center (TSC). Nevertheless, Inspector General Glenn Fine has identified inherent problems with the master list such as missing names and incomplete/inaccurate data. With this in mind, please answer the following questions:

a. How accurate and complete is the consolidated terrorist screening database?

Response:

The Terrorist Screening Database (TSDB) contains data on known or appropriately suspected terrorists that is provided to the Terrorist Screening Center (TSC) by either the National Counterterrorism Center (NCTC) (for international terrorists) or the FBI (for purely domestic terrorists). The TSC is not in a position to validate the derogatory information that justifies placement of an individual on the TSDB. For example, TSC has no ability to verify whether information in an intelligence cable is accurate or was obtained from a reliable source. TSC must rely upon the agencies that investigate terrorism and gather and analyze intelligence to provide accurate, complete, and current information to support terrorist watchlist nominations. Clearly, the agencies that nominate individuals to the watchlist are in the best position to ensure the adequacy of the quality controls employed to ensure the underlying intelligence and investigatory data support the inclusion of nominated individuals.

TSC has developed quality controls for the various stages of the watchlist process to increase the quality of the TSDB. First, since March 2006, TSC has used a software application called the Single Review Queue (SRQ) to ensure that every new nomination or modification of a watchlist record is reviewed by a TSC subject matter expert. TSC analysts review the nominations to ensure, to the extent possible, that the derogatory information supporting the watchlist nomination based upon a terrorism nexus is sufficient and accurate. TSC has developed technology business rules in TSDB to enforce minimum data and

export requirements in order to identify and correct records that appear to have erroneous, inconsistent, or otherwise discordant data.

The TSC established an interagency working group to review the nominating criteria, finding that the criteria were valid but the guidelines for implementing them required revision. Based on this finding, TSC will conduct record-by-record reviews of the Transportation Security Administration (TSA) No Fly list and Selectee list, including thorough examination to identify records no longer meeting the criteria so they may be removed from the list.

TSC has also developed procedures to ensure that every time a possible encounter with a watchlisted person is phoned into the TSC, the TSC's call center staff will review the TSDB and other relevant data systems to identify records in which an individual's status has changed or other updates are required. If modifications or removals are required, TSC coordinates with the nominating agency and the NCTC to ensure that records are appropriately adjusted or removed.

As discussed below, TSC's redress process is also an important part of ensuring the accuracy and completeness of the TSDB.

b. What mechanisms or processes are afforded to those individuals incorrectly placed on the TSDB, or those whose name is confused with that of a suspected terrorist, who seek to challenge the accuracy of the government's information?

Response:

In January 2005, TSC established a formal watchlist redress process. The process allows agencies that use watchlist data during a terrorism screening process (screening agencies) to refer individuals' complaints to the TSC when it appears those complaints are watchlist related. The goals of the redress process are to provide for timely and fair review of individuals' complaints and to identify and correct any data errors, including errors in the terrorist watchlist itself.

The redress process consists of procedures to receive, track, and research watchlist-related complaints and to correct watchlist and other information causing an individual unwarranted hardship or difficulty during the screening process. TSC has worked closely with screening agencies to establish a standardized process for referral of and response to redress requests from the public. TSC also works with federal law enforcement agencies and the IC, which

nominate individuals to the watchlist, to review redress complaints, evaluate their validity, and make appropriate corrections (including removal from the watchlist when warranted).

The terrorist watchlist would not be an effective counterterrorism tool if those who are watchlisted were able to learn the basis for their watchlist status. Consequently, to maintain the confidentiality of the watchlist, the redress process does not inform individuals, either orally or in writing, whether they have been watchlisted. The redress process also does not reveal the final determination of the redress matter, including whether the individual was removed from the watchlist. The TSC believes that the inability to provide transparency to affected individuals places on the TSC the burden to perform a critical, in-depth review of the information supporting each person's inclusion on the watchlist to ensure it meets the watchlist criteria. There is an enhanced redress process for individuals on the No Fly list, providing for an administrative appeal of any adverse redress decision that includes the ability to request any releasable information and to submit information for consideration during the appeal.

Those who are erroneously identified as watchlisted individuals (misidentified persons) often file redress complaints and corrective action is usually taken by the screening agency. The Government Accountability Office (GAO) recently completed a comprehensive review (GAO Report 06-1031) of the ongoing interagency efforts to improve the experience of misidentified persons, including efforts by DHS agencies to annotate their record systems to distinguish the individuals more quickly in the future. TSC's efforts to assist misidentified persons include recording encounters with misidentified persons and check these records when a new encounter occurs so TSC can rapidly identify and clear known misidentified persons.

Information regarding the watchlist redress process and how to file a complaint with a screening agency is available to the public on TSC's website at www.fbi.gov/terrorinfo/counterterrorism/tsc.htm. Other agencies that use TSDB data for screening, such as TSA, also have redress information on their web sites.

FBI NAME CHECKS

12. The FBI's National Name Check Program (NNCP) reportedly receives between 60,000 and 70,000 name check requests every week (3.3-3.5 million annually). Of these, over 28,000 (1.5 million annually) are related to immigration cases from U.S. Citizenship and Immigration Services within DHS, followed in volume by OPM and the State Department.

Although 68% of name checks are processed within 48 hours and 90% are completed within 30-60 days, the remaining 10% can take years to complete. The committee has been advised the FBI has contracted a comprehensive fee study to analyze how name checks are processed and measure direct and indirect costs.

a. What is the status of this study?

Response:

The National Name Check Program (NNCP) process is comprised of four steps: 1) batch, 2) name search, 3) file review, and 4) dissemination. The four steps vary in terms of automation levels and processing times.

- **Batch** - Most name check requests are received from customers on data tapes. Each data tape can contain up to 10,000 different name check subjects. These tapes are electronically checked against the FBI's Universal Index (UNI). UNI is an electronic subject/case index of all investigative and administrative matters that indexes names to cases. If the FBI's UNI database contains no identifiable information regarding a particular individual, the name is returned to the customer as having "No Record" (NR). Historically, 68 percent of the name check requests submitted by United States Citizenship and Immigration Services (USCIS) return no records in FBI files during batch and are completed within 48 to 72 hours, with the results returned to USCIS. The remaining name check requests are passed to the next step, which is "name search."

- **Name Search** – Analysts view each UNI record using a specialized computer application called the Name Check Program (NCP) to further refine the search and determine if any potentially valid file references pertaining to the name check subject exist. If no valid file references pertaining to the name check subject exist, the NCP returns an NR response to the customer agency. Historically, approximately 22 percent of the original name check requests submitted by USCIS are completed in this step within 30 to 60 days, with the results returning to USCIS. If potentially valid references still exist, the name check request proceeds to the "file review" phase.

- **File Review** - FBI files may exist in electronic or paper form. The file review staff attempts to locate paper files for review to determine

applicability to the name check subject. Those name check requests not identified with an FBI file receive a final designation of NR and the results are forwarded to the customer agency. The remaining name check requests are passed on to the "dissemination" step.

- **Dissemination** - Research analysts examine each file to determine what information, if any, is pertinent to the customer agency, and then provide a response to the customer. If the FBI's information is derogatory, the NNCP provides this information to the customer as allowed by various laws, policies, and court orders that dictate the content of the response. The "dissemination" phase can take from 90 days to more than a year to complete.

In accordance with Office of Management and Budget (OMB) Circular A-25, the FBI is currently conducting a NNCP fee study. The study will be finalized within the next several months, at which time the FBI will pursue a rule change to update the current fee structure, which was put in place over 10 years ago.

b. What efforts are you taking to address the name check backlog?

Response:

The current backlog is due in part to a change in the name check process. In a pre-terrorism environment, only a "main" file name indexed in UNI that could be positively identified with a name check request from USCIS was considered responsive to that request. A "main" file name is the name of an individual who is, himself or herself, the subject of an FBI investigation. Because that approach ran the risk of missing a match to a possible derogatory record, the FBI and USCIS agreed that the FBI would alter its search criteria to include "reference" file names as well. A reference file name is the name of an individual whose name appears as part of an FBI investigation, but who is not the subject of the investigation, such as a witness interviewed by the FBI or an associate of a main subject. This change led to the resubmission in November 2002 of 2.7 million names *at one time*, which created an immediate backlog that is still impacting the processing of name checks. Currently, over 480,000 name check requests have been in process at the FBI for over 30-days, of which over 345,000 belong to USCIS. The FBI is currently revising the process to eliminate the backlog by increasing its capacity to process name checks and handle broader customer requirements.

The following short-term improvement efforts are in progress to address the name check backlog:

- The NNCPS is partnering with its customer agencies to provide contractor and/or personnel support. For example, in July 2006, OPM provided Top Secret cleared contractors to work on OPM's name check requests. To date, over 70 percent of the name checks that were considered to be a part of the backlog at the start of this initiative have been completed. NNCPS is working closely with USCIS to develop a similar strategy to reduce its backlog.

- NNCPS continues to make process improvements to its Name Check Dissemination Database (NCDD). The NCDD is an automated system that eliminates manual and duplicate preparation of reports to other agencies, providing opportunities for further automation of the name check process.

- NNCPS has implemented a new NNCP Employee Development Training Program to establish standard operating procedures and decrease the time it takes new employees or contractors to learn name check program processes.

- NNCPS has begun to build an Electronic Records System through the scanning of paper files. This process will enable employees to electronically access required files.

- The NNCPS is continually exploring innovative ways to streamline the incoming product and to automate the exchange of data with our customers in an effort to ensure a more secure and timely method of sending and receiving data.

Regarding a long-term improvement, the FBI is developing a Central Records Complex in order to create a central repository of records. Currently, paper files/information must be retrieved from over 265 locations throughout the FBI. The Central Records Complex will address this issue and will create a central scanning facility and document repository.

TURNOVER OF TOP COUNTERTERRORISM MANAGEMENT

13. Previously, you have attributed your high turnover rate of top level management personnel to their years of experience and the high level of demand in the private sector, coupled with their eligibility for retirement. That being said, in order to become an effective intelligence agency, consistency within your top-level managers is critical.

a. What steps are you taking to address this?

Response:

For the past ten years, retirement has accounted for approximately 85 percent of the attrition in the Senior Executive Service (SES) ranks. Since 9/11/01, we have targeted the best qualified personnel for promotions earlier in their careers in order to have a younger workforce entering the SES ranks. As a result, significantly fewer individuals currently in the SES ranks are eligible to retire than in the past several years.

b. Have you created any incentives encouraging top-level managers to stay with the FBI once promoted?

Response:

In May 2005, the FBI implemented new authorities for the payment of retention pay to those executives eligible to retire or considering leaving Federal service for other reasons. Since then, we have provided retention pay to approximately 30 SES officials as an incentive to remain with the FBI.

c. In your response to submitted questions from our May 2, 2006 hearing you argue that turnover in the EAD position for Counterterrorism and Counterintelligence has not harmed efforts to improve that division. Is continuity in this position not necessary? What impact has the high level of turnover had in your ability to meet your objectives in counterterrorism?

Response:

While continuity in all FBI executive positions is preferable, individual employees may elect to retire once they reach eligibility. Therefore, we have developed a strong team of professionals at the highest levels of the FBI to ensure that the

departure of any one individual does not negatively impact our ability to meet our objectives in any FBI program. Recently, the FBI began developing a formalized Succession Plan for executive positions.

TRANSLATIONS

14. At our hearing, you indicated that the FBI has 33 agents proficient in Arabic at level two and 52 total in Middle Eastern languages (including Arabic, Turkish, Farsi, Urdu, etc.).

a. How many FBI agents are higher than level two in proficiency in Middle Eastern languages?

Response:

There are 37 SAs at the 2+ or higher proficiency level in Middle Eastern languages (see the breakdown below). The FBI considers SAs at level 2 proficiency to be productive linguists. At a level 2, the speaker is able to fully participate in casual conversations, express facts, give instructions, describe, report on, and provide narration about current, past, and future activities, and discuss family, interests, work, travel, and current events.

	Proficiency Level						
Language	**2+**	**3**	**3+**	**4**	**4+**	**5**	**Total**
Arabic	12	2	2	4	3	0	23
Hebrew	2	0	0	0	0	0	2
Farsi	4	3	1	1	0	1	10
Punjabi	1	0	0	0	0	0	1
Turkish	1	0	0	0	0	0	1

b. We understand the FBI has worked hard to expand the number of linguists in its analytical corps, however, are you concerned that the lack of language proficient agents may hinder your ability to interview and interrogate suspects and witnesses?

Response:

While the FBI is aggressively pursuing an increased population of SAs with proficiency in Arabic, we do have 267 linguists who are proficient in Arabic and who support our SAs. The FBI's language analysts and contract linguists are assigned to more than 100 locations throughout the world. Within the United States, the heaviest concentrations of the FBI's linguists are found in major metropolitan areas at our largest field offices. These offices have been the greatest consumers of the foreign language interpretation and translation services provided by the Bureau's Language Services Section. In these locations, language analysts routinely serve as interpreters accompanying SAs who conduct interviews or interrogations.

Used in this way, SAs benefit not only from the language analysts' native-level language abilities, but also from the linguists' native knowledge of history, culture, religion, and geography. Further, as native speakers, these linguists are often more adept at identifying non-verbal cues that a non-native speaker might not recognize. SAs also often rely on the language interpreting process itself - even when the SA has a working level of proficiency in the required language - as part of interrogation or interview tactics designed to elicit specific information from subjects or witnesses.

15. In your written response to questions submitted for the record from our May 2, 2006 hearing, you indicate that in the past 5 years, attrition for language analysts has ranged between 5 and 8 percent. You cite competition with private sector salaries as the principal factor in this level of attrition. What additional resources would be necessary to prevent the flight of skilled analysts?

Response:

The FBI would be pleased to work with DOJ, OMB, and the Congress to identify the appropriate resources.

16. In your written response to questions submitted for the record from our May 2, 2006 hearing, you indicate that 46.1 percent (3,240 hours) of the total backlogged audio recordings that need translation (7,028 hours) is due to obscure languages and unfamiliar dialects. What progress has been made in recruiting the necessary linguists to address this need?

Response:

The FBI continually recruits for all necessary languages, and attempts to address all work possible. The chart provided as Enclosure A reflects the hiring in recent years up to 12/31/06 in the critical counterterrorism languages. When the FBI does not have the language resources for a particularly rare language, we work with contractors and with the National Virtual Translation Center (NVTC) to address those needs. In one situation, the FBI used Department of Defense (DoD) contracts to provide cross-training for FBI Arabic linguists on an unusual dialect of Arabic that was needed. These resources provide a surge capacity in the FBI's most critically needed languages as well as a pool of linguists in less commonly needed languages that are important to the FBI's mission. Contract linguists must pass the same language test batteries and security vetting as full-time employees. Their Top Secret clearances, native-level proficiency in the foreign language, high-level of skill in English, and knowledge of the target culture make FBI contract linguists a highly desirable commodity in the IC. Many of the FBI's contract linguists provide support in languages that the full-time linguist staff does not cover. The FBI depends on the contract linguists and NVTC for a substantial amount of the needed support in many languages critical to the FBI's mission.

While the FBI continues to hire new contract linguists, it is currently converting many of the talented contract linguists hired since 9/11/01 to full-time language analysts, with the goal of maintaining a language workforce composed of one-third contract linguists and two-thirds FBI language analysts. This ratio will enable the FBI to maintain a stable workforce and will provide greater job security and benefits for the linguists proficient in the languages most needed to meet ongoing national security requirements.

Since May 2006, the FBI has made a special effort to focus on the backlog and has decreased the unaddressed counterterrorism work in the most critical languages to less than 1,000 hours. While the figures referenced in the May 2006 hearing pertain to counterterrorism cases only, audio backlog continues to be a concern for the FBI. In general, audio collection in the difficult and unusual languages represents only about 1% of the FBI's total audio collection in the past four years.

WHISTLEBLOWERS

17. Whistleblower Mike German has alleged that the FBI failed to investigate a potential terrorist link between white supremacist and Islamic extremists. During our investigation

of this case, our staff received two different versions of a crucial transcript. Neither version of this transcript was complete.

a. Can you explain the apparent discrepancies in the two versions of the transcript?

Response:

In connection with its investigation of this matter, by letter dated 2/3/06 the Committee requested from the DOJ OIG copies of documents the OIG relied upon in preparing its reports. The document request included the transcript of the 1/23/02 tape-recorded meeting between members of the foreign and domestic terrorist groups, which German had provided to the OIG in February 2003, and any other transcripts made of that meeting. By letter dated 7/27/06, the FBI provided the Committee with copies of the FBI documents responsive to this request, including copies of two transcripts of the 1/23/02 meeting.

One version of the transcript, identified with the text marking "037eb01.t3" at the top left of each page, was obtained from German on 2/12/03 during his interview by investigators from DOJ's OIG and FBI. German produced and referenced portions of this transcript in support of information he provided in his signed, sworn statement, and this version was attached to and made a permanent part of German's sworn statement. This version of the transcript is a rough draft of the transcription of a consensually monitored conversation that occurred on 1/23/02; it contains several instances of "unintelligible" conversations on the recording and abruptly ends on page 126. On page 49, the construction of this document changes from a rough draft format to FBI FD-302a format, and continues sequentially but displays the page number starting at 46. This "combination" document submitted by German contains duplicative pages of the rough transcription and the FD-302a, so that pages 46, 47, 48, and 49 are misnumbered yet sequential. It is unknown why German provided to OIG and FBI interviewers only 126 pages of a total 167 pages or why this document has a combination of transcript formats.

The second version of the transcript, identified with the marking "FD-302a" at the top left of each page, represents the draft of the entire transcription in the official FD-302a format. Because the header and footer on each page of an FD-302a reduce the remaining printing surface, the pages of this FD-302a draft do not line up exactly with the pages of the rough draft portion of the version obtained from

German. In the FD-302a draft, many, though not all, of the "unintelligible" portions that appear in the rough draft have been clarified. This FD-302a version is a complete transcription of the 1/23/02 conversation at 167 pages, or 31 pages more than the version provided by German.

b. Which of the two transcripts do you consider most accurate?

Response:

For the reasons discussed above, the version identified with the FD-302a marking at the top left of each page is the most accurate.

c. Will you provide the committee with the tape that this transcript is based on, in its complete form? If not, why not?

Response:

The Committee has not previously requested a copy of the tape in connection with its oversight investigation of this matter. Should we receive a Committee oversight request from the Chairman regarding this matter, we would be pleased to consult with DOJ as to the appropriate response.

Questions Posed by Senator Grassley

AMERITHRAX INVESTIGATION

18. a. Why was Richard Lambert removed as the head of the Amerithrax investigation?

Response:

Richard Lambert served as the Inspector in Charge of the Amerithrax investigation from 9/20/02 to 9/16/06. On 5/22/06, he applied for promotion to the position of Special Agent in Charge (SAC) of the FBI's Knoxville Division. The Senior Executive Career Board reviewed the qualifications of the interested candidates and recommended Richard Lambert for selection. On 6/16/06, Director Mueller announced the selection of Mr. Lambert as the Knoxville SAC.

b. Was it related in any way to disagreements between him and others working on the investigation about the proper scope and focus of the FBI's inquiry? If so, please explain.

Response:

Mr. Lambert applied for and was selected as Knoxville SAC based on his qualifications for the position.

c. Please identify and describe any and all documents related to Richard Lambert's transfer.

Response:

The FBI's Human Resource Division prepared the routine transfer orders reassigning Mr. Lambert from the Washington Field Office to the Knoxville Field Office.

19. a. Has the FBI been able to narrow the possible source of the anthrax used to a finite number of labs? If so, how many?

b. What basis, if any, does the FBI have to believe that the anthrax was obtained directly from a lab by the terrorist?

Response to subparts a and b:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

20. a. How many "persons of interest" other than the Dr. Stephen Hatfill are still of interest to the FBI?

b. How many, if any, individuals have been removed from the "persons of interest" list in the last five years?

c. Describe what criteria, if any, are used to determine when someone is removed from the "persons of interest" list.

These responses are current as of 2/8/07

Response to subparts a through c:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

21. a. What has been the total cost of the investigation so far?

b. Of the 9,100 interviews, 67 searches, and 6,000 grand jury subpoenas in the Amerithrax investigation, how many were unrelated to Dr. Stephen Hatfill?

c. How many were related to the potential that foreign-born terrorists were involved in the attacks?

d. How many were related to leads not consistent with the initial FBI suspect profile?

e. Has the FBI altered its initial suspect profile in any way in the last 5 years? Please explain why or why not.

Response to subparts a through e:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

22. Are the public reports true that Dr. Christos Tsonas at Holy Cross Hospital in Fort Lauderdale, Florida treated Ahmed al-Haznawi, one of the 9/11 hijackers for a lesion that he thought "was consistent with cutaneous anthrax" and that a 2002 memorandum prepared by experts at the Johns Hopkins Center for Civilian Biodefense Strategies concluded that the diagnosis of cutaneous anthrax was "the most probable and coherent interpretation of the data available?"

Response:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

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23. In March 2002, John E. Collingwood, an FBI spokesman, was quoted dismissing the possibility that the 9/11 hijackers handled anthrax, saying: "This was fully investigated and widely vetted among multiple agencies several months ago. Exhaustive testing did not support that anthrax was present anywhere the hijackers had been."

a. Has exhaustive testing been conducted where Dr. Stephen Hatfill has been?

b. Did those test results support that anthrax was present in any of those locations?

c. If not, then please explain why those test results have not been announced publicly, just as the 9/11 hijacker test results were four years ago?

Response to subparts a through c:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

24. a. What are the names of the officials responsible for determining that the anthrax attacks would be treated solely as a criminal law enforcement matter and not as an intelligence matter?

b. On what date was that decision made?

c. Please describe what criteria are used to classify a case as a criminal matter rather than an intelligence matter.

d. Please identify and describe any and all records, documents, or memoranda related to that decision.

Response to subparts a through d:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

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25. a. Please describe the procedures for sharing information about the anthrax investigation with the rest of the intelligence community.

b. Please describe the types and volume of information about the anthrax investigation that has been shared with the intelligence community.

c. Please describe the types and volume information about the Anthrax investigation withheld from the intelligence community, including a description of each occasion in which another government agency has requested information about the investigation and the request was declined.

Response to subparts a through c:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

26. a. On how many occasions, and with what agency, has grand jury or other information gathered during the Amerithrax investigation been shared outside the Justice Department pursuant to Section 203 of the USA PATRIOT ACT?

b. On how many occasions has information gathered during the course of the Amerithrax investigation been shared outside the Justice Department pursuant to Section 905(a)(1) of the USA PATRIOT ACT?

c. On how many occasions has information gathered during the course of the Amerithrax investigation been withheld under Section 905(a)(2)?

Response to subparts a through c:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

27. a. Other than the FBI's Amerithrax investigative team, is there anyone else in the U.S. government tasked with examining the anthrax attacks and making a judgment about their likely origin?

b. If so, please explain. If not, why not?

Response to subparts a and b:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

28. a. Has the FBI ever employed a "red-teaming" strategy in which a second group of investigators is tasked with looking at the evidence with the freedom to pursue alternative theories of the case?

b. If so, please explain. If not, why not?

Response to subparts a and b:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

29. a. What are the names of the officials responsible for the decision to impose a blanket prohibition on all Congressional briefings related to the Amerithrax investigation?

b. On what date was that decision made?

c. What is the legal justification for such a decision?

d. Please identify and describe any and all records, documents, or memoranda related to that decision.

Response to subparts a through d:

There is no blanket prohibition on all Congressional briefings related to the Amerithrax investigation. In fact, after receiving DOJ approval, the FBI contacted Chairman Leahy and offered to provide a briefing to him.

30. a. What steps have been taken to determine who was responsible for the alleged Congressional leak?

b. Did the alleged Congressional leak involve the disclosure of classified information?

c. Did it involve the violation of an agreement not to further disseminate the information?

d. If the FBI believes that a Congressional leak damaged its investigation, as was implied it its September 28, 2006, letter, what steps, if any, has it taken to describe the nature of the damage and communicate its concern to the appropriate leadership or other authorities in Congress?

e. If none, then please explain why not.

Response to subparts a through e:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

31. a. On how many occasions have Justice Department and/or FBI personnel leaked investigative information about Stephen Hatfill or the Amerithrax case?

b. What steps have been taken to investigate those leaks and discipline those responsible?

c. Please provide a list of the names of each government official interviewed, questioned under oath, or subjected to a polygraph examination regarding Amerithrax-related leaks, along with the dates of their testimony and the results of any polygraphs.

d. How many Justice Department and FBI personnel have been reprimanded or punished for leaking such information?

e. If any, please provide a detailed explanation of each instance.

f. What steps have been taken to prevent or deter future leaks by DOJ or FBI personnel of information related to the Amerithrax investigation?

Response to subparts a through f:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

32. Please explain why the reasons given now for refusing to brief Congress on the Anthrax case (that it is a pending matter and that it involves grand jury information), did not prevent the FBI from briefing Congress on the case three years ago.

Response:

Please see our response to Question 29, above.

33. According to public reports, two FBI agents were the anonymous sources for the *New York Times* stories implicating Stephen Hatfill as a "person of interest" in the investigation.

a. Is the FBI aware of aware of the identities of those two agents?

b. Did any other FBI official approve or have contemporaneous knowledge of their communications with the *New York Times*?

c. Will those two agents face any disciplinary action for unauthorized contact with the press? If not, why not?

Response to subparts a through c:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

d. If so, what is the range of potential punishment for such a violation?

Response:

The FBI's Penalty Guidelines set forth the range of disciplinary sanctions available in and applicable to employee misconduct cases. An employee who engages in the unauthorized disclosure of information may receive a disciplinary sanction ranging from a letter of censure to dismissal.

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e. In your view, what would be an appropriate punishment under these circumstances?

Response:

It would be inappropriate to speculate on the appropriate disciplinary sanction without knowing the specific facts and circumstances of this case. OPR, the entity in the FBI charged with making these decisions, will review the investigative file, including witness statements, documentary evidence, and prior employment history, before making a final decision. As with all Federal agencies, the FBI decides an appropriate disciplinary sanction on a case-by-case basis, taking into account mitigating and/or aggravating circumstances.

FBI LEAKS

34. Just before the midterm elections, the FBI executed search warrants for properties owned by the daughter and an associate of Congressman Curt Weldon. The timing of the public disclosure of those searches left the FBI open to criticism and speculation about whether there was an attempt to influence an election.

An *Associated Press* story (10/16/06) said: "The search warrants were executed, in part, because of news reports over the weekend exposing the investigation, according to a senior Justice Department official[.] Typically, such searches are sped up to prevent any evidence from being destroyed." It appears that the FBI would not have executed these search warrants until after the election except for the fact that someone -- possibly an employee of the Justice Department or the FBI -- leaked the fact of the investigation to the media.

a. Does the FBI know the identity of the person who apparently leaked it to the media, and if not, have you initiated an investigation to find out?

Response:

An internal review of this matter is being conducted at the request of Director Mueller.

b. Has the FBI investigation into the House page scandal identified the person or people who apparently sat on former Congressman's Mark Foley's potentially criminal emails until their disclosure would have the maximum impact on an election?

Response:

This matter is addressed in the January 2007 report issued by DOJ's OIG.

c. Does the FBI know whether any DOJ or FBI employees have disclosed nonpublic information to a nonprofit group called Citizens for Ethics and Responsibility in Washington (CREW), and if not, has the FBI initiated an investigation to find out?

Response:

The involvement of the Citizens for Ethics and Responsibility in Washington in the matter relating to former Congressman Mark Foley is addressed in the January 2007 OIG Report.

HEDGE FUND DIRTY TRICKS

35. This past Summer a civil lawsuit was filed by a publicly-traded company alleging that it had been attacked by operatives of a hedge fund that was attempting to profit from selling the stock in the company short. The attack is alleged to have included a campaign of dirty tricks and harassment, including, in one instance, the mailing of a harassing package to the Pastor of the company's CEO. After the suit was filed, one of the defendants allegedly responsible for these activities went to the press, claiming to have been "deputized" by the FBI, and an FBI spokesperson was reported to have confirmed this. Recently, that gentleman, Spyro Contogouris, was charged and arrested by the FBI for wire fraud, on charges that I believe are unrelated to the civil suit.

a. Please explain what happened in this case and what the FBI has learned about Contogouris and his activities?

b. Please describe the nature of the interactions and relationship between Contogouris and the FBI. Was he at any time a cooperating witness and/or a confidential informant for the FBI or for any other federal law enforcement agency?

Response to subparts a and b:

Contogouris was arrested on 11/13/06 and is charged with one count of wire fraud. Consistent with longstanding DOJ policy regarding the disclosure of information concerning pending cases, the FBI declines to provide further information on this matter.

The FBI does not "deputize" members of the general public.

c. Related to that, how does the FBI screen and monitor confidential informants in non-terrorism, cases? What does the FBI do to ensure that a confidential informant or an FBI agent is not profiting from his or her knowledge of an ongoing investigation?

Response:

Criminal and internal FBI checks are conducted to baseline the history of a potential source at the time the potential source is identified, after which a source may be approved for continued recruitment. A source is then advised of the applicable Attorney General (AG) Guidelines and specifically cautioned against involvement in criminal activity other than that which is specifically approved by the FBI. Recruitment is followed by a suitability assessment during which we determine whether the source will be capable of performing the tasks desired by the FBI, as well as whether the individual will function in accordance with taskings, limits, and required controls. The operation of the source will be reviewed by a Supervisory Special Agent (SSA) at least once every 90 days while the source's relationship with the FBI continues and the source will be annually re-advised of the AG Guidelines. In addition, the responsible SAC is required to review a source who has been operated by the same Special Agent (SA) for an extended period and determine whether the SA will continue to operate the source. If the source should be arrested and entered into National Crime Information Center (NCIC), the FBI will be notified and will determine whether the operation of the source should be discontinued. Greater oversight is afforded for sources whose operations pose significant risk due to source's sensitive position and/or operational or investigative needs, such as those approved to conduct otherwise illegal activities (actions that would be illegal if not sanctioned by appropriate authority, as discussed further below) or used in undercover operations.

The FBI's newly established practice of validation provides for a separate review of the accuracy, reliability, and relevance of the source's information. The validation process also addresses the control we maintain of the source, including review to determine whether a source may be operating at the direction of a third party or manipulating the operation for his/her own benefit and against the interests of the FBI or the U. S. Government. A confidential source's improper use of information gained by virtue of his relationship with the FBI may constitute

a violation of the law. A discovery that the source had disclosed FBI investigative information would result in a review to determine the damage to the pertinent investigation and the extent of wrongdoing on the part of the source, including whether the source had engaged in unauthorized illegal activity.

If an operation requires the source to engage in otherwise illegal activity, the FBI requires that the activity be supervised and approved in advance, and the AG Guidelines require that the relevant Chief Prosecuting Official, the responsible FBI SAC, and FBIHQ be notified. Continued operation of a source who has participated in unauthorized illegal activity requires the review and approval of the SAC and the concurrence of FBIHQ.

In order to protect against the improper use of FBI information for profit by FBI SAs, the FBI administers a comprehensive program of security awareness, education, and training with respect to all employees. The program provides explicit instruction on the proper handling and use of FBI information, as well as the potential penalties for noncompliance. In addition, the FBI's Enterprise Security Operations Center (ESOC) monitors FBI information technology systems to deter their misuse and to prevent other insider threats, such as hacking, malware, and unauthorized access. However, misuse of authorized access to FBI information is much more difficult to detect and prevent. Currently, the ESOC supports counterintelligence, criminal, and other serious misuse cases through the review, analysis, and correlation of many disparate sets of FBI business process data. In the near future, ESOC will implement a system that allows more effective detection of anomalous activity, further helping to prevent the misuse of FBI information. This system will use FBI business process data to automate both analysis and the development of leads, incorporating relevant security data from FBI operational databases, facility access databases, personnel databases, and other user activity logs to provide a complete picture of a user's behavior. By quickly and effectively collecting, sorting, and examining relevant data, the FBI will be able to rapidly identify indicators of misuse and other inappropriate activity.

Along with these technology-driven innovations, the FBI will continue to use regular personnel reinvestigations, including reviews of employees' financial circumstances, to detect willful and/or potentially criminal misconduct.

d. What guidelines and training govern how agents deal with potential informants who may be engaged in trading or short-selling securities or may be selling information to hedge funds?

Response:

The FBI has instituted a new comprehensive informant validation process for use by field offices and FBIHQ. The validation process includes quarterly SSA reports addressing the sources' motivation, access, timeliness, corroboration, and history. As discussed above, AG Guidelines address unauthorized criminal activity by confidential sources. These AG Guidelines are covered in the New Agent core-training received at the FBI Academy and reinforced through regular legal training provided in field offices during the remainder of an SA's career.

e. In October of this year, a former FBI agent Jeffrey A. Royer was sentenced to six years in prison for racketeering and securities fraud. According to witnesses at trial, the agent provided non-public FBI information to an outside party who used the information to spread negative publicity about companies and profit from short-selling their stock. What lessons can the FBI learn from this case?

Response:

In response to a recommendation in the March 2002 Webster Commission report, the FBI's Security Division (SecD) developed and implemented a comprehensive security awareness, education, and training program for all persons with access to FBI information. This comprehensive approach included the development of a professional cadre of highly trained Chief Security Officers, who now provide FBI personnel with the most up-to-date security policy, training, lessons learned, and best practices.

SecD uses a variety of educational methods, to include formal classroom training, web-based training, written guidance, and mentoring, to enhance the security awareness and education of the entire FBI population. Formal classroom instruction has included: the authorized procedures for releasing information to the public; refresher courses on establishing an information recipient's "need-to-know"; and the potential penalties for deviating from established procedures. Instruction is also provided in the form of "Non-disclosure and Releasability briefings," during which all personnel execute a "Classified Information Non-disclosure Agreement" and "FBI Rules of Behavior" form acknowledging their responsibility to protect and properly handle FBI information. SecD also provides a host of additional training opportunities and materials, each of which serves to reinforce security awareness throughout the FBI.

While this approach will not stop a trusted insider intent on disclosing information for improper purposes, it ensures the employee is educated on proper information handling techniques and encourages each employee to report others who violate the rules. In other words, FBI employees now better understand their role in protecting and ensuring the security of FBI information, personnel, and facilities.

f. What safeguards exist to prevent agents like Royer from similarly profiting on non-public information about ongoing investigations?

Response:

Please see our responses to subparts c and e, above.

USE OF GOVERNMENT-OWNED OR LEASED AIRCRAFT

36. I understand that the FBI operates a number of executive jets as part of its aviation program for both operational use and for official travel by senior FBI officials.

a. Please identify the number, type, and cost of aircraft owned and/or leased by the FBI and used for both operational purposes and travel by senior FBI officials.

Response:

The FBI reads this question as distinguishing between aircraft used to meet "mission requirements" of the FBI and those used for the "official travel" of "senior Federal officials" in the FBI other than to meet mission requirements, as those terms are defined in OMB Circular No. A-126.[1] While the vast majority of

[1] Paragraph 5 of OMB Circular No. A-126 (5/22/92) includes the following definitions:

b. **Mission requirements** means activities that constitute the discharge of an agency's official responsibilities. Such activities include, but are not limited to, the transport of troops and/or equipment, training, evacuation (including medical evacuation), intelligence and counter-narcotics activities, search and rescue, transportation of prisoners, use of defense attaché-controlled aircraft, aeronautical research and space and science applications, and other such activities. For purposes of this Circular, mission requirements do not include official travel to give speeches, to

the FBI's flight capability is used for operational purposes (including criminal investigative purposes, counterterrorism, counterintelligence, and other operations), this distinction is important because senior FBI officials are often aboard FBI aircraft to conduct these mission requirements; to a far lesser extent these officials may use FBI aircraft for "required use" or other non-mission "official travel."

The FBI owns or leases 133 aircraft, including 3 that may be considered "executive jets." Two of these "executive jets" are leased by the FBI and are used for both mission requirements and other official travel by the AG, the FBI Director, and other senior Federal officials. The costs of these aircraft are as follows:

1. Gulfstream V aircraft – leased for $1.00 per year from the U.S. Air Force. The FBI pays the costs of fueling and maintaining this aircraft, which is $3,720.00 per flight hour.

2. Citation X aircraft – leased for $3.0 million per year from the Cessna Aircraft Corporation. The FBI pays the costs of fueling and maintaining this aircraft, which is $2,840.00 per flight hour.

The third is owned by the FBI, is configured with sensitive surveillance equipment, and is not used for executive transportation. This is a Citation Encore, which costs $1,497.00 per flight hour to fuel and maintain.

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attend conferences or meetings, or to make routine site visits.

c. **Official travel** means (i) travel to meet mission requirements, (ii) required use travel, and (iii) other travel for the conduct of agency business.

d. **Required use** means use of a government aircraft for the travel of an Executive Agency officer or employee, where the use of the government aircraft is required because of bona fide communications or security needs of the agency or exceptional scheduling requirements.

b. Of the aircraft used for both purposes, please identify the number of flights and the percentage of total flight hours devoted to travel by senior FBI officials in the last four years?

Response:

In the last four years the FBI has flown a total of 52,408 flights for a total of 154,570.4 hours. Of these, 534 flights (2171.8 hours) were for non-mission official travel by senior Federal officials of the FBI, which is 1.4 percent of the total flight hours during this period.

c. On how many occasions in the last four years has the FBI used short-term leased aircraft operated by outside companies for particular trips by senior FBI officials rather than FBI-operated aircraft owned or under long-term lease? Please identify particular examples, explain the reasons for not using FBI-operated aircraft, and describe any additional costs associated with such arrangements.

Response:

The FBI maintains a full-time international aviation response posture in furtherance of the FBI's mission to conduct counterterrorism, counterintelligence, and other investigations, relying solely on its owned and leased aircraft except for one period in the past four years. From November 2005 through February 2006, the FBI's only aircraft capable of such international missions was required to undergo scheduled maintenance and receive a communications upgrade. Because it was anticipated that this maintenance would take 3 months, the FBI entered into a three-month contract with an "on-demand" aircraft charter company listed on the General Services Administration (GSA) schedule so it could continue to meet its international mission and official travel requirements. When it was determined that the maintenance would exceed 3 months, the FBI initiated a five-year Blanket Purchase Agreement (BPA). Five missions were conducted under the three-month contract, which expired on or about 2/2/06, and one 3-day mission in the continental United States (CONUS) and one 5-day mission outside CONUS were conducted for the FBI Director under the BPA.

COUNTERTERRORISM SUBJECT MATTER EXPERTISE

37. A low point in the history of the FBI had to have come when a former FBI Executive Assistant Director for Counterterrorism and Counterintelligence was unable to describe

the differences between Shiite and Sunni Muslims. In that moment, it became clear that some at the highest levels the FBI lack the subject matter expertise necessary to supervise effective counterterrorism investigations against the Muslim extremists who pose a threat to the lives of the American people.

a. What steps, if any, have been taken by the FBI to increase counterterrorism subject matter expertise in the ranks of the agency's supervisory personnel?

Response:

The FBI's Counterterrorism Division (CTD) has increased the subject matter expertise within the ranks of supervisory and executive personnel as well as within the investigative and professional support roles. Supervisors and executives in the field and at FBIHQ have received and will continue to receive training regarding the history, culture, technology, and roots of radical extremism, including training provided by the United States Military Academy's Combating Terrorism Center. These classes have included such topics as Muslim culture, analysis of the ideology behind the terrorist movement, Internet as Emirate, the strategy and logic of suicide bombers, radicalization, understanding terror networks, weapons of mass destruction (WMD), and geospatial mapping. In addition to these seminars are myriad "virtual" classes and Joint Terrorism Task Force (JTTF) training sessions offered throughout the country to all FBI employees. This training teaches us to interact better with Muslim communities and to build the trust critical to effective community policing.

The FBI has also begun implementation of the SA Career Path Program, which is a direct response to the 9/11 Commission recommendation for the FBI to establish a specialized and integrated national security workforce that is recruited, trained, rewarded, and retained to ensure the development of an institutional culture imbued with a deep expertise in intelligence and national security. Included in this initiative are plans to increase specialization within the SA workforce and to develop intelligence expertise in the management ranks.

CTD's current senior leaders have acquired subject matter familiarity through their daily work, their past interactions with Muslim communities during field assignments, and study in this area. These leaders are also knowledgeable regarding terrorists' operational methods and their criminal activities, neither of which depend on Islamic ideology. Because management and leadership qualities

are as important as substantive expertise, it is also important that CTD managers come to their jobs with in-depth experience managing high-profile investigative and intelligence efforts.

b. Is counterterrorism subject matter expertise now a requirement for an FBI agent to assume a supervisory role over counterterrorism investigations? If not, why not?

Response:

Currently, competition for supervisory positions within the counterterrorism program is open to all qualified persons regardless of their program background. However, many applicants are experienced counterterrorism specialists who have served on multiple JTTFs throughout the FBI. Numerous JTTF supervisors who lead and manage these SAs and task forces have CTD or counterterrorism field experience and mentor the SAs who ultimately seek counterterrorism management positions. An extensive review of each applicant's supervisory and investigative abilities and accomplishments is completed prior to the selection process. If an individual does not have a background in counterterrorism and is selected for such a position, training is readily available to enhance the selectee's understanding of counterterrorism issues and complement their management qualifications.

c. Are there objective tests on FBI rules and procedures required before agents can be promoted to supervisory or senior management positions? If so, please describe the tests in detail. If not, please explain why not?

Response:

In the promotion of managers and executives, the FBI specifically chose to focus on those competencies that were determined through a comprehensive, empirical job analysis to be most predictive of successful performance in managerial and executive positions. In this job analysis, the knowledge of rules, policies, and procedures was not determined to be the primary factor in the ability to successfully perform the managerial and SES jobs at the FBI. Rather, those competencies that most strongly contribute to the success of a manager or executive are: leadership, interpersonal ability, liaison, planning and organizing, problem solving, flexibility, initiative and motivation, and communication.

A successful SA, supervisor, manager, or executive is able to apply multiple rules, policies, and procedures in various ways through the course of investigations and operations. Therefore, the FBI explicitly decided not to assess promotion potential based on an applicant's knowledge of rules, policies, and procedures. Rather, the FBI determined it was more practical to assess individuals for promotion based on the manner in which they had addressed certain work challenges, because the creative, innovative, and practical application of policies, rules, and procedures leads to success in all areas, including national security and criminal investigations as well as in leadership roles.

A practical and standardized assessment of the application of rules, policies, and procedures is found in the second phase of the promotion system, in which an applicant provides (in a standardized format) multiple behavioral examples to demonstrate the expertise determined by the hiring official to be germane to a specific position. The quality of an applicant's example is evaluated using a standardized metric to measure complexity, applicability, practicality, and the success of applying a particular technical knowledge, rule, policy, procedure, or technique.

d. Are there objective tests on relevant subject matter expertise before agents can be promoted to supervisory or senior management positions? If so, please describe the tests in detail. If not, please explain why not?

Response:

In its revision of the management promotion system, the FBI explored the possibility of using traditional assessments such as multiple-choice, essay, fill-in-the-blank tests to ascertain an applicant's subject matter expertise. We explicitly decided not to assess promotion potential on this basis for several reasons. First, as discussed above regarding objective tests regarding knowledge of rules and procedures, empirical job analysis indicated that subject matter expertise was not the competency most predictive of successful performance in managerial and executive positions. In addition, it would require substantial resources to track and test the rapidly evolving subject matter knowledge used in national security and criminal investigations under the FBI's purview. Given the high cost and limited benefit of such testing, as revealed by the empirical study discussed above, the FBI decided not to base promotions primarily on subject matter expertise.

As with knowledge of rules and procedures, discussed above, practical and standardized assessment of subject matter knowledge is found in the second phase of the promotion system, in which an applicant provides (in a standardized format) multiple behavioral examples to demonstrate the subject matter expertise determined by the hiring official to be germane to a specific position. The quality of an applicant's example is evaluated using a standardized metric to measure complexity, applicability, practicality, and the success of applying particular subject matter expertise. All those who apply for a particular position are compared with respect to managerial and technical (subject matter) competency, with higher weight ascribed to the managerial competencies.

The job analysis did show that, should the level of managerial/executive competency be equal, experience in a particular subject matter (such as counter-intelligence procedures, WMD, health care fraud, etc.) would predict success over a person who did not possess such subject matter expertise. Consequently, subject matter expertise becomes a significant factor in promotion decisions if management and leadership skills appear to be equal.

e. How does the FBI determine whether an FBI agent has the counterterrorism subject matter expertise necessary for him or her to supervise counterterrorism investigations?

Response:

Please see the response to subpart b, above.

FBI INVOLVEMENT IN THE LIN DeVECCHIO PROSECUTION

38. Former FBI Special Agent Lin Devecchio has been indicted on murder charges in the State of New York and is awaiting trial on those charges. An Internet website has been set up for his benefit at www.lindevecchio.com. The website includes a description of events at Devecchio's bond hearing, including a statement reporting that 47 former and active FBI agents attended the hearing as a sign of support for Devecchio.

a. Has the FBI conducted an investigation to identify the active agents who reportedly attended the Devecchio bond hearing and to determine whether those active agents might be subject to discipline for misusing their status as FBI agents? If so, describe the investigation in detail. If the investigation did not at least include efforts to conduct

interviews of the retired agents identified on the Devecchio website, please state why no effort was made to interview those retired agents.

Response:

No investigation has been initiated. The DOJ OIG received a letter from Angela Clemente and Associates (ACA), dated 5/22/06, alleging potential misconduct by unnamed current or former FBI agents who appeared to support Devecchio. In June 2006, the OIG asked ACA to provide additional information. In August 2006, after receiving no response from ACA, the OIG forwarded ACA's original letter to the FBI. Because the letter contained little detail and appeared to concern misconduct by former FBI SAs, the FBI's Internal Investigations Section (IIS) did not initiate an investigation. If information should be provided regarding misconduct by on-board FBI employees, IIS will reassess the need for investigation.

IIS typically does not initiate investigations relative to the actions of former FBI employees, as they are not subject to the same restrictions placed on on-board personnel. Although current FBI employees are subject to regulations restricting their use of public office for private gain and their use of their Government position, title, or authority to induce others to provide benefits, former FBI employees who are no longer in federal service are not subject to these restrictions. While a federal statute (18 U.S.C. § 709) prohibits the use of the FBI's name to convey the impression that the FBI endorses a publication or production, it does not, by its terms, prohibit former FBI employees from referring to their former FBI positions to "lend credibility" to their own beliefs about a former colleague or from attending events as a show of support.

b. Has the FBI issued any statements or written directives to agents advising them of the impropriety of misusing their status/authority as FBI agents to influence court proceedings against a former agent facing criminal charges? If so, please describe those statements or directives in detail.

Response:

Yes. Current FBI employees, including SAs, are subject to the regulations governing federal employees generally and to internal FBI regulations. Under government-wide regulations, employees are prohibited from using their Government positions, titles, or authorities to induce others to provide any benefit

to the employee or to another person, or in a manner that could be construed as implying that the agency or another Government entity sanctions or endorses the employee's personal activities or those of another. (5 C.F.R. § 2635.702.) Internal FBI regulations specifically prohibit employees, except in an official capacity, from becoming involved "in any matter directly or indirectly concerning an employee or non-employee who has been arrested or is otherwise in difficulty with a law enforcement agency" or attempting "to mitigate the action of any arresting officer, agency, or prosecuting officer, or in any way try to minimize publicity concerning such incident." FBI Manual of Administrative Operations and Procedures, Part 1, Section 1-15.2.

In addition, when expressing personal views, employees are cautioned through the FBI's Prepublication Review Manual to make clear that they are stating their personal opinions, not those of the FBI, especially when they have been identified as FBI employees, or when discussing matters related to the functions of the FBI. These standards are discussed in the FBI directives and other materials available to all employees on the FBI's intranet and are also covered in ethics training sessions, which are required for each employee upon entry on duty and for managers on an annual basis. New SAs receive 18 hours of training in ethics, which stresses both the prohibitions on misuse of position and the need to avoid any appearance of impropriety. As noted above, however, former FBI employees who are no longer in federal service are not subject to these restrictions.

DOUBLE STANDARD OF DISCIPLINE

39. The general perception among FBI personnel has long been that there is a double standard of discipline at the agency, with FBI supervisors receiving preferential treatment during disciplinary proceedings. This perception of unfairness in the FBI has had a detrimental effect on the morale of the agency's employees and has diminished the agency's public credibility.

a. What percentage of FBI Agents are currently in supervisory positions?

Response:

Currently, of the 12,559 FBI SAs, 2,827 (or 22.5%) are in supervisory positions.

b. What percentage of the FBI agents who have received suspensions of more than three days since January 1, 2001, have been in supervisory positions at the time the suspensions were ordered?

Response:

From 1/1/01 through 12/31/06, the percentage of SSAs who received suspensions of more than three days was 19%. From 11/1/04 (the effective date of the FBI's Employee Offense Table and Penalty Guidelines, under which disciplinary sanctions are aggravated based on supervisory status) through 12/31/06, the percentage of disciplinary actions imposed on SSAs was 26%. During that same period, the average length of suspension, broken down by grade level, was:

Non-supervisory SAs: 11 days
GS-14 SSAs: 12 days
GS-15 SSAs: 17 days
SES SSAs: 25 days

c. What steps are being taken by the FBI to affirmatively ensure that FBI supervisors are not being given preferential treatment during disciplinary proceedings?

Response:

FBI supervisors are not given preferential treatment during disciplinary proceedings. The Assistant Director (AD) of the FBI's Office of Professional Responsibility (OPR) is a veteran DOJ attorney with more than 10 years of experience investigating employee misconduct cases in her former position as a senior attorney at DOJ/OPR, and more than 2 years of experience adjudicating employee misconduct cases in her current position as the AD of FBI/OPR. The AD reports directly to the Director and Deputy Director, and has complete independence and autonomy in deciding employee misconduct cases. OPR adjudicates its cases using the FBI's Offense Table and Penalty Guidelines, which make an employee's supervisory status an aggravating factor in determining the appropriate penalty. In OPR, a case undergoes multiple levels of review to ensure accuracy, consistency, and impartiality, including peer review and review by an OPR unit chief, the AD's special assistant (a former federal public corruption prosecutor), and the OPR AD.

40. Cecilia Woods is an FBI agent who reported an inappropriate relationship between her supervisor and a paid informant and who was thereafter targeted for a series of disciplinary proceedings that ultimately forced her into retirement. It is my understanding that her supervisor, on the other hand, was allowed to continue his employment with the FBI.

While conducting an inquiry into this matter, I requested a copy of the FBI's table of offenses and penalties for agent misconduct. I received that document on March 8, 2006. In reviewing the FBI's table of offenses and penalties, I discovered that the table does not require the termination of employment of FBI agents who engage in sexual conduct with paid confidential informants. In fact, the penalty provided by Section 1.4 of the table can be as little as a letter of censure.

a. Please explain why FBI guidelines do not require the mandatory termination of employment of all FBI agents who engage in sexual conduct with confidential informants. Shouldn't there be a zero tolerance policy for that sort of behavior?

Response:

The provision of the FBI's Offense Table and Penalty Guidelines to which you refer addresses improper employee-informant personal relationships of all types, not just sexual misconduct. While the FBI does not tolerate agents engaging in sexual misconduct with informants, this provision does not require dismissal in every case because: (1) this provision also addresses non-romantic, non-sexual social relationships that are nevertheless deemed improper; and (2) the varied factual settings of these cases, including sexual misconduct, do not lend themselves to a single penalty. For example, an agent could develop a sexual relationship with someone who is an informant but not know the individual is an informant. Provided the agent reports his or her relationship with the informant when this is discovered, OPR would weigh the circumstances to determine the appropriate response.

b. What is the total amount of money paid by the FBI to the confidential informant who engaged in an intimate relationship with Cecilia Woods' supervisor?

Response:

The FBI's OPR did not find that Cecilia Woods' supervisor had an intimate relationship with a confidential informant. Rather, OPR concluded that the supervisor made payments of nearly $10,000 to the informant for information of little or no value.

c. During the past five years, how many FBI agents have been fired for engaging in sexual conduct with confidential informants?

Response:

Since January 2001, one SA has been dismissed based on a finding of sexual misconduct with an informant and the commission of other disciplinary infractions. In separate cases, two other SAs who were charged with sexual misconduct with informants/witnesses resigned while under inquiry.

ALLEGATIONS OF MISCONDUCT BY FBI SUPERVISOR

41. On January 3, 2005, Agent Jennifer Smith-Love was promoted from the field to a position at FBI Headquarters. According to your answers to previous questions for the record, you approved this promotion while an investigation was still being conducted of her involvement in possible misconduct related to her handling of the investigation of the death of federal prosecutor Jonathan Luna.

a. At the time you approved the promotion of Smith-Love, did you know she would be cleared by FBI/OPR of any misconduct? If so, how did you know that? If not, then why approve the promotion while the investigation is still pending.

Response:

As is typically done before promotion to the SES, an administrative records check was conducted before Mrs. Love was promoted to the position of CTD Section Chief in January 2005. That check revealed that DOJ OIG and FBI OPR inquiries were then pending relating to the Luna investigation. The Director was aware of this and approved Mrs. Love's promotion.

Several months after her promotion to Section Chief, it was alleged that Mrs. Love made inconsistent statements during the administrative reviews of the Luna

investigation. Ultimately, FBI OPR determined that the preponderance of evidence did not support a finding of any misconduct, including false statements or lack of candor.

b. The head of FBI/OPR told staff in a briefing earlier this year the mission of the office would not be impaired by providing the Committee access to its final report on this matter. Please provide a copy of the report or a detailed explanation of the basis on which it is being withheld.

Response:

Consistent with longstanding Executive Branch policy, DOJ's goal in all cases is to satisfy legitimate oversight interests while protecting significant Executive Branch confidentiality interests. As a general matter, the disclosure of OPR investigative files implicates significant individual privacy interests because these files discuss allegations against individuals under investigation. DOJ has consistently offered to accommodate Congressional requests for information about OPR investigations through briefings, minimizing the intrusion on the privacy of Executive Branch employees.

On 6/21/06 the FBI responded to the Committee's 5/10/06 request for information and documents relating to the FBI's investigation of the suspected murder of Assistant United States Attorney Jonathan Luna. In its response, the FBI advised the Committee that documents concerning OPR matters raise serious privacy considerations, particularly when, as in that instance, there was no finding of misconduct. Consistent with the policy articulated above, Candice Will, AD of the FBI's OPR, provided a 6/30/06 staff briefing that included an overview of OPR's investigation and addressed both the issues raised in the Committee's 5/10/06 letter and all issues raised by the staff. In response to a question from staff concerning the availability of the OPR report, our records reflect that AD Will did not indicate that she had no objection to producing the report, but rather advised that privacy concerns counseled against providing that document to the Committee.

FBI WHISTLEBLOWERS

42. In May, 2006, I asked the FBI for a description of each instance where an FBI supervisor has been disciplined for retaliating against a whistleblower. Two weeks ago, I

received a response from your agency advising me that since 1999 no FBI supervisors have been disciplined as a result of their having retaliated against whistleblowers.

a. Why haven't any FBI supervisors been disciplined for having retaliated against whistleblowers?

Response:

As the FBI has previously indicated in response to Questions for the Record, an Assistant Special Agent in Charge (ASAC) was disciplined for whistleblower retaliation. While that sanction, which was imposed before implementation of the Bell Colwell recommendations, was ultimately vacated on appeal, that case does not indicate that supervisors are not disciplined for retaliation, but instead indicates that the FBI has procedures in place designed to protect the rights of all employees. Since that response, no allegations of whistleblower retaliation have reached final adjudication.

b. The DOJ/IG found that Jorge Martinez retaliated against Michael German for protected whistle blowing activity. Has FBI disciplined Martinez? If not, why not?

Response:

The FBI is well aware of this matter and is in the process of taking appropriate action. Consistent with longstanding Executive Branch policy, our goal in all cases is to satisfy legitimate oversight interests while protecting significant Executive Branch confidentiality interests. As a general matter, the disclosure of information from OPR investigative files implicates significant individual privacy interests because these files discuss allegations against individuals under investigation.

c. Since 1999, how many FBI personnel have claimed whistleblower status? How many have claimed retaliation for protected whistleblowing activity?

Response:

The FBI is not in a position to provide this information. Pursuant to 5 U.S.C. § 2303 and 28 C.F.R. Part 27, DOJ's OIG and OPR serve as Investigative and/or Conducting Offices in FBI whistleblower cases, while the Director of DOJ's

Office of Attorney Recruitment and Management (OARM) is authorized to adjudicate claims of FBI whistleblower reprisal and to order corrective action subject to appeal to the Deputy Attorney General (DAG). Pursuant to 28 C.F.R.§ 27.4, the identity of employees who make those claims is not disclosed to the FBI unless there is a recommendation for corrective action.

DOJ's OARM advises that, based on numbers collectively reported by OARM, OIG, and OPR for calendar years 1999 through 2006, 96 FBI personnel have made allegations of retaliation for claimed protected whistleblowing activity. It is the FBI's understanding that there is no formalized consolidated record of those who may initially claim whistleblower status because, in the absence of subsequent retaliation based on the whistleblowing, the mere status as a whistleblower does not affect the employees' rights or benefits.

REPORTING OF DRUG SEIZURE STATISTICS

43. The staff of the House Committee on Homeland Security, Subcommittee on Investigations, recently released a staff report entitled, "A Line in the Sand: Confronting the Threat at the Southwest Border." This report describes, among other things, the results of efforts by various federal law enforcement agencies to improve our nation's security. The report indicates that several agencies of the federal government (including the FBI) were asked to provide information on the quantities of drugs that they had seized across the nation. The report states that those several agencies reported to Congress that during FY 2005 they had accomplished the total drug seizures listed in the following table:

FY2005 Federal Drug Seizures

Federal Agency	Cocaine (in lbs)	Marijuana (in lbs)	Methamphetamine (in lbs)
Border Patrol	12,000	1,200,000	728
ICE	345,031	1,036,241	3,501
Coast Guard	338,206	10,026	N/A
DEA	49,172	2,143,260	1,215
FBI	384,866	2,485,962	11,346
TOTAL	1,129,275	6,866,465	16,790

Source: U.S. Customs and Border Protection, U.S. Coast Guard, DEA and FBI

These statistics indicate that the FBI has seized far more drugs than any of the other major federal law enforcement agencies.

a. How did the FBI develop information on the statistical accomplishments set forth in the House report?

Response:

The above chart does not appear to have been taken from the House report referenced in the question. The statistics attributed to the FBI in the above chart were provided to Committee staff in response to an informal inquiry regarding total Federal drug seizures, rather than FBI drug seizures.

It appears that the House report used information obtained from the El Paso Intelligence Center (EPIC), which compiles statistics on drug seizures that meet a specific threshold reporting requirement, and does not represent all of the drug seizures conducted by a federal agency. In the table on page 3 of the House report, EPIC attributed the following drug seizure statistical accomplishments to the FBI for FY 2005:

Cocaine:	1,380 kg
Marijuana:	15,908 kg
Methamphetamine:	107 kg

The methods used by EPIC and the FBI to record drug seizures may differ in significant respects. For example, FBI drug seizure amounts that fall below the EPIC minimum threshold are not captured by EPIC, but they are recorded in the FBI's Automated Case Support (ACS) system using the Integrated Statistical Reporting and Analysis Application (ISRAA), which has no minimum threshold. Also, while both EPIC and the FBI generally record seized drugs by weight, the FBI records "live plants" seized or destroyed, as a special category, while EPIC does not. Other differences in statistical methodologies would create additional distinctions between agency statistics and those of EPIC or others.

For FY 2005, the FBI's drug seizure statistical accomplishments, as recorded in ISRAA, are:

Cocaine:	5,933 kg	13,053 lbs.
Marijuana:	9,200 kg	20,240 lbs. (+ 19,939 live plants)
Methamphetamine:	2,611 kg	5,744 lbs.

These figures indicate that the FBI engaged in a significant number of seizures of cocaine and methamphetamine that were below EPIC's threshold amount, resulting in higher FBI seizure amounts in ISRAA than in EPIC.

b. In the table above, the FBI is listed as being responsible for the seizure of 11,346 pounds of methamphetamine in FY2005. However, according to EPIC, the FBI obtained federal drug identification numbers for only 107 kilos (or 235.4 lbs) of methamphetamine. Please explain this discrepancy.

Response:

For FY 2005, the FBI seized a total of 2,611 kg or 5,744 lbs. of methamphetamine. Because of the nature of methamphetamine distribution, many of the seizures did not exceed the threshold (250 grams) required for reporting to EPIC. Seizures under the threshold, which are common in violent gang investigations, are not reported to EPIC.

c. Does the FBI report the agency's drug seizures to the El Paso Intelligence Center (EPIC) and obtain Federal Drug Identification Numbers (FDINs) for seizures meeting the threshold reporting requirements? If not, why not?

Response:

As discussed above, the FBI reports drug seizures meeting the threshold reporting requirements to EPIC for the assignment of an FDIN.

d. What steps are taken by the FBI to prevent double-counting or double-reporting of seizure statistics by law enforcement agencies?

Response:

The FBI compiles its drug seizure statistics using an "Accomplishment Report" (Form FD-515) to record information for the ACS system's ISRAA. Statistical accomplishments, such as seizures that disrupt or dismantle a drug organization, are reviewed and approved by FBIHQ for accuracy. For drug seizures that meet the threshold requirement, field offices are required to obtain an FDIN from EPIC for entry in Block N of the Accomplishment Form. Additionally, all statistical accomplishments must be associated with an FBI case file. These reporting procedures, which require provision of the name, title, agency, date and time,

circumstances, and quantity and type of drug collected, prevent double-counting and double-reporting drug seizures.

e. What steps are taken by the FBI to ensure the veracity of statistical accomplishments provided to Congress?

Response:

The FBI takes its obligation to ensure the accuracy of all information provided to Congress and others, including statistical accomplishments, very seriously. Information requested by an appropriate authority is carefully compiled and analyzed by the FBIHQ substantive unit and thoroughly reviewed before dissemination.

Questions Posed by Senator Sessions

44. Entering Person Files Into the NCIC.

a. What are the minimum standards for entering a person file into the NCIC database?

Response:

The qualification standards for entry in NCIC depend on the NCIC file in which the name will be entered. For example, the criteria for entry into Immigration Violator Files (IVFs) are addressed in response to Question 45a, below. As another example, in order to be entered in the NCIC Wanted Person File related to federal warrants, the individual must be considered a "federal fugitive." Federal fugitives are individuals (including juveniles who will be tried as adults) for whom a federal warrant is outstanding and who:

- Are being sought because they have been charged with one or more federal crimes,
- Have failed to appear for a required court action or for deportation, or
- Have escaped from federal custody.

In addition to particular criteria for entry, minimum standards for entry require that agencies that enter records in the NCIC System be responsible for the accuracy, timeliness, and completeness of these records. To facilitate compliance with hit confirmation requirements, the originating agency must be available 24 hours a day to confirm its record entries. Stringent administrative procedures and controls ensuring the accuracy of data entered in computerized criminal justice information systems are important and can prevent the loss of court cases, false arrests, criminal charges against law enforcement officers, and civil liability suits.

These administrative controls include a requirement that the accuracy of a record be double checked by a second party at the time of initial entry. (For electronic records management systems, electronic cross-checks are acceptable.) Cross-checks must include a check of source documents to ensure accurate, complete, and up-to-date information is maintained.

Records also must be entered and maintained in a timely manner. NCIC records must be entered immediately when the conditions for entry are met. The only exceptions to immediate entry are when otherwise prescribed by federal law or when documentation exists to support delayed entry. After the decision to arrest or authorize arrest has been made, entry of records for Federal warrants must be accomplished within 24 hours of the receipt of information by the inputting agency/office. Appropriate maintenance, modification, and removal of IVFs must also be accomplished in a timely manner.

Complete records include all information available on the person or property at the time of entry. Validation should include a review of whether additional information missing from the original entry has become available for inclusion since that time. Validation also obliges the agency of record to confirm that the record is complete, accurate, and still outstanding or active. Validation is accomplished by reviewing the original entry and current supporting documents and by consultation with any appropriate complainant, victim, prosecutor, court, or other appropriate source or individual. This consultation includes communication with agencies that lack direct terminal access to NCIC (typically called "nonterminal agencies") and, consequently, rely on other agencies, such as dispatch centers, to enter and maintain their records. All NCIC records (except for Article Files, which record stolen property) must be validated 60 to 90 days after entry, and all person file records, including IVFs, are validated annually thereafter.

b. Please explain the process for setting these standards in full.

Response:

The NCIC System standards have been developed over the 40-year history of the system. When new requirements are imposed on the NCIC System (whether through legislation, Executive Orders, Departmental Directives, or user needs), standards are modified or expanded as necessary. These modifications and expansions are deliberated through the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) as described in response to subpart c, below.

c. Please explain the role, membership, and meeting schedule of the Advisory Policy Board and how this board makes decisions regarding the standards for data entry into NCIC.

Response:

The CJIS APB's role is to recommend general policy to the Director of the FBI with respect to the CJIS Division's philosophy, concept, and operating principles. The APB reviews and considers proposed rules, regulations, and procedures for the operation of CJIS Division systems and programs.

The CJIS APB is composed of 33 members. Twenty of the board members are representatives from law enforcement agencies (12 are from state-level agencies and 8 are from local agencies). Eight members are selected by professional criminal justice associations such as the International Association of Chiefs of Police and the National Sheriffs' Association. One board member represents Federal users of CJIS systems. The remaining four board members are selected by the Director and include representatives of a national security agency and the prosecutorial, correctional, and judicial sectors of the criminal justice community.

The APB meets twice yearly, usually in June and December unless budgetary or other considerations dictate otherwise.

Working Groups usually deliberate first about issues concerning the operation of the NCIC system. Working Groups consist of representatives from local and state law enforcement agencies from each of the 50 states as well as representatives of federal agencies that use the NCIC system. These issues are then discussed by the APB's NCIC Subcommittee, which is composed of APB members and other subject matter specialists who study and review these issues to assist the APB with its deliberations. The Working Groups and the NCIC Subcommittee

formulate recommendations concerning the issue and those recommendations are forwarded to the APB for its consideration. The APB then recommends a course of action to the FBI Director. The Board's role is strictly advisory; the FBI Director makes the final decision regarding NCIC data entry standards.

45. Process for Entering Immigration Violator Files Into the NCIC.

a. What are the categories of immigration violators that can be entered into the NCIC?

Response:

The following categories of immigration violators can be entered into NCIC.

Deported Felons: The Deported Felon Category contains records of previously deported felons who have been convicted and deported for drug trafficking, firearms trafficking, or serious violent crimes.

Absconders: The Absconder Category contains records of individuals with outstanding administrative warrants of removal from the United States who have unlawfully remained in the United States.

National Security Entry-Exit Registration System (NSEERS): The NSEERS Category contains records of individuals with outstanding administrative warrants for failure to comply with national security registration requirements.

b. Are you considering adding any new immigration violator categories into the NCIC?

Response:

Not at this time.

c. Because the FBI oversees the NCIC, please explain the process for deciding which immigration violator files are entered into the NCIC and which are not.

Response:

After the events of 9/11/01, there were several initiatives to require DHS's Immigration and Customs Enforcement (ICE) to place into NCIC the names and biographical data of those in violation of their immigration status, including administrative cases. The entry of administrative cases into NCIC caused concern in the law enforcement community, and several jurisdictions debated their authority to detain individuals under state law solely for immigration violations. Based on this concern, and keeping in mind that ICE would continue to enter into the NCIC Wanted Person File records of criminal aliens with federal warrants, the FBI's CJIS Division presented options for consideration through the APB process.

During the fall of 2002, the APB recommended that records of criminal aliens with federal warrants continue to be entered into NCIC but that the Deported Felon File be restructured and included in the IVF. Based on this recommendation, the IVF was implemented in August 2003. Administrative immigration information is entered into NCIC pursuant to 28 U.S.C. § 534, 28 C.F.R. Part 20, Subpart C, and policy recommended by the CJIS APB. ICE's Law Enforcement Support Center (LESC) is the only agency authorized to enter, modify, validate, or delete records in the IVF, and LESC is responsible for the institution of procedures for entering and maintaining these records.

The NCIC operates under a shared-management concept in which the FBI and Federal, state, local, and tribal criminal justice agencies participate. The FBI maintains the host computer and provides a telecommunication network accessed by the CJIS Systems Agencies (CSAs) in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and Canada, as well as by other Federal criminal justice agencies. The CSAs provide the networks by which local and regional agencies access NCIC. When an agency enters a record in NCIC, that agency must comply with NCIC policies and is responsible maintenance of the record.

d. What keeps each and every immigration violator file from being entered into the NCIC?

Response:

The only records that may be entered in an NCIC file are those that satisfy the criteria for inclusion in that file. The criteria for the IVF are set out in the

response to subpart a, above. Beyond that, for the reasons indicated in subpart c, above, we defer to DHS with respect to how they determine which records satisfy these criteria and how they prioritize their entry.

e. Please explain the phrase "lack of identifying information."

Response:

"Lack of identifying information" indicates that some of the mandatory data elements are not available. The following data elements are required for entry of a person's record in the IVF: name, sex, race, height, weight, hair color, IVF category, case number, and at least one of the following numeric identifiers: date of birth (including year, month, and day); FBI number; social security number; military serial number; alien registration number; Canadian social insurance number; mariner's document or identification number; passport number; state-issued personal identification number; port security card number; Selective Service number; Veterans Administration claim number; driver's license number (with state and year of expiration); license plate number (with state, year of expiration, and type); vehicle identification number (with model year, make, and style).

f. Is this "lack of identifying information" an issue in entering immigration files into the NCIC?

Response:

We defer to DHS for response to this question for the reasons indicated in subpart c, above.

g. How many employees at the DHS Law Enforcement Support Center in Vermont are assigned to NCIC activities?

Response:

We defer to DHS for response to this question.

46. Immigration Violator File Subfiles. The "Immigration Violators" file is divided into subfiles for the three types of immigration violators: deported felons, alien absconders, aliens with outstanding ICE criminal warrants, and NSEERS violators.

a. How many total entries are currently in the "Immigration Violators File" in the NCIC? ***(In your testimony before the Senate Judiciary Committee on December 6, 2006, you stated that approximately 107,000 alien absconders had been entered into NCIC).***

Response:

As of 1/9/07, there were 240,836 records in the IVF. Please note that records for aliens with outstanding ICE criminal warrants are included in the NCIC Wanted Person File.

b. How many of the IVF entries are deported felons?

Response:

123,612 of the IVF entries represent deported felon records.

c. How many deported felon entries are pending (waiting to be entered into the NCIC)?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

d. What is the current total number of deported felons?

Response:

We defer to DHS for response to this question.

e. How many of the IVF entries are alien absconders?

Response:

117,224 of the IVF entries represent alien absconder records.

f. How many alien absconder entries are pending (waiting to be entered into the NCIC)?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

g. What is the current total number of alien absconders in the United States?

Response:

We defer to DHS for response to this question.

h. How many alien absconder files exist that are not pending (waiting to be entered into the NCIC)?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

i. What is the current rate per day of entering alien absconders into NCIC?

Response:

During December 2006, ICE averaged 205 alien absconder record entries per day.

j. Please outline each step in the process of entering the name of an alien absconder into NCIC.

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

k. How many of the IVF entries are aliens with outstanding ICE criminal warrants?

Response:

As of 1/9/07, there were 1,875 records for outstanding ICE criminal warrants in the NCIC Wanted Person File.

l. How many aliens with outstanding ICE criminal warrants entries are pending?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

m. What is the current total number of aliens with outstanding ICE criminal warrants in the United States?

Response:

We defer to DHS for response to this question.

47. Process for Entering Alien Absconder Files into NCIC.

a. Because the FBI oversees the NCIC, please explain the process for deciding which alien absconder files are entered into the NCIC and which are not.

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

b. What keeps each and every alien absconder file from being entered into the NCIC?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

48. Process for Entering Aliens with Outstanding Criminal Warrants into NCIC.

a. Because the FBI oversees the NCIC, please explain the process for deciding which aliens with outstanding criminal warrants files are entered into the NCIC and which are not.

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

b. What keeps each and every alien with outstanding criminal warrant file from being entered into the NCIC?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

49. Process for Entering Deported Felon Files into NCIC.

a. Because the FBI oversees the NCIC, please explain the process for deciding which deported felon files are entered into NCIC and which are not.

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

b. What keeps each and every deported felon file from being entered into NCIC?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

c. Is this "lack of identifying information" an issue in entering alien with outstanding criminal warrant into the NCIC?

Response:

We defer to DHS for response to this question for the reasons indicated in Question 45c, above.

Questions Posed by Senator Leahy

IRAQ STUDY GROUP RECOMMENDATIONS

50. In its recent report about the situation in Iraq, the bipartisan Iraq Study Group found that the Iraqi Police Service ("IPS") is in dire straits. In particular, the report states (on pages 9-10):

> **The state of the Iraqi police is substantially worse than that of the Iraqi Army. The Iraqi Police Service currently numbers roughly 135,000 and is responsible for local policing. It has neither the training nor legal authority to conduct criminal investigations, nor the firepower to take on organized crime, insurgents, or militias.... Iraqi police cannot control crime, and they routinely engage in sectarian violence, including the unnecessary detention, torture, and targeted execution of Sunni Arab civilians. ... There are ample reports of Iraqi police officers participating in training in order to obtain a weapon, uniform, and ammunition for use in sectarian violence. Some are on the payroll but don't show up for work. In the words of a senior American general, "2006 was supposed to be 'the year of the police'" but it hasn't materialized that way.**
>
> **In recommendation #54 of the report, the Iraq Study Group advocates having the Justice Department direct the training mission of the IPS forces that remain within the Iraq Ministry of the Interior.**

a. Please state whether you agree with this recommendation and explain your response.

b. What role has the FBI had in the training of the Iraqi police, thus far?

c. What additional steps will the FBI take to train the IPS in light of the Iraq Study Group's report and in particular, this recommendation?

Response to subparts a-c:

In January 2004, FBI Executive Assistant Director (EAD) Charles Prouty and Training Division (TD) Unit Chief Judson Ray traveled to Iraq as part of a Department of State (DOS) led training needs assessment team. Pursuant to the findings and recommendations of this team, the FBI agreed to provide training in the areas of organized crime, counterterrorism, kidnapping, intelligence analysis, establishment of a fingerprinting system in Iraq, and training on recruitment, selection, evaluation, and assessment of potential Iraqi Police Service (IPS) personnel. The FBI entered into an interagency agreement with DOJ and the DOS Bureau for International Narcotics and Law Enforcement Affairs. This interagency agreement was the basis for the Iraqi Training Initiative (ITI), which was established in coordination with Iraq's Ministry of Interior (MOI) and the Civilian Police Assistance Training Team (CPATT) to provide training assistance to the IPS. (The current CPATT was not established until May 2004 under the Multinational Force-Iraq. Prior to that, all police training was provided in support of the Coalition Provisional Authority.)

Following the needs assessment, the TD's International Training and Assistance Unit attended weekly meetings chaired by the National Security Council. Representatives from the DoD, DOS, and the FBI's Baghdad Legal Attaché (Legat) participated in these meetings. Training began in June 2004 and, to date, 653 students have graduated.

From 2004 to 2006, the following courses were conducted:

- Intelligence (one-week course)
- Kidnaping/Hostage Negotiation (one-week course)
- Counterterrorism (six week course)
- Iraqi -U.S. Major Crimes Task Force (six-week course)

51. In recommendation #57, the Iraq Study Group recommends that the practice of embedding U.S. police trainers with Iraqi police units be expanded and that the number of civilian officers training Iraqi police be increased.

a. Please state whether you agree with this recommendation and explain your response.

Response:

By letter of January 16, 2007, the Department of Justice advised that its International Criminal Investigative Training and Assistance Program ("ICITAP") has deployed senior law enforcement advisors to oversee teams of approximately 250 police trainers and 80 trainers for the Iraqi Correctional System, and that the Department's law enforcement components have provided support to the Department of Defense-led police training program in Iraq. The size and functional scope of such police training efforts are determined in full coordination with the Department of State and the Department of Defense, in furtherance of Presidential guidance.

b. Are there currently any FBI agents embedded with the Iraqi Police Service? If so, how many?

Response:

The FBI does not have, and has not had, SAs embedded with the IPS.

c. Will the FBI provide additional police trainers to participate in the training of the Iraqi Police Service and, if so, how many?

Response:

The FBI's TD is currently developing and conducting training for FY 2007, as discussed further in response to Question 52d, below. These courses of instruction will require the deployment of approximately 6 FBI SAs.

52. In recommendation # 58, the Iraq Study Group further recommends that the FBI expand its investigative and forensic training and facilities in Iraq, to address both terrorism and criminal activity.

a. Please state whether you agree with this recommendation and explain your response.

Response:

The FBI agrees that investigative and forensic training and facilities in Iraq would be beneficial. While the FBI's Laboratory Division (LD) does not anticipate the provision of forensic training in the near future due to concerns regarding the resources required (in terms of both people and equipment) and the safety and security of the non-agents who would provide on-site training, the LD does currently provide forensic training in the U.S. that can be made available to Iraqi forensic scientists. Training by the FBI's TD was suspended due to security concerns but is expected to resume by the late spring of 2007. This training will be provided in support of CPATT and coordinated through the U.S. Mission. The TD conducted a Major Crimes Task Force Course in Iraq during December 2005 - January 2006, and will deliver training in 2007 in: Intelligence, Kidnapping/Hostage Negotiations, Money Laundering/Terrorist Financing Investigations, Law Enforcement Training for Safety and Survival, and Basic Crime Scene/Post Blast Investigations.

b. How many FBI agents and personnel are currently providing investigative and forensic training in Iraq?

Response:

The FBI is not currently providing investigative or forensic training in Iraq because training was suspended to address security concerns. As indicated in the response to subpart a, above, the FBI's TD intends to resume training in the late spring of 2007. While the FBI's Major Case Task Force provides ongoing mentoring and informal situational training, it is not currently providing any classroom instruction or other formal training.

c. How many FBI agents and personnel are currently assisting with counterterrorism activities in Iraq?

Response:

On average, there are typically 55 to 60 FBI employees, including both SAs and support personnel, working on counterterrorism matters in Iraq. In addition, an average of 10 other U.S. Federal law enforcement officers typically join in this effort, including representatives from Immigration and Customs Enforcement, the

U.S. Marshals Service, the DEA, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

d. Will the FBI expand its role in these programs as the Iraq Study Group recommends and, if so, what additional resources, including staff, equipment and funding, will be dedicated to that effort?

Response:

The FBI and CPATT have proposed the following training agenda for FY 2007.

- Iraqi-U.S. Major Crimes Task Force Directorate - Delivers investigative methodologies and techniques on post-blast crime scene investigations, kidnapping/hostage negotiations, law enforcement training for safety and survival, and organized crime and counterterrorism.

- Kidnaping/Hostage Negotiations Directorate - Course focuses on sophisticated investigative techniques, hostage negotiation practices, evidence collection, case management, intelligence fusion, and case studies of subject behavior patterns. This course also provides basic negotiating skills and explores the various psychological factors involved with the hostage taker, the hostage, and police authorities.

- Money Laundering/Terrorist Financing Investigation Directorate - This course provides a fundamentally sound base of knowledge, skill sets, tactics, techniques and investigative modalities necessary to confront and neutralize criminal operations funding terrorism. Practical problems are used throughout the course.

- MOI National Command Center (NCC) Assessment and Training Course Design - A Critical Incident Response Group command post expert assesses Iraqi NCC structure and functions, to include command center systems, communications networks, staffing, and crisis management methodologies and will formulate recommendations. In addition, the Iraq Provisional Joint Command Center Directors and Operations Chiefs will be trained in conventional command center operations, protocols, and practices.

- Intelligence Directorate - Provides instruction in the collection, collation, analysis, and dissemination of strategic and tactical intelligence used to investigate terrorist and criminal activities. Collection topics include open source, private, government, and human sources as specifically related to criminal activities. Emphasis also on the use of analytical tools to enhance strategic analysis and planning.

53. Public corruption is a significant problem in Iraq. According to the Iraq Study Group's report, one senior Iraqi official estimated that official corruption cost the Iraqi Government between $5 and $7 billion per year. To address the rampant corruption in Iraq, the Iraq Study Group concludes that Justice Department programs to create institutions and practices to fight public corruption in Iraq "must be strongly supported and funded."

a. What resources, including staff, equipment and funding, does the FBI currently have dedicated to helping to fight public corruption in Iraq?

Response:

There are no FBI resources specifically designated to help the Iraqi government fight corruption among Iraqi officials. The FBI's Legat office in Baghdad provides law enforcement cooperation assistance similar to the support provided by other FBI Legats in their host countries. The FBI is seeking to expand its foreign corruption training program to include countries in greatest need of this kind of assistance. If resources permit, the FBI anticipates that both Iraq and Afghanistan will be among the first countries to receive this training. In Iraq, this training will be coordinated with the programs already under way, with the support of such programs as the International Criminal Investigative Training Assistance Program.

b. Will the FBI increase the resources that it currently has in Iraq to further assist the Iraqi government in fighting public corruption?

Response:

Our recognition of the sovereignty of the Iraqi government prevents the FBI from directly combating corruption among Iraqi government officials. The FBI does, however, take an aggressive approach to fighting corruption tied to United States Government funding initiatives in Iraq, which may offer the Iraqi government a

strong model to follow and aid in identifying criminal elements that may also be involved in internal government corruption. In addition to the aforementioned foreign corruption training initiative, the FBI has partnered with U.S. Army Criminal Investigation Command, the Special Inspector General for Iraq Reconstruction, the Defense Criminal Investigative Service, and DOS, among others, to participate in the International Contract Corruption Task Force (ICCTF) and the DOJ National Procurement Fraud Task Force to actively investigating U.S. officials, private citizens, and business entities involved in public corruption and governmental fraud in Iraq. Temporary Duty (TDY) rotational assignments of FBI SAs to Baghdad will begin early in 2007, an Assistant Legal Attaché (ALAT) wholly dedicated to public corruption and governmental fraud matters will be posted in Iraq later in 2007, and FBIHQ has assigned two FBI SA ICCTF program managers and several IAs to these matters. A number of FBI field offices are conducting Iraq-related public corruption investigations supported by the ICCTF, and all 56 field offices are available to support these and related investigations. As the FBI continues to increase its resources within and outside the U.S. in support of the ICCTF, liaison with our Iraqi counterparts in mutual support of these investigations will also increase. Any FBI programs to assist the Iraqis in combating public corruption will be undertaken in full coordination with existing programs and with the programs described in the President's 2007 Supplemental Appropriations Request.

DATAMINING/ATS AND IDW

54. At the hearing, I asked you about the Department of Homeland Security's Automated Targeting System ("ATS") and recent revelations that, since 9/11, the Bush Administration has been using this program to secretly assign terror scores to millions of law-abiding Americans who travel across our borders. You were not prepared to answer my questions about ATS at the hearing; however, you stated that you would look into this matter. Please respond to the following questions:

a. During an unclassified briefing for Judiciary Committee staff, the Department of Homeland Security said that it shares the sensitive personal information in the ATS database with the FBI and checks the information in this database against the Terrorist Watchlist. Does the FBI receive the terror scores or assessments and the other information contained in the ATS database? Please describe the information that the FBI receives from ATS and explain how the Bureau uses this information.

Response:

The FBI's TSC maintains the consolidated terrorist watchlist, but it does not receive Automated Targeting System (ATS) passenger risk assessments from DHS. TSC also does not place individuals on the terrorist watchlist based on ATS risk assessments. Instead, ATS checks air passenger data against the terrorist watchlist data provided to DHS by TSC, and DHS then contacts TSC if there appears to be a match between a passenger on an inbound flight and an identity on the watchlist, passing that passenger's identifying information and flight information to TSC so a final identity match determination can be made by TSC. ATS risk assessments do not result in calls to the TSC unless the individual is a possible match to the terrorist watchlist. If TSC determines the passenger is, in fact, the person on the watchlist, TSC will notify the FBI's Terrorist Screening Operations Unit, a unit within the FBI's CTD, which will determine what operational response is appropriate.

In a TSC database called the Encounter Management Application (EMA), TSC retains records of all such contacts from DHS and from other agencies that perform terrorist watchlist screening. The EMA record includes the identifying information regarding the individual being screened (the airline passenger) and TSC's determination of whether the person is a positive match to the watchlist. EMA records of positive matches are used to produce TSC's daily report, which is distributed to the Federal law enforcement and intelligence communities. EMA records of "negative matches," which usually concern individuals whose names are the same as or similar to watchlist identities, are used by TSC to help ensure that future encounters with those same individuals are quickly and properly resolved as negative matches in order to minimize the adverse impact on those innocent persons in the future.

b. Does the FBI use the information that it receives from ATS to assist it in investigating traditional criminal cases as well as counterterrorism matters?

Response:

No. Within the FBI, ATS information is available only to the TSC and only for counterterrorism purposes. While individuals assigned to the TSC may have access to ATS and may include this information during the identification or post-encounter process, ATS does not directly feed information into the TSDB, TSC's EMA, Investigative Data Warehouse (IDW), or any other FBI system. The risk

assessment scores generated by ATS are not reviewed by the TSC or used in any TSC processes.

c. What safeguards are in place at the FBI to ensure the accuracy of this information and to protect the privacy interests of the millions of law-abiding Americans whose sensitive personal data is contained in ATS?

Response:

As discussed above, TSC does not receive all passenger data in ATS, but only data regarding passengers who are determined by DHS to be possible matches to identities on the terrorist watchlist.

TSC relies upon existing DHS privacy and data security/integrity processes to ensure the accuracy of the passenger data DHS sends to TSC. TSC does not have contact with the airlines or with individual passengers to permit us to verify the passenger manifest data supplied by the carriers to DHS's Customs and Border Protection (CBP). Once the passenger arrives at the border, he or she will present a passport and/or other identity documents to DHS's CBP officers, who will verify identity data at that time using the Treasury Enforcement Communications System. Any errors in identity data that were passed by the airline should have been detected by DHS and corrected at that time or, if discovered by CBP during inspection, passed by CBP to TSC for an update of all appropriate records.

TSC has in place a robust privacy compliance program, led by a full-time privacy officer, to ensure that the personal information TSC maintains is protected by strong privacy and security policies and practices. TSC would be pleased to brief the Committee in order to provide more detailed information about its privacy compliance program upon request.

55. You also testified that you would check into whether the FBI's own Investigative Data Warehouse database ("IDW") – which now contains more than 560 million FBI and other agency documents – shares information or data with ATS. Does the IDW database share information or otherwise interface with the ATS data-mining program?

Response:

The IDW system does not have interface with DHS's ATS. The IDW project does not have a listing of the ATS data sources and we cannot determine what, if any, information the two systems have in common.

56. You further testified that the FBI has issued a privacy impact statement for IDW.

a. Has the Bureau publicly released this privacy impact statement for IDW and, if not when will the FBI do so?

Response:

As a national security system, the IDW is exempt from the privacy impact assessment (PIA) requirement of section 208 of the E-Government Act. Even though the IDW was not required to be assessed under Section 208 of the E-Government Act, the FBI nevertheless examined the privacy issues presented by the development of this system and is satisfied that the system adequately protects privacy. The FBI has, however, determined that, consistent with the balance struck by Congress when it enacted the E-Government Act, the harm to the Bureau's national security mission outweighs the need to provide public awareness of the precise details of the technological tools the FBI employs in fighting terrorism. Therefore, we have decided not to make the PIA available to the public. The PIA was, however, provided to DOJ's Privacy and Civil Liberties Officer.

b. Has the FBI filed a notice in the Federal Register regarding the IDW program? If not, why not, and when will the Bureau do so?

Response:

As noted above, the PIAs for IDW have not been made publicly available.

The IDW system is covered by the FBI's Central Records System (CRS) Privacy Act system notice. The CRS notice was last published in full in the Federal Register at 63 Federal Register 8659, 8671 (2/20/98).

57. What policies are in place to ensure the accuracy and security of the sensitive personal data contained in the IDW database?

Response:

The IDW system contains copies of data from source systems maintained by the FBI and other government agencies. The accuracy of the data is ensured by the source system data governance processes and procedures. IDW services and functions are used to perform code-based or tool-based verification that data sent to or received by IDW are in compliance with established and documented form requirements (e.g., file structure, file type, number of fields, field formats, and value ranges). Daily tests are conducted to determine if data ingestion and data extraction/transformation/loading processes have been successfully completed. Users are provided with contact numbers on IDW web pages for use in the event that anomalous data or results are encountered. Anomalies are tracked either as problems or as security events.

IDW has an approved PIA, has completed the FBI Certification and Accreditation process, and has obtained an Authorization to Operate. IDW has dedicated system security administrators and an Information System Security Officer whose responsibilities are to monitor system security; verify that secure system operations and operating practices are maintained; document, respond to, and record security incidents; and document remedial actions.

DETAINEE TREATMENT

58. Last year's Detainee Treatment Act and this year's Military Commissions Act both set standards for what types of interrogation techniques are and are not permissible. In each case, though, the standards are general and open to interpretation.

a. Did the Office of Legal Counsel or any other legal office at the Justice Department or the FBI provide guidance to the FBI regarding how to interpret the provisions of the Detainee Treatment Act governing what interrogation practices are permissible?

b. What form did this guidance take? Did it dictate what specific interrogation techniques can and cannot be used?

c. What was the substance of this legal guidance? Will you share this document with the Committee?

These responses are current as of 2/8/07

Response to subparts a-c:

The FBI's policy relative to interrogation of detainees at Guantanamo has always been that the only techniques that are permissible are those that would be permitted in the United States with criminal suspects. That policy was documented in a 5/19/04 communication signed by the FBI's General Counsel and Deputy Director. In order to ensure that all FBI interrogators are aware of FBI policy, FBI interviewers at Guantanamo are provided a block of legal instruction (two to three hours) upon their arrival reminding them of the rules that govern the interrogation of detained individuals. In addition, an Assistant General Counsel from the FBI's Office of the General Counsel (OGC) has maintained a full-time presence at Guantanamo since April 2004.

Because FBI policy relative to the treatment of detainees is more limited than that permitted by the Detainee Treatment Act and the Military Commissions Act, the provisions of those Acts have not been a significant training issue for the FBI. We have, however, included limited information concerning those Acts in the legal instruction provided to FBI personnel upon their arrival at Guantanamo. Specifically, the instruction now includes information on the Military Commission Act of 2006 and on the Detainee Treatment Act of 2005.

The instruction on the Military Commission Act addresses the establishment of military commissions under that legislation and the rules of evidence applicable to military commission proceedings. The instruction on the Detainee Treatment Act addresses the prohibition on cruel, inhuman, or degrading treatment of persons under the custody or control of the U.S. Government; the procedures for Combatant Status Review Tribunals and Administrative Review Boards; and the fact that no court has jurisdiction to hear or consider writs of habeas corpus filed by or on behalf of aliens detained at Guantanamo.

The document in which policy and advice was conveyed to agents deployed to Guantanamo is attached as Enclosure B.

59. Has the Office of Legal Counsel or any other legal office at the Justice Department or the FBI provided guidance to the FBI regarding how to interpret the provisions of the newly passed Military Commissions Act governing what interrogation practices are permissible?

a. If so, what is that guidance? Please provide a copy of any legal guidance provided to the FBI regarding the Military Commissions Act.

b. If not, please explain how your agents know what is permitted or prohibited by the broad language of the Military Commissions Act without legal guidance. Do you expect to receive legal guidance in the future?

Response to subparts a and b:

Please see the response to question 58, above.

60. An FBI Supervisory Special Agent at Guantanamo Bay wrote a memo in November 2002 entitled "Legal Analysis of Interrogation Techniques," in which he or she concluded that rendering terrorism suspects to "Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information" would violate 18 U.S.C. §2340 (the torture statute). Specifically, the memo states:

> **In as much as the intent of this category is to utilize, outside the U.S., interrogation techniques which would violate 18 U.S.C. §2340 if committed in the U.S., it is a per se violation of the U.S. Torture Statute. Discussing any plan which includes this category, could be seen as a conspiracy to violate 18 U.S.C. §2340. Any person who takes any action in furtherance of implementing such a plan, would inculpate all persons who were involved in creating this plan. This technique can not be utilized without violating U.S. Federal law.**
>
> **Legal Analysis of Interrogation Techniques (available online at http://www.humanrightsfirst.org/us_law/etn/pdf/fbi-brief-inter-analysis-112702.pdf).**

a. Do you agree that the "technique" of rendering suspects to third countries in order to allow those countries to use coercive interrogation techniques that violate U.S. law "cannot be utilized without violating U.S. Federal law"?

b. Does the legal analysis contained in the November 2002 memo reflect the FBI's current thinking with respect to rendition and other interrogation techniques? If not, how does the FBI's current analysis differ from the analysis in the memo?

Response to subparts a and b:

It is our understanding that the referenced 2002 memorandum was drafted by a military officer and was cut and pasted into a document transmitted by an FBI Supervisory Special Agent at Guantanamo. It was not a product of the FBI's Office of General Counsel. FBI policy on the treatment of detainees limits our agents to techniques that would be permissible to use with criminal suspects in the United States. It would not be permissible under FBI policy for an FBI agent to threaten to remove a criminal suspect to a third country to be mistreated.

61. You testified that the FBI is not investigating any of the allegations that have been made by German national Khalid El-Masri and others regarding possible violations of U.S. law in connection with the rendering of individuals to foreign countries. Why isn't the FBI investigating these allegations?

Response:

In circumstances such as this, where there has been no direct report to the FBI of allegations of violation of U.S. law, but where such information is made known to the U.S. government through a public forum such as a news report, those allegations are typically examined in the first instance by the OIG of the agency that employs the officer or employee about whom the allegation was made. If the employing agency determines that there is a reasonable basis to believe that El-Masri's allegations constitute a possible violation of federal criminal law, then the employing agency is required to refer those allegations to the FBI and the AG pursuant to a Memorandum of Understanding (MOU) for Reporting of Information Concerning Federal Crimes between several members of the IC that has been in effect since August 1995. If the FBI receives a referral in this case, it will conduct whatever investigation is appropriate.

BRANDON MAYFIELD

62. In December, the government agreed to pay $2 million to settle a case that had been brought by Oregon lawyer Brandon Mayfield. Mr. Mayfield was jailed for two weeks in 2004 as a material witness, in connection with the Madrid train bombing. As part of the settlement, the government made a formal apology to Mr. Mayfield and his family for the suffering caused by his mistaken arrest. Mr. Mayfield was arrested and held for two weeks on a material witness warrant. Under the material witness law, the government is authorized to arrest a witness to secure his testimony in a criminal proceeding. After the

9/11 attacks, the Justice Department began using the material witness law not to secure testimony from possible witnesses, but rather to lock up possible suspects in counter-terrorism investigations without charge until there is enough evidence to indict. Is it accurate to say that this is what happened in the Mayfield case?

Response:

The decision to arrest Mr. Mayfield on a material witness warrant on 5/6/04 was made to secure his testimony and was based upon probable cause to believe that Mr. Mayfield had testimony material to the investigation of the 3/11/04 Madrid train bombings (primarily because his fingerprint was matched, albeit erroneously, to evidence found in Madrid and connected to the bombing) and that it may become impracticable to secure his testimony by subpoena. In the days leading up to the decision to seek the material witness warrant, media reporting on the investigation was believed to be imminent, and there was significant concern about the risk of flight by Mr. Mayfield once the story broke. On Friday, 5/7/04, the day after his arrest, U.S. District Court Judge Robert E. Jones advised Mr. Mayfield that his deposition could begin at 1:30 p.m. that day, Mr. Mayfield could be released for the weekend with electronic monitoring, and the deposition could resume on the morning of 5/10/04. Mr. Mayfield declined to be deposed on that date and, as a result, he remained incarcerated.

It is important to clarify DOJ's use of material witness warrants after the 9/11 attacks. Every person detained as a material witness as part of the 9/11 investigation was found by a federal judge to have information material to the grand jury's investigation. An individual is detained under the material witness statute, 18 U.S.C. § 3144, only when a federal judge concludes that (1) the witness' testimony is "material in a criminal proceeding"; (2) it may become impracticable to secure the witness' presence by subpoena; and (3) the witness meets criteria for detention under the Bail Reform Act, 18 U.S.C. § 3142. Each and every material witness is entitled to counsel by statute, and counsel will be appointed if the witness cannot afford to pay for an attorney. (18 U.S.C. § 3006A(a)(1)(G).) Once the warrant is issued and the witness is arrested, a court applies the Bail Reform Act (18 U.S.C. § 3142) to decide whether to detain the witness pending his or her testimony. An individual detained under the statute is entitled to a speedy detention hearing before the court, where the witness is afforded representation by counsel and is entitled to present evidence and cross-examine government witnesses. (18 U.S.C. § 3142(f).) At such a hearing, the

government must establish that "no condition or combination of conditions will reasonably assure the appearance of the person as required." (18 U.S.C. 3142(e).)

Moreover, under Federal Rule of Criminal Procedure 46(h), a court must supervise the detention of material witnesses to eliminate unnecessary detention and an attorney for the government must report biweekly to the court, listing each material witness held in custody for more than 10 days and explaining why the witness should not be released. In short, there are numerous judicial safeguards built into the long-established practice of detaining material witnesses pursuant to a warrant. (See, for example, the case of United States v. Awadallah, 349 F.3d 42, 62 (2d Cir. 2003), in which the court noted that the material witness statute and related rules "require close institutional attention to the propriety and duration of detentions.")

63. The Second Circuit Court of Appeals wrote in 2003 [in the *Awadallah* case] that the purpose of the material witness law is to secure testimony where it may become impracticable to secure the presence of the witness by subpoena. The Court added: "It would be improper for the government to use [the material witness law] for other ends, such as the detention of persons suspected of criminal activity for which probable cause has not yet been established." Do you agree that it is improper for the government to use the material witness law for purposes other than securing testimony?

Response:

18 U.S.C. § 3144 permits DOJ to seek an arrest warrant for a material witness if a judge can be persuaded that it appears that the witness possesses information material to a criminal proceeding and that it is impracticable to secure the presence of that person by subpoena. Pursuant to the same statute, a judge may order such a witness to be detained as necessary to secure the witness's testimony after careful application of the factors identified in 18 U.S.C. § 3142. As in the Awadallah case, wherein the Second Circuit Court of Appeals ruled that the detention was a scrupulous and constitutional use of the statute, DOJ only seeks such warrants when authorized by the statute to secure the presence and testimony of a material witness. See U.S. v. Awadallah, 349 F.3d 42, 64 (2d Cir. 2003).

64. The government noted as part of the settlement with Mr. Mayfield that the FBI had taken steps "to ensure that what happened to Mr. Mayfield and the Mayfield family does not happen again." What steps has the FBI taken? Do they include any new guidance respecting the use of the material witness statute?

Response:

In the aftermath of the 3/11/04 Madrid train bombing, the FBI's Latent Print Unit performed a fingerprint analysis and reported a match with a candidate print from an Integrated Automated Fingerprint Identification System (IAFIS) search. It was subsequently determined that the match was in error, and the latent print was ultimately identified to a different subject.

Upon recognizing the error, the FBI's Laboratory implemented its established corrective action process regarding the three FBI examiners who made the error, which included a review of all cases that involved identifications by these examiners, re-training, and a review of cases involving individuals awaiting execution.

In June of 2004, the FBI Laboratory convened an international committee of distinguished latent print examiners and forensic experts to review the fingerprint analysis performed by the FBI Laboratory in the Madrid Train Bombing Case. The Panel recommended improvements to procedures and guidelines to help minimize the possibility of this type of error occurring in the future.

Following the International Committee's review, the FBI Laboratory assembled eight teams of experienced forensic scientists from within and outside the FBI Laboratory to methodically inspect every aspect of the latent fingerprint process in a scientific manner and address each recommendation made by the International Panel. Each team was headed by non-latent print unit personnel from the FBI Laboratory and most teams included external members from the forensic community. These teams were tasked with a number of missions, including: 1) review of the policy regarding cases with "less than original evidence" (in the Madrid Bombing case the FBI Laboratory was provided, via e-mail, digital images of the processed latent fingerprints; the team recommended the establishment of minimum requirements for accepting digital images in lieu of actual evidence), 2) review of the training provided to all Latent Print Unit employees (all aspects of the training program were reviewed, with resulting changes to training programs for both new and experienced examiners), and 3) a complete review of the latent print standard operating procedure (the team provided detailed recommendations for revisions to the procedures).

The FBI's Laboratory approved the implementation of all internal review team recommendations, which were published as a special report in the Journal of

Forensic Identification ("Review of FBI Latent Print Unit Processes and Recommendations to Improve Practices and Quality," Journal of Forensic Identification, 56(3): 402-434, May/June 2006), and continues to conduct research relating to latent print identification and to work with the FBI's CJIS Division to complete the implementation process pertaining to IAFIS system improvements.

A review of the FBI's investigation by DOJ's OIG concluded that the investigation and arrest were driven by the misidentification of the fingerprint, rather than by misuse of any authority or statute. Therefore, the corrective steps taken by the FBI have focused on the Laboratory procedures used in this case.

DOJ believes the existing framework for the use of material witness warrants, as detailed in the responses to Questions 62 and 63, above, is sufficient and no new guidance is necessary.

SENTINEL

65. You testified that there will be no cost overruns or budget shortfalls for the Sentinel program. However, in December 2006, the Department of Justice Office of Inspector General ("OIG") released a report that found that the FBI will need an additional $56.7 million over what the President requested in his budget for next year to continue the Sentinel project, and that these additional costs could have an adverse impact on the FBI's counterterrorism and other programs. The OIG's report also calls the FBI's cost estimate for the Sentinel program into serious question.

a. Does the FBI need additional funds to pay for Phase II of Sentinel and if so, how much additional funding is needed?

b. You testified that the FBI has set aside $57 million to make up the difference between the President's $100 million budget request for Sentinel and the anticipated program costs for Phase II. What FBI programs will be cut back or eliminated in order to use these funds to pay for Sentinel?

Response to subparts a-b:

The funding requested in the President's FY 2007 budget will fund O&M for Phase 1 and most of the system development, training, and program management costs for Phase 2. The full FY 2007 requirement for Sentinel, $156.7 million, was estimated during formulation of the FY 2007 budget and has not changed. In

consultation with DOJ, OMB, ODNI, and Congress, the FBI has identified $56.7 million remaining from Phase 1 funding and prior-year unobligated balances available to support the FY 2007 requirements of the Sentinel program. All identified funds are either expired or were previously approved for use on Sentinel; no programs will be reduced or eliminated due to the reprogramming. Funding for Phases 3 and 4 and for the remainder of O&M for all Phases will be included in future budget submissions.

c. Will you promptly inform Congress of Sentinel's operational impact on other FBI programs if reprogramming of funds is necessary to pay for Sentinel?

Response:

The FBI has offered quarterly updates to each of its oversight Committees since the Sentinel contract was awarded to Lockheed Martin on 3/16/06. These briefings cover all aspects of Sentinel, including progress of each phase of development, independent verification and validation, and budget issues.

66. Earlier this year, the Government Accountability Office ("GAO") found that the FBI paid about $10.1 million in unallowable costs to contractors during the Trilogy program. You have said that the FBI would pursue these funds upon completion of a closeout audit of the Trilogy program by the Defense Contract Audit Agency. When will the FBI start to recover these taxpayer funds?

Response:

The FBI is doing everything possible, consistent with the laws governing federal acquisition, to recover any improper payments made during the Trilogy program. The FBI has engaged the services of the Defense Contract Audit Agency (DCAA) to thoroughly audit the Trilogy program in order to identify any improper costs that could be recovered. In a December 2006 letter to the GSA, the FBI requested that the DCAA audit address the concerns identified in GAO's review of Trilogy, including double billing for labor, payments for first class travel, subcontractor invoice validation, timecard validation, extended work week policies, and other direct costs (ODCs). The audit effort will include a 100 percent review of incurred costs for labor, travel, and ODCs. Completion of the full audit is anticipated a minimum of nine months after the Trilogy contractors and their subcontractors provide all supporting documentation. The FBI will conduct interim progress meetings with GSA's Federal Systems Integration and

Management Center (FEDSIM) and DCAA during the audit period, and GSA-FEDSIM will use the audit recommendations in the efforts to recover monies owed to the FBI.

67. Another concern raised by the GAO is the FBI's over-reliance on government contractors to complete Sentinel. According to the GAO, 77 percent of the positions for Sentinel will be filled by contractors rather than by government personnel. Given the FBI's past experiences with contractors on the Trilogy program, is the Bureau overly relying on contractors for Sentinel?

Response:

We do not believe the FBI is over-relying on contractors to staff the Sentinel Program Management Office (PMO). In the Bureau's response to the draft GAO report, we did not agree with the GAO's observation regarding contractor versus government staffing levels. In our discussions with one of the GAO auditors, we learned that this was intended to be an "observation" rather than a "recommendation," that it was based on two other programs the GAO had reviewed, and that this observation has no basis in industry or government "best practices."

As currently configured, contractors, including personnel from the Federally Funded Research and Development Centers (FFRDC), will comprise 72 percent of the Sentinel PMO staff. The Bureau believes this allows flexibility in bringing on board qualified individuals with the appropriate clearances and special skill sets relatively quickly. We believe many successful information technology (IT) programs have had higher ratios of contract to government personnel, using personnel from FFRDCs, nonprofit centers, and similar organizations to augment government personnel in successfully managing program offices.

The PMO staffing plan is the product of a great deal of thought and research.

- The Office of the Chief Information Officer (OCIO) invested three months to assess the correct mix of engineering, business and administrative management, contract, legal, transition, operations and maintenance, organizational change management, and communications and staff support necessary to manage the Sentinel program, interface with major stakeholders, and keep the FBI user population informed and engaged.

- The staffing plan was based on an analysis of program needs, consideration of the lessons learned from other IT projects, and full coordination with FBI leadership. The PMO Staffing Plan, which was aligned with the personnel needs identified in Program Management Plan, defined the staff's skill requirements, associated government and contractor PMO staffing levels, and proposed plan for filling the PMO positions. The Staffing Plan included the use of FFRDC personnel to manage units (under the supervision of the unit chief) until qualified government replacements were found to provide continuity.

- The Program Manager (PM) and Deputy PM personally reviewed the résumés of all potential staff members, including both government employees and contractors, to ensure that we reached the proper mix and balance of skills. The PM formed an integrated team of subject matter experts from government, FFRDCs, and Systems Engineering and Technical Assistance contractors in order to maximize program expertise, ease the staffing burden for any one contractor, and afford the greatest possible flexibility in addressing known and unforeseen staffing requirements. The PM also ensured that the organizations providing contract support to the PMO have a well- established and positive reputation and history of work with the FBI.

ARABIC-SPEAKING AGENTS AND TRANSLATORS

68. Despite progress on hiring Arabic translators, the FBI lags far behind when it comes to the number of agents who are proficient in Arabic. Recently, *The Washington Post* reported that only 33 FBI agents have at least a limited proficiency in Arabic and only 1 percent of FBI agents have any familiarity with the language.

a. How can the FBI effectively fight the war on terror when most of its agents lack even a basic proficiency in the Arabic language?

Response:

Please see our response to Question 14b, above.

b. How has the lack of Arabic speaking agents impacted the Bureau's ability to develop relationships with Arabic-speaking and Muslim communities within the United States?

Response:

The number of Arabic speaking agents has not impacted the FBI's ability to develop relationships with the Arab-American/Muslim communities within the United States. The FBI's Community Relations Unit has established a close working relationship with Arab-American, Muslim, Sikh, and South Asian leaders at the national level. All 56 FBI field offices have also established and/or strengthened relationships within those communities in their jurisdictions.

c. How has the lack of Arabic speaking agents impacted the Bureau's ability to gather critical counterterrorism intelligence?

Response:

It is important to understand that no national security threats have gone unaddressed due to an insufficiency of Arabic-speaking FBI SAs. Despite the limited number of Arabic-speaking SAs, the FBI has been able to address the national security threats by maximizing our use of our on-board Arabic-speaking SAs, using our non-SA Arabic-speaking employees in direct support of operations, and turning to our partners in the intelligence, law enforcement, and military communities to provide language resources to address the national security threats as they arise. Nonetheless, our efforts to address national security threats have been made more challenging by our limited number of Arabic-speaking SAs. For example, this limitation impedes our ability to interact with, recruit sources in, and interview subjects and witnesses in Arabic speaking communities.

The FBI is very aware of our need for more investigators with Arabic language abilities and we have adjusted our hiring practices with a view toward the recruitment and retention of SAs with relevant language skills. While clearly the objective of maintaining a cadre of employees with language abilities sufficient to address national security matters in a timely fashion is made more challenging by the fact that the individuals who threaten us speak a wide variety of languages, in a plethora of dialects, and come from a wide range of social, cultural, geographic, and religious backgrounds, we are actively recruiting and training those who can best serve in this complex and challenging mission. The FBI is implementing expedited testing and security background processing of SA applicants who possess fluency in critical foreign languages. As a result of these procedures, a large number of SAs who possess fluency in foreign languages critical to the FBI

are expected to attend new Agents training classes in July, August, and September, 2007.

69. You previously testified that the FBI can translate high-priority counterintelligence material within 24 hours. Is this still the case, and what are the realistic prospects for this type of material to be translated in something approximating real time?

Response:

The FBI continues to translate foreign language collection from its highest priority investigations within 24 hours, except in rare circumstances where an unusual or rare dialect is used. Translation of foreign language materials in "real time" is the least efficient method for translating because those operations require dedicating linguists to single projects. Most of the FBI's linguists are simultaneously tasked with myriad projects, providing support to each based on current priorities. However, during periods of heightened activities, the FBI does assign linguists to "live monitoring" of these priority targets.

AFGHANISTAN OPIUM TRADE

70. Earlier this year, the United Nations Office on Drugs and Crime ("UNODC") reported that there has been a surge in opium cultivation in Afghanistan that is fueling the insurgency in that country. According to the report, opium production in Afghanistan has increased 59 % over last year and in the southern region where Taliban insurgents have intensified their attacks on Afghan government and U.S. forces, opium cultivation has increased by 162 %. Given that the Bush Administration routinely describes the international narcotics trade as a national security issue, and that the production of opium has skyrocketed since the invasion of Afghanistan and removal of the Taliban, what does this mean for our national security at home and for the safety of our troops in Afghanistan?

Response:

The large scale production of opium in Afghanistan is not only a significant threat to Afghanistan's future and the region's stability, it also has worldwide implications. In the past, terrorist groups derived much of their funding and support from state sponsors of terrorism. With increased international pressure, many of these funding sources have become less reliable and, in some instances, have disappeared altogether. As a result, terrorist groups have turned to

alternative sources of financing, including fund raising from sympathizers and nongovernmental organizations and criminal activities such as arms trafficking, money laundering, kidnapping for ransom, extortion, racketeering, and drug trafficking. This trend is true not only in Afghanistan but around the world, and increasingly blurs the distinction between terrorist and drug trafficking organizations.

Both criminal organizations and terrorist groups continue to develop international networks and to establish alliances of convenience. In the new era of globalization, both terror and crime organizations have expanded and diversified their activities, taking advantage of the globalization of communications and banking systems and the opening of borders. There are many facets of combating narcotics production and trafficking in Afghanistan. In addition to eradication, interdiction, and seizing heroin labs, it is critical to attack the trafficking networks, their infrastructures, and their illicit assets.

Much of this important work has been accomplished by the DEA, which fully reopened its Kabul Country Office in January 2004, making significant progress under difficult conditions. To date, DEA has increased staffing levels in the Kabul Country Office, deployed "Foreign-Deployed Advisory and Support Teams in Afghanistan, mentored and trained the Afghan Narcotics Interdiction Unit, targeted high-value trafficking organizations and their leaders, achieved the first extradition from Afghanistan, and coordinated Afghan-based investigations with its law enforcement partners, including the FBI. DEA's investigative approach focuses on the use of credible, corroborated, confidential sources whose activities are closely directed and monitored by SAs to identify, penetrate, disrupt, and dismantle these organizations. In Pakistan and Afghanistan, DEA has developed a cadre of reliable sources of information and developed many valuable relationships. Because DEA is concerned with the nexus between terrorist activity and its association with narcotics trafficking, DEA personnel are directed to solicit information of assistance in the global war on terror at all informant debriefings. These relationships have yielded actionable intelligence regarding ongoing anti-coalition activities, and information gathered through DEA human intelligence (HUMINT) sources has assisted in thwarting hostile acts against U.S. personnel and interests inside of Afghanistan.

TERRORIST WATCHLIST

71. You recently disclosed that the Terrorism Screening Database ("TSDB") contains 491,000 records and that the FBI's review of the database to ensure the accuracy of these

records will take years. The glaring errors in the FBI's Terrorist Watchlist – including the names of Members of Congress, infants and even nuns – clearly make the case for why this review is needed. These errors also suggest that any review of the TSDB must also include finding out how the bad information that is in this database got there in the first place.

a. What is the FBI doing to find out how bad data got into the TSDB and onto the terrorist watchlist?

b. Is there any procedure in place that requires the FBI to conduct an internal investigation whenever errors are detected in the TSDB? Should there be?

Response to subparts a and b:

It is important to understand that records in the TSDB meet only the threshold for suspicion of terrorism for inclusion in the database. Once the suspicion has been established, it is appropriate to include that identity on watch list. As more information becomes available, the record may be updated or removed from TSDB. This is not an indication that the record was initially included in error, but rather a reflection of the additional information obtained regarding the individual and its impact on the record's status. It has been widely reported in the media that persons who are wholly inappropriate for watchlisting, such as members of Congress and young children, are included on the terrorist watchlist and, as a result, have had difficulty boarding planes. These reports are highly misleading in that they suggest that every individual who has been delayed or had difficulty during a screening process is on the terrorist watchlist. Unnecessary alarm is often caused by airline ticket agents who erroneously inform travelers that they are "on a watchlist" if the individual encounters any difficulty during the security screening process. Unfortunately, individuals who share an identical or similar name with watchlisted individuals may experience delays at various points of screening (e.g., U.S. ports of entry, airports, etc.) until screeners can verify they are not, in fact, those watchlisted. These individuals are commonly referred to as "misidentified persons" because their inconvenience is due to a temporary misidentification with a watchlist record. GAO recently issued a detailed report (GAO 06-1031) regarding this problem and the Executive Branch's efforts to minimize the inconvenience caused to these persons. TSC's efforts to assist misidentified persons include an operational procedure to maintain records of encounters with misidentified persons and check those records when a new encounter occurs so TSC can rapidly identify and clear known misidentified

persons during screening. TSC has also established an inter-agency redress process for persons having watchlist-related screening difficulties.

As discussed in response to Question 11a, above, the TSDB contains data on known and appropriately suspected terrorists, which is provided to the TSC by either the NCTC (for international terrorists) or the FBI (for purely domestic terrorists). The TSDB was initially created by consolidating all data in U.S. government data systems into a single database. Because of the urgency of establishing a consolidated watchlist, terrorism data from other systems was added to the TSDB with limited review or quality controls. As a result, much of the quality assurance efforts that ideally would have been performed prior to compiling TSDB were, by necessity, pushed to the back end of the process. Since the TSDB was created, significant efforts have been underway at the TSC to establish strong gate-keeping controls to prevent inappropriate records from being added to the TSDB and to review existing TSDB records to ensure they are appropriate for watchlisting.

The TSC has developed numerous internal quality controls for the various stages of the watchlist process to increase the quality of the TSDB. These quality control efforts are discussed at length in response to Question 11, above. While there is no policy requiring a formal investigation when watchlist errors are identified, TSC takes appropriate steps to determine if the error was an isolated one or part of a larger problem involving multiple records that now must be reviewed and corrected. TSC also provides feedback to the nominating agencies when errors are made in the nomination process that would degrade the quality of the watchlist.

The TSC's ability to improve the quality of the watchlist is limited, however, as TSC is not in a position to validate information provided by nominating agencies. For example, TSC has no ability to investigate, verify, or judge whether information in an intelligence cable is accurate as reported or from a reliable source. TSC must rely upon the agencies that investigate terrorism and gather and analyze intelligence to provide accurate, complete, and current information to support terrorist watchlist nominations, and to critically review that information before nominating someone for inclusion on the watchlist. Through the TSC Governance Board, inter-agency working groups, and other means, TSC works closely with nominating agencies to clarify watchlist standards and to streamline operational protocols to improve the quality of the watchlist data that is sent to TSC daily. Clearly, though, the agencies that nominate individuals to the watchlist are in the best position to improve the accuracy and reliability of the

watchlist by ensuring the validity of the underlying intelligence and investigatory data that support these nominations.

CYBER SECURITY

72. During the hearing, you testified that cyber crime is one of the FBI's top three priorities on the national security side. In late November, there were unconfirmed reports of a threatened attack on U.S. stock market and the Banking industry websites by a radical Muslim group. According to press reports, the attack would be in retaliation for the detention of Muslim prisoners at Guantanamo Bay.

a. What steps did the FBI take to respond to this threat?

Response:

The FBI's Cyber Division was informed on 11/13/06 that DHS's U.S. Cyber Emergency Response Team (US CERT) had released a threat report concerning a cyber attack on the U.S. Stock Exchange in New York. The Cyber Division, which has a full-time senior manager detailed to the US CERT for liaison purposes, immediately requested additional information from US CERT and its member agencies and briefed the FBI's CTD and National Press Office.

The web site referenced in the threat report is generally known to law enforcement, the IC, and the media, having posted a threat against the Vatican in October 2006. The FBI continued its coordination with the US CERT to determine the necessity for additional public announcements and investigative activity. US CERT decided to retract the threat release and inform the public that the threat was not credible, and ultimately no additional public alerts were necessary.

b. What resources does the FBI currently have dedicated to U.S. cyber security?

Response:

The FBI's Cyber Division includes 59 Supervisory Special Agents at FBIHQ to ensure coordination of cyber matters with other agencies and among FBI programs (including counterterrorism and counterintelligence programs) and to provide program oversight on a national and international basis. In addition, 527

SAs in the field are dedicated to U.S. cyber security matters; in each of the FBI's 56 field offices there is at least one SA dedicated full time to cyber security. The FBI has also created Cyber Action Teams (CAT), which are computer emergency response teams that can deploy worldwide and can draw on both FBIHQ and field assets. The CATS are comprised of highly trained cyber SAs, Computer Analysis Response Team examiners, IAs, and other FBI assets, and can address incidents that require advanced cyber expertise. In addition, the FBI's InfraGard program is dedicated to promoting ongoing dialogue and timely communication between the FBI and the private sector (including the banking industry) concerning critical infrastructure protection issues.

In addition to these FBI-wide programs, individual field offices have developed cyber security programs tailored to their individual circumstances and threats. For example, the FBI's New York Division includes a cyber intrusion squad that has developed a very productive working relationship with the financial services industry and the brokerage industry in New York. Among many other liaison efforts, representatives from the New York Division annually address the Chief Information Officer (CIO) forum, which includes numerous Fortune 500 companies.

PUBLIC CORRUPTION

73. In your testimony at the hearing, you called public corruption the FBI's top criminal investigative priority and you asserted that there has been an increase in the number of agents investigating public corruption cases and the number of cases investigated. However, a September 2005 report by the Department of Justice Office of the Inspector General found that, from 2000 to 2004, there was an overall *reduction* in public corruption matters handled by the FBI. The report also found declines in resources dedicated to investigating public corruption, in corruption cases initiated, and in cases forwarded to U.S. Attorney's Offices. It further found that some field offices were not giving public corruption sufficient emphasis and had scaled back their anti-corruption efforts.

a. What have you done since the Inspector General's report came out to ensure that combating corruption gets the resources and attention it needs?

Response:

In May 2002, Director Mueller designated public corruption as the top criminal priority, and overall as the fourth investigative priority of the FBI. Since then, SA

resources expended to address the public corruption program have increased markedly, with a 40% increase occurring from FY 2004 to FY 2006. In FY 2004, 434 SAs addressed public corruption; in FY 2005, the number of SAs who worked public corruption increased to 528; and in FY 2006, 606 SAs addressed public corruption. Considering that the total number of SAs allocated to address criminal matters decreased by almost 1,000 after 9/11, the increase of 172 SAs in the public corruption program clearly demonstrates the FBI's commitment to addressing public corruption. The 40% increase in SAs resulted in an increase in statistical accomplishments in the public corruption program, as follows:

Category	FY 2004	FY 2005	FY 2006	% increase from 2004 to 2006
# of Agents	434	528	606	40%
Pending Cases	1854	2118	2233	20%
Informations/Indictments	785	890	954	22%
Convictions	595	759	800	34%

In addition, over $300 million in restitution was obtained as a result of public corruption cases adjudicated in FY 2006.

This significant increase in statistical accomplishments is attributable to the dedication of more public corruption resources in the field to address myriad public corruption crime problems, including judicial, executive, legislative, law enforcement, municipal, regulatory, and prison corruption, that affect every FBI jurisdiction in the United States. They are also attributable to the FBI's focus on specific crime problems, such as the Hurricane Fraud Initiative, International Contract Corruption Initiative (with current emphasis on the Middle East), Southwest Border Corruption Initiative, Campaign Finance and Ballot Fraud Initiative, Capital Cities Initiative (with emphasis on state-level legislative corruption), and the Foreign Corrupt Practice Act Subprogram. To support these investigations, the public corruption program provides regular domestic and international public corruption training and also conducts regular field office visits throughout the United States pursuant to the Program Enhancement Initiative (PEI).

The FBI recognizes that public corruption poses an enormous threat to the credibility of federal, state, and local government in the areas of legislative, executive, law enforcement, judicial, municipal, regulatory, contract, and prison corruption. Public corruption can not only place physical security at risk, it also undermines the community's faith and confidence in government and erodes trust in the institutions upon which the American democratic system is based. The strategic focus of FBI public corruption investigations is on the most corrosive criminal acts by public officials. Most investigations are long-term and complex in nature. Because of this focus, the public corruption program cannot be evaluated solely based on the number of cases initiated. Instead, the quality and significance of the impact exerted by these corruption investigations is a better indicator of the success of the FBI's efforts to combat corruption.

b. Would the FBI benefit from additional resources to combat public corruption? If so, what types of resources would be the most helpful?

Response:

The FBI will continue to address program needs through the budget formulation process in coordination with DOJ and OMB.

74. In your written testimony, you cited the Phoenix Division's Lively Green investigation as an example of the FBI's commitment to, and success in, investigating public corruption. The *Arizona Republic* reported earlier this year that FBI agents working on the Lively Green investigation paid for a room for informants to stay in a presidential suite at the MGM Grand Hotel in Las Vegas. According to a disclosure made by prosecutors, the informants and suspects staying in the room hired prostitutes and sexually abused an unconscious prostitute. Soon after, FBI personnel recorded conversations which included detailed descriptions of the incident, and agents reviewed lewd photographs from the incident. FBI personnel failed to report the incident to prosecutors, who learned of it only many months later from an informant, and one agent was found to have made statements apparently suggesting that the informants get rid of the incriminating photographs. Although the Lively Green prosecutions went forward successfully, these cases were placed in jeopardy by this conduct.

a. What is the FBI doing to ensure that the problems that plagued the Lively Green investigation and other past investigations – agents covering for their informants' misconduct – do not happen again?

Response:

Several months ago the FBI's DI initiated a comprehensive review and revision of our HUMINT program in conjunction with DOJ. As one part of the re-engineering project, the FBI is working with DOJ to draft revised AG Guidelines governing source operations and to develop new internal manuals. The Validation Standards Manual details the implementation of a comprehensive, Bureau-wide validation process that has been reviewed by DOJ and complies with the standards developed by the ODNI. In addition to requiring the validation of every source and every relationship between an SA and a source on a regular and consistent basis, the revised validation process will be streamlined and automated through a new technology application. By automating the administrative aspects of human source operations, the FBI will improve compliance with AG Guidelines and reduce human error.

b. Are you satisfied with the steps that the FBI took to investigate and respond to the misconduct in the course of this operation?

Response:

Yes. Based on allegations of misconduct, a timely, thorough, and comprehensive internal investigation was conducted by the FBI Inspection Division into the course of events surrounding the Lively Green case. Numerous signed, sworn statements were provided by FBI employees. Interviews were also conducted with the Assistant United States Attorneys familiar with the Lively Green case. Several interviews were conducted with cooperating witnesses who actively participated in the Lively Green case. At the conclusion of the internal inquiry, the results were forwarded to the FBI's OPR for adjudication. The two subject employees specifically denied any awareness of criminal misconduct by the cooperating witnesses. Based on these denials and the lack of preponderant evidence to the contrary, no findings were made against the two employees. To prevent a recurrence of the problems encountered in the Lively Green investigation, the FBI has taken the steps outlined in response to question 42a, above, and increased its training in this area.

FBI COMPUTER SYSTEM FAILURE

75. According to several press reports, the FBI's National Instant Criminal Background Check System, which is used to screen gun buyers, crashed several times in November 2006

– potentially allowing gun buyers to purchase firearms without being properly screened. According to the FBI, this background check system receives between 30,000 and 50,000 background check request each day, so this is not an insignificant matter. I have three questions:

a. Has the FBI determined what caused the system to crash, and has this problem been fixed?

Response:

The FBI's CJIS Division has been reviewing and analyzing logs that were generated during the National Instant Criminal Background Check System (NICS) outage on 11/26 and 11/27/06 in order to determine the cause of the outage. As of 1/7/07, no clear cause of the outage had been determined.

System and database administrators continue to monitor the NICS system in case of recurrence. Since the NICS outage on 11/26-27, the NICS system has only received a few of the "Two Task" Oracle 3106 errors (the errors seen during the November outage) and the system has recovered on its own with no intervention needed. Developers have reviewed the computer code and have not identified any changes to code that would cause this type of error.

NICS developers are receiving daily system logs for further analysis. In addition, the FBI is working in the non-operational environment in an attempt to recreate the outage, but to date these efforts have been unsuccessful.

Absent a clear indication of the cause of the outage, the only changes made to NICS as a result of it have been an increase in the shared memory pool and Oracle database cache, which appear to have resolved the issue. The FBI's CJIS Division will continue to monitor and analyze the NICS in order to prevent or minimize future outages.

b. Does the FBI know how many gun sales were completed without background checks while the system was down?

Response:

The outage on Sunday, 11/26/06, lasted 45 minutes, and the three outages on Monday, 11/27/06, lasted 34 minutes, 1 hour 24 minutes, and 35 minutes. Even

with these outages, NICS processed 17,983 firearms transactions on Sunday (11/26) and 29,867 on Monday (11/27). For comparison purposes, on the Sunday and Monday after Thanksgiving in 2005, NICS processed 14,574 and 28,200 firearms transactions, respectively. The FBI has no reason to believe gun sales were executed during the outage in violation of the legal requirements of the Brady Handgun Violence Prevention Act of 1993.

c. What is the FBI doing to make sure that this problem never happens again?

Response:

The FBI's CJIS Division has made all of the changes recommended by the vendors. As indicated in response to subpart a, above, the problem has not recurred, but the CJIS Division will continue to monitor the system and make any corrections we identify.

MIKE GERMAN / WHISTLEBLOWERS

76. According to the Office of the Special Counsel ("OSC"), the average number of whistleblowers who have filed complaints with the government has increased by 43% since September 11, 2001. Yet, sadly, the number of whistleblowers who have filed reprisal complaints with the OSC because their employers have retaliated against them for coming forward has also increased by 21% during the same time period. For example, former FBI special agent Michael German has said that his reputation and career were ruined after he reported concerns about misconduct on the Bureau's terrorism investigations to his superiors. What is the Bureau doing to protect the rights of whistleblowers within the FBI to come forward and disclose government fraud, waste and abuse?

Response:

Although the FBI can never completely eliminate an employee's fear of whistle blower retaliation, factors likely to induce such fear can be reduced or eliminated. The anonymous nature of inspection leadership surveys (which are conducted prior to internal FBI inspections to assess management effectiveness), private interviews with the inspection staff during these inspections, and executive managers who promote the proper environment all help to reduce the fear of whistleblower retaliation. If an employee nonetheless believes retaliation has occurred, this may be reported to the Inspection Division's IIS or to DOJ's OIG or

OPR. FBI employees are also frequently reminded through FBI-wide emails and other mechanisms that there is a procedure established under law (5 U.S.C. § 2303) and implemented by regulation (28 C.F.R. Part 27) that provides a formal avenue for an employee to seek corrective action based on a personnel action taken in reprisal for whistle blowing.

77. Many whistleblowers in the intelligence community are discouraged from coming forward because intelligence agencies are exempted from the Whistleblower Protection Act. Would you support legislation to extend whistleblower protections to national security employees?

Response:

Congress specifically excluded the FBI and other IC agencies from the application of 5 U.S.C. § 2302 (the government-wide Whistleblower Protection Act) because of the classified and sensitive nature of their work and the fact that any employee may have access to such information. The legislative history indicates that the exceptions for the FBI and the other specified agencies is tied to the intelligence aspect of their missions. See H.R. Rep. 328, 101st Cong., 1989 WL 225002 (Leg. Hist.). We support the Congressional reasoning that underpins these exceptions.

Congress has provided separate whistleblower protections for national security employees through the IC Whistleblower Protection Act of 1998 (ICWPA). The ICWPA provides that an employee may communicate "a complaint or information with respect to an urgent concern" regarding intelligence activities to the appropriate Inspector General (or designee) and thereafter, under specified circumstances, "to Congress by contacting either or both of the intelligence committees directly." Inspector General Act of 1978, 5 U.S.C. Appendix 3, §§ 8H(a)(1) and (d).

ANTHRAX INVESTIGATION

78. The Bureau's investigation into the 2001 anthrax attacks that killed 5, infected 17 others and terrified millions of Americans is now well into its fifth year. Many believe that the investigation has gone very cold and no arrests have been made in the case.

a. What is the current status of the anthrax investigation?

b. Do you expect that criminal charges will be brought in the case and if so, when?

c. You testified at the hearing that the FBI currently has 17 agents and 10 postal inspectors assigned to the anthrax investigation. Has the number of personnel dedicated to the investigation changed? Will you consider increasing the number of agents and investigators dedicated to this investigation?

d. How much money has the FBI spent on the anthrax investigation to date?

Response to subparts a through d:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

79. A frequent criticism of the anthrax investigation is that the FBI has made a number of incorrect assumptions about the source of the anthrax and refused to heed outside expert advice in the case. Will the Bureau be open to new theories about the case and more receptive to outside expertise and criticism going forward?

Response:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

80. You testified that the FBI has "periodically" provided briefings for the family members of the anthrax attacks. When was the Bureau's last briefing to victims and their family members? How often does the FBI provide these briefings?

Response:

During the months of May, June, and July, 2003, the FBI and United States Postal Inspectors provided investigative briefings to various victims and/or their family members. Some victims or family members declined briefings. Subsequent investigative updates were provided through letters to the victims or their family members dated 12/11/03, 3/3/04, and 10/25/04. The FBI provided additional oral briefings in person or through conference calls to the victims and/or their family

members on 11/10/05 and again on 10/27/06. These briefing provide as much information as can be provided without compromising the criminal investigation.

COMBINED DNA INDEX SYSTEM (CODIS)

81. A recent investigation by *USA Today* uncovered nearly three dozen cases during the past five years in which investigators failed to pursue potential suspects whose DNA matched evidence found at crime scenes. ("Many DNA Matches Aren't Acted On, Nov. 21, 2006). According to *USA Today*:

The unpursued matches had this in common: All were recorded as 'hits' by the CODIS system and added to the list of CODIS-aided investigations that the FBI makes public. Through September, the FBI counted 39,291 such matches since 1990. No one is certain how many of those matches resulted in arrests or convictions, however. In part that's because no law or regulation requires crime labs, the FBI or local law enforcement to follow through and determine what becomes of DNA matches after the CODIS system reports them to the police. Crime lab officials believe hundreds more matches have not been pursued by authorities. They say those matches might become evident only after a perpetrator is caught for a second time.

a. Does the FBI keep any data on how many CODIS matches are pursued by investigators?

b. Does the FBI keep any data on how many CODIS matches have helped solve crimes?

Response to subparts a and b:

Not currently. The Combined DNA Index System (CODIS) database, by statute, does not include any personal identifiers, as the system was established to link DNA laboratories together in order to share DNA information. We welcome a dialogue with our state partners to discuss a reporting mechanism for tracking matches that lead to arrests and convictions.

While there is no reporting mechanism that links prosecutors, law enforcement, and crime labs, the success of CODIS can be measured by tracking the number of crimes it helps to solve. CODIS's primary metric, "Investigation Aided," is defined as a case that CODIS assisted by producing a lead that would not otherwise have been developed. Through October 2006, CODIS had assisted in

more than 40,000 investigations covering 49 states and two federal laboratories. CODIS has also produced nearly 9,000 forensic hits, 4,000 national offender hits, and 26,000 state offender hits.

82. The leader of the FBI's CODIS unit told *USA Today* that tracking the results of DNA matches would present a "significant task" that the FBI is not geared to undertake, and that accounting for CODIS matches should be the responsibility of local police and prosecutors who are given match information. Do you agree?

Response:

Yes. The FBI Laboratory is responsible for the maintenance and enhancement of the CODIS software used by Federal, state and local law enforcement laboratories. The FBI also supports the communication infrastructure for forensic DNA laboratories participating in the National DNA Index System (NDIS). The FBI Laboratory's points of contact for CODIS and NDIS are the forensic DNA laboratories, of which there are 178. These forensic DNA laboratories interact with each other when a potential CODIS match is identified in order to confirm that match.

Once a CODIS match is confirmed, the information is transmitted to the appropriate Federal, state, or local law enforcement agency. The reporting of the CODIS match to law enforcement has long been considered to be part of the analysis of the evidence and part of the investigative process. Once the forensic DNA laboratory has provided this information to law enforcement, is often no further interaction between the forensic DNA laboratory and the law enforcement agency unless or until the case goes to trial, since the forensic DNA laboratories may not be involved in the resolution of a case unless they are called upon to testify to the evidence. There are over 18,000 law enforcement agencies in the United States, and laboratories can work cases for multiple law enforcement agencies. This makes the tracking of the results of DNA matches throughout the country very difficult.

83. Do you have any recommendations for improving accountability in this area? How can the federal government get an accurate measure of CODIS's real world value in solving crimes?

Response:

The FBI Laboratory has mechanisms to measure the effectiveness of CODIS and, therefore, to provide some measure of accountability. Participating forensic DNA laboratories are required to report to the FBI, on a monthly basis, on investigations aided, offender hits, and forensic hits. These statistics are reported on the FBI's web site.

The selection of these particular performance measures was determined because CODIS was designed as a tool to assist in criminal investigations, especially cases in which law enforcement has not identified a suspect. When CODIS provides information, either the identity of a potential suspect or a link between two or more cases, we consider that to be investigative information - information we would not have were it not for CODIS and the DNA database.

During the implementation of the NDIS in the 1990s, the FBI Laboratory sponsored a limited study to determine whether it was possible and effective to track confirmed CODIS matches through resolution of the case. At the conclusion of the study, very little meaningful information was obtained regarding the resolutions of the related cases because many of the cases were still pending and because of the difficulties inherent in obtaining information across multiple agencies.

A couple of jurisdictions (New York and Virginia) are currently trying to track CODIS match information through case resolution. These jurisdictions are working to coordinate communication between the agencies involved in the processing of a case through resolution (laboratories, law enforcement, prosecutors, and courts). Preliminary information reported by these jurisdictions indicates that there is still a significant percentage of the CODIS match cases that falls in the "pending" category. Additionally, one jurisdiction has encountered inconsistent reporting practices by the multiple agencies involved. Additional follow-up by the agency conducting the study is necessary in order to obtain the case status.

CORPORATE FRAUD

84. You testified during the hearing that white-collar criminal cases were one of the FBI's top three priorities on the criminal side. Recently, Deputy Attorney General McNulty issued new guidelines for corporate fraud investigations to address growing concern about

the Department of Justice's investigation and prosecution of corporate fraud cases and, in particular, criticisms of the Department's policy – embodied until recently in the so called "Thompson Memorandum" – to request that corporate defendants produce attorney-client privileged and/or work product information in these investigations.

a. Does the FBI request or demand that corporate defendants turn over attorney-client privileged or work product information in its corporate fraud investigations? If so, would you describe such requests as routine in white collar fraud cases?

Response:

According to DOJ guidelines, the FBI may request attorney-client privileged or work product information only at the direction of a federal prosecutor who has obtained a waiver of attorney-client or work product protections from a corporate defendant. These requests are not routine, but waiver of privilege may be sought in an appropriate case after a federal prosecutor obtains the necessary supervisory approvals to make the request. The approval process is set forth in the McNulty Memorandum.

b. What will the FBI do to ensure that agents investigating corporate fraud cases conform their conduct to fit the standards set out in the new McNulty Memorandum?

Response:

The FBI conducts all corporate fraud investigations in close collaboration with DOJ attorneys. The FBI strictly abides by applicable laws, regulations, and guidelines, including the McNulty Memorandum. Agents will consult with prosecutors when necessary to ensure that any production of documents by a corporate defendant is consistent with the McNulty Memorandum's requirements.

GARDNER-QUINN MURDER INVESTIGATION

85. During the hearing, you testified that the FBI agent who published details of the Gardner-Quinn murder investigation in a Vermont newspaper is under investigation. What is the status of this investigation and has the agent involved been disciplined by the FBI?

Response:

In December 2006, the DOJ OIG reviewed an allegation regarding this disclosure and subsequently referred the matter to the FBI for review. The FBI's IIS initiated an administrative inquiry into the allegation, and that inquiry is currently pending.

Questions Posed by Senator Kennedy

I. HATE CRIME STATISTICS

In your written responses to my questions, you confirmed the number of federal hate crimes prosecutions in 2004.

86. Can you please provide the same data for 2005 and 2006?

Response:

FBI investigations resulted in 31 indictments/informations and 19 convictions in hate crime matters during FY 2005. During FY 2006, 21 indictments/informations and 23 convictions were obtained.

87. Can you include details relating to each case that you are including in the statistics for 2004 and 2005, including the state in which each case was opened or an indictment was issued?

Response:

Because the question acknowledges that the statistical data for 2004 was previously provided in response to a Question for the Record following the 5/2/06 hearing (Question 78), and the preceding question (Question 86) requests Hate Crime information for 2005 and 2006, we interpret this question as requesting details and statistics for the years 2005 and 2006.

2005

During FY 2005, the following Federal hate crime convictions and informations/ indictments were obtained (information is provided by category and location).

Racial Discrimination with Force and/or Violence

Location	Convictions	Informations/Indictments
California	3	1
Kentucky	-	1
Missouri	-	2
New York	1	-
North Carolina	3	-
Texas	2	4
Total	**9**	**8**

Racial Discrimination with No Force or Violence

Location	Convictions	Informations/Indictments
California	2	3
Nebraska	1	-
District of Columbia	1	1
Total	**4**	**4**

Religious Discrimination Involving Force and/or Violence

Location	Convictions	Informations/Indictments
Illinois	-	1
Kentucky	-	1
Oregon	-	4
Tennessee	-	1
Texas	1	1
Washington	1	3
Wisconsin	1	1
Total	**3**	**12**

Religious Discrimination with No Force or Violence

Location	Convictions	Informations/Indictments
Illinois	-	1
Nevada	1	-
Total	**1**	**1**

Housing Discrimination Involving Force and/or Violence

Location	Convictions	Informations/Indictments
Indiana	1	-
Maryland	-	6
Michigan	1	-

These responses are current as of 2/8/07

Total	**2**	**6**

Housing Discrimination with No Force or Violence
There were no convictions or informations/indictments in this category in FY 2005.

2006

During FY 2006, the following Federal hate crime convictions and informations/ indictments were obtained (information is provided by category and location).

Racial Discrimination with Force and/or Violence

Location	Convictions	Informations/Indictments
Arkansas	2	2
California	4	1
Florida	1	1
Maryland	1	1
Missouri	1	2
North Carolina	1	-
Total	**10**	**7**

Racial Discrimination with No Force or Violence
There were no convictions or informations/indictments in this category in FY 2006.

Religious Discrimination Involving Force and/or Violence

Location	Convictions	Informations/Indictments
Alabama	-	3
Illinois	2	-
Oregon	4	1
Washington	2	-
Total	**8**	**4**

Religious Discrimination with No Force or Violence
There were no convictions or informations/indictments in this category in FY 2006.

Housing Discrimination Involving Force and/or Violence

Location	Convictions	Informations/Indictments

Arkansas	3	4
Michigan	1	3
Ohio	-	2
Total	**4**	**9**

Housing Discrimination with no Force or Violence

Location	Convictions	Informations/Indictments
Michigan	-	1
Total	**-**	**1**

II. USE OF CONFIDENTIAL INFORMANTS

88. In response to written questions submitted by Senator Grassley, the FBI responded that the Department of Justice is working on new Attorney General Guidelines on source operations. As you know, many members of the Senate Judiciary Committee have an interest in this topic. Please provide a copy of the revised Guidelines to the Committee as soon as the revised Guidelines are complete. Can you please confirm when these new Guidelines will be issued? Can you also provide further detail on the process that FBI personnel will follow under the new Validation Standard Manual for every source and relationship?

Response:

The AG Guidelines Regarding the Use of FBI Confidential Human Sources were approved on December 13, 2006 and are provided as Enclosure C.

Every human source will be subjected to the validation process as outlined in these AG Guidelines and the Validation Standards Manual, which is still in draft form. For further details on the validation process, please see the section titled "Validation of a Confidential Human Source" in the attached copy of the AG Guidelines.

89. Specifically, how will the guidelines be revised, in particular Section IV Special Notification Requirements pertaining to notifications to federal, state and local prosecutors of crimes committed by confidential informants?

Response:

Under the new AG Guidelines Regarding the Use of FBI Confidential Human Sources, notification to state and local officials is required when, with the concurrence of the Chief Federal Prosecutor and the FBI SAC, an FBI SA has reasonable grounds to believe that the alleged felonious activity of a current or former confidential human source is being prosecuted by, is the subject of an investigation by, or is expected to become the basis of a prosecution or investigation by a Federal, state, or local prosecutor's office.

In addition, if an FBI SA has reasonable grounds to believe that a confidential human source has engaged in unauthorized criminal activity (other than minor traffic offenses), the Chief Federal Prosecutor and the FBI SAC, with mutual concurrence, shall notify any state or local prosecutor's office that has jurisdiction over the confidential human source's criminal activity and that has not already filed charges against the confidential human source for that criminal activity. For specific language on these requirements, please see the "Special Notification Requirements" of the attached AG Guidelines.

90. Under the existing guidelines, the Chief Federal Prosecutor and Special Agent in Charge must concur prior to notifications to federal, state and local prosecutors. Will the revised Guidelines require prompt notification of information pertaining to crimes committed by confidential informants, to federal, state and local prosecutors having jurisdiction with or without this concurrence?

Response:

Please see the response to Question 89, above. According to the AG Guidelines section titled, "Exceptions and Dispute Resolution," whenever there is a dispute between or among entities, the dispute shall be resolved by the Assistant Attorney General for the Criminal Division or the National Security Division, whichever is appropriate, or his/her designee.

91. Will the guidelines be revised to expressly prohibit FBI contact or utilization of confidential informants who are fugitives or the subject of warrants issued by federal, state and local jurisdictions without notice to those jurisdictions? A grand jury in New York has found that Special Agent Lindley DeVecchio did have contact with an FBI confidential informant (Gregory Scarpa, Sr.) who was at the time the subject of a state warrant for gun

possession charges. How will the revised guidelines address situations like those arising in the case of Special Agent Lindley DeVecchio?

Response:

The revised AG Guidelines Regarding the Use of FBI Confidential Human Sources expressly prohibit FBI contact or utilization of sources who are fugitives or who are the subjects of warrants issued by Federal, state, or local jurisdictions without notice to those jurisdictions. For specific language regarding fugitives, please see the subheading titled, "Fugitives" in the section titled, "Special Approval Requirements" in the attached copy of the AG Guidelines.

92. Please provide the Committee with more information on the changes being implemented in the Confidential Informant Review Committee (CIRC) process. Specifically, identify under what circumstances (if any) a source could have a designated classification that would not be reviewed by such a committee.

Response:

According to the approval process detailed in the section titled, "Special Approval Requirements" in the attached copy of the AG Guidelines Regarding the Use of FBI Confidential Human Sources, those sources providing information for use in international terrorism investigations, national security investigations, or other activity under the AG Guidelines for FBI National Security Investigations and Foreign Intelligence Collection would not be reviewed by the Human Source Review Committee (HSRC). The HSRC, previously called the Confidential Informant Review Committee, is a committee composed of DOJ and FBI representatives that will review certain human sources who report on criminal matters. Pursuant to the new AG Guidelines, the following categories of human sources will require special approvals: Senior Leadership Sources, Privileged or Media Sources, High-Level Government or Union Sources, and Long-Term Sources. All sources will be subject to the validation process as detailed in the FBI's Confidential Human Source Validation Standards Manual (pending approval).

93. Will the FBI make changes to existing policy in order to allow an investigation to be conducted when an FBI agent retires or resigns? What is your view on whether the FBI has an institutional interest in reviewing whether there were violations of its internal disciplinary system, even when the agent subsequently retires or resigns?

Response:

Prior to November 2004, internal investigations were discontinued when an employee resigned or retired during the pendency of an investigation/adjudication. On 11/1/04, that policy was changed so that, notwithstanding the resignation or retirement of an employee, a disciplinary matter is completed when necessary to protect the institutional interests of the FBI (such as when a retiree seeks FBI re-employment as a contractor), while also considering the finite resources available to the FBI in investigating/adjudicating employee misconduct cases, the need for speedy resolution of matters impacting current employees, and the limited impact the FBI's administrative process can have on a former employee. This determination to complete a case notwithstanding the subject's retirement or resignation will be made on a case-by-case basis.

94. The GAO has reported that no government-wide policies or process are in place to improve the sharing of critical counter-terrorism information. Please provide more information on what steps the FBI is taking to improve information-sharing with its state and local partners. Specifically, how will bureaucratic measures such as the creation of an "FBI Information-Sharing Policy Board" ensure that "real time" information-sharing of terrorist information with state and local law enforcement authorities will take place?

Response:

Since the attacks of 9/11/01, the FBI has enhanced our partnerships with state, local, and tribal law enforcement to ensure that we share information as fully and appropriately as possible with our law enforcement and IC partners. The guiding principle is that FBI information and IT systems must be designed to ensure that those protecting the public have the information they need to take action. Three primary initiatives are: Law Enforcement National Data Exchange (N-DEx); Law Enforcement Regional Data Exchange (R-DEx); and the Law Enforcement Online (LEO) network. N-DEx will provide a nationwide capability to exchange data derived from incident and event reports. The national scale of N-DEx will enable rapid coordination among all strata of law enforcement. R-DEx enables the FBI to join participating Federal, state, tribal, and local law enforcement agencies in regional full-text information-sharing systems under standard technical procedures and policy agreements. The FBI makes national intelligence more readily available to state, tribal, and local law enforcement agencies through LEO. This system provides web-based communications to the law enforcement community

to exchange information, conduct online education programs, and participate in professional special interest groups and topically focused dialog.

FBI efforts to ensure the "real time" sharing of terrorist information with state and local law enforcement authorities include the FBI's JTTFs and FIGs, the TSC, the NCIC Violent Gang and Terrorist Organization File (VGTOF), LEO, and other activities discussed further below.

From an information sharing perspective, the FIGs are the FBI's primary component for receiving and disseminating information. They complement the JTTFs and other squads and task forces. The FIGs play a major role in ensuring that we share what we know with our IC and law enforcement partners. The FIGs share information with law enforcement partners through Fusion Centers. State Fusion Centers and other Multi-Agency Intelligence Centers have become a focal point of information exchange and relationship building, and the FBI is committed to participating in these centers as resources permit. We have identified 43 states with designated State Fusion Centers in varying stages of development. FBI personnel are assigned to 24 of these centers and we are assessing the remaining 19 centers for assignment of FBI personnel. Some of the existing Fusion Centers are co-located with the FBI's FIG and local JTTF. In addition to supporting the State Fusion Centers, we are also participating in 8 select Multi-Agency Intelligence Centers throughout the country; a total of 188 FBI personnel are assigned to 32 state and regional Fusion Centers.

In addition to these efforts, the FBI shares classified intelligence and other sensitive FBI data with Federal, state, and local law enforcement officials who participate in the JTTFs, which are important force multipliers in the fight against terrorism. Since 9/11/01, the FBI has increased the number of JTTFs from 35 to 101 nationwide. We have also established the National Joint Terrorism Task Force (NJTTF) at FBIHQ, staffed by representatives from 38 Federal, state, and local agencies. The mission of the NJTTF is to enhance communication, coordination, and cooperation by acting as the hub of support for the JTTFs throughout the United States, providing a point of fusion for intelligence acquired in support of counterterrorism operations.

The FBI has also established the TSC to consolidate terrorist watchlists and provide around-the-clock operations support for Federal, state, local, and tribal law enforcement personnel across the country. Police on the streets access the TSC through the FBI's NCIC and its VGTOF. The FBI will continue to create

new avenues of communication between law enforcement agencies to better fight the terrorist threat.

To provide a single source of coordinated Federal assessments to state and local officials, the FBI is also joining with DHS, the ODNI, and other agencies to establish an Interagency Threat Assessment Coordination Group located at the NCTC.

The FBI's Information Sharing Policy Board (ISPB), which is chaired by the EAD of the NSB, further enhances our information-sharing efforts with our law enforcement partners. The ISPB brings together the FBI entities that generate and disseminate law enforcement information and intelligence to implement the FBI's goal of sharing by rule and withholding by exception. The ISPB initiates, develops, enacts, monitors, and maintains the primary policies, decisions, and procedures concerning substantive criminal and intelligence information sharing internally and externally. The FBI ISPB oversees the FBI's participation in the Information Sharing Environment (ISE) and addresses any ISE-related FBI information-sharing policy issues. For example, upon the recommendation of the ISE PM in 2006, the ISPB reviewed the policies associated with FBI pilot projects funded by the ODNI.

On 11/14/06, the ODNI submitted to Congress the Implementation Plan for the terrorism ISE, which serves five communities: intelligence, law enforcement, defense, homeland security, and foreign affairs. For information sharing at the Federal level, the ISE Implementation Plan calls for greater coordination so that strategic and time sensitive threat information gets to those who need it. Key elements are a national management structure, architecture, and standards. FBI roles include:

- The AD for the DI is a full member of the ISE Information Sharing Council, which is chaired by the ISE PM, who comes from the ODNI. A senior FBI executive is a deputy to the ISE PM.

- The FBI's CIO develops and implements plans for the ISE Enterprise Architecture Framework and Common Terrorism Information Sharing Standards, consistent with the DOJ and IC architectures and standards.

- The FBI has established the NSB to combine intelligence, counter-terrorism, counterintelligence, and WMD functions, making the FBI a preeminent domestic intelligence agency. The NSB shares information

with the other U.S. intelligence agencies through secure communications and the Intelink network.

- The FBI has assigned SAs and analysts to the NCTC, which analyzes all intelligence pertaining to terrorism. A senior FBI executive is the principal deputy director of the NCTC. The FBI CTD is co-located with the NCTC and the CIA's Counterterrorism Center.

For information sharing with state, local, and tribal governments, the ISE Implementation Plan provides for a network of state and regional Fusion Centers that communicate, cooperate, and coordinate with each other and with the Federal government. In 2006, the FBI provided to the ISE PM an Enterprise Architecture report on 39 FBI programs related to the ISE (29 Unclassified, 10 Secret). The FBI followed up with briefings by senior representatives of the NSB, the Science and Technology Branch, the OCIO, and PMs of the following 13 unclassified programs related primarily to the ISE Implementation Plan.

Dedicated National Counterterrorism Programs:

1. Foreign Terrorist Tracking Task Force (FTTTF) (including E-Guardian)
2. TSC

Counterterrorism-Related Web-based Networks

3. LEO (including InfraGard support)
4. SCI Operational Network

Information Sharing Infrastructure

5. Sentinel
6. N-DEx

Analysis and Dissemination Capabilities

7. FBI Automated Messaging System

Collection and Exploitation Capabilities

8. ELSUR Data Management System

Federal Multi-source Information Resources

9. IDW

Primary Law Enforcement Community Resources

10. NCIC (including VGTOF)
11. Next Generation Integrated IAFIS
12. Biometric Interoperability
13. CODIS

Additional FBI projects are supported by the ISE PM as pilot projects.

95. Please clarify your response to my written question regarding Inspector General Fine's report of a 42% rate of noncompliance with confidential informant files with respect to the Section 1V, Special Notification Requirements of the current Attorney General Guidelines. Contrary to the written response provided by the FBI to the Committee on November 30, 2006, there is a requirement that the FBI notify state and local prosecutors of criminal activity by confidential informants. Specifically, subsection B.2 of the Special Notification requirements states "whenever such Notifications are provided the Chief Federal Prosecutor.....and the Special Agent in Charge with the concurrence of each other shall notify any state or local prosecutor's office that has jurisdiction over the confidential informant's criminal activity".

a. Please explain how compliance can be achieved when it is not known whether compliance is required under the existing Guidelines.

Response:

Please see the responses to Questions 89 and 90, above.

b. Please explain how the new and revised Guidelines will deter future non-compliance with the Guidelines when the Guidelines have failed to act as a sufficient deterrent in the past.

Response:

The new human source policy will mandate compliance. Appropriate communications will be sent to the field to ensure familiarization with the new AG Guidelines and SSAs' Quarterly Reviews will address compliance with these Guidelines. One of the critical elements of the performance work plans for both SAs and their supervisors specifically identifies compliance with the AG Guidelines as a performance measurement, making it clear that non-compliance with the new Guidelines will be addressed as a performance matter. If merited by

the violation, a report may be issued to the appropriate entity within DOJ or to the FBI's OPR, resulting in formal review and potential disciplinary action.

96. In light of the FBI's failure to comply with the existing Guidelines and the ineffectual sanctions to deter violations of the Guidelines, please state the FBI's position on H.R. 4132, the Law Enforcement Cooperation Bill introduced by Congressmen Lundgren and Delahunt. The bill would require mandatory prompt Notification to federal, state and local prosecutors having jurisdiction, whenever the FBI obtains knowledge a confidential informant or any other individual has committed a violent crime. If the FBI has concerns about this proposed legislation, please provide the Committee with a detailed explanation of those concerns.

Response:

The FBI's concerns regarding H.R. 4132 are articulated in the 8/25/06 letter provided as Enclosure D.

III. NEW REPORTING REQUIREMENTS UNDER THE REAUTHORIZATION OF THE PATRIOT ACT

The USA Patriot Improvement and Reauthorization Act enacted last March contains new reporting requirements relating to National Security Letters as well as an audit of the use of these letters.

97. Under the Act, a report on the number of National Security Letters is due to the Senate Judiciary Committee by April 2007. Please provide the Committee with an update and detailed information on the FBI's progress to comply with implementation of these new reporting requirements.

Response:

Pursuant to the USA PATRIOT Improvement and Reauthorization Act of 2005, the AG submitted the first annual report on 4/28/06. The FBI is currently compiling the information required for the calendar year 2006 report. We expect that report to include a caveat regarding the reported number of different U.S. persons on whom we have collected data through NSLs because, toward the end of the year, we discovered that we had not adequately explained the change in the reporting requirement to our field personnel. That lack of clarity, together with the fact that the U.S. person status of the subject of an NSL (as opposed to the

U.S. person status of the target of the investigation) is not always clear, leads us to believe that the statistics we have this year on the number of different U.S. persons whose data is gathered through NSLs will not be as precise as we would like. Further, we have learned from the review conducted by the DOJ OIG that there are other errors in our compilation of these numbers. We continue to work to ensure the accuracy and reliability of these statistics.

98. Please provide the Committee with information relating to any changes in FBI policy or procedures following the enactment of the USA Patriot Improvement And Reauthorization Act last March.

Response:

The USA Patriot Improvement and Reauthorization Act ("Patriot IRA") amended several statues that are regularly used by the FBI in the conduct of its national security investigations. In limited respects, some of these statutory changes required changes to FBI processes; other notable changes largely codified procedures the FBI already followed.

NSLs. The Patriot IRA modified the various authorities pursuant to which the FBI issues NSLs in several respects, it increased the number of committees to which certain semi-annual reports are made, and it altered the content slightly of those reports.

Those changes required three changes to FBI process and procedure. First, the FBI is now required to report the number of different persons (including status as a U.S. Person or Non-U.S. Person) about whom information is sought. As discussed further above, before enactment of the Patriot IRA the FBI reported only the U.S. Person status and the number of different targets about whom information was gathered. This change in external reporting has required changes in internal reporting. Agents are now required to include with every request for an NSL the U.S. Person status of the person to whom the requested NSL relates.

The second change to FBI process and procedure required by the Patriot IRA relates to the internal evaluation that must accompany every request for an NSL. Prior law automatically imposed an obligation of confidentiality on the recipient of an NSL. The Patriot IRA requires a case-by-case evaluation of the need *vel non* for the recipient to be obligated not to disclose the existence of the NSL. In response, FBI process now requires its employee initiating the NSL request to

explain in the request whether, and if so why, the recipient should be obligated not to disclose the NSL. That justification is reviewed along with the request for the NSL and must be approved by the official who executes the NSL.

Finally, the Patriot IRA mandated that the recipient of an NSL be affirmatively notified of: the process by which he or she can challenge the NSL or the nondisclosure provision and his or her right to disclose the NSL to persons necessary to comply with the NSL request, including an attorney to obtain legal advice or legal assistance regarding the NSL. The FBI made conforming changes to the standard forms of all NSLs.

Roving Foreign Intelligence Surveillance Act (FISA) Surveillance. The Patriot IRA modified FISA regarding the amount of detail the FBI must provide in connection with a FISA roving surveillance order. The application must now include a description of the "specific" target when the target is identified by description rather than by name. The Court, in turn, must find the possibility of the target thwarting surveillance based upon specific facts. The FBI has always provided a description of the target of surveillance, to the extent known. (The FBI's describing the target with as much specificity as possible has always been necessary to accomplish collection on the correct person or persons authorized by the Court.) Thus, this change, in effect, codified existing practice and did not require changes to FBI procedures.

The Patriot IRA also added a statutory return requirement, pursuant to which the FBI is generally required to notify the Court within ten days of instituting surveillance of a new facility under the roving authority. In the notice, the FBI must inform the Court of the nature and location of the new facility, the facts and circumstances upon which the applicant relies, any new minimization procedures, and the total number of electronic surveillances that have been or are being conducted under the roving authority. As a practical matter, that change simply codified the practice that was generally followed with roving surveillance. Even before the Patriot IRA, the FISA Court typically mandated notice to the Court when the surveilled facility changed. The new statute has imposed some more reporting requirements, and FBI has adjusted its process to generate the required information in a timely fashion.

Business Records under FISA. The Patriot IRA made significant changes to Section 215 of the Patriot Act (FISA Business Records Order). Among other things, the law now requires that a FISA Business Records Order describe the tangible things that must be produced with sufficient particularity to permit them

to be fairly identified. The Order must also contain a date on which the tangible things must be provided, and that date must afford the recipient a reasonable period of time in which to produce them. The Patriot IRA also imposes high-level supervisory approval of FISA Business Records Orders when they are seeking certain special categories of things such as library circulation records, library patron lists, book sales records, book customer lists, firearm sales records, tax return records, educational records, and medical records containing information that would identify a person.

The new statutory obligation to specifically describe the documents sought and to provide a date on which they must be produced did not required changes to FBI policy and procedures. Rather, it simply codified existing policy and procedure.

The obligation to obtain high-level supervisory approval for sensitive FISA Business Records Requests has resulted in an alteration in practice. Previously, virtually all FISA Business Records Requests were signed by either the FBI General Counsel or the FBI Deputy General Counsel for the National Security Law Branch. As a result of the Patriot IRA, that process has been altered to the limited extent that, in those very limited situations in which sensitive records are sought, the General Counsel obtains the signature of either the FBI Director or Deputy Director.

FISA Duration Changes. The Patriot IRA extended the duration of initiations and renewals of electronic surveillance, physical searches, and pen register/trap-and-trace surveillance for agents of foreign powers who are not U.S. persons. Initiations and renewals for U.S. persons remained the same.

The duration of FISA surveillance and physical search for non-U.S. persons was increased from the standard of 90-day initiations and 90-day renewals. Electronic surveillance and physical search coverage increased to a 120-day initiation and one-year renewal, and the pen register/trap-and-trace increased to a one-year initiation.

While there was little, if any, effect on FBI policies or procedures, both DOJ and the FBI have benefitted from the substantial savings in resources that resulted from the new durations.

IV. FBI'S ANTI-GANG STRATEGY

The FBI has undertaken various initiatives to combat gang violence.

99. Please provide the Committee with information on the current status and activities of the MS-13 National Gang Task Force.

Response:

The MS-13 National Gang Task Force (NGTF), which is staffed by six SSAs, six IAs, and one program analyst, is currently coordinating 105 cases in 44 FBI Field Offices, having recently initiated new investigations in Omaha and Seattle. The MS-13 NGTF has also assisted Field Divisions by drafting four wire-tap affidavits and its analysts have provided "hands-on" analytical assistance in investigations being conducted by the following Field Offices: Los Angeles, Washington Field Office, Seattle, Houston, Sacramento, Baltimore, and Charlotte. In addition, pursuant to a recent expansion in authority, FBI SAs assigned to Resolution 6 in Mexico City are conducting drug investigations and gathering information in support of transnational criminal gang investigations.

The MS-13 NGTF continues to direct a criminal file/fingerprint retrieval initiative known as the Central American Fingerprint Exploitation (CAFÉ). CAFÉ was developed in conjunction with the FBI's CJIS Division to retrieve and store in the FBI's IAFIS the criminal fingerprints of gang members from Chiapas, Mexico, and the Central American countries of El Salvador, Guatemala, Belize, and Honduras. CJIS has acquired approximately 180,000 sets of criminal fingerprints from Mexico, El Salvador, and Belize, and approximately 20% of these subjects have had some contact with American law enforcement officers. This project is supported by DOS and DHS, both of which have strong interests in being able to identify individuals who have criminal records and/or use aliases at the time they seek entry into the United States. In addition to contributing to border security and assisting in the coordination of gang investigations in the U.S., the CAFÉ initiative is serving as a catalyst for our Central American partner countries to develop their own versions of IAFIS, which will significantly enhance their ability to conduct effective criminal investigations in their own countries.

The NGTF is coordinating the collection and analysis of MS-13 communication activity in areas with significant MS-13 criminal activity or key communication activity among MS-13 cliques. Among other things, the NGTF coordinates the identification of additional gang cells and members, assists Field Offices in formulating investigative strategies that target MS-13's leadership structure, and ensures state and local law enforcement agencies are notified when MS-13 activity is detected in their jurisdictions. The NGTF also ensures that close

coordination is maintained with the National Gang Intelligence Center and DOJ's Gang Targeting, Enforcement, and Coordination Center, and is developing a means of using Interpol's "blue notice" system to detect when MS-13 subjects travel or are arrested.

100. Please provide additional information on efforts to coordinate anti-gang activities with government leaders in Central America. Specifically, please provide the Committee with more information regarding the FBI's agent working in El Salvador.

Response:

The FBI's San Salvador Legat office was opened as a regional office in June 2006 and provides coverage for El Salvador, Guatemala, Honduras, and Belize, specifically addressing the gang crime problem attributed to the MS-13 and 18th Street gangs. The San Salvador Legat office, which is staffed with a Legal Attaché and an ALAT, has assessed the needs of the judicial systems of the covered and has identified three areas that would benefit from coordinated FBI/U.S. Mission assistance: development of an effective fingerprint system, providing training in conducting investigations, and assisting in controlling the activities of gang members in the inmate population. The effective coordination of anti-gang activities will require improvement in all three areas, and the Legat is facilitating the necessary improvement.

The Legat's assessment revealed that none of the countries in the region have the capability to collect and compare fingerprints through automated means such as IAFIS. Without the ability to compare latent fingerprints from crime scenes or weapons with a subject's fingerprints, law enforcement efforts to solve crimes such as homicides, 70% of which are attributed to gang members, are significantly impeded. To address Ambassador Barclay's concerns regarding the recent increase in violent crime in El Salvador, the Legat coordinated a visit to El Salvador by the Los Angeles Police Department, Los Angeles Sheriff's Office, and Fairfax County Police Department. At the end of the visit, the U.S. law enforcement officers provided an out brief to the Director of the El Salvador police (the Policia National Civil) and to the U.S. Mission, sharing "best practices" and recommendations for combating the MS-13 and 18th Street gangs and making clear the need to fund an El Salvador IAFIS.

Learning from meetings with prison officials in El Salvador, Guatemala, and Honduras that they attribute the gang-controlled prisons to overcrowding, a lack

of resources, and poorly paid guards, the San Salvador Legat began to facilitate the provision of technical assistance and the donation of surplus equipment by U.S. Bureau of Prisons (BOP). The Legat is also coordinating the provision of specialized gang investigation training for Salvadoran police officers and prosecutors and is continuing to assist in bringing technology and training to the law enforcement agencies in the region, with the ultimate goal of enabling these organizations to conduct joint investigations of transnational gangs with U.S. law enforcement agencies and to more effectively investigate and prosecute crime within their own borders. To bolster our relations with Central American law enforcement, the MS-13 NGTF recently co-sponsored the Los Angeles International Chiefs of Police Summit on Gangs. The Summit successfully brought together Chiefs of Police from El Salvador, Honduras, Guatemala, Belize, and Chiapas, Mexico, to discuss with American and Canadian law enforcement and other government officials the impact transnational gangs have on Central America, the United States, Mexico, and Canada. This meeting resulted in the identification and development of four initiatives that will be further developed at the April 2007 International Anti-Gang Conference in El Salvador: Top 20 Gang Fugitives, Officer Exchange Program, Prevention/Intervention, and Intelligence/Information Sharing.

101. Please identify the criteria used by the FBI to identify gang members. Specifically, please explain in detail the criteria used to identify gang members arrested in the 650 arrests announced in September 2005.

Response:

The FBI considers an individual to be a gang member if he or she admits to gang membership when arrested or while incarcerated. Absent such an admission, the FBI considers an individual to be a gang member if any two of the following occur: 1) the individual has been identified as a gang member by someone of proven reliability; 2) the individual has been identified as a gang member by an individual of unknown reliability and the information provided by that individual has been corroborated in significant respects; 3) the individual has been observed by law enforcement to frequent a known group's area, to associate with known group members, and/or to affect that group's style of dress, tattoos, and symbols or hand signals; 4) the individual has been arrested on more than one occasion with known gang members for offenses consistent with gang activity; 5) the individual has admitted membership in an identified group at any time other than arrest or incarceration.

The 659 subjects arrested during the 9/7/05 international take-down were selected based upon outstanding warrants or their illegal status within the United States. Seventy-seven of the 659 subjects were MS-13 gang members arrested in the United States on outstanding warrants or immigration violations. Of those 77 MS-13 gang members, 4 were arrested on federal charges other than immigration, 34 were arrested on state and local charges, and 39 were arrested for immigration violations. The 77 subjects were identified as MS-13 gang members through law enforcement resources in the states where they were arrested, including: Rhode Island, New York, New Jersey, Virginia, Georgia, North Carolina, Tennessee, Ohio, Wisconsin, Nebraska, California, and Texas. In addition, the following foreign countries identified and located gang members who were wanted for outstanding warrants, El Salvador (232), Honduras (162), Guatemala (98), and the state of Chiapas, Mexico (90).

102. What additional resources are needed to continue operations of the National Gang Intelligence Center established in 2005? What steps are being taken to coordinate efforts of the Center with state and local law enforcement?

Response:

Working in concert with other Federal, state, and local criminal justice agencies, the FBI established the National Gang Intelligence Center (NGIC) to further the collection and analysis of gang intelligence for appropriate use by all criminal justice agencies. The mission of the NGIC is to support criminal justice agencies through information sharing; to perform strategic and tactical analysis of available data focusing on the growth, migration, criminal activity, and associations of gangs; to provide one-stop shopping for gang information; to conduct research and analysis to identify nationwide gang trends; to develop intelligence for the deconfliction and coordination of gang investigations and prosecutions; and to identify any associations or credible links to terrorist activities. A continuation of funding at its current level is required to maintain on-going efforts in support of this mission.

State and local law enforcement remain the primary consumers of NGIC intelligence, which is shared using a three-pronged approach.

The first aspect of this approach is the provision of information access using existing and emerging technologies, including the use of Special Interest Groups (SIGs) on LEO. The NGIC site stores intelligence collected from law

enforcement entities across the country on LEO, which is available to users 24 hours a day. LEO also provides a vehicle through which law enforcement can to request tactical or strategic support, or specific intelligence or information, from NGIC analysts. Another NGIC partner, the Regional Information Sharing System, will provide a site that mirrors that found on LEO. In February 2006, the NGIC began using a standardized Request for Information (RFI) form through LEO's NGIC SIG, allowing users to request gang-related information from the NGIC. The RFI enables users to request analytical or tactical support or information on specific gangs, individuals, or tattoos/graffiti.

As part of NGIC's mission, an information technology team comprised of engineers, project management specialists, and financial specialists has been working to develop a single access point for state and local law enforcement entities to receive, request, and access intelligence products and tools. NGIC is acquiring access to several databases used by law enforcement across the country, including GangNET, CalGang, I-CLEAR, and R-DEx.

Secondly, the FBI ensure that the perspectives and needs of our state and local law enforcement partners are recognized and accommodated by participating in the NGIC's Law Enforcement Executive Fellow Program, a six-month program that provides a forum in which state, municipal, and tribal law enforcement executives can share expertise and intelligence.

Lastly, NGIC analysts routinely attend gang conferences to keep current on evolving issues and provide training and briefings to state and local law enforcement personnel. This training includes techniques to assist law enforcement authorities recognize gang activity and gang migration, which is especially valuable to venues that have no historic gang problem but have been newly identified as having a developing gang presence. The NGIC partners with the National Alliance of Gang Investigators Association and sponsors their bi-annual executive board meetings.

Questions Posed By Senator Biden

LOCAL CRIME – COMMUNITY ORIENTED POLICING SERVICES

103. Director Mueller. As you know, I spent my career working to ensure that law enforcement has the tools to do the job to combat crime, and I must say that I am very troubled by the recent Uniform Crime Reports that show what many local chiefs and

sheriffs have been telling me for years – crime is on the rise in the United States. I have often said that fighting crime is like cutting grass. You mow the lawn and it looks great. You let it grow for a week and it looks a little ragged. You let it grow for a month or two, and it looks like a jungle. Well – we are starting to see a jungle. And, listen – I think that we know what we need to do. I believe that we need to reinstate the COPS hiring program and we need to add 1,000 new agents to fill the gaps left by transitioning from local crime to counter-terrorism. Unfortunately, we have decimated the COPS hiring program despite evidence that it works. Study after study showing us what we all know – more cops equals less crime. And despite this evidence we have killed the program. Do you believe that more local COPS on the streets helps combat local crime and can help with counter-terrorism efforts?

Response:

The FBI has a long history of working with our state and local partners, and we believe there are mutual benefits to maintaining robust law enforcement capabilities at all levels.

Local Crime – Federal responsibility to help combat crime

104. Mr. Mueller, many of my Republican colleagues make the ideological argument that local crime is a local problem, and therefore, the Federal government should not play a role in helping local agencies address the local problems. I strongly disagree! How can a local police Chief in Wilmington control the drug trafficking running up and down the I-95 corridor? How can a local sheriff prevent the farming of opium in Afghanistan? How can a local cop address the MS-13 gang that got it roots in El Salvador? It is my view that crime is a national problem and it requires a federal solution. This is why I strongly support federal funding for the COPS program and the Justice Assistance Grant and why I want to add 1,000 new FBI agents to work on local crime with local agencies. What is your view on local crime? Is it a purely local problem in your view and do you agree that international and national problems can have a local impact?

Response:

There is often an international component of crimes that are ultimately executed in, or that directly impact, U.S. localities, and it appears that the trend is toward an increase in multi-jurisdictional crimes. In addition to the circumstances you note, cyber crime is another example of crime crossing jurisdictional and international boundaries. While the FBI must prioritize its resources to protect the nation from

terrorism while balancing other responsibilities, we continue to work with and support our state and local law enforcement partners in many ways to address these crimes, including the provision of intelligence analysis and specific expertise.

LOCAL CRIME – LEGISLATION TO AUTHORIZE 1,000 ADDITIONAL FBI AGENTS

105. I noted that in answers to written questions from Senator DeWine you discussed an issue that we discussed privately several years ago – the reprogramming of FBI agents from crime to terrorism. In fact, you indicated that you have lost 994 FBI criminal case agents since September 11th. And, because of this "the FBI has made difficult choices on how to most effectively use the available agents." My view is that Public safety should be our number one priority, and I think of all the challenges that you are facing with reforming the FBI shortages of agents should not be one. Quite simply, you must have the resources to respond to terrorism AND crime. To this end, I introduced a bill that would authorize an additional 1,000 agents to fill this gap. Do you view the FBI's responsibility to prevent and respond to crime and would 1,000 additional agents ultimately assist you in meeting the dual challenges of addressing crime and terrorism in the post 9-11 era?

Response:

The FBI's post-9/11 reallocation of SAs previously assigned to its criminal program did not diminish the FBI's commitment to criminal matters, but it did reduce the number of FBI SAs available to prevent and respond to crime. For a substantial increase in SAs to be fully effective, such an increase should also address the corresponding need for additional equipment and other infrastructure, as well as support employees. If these needs are not addressed, the additional SAs will not be able to function at their full potential.

DOMESTIC SECURITY – CREATING A HOMELAND SECURITY AND PUBLIC SAFETY TRUST FUND

106. Many of the things that we need to do to secure our nation will cost more money, but we can afford it if we change our priorities. This year, the tax cut for individuals making over $1,000,000 dollars is $60 billion. At the same time, the budget for the Department of Homeland Security is $35 billion and the budget for the Department of Justice, which includes the FBI, is $21 billion. So, the two major agencies charged with our nation's domestic security are funded at a lower level than the tax cut for our most fortunate. This is the wrong priority in my view, and I have proposed that we take less than one year of the

tax cut for millionaires and put it in a trust fund to invest in our homeland security over the next five years. With this funding, I would implement the 9/11 Commission Recommendations, fully fund the COPS program, invest in 1,000 new FBI agents, invest in critical infrastructure protection. I know that you will argue that these budgeting decisions are above your pay grade, and that tax policy is not your area of expertise, but I'd like for you to get back to me on the priorities that you would invest in if you had access to additional resources in the coming years.

Response:

The FBI appreciates the efforts of this Committee and the Appropriations Committees to ensure we have the necessary resources. As always, the FBI will work with DOJ and OMB to identify the programs and budgeting needed for the FBI to continue to fulfill its responsibilities.

BACKGROUND CHECKS FOR VOLUNTEERS WORKING WITH CHILDREN

Over the last several years, the FBI has been working with the National Center for Missing and Exploited Children and other organizations on the Child Safety Pilot Program. This pilot program aimed to test the usefulness of background checks being run for volunteers who will be working with children. 25,000 background checks have now been run and a significant number (seven percent) were returned raising concerns about that particular volunteer applicant. In other words, this program led directly to hundreds of volunteers rightfully being kept from securing positions in which they could harm and prey on kids. These results show the usefulness of background checks in this context, and I want to explore ways to expand the program.

107. Will you commit your staff's time and resources to help us expand this program?

108. Does the FBI have any recommendations for how to most effectively and efficiently expand this model?

Response to Questions 107 and 108:

On 12/17/05, Congress enacted the "Violence Against Women and Department of Justice Reauthorization Act of 2005." Section 1197 of this Act extended the child safety pilot program for an additional 60 months and expanded the pilot program to include nonprofit organizations that care for children. The Act also increased the number of fingerprint submissions allotted for the pilot program from 100,000

to 200,000. Eligibility for participation in the pilot program is determined by the National Center for Missing and Exploited Children (NCMEC), with the AG's concurrence. To date, the following nonprofit organizations have been approved to participate in the pilot program: American Camp Association, National Alliance for Youth Sports, National Crime Prevention Council, and the Palouse-Clearwater Environmental Institute.

To support the expansion of the program, the FBI installed a circuit for the CJIS Wide Area Network at NCMEC so that they could submit fingerprints to, and receive criminal history records from, the FBI electronically. The FBI also modified its billing policy to permit any agency that participates in the pilot program to establish a billing account with the FBI. (Previously, only agencies that submitted 500 fingerprints or more a year could establish a billing account. All other agencies had to submit a personal or business check with their fingerprint cards.) As a result of these program improvements, almost every volunteer organization participating in the pilot program is submitting their fingerprints through NCMEC. The FBI believes the current infrastructure is sufficient to process the 200,000 fingerprints allotted for the pilot program.

Recommendations for ways to expand access to FBI background checks for employees and volunteers working with children have been offered in the "Attorney General's Report on Criminal History Background Checks," which was submitted to Congress in June 2006. This report was prepared pursuant to section 6304 of the Intelligence Reform and Terrorism Prevention Act of 2004, which required the AG to make recommendations for improving, standardizing, and consolidating the existing statutory authorization, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes. Further expansion of the program would likely require additional fee-funded or other resources to manage enrollments and process fingerprint cards.

109. One finding from the pilot program is that volunteer organizations can only undertake the background checks if it is low cost and administratively feasible. For example, we've found that if organizations face a $20 fee per background check they will be much less able to participate than if the cost were $5 per background check. What can the FBI do to work with volunteer organizations to lower the costs as much as possible?

Response:

The FBI fee for processing volunteer fingerprints is calculated to cover the actual cost of processing the check, including the costs for collecting, maintaining, and disseminating criminal history record information up to the statutory maximum of $18. This fee, which applies to all volunteer checks (not limited to the pilot program), is currently $16 or $18 per submission, depending on the method of payment. The FBI is currently reviewing its fee structure and will propose any necessary revisions by the end of Calendar Year (CY) 2007 (fees will remain within statutory constraints).

110. How can we bring live scan fingerprint technology to bear in the expansion of this program?

Response:

On 11/8/06, the FBI announced the selection of 19 contractors to serve as pre-approved "channelers" who can contract with authorized recipients to capture and submit fingerprints to the FBI for criminal history records checks for noncriminal justice purposes, receive the results of the criminal history checks from the FBI, and promptly forward those results to the authorized recipient. NCMEC has been designated as the authorized recipient of criminal history record information under the PROTECT Act pilot program; the volunteer organizations are not authorized to receive criminal history record information. Therefore, NCMEC could contract with one or more of the approved channelers to provide live-scan fingerprint identification services, though the cost of the service provided by a channeler would add to the total cost of the background check.

Questions Posed by Senator Feinstein

Background: In the November 28, 2006 *Washington Post*, it was reported that the FBI computer system that screens gun buyers' backgrounds for criminal activity – the National Criminal Background Check System – had crashed several times over the past two days, with the outages potentially allowing people to buy firearms without being screened if sellers gave up on making the required check. An FBI spokesman that there was a technical glitch, but said it was still unclear when the problem would be fixed.

111. Can you provide a fuller explanation of what happened, and explain what steps have been taken to fix this problem?

Response:

Please see the response to Question 75c, above.

112. Is there a back-up system in place to perform background checks should the system face any breakdowns in the future?

Response:

There is not currently a back-up system to perform background checks if the primary system is nonoperational.

Background: A DOJ audit released on December 4 says the FBI faces a $56.7 million funding gap in its Sentinel computer project, and "uncertainty" over how to meet its funding needs to continue building it. The FBI responded that this money has been identified from existing FBI balances but will not impact operational programs.

113. Is this still the case? If not, what is needed to keep the Sentinel computer project on track, and why is it needed?

Response:

Please see the response to Question 65b, above.

114. Can you provide us with your candid assessment of how the implementation of the Sentinel project is going, especially as Sentinel enters its higher-risk second phase in 2007?

Response:

We believe the Sentinel Program is on track based on all of the completed program reviews and control gate checks required by the FBI's Life-Cycle Management Directive with respect to capabilities to be delivered in Phase I. In late October 2006, the Sentinel PMO received approval to move from the final design stage to the development of the Phase 1 product. Hardware for the system was delivered and installed at the data centers in both Clarksburg, West Virginia, and FBIHQ. In parallel with development, we are also completing the training

curriculum and materials required for deployment of this phase. Completion of Phase I is still anticipated by the late spring of 2007.

We have also started planning for how to develop the capabilities currently allocated for Phase II, and we intend to have all requirements understood, the development approach refined, and a realistic schedule defined (including all lessons learned from Phase I) before beginning the implementation of Phase 2.

As currently planned, the same stringent checks and balances currently practiced for Phase 1 will be employed in Phase 2 - weekly briefings to the Director and Deputy Director; regularly scheduled updates to the DOJ CIO, OMB, several Congressional committees, and other oversight and advisory bodies; a thorough Earned Value Management (EVM) process for both Lockheed Martin and the PMO; and financial reviews by the FBI's Finance Division.

The PMO anticipates continued success in holding program changes and additional costs in check, while realizing that there may be occasions where the right decision will be to modify or adapt the program to meet new critical requirements. Again, there is a detailed process in place for managing change.

Background: As you know, during the 1980s and 1990s, Ms. Leung was being used an informant by the China Squad of the FBI's Los Angeles Field Office. Shortly after our last FBI Oversight Hearing, Inspector General Fine issued a public version of his report on the FBI's handling of Ms. Katrina Leung, along with a list of 11 recommendations beyond the FBI's own corrective steps that were implemented after the Leung investigation began.

Following the last Oversight hearing, Senator Grassley asked you about a separate matter, involving Cecilia Woods' allegations that her supervisor engaged in a sexual relationship with a paid informant. Senator Grassley noted that the standard FBI penalty for an improper personal relationship with an informant is a mere 7-day suspension, and that Ms. Woods' supervisor received a 14-day suspension even though the FBI's administrative review substantiated allegations that he had engaged in misconduct, and he has now apparently admitted in a deposition to sexual activity with an informant.

115. What is the status of the FBI's efforts to implement the Inspector General's 11 recommendations? If some of those recommendations are not being implemented, please explain why.

These responses are current as of 2/8/07

Response:

Recommendations 1, 6, 7, 8, 9, 10, and 11 have been implemented. Recommendation 7 provides as follows: "The FBI should require alternate case agents meet with asset a specified number of times a year. The frequency of alternate case agent meetings with an asset should depend on the importance of the asset." The FBI believes the current policy sufficiently addresses the OIG's concern. Under current policy, for every source opened, the FBI requires an alternate SA be assigned to the case. Moreover, two SAs must be present when paying a source. The frequency with which an alternate case agent meets with an asset is based on numerous factors and will be left to the discretion of each field office.

Recommendations 2 and 5 have been partially implemented, with full implementation scheduled by the summer of 2007.

Implementation of Recommendation 4 is in progress; the FBI intends to complete implementation by the winter of 2007.

Implementation of Recommendation 3 is also in progress. This recommendation suggests as follows: "The FBI should require the field SSA, the ASAC [Assistant Special Agent in Charge], and the FBIHQ SSA responsible for each asset to signify that they have reviewed the entries in this subsection as part of the routine file review or of the semi-annual or annual asset re-evaluations. If anomalies exist, the SSA should note what action has been taken with respect to them, or explain why no action is necessary, and the ASACs agreement should be noted." The FBI believes the creation of new asset review mechanisms satisfactorily addresses the OIG's concern. During the past two years, the FBI has been developing new policies regarding the utilization of confidential human sources through our Confidential Human Source Re-engineering Project. The FBI's DI and DOJ are collaborating to simplify and standardize administrative procedures, clarify compliance requirements, and improve compliance with the AG's Guidelines. This re-engineering project will include the upcoming Confidential Human Source Validation Standards Manual and the subsequent implementation of a revamped validation process that will apply to all confidential human sources. FBI SAs, the FIGs, FBIHQ, and DOJ will all have roles in measuring the value of a source's operation as well as managing the risks associated with using a human source. Redundancy of review will be an intentional part of the validation process, serving as a check and balance on human source activities, including

authorized and any possible unauthorized criminal activities. The EAD of the FBI's NSB has approved a draft of the Validation Manual, and the FBI is moving toward implementation throughout the FBI.

116. Some critics argue that the FBI often allows agents involved in wrongdoing to quietly retire. What are you doing to ensure future accountability, since most of the FBI personnel responsible for the Leung security breach avoided negative consequences by retiring? Do you believe that the penalties described in your colloquy with Senator Grassley about the Woods allegations are consistent with the recommendations of the Inspector General in the Leung affair? If so, why?

Response:

As stated above in response to question 93, in order to ensure the accountability of agents who engage in wrongdoing and then attempt to quietly retire, the Director amended FBI policy governing the administrative inquiry process so that, notwithstanding the resignation or retirement of an employee, a disciplinary matter is completed where necessary to protect the institutional interests of the FBI. Obviously, any matters involving criminal allegations are pursued irrespective of an employee's retirement or resignation.

117. In response to a written question from Senator Grassley after our last Oversight hearing, you appear to acknowledge that no one has ever been disciplined for whistleblower retaliation under the FBI's guidelines. Is that accurate? Can you explain? What is being done to ensure that FBI whistleblowers are being protected from retaliation?

Response:

That is not accurate. As stated above in response to question 42a, the FBI has disciplined a number of employees for engaging in retaliatory behavior, including whistleblower retaliation. OPR recently suspended one supervisor for 30 days for engaging in retaliation against a whistleblower. Although not final, in another disciplinary matter, OPR has proposed the dismissal of a supervisor for retaliating against a whistleblower. In another, OPR imposed a 3-day suspension on a supervisor who threatened to retaliate against a whistleblower.

118. You also noted that, in the one FBI case where a 3-day suspension was initially imposed for whistleblower retaliation, that decision was later reversed, through an

appellate process that the FBI's General Counsel declared to be"flawed." What has been done to fix the appellate process?

Response:

Upon the completion of the Bell/Colwell Commission's study of the FBI's disciplinary process, the FBI adopted changes recommended by the Commission to improve the FBI's disciplinary process. With respect to the FBI's appellate process specifically, the Commission recommended key changes designed to improve the transparency and fundamental fairness of the appellate process for all FBI employees. These changes were adopted and made effective by the FBI Director on 8/19/05.

One such improvement offers non-SES employees the option to choose a mid-level manager, rather than an SES employee, to participate on the three-member Disciplinary Review Board (DRB), which convenes to hear appeals in those cases in which an adverse disciplinary sanction has been imposed by the FBI's OPR. (Previously, the voting members of the DRB's were composed strictly of SES employees.) The advantage of this change is that non-SES employees are now being judged with input from "one of their own." This concept is especially important in light of past OIG investigations into allegations of disparate treatment in the FBI's disciplinary process.

Another important change, recommended by the Commission and adopted by the FBI Director, was elimination of the ability to increase a disciplinary penalty on appeal. This change was made to ensure all employees could take full advantage of the FBI's appellate process without fear of facing additional sanctions. In addition, the Commission recommended that the "de novo" appellate standard be replaced with a "substantial evidence" standard, which is now being used to review matters on appeal. This change allows the FBI's appellate authority to continue to serve as an important check and balance on the entire OPR process.

In addition to the improvements mentioned above, the FBI's appellate authority will continue to seek the advice of the FBI's OGC when guidance is needed on legal matters. The FBI is dedicated to ensuring the FBI's appellate process continues to operate in a fair, effective, and efficient manner for all employees.

Background: In response to questions following the last FBI Oversight hearing about press reports relating to the New York Field Office, you seem to acknowledge that there

may be some FBI agents who do not even have access to e-mail accounts and the internet. You also noted that the FBI has "not dedicated funding for Blackberry purchase or use," with such devices used by FBI divisions only on a limited fee-for-service basis.

119. Do you think these levels of e-mail, Internet and Blackberry access are sufficient? Please explain.

Response:

The FBI is becoming a more strategic, threat-based, and intelligence driven organization, with its IT infrastructure becoming a key enabler of increased flexibility in operations and sharing of information with external organizations. Several ongoing initiatives, including increased access to and use of the Internet and unclassified email accounts by SAs and professional staff, are making this possible.

Increased emphasis has been put on providing every SA with mobile wireless capability (currently using BlackBerry devices) to ensure ubiquitous capability to support the FBI mission. In the FBI, BlackBerry accounts are centrally managed but funded by a combination of sources, including allocations from centralized FBI funding, Field Office budgets, and a fee-for-service plan that is funded and managed in accordance with an office's priorities and needs.

At our current levels of email use, Internet and BlackBerry access are adequate to execute the FBI mission. However, changes in the scope and complexity of the mission will necessitate the use of technology to maintain our capabilities. These changes include improvements to our communications to increase the levels of unclassified and wireless mobile capability.

Recent efforts to upgrade our communications capabilities have included providing every SAC and senior executive with a BlackBerry account and device; connecting FBIHQ, all 56 field offices, and a few off-sites to the FBI's unclassified network (UNET); and conducting a requirements survey to determine how many individual circuits and personal computers are required to install an Internet-access, unclassified personal computer in every employee's workspace. To date, there are 10,623 terminals available; a total of 26,161 UNET accounts have been assigned to 9,387 FBI SAs, 1,783 IAs, and 14,991 other FBI employees, task force members, and contractors. The UNET email server

environment is capable of expanding to 30,000 accounts, affording adequate UNET accessibility once other requirements are met.

Additionally, we are conducting a mobility pilot project that will make wireless mobile devices more SA-friendly and provide instant access to critical databases anywhere at any time. Our fee-for-service policy allows those field offices with mobile communication requirements to provide additional BlackBerry functionality for their users until more widespread use in the Bureau.

Background: With[in] the past two weeks, the FBI issued an unusual apology to Brandon Mayfield. Mayfield, a lawyer and Muslim from Oregon, was arrested and held for weeks by the FBI, after FBI examiners erroneously linked him to a fingerprint found after the Madrid train bombing in 2004.

120. [O]ur written testimony describes a variety of internal reviews by teams of forensics examiners and scientists, and new policies adopted since the Mayfield error, all designed to prevent future latent print mistakes. Please explain why fingerprint examiners need to know a suspect's faith or underlying personal characteristics. What procedures have been put in place to ensure that the FBI Laboratory personnel are segregated from a suspect's faith, for example, or his race?

Response:

The latent print examiners were not aware of Brandon Mayfield's religious faith when they erroneously matched his fingerprint to the latent print found near the scene of the Madrid train bombings. When latent print examinations are performed, examiners are not informed of, and have no need to know, the religious faith of the person whose fingerprint they are examining.

Under certain circumstances, an examiner may be aware of physical characteristics such as sex, race, height, weight, eye color, and hair color, which are recorded on the standard fingerprint card. The fingerprint card does not record the individual's religion, so this information is not included in the fingerprint repository and is not addressed in an IAFIS search. If, for example, an unidentified subject commits a bank robbery, a latent print is lifted from something he touched, and the teller identifies him as being male, Caucasian, and over 6 feet tall, the latent print examiner may use those known physical characteristics to search for fingerprints in the database of individuals meeting that description. Since only about 30% of the IAFIS repository may be searched at any

one time due to technological constraints, those known factors may assist the examiner in conducting a more efficient search. Each individual in IAFIS is assigned an FBI number. Once an identification is made, strictly on the basis of the fingerprint comparison, the examiner will use the FBI number to obtain the fingerprint record, which contains identifying information such as name, arrest record, and the physical characteristics identified above.

121. Was the Mayfield error an isolated mistake, or did the FBI's internal reviews uncover other problems with accuracy in the analysis of evidence performed by the FBI's three Latent Print Units in other cases?

Response:

The Mayfield error was an isolated mistake. Previous similar case work of the latent print examiners and supervisor who made the error (i.e., cases in which identifications and/or IAFIS searches/comparisons were conducted), dating from 1997 to the time of the Mayfield error, was reviewed and no erroneous identifications were detected. The internal reviews of the three FBI Latent Print Units did not uncover other problems that called into question the accuracy of latent print analysis performed by these units. Nonetheless, recommendations for improvement in the latent print operations have been implemented in order to further minimize the possibility of future errors.

Background: In your recent written responses, you noted that the so-called terrorist watchlist – the FBI's Terrorist Screening Data Base, or TSDB – now contains almost half a million records. You agreed that erroneous inclusion in the TSDB "exerts a negative impact on the individual," and said that "the FBI takes errors seriously and is working to eliminate them."

122. [W]hat is the current backlog for such reviews, and has it increased or decreased in the past year? By how much? What is your definition of "backlog" in tbis context, and has it changed over the years?

Response:

As stated in the preamble to the question, the TSC and FBI do take errors seriously and work hard to eliminate them with a variety of approaches. There is no "backlog" in the review of incoming records because each records is subject to quality assurance reviews before it is added to the TSDB. The following

approaches have been implemented to ensure that the data in the TSDB is current, accurate, and thorough.

- Analysts in the TSC's Nominations and Data Integrity Unit (NDIU) review terrorist records submitted by the NCTC and the FBI daily to ensure the accuracy of biographical and derogatory information through SRQ software. This application enables the TSC to review every nomination of Known or Suspected Terrorists before it is added to the TSDB. As a result of this review, the analysts ensure that the records are exported to the appropriate support systems for screening opportunities based upon the requirements of the respective screening agencies (i.e., Customs, DOS, FBI, and state and local police). For example, individuals nominated to the TSA No Fly List must meet TSA's established criteria and also present a complete name and date of birth (a carrier requirement).

- In addition to the daily quality assurance provided by the SRQ, NDIU analysts work on various proactive quality assurance projects. For example, these analysts are currently "scrubbing" TSA's No Fly List. The "scrub", which has also been supported by 10 TDY Federal Air Marshals, involves a thorough review of every TSDB record currently exported to TSA's No Fly List. The "scrub" of TSA's No Fly List should be completed during the spring of 2007. These analysts will next "scrub" TSA's Selectee List. The Selectee scrub is scheduled to begin in approximately February of 2007.

- The NDIU analysts also conduct encounter-driven quality assurance. When a known or appropriately suspected terrorist is encountered by a law enforcement officer, border official, etc., the records associated with that individual are immediately reviewed for completeness and accuracy. If the records are determined to be accurate and complete, they are maintained as they are. If the records require modifications or removal, the analyst coordinates with the appropriate entity (the NCTC or the FBI) and ensures that record is adjusted or removed accordingly.

123. What is the timeline for resolving the backlog of challenges from those who claim they have been placed on this watchlist improperly?

Response:

Complaints from individuals who are having watchlist-related screening problems are handled through the watchlist redress process, by which individual complaints of adverse screening experiences (e.g., denied boarding on a plane, repeated secondary screening) are referred to the TSC when it appears the complainant is a watchlisted person. TSC established its formal redress process in January 2005 and now has a redress office dedicated to researching and resolving these matters. Because of the in-depth research and analysis the TSC performs on each redress matter, and the fact that most redress matters require that TSC consult with and/or seek additional information from other agencies, TSC does not consider any redress matter to be overdue (and therefore part of a backlog) unless it has not been concluded within 60 days TSC's receipt of the referral.

Following are the statistics for redress matters as of 1/3/07.

	CY2005	CY2006
Total Redress Matters Received	134	253
Total Closed	134	197
Total Pending	0	56
Average Completion Time (Calendar Days)	86	49
Backlog (Number of Pending Matters Open More Than 60 Calendar Days)	0	20

124. If there is a problem processing this backlog, what resources would be necessary to fix it?

Response:

The TSC redress office requires sufficient staffing to handle the volume of redress matters in a timely manner. As noted above, in 2006 TSC experienced an 89% increase in the number of redress matters it received over the previous year. TSC increased its redress staffing in FY 2006 by adding a dedicated redress supervisor, an additional full-time analyst, and several temporary-duty personnel, but has identified the need for additional permanent staff in FY 2007 to address the increased workload. Therefore, TSC is in the process of adding four new redress analysts during FY 2007, which would increase the compliment of full-time, permanent redress analysts from two to six. Under a recently signed agreement between TSC and DHS, DHS has agreed to provide staff to fill the four redress analyst positions during this FY.

It is important to note that redress backlogs can also develop when other agencies do not respond in a timely manner to TSC's request for consultation or additional information. For the past year, TSC has been leading an effort to establish a multi-agency MOU to be signed by all agencies that participate in the watchlist redress process. Among other things, the MOU would secure a commitment from these agencies to provide adequate resources to support the redress process. The MOU also seeks to document the existing inter-agency redress process to reduce confusion and to establish procedures to resolve conflicts among agencies, which TSC believes will streamline the process and thereby speed the resolution of most redress matters. The MOU would require each signatory agency to designate a senior official for redress to ensure that the obligations under the MOU are properly carried out. Currently, the MOU is in the interagency clearance process.

Background: On August 17, 2006, the *Washington Post* published an article describing the FBI Academy at Quantico. It noted that, while 37 hours of counterterrorism training are now given to new agents, this still represents just 5% of the curriculum.

125. The Washington Post article contrasts the FBI Academy with "the Farm" run by the CIA, in which CIA agents-in-the-making train for a year, focusing on how to identify, recruit and manage foreign informants. The article notes that CIA officers assigned to penetrate terrorist organizations are provided with additional, specific training that is heavy on language and cultural indoctrination. Is the CIA's "Farm" and additional formal training approach a model the FBI could use, at least for FBI recruits who plan to serve as intelligence analysts instead of criminal investigators? Why or why not?

Response:

The FBI's TD has entered into a partnership with the CIA to develop an FBI training program that models the CIA's Core Collector training. While the FBI's overall approach to HUMINT collection is similar to the CIA's, as are some techniques and tactics used, there are legal restrictions placed on the FBI that are not applicable to CIA Core Collectors. For example, FBI SAs must identify themselves as FBI when asked or within the early stages of the recruitment cycle, whereas the CIA is not held to those same requirements.

The content of the CIA course will be used as the foundation to build FBI-specific content and practical exercises. The new FBI course (the National Security Domestic Collectors Course) is expected to be six weeks for journeyman-level SAs.

For both agencies, IAs have separate and distinct responsibilities from FBI SAs/CIA Core Collectors, and therefore have different training requirements. FBI SAs have the sole operational responsibility of initiating and managing sources and assets, a function not shared by IAs. FBI new SA trainees receive course work in basic skills development relating to confidential sources, cooperating witnesses, and asset development during the 21-week course at the FBI Academy.

126. An NBC news report on December 4, 2006 also reported that, until recently, new agents received only two hours of Arabic culture training at the FBI Academy. Has this situation been changed, and if so, how many hours are now spent in each category?

Response:

The 21-week new SA training curriculum has, in fact, changed, consisting now of the following international terrorism topics taught by FBI instructors.

- Introduction to International Terrorism (2 hours)
- International Terrorism Case Management (2 hours)
- International Terrorism Investigative Techniques (2 hours)
- International Terrorism HUMINT Practical (4 hours)

This new curriculum also integrates 20 hours of instruction focusing on Arabic, Muslim, and Islamic topics taught by instructors from the United States Military Academy's Combating Terrorism Center in the following areas.

- Islam and the Evolution of Militant Islamic Ideologies (4 hours) (this block of instruction includes: origin of Islam, different schools of Islamic Thought, ideological tenets of Hezbollah, and the Five Pillars of Islam, among other topics).
- Shia Extremism (4 hours) (this block of instruction covers the origins and ideological tenets of Shia Extremists and Hezbollah).
- Beginnings of Sunni Extremism (4 hours) (this block of instruction covers the origins and ideological tenets of Sunni Extremists and Al-Qaeda).

- Virtual Caliphate: Web Use by Terror Networks (4 hours) (this block of instruction looks at breeding grounds for extremism and informal education methods used to radicalize youth).

- European Muslim Diaspora (4 hours) (this block of instruction addresses immigration patterns from threat countries and discusses the origins and operations of terror groups and their threat to the United States).

In addition to the training received during the new SAs' course, the FBI's TD sponsors Bureau-wide training in the areas of Arabic culture and Radical Islam culture as it relates to Sharia Law. The revised training curriculum for new SAs will include "Enrichment" nights that address these areas, and this training will also be offered to those serving in JTTFs and in various executive forums. In addition, beginning in 2005 the FBI's TD has sponsored one-year sabbaticals to Jerusalem for six SAs per year for full-emersion training in Arabic language and culture.

127. The NBC news report also noted that only 33 of the FBI's 12,000 agents have even a limited proficiency in Arabic, and that the FBI currently has a pool of only six fluent, Arab-speaking agents. What is being done to change this situation and accelerate the recruitment of agents proficient or fluent in Arabic?

Response:

The FBI has a variety of training programs designed to improve the language abilities of onboard SAs. For example, in October 2005, the FBI established a year-long overseas Arabic language training program for SAs, with instruction concentrating on practical Arabic for professional use and including familiarization with Arab customs and traditions and with the culture of Islam. Six SAs completed the first program in November 2006.

In addition to this program, the FBI provides shorter-term Arabic language training to SAs on a regular basis. In FY 2006, 34 SAs at various levels of proficiency were provided with survival, full-time, and immersion Arabic language training. For FY 2007, 72 SAs at varying levels of proficiency have submitted applications for Arabic language training programs at DOS's Foreign Service Institute, Middlebury College, and commercial schools with which the FBI has contracts. Approval of these training requests will depend on available funding.

The FBI has developed a self-study computer-based "survival" Arabic language training program that will be ready for distribution in January 2007. This interactive program is targeted to the specific language needs of SAs, and will provide them with a strong foundation in language skills on which to build higher-level proficiency. The FBI has also originated a self-study computer-based program both to teach agents to Romanize Arabic names according to IC standards and to predict nonstandard Romanizations that may be encountered. This program will also be available in January 2007. In addition, the FBI has created new listening and speaking exams that can test for dialect-specific Arabic ability, including Egyptian, Palestinian (Levintine), Algerian, and Iraqi, and we are considering adding other dialects. In the past, all SAs studying Arabic and those applying for SA positions were tested only with exams that measured ability in the Modern Standard Arabic. These exams were not always indicative of true useful speaking or comprehension ability.

The FBI's recruitment and marketing strategies targeting Arab Americans for FBI recruitment have greatly expanded to include the following initiatives.

- A strategy to expedite the testing of SA candidates possessing fluency in Middle Eastern languages has been implemented and will continue throughout FY 2007 and 2008. This strategy immediately identifies new applicants possessing language fluency and expedites all FBI testing and processing of these critically skilled language candidates.

- The FBI has dedicated staff who are solely responsible for the development and implementation of targeted Middle Eastern recruitment strategies. These strategies include building relationships (national and regional outreach to both the public and private sector and to the academic community); education (dispelling myths and misconceptions); direct recruitment; candidate referrals, special career invitational events; collegiate recruitment; high school information sessions and career days; enhanced advertising and marketing; and the promotion of cultural awareness.

- The National Recruitment Program has been restructured to ensure greater accountability and targeted recruitment programs have been implemented nationwide.

- A Middle Eastern Recruitment Task Force has been developed, comprising respected member of Middle Eastern Professional

Organizations, a Middle Eastern Advertising Agency, and current Middle Eastern FBI SAs. The Task Force held its first meeting on 11/13/06 and will meet monthly throughout FY 2007 to develop targeted recruitment strategies and to ensure these strategies are implemented with measurable results. The Task Force will also develop plans to build relationships with Middle Eastern communities and to provide appropriate training to FBI personnel and recruiters in all 56 field offices.

- The FBI is using the services of both Allied Media (a Middle Eastern Marketing Agency) and Bernard Hodes Advertising Agency to develop and implement a robust marketing strategy targeting Middle Eastern linguists for the SA position. This marketing campaign includes special career invitational events and Internet and direct marketing strategies.

- In 2006, the FBI developed the Middle Eastern Foreign Language Honors Internship Program, a targeted internship program designed specifically for students fluent in critical Middle Eastern languages. This program creates an immediate pipeline of SA candidates fluent in Middle Eastern languages.

- Advertisements have been placed in various mediums, including Al Manassah Weekly, Al Arab Weekly, Arab American Business, Copts.net, Arab American News, Aramica, The Arab Voice, Al Hureya, Al Akhbar, Al Nahar, Al Offok, Al Arabi, Detroit Chaldean Times, Arab World, Al Nashra, The Beirut, The Foreign Affairs Journal, Language Magazine, Arab American Business Journal, The Arab American Chaldean Council, Al Sahafa newspaper, Dandana Arabic Television.

- In partnership with numerous Middle Eastern organizations, the FBI hosted "An Evening with the FBI - Career Invitational" on 10/25/06 at FBIHQ. The participating organizations invited selected members of their communities who qualified and were interested in SA positions to attend the event, and 80% of the attendees spoke a critical foreign language.

- The FBI continues to identify and participate in career and job fairs throughout the country in an effort to reach Middle Easterners interested in SA positions.

Questions Posed by Senator Feingold

128. Last year the Government Accountability Office reviewed the Foreign Terrorist Tracking Task Force. GAO recommended that the FBI conduct a Privacy Impact Assessment of this program, which is required by FBI regulations, and has since occurred. GAO also recommended that the FBI make that Privacy Impact Assessment available to the public as appropriate, a recommendation that the FBI has stated is under consideration.

a. Has the FBI decided whether to issue publicly all or part of the Privacy Impact Assessment for the Foreign Terrorist Tracking Task Force?

Response:

As a national security system, the FTTTF system is exempt from the PIA requirement of section 208 of the E-Government Act. Even though the FTTTF system was not required to be assessed under Section 208 of the E-Government Act, the FBI nevertheless examined the privacy issues presented by the development of this system and is satisfied that the system adequately protects privacy. The FBI has determined that, consistent with the balance struck by Congress when it enacted the E-Government Act, the harm to the Bureau's national security mission outweighs the need to provide public awareness of the precise details of the technological tools the FTTTF employs in fighting terrorism. Therefore, we have decided not to make the PIA available to the public. The PIA was, however, provided to DOJ's Privacy and Civil Liberties Officer.

b. If not, will the FBI share the full document with the Judiciary Committee, in classified form if necessary?

Response:

This information is provided separately.

129. According to your recent response to a written question from Senator Leahy after the last oversight hearing, as of May 2006 there were 491,000 records in the Terrorist Screening Database. You also stated that the Terrorist Screening Center began its own record-by-record review in March to make sure that each entry actually belongs on the list. This is obviously a massive task with respect to a database with nearly half a million entries, but it is also important – to make sure that mistakes do not keep people off

airplanes or otherwise adversely affect them. How long do you believe it will take to complete the review of the Terrorist Screening Database?

Response:

The TSC's NDIU is aggressively working to ensure an expeditious and thorough review of all records contained in the TSDB and it is hoped that this process can be completed by the fall of 2007.

As discussed in response to Question 122, above, the NDIU has adopted a multifaceted approach to this review, including the following.

As noted above, the SRQ is a daily and on-going process through which all additions, modifications, and deletions to TSDB records are reviewed by an NDIU analyst. From the deployment of the SRQ in late March 2006 to 1/10/07, NDIU analysts processed a total of 670,444 records. (This does not represent individuals, but the number of records received from NCTC for inclusion, update, or removal from the TSDB.) This new process directly supports the goal of the NDIU eventually reviewing every record contained within TSDB.

In addition, during each positive TSC encounter, TSC analysts review the related TSDB record(s) for accuracy and completeness. If a change to a record is required, the Terrorist Screening Tactical Operations Center forwards the record(s) to NDIU analysts for review and resolution, and NDIU analysts coordinate any required changes with the NCTC or the FBI to ensure situational awareness and data consistency. These full derogatory reviews have resulted in the review of 39,978 TSDB records (as of 11/30/06).

As discussed above, the TSC is also in the process of conducting a "No Fly" review, pursuant to which all records in the TSDB that are currently exported to the TSA No Fly List are being reviewed. This project will result in the review of over 77,000 TSDB records (60,117 of these records had been reviewed as of 1/10/07). At the completion of the No Fly review, NDIU analysts will begin a review of all records in TSDB that are exported to the TSA Selectee List. This project, which would consist of a review of nearly 118,000 records if it were started today, is expected to be complete by the end of 2007. In addition to these projects, the NDIU will continue to identify smaller groups of data that require quality assurance scrubbing and will conduct these reviews as appropriate.

At the conclusion of these reviews, we will identify all records in the TSDB that have not been reviewed and begin that final scrub, resulting in a 100% review of the TSDB and its supporting information.

130. A professor at Seton Hall recently released a report on the designation of terrorist organizations by the U.S. government, and found that different government agencies had different lists of organizations that each agency designated as terrorist groups. Although there seems to be agreement that we need a consolidated terrorist watch list, the U.S. government does not have a consolidated terrorist organization list, at least according to the Seton Hall report. Is that accurate? If so, do we need one?

Response:

While the FBI generally looks to the Foreign Terrorist Organization (FTO) list as the consolidated list of designated terrorist groups, Congress has authorized the use of other criteria to identify terrorist organizations, as well. There are three key mechanisms for designating terrorist groups, each with different statutory authority. They reflect different criteria and consequences tied to the designations.

First, the Anti-Terrorism and Effective Death Penalty Act, codified at 8 U.S.C. § 1189, authorizes the Secretary of State, in consultation with the AG and the Secretary of the Treasury, to designate an organization as an FTO if the Secretary of State finds that the organization in question is foreign, is engaged in terrorist activity, and that such activity threatens the national security of the United States or the security of U.S. nationals. Currently, 41 organizations are so designated. Once an organization is listed by the Secretary of State as an FTO, it is a crime for persons in the United States to knowingly provide material support or resources to the organization. In addition, alien representatives and members of designated FTOs may be denied admission to the United States and may be removed if they are already in the United States. Financial institutions that become aware that they possess or control funds belonging to a designated FTO, or that its agent has an interest in such funds, must freeze the relevant assets and alert the Department of the Treasury.

Second, Section 411 of the USA PATRIOT Act, codified at 8 U.S.C. § 1182, authorizes the Secretary of State, in consultation with the AG, to designate terrorist organizations for immigration purposes, prescribing different criteria for

designation than for FTOs. This immigration-oriented list is known as the Terrorist Exclusion List.

Third, the Specially Designated Global Terrorist list provides for the designation of organizations and individuals and is based on Executive Order 13224 and various statutes. This list enables the United States to impede terrorist funding in connection with national emergencies to deal with the unusual and extraordinary threats to our national security relating to foreign terrorism, such as the 9/11 attacks. It is a crime to engage in financial transactions with the more than 500 organizations and individuals currently on this list. Financial institutions in possession of assets of such organizations or individuals must freeze those assets and notify the Treasury Department.

The NCTC's Interagency Intelligence Committee on Terrorism includes the various lists in the National Intelligence Priorities Framework Counterterrorism Priorities rankings, which rank these organizations according to the level of threat they impose. Because FBI investigators and analysts can run a single search that would check all relevant lists, and because each list is developed according to different criteria to meet different needs, we do not believe it is necessary or productive to develop an additional list that would either consolidate these lists or establish yet another list according to a new set of criteria.

131. The 2005 FBI Uniform Crime Report shows a startling increase in violent crime, reporting the largest single-year percent increase in violent crime in fourteen years. The figures from the Midwest—and Wisconsin in particular—are especially troubling. While violent crime increased 2.3% overall at the national level, in the Midwest crime increased 5.6% and in Wisconsin it increased 15.8%. According to the Police Executive Research Forum, in many cities crime rates have continued to rise in the first six months of 2006. For example, according to its figures, in Milwaukee robberies are up 36% and aggravated assaults are up 31.6% in the first half of 2006.

a. Do you believe that these statistics accurately reflect what is happening in our communities, or is there another explanation for these statistics?

Response:

While the 2005 Uniform Crime Reports (UCR) indicate that violent crime has increased in some cities, it has decreased in others. Nevertheless, the FBI is

concerned about any increases in violent crime and is actively working with its Federal, state, and local counterparts to address those increases.

b. Some argue that overall crime is still relatively low and that these statistics may not be the start of an overall trend. From your vantage point, do these numbers appear to be indicative of a longer term problem?

Response:

Overall crime is, by recent historical standards, still low, and it is very possible that recent UCR statistics are not indicative of a longer-term problem. It is simply too early to determine with any certainty whether this is the case. That said, the FBI is not waiting for the long-term picture to develop, but is instead aggressively responding to the recent crime statistics.

c. How is the FBI planning to respond to the rise in violent crime? Is the FBI going to expand or modify existing initiatives or launch any new initiatives?

Response:

Through partnerships with state, local, tribal, and other Federal law enforcement agencies, the FBI has achieved significant results in combating violent crime over the past several years. Since 1996, the collaborative efforts of the FBI's Violent Gang Safe Streets Task Forces (SSTFs) have resulted in 24,883 indictments and informations and 23,170 convictions. These results were achieved using the full range of investigative tools available to the FBI, including 122 undercover operations, 1,137 Title III wiretaps, and the use of racketeering laws in 1,872 indictments obtained in order to dismantle gangs by removing their leadership structure.

Part of the FBI's response to the rise in violent crime is to ensure there are no reductions in its current resource commitment to the highly productive partnerships that have led to these results. Task forces increase the effectiveness and productivity of limited personnel and logistical resources, avoid duplication of investigations, and expand the cooperation and communication among Federal and state law enforcement agencies. Currently, the FBI operates 33 violent crime SSTFs, 131 violent gang SSTFs, 16 "Safe Trails" task forces, and 23 child prostitution task forces.

Central to the FBI's response to the increase in violent crime is the expanded use of technology and of unique violent crime initiatives; FBI SAs and their law enforcement partners have collaborated to create tools to more efficiently use their limited resources. Significant successes have been achieved through the following initiatives.

1. Project Pin Point (PPP)

PPP is an analytical/intelligence tool created by the FBI's Philadelphia Division in conjunction with its partners in the Philadelphia Police Department, Judicial Warrant Squad, and others, to assist in violent crime investigations. PPP uses numerous layers of data sets, including arrest warrants from various law enforcement organizations, the addresses of registered sex offenders, and the locations of shootings and other violent crimes. The combined information identifies high crime areas, crime trends, intelligence gaps, and response capabilities that the FBI and local law enforcement can use in tailoring their tactics and resource allocation to most efficiently address an ever-changing crime threat. The FBI is now implementing this successful tool in additional FBI Field Offices.

2. Shot Spotter

Shot Spotter is an audio sensor system that uses portable sensors to detect and transmit sounds to software that determines their source and location. After detecting a gunshot, sensors send wireless signals through a Global Positioning System satellite to a home base computer that is set up in a strategic location, such as a command post or 911 center. The computer triangulates sensor input to locate the source of the shot, which it displays as a street address. Law enforcement officers are then able to respond quickly to the exact location of the gunshot and take immediate action. Thirteen American cities have deployed Shot Spotter and the FBI's Washington Field Office has deployed a system in cooperation with the Washington Metropolitan Police Department. The technology has resulted in the recovery of weapons and other evidence and has allowed emergency personnel to more quickly render aid to injured persons.

3. Violent Crime Wireless Intercept and Tracking Team (VC WITT)

The ability to track and locate cell phones in the possession of subjects and victims is an invaluable tool in solving abductions and other violent crimes, as

well as in apprehending fugitives. VC WITTs were established to provide WITT equipment and to train SAs in the use of this equipment and the survey process.

4. Child Abduction Rapid Deployment Teams

In October 2005, the FBI created eight Child Abduction Rapid Deployment teams. Each team is regionally located to establish a nationwide rapid response capability in the hours immediately following a child abduction. These teams consist of experienced SAs who provide technological, analytical, behavioral, and investigative resources to resolve child abduction cases quickly. The FBI is working to ensure that each FBI Field Office has at least one SA trained specifically in child abduction matters.

5. Registered Sex Offender Locator Tool (ReSOLT)

ReSOLT is a database that maps the locations of registered sex offenders. This information is used, along with comparisons of this information to ChoicePoint records, to identify registered and unregistered sex offenders in the vicinity of a child abduction and to assist in identifying unregistered sex offenders.

132. At a crime summit held by the Police Executive Research Forum in August 2006, more than 50 cities were represented by mayors, police chiefs, and other public officials. Both during the summit and in the final report, a recurring theme was that these local officials believe that *hometown* security has been sacrificed to *homeland* security. In your written testimony, you tell us that the FBI shifted resources away from criminal investigative programs to support counterterrorism and counterintelligence efforts. As Senator Feinstein noted at the hearing, you are opening far fewer criminal cases and funding for criminal case agents has also decreased.

a. The FBI's counterterrorism capabilities are obviously critical in today's world, but how do we make sure the FBI does not neglect its traditional criminal justice priorities, especially in light of the increasingly urgent problem of violent crime?

Response:

The FBI has allocated its resources to ensure priorities are addressed in all its programs, including the criminal programs. We have established policies regarding resource allocation, we monitor resource use within each program to ensure that the most serious crime problems are addressed, and we ensure valid

reasons exist for the diversion of resources from lower priority programs to higher priorities. The FBI remains committed to working alongside our Federal, state, and local law enforcement partners to effectively and aggressively investigate violent crime.

b. Similarly, are there ways that the federal government can help state and local authorities make their existing federal dollars go further?

Response:

The FBI has many investigative tools that local law enforcement can take advantage of to better use their Federal dollars, as do other Federal law enforcement agencies. Providing task force officers to FBI-led task forces allows state and local law enforcement departments to save in overtime pay and vehicle costs. A local department can avail itself of violent crime and gang crime analysis functions by sharing criminal intelligence and source development through the FBI's NGIC, FIGs, and the PPP initiative. In joint investigations, the FBI's Evidence Response Teams can be used to collect evidence so that forensic laboratory expenses, crime scene and court appearance overtime, and equipment usage costs are incurred by the Federal government. If a case warrants, state and local agencies use Federal resources such as WMD and Hazardous Materials response teams, bomb detection assets, wireless interception, and command post operations to augment investigative capabilities.

In addition to this investigative assistance, the Federal government can also sometimes provide direct financial assistance. For example, resources provided by DOJ's Asset Forfeiture Fund allow the FBI's Safe Streets Task Force (SSTF) initiative to reimburse state and local overtime, vehicle leases, and other equipment used by full-time Task Force Officers participating in SSTFs. In addition, on average 80% of all forfeited proceeds are returned to the state and local police departments that participated in the investigations leading to the forfeitures.

133. Senator Kohl raised with you the fact that cuts in federal funding for programs like COPS grants and juvenile justice and prevention programming have exacerbated our violent crime problem. These cuts also have contributed to the perception that the federal government has largely abandoned state and local law enforcement agencies in their fight to combat violent crime. Do you support increased federal funding for COPS and the Byrne/Justice Assistance Grant programs?

Response:

The FBI is not involved in funding decisions for either COPS or Byrne/Justice Assistance Grant programs and defers to DOJ with respect to this inquiry.

134. As you may know, this committee recently held an oversight hearing on the Department of Justice Civil Rights Division. At that hearing, we heard complaints that this administration has stepped back from vigorous enforcement of civil rights laws. According to the FBI website, the FBI's fifth-highest priority is to protect civil rights, yet your written testimony did not address what the FBI is doing in this area. What is the FBI doing to police civil rights violations?

Response:

The FBI conducts preliminary investigations of every credible civil rights allegation brought to its attention. No civil rights cases are unaddressed.

The mission of the FBI's Civil Rights Program (CRP) is to enforce Federal civil rights statutes and to ensure that civil rights are not abridged. The FBI's fifth priority is the CRP, behind only counterterrorism, counterintelligence, cyber crime, and public corruption. Approximately 152 FBI SAs address civil rights matters throughout the FBI's 56 Field Offices, a staffing level the FBI has maintained since 9/11 while other criminal program staffing levels have shrunk. FBI civil rights investigations resulted in 230 indictments and informations and 176 convictions in FY 2006.

The four CRP subprograms are hate crimes, "color of law," human trafficking, and Freedom of Access to Clinical Entrances (FACE) Act enforcement. In FY 2006, the FBI initiated 1,524 civil rights investigations. Hate crimes comprised 24% of this total, while "color of law" investigations made up approximately 62% of the total. The number of human trafficking investigations initiated increased from 3 in FY 1996 to 126 in FY 2006, and the proactive measures employed by field offices to address this crime problem are expected to result in continued increases. FACE Act violations comprise approximately 1% of all civil rights cases investigated by the FBI.

Law enforcement officers are more effective investigators when they understand the crimes they are investigating. In addition to their investigative responsibilities, FBI Field Offices are required to initiate and maintain liaison

contacts and to provide training to state and local law enforcement organizations and the communities they serve. Civil Rights training is provided to new FBI SAs, experienced SAs in the field, and National Academy classes composed of law enforcement officers from around the country and the world. During FY 2006, the FBI's Civil Rights Unit (CRU) developed and initiated a PEI to provide training and program assistance to the field, sponsoring training for FBI supervisors, coordinators, and investigators that focused on the entire range of civil rights matters. During FY 2007, the CRU will again sponsor this type of civil rights training; eight PEI on-site visits will be conducted by CRU at various field offices.

Pursuant to a human trafficking initiative implemented in October 2005, FBI Field Offices conducted threat assessments, joined or established human trafficking task forces or working groups, and established contact with non-governmental organizations to address human trafficking issues. This initiative resulted in the opening of 126 human trafficking cases, 96 indictments and informations, and 65 convictions during FY 2006.

The FBI's Cold Case Civil Rights Era Initiative was designed to address previously unresolved civil rights cases. Pursuant to this initiative, FBI Field Offices worked with state and local authorities to identify, reopen, and expeditiously investigate unsolved and/or inadequately addressed hate crimes that occurred before 1970. Thirty-nine potential cases involving 51 victims have been identified; five of these cases meet the criteria for case initiation and are currently under investigation.

The FBI believes the excellent results produced by these initiatives demonstrates our commitment to the protection of civil rights. Following are some specific case examples of this commitment from 2006.

- Eight Houston, Texas, area subjects were indicted in December 2005 after recruiting and smuggling into the U.S. young females, including juveniles, from Honduras and El Salvador, then forcing them to work in Houston-area bars and restaurants. As of May 2006, 98 victims had been identified and five defendants had entered guilty pleas.

- Four members of the notorious "Avenues" Hispanic street gang in Los Angeles, California, were convicted in August 2006 of conspiring to violate the civil rights of African Americans who were assaulted or murdered for being on the gang's "turf." One victim was shot while

waiting for a bus, and another was shot while looking for a parking space. All four defendants received life sentences.

- A San Antonio, Texas, couple received jail sentences in May 2006 for forced labor and human trafficking offenses. The 12-year-old victim was smuggled into the U.S. and forced to provide child care and perform domestic duties. She was hit, slapped, and kicked by the defendants, and not permitted to attend school.

- Norman Weslin, convicted of a FACE Act violation in 1996, was indicted for a FACE Act violation in May 2006 after being arrested by Bellevue, Nebraska, police for criminal trespass and obstruction in April 2006 at the Abortion and Contraceptive Clinic of Nebraska in Bellevue, Nebraska. He is awaiting trial.

- Officers from the Wilson County, Tennessee, Sheriff's Office engaged in a nearly two-year conspiracy to assault inmates, causing the death of one. They attempted to cover up their conduct by filing false reports and charges and by withholding medical care from their victims. A police sergeant was convicted of conspiracy against rights and deprivation of rights under color of law, including a finding of death resulting from failure to provide medical care, and sentenced to life in prison in July 2006.

- Jacob and Gabriel Laskey pled guilty to Federal hate crimes in August 2006 in relation to a 2002 incident in which the brothers threw rocks containing carved images of Nazi swastikas during evening services of the Temple Beth Israel in Eugene, Oregon, breaking two stained glass windows.

- Two Chattanooga Police Department officers were charged with conspiracy to violate civil rights in March 2006 and have agreed to plead guilty. The FBI began investigating in January 2006 after learning that wallets taken from members of the Latino community during routine traffic stops were missing cash when returned to them.

135. According to news reports, two U.S. citizens, Muhammad and Jaber Ismail, were denied entry into the U.S. for more than five months, forced to wait in Pakistan until they were cleared by the Department of Homeland Security. Both the *San Francisco Chronicle*, on August 26, 2006, and the *New York Times*, on August 28, 2006, reported that the

government would not allow the men back into the country unless and until they agreed to FBI interrogations in Pakistan. These articles indicated the FBI was directly involved in the matter and that FBI agents insisted at least one of the men take a polygraph test and allow himself to be interrogated without representation before either man would be cleared to return to the United States. The *New York Times* article also reported that the two men were not immediately informed as to why they were unable to enter the country, but instead were initially advised that there was a problem with their passports and then later told by the U.S. embassy in Pakistan that their inability to enter the country was a mistake. The *New York Times* story states that based upon the advice of the embassy, the two booked a second set of tickets to return to the U.S., only to be rebuffed at the airport again. Their lawyers allege that they were not contacted by the FBI until after their second attempt to return to the U.S., which itself was weeks after their original flight was to have left.

a. Are the allegations in these news reports true? Please specify any inaccuracies.

b. What, if any, was the extent of the FBI's involvement in this matter? Under what legal authority did it proceed?

c. Was the Ismails' entrance into the United States ever conditioned upon consent to interrogations without representation or on taking a polygraph test?

d. Why did it take five months to resolve this matter?

e. Have any charges been filed against Muhammad or Jaber Ismail?

f. Has the FBI ever been involved in a situation where a U.S. citizen is denied entry into the United States pending cooperation with FBI investigations?

Response to subparts a through f:

Pursuant to the longstanding DOJ policy against disclosing non-public information concerning pending law enforcement and litigation matters, we are unable to provide a response at this time.

136. The DOJ Inspector General's July 2005 report on the FBI's foreign language translation program indicates that the FBI's digital audio collection systems have limited storage capacity and that audio sessions are sometimes deleted or automatically archived to make room for new incoming audio sessions. While the report makes clear that no

unreviewed counterterrorism or Al Qaeda sessions had been deleted, it indicates that counterintelligence recordings are still being deleted and archived without first being reviewed. The report indicates, in fact, that six of eight offices tested deleted unreviewed counterintelligence materials. The report also states that once these sessions are archived it is difficult to determine whether the material has been reviewed.

a. Has the FBI acted on the recommendation from the Inspector General's office to establish controls to prevent unreviewed audio materials from being deleted, or is it still the practice that the FBI deletes some unreviewed counterintelligence materials?

b. What is the FBI doing to ensure that this does not continue to happen in the future?

Response to subparts a and b:

The FBI has acted on all of the suggestions of the July 2005 OIG report, and in October 2006 the OIG was satisfied with the FBI's progress and closed all action items. The FBI has focused a great deal of attention on improving the availability of all sessions in the digital collection systems and continues to look for ways to increase the time online for the sessions that it collects. The FBI has also remedied the problem through better guidance to system administrators, upgrading memory capacity and creating an "archive history" for all sessions removed from the system. Although unreviewed materials are still being removed from the online system, they are easily accessed and are still available in the archive. With additional linguists, the FBI has made significant progress in addressing a greater percentage of foreign language materials.

Questions Posed by Senator Schumer

137. As you confirmed to the Senate Committee on the Judiciary on December 6, 2006, only 33 of 12,000 FBI Special Agents are proficient in Arabic. Of these, only six have Arabic language skills rated "advanced proficiency."

a. Do you agree that for the FBI's counterterrorism work to be effective, more agents need to be proficient in Arabic?

b. In your view, what percentage and what number of the FBI's agents should be proficient in Arabic for the agency's counterterrorism work to be effective?

These responses are current as of 2/8/07

c. Can you commit to a date by which the FBI will have the percentage of Arabic-proficient agents needed for effectiveness in counterterrorism?

d. Please explain what specific steps, if any, the FBI is taking to raise the percentage of agents who have proficiency or advanced proficiency in Arabic.

Response to subparts a through d:

As we stated in our response to Question 68, above, the FBI's counterterrorism work has been extremely effective because of the synergies achieved between SAs, IAs, language analysts, and contract linguists. The FBI has 267 linguists who are proficient in Arabic and who support SAs by accompanying them to interviews and providing native knowledge of history, culture, religion, and geography. The interactions among these dedicated professionals has been highly productive.

As discussed in the responses to Questions 68 and 127, above, the FBI is also aggressively pursuing the recruitment and training of SAs and other professional staff who are proficient in Arabic and numerous other high priority foreign languages to enhance the FBI's ability to support its counterterrorism, counterintelligence, criminal, and international law enforcement outreach missions.

138. Earlier this year, the Inspector General reported that nearly 1 in 3 intelligence analyst positions at the FBI were not filled. The FBI was reportedly aiming to hire 880 new intelligence analysts by the end of this year, yet your testimony states that the FBI hired only 370 analysts in FY 2006.

a. How many intelligence analyst positions at the FBI remain to be filled, and can you commit to a date by which all of these positions will be filled?

Response:

The FBI has a funded staffing level of 2,579 IAs, with an onboard complement of 2,209 IAs. Currently, we have 66 new IAs who have completed the background process and are waiting to receive letters of appointment to the FBI. We anticipate bringing 33 of these IAs on board in February 2007. Additionally, 154 IA applicants are in our background investigation process, and we expect that this number will yield 75 to 80 new IAs, who will be eligible for hire in FY 2007. We

are continuing our efforts to recruit and hire top-level candidates to the FBI and are working to develop new ways to attract these applicants to the specific job skills and backgrounds needed to fill our remaining vacancies through a targeted recruitment approach.

b. What percentage of intelligence analysts left FBI employment in FY 2006?

Response:

In FY 2006, the overall attrition rate of FBI IAs was 9%, including individuals who were removed, who retired, and who left the IA position but remained with the FBI. Excluding retirements and removals, the attrition rate for IAs leaving the FBI was 4.3%.

139. Depositions in a recent lawsuit filed by Bassem Youssef, the FBI's highest-ranking Arab-American agent, have revealed that many top FBI officials do not know the difference between Sunni and Shi'a Islam.

a. Do you think that top FBI officials should have a basic understanding of Islam and of Middle Eastern cultures?

b. What specific steps, if any, are you taking to remedy the current situation and to ensure that top FBI officials have a basic understanding of Islam and of Middle Eastern cultures?

Response to subparts a and b:

It is important that all investigators understand the dynamics that shape the terrorist threat facing our country. The FBI has made it a priority to ensure that our work force understands the bases of violent Islamic extremist ideologies, and has placed particular emphasis on understanding Muslim culture and the Islamic religion. This is evidenced by the counterterrorism and cultural training made available to our employees. This training teaches us to interact better with Muslim communities and to build the trust critical to effective community policing. Within the counterterrorism program, the provision to our counterterrorism workforce of the correct tools and relevant knowledge is one of our highest priorities. CTD's current senior leaders have acquired this familiarity through their daily work, their past interactions with Muslim communities during field assignments, and study in this area. These leaders are also knowledgeable

regarding terrorists' operational methods and their criminal activities, neither of which depend on Islamic ideology. Because management and leadership qualities are as important as substantive expertise, it is also important that CTD managers come to their jobs with lengthy and in-depth experience managing high-profile investigative and intelligence efforts.

Since 9/11, the FBI's counterterrorism program has grown quickly and is the FBI's top investigative priority. This rapid growth has been fueled by a reallocation of our best investigators, managers, and leaders to the counterterrorism mission. We have also refocused our recruiting and hiring to attract individuals with skills critical to our counterterrorism and intelligence missions. These new recruits have included hundreds of IAs, translators, and SAs.

140. In April 2005, a Department of Justice Inspector General review of eight FBI field offices, conducted over three days, found that three of these offices failed to review their high-priority FISA interceptions within 24 hours.

a. Please state the FBI's current rule regarding how quickly FISA interceptions must be reviewed.

Response:

FBI policy is that FISA intercepts in the highest priority counterterrorism and counterintelligence cases (those in which the subject potentially presents a direct threat of violent terrorist activity) will be reviewed within 24 hours. Additional information in response to this inquiry is classified and is, therefore, provided separately.

b. Please describe what is entailed by such a review.

Response:

A review is completed when the linguist or analyst determines whether a session contains a threat to safety and/or security or contains actionable intelligence. If the reviewer determines there is a threat or actionable intelligence contained in the session, this information is immediately reported to parties that can act on the information.

c. Please explain what specific steps, if any, you are taking to clarify the rule on reviewing FISA interceptions and to ensure that field offices are abiding by this rule.

Response:

The FBI disseminated policy in 2004 and in 2006 reiterating the rule that a session is not considered reviewed until the threat information/actionable intelligence or lack thereof has been determined. This policy is reinforced through repeated FISA training.

141. As you know, the United Kingdom has a domestic agency, known as MI5, that is devoted to counter-intelligence and national security. Some have called for the creation of a similar agency in the United States.

a. Do you think that creating an agency like MI5 would make our domestic counterterrorism efforts more effective?

b. What would be the costs and benefits of using an MI5 model instead of our current counterterrorism model?

Response to subparts a and b:

In the more than 5 years since the attacks of 9/11/01, the FBI has evolved from a law enforcement agency focused on investigating crimes after the fact into an intelligence and law enforcement organization focused largely on preventing terrorist attacks. We have entered an era of unprecedented information sharing among the law enforcement and intelligence communities and we are continuing to build on our success in strengthening our intelligence capabilities. Experience has taught the FBI that there are no neat dividing lines distinguishing criminal, terrorist, and foreign intelligence activities. Criminal, terrorist, and foreign intelligence organizations and activities are often interrelated or interdependent. FBI files contain numerous examples of investigations in which information sharing between counterterrorism, counterintelligence, and criminal intelligence efforts and investigations was essential to the FBI's ability to protect the United States from terrorists, foreign intelligence activities, and criminal efforts. Some cases that begin as criminal cases become counterterrorism cases, and vice versa. The FBI must sometimes initiate parallel criminal and counterterrorism or counterintelligence cases to maximize the FBI's ability to identify, investigate, and address threats to the United States. Often, the success of these cases is

entirely dependent on the free flow of information between the respective investigations, investigators, and analysts.

The FBI believes there is no reason to separate the functions of law enforcement and domestic intelligence, as would occur if the MI-5 model were adopted. On the contrary, combining law enforcement and intelligence affords us ready access to every weapon in the government's arsenal against terrorists, allowing us to make strategic and tactical choices between the use of information for law enforcement purposes (arrest and incarceration) or intelligence purposes (surveillance and source development).

The benefits of this approach have been clearly borne out. Since 9/11/01, the FBI has identified, disrupted, and neutralized numerous terrorist threats and cells, and we have done so in ways an intelligence-only agency like the United Kingdom's MI-5 cannot.

Because of its personnel, tools, and assets, the FBI is uniquely suited for the counterterrorism mission. These resources include:

- A worldwide network of highly trained and dedicated SAs;
- Intelligence tools to collect and analyze information on threats to national security;
- Law enforcement tools to act against and neutralize those threats;
- Expertise in investigations and in the recruitment and cultivation of human sources of information;
- Longstanding and improving relationships with those in state and local law enforcement, who are the intelligence gatherers closest to the information we seek from these communities; and
- Nearly a century of experience working within the bounds of the United States Constitution.

For these reasons, the FBI believes the United States is better served by enhancing the FBI's dual capacity for law enforcement and intelligence gathering/analysis than by creating a new and separate domestic intelligence agency, which would constitute a step backward in the war on terror, not a step forward.

These responses are current as of 2/8/07

That said, the FBI is in the process of adopting some aspects of MI-5. One of the benefits inherent in an intelligence organization like MI-5 is its ability to establish a "requirements" process where current intelligence requirements are reviewed (whether they be terrorism, international crime, cyber crime, etc.) and knowledge gaps are identified. The next step is to get the intelligence collectors (in this case, FBI SAs from around the country) to fill in those gaps. The FBI has adapted and is incorporating this kind of intelligence requirements process, not just with respect to terrorism but for all programs. This process is invaluable in helping to better prioritize FBI resources and to identify the gaps in understanding.

Both the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) and the report of the Commission on the Intelligence Capabilities of the United States Regarding WMD (WMD Commission) agree that the FBI should retain its domestic intelligence responsibility. Similarly, in its March 2005 report, "Transforming the FBI: Progress and Challenges," the NAPA Panel on FBI Reorganization wrote: "This Panel, like the 9/11 Commission, is convinced that the FBI is making substantial progress in transforming itself into a strong domestic intelligence entity, and has the will and many of the competencies required to accomplish it. That Panel recommended that the FBI continue to be the key domestic intelligence agency responsible for such national security concerns as terrorism, counterintelligence, cyber, and transnational criminal activity."

The WMD Commission also examined the FBI's intelligence program and concluded in March 2005 that it had been significantly improved since 9/11/01. The commission rejected the need for a separate agency devoted to internal security without any law enforcement powers, recognizing that the FBI's hybrid intelligence and investigative nature is one of its greatest strengths and emphasizing the importance of the ongoing effort to integrate intelligence and investigative operations. At the same time, the commission noted that the FBI's structure did not sufficiently ensure that intelligence activities were coordinated with the rest of the IC. Accordingly, the commission recommended the creation of a "National Security Service." In response to the President's directive endorsing that recommendation, the FBI created the NSB, which combines the capabilities, resources, and missions of the Counterterrorism Division, the Counterintelligence Division, and the Directorate of Intelligence under one leadership umbrella. The NSB will build on the FBI's strengths, ensure the integration of national security intelligence and investigations, promote the development of a national security workforce, and facilitate a new level of coordination with others in the Intelligence Community.

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142. In September 2006, the Department of Justice Inspector General released a report concluding that the mail and phone calls of terrorists in American prisons are not being adequately monitored. The Inspector General recommended that the FBI "develop and reinforce procedures for interacting with the Bureau of Prisons regarding international terrorist inmates, including monitoring of inmates, intelligence gathering, and sharing of information and intelligence."

a. In order to resolve its recommendation to the FBI, the Office of the Inspector General asked that the FBI provide, by December 1, 2006, an update on the status of improvements to the FBI's Correctional Intelligence Initiative. Did the FBI provide this information to the IG by the deadline of December 1, 2006? Please provide me with a copy of this update on the Correctional Intelligence Initiative.

Response:

Attached as Enclosure E is the FBI's update regarding the status of completed and pending improvements regarding the Correctional Intelligence Initiative (CII), highlighting those enhancements or accomplishments that will directly assist the BOP.

b. What agency has the lead responsibility for preventing terrorist recruitment and investigating possible terrorist activity in federal prisons?

Response:

The NJTTF has the lead regarding terrorism matters in correctional institutions, including U.S. BOP facilities. The NJTTF directly addresses this tasking through the CII, which is designed to detect, deter, and disrupt efforts by terrorist or extremist groups to radicalize or recruit in Federal, state, and local prisons. All Federal prisons are directly included in the CII program, and BOP intelligence staff are primary partners in this nationwide initiative.

c. Do you think it would be helpful to establish a high-level task force to improve coordination between the FBI and BOP to address issues associated with individuals suspected and convicted of terrorism in federal custody? The current strategy of BOP participation on local Joint Terrorism Task Forces does not seem to be effective.

Response:

As discussed above, the NJTTF has the designated lead for addressing this issue and is taking active steps to continually expand and improve the CII program. These efforts include ensuring an effective intelligence partnership between the FBI and BOP both at the agency level, as well as at the local correctional institution level. This CII partnership between the FBI and BOP receives active executive support from both agencies, and BOP intelligence staff directly assigned to the NJTTF have comprehensive access to FBI information systems. Intelligence sharing protocols and FBI training for BOP intelligence staff are continually being improved. We believe the NJTTF is the correct "high-level task force" to directly address and manage this issue.

143. The DOJ Inspector General has reported that detention center personnel receive only a single page of information when a terrorist suspect is sent into their custody. In one shocking incident, staff at the Metropolitan Correctional Center in New York learned only from a news report that one of their inmates was a high-level al Qaeda operative trained in martial arts and urban warfare. What specific steps, if any, are you taking to improve information sharing between the FBI and BOP to ensure that the FBI is providing the BOP with the information that prison staff need to safely manage terrorist inmates?

Response:

Foremost in our efforts to ensure a fully effective intelligence partnership with the BOP is the comprehensive access to FBI intelligence information resources afforded BOP staff assigned to the NJTTF and to a number of local JTTFs. We have recently provided IA training to BOP intelligence staff, and we will continue to provide this training as appropriate. We are also in the process of developing additional instructions to all FBI field offices emphasizing intelligence sharing procedures with BOP facilities.

144. As you know, the FBI is also responsible for monitoring inmates who are under Special Administrative Measures (SAMs). Do you think that this fact creates a disincentive for agents to identify incoming terrorist suspects as needing SAMs or other restrictions?

Response:

We believe monitoring of inmates in Special Administrative Measures (SAM) status is actually very much to the advantage of SAs working related issues

because SAM status eliminates many administrative burdens, such as those associated with seeking frequent subpoenas for inmate telephone calls and correspondence coverage.

145. I previously asked you about reports of FBI personnel's non-compliance with the Attorney General's guidelines on to confidential informants. To address these concerns, you pledged that new training would be implemented as a part of the Confidential Human Source Re-engineering Project by the fall 2006. Has that training been implemented? If not, please explain why and provide a deadline for when it will be implemented.

Response:

The formal training regarding the Confidential Human Source Re-engineering Project has not yet been implemented. For the past two years, the DI Human Source Re-engineering Team has worked to revise and simplify policies and processes associated with the management of confidential human sources. The principal results of this effort are the December 2006 AG Guidelines, consolidated FBI policy, and the Validation Standards Manual that flows from the AG Guidelines and ODNI validation standards. These extensively cross-referenced documents have been developed to standardize processes and ensure agency-wide compliance in terms of source management, operation, administration, and validation. Although we originally anticipated beginning training in the fall of 2006, we had to revise our training schedule because much of our time was devoted to revising the draft AG Guidelines. Only after the revised those Guidelines were signed in mid-December 2006 could detailed planning for the required training program begin. We plan to deliver this training beginning in April 2007.

The training phase of the DI's Re-engineering Project is being addressed by the Policy Implementation Team, which is composed of representatives from the FBI's Training and Development Division and DI, as well as contractors from the MITRE Corporation. The core team is augmented by an attorney from the FBI's OGC, an IA from the Criminal Investigations Branch, a member of the NSB's Communications Unit, and confidential file room personnel from the Washington Field Office. This team works in close coordination with a team representing the IT system (Delta) that is being designed in order to ensure consistency between the IT piece and the policy implementation piece and to facilitate the administration of the re-engineered source management processes.

The implementation plan includes Bureau-wide training for all employees (FBIHQ and the field) who are involved in human source matters. Most immediately, this plan proposes an initial three-day train-the-trainer conference on 4/15-27/07 (two consecutive sessions) for all Human Sources Coordinators and other confidential file room personnel. FBIHQ entities with a role in HUMINT will also be required to attend one of these sessions. The training is designed to be very interactive, consisting of an overview of the Human Source Re-engineering Project, presentations on the new and old AG Guidelines, a detailed presentation on the new validation standards policy and manual, inspection implications, and integrated case scenarios.

The newly trained trainers will be responsible for training personnel in their respective field offices and others who work with HUMINT (such as SACs, ASACs, Chief Division Counsel, and IAs) will receive revised blocks of instruction during management and program conferences. The New Agents Training curriculum is also being revised to accommodate training in this regard.

146. I note that your written responses to my questions from the May 2006 oversight hearing were submitted for clearance in July 2006. At that time, you stated that it was too early to determine the value of the FBI's new wInsight software tool to improve tracking of project costs.

a. Is the wInsight program now fully functional?

Response:

Yes. The wInsight software suite used by the FBI's Sentinel Program became fully operational in October 2006. Since then, wInsight has been available to multiple Sentinel managers to access data and analyze Sentinel's EVM performance through the FBI's unclassified intranet.

b. If yes, please state whether the wInsight tool is meeting the FBI's expectations and requirements for project cost tracking.

c. If it is not yet fully functional, when do you expect that it will be sufficiently implemented to determine whether the Inspector General's concerns have been resolved?

Response to subparts b and c:

The wInsight tool is meeting the FBI's expectations. The Sentinel EVM System includes wInsight as a primary EVM data collection and performance analysis tool. The Sentinel EVM system has proven to be an excellent means of capturing accrued costs and the value of work accomplished, months before they appear in an invoice from Lockheed Martin. This gives the FBI an early view into work accomplished versus work planned in terms of value associated with that work.

EVM data is briefed to the FBI Director weekly and to the DOJ's Department Investment Review Board monthly. EVM data is also provided at least quarterly to the eight Congressional committees and/or Subcommittees that have Sentinel oversight. In addition, as it becomes available, EVM data is provided to GAO auditors, DOJ's OIG, and DOJ EVM auditors.

147. The progress of the FBI's Sentinel case management system has been closely watched by the Senate Committee on the Judiciary, especially given the failure of the FBI's prior attempt to create such a system. The Inspector General's newest report on Sentinel, issued in December 2006, expressed continued concern that the cost of Sentinel in FY 2007 will force the FBI to reprogram funds intended for other purposes.

a. Do you expect this to happen?

b. If you do have to divert other funds to pay for Sentinel, how will that affect the FBI's ability to accomplish its mission?

Response to subparts a and b:

The FBI has determined that no reprogramming will be required for FY 2006 Sentinel operations. The funding requested in the President's FY 2007 budget will fund O&M for Phase 1 and most of the system development, training, and program management costs for Phase 2. If there are additional Phase 2 costs beyond the $100 million in the President's budget, the FBI will work with DOJ, OMB, and Congress to redirect existing funds where available or request additional funding as needed. Funding for Phases 3 and 4 and for the remainder of O&M for all Phases will be requested in future budget submissions. As noted in the response to the OIG, the FBI evaluates the operational impact of any proposed reprogramming and takes that impact into consideration in all

reprogramming decisions. The FBI routinely provides this impact assessment and other relevant information to DOJ, OMB, and Congress.

148. The campaign season and midterm elections of November 7, 2006, were marred by many instances of wrongdoers cynically attempting, probably with some success, to intimidate or deceive voters headed to the polls. According to media reports, these attempts ranged from calls to Virginia voters wrongly telling them that they were not registered, to deceptive flyers distributed by the Ehrlich and Steele campaigns in southern Maryland, to an armed man who harassed Hispanic voters outside a polling place in Arizona. I believe that the Department of Justice should be using all available means to respond to these despicable tactics.

a. How many investigations, if any, is the FBI conducting that pertain to questionable or illegal tactics used during the midterm election of November 7, 2006 and the campaign season leading up to it?

Response:

Specific facts indicating that a violation has occurred are required in order for the FBI to initiate an investigation into allegations of election-related crimes. The initiation of each investigation must be supported by DOJ's Public Integrity Section, Election Crimes Branch, or the Criminal Section of the Civil Rights Division. As a result, the FBI does not initiate investigations related to "questionable" tactics; only allegations involving violations of applicable federal law. Between 1/1/06 and 11/30/06, the FBI opened 38 formal investigations involving alleged federal election law violations related to activity leading up to and surrounding the 11/7/06 election. These investigations encompass allegations of campaign finance violations, ballot fraud, voter intimidation, and voter fraud.

b. Please list all completed or ongoing FBI investigations, if any, into tactics used during the campaigns or elections of November 7, 2006, and for each case give the location and nature of the conduct being investigated.

Response:

Longstanding DOJ policy generally precludes the FBI from commenting on the existence or status of ongoing investigations. In addition to protecting the privacy interests of those affected, the policy serves to avoid disclosures that could

provide subjects with information that might result in the destruction of evidence, witness tampering, or other activity that would impede the FBI's investigation.

The following election crime investigations related to the 11/7/06 national election were opened by the FBI on or after 1/1/06 and closed on or before 12/22/06.

- Diebold software theft: investigation by the Baltimore Division into the possible theft of Diebold Election Systems, Inc., electronic voting machine software.

- Ohio State Medical Association (OSMA) Political Action Committee (PAC) embezzlement: investigation by the Cincinnati Division regarding allegations of an $83,000 embezzlement from the OSMA PAC and related false filings with the Federal Election Commission.

- Lieberman "denial of service" website attack: investigation by the New Haven Division regarding allegations of an attempted "denial of service" attack on Senator Joseph Lieberman's official Internet website immediately prior to the Democratic primary in August 2006.

- Multiple voting referral (Galesburg, Illinois, Election Department): investigation by the Springfield Division of allegations of multiple voting by a specifically identified individual.

- Harrington felon voting: investigation by the Tampa Division of taunting letters from a convicted felon who claimed to be regularly voting, despite his previous disqualifying federal felony conviction.

c. Please explain why the FBI is not investigating the incident in which the Ehrlich and Steele campaigns in Maryland brought groups of people from Pennsylvania on November 7, 2006, and paid them to distribute fliers designed to create the false impression that Ehrlich and Steele are members of the Democratic party.

Response:

Longstanding DOJ policy generally precludes the FBI from commenting on the existence or status of ongoing investigations. In addition to protecting the privacy interests of those affected, the policy serves to avoid disclosures that could

provide subjects with information that might result in the destruction of evidence, witness tampering, or other activity that would impede the FBI's investigation.

Questions Posed by Senator Durbin

CHALABI INVESTIGATION

149. In your written testimony you discussed the FBI's counterintelligence work, but there is one item of great interest to this Committee that you did not discuss – whether the FBI is investigating allegations that Administration officials leaked classified information to Ahmed Chalabi, and that Chalabi passed this information to Iran.

In November 2005, Mr. Chalabi visited the United States and met with a number of high-ranking Administration officials. At the time, Senator Leahy, Senator Kennedy and I wrote a letter to Attorney General Gonzales asking about the FBI's inquiry into Mr. Chalabi's alleged misconduct. In response, we received a January 24, 2006 letter stating, "Based on longstanding Department of Justice and Federal Bureau of Investigation policy, we generally do not confirm or deny the existence of investigations."

It is my understanding that, in the past, the Justice Department has confirmed to Congress and the public the existence of specific investigations, particularly if the matter under investigation if of great public significance. I hope you would agree that the allegations in question are very significant. The Department has also provided briefings on pending investigations to Senators and staff. If the mere existence of such an investigation is too sensitive for public release, this information can be provided in a confidential form.

a. Is the FBI investigating the alleged leak of classified information to Ahmed Chalabi, as well as the claim that Mr. Chalabi gave this information to Iran? If yes, can the FBI provide a briefing to me or my staff on the status of the investigation?

b. If there is an ongoing investigation, has the FBI interviewed Mr. Chalabi? If not, why did the FBI not interview Mr. Chalabi when he was in the U.S. in November 2005?

c. Was the FBI notified that Mr. Chalabi was visiting the U.S. in November 2005? If Mr. Chalabi is under investigation, do you think it was appropriate for high-ranking Administration officials to meet with him?

Response to subparts a-c:

The responses to these questions are classified and are, therefore, provided separately.

WAR CRIMES ACT

150. One provision of the recently-enacted Military Commissions Act retroactively revises the War Crimes Act.

a. Since 2001, has the FBI opened any investigations into alleged violations of the War Crimes Act?

Response:

A review of FBI records indicates that, since 2001, the FBI has opened seven investigations related to war crimes, as that term is used in the War Crimes Act (18 U.S.C. § 2441). Three of these cases have been closed and the other four remain open in varying states of investigation. None has reached the point of readiness for indictment regarding any war crime.

b. If so, will any of these investigations be affected by the retroactive revisions to the War Crimes Act in the Military Commissions Act?

Response:

Section 6 of the Military Commissions Act of 2006 amended the War Crimes Act (18 U.S.C. § 2441) in certain respects. Specifically, it amended the definition of "war crimes" to include conduct that constitutes, under specified circumstances, a grave breach of common Article 3 of the Geneva Conventions. (18 U.S.C. § 2441(c)(3).) It also added a new section, "Common Article 3 violations," that addresses common Article 3 treaty violations in detail. (18 U.S.C. § 2441(d).) Section 6 made most of those amendments retroactive to 11/26/97.

At this point, there is no indication that any of the above-referenced investigations will be affected by these amendments. All indications at this point are that the matters under investigation relate to facts that constitute offenses notwithstanding the amendments to the War Crimes Act.

RENDITION

151. According a recent *MSNBC* report, Col. Britt Mallow, the former commander of the Defense Department's Criminal Investigation Task Force, and Mark Fallon, the task force's chief investigator, claim that the FBI suggested sending a Guantanamo detainee "to another country, such as Egypt or Jordan, where he could be interrogated with techniques the FBI could not legally use." Is this report accurate?

Response:

We are not familiar with the MSNBC report referenced in the question, and we are unaware that any FBI employee suggested sending any detainee to another country where the detainee would be subject to interrogation techniques that the FBI could not use. To the contrary, the FBI employees who have been deployed to Guantanamo have been instructed that they are to use only techniques that could be used in the United States. No employee has reported any knowledge of FBI mistreatment of detainees. Moreover, the DOJ OIG is conducting an investigation of the FBI's treatment of detainees.

As to the particular incident referenced in the question, while we are not familiar with the MSNBC report, we are aware that Guantanamo-assigned FBI personnel specifically and expressly objected to the notion that a recalcitrant detainee could be removed to a foreign country so that the foreign country could use interrogation techniques that could not be used in Guantanamo.

ARAB-MUSLIM OUTREACH

152. According to "Building Trust, FBI 'At the Table' With Muslims," an article dated October 2, 2006, and posted on the FBI's website, "The FBI's Washington field office helped create an advisory council of Arab, Muslim, and Sikh leaders to improve relations with communities that might be helpful in the search for intelligence."

a. Please describe the activities of the advisory council.

Response:

The advisory council conducts meetings to discuss a range of issues including problem trends, hate crimes, and concerns about the USA PATRIOT Act. In addition to meetings being held at the Washington Field Office, discussions are

also conducted at various mosques in the Washington Metropolitan area. The advisory council members have participated in conferences, forums, and town hall meetings to discuss issues and develop best practices in the community, and the FBI has realized investigative gains as a result of these interactions.

b. How often does the advisory council meet?

Response:

The advisory council meets on a bi-monthly basis.

c. When was the most recent time the advisory council met?

Response:

The most recent meeting occurred on 1/11/07.

d. Has the FBI established other advisory councils in other areas, especially those with large Arab, Muslim, and South-Asian American populations?

Response:

In addition to the Washington Field Office, Multi-Cultural Advisory Committees (MCACs) have been established by the FBI's Baltimore, Charlotte, Los Angeles, and New York Divisions.

153. How many times have you met with Arab, Muslim and South-Asian American community leaders since 9/11? When was your most recent meeting?

Response:

FBI officials have met frequently with community leaders at both the national and local level since the attacks of 9/11/01. Twice a year the FBI Director meets with national leaders from the Arab, Muslim, Sikh, and South Asian American communities. These national leaders also meet quarterly with the AD of the FBI's Office of Public Affairs (OPA) and with the Community Relations Unit. In addition to face-to-face meetings, conference calls are held periodically.

The national community leaders have also communicated via secure video teleconference with the Community Outreach Specialists and Media Coordinators in all 56 FBI field offices regarding FBI media operations and identified how FBI field offices can contact local organizations in this community when issues involving their constituencies arise. As a result of these exchanges, the value and frequency of dialogue has improved both nationally and locally.

The most recent meeting between the FBI's OPA AD and national leaders from the Arab, Muslim, Sikh, and South Asian American communities occurred via conference call on 1/10/07. During this call, the parties established what was expected from both the FBI and the various community leaders during 2007.

The Director and members of his executive staff, including the OPA AD, also met with national leaders from the American-Arab and Muslim communities on 11/1/06 to discuss expanding the FBI's partnership with the Arab-American/ Muslim community. As a result of that meeting, national leaders are in the process of developing a strategy to encourage community members at the local level to participate in more Citizen's Academies. The FBI has also been in discussion with the Vice President of the Islamic Society of North America to schedule tours and cultural training for FBI SAs at the All Dulles Area Muslim Society Center and to coordinate the introduction of the Community Executive Seminar Training program to the local organizations by the national leaders.

At the local level, FBI Field Office SACs and Division Community Outreach Specialists meet regularly with local community leaders. Field offices engage with these leaders in face-to-face meetings, conference calls, and town hall meetings to discuss issues and develop best practices in the community. Through these frequent interactions, partnerships have developed and have resulted in the creation of advisory committees. FBI field offices such as the Los Angeles Division and Washington Field Office have established MCACs that consist of community leaders from a variety of cultural and religious backgrounds. The MCACs reach out to the communities most impacted by 9/11 and assist in educating them about the FBI's mission and in dispelling misconceptions about the FBI. The MCACs also educate the FBI about their cultures and the issues most important to them.

FBI FOREIGN LANGUAGE ABILITIES

154. On March 10, 2004, I sen[t] you a letter requesting information about the FBI's foreign language abilities. In response, I received an April 19, 2004 letter from Special Agent Roderick Beverly, which I have attached. I would appreciate an update.

a. Attachment A to the 4/19/04 letter is a chart entitled "FBI Foreign Language Resources." Please provide an updated version of this chart.

Response:

Please see our response to Question 16, which includes the updated chart (provided as Enclosure A).

b. On page 6 of the 4/19/04 letter, in response to question #8, Mr. Beverly mentions a number of initiatives to provide advanced Arabic training for Special Agents, including, Middlebury College, the Department of State's Foreign Service Institute, and a pilot program at the University of Jordan in Amman. Please provide an update on these initiatives. How many FBI Special Agents have received training in each of these programs?

Response:

A total of 124 SAs have received training in the programs mentioned in Mr. Beverly's letter. In FY 2004, eight SAs attended Middlebury College's Arabic summer immersion program and another 39 received survival or full-time Arabic training at commercial language schools. In FY 2005, two SAs attended Middlebury's Arabic program, and another 41 received survival or full-time training. In FY 2006, four SAs attended Middlebury, and 30 received survival or full-time training. For FY 2007, seven SAs have submitted applications to attend Middlebury, and 65 have applied for survival, full-time, or maintenance training in Arabic. Twelve of these applications are for training at the Foreign Service Institute. Approval of these training requests will depend on available funding.

A pilot six-week pilot program was held at the University of Amman in Jordan in the spring of 2004 to help two SAs develop higher levels of proficiency in Arabic. While the pilot was successful, subsequent events in Jordan have prevented us from continuing this training.

Since Mr. Beverly's letter, the FBI has made additional efforts to raise the number of SAs who have working proficiency in Arabic. Please see our response to Question 127, above, for more information on those efforts.

c. On pages 6-7 of the 4/19/04 letter, in response to question #9, Mr. Beverly indicates that the FBI is developing five Listening Summary Translations Examinations and a Verbatim Translation Examination. Please provide an update.

Response:

Listening Summary Translation Exams in Farsi and five Arabic dialects (Egyptian, Iraqi, Levantine, Algerian, and Yemeni) were completed in FY 2005 and are being administered to SA applicants. Verbatim Translation Examinations in 16 languages (including Arabic, Farsi, Hindi, Turkish, Pashto, and Urdu) have been available since FY 2005 and are administered to individuals applying for translator positions.

FBI COMPUTER CAPABILITY: SENTINEL FUNDING

155. I read with interest and concern various news accounts in early December describing uncertain funding circumstances for developing and deploying the FBI's Sentinel desktop case management system. While I am optimistic that this project for achieving the long-delayed Virtual Case File capability is proceeding on solid footing, the potential consequences of funding shortfalls on achieving expected milestones, remaining on schedule, and keeping costs within budget are troubling.

I understand the FBI needs $150 million in FY 2007 to continue the Sentinel project. I note that previously the FBI obtained permission to use $97 million from its fiscal 2005 budget for the Sentinel program, including about $29 million from its counter-terrorism division, intelligence-related activities and its cyber division. I share the concerns expressed that diverting substantial funds from such mission-critical areas could begin eroding the FBI's operational effectiveness.

A recent Justice Department Inspector General report (Audit Report 07-03; December 2006) explained that in addition to the $100 million for Sentinel in the President's 2007 budget request, the FBI would need an additional $56.7 million to bridge the gap between requested funds and FY 2007 requirements. Concern was expressed that an FY 2007 appropriation of less than $100 million could result in an unprecedented level of reprogramming of FBI resources to fund Sentinel.

a. As the Sentinel project proceeds, what are the implications for achieving expected milestones and for meeting financial obligations if 2007 funding is not in place and operations are governed by a continuing funding resolution?

Response:

Please see our response to Question 9, above.

b. Is additional fund reprogramming being contemplated to secure the $57 million? What are the specific sources of the funds you have identified that would be drawn upon to address the shortfall? What impact would that effort have on meeting other critical mission capabilities and operational priorities?

Response:

Please see the response to Question 65b, above.

c. What contractual problems would the FBI encounter in the Sentinel development effort if sufficient funding levels are not available? What contingency plans are in place to mitigate any schedule slippage? Are there cost implications of any delays in the project?

Response:

Please see the response to subpart a, above.

FBI/DHS Fingerprint Database Integration

156. As we mark over a decade since integration of the IAFIS (FBI) and IDENT (INS, now DHS) databases was initially urged by Congress (and over 15 years since these two databases were originally conceptualized) how realistic is it today that the goal is within reach?

I was pleased to review the July 2006 report of the Inspector General indicating that reconciliation of the divergent fingerprint systems (2-print vs. 10-print) had finally been accomplished. It appears, however, that we still lack full integration, and may not achieve full integration until December 2009.

a. What is the current status of the integration effort between the fingerprint databases of the FBI's IAFIS system and Homeland Security's IDENT system?

Response:

The FBI, DHS, and DOS have agreed to pursue interoperability, forming a multi-agency Interoperability Integrated Project Team that has developed a program to demonstrate that enhanced interoperability of existing systems can be achieved. Part of this program focuses on a reciprocal exchange of data subsets pursuant to a shared data prototype called the interim Data Sharing Model (iDSM), which allows each agency to hold a read-only copy of fingerprint images from the other agency and to perform biometric-based searches of the other agency's data. On 9/3/06 the iDSM was successfully deployed with over a million fingerprint images and plans to add additional data sets. Practical success was demonstrated on 10/18/06 and 10/22/06, when the Boston Police Department used iDSM to identify arrest subjects as individuals also of interest to ICE, which issued detainers on these subjects. The Dallas County Sheriff's Office, which initiated the use of iDSM on 11/1/06, has also identified arrest subjects as of interest to ICE, and detainers were additionally issued on these subjects.

b. What is the prognosis for achieving fuller integration and cross-matching capabilities between IDENT and IAFIS?

Response:

While agencies are working to enhance the interoperability of existing systems through activities such as the iDSM for short-term gains, they are concurrently making longer-term plans for future systems. Through the National Science and Technology Council's Subcommittee on Biometrics, the FBI is leading a multi-agency process to develop a "system of systems" framework that aims to enhance both interoperability and privacy protection. This framework is driving multi-agency plans for upcoming RDT&E standards and privacy activities and will provide the foundation for agencies as they design their next generation systems, such as the FBI's Next Generation Identification (NGI) multi-biometric system.

c. Are there steps that could be taken to expedite the integration? If so, please describe. If not, please explain.

Response:

Past and ongoing efforts of the NSTC Subcommittee on Biometrics have improved core biometric technologies so that enhanced integration is becoming possible. The Subcommittee's more recent interoperability efforts were initiated to expedite the planning and implementation of future, better integrated, systems. The FBI will also continue to enhance its existing system for short-term interoperable gains, such as improving IAFIS response times for civil submissions from US-VISIT and DOS. The full interoperability of IDENT/IAFIS will be delivered using an incremental approach, with benefits to state and local law enforcement and national security being realized each year.

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM FAILURE

157. As we mark over a decade since integration of the IAFIS (FBI) and IDENT (INS, now DHS) databases was initially urged by Congress (and over 15 years since these two databases were originally conceptualized) how realistic is it today that the goal is within reach?

Response:

Please see the response to Question 156, above.

158. News reports in early December 2006 revealed that the National Instant Criminal Background Check System operated by the FBI to quickly screen gun buyers' backgrounds for criminal activity crashed several times over a two day span. This system generally receives between 30,000 and 50,000 requests for background checks on a daily basis and processes the requests within 30 minutes. It was on the blink for up to a half-hour at times. An FBI spokesman blamed a technical glitch for the problem. It was unclear when it would be fixed.

According to the media accounts, "the outages potentially allowed people to buy firearms without being screened if sellers gave up on making the required check." It is my understanding that no firearms were sold during the periods the system was malfunctioning.

a. Please confirm my understanding about the lack of any sales during the periods that the system was malfunctioning.

Response:

Please see the response to Question 75b, above.

b. What policies are in place and used to ensure that a system failure does not allow Federal Firearms Licensees to dispense with the obligation to run the mandatory check in advance of completing a sales transaction? What directives or other guidance are provided to Federal Firearms Licensees for handling transactions when the electronic system is inaccessible?

Response:

18 U.S.C. § 922(t)(5) provides that a licensee who knowingly transfers a firearm and knowingly fails to comply with the provisions of Section 922(t)(1) with respect to the transfer may be subject to the revocation or suspension of the license for up to six months and a civil fine of not more than $5,000. Federal law (18 U.S.C. § 922(t)(1)) and regulation (27 C.F.R. § 478.102) prohibit Federal Firearms Licensees from transferring firearms without contacting the NICS. Pursuant to 28 C.F.R. § 25.6(i), federal firearms licensees "are required to record the system response, whether provided by the FBI NICS Operations Center or a [point of contact], on the appropriate ATF form for audit and inspection purposes, under 27 C.F.R. Part 178 record keeping requirements. The FBI NICS Operations Center will always include an NTN and associated 'Proceed,' 'Delayed,' or 'Denied' determination."

c. What preventative steps have been instituted to reduce the frequency of systems failures? Are other initiatives in progress or being planned to help limit the likelihood of system shutdown? Are there remedial backups in place to address problems such as the one recently experienced?

Response:

Please see the responses to Questions 75c and 112, above.

ENCLOSURE A

QUESTION 16

THE FBI'S FOREIGN LANGUAGE RESOURCES

Foreign Language Resources Breakdown
Provided by Language Services Section

As of 12/31/2006 Attachment to question # 137.

FBI Foreign Language Resources

Language	On-Board as of 04/18/2004			Hired in FY 2004			Hired in FY 2005			Hired in FY 2006			Hired in FY 2007 (YTD) (As of 12/31/2006)			Current On-Board Resource			Projected to Yet Hire in FY07, Jan 1 - Sep 30 **		
	SALP	LA	CLP	SALP	LA	CLP	SALP	LA	CLP	SALP	LA	CLP	SALP	LA	CLP	SALP	LA	CLP	SALP %	LS	CLP
Arabic	21	85	151	3	12	20	4	8	19	0	17	62	1	13	23	35	95	172	0	2	8
Farsi	10	13	45	2	1	6	0	0	5	1	6	11	0	1	4	0	18	49	0	1	2
Hindi	0	4	6	0	0	3	0	0	10	0	3	3	0	0	0	0	5	6	0	0	0
Kurdish	0	0	6	0	0	4	0	0	1	0	0	1	0	0	0	0	0	4	0	1	0
Pashto	0	1	7	0	0	1	0	0	3	0	0	1	0	0	0	0	0	7	0	0	0
Turkish	0	1	9	0	0	5	0	0	2	0	2	2	0	0	1	1	2	8	0	2	1
Urdu/Punjabi	0	7	21	3	1	7	2	0	9	0	3	11	0	6	4	1	13	33	0	1	2
Total Hired: Middle Eastern Languages Listed Above	31	91	245	8	14	49	6	9	49	1	31	91	1	20	32	37	134	281	0	7	11
Total Hired: All Languages	-		-	124	30	120	108	15	181	69	112	205	1	55	76	-	-	-	-	45	25
Total On-Board: All Languages *	**1198**	**408**	**820**	-	**387**	**835**	**1662**	**372**	**944**	**1442**	**448**	**821**	-	-	-	**1476**	**487**	**888**	**1476**	**632**	**913**

* Note that the total of On-Board linguists does not necessarily equal the total of the previous year plus the number hired due to attrition.
SALP = Special Agents Language Program
LA = Language Analysts
CLP = Contract Linguist Personnel

% Estimate unknown

** NOTE that due to current budget and and hiring uncertainties, these numbers are only estimates

As of 01/08/2006

ENCLOSURE B

QUESTION 58

5/19/04 ELECTRONIC COMMUNICATION SUBJECT: TREATMENT OF PRISONERS AND DETAINEES

Said 86
m MCT

(Rev 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 05/19/2004

To: All Divisions

Attn: ADIC
AD
DAD
SAC
CDC

From: General Counsel
Contact: Donald Klein (202) 324-0605

Approved By: Pistole John S
Caproni Valerie E

Drafted By: Klein Donald J
Matsumoto Lisa K

Case ID #: (U) 66F-HQ-A1258990

Title: (U) Treatment of Prisoners and Detainees

Synopsis: (U) In light of the widely publicized abuses at the Abu Ghraib prison, Iraq, this EC reiterates and memorializes existing FBI policy with regard to the interrogation of prisoners, detainees, or persons under United States control (collectively "detainees"). These guidelines serve as a reminder of existing FBI policy that has consistently provided that FBI personnel may not obtain statements during interrogations by the use of force, threats, physical abuse, threats of such abuse or severe physical conditions. In addition, this EC sets forth reporting requirements for known or suspected abuse or mistreatment of detainees.

Details: (U) FBI personnel posted abroad come into contact with detainees in a variety of situations. Persons being detained or otherwise held in the custody of the United States are entitled to varying levels of procedural rights depending upon their situation or category of detention (*e.g.*, unlawful combatant, prisoner of war). Although procedural rights, such as Miranda rights, do not apply in all situations overseas, certain minimum standards of treatment apply in all cases.

Applicability: (U) FBI personnel and personnel under FBI supervision deployed in Iraq, Guantanamo Bay, Cuba, Afghanistan or any other foreign location where similar detention and interrogation issues arise are to follow FBI policies and guidelines for the treatment of detainees.

To: All Field Offices From: General Counsel
Re: (U) 66F-HQ-A1258990, 05/19/2004

FBI Policy: (U) "It is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises." FBI Legal Handbook for Special Agents, 7-2.1 (1997). A person's status determines the type and extent of due process rights accorded by the FBI, such as right to counsel or advisement of rights. Regardless of status, all persons interrogated or interviewed by FBI personnel must be treated in accordance with FBI policy at all times. It is the policy of the FBI that no interrogation of detainees, regardless of status, shall be conducted using methods which could be interpreted as inherently coercive, such as physical abuse or the threat of such abuse to the person being interrogated or to any third party, or imposing severe physical conditions. *See*, FBI Legal Handbook Section 7-2.2.

Joint Custody or Interrogation: (U) FBI personnel who participate in interrogations with non-FBI personnel or who participate in interrogations of persons detained jointly by FBI and non-FBI agencies or entities shall at all times comply with FBI policy for the treatment of persons detained. **FBI personnel shall not participate in any treatment or use any interrogation technique that is in violation of these guidelines regardless of whether the co-interrogator is in compliance with his or her own guidelines**. If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation.

Reporting of Violations: (U) If an FBI employee knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee, the FBI employee must report the incident to the FBI on-scene commander, who shall report the situation to the appropriate FBI headquarters chain of command. FBI Headquarters is responsible for further follow up with the other party.

To: All Field Offices From: General Counsel
Re: (U) 66F-HQ-A1258990, 05/19/2004

LEADS.

Set Lead 1 (INFO)

ALL RECEIVING OFFICES

(U) Distribute to all personnel.

Set Lead 2 (INFO)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) To be distributed to all FBI personnel who are now, or in the future are, detailed to Iraq, Guantanamo Bay, Cuba, or Afghanistan or other foreign locations in which similar detention and interrogation issues may arise.

♦♦

ENCLOSURE C

QUESTION 88

THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE USE OF FBI CONFIDENTIAL HUMAN SOURCES

THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE USE OF FBI CONFIDENTIAL HUMAN SOURCES

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I. GENERAL PROVISIONS

A. PURPOSE AND SCOPE

1. The purpose of these Guidelines is to set policy for all Department of Justice (DOJ) personnel regarding the use of all Confidential Human Sources, as further defined below, that are operated by the Federal Bureau of Investigation (FBI) in any of the FBI's investigative programs or other authorized information collection activities.

2. These Guidelines are issued under the authority of the Attorney General as provided in Title 28, United States Code, Sections 509, 510, and 533.

3. These Guidelines are mandatory and supersede: the Attorney General's Guidelines Regarding the Use of Confidential Informants (May 30, 2002), to the extent that they apply to the FBI; the Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988), to the extent that it applies to assets; and the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) ("NSIG"), to the extent that they are inconsistent with these Guidelines.[1] These

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[1]However, techniques whose use is authorized for validating assets, as outlined in the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, to identify potential assets, to collect information to maintain the cover or credibility of assets, or to validate assets (including determining suitability or credibility) may continue to be utilized in relation to Confidential Human Sources in connection with activities related to threats to the national security.

Guidelines do not supersede otherwise applicable ethical and legal obligations of Department of Justice attorneys, which can, in certain circumstances (for example, with respect to contacts with represented persons), have an impact on FBI conduct.

4. These Guidelines apply to the use of a Confidential Human Source in a foreign country only to the extent that the Confidential Human Source is reasonably likely to testify in a domestic case.

5. These Guidelines do not limit the ability of the FBI to impose additional restrictions on the use of Confidential Human Sources.

6. All DOJ personnel have a duty of candor in the discharge of their responsibilities pursuant to these Guidelines.

7. These Guidelines shall be effective 180 days after they are approved by the Attorney General. However, to the extent provided in FBI policy: (i) activities commenced under pre-existing guidelines may be continued and completed in conformity with such pre-existing guidelines, notwithstanding the approval by the Attorney General and effectiveness of these Guidelines, and (ii) restrictions on the use of human sources under pre-existing guidelines which are not perpetuated by these Guidelines need not be observed following the Attorney General's approval of these Guidelines, even in relation to activities commenced under pre-existing guidelines, if the requirements of these Guidelines for such activities are satisfied. To the extent that paragraph III(A)(3)(f) cannot be fully implemented within 180 days, the FBI and the National Security Division will establish a protocol to

govern the review of sources who would otherwise be subject to that paragraph. The FBI shall adopt such measures as may be needed to effect an orderly and expeditious transition to the new Guidelines, without disruption or impediment to ongoing activities within their scope. The FBI shall keep the Deputy Attorney General, the Assistant Attorney General of the Criminal Division, and the Assistant Attorney General for National Security informed of such measures as directed by the Deputy Attorney General.

B. DEFINITIONS

1. "Special Agent in Charge" or "SAC" – the FBI Special Agent in Charge of an FBI Field Office (including an Acting Special Agent in Charge), except that the functions authorized for Special Agents in Charge by these Guidelines may also be exercised by the Assistant Director in Charge in an FBI Field Office headed by an Assistant Director, and by FBI Headquarters officials designated by the Director of the FBI.

2. "Federal Prosecuting Office" or "FPO" – any of the following Department of Justice components:

   a. The United States Attorneys' Offices;

   b. The Criminal Division;

   c. The National Security Division ("NSD");

   d. Any other litigating component of the Department of Justice with authority to prosecute federal criminal offenses, including the relevant sections of

the Antitrust Division, Civil Division, Civil Rights Division, Environmental and Natural Resources Division, and the Tax Division.

3. "Chief Federal Prosecutor" or "CFP" – the head of an FPO.

4. "FPO Attorney" – an attorney employed by, or working under the direction of, an FPO.

5. "Confidential Human Source Coordinator" – a supervisory FPO Attorney designated by the CFP to facilitate compliance with these Guidelines.

6. "FPO participating in the conduct of an investigation" – any FPO employing or directing an FPO Attorney assigned to a matter whose approval is necessary pursuant to these Guidelines, or whose approval was sought or obtained regarding any investigative or prosecutorial matter including the issuance of a search or arrest warrant, electronic surveillance order, subpoena, indictment or other related matter.

7. "Confidential Human Souree" – any individual who is believed to be providing useful and credible information to the FBI for any authorized information collection activity, and from whom the FBI expects or intends to obtain additional useful and credible information in the future, and whose identity, information or relationship with the FBI warrants confidential handling.

8. "Senior Leadership Source" – a Confidential Human Source who is in a position to exercise significant decision-making authority over, or to otherwise manage and direct, the unlawful activities of the participants in a group or organization involved in unlawful activities that are:

a. nationwide or international in scope; or

b. deemed to be of high significance to the FBI's criminal investigative priorities, even if the unlawful activities are local or regional in scope.[2]

9. "High-Level Government or Union Source" – a Confidential Human Source who is either (a) in relation to the federal government or the government of a state, the chief executive, the official next in succession to the chief executive, or a member of the legislature, or (b) a president, secretary-treasurer or vice president of an international or national labor union or the principal officer or officers of a subordinate regional entity of an international or national labor union.[3]

10. "Tier 1 Otherwise Illegal Activity" — any activity that:

a. would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization; and

b. that involves -

(i) the commission, or the significant risk of the commission, of any act of violence by a person or persons other than the Confidential Human Source;[4]

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[2]Such organizations shall include, but are not limited to: any La Cosa Nostra Family, Eurasian Organized Crime Group, or Asian Criminal Enterprise which is recognized by FBI Headquarters; and any domestic or international Terrorist Organization, which is recognized by FBI Headquarters.

[3]The term "regional entity" shall not include a local union or a group of local unions, such as a district council, combined together for purposes of conducting collective bargaining with employers.

[4]Bookmaking that is significantly associated with, or substantially controlled by, organized crime ordinarily will be within the scope of this definition. Thus, for example, where bookmakers have a financial relationship with members or associates of organized crime, and/or

(ii) corrupt conduct, or the significant risk of corrupt conduct, by an elected public official or a public official in a high-level decision-making or sensitive position in federal, state, or local government;

(iii) the manufacturing, importing, exporting, possession, or trafficking of controlled substances in a quantity equal to or exceeding those quantities specified in United States Sentencing Guidelines § 2D1.1(c)(1);

(iv) financial loss, or the significant risk of financial loss, in an amount equal to or exceeding those amounts specified in United States Sentencing Guidelines § 2B1.1(b)(1)(I);[5]

(v) a Confidential Human Source providing to any person (other than an FBI agent) any item, service, or expertise that is necessary for the commission of a federal, state, or local offense, which the person otherwise would have difficulty obtaining; or

(vi) a Confidential Human Source providing to any person (other than an FBI agent) any quantity of a controlled substance, an explosive, firearm, or

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use members or associates of organized crime to collect their debts, the conduct of those bookmakers would create a significant risk of violence, and would therefore fall within the definition of Tier 1 Otherwise Illegal Activity.

[5]The citations to the United States Sentencing Guidelines (USSG) Manual are to the 2005 Edition. The references herein to particular USSG Sections are intended to remain applicable to the most closely corresponding USSG level in subsequent editions of the USSG Manual in the event that the cited USSG provisions are amended. Thus, it is intended that subsection (iii) of this paragraph will remain applicable to the highest offense level in the Drug Quantity Table in future editions of the USSG Manual, and that subsection (iv) of the paragraph will remain applicable to dollar amounts that, in future editions of the USSG Manual, trigger sentencing enhancements similar to that set forth in the current section 2B1.1(b)(1)(I). Any ambiguities in this regard should be resolved by the Assistant Attorney General for the Criminal Division.

other dangerous weapon, or other item that poses an immediate and significant threat to public safety, with little or no expectation of its recovery by the FBI.

11. "Tier 2 Otherwise Illegal Activity" - any other activity that would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization.

12. "Fugitive" – an individual:

    a. for whom a federal, state, or local law enforcement agency has placed a wanted record in the FBI's National Crime Information Center (other than for a traffic or petty offense); or

    b. for whom a federal warrant has been issued; and

    c. for whom the law enforcement agency is willing, if necessary, to seek his or her extradition to its jurisdiction.

13. "Human Source Review Committee" or "HSRC" – A committee convened pursuant to these Guidelines to review various matters under these Guidelines as set forth below in paragraph III (A).

14. "National Security Investigation" – A national security investigation as defined in Part VIII.Q of NSIG.

15. "International Terrorism Investigation" – An investigation relating to international terrorism, whether conducted under NSIG, under the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise

Investigations (May 30, 2002), or under other guidelines issued by the Attorney General.

C. PROHIBITION ON COMMITMENTS OF IMMUNITY BY THE FBI

The FBI does not have any authority to make any promise or commitment that would prevent the government from prosecuting a Confidential Human Source for criminal activity that is not authorized pursuant to Section V below or that would limit the use of any evidence by the government, without the prior written approval of the FPO that has primary jurisdiction to prosecute the Confidential Human Source for such criminal activity. An FBI Agent must exercise due diligence to avoid giving any person the erroneous impression that he or she has any such authority.

D. MAINTAINING CONFIDENTIALITY

1. Obligation

DOJ Personnel have an obligation to maintain as confidential the identity of any Confidential Human Source. Consistent with that obligation, DOJ personnel shall not disclose the identity of a Confidential Human Source or information that Source has provided that would have a tendency to identify the Source unless disclosure is appropriate under one of the exceptions referenced below in paragraph D (4).

2. Security of Material

If the FBI provides DOJ personnel with any material containing:

a. the identity of a Confidential Human Source;

b. information that may possibly identify the Source; or

c. information that the Source has provided;

such material must be secured in a manner consistent with its security markings or classifications, when not in the direct care and custody of DOJ personnel.

3. Continuing Obligation

DOJ personnel have a continuing obligation after leaving employment with the Department of Justice to maintain as confidential the identity of any Confidential Human Source and the information that Source provided, unless disclosure is appropriate under one of the exceptions referenced below in paragraph D (4).

4. Exceptions

a. Notwithstanding paragraph I (D) (1), DOJ personnel may make appropriate disclosures:

i. to FBI Agents who need to know the identity of the Source in order to perform their official duties. However, an FPO must coordinate with the FBI Agent directing the Source to obtain the required approval of the FBI-SAC or his or her designee prior to such disclosure;

ii. to other law enforcement, intelligence, immigration, diplomatic, and military officials who need to know the identity to perform their official duties, subject to the prior approval of the FBI-SAC or his or her designee;

iii. when the Confidential Human Source has agreed to testify in a grand jury or judicial proceeding.

b. All DOJ personnel must disclose the identity of a Confidential Human Source, and the information that Source has provided, when required by court order, law, regulation, these Guidelines or other Department of Justice policies.

5. **Disclosures to Confidential Human Sources**

DOJ personnel must exercise due diligence to avoid disclosing any confidential investigative information to a Confidential Human Source (e.g., information relating to electronic surveillance, search warrants, indictments and other charging documents, or the identity of other actual or potential informants), other than what is necessary and appropriate for operational reasons.

E. **EXCEPTIONS AND DISPUTE RESOLUTION**

1. Whenever an FBI SAC, a CFP, or the designee of an FBI SAC or CFP, believes that extraordinary circumstances exist that warrant an exception to any provision of these Guidelines, or whenever there is a dispute between or among entities (other than a dispute with the Assistant Attorney General (AAG) of either the Criminal Division or National Security Division of the Department of Justice) regarding these Guidelines, an exception must be sought from, or the dispute shall be resolved by, the AAG for the Criminal Division or the National Security Division (whichever is appropriate) or his or her designee.

2. Whenever there is a dispute with the AAG for either the Criminal Division or National Security Division of the Department of Justice, such dispute shall be resolved by the Deputy Attorney General or his or her designee.

3. The Deputy Attorney General, or his or her designee, shall hear appeals, if any, from decisions of the Assistant Attorneys General of the Criminal Division and the National Security Division.

4. Any exception granted or dispute resolved pursuant to this paragraph shall be documented in the FBI's files.

F. RIGHTS OF THIRD PARTIES

Nothing in these Guidelines is intended to create or does create an enforceable legal right or private right of action by a Confidential Human Source or any other person.

G. COMPLIANCE

1. Within 60 days of the approval of these Guidelines by the Attorney General, the FBI shall submit an implementation plan to the respective Assistant Attorneys General for the Criminal Division and the National Security Division of the Department of Justice for review. The plan must address all the requirements imposed upon the FBI by these Guidelines.

2. Within 60 days of the approval of these Guidelines, the FBI in conjunction with the Criminal Division of the Department of Justice, shall establish a Human Source Review Committee to perform the functions set forth in Section III (A) below.

3. Within 60 days of the approval of these Guidelines, each FPO shall designate one or more supervisory FPO Attorneys to serve as "Confidential Human Source Coordinators," whose duties shall include:

   a. coordinating the responsibilities of the FPO under these Guidelines;

b. serving as a point of contact for the FBI for all matters pursuant to these Guidelines; and

c. approving matters pursuant to these Guidelines on behalf of the FPO when no other FPO Attorney has been assigned or when the assigned FPO Attorney is unavailable.

4. Each CFP and FBI-SAC shall implement comprehensive periodic training of its respective personnel regarding these Guidelines.

5. Each CFP shall coordinate with the appropriate FBI SAC to develop procedures to maximize the accessibility and availability of the FPO's Confidential Human Source Coordinators.

II. VALIDATION OF A CONFIDENTIAL HUMAN SOURCE

A. INITIAL VALIDATION

1. General

All FBI Confidential Human Sources must be subjected to the validation process as provided in these Guidelines and other FBI policies.

2. Time Limits

The FBI, in consultation with the Assistant Attorneys General of the Criminal Division and the National Security Division of the Department of Justice, shall establish reasonable time limits for subjecting a Source to the Initial Validation process that are compatible with these Guidelines and other FBI policies.

3. **Required Information**

In opening a Confidential Human Source, an FBI Agent shall document information pertaining to that Source and forward it to an appropriate FBI Supervisor for an Initial Validation. At a minimum, an FBI Agent shall provide the following information to facilitate the Initial Validation process:

a. basic identifying information that establishes the person's true identity, or the FBI's efforts to establish the individual's true identity;

b. a photograph of the person (when possible);

c. whether the person has a criminal history, is reasonably believed to be the subject or target of a pending criminal investigation, is under arrest, or has been charged in a pending prosecution;

d. the person's motivation for providing information or assistance, including any consideration sought from the government for this assistance;

e. any promises or benefits, and the terms of such promises or benefits, that are given a Confidential Human Source by the FBI, FPO or any other law enforcement agency (if known, after exercising reasonable efforts); and

f. any other information that is required to be documented in the Confidential Human Source's file pursuant to these Guidelines and FBI policies, including but not limited to, the instructions provided to the Confidential Human Source.

B. INSTRUCTIONS

1. In opening a Confidential Human Source, at least one FBI Agent, along with one additional Agent or other government official present as a witness, shall review with the Confidential Human Source instructions as required by these Guidelines and other FBI policies. At a minimum, these instructions must indicate that:

   a. information provided by the Confidential Human Source to the FBI must be truthful;

   b. the Confidential Human Source's assistance and the information provided are entirely voluntary;

   c. the United States Government will strive to protect the Confidential Human Source's identity but cannot guarantee that it will not be divulged;

   d. the Confidential Human Source must abide by the instructions of the FBI and must not take or seek to take any independent action on behalf of the United States Government.

2. The following additional instructions shall also be reviewed with a Confidential Human Source if applicable to the particular circumstances of the Confidential Human Source:

   a. The FBI on its own cannot promise or agree to any immunity from prosecution or other consideration by a FPO, a state or local prosecutor, or a Court in exchange for the Confidential Human Source's cooperation, because the decision to confer any such benefit lies within the exclusive discretion of the FPO and the Court. However, the FBI will consider (but

not necessarily act upon) a request by the Confidential Human Source to advise the appropriate FPO, the state or local prosecutor, or Court of the nature and extent of his or her assistance to the FBI;[6]

b. The Confidential Human Source has not been authorized to engage in any criminal activity and has no immunity from prosecution for any unauthorized criminal activity;[7]

c. The Confidential Human Source is not an employee of the United States Government and may not represent himself or herself as such;[8]

d. The Confidential Human Source may not enter into any contract or incur any obligation on behalf of the United States Government, except as specifically instructed and approved by the FBI;[9]

e. The FBI cannot guarantee any rewards, payments, or other compensation to the Confidential Human Source;

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[6] This instruction should be provided if there is any apparent issue of criminal liability or penalties that relates to the Confidential Human Source.

[7] This instruction should be provided to any Confidential Human Source who is not authorized to engage in otherwise illegal activity. See paragraph V (B)(3) for instructions that must be provided to a Confidential Human Source who is, in fact, authorized to engage in otherwise illegal conduct.

[8] This instruction should be provided to all Confidential Human Sources except under those circumstances where the Source has previously been, and continues to be, otherwise employed by the United States Government.

[9] This instruction should be provided to all Confidential Human sources except under those circumstances where the Source is otherwise authorized to enter a contract or incur an obligation on the behalf of the United States.

f. In the event that the Confidential Human Source receives any rewards, payments, or other compensation from the FBI, the Source is liable for any taxes that may be owed; and

g. No promises or commitments can be made, except by the United States Department of Homeland Security, regarding the alien status of any person or the right of any person to enter or remain in the United States.[10]

3. The content and meaning of each of the foregoing instructions must be clearly conveyed to the Confidential Human Source. Immediately after these instructions have been given, the FBI Agent shall require the Confidential Human Source to acknowledge his or her receipt and understanding of the instructions. The FBI Agent, and the additional Agent or other government official present as a witness, shall document that the instructions were reviewed with the Confidential Human Source and that the Source acknowledged the instructions and his or her understanding of them. As soon as practicable thereafter, an FBI Supervisor shall review and, if warranted, approve the documentation.

4. The instruction and documentation procedures shall be repeated to the Confidential Human Source whenever it appears necessary or prudent to do so, and, in any event, at least annually.

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[10] This instruction should be provided if there is any apparent issue of immigration status that relates to the Confidential Human Source.

C. ANNUAL VALIDATION REVIEW

1. Each Confidential Human Source's file shall be reviewed at least annually consistent with these Guidelines and other FBI policies.

2. The FBI shall establish procedures to ensure that all available information that might materially alter a prior validation assessment, including, but not limited to, information pertaining to unauthorized illegal activity by the Confidential Human Source, is promptly reported to an FBI Supervisor and then recorded and maintained in the file of the Confidential Human Source.

III. SPECIAL APPROVAL REQUIREMENTS

A. DEFINED CATEGORIES OF SOURCES

1. Required Early Approval

Within 60 days of utilizing a Confidential Human Source who meets any of the following definitions, the FBI must seek written approval, in accordance with the relevant provisions set forth in paragraph III (A)(3) below, for the continued use of the Source unless an FPO Attorney has existing oversight of a Source because the Source has agreed to testify in a federal criminal prosecution:

a. "Senior Leadership Source" -- a Confidential Human Source as defined in paragraph I (B)(8), above;

b. "Privileged or Media Source" -- A Confidential Human Source who is under the obligation of a legal privilege of confidentiality or affiliated with the media;

c. "High-Level Government or Union Source" – A Confidential Human Source as defined in paragraph I (B)(9), above.

2. **Long-Term Sources**

When a Confidential Human Source has been registered for more than five consecutive years, and to the extent such a Source remains open, every five years thereafter, the FBI must seek written approval, in accordance with the relevant provisions set forth in paragraph III (A)(3) below, for the continued use of the Source.

3. **Approval Process**

All FBI requests seeking approval for the continued use of a Confidential Human Source who meets any of the definitions set forth in paragraphs III (A)(1) & (2) above, <u>except</u> those Sources providing information for use in an international terrorism investigation, national security investigation, or other activity under NSIG, shall be reviewed and determined by a Human Source Review Committee (HSRC).

a. Composition of the HSRC - - At least one HSRC shall be established by the FBI and the Criminal Division of the Department of Justice. The Chairperson of each HSRC shall be an FBI Agent at or above the level of Deputy Assistant Director (or its equivalent). The membership of each HSRC shall include: two FBI Agents, and two attorneys from the FBI's Office of General Counsel, as designated by the Chairperson; and five FPO Attorneys designated by the AAG for the Criminal Division. One of

the five FPO Attorneys shall be a Deputy AAG from the Criminal Division, and at least two of the remaining FPO Attorneys shall each be from a U.S. Attorney's Office and have relevant experience in organized crime matters. In addition, an FPO Attorney designated by the Assistant Attorney General for National Security shall be a member of the HSRC, but shall not be considered to be a voting member for purposes of determining whether continued use of a Source under review should be approved.

b. Access to FBI Information - - During the approval process, the HSRC shall have access to all relevant FBI information pertaining to the use of the Confidential Human Source under consideration, including any Annual Validation Reports. However, the identity of the Confidential Human Source will not be disclosed to the HSRC unless the Chairperson of the HSRC determines that compelling reasons exist to warrant such a disclosure.

c. Time Limit - - The HSRC approval process shall be completed no more than 45 days after the FBI has submitted a request seeking approval for the continued use of a Confidential Human Source. While the request is pending with the HSRC, the FBI shall be permitted to continue to utilize the Confidential Human Source.

d. Notice to FPO - - After a final decision has been made by the HSRC, the HSRC shall consider whether to provide notice of the decision to any appropriate FPO.

e. Disputes - - The HSRC shall recommend approval of the continued use of a Source only upon reaching a consensus, provided that whenever the FBI, an FPO, or a HSRC Member disagrees with the final decision of the HSRC, it may seek review and reconsideration of that decision pursuant to the Exceptions and Dispute Resolution section, paragraph I (E) above. While the dispute is pending resolution, the FBI shall be permitted to continue to utilize the Confidential Human Source.

f. Sources Providing Information for Use in International Terrorism Investigations, National Security Investigations, or Other Activities under NSIG - - No Confidential Human Source who is providing information for use in international terrorism investigations, national security investigations, or other activities under NSIG shall be referred to the HSRC for review. Instead, the FBI shall provide notice to the National Security Division within 60 days of FBI Headquarters' approval of the continued use of any such Confidential Human Source who is subject to the enhanced review provisions of the FBI's Confidential Human Source Validation Standards Manual. Confidential Human Sources who meet any of the definitions set forth in paragraphs III(A)(1) & (2) shall be subject to enhanced review. The Assistant Attorney General for National Security

shall designate FPO Attorneys to review the notices and associated information pursuant to the following process:

i. Upon request by the designated FPO Attorney, the FBI shall make available at FBI Headquarters to the designated FPO Attorney Validation Reports regarding the Confidential Human Source. If the Validation Reports do not permit the FPO Attorney to conduct a meaningful analysis of the propriety of continuing to use the Confidential Human Source, the FPO Attorney may ask for additional information regarding the Confidential Human Source. The identity of the Confidential Human Source shall not be disclosed to the designated FPO Attorney unless the Assistant Director or a Deputy Assistant Director of the Division that is utilizing the Confidential Human Source determines that compelling reasons exist to warrant such a disclosure. With the exception of a request for the identity of the Confidential Human Source, all requests by the FPO Attorney for further information pertaining to a Confidential Human Source shall be satisfied within a reasonable period of time. Failure to provide such information may be grounds for the National Security Division to recommend that the Deputy Attorney General disapprove continued use of the Confidential Human Source. If the Director of the FBI and the Assistant Attorney General for National Security do not agree

whether information sought is reasonably necessary in order for the FPO Attorney to conduct a meaningful analysis of the propriety of continuing to use the Confidential Human Source, any such dispute shall be resolved by the Deputy Attorney General.

ii. The designated FPO Attorney may consult with other designated FPO Attorneys and with the Assistant Attorney General for National Security concerning the continued use of the Confidential Human Source. If the Assistant Attorney General for National Security does not object to the FBI's continued use of the Confidential Human Source, no further action shall be taken. If the Assistant Attorney General for National Security objects to the FBI's continued use of the Confidential Human Source, the Assistant Attorney General shall forward a recommendation to the Deputy Attorney General that continued use of the Confidential Human Source be disapproved. While the dispute is pending resolution before the Deputy Attorney General, the FBI shall be permitted to continue to utilize the Confidential Human Source.

B. FEDERAL PRISONERS, PROBATIONERS, PAROLEES, AND SUPERVISED RELEASEES

1. Consistent with extant Department of Justice requirements, the FBI must receive the approval of the Criminal Division's Office of Enforcement Operations ("OEO") prior to utilizing as a Confidential Human Source an individual who is in the custody of the United States Marshals Service or the Bureau of Prisons, or who is under Bureau of Prisons supervision. See U.S.A.M. § 9-21.050.

2. Prior to utilizing a federal probationer, parolee, or supervised releasee as a Confidential Human Source, an FBI Supervisor shall determine whether the use of that person in such a capacity would violate the terms and conditions of the person's probation, parole, or supervised release. If the FBI Supervisor has reason to believe that it would violate such terms and conditions, prior to using the person as a Confidential Human Source, the FBI Supervisor or his or her designee must obtain the permission of a federal probation, parole, or supervised release official with authority to grant such permission, which permission shall be documented in the Confidential Human Source's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate federal official, the FBI may seek to obtain authorization for the use of such individual as a Confidential Human Source from the Court then responsible for the individual's probation, parole, or supervised release, provided that the FBI first consults with the FPO for that District.

3. If an FPO is participating in the conduct of an investigation by the FBI in which a federal probationer, parolee, or supervised releasee would be utilized as a

Confidential Human Source or would be working with a federal probationer, parolee, or supervised releasee in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the current matter prior to using the person as a Confidential Human Source.

C. CURRENT OR FORMER PARTICIPANTS IN THE WITNESS SECURITY PROGRAM

1. Consistent with extant Department of Justice requirements, the FBI must receive the approval of OEO and the sponsoring FPO Attorney (or his or her successor) prior to utilizing as a Confidential Human Source a current or former participant in the Federal Witness Security Program, provided further that the OEO will coordinate such matters with the United States Marshals Service. See U.S.A.M. § 9-21.800.

2. If an FPO is participating in the conduct of an investigation by the FBI in which a current or former participant in the Witness Security Program would be utilized as a Confidential Human Source or would be working with a current or former participant in the Witness Security Program in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the matter prior to using the person as a Confidential Human Source.

D. STATE OR LOCAL PRISONERS, PROBATIONERS, PAROLEES, OR SUPERVISED RELEASEES

1. Prior to utilizing a state or local prisoner, probationer, parolee, or supervised releasee as a Confidential Human Source, an FBI Supervisor shall determine whether the use of that person in such a capacity would violate the terms and

conditions of the person's incarceration, probation, parole, or supervised release. If the FBI Supervisor has reason to believe that it would violate such terms and conditions, prior to using the person as a Confidential Human Source, an FBI Supervisor or his or her designee must obtain the permission of a state or local prison, probation, parole, or supervised release official with authority to grant such permission, which permission shall be documented in the Confidential Human Source's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate state or local official, the FBI may seek to obtain authorization for the use of such person as a Source from the state or local court then responsible for the person's incarceration, probation, parole, or supervised release.

2. If an FPO is participating in the conduct of an investigation by the FBI in which a state or local prisoner, probationer, parolee, or supervised releasee would be utilized as a Confidential Human Source or would be working with a state or local prisoner, probationer, parolee, or supervised releasee in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the matter prior to using the person as a Confidential Human Source.

E. FUGITIVES

1. Except as provided below, an FBI Agent shall not initiate communication with a current or former Confidential Human Source who is a fugitive.

2. An FBI Agent is permitted to communicate with a current or former Confidential Human Source who is a fugitive:

a. if the fugitive Source initiates the communication;

b. if the communication is part of a legitimate effort by the FBI to arrest the fugitive; or

c. if approved, in advance whenever possible, by a Supervisor of any federal, state, or local law enforcement agency that has a wanted record for the individual in the NCIC and, in the case of a federal warrant, by the FPO for the issuing District.

3. An FBI Agent who communicates with a Confidential Human Source who is a fugitive must promptly report such communication to the appropriate federal, state or local law enforcement agency, and any other law enforcement agency having a wanted record for the individual in the NCIC, and must document those communications in the Confidential Human Source's files.

IV. RESPONSIBILITIES REGARDING CONFIDENTIAL HUMAN SOURCES

A. NO INTERFERENCE WITH AN INVESTIGATION OF A CONFIDENTIAL HUMAN SOURCE

DOJ personnel shall not interfere with or impede any criminal investigation or arrest of a Confidential Human Source. DOJ personnel shall not reveal to a Confidential Human Source any information relating to an investigation of the Source, including confirming or denying the existence of such an investigation, unless authorized to do so by the Chief Federal Prosecutor or his or her designee, after consultation with the appropriate FBI SAC or his or her designee.

B. PROHIBITED TRANSACTIONS AND RELATIONSHIPS

1. DOJ personnel directing or overseeing the direction of a Confidential Human Source shall not:

   a. exchange gifts with a Confidential Human Source;

   b. provide the Confidential Human Source with anything of more than nominal value;

   c. receive anything of more than nominal value from a Confidential Human Source; or

   d. engage in any business or financial transactions with a Confidential Human Source.

2. Unless authorized pursuant to paragraph IV (B)(3) below, any exception to this provision requires the written approval of an FBI Supervisor, in advance whenever possible, based on a finding by the FBI Supervisor that the event or transaction in question is necessary and appropriate for operational reasons. This written finding shall be maintained in the Confidential Human Source's files.

3. DOJ personnel directing or overseeing the direction of a Confidential Human Source shall not socialize with that Source, except to the extent necessary and appropriate for operational reasons.

4. If an FPO is participating in the conduct of an investigation that is utilizing an FBI Confidential Human Source or working with a Confidential Human Source in connection with a prosecution, the FBI shall provide written notification to the FPO Attorney assigned to the matter, in advance whenever possible, if the FBI

approves an exception under paragraph IV (B) or if an FBI Agent socializes with a Confidential Human Source in a manner not permitted under paragraph IV(B)(2) & (3).

C. MONETARY PAYMENTS

1. General

Monies that the FBI pays to a Confidential Human Source in the form of fees and rewards shall be commensurate with the value, as determined by the FBI, of the information or assistance the Source provided to the FBI. The FBI's reimbursement of expenses incurred by a Confidential Human Source shall be based upon actual expenses incurred, except that relocation expenses may be made based on an estimate of the expenses.

2. Prohibition Against Contingent Payments

Under no circumstances shall any payments to a Confidential Human Source be contingent upon the conviction or punishment of any individual.

3. Approval for Payments

The FBI shall establish a written delegation of authority for approval of payments to Confidential Human Sources. The delegation of authority shall establish the level of approval required when single payments, aggregate annual payments, and total aggregate payments meet or exceed specific threshold amounts. The threshold amounts and approval authority are subject to periodic review and amendment as deemed appropriate by the FBI Director.

4. Documentation of Payment

The payment of any FBI funds to a Confidential Human Source shall be witnessed by at least one FBI Agent and another government official. In the event of extraordinary circumstances that must be documented in the Source's file, only one witness shall be required. Immediately after receiving a payment, the Confidential Human Source shall be required to sign or initial, and date, a written receipt.[11] At the time of the payment, the FBI Agent or other government official shall advise the Confidential Human Source that the monies may be taxable income that must be reported to appropriate tax authorities. Thereafter, the FBI shall document the payment and the advice of taxability in the FBI's files. The documentation of payment shall specify whether the payment is for services or expenses.

5. Accounting and Reconciliation Procedures

The FBI shall establish accounting and reconciliation procedures to comply with these Guidelines. The FBI procedures shall ensure that the FBI accounts for all funds paid to a Confidential Human Source subsequent to the issuance of these Guidelines.

6. Coordination with Prosecution

If an FPO Attorney is participating in the conduct of an investigation or prosecution that is utilizing an FBI Confidential Human Source who is expected

[11] The Confidential Human Source may sign or initial the written receipt by using a pseudonym which has been previously approved and documented in the Source's files and designated for use by only one Confidential Human Source.

to testify, the FBI shall coordinate with the FPO attorney, in advance if practicable, any payment of monies to the Confidential Human Source pursuant to paragraph IV(C)(3) above. If the payment is to be made for services and if the FPO Attorney objects to the payment, no payment will be made until the dispute has been resolved in accordance with Section I. E. above.

V. AUTHORIZATION OF OTHERWISE ILLEGAL ACTIVITY

A. GENERAL PROVISIONS

1. The FBI shall not authorize a Confidential Human Source to engage in any activity that otherwise would constitute a criminal violation under federal, state, or local law if engaged in by a person acting without authorization, except as provided in the authorization provisions in paragraph V(B) below.

2. The FBI is never permitted to authorize a Confidential Human Source to:

   a. participate in any act of violence except in self-defense;[12] or

   b. participate in an act designed to obtain information for the FBI that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespass amounting to an illegal search).

B. AUTHORIZATION PROCEDURES

1. Written Authorization

[12]The Source may take reasonable measures of self-defense in an emergency to protect his or her own life or the lives of others against wrongful force.

a. Tier 1 Otherwise Illegal Activity must be authorized by an FBI SAC and the appropriate CFP, in advance and in writing for a specified period, not to exceed 90 days, except that, with respect to all international terrorism investigations, national security investigations, or other activities under NSIG, upon request of the FBI and at the discretion of the appropriate CFP, the Otherwise Illegal Activity may be authorized for a period of up to one year.

b. Tier 2 Otherwise Illegal Activity must be authorized by an FBI SAC in advance and in writing for a specified period, not to exceed 90 days.

c. The written authorization by the FBI SAC and/or CFP of Otherwise Illegal Activity shall be as narrow as reasonable under the circumstances as to the unlawful activity's scope, geographic area, duration and other related matters.

d. For purposes of this paragraph, <u>except</u> with respect to all international terrorism investigations, national security investigations, or other activities under NSIG, the "appropriate Chief Federal Prosecutor" is the CFP that:

   i. is participating in the conduct of an investigation by the FBI that is utilizing the Confidential Human Source or is working with the Confidential Human Source in connection with a prosecution;

   ii. would have primary jurisdiction to prosecute the Otherwise Illegal Activity that would constitute a violation of federal law; or

iii. is located where the Otherwise Illegal Activity is to occur, and it only constitutes a violation of state or local law.

e. With respect to all international terrorism investigations, national security investigations, or other activities under NSIG, the appropriate Chief Federal Prosecutor is the AAG of the NSD, or designee. Within 60 days after these Guidelines are approved by the Attorney General, the AAG of the NSD shall identify designees for purposes of this paragraph, which may include DOJ personnel outside the NSD.

2. Findings

a. The FBI SAC and the CFP who authorize the Otherwise Illegal Activity must make a finding, which shall be documented in the Confidential Human Source's files, that the illegal activity is:

i. necessary either to -

A. obtain information or evidence essential for the success of an investigation that is not reasonably available without such activity, including circumstances in which the Confidential Human Source must engage in the illegal activity in order to maintain his credibility and thereby obtain the information or evidence, or

B. prevent death, serious bodily injury, or significant damage to property; and

ii. that the benefits to be obtained from the Confidential Human Source's participation in the Otherwise Illegal Activity outweigh the risks.

b. In making these findings, the FBI SAC and the CFP shall consider, among other things:

i. the importance of the investigation;

ii. the likelihood that the information or evidence sought will be obtained;

iii. the risk that the Confidential Human Source might misunderstand or exceed the scope of his authorization;

iv. the extent of the Confidential Human Source's participation in the Otherwise Illegal Activity;

v. the risk that the FBI will not be able to closely monitor the Confidential Human Source's participation in the Otherwise Illegal Activity;

vi. the risk of violence, physical injury, property damage, or financial loss to the Confidential Human Source or others; and

vii. the risk that the FBI will not be able to ensure that the Confidential Human Source does not realize undue profits from his or her participation in the Otherwise Illegal Activity.

3. Instructions

a. If a Confidential Human Source is authorized to engage in Otherwise Illegal Activity, at least one FBI Agent, along with one additional government official present as a witness, shall review with the Confidential Human Source written instructions that:

i. the Confidential Human Source is authorized only to engage in the specific conduct set forth in the written authorization and not in any other illegal activity (the Chief Federal Prosecutor's written authorization should be read to the Confidential Human Source unless it is not feasible);

ii. the Confidential Human Source's authorization is limited to the time period specified in the written authorization;

iii. under no circumstance may the Confidential Human Source:

A. participate in an act of violence (except in self-defense);

B. participate in an act designed to obtain information for the FBI that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespass amounting to an illegal search);

C. If applicable: participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering,

witness intimidation, entrapment, or the fabrication, alteration, or destruction of evidence);

D. If applicable: initiate or instigate a plan or strategy to commit a federal, state, or local offense;

iv. if the Confidential Human Source is asked by any person to participate in any illegal activity other than the specific conduct set forth in the written authorization, or learns of plans to engage in such illegal activity, the Source must immediately report the matter to the FBI Case Agent; and

v. participation in any illegal activity other than the specific conduct set forth in the written authorization could subject the Confidential Human Source to criminal prosecution.

b. Immediately after these instructions have been given, the Confidential Human Source shall be required to sign or initial, and date, a written acknowledgment of the instructions.[13] If the Confidential Human Source refuses to sign or initial the written acknowledgment, the FBI Agent, and the additional Agent or other government official present as a witness, shall document that the instructions were reviewed with the Confidential Human Source and that the Source acknowledged the instructions and his

[13] The Confidential Human Source may sign or initial the written acknowledgment by using a pseudonym which has been previously approved and documented in the Confidential Human Source's files and designated for use by only one Confidential Human Source.

or her understanding of them. As soon as practicable thereafter, an FBI Supervisor shall review and, if warranted, approve the documentation.

4. Precautionary Measures

Whenever the FBI has authorized a Confidential Human Source to engage in Otherwise Illegal Activity, the FBI must take all reasonable steps to:

a. monitor closely the activities of the Confidential Human Source;

b. minimize the adverse effect of the Otherwise Illegal Activity on innocent persons; and

c. ensure that the Confidential Human Source does not realize undue profits from his or her participation in the Otherwise Illegal Activity.

5. Suspension of Authorization

Whenever the FBI cannot, for legitimate reasons unrelated to the Confidential Human Source's conduct (e.g., unavailability of the Case Agent), comply with the precautionary measures described above, it shall immediately:

a. suspend the Confidential Human Source's authorization to engage in Otherwise Illegal Activity until such time as the precautionary measures can be complied with;

b. inform the Confidential Human Source that his or her authorization to engage in any Otherwise Illegal Activity has been suspended until that time; and

c. document these actions in the Confidential Human Source's files.

6. Revocation of Authorization

a. If an FBI Agent has reason to believe that a Confidential Human Source has failed to comply with the terms of the authorization of Otherwise Illegal Activity, the FBI Agent shall immediately:

i. revoke the Confidential Human Source's authorization to engage in Otherwise Illegal Activity;

ii. inform the Confidential Human Source that he or she is no longer authorized to engage in any Otherwise Illegal Activity;

iii. comply with the notification requirement of paragraph VI (B) below;

iv. determine whether the Confidential Human Source should be closed pursuant to Section VII; and

v. document these actions in the Confidential Human Source's files.

b. Immediately after the Confidential Human Source has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the Confidential Human Source should sign or initial, and date, a written acknowledgment that he or she has been informed of this fact.[14] If the Confidential Human Source refuses to sign or initial the written acknowledgment, the FBI Agent who informed the Confidential Human Source of the revocation of authorization shall document the refusal, and the source's oral acknowledgment of the information if such oral

[14] The Confidential Human Source may sign or initial the written acknowledgment by using a pseudonym which has been previously approved and documented in the Confidential Human Source's files and designated for use by only one Confidential Human Source.

acknowledgment is provided. As soon as practicable thereafter, an FBI Supervisor shall review the written acknowledgment or documentation of refusal.

7. Renewal and Expansion of Authorization

a. If the FBI seeks to re-authorize any Confidential Human Source to engage in Otherwise Illegal Activity after the expiration of the authorized time period, or after revocation of authorization, the FBI must first comply with the procedures set forth above in paragraphs V(B)(1)-(3).

b. If the FBI seeks to expand in any material way a Confidential Human Source's authorization to engage in Otherwise Illegal Activity, the FBI must first comply with the procedures set forth above in paragraphs V (B)(1)-(3).

8. Emergency Authorization

a. In exceptional circumstances, an FBI SAC and the appropriate CFP may orally authorize a Confidential Human Source to engage in Tier 1 Otherwise Illegal Activity without complying with the documentation requirements of paragraphs V (B)(1)-(3) above, when they each determine that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these documentation requirements, and that the circumstances support a finding required pursuant to paragraph V (B)(2). In such an event, the documentation requirements, as well as a written justification for the oral authorization,

shall be completed within 72 hours or as soon as practicable following the oral approval and maintained in the Confidential Human Source's files.

b. In extraordinary circumstances, an FBI SAC may orally authorize a Confidential Human Source to engage in Tier 2 Otherwise Illegal Activity without complying with the documentation requirements of paragraphs V(B)(1)-(3) above when he or she determines that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 72 hours or as soon as practicable following the oral approval and maintained in the Confidential Human Source's files.

9. Designees

The FBI SAC and the CFP may agree to designate particular individuals at the supervisory level in their respective offices to carry out the approval functions assigned to them in Section V.

10. Record Keeping Procedures

a. The FBI shall maintain a file for each Confidential Human Source containing all the written authorizations, findings and instructions regarding Tier 1 Otherwise Illegal Activity, as required under Section V(B) of these Guidelines.

b. At the end of each calendar year, the FBI shall report to the Assistant Attorneys General of the Criminal Division and the National Security

Division the total number of times each FBI Field Office authorized a Confidential Human Source to engage in Otherwise Illegal Activity, and the overall nationwide totals.

c. If requested, the FBI shall provide to the Assistant Attorneys General of the Criminal Division and the National Security Division a copy of any written authorization, finding or instruction issued pursuant to Section V(B) of these Guidelines.

VI. SPECIAL NOTIFICATION REQUIREMENTS

A. NOTIFICATION OF INVESTIGATION OR PROSECUTION

1. If an FBI Agent has reasonable grounds to believe that the alleged felonious activity of a current or former Confidential Human Source is, or is expected to become, the basis of a prosecution or investigation by an FPO or a state or local prosecutor's office, the FBI Agent must immediately notify a Confidential Human Source Coordinator or the assigned FPO Attorney of that individual's status as a current or former Confidential Human Source. However, with respect to a former Confidential Human Source whose alleged felonious activity is, or is expected to become, the basis of a prosecution or investigation by a state or local prosecutor's office, no notification obligation shall arise unless the FBI Agent has reasonable grounds to believe that the Confidential Human Source's prior relationship with the FBI is material to the prosecution or investigation.

2. Whenever such a notification occurs, the Confidential Human Source Coordinator or the assigned FPO Attorney shall notify the CFP. The CFP and FBI SAC, with the concurrence of each other, shall notify any other federal, state or local prosecutor's office or law enforcement agency that is participating in the investigation or prosecution of the Confidential Human Source.

B. NOTIFICATION OF UNAUTHORIZED ILLEGAL ACTIVITY

1. If an FBI Agent has reasonable grounds to believe that a Confidential Human Source has engaged in unauthorized criminal activity (other than minor traffic offenses), the FBI shall promptly notify a Confidential Human Source Coordinator or the assigned FPO Attorney. In turn, the Confidential Human Source Coordinator or assigned FPO Attorney shall notify the following FPOs of the Confidential Human Source's criminal activity and his or her status as a Confidential Human Source:

   a. the FPO in whose District the criminal activity primarily occurred, unless a state or local prosecuting office in that District has filed charges against the Confidential Human Source for the criminal activity and there is no basis for federal prosecution in that District;

   b. the FPO Attorney, if any, who is participating in the conduct of an investigation that is utilizing the Confidential Human Source or is working with the Confidential Human Source in connection with a prosecution; and

c. the FPO Attorney, if any, who authorized the Confidential Human Source to engage in Otherwise Illegal Activity pursuant to paragraph V(B) above.[15]

2. Whenever such notifications are provided, the Chief Federal Prosecutor(s) and the FBI SAC, with the concurrence of each other, shall notify any state or local prosecutor's office that has jurisdiction over the Confidential Human Source's criminal activity and that has not already filed charges against the Confidential Human Source for the criminal activity of the fact that the Confidential Human Source has engaged in such criminal activity. The CFP(s) and the FBI SAC(s) are not required, but may with the concurrence of each other, also notify the state and local prosecutor's office of the person's status as a Confidential Human Source.

C. NOTIFICATION REGARDING CERTAIN FEDERAL JUDICIAL PROCEEDINGS

The FBI shall immediately notify an appropriate Confidential Human Source Coordinator or the assigned FPO Attorney whenever an FBI Agent has reasonable grounds to believe that:

1. a current or former Confidential Human Source has been called to testify by the prosecution in any federal grand jury or judicial proceeding;
2. the statements of a current or former Confidential Human Source have been, or will be, utilized by the prosecution in any federal judicial proceeding; or

[15] Whenever such notifications to FPOs are provided, the FBI must also comply with the Annual Validation Review requirements described above in paragraph (II)(C)(2).

3. an FPO Attorney intends to represent to a Court or jury that a current or former Confidential Human Source is or was a co-conspirator or other criminally culpable participant in any criminal activity.

D. PRIVILEGED OR EXCULPATORY INFORMATION

1. If an FPO is participating in the conduct of an investigation by the FBI that is utilizing a Confidential Human Source or working with a Confidential Human Source in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the matter, in advance whenever possible, if the FBI has reasonable grounds to believe that a Confidential Human Source will obtain or provide information that is subject to, or arguably subject to, a legal privilege of confidentiality belonging to someone other than the Confidential Human Source.
2. Whenever an FBI Agent knows or reasonably believes that a current or former Confidential Human Source has information that is exculpatory as to a target of a federal, state or local investigation, or as to a defendant (including a convicted defendant) in a federal, state or local case, the FBI Agent shall disclose the exculpatory information either to the assigned FPO Attorney that is participating, or had participated, in the conduct of the investigation or to a Confidential Human Source Coordinator.
3. In turn, the assigned FPO Attorney or Confidential Human Source Coordinator shall disclose the exculpatory information to all affected federal, state and local authorities. In the event the disclosure would jeopardize the security of a Confidential Human Source or seriously compromise an investigation, the FPO

Attorney or Confidential Human Source Coordinator shall refer the matter to the HSRC for consideration, except such matters with respect to an international terrorism investigation, national security investigation, or other activity under NSIG shall be referred to the AAG of the NSD or designee.

E. LISTING A CONFIDENTIAL HUMAN SOURCE IN AN ELECTRONIC SURVEILLANCE APPLICATION

1. The FBI shall not name a Confidential Human Source as a named interceptee or a violator in an affidavit in support of an application made pursuant to 18 U.S.C. § 2516 for an electronic surveillance order unless the FBI believes that:

   a. omitting the name of the Confidential Human Source from the affidavit would endanger that person's life or otherwise jeopardize an ongoing investigation; or

   b. the Confidential Human Source is a bona fide subject of the investigation based on his or her suspected involvement in unauthorized criminal activity.

2. In the event that a Confidential Human Source is named in an electronic surveillance affidavit under paragraph VI (E)(1) above, the FBI must inform the FPO Attorney making the application and the Court to which the application is made of the actual status of the Confidential Human Source.

F. RESPONDING TO REQUESTS FROM FPO ATTORNEYS REGARDING A CONFIDENTIAL HUMAN SOURCE

1. In any criminal matter arising under, or related to, these Guidelines, upon request by an appropriate FPO Attorney, the FBI shall promptly provide the FPO Attorney

all relevant information concerning a Confidential Human Source, including whether he or she is a current or former Confidential Human Source for the FBI.

2. If the FBI SAC has an objection to providing such information based on specific circumstances of the case, he or she shall explain the objection to the FPO making the request and any remaining disagreement as to whether the information should be provided shall be resolved pursuant to the Exceptions and Dispute Resolution section, paragraph I (E).

G. EXCEPTIONS TO THE SPECIAL NOTIFICATIONS REQUIREMENTS

The Director of the FBI, with the written concurrence of the Deputy Attorney General, may withhold any notification required pursuant to paragraphs VI (A)-(F) if it is determined that the identity, position, or information provided by the Confidential Human Source warrants extraordinary protection for sensitive national security reasons. Any such determination shall be documented and maintained in the Confidential Human Source file, along with the concurrence of the Deputy Attorney General.

H. FILE REVIEWS

If the FBI discloses any information about a Confidential Human Source to a FPO pursuant to paragraphs VI (A)-(F), the FBI SAC and the CFP shall consult to facilitate any review and copying of the Confidential Human Source's files by the FPO that might be necessary for an FPO Attorney to fulfill his or her disclosure obligations.

I. DESIGNEES

An FBI SAC and a CFP may, with the concurrence of each other, designate particular individuals in their respective offices to carry out the functions assigned to them in paragraphs VI (A)-(H).

VII. CLOSING A CONFIDENTIAL HUMAN SOURCE

A. GENERAL PROVISIONS

If the FBI determines that a Confidential Human Source should be closed for cause or for any other reason the FBI shall promptly:

1. close the individual;
2. document the reasons for the decision to close the individual as a Confidential Human Source in the Confidential Human Source's files;
3. if the Confidential Human Source can be located, notify the Confidential Human Source that he or she has been closed as a Confidential Human Source and document that such notification has been provided in the same manner as set forth in paragraph (II)(B)(3), except that, if the Confidential Human Source refuses to acknowledge his receipt and understanding of the notification, the FBI shall document the refusal; and
4. if the Confidential Human Source was authorized to engage in Otherwise Illegal Activity pursuant to paragraph V(B), immediately revoke that authorization under the provisions of paragraph V (B)(6).

B. DELAYED NOTIFICATION TO A CONFIDENTIAL HUMAN SOURCE

The FBI may delay providing the notification to the Confidential Human Source described above in paragraph of VII (A)(3) during the time such notification might jeopardize an ongoing investigation or prosecution or might cause the flight from prosecution of any person. If the decision is made to delay providing a notification, that

decision and the reasons supporting it must be documented in the Confidential Human Source's files.

C. CONTACTS WITH FORMER CONFIDENTIAL HUMAN SOURCES CLOSED FOR CAUSE

Absent exceptional circumstances that are approved by an FBI Supervisor, in advance whenever possible, an FBI Agent shall not initiate contact with or respond to contacts from a former Confidential Human Source who has been closed for cause. When granted, such approval shall be documented in the Confidential Human Source's files.

D. COORDINATION WITH FPO ATTORNEYS

If an FPO is participating in the conduct of an investigation that is utilizing an FBI Confidential Human Source or the FPO is working with a Confidential Human Source in connection with a prosecution, the FBI shall coordinate with the FPO Attorney assigned to the matter, in advance whenever possible, regarding any of the decisions described in paragraphs VII (A)-(C).

Date: 12-13-06

ALBERTO R. GONZALES
ATTORNEY GENERAL

ENCLOSURE D

QUESTION 96

8/25/06 LETTER
FROM DOJ AAG MOSCHELLA
TO THE HONORABLE F. JAMES SENSENBRENNER

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D C 20530

August 25, 2006

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is to advise you of our strong opposition to H.R. 4132, the "Law Enforcement Cooperation Act of 2005," as reported by the Committee.

H.R. 4132 would amend the federal criminal code to impose fines and up to five years of incarceration upon any "officer or employee" of the Federal Bureau of Investigation (FBI or Bureau) who obtains information that a "confidential informant or other individual" has committed a serious violent felony that violates state or local law, and knowingly fails to promptly inform the state's chief law enforcement officer and local prosecutor. The bill also requires the officer or employee to notify the Attorney General that such information has been provided.

Inside information, through the management of cooperators and informants who are within, or on the immediate periphery of, the target criminal or terrorist organization, is key to the success of many of the FBI's investigations. The Attorney General's Guidelines provide legally sound and time-tested protocols by which the FBI coordinates with local law enforcement and reports serious crime by informants to the appropriate local authorities. The Guidelines require the U.S. Attorney and the FBI Special Agent in Charge to engage in a coordinated decision-making process through which senior law enforcement officials have an opportunity to consider such factors as the seriousness of the crime and the significance of the investigation in which an informant is being used. The FBI is greatly strengthening its internal procedures for tracking the recruitment and use of its human sources in order to ensure that this requirement, and all other requirements of the Attorney General's Guidelines, are strictly carried out. In addition, there is ample federal guidance requiring federal agencies to share criminal investigative information with their state and local counterparts. The FBI has actively followed these directives since their issuance after September 11, 2001, as part of the FBI's National Information Sharing Strategy. Indeed, active and effective law enforcement information sharing is underway at both the national

and regional levels (through the National Data Exchange System known as "N-DEX" and the Regional Data Exchange System, or "R-DEX, respectively).

We believe that H.R. 4132, instead of having the intended effect of encouraging greater cooperation, would impede the progress we have made in fostering more effective federal, State and local law enforcement information-sharing and cooperation. The proposal would shift the primary focus of the FBI agent in the field away from recruiting sources capable of obtaining actionable intelligence to an emphasis on recruiting "safe" sources who are less likely to expose the agent to reportable criminal offenses.

Moreover, the legislation would significantly upset the delicate balance, achieved through decades of Supreme Court and federal case law, concerning whether an injured party has a justiciable claim against the United States under the Federal Tort Claims Act (FTCA) for the actions of FBI officials in failing to intervene or report criminal activity. The discretionary function exception of the FTCA, which currently provides broad protection against tort liability of the United States for such actions, would be undermined by this proposal, should an FBI agent violate the reporting requirement and a victim suffer harm at the hands of a confidential source, over whom the agent had no control. This could lead to unwarranted payments of substantial sums of public funds for damages even if the United States could not have prevented the harm.

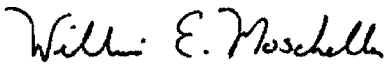
The Department also notes that the reporting obligation contemplated by H.R. 4132 is without precedent or analog in State or federal law. The closest reference is the common law crime of failing to report criminal conduct. We note, however, that challenges to such prosecutions have encountered both evidentiary problems and constitutional challenges. As a result, virtually every jurisdiction in the country has included an element of active concealment in the proof required for a conviction *See, e.g.*, misprision of a felony, codified in federal law at 18 U.S.C. § 4.

In addition to lacking critical elements of proof, the bill fails to limit the proposed reporting requirement to only the most serious crimes, or to impose any standard of credibility, reliability, or weight with respect to the underlying report or allegation of criminal conduct. Section 3559 of title 18 includes crimes where no violence has occurred, such as firearms possession in furtherance of a drug trafficking offense, and also contains attempt, conspiracy, and solicitation provisions. As a result, H.R. 4132 would expose an FBI employee to a felony conviction, and up to five years imprisonment, for example, for failing to report a mere suggestion, by a non-credible source, that another person is thinking of robbing a local liquor store with a gun. No matter how lacking in credibility or viability the allegation might be, the agent would be obligated to pass it on in order to protect him or herself from criminal culpability. Such reporting not only would involve needless expenditure of both federal and local officer time and energy, it could also jeopardize federal criminal investigations, particularly those involving undercover agents and/or informants. The bill grants the FBI agent (or employee) no discretion to elect not to report the serious violent felony based on the agent or employee's professional judgment that greater harm will come to those who reported it.

As a final matter, we note that there have been no public hearings on H.R. 4132, which would allow the Committee to receive testimony from law enforcement personnel and other information concerning the myriad of problems raised by the bill.

We appreciate the opportunity to bring our views to your attention. The Office of Management and Budget has advised that there is no objection to the presentation of these responses from the standpoint of the Administration's program and that enactment of H.R. 4132 would not be in accord with the program of the President. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,



William E. Moschella
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

ENCLOSURE E

QUESTION 142a

1/25/07 LETTER FROM CTD AD BILLY TO ASSISTANT IG PRICE

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No

January 25, 2007

The Honorable Paul A. Price
Assistant Inspector General
Office of the Inspector General
Evaluation and Inspection Division
Department of Justice
Suite 6100
1425 New York Avenue, NW
Washington, D.C. 20530

RE: OIG Recommendation 14, Status Update

Dear Mr. Price:

This letter is in response to the Office of the Inspector General (OIG) review of the "Federal Bureau of Prisons' Monitoring of Mail for High-Risk Inmates", A-2005-006, specifically Recommendation number 14. This Recommendation states "The FBI should continue to develop and reinforce procedures for interacting with the Bureau of Prisons (BOP) regarding international terrorist inmates, including monitoring of inmates, intelligence gathering, and sharing information and intelligence." The FBI agrees with this Recommendation and will continue to develop procedures regarding information sharing with BOP.

The FBI provided you with a letter dated September 22, 2006 in which we outlined our continuing efforts to improve and expand information sharing with the BOP. The purpose of this letter to provide you with a status report regarding our ongoing efforts.

Central to the success of the Correctional Intelligence Initiative (CII) is effective training for correctional staff in the skills necessary to accomplish the program goals. The following training initiatives have recently been completed or are well under way:

1. During the week of December 4-8, 2006, the FBI Center for Intelligence Training in Quantico, VA provided Intelligence Analyst Training for 20 BOP staff assigned as Special Investigative Agent and Linguists from ADX

Florence, Colorado; Intelligence Officers and Intelligence Research Specialists from the Joint Intelligence Sharing Initiative (JISI); the BOP's Chief of Intelligence, Central Office; the Chief, Intelligence Analysts, and Linguists from the Counter Terrorism Unit, Martinsburg, WV; and the Deputy Chief of the Sacramento Intelligence Unit.

2. The FBI held the 2006 National CII Coordinators Conference on December 12-13 at the National Counter Terrorism Center in McClean, Virginia. This training was based on the "train the trainer" concept. CII Coordinators from each FBI field office who will conduct the outreach and training for all correctional agencies within their geographical area, to include BOP facilities were in attendance.

3. An electronic communication (EC) issued on December 7, 2006 which directed all FBI field offices to develop formalized CII Outreach and Training Plans by March 1, 2007. Field offices were directed to include target dates, performance measures, CII program updates, and required reporting dates.

Progress continues to be made in the following areas:

- Continued FBI support of BOP intelligence needs with regard to vetting and screening of contractors and volunteers, information on terrorist offenders entering BOP custody, and special monitoring of BOP offenders under Special Administrative Measures (SAMs) controls.

- Continued comprehensive access to FBI resources through BOP staff assigned to the National Joint Terrorism Task Force (NJTTF) and respective JTTFs.

- FBI support to the new BOP Counterterrorism Unit (CTU) recently opened in Martinsburg, WV. Specifically, the FBI will assess the staffing of two personnel and identify necessary databases to support the mission.

- Provide guidance to all FBI field offices to clarify and expand intelligence sharing initiatives regarding terrorism matters between the FBI, BOP, and other state, county, and private correctional agencies.

- Provide continued CII training at various state, regional and national conferences. Completed CII training at recent conferences which BOP attended have included the 2006 Major Gang Task Force National Training Conference in Indianapolis, IN on September

12, 2006; FBI Boston regional training conference on September 28, 2006; and the FBI Atlanta regional conference on December 18, 2006. A CII presentation will also be made at the pending American Correctional Association (ACA) Winter Conference in Tampa on January 24, 2007, and as well as the scheduled National JTTF Conference during fiscal year 2007.

- The FBI will continue to support BOP efforts regarding internal intelligence training by providing speakers and resources as appropriate.

We believe the above noted steps will help ensure that the FBI continues our current emphasis on our ever-expanding intelligence partnership with the BOP regarding terrorism matters.

Sincerely,

Joseph Billy, Jr.
Assistant Director
Counterterrorism Division

SUBMISSIONS FOR THE RECORD

[OPINION]

Behind the Crime Scene

For investigators, the Michelle Gardner-Quinn case is about more than law and order

By **An Anonymous Cop** (11/08/06).

Violence is seemingly endemic to American society these days. Though statistics clearly show that each individual in America today has an incredibly slim chance of becoming a victim of violent crime in a given year, those same statistics show that your chance of being so victimized now is greater than at any point in the last century. For those not well versed in statistics, it is a paradox.

For me, and others like me, it is simple reality. We live professionally in the part of our society that deals daily with this interpersonal violence, an ugly, brutal reality of the human condition that is not often spoken of in polite circles. It is the 600-pound gorilla in the middle of society's spacious living room. Most people know it exists, but they usually prefer to ignore it and pretend it is for others to acknowledge and deal with. It thus becomes an abstract threat. Sort of like the inevitable cooling of the sun or Ebola.

This is particularly true in bucolic Vermont. Though violent crime does occur here, we traditionally enjoy one of the lowest crime rates of any state in the union. The reasons are many and varied, but the fact remains. What violent crime we do have tends to occur outside of most folks' normal routine, as the societal profiles of criminals often mirror that of victims. In other words, criminals often prey upon those in their own socio-economic strata, preferring to stay close to home in terms of both geography and class. This has the effect of, usually, keeping violent crime away from the middle and upper classes, especially here in Vermont. Violent crime is largely a problem of the under-class.

I am not judging or preaching. Just pointing out the way things are.

This past month has seen one of the rare exceptions to this general rule, with the kidnapping and senseless, brutal murder of a University of Vermont senior. At 21, she was young, pretty, loved and protected, yet by all accounts had lived a rich and varied life thus far. She was outgoing and friendly, experienced in living in dangerous communities, but not jaded by the experience. A woman from a good family, she did not fit the stereotype of the typical victim, much less that of a criminal. She was, in a very real sense, the classic girl next door.

She had spent the day and early evening with her parents, who were in town for UVM's Parents' Weekend. Her father took some snapshots of her to memorialize their visit that afternoon. It was a timeless scene, a happy one for everyone involved. They casually planned to meet the next day for lunch.

They never fulfilled that plan.

Walking downtown that Friday night, having left one group of friends to join another in celebrating one of them having turned 21, she walked a few short blocks in the middle of downtown Burlington. She went alone. It is an action undertaken by dozens of her peers every weekend here in town and probably one that she had done herself more than once.

In trying to connect with the friend that she was trying to meet, her cellular telephone battery ran out of power. Without much thought, she asked a man on the street if she could use his telephone. Her casual trust and this small act started a chain of events that would end tragically for them both.

The man she had asked was, unlike the vast majority of people in our community, not a good person. Indeed, he was the single-worst person she could have asked for help that night. Though I am not a religious person, I would call him evil. Through nothing more than blind bad luck, she had found a violent sexual predator, a man who preys on the vulnerable in the dark places like some kind of two-legged hyena. She was alone and demonstrated her vulnerability by asking him for help.

He helped her, offering his telephone and talking to her. Smooth. Friendly. Deceptive. He was heading back to his car and, as fate would have it, she was going the same way towards her dorm, having failed to find her friends. How seemingly fortuitous that she had found a nice guy to escort her part of the way home.

Only he was not such a nice guy. And she never made it home as a result.

Somewhere that night, she died, having endured what no person should ever have to endure. He then shoved her under some rocks and leaves in a wooded area near his home. She trusted him, for just a brief moment, and it cost her the single most precious possession she had. It is not her failing at having trusted, but his at having taken advantage of that trust in so heinous a fashion.

I wear many hats in this state. Amongst other things, I am a law enforcement officer, a citizen of this community, the parent of a daughter, a spouse, a UVM alum. I had many reasons to be interested in this case, all of which and more have run through my mind over the week. I wanted with every fiber of my being to find this girl alive and to catch her abductor, though, as time passed, I knew that the chance of the former was dropping. Happily, the latter was rapidly looming larger.

I spent a week working alongside almost every law enforcement officer I know in Chittenden County, and many I was meeting for the first time, looking for her and trying to capture her killer. We all worked tirelessly, chasing every lead, no matter how nebulous. Never did I see a single one of my peers complain or snap at one another. Never did anyone despair, even though we all knew that her odds of being found alive went lower and lower with each passing minute. Instead, each worked harder still, hoping to find her alive, knowing that we would avenge her if she were not. Each of us asking ourselves deep down inside, "Why could he not have tried this with me instead? Why could I not have been nearby when this happened?"

I would arrive earlier than I was required each day. I worked late into each night, going home near 1 or 2, physically and emotionally drained. One night I left only when my boss ordered me to. then I snuck back a few hours later. I was quickly caught and sent home again, this time with few illusions about my fate should I come back within a few hours. Every one of us had a similar story.

Surveillance teams worked around the clock. Managers strategized until the wee hours. Uniformed officers canvassed neighborhoods and took tips from anyone who had something to say. Investigators interviewed, searched, typed and contemplated. Crime scene techs pored over scenes suspected of being involved with the crime. Every detail of every bit of information was examined and reexamined, then discussed with others, in a constant effort to find the piece we were missing, the one bit of info that would break the case wide open.

Hope for her survival was slowly replaced by cold resolve to find her, no matter how long we had to look, to bring her home to her family and to bring her abductor to justice. Determination hardened in everyone.

Many of us interviewed and followed the man we eventually arrested — the man who lent her a cellphone. The man who turned a young woman's trust into a deadly weapon.

He did not just snuff out her life that night, but, in a very real way, he snuffed out his own. Only he gets to keep on breathing. And, like ripples in a still pond, his act radiates out beyond just the two of them, grievously impacting those around them in gradually widening circles. His children will suffer for his sin, fair or not. His parents, good people in their own right, now suffer. Her parents and family now suffer. Our community suffers. All because he made the choice to strike out and to kill.

And while she is dead and he is in jail awaiting trial, others are safer now for it. He has been sexually assaulting women in vulnerable positions for decades, unreported and undetected. There was no sign that he was going to stop. My professional experience and training tell me that, if anything, he was going to become more and more violent in his sexual rampages. Indeed, this case bears that out. Her death brought to light who he is and, in all likelihood, saved many others from enduring his ministrations in later years.

His actions deprived our society of her life, of all the things she would have gone on to do for herself and, by extension, the rest of us. Yet as a group, we will be safer now because of them. This is what I dwell on in order to keep my own perspective, to keep my own frustration and rage under control. I will not sink to his level and take his life, though I admit the idea does not repel me. I have attended the deaths of others who did not deserve it nearly as much as he does, at least not to my way of thinking. To me, he has forfeited his right to life. But I am not the final arbiter of such things.

I am a cop.

My respect for the law stays my hand, twitch though it may. I believe that it speaks well of us, as a profession and as a community, that we go to great lengths to extend the protection of the law to someone who has so terribly violated it. I may not like it sometimes, but it runs counter to who I am not to live with this system.

Because I am better than him.

I have never been one to deal well with the survivors and victims of such brutal crimes. I do not have the temperament for it. Others do, and I applaud them. It is necessary and important work that I choose not to do. I lack the drive and the sensitivity.

Instead, my peers and I hunt the evil. We choose to stand a post between society and chaos, to do what we can to stop these things from happening. And when they do happen, we put our effort into trying to catch those who transgress, in order that society can visit rightful judgment on their crimes.

And though in this case I failed to find him before she did, and I failed to save her once their paths crossed, I, and those like me, *did* catch him. By doing so, we can let our wounded community mete out the justice that we will. It will be on our terms, at our leisure, and it will be a justice in keeping with the law, imparted only after extensive review and discussion. For "not guilty" is not the same as "innocent." It may sound like cold comfort, but it is the best we have. It will suffice.

It is also the best we can do for her now, as we mourn her senseless passing and try to heal the communal wound left by his brutal act. Random violence can find us even here, as he has clearly demonstrated. It is a sad, terrible lesson, and one that we would all do well to keep in mind.

Seven Days *has verified the identity of this law enforcement officer but agreed to allow him anony- mity, given the tragic inspiration for writing this essay and the nature of his job.*

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The Burlington Free Press (**Vermont)**

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01 Edition

HEADLINE: FBI agent's story threatens Rooney case

BYLINE: Adam Silverman Contact Adam Silverman at 660-1854 or asilverm@bfp.burlingtonfreepress.com

The man accused of sexually assaulting and killing a University of **Vermont** student last month wants the case thrown out after a local weekly newspaper published an article by an "anonymous cop" about the investigation.

Brian L. Rooney's attorney argued in court papers submitted Thursday that the article is so harmful to the ability to find impartial jurors that dismissing the case is the only suitable response.

"Agents of the state have deliberately disseminated highly inflammatory and prejudicial comments to the press," lawyer David Sleigh of St. Johnsbury wrote in his three-page motion.

Rooney, 36, of Richmond has pleaded not guilty to a charge of aggravated murder in connection with the Oct. 7 abduction, assault and killing of Michelle Gardner-Quinn, 21, of Arlington, Va., a UVM senior majoring in environmental studies. Gardner-Quinn vanished after a night out with friends in downtown Burlington and a chance encounter with Rooney in which he allegedly lent her his cell phone.

Rooney is jailed without bail pending trial and faces life in prison if convicted. Police say DNA evidence ties Rooney conclusively to the crime.

Prosecutor Justin Jiron, a deputy Chittenden County state's attorney, said he had yet to receive Sleigh's motion and could not comment on it. Jiron also declined to describe his reaction to the anonymous article, but said the piece was something neither his office nor law enforcement would condone.

"I view this release as an unauthorized release," said Burlington Police Chief Thomas Tremblay, whose department led the massive investigation. "Any release should have come through us."

The article's author is an **FBI** agent, said Paul Holstein, a bureau lawyer and spokesman based in the Albany, N.Y, headquarters for the division that includes **Vermont's FBI** office.

"We're not happy with it, and we'll take steps to ensure it doesn't happen again," Holstein said. "We take it very seriously when we have an unauthorized media contact, and it also is an issue because we have a policy that we do not discuss ongoing investigations or

prosecutions."

The article

The article in question, printed Wednesday in the Burlington publication Seven Days, describes the agent's involvement in the investigation, the strength of the state's case and, in vivid detail, his visceral, angry reaction to the crime. The author never used Rooney's name, but the suspect's identity is clear.

The piece describes the suspect as "evil," a "sexual predator" and a "two-legged hyena" who preyed on a vulnerable, trusting woman. The article presents no shred of doubt that the man police arrested is Gardner-Quinn's killer.

Sleigh contends the article, coupled with a Burlington police officer's recent appearance on a national cable news program, has destroyed Rooney's chance to receive a fair trial anywhere in the state. Sleigh said moving the case wouldn't help: "To where? Mars?"

The publicity "went well beyond what was necessary to inform the public about alleged criminal behavior, the arrest of a suspect and the commencement of legal proceedings," Sleigh wrote in his motion. "The state has intentionally and maliciously endeavored to deprive him of a fair trial."

Vermont Law School professor Michael Mello said he thinks a judge will allow the case against Rooney to continue, but publication of the article has shrouded the proceedings in a "toxic cloud" and given a substantial boost to Rooney's ability to win a plea bargain.

"This is wildly unethical. I don't know what this guy was thinking," Mello said. "This has given the defendant the opportunity to escape the very justice the cop is purporting to support."

Aggravated murder is the most serious charge **Vermont** prosecutors can bring and carries a mandatory sentence of life with no chance for parole. One rung lower on the ladder is first-degree murder, which carries a penalty of 35 years to life in prison. Second-degree murder is punishable by a term of 20 years to life.

'Freedom of expression'

Seven Days co-publisher and editor Pamela Polston said the author requested anonymity, and the paper granted the request after verifying the officer's identity. Polston declined to share her reaction to Sleigh's request to dismiss the case, but she defended the paper's decision to publish the piece.

"We stand behind the freedom of expression of every citizen, including that of law-enforcement officers, and, like all newspapers, offer a forum to our readers for that expression," she said.

Sleigh said the officer went too far.

"This is an intentional comment on the strength of the state's case with the sole purpose of influencing potential jurors," he said in an interview.

Although Burlington was the primary agency on the case, the investigation swelled to include some 70 local, state and federal officers from 30 agencies during the weeklong search for Gardner-Quinn, whose body remained hidden at Huntington Gorge in Richmond for nearly a week after she was killed.

Tremblay said an inquiry into the article uncovered the author's identity, and the incident was referred to the **FBI** "as a personnel matter."

Neither Tremblay nor Holstein, the **FBI** spokesman, would provide the writer's name. Holstein declined to comment on potential disciplinary ramifications the agent might face.

Prosecutors are expected to file a written response to Sleigh's motion next week in **Vermont** District Court in Burlington. Sleigh has requested a hearing on the matter, although a judge could issue a ruling based solely on arguments in the legal papers.

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LOAD-DATE: November 12, 2006

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Prepared Statement of Senator Chuck Grassley of Iowa
Senate Committee on the Judiciary Hearing
"FBI Oversight"
Wednesday, December 6, 2006

Chairman Specter, thank you for holding this FBI Oversight hearing today. Since the holes in our nation's defenses were exposed by the attacks on 9/11, no problem has been more difficult to solve than the lack of adequate information sharing between agencies, and sometimes even within agencies.

Information Technology

I was pleased with the reports that the FBI's Information Data Warehouse (IDW) has been somewhat successful in tying law enforcement databases together so that investigators can search across many sources of information in one place. However, there needs to be more progress in integrating information from all federal law enforcement agencies into the IDW. For example, it should include Drug Enforcement Agency information. I'd like to learn more from the FBI about why certain databases have not yet been included. My fear is that there may be a reluctance by other agencies to contribute information to an FBI-run database given the FBI's history and reputation among other federal law enforcement agencies of not sharing its databases with them in return.

However, information sharing with other agencies cannot be truly effective until the FBI can capture and organize its own information electronically in a modern, automated case management system. The FBI's attempts to do this have been delayed and restarted time and again – with the costs going up and up with little more than words to show for it. Just yesterday, media reports indicated that the FBI's Sentinel computer system may exceed its estimated $425 million budget. That's more money to contractors and less security for Americans.

The Amerithrax Investigation

I am shocked that the FBI and the Justice Department continue to deny Congressional requests for briefings on the Anthrax investigation. Three years without a briefing to Congress on one of the largest and most important investigations the FBI has ever undertaken is simply unacceptable. As I explained in my letter to the Attorney General on October 23, 2006, I have previously expressed concern about the FBI's designation of Stephen Hatfill as a "person of interest" in the case without any formal policy or evidentiary standard. Now, news reports suggest that the anthrax spores may have been less sophisticated than originally thought, which means that the FBI's focus may have been too narrow for too long.

Stephen Hatfill is suing several media outlets and the Justice Department for leaking his name to the press and inappropriately casting suspicion on him. His lawsuit alleges that the FBI engaged in systematic leaking in order to smear someone just to make it look like they were making progress, when in fact they were not. Those are serious allegations. They need to be

examined by an independent Congressional inquiry to determine whether there is any truth to them.

But it is more than just denying a briefing request. My October 23rd letter to the Attorney General posed legitimate oversight questions seeking basic information necessary to ensure that Congress can evaluate how its post-9/11 legislation is being implemented. For example, on the focus of today's hearing – information sharing – I asked:

> (a) On how many occasions, and with what agency, has grand jury or other information gathered during the Amerithrax investigation been shared outside the Justice Department pursuant to Section 203 of the USA PATRIOT ACT?
>
> (b) On how many occasions has information gathered during the course of the Amerithrax investigation been shared outside the Justice Department pursuant to Section 905(a)(1) of the USA PATRIOT ACT?
>
> (c) On how many occasions has information gathered during the course of the Amerithrax investigation been withheld under Section 905(a)(2)?

Refusing to answer basic questions like these just doesn't make sense. There's no justification for it. I suspect that stiff-arming Congress across-the-board in its requests for information about these matters may have less to do with fears of Congress leaking details of a five-year old investigation and more to do with Congress and the public learning about embarrassing missteps and misconduct in the course of the investigation.

FBI Whistleblower Michael German

For two-and-a-half years under two different Chairmen, this Committee attempted to get a copy of the transcript of a meeting at issue in the allegations of FBI whistleblower Michael German. According to the DOJ Inspector General, Special Agent German was retaliated against by the FBI for reporting mismanagement and misconduct within the FBI. German claimed that the transcript of the secretly recorded meeting shows that a domestic and an international terrorist group were beginning to meet to discuss the possibility of mutual operational ties. According to German, FBI officials denied that the meeting occurred, denied that it had been recorded, and denied that it involved subjects associated with terrorist groups, all in an effort to discredit his allegations of mismanagement and misconduct. Earlier this year, the Committee received a copy of this transcript, and it is a lot closer to what Michael German described than what the FBI described. Unfortunately, that's just more of the same from the FBI.

The FBI's criminal investigations often contain valuable intelligence, such as this information about initial contacts between domestic and foreign terrorist groups exploring the possibility of operational ties. However, it is difficult to see how this information can be effectively shared with the rest of intelligence community when the culture of the FBI continues to allow managers to hide information like this and deny, both internally and publicly, that it even exists. And all of this without any consequences for the managers involved. If our nation is to be safe, then at some point the FBI needs make it clear that protecting the Bureau's reputation is not as important is getting the right information into the hands of the right people at the right time.

U S SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

STATEMENT OF SENATOR PATRICK LEAHY,
RANKING MEMBER, COMMITTEE ON THE JUDICIARY
HEARING ON FBI OVERSIGHT
DECEMBER 6, 2006

Mr. Chairman, thank you for convening today's FBI oversight hearing. This is another opportunity to continue our efforts to remake the FBI into a modern domestic intelligence and law enforcement agency.

Once again we commend the Bureau's skilled workforce – the agents, the technicians and all the other men and women on the front lines and behind the scenes who have been working long days, year after year, to help keep our citizens and communities safe.

The Importance Of Oversight

As the people's elective representatives, we in Congress have a solemn duty to conduct meaningful oversight of the Executive Branch. Constructive congressional oversight of the FBI's work is an invaluable tool to help make the FBI as good as the American people need it to be in countering terrorism and in strengthening law enforcement.

I take the responsibility to conduct oversight seriously. For this reason, oversight of the FBI and the Department of Justice will again be one of my highest priorities as Chairman of the Senate Judiciary Committee during the next Congress, as it was when I last had the privilege of chairing this Committee.

The recent revelation that the Bush Administration, since 9/11, has been compiling secret dossiers on millions of unwitting, law-abiding Americans who travel across our borders, highlights the importance of diligent congressional oversight. It is simply incredible that the

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Administration is willing to share this sensitive information with foreign governments and even private employers, while refusing to allow U.S. citizens to see or challenge the so-called terror score that the government has assigned them based on their travel habits and schedules.

When done poorly or without proper safeguards and oversight, data banks do not make us safer, they just further erode Americans' privacy and civil liberties. This Administration has gone to unprecedented lengths to hide its own activities from the public, while at the same time collecting and compiling unprecedented amounts of information about every citizen.

New technologies make data banks more powerful and more useful than they have ever been before. They have a place in our security regimen. But powerful tools like this are easy to abuse and are prone to mistakes. A mistake can cost Americans their jobs and wreak havoc in their lives. Mistakes on government watch lists have become legendary in recent years. We need checks and balances to keep government data bases from being misused against the American people.

Data banks like this are overdue for meaningful oversight, and that is going to change in the new Congress.

Detainee Treatment

One of the greatest challenges facing the FBI today is striking the successful balance between fulfilling its core counterterrorism mission, while respecting and preserving the democratic principals and freedoms that make America such a great and resilient Nation. For more than two years, I have repeatedly sought answers from the FBI, and from others, regarding reported and, in some instances, documented cases of the abuse of detainees in U.S. custody. Just recently, I wrote to the Attorney General about press reports that after years of denials the Central Intelligence Agency has acknowledged the existence of additional classified documents detailing the Bush Administration's interrogation and detention policy for terrorism suspects.

When Director Mueller appeared before this Committee in May 2004, I asked him if FBI agents had witnessed objectionable interrogation practices in Iraq, Afghanistan or Guantanamo Bay, and he gave a purposefully narrow answer, saying that no FBI agents had witnessed abuses "in Iraq." Documents released by the FBI in December 2004 made clear that FBI agents witnessed abusive treatment of prisoners at least at Guantanamo Bay, and Director Mueller's own answers to subsequent questions have shed some more light on the subject than his original answer. The Congress and the American people deserve to know the truth about the Bush Administration's interrogation policies and practices. I hope that Director Mueller will continue moving away from the Bush Administration's policy of secrecy and concealment on this issue and toward the responsiveness that the American people deserve.

Counterterrorism

It also troubles me deeply that, five years after 9/11, the FBI is still not as strong and as equipped as it must be to fulfill its counterterrorism mission. After the 9/11 terrorists attacks, I authored the USA Patriot Act provision aimed at facilitating the hiring of more translators at the FBI. To its credit, the Bureau has made some progress in this area. The number of FBI translators proficient in Arabic has increased almost 300 percent since 9/11, and the FBI has significantly increased its overall number of linguists. But the FBI still lags far behind when it comes to the number of agents who are proficient in Arabic. Recently, *The Washington Post* reported that only 33 FBI agents have at least a limited proficiency in Arabic and that only 1 percent of FBI agents have any familiarity with the language at all. If the FBI is to be a world-class intelligence agency, this is a serious problem that it must promptly and adequately address.

Information-Sharing And Sentinel

I also remain greatly concerned about the FBI's new paperless case management system, Sentinel. We have been told that Sentinel will cost the American taxpayers $425 million to complete and that this system will not be fully operational until 2009. On Monday, the Department of Justice Office of Inspector General issued a report finding that the FBI will need an addition $56.7 million to just to pay for Phase II of Sentinel and that there are serious

concerns about the adverse impact that these additional costs could have on the FBI's non-IT programs. There have also been rumors about growing concern within the FBI that the Bureau will cut other mission-critical programs to pay for this program for several months. In addition, in October, the GAO issued a report that found that the FBI has no plan in place to address future staffing and human capital needs for Sentinel. After watching the FBI waste five years and millions of taxpayer dollars on the Trilogy program, I remain seriously concerned about this project. The American people cannot afford another fiasco.

Conclusion

Since 9/11, the FBI has made significant strides to adjust to the threats and challenges of our time. I commend these accomplishments, and especially the hardworking men and women of the FBI.

But there is much more to do. The Bureau must also acknowledge and learn from its mistakes to become a world-class intelligence and law enforcement agency intelligence. Director Mueller, I look forward to hearing your views on how best to move the Bureau forward.

# # # # #

Testimony of Robert S. Mueller, III
Director, Federal Bureau of Investigation
Before the Senate Judiciary Committee
December 6, 2006

Good morning, Mr. Chairman, Senator Leahy, and members of the committee. I am pleased to be here today to discuss the progress of the FBI's transformation efforts.

When I was sworn-in as the sixth Director of the FBI on September 4, 2001, I was aware of the need to address a number of management and administrative challenges facing the Bureau at that time. However, the terrorist attacks of September 11, 2001, the emerging threats brought on by globalization and advances in technology, and the continued traditional criminal threats, required far more changes than we could have ever expected. Indeed, the last five years have been a time of unprecedented change for the FBI.

While there have been some setbacks along the way, there has also been remarkable progress. Today, the FBI is a stronger organization, combining greater capabilities with the longstanding commitment to the security of the United States.

After the September 11th attacks on America, the FBI priorities shifted dramatically. Our top priority became the prevention of another terrorist attack. Today, our top three priorities - counterterrorism, counterintelligence, and cyber security - are all national-security related. To that end, we have made a number of changes in the Bureau, both in structure and in the way we do business. This summer we announced the realignment of our organizational structure to create five branches: National Security, Criminal Investigations, Science and Technology, the Office of the Chief Information Officer and Human Resources. These changes address areas where we and outside advisors identified weaknesses or areas where additional change is needed. This structure will carry the FBI into 2011 and beyond.

Understandably, much of the focus on the FBI in the last five years has been on the transformation, the changes, the shifts. But amid all the change, there is another story – that of tremendous accomplishment.

My testimony today is a collection of some of the FBI's most important accomplishments over the last five years. Credit for these accomplishments goes to many. The support and guidance provided by the Congress has been invaluable. The Administration has strongly supported our efforts, and many independent organizations offered important advice and guidance that substantially enhanced our efforts.

But most of the credit, Mr. Chairman, goes to the 30,000 men and women of the FBI. They are the ones who have built on the foundation laid by the many Agents and professional staff who came before them. They are the ones who have made all that we have done in the last five years possible. And they are the ones who will be there in the future continuing the proud tradition of the FBI to protect the nation while preserving civil liberties. I have been privileged to work with this outstanding group of public servants for the last five years. Their hard work, dedication, and resolve are a daily inspiration.

As set forth below, each branch of the FBI -- National Security, Criminal Investigations, Science and Technology, the Office of the Chief Information Officer, and Human Resources -- has demonstrated the ability and the willingness to embrace change for a better, stronger, more effective FBI. These accomplishments are by no means exhaustive, but they provide a vivid illustration of the extraordinary work done day-in and day-out at the FBI.

National Security

Since September 11, 2001, the FBI has implemented significant changes to integrate our intelligence and operational elements and enhance our ability to counter today's most critical threats. We have built upon our established capacity to collect information and enhanced our ability to analyze and disseminate intelligence. Development of the National Security Branch (NSB) has been another step in enhancing the FBI's mission as a dual law enforcement and intelligence agency.

The National Security Branch structure took effect on September 12, 2005, in response to a directive from the President to the Attorney General. The NSB consists of the FBI's Counterterrorism Division (CTD), the Counterintelligence Division (CD), the Directorate of Intelligence (DI), and the new Weapons of Mass Destruction (WMD) Directorate. Combining our national security workforce and mission under one leadership umbrella enhances our contribution to the national intelligence effort and provides us with the opportunity to leverage resources from our U.S. Intelligence Community (USIC) partners, as well as our federal, state, local, and tribal law enforcement partners.

Counterterrorism Division

The mission of the Counterterrorism Division is to identify and disrupt potential terrorist plots by individuals or terror cells, freezing terrorist finances, sharing information with law enforcement and intelligence partners worldwide, and providing strategic and operational threat analysis to the wider intelligence community. Since the September 11th attacks, we have dramatically strengthened our ability to combat terrorism and have had success identifying, disrupting and dismantling terrorist threats. Set forth below are a few examples of the myriad successes in this regard.

In the past five years, we have disrupted terrorist financing mechanisms.

An investigation titled "Operation Blackbear" was initiated in 2001 and focused on three individuals involved in raising money for terrorist organizations. Our investigation identified other individuals in the United States that could remit money to Yemen for support of terrorist organizations. We developed evidence that indicated the subjects were engaged in providing money to support mujahadeen fighters in Afghanistan, Chechnya and Kashmir and that they had met with Bin Laden and provided money, arms, and recruits. Two of the subjects were arrested in Germany in January 2003 and charged with providing material support to terrorism and conspiracy to provide material support. They were extradited to the United States and indicted in December 2003. These individuals were found guilty in March 2005 and sentenced to significant prison terms. In addition, other individuals were arrested on charges such as illegal money remitting and bank structuring charges and were convicted or pled guilty in connection to this investigation. "Operation Blackbear" also resulted in the criminal forfeiture of approximately 25 million dollars.

In December 2001, an investigation into the Global Relief Foundation (GRF) proved that the organization was providing material support to terrorism. The GRF was an Islamic charity claiming to be a conduit for directing aid to the poor and needy of the Islamic world. The investigation uncovered facts to indicate that GRF was actually a conduit for funding Islamic Fighters engaged in battle throughout the world, including Chechnya. GRF was the second largest Islamic Non Governmental Organization (NGO) operating in the U.S. and was named a "Specially Designated Global Terrorist" entity by the Department of Treasury pursuant to Executive Order 13224. Through our efforts and those of our partners, this organization was successfully disrupted and dismantled. Rabih Haddad, GRF's Chairman of the Board, was subsequently arrested by INS and deported to Lebanon after a two year detention period.

In August 2003, Enaam Arnaout, Chief Executive Officer (CEO) of the Benevolence International Foundation (BIF), was convicted of racketeering conspiracy in the diversion of charitable donations to Islamic Fighters, and sentenced to over 11 years in federal prison. BIF was also an Islamic charity claiming to be a conduit for directing aid to the poor and needy of the Islamic world. The investigation uncovered facts to indicate that it was actually a conduit for funding Islamic Fighters engaged in battle in Chechnya, Bosnia, and Sudan. BIF also employed several high-ranking Al Qaeda operatives and facilitated the international travel of these individuals under the guise of charity work. BIF was third largest Islamic NGO operating in the U.S. and, like GRF, was named a "Specially Designated Global Terrorist" entity by the Department of the Treasury pursuant to Executive Order13224. This designation was based primarily upon information gathered through the FBI investigation. Due to the Treasury designations of BIF and GRF, both organizations have closed all operations in the U.S. and abroad.

Working with our federal, state and tribal partners, we have had other operational successes that contribute to the overall goal of keeping America safe.

In 2002, we arrested Iyman Faris, an Ohio truck driver from Kashmir, who later pled

guilty to providing material support and resources to Al Qaeda. Faris admitted that he met with bin Laden at a training camp in Afghanistan and that he cased the Brooklyn Bridge with an eye toward planning an attack. He was sentenced to twenty years in prison.

The investigation known as the "Lackawanna Six" determined that shortly before the 9/11 terrorist attacks, specific individuals attended or supported attendees at the Al-Farooq terrorist training camp, an Al Qaeda military-style training camp, located in Afghanistan. The investigation successfully identified and documented the methods Al Qaeda members used to communicate with and recruit U.S. citizens of Yemeni descent to travel to Afghanistan for the purpose of military training for jihad. The investigation resulted in the convictions of the six men, all U.S. citizens of Yemeni descent. All were convicted of providing material support to Al Qaeda and conducting transactions unlawfully with Al Qaeda. They are currently serving sentences ranging from 7 to 10 years after pleading guilty in 2003. A seventh individual, who fled the United States prior to the capture and conviction of his cell, is believed to still be outside the country and is currently listed on the FBI's Most Wanted Terrorist section of the FBI website.

In August of last year, four men were indicted and charged with plotting to attack U.S. military facilities, Israeli government facilities, and Jewish synagogues in the Los Angeles area. Investigators broke this case when the terrorists committed a series of gas station robberies in the Los Angeles area to raise the money to finance the attacks. Together, hundreds of investigators from the FBI, state and local law enforcement, the Department of Homeland Security and other agencies worked around the clock at an FBI command post to identify other members of the cell. They spent thousand of hours tracing the steps of these terrorists until the entire cell was exposed.

Likewise, earlier this year, we worked with our partners on the Joint Terrorism Task Force in Toledo, Ohio, and with the United States Secret Service to arrest three men on charges of conspiring to commit terrorist acts against Americans overseas. These men have been charged with providing financing, computers and communications equipment to terrorists.

More recently, we worked with British and Pakistani law enforcement and intelligence authorities to investigate potential ties in the United States to the British suspects arrested in August in connection with the plot to bomb several jet airlines over the Atlantic Ocean. Together, we were able to identify the key members of this cell and stop them before they could strike.

The FBI is the lead agency for preventing and investigating domestic terrorism, such as animal rights extremism, environmental extremism, right-wing and left wing extremism.

The mission of the FBI's domestic terrorism program is to identify, prevent, and defeat terrorist operations before they occur, and in the event of an act of terrorism, to fulfill its role as the Lead Federal Agency for crisis response, functioning as the on-scene manager for the United States Government. The FBI investigates and counters the activities of persons or organizations

who, without foreign direction, conspire of engage in criminal activity to effect political or social change in the United States. Some examples of the FBI's domestic terrorism successes follow.

Between 1996 and 1998, bombs exploded four times in Atlanta, Georgia and Birmingham, Alabama, killing two, injuring hundreds and setting off what turned out to be a five-year manhunt for the suspected bomber Eric Rudolph. Working with federal, state and local partners through the Southeast Bomb Task Force, investigators remained focused on western North Carolina where Rudolph was believed to be living. Rudolph was captured in May 2003 in Murphy, North Carolina by a local officer who spotted him rummaging through a dumpster. Rudolph signed a plea agreement in April 2005, pleading guilty to both the Birmingham bombing and the Atlanta bombings. In connection with the plea agreement, five caches, containing approximately 265 pounds of dynamite and other bomb making material, were recovered in western North Carolina. In July 2005, Rudolph was sentenced to two consecutive life terms for the two counts in the Birmingham bombing.

A series of Earth Liberation Front (ELF) arsons occurred in the Sacramento, California, area beginning in December 2004, when four improvised incendiary devices (IIDs) were discovered at a construction site in Lincoln, California. In January 2005, five IIDs were discovered at a construction site in Auburn, California. In February 2005, seven IIDs ignited in an apartment complex under construction in Sutter Creek, California. Based on source information and follow-up investigation, four individuals were arrested. Charges included conspiracy to commit arson and aiding and abetting arson. All of the subjects ultimately pled guilty and are serving sentences ranging from two to six years incarceration.

In January 2006, a 65-count indictment of 11 individuals was handed down on charges including arson and destruction of an energy facility on behalf of the Earth Liberation Front and Animal Liberation Front movements (ALF/ELF).

These and other investigations demonstrate the advancements that the FBI counterterrorism program have made in the last five years. Our counterterrorism efforts are enhanced in other ways as well.

Joint Terrorism Task Forces

Joint Terrorism Task Forces (JTTFs) team up police officers, FBI agents, and officials from over 20 federal law enforcement agencies to investigate terrorism cases. We have increased multi-agency Joint Terrorism Task Forces (JTTFs) from 35 to 101 since 2001, and have increased the number of Agents and law enforcement serving on JTTFs from under one thousand to nearly four thousand. To support the JTTFs, thousands of clearances have been processed for state/local JTTF officers. The JTTFs have been a resounding success, and they play a central role in virtually every terrorism investigation, prevention, or interdiction within the U.S.

These local force multipliers are mirrored at Headquarters with the National Joint Terrorism Task Force (NJTTF). Immediately following the attacks of September 11, 2001, an ad

hoc group of representatives from federal agencies began meeting, sharing information, and working together in the FBI's Strategic Information Operations Center at Headquarters. In July 2002, we formally created the NJTTF to act as a liaison and conduit for information on threats and leads from FBI Headquarters to the local JTTFs and to 40 participating agencies. The NJTTF now includes representatives from members of the Intelligence Community; components of the Departments of Homeland Security, Defense, Justice, Treasury, Transportation, Commerce, Energy, State, and the Interior; the City of New York Police Department; the Nuclear Regulatory Commission; Railroad Police; U.S. Capitol Police; and others. All members are provided with access to the FBI intranet, including its internal e-mail system, and to the FBI's investigative database for purposes of counterterrorism investigations. In turn, members provide access to their organizations' respective databases consistent with applicable laws and regulations.

Terrorist Screening Center

On September 16, 2003, the President directed the Attorney General, Secretary of Homeland Security, Secretary of State, and Director of Central Intelligence to develop the Terrorist Screening Center (TSC) to consolidate information from terrorist watch lists and provide 24-hour, seven-days-a-week operational support for law enforcement, consular officers and other officials. The FBI was directed to lead this effort and we began operations in December 2003.

The TSC manages the one, consolidated terrorist watchlist, providing key resources for screeners and law enforcement personnel. These include: a single coordination point for terrorist screening data; a 24/7 call center for encounter identification assistance; access to a coordinated law enforcement response; a formal process for tracking encounters; feedback to the appropriate entities; and a process to address misidentification issues. Recent TSC successes include: a traffic stop resulting in the arrest of a suspect connected to Hamas, which is denoted as a Specially Designated Terrorist Organization by the Department of State, and a customs in-flight check with the FBI prompting an arrest at the Chicago Airport.

Foreign Terrorist Tracking Task Force

The Foreign Terrorist Tracking Task Force (FTTTF) was created pursuant to Homeland Security Presidential Directive No. 2 and was consolidated into the FBI pursuant to the Attorney General's directive in August 2002. The FTTTF uses innovative analytical techniques and technologies that help keep foreign terrorists and their supporters out of the United States or lead to their location, detention, prosecution, or removal. The participants in the FTTTF include the Department of Defense, the Department of Homeland Security's Bureaus of Immigration and Customs Enforcement and Customs and Border Protection, the State Department, the Social Security Administration, the Office of Personnel Management, the Department of Energy, and the Central Intelligence Agency. FTTTF has also established liaison with foreign partners including Canada, Australia, and the United Kingdom. To accomplish its mission, the FTTTF has facilitated and coordinated information sharing agreements among these participating agencies and other public and proprietary companies to assist in locating terrorists and their

supporters who are, or have been, in the United States. The FTTTF has access to over 40 sources of data containing lists of known and suspected foreign terrorists and their supporters, including the FBI's Violent Gang and Terrorist Offenders File (VGTOF).

Counterintelligence Division

Foreign counterintelligence (FCI) is a crucial component of the FBI's overall strategy, second only to counterterrorism. As the lead agency for FCI in the United States, and the primary investigative component of the Department of Justice, the FBI has the responsibility to oversee the integration of U.S. law enforcement and intelligence efforts to ensure that all available means are brought to bear to mitigate this ongoing and daunting threat, consistent with our laws and policy.

In February 2002, the FBI embarked on a dramatic transformation of its Counterintelligence program. Awareness of the growing threat to United States national security interests, combined with a realization that adversaries were successfully expanding their efforts, utilizing new approaches, and targeting critical United States technologies forced a comprehensive reconsideration and redirection of the FBI's Counterintelligence program. The FBI's Counterintelligence program has been transformed and, while continuing to show success against traditional adversaries, has developed and implemented a far-reaching program designed to address a new and growing threat that seeks to disadvantage the United States in virtually all sectors and every section of the country.

While many of our counterintelligence successes cannot be discussed publicly, the following cases represent some of our efforts to address this threat.

The FBI recently concluded a major counterintelligence investigation involving Lawrence Franklin, a former Iran desk officer in the Office of the Secretary of Defense at the Pentagon. Franklin, from Kearneysville, West Virginia, was sentenced on January 20, 2006, by U.S. District Judge T.S. Ellis III on three felony counts: conspiracy to communicate national defense information to persons not entitled to receive it; conspiracy to communicate classified information to an agent of a foreign government; and the unlawful retention of national defense information. Franklin was sentenced to a total of 151 months in prison and ordered to pay a fine of $10,000.

On December 15, 2005, a federal jury convicted Kenneth Wayne Ford, Jr., of Waldorf, Maryland, of unlawfully possessing classified information related to the national defense and making a false statement to a U.S. government agency. Ford was employed by the National Security Agency (NSA) between June 2001 and late 2003. On January 11, 2004, FBI agents executed a search warrant at Ford's residence and discovered sensitive classified information throughout his home, including numerous Top Secret documents in two boxes in Ford's kitchen. Ford was arrested on January 12, 2004. Ford had taken home the classified information on the last day of his employment at NSA in December 2003, when Ford was to start working in the

private sector on a classified contract for a defense contractor. On March 30, 2006, Ford was sentenced to 72 months in prison.

On March 23, 2006, Howard Hsy, of Bellevue, Washington, was sentenced by a U.S. District Court Judge to two years of probation and a $15,000 fine for conspiracy to violate the Arms Export Control Act. Hsy conspired with others to export night vision goggles and camera lenses to a contact in Taiwan. Exporting those items required a license and written approval from the State Department, which Hsy did not have. The military equipment is later shipped to the People's Republic of China. Hsy conspired with others in the Seattle area and Taiwan to purchase the military gear for export. The military equipment was primarily used by military pilots to fly and navigate at night. In October 2005, a Seattle-area co-conspirator, Donald Shull, pled guilty to conspiracy to violate the Export Administration Act and was sentenced in February 2006 to two years of probation and a $10,000 fine.

On January 25, 2006, the U.S. Southern District Court of Indiana convicted Shaaban Hafiz Ahmad Ali Shaaban of six counts: conspiracy; acting as a foreign agent without notification; one violation of the Iraqi Sanctions under the International Emergency Economic Powers Act; unlawful procurement of an identification document; and unlawful procurement of naturalization. Shaaban never registered as an agent of Iraq, yet, in 2002 and 2003 when he lived in Indianapolis and Greenfield, Indiana, Shaaban traveled to Baghdad in late 2002 where he offered to sell names of U.S. intelligence agents and operatives to Iraq for $3 million; sought to gain Iraqi support to establish an Arabic television station in the United States that would broadcast news and discussions that would be pro-Iraqi; sought to enter into a "cooperation agreement" where he would be paid a fee by Iraq to organize volunteers to act as human shields to protect Iraqi infrastructure during the war; and broadcasted messages of support for the Iraqi government on Iraqi media stations that advocated support for Iraq and encouraged others to forcibly resist the United States and others who opposed Iraq.

Counterintelligence Operations

The Counterintelligence Division (CD) has implemented the National Strategy for Counterintelligence (National Strategy), focusing resources on counterproliferation, counterespionage, and protection of critical national assets. This included implementation of field office counterintelligence program reviews utilizing metrics tied to the National Strategy, ensuring resources in the field are prioritized and following the National Strategy, recommending improvements where needed.

CD has also established a Counterespionage Section to focus and consolidate espionage investigations within one section at headquarters. They seek to identify and investigate the non-traditional foreign intelligence threat in both establishment and non-establishment offices. It also has developed country specific program directives to the field offices that are coordinated by headquarters.

Training and Workforce

The CD agent workforce now constitutes a sizable portion of the overall agent workforce, receiving steady enhancements since 2002. With this larger workforce, we have established CD squads in all 56 field offices. Additionally, we use contractors with counterintelligence expertise to augment the program where needed.

The Counterintelligence Training Center (CITC) has also expanded, which has doubled the number of trained counterintelligence professionals. We have also expanded advanced training programs, and have seen a significant increase of the number of agents who received this advanced training. Also of note is the establishment of a CD supervisors course and a CD field executive course.

Outreach and Coordination

We have helped establish the National Counterintelligence Working Group, an inter-agency group of 25 national level CI leaders, which, with the FBI, coordinates counterintelligence operations at the national level. We have also established regional inter-agency counter-intelligence working groups throughout the U.S., which, with the FBI, implement the National Strategy by reviewing joint operations, identifying priorities and trends, and providing a general forum for agency de-confliction.

We have focused on working with those who may be targets of foreign counterintelligence efforts. We established joint technology protection task forces with DOD to protect specific weapons systems such as the Joint Strike Fighter. We implemented an "Agents in the Lab" program in specific DOE facilities for the purpose of raising counterintelligence awareness and broadening the FBI's access to intelligence within the labs.

Our newly-established Domain Section within the FBI focuses resources on building relationships in business and academia through Business and Academic Alliances. We have secured the cooperation of major corporations such as L3, Boeing, Northrup Grumman, Lockheed Martin, and Tier 1 research universities in our domain initiative.

We will also soon release our Research Technology Protection/Infragard website that will support information sharing by providing unclassified FBI, DOD, and Defense Security Service intelligence products to cleared contractors, academia, and interested businesses.

Directorate of Intelligence

In 2005, the FBI created its Directorate of Intelligence, which is responsible for intelligence policy within the Bureau and controls the budget for the people, information technology, training, and other resources that it manages. The Directorate succeeded the Office of Intelligence, which we stood up following the September 11, 2001, terrorist attacks. In response to today's asymmetic threats, we have elevated our intelligence program to a level on par with our investigative programs. The new intelligence program is defined by enhanced analytical capabilities, state of the art information technology and an integrated intelligence

structure at headquarters and in the field.

Intelligence Career Service

The FBI has created an Intelligence Career Service (ICS) of FBI Special Agents, Intelligence Analysts, Language Analysts, and Physical Surveillance Specialists whose members work in every FBIHQ division and all 56 field offices. We have embedded analysts, or are taking actions to do so, in the FBI Laboratory, Operational Technology Division, Criminal Justice Information Services, and Special Technologies and Applications Office to explore and exploit unique information available that is responsive to national requirements. The DI continues to build up the ICS, bringing onboard 370 additional Intelligence Analysts (IAs) in fiscal year (FY) 2006; the FBI currently has over 2,100 IAs on board through these efforts.

To support the ICS, we have established training in order to achieve a consistent level of knowledge across the workforce on intelligence concepts and processes. Training remains a major focus of the DI's efforts in 2006, with improvements in the Analytical Cadre Education Strategy (ACES) and implementation of an aggressive schedule to provide training to IAs, Language Analysts (LAs), and surveillance personnel in cohort groups as they are hired. Cohort training, which replaces ACES 1.0 for new ICS hires, began on October 16, 2005, with two pilot classes. ACES training is mandatory for all onboard IAs.

To date, we have trained 392 ICS personnel through Cohort, and have trained over 2,000 ICS personnel through ACES. However, we also recognize a clear need to aggressively work to improve training, if we are to meet workforce expectations and mission demands. Therefore, we are implementing a specific action plan with the FBI's Training and Development Division, in cooperation with our Community partners, to advance FBI training into an environment consistent with the demonstrated readiness of our workforce and our mission demands.

In December 2005, we certified the first FBI Intelligence Officers as part of the pilot implementation of the FBI Intelligence Officer Certification (FIOC) Program. FBI Intelligence Officer Certification is a credential that recognizes achievement in and long-term commitment to the intelligence profession as demonstrated through experience, education, and training. Eleven FBI executives have been certified, on the basis of prior training and activities.

Linguists/Languages

The FBI has increased its overall number of linguists by 82%, with the number of linguists in certain high priority languages (Middle Eastern and North African languages) increasing by more than 250%. Our hiring efforts are ongoing, with over 100 Language Analysts in the final hiring process and a significant number of prospective full-time candidates identified from current Contract Linguist applicants. The 2006 Budget provided an additional 264 full-time linguist positions for a total of 694 Language Analyst positions. In addition to Language Analyst positions, many field offices will be receiving new or additional supervisory positions to accommodate and manage the growing FBI linguist population.

To ensure that all FBI linguists are subject to at least an annual quality control review, we have established a translation Quality Control program in our Language Services Section (LSS). In addition, all translations presented in court or otherwise designated for public release, as well as the first 40 hours of translation work performed by new linguists after their initial training period, are subject to full quality control review.

LSS has trained and certified more than 201 quality control reviewers from the middle of 2005 to the end of June 2006, and continues to conduct Quality Control Reviewer Workshops on an almost monthly basis to increase and retrain linguists certified to conduct quality control reviews. There have been 2755 Quality Control reviews performed since the inception of the program.

Finally, the FBI is the designated Executive Agency for the National Virtual Translation Center (NVTC), established under the authority of the USA PATRIOT Act to "provide accurate and timely translations of foreign intelligence material to the US intelligence community." The NVTC is the element of the United States government specifically dedicated to the timely and accurate translation of foreign intelligence for US government agencies. In addition, it enables interagency sharing of translation resources, maximizes human and automated translation capabilities, and balances the workload of translation jobs among the various IC elements.

Field Intelligence Groups

We have developed and directed the implementation of the Field Intelligence Group (FIG) program, which serves as the lens through which the Field Divisions evaluate threats. The FIG is the mechanism through which the FBI contributes to regional and local perspectives on a variety of issues, to include the receipt of and action on integrated investigative and intelligence requirements. FIGs further provide the intelligence link to the Joint Terrorism Task Forces, Fusion Centers, FBIHQ and the Intelligence Community at large. FIGs, which have been established in all 56 Field Offices since October 2003, consist of Intelligence Analysts, Special Agents, Language Analysts, and Special Surveillance Groups. FIG personnel have been embedded in more than twenty-five Fusion Centers and/or Multi-Agency Intelligence Centers (MAICs) around the country.

Sharing Intelligence

Among the fundamental post September 11th changes, sharing intelligence is now the main objective. We have developed an FBI intelligence presence within the intelligence and law enforcement communities by sharing Intelligence Information Reports (IIRs), Intelligence Assessments (IAs), Intelligence Bulletins (IBs), and related intelligence information on platforms routinely used by our law enforcement and Intelligence Community partners, including JWICS, SIPRNet and LEO, as well as on the FBI Intranet. This effort has resulted in more than 7,400 IIRs, 150 IBs, and 100 IAs that have been posted on all listed platforms; in addition, over 400 Current Intelligence Reports have also been produced, of which over 50 have been shared with the intelligence community through NCTC Online. Furthermore, we are using

our internal, closed network to provide FBI employees with access to raw, current and finished intelligence.

Domain Management Initiative

We recently began implementing the National Security Branch (NSB)'s Domain Management Initiative, a methodological approach to FBI mission management that will define our National Security mission and, by extension, our Criminal and Cyber missions. Traditionally, the FBI has derived intelligence primarily from our cases. The stand-up of the NSB in 2005 required that we expand our intelligence capacity beyond case-driven investigations. The focus is to remain ahead of the threat.

The goal of Domain Management is to develop a comprehensive understanding of a territory's threats and vulnerabilities so that managers can effectively deploy resources for greatest impact. Domain Management is simply about "questions and choices": What do you need to know about your territory to protect the people in it? What do you know about the threats and vulnerabilities that worry you most? What don't you know about the threats and vulnerabilities that worry you most? What are you going to do to address your threats and vulnerabilities?

Weapons of Mass Destruction

The FBI serves as the lead agency for the investigative, intelligence, counterintelligence, and overall law enforcement response to a terrorist threat or incident in the United States, and is charged with lead agency responsibility for investigating violations of weapons of mass destruction (WMD)-related statutes. A critical, challenging part of this mission is to detect and disrupt the acquisition and use of WMD.

We recently created a WMD Directorate (WMDD) within our National Security Branch. The strategic focus of this Directorate is to prevent and disrupt the acquisition of WMD capabilities and technologies for use against the United States. The WMDD will support and consolidate the FBI's WMD components. The strategic focus of this Directorate is to prevent and disrupt the acquisition of WMD capabilities and technologies for use against the U.S. homeland by terrorists and other adversaries, including nation-states. It integrates and links all of the necessary counterterrorism, intelligence, counterintelligence, and scientific & technological components to accomplish the FBI's overall WMD mission.

Over the past five years, the FBI's WMD components have engaged in outreach to target specific sectors of industry, such as the chemical and agricultural industries, to increase WMD awareness and sensitivities to potential threats and to facilitate reporting of information that potentially has intelligence value. This includes the establishment of a two-way communication and methods to report suspicious activity. WMD components established two WMD-specific InfraGard portals to provide unclassified information and intelligence products to vetted academia and industry members.

Criminal Investigations

National security is the top priority of the FBI, and must remain so. To support our top priorities of counterterrorism and counterintelligence, we have shifted Special Agents to those programs from criminal investigative programs. Nevertheless, our criminal investigative program remains effective.

In the last five years, we have focused our resources on those areas where the FBI has unique and specialized capabilities. From cyber crime to public corruption to white collar crime and beyond, the number of successful and important investigations are significant. Our criminal investigative program may be relatively smaller than it was five years ago, but its impact is greater than ever.

Cyber

Shortly after the September 11, 2001, terrorist attacks, the FBI established as our third priority protecting the United States against cyber-based attacks and high-technology crimes. In coordination with this priority and recognition of the international aspects and national economic implications of cyber threats, the FBI created a Cyber Division (CyD) at the headquarters level to manage and direct this nationally-developing program.

The rapid evolution of computer technology, coupled with ever-increasing techniques used by terrorists, foreign intelligence actors, and criminals, requires FBI investigators and professionals to have highly-specialized computer based skills. The FBI Cyber Program uses a centrally-coordinated strategy to support FBI priorities across program lines, assisting crucial Counterterrorism (CT), Counterintelligence (CI), and criminal investigations whenever aggressive technical investigative assistance is required. The Cyber Program also targets major criminal violators with a cyber nexus.

We have achieved significant results in both computer intrusion investigations and cyber crime investigations.

Computer Intrusions

Computer intrusion cases - counterterrorism, counterintelligence, and then criminal - are the first order of business due to their relationship to national security matters.

Among the most notable investigations for the Cyber Division was the successful resolution of the Zotob worm case. The Zotob worm is an IRC bot program, which manipulates infected systems to connect to a remote server for further instructions. This architecture allows the operator complete remote access to infected computers, enabling them to send SPAM, launch denial of service attacks, steal personal information, and compromise more computers. The Zotob case was initiated as a routine computer intrusion matter, but quickly transformed into a highly complex, global investigation which encompassed other CyD programs including

computer fraud, child pornography, and the transmission of malicious code. In August 2005, one FBI team was deployed to Rabat, Morocco and one FBI team was deployed to Ankara, Turkey. The teams were made up of FBI investigators, FBI malicious code experts, and computer forensic experts. FBI deployment teams were provided direct access to Turkish law enforcement by Legat Ankara and Moroccan law enforcement by ALAT Rabat. Cooperation was achieved from Microsoft Corporation, major Internet service providers, and other private sector e-businesses, and the CyD collaborated with law enforcement in Morocco and Turkey. As a result, the two individuals responsible for the worm were apprehended.

As the world relies even more on technology in the future, computer intrusion cases will undoubtedly grow. The FBI is committed to the continued development of its computer intrusion investigative program and building on the progress of the last five years.

Innocent Images National Initiative

The FBI also remains committed to the Innocent Images National Initiative (IINI). The IINI is an intelligence driven, proactive initiative that combats the worldwide proliferation of child pornography and child sexual exploitation facilitated by the Internet. IINI's mission is to identify, investigate, and prosecute sexual predators who use the Internet and other online services to sexually exploit children; to establish a law enforcement presence online as a deterrent; and to identify and rescue child victims.

As an example, in January of 2002 the FBI led an investigation which resulted in the rescue of a thirteen year old girl who had been taken to Northern Virginia from Pittsburgh, Pennsylvania by an individual she met on the Internet. The girl was transported across state lines and held in a residence where she was repeatedly sexually assaulted. When the girl was rescued, she was restrained to a bed post with a dog collar and a chain. The subject was identified after bragging in an Internet chat room and sending photographs of the victim whom he identified as his "sex slave". The subject was prosecuted in the United States District Court for the Western District of Pennsylvania and sentenced to seventeen years in prison.

Since its inception in 1996, the program has grown exponentially, and in recent years the pace has increased. Between October 2002 and September 2004, more than 7,000 cases have been opened, more than 2,300 informations/indictments were issued, and nearly 2,300 convictions and/or pre-trial diversions have been secured.

In October 2004, the Innocent Images International Task Force (IIITF) was established as an initiative to target East Central European child pornography websites. The task force has generated nearly 3,000 leads that have been forwarded to the DOJ-funded Internet Crimes Against Children Task Forces (ICAC) and FBI offices around the country. Almost 1,000 leads have been disseminated to our international partners in more than 67 different countries.

Internet Crime Complaint Center

A key element to many successful investigations is the assistance of the public. The Internet Crime Complaint Center (IC3) enables the public to alert us to potential cyber crimes. Since its inception, the IC3 has received over 700,000 consumer complaints, more than 450,000 of which have been referred to law enforcement for investigation. These referrals include an accumulated loss in excess of $450 million as of December 31, 2005.

As the IC3 is currently receiving over 22,000 complaints a month, the one millionth consumer complaint is expected to be processed in calendar year 2007. The IC3 has referred over 4,500 significant identified cases with an accumulative loss of $213 million to state and local law enforcement. The nearly 900 investigations that followed have resulted in 155 search warrants issued, 56 arrest warrants issued, 479 arrests, 173 indictments, and 119 convictions.

The IC3 also has coordinated several national initiatives since its inception for the advancing of investigations and prosecutions of Cyber cases, enhancing the development of productive task forces, and establishing public/private alliances to facilitate the timely sharing of intelligence. Such intelligence is vital in crafting an aggressive and proactive strategy to Cyber crimes, both domestically and internationally. Initiatives include Operation Cyber Loss, Operation E-Con; Operation Cyber Sweep and Operation Web Snare. These initiatives found more than 1.1 million victims and resulted in more than 400 investigations, 263 indictments, 293 search/seizure warrants, $604 million in losses, and 355 arrests and convictions.

As with computer intrusion cases, cyber crime cases are expected to increase in the coming years. Through the establishment of the FBI's Cyber Division and the ongoing initiatives such as the Innocent Images National Initiative, the FBI will be well-prepared to combat these growing crimes.

Criminal

Public Corruption

Public corruption is a betrayal of the public's sacred trust. It erodes public confidence and undermines the strength of our democracy. Unchecked, it threatens our government and our way of life. That is why it is our top criminal investigative priority.

Over the last two years, the FBI has convicted more than 1,060 government employees involved in corrupt activities, to include 177 federal officials, 158 state officials, 360 local officials, and more than 365 police officers. In FY 2005 alone, the Public Corruption Program saw a 25% increase in public corruption cases investigated, resulting in 890 indictments, 759 convictions, and 2,118 cases still pending. There are 622 agents currently working public corruption matters, an increase of 264 since 2002.

One investigation to note is the Phoenix Division's Lively Green investigation. This involved up to 99 indictable subjects who used their positions in the military to facilitate the smuggling of several hundred kilograms of cocaine across the U.S./Mexican border.

Violent Gangs

The FBI has increased its focus on violent gangs through its continuing Safe Streets Violent Crime Initiative. Started in 1992, Safe Streets Task Forces (SSTFs) are the primary mechanism developed for this initiative. The focus of SSTFs is to achieve maximum coordination and cooperation of the participating law enforcement agencies to investigate state and federal crimes committed by these violent gangs and others.

As of June 2006, the FBI currently operates more than 160 SSTFs in 55 FBI Field Offices which are comprised of more than 1800 local, state, and federal investigators representing more than 500 law enforcement agencies throughout the United States. Of these task forces, 129 are considered violent gang SSTFs. The 129 Violent Gang Safe Streets Task Forces (VGSSTF), which operate in 54 FBI Field Offices, represent a 38% increase in VGSSTFs since FY 2000, when SSGU operated 49 VGSSTFs.

In 2004, the FBI established the MS-13 National Gang Task Force to investigate the violence associated with this gang. The MS-13 gang members are primarily from the Central American countries of El Salvador, Honduras and Guatemala and were first identified in Los Angeles in the 1980s. The threat posed by MS-13 is unique due to its strong links to the military and rebels involved in the civil wars in El Salvador, Honduras and Guatemala. The MS-13 members and associates have been identified in more than 30 states and have a significant presence in the metro areas of Houston, Los Angeles, New York City, and Washington, D.C. This task force works closely with other federal, state, and local agencies deconflicting and coordinating efforts against MS-13 gang targets. As of July 2006, there were 36 pending MS-13 Racketeering Enterprise Investigations and 58 MS-13 criminal investigations.

Innocence Lost National Initiative

The Innocence Lost National Initiative successfully addressed the crime problem of domestic trafficking of children for the purposes of prostitution. To date, this initiative has been expanded to 26 cities with an identified child prostitution crime problem. Eighteen task forces have been established with state and local law enforcement to combat this crime problem, with strong support provided by the National Center for Missing and Exploited Children. There have been 188 investigations (child exploitation or child trafficking cases) initiated, which resulted in 574 arrests, 115 indictments and 101 convictions. Prosecution at the federal level has resulted in the dismantling of 16 criminal organizations engaged in child prostitution.

Indian Gaming

In February 2003, FBI established the Indian Gaming Working Group (IGWG). This group consists of seven federal agencies and representatives from FBI subprograms including financial crimes, public corruption, and organized crime. Since March 2004, the FBI has hosted eight IG conferences and trained more than 500 personnel assigned to work IG matters. This training and the FY 2005 enhancement contributed to the initiation of 16 IG investigations

focusing on public corruption, theft, and embezzlement. As a result of the IGWG, an investigation was initiated in New York in which members of an organized crime family had infiltrated IG casinos in North Dakota and Oklahoma. Investigators learned that these members were moving large sums of money through the Indian reservations and offshore gambling operations. From 2000-2004, more than $200 million in illegal bets were placed with $65 million being wagered on horse races. In January 2006, 17 individuals were indicted and arrested.

Financial Crimes

Since October 2001, the FBI's Corporate/Securities and Commodities Fraud has remained as a priority within the White Collar Crime (WCC) Program. The outbreak of large scale corporate fraud threatened to undermine investor confidence and trust in the stock market, and financially injured millions of investors and employees. To address this significant crime problem, the FBI established a Corporate Fraud Initiative (CFI) as part of the President's Corporate Fraud Task Force. The CFI effectively focuses and coordinates the FBI's limited WCC resources on combating the corporate fraud crime problem. As a participant on the President's Corporate Fraud Task Force, and the lead agency investigating corporate fraud, the FBI has concentrated its efforts on those cases that involve accounting schemes, self-dealing by corporate executives and obstruction of justice to conceal illegal activities from criminal and regulatory authorities.

Since initiating the CFI in 2001, the FBI has opened 465 corporate fraud investigations in which it is alleged that corporate officers intentionally "cooked the books" in order to artificially inflate the value of their corporation's stock and/or to justify paying themselves millions of dollars in bonuses to which they were not entitled. Major corporate fraud investigations since 2001 include Enron, Worldcom, and Qwest Communications. In addition, an emerging corporate fraud problem that the FBI is currently investigating involves allegations of the fraudulent backdating of stock options grants issued by public companies. FBI offices are working with information provided by the Securities and Exchange Commission (SEC) to investigate these matters and we currently have over 45 separate investigations on backdating.

To date, the FBI has obtained 2,962 indictments/informations, 2,569 convictions and restitution totaling over $14.9 billion related to Corporate and Securities Fraud. As of 7/27/2006, 109 FBI agents are dedicated to Corporate Fraud investigations, with an additional 158 FBI agents working Securities Fraud investigations.

Since October 2001, the FBI's Financial Institution Fraud (FIF) Program has targeted the most egregious financial institution offenders, both insiders and outsiders.

The FBI's Mortgage Fraud Program, for example, consists of our working with approximately 200 contacts in law enforcement and industry at the national level, and task forces and contacts at the field office level, in order to address this over $1 billion crime problem. The Mortgage Fraud Program focuses our resources on those engaging in mortgage fraud for profit, as opposed to property, typically involving rings of professional insiders. In December of 2005,

the FBI participated in Operation Quick Flip, a national takedown that resulted in 156 indictments, 81 arrests and 89 convictions. The losses associated with these cases alone cost the mortgage industry $607 million.

Since October 2001, the Financial Institution Fraud Program has made more than 6,000 arrests, obtained more than 13,000 indictments and informations, and secured more than 12,000 convictions. These investigations have resulted in more than $131 million in recoveries, $159 million in seizures and forfeitures, $14 billion in restitution payments, and $632 million in fines.

The Health Care Fraud Program has remained within the top five WCC Program national priorities since October 2001. The overall mission of the program is to target the most egregious health care fraud offenders, both organizations and individuals, who are defrauding the public and private health care systems. The FBI has a number of initiatives in place to combat this activity, including: the Pharmaceutical Fraud Initiative, focused on investigations that involve drug diversion, off-label marketing and prescription fraud; the Internet Pharmacy Initiative, focused on the identification of internet pharmacies involved in the illegal distribution of pharmaceuticals in the United States and internationally; the Outpatient Surgery Center Initiative which addresses the nationwide schemes in which health care providers and facilities are billing private insurance plans for unnecessary outpatient surgeries arranged through a network of individuals that includes owners of medical clinics, physicians, marketers and recruiters; and the National Automobile Accident Insurance Fraud Initiative that was developed to enhance investigations involving members of staged accident rings formed specifically to defraud health care entities. The number of pending Health Care Fraud investigations has shown steady increase since October 2001 from approximately 500 cases in 1992 to over 2,500 cases through 2005.

Partnerships with Law Enforcement

Our partnerships with foreign, state, local and tribal law enforcement have been integral to our ability to protect this nation.

Office of Law Enforcement Coordination

In May 2002, we established the Office of Law Enforcement Coordination (OLEC) to enhance coordination and communications between the FBI and its state, local, tribal, federal, and international law enforcement partners. In just a few short years, OLEC has become central to our outreach and educations efforts for law enforcement.

OLEC developed, implemented and manages the Police Executive Fellowship Program (PEFP), a six-month work exchange program for mid-level and above law enforcement managers. Since its inception, 22 Fellows have served in a variety of assignments at FBIHQ, including: the National Joint Terrorism Task Force, National Gang Intelligence Center, Interpol, the Directorate of Intelligence, Law Enforcement On-Line (LEO), and MS-13 National Gang Task Force.

OLEC has produced two suicide bomber broadcasts and videos which raised law enforcement partners' awareness of new trends in suicide bombings. And, in conjunction with the U.S. Department of Homeland Security and a number of state and local law enforcement agencies, OLEC produced and disseminated a roll-call training video entitled, "Vigilance: Patrolling in the New Era of Terrorism." The video was sent to over 20,000 state, local and campus law enforcement agencies along with an informational brochure on terrorism indicators. OLEC continues to receive requests for both products (video and brochure).

Office of International Operations

The Office of International Operations (OIO) and the Legal Attache (Legat) Program support the FBI's core investigative priorities through liaison and operational interaction with the FBI's foreign law enforcement counterparts and overseas intelligence community. The relationships developed by the Legats are essential to the successful fulfillment of the responsibilities of the FBI. The Legat Program provides for a prompt and continuous exchange of information with foreign law enforcement and intelligence agencies enabling the FBI to effectively and expeditiously achieve its international responsibilities.

Since September 11, 2001, OIO has aggressively pursued expanding the Legat Program in an effort to identify countries/regions in critical need of new or expanded Legat offices in areas known for terrorist group development, fundraising, transit, and/or support. Additionally, in conjunction with substantive FBIHQ Divisions, OIO is attempting to identify areas, such as South America, which have historically been predominately involved in illegal drug trafficking, but are becoming increasingly involved in significant terrorist related activities. The cultural and geographic span of some of the existing Legats, such as those in Africa, is too large and should be narrowed; Legat Pretoria, for example, covers 16 countries.

In Fiscal Year 2001, there were 44 Legat offices with 112 Agent and 74 support employees for a total of 186 personnel stationed abroad. Today, the FBI has 57 fully operational Legat offices and 13 sub-offices with 167 agent and 111 support personnel assigned for a total of 278 employees stationed abroad, an increase of nearly 70%.

Since September 11th, we have opened Legat Offices in Abu Dhabi, United Arab Emirates; Baghdad, Iraq; Beijing, China; Doha, Qatar; Freetown, Sierra Leone; Jakarta, Indonesia; Kabul, Afghanistan; Kuala Lumpur, Malaysia; Rabat, Morocco; Sana'a, Yemen; Sarajevo, Bosnia- Herzegovina; Sofia, Bulgaria; and, T'bilisi, Georgia.

Investigative Analysts (IAs) have been placed in eight Legat offices since September 11, 2001 and the number of international students attending the National Academy (NA) at Quantico has increased by 20% in an effort to provide direct law enforcement assistance to our Legat personnel. OIO has emphasized the importance of providing financial assistance to countries and/or agencies of first time NA attendees who could not otherwise afford to attend, such as candidates from East Timor and Namibia.

Science and Technology

The FBI's science and technology capabilities have always been significant. From fingerprints to DNA analysis, the FBI has provided exceptional service to the law enforcement community. The FBI remains a leader in technical innovation and developments in the sciences that support investigative and intelligence-gathering activities.

FBI Laboratory

Investigations and intelligence gathering are the lifeblood of the FBI, and the FBI Laboratory supports those efforts. FBI Laboratory personnel routinely examine evidence from major cases, as well as other cases that do not receive publicity. Whether the case is big or small, just around the corner or halfway around the world, the FBI Laboratory approaches each one with the same steadfast determination and desire to be the world's foremost forensic laboratory upon which FBI field offices, investigative and intelligence agencies, and the American public can always rely.

Relocation to New Laboratory Facility and Re-Accreditation

In 2003, the FBI Laboratory employees began moving from FBI Headquarters in Washington, DC, to its new facility in Quantico, Virginia. The Laboratory's nearly 500,000-square-foot, state-of-the-art design reveals four floors for specialized laboratories and offices and a library on the fifth floor, a 900-space parking garage, and a stand-alone central utilities plant. The facility is a model for security and evidence control with specified paths for the acceptance, circulation, and return of evidence. The Laboratory successfully achieved re-accreditation in its new facility from the American Society of Crime Laboratory Directors/Laboratory Accreditation Board after this significant relocation.

Terrorist Explosive Devices Analytical Center

The Terrorist Explosive Devices Analytical Center was established in 2004 to serve as the single interagency organization to receive, fully analyze and exploit all terrorist Improvised Explosive Devices (IED's) of interest to the United States worldwide, and to develop actionable intelligence to respond to the threat. The TEDAC is co-located within the FBI Laboratory and as such leverages the FBI Laboratory's broad-based technical and forensic capabilities along with electronic exploitation services provided through the Operational Technology Division.

The TEDAC has successfully made 56 positive identifications of bomb makers since beginning operations. In one case, a latent print developed in January 2004 on a keyless car entry system used in an IED, was matched to a specific individual taken into custody for unrelated reasons on October 30, 2004. DNA removed from this same IED component was linked to DNA recovered in another bombing. In addition, the identified individual was linked through fingerprints to a rocket attack on the al-Rashid Hotel in October 2003.

Overall, as of August 2006, the TEDAC has received over 8,670 submissions from Iraq and Afghanistan. It has developed in excess of 2,500 latent prints with over 450 matches and associations that have forensically connected one TEDAC device to another through device construction, latent prints, trace evidence (both hairs and fibers) and by DNA.

Combined DNA Index System (CODIS) Enhancements/ National Missing Persons DNA Program/ Federal Convicted Offender Program

CODIS blends forensic science and computer technology into a tool for linking violent crimes. It enables federal, state, and local forensic laboratories to exchange and compare DNA profiles electronically, thereby linking serial violent crimes to each other and to known offenders.

The Federal Convicted Offender Program has been fully integrated into CODIS. As of June 2006, CODIS has achieved 36,000 investigations aided, 8,000 offender hits and 3,500 forensic hits.

The National Missing Person DNA Database stores the mtDNA profiles in the Combined DNA Index System Missing Person (CODISMP) software. In Fiscal Year 2004, 199 cases were reported out and 283 cases were submitted to the National Missing Person DNA Database Program for analysis. Nationally, there were 21 cases where a match was made between the unidentified human remains and a biological relative of a missing person.

Latent Fingerprint Improvements

As a result of the misidentification of a latent print in the Madrid train bombing investigation in 2004, a number of critical reviews of the operations of the three Latent Print Units (LPUs) were conducted. One of these reviews consisted of an internal review by eight teams of experienced forensic examiners and scientists in the FBI Laboratory and outside experts. The internal review resulted in a large number of recommended changes which were approved by the FBI Laboratory in April 2005. Teams within the LPUs were established to develop new policies and procedures to implement the numerous recommendations, many of which have been completed. We have established Standard Operating Procedures (SOPs) pertaining to friction ridge analysis, Integrated Automated Fingerprint Identification System (IAFIS), and digital imaging, including minimum evidence requirements. All LPU personnel have received training in analysis methods and new SOPs. We have developed new case acceptance policies governing acceptance of state and local latent print cases, as well as guidelines for accepting international cases. We have also developed quality assurance practices and procedures pertaining to blind verification, administrative and technical reviews, conflict resolution, and casework documentation requirements. The former latent print units have been reorganized into the Latent Print Operational Unit and the Latent Print Support Unit.

Criminal Justice Information Services

The mission of the Criminal Justice Information Services (CJIS) Division is to reduce terrorist and criminal activities by maximizing the ability to provide timely and relevant criminal justice information to the FBI and to authorized law enforcement, criminal justice, civilian, academic, employment, and licensing agencies concerning individuals, stolen property, criminal organizations and activities, and other law enforcement related data

IDENT/IAFIS Interoperability

The DHS/US-VISIT and Department of Justice/FBI Interoperability initiative was merged with the DHS transition to ten-print effort in September of 2005 in order to better coordinate the interdependent efforts. By transitioning from two-flat to ten-flat fingerprints, the IDENT database will be based upon a ten finger standard similar to the ten-rolled standard used in IAFIS. Thus, the databases will be more compatible and will assist in achieving IDENT and IAFIS interoperability. The FBI and the Department of State working together with DHS began piloting at select foreign consular posts a ten-print search of visa applicants against the full IAFIS Criminal Master File in September 2006. Pilot sites have been identified based on locations of most significant risk.

The FBI/DHS Interoperability project team delivered its interim Data Sharing Model (iDSM) as scheduled on 09/03/2006. The iDSM delivered the systems and connectivity to share a limited subset of live data from the FBI's IAFIS system and the DHS's IDENT system in near real-time. This data includes the fingerprint images for all Wanted Persons from the IAFIS and the Expedited Removals and Category 1 Visa Refusals from IDENT. There are three piloting agencies scheduled to participate in the iDSM. On 09/03/2006, the Boston Police Department was the first law enforcement agency to participate and began sending submissions, with the Texas Department of Public Safety (Dallas Police Department) and the Federal Office of Personnel Management (OPM) soon following. The iDSM pilots the exchange of information between the DOJ and the DHS and provides biometric-based access to immigration violation information to selected state and local law enforcement and authorized non-criminal justice agencies for the first time. The total number of records shared as of 09/07/2006 is as follows: 677,207 Wants and Warrants; 377,994 Expedited Removals; and 41,718 Category 1 Visa Refusals.

Law Enforcement National Data Exchange (N-DEx)

CJIS is developing the N-DEx, which will provide for the integration and discovery of criminal justice information on a national level, serve as an electronic catalog of structured criminal justice information that provides a "single point of discovery," leverage technology to relate massive amounts of data that is useful information, automate discovery of patterns and linkages to detect and deter crime and terrorism, and afford enhanced nationwide law enforcement communication and collaboration. Phase 1 N-DEx piloting has been initiated in Alexandria, Virginia; Marietta, Georgia; West Virginia; Colorado; Delaware; Chattanooga, Knoxville, and Nashville, Tennessee; and the Air Force Office of Special Investigation.

Law Enforcement Online (LEO)

LEO now has over 50,000 users with secure connections and has implemented the FBI National Alert System with the ability to reach over 20,000 members in five minutes; over 240 Special Interest Groups (SIGs), including hosting services for the FBI Bomb Data Center Database, the National Center for Missing and Exploited Children, and the Department of Justice Joint Automated Booking System; and 24/7 operational support, including a Virtual Command Center, for special events. CJIS plans to continue expanding SIGs and membership to include critical infrastructure personnel who have a counterterrorism nexus.

Regional Computer Forensic Laboratories

The FBI created the Regional Computer Forensic Laboratories (RCFL) Program in response to law enforcement's urgent demand for expert digital forensics services and training. Over the past five years, nearly fourteen RCFLs have opened. Each facility is devoted entirely to the examination of digital evidence in support of a variety of criminal investigations.

Each RCFL is managed by a coalition of participating agencies who enter into a Memorandum of Understanding with the FBI. These agencies donate staff to the RCFL, and in return, their personnel receive FBI training; work on sophisticated computer equipment; and are exposed to a variety of investigations. Once they complete their assignments, detailees return to their home agencies. There are approximately 100 participating agencies involved in the program to date.

RCFLs are extremely productive, deliver high quality products, and are cost effective. Since 2002, the program has received 6,426 service requests; trained 6,843 law enforcement personnel; and conducted 4,998 examinations. Prior to the RCFL Program, law enforcement was severely deficient in meeting its computer forensics needs. With the opening of the 14th laboratory in October, RCFLs will be available to nearly 4,000 law enforcement agencies across 17 states.

In 2005, the RCFL Program became a semi finalist in Harvard's Innovations in American Government Awards, calling it one of the "best and brightest initiatives in government today." This marked the second time in 18 years that an FBI initiative progressed to this level.

Office of the Chief Information Officer

Information Technology Systems

Although the FBI's information technology (IT) systems have offered us some of our greatest challenges, they have also resulted in some of our most significant improvements in the last five years.

Today, when an FBI agent sits down at her desk and logs on to the computer, she is

connected at the "secret" level to a fast, secure system that allows her to send e-mails, photographs and documents to any other agent or analyst in the Bureau -- across the country and around the world. Agents also have direct access to the FBI's internal "Intranet," which can be searched via a Google-based search engine. Through this Intranet, agents can receive online training, watch streaming video of meetings or conferences, and download investigative guidelines.

For "top secret" communications, we have deployed the Top Secret/Sensitive Compartmented Information Operational Network, or SCION. Nearly 4,000 personnel have been trained on the SCION and associated Intelligence Community systems. This system is the backbone for FBI personnel to coordinate, collaborate, disseminate and conduct research on analysis with the Intelligence Community.

Additionally, other technology initiatives, such as the Investigative Data Warehouse ("IDW"), have surpassed our expectations. The IDW is a centralized repository for relevant counterterrorism and investigative data that allows users to query the information using advanced software tools. IDW now contains over 560 million FBI and other agency documents from previously stove-piped systems. Nearly 12,000 users can access it via the FBI's classified network from any FBI terminal throughout the globe. And, nearly thirty percent of the user accounts are provided to task force members from other local, state and federal agencies.

In addition, we have launched a myriad of technical services and programs in support of law enforcement, including, the Regional Data Exchange (R-DEx), National Data Exchange (N-DEx), Next Generation Identification System (NGI), Next Generation Combined DNA Index System (CODIS), National Gang Intelligence Center (NGIC), Guardian/eGuardian, Data Extraction and Extension Project (DEEP), Crisis Management Information System (CMIS), Web Automated Case Support (WACS) System, and Phoenix.

We also have deployed a number of technical systems and programs in support of the Intelligence Community including SIPRNet to the Desktop, iDomain Pilots, Translators Online Network (TONs), Secure Voice Secure Network (SVSN), FBI Automated Messaging System (FAMS), Delta, Terrorist Screening Database (TSDB), Foreign Terrorist Tracking Task Force (FTTTF), Information Portal, and the FBI Intelligence Information Report Dissemination System (FIDS).

The FBI has worked hard to build a solid foundation for the successful implementation of major Information Technology investments and these are just a few examples of proven success. We have instituted strong, centralized management of IT assets, including strategic planning, portfolio management, and enterprise architecture, and we require compliance with disciplined policies, procedures, and business practices that govern the management of IT projects from "cradle to grave." This approach also includes review and validation consistent with the enterprise architecture guidelines being defined by the Office of the Director of National Intelligence for all members of the Intelligence Community.

Sentinel

One of the most critical programs to the future of the FBI's IT posture is Sentinel, for which we awarded a $305 million contract to Lockheed Martin earlier this year. Sentinel will deliver an electronic information management system, automate workflow processes for the first time, and provide a user-friendly web-based interface to access and search across multiple databases. Sentinel will help the FBI manage information beyond the case-focus of the existing Automated Case Support (ACS), and will provide enhanced information sharing, search, and analysis capabilities. Sentinel will also facilitate information sharing with members of the law enforcement and intelligence communities.

The Sentinel program will be developed and deployed over time—in four phases—with each phase introducing new capabilities. Existing information will be migrated to the new system throughout the phases so that selected systems can be retired by the end of the fourth phase.

Human Resources

The FBI is a large organization with a global workforce and diverse needs. As a result, we are focusing on creating a full-service human resources capability that maximizes our efforts to attract the most talented people, promote personal development, and develop outstanding leadership abilities.

Training and Development Division

The Training and Development Division (TDD) has made significant improvements in curriculum across all programs, has introduced an intelligence training program, expanded leadership, sabbatical, and advanced degree programs, developed a Special Agent Career Path Program, and created a distance learning platform.

New Agent Training

During the past three years, the FBI's New Agent Training Program has undergone radical and progressive change to ensure that all new Agents are equipped to deal with today's investigative and intelligence challenges in concurrence with FBI priorities.

New Agent Training was extended from 16 to 18 weeks to incorporate additional critical training in counterterrorism, counterintelligence, and intelligence. For example, intelligence training increased from 0 to 24 hours while CT/CI training was expanded from 54 to 92 hours.

Prior to September 11th, new Agents spent a day and a half on a final bank robbery practical problem, which included arrest techniques, search warrant execution, surveillance, interviewing, and a final moot court exercise. Today's Integrated Case Scenario (ICS) is interwoven throughout the entire 18-week curriculum focusing on an initial bank robbery which

evolves into a white collar fraud investigation, terrorist financing operation, espionage, and eventual terrorist threat involving a Weapon of Mass Destruction, each requiring extensive intelligence gathering and dissemination. In addition to previous practical exercise investigative requirements, Agents learn a host of sophisticated investigative techniques, including consensual monitoring, source development, FISA application, undercover operations, and False Flag scenarios.

New Agents participate in a joint practical exercise with new Intelligence Analyst counterparts involving investigative and intelligence aspects surrounding a terrorist threat scenario. This serves as the initial bond in building Agent/Analyst working relationships for the future.

National Security Branch (Training)

Since 9/11 the components of the National Security Branch have been the primary customer for the development and delivery of new training by the TDD. Newly developed classes include Human Intelligence Development, Basic Counterintelligence Operations for Special Agents; Basic CI Operations for Analysts; Reports Officer; CI for Field Supervisors; CI Asset Development; CI Interviewing; Introduction to Espionage; Basic International Terrorism; CT: A Strategic and Tactical Approach; Basic IT Interview and Interrogation Techniques; Digital and Electronic Evidence Exploitation for CT Investigations; Domestic Terrorism: WMD Basics Course; Basic DT; Terrorist Financing; and FISA and Information Sharing.

Intelligence Training Program

During the past two years, the TDD created the Center for Intelligence Training and in conjunction with the Directorate of Intelligence (DI) developed the FBI's first intelligence training program for Analysts, Language Specialists, and Surveillance Specialists for both onboard personnel and new hires. This curriculum consists of five weeks of basic analyst training and four weeks of specialized tools and systems training. Since their inception in Fiscal Year 2005, the Analytic Cadre Educational Strategy (experienced analysts) and Cohorts (new hires) programs have graduated over 2,600 FBI intelligence personnel, including virtually all headquarters, field and international analyst personnel.

In addition to basic analyst training, the TDD and DI have developed numerous first-time intelligence courses targeting various levels of personnel, including Advanced Intelligence Analyst; FBI Managers of Intelligence Analysts (developed and produced jointly with the CIA); Analyst Notebook; Reports Officer; Financial Investigative Analysis; Human Intelligence Development for Agents; Counterdrug Intelligence Analyst Course; Counterintelligence Analytic Methods Course; Counterterrorism Analyst Course; Collection Management for Analysts; Denial and Deception Awareness; Open Source Intelligence; Asset Validation; Operations Security; and Basic Intelligence Familiarization Course.

The Kellogg School of Management

In 2003, the FBI contracted with the Kellogg School of Management, Northwestern University, one of this country's most renowned business schools to develop two executive development programs for the Bureau's most senior managers. These courses, "Leading Strategic Change" and "Navigating Strategic Change" (primarily for senior personnel in an intelligence-related role) are offered four times per year and focus on inducing positive change, exemplifying strong leadership, teambuilding, leading national security investigative efforts, and the importance of intelligence-driven investigation.

University Education Program

The University Education Program (UEP) was greatly assisted by funding spearheaded by this subcommittee and provides opportunities for FBI employees to obtain tuition reimbursement in furtherance of their education in direct support of FBI function and mission. To date, the UEP has provided funding to over 200 FBI employees, most seeking advanced degrees in a variety of disciplines.

Special Agent Career Path Program

The Special Agent Career Path Program allows for specialization within the Agent workforce and develops intelligence expertise within the management ranks. This initiative established Agent career paths in two primary programs; National Security Branch and Criminal Investigative Branch, and five subprograms within those branches: Counterterrorism, Counterintelligence, Intelligence, Cyber, and Criminal.

As part of this program and through a series of established procedures involving FBI experience, previous employment, and a host of additional factors, all Agent personnel are designated into at least one of the aforementioned subprograms in accordance with existing skill sets and ensure that these skills are used in optimal support of the Director's investigative priorities. This initiative includes designation of all Agents into one of the five subprograms after three years of general investigative experience and often coincides with the rotational transfer of an Agent from a small/mid-size field office to one of the FBI's 15 largest national offices.

Human Resources Division

To improve our human resources capabilities, we hired a Human Resources Officer in 2005 and transformed the Administrative Services Division into the Human Resources Division. We have seen significant advances in our human resources processes and programs in the last five years.

Career Development and Retention Programs

We created career development opportunities to include an 18-month temporary duty (TDY) program, alternate career path programs, and term limits for Field Supervisors as a means to further enhance our effectiveness in career development and succession planning. We also implemented first office Rotational Transfer Policy as an alternative way to staff critical positions at FBIHQ. Using authority provided by Congress, we initiated retention and relocation bonuses. We also introduced an enhanced Mid-Management Selection System.

Use of HR Authorities

The HRD has worked to develop implementation policies on expanded HR authorities, including critical pay and senior level positions for the FBI Intelligence Service.

We have granted exemptions to mandatory retirement age from age 60 to age 65. We also have established the Reserve Service Program, which allows the temporary re-employment of up to 500 former FBI employees to perform critical functions during emergency periods. And approximately 2000 employees have benefitted from our Student Loan Repayment program.

Other Significant Accomplishments

While the five branches listed above represent a major portion of the FBI's transformation during the past five years, other FBI components deserve mention for their contributions as well.

Security Division

The FBI formed the Security Division in December 2001, in response to the espionage arrest of Robert Hanssen. In March 2002, the Commission for Review of FBI Security Programs, chaired by former FBI and CIA Director, William Webster, issued its report, and listed 29 recommendations from which the FBI was required to devise a comprehensive, prioritized plan to address its security shortcomings.

The Security Division has in response established an Information Assurance (IA) Program, implemented an aggressive Certification &Accreditation (C&A) effort to discover and address vulnerabilities contained in FBI IT systems, established the Analytical Integration Unit to serve as the focal point for collecting and addressing information that could have a negative impact on trustworthiness evaluation, and conducted limited expansion of the Polygraph Program. The IA Program will report on all C&A and C&A-related activities as required by OMB, DOJ and the Office of the Director of National Intelligence.

From FY 02 to FY 06, the Security Division grew from 13 to 29 functional units covering physical, personnel and information assurance security. This growth included an increase in staff from 624 to over 1250 personnel and the resolution of 26 of the 29 recommendations by the Webster Commission. Initiatives addressing the remaining three multi-year recommendations are in progress. In addition, since September 11, 2001, the Security Division has processed

clearances for nearly 8,000 local law enforcement and Joint Terrorism Task Force members and hired 4,264 Special Agents and 6,046 Professional Support personnel (September 11, 2001 to August 10, 2006).

Facilities and Logistics Division

The FBI established a combined facilities and logistics services division to improve services, provide secure facilities and improve FBI business operations. Since 2001, the Division has managed the completion or occupancy of new secure and modern Field Office facilities in Pittsburgh, Newark, Dallas, Albuquerque, Baltimore, Birmingham, Tampa, Springfield, Chicago, and Las Vegas.

The Division has also completed 66 Joint Terrorism Task Force facilities, acquired space and facilities for the Terrorist Screening Center and National Counterterrorism Center (with CIA), and initiated 58 new Sensitive Compartmented Information Facilities Bureau-wide.

Finance Division

Over the past two years, the Finance Division has initiated several efforts that will yield more than $35 million in real cost savings each year. There are several initiatives that have simplified processes and converted from paper to electronic media to reduce the administrative burden and save costs. The following are examples of FD initiatives.

Enterprise Software License Agreements

Individual project software licensing have been consolidated into enterprise license agreements allowing the FBI to address all of our needs for a particular project at significantly reduced prices. Examples include products from Microsoft and Oracle. Total savings realized on license agreements are anticipated to be $16 million a year.

National Vehicle Lease Program

More than 200 individual lease contracts for 1,700 vehicles were replaced with a single national vehicle lease contract to support task force vehicle needs across the country. The national program allows for leasing of up to 2,500 vehicles at prices approximately $500 per month. Projected savings for 1,700 vehicles is $10 million a year.

FBI Headquarters (HQ) Energy Efficiency Initiative

An energy saving performance contract in cooperation with the General Services Administration and the Department of Energy allows for facility improvements at the FBI HQ building. Improvements include such items as lighting and chillers with costs paid through savings in energy bills. Projected FBI HQ savings are $3 million a year or a total of $66 million

over a 20-year period, the life of the contract. A proposal is currently under review to implement a similar program at the FBI's Quantico facility.

Records Management Division

The Records Management Division (RMD) has made substantial progress building a Central Records Complex (CRC) outside the Washington Metropolitan Area, where the primary function will be to consolidate the storage and management of the Bureau's records and files. The CRC will provide the security and operational efficiencies required by a National Archives and Records Administration (NARA) compliant records storage facility. Critical operations utilizing these records such as Freedom of Information Act (FOIA) and National Name Checks will also be located there. Additional functions located at the CRC will include a Data Center facility housing both the FBI's and DOJ's main data repository and the utilization of the facility as an FBI Continuity of Operations (COOP) backup location. As the permanent CRC is not expected to be completed until late 2009, RMD has established two interim facilities in Frederick County, Virginia, to support on-going Records Management operations not related to the storage and retrieval of the FBI's paper based records.

RMD created DocLab in 2002, which serves as the FBI's center for the conversion of paper documents into multiple electronic formats, as well as the program manager within the FBI regarding the scanning of documents, setting scanning standards and policies. As a result of this conversion from paper documents to an electronic format, investigators and analysts are able to conduct automated searches of the material, facilitating their timely review and dissemination of the information contained in the documents. Since its institution, DocLab has scanned and converted more than 38 million pages in support of various investigative and intelligence gathering efforts of the FBI. DocLab also supports the FBI worldwide with "fly teams" consisting of trained personnel and a portable scanning capability through the deployment of scanning teams and portable scanning equipment.

During the past last five years the FBI received a total of 62,657 Freedom of Information and Privacy Acts (FOIPA) requests. By leveraging technology and designing new processes, the FBI was able to reduce the number of employees responding to FOIPA requests from 640 to 260 while reducing the number of pending FOIPA requests from 4,462 at the end of January 2001 to 1,596 in January, 2006.

Office of Professional Responsibility

In May 2003, we commissioned a study of the FBI's Office of Professional Responsibility (OPR). The review, conducted by former Attorney General Griffin Bell and former FBI Associate Director Lee Colwell, was completed and a report was released on February 27, 2004. The vast majority of the recommendations in the report were adopted.

Among other changes, the investigative, adjudicative and teaching functions of the former OPR were separated. The investigative function was transferred to the Inspection

Division (INSD). The adjudicative function was retained in OPR. The Law Enforcement Ethics Unit was transferred to the Training Division.

A new Case Management database that closely tracks and monitors pending cases from the receipt of a complaint to the final decision on appeal has been implemented. Term limits have been established for the Supervisory Special Agents assigned to OPR. Incentives have been created (GS-15 pay and Inspection credit) to encourage experienced agent personnel to apply for the investigator and adjudicator positions.

Conclusion

Mr. Chairman, I would like to commend the men and women of the FBI for their hard work and dedication — dedication both to defeating terrorism and to upholding the Constitution. They are responsible for the accomplishments that I have outlined for you today and they are committed to upholding their duty to protect the citizens of the United States. I would like to conclude by thanking this Committee and you for your dedicated service as its Chairman. Many of the accomplishments that we have realized during the past five years are because of your support. Our transformation to an intelligence agency was accomplished in large measure because of changes permitted by the both the USA PATRIOT Act and USA PATRIOT Improvement and Reauthorization Act. By responsibly using the statutes provided by Congress, the FBI has made substantial progress in its ability to proactively investigate and prevent terrorism and protect lives, while at the same time protecting civil liberties.

Thank you again for the Committee's support of the FBI and for the opportunity to be here this morning. I would be happy to answer any questions you might have.

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