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BEFORE THE

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HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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FEDERAL BUREAU OF INVESTIGATION

THURSDAY, JULY 26, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 1:35 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Delahunt, Cohen, Sutton, Davis, Wasserman Schultz, Ellison, Smith, Sensenbrenner, Coble, Gallegly, Chabot, Lungren, Forbes, Feeney, Franks, and Gohmert.

Staff present: Perry Apelbaum, Staff Director and Chief Counsel; Joseph Gibson, Minority Chief Counsel; Robert Reed, Majority Counsel; and Brandon Johns, Majority Staff Assistant.

Mr. CONYERS. Good afternoon. The Committee will come to order.

Today's hearing is on the Federal Bureau of Investigation. And our sole witness today is Robert Mueller, III, Director of the Federal Bureau of Investigation, whom we welcome to the Committee hearing.

The Federal Bureau of Investigation is the linchpin of the Nation's law enforcement efforts. We have granted the Bureau significant powers: the ability to initiate investigations, to conduct surveillance on our citizens, and to combat crime and, more recently, terrorism.

And with those powers go responsibility and accountability to respect citizens' civil rights and civil liberties, to testify fully and forthrightly to Congress.

There are thousands of men and women in the FBI who put their lives on the line for us every day, while doing their utmost to ensure the rights of the people are fully respected.

It is a difficult balancing act, and the FBI's history is replete with instances where the Bureau has crossed the line, and sometimes that abuse has risen to the very top.

We saw it going back in history with the notorious COINTELPRO investigation into political activities in the 1950's and 1960's. We saw it when the FBI saw fit to wiretap and harass Martin Luther King, Jr., and the files of groups such as the NAACP.

It is no understatement to say that the shadow of J. Edgar Hoover still haunts the Federal Bureau of Investigation.

The stakes are even higher today than they were then, because after the tragedy of September 11, Congress passed new laws transferring even greater powers to the Federal Bureau of Inves-

tigation under the PATRIOT Act. At the same time, the Department relaxed regulations that had been in place for decades to check the FBI's powers. We also granted the Bureau significant funding increases.

Now, the FBI has had notable successes, and under Mr. Mueller's leadership has been able to begin the process of modernizing and retooling itself.

This week, they seized more than $500 million worth of counterfeited goods in China.

The Bureau has also had some unfortunate failures, that include the so-called National Security Letter program. And several months ago, we learned that FBI agents had routinely used national security letters without proper authorization and outside of statutory and regulatory requirements.

We learned of the FBI misuse of so-called exigent letters in nonemergency situations. In other words, the FBI claimed that there was an emergency simply to bypass the national security letter requirements.

Five months later, I have yet to learn of a single FBI agent or employee being disciplined. Five months later, we have no concrete guarantees that this won't happen again. Five months later, we still have no reform of the whistleblower process.

We all appreciate the need for increased powers to combat terrorism. We in Congress have the job of making sure that these powers are not abused. If they are, we have the further job of reining in those powers as appropriate, by oversight and, if necessary, by statute.

And so it is in that spirit that we are conducting this hearing. And I hope that we will be able to work cooperatively with this Director and head of the FBI to ensure that we are striking that difficult and proper balance between security and liberty.

I am pleased now to recognize Lamar Smith, the Ranking Member of the Judiciary Committee, from Texas, for his opening comments.

Mr. SMITH. Thank you, Mr. Chairman.

Like you, Mr. Chairman, I welcome today's witness, Director Mueller. And I want to thank him for his dedication and commitment to the mission of the FBI, which plays such an integral role in protecting the lives of the American people.

Certainly Director Mueller deserves credit for his efforts to successfully prevent another terrorist attack since 9/11. The FBI recently has thwarted two intended terrorist attacks: one at Fort Dix Army Base and one at JFK International Airport.

As the recent National Intelligence Estimate has indicated, though, our Nation is still at risk. We must continue to wage the war against terrorism at home and abroad.

On another subject, last March the Committee reviewed the Inspector General's audit of the FBI's use of national security letters. In that audit, the I.G. raised concerns regarding the FBI's use of such letters. The problem was with enforcement of the law, not the law itself.

The FBI has conducted an internal audit of NSL files, prepared and dispersed specific guidelines for the use of NSL authority to its

56 field offices, and established an Office of Compliance to ensure that its practices adhere to Federal laws and regulations.

A few days ago, the Justice Department and the FBI announced new measures to enhance national security oversight and compliance.

DOJ created a dedicated Oversight Section within the National Security Division. The FBI created a new Office of Integrity and Compliance.

These new oversight programs will help ensure that national security investigations are conducted in a manner consistent with the Nation's laws, regulations, and policies, including those designed to protect the privacy interests and civil liberties of U.S. citizens.

It is worthwhile to remember that no evidence suggests that anyone at the FBI intended to violate the law or internal policy governing use of NSLs.

FBI agents acted in good faith and sought to comply with the law, even as they worked under severe time constraints and with an urgent desire to stop terrorist activities.

As the Inspector General reported, NSLs are a critical tool in fighting terrorism and keeping our country safe. To do their job, the FBI must collect important information about suspected terrorists and spies.

The FBI has combated terrorism while continuing to fight against other more traditional forms of crime, such as gang violence, white-collar fraud schemes, cyber-crime, child pornography, drug trafficking, and intellectual property crime, too.

Director Mueller, thank you for all the good work that the FBI has done for all good Americans. I appreciate your being here.

Mr. CONYERS. Thank you, Mr. Smith.

Robert Mueller III, Director of the Federal Bureau of Investigation, has held his post since September 4, 2001. He has a long and distinguished career in public service. Between Princeton and University of Virginia Law School, he served as an officer in the Marines and was heavily decorated.

He has been an Assistant United States Attorney in San Francisco, in Boston, and in Washington, DC. He served as Assistant Attorney General for the Criminal Division in the early 1990's. And he returned to San Francisco in 1998 as United States Attorney.

In between that, he has managed two stints in private practice as a partner at two prominent Boston firms. He was called back from San Francisco to Washington in early 2001 to be Acting Deputy Attorney General, where he served until assuming his current post.

We have his statement, which will be included in the record, and we welcome him to proceed with his commentary.

STATEMENT OF THE HONORABLE ROBERT S. MUELLER, III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. MUELLER. Thank you, Chairman Conyers, Representative Smith and other Members of the Committee. Thank you for having me here today.

When I was sworn in nearly 6 years ago, we were keenly aware not only of the successes of the Bureau, but also of the need to ad-

dress a number of management and administrative challenges facing the Bureau.

The terrorist attacks of September 11, coupled with emerging terrorist and criminal threats brought on by globalization and advances in technology, required far more changes than we ever anticipated prior to September 11.

Today, the FBI is a stronger organization, committed to protecting the American people from both terrorism and traditional crime, while upholding the Constitution and protecting civil liberties.

Today, I want to give you a brief sense of the FBI's current priorities, the changes we have made to meet our mission, and some of the challenges we are facing.

After September 11, the FBI's priorities shifted dramatically. Today, our top three priorities—counterterrorism, counterintelligence, and cybersecurity—relate to the national security. And to that end, we have made a number of changes in the Bureau, both in structure and in the way we do business.

The FBI's top priority is, and will continue to be, the prevention of another terrorist attack.

Since September 11, we have made significant progress and had notable successes in the war against terror. We have doubled the number of intelligence analysts on board and tripled the number of linguists. We have set up field intelligence groups in each of our 56 field offices, tripled the number of joint terrorism task forces from 33 to over 100, in which we combine the resources and expertise of the FBI, the intelligence community, and State and local law enforcement officers.

And today, intelligence is woven through every FBI program and every operation. And as has been pointed out, we have successfully broken-up terrorist plots across the country; whether it be Lackawanna, New York; Portland, Oregon; Torrance, California; Chicago; and recently the potential attacks on Fort Dix and the JFK plot.

Our second priority is counterintelligence, protecting our Nation's most sensitive secrets from those who would do us harm and who would strike at our economic well-being. We reach out to businesses and universities, we join forces with other intelligence community members, and we work closely with the military and others to safeguard our secrets.

Our third priority in the post-9/11 world is the ever-evolving cybercrime threat. Our foreign adversaries and competitors can remotely observe, target, acquire and exploit our information to their advantage. Terrorists now recruit, train and plan attacks on the Internet.

Sexual predators prowl chat rooms for young victims. Spies sell intellectual property and state secrets to the highest bidder. Hackers who used to shut down servers around the world for bragging rights may now be linked to criminal and terrorist organizations. Many traditional crimes, from money laundering and fraud, to identity theft and organized crime, have migrated online.

The FBI's Cyber Division, created 5 years ago, uses highly trained investigators to address these threats. And we effectively partner with government and industry through our sponsorship of

InfraGard, a public and private alliance of over 20,000 individual members.

And while Americans are justifiably concerned about terrorism, it is crime in their communities that often directly touches their lives. With limited resources, the FBI must target those criminal threats against which we have the most substantial and lasting impact. And I want to emphasize five areas.

First, public corruption. In the past 2 years alone, we have convicted over 1,500 Federal, State, and local officials and recovered hundreds of millions in fines and restitution.

Civil rights: In recent years, we have expanded our civil rights program beyond police brutality and hate crimes to include the Civil Rights Cold Case Initiative and human trafficking issues.

Transnational organized crime continues to evolve with advances in globalization and technology. And we will continue our international commitments to this threat.

White-collar crime, including corporate, securities, commodities, investment, mortgage, and health care fraud, continue to adversely affect our Nation's economy and contributes to a number of victims. And we will continue our efforts to maintain public confidence in our country's economic institutions.

Another area I might mention is our hurricane fraud initiative, addressing contract and procurement fraud in the Gulf Coast region in the aftermath of Hurricanes Katrina and Rita.

Violent crime, especially violent gangs: Gangs are a nationwide plague no longer limited to our largest cities. The FBI works to combat this pervasive threat through our Safe Streets task forces, which have grown nearly three-fold since 2001.

And we are combating violent crime through other partnerships and task forces. Some of our Safe Streets and Safe Trails task forces are dedicated to other violent crime, from kidnappings to extortions to major interstate theft to assaults and murder in Indian country.

Finally, let me conclude by bringing you up to date on two issues about which I know you have particular concern, one of which has already been mentioned, and that is national security letters.

In response to the Department of Justice inspector general's report concerning our use of national security letters, the Bureau is in the process of implementing numerous reforms on which, I believe, your staff members have been continuously briefed.

These reforms will ensure that we comply fully with both the letter and the spirit of the authorities entrusted to us.

We are identifying and rectifying errors in our use of NSLs. We have changed the approval process to include review of all NSL requests by FBI attorneys. We have and are retraining agents and supervisors on how and when to use NSLs.

Within the FBI itself, we have established the Office of Integrity and Compliance, reporting directly to the FBI's deputy director. While many major corporations have compliance divisions, few, if any, government agencies have a department-wide program to internally monitor compliance. And given the complex nature and important nature of our mission, as well as the number of rules and guidelines and laws to which we are subject, such a program is an imperative, and we have put it in place.

And finally, to respond, Mr. Chairman, to one of your issues in terms of accountability, we are conducting an investigation with the Inspector General in the lead into the use of the exigent letters. And my expectation is, as a result of that investigation, we will take whatever steps are necessary to hold persons accountable. That investigation is pushing forward rapidly, but it is still ongoing.

Second, in recent years, we have made major improvements to the FBI's outdated information technology systems. We have installed thousands of state-of-the-art computers and secure and global networks.

We are also in the process of implementing Sentinel, to help the FBI manage information and provide enhanced information sharing, search and analytical capabilities. In June, we successfully implemented the first phase of Sentinel, and are currently working on the development and deployment of the next set of capabilities.

Mr. Chairman, let me conclude by saying that the FBI was created nearly 100 years ago to address crime crossing State boundaries. The threats we now face are global, and technology is moving more quickly than any of us could have foreseen just 10 years ago.

We must continue to protect the security of our Nation, while upholding the civil rights guaranteed by the Constitution.

When I speak to special agents upon their graduation from the FBI Academy, I remind each one that it is not enough to prevent foreign countries from stealing our secrets. We must prevent that from happening while still upholding the rule of law. It is not enough just to stop the terrorist. We must stop him while maintaining his civil liberties. It is not enough to catch the criminal. We must catch him while respecting his civil rights.

Mr. Chairman, Representative Smith, and Members of the Committee, I appreciate the opportunity to testify this afternoon and look forward to answering your questions.

[The prepared statement of Mr. Mueller follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT S. MUELLER

ROBERT S. MUELLER, III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
JUDICIARY COMMITTEE ON OVERSIGHT OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 26, 2007

Good afternoon Chairman Conyers, Representative Smith, and members of the Committee. I am pleased to be here today.

When I was sworn-in as the sixth Director of the FBI nearly six years ago, I was keenly aware of the need to address a number of management and administrative challenges facing the Bureau. However, the terrorist attacks of September 11, 2001, coupled with the emerging terrorist and criminal threats brought on by globalization and advances in technology, required far more changes than we anticipated. Indeed, we in the FBI have undergone unprecedented transformation in recent years. Today, the FBI is a stronger organization, combining greater intelligence and national security capabilities with a longstanding commitment to protecting the American people from both crime and terrorism, while upholding the Constitution and protecting civil liberties.

Today, I want to give you a brief sense of the FBI's current priorities, the changes we have made to meet our mission, and some of the challenges we are facing.

Changes in Structure and in the Way We Do Business

After the September 11th attacks on America, the FBI's priorities shifted dramatically. Our top priority became the prevention of another terrorist attack. Today, our top three priorities – counterterrorism, counterintelligence, and cyber security – are 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. We stood up the National Security Branch, which oversees our counterterrorism, counterintelligence, and intelligence operations. We consolidated our chemical, biological, radiological, and nuclear threat resources into the Weapons of Mass Destruction Directorate.

We have doubled the number of intelligence analysts on board, from 1,023 in September 2001 to more than 2,100 today. We have tripled the number of linguists. We set up Field Intelligence Groups, or FIGS, in each of our 56 field offices. These FIGS combine the expertise of agents, analysts, translators, and surveillance specialists. We integrated our intelligence program with other agencies under the Director of National Intelligence, with appropriate protections for privacy and civil liberties.

We have tripled the number of Joint Terrorism Task Forces (JTTFs) across the country, from 33 to more than 100. These task forces combine the resources of the FBI, the intelligence community, the military, and state and local police officers. These JTTFs

have been essential in breaking up terrorist plots across the country, from Portland, Lackawanna, Torrance, and Chicago, to the recent Fort Dix and JFK plots.

In short, we have improved our national security capabilities across the board. Today, intelligence is woven throughout every program and every operation. Much of our progress has been the result of expertise gained over the past 99 years of our existence, in the criminal arena with organized crime, and in counterintelligence, through the development of sources and expertise in interview and surveillance techniques. Our experience has allowed us to build enhanced capabilities on an already strong foundation.

The FBI's Criminal Programs

To meet our national security mission, the FBI had to shift personnel and resources, but this has not affected our commitment to our significant criminal responsibilities. While Americans justifiably worry about terrorism, crime also touches the lives of millions of people. Today in the FBI, we have roughly a 50/50 split in resources between national security and criminal programs. To make the best use of these resources, we will continue to focus on those areas where we bring something unique to the table and to target those criminal threats against which we will have the most substantial and lasting impact.

In recent years, we have moved away from traditional drug cases and smaller white collar crimes that can be handled by other law enforcement agencies, but we have dedicated more agents and more resources to public corruption, violent crime, civil rights, transnational organized crime, corporate fraud, and crimes against children. We remain ready and willing to help keep our communities safe.

Public Corruption

Public Corruption is among the agency's top priorities and is the number one priority of the Criminal Investigative Division. Public corruption strikes at the heart of government. It erodes public confidence, and undermines the strength of our democracy. Investigating public corruption is an FBI commitment as old as the Bureau itself. Indeed, it is a mission for which the FBI is singularly situated; we have the skills necessary to conduct undercover operations and the ability to perform electronic surveillance.

Today, there are 640 Special Agents dedicated to more than 2,400 pending investigations. The number of pending cases has increased by 49 percent since 2001. The number of agents working such cases has increased by 42 percent. The Department of Justice's conviction rate is high, as is the overall number of corruption convictions. In the past two years alone, the Department has convicted over 1,500 federal, state, and local officials. The Department also has recovered more than $69 million in fines and more than $356 million in restitution.

The Public Corruption Program also targets governmental fraud and corrupt practices. For example, the International Contract Corruption Initiative addresses the systemic, long-term multi-billion dollar contract corruption and procurement fraud crime problem in the Middle East, principally in Iraq, Kuwait, and Afghanistan.

The Hurricane Fraud Initiative addresses contract and procurement fraud in the Gulf Coast region of the United States in the aftermath of hurricanes Katrina and Rita. The Campaign Finance and Ballot Fraud Initiative addresses campaign finance violations, with a particular emphasis on the upcoming 2008 primaries and national elections.

Violent Crime

National crime rates remain near historic lows, thanks in large part to the courageous efforts of local, state and federal law enforcement agencies, and several major metropolitan areas continue to report decreases in the number of violent crimes in their communities. Nevertheless, it must be acknowledged that the FBI's 2005 Uniform Crime Report (UCR) and the 2006 preliminary UCR did signal a slight increase in the aggregate number of violent crimes in America. These data do not reveal a nationwide trend; instead, they show local increases in some violent crimes in certain communities.

Despite the continuation of historically low crime rates, the Department of Justice and the FBI take seriously any increase in crime, and here, too, we strive to maximize our resources through partnerships and task forces. We are currently operating 188 Safe Streets Task Forces. Forty-three of these task forces are dedicated to violent crime; 10 are dedicated to major theft. In addition, there are 16 Safe Trails Task Forces that cover crimes committed in Indian Country such as homicide, rape, child sexual assault, and narcotics trafficking. Task forces dedicated to violent crime alone conducted investigations resulting in more than 700 convictions in Fiscal Year 2006.

We also participate in state and local fusion centers across the country. More than 250 Special Agents, analysts, and linguists work side-by-side with their state and local counterparts, collecting intelligence, analyzing criminal trends, and sharing that information up and down the line, from federal and state officials to the officer on the street.

We are also working together to combat crimes against children. The Innocence Lost National Initiative works to identify and disrupt child prostitution rings. To date, the program has been expanded to 29 cities, with 23 dedicated task forces and working groups. Since its inception, more than 300 children have been recovered and/or identified, and 204 child predators have been convicted in federal or state court.

To address the pervasive problem of child abductions, the FBI created the Child Abduction Rapid Deployment (CARD) teams. There are currently 10 teams regionally dispersed to enable the rapid deployment of experienced Crimes Against Children investigators. These agents provide investigative, technical, and resource assistance to state and local law enforcement during the most critical time period after a child is abducted. Since April 2006, the CARD teams have been deployed 23 times. Eleven victims have been recovered alive and all but two investigations have been resolved.

Violent Gang Activity

We also face significant challenges from violent gangs. They are a nationwide plague that is no longer limited to our largest cities.

Since 2001, for example, our violent gang caseload has more than doubled. Currently, we have more than 2,800 pending investigations into gangs and gang-related activities. The number of agents working such cases has increased by 70 percent.

We routinely work with our state and local partners to combat this pervasive threat. Of our 188 Safe Streets Task Forces, 135 are dedicated to identifying, prioritizing, and targeting violent gangs. We now have more than 600 agents serving on those task forces, along with more than 1,100 officers from state and local law enforcement. Last year, they convicted nearly 2,200 violent gang members.

In addition to our task force participation, we stood up the National Gang Intelligence Center (NGIC) in Washington, D.C. to support our law enforcement partners on the front lines. The NGIC shares information and analysis concerning the growth, migration, criminal activity, and association of gangs that pose a significant threat to communities across the United States. The NGIC is co-located with GangTECC, the National Gang Targeting, Enforcement and Coordination Center, which is the national, multi-agency anti-gang task force created by the Attorney General. The MS-13 National Gang Task Force supports FBI field office investigations of the MS-13 international gang, and coordinates investigations with other local, state, federal, and international criminal justice agencies.

In support of the President's strategy to combat criminal gangs from Central America and Mexico, the FBI has forged partnerships with anti-gang officials in El Salvador, Honduras, and Guatemala, among other countries. We are working with the U.S. Department of State and the Department of Homeland Security to support the FBI's Central American Fingerprint Exploitation (CAFE) initiative, which collects gang members' fingerprints in the above-referenced countries, allowing the United States to deny entry to the country even if they utilize aliases, and the new Transnational Anti-Gang (TAG) Center announced by the Attorney General in San Salvador in February.

Civil Rights Program

As you know, the FBI is charged with investigating civil rights violations. In recent years, we have expanded our Civil Rights Program beyond police brutality and hate crimes, to include the Civil Rights Cold Case Initiative and human trafficking issues. Since 2001, the number of pending civil rights cases has increased 19 percent, from 1,326 to 1,587.

In February of 2006, the FBI and the Department of Justice began to work with the NAACP, the Southern Poverty Law Center, and the National Urban League on the Civil Rights Cold Case Initiative. As part of this initiative, the FBI asked its 56 field offices to re-examine their unsolved civil rights cases, and to determine which cases could still be viable for prosecution. Since this initiative began, 95 referrals have been forwarded to 17 field offices. Each will need to be assessed for its investigative and legal viability, but for those cases in which we can move forward, we will.

We all know that many murders during the Civil Rights era were not fully investigated, were covered up, or were misidentified as accidental deaths or disappearances. Many trails ran cold, and many cases were effectively closed.

Yet the families and friends of these victims never lost hope, and breakthroughs in forensic analysis technology have affirmed that hope. In June of this year, for example, James Seale, a former member of the Ku Klux Klan, was convicted of the kidnapping and murder of Henry Dee and Charlie Moore back in 1964. In 2005, Edgar Ray Killen was convicted for his role in the deaths of three civil rights workers in Mississippi in 1964. And in 2003, Ernest Avants was convicted for the 1966 murder of Ben Chester White.

Through your support of these investigations, with the passage of the Emmett Till Unsolved Civil Rights Crime Act, we will have the resources we need to investigate and prosecute these crimes, and bring those responsible to justice.

Transnational Organized Crime

Transnational organized crime continues to evolve with advances in globalization and technology.

La Cosa Nostra is an organized crime enterprise with direct ties to the Sicilian Mafia and remains a major organized criminal threat to American society. Currently, we have nearly 600 pending Italian organized crime investigations. We are also actively investigating Eurasian, Albanian, Asian, and African organized criminal syndicates. Between 2001 and 2007, for example, pending Eurasian organized crime cases increased by 65 percent and an average of 160 individuals were indicted per year between 2002 and 2006.

We are working with partners around the world to identify, apprehend, and disrupt members of international criminal syndicates. For example, we are working with the Italian National Police to combat Sicilian Mafia activity in Italy and in the United States, in a partnership known as the Pantheon Project. The FBI has assigned personnel in Rome to work side-by-side with Italian National Police investigators, and the Italian National Police have assigned a representative to FBI Headquarters to work side-by-side with Agents in the Organized Crime Section.

The FBI-Hungarian National Police Organized Crime Task Force has been up and running for more than six years, working to dismantle organized crime groups, with FBI agents permanently stationed in Budapest to work with their Hungarian counterparts. The Albanian Organized Crime Task Force will commence operations this fall, with partial funding from the Department of Defense.

The FBI's Criminal Division has also assumed administrative and operational responsibility from the Office of International Operations for the Southeast European Cooperative Initiative (SECI), which is headquartered in Bucharest, Romania. SECI serves as a clearinghouse for information and intelligence for member and observer countries, and supports specialized task forces addressing transborder crimes including human trafficking, financial crimes, smuggling of goods and terrorism.

Recognizing the growing threat posed by transnational criminal enterprises throughout the world, the FBI, in conjunction with the Department of Justice, has begun an assessment of the world-wide organized crime threat. This collaborative effort between the United States, Great Britain, Canada, Australia, and New Zealand will enable us to focus resources internationally in order to neutralize those organized crime groups with the greatest impact and longest reach.

Major White Collar Crime

The FBI routinely investigates large-scale financial crimes, including corporate, securities, commodities, mortgage and health care fraud. In recent years, the FBI has investigated company after company, including Enron, Enterasys, Comverse, HealthSouth, WorldCom, and Qwest, among many others. These names have been in the headlines for the past several years. Thousands of employees lost their jobs and their life savings; thousands of stockholders were defrauded. We have successfully investigated and helped put away many of the persons responsible for these crimes.

The number of agents investigating corporate and other securities, commodities, and investment fraud cases has increased 47 percent, from 177 in 2001 to more than 250 today. Today, we have more than 1,700 pending corporate, securities, commodities and investment fraud cases, which is an increase of 37 percent since 2001.

In 2006, the FBI investigated 490 corporate fraud cases, resulting in 176 informations and indictments, 133 convictions, $14 million in fines, and $62 million in seized assets. Significantly, the FBI has also secured $1.2 billion in court ordered restitution for the victims of these crimes.

We are also a member of the Corporate Fraud Task Force. FBI Special Agents work closely with investigators from the Securities & Exchange Commission, the IRS, the U.S. Postal Inspection Service, the Commodity Futures Trading Commission, and Treasury's Financial Crimes Enforcement Network, among others. Together, we target sophisticated, multi-layered fraud cases that injure the marketplace and threaten our economy. Since its inception, the Department has obtained 1,236 corporate fraud convictions, including the convictions of 214 chief executive officers and presidents, and 53 chief financial officers.

Health care fraud significantly impacts the lives of all Americans. The National Health Care Anti-Fraud Association conservatively estimates that three to five percent of total health care expenses are fraudulent. The major issues are constantly changing and those involved in health care fraud are continually probing health care benefits programs for areas of potential fraud. Constant communication between the health care benefits programs, law enforcement agencies, state agencies and the public is the most effective means to respond to these changes. The FBI is an integral element of the joint Department of Justice and Department of Health and Human Services Health Care Fraud and Abuse Program and is actively involved in 32 Health Care Fraud Task Forces, as well as numerous working groups and joint investigations. During 2006, investigations

resulted in 599 indictments; 534 convictions and pre-trial diversions; $373 million in restitutions; and $1.6 billion in recoveries.

Cyber Crime

Protecting the United States against cyber-based attacks and high-technology crimes is our third priority, ranking behind only counterterrorism and counterintelligence. With the ubiquitous nature of the Internet, cyber crime is an ever-evolving threat. Our foreign adversaries and competitors can remotely observe, target, acquire and exploit our information to their advantage, often without any physical presence in the United States. Terrorists recruit, train and plan attacks in the shadows of the Internet. Sexual predators prowl chat rooms for younger and younger victims. Spies sell intellectual property and state secrets to the highest bidder. Hackers who used to shut down servers around the world for bragging rights may be linked to criminal or terrorist organizations. In addition, many traditional crimes, from money laundering and fraud to identity theft and organized crime, have migrated online.

Five years ago, in 2002, we created the Cyber Division to handle all cyber-security crimes. Today, our highly-trained cyber agents and analysts investigate computer fraud, child exploitation, theft of intellectual property, and worldwide computer intrusions.

Innocent Images National Initiative

One of our most important cyber programs is the Innocent Images National Initiative (IINI). The IINI is an intelligence-driven, multi-agency investigative operation to combat the proliferation of Internet child pornography and exploitation. Unfortunately, there is no shortage of work in this arena. In the past 10 years, we have witnessed an exponential increase in our caseload, from just 113 cases in 1996 to more than 5,000 this year. In fact, online child pornography and exploitation investigations accounted for 37 percent of all investigations in the Cyber Division in Fiscal Year 2006. In total, more than 6,000 child predators have been convicted in FBI cases since 1996.

We have ongoing undercover operations across the country, with hundreds of agents who investigate cases with their state and local counterparts. On any given day, these investigators may pose as children to lure online predators into the open. They may pose as collectors who seek to share images through peer-to-peer networks. They may coordinate with the National Center for Missing and Exploited Children to identify children and adults featured in child pornography. Or they may train police officers to investigate cases in their own jurisdictions.

Our collaboration is not limited to the national level. Many producers and distributors of child pornography operate outside of our borders. Police officers from Britain, Australia, Belarus, Thailand, and the Philippines, among others, work with agents and analysts on the Innocent Images International Task Force in Calverton, Maryland. Since its inception, investigators from 19 countries have participated in the task force. Together, they have generated more than 3,000 leads that were sent to DOJ-

funded Internet Crimes Against Children Task Forces, FBI field offices, and our international law enforcement partners.

Online Fraud, Cyber Espionage, and Computer Intrusions

We also investigate online fraud, identity theft, intellectual property violations, cyber espionage, and computer intrusions.

For example, an ongoing cyber crime initiative has identified more than one million potential victims of botnet cyber crime. The investigation, entitled "Operation Bot Roast," targets "botnets" – groups of compromised computers under the remote command and control of a hacker commonly known as a "bot-herder."

Most owners of these compromised computers are unwitting victims who have unintentionally allowed access and use of their computers to facilitate other crimes, including identity theft, denial of service attacks, phishing, click fraud, and the mass distribution of spam and spyware. Because of their widely distributed capabilities, botnets are a growing threat to national security, the national information infrastructure, and the economy.

The FBI is working with industry partners like the CERT Coordination Center at Carnegie Mellon University, Microsoft Corporation, and the Botnet Task Force to identify victim computer IP addresses and to notify those affected. To date, several suspects have been charged or arrested with computer fraud and abuse.

The FBI sponsors InfraGard, a cutting edge public and private alliance committed to information sharing and analysis to combine the knowledge base of a wide range of members. InfraGard is an association of businesses, academic institutions, state and local law enforcement agencies, and other participants dedicated to sharing information and intelligence to prevent hostile acts against the United States. InfraGard Chapters are geographically linked with FBI Field Office territories. Currently, there are over 20,000 individual Infraguard members, representing 240 Fortune 500 companies and all National Critical Infrastructure sectors.

Increasingly, cyber threats originate outside of the United States. Our information infrastructure is not ours alone – it can be accessed by anyone with a laptop and a modem. Our Cyber Action Teams travel around the world on a moment's notice to assist in computer intrusion cases, whether in government, military, or commercial systems. These teams gather vital intelligence that helps us identify the cyber crimes that are most dangerous to our national security and to our economy.

In 2005, for example, cyber teams comprising investigators and experts in malicious code and computer forensics worked closely with Microsoft Corporation and with law enforcement officials from Turkey and Morocco to find the criminals responsible for creating and spreading the "Mytob" and "Zotob" worms. We resolved this case within just weeks of the attack, in large part because of the intelligence we received from our international and private sector partners.

We are also uniquely positioned to investigate counterintelligence threats in the cyber arena. Although I am limited in what I can discuss in an open forum, the FBI is partnered in the National Cyber Investigative Joint Task Force with elements of the Intelligence Community to investigate and respond to counterintelligence cyber threats.

International Scope and Operations

In today's "flat world," our role cannot be limited to the domestic front. Just as there are no borders for crime and terrorism, there can be no borders for justice and the rule of law.

To respond to this new threat landscape, the FBI must create new partnerships and solidify old friendships with our counterparts around the world. Twenty years ago, the idea of regularly communicating with our law enforcement and intelligence counterparts around the world was as foreign as the Internet or the mobile phone. Today, advances in technology, travel, and communication have broken down walls between countries, continents, and individuals.

To that end, we have strengthened our relationships with our international law enforcement partners; we have expanded our global reach. The FBI now has Legal Attaché offices – called Legats – in more than 70 cities around the world, providing coverage for more than 200 countries.

These Legats are the FBI's first responders on the global front, from assisting our British counterparts in the London bombings to finding the man responsible for the attempted assassination of President Bush in Tbilisi, Georgia. We train together; we work hand-in-hand on multinational task forces and investigations. We have assisted counterterrorism investigations from Saudi Arabia to Spain, and from Britain to Bali.

Together we are identifying people and groups that provide financial support to terrorists. We are collaborating closely with our counterparts in Russia, Eastern Europe, and Asia to combat global nuclear terrorism. We are working with the Italian National Police and the Hungarian National Police to investigate organized criminal syndicates that continue to immigrate to the United States. We are working with our foreign counterparts to cut off the proliferation of child pornography on the Internet. These international partnerships are vital to our collective security.

National Security Letters and the Office of Integrity and Compliance

In response to the Inspector General's report dated March 9, 2007, concerning the FBI's use of National Security Letters (NSLs), and an internal audit conducted by the FBI, the Bureau is in the process of implementing numerous reforms. These reforms will ensure that we comply fully with both the letter and the spirit of the authorities entrusted to us.

We are conducting audits to identify and rectify errors in our use of NSLs. We are streamlining the approval process to include review of all NSL requests by FBI attorneys. We are training agents and supervisors how and when to use NSLs.

With regard to the collection of data, investigators must request specific information and justify the need for such information before the NSL is sent. In addition, all evidence received from an NSL must be reviewed before it is included in the FBI's databases, to ensure that only the information requested is retained. Any irrelevant data will be isolated from other data and may be returned or destroyed. Further, the use of so-called "exigent letters" is no longer permitted. New guidelines provide a clear process to be followed in cases of emergency. The FBI has also worked closely with the privacy and civil liberties officers of the Department of Justice and the Office of the Director of National Intelligence to insure that policies for retention of information obtained through NSLs are appropriate to protect privacy and civil liberties.

As part of a significant national security oversight and compliance effort, we are working with the Department of Justice as it stands up a dedicated Oversight Section within the National Security Division. This section will be comprised of attorneys and staff members specifically dedicated to ensuring that the Department of Justice fulfills its national security oversight responsibilities, to include all aspects of the FBI's national security program and its use of national security tools. The Department will exercise this oversight through a regular process of conducting National Security Reviews of FBI field offices and Headquarters national security units. These reviews are not limited to areas where shortcomings have been identified; instead, they are intended to enhance compliance across the national security investigative spectrum.

Finally, within the FBI itself, we have proposed establishment of the Office of Integrity and Compliance (OIC), which will soon be submitted to Congress and the Office of Management and Budget for their concurrence. After the Inspector General's audit of the FBI's use of NSLs brought to our attention an unacceptably high rate of error, we took a hard look at the causes. While we had training for the use of NSLs in place, we had no built-in, effective way to track compliance with those requirements.

While many large corporations have compliance divisions, few, if any, government agencies have department-wide programs to internally monitor compliance. Given the complex nature of the FBI's mission, as well as the number of rules, guidelines, and laws to which we are subject, it is time to start such a program. In developing this proposal, we have welcomed the input of the Privacy and Civil Liberties Oversight Board, external privacy and civil liberties groups, as well as Congress.

The OIC will develop, implement, and oversee a program that ensures there are processes and programs in place that promote FBI compliance with both the letter and the spirit of all applicable laws, regulations, rules, and policies. Through this program, we will cultivate an environment committed to these principles and will assist FBI management at all levels to maintain a culture where ethics and compliance are paramount considerations in decision making. The OIC will be headed by an Assistant Director who will report directly to the FBI's Deputy Director, providing direct access to the top decision makers within the FBI. The OIC will not duplicate the work of the Inspections Division, but will identify areas of risk so that we can mitigate the risk.

These comprehensive oversight and compliance programs will ensure that national security investigations are conducted in a manner consistent with our laws, regulations, and policies, including those designed to protect the privacy interests and civil liberties of American citizens. The FBI will do all that it can to uphold our core value of integrity in order to maintain public trust and confidence.

Information Technology

In recent years, we have made vast improvements to the FBI's outdated information technology systems. We have installed thousands of state-of-the-art computers and secure global networks. We have developed sophisticated databases and search engines, many of which we share with our federal, state, local and tribal counterparts.

We are also in the process of implementing Sentinel, our fully automated, web-based case management system. The Sentinel system, when completed, will help the FBI manage information beyond the case focus of existing systems, and will provide enhanced information sharing, search, and analysis capabilities. Sentinel also will facilitate information sharing with members of the law enforcement and intelligence communities.

In June, we implemented the first phase of Sentinel. Phase 1 provides a user-friendly, web-based interface to access information that is housed in the FBI's Automated Case Support (ACS) system. Information is pushed to users, and documents are made available through hyperlinks. Phase 1 features a Personal Workbox, which summarizes a user's cases and leads, putting more information at their fingertips. It also provides a Squad Workbox, which allows supervisors to better manage their resources and assign leads with the click of a mouse.

We are currently working with Lockheed Martin, the prime contractor, to plan the development and deployment of the next set of Sentinel capabilities. With Phase 1, we built the foundation for the entire enterprise. Phase 2 will add additional capabilities, such as electronic forms and electronic workflow, through which employees can send documents to supervisors for review, comment, and approval. Phase 2 is scheduled for incremental development and deployment, providing capabilities to users in a more timely fashion. The four-phase Sentinel project is scheduled to conclude in 2011, as originally planned.

Future of the FBI

The FBI was created nearly 100 years ago to address crime crossing state boundaries. Today, we combat crime and terrorism that cross state boundaries and national borders with the click of a mouse. The world is smaller and more interconnected than it ever has been. Unfortunately, criminals and terrorists are also more interconnected. The threats we face are global in nature, and the technology is moving more quickly than we could have foreseen just 10 years ago.

To defeat these emerging threats, we must continue to expand our global reach. We must continue to share information with our federal, state, local, tribal, and international partners. We must continue to update our technology to keep pace with criminals and terrorists the world over. We must continue to work together to dismantle criminal enterprises and terrorist cells, to put away child predators and violent gang members, and to disrupt criminals and terrorists before they strike. Working together is not just the **best** option; it is the **only** option.

Today, we are building on our legacy and our capabilities as we focus on our top priority: preventing another terrorist attack. It is indeed a time of change in the FBI, but our values can never change. We must continue to protect the security of our nation while upholding the civil rights guaranteed by the Constitution to every citizen.

When I speak to Special Agents upon their graduation from the FBI Academy, I remind each one that it is not enough to prevent foreign countries from stealing our secrets – we must prevent that from happening while still upholding the rule of law. It is not enough to stop the terrorist – we must stop him while maintaining his civil liberties. It is not enough to catch the criminal – we must catch him while respecting his civil rights. The rule of law, civil liberties, civil rights – these are not our burdens; they are what make us Americans.

* * *

Mr. Chairman, I would like to conclude by thanking this Committee and you for your service and your support. Many of the accomplishments we have realized during the past six years are in part due to your efforts. From addressing the growing gang problem to creating additional Legal Attaché offices around the world, to compensating our personnel, and, most importantly, to protecting the American people from terrorist attack, you have supported our efforts and our budget requests.

On behalf of the men and women of the FBI, I look forward to working with you in the years to come as we continue to develop the capabilities we need to defeat the threats of the future.

Mr. CONYERS. Thank you for your testimony, which will accompany your written statement.

I wanted to begin with the anthrax investigation, which we can't get any information about, but yet the Senate apparently got a briefing on it. And we have Richard Hertling, Acting Assistant Attorney General, who wrote Congressman Rush Holt, saying that, "We can't give you any information or a briefing in the House."

Is there any way we can overcome this difference of views?

Mr. MUELLER. I would be happy to discuss with the Department of Justice the possibility of providing some form of briefing with regard to what is happening in the anthrax investigation.

It is an ongoing investigation, and, quite obviously, we have some concerns that the confidentiality be maintained.

But in the meantime, I will discuss with the Department, a mechanism whereby we can give you a briefing as to what we are doing, the number of agents on the case, and some of the aspects of the case that would not compromise the ongoing investigation.

Mr. CONYERS. Thank you.

Now, the national security letters. The Inspector General's report said that, of the 143,074 requests between 2003 and 2005 involving information on U.S. citizens, most of them were presumably innocent.

And there are those in the Congress that begin to question the continued giving of the FBI this broad NSL authority in light of the findings not only from the Inspector General's report but from the FBI's own internal audit that the Bureau has systemic difficulties in limiting national security letters to appropriate uses.

Your comments, please.

Mr. MUELLER. First of all, let me say I absolutely understand the concern from the I.G.'s report.

A couple of preliminary points to make, and that is that the Inspector General did not find any intentional activity or actions by FBI agents to circumvent and obtain records to which they were not entitled. And in almost every case, the FBI was entitled to the records that were obtained.

One of the concerns I think is raised is the fact that there are so many and that they are U.S. citizens. And I would give perhaps a hypothetical that would explain the necessity for the use of that tool.

We will, upon occasion, have investigations such as we had overseas these last few weeks where, in the United Kingdom, there were a couple of cars left outside a nightclub with the expectation they would explode. There was a terrorist attack in Scotland. And a year ago, if you will recall, there were a group of individuals in the United Kingdom who were arrested intending to bring on-board liquid explosives on a number of planes and blow them up.

Either in international investigations or domestic investigations, we will find, in the course of those investigations, telephone numbers that they have utilized and been passed to us by British authorities, e-mail addresses, and other identifiers of communication.

If we have individuals in the United States who are in contact with individuals who are part of a terrorist cell overseas, it is incumbent upon us to determine whether or not they are contacting people in the United States who may be terrorists, may be part of

that group, or to determine that they are not persons part of that group. In order to get those records, we use national security letters.

The standard needs to be relevance to our investigation. It is important that we track down every possible lead to individuals in the United States who might be undertaking terrorist attacks. It is not something that we did; we did not have the tools prior to September 11.

It is fair to say that to the extent that we have been in some ways successful in preventing terrorist attacks since September 11, it is attributable to the tools that have been given to us under the PATRIOT Act.

Let me finish by saying that what we did not have in place, which we should have had in place, is a compliance program, to assure that the procedures we had were being followed across the field, and that our databases were accurate and up to date. We did not have that. We have put that into place.

And my hope and expectation is that, with all of the changes we have made, we will never again face the problem that we have faced in the last few months on items such as national security letters.

Mr. CONYERS. Well, I have more questions, of course, but my time has expired. I will yield to Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Director Mueller, when the American people think of the FBI, I think they think of your two worthy missions: one, to reduce violent crime and, two, to deter terrorist attacks. And I would like to ask you about the latter.

To what extent is al-Qaida trying to get agents into the United States? Are you seeing an increase in activity or a decrease in activity?

And also, to what extent is the FBI able to break up cells or deter those types of activities?

Mr. MUELLER. Well, as the recently released national—or the national intelligence report, the NIE, indicates that, for the next 3 years, we face a threat of terrorist attack.

In part, it is attributable to the understanding of persons affiliated or associated with al-Qaida, that it is important to try to find individuals who can circumvent our border security and come into the United States, in much the way the 19 hijackers did prior to September 11.

They have, since September 11, not for one instant given up the hope and the efforts to try to infiltrate persons into the United States to undertake attacks.

Mr. SMITH. You are saying we need to strengthen our immigration laws and our border security then?

Mr. MUELLER. We have, and we need to continue to do so.

We also need to understand that it is not just stopping individuals at the borders, but that, once individuals were in, we have to identify those individuals who may have come in with the intent of undertaking an attack or, as important, individuals within the country who have been radicalized by the Internet or otherwise—perhaps American citizens or perhaps recent immigrants—but

come together, self-radicalized, with the expectation of being able to undertake a terrorist attack.

So it is not just border security, but it also is our ability to develop sources to have tripwires out to identify individuals who may already be in the United States, or others who are coming into the United States who may be part of an effort to undertake a terrorist attack.

Mr. SMITH. Director Mueller, how many individuals in the United States have you suspected of either intending to commit a terrorist act or had the potential to commit a terrorist attack, that you have deterred, stopped, arrested or otherwise prevented from doing so?

Mr. MUELLER. Well, certainly——

Mr. SMITH. Is it——

Mr. MUELLER. I hate to get into numbers, particularly in an open forum.

I can tell you that, since September 11, we have had thousands of investigations into persons in some way associated with terrorists, various Sunni, or even Shia terrorist groups.

And there also are levels of participation, there is funding, there is recruiting, there is radicalization—all pieces of the terrorist puzzle—in addition to those who provide support or those who are going to undertake a terrorist attack.

And we have to address that, across the board, and have.

Mr. SMITH. Let me ask you a question about internal policy at the FBI that affects, I think, most of your personnel.

What has been the success or lack of success involved with the 5 years up-or-out policy, I think, that was implemented a couple of years ago?

Mr. MUELLER. In 2004, we determined that we needed to change the way we develop leadership to encourage and push forward, give incentives to the best in the Bureau to rise to the top.

We decided that in 2004 and indicated we would—I would start the process 2 years later, in 2006, giving individuals an opportunity to adjust their career moves.

The purpose of this was to use the supervisor's position as a first step in career-building, and to encourage persons to become Assistant Special Agents in Charge. It has had that effect. We have many more people seeking to move up the career ladder within the FBI.

Mr. SMITH. So it has been a success.

Let me squeeze in one more last question on a different subject. What have been the main obstacles to the States' providing accurate information to you all for the instant background check?

Mr. MUELLER. Well, either an obvious example, such as what happened with West Virginia, in terms of medical and the psychiatric records. That is an obvious example.

The other area is where, because of the lack of technology in particular States, it is difficult for the information to be given to us or to be adequately queried. I would have to get back to you on more of the specifics on that.

Mr. SMITH. Okay. If you can get back to me——

Mr. MUELLER. I would be happy to do that.

Mr. SMITH [continuing]. That would be great.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you.

The Chairman of the Constitution Committee, Jerry Nadler of New York?

Mr. NADLER. Thank you, Mr. Chairman.

Director Mueller, the I.G. reports that the number of requests for NSLs from 2002 to 2005 was over 143,000. Over half of those concerned U.S. persons. He also reports that the number of terror-related convictions the Inspector General was able to confirm, stemming from the 143,000 persons' information that was collected through NSLs, was one.

Doesn't that sound a little unbalanced?

Mr. MUELLER. I would have to go back and look at that. Quite clearly, national security letters have figured in any number of terrorist investigations, disruptions and prosecutions.

Mr. NADLER. Substantially more than one?

Mr. MUELLER. Yes.

Mr. NADLER. Because the I.G. reports that there was one conviction that stemmed from those 143,000 people.

Mr. MUELLER. I have to go back and look at that statement. I didn't focus on that. But I can assure you that there are national security letters that focus in any number of investigations.

Any time you have an investigation such as this Operation Overt, where individuals are trying to get on planes in the U.K., we will have efforts to immediately determine whether or not we have a threat here; if you have a JFK plot, the recent plot against Fort Dix, I can assure that——

Mr. NADLER. All right. Let me go further.

The I.G. also discovered that the subscriber information for approximately 11,000 phone accounts was obtained with only nine NSLs. Nine NSLs produced 11,000 phone accounts.

Mr. MUELLER. I would have to get back to you on that.

Mr. NADLER. All right, because—well, that is what is in the I.G.'s report. And my question is, that ratio sort of implies a fishing expedition, or at least not very focused investigations.

Mr. MUELLER. I am not going to disagree with you in terms of the perception. I would have to get back to you as to the circumstances under which, number one, what the I.G. was referring to and the circumstances that he is referring to.

Mr. NADLER. Okay.

In the June 1, 2007, draft guidelines on the issuance of NSLs, on page three, there is a discussion of e-mail and what is content and therefore cannot be obtained by an NSL, but that discussion is redacted.

So my question is, do you consider the body or the text of an e-mail to be content?

Mr. MUELLER. Yes.

Mr. NADLER. Both?

Mr. MUELLER. If you are talking about the body of an e-mail, that is content.

Mr. NADLER. And therefore cannot be obtained?

Mr. MUELLER. Yes, the content.

Mr. NADLER. And therefore cannot be obtained by an NSL?

Mr. MUELLER. That is correct.

Mr. NADLER. And the subject line of the e-mail?

Mr. MUELLER. I would have to make certain and get back to you. I believe that is content as well.

Mr. NADLER. Okay.

Now, on page 109 of the Inspector General's report, it is reported that agents are accessing "NSL information about parties two or three steps removed from their subjects without determining if these contacts are real serious connections."

Doesn't this violate even the relevance standard for issuing NSLs?

Mr. MUELLER. Again, I would have to go—it may. I do not believe it necessarily does, but is determined by the circumstances of a particular investigation.

Mr. NADLER. And if it doesn't, would that not imply that the relevance standard is a little too low?

Mr. MUELLER. Again, I think you would have to look at the circumstances. I don't think you can base a conclusion on that statement alone. You would have to look at the circumstances, because there may well be indications that this person is part of a community——

Mr. NADLER. Let me switch topics.

In the revisions to section 505 that were made by the PATRIOT Act, the new standard was that, in order to get an NSL, you simply had to assert that it is relevant to an ongoing investigation——

Mr. MUELLER. Yes.

Mr. NADLER [continuing]. With respect to terrorism.

The old standard was that, in order to get an NSL, you had to assert specific and articulable facts giving reason to believe that the information or records sought by the letter pertain to a foreign power, an agent of a foreign power, or terrorist.

Now, why shouldn't we go back to that?

Mr. MUELLER. Because it would absolutely hobble us in terms of our ability to do it. Because you need information to make the finding that the person is an agent of a foreign power. The only way to get the information to make that finding is to obtain records in which there is a limited privacy right, such as subscriber records, until you make that finding. And to put that finding at the front, it would preclude us from doing exactly what I said we need to do.

When we get telephone numbers from a U.K. plot, we do not know whether the persons contacted in the United States are terrorists or not. If we had that standard, we would not be able to follow up on that information we got from our counterparts overseas.

Mr. NADLER. I yield back.

Mr. CONYERS. Thank you.

The former Chairman of the Judiciary Committee, Jim Sensenbrenner from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

First, Director Mueller, let me say I appreciate your meeting with me yesterday relative to the audit of the Milwaukee FBI office on privacy violations.

And while I understand that the audit is not finalized and it would be premature to talk about the substance of that, I would like to ask you to send me a copy of the finalized audit once it is available. Can you do that?

Mr. MUELLER. I will look and see if we can, yes.

Mr. SENSENBRENNER. Okay.

Now, relative to national security letters, am I correct in understanding that the Justice Department and the FBI had national security letter authority long before the PATRIOT Act, specifically since 1986?

Mr. MUELLER. Correct.

Mr. SENSENBRENNER. And the national security letters were not new at the time the PATRIOT Act was signed by the President in October 2001?

Mr. MUELLER. Also true.

Mr. SENSENBRENNER. Am I also correct in understanding that national security letters, under the revised standard, cannot be used for a garden-variety criminal investigation that does not involve terrorism or espionage?

Mr. MUELLER. Yes, sir.

Mr. SENSENBRENNER. So my question is, what kind of safeguards were there in the FBI to prevent NSLs from being used for the non-terrorism and non-espionage investigations?

Mr. MUELLER. The safeguards we had were, in essence, the agent had to do a write-up of the basis for the NSL that would support the national security letter itself. And then it would have to approved by the Special Agent in Charge.

What we have put into place since we realized that this was not always happening appropriately, is we have required, now, that before a Special Agent in Charge signs-off on a national security letter, that special agent—the lawyer in the office—go through the national security letter to ensure that it is appropriately being issued, and that there is the appropriate underlying investigation supporting the issuance of that national security letter.

We also put into place—and it is being piloted as we speak; the pilot started this week—a new database, software program, and we have started piloting it in the Washington, DC, field office, which requires certain information to be filled into particular blanks before that national security letter will be issued, which will assure that we have the appropriate approvals but will also assure that we have the appropriate count to forward to Congress, as well.

Mr. SENSENBRENNER. Have you had any experience to make sure that these new guidelines are working and preventing national security letters from being issued when they are not supposed to be issued?

Mr. MUELLER. Well, in the wake of the I.G.'s report, we took approximately 200 agents and others and did an audit of all of our offices to see where we were. In the wake of that, if there was an office that had a particular problem, we have addressed it.

We are continuously in the process of training and putting out the guidance. I think somebody had a copy of the draft guidance. We had run our draft guidance past privacy and civil rights organizations to get input on that policy. We have issued that policy.

And I know the Inspector General is looking at the ability of our initiatives to address the problem and will be reporting to Congress in December. But my expectation is that he will find that we have taken the steps necessary to assure that this does not happen.

Mr. SENSENBRENNER. As the author of the PATRIOT Act and the author of the PATRIOT Act reauthorization, which did put some restrictions on NSLs about a year and a quarter ago, now let me say that I am very concerned that the controversy on NSLs is bringing down certain support for the PATRIOT Act, even though the bells and whistles and traps to prevent NSL abuse had nothing to do with the PATRIOT Act, because the NSLs were authorized, I believe, in the law that was authored by the PATRIOT Act's principal critic in the Senate, Senator Leahy.

I guess people have a much lesser attention span or institutional memory on the other side of the Capitol than over here. But I can say that in 2006, this Committee did a lot to fix up some of the gaps that Senator Leahy had in the NSL law of 1986.

And my time is up.

Mr. MUELLER. Let me just say that I testified before both bodies, sir, and I understand what you are saying. [Laughter.]

But will not comment. [Laughter.]

Mr. CONYERS. Careful.

Mr. MUELLER. That is what I—I have a very good relationship with the other body.

Mr. CONYERS. The Chairman of the Subcommittee on Crime, Bobby Scott of Virginia.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Mueller, you mentioned linguistics as a skill set that is needed at the FBI. Does the diversity in employment within the FBI reflect the need to get persons with the cultural knowledge, sensitivity and linguistics? Do you have enough people of different backgrounds?

Mr. MUELLER. Yes, sir.

Mr. SCOTT. Could we get the diversity breakdown at the FBI, if you could provide that, of your employees?

Mr. MUELLER. Absolutely.

Mr. SCOTT. We have heard previously that there was virtually nothing that you can get with a no-warrant NSL that you couldn't get by going through FISA. Was that right?

Mr. MUELLER. That is wrong. We are limited to what we can get under NSLs. There are broader categories of records we certainly can get going through the FISA Court under 215.

Mr. SCOTT. You can get more out of FISA than you can get with an NSL?

Mr. MUELLER. Yes.

Mr. SCOTT. Then remind me why we need—and then you can get an emergency after-the-fact warrant under FISA.

Mr. MUELLER. Yes.

Mr. SCOTT. So why do we need to do this without a warrant?

Mr. MUELLER. Because we need to react quickly to terrorist threats. We need the capability of immediately—when we get information on individuals who may want to communicate with others, we need to get that information. We need to get the information, say, on a number, 10, 15, 20 numbers.

If we make an arrest someplace, and we find an address book, and the numbers are in that address book, of a terrorist, we have to know with whom that terrorist is communicating, and we need to get that information quickly. And we cannot take the time, in

my mind, to go through that which is necessary to have the court review the paperwork in order to get that information.

Mr. SCOTT. Isn't there an after-the-fact procedure where you can go get the information and then later get around to the paperwork?

Mr. MUELLER. That is true. But the paperwork for the court proceeding to get a FISA, where you are seeking the right to intercept the conversations of an individual, is generally a quarter-of-an-inch thick. It requires the certification by me, the certification by the attorney general, an affidavit by an agent.

And to require that in order to get the information on a subscriber would be an inordinate burden and would hobble us, as I have said before, in our ability to swiftly react to the threat of a terrorist.

Mr. SCOTT. Wait a minute. I thought you said you could already swiftly react, go get the information, and then do the paperwork when you get around to it?

Mr. MUELLER. Right. And the paperwork would inundate us.

I have given you some examples of what we do in terms of needing the subscriber information, the e-mail information and the like. And we do it countlessly, day-in and day-out.

Mr. SCOTT. The advantage of a warrant is that you—it is an ex parte proceeding. Only one side is represented, so you can't possibly lose the case. But the fact that you just have to explain to somebody what you are doing, kind of, has a little check and balance to it that you don't have when you just go on your own and get what you want.

Mr. MUELLER. Well, there are, in my mind, several checks and balances—internal checks and balances in the—— [Laughter.]

Mr. SCOTT. I am sorry, but some of us look at checks and balances as one branch of government looking at another branch of government. An employee of the executive branch checking with a subordinate does not constitute, in my mind, a check and balance.

Mr. MUELLER. I was going to go on to say also the Department of Justice. The Inspector General's Office, under the original PATRIOT Act and the revisions to the PATRIOT Act, is looking at our processes and procedures. And ultimately, as well, the checks and balances from Congress, the other branch of government.

In my mind, where the intrusion into privacy is somewhat limited when it comes to toll records and the like, the necessity for going through the FISA process is much reduced. In the same way in the criminal sphere, where a grand jury subpoena is issued on a relevant standard—there is a more dramatic incursion into the privacy rights in terms of the Title III and the like, you go to a court.

Mr. SCOTT. In the past, the Department has seen the requirement of proving force and fraud as a major obstacle to their efforts to investigate and prosecute cases of domestic human trafficking. To address the problem, as you know, we recently increased the penalties from 10 to 20 years under the Mann Act, so that the Department could pursue domestic trafficking cases, and also changed the standard to remove the provision that you had to prove force, fraud, and coercion.

Since increasing the relevant penalties, what has the FBI done to bring about more investigations in this case? And how has the

FBI used the more relaxed standard for prosecution purposes? And what services are available for the victims?

Mr. MUELLER. I would have to get back to you on the specifics tied into that statutory change, if you will allow me.

Mr. SCOTT. Well, let me just ask one other quick question. And that is, you know that running an Internet gambling operation is illegal in the United States. Is there any way that you can effectively prohibit Internet gambling by people in the United States on the Internet? And if not, would it make better sense to legalize and tax it and regulate it?

Mr. MUELLER. I have not really looked or thought long and hard about it, but I would probably be adverse to legalizing it, for a variety of reasons.

They are difficult to prosecute because they can go offshore so quickly. And with the ubiquitous nature of the Internet, it is often difficult, with anonymizers and the like, to track down individuals who are running offshore gambling organizations in the United States, although we endeavor to do so.

Mr. CONYERS. The Chair recognizes the distinguished gentleman from California, Elton Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

And I would like to thank the gentleman from North Carolina for letting me speak out of order. And I will try to be brief, because I have another commitment.

Director Mueller, as of April of this year, there is a backlog of 636,000-plus illegal alien absconders. And that number has doubled since the last report 5 years ago.

Clearly, many of these folks have an objective to do great harm to our Nation. Many others are here strictly for economic reasons.

Clearly, I understand that, under your leadership as a Director, you have had probably more challenges of significant magnitude than any Director in history. And I know that one of the most difficult jobs in any administrator's life is establishing priorities.

But could you tell me if and what the FBI is doing to identify and apprehend illegal alien absconders?

Mr. MUELLER. It generally does not fall within our bailiwick. We certainly help the Department of Homeland Security and its various agencies where we can. And I know that Homeland Security and Mike Chertoff have programs to address that particular issue. But our support is secondary support, where we can give it.

Mr. GALLEGLY. Appreciate that.

An issue that we have heard a lot about lately, FISA, the Foreign Intelligence Surveillance Act. And we know the Administration has recently asked Congress to modernize this act. Could you give us a very brief summary of why you feel that that is so important?

Mr. MUELLER. Generally speaking, as I referred to in my opening remarks, the digitization, the ability of persons to communicate in a variety of ways through digital networks, whether it be Skype or voice-over IP, otherwise, the ability of persons to utilize communication capabilities across international lines has grown immensely over the years, and the statutory framework has not kept up with it.

It goes without saying that, as was shown on September 11, we face threats from overseas that we never thought we would face prior to that happening, because of the oceans on both sides of us.

But with internationalization, we have to be astute and flexible in understanding that those who wish to do us harm from overseas can quickly cross borders with the click of a mouse or come into the country.

One of the things we absolutely need to do is, to the extent possible, understand that we have to use all of our resources on persons who are not U.S. citizens, in foreign countries, to obtain information with regard to their communications traffic. With a United States citizen in the United States, there should be a different mechanism, we all agree.

But the FISA modernization statute that we have sought from Congress will upgrade those capabilities and allow us to do, in some sense, that which we were able to do before technology, when we were using the old technology, but have been barred from using given the provisions of the FISA statute.

But we have to recognize that the division between information from outside the country—the division of that information from outside the country to the information inside the country has to be broken down. There has to be integration. There has to be use of full capabilities, particularly when it comes to non-U.S. persons.

Mr. GALLEGLY. Thank you.

Mr. Director——

Mr. CONYERS. Would the gentleman—are you finished?

Mr. GALLEGLY. I just want to make a 15-second summary.

It is clear, I think, to most of us that in order to get to the core of organizations like al-Qaida, who have absolute modernized technological telecommunications ability, is to penetrate through the network. And without this modernization, I think we all know that it is going to be very difficult to penetrate that outside network to get to the core.

I thank you very much.

I thank the gentleman for letting me speak out of turn.

Mr. CONYERS. Would the gentleman yield to me——

Mr. GALLEGLY. Certainly.

Mr. CONYERS [continuing]. The balance of his time? Thanks, Elton.

Mr. GALLEGLY. Thank you very much.

Mr. CONYERS. Since we are not likely to have a second round, I just wanted to get in some of the two issues in Dearborn, Michigan, in which we have the largest concentration of Muslims and Arabs of anywhere in the country.

And we have had two charities in Dearborn that have had their accounts suspended, and they are under investigation. And individual bank accounts of people of Arab descent have been summarily discontinued by their banks. And I need to have the FBI assist us in understanding where all of this is going, since these two charities enjoyed a pretty good reputation in the general public.

Mr. MUELLER. Mr. Chairman, I think I am sure you understand that whatever actions were taken, at least by the law enforcement authorities, were taken with the approval, certainly, of the U.S. attorney and, in most cases, I would believe, the courts.

With regard to independent actions of banks, that is something I am not aware of and would be happy to look into.

But whatever actions have been taken on these charities, I think you will find, have been taken as a result of appropriate legal process.

Mr. CONYERS. Did you know, in 2004 and it was reported in the papers—Homeland Security ICE, the Immigration and Customs Enforcement section, and the FBI, were knocking on doors in the October before the November elections, that apparently gave many of those citizens in that area the impression that they were being intimidated about the voting process?

Mr. MUELLER. No, sir. It is the first I have ever heard of that. I have not heard a complaint about that. And I can assure you that at no time have we in the Bureau in any way sought to intimidate an individual from exercising their constitutional right to vote.

And if you wish to pass on the specifics to me, I will certainly look into that.

Mr. CONYERS. I will get the information to you.

Mr. MUELLER. It does not sound like something that we would engage in, at all.

Mr. CONYERS. Thank you.

The Chair recognizes the distinguished gentleman from North Carolina, Mel Watt.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Director, one of the concerns that I am hearing expressed to me by a number of people, is that traditional law enforcement is being compromised by our overemphasis on—not overemphasis, I guess you can't overemphasize—but we are paying so much attention to terrorism and that prospect, that your traditional law enforcement—and the 2005 FBI Uniform Crime Report suggests that most, if not all, the major traditional criteria are up, crime-wise. And despite that, that the FBI crime investigations, violent crime investigations, are down by 60 percent.

Respond briefly to that, if you can. I don't want to respond to it too long, because I have a whole other question that I need to ask you to respond to.

Mr. MUELLER. We have had to reprioritize after September 11, moving agents from criminal cases over to counterterrorism and counterintelligence. We are not doing as many drug cases. We are not doing as many smaller white-collar criminal cases as we have done before. We are not doing as many bank robberies as we have done before. We have had to focus.

What we have done——

Mr. WATT. So the concern that people are expressing is correct, then, that you have shifted——

Mr. MUELLER. Well, yes, but we have also grown our safe street task forces to address crime. And my own view is that we are most effective when we leverage our relationships with State and local law enforcement.

And so, we are doing—we have far more task forces than we have had in the past. And we are focusing on violent crime. But we could always use more resources to address that.

Mr. WATT. The statistics don't seem to bear out that this task force process is working as effectively as the other process, but that—I just wanted to make sure that we got that on the record.

I wanted to ask you about the testimony of Mr. Comey and ask you if you can verify or give us your description of what occurred at the hospital, or leading up to the hospital visit, that has become so famous.

Mr. Comey says that he phoned you, and you agreed to meet him at the hospital, and that you ordered the FBI agents on Mr. Ashcroft's security detail not to evict the Acting Attorney General from the hospital room.

Can you just give us—I won't program what he said. I would rather hear what you have to say about that whole sequence of events.

Mr. MUELLER. I don't dispute what Mr. Comey said in terms of receiving a call requesting my going to the hospital, and alerting persons that Mr. Comey wanted to be present during any conversations that were had with the Attorney General.

Mr. WATT. And he further says that the President met with you, and after that meeting emerged to inform Mr. Comey that the President had authorized the changes in the program that had been sought by the Justice Department.

Do you confirm that that is correct?

Mr. MUELLER. I don't dispute what Mr. Comey says.

Mr. WATT. Okay. What do you make of that whole episode?

Mr. MUELLER. Unfortunately, Congressman, I don't think it appropriate to speculate. I can answer questions as to what happened to the extent that I am able to, but beyond that—I would be happy to answer any further questions——

Mr. WATT. Well, can you confirm that you and some of your agents were prepared to resign because of—leading up to this controversy?

Mr. MUELLER. Again, I am uncomfortable getting into conversations I had with individuals, because I do believe that individuals are entitled to my unfettered thoughts.

Mr. WATT. Can you confirm that you had some serious reservations about the warrantless wiretapping program that kind of led up to this?

Mr. MUELLER. Yes.

Mr. WATT. Okay.

I thank the Chairman, and I yield back.

Mr. CONYERS. Thank you.

Now, Howard Coble of North Carolina, the former Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, now the Ranking Member, is recognized.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Mueller, good to have you with us. Thank you for your years of public service.

I am going to ask you a provincial question, tobacco being prominent in my State. Have there been recent arrests regarding the trafficking of counterfeit cigarettes by terrorist groups?

Mr. MUELLER. I would have to check on recent—there was one notable case from several years ago, with Hezbollah, in which I know cigarettes were being shipped from North Carolina to, if I am

not mistaken, it was Detroit, and there was substantial prosecution.

I would have to check to determine whether any additional prosecutions since then.

Mr. COBLE. I would like you to do that, if you could, Mr. Mueller.

Mr. MUELLER. Happy to get that.

Mr. COBLE. Mr. Mueller, we are all aware of several recent high-profile public corruption arrests and prosecutions of Federal officials. How significant a problem, in your opinion, is public corruption in State and local governments? And does the FBI pursue these cases as well?

Mr. MUELLER. It is hard to compare at times. I actually think that the incidence of public corruption is probably less so now than it was, say, 10 or 15 years ago.

I do believe, however, that it is and should be one of the main, if not the principal, priority, and it is currently the principal priority of the FBI, to identify and ferret out public corruption, wherever it occurs. We have had, as I indicated, in the last 2 years, over 1,500 convictions of Federal, State, and local officials who have abused the trust. And to the extent that that happens, it undercuts the core of democracy.

And so, for us, it is a substantial priority, and I can say that there is enough work to keep us busy for a long time.

Mr. COBLE. Mr. Mueller, recent reports have highlighted the growing problem of Chinese espionage efforts. Describe the nature of that threat, if you can, and the FBI's role in this area.

Mr. MUELLER. I can probably say more in a classified setting. I can say that it is a substantial concern. China is stealing our secrets in an effort to leap ahead in terms of its military technology, but also the economic capability of China. It is a substantial threat that we are addressing in the sense of building our program to address this threat.

And beyond that, I would feel uncomfortable saying more in this open setting.

Mr. COBLE. I can appreciate that. Perhaps we could get subsequent information on that.

Mr. MUELLER. Yes, sir.

Mr. COBLE. Mr. Director, let me ask you this. The recent rise in violent crime does not appear to be uniform across the country. Cities, for example, like Los Angeles and New York, actually experienced a reduced crime rate. To what do you attribute this disparity?

Mr. MUELLER. There are probably a number of factors. A number of people are trying to wrestle with what contributes to the uptick in crime in particular cities and not others.

I do believe that the police departments in both New York and Los Angeles have been on the cutting edge of devising new ways to address violent crime. But there are also a number of factors probably outside the control of police departments to address it.

In response to one of Mr. Scott's question with regard to the use of task forces, in Los Angeles we have, over the last 6 months, come together on a task force with the Los Angeles Police Department, San Francisco Sheriff's Office, and a number of other Federal agencies to address gang violence. And there has been a substan-

tial reduction in gang violence in Los Angeles as a result of the joint efforts in that task force.

So it is not just us, but it is the other Federal agencies, coming together to target. And when we do so, we are effective.

Mr. COBLE. Let me try one more question before the red light illuminates.

Recent terrorist plots were thwarted at Fort Dix Army base and JFK International Airport. What role did the FBI play in those matters?

Mr. MUELLER. We, along with the joint terrorism task forces in each of those communities, were responsible for the investigation and the arrests that were made as a result of that investigation. It was the combined efforts of the Bureau, with the State and local law enforcement and other Federal partners on joint terrorism task forces, who are responsible for both of those successes.

Mr. COBLE. Thank you, sir.

I yield back, Mr. Chairman.

Mr. CONYERS. Thank you.

Mr. COBLE. Mr. Chairman, I beat the red light.

Mr. CONYERS. That has never happened before.

Mr. COBLE. I think it has. [Laughter.]

Mr. CONYERS. Maybe.

The Chair is pleased to recognize the Chair of the Immigration Subcommittee of Judiciary, the gentlelady from California, Zoe Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

And, Director, it is good to see you.

I have strong concerns about many of the issues that have already been raised. But I think, as they are being handled well by my colleagues, I would like to ask about something that has not yet been attended to. And that is the role of the FBI in checking the names of immigration beneficiaries for any concern that they might pose.

I have a strong concern about the delays that have been encountered for a portion of this. I understand that 85 percent of the names are cleared electronically right away, and that of the remaining 15 percent, 95 percent of those are usually cleared within 1 week's time.

The problem is the 5 percent remaining. And I have situations, cases in my office, and I hear from other members all the time, where people have been waiting for as long as 5 years for an answer.

And I am aware of situations, now, where companies who have a valued employee, are going to court, getting mandamus orders to the FBI, just to produce an answer. And I have been told—and I guess this is a question, not a statement, that the FBI is now 10,000 behind on the mandamus-ordered name checks.

Can you tell me what you are doing to get this speeded up? What needs to be done? Is it additional resources? Is it computer technology? What do we need to do to fix this, Director?

Mr. MUELLER. Let me give you just a wee bit of background in terms of where we are.

Back in 2002, the Citizenship and Immigration Service, they gave us 2.7 million names to run through, to check not just on that

name, but any references to an individual in any of our files, which put us way behind the curve in doing that.

We have a problem. I share your concern on the problem. We have been working with DHS, we have been working with OPM. For instance, OPM gave us 30 contractors to address their backlog. It is a combination of personnel, but it will take a period of time to get additional contractors on. It is a question of money in order to pay them to do this. And lastly, it is a function as well of computerizing the documents and putting them in digital form so the searches can be done——

Ms. LOFGREN. But these are paper files, sir?

Mr. MUELLER. They are.

Ms. LOFGREN. My goodness.

Mr. MUELLER. And they are paper files around the country. And the problem is that we have files going back—I don't want to say we have got them back to when we started in 1908, but we have some files that probably are of that vintage. And quite clearly——

Ms. LOFGREN. Presumably, those files would not be relevant today.

Mr. MUELLER. They would not. And what we have tried to do is triage in terms of seeing if there are ways to expedite it by cutting out categories of files that we need to look at. We are also talking with DHS in terms of changing the requirements, in terms of looking at all references.

So we are looking at it from a variety of perspectives, understanding that there are a number of people out there that are very frustrated that they cannot get their citizenship, and that Congress in particular is frustrated at this backlog. So we are doing what we can.

Ms. LOFGREN. Well, I am concerned on two levels. One, that perfectly honest, honorable people—and way less than 1 percent ever have anything negative come out. But if you are waiting for 5 years, the 1 percent is out there in America and unknown to us. So that is a concern from security, and it is also a concern from the process not working well.

Let me ask you about your computer system. Because it strikes me that, not only is this a problem for the orderly administration of the immigration and citizenship laws but, just in terms of law enforcement, if you have got paper files, your virtual case——

Mr. MUELLER. Virtual case files?

Ms. LOFGREN [continuing]. File—that was $170 million, was that right?

Mr. MUELLER. Well, the virtual case file—yes.

Ms. LOFGREN. And did we get anything of value out of it?

Mr. MUELLER. Yes, we did, but not as much as we should have out of that. And several years ago, we decided to go another route. And the Sentinel program that we put into place, for four stages, we successfully completed, as I indicated, the outset, first phase of Sentinel, this last June.

Ms. LOFGREN. Well, when that is done, will the searches by digitized prospectively?

Mr. MUELLER. Yes. And as we go through the process, now, we are digitizing—every time we do a search, we digitize the information.

Ms. LOFGREN. Okay.

Mr. MUELLER. But there are still miles of records out there, miles of records out there that have not been digitized.

Ms. LOFGREN. I know my time is up, but I would suggest that, you know, it is always hard to have a records-keeping function compete with personnel in the field and the like.

Yet I would think that that ought to be one of the highest budget priorities, for you to have to digitize all those records. And it will give power to your agents in ways that will far exceed the funding necessary to do that, in 6 months' time.

Mr. MUELLER. Well, we have a new facility that we are building out in Winchester. We have had the funding for it. It is going into place. It will be one of the most modern records-handling facilities in the country. And we started doing this almost 3 years ago, maybe even 4 years ago, understanding that we have to bring ourselves into the modern era and that we have to digitize just about everything.

The problem is we have miles upon miles and miles of files. And it is a question of resources and bringing on board the best technology.

In the next year, my expectation is, we will leap ahead with our new facility out in Virginia.

Ms. LOFGREN. I see my time has expired. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you.

The distinguished gentleman from Cincinnati, Ohio, Steve Chabot.

Mr. CHABOT. Thank you, very much, Mr. Chairman.

Thank you for being today, Mr. Mueller.

Several Members of this Committee have an interest in ensuring that the contracting opportunities available in the Federal prison industries, which is set forth in section 4124 in title XVIII, are protected.

And, as I am sure you know, the FBI is the Federal prison industry's largest customer, comprising 35 percent of the Federal prison industry's annual revenue.

In fact, in response to our urging, the Attorney General issued a memorandum last October to all the Department's components, including the FBI, of course, directing them to comply with their legal obligations under the Federal Acquisition Regulations—and, again, including the FBI.

Unfortunately, this directive hasn't settled the issue. Because over the last few months, we have received ongoing accounts of FBI officials circumventing this directive and their legal obligations to contract work out to the Federal prison industries.

In a briefing provided on March 27 of this year by FBI Deputy Assistant Director Joe Ford, Congressman Bobby Scott, who was here—he is right here now—Congressman Scott and I were assured that while three contracts that should have been outsourced to the Federal prison industries were not, steps had been taken to prevent this situation from reoccurring. Yet we continue to hear accounts of non-compliance, in fact defiance, as recently as last week.

Is there something that you can assure us that you will do to look into this matter, and make sure that the FBI is meeting its

legal obligations, so that contracts that are supposed to go to Federal prison industries will? Because as we know, the people that are behind bars, most of them are going to come out someday, and it makes sense to give them job skills and something to do. It is safer for the guards and those sorts of things.

So could you respond, please?

Mr. MUELLER. Surely.

I don't purport in any way to be an expert in the area of contract formulation. But I have been aware of this issue. And I believe that we are following the law.

Again, I would have to go back and study it more, but my expectation is that you would also find there is a responsibility for competition under the statutory requirements.

And it is not the conflict, but how you coordinate the responsibility to let competitive contracts, along with the desire to provide to the Bureau of Prisons the business that creates the issue.

But I can tell you and assure you that we are trying we are trying to comply with the statutes to the letter of the statute. And I would be happy to get back to you and review that more personally, and see if there is some issue there that I am missing.

Mr. CHABOT. Thank you. I would appreciate that, if you could get back to me and also Congressman Scott, as well. I think they essentially agreed that the three contracts should have been, weren't let out, they would do better, and apparently there is still a problem. So if you would look into that, we would greatly appreciate it.

The other matter I would like to mention, in 2000, the FBI extended DNA testing to locate missing persons and identify unidentified human remains and established the National Missing Persons DNA Database to store this information.

How effective has this database been in locating and identifying missing persons and unidentified human remains? And how does the FBI's database interact with the Center for Human Identification, located at the University of North Texas?

Last month, the Administration announced the creation of yet another new database, called NamUs, which creates a central reporting system for unidentified remains. How will the FBI's database interface with this new database, and what additional resources are needed? Or can the resources that are in place be streamlined to truly assist families who are searching for loved ones?

My interest in this came from a woman, Debra Culberson—her daughter, Carrie, was murdered, and they have never found the remains, unfortunately.

And this is a fairly common occurrence. And to give some closure to the families, it is certainly helpful. And there are thousands of cases where these unidentified remains are literally in a coroner's office or somewhere, maybe in another State.

And so if you could respond, I would appreciate it.

Mr. MUELLER. The database we established for missing persons was, I think, an outgrowth of the development of the mitochondrial DNA capabilities. And in terms of its success, I periodically hear anecdotal stores of successes they have had. But I would have to get back to you on the statistics.

I am not certain about our intersection with the group at the University of North Texas, and I would have to get back to you on that. Quite clearly, the developments we have had in DNA over the last number of years have transformed in some sense the criminal justice system—giving us positive identifications of individuals, whether it be persons who were subsequently successfully prosecuted, but also missing persons.

As the use of DNA grows, we are short of resources, we are backlogged. And whether it be for the missing persons database or to more effectively and efficiently process requests for DNA examinations, it is something where we are going to need substantial resources in the future. My belief is the Federal system we have that integrates the State systems is working overall very well.

Mr. CHABOT. Thank you very much.

I think my time has expired, Mr. Chairman. Thank you.

Mr. CONYERS. Thank you.

I would be pleased to recognize the indefatigable gentlelady from Houston, Texas, Sheila Jackson Lee.

Ms. JACKSON LEE. Welcome to Mr. Mueller.

Thank you very much, Mr. Chairman. Let me thank you for creating a very important—or expanding on the very important role of this Committee, and that is oversight.

And we welcome you, Mr. Mueller. I know that we have visited before and you have missed some times. We hope you are well. Thank you for that.

I have three questions. My time is very, very short. And I think in the spirit of oversight, we have some very, very important questions to focus on that address a line of questioning that we have addressed over the past couple of weeks.

It is March 10 when General Ashcroft was in the hospital and you got a call from Jim Comey, concerned about a meeting that Mr. Gonzales was going to have with the chief of staff of the White House.

And it seems as if you would dispatch your FBI detail so that Mr. Comey would not be evicted from the room with General Ashcroft. And I might say that all of us were wishing him well at that time—certainly expressed our concern.

But he was going there, General Gonzales, to talk about the TSP, warrantless wiretapping. And it is a concern, so that we can get the record straight about what happened. And Mr. Comey was—as he arrived, he expressed a number of concerns about what this meeting was going to be about.

So my question to you, first of all, did you ever speak with either Mr. Gonzales or Mr. Card while they were at the hospital?

Mr. MUELLER. No, ma'am.

Ms. JACKSON LEE. And if you did not do that, did any of your agents speak to those individuals?

Mr. MUELLER. I don't believe so. I arrived at the hospital after Mr. Gonzales and Mr. Card had left.

Ms. JACKSON LEE. The discussion—and I don't know if you did arrive—did you have an opportunity to talk to General Ashcroft or did he discuss what was discussed in the meeting with Attorney General Gonzales and the chief of staff?

Mr. MUELLER. I did have a brief discussion with Attorney General Ashcroft.

Ms. JACKSON LEE. Pardon? I am sorry?

Mr. MUELLER. I did have a brief discussion with Attorney General Ashcroft after I arrived.

Ms. JACKSON LEE. And did he indicate the details of the conversation?

Mr. MUELLER. I prefer not to get into conversations that I had with the Attorney General. At the time I—again, he was entitled to expect that our conversations——

Ms. JACKSON LEE. And I respect that. Could I just say, did you have an understanding that the discussion was on TSP?

Mr. MUELLER. I had an understanding the discussion was on an NSA program, yes.

Ms. JACKSON LEE. I guess we use TSP; we use warrantless wiretapping. So would I be comfortable in saying that those were the items that were part of the discussion?

Mr. MUELLER. The discussion was on a national—an NSA program that has been much discussed, yes.

Ms. JACKSON LEE. Well, I appreciate that.

And do you then later remember what might have occurred? We know that there was a meeting back at the White House that night. Again, all of us were interested. It was raising debate in the United States Congress. Do you remember what happened at the meeting at the White House that night?

Mr. MUELLER. I was not present at the White House that night.

Ms. JACKSON LEE. And would you have any recollection, or asked for recollection through staff, whether TSP was discussed?

Mr. MUELLER. Well, I was not present at the meeting that Mr. Comey testified to having later that night at the White House. I do believe it related to a national security program—or a national NSA program, I should say.

Ms. JACKSON LEE. And let me just be clear, because I am saying this to you. Is it your understanding that General Gonzales was at the hospital and visited then-former General Ashcroft along with the chief of staff, Andy Card? Is it your understanding that they did have a meeting?

Mr. MUELLER. Yes.

Ms. JACKSON LEE. And so as we listen to General Gonzales's testimony, I believe under oath, regarding that, his statement, if I might just indicate that, in a question posed to him—and if it was about the TSP you are dissembling to this Committee—now, was it about TSP or not, the discussion on the 10th?

I think this says the 8th; I think the transcript is incorrect. This was a question posed by Senator Schumer.

The answer was, the disagreement on the 10th was "about other intelligence activities." The question, specifically, was, was it about TSP or not? And the answer was "about other intelligence activities."

It appears, from our discussion here today, that the discussion was certainly more focused than what General Gonzales has offered to the United States—in your recollection?

Mr. MUELLER. I am sorry. Is that a question, ma'am?

Ms. JACKSON LEE. Yes, it is.

Mr. MUELLER. I really can't comment on what Judge Gonzales was thinking or saying. I can tell you what I understood at the time.

Ms. JACKSON LEE. I think we appreciate your recollection. And I will just follow up—just to finish, Mr. Chairman, if I may—to say that, General, I had a series of questions about hate crimes and about that watch list.

I would only say to you, on the watch list, there are many people hurting, as my colleague said, while others may be going free.

I would like to get a report back on the watch list, because I will speak for the Texas Medical Center. And researchers and scientists are on that list—and it is very destructive—among others.

My last point is, Mr. Chairman, is that we like your priorities on terrorism, but, if I may just show this, we have no action on hate crimes and racial violence. That is where you are in the investigation of those.

And so I would appreciate a quick answer or a letter back on why we are so low. And I would welcome the letter, if the Chairman does not indulge me at this point.

Mr. MUELLER. Well, if I may comment on that last point, the addressing of hate crimes, the addressing of civil rights abuse is our number-two priority. But I would look at that figure in terms of what it represents in actual investigations we have undertaken.

Because, for a substantial period of time, we would open cases to report that which has happened in a particular community, as opposed to a thorough investigation.

And I will absolutely get back to you. But I do not believe that those statistics reflect what we have done in terms of hate crimes of civil rights abuses.

Ms. JACKSON LEE. I thank you very much.

Mr. Chairman, I want to pursue in the Committee——

Mr. CONYERS. The gentlelady's time——

Ms. JACKSON LEE [continuing]. The conflicting testimony of General Gonzales.

Mr. CONYERS [continuing]. Has expired.

Ms. JACKSON LEE. Thank you very much. I yield back.

Mr. CONYERS. I would like to recommend that there will be questions coming to the Director from Members, that he will be able to respond to.

I am pleased now to recognize Dan Lungren, the distinguished gentleman from California.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Mueller, let me try and go back to the FISA warrants, versus the NSLs, just so we make sure that the record is correct. Because you said you can get more in FISA warrants than you can get in NSL, leading to the suggestion that you don't need NSLs because you have FISA warrants.

But as I understand your testimony, you use the NSLs in some ways in preparation to be able to get a FISA warrant, because the NSLs gives you non-content material. And you may not have the basis to go after the more extensive information, absent that which you would get through the NSL.

Is that correct?

Mr. MUELLER. Correct.

Mr. LUNGREN. So the NSL is an essential investigative enabling tool that you use at the very beginning, particularly in time-sensitive situations, such as evidence of an impending terrorist plot. Is that correct?

Mr. MUELLER. Exactly. Thank you, sir.

Mr. LUNGREN. Now, the NSLs are extremely important. You have said that.

And one of the concerns I have had, and some other Members of this Committee who have supported you on the NSLs and supported the continuation of the NSLs, is the failures in the Bureau to do it properly, that which was revealed in the Inspector General's report.

And when we were probing on this, it became evident that at some of the Bureau offices, there wasn't the proper understanding of what was required. And so, the question we asked was, why didn't that information go from the General Counsel down to your lawyers at the office level.

And we were told that the lawyers at the office level, branch level, actually work for the SAC, not for the General Counsel. So the question becomes, does that make good sense, to continue that sort of focused direction?

Would it not make more sense to have those lawyers have a direct responsibility to the General Counsel's office?

Mr. MUELLER. That is an issue that we are still looking at. But in the meantime, what we have done is to put each lawyer, in each of our field offices, in the NSL process by procedure. And we have also indicated that they have an independent responsibility, beyond the office and beyond the SAC, to the Office of General Counsel in carrying out the responsibilities with regard to the—well, the responsibilities on NSLs and their responsibilities in their particular office.

Now, whether we go and change the line from a dotted line to a solid black line is something we are still looking at. There are downsides to doing that.

Mr. LUNGREN. I know there would be downsides to it, but let me just ask you this: Who has greater effect on their potential advancement in the FBI, the General Counsel or the SAC in the office in which they now work?

Mr. MUELLER. I would have to say the SAC.

Mr. LUNGREN. And doesn't that create somewhat of a conflict from independent judgment for the counsel to the SAC, where the SAC is saying, "I want these NSLs," and you have told us that the system didn't work. Would not that be perhaps one of the reasons why it didn't work?

Mr. MUELLER. I think that it was perhaps one of the reasons that it did not work, but I would not say that that was the main reason that it did not work. The General Counsel in a particular office, or the legal counsel in a particular office, was not put into that process in a way that gave them the independence and the capability to do it.

And so, I have not totally ruled out changing it. It is something we are looking at. But in the meantime, we have taken steps to make certain that we address that particular issue.

Mr. LUNGREN. I appreciate that.

Now, let me say that I happen to think that you have been one that has worked very, very hard and very effectively to change somewhat of the culture of the FBI, with the new obligations that are imposed on it.

At the same time, we have to deal with certain continuing difficulties with the FBI. And the order of the court that came down in the United States District Court for the District of Massachusetts today, with a $101 million damage against the FBI for the misconduct in the handling of confidential informants, where, if you read the summary, it is astounding. I never thought I would see that about the FBI.

I never thought I would see four people framed, three of them sentenced to death, one to life imprisonment. The three did not receive the death sentence because it was later changed to life, a conspiracy to keep them in jail for three decades, findings by the court that are absolutely astounding.

Now, this happened back in 1968, in the 1960 timeframe. But it is almost the beginning of my understanding of the difficulty with handling confidential informants, and the continued problems that ensued with the Department, as exposed by the report of the Inspector General just a year ago.

Can you tell us now whether we are going to continue to need to pursue legislation—which I would grant you that Mr. Delahunt and I have sponsored for some time, which is pretty tough legislation with criminal sanctions in it. Or is there some movement in the Bureau to come up with absolute standards, a certification that they are being followed, with some teeth in it so that there are disciplinary actions taken against those, whether they are supervisors, SACs, whether they are agents, for violating the policy?

Which, if you look at the Inspector General's report, it suggested that, I believe, 87 percent of the cases, the CIs were being followed in accordance with the promulgations that you had put out.

Mr. MUELLER. Let me make a distinction between two aspects of what you discuss. The first, and what your statue addresses, is the failure to inform State and local law enforcement of unauthorized, illegal activity by informants handled by the FBI, and your statute does address the FBI and no other agency.

Mr. LUNGREN. Actually, it is confined to violent, felony offenses.

Mr. MUELLER. And the second aspect of it is the disclosure of exculpatory information that the FBI might have as to an individual who is being prosecuted at the State and local level.

In the wake of what happened in Boston in the late 1990's, substantial attention was given to redoing the guidelines with regard to handling informants.

It is mandated today that if we know—and by we, the FBI—know of violent activity, or actually any illegal activity, of an informant that comes within the bailiwick of State and local prosecutors, we are to tell the United States Attorney, and the U.S. attorney is then mandated with us to provide that information to State and local authorities.

Likewise, with the discovery of exculpatory information in our files related to a prosecution of State and local law enforcement, we are mandated to inform the U.S. attorney, and then, with the U.S. attorney, to provide that information.

There is an oversight panel that has both FBI and Department of Justice personnel on it. In every office now, we have a human source coordinator. We have a quarterly review of all of our sources by supervisors to determine if there has been any unauthorized criminal activity or exculpatory information. And that is followed up by inspections.

And I would suggest—I would be happy to give you a further briefing on what this—what we have put in place to address what I agree is a very difficult problem. I do not believe that this statute is the answer. I think it is too broad and it will have a chilling effect on our ability to develop sources and to address terrorist attacks, to address public corruption, to address—as you well know, being a prosecutor, and Mr. Delahunt being a prosecutor, in order to effectively undertake these investigations, you have to utilize sources.

We have to do a better job in assuring that we do not have another debacle such as we had in Boston, and we have put into place the mechanisms to do so.

Mr. LUNGREN. I thank you for that response.

And I would say that on my behalf and Mr. Delahunt, and I know Mr. Scott has talked with me about this as well, we probably need to get a briefing at the very least, a closed-door briefing, on this with you at an early date.

I thank the Chairman.

Mr. CONYERS. The Chair recognizes the other prosecutor, Bill Delahunt from Massachusetts.

Mr. DELAHUNT. I thank the gentleman for yielding.

And I will pursue the same line of questioning that my friend from California initiated.

But before I do, you indicated, Director Mueller, that you are going to get back to us. I think I have heard that several times, and I would suggest that is very positive.

You also indicated you have testified before both bodies. And yet I have no recollection that you have testified before the House Judiciary Committee until this moment. But you can check with your staff and advise me if I am incorrect.

Mr. MUELLER. That was the first time I have testified before this House Committee.

Mr. DELAHUNT. This is the Committee of jurisdiction. We had a number of concerns about the FBI not just dealing with NSLs or confidential informants. I dare say it would have been very beneficial for the Members of this panel to hear your concerns in a public venue regarding the terrorist surveillance program. Because this is too important simply to have a briefing behind closed doors. I would suggest that it is important to educate and inform the American public in full measure as to what we are doing.

The legislation that Mr. Lungren and I have been discussing should not be viewed as an effort to punish or embarrass the FBI. To the contrary, I view it as an effort to help the FBI restore its credibility with the American people. I don't know if you have had an opportunity to read the decision by Judge Gertner today.

Mr. MUELLER. I have not.

Mr. DELAHUNT. It is embarrassing. It is scathing. Let me just read one excerpt: "The issue is not about failure to produce excul-

patory evidence, but procuring convictions by misrepresentation, not letting perjured testimony proceed uncorrected but facilitating it."

With all due respect to internal reviews, audits, Inspectors General, in a democracy my understanding of checks and balances is as the founders foresaw it, and that is having an independent branch of government review what the executive is doing.

It is not just the responsibility of the judicial branch to protect individual freedoms and civil liberties, but it is our responsibility, as well.

However, having said all that, I am glad to hear that we are now going to have a Bureau of Compliance, where these kind of issues will be monitored. I dare say it is late in coming, with all due respect.

And while my friend, the former attorney general of California, mentions that this happened in the 1960's, you and I know that this has been a problem of decades, including the 1990's. We saw this decision now.

There is a former FBI agent that is currently indicted for murder, awaiting trial in the state of Florida. Another former FBI agent that appeared at the bench that you are sitting at, Paul H. Rico or H. Paul Rico, was indicted for murder before he died.

This is the kind of behavior that really undermines the confidence of the people in the integrity of the FBI.

And talking about guidelines—we have had guidelines. We have had guidelines for the past four decades, commencing with the former Attorney General Levi. It is a question of whether they are going to be complied with.

I have reached the conclusion that we need legislation in an effort to, once and for all, put an end to these embarrassing moments, not just for the Bureau, not just for the Department of Justice, but for the government that the American people support when they go to the polls every 2 years.

Any comment?

Mr. MUELLER. Yes, I do. You and I both come from a background where this was a substantial issue. It is an episode that redounds to the detriment of the Bureau, without a question of a doubt. But I would suggest to you that is isolated. It is isolated in the past. And we have put into place guidelines and procedures——

Mr. DELAHUNT. With all due respect, Mr. Director, you know, there was a cistrict attorney in Brooklyn that received information that was very comparable. I don't know even what has happened to that particular case. But there were former FBI agents that were indicted in that matter, as well. And the similarities are striking.

Mr. MUELLER. I cannot disagree with you on these instances. But day in and day out, over the years, FBI agents have undertaken investigations and done them lawfully. They have done them successfully.

And I would absolutely agree with you, afterward, we have to ensure that these incidents do not repeat themselves. Because it does undercut the credibility and the work of the 99 percent of the Bureau that are out there, day-in and day-out, doing their job.

Mr. DELAHUNT. Thank you. And I hope to see you here—I hope, in the future, you adjust your schedule so that we can see you on a more frequent basis and have more ample opportunities to exchange views, to work in a cooperative fashion, and not wait for 6 years to see you again.

Mr. CONYERS. Well, we can correct that by inviting him more. [Laughter.]

Mr. MUELLER. Let me just say, Congressman, I would be happy to come up and sit down informally with you and go through whatever issues you have, periodically. And I am also, quite obviously, looking forward to being here again.

Mr. DELAHUNT. It is good to hear that, Mr. Mueller. [Laughter.]

Mr. CONYERS. The Chair is pleased now to recognize the Ranking Member of one of our Subcommittees, Randy Forbes of Virginia.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Director, thank you for being here. And I am going to ask you to shift gears a little bit and talk about criminal gang activity in the country, if you could.

And just to lay the groundwork for that, on April 20, 2005, the FBI Assistant Director, Chris Swecker, testified before the House International Relations Subcommittee on Western Affairs, regarding the FBI's efforts to combat criminal gangs.

And during his testimony, he stated that there is some evidence of an increased level of sophistication and some indications of a hierarchy of leadership.

And cliques throughout the country often follow the lead of the Los Angeles-based cliques. And there are reports of Los Angeles-based members traveling throughout the United States for the purpose of recruiting new members, establishing new cliques, and taking over existing Latino gangs and instilling discipline through violence and intimidation.

And yesterday the Washington Times reported on a recent Army intelligence assessment that identifies MS-13 as an organization that can function as networks with extensive transnational linkages.

Furthermore, their internal functions include recruiting, logistics, attacks, intelligence, and activities including murders, drugs, extortions and others.

And my questions for you are these: Do you agree with this upgraded assessment? How many members of MS-13 do you think we might have in the United States or internationally? How sophisticated are their operations? What kind of threat are they posing to us at this particular point in time?

Mr. MUELLER. First of all, I agree with the assessment. There are many thousands of persons associated with MS-13 in the United States, in Guatemala, in Mexico, in quite obviously El Salvador and several other countries. And the threat is not just limited to Los Angeles, but is throughout the United States.

One of the benefits of developing an intelligence capability within the Bureau is to better identify those areas within the United States that currently have a presence of MS-13, identify those areas in the United States that did not have a presence of MS-13, and make certain they do not have a presence of MS-13.

We have a task force, MS-13 task force, with a number of participants from various agencies that address this across not only the different State borders within the United States but transnationally. Approximately a year ago, there were some 600 MS-13 individuals who were arrested not only in the United States, but in El Salvador and Guatemala, Mexico, I think it may have been Dominican Republic, Honduras in a coordinated takedown.

With a gang such as this that crosses borders, it is a function of globalization, a different type of globalization which requires us to work cooperatively and build allegiances and alliances with our counterparts overseas, if we are to effectively address what I would call a scourge of gang activity.

As I mentioned—I would finish by saying that we have been somewhat successful recently in a joint task force operating out of Los Angeles to address violent crime with MS-13 and the 18 street gangs there.

Mr. FORBES. And if I could follow up on that—and I know you did have that success. You mentioned it earlier. How important are the joint task force capabilities to be able to pull down the gang networks that you are seeing, especially the national connectivity that we are beginning to see with MS-13?

Mr. MUELLER. My belief is task forces are tremendously important. And that it is tremendously important that State and local law enforcement authorities be funded to support task forces.

The funding constraints on State and local law enforcement have been somewhat substantial over the last years. We ask them to participate in joint terrorism task forces, to join with us in addressing the threat of terrorism. They ask us to participate with them to address what is most on their mind, which often is violent crime and, quite often, violent crime at the hands of gangs.

And the funding for both us, as well as State and local law enforcement, to address this must be provided, if we are to make a dent in violent crime activity, violent gang activity in the United States.

Mr. FORBES. And the last question—you may, if you don't have this statistic with you, just get back to us with it. Do you have any idea about the percentage of members of, let us say MS-13, because that is in the news lately, might be here illegally?

Mr. MUELLER. I do not. I would have to get back to you. But it is fairly—well, I would really have to get back to you on that. I don't want to——

Mr. FORBES. We have had testimony that it could be between 60 percent and 80 percent. But if you could just see what your statistics and get back.

Mr. MUELLER. Will do.

Mr. FORBES. Thank you, Mr. Director.

And, Mr. Chairman, I yield back.

Mr. CONYERS. Thank you very much, Mr. Forbes.

The Chair is pleased to recognize the gentleman from Tennessee, Mr. Steve Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

I know we have gone over, two or three times, this fact that General Ashcroft was in the hospital. But I am curious. Mr. Comey

said that he called you, and you called your agents and said that Mr. Comey was not to be removed from the room.

Why did you feel that there might be an attempt to remove him from the room?

Mr. MUELLER. It was based on my conversation with Mr. Comey, in which he indicated he had a concern that he would not be participating in discussions in which he felt he should be participating as the Acting Attorney General.

Mr. COHEN. And were there FBI agents at the room protecting General Ashcroft?

Mr. MUELLER. Yes. He had a detail of FBI agents throughout his tenure.

Mr. COHEN. All right. And so, he was concerned that Mr. Card and Mr. Gonzales, or Judge Gonzales, were not going to include him in the conversation. Is that correct?

Mr. MUELLER. All I can tell you is what I learned from him.

Mr. COHEN. So he believed that.

Mr. MUELLER. Yes.

Mr. COHEN. Why did you rush there?

Mr. MUELLER. He requested that I be there to determine what went on. You would have to ask Mr. Comey why he had me there. I did go at his request. He was the Attorney General at the time.

Mr. COHEN. So you went there, and when you were there, he said at one point that you had a brief and memorable conversation—a brief, memorable exchange with the Attorney General. How memorable was that?

Mr. MUELLER. I had a conversation with him. I couldn't recite to you word for word what that conversation was. I do remember him being there.

Mr. COHEN. Just a memorable conversation——

Mr. MUELLER. It was a conversation, yes.

Mr. COHEN. What was the gist of it, sir?

Mr. MUELLER. I guess it covered very generally what had happened the moments before.

Mr. COHEN. And what had happened the moments before?

Mr. MUELLER. Well, again, I resist getting into the conversations, the specifics of conversations I had, because I do think the Attorney General then, the Attorney General now, and others are entitled to keep those conversations between themselves.

Mr. COHEN. They may be entitled to, but are you entitled to?

And he is no longer the Attorney General, so at this point, he is not the Attorney General. I am asking you to tell us what the conversation was. I don't think there is a privilege.

Mr. MUELLER. Excuse me just 1 second.

Mr. COHEN. Sidebar.

Mr. MUELLER. The discussion was that there had been a prior discussion about an NSA program and that the Attorney General deferred to Mr. Comey as the person to make whatever decision was to be made.

Mr. COHEN. He had confidence in Mr. Comey, I take it.

Mr. MUELLER. Yes.

Mr. COHEN. Okay. At some point or another, I think you told maybe Mr. Watt that you felt that there were problems with some of the operations there, the wiretaps.

Mr. MUELLER. At a point in time, in conversations with Mr. Comey, I had understood that the Department of Justice had some concerns about the legality of an NSA program. That affected the FBI in the sense that we received pieces of information from the NSA.

My purpose was to determine that whatever we did as the Bureau in handling that was done according to the directive and the appropriate directive of the Department of Justice.

So my concern was to assure that whatever activity we undertook as a result of the information we received was done appropriately and legally. At some point in time, he expressed concern about the legality of it.

Mr. COHEN. And because of that concern, at some point did you express to Mr. Watt, I believe that was correct, earlier, that you considered resignation?

Mr. MUELLER. I don't believe I expressed that. I did not dispute what Mr. Comey had said. But, again, in this area, I would say that I should not get into the conversations I had with individuals.

Mr. COHEN. Well, this wouldn't be a conversation. I go back to Mr. Comey's testimony to the Senate—was about resignations. And Mr. Schumer asked, "Was one of those people that might have resigned the Director?" And he said, "I believe so. You would have to ask him, but I believe so."

So I am not asking you about a conversation with Mr. Comey, I am asking you, was he correct? Or better yet, just were you that person?

Mr. MUELLER. I was that person to whom he refers, yes.

Mr. COHEN. And were you considering resigning? You don't have to relay the conversation, this is just your own mind——

Mr. MUELLER. Understand why I cannot say that I do not dispute what Mr. Comey says, because Mr. Comey says ask Mr. Mueller. I will tell you that I don't believe that it is appropriate of me to get into conversations that I have had with principals on that issue.

Mr. COHEN. And I don't want a conversation. I want what is in your psyche. Did you consider it yourself? That is not a conversation, that is a state of mind.

Mr. MUELLER. Well, to the extent that I followed through on the state of mind, then it is a conversation. Again, I would resist getting into that conversation.

Mr. COHEN. My time is almost up. If I could have 30 more seconds, Mr. Chairman? And I would just like to ask this.

You made a comment about some task forces doing a great job in reducing crime in New York and Los Angeles. I am from Memphis. We have a serious crime problem there. Is there any plan to have any task forces there, street task forces, or additional personnel to help us with our crime problem?

Mr. MUELLER. I am quite confident we have at least one, if not more, safe streets task forces in Tennessee, in particularly in Memphis. And I will get back to you on that.

Mr. COHEN. No matter how many it is, I want one more. [Laughter.]

And I want to compliment you on your Tennessee—whatever it was called—that got some public officials. That was good work that you all did.

Mr. MUELLER. Thank you. But if we go along with your request, I have a number of seats up here that would probably be making the same request. Always happy to accommodate with more resources.

Mr. COHEN. Memphis is a great city that needs help.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Franks is now recognized for the usual amount of time.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And thank you, Director Mueller, for being here. I know that a lot of people have good ideas about how things should be done, but the guy that has to turn these good ideas into reality has always got the biggest challenge. And I appreciate you so much for kind of standing there between the malevolent and the innocent, as you do. And I know it is a tremendous responsibility.

Director Mueller, I have said many times I think that the jihadist ideology that we face is the most dangerous ideology that we have dealt with in the Nation's is history. And I know that half the problem is knowing where the dangers are coming from.

If we knew where every terrorist exactly was today, we could probably solve this problem in a month. But knowing where they are is critical, and I understand that that is one of your biggest challenges.

That said, I have also believed that the President has the constitutional authority to—you know, we have given him the job to hunt down, ferret out, and kill terrorists. And as Commander in Chief under the Constitution, he has that authority as well.

It occurs to me, if he has the authority to hunt down, ferret out, and kill terrorists, that he also has the authority to listen to them on the telephone before he proceeds.

And I know there has been an incredible amount of discussion going around the terrorist surveillance program. But given the fact that it is now under FISA, can you tell us, is it working? Is it something that is an effective tool, notwithstanding the fact that probably every terrorist in the galaxy knows about the conversations that we have now?

Mr. MUELLER. Well, I think that probably my answer would have to come in some form of classified setting.

But generally I can say that the leads we have received from an NSA program have been helpful in the war on terror, yes.

Mr. FRANKS. Well, the Administration has recently submitted proposals to reform FISA. And do you think that those reforms are necessary and that they will help you do your job?

Mr. MUELLER. Yes. And it would help not just the FBI, but operating together with NSA, the CIA, the DIA, all of whom, all of us share the same responsibility to protect the homeland. And what is proposed in the revision of the FISA statute would help all of us.

Mr. FRANKS. Well, without touching on anything that could be of a disadvantage to the country, what do you consider your greatest concern, the greatest gap, that you have in terms of being able to

assess and predict or prevent the terrorist challenge that we face in the homeland itself?

Mr. MUELLER. I think we have made substantial strides since September 11 in terms of breaking down the walls between the various entities in the intelligence community.

We do a far better job, not only within the United States, but ourselves as an intelligence community—and I consider us an intelligence community—working together with our counterparts overseas.

The gaps come, I believe, in—and it is gaps that, I believe, that my counterparts at the CIA or ODNI would also focus upon. And that is the threats of terrorists having the opportunity to train, to plan, to coordinate in a sanctuary around the world, whether it be in Waziristan or the Horn of Africa or elsewhere. And we cannot let that happen.

Secondly, it is important to understand that al-Qaida is intent on attacking in the United States and finding ways to infiltrate individuals in the United States, often through countries that do not have the same stringent controls that we have at the borders.

And those are the biggest concerns, I think, to the intelligence community as a whole, in terms of the threat that we face from al-Qaida from outside.

Internally, I think we have done a very good job in building up our Joint Terrorism Task Forces and enlisting the cooperation and input and assistance and expertise of State and local law enforcement.

We have to remain vigilant. We have to remain on guard. And as we get further away from September 11, my greatest concern is that we become complacent and that we do not pick up on that which would alert us to the possibility of a group in the United States who are going to undertake an attack.

And lastly, I would say, as I have iterated before, that advances in communications, the advances in technology, are putting us behind the curve in our ability to identify and to intercept communications on those that would do us harm.

And so the statutory changes are necessary, but also the funding to keep us on the cutting edge of technology so that we can intercept individuals' communications who wish to do us harm requires both—not just both, but the Administration, Congress, as well as the various telecommunication carriers working together to try to fill that gap.

Mr. FRANKS. Well, thank you, Mr. Chairman. The light is red.

Mr. CONYERS. You are more than welcome.

The Chair is pleased to welcome a recent addition to the Committee, Ms. Betty Sutton of Ohio.

Ms. SUTTON. I thank the Chairman.

Director Mueller, thank you for being here to shed some light on the Bureau's operations. There are so many topics, and I share my colleagues' wishes that you return often so we can delve into a lot of them deeper.

At this moment, I would just like to talk to you a little bit about something we haven't discussed: the whistleblower protections.

We have had some problems in the Bureau and actually they reflect upon some of the facets, the consequences that Mr. Delahunt,

the distinguished gentleman, points out, and it emphasizes the importance that we have proper whistleblower protection, not just because governmental employees need to have that safeguard, but it is also a matter of ensuing that our national security and the integrity of the agency is intact.

I know that you have given personal assurances in the past that you were going to take action to ensure that whistleblowers would be protected, but we know that there has been a culture within the FBI through some years where that just hasn't been the case.

So I would like to, just for a moment, go through a couple of those instances, and then you can share with me how things have changed so that their plight would have changed and outcomes would be different.

In 2001, Coleen Rowley claims that she was blocked at every turn from pursuing her concerns about 9/11 co-conspirator Moussaoui. In a statement you issued in response to that case, you stated that there is no room for the types of problems and attitudes that could inhibit our efforts.

In 2002—you are familiar with John Roberts' case. He blew the whistle on several senior FBI officials, all of whom were subsequently promoted, and some of whom received bonuses.

And of course, the Inspector General subsequently issued a report endorsing John Roberts' findings of wrongdoing within the agency and concluded that the FBI suffered, and still suffers from a strong perception that a double standard exists within the FBI with regard to the treatment of senior officials versus lower-level employees. And of course, he was humiliated because of coming forward with evidence of wrongdoing.

And we are all familiar with Sibel Edmonds, a former translator with the FBI, who did work for the counterterrorism program, who was fired after reporting serious problems in the Bureau's translation services department. And of course, when she sought recourse, she was completely blocked, after the Bureau invoked the State secrets privilege.

So my question to you is, what have you done, specifically, to make sure that moving forward—not redress in those cases, but moving forward—that these things shall not happen and the chilling effect that this culture produces and the consequences beyond that are no longer being felt?

Mr. MUELLER. Well, initially, I had an outside panel come in and look at how we were handling OPR, how we were handling our response to incidents of misconduct, including those that would be set out by whistleblowers. And we have changed our procedures.

Every year, at least every year, I sent out statements about, "I will not put up with retaliation for persons who bring to our attention that which should be brought to our attention."

Whenever that occurs, it is immediately referred to the Inspector General so the Inspector General can do an independent investigation. And I have followed the recommendations of the Inspector General as to what steps should be taken when retaliation has been found, all the way up to the SES level.

So I believe, both through statements as well as actions, the message has gone out that we will not put up with retaliation for those

who bring to our attention those matters that should be brought to our attention.

Ms. SUTTON. Well, could you be more specific in the changes that have been implemented?

Mr. MUELLER. I can get back to you on specifically, but I think the biggest change is the ability and putting in place the mechanisms to ensure an independent investigation of allegations of retaliation for whistle-blower activities, and our willingness to follow up immediately with the results of the independent investigation which has been done by the Inspector General.

Ms. SUTTON. Okay, Director. But let us say that that fails and we have a situation like Sibel Edmonds. How does she deal with the invocation of the State secrets privilege? How does she have any recourse?

Mr. MUELLER. Well, I can't get into the rationale behind asserting the State secrets privilege in that particular case. It is a matter that was sealed by the court.

But in that case as well, the case was investigated independently, and actions that were necessary to be taken as a result of that investigation, as to individuals in the FBI, have been taken.

Ms. SUTTON. Mr. Chairman, if I just may—but with respect to somebody facing the same situation, they would face the same outcome. Is that correct?

Mr. MUELLER. It depends on the circumstances of the case.

Ms. SUTTON. Okay, thank you.

Mr. CONYERS. Before I recognize Judge Gohmert, could you yield just for one very brief comment from Bill Delahunt? Thank you very much.

Mr. GOHMERT. Is that going to be part of my time, or are we just yielding——

Mr. DELAHUNT. Well, I hope so, Mr. Gohmert. [Laughter.]

I appreciate your yielding.

Just a quick question, Director. I would direct your attention to the FBI presence, early on, at the base in Guantanamo. There were a number of reports indicating that the Bureau expressed its concerns about interrogation methods.

Can you just tell us when those concerns were expressed to the appropriate agencies?

Mr. MUELLER. It would depend on particular concerns. In the wake of what occurred in Iraq, we undertook a review of those concerns. And in the months subsequent to that, Abu Ghraib, we had sent to the military what information we had with regard to specific concerns and specific incidents, as opposed to generalized concerns as to the type of interrogation techniques that were being used, and those techniques had changed over a period of time.

Mr. DELAHUNT. Thank you.

Mr. CONYERS. Thank you.

Judge Gohmert?

Mr. GOHMERT. Thank you. And, Mr. Chairman, for the record, I guess I am the other other prosecutor from 30 years ago.

But anyway—and I do want to applaud the tone of this hearing. Director Mueller, I don't know if you have seen some of the hearings from other administrative officials, but sometimes voices have been raised, yelling has occurred, accusations flying.

And I can't help but wonder if maybe people had heard about that story of the guy calling the FBI office, wanting—demanded to talk to somebody in authority, getting them, telling them his name, just blowing hard about how—all the things evil and wrong with the FBI and then finishing by saying, "and I demand to know, do you have a file on me?"

And they responded, "Well, we sure do now." [Laughter.]

So I don't know if that is why the tone is down like it is. [Laughter.]

But in any event, seriously, I do believe this probably is the most difficult time in our Nation's history, since the War of 1812, to protect our homeland. And you have been serving during that time.

And I know you care every bit as deeply about the safety and future of our country as I do. I know that. And I know people here all have that concern. It doesn't mean we can't have disagreements on how we go about securing that safety.

Many of us fought and pushed to make sure that the Justice Department had the tools they needed in the PATRIOT Act. I wanted sunsets on things to be sure we had accountability in future Administrations, and we got some, to some extent.

But I would like to go back to something that, apparently, you had wanted to address early on, and brought up, and that is—back, right after the NSL disclosure and the abuses by the Inspector General's report, there was a press conference in which I understood you to say, I should have made sure that the people in the field working on these NSLs had the experience and training they needed not to abuse the process.

And frankly, I agree with that. And I do believe that the 5-year up-or-out policy has been one of the things that has been an impediment to having that experience in training, where we have numerous experienced, well-trained people.

And I applaud your efforts. I love when people have innovative ideas about how to proceed with management, but giving incentives to rise to the top, as you had indicated, giving individuals a chance to move to the top or seeking to move up the career ladder, I applaud that, except this isn't the Army. And I know you know that.

But it takes time to develop those relationships, to allow a joint task force to work between the law enforcement.

I have seen it, for the last 30 years, very personally. It takes time to develop respect and trust and credibility and a good working relationship, not only with task forces, with confidential informants. And actually, it helps to have years of experience.

When I first got out of law school and became a prosecutor, I would not have agreed to this, but I see, in hindsight, I needed that D.A. looking over my shoulder because I was aggressive; I was competitive. And it is important not to lose sight of the fact that justice is the end result.

And I am curious. Do you know how many experienced FBI agents have chosen not to move up after 5 years, but to move out or down?

Mr. MUELLER. I do not know that. I would have to get you the specific figures.

And let me tell you, if I might respond, that it was one of the more difficult decisions I had to make, because you had to balance the scales. I think the program is beneficial to the institution as a whole, in terms——

Mr. GOHMERT. And that goes without saying. I know you wouldn't have put it in place if you didn't.

Mr. MUELLER. And I absolutely acknowledge we have lost, through retirement, some very, very experienced agents——

Mr. GOHMERT. Who wouldn't have retired otherwise?

Mr. MUELLER. Who would not have retired otherwise. And we have had—I understood this was going to be a consequence. We also have had agents step down who are very good supervisors, and my hope and expectation is those that are taking their place are very experienced as well, and build up that experience during the time.

And we have seen the results of increased movement through the upper ranks, and I have had a number of ASACs, Assistant Special Agents in Charge, come up to me and say, "I wouldn't have moved absent this policy. I hated it. I thought it would never go into effect but now I am ASAC and I actually have benefited from it."

Let me say one other thing, if I could, in regard to these individuals who have been supervisors, who have been and are the backbone of the Bureau. I am supportive of pension retention, additional funds to provide pension retention.

Mr. GOHMERT. Okay, well, the pension retention idea goes beyond my scope. I am concerned about the NSLs and those kind of things, and we can get into that later. But my time is so short.

Mr. Delahunt had mentioned earlier that, you know, it is not just the judiciary that protects us. With my background, I thought that would. I thought judiciary protection was adequate.

And then you start to seeing the abuses J. Edgar Hoover had, and you start realizing there is some information that is gleaned never intended to be introduced in court. And when you see that, you realize judicial protection is not enough. We do need all the checks and balances, including oversight from the Congress.

And so I appreciate your willingness to work with us in the future, but I also hope it will be done and that you will look into efforts and even intimidation when oversight has been attempted by people, like when Mike Rogers wanted to talk with somebody—former FBI agent from Michigan wanted to talk with somebody from the FBI.

He asked to talk to a supervisor, came back to his office for the appointment, and found that his old office had been run out, and they said, well, they were having to do a sweep, they said, before you could talk.

And he knew that there was nothing confidential that would be discussed, and to try to come into his own office was not allowed. He said it looked like, from the reflection when he tried to open his own office, that his contents of his office were being videotaped, but he couldn't be certain. And he knew, as a former FBI agent, he hadn't seen that before.

But anyway—and then also, after—and I am sure the Chairman——

Mr. MUELLER. Congressman, can I respond to that, sir? Just to say that I will look into that incident, but we don't do that type of thing. I will look into what you are alluding to, but we do not.

Mr. GOHMERT. I appreciate your saying that, but I really don't think Mike Rogers lied to me, and so I would not say he lied about that.

But then also, right after—some people felt like the raid on William Jefferson's office and people that were concerned about that were defending William Jefferson. They weren't.

There was a concern here in this body that there was an intimidation moving forward and that, by raiding his office, it wasn't about William Jefferson because, as I understand, those documents may have already been secured by other means but, nonetheless, that it—and this may not have been your sense at all, but from this side, it appeared that there was a lot of intimidation going on.

And then when Dennis Hastert proposed objections or posed objections, then it was leaked by someone in Justice that he was under investigation, and that is why he was concerned. And then he demanded to know, "Am I really a target?" And the official answer was, "No, you are not," and then the next day it was in the national press that two people had acknowledged, yes, they said that as the official answer, but it really wasn't.

And then—I never heard this. Somebody told me—one of the other Members of Congress, so I don't know, and I wanted to ask you directly—that that same week with all this back and forth going on and the concerns about the power struggles between the branches, that you had made a statement that you may need to add 400 people to investigate corruption in Washington, which, if it were said, would actually sound like more intimidation.

And I don't know. I never heard it, couldn't find that it was written. Did you ever say anything like that?

Mr. MUELLER. No, sir, I did not.

Mr. GOHMERT. Okay, thank you.

Mr. MUELLER. And I will tell you that the search of Congress was done out of a great deal of effort, a great deal of reflection at the Department of Justice, and in the White House. It certainly was no way to intimidate.

It was done in the belief that, as part of an ongoing investigation, records were necessary to that investigation and I can assure you that the last thing on anybody's mind was intending to intimidate Congress. It was just to do our job as we saw in pursuing that investigation.

Mr. GOHMERT. No, I am just saying that was an appearance, and do you know whether or not——

Mr. CONYERS. The gentleman's time is almost over.

Mr. GOHMERT. This will be my final question.

Do you know whether or not copies of those documents had already been secured and were secured, perhaps, by the Ethics Committee here?

Mr. MUELLER. We did not believe that to be the case.

Mr. GOHMERT. You do not believe, but you do not——

Mr. MUELLER. Do not believe that to be the case.

Mr. GOHMERT [continuing]. Know for sure?

Mr. MUELLER. I would have to go look, but I do not believe that to be the case at all.

Mr. GOHMERT. All right, thank you.

And I do appreciate the Chairman's flexibility.

And, Mr. Mueller, I do thank you for coming up here and visiting with you. I think this helps us to have a better relationship. Thank you.

Mr. MUELLER. Thank you, sir.

Mr. CONYERS. The Chair recognizes yet another prosecutor, the gentleman from Alabama, Mr. Artur Davis.

Mr. DAVIS. Thank you, Chairman Conyers.

Mr. Mueller, I didn't know that my friend from Texas was going to be the first witness to beat you up today. That is news to those of us on this side.

Let me, in the time that I have, go back to something that we have obviously talked about a lot today, and it is the circumstances around the March 10 visit from the Attorney General to then-White House counsel Gonzales' office to Mr. Ashcroft, then the Attorney General.

And I will preface it by saying that I know you feel that we have plowed over this ground a lot today. We are doing it for an obvious reason. There have been serious questions raised about whether the current Attorney General was candid and truthful in his testimony at the United States Senate. And I know that you, if you had an opinion of that, would not venture it to us.

But it is important and we have some obligation to try to elucidate facts around as much as we can. So in that spirit, let me try to fill in some of gaps that some of my colleagues may have left today.

What did you understand John Ashcroft's condition to be on March 10, 2004?

Mr. MUELLER. He had gone through a difficult operation and was being closely monitored in the hospital.

Mr. DAVIS. Had you been in touch with him in the interim between March 10 and his operation?

Mr. MUELLER. No. The operation preceding March 10?

Mr. DAVIS. Yes, that is right. That is right.

Mr. MUELLER. No, I had not. I had not.

Mr. DAVIS. Did you understand him to be in a condition to receive visitors on these serious matters?

Mr. MUELLER. I did not, no.

Mr. DAVIS. Had you felt anything was pressing enough for you to get in touch with him during that timeframe?

Mr. MUELLER. No.

Mr. DAVIS. Were you surprised when you received the phone call from Mr. Comey indicating that there was going to be this visit to Mr. Ashcroft by Mr. Gonzales and Mr. Card?

Mr. MUELLER. It was out of the ordinary.

Mr. DAVIS. And was one of the reasons it was out of the ordinary because you didn't understand Mr. Ashcroft to be in a condition to receive visitors on serious matters?

Mr. MUELLER. No. It was a request from Mr. Comey that was out of the ordinary.

Mr. DAVIS. What was out of the ordinary?

Mr. MUELLER. To be requested to come to the hospital at that particular time, early in the evening.

Mr. DAVIS. And I think you have testified, or there has been testimony from Mr. Comey, that he asked you to have a conversation with FBI agents and to instruct them not to remove him from the room. Is that essentially accurate testimony on Mr. Comey's part?

Mr. MUELLER. I have no dispute with Mr. Comey as in that regard. My own recollection is somewhat uninformed.

Mr. DAVIS. Well, that certainly strikes me as unusual. You are the FBI Director. A senior official calls you and says, "Make sure that I am not evicted from the room," and I am sure that must have struck you as being an unusual request, didn't it?

Mr. MUELLER. Yes.

Mr. DAVIS. Did you take notes and memorialize your conversation with Mr. Comey, at that point?

Mr. MUELLER. No, at that point, I did not.

Mr. DAVIS. At some point, did you memorialize your conversations regarding this visit with Mr. Comey?

Mr. MUELLER. I may have, yes.

Mr. DAVIS. Do you still have those notes?

Mr. MUELLER. Yes.

Mr. DAVIS. And are they available to the Committee if the Committee was to ask for them?

Mr. MUELLER. I would have to get back to you on that.

Mr. DAVIS. Can you think of a reason or a privilege that would prevent the Committee from receiving these notes?

Mr. MUELLER. Deliberative, but I would have to get back to you on that.

Mr. DAVIS. Well, but as we sit here, can you think of any privilege that would preclude the Committee?

Mr. MUELLER. Deliberative. Deliberative.

Mr. DAVIS. Okay. That is your answer.

Let me move forward. I think you have indicated that you did not encounter Mr. Gonzales or Mr. Card at the hospital. Is that right?

Mr. MUELLER. Correct.

Mr. DAVIS. But you did speak with Mr. Ashcroft after the conversation that he had with Mr. Card and Mr. Gonzales. Is that right?

Mr. MUELLER. I did.

Mr. DAVIS. Did you make any notes regarding your conversation with Mr. Ashcroft?

Mr. MUELLER. Yes.

Mr. DAVIS. And do you still have those notes in your possession?

Mr. MUELLER. Yes.

Mr. DAVIS. Can you think of any reason why those notes should not be disclosed to the Committee?

Mr. MUELLER. The same response that I gave before in response to your earlier question, deliberative.

Mr. DAVIS. Now—this is an important question—tell me why you decided to make notes of your conversation with Mr. Ashcroft?

Mr. MUELLER. It was out of the ordinary.

Mr. DAVIS. What was out of the ordinary, Mr. Mueller?

Mr. MUELLER. Being asked to go to the hospital and be present at that time.

Mr. DAVIS. Did you share those notes with anyone in the Administration?

Mr. MUELLER. No.

Mr. DAVIS. Who have you shared them with prior to today?

Mr. MUELLER. My counsel.

Mr. DAVIS. Counsel——

Mr. MUELLER. Office of General Counsel.

Mr. DAVIS. Okay. Is that the only individual, Office of General Counsel?

Mr. MUELLER. Yes. Well, there may have been persons in my immediate staff, but——

Mr. DAVIS. Have you made any other notes or memorandum regarding the March 10 visit that you have characterized as unusual?

Mr. MUELLER. No.

Mr. DAVIS. Do you know if any notes or memorandum were made regarding the visit itself? I understand you didn't make them as you weren't there, but regarding the visit by Mr. Card and Mr. Gonzales to Mr. Ashcroft, do you know if there was any notetaker present.

Mr. MUELLER. I do not know.

Mr. DAVIS. I am sorry. Did you finish your answer? I am sorry.

Mr. MUELLER. I was going to anticipate your next question is I have not seen any such notes.

Mr. DAVIS. Okay, and——

Mr. CONYERS. I hate to tell the gentleman this, but with two other Members and the vote on, we are now really——

Mr. DAVIS. If you would just indulge me 10 seconds, Mr. Chairman, I would ask the Committee to take note of Mr. Mueller's very candid statement to us that he does have notes regarding this very important conversation, and I would ask the Senate to certainly be aware of it.

And I would certainly ask this Committee and our colleagues in the Senate to make a formal inquiry to obtain those thanks

Thank you for being candid, Mr. Mueller.

Mr. CONYERS. Thank you very much.

The Chair recognizes the gentlelady from Florida, Debbie Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Director Mueller, I am going to change the subject and ask some questions related to the Internet and the ICAC task forces.

As you know, the Internet has facilitated an explosion of child exploitation. And Department of Justice officials testified before the Energy and Commerce Committee in the last Congress that there are hundreds of thousands of individuals trafficking in child pornography in the United States.

Everyone that I have talked to—from Mark Lunsford in Florida who is Jessica Lunsford's father, Marc Klaas, Polly Klaas's father in California and a number of other parents who have formed the Surviving Parents Coalition, to the National Coalition to Protect Children—everyone tells me that this problem is only getting worse and not better.

And let me be clear. These are images and video of children being sexually abused, including depictions of rape and sexual penetration. These are crime scene photos.

A 2005 study by the Department of Justice determined that 83 percent of child pornography possessors have images as young as 6, while another 19 percent of possessors had images of infants and toddlers.

Flint Waters, who is the director of the Wyoming Internet Crimes Against Children task force, ICAC, and who is widely recognized as the Nation's top investigator, recently examined one of 15 networks where peer-to-peer file sharing exchanges occur.

By extrapolating local cases nationwide, he estimates conservatively that there are 485,000 known individuals—485,000 known individuals—engaging in trafficking child pornography in the United States. That is half a million people right here in the U.S. trading these criminal imagines online and spreading them around the world.

The Wyoming ICAC learned that there have been more than 1.2 million unique Internet protocol addresses that have engaged in child pornography tracking since 2004—1.2 million I.P. addresses that we know for a fact are trading in criminal child pornography.

Do you know, Director Mueller, what percentage of these cases are presently being investigated by the FBI or other branches of Federal law enforcement? I will, in the interest of time, answer it for you, because I know. It is 2 percent—2 percent.

Now, that figure alone is appalling, but when you consider one more statistic that is all the more chilling, we know that 30 percent of the offenders identified by the ICAC databases are typically associated with local victims. These are children who are being violated from within their daily circle of trust.

That would mean that there are 145,000 offenders exploiting children in their local areas who could be arrested by local law enforcement right now, if law enforcement established different priorities, or asked for the funds that they needed to eradicate this problem.

Director Mueller, do you know how many FBI agents are dedicated to white-collar crime? I will answer that one for you, too: 2,342 agents—2,342 agents.

And do you know how many agents are dedicated to child exploitation? Two hundred and forty-two—242—for child exploitation; 2,342 for white-collar crime.

In the interest of time, I will speed my testimony. But I am sponsoring legislation which will also be sponsored by Senator Biden, that will authorize $1 billion that would build the largest law enforcement effort dedicated to the protection of children.

I am really not sure—and what I would like you to respond to—is why the FBI has not made child exploitation a bigger priority, and why have you not asked for more help from this Congress?

Mr. MUELLER. I can tell you that child exploitation is a substantial priority. Our Innocent Images undertaking has grown over the years, even though we have had other priorities such as counterterrorism and counterintelligence.

To the extend that I can obtain additional resources—and we have put in, over the years, for additional resources to the extent

that I can obtain additional resources to address child pornography and support the ICACs, I, of course, would be willing to do so.

I do believe the ICACs around the country are—the mechanism that leverages our capability in working with State and local law enforcement to address this problem. You can give us a tremendous number of resources, but they would be inadequate to address this problem alone.

And, again, I share your concern. I share your desire to utilize everything we have at the Federal level to address this problem. Again, it is a question of trying to maintain those resources we have and augment them when there are other competing priorities.

Ms. WASSERMAN SCHULTZ. But I just want to share with you that I have a deep concern about the FBI and the Department of Justice's priorities when you have 2,342 white-collar criminal investigators, and only 242 investigators for child exploitation.

And I would hope that the FBI and that you would commit to working with me and Senator Biden and the other Members that are deeply concerned about reordering the priorities of the Department of Justice and the FBI, to make sure we can go after the people who are really harming the most vulnerable population—and that is our children.

Mr. MUELLER. I would be happy to work with you.

Ms. WASSERMAN SCHULTZ. Thank you very much.

Mr. CONYERS. Thank you.

The Chair recognizes our last Member to ask questions, the gentleman from Minnesota, Mr. Keith Ellison.

Mr. ELLISON. Mr. Director, thanks for being here today.

In the past several weeks, I have been in a lot of events for members of the Muslim and Arab community. And there have been several of them where I have seen people from the FBI who were there who spoke, who interacted with the community. I thought that was a good thing. I want to commend you and encourage you to continue to do that.

Could you talk about other things that the FBI is doing right now to try to build better relationships within those communities at this time?

Mr. MUELLER. As you have pointed out, we have substantial outreach in every one of our 56 field offices. And Special Agents in Charge since September 11 have been directed to attend mosques, attend dinners, attend congregations of Muslim-Americans, Arab-Americans, Sikh-Americans in order to share basically what we do and our concern not only about the contributions of that community to protect the United States against another attack, but addressing hate crimes which also are a substantial concern in the wake of September 11.

And we take any allegations of a hate crime against a Muslim as extremely serious in undercutting the democracy in which we live.

I meet periodically with the national leaders of the Muslim communities. We have established a mechanism whereby when we do make an arrest, and it does happen to be Muslims, that we have a dialogue immediately so that there is an understanding of what supports that arrest, and allowing leaders of the Muslim community to explain to the flock what we are doing.

Part of our outreach is also through citizens' academies in which we will have Muslim leaders participate in citizens' academies which are several, continuous weeks of, I would say, training by the FBI as to what we do and how we do it, the constraints under which we do it.

And I will say almost to a one that the persons who go through the citizens' academies come out with a much better understanding about what we do, how we do it, and our concerns about the civil rights of all populations in the United States. Those are just a few of the areas in which we operate.

I will tell you that the participation in the Muslim community, in terms of trying to prevent another terrorist attack, from September 11, has been terrific.

Mr. ELLISON. Do you agree, then, that the American-Muslim community stands four-square with the American people in working to prevent any kind of further extremist violence?

Mr. MUELLER. Absolutely. And the worst thing for the Muslim community would be another attack such as September 11. And I think members and leaders of the Muslim community recognize that.

Mr. ELLISON. Do you think they are doing their good part?

Mr. MUELLER. I do, but there is always more to be done in all communities. The need to be vigilant to self-radicalization, is important. And when you see persons or individuals, in whatever community, whom you think present a concern, it is important that one take action.

I am always reminded of the—on the airline flying from Paris to Florida, the shoe-bomber. And it was an alert flight attendant who fixed on the fact that there was something unusual when he was lighting a match, and saved the lives of hundreds of people.

Now, that did not happen to be a Muslim flight attendant but, nonetheless, we have had that same type of——

Mr. ELLISON. Forgive me for my interruption. It is just the time that makes me have to do that.

There were recently some arrests in Detroit—Detroit area, Dearborn—that may well have been justified. I don't have any view on that. But what the residual impact was was that some charities were notified by the banks that they were working with that their relationship was going to be terminated.

Are you at all concerned about how third parties out in the communities, such as banks and others, might react when it has gotten into the public arena that there has been some law enforcement activity in a certain community?

Do you understand what I am getting at?

Mr. MUELLER. Yes, I am concerned. But, on the other hand, we have our job to do. When we have the evidence and we have the imperative to move ahead, we have to. There will be residual effects. I am not saying there will not be. And that is of some concern——

Mr. ELLISON. Can the FBI do anything to help mitigate those residual effects? I mean, is that something that you regard as something that is important in terms of continuing to pursue your program to build better, stronger relationships?

Mr. MUELLER. Yes. And the mitigation goes to what I was saying before in terms of developing relationships and understanding of how the FBI operates—when we do searches, it is at the behest of a judge who has approved a search warrant—so there is greater understanding of the parameters in which we operate, as well as our mission and how we undertake it.

Mr. ELLISON. Do you ever send communications to banks or any groups like that to say that, "Look, we haven't found anything; these people are—you might not want to take adverse action against them because our investigation has not turned up anything against them"?

Mr. MUELLER. Generally, we cannot and do not do that, given the confidentiality of our investigations. But to the extent that we can mitigate such adverse consequences within the constraints of what we can do investigatively, we would try to do it. Much of it is building up the relationships and the rapport.

Mr. ELLISON. Is there anything you could do to remove that cloud of suspicion that would inevitably hang over a group where there may have been some investigative action that has found not be fruitful?

Mr. MUELLER. Well, ultimately, if we take an action, generally there is an indictment or some other action. It may be a forfeiture action like in which the courts address it. And the facts that triggered the enforcement action come through and become transparent in the judicial process.

Mr. ELLISON. Yes, but sometimes there is no further action. There might be just a couple of guys in black suits and ties that knock on the door. That causes a certain amount of fear and suspicion. Or maybe there are some search warrants served, but then there is no further action after that. The community continues to wonder what is up with those guys?

Mr. MUELLER. Well, there is—and, again, it is usually up to the U.S. attorney. There is the capability of indicating to a defense attorney that the client is no longer either a target or subject of an investigation, and that goes generally to—that kind of letter goes to a defense attorney.

Mr. CONYERS. The gentleman's time has expired.

It has been a long day, Director Mueller, but it has been a very fruitful day.

We will keep the record open for 5 legislative days for questions to go to you and for Members to add additional material.

And we think that this first hearing with the head of the FBI is one that will get us together more frequently in the future. We thank you for your patience and cooperation with the Committee.

Mr. MUELLER. Thank you, sir.

Mr. CONYERS. And, with that, the hearing is adjourned.

[Whereupon, at 4:13 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

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STATEMENT BEFORE THE JUDICIARY COMMITTEE

OVERSIGHT HEARING: FEDERAL BUREAU OF INVESTIGATION

JULY 26, 2007

Thank you, Mr. Chairman for holding this hearing. Let me also welcome and thank our witnesses, the Hon. Robert S. Mueller, Director of the Federal Bureau of Investigation.

Today's hearing is being held consistent with this Committee's obligation to conduct meaningful oversight of the Department of Justice and its constituent organizations, including the FBI. I am particularly interested in focusing on two areas of major importance:

(1) the FBI's Use of National Security Letters (NSLs); and (2) the redeployment of investigative resources away from traditional law enforcement subjects, including civil rights enforcement, toward the war on terrorism.

NATIONAL SECURITY LETTER SCANDAL

Earlier this year the DOJ Inspector General issued a report that raised widespread concerns regarding the manner in which federal agencies investigate individuals. The Inspector General's Report identified several serious issues regarding the FBI's methods of reporting to Congress its use of NSLs, the manner in which it collects, retains, and uses information, and the implications these methods have on individual privacy rights.

Specifically, the Report states that that the FBI has reported inaccurate and incomplete data to Congress. Additionally, the report documents improper methods used by the FBI to acquire data on individuals. Exacerbating matters, it appears that the FBI has retained information collected on individuals indefinitely even in cases where the individual involved has no direct or substantial relevance to any terrorism investigation. This pattern of conduct, of course, raises serious concerns regarding the privacy rights and civil

liberties of American citizens and residents.

Mr. Chairman, "National Security Letters" (NSLs) are written directives to provide information that the FBI issues directly to third parties, such as telephone companies, financial institutions, Internet service providers, and consumer credit agencies. Under current law, NSLs are not subject to judicial review. Over the last 20 years, Congress has enacted a series of laws authorizing the FBI to use NSLs to obtain four types of information in terrorism, espionage, and classified information leak investigations without obtaining warrants from the Foreign Intelligence Surveillance Court or approval from another court. The four types of information are:

1. financial institution customer records;
2. certain communication service provider records;
3. certain financial information and consumer reports, and credit agency consumer records for counterterrorism investigations; and
4. financial information, records, and consumer reports.

Prior to September 11, 2001, and the enactment of the Patriot Act, the authorizing statutes which governed NSLs required that prior to their issuance a senior FBI Headquarters official certify that the FBI had "specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or agent of a foreign power" as defined in the Foreign Intelligence

Surveillance Act of 1978.

In the wake of the September 11, 2001 attacks, the Administration expressed concern about the delays in effectuating the preparation and ultimate dissemination of NSLs and prevailed upon the Congress to enact the USA PATRIOT Act, which, *inter alia*, relaxed the standard that must be satisfied to warrant the issuance of a national security letter. The Patriot Act substantially expanded the FBI's preexisting authority to obtain information through NSLs in four ways. First, it eliminated the requirement that the information sought in an NSL must pertain to a foreign power or an agent of a foreign power and replaced it with the lesser showing that the information requested was "relevant to or sought for an authorized investigation to protect against international terrorism or espionage. Second, it authorized the issuance of NSLs by heads of FBI field offices and instead of senior FBI headquarters officials.

Third, it permitted NSLs to request information from communications providers, financial institutions, and consumer credit agencies about persons other than the subjects of FBI national security investigations so long as the requested information is relevant to an authorized investigation. Finally, it allowed any federal

government agency (not merely the FBI) investigating or analyzing international terrorism to obtain a consumer's full credit report.

When it reauthorized the PATRIOT Act in 2005, Congress directed the Department of Justice's (DOJ) Office of the Inspector General (OIG) to review "the effectiveness and use, including any improper or illegal use, of national security letters issued by the Department of Justice." The OIG was also directed to review the use of NSLs for two time periods: calendar years 2003 through 2004, and calendar years 2005 through 2006. The first report was turned into Congress this month. The second report is due on December 31, 2007.

Congress directed the OIG's review to include the following:

> 1) An examination of the use of NSLs by the DOJ during calendar years 2003 through 2006;
>
> 2) a description of any noteworthy facts or circumstances relating to such use, including any improper or illegal use of such authority;
>
> 3) an examination of the effectiveness of NSLs as an investigative tool, including-
>
> > A) the importance of the information acquired by the DOJ to the Intelligence activities of the DOJ or to any other department or agency of the Federal Government;
> >
> > B) the manner in which such information is collected, retained, analyzed, and disseminated by the DOJ,

> including any direct access to such information (such as to "raw data") provided to any other department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;
>
> C) whether, and how often, the DOJ utilized such information to produce an analytical intelligence product for distribution within the DOJ, to the intelligence community . . . or to Federal, State, local, or tribal government departments, agencies or instrumentalities;
>
> D) whether, and how often, the DOJ provided such information to law enforcement authorities for use in criminal proceedings; . . . .

Further piquing Congress's interest in the FBI's use of NSLs was a November 6, 2005 Washington Post article that reported that the FBI issued 30,000 NSLs every year, a hundred fold increase over historical practices. The article suggested that the FBI was using NSLs to spy on ordinary Americans. In effect, the article highlighted the breadth of the use of NSLs.

The Report completed and submitted by the OIG documents at least six different types of troubling findings. First, the FBI's practice of collection and retention of information obtained from NSLs was problematic because the FBI had no policy or directive requiring the retention of signed copies of NSLs or any requirement to upload NSLs in the FBI's case management system. Second, in many important respects the data regarding National Security Letters issued by the

FBI from 2003 through 2005 was incomplete and inaccurate.

Third, the volume of National Security Letter requests involving persons in the United States increased dramatically during the period 2003 through 2005. Fourth, notwithstanding the FBI's claims that NSLs are an effective investigative tool, the FBI did not possess data to substantiate the efficacy of NSLs' in criminal investigations and prosecutions. Fifth, the OIG Report identified many instances where NSL were used improperly or illegally. Last, the OIG Report documents numerous instances where the FBI failed to comply with its own policies and guidelines regarding the issuance and use of NSLs.

CIVIL RIGHTS ENFORCEMENT

Mr. Chairman, the FBI is the nation's largest and most prestigious investigative agency. It wields the authority and the resources of the federal government on difficult and complex issues and has helped bring about some of the greatest global advances for civil rights. However, the FBI's record under this Administration indicates that it is not living up to its tradition of fighting for equal justice under law and championing the rights of the powerless and vulnerable. The FBI has simply neglected to fully investigate

challenging cases that could yield significant rulings and advance the cause of civil rights in our country.

The Bush administration has abdicated its responsibility to enforce the nation's most critical laws. For example, since January 20, 2001, the Bush Administration has filed 32 only Title VII cases, an average of approximately 5 cases per year. In contrast, the prior Administration filed 34 cases in its first two years in office alone, and 92 in all, for an average of more 11 cases per year.

Moreover, a close look at the types of cases reveals an even more disturbing fact, which is a failure to bring suits that allege discrimination against African-Americans. Of the 32 Title VII cases brought by the Bush Administration, 9 are pattern or practice cases, 5 of which raise allegations of race discrimination but only one case – 1 case – involved discrimination against African Americans. In contrast, the Clinton Administration filed 13 pattern or practice cases, 8 of which involved racial discrimination.

The record is not much better when it comes to the subject of voting rights enforcement. After six years, the Bush Administration has brought fewer Section 2 cases, and brought them at a significantly lower rate, than any other administration since 1982.

The Voting Section filed a total of 33 involving vote dilution and/or other types of Section 2 claims during the 77 months of the Reagan Administration that followed the 1982 amendment of Section 2. Eight (8) were filed during the 48 months of the Bush I Administration and 34 were filed during the 96 months of the Clinton Administration. Only 10 have been filed so far during the first six years of the Bush II Administration.

But the record is really bad when it comes to enforcement of the federal criminal civil rights law. According to an analysis of Justice Department data by the Seattle Post-Intelligencer, civil rights enforcement no longer appears to be a top departmental priority. An analysis of the data reveals that between 2001 and 2005, the number of federal investigations targeting abusive police officers declined by 66 percent and investigations of cross-burners and other purveyors of hate declined by 60 percent.

It appears that this downward trend accelerated after the 9/11 attacks. There has been a slight increase in enforcement related to human trafficking, which is counted under civil rights, but not enough to stop the overall slide.

I am very troubled by this trend. Hate-crimes are too dangerous to ignore, and there is social value in effective federal review of police misconduct. I am anxious to hear the Attorney General's responses to these serious problems.

Additionally, Mr. Chairman, most of the Department's major voting-related actions of the past five years have been beneficial to the Republican Party, including two in Georgia, one in Mississippi and the infamous redistricting plan in Texas, which the Supreme Court struck down in part. For years we have heard stories of current and former lawyers in the Civil Rights Division alleging that political appointees continually overruled their decisions and exerted undue political influence over voting rights cases. Indeed, one-third of the Civil Rights Division lawyers have left the department and the remaining lawyers have been barred from making recommendations in major voting rights cases.

As I indicated earlier, it appears the FBI has abandoned its mission in cases involving abusive police practices. "Police abuse" prosecution cases numbered about 20 nationwide as of 2006, according to a leading scholar on the subject, Professor Sam Walker at the University of Nebraska at Omaha. Very few, if any, consent

decrees have been entered into under the Bush Administration. While the Bush Administration has entered into several memorandum-of-agreement settlements, there has been no effort to address the on-going problems of the most problematic agencies. Progress has ground to a halt and the special litigation section hasn't initiated any new cases in years. As recent cases in New York, Atlanta and Los Angeles make all too clear, police abuse is still alive and well in America.

I look forward to exploring these and other issues with Director Mueller, to whom I extend a hearty welcome. Thank you, Mr. Chairman. I yield back my time.

PREPARED STATEMENT OF THE HONORABLE BETTY SUTTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND MEMBER, COMMITTEE ON THE JUDICIARY

Thank you, Mr. Chairman, and thank you for convening this hearing. And thank you, Director Mueller, for being here today.

This opportunity to examine the operations of the Federal Bureau of Investigation is a welcome one. As the nation's premiere domestic law enforcement, counter-espionage and counter-terrorism agency, the FBI stands at the forefront of some of the most critical issues facing the country.

The job that the agency does, and the way it carries out that job, are questions of vital importance to all Americans.

Director Mueller, as you mention in your prepared testimony, the September 11th terrorist attacks brought about fundamental changes in our country, both in our individual attitudes and in refocusing the priorities of the federal government.

The questions before us today are how has that change been managed, and how do we ensure that we strike the right balance between the demands of this new world of security challenges and our long-standing commitment to maintaining the protections guaranteed to all Americans in our Constitution.

It is clear to me from the Department of Justice Inspector General's report in March of this year that the correct balance was not struck in the FBI's use of National Security Letters (NSL)—and I would like to thank you, Director Mueller, for the acknowledgement of that in your prepared testimony.

Many officials who come to testify before our Congressional committees lack the candor and the willingness to admit things under their jurisdiction need a second look and a better system of accountability.

I hope your agency implements improvements in the NSL program so that it meets the standards of accountability and integrity that the American people deserve from their government. The first system of NSLs was fatally flawed.

I know that several of my colleagues will want to discuss the NSL issue with you today. There are two other things under the jurisdiction of the FBI that are also cause for grave concern, which I would like to call to the committee's attention today.

First, I understand that the demands on your agency are greater than they were before, but I would ask that you take a hard look at how you are formulating your agency's priorities—especially in the priority given to assistance for state and local law enforcement.

The Administration, in my opinion, has treated the distribution of resources in the area of domestic law enforcement as a zero-sum game.

While the emphasis given to counterterrorism is good, important and vital, this does not mean that the FBI's traditional responsibilities have gone away.

I don't pretend to know the solution to this problem of balancing priorities, but it is clear that many of our neighborhoods have become less safe in recent years.

Murders are up 3.4% nationwide—the largest increase since 1998. The lack of funding, and decrease in FBI violent crime investigations, is having a palpable effect on our communities.

There are never enough resources to achieve everything we would like, but when state and local law enforcement agencies have been stretched so thin that many Americans no longer feel safe walking in their own neighborhoods, it's time to reconsider our priorities.

Second, your submitted testimony mentions that you have tripled the number of linguists and acknowledges that the need for experts who can help our government in fighting terrorism is especially critical.

Given that, I remain deeply concerned about your agency's efforts to protect those seeking to ensure the integrity of your agency's operations.

I was a strong supporter of the Whistleblower Protection Enhancement Act of 2007, which passed in the House earlier this year.

I supported it because cases like Sibel Edmonds's make it clear that the Whistleblower Protection Act is falling short of its purpose. I am not only concerned that government employees are not being protected, I am concerned that their dismissals came at the expense of our national security.

I know you have spoken out strongly on this subject, and that you made personal assurances that you would not tolerate retaliation against whistleblowers within your agency. But I would encourage you to be vigilant in examining the culture within the FBI to ensure these abuses will not be tolerated.

Thank you, Mr. Chairman, and thank you, Director Mueller, for being here today.

Mr. Chairman, I yield back the balance of my time.

POST-HEARING QUESTIONS POSED BY THE HONORABLE JOHN CONYERS, JR., AND THE HONORABLE LUIS V. GUITERREZ TO THE HONORABLE ROBERT S. MUELLER, III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

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September 20, 2007

Robert S. Mueller, III
Director, Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Dear Mr. Mueller:

Thank you for your recent appearance before the House Committee on the Judiciary at its July 26, 2007, oversight hearing on the Federal Bureau of Investigation. Enclosed you will find additional questions from members of the Committee to supplement the information already provided at the hearing.

Also, please find a **verbatim** transcript of the hearing enclosed for your review. The Committee's Rule III (e) pertaining to the printing of transcripts is as follows:

> *The transcripts...shall be published in **verbatim form**, with the material requested for the record...as appropriate. Any requests to correct any errors, other than transcription, shall be appended to the record, and the appropriate place where the change is requested will be footnoted.*

Please deliver your transcript edits and written responses to the Committee on the Judiciary by October 12, 2007. Please send them to the Committee on the Judiciary, Attention: Renata Strause, 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Renata Strause at (202) 225-3951.

Sincerely,

John Conyers, Jr.
Chairman

cc: Lamar S. Smith

Enc

CHAIRMAN JOHN CONYERS, JR.
QUESTIONS FOR ROBERT MUELLER, III
APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE

July 26, 2007

The Use of NSLs and the Report of the Inspector General:

1. At the March 20, 2007 hearing before the Committee on the Judiciary, Ms. Valerie Caproni testified that with respect to information obtained in violation of law or agency rules the Bureau "[is] making every effort to figure out where those errors are, to sequester the material, to pull it out of our files and to destroy it." Please explain how much information improperly collected has been destroyed and purged from FBI systems and how this has taken place.

2. How many violations of the law or agency rules did the FBI internal audit find?

a. Is 1,000 a correct number as reported in the media?

b. Which specific laws did the Bureau violate in its collection?

c. From this audit, how many incidents have beeu reported to the President's Intelligence Oversight Board?

3. Has the Bureau ever had any communication with Members of the President's Intelligence Oversight Board ("IOB"), which is charged with identifying intelligence abuses?

a. Has the IOB provided the Bureau with any guidance on the numerous legal or procedural violations the FBI reported to the Board?

4. How many terrorism-related convictions have flowed from NSL derived information?

a. How many convictions for fraud, immigration and money laundering have flowed from NSLs?

5. What would be the advantages and disadvantages in having judges approve national security letters, as they do applications for placement of pen registers and trap and trace devices, or going through the normal FISA process?

6. In the FBI internal audit, how many NSLs were issued without the presence of an open or authorized investigation?

7. In his report, the IG recommended that the FBI keep copies of all NSLs in a "control file" –

one central file so that auditors can easily access them at a later time. However, FBI directives mandate copies to be kept in "case files" only, which means copies of NSLs are being kept in several different files. Where are the copies of NSLs being kept – control file or various case files or both?

8. How many NSLs have been sent to public libraries? How many of those were accompanied by a "gag order?"

9. On page 109 of the Inspector General's Report, it is reported that agents are accessing "NSL information about parties two or three steps removed from their subjects without determining if these contacts reveal suspicious connections." How does this comport with the standard that the information requested be relevant to or sought for an authorized investigation to protect against international terrorism or espionage?

a. If not, is the "relevance" standard too low?

10. Is there meaningful review and analysis of all information collected by the use of NSLs? What type of review and analysis is conducted?

11. Page 48 of the IG's report discusses how NSLs may be used to support later Foreign Intelligence Surveillance Act (FISA) applications. Someone, however, redacted the standard for getting such an order from the Report. It states:

"For example, to obtain FISA orders the FBI must establish [REDACTED]."

a. Why was this redacted?

b. Who decided to redact this? Did the White House or anyone in the Justice Department outside the IG's Office in any way influence that person?

c. There is a statute on the books that clearly delineates the standard for a FISA order. Does this redaction imply that the FISA requirements are not being followed?

12. Page 88 of the IG report discusses the contracts signed by the Communications Analysis Unit and three telephone companies to access records outside of the law. These contracts "obligated funds" to the companies. How much was the FBI paying the phone companies to turn over customer records?

FBI Draft Guidelines on the Issuance of NSLs

1. The IG reported that the lawyers in the field office who are responsible for reviewing the legal sufficiency of NSLs were reluctant to provide an objective review of the requests because their

superiors (SAC) had already approved the underlying investigation. The Bureau's Draft Guidelines do not address or correct this critical problem. How will the Bureau address this matter?

2. The following questions pertain to specific sections of the Bureau's Draft Guidelines:

   a. On page 3 of the Guidelines, there is redaction of a discussion of email and what is content and therefore cannot be obtained by an NSL.

      i. Do you consider the subject line of the email to be content?

      ii. Is the Bureau using the Internet Service Provider NSLs to get lists of people an individual sends an email to?

   b. On page 19 of the Guidelines, you note that some companies are uncomfortable complying with "exigent letters" and request subsequent process.

      i. Which companies does this refer to?

      ii. What process do they seek?

      iii. Do you plan on complying with these requests?

      iv. Do you plan on taking adverse action against companies that do not comply with your oral / written request and instead insist on an NSL, subpoena, or other compulsory process?

   c. On page 18, you direct agents that exigent letters should be issued in emergencies. What direction has been or will be provided to agents about what an emergency is?

   d. On page 5, the guidelines state, "In the context of NSLs, there must be a reasonable belief that the information sought via the NSL either supports or weakens facts being investigated in a case." Can you explain what this means to the FBI?

Datamining

1. How much is the FBI spending on data mining each year?

   a. How many agents and analysts are working on data mining?

   b. What's the average yearly cost for employing a single agent? Analyst?

2. What scientific, peer-reviewed research can you point to that indicates data mining can predict future criminal behavior?

3. Recently, the Department provided the Committee with a long-overdue data mining report. This is the first such report, which was required under Section 126 of the Patriot Re-authorization Act of 2005, Pub. L. No. 109-177. The report was due on March 9, 2007, but it wasn't released until July 9, 2007. Why was it so late?

4. In the report, the Department states that the Foreign Terrorist Tracking Task Force (FTTTF) maintains and data mines the FTTTF Data Mart with a risk assessment software system called STAR. STAR assigns a terrorist risk score to each name evaluated by the system. With the STAR initiative, the report states that the analyst starts with an individual's name- a person of interest- and that person's name is then run against data sets "already lawfully collected and available."

a. How does the STAR system fit in with the Attorney General Guidelines governing FBI investigations, and under what circumstances would a high STAR risk score trigger a FBI preliminary or full investigation?

b. We understand that STAR will draw up lists of terror suspects based on information from private data-brokers like ChoicePoint. Is there any mechanism in place ensuring the information is accurate? What steps has the Bureau taken to ensure accuracy? Will records be kept detailing the information the FBI asks for and obtains from these private data-brokers?

c. What specifically are the data sets that the names are run against?

d. How is the data "lawfully collected" to populate these data sets?

e. Is any data obtained through National Security Letters incorporated in these data sets?

5. For purposes of STAR, IDW and other datamining activities and databases, what happens to data that has been collected but is later found to be irrelevant or erroneous?

6. The last paragraph of page 10 of the report states, "if the threat information does not identify individuals, the analyst will develop a list of names from the FTTTF Data Mart based on the nature and the specificity of the terrorist threat."

a. What are the criteria used to develop a list of names?

b. Is participating in an anti-war protest a criterion?

c. Is writing or reading provocative political literature a criterion?

d. What methods has the FBI used to validate the criteria the analysts are using?

e. How many terrorists developed from this data have been convicted of terrorist-related offenses?

7. A 2005 GAO report identified the FTTTF Data Mart as a data-mining project. Why does the FBI disagree with the GAO's determination that the FTTTF Data Mart is a data-mining project?

a. In addition, has the Privacy Impact Assessment for the FTTTF Data Mart been published?

8. A document released as part of a recent FOIA request entitled "Typical NSL Retention and Database Use" shows NSL telephone record data being distributed into six different databases, two of which are hidden with redaction tape. Are these secret databases that the FBI has not otherwise reported?

a. The IG report on NSLs mentions only three databases into which NSL information is distributed. Was the IG told of these secret databases?

b. Why are these databases being hidden?

9. The Bureau has sought to pay major telecommunications companies to retain their customers' Internet and phone call records for at least two years. How does this comport with the Bureau's interpretation of the Fourth Amendment? What does the Bureau plan to do with this data?

The Department's Announcement of a New National Security Oversight and Compliance Effort

1. In early August 2007, the Department announced the implementation of an Oversight Section within the Department's National Security Division and the proposed establishment of a new Office of Integrity and Compliance within the FBI. According to the Department, these new programs were designed to ensure that national security investigations comply with laws and regulations designed to protect privacy interests and civil liberties.

a. Were you involved in the development of these new initiatives?

b. If so, when were these new proposals originally conceived?

c. Were the programs conceived after the Inspector General's March 2007 Report?

i. If so, why not earlier, given the 2005 reports of NSL abuses?

2. The new Oversight Section is designed to ensure the accuracy of FBI declarations to the Foreign Intelligence Surveillance Court. Were there instances in which declarations to the Court

were inaccurate? Please explain.

Decreased Resources for Traditional Law Enforcement

1. What performance measures does the FBI have to assess its progress in implementing its counterterrorism policy, and the effects of this priority on its traditional law enforcement and crime fighting mission?

2. How have the FBI's counterterrorism priorities, including changes in FBI support to local crime task forces, affected field office partnerships with state and local law enforcement agencies?

FBI Treatment of Whistleblowers

1. How does the system of checks and balances for quality control of State Secrets Privilege (SSP) designation compare to the procedures before information can be classified? Please explain each distinction in detail, and justify any inconsistencies.

2. Why is it necessary to designate information as SSP, instead of merely giving it the appropriate level of classification?

3. How many times has the SSP been used to restrict disclosure of information in whistleblower and First Amendment rights litigation, respectively?

4. How many times has SSP-withheld information been subsequently disclosed? Please describe each such disclosure, as well as any post-disclosure analysis or assessment of the validity for initially asserting the privilege in each instance.

5. What would be the specific, tangible disadvantages to the United States, if any, of subjecting the Government's assertion of the SSP to a review for accuracy by the relevant agency or departmental Office of Inspector General, before a court or administrative law forum rules on the government's assertion of the privilege?

6. What is the appropriate form of accountability for any government official who falsely claims the SSP?

7. Why would the FBI not give the SSP protection to those who are trying to reveal possible actions of espionage, such as the case of Sibel Edmonds?

8. In the case of NSLs, an FBI employee reportedly told his supervisor about problems with the exigent letters in 2005, well before the recent IG investigation uncovered the problems, but his concerns were reportedly dismissed. Are you aware of any other employees who had reported

problems with NSL usage? What has happened to these employees?

9. During the hearing, Representative Betty Sutton asked you to provide specific examples of the changes the Bureau has implemented to address whistleblower protection. You responded with "I can get back to you on specific[s]." Consistent with your offer, please provide specifics.

Sentinel

1. It took two years to implement phase 1 of the Sentinel program. At this pace, Sentinel wouldn't be finished until 2013. What safeguards have you taken to ensure that Sentinel will meet the completion deadline of 2009, and that the cost will not exceed the $425 million estimated cost? What type of internal auditing has taken place to make sure that money is not being misspent?

2. What is the difference between the management continuity and oversight concerning the Sentinel employees and the employees who formerly worked on the Virtual Case File program?

a. Please describe the training provided to employees to ensure they will utilize all of the capabilities of the Sentinel program.

b. Please provide an update on the risk management group findings of the risk associated with the Sentinel program since the implementation of phase 1 in June.

Referrals to the IOB

1. A July 10, 2007 Washington Post article detailed how in 2005, six days before Attorney General Gonzales testified before the Senate that "there has not been one verified case of civil liberties abuse," the FBI had sent him reports explaining how its agents had obtained personal information that they were not entitled to have. The FBI reports also alerted Mr. Gonzales of problems pertaining to the FBI's use of National Security Letters.

a. What, if any, immediate corrective actions did the FBI take, aside and apart from reporting violations to the President's Oversight Intelligence Board?

b. Do you have any personal knowledge of whether the Attorney General received and read the reports when the FBI originally sent them in 2005?

c. Did you have any follow-up conversations with the Attorney General after the Bureau issued the 2005 reports to him?

i. What was your reaction to reports that the Attorney General was surprised when he read the Inspector General's March 2007 Report regarding the

FBI's abuse of the National Security Letters?

Investigation of Anthrax Attacks that Occurred in 2001

1. During the hearing, in response to my inquiry regarding the need for House Members to receive a briefing on the status of the FBI's pending investigation into anthrax attacks that occurred in 2001, you responded that you "will discuss with the Department, a mechanism whereby we can give you a briefing as to what we are doing . . . ."

a. Consistent with your response, when will you offer a briefing to Members of the Judiciary Committee regarding that investigation?

Charities and Arab Americans in Dearborn, Michigan

1. During the hearing, I requested the FBI's assistance in determining the underlying circumstances surrounding the suspension of the accounts of two charities and the individual accounts of people of Arab descent. You agreed to look into these matters. Consistent with your offer, please provide the Committee with information concerning these issues.

REP. LUIS V. GUTIERREZ
QUESTIONS FOR ROBERT MUELLER, III
APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE

Thursday, July 26, 2007

In April of this year, FBI agents from the Chicago Field Office, working with Immigration & Customs Enforcement agents, conducted a mass sweep at the Little Village Discount Mall in the heart of Chicago's Mexican-American community. The community was horrified to see as many as 200 agents cordon off the entire shopping center and its parking lots during business hours, locking down the stores and detaining mall patrons en masse while searching for members of a document fraud ring. At the time, Chairman Conyers and I stated that no neighborhood - Hispanic, Black, White or otherwise - should be subjected to generalized law enforcement sweeps. As the committee has tried to express its concern about this raid, ICE officials have pointed to DOJ and FBI as being responsible for the operation.

1. How many document fraud investigations, or other immigration investigations, is the Bureau conducting, whether alone or in conjunction with ICE?

2. Is the Bureau providing manpower or support to ICE raids, worksite enforcement and other internal enforcement efforts which purport to search for fugitive aliens but routinely net people who are merely undocumented instead?

3. Is it the Bureau's common practice to conduct arrests in broad daylight, as part of mass sweeps, as opposed to targeted apprehensions?

4. Can the Bureau identify any other enforcement action in which a "round up" of this sort occurred?

LETTER FROM RICHARD C. POWERS, ASSISTANT DIRECTOR, OFFICE OF CONGRESSIONAL AFFAIRS, U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, DATED NOVEMBER 13, 2007

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

November 13, 2007

Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During the Committee's July 26, 2007, Oversight hearing, several members asked Director Mueller to provide additional information on specific topics following the hearing. While several of those topics were the subjects of the Committee's written Questions for the Record or other formal Committee requests, we have prepared responses to the inquiries that are not being addressed through those other vehicles and have delivered those responses to the Department of Justice (DOJ) for review. We will forward our responses to the Committee after DOJ completes its review.

Thank you for your patience as the FBI works with DOJ to develop appropriate and thoughtful responses to these important inquiries.

Sincerely,

Richard C. Powers

Richard C. Powers
Assistant Director
Office of Congressional Affairs

Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

LETTER FROM RICHARD C. POWERS, ASSISTANT DIRECTOR, OFFICE OF CONGRESSIONAL AFFAIRS, U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, DATED DECEMBER 19, 2007

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

December 19, 2007

Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

By letter to Director Mueller dated September 20, 2007, the Committee requested responses to questions for the record based on the July 26, 2007, hearing concerning FBI oversight.

Today we delivered our responses to the Department of Justice (DOJ) for review and approval. DOJ will forward the responses to you directly following their review.

Thank you for your patience as the FBI works with DOJ to develop appropriate and thoughtful responses to these important inquiries.

Sincerely,

Richard C. Powers
Assistant Director
Office of Congressional Affairs

Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

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