AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 110–910

OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 5, 2008

Serial No. J–110–78

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

53–361 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00001 Fmt 5011 Sfmt 5011 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

EDWARD M. KENNEDY, Massachusetts
JOSEPH R. BIDEN, JR., Delaware
HERB KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
BENJAMIN L. CARDIN, Maryland
SHELDON WHITEHOUSE, Rhode Island

ARLEN SPECTER, Pennsylvania
ORRIN G. HATCH, Utah
CHARLES E. GRASSLEY, Iowa
JON KYL, Arizona
JEFF SESSIONS, Alabama
LINDSEY O. GRAHAM, South Carolina
JOHN CORNYN, Texas
SAM BROWNBACK, Kansas
TOM COBURN, Oklahoma

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00002 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Kyl, Hon. Jon, a U.S. Senator from the State of Arizona, prepared statement	94
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	1
prepared statement	92
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	3

WITNESSES

Mueller, Robert S. III, Director, Federal Bureau of Investigation, Department of Justice, Washington, D.C.	5

QUESTIONS AND ANSWERS

Responses of Robert S. Mueller, III, to questions submitted by Senators Leahy, Feingold, Schumer, Durbin, and Grassley (**Note:** Answers to Senator Kennedy were not received at the time of printing, November 3, 2009)	40

SUBMISSIONS FOR THE RECORD

Mueller, Robert S. III, Director, Federal Bureau of Investigation, Department of Justice, Washington, D.C., statement	70

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

WEDNESDAY, MARCH 5, 2008

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–106, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Kennedy, Kohl, Feinstein, Feingold, Schumer, Cardin, Whitehouse, Specter, Hatch, Grassley, and Kyl.

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

Chairman LEAHY. Sometimes it is hard to get used to this cavernous room, but today's hearing will continue our oversight of the Department of Justice. We are going to examine the effectiveness of the Federal Bureau of Investigation in carrying out its responsibilities, and I welcome back our FBI Director. I thank him for appearing today, and I think he would probably join me in thanking the hard-working men and women of the FBI for their commitment not only here but in many other countries to keep all Americans safe.

We have to look at some of the issues we raised last year and see where we are, what progress has been made. I talked with the Director yesterday, and, again, I commend him in our meetings. Whether personal meetings or over the phone, he has always been very open and very candid, whether we are talking on things of praise or things of criticism.

But I told him I was astonished to learn about the FBI failure in an instance of paying bills that resulted in telecommunications companies shutting off wiretaps, including one FISA wiretap. The reason I mention that, I understand from him—and you will probably speak further of this about how that happened, but after the Bush-Cheney administration and the congressional Republicans refused to extend the Protect America Act, of course, the statute expired, but the surveillance authorized under that statute continues, contrary to some of the statements made by the President's Press Secretary.

Ironically, of course, the only shutdown of surveillance has been when the telecom companies ceased surveillance because they were not paid their fees. It had nothing to do with whether the Act was in place or not but whether the Government paid the bills. And that, of course, is—well, you know how I feel about that.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00005 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

Then the confidence and credibility of the FBI took a hit on increasingly potent technologies. There are recent reports saying the FBI is engaged in a $1 billion program—a $1 billion program—to create a massive biometric database, compiling not just fingerprints but eye scans, palm prints, facial features, and other identifying features of millions of people.

I worry about that in a number of areas. I want to make sure the FBI has mastered emerging and enhanced technologies in the fight against crime. We know the difficulties there were in past years on the file sharing and other technological problems the FBI had. But we also have to look at the impact that such a database can have on the privacy rights and civil liberties of Americans. We want to make sure the FBI acts in ways that protect and enhance the rights and values that define us as Americans, that make us a unique society, and not undermine them.

We know what happened with the internal computer network. We know what has happened with national security letters and exigent letters, so there has to be a concern that if we are going to embark on anything like this, which goes so much into the privacy of Americans, that we know what we are doing.

I would urge the Director to continue to work to address the backlog in the National Name Check Program. Delays and backlogs there contribute to the inaction by the Department of Homeland Security on citizenship applications and on applications for visas by those who have aided American forces in Iraq.

Last year we talked about the FBI's use of the national security letters, and what appeared to be improper use by some, and the exigent letters; the lag in hiring agents proficient in Arabic; and, of course, the problems with the computer systems. And then we talked about the Inspector General's findings of widespread illegal and improper use of national security letters in obtaining Americans' phone and financial records.

Everybody wants to stop terrorists, but also, though, as Americans we believe in our privacy rights, and we want those protected, because at that time the Inspector General found that the FBI repeatedly abused national security letters and failed to report these violations. The same with the FBI's use of so-called exigent letters, which were used to obtain Americans' phone records, often when there was no emergency and never with a follow-up subpoena.

And I discussed this with the Director. I know he shared my concern and the fact that there has to be a better chain of command for this. You cannot just have an FBI agent who decides he would like to obtain an American's records, bank records or anything else, and do it just because they want to.

We do have the information technology we have discussed with the FBI, and I want to know where they are on Sentinel. We need an update on the FBI's efforts to hire, train, and utilize its intelligence analysts, especially those proficient in Arabic.

Now, it is not all down by any means. As I said, imagine this country without the FBI and what they have been able to do for us.

I discussed one issue especially with the Director yesterday when we met, and I want to commend him, but I also want to commend

the FBI. They, along with our military, have led on the topic of torture and the effective interrogation of detainees.

Mr. Director, you and the FBI have consistently been a voice of reason on these issues, and I think you have received applause, and justly so, from Americans of all political stripes. It seems to me that the FBI has concluded that tried and true interrogation tactics, which do not use cruelty and torture, are not only more consistent with our laws and our values, but are often more effective in obtaining information.

And I think just as I have commended the military in the military handbook and what they have done on this, I commend you, Mr. Director; but I also commend you for making it very clear how the people in your Bureau will work. And I commend those agents—some of which we cannot discuss in open session, and you and I have discussed more in a classified session—those agents who have shown their commitment to the values that you have laid down and the values this country has laid down on that subject.

Also, we note that violent crime has been back on the rise in recent years. We have to make sure that there is enough FBI resources dedicated to it. You are also uniquely suited to take on fraud and corruption, and it is not acceptable to this Chairman when other agencies and organizations seek to undermine the FBI's commitment in those areas. You are uniquely suited for that, and I want to make sure that you are able to commit and recommit yourself to your best traditions. And to you personally, Mr. Director, I appreciate your openness to oversight and accountability that has distinguished you from many others in this town today.

Senator Specter, I yield to you for whatever amount of time you want.

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

Senator SPECTER. Thank you very much, Mr. Chairman, and welcome, Director Mueller. We thank you for your service, for the work done by the Federal Bureau of Investigation, some 30,000 employees, 12,568 Special Agents, and with each passing day, we seem to be giving you more duties without, in my judgment, a commensurate increase in resources.

Just one word on a personal note. Years ago, I was in the Air Force in the Office of Special Investigations and had the opportunity to go to an 8-week training course conducted by FBI agents. When the Department of the Air Force was created, the Air Force sought a ranking FBI official, and Joseph Carroll, who came in as a colonel, later became a two-star general, and that training has stayed with me to this day. I do not know whether it has done me a whole lot of good, but the training was excellent.

Director Mueller, there are many subjects which are right on the front burner where you agency is intimately involved. The No. 1 subject is the war on terrorism, and there are still looming questions as to whether there is sufficient coordination. There had been the generalization that had there been coordination between CIA and FBI, 9/11 might have been prevented. We are now in the midst of work on reauthorization of the foreign intelligence surveillance

issue, a very hotly contested issue on Capitol Hill, now hung up on the issue of retroactive immunity for telephone companies.

I have offered a substitute amendment which would enable the Government to continue to collect the data but not close down the courts. It is my judgment that Congress has been very ineffective in oversight on the expansion of executive power, and I believe we need very extensive executive power to deal with terrorism.

My amendment failed in the Senate. I supported the legislation even though it granted immunity that I am opposed to. But it is my hope that we can work out an accommodation with the House of Representatives. There have been ongoing discussions, which I participated in personally, and there is some, I think, considerable sentiment on the House side for my substitute amendment.

The issue of state secrets is one of great importance. Legislation has recently been introduced, where I am a cosponsor, which seeks to define state secrets, and I would be interested in your views on that when the time comes for questions and answers.

There is a growing concern on the question of reporters' privilege. The Committee has reported out a bill which seeks to provide some balance on that subject to protect reporters' sources because the media has been instrumental in the life of our Republic in exposing corruption and malfeasance and wrongdoing. And a great concern exists that the cutdown of sources is going to be very harmful for the public.

I still do not understand the Judith Miller case, why she was incarcerated for 85 days when it was well known who the source was of the leak in the Valerie Plame case. Richard Armitage had been interviewed by the Department of Justice in October when he had realized that he was the source. Special counsel was appointed and then began a long chase, which has had a devastating, chilling effect, in my opinion, on reporters in this country.

Today we are looking at another matter on the front pages involving a Pennsylvanian, Tony Lucy, and we looked at the Hatfill case last year where there were eight journalists targeted, from ABC, CBS, NBC, Gannett, Newsweek, Washington Post, the Baltimore Sun, and the L.A. Times.

One other subject briefly, before my time expires, and that is the issue of how we deal with illegal aliens who have committed crimes of violence, who are released from jail, can be detained by the Department of Homeland Security for only 180 days, and then being put back on the streets. That is a problem which has received very little notoriety compared to the intensity of the problem. I have been visiting jails in Pennsylvania and looking into the details of this issue, but many foreign governments are refusing to take back their citizens, and we can only hold them for a certain length of time.

I thank you for coming by yesterday for the informal discussion, and I am going to get into it in the Q&A. But I believe we have to search hard to see if there is some way to retain detention on those individuals consistent with due process and consistent with our constitutional principles.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you.

Director Mueller, would you please stand and raise your right hand? Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MUELLER. I do.

Chairman LEAHY. Thank you. Director, please go ahead, and then we will open it to questions.

STATEMENT OF HON. ROBERT S. MUELLER, III, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Director MUELLER. Thank you, Chairman Leahy, Senator Specter, other Senators on the Committee. I am pleased to be here today to discuss the FBI's efforts to continue to keep America safe.

Today in this short statement, I want to give you an overview of the threats we face today and generally outline the FBI's efforts to combat those threats.

As you are aware, the FBI's top three priorities are counterterrorism, counterintelligence, and cyber security. These priorities are critical to our national security and the FBI's vital work as a committed member of the intelligence community. Important, too, are our efforts to protect our communities from the very real threat of crime, especially violent crime.

In the counterterrorism arena, al Qaeda continues to present a critical threat to the homeland, as do groups who are not a part of al Qaeda's formal structure but who are affiliates of al Qaeda or other organizations. A particular challenge in this arena is that posed by self-radicalized, homegrown extremists. They are difficult to detect, often using the Internet to train and operate. And here at home, through our domestic Joint Terrorism Task Forces and abroad through our legal attaches and international partners, we together share real-time intelligence in order to fight these terrorists and their supporters.

With regard to the counterintelligence threat, protecting our Nation's most sensitive secrets from hostile intelligence services or others who would do us harm is also a core FBI mission. We reach out to businesses and universities, we join forces with our intelligence community partners, and we work closely with the military to help safeguard our country's secrets.

Cyber threats to our national security and the intersection between cyber crime, terrorism, and counterintelligence is becoming increasingly evident. Foreign adversaries and competitors can now remotely observe, target, acquire, and exploit our information to their advantage. Terrorists recruit, train, plan, and execute attacks on the Internet. Spies now sell intellectual property and state secrets to the highest bidder. And hackers who used to shut down servers around the world for bragging rights may now be linked to criminal or terrorist organizations.

Today the FBI's cyber investigators focus on these threats, and we partner with government and industry through our sponsorship of a program called "InfraGard," which is an alliance of more than 23,000 individual and corporate members, whose members help identify and prevent cyber attacks.

I am certainly mindful of this Committee's abiding interest in the FBI's progress in building an intelligence program while combating these threats, and the FBI has made a number of changes in the last several years to enhance our capabilities and to build a national security organization on par with our law enforcement capabilities. Among them are:

Today, intelligence is woven throughout every FBI program and every operation. Utilizing this intelligence, we have successfully broken up terrorist plots across the country—Portland, Oregon; Lackawanna, New York; Torrance, California; Chicago; to the more recent Fort Dix and JFK plots. We have increased and enhanced our working relationships with our international partners, sharing critical intelligence to identify terrorist networks and disrupt planned attacks.

We have doubled the number of intelligence analysts on board and tripled the number of linguists. We have tripled the number of Joint Terrorism Task Forces, going from 33 in September of 2001 to over 100 now, combining the resources and the expertise of the FBI, the intelligence community, the military, and State, local, and tribal law enforcement.

Another important part of our FBI mission, quite clearly, is our work against criminal elements in our communities, often in task forces with our Federal, State, local, and tribal partners.

Public corruption remains the FBI's top criminal investigative priority. Corruption erodes public confidence and undermines the strength of democracy. In the past 2 years alone, we have convicted over 1,800 Federal, State, and local officials for abusing their public trust.

Similarly, our work to protect the civil rights guaranteed by our Constitution is a priority, which includes fighting human trafficking as well as our focus on the Civil Rights Cold Case Initiative.

Gangs and violent crime continue to be as much a concern for the FBI as it is for the rest of the country. As you are only too aware, gangs are no longer a big-city problem, and the FBI's 141 Safe Streets/Violent Gang Task Forces across the country leverage the knowledge of State and local police with Federal resources and contemporary investigative techniques.

The FBI sponsors 52 additional Violent Crime and Interstate Theft Task Forces as well as 16 Safe Trails Task Forces targeting homicide, child sexual assault, rape, and drug trafficking in Indian country.

The FBI combats transnational organized crime, in part by linking the efforts of our Nation's 800,000 State and local police officers with our international partners through the FBI's 70-plus legal attache offices around the world. These legal attache offices cover more than 200 countries, and today these partnerships are absolutely essential when criminals and their enterprises easily span international borders.

Because of the FBI's unique global reach, we have passed over 35,000 pieces of intelligence related to terrorism and other criminal threats, and most recently we have trained more—over the last several years, I should say, we have trained more than 865 foreign partners at our facility in Quantico.

Finally, major white-collar crime, from corporate fraud to fraud in the mortgage industry, clearly continues to be an economic threat to the country. In recent years, the number of FBI pending cases associated with subprime mortgage lending has grown nearly 50 percent to over 1,200 cases. Roughly half of these have losses of over $1 million, and several have losses greater than $10 million.

Currently, the FBI partners with law enforcement and regulatory agencies in 33 Mortgage Fraud Task Forces and working groups, as well as an additional 19 Corporate and Securities Fraud Task Forces, all in an effort to target this threat. And we will continue our work to identify large-scale industry insiders and criminal enterprises engaged in systemic economic fraud.

Thank you, Mr. Chairman, for your comments with regard to the personnel we have in the FBI and the hours they work and the good work that they do. We recognize that, and for the past 100 years of the FBI's history, our greatest asset is our people. We are building on that history with a comprehensive restructuring of our approach to intelligence training for both our professional intelligence analyst cadre as well as for new FBI agents coming out of Quantico. We have and we will continue to streamline our recruiting and hiring processes to attract persons who have the critical skills needed for continued success.

I am also very aware of your concerns that we always use legal tools given the FBI fully, but also appropriately. For example, after the Department of Justice IG review of the use of national security letters, we have instituted new procedures and internal oversight mechanisms to ensure that we as an organization minimize the chance of future lapses.

Among the reforms we have instituted is the creation of a new Office of Integrity and Compliance within the Bureau, reporting to the Deputy Director. This office will identify and mitigate in advance areas of potential risk. We will continue our vigilance in this area.

As an aside, as you may know, the Inspector General will soon release the audit of the FBI's use of national security letters during the 2006 time period. As we discussed yesterday, Mr. Chairman, and as the staff has, I believe, been briefed, this report will identify issues similar to those in the report issued last March. This is, of course, because it covers a time period which pre-dates the reforms we now have in place.

I look forward to keeping the Committee up to date on our progress and tell you we are committed to ensuring that we not only get this right but maintain the vital trust of the American people.

In closing, let me say that the FBI recognizes that it is a national security service responsible not only for collecting, analyzing, and disseminating intelligence, but most particularly for taking timely action to neutralize threats to this country, be it from a terrorist, a foreign spy, or a criminal. And in doing so, we recognize that we must properly balance civil liberties with public safety in our efforts, and we will continually strive to do so.

Mr. Chairman, Senator Specter, members of the Committee, I appreciate the opportunity to appear before you today and look forward to answering your questions. Thank you for the opportunity

to give those remarks, Mr. Chairman, and I ask that my longer statement be included in the record.

Chairman LEAHY. Of course, it will be, as well as any statements that any Senator wishes to have included in the record.

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

Chairman LEAHY. Director Mueller, I want to reiterate again that I appreciate your willingness to brief me and other members. You have asked and some things we will not discuss in this hearing because of a classified nature, but let me go into a couple things.

We now know that the administration authorized and the CIA used the ancient and notorious technique of waterboarding on several detainees in 2002 and 2003. I have long maintained that waterboarding is illegal and it is torture. That is the way it has been defined in the past in this country, and it has been understood that way for hundreds of years and that our embrace of it threatens our values.

And as many of the military people have said in testimony before this and other committees, it places our servicemen and women at risk overseas. And the administration says that may be, but it is necessary to obtain intelligence from key suspects. With these high-level detainees, before they are turned over to the CIA for harsh treatment, they are briefly subject to interrogation by the FBI. They did not use these techniques. They used the kind of rapport-building techniques they have used with great success over the years.

Some FBI officials have told the press that their techniques, the techniques approved by the FBI used in interrogation for decades, were starting to yield results by the time control of the interrogation was taken away from the FBI and turned over to the CIA. These officials have also said to the press that they wanted no part of the CIA's method, that it violated their own rules and also believed it to be inappropriate and less effective.

So, to the extent you can discuss this in open session, was the FBI beginning to achieve positive results in its interrogation of high-level detainees in 2002 using FBI methods which do not include cruelty or coercion?

Mr. MUELLER. I do believe talking about any particular case in open session would be problematic. I will say that it has been our policy throughout that our policy prohibits the use of coercive techniques. And a determination was made that, to the extent that other techniques would be used, we would not participate in that type of interrogation.

Chairman LEAHY. Do you believe that had the FBI been allowed to continue interrogations, based on what they had already seen, that they could have been successful in a number of areas using the non-coercive techniques the FBI uses?

Mr. MUELLER. Well, on the one hand, not getting into details of any particular case, on the other hand, trying also not to speculate, I would say that our techniques, the experts that we have, I believe that our techniques are effective and are sufficient and appropriate to our mission, and those techniques are founded on the desire to develop a rapport and a relationship.

Chairman LEAHY. And you have found that to be successful in criminal matters and other types of investigations?

Mr. MUELLER. Yes.

Chairman LEAHY. And you have a policy, as does the military in the military handbooks, not to use coercive techniques like waterboarding. Why do you have that policy?

Mr. MUELLER. Well, there are a number of reasons that probably contributed to the development of that policy years ago. Generally, our questioning has been in the past done in the United States, and the results of our questioning often end up in a court where, as you and others who have been prosecutors know, the question of voluntariness is at issue for the admissibility of information you have. And, consequently, the policy was established, I would imagine, given our particular unique mission here and the operation under the Constitution, the applicable statutes, and the Attorney General guidelines.

It also is a result, I believe, of the analysis of our Behavioral Science Unit as to effective use of particular techniques where we believe that a rapport-building technique is particularly effective.

Chairman LEAHY. Again, without going into classified matters we have discussed, not that there are—there are areas where you have had some very significant and positive results by using rapport building.

Mr. MUELLER. Yes, sir. One example that recently appeared in a piece on television was the use of those techniques with the interrogation of Saddam Hussein after he was captured.

Chairman LEAHY. And that was done over a fairly long period of time that the agent did that in building up this level of trust and rapport building. Is that correct?

Mr. MUELLER. It was. And I will also say that credit goes to our sister agency as well. Yes, we played a role, but so did our sister agency, and they are also to be commended for their participation in this particular effort.

Chairman LEAHY. We saw, when people violated the rules in Abu Ghraib and the photographs, the reaction around the world. Is it safe to say that if they are going to show techniques around the world, you would be far happier to have had the FBI techniques shown than what was shown at Abu Ghraib?

Mr. MUELLER. I think anybody that saw the videotapes of what happened at Abu Ghraib was shocked, horrified, tremendously upset that that could occur.

Chairman LEAHY. Now, the FBI announced last month that it awarded a $1 billion contract to Lockheed Martin to develop the next-generation identification database. I mentioned that earlier. That is a massive database of biometric information, not only fingerprints but palm prints, perhaps facial features, retina scans, other forms of identification for millions of people.

On the one hand, we all agree the FBI has to stay at the forefront of technology. The situation is a lot different than when you and I began careers in law enforcement. But I also worry about the checks and reporting requirements, the amount of material that it will gain on Americans. We have not really had hearings on this or set up a check and balance on this.

Can you give us assurances, tell us the steps you are taking to guarantee that the privacy rights and liberties of Americans will be protected if this massive database is implemented?

Mr. MUELLER. Let me, if I could, give a little bit of background, Mr. Chairman. We have expanded our fingerprint capabilities dramatically, particularly since September 11th, and the system that we have for the comparison of fingerprints now is way overtaxed. And so, inevitably, we would have to build a next-generation identification database. And it is true that this would include palm prints, iris scans, facial images, and the like. But there are a couple of points perhaps to keep in mind.

The first is it would not expand the categories of individuals from whom fingerprints and biometric data may already be collected—in other words, persons who were convicted of crimes and the like. There are various categories of persons for which we appropriately collect data, and it would not expand the categories of individuals.

The second point is that we have published a system of records notice, as required by the Privacy Act, to let the public know what information is being stored, under what authority that information is being collected, how long that information will be used and retained, how it will be used, and to whom it is being provided. And that gives the public, Congress, an opportunity, quite obviously, to challenge any collection, storage, or use of that data.

And, last, I would say we would be happy to brief members of this Committee, staff of this Committee, at any time on this contract, and the intent of the contract, the scope of the contract, the funding of the contract, so that there is transparency—

Chairman LEAHY. Does that include the Privacy Impact Assessment Report?

Mr. MUELLER. Absolutely, and that will be public.

Chairman LEAHY. Thank you. I will come back to this.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I begin, Director Mueller, with the war on terrorism. The inference was drawn by many that, had there been coordination between the FBI and CIA, 9/11 might have been prevented. Without getting into the speculation on that subject, there have been considerable steps taken to change the posture of homeland security with the new Department, the Director of National Intelligence.

Do we now have a system of coordination among the intelligence agencies in the United States which guarantees—and that is a strong word—an exchange of information so that we can do our utmost to stop another act of terrorism against the homeland?

Mr. MUELLER. Yes, sir, I do. I believe that is the case, and let me address it, if I could, on three or four levels.

The ODNI, Office of Director of National Intelligence, was established, I would say, in large part to assure that that happens. And that role has been fully utilized by the Director of National Intelligence, John Negroponte, and Mike McConnell.

Senator SPECTER. Director Mueller, could you limit your answer to 2 minutes?

Mr. MUELLER. Surely.

Senator SPECTER. Because there are so many other subjects I want to move to.

Mr. MUELLER. Let me just say there that we meet every 2 weeks, members of the intelligence community on that level. On another level, you have the National Counterterrorism Center. On a third level, you have the Joint Terrorism Task Forces where there are agency representatives throughout the United States.

And the last point I would make is that whenever we have a transnational threat and attack, we are sitting shoulder to shoulder with our counterparts in the intelligence agencies, dealing with our counterparts in foreign intelligence and law enforcement agencies by videoconference and the like on a 24-hour basis.

On all those levels, there has been dramatic change since September 11th.

Senator SPECTER. Director Mueller, moving over to the current congressional activity on reauthorization of the Foreign Intelligence Surveillance Act, as we discussed yesterday at some length in a private meeting, there was considerable opposition to a grant of retroactive immunity to telephone companies. I believe the telephone companies have been good citizens and ought to be protected.

But I believe that it can be accomplished by having the amendment which I offered on the Senate floor—which was not passed—which would substitute the Government for the telephone companies as the party defendant. The Government would have the same defenses, no more, no less, as the telephone companies.

Customarily, the government cannot be sued because of governmental immunity. That would not be present. But the Government would have the state secret defense. It is my view that it is highly unlikely there are going to be verdicts in any event, but I am very much opposed to seeing the courts closed. It is my judgment that the congressional oversight has been ineffective in dealing with the expansion of executive authority, and I believe the executive authority needs to be expanded. When my amendment failed, I supported the bill even though it gave retroactive immunity that I did not like. Now we have a stalemate. The bill has not been renewed. There are contentions that our national security is jeopardized because of the failure to reauthorize it.

Now, wouldn't it be a sensible accommodation to take the bill with the substitution so that you retain the Government's ability to get all the information it gets now from the telephone companies, which still does not close the courts?

Mr. MUELLER. As we discussed yesterday, sir, I would have to—I disagree, respectfully. I do believe that the telephone companies, the communications carriers, have been excellent citizens, particularly since September 11th. In a day of e-mail, cell phones, wire transfers, it is tremendously important that we have the communications carriers as partners. And I do believe that ongoing litigation is a disincentive for them to continue to partner with the Federal Government in areas where we need that information.

Senator SPECTER. A disincentive. Okay. But do you think they would stop?

Mr. MUELLER. I think it is a disincentive to that type of cooperation that we need to be effective. Where you have ongoing litigation—

Senator SPECTER. I understand the disincentive, but my question is: Do you think they would stop?

Mr. MUELLER. I think it would hamper our relationships, yes. With ongoing litigation, with depositions, with hearings, with interrogatories, with the potential of disclosing aspects of the relationship in courtrooms around the country, I do think it would hinder our relationships.

Senator SPECTER. Disincentive, hamper, hinder.

Mr. MUELLER. Yes.

Senator SPECTER. But I do not hear you say that it would stop.

Mr. MUELLER. I mean, I am not going to say it is going to stop, but—

Senator SPECTER. Good.

Mr. MUELLER. But I do believe that delay is detrimental to the safety of the country. Delay and a lack of clarity, a lack of simplicity guiding our relationships, inhibits our ability to get the information we need on a timely basis.

Senator SPECTER. I would move on to two other subjects within my time limit. I asked you on December 6, 2006, in an oversight hearing about the leak by the FBI on a search and seizure which was made on the family's residents of Congressman Curt Weldon immediately before the 2006 election, which virtually certainly cost him that election.

When written answers were filed recently, we discovered from the record on January 25th of this year that the investigation was concluded because "investigators were unable to identify a suspect or substantially narrow the pool of suspects. Accordingly, the investigation was closed on October 1, 2007."

I just found out about it January 2008. Wouldn't it have been a better practice to at least notify the Committee and me that the investigation had been closed?

Mr. MUELLER. Yes.

Senator SPECTER. Would you give me a briefing as to what was done on the investigation?

Mr. MUELLER. I would have to go back and look at what we did. I would presume that I would be free to do so. I am not sure to what extent there may be grand jury considerations, but to the extent that I can, we would absolutely give you a briefing as to what happened.

Senator SPECTER. Let me broach one other subject, if I may, Mr. Chairman, in about 30 seconds, 45 seconds.

This issue about illegal aliens who committed crimes of violence, sentenced in the United States, released from jail, can be detained only for 180 days and then are put back on the streets, thousands of them. We talked about this yesterday, but I want to put it on the public record and encourage your participation and the participation of others to see if we can find a constitutional way consistent with due process to detain these people.

We know that people who are in detention awaiting trial, presumed to be innocent, may be detained on a showing of danger to the community. We know that there are mental health cases where a showing may be made as to danger to themselves or the community, and they can be detained. We are investigating the issue of

sexual predators as to whether there may be detention beyond the conclusion of a jail sentence.

Do you have any suggestion, Director Mueller, as to what we can do about these thousands of violent criminals who are being released onto our streets and not being deported because the country of origin will not take them?

Mr. MUELLER. The first opportunity I had to focus on this is our discussion yesterday, and I quite obviously share your concern and will do what I can to advance the discussion as to how we may address what quite clearly is a problem that faces us today and will face us for the foreseeable future.

Senator SPECTER. Thank you, Director Mueller.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

Director Mueller, last year, the President insisted on significant cuts in the appropriations bills and threatened to veto anything that did not meet his demand. This did result in a 67-percent cut to the Byrne Justice Assistance Grant program. As a result of the cuts imposed by the President, many States, but particularly my own State, will receive just over $1 million—that is, Wisconsin. The State must now determine which drug task forces and prevention programs to shut down entirely and how many prosecutors to lay off. In Milwaukee, the district attorney is now talking about reducing his staff by as much as 15 percent.

State and local law enforcement have been under tremendous pressure in recent years as Federal law enforcement have focused more on terrorism and Federal funding at the local level has undergone big cuts. I believe that if something is not done to alleviate this, it will perhaps devastate our State and local efforts to combat crime. And yet the President's budget again seeks significant cuts to the Byrne program.

Do you recognize the value of this program? And are you concerned about the impact that these cuts will have on our ability to combat crime in our communities all across the country?

Mr. MUELLER. As we have discussed before, Senator, I am a great believer in task forces where you have Federal, State, and local working together. I am a great believer in funding of State and local law enforcement, particularly when it is coupled with working together with the Federal Government.

I am aware that there are grants that are going to Wisconsin. I believe it is in excess of $1 million to Milwaukee, as well as, I believe, several hundred thousand to Madison, Wisconsin, if I am not mistaken. But I am a great believer, as I say, in funding of State and local law enforcement so that it encourages participation on task forces that brings together the various Federal as well as State and local law enforcement entities.

I might also say, if I might, I know in Milwaukee itself that there have been substantial issues. We participate with State and local law enforcement there on the HIDTA, as I am sure you are aware. And I have worked with Ed Flynn, the new Chief of Police in Milwaukee, over the years, and I look forward to working with him again. He is a tremendous law enforcement officer.

Senator KOHL. Director Mueller, following on that theme, State and local law enforcement has been looking for new ways to improve the successful model of community policing. In recent years, law enforcement agencies around the country have been turning to intelligence-led policing as a way to improve their efforts to combat violent crime.

As you know, intelligence-led policing seeks to improve information sharing between law enforcement agencies and to ensure that this information can assist law enforcement in making the best possible decisions with respect to crime control strategies, allocation of resources, and strategic operations. In recent years, this administration has been investing in intelligence-led policing at the State and local level.

From your experience, does intelligence-led policing enhance community policing and improve the effectiveness of law enforcement operations?

Mr. MUELLER. Yes, and it is a—which is why, again, I am a strong supporter of task forces because I do believe what the FBI can bring to the table are the databases, the capabilities of analyzing intelligence that is derived from those who are much more familiar with the seats, and then prioritize—or the streets, I should say, and then prioritize the efforts of law enforcement on all levels to address the crimes that are bedeviling a particular community at a particular time.

Senator KOHL. So you support intelligence-led policing?

Mr. MUELLER. Yes, sir.

Senator KOHL. Do you think we need to continue to invest in it?

Mr. MUELLER. Yes, sir, and for the Bureau, as I am wont to say, as I did in my opening statement, it is that intelligence now directs us to prioritize our resources, whatever the program, whether it be public corruption or violent crime or counterintelligence or counterterrorism.

Senator KOHL. Director Mueller, as you know, the President's Intelligence Oversight Board has full investigative powers and is responsible for conducting oversight of the intelligence community and assessing whether its activities are lawful. Last week, the President issued an Executive order assigning a number of its responsibilities to the Director of National Intelligence.

It seems to me that taking oversight away from an independent board and assigning it to a member of the President's own administration appears to be an effort to thwart real oversight over the intelligence community's activities. This seems to be a theme with this administration, avoiding outside oversight and insisting that self-monitoring is sufficient.

What is the reason for this shift from independent oversight to internal oversight? And how can it be justified?

Mr. MUELLER. I am not familiar with the details of that shift, sir. I will say in my years in this position, there has not been a lack of oversight in terms of the affairs of the FBI, whether it be Congress or the Inspector General or the GAO, a number of areas. And, again, I am not familiar with the details of this shift, and so I really cannot comment on the pluses or minuses of it, sir.

Senator KOHL. But you would agree that the intelligence community does deserve oversight from beyond the administration?

Mr. MUELLER. I believe oversight is an important function of Congress. It is an important function of various elements of the Government.

Senator KOHL. Thank you so much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Kohl.

Senator Grassley.

Senator GRASSLEY. Members of the Committee, the FBI is stonewalling our congressional oversight efforts. I think this Committee needs to demand answers and stand up for our right to information from the executive branch. As we sit here today, it is nearly a year since the last FBI oversight hearing. The public cannot even obtain the official record from that hearing. It has not been printed yet because the FBI has failed to respond to more than half of the questions posed by all the members of this Committee. This ought to be completely unacceptable. The responses they did manage to provide do not really answer questions.

Mr. Chairman, I have provided you and Senator Specter a letter detailing a series of unresolved issues that I have been working on. These issues are not partisan, and are not ideological. They are basically about good government and accountability. These issues range from the use of the FBI jet to claims by FBI whistleblowers, like Michael German, Bassem Youssef, Cecilia Woods, and others I will not go into. I am frustrated with the FBI's refusal to provide us with documents on the exigent letters. So, Mr. Chairman, I would like to get a specific date from the Director and a commitment that he will fully comply, and no more monkeying around.

Now I am ready to ask questions, but I would like to have you think about that, Mr. Chairman.

Chairman LEAHY. Well, I would note this, and this will not be taken from your time. We will give extra time for this. But I would note that Senator Grassley has been probably one of the most vigorous people in oversight of either party. His oversight has never been partisan. He has been just as tough on Democratic administrations as Republican administrations.

I will work with him because I have found him to be very open on these issues of oversight, and I am directing my staff to work with your staff, Senator Grassley, to get these answers and let us work at getting them. I think it is extremely important. I think he has asked legitimate questions. They should be answered.

Senator GRASSLEY. Thank you very much.

I am going to go first, and I am going to have my staff bring down some questions so you will have them, because I want to ask a series of questions in order. Leading up to that—

Mr. MUELLER. Senator, can I just interrupt for a second and respond to the comments that you had at the outset?

Senator GRASSLEY. Yes.

Mr. MUELLER. Let me say, sir, that I do believe in oversight, as I indicated in response to the last question. When we get questions for the record, we draft the responses as quickly as we can. We send them through the process, and we hope to get them up here as fast as possible. Whenever you have had an issue with the FBI, I have tried to address that issue through the staff, and to the extent that I could not address it through the staff, I would be very

happy to sit down with you to try to address it. And, in fact, I have in the past reached out to you to discuss some of these issues.

Again, I reiterate, to the extent that there is a problem with our responsiveness, I am very happy to sit down with you and address those seriatim.

Senator GRASSLEY. Well, it seems to me that there is a problem when we do not have the record from the last hearing a year ago being able to be printed because all the questions have not been answered by all the members of the Committee, not just Chuck Grassley. But let's go on to specific questions. I would like to get to at least two. And I am going to have my staff bring these down to you.

Immigration and Customs Enforcement and the FBI recently announced a plan to postpone background checks for aliens seeking legal status to live in the United States. As of last April, there were nearly 340,000 name checks pending at the FBI. Over half of those were older than 6 months. Thanks to this FBI backlog, immigration officials are foregoing the name checks. Rather than kicking the can down the road, the checks need to be done now. Applications should be reviewed thoroughly and completely, not just rubber stamped. It only takes one error of national security to put our country at risk.

Just look at the FBI's experience with the former agent Nada Prouty. She overstayed her visa, engaged in a sham marriage to become a citizen, then pled guilty to unauthorized access to Hezbollah case information. Congress had already provided $20 million in December to take care of the backlog. Then CIS had this foolish proposal that was announced without a concrete plan to spend the money. So these four questions:

How do you plan to use the $20 million to reduce the backlog? I want to see a written spending plan for the $20 million Congress has provided. When will we get a copy of that? Are you at all concerned about national security being pushed to the side for the sake of reducing backlog? Why would the FBI agree to that policy?

Today, there are more than 600,000 people who have defied orders to leave the United States. If a green card needs to be revoked after a name check is finally done, how can you possibly be sure that the person will be located and deported?

Mr. MUELLER. I understand your concern and the concern of others sitting on this Committee, and throughout Congress, with regard to the necessity for clearing the name checks with the Bureau for those who seek to be citizens of the United States. By way of brief background, as I think you are aware, Senator, in the wake of 2001, we were requested to do a much more thorough background check on 2.7 million people, which has been the source of the backlog today.

Now, we've worked our way through much of that, but we get, in any given week, 79,000 background requests that require us to go through our files. Upwards of 70 percent of those are resolved within 30 to 60 days. With regard to the backlog, we have been working to address that with DHS, and in particular U.S. CIS, for the last year. We have hired, or will have hired by the end of March with the monies that you have indicated, upwards of 220 contractors to assist us in going through those.

We anticipate that the great bulk of the backlog will be done by July of this year and we should complete it by January of this year with the additional contractors that we have. In the meantime, we have taken steps to revise the criteria so that we could more swiftly go through this backlog, and we have also prioritized the workload so that those who have been delayed for an extensive period of time are the first ones out.

Finally, we have a Central Records complex that is being built in Virginia that utilizes the modern technology, so that once we are through this backlog in the next year, my hope and expectation is that we will not face it again.

Senator GRASSLEY. On another issue, last year I read into the record some quotes from the transcript in a Florida terrorism case where Michael German said the FBI dropped the ball. In the transcript, a white supremacist and an Islamic extremist talked about targeting Jewish reporters for assassination and the mutual admiration of Hitler.

I was shocked by your answers to written questions for the record where you suggested this was not enough to open a terrorism investigation. You have got questions on this. Isn't it true that a terrorism investigation was, in fact, opened on these subjects based on that recording? Other than this particular case, has there ever been a terrorism-related investigation involving either of the two subjects in that recording? If so, explain.

Has there ever been an investigation related to weapons charges or violent crime involving either of the two subjects? And what punishment did the FBI official who retaliated against the FBI whistleblower, Michael German, receive? Isn't this case the first time that any FBI official has ever been punished for whistleblower retaliation?

Director MUELLER. I'd have to get back to you, Senator, on the specific questions you ask as to the particular case. With regard to an individual, yes, an individual was punished. I would be happy to provide that information to your staff in terms of the extent of the punishment of that individual. As to the question as to whether this is the first time that somebody has been punished for retaliation, I can't tell you. I don't believe that's the case.

Senator GRASSLEY. Okay. Well, I'll wait for your answer in writing.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you. Thank you very much, Senator Grassley.

Senator Feinstein.

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

Mr. Mueller, let me begin by saying I do think you do a good job and I want you to know it's appreciated. I believe other members of this Committee think so, too. I do differ with you on some things. As you know, one of them is making violent crime your eighth priority. I want you to know that, according to your own statistics, violent crime rose by 4.1 percent between 1905 and 1907. Murder rates jumped almost 5 percent during the first half of 1907. Despite this trend, the number of FBI agents assigned to investigate criminal cases has dropped steadily.

Since September 11, 2001, the FBI has failed to replace nearly 2,400 agents that have been transferred to counter-terrorism squads. Many of the agents had been assigned to violent crime and gang squads and have not been replaced. The number of total criminal cases investigated by the FBI has also steadily declined. I can give you those statistics; I do not want to take the time to do it.

I am really concerned about this. In 2007, October, you told the International Association of Chiefs of Police that "We're realizing that national security is as much about reducing the number of homicides on our streets as it is about reducing the threat of terrorism." I don't believe you can do this if violent crime is No. 8 on your priority list.

I must tell you, what's happening in the cities—and I'll speak for California, and I'm going to go to your office on Monday and meet with some of your people in San Francisco, but it's a big problem. It's an increasing problem. With the cuts local law enforcement is taking, I really worry about the streets of America and what's happening. Have you at all reconsidered making violent crime your eighth priority?

Director MUELLER. Senator, as we have discussed—

Senator FEINSTEIN. Yes. Three times now we've discussed this.

Director MUELLER. I know. The national security priorities which come first are counter-terrorism, counterintelligence, and cyber. On the criminal side, it is public corruption, it is civil rights, and then transnational organized criminal groups, which are gangs, which is where we address primarily the violent crime. Now, if you look at where we are and what we had to do in the wake of September 11th, I had to shift 2,000 agents—you're absolutely right, 2,000 agents—from the criminal side of the house over to the national security side of the house to address counter-terrorism and counterintelligence. Twelve hundred of those 2,000 went to counter-terrorism, 400 went to counterintelligence, and 400 went to intelligence.

Now, I look at what we are not doing as a result of that shift. We're not doing 800 agents that were doing white-collar crime, white-collar crime cases where the loss to the bank or the institution was less than $50,000, are not being done. That is almost 10,000 cases. Eight hundred agents. We're not doing that. Nine hundred agents were doing drug cases. They are no longer doing drug cases. We had approximately 140 additional agents who were doing bank robberies who are no longer doing bank robberies.

Senator FEINSTEIN. So let me stop—

Director MUELLER. But in the meantime, I have tried to keep the agents doing violent crime and enhance it when I can.

Senator FEINSTEIN. See, this is the problem. I mean, this is the administration. You take 2,400 agents, you put them somewhere else, you don't replace them. What do I say, and others say, to chiefs of police when they come here and they say they are unable to replace the FBI's investigative gap? We've got a budget that has proposed a $3.2 billion reduction in Federal assistance to State and local law enforcement in 2008, so it's going to get hit there. I mean, we have to wake up and understand that we also have a responsi-

bility to protect the streets of America, and we're not doing that, Mr. Mueller.

Director MUELLER. We are utilizing our resources as effectively and efficiently as we can, and prioritizing to try to address it. Needless to say, additional resources would always be welcomed. But I will tell you, if you sit down and you talk to Bill Bradley, you talk to the State and local law enforcement in southern California or northern California, I think they would express appreciation for the efforts we are making. I am sure that they would say that we need more resources.

Senator FEINSTEIN. Let me ask you something. There is an article which says that you requested John Ashcroft and Alberto Gonzales to give you additional funding and agents to handle traditional criminal investigations. Is that correct?

Director MUELLER. I hesitate to get into the discussions with them.

Senator FEINSTEIN. Yes or no?

Director MUELLER. I have asked for additional resources throughout the years, yes.

Senator FEINSTEIN. Okay. Have you asked Attorney General Mukasey for additional resources?

Director MUELLER. In the course of the budget process, yes. Every Attorney General, I've asked. The Attorney General, OMB, and Congress. Yes. Those are the steps one goes through.

Senator FEINSTEIN. Now, the Seattle Post Intelligencer recently quotes a recently retired high-ranking FBI official as saying that the Bush administration is forcing the FBI to cannibalize its traditional crime-fighting units in the name of fighting terrorism. Would you agree with this characterization?

Director MUELLER. I would say we have had to take resources from our criminal programs to address national security, yes. And I think you would see that with regard to the Department of Justice's budget as well where our—the money spent on national security for the FBI is eating up money in the Department of Justice that could go to our criminal programs, but the criminal programs of DEA, ATF, as well as prosecutors. Yes.

Senator FEINSTEIN. Well, I thank you for that. I thank you for being honest, because I think we're really opening this Nation to great harm on our streets. You can't take 2,400 agents, transfer them, and not replace them. So, thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Feinstein.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Director Mueller, I'll add my best wishes to all of the people who work with you, and suggest that while this is oversight and there can sometimes be tough questions, I'm sure that every one of us appreciate your leadership and the job that your folks do.

Let me ask you a question about a letter that you and eleven other prominent members of the law enforcement and intelligence communities sent to Senate Leaders Reid and McConnell recently—January 23rd, actually—expressing concerns about the Federal media shield legislation, the so-called Free Flow of Information Act.

In that letter you suggested that those bills "will undermine our ability to protect intelligence sources and methods and could seriously impede national security investigations." The letter also said, "The high burden placed on the government by these bills will make it difficult, if not impossible, to investigate harms to the national security and only encourage others to illegally disclose the Nation's sensitive secrets.

Could you comment on whether you believe that legislation like this is really necessary at this time and what impact you believe that such a law would have on our ability to protect the Nation from terrorists and other threats to our national security?

Director MUELLER. I do believe, having spent time in the Department of Justice reviewing these particular issues, and that is the service of subpoenas upon the media and what actions to take, as well as looking at it from the perspective of an investigator in the Bureau, that the legislation is not necessary. Because of the relatively tight controls—I would say the tight controls—that you have at Justice and before you ever issue a subpoena to a member of the media.

I would also say, I think a follow-up letter that was sent from the Department of Justice in which it lists the numbers of times that subpoenas have been approved by the Department of Justice, they are minuscule, very, very few, and only in situations where we believed the information was necessary.

The process now on the Federal level, which is when a subpoena or other order is opposed, it goes to a judge who does an appropriate balancing of the adverse impact on the national security or otherwise compared to the adverse impact on the exercise of the First Amendment by the members of the media. I do believe that that balancing, in the hands of a judge who looks at the specifics of a particular case, is appropriate to resolve those issues.

Senator KYL. I appreciate that.

Let me now go to a matter that Senator Feinstein alluded to, and also to some extent Senator Grassley talked about. That is the shortage of personnel to do jobs that Congress imposes on you and that otherwise exists. I don't think you have to apologize at all for asking for, in your budget submissions, more than any administration ultimately provides.

Your job is to try to figure out what you need to do your job, and if for other reasons and prioritization the administration doesn't choose to make the full extent of those requests, you've nevertheless done your job. It's important for us to know what you think. So where there is a need for additional resources, I think it's important for you to let us know that, even though there is another process through which you go and you're part of the administration.

This has to do, as a follow-up with what Senator Grassley talked about, and it has to do with this backlog. I mean, there are a lot of different backlogs, but the one that caught my eye recently was an article in the Washington Post reporting that 44 percent of the background checks on pending immigrants have waited more than 6 months, and according to the article—and I'd like to ask if you know whether this is true or not—to cope with that backlog the Department of Homeland Security intends to announce a new policy

granting lawful permanent residence to tens of thousands of foreign nationals who have not yet cleared the FBI's National Name Check program.

Is that true? Are there additional resources you need to eliminate, as you said, the bulk of—I think we're talking about the same backlog, by July of this year, the bulk of it. And whether you either have requested additional resources or you need additional resources to accomplish that goal.

Director MUELLER. In the past we had requested additional resources, some we have gotten, some we have not gotten. But we also have received funding from the Department of Homeland Security that has enabled us to build up, as I said earlier, to a staff of almost 220 to work through this backlog.

To a certain extent, the delay is bringing the persons on board, training the persons to do the searches, as well as understanding that our files are spread throughout the United States, or paper files spread throughout the United States, as well as across the world. So we are doing everything we can. At this point I believe the money is sufficient. I would come back to you, or I'd also go back to Mike Chertoff and say it's insufficient if we were not on a path to get this done as swiftly as we can.

Senator KYL. But do I understand that. And you mentioned something in your answer to Senator Grassley's question, that some of the criteria will be revised, which was kind of a red flag for me.

Director MUELLER. Yes. Yes.

Senator KYL. Can you comment on the news report that DHS will announce a new policy granting lawful permanent residence to folks who have not yet cleared the FBI's clearance program?

Director MUELLER. I believe that they are doing that with the expectation that if it does not clear, they would revoke that particular status. I will tell you that the percentage of finding derogatory information in a background check is approximately 1 percent, and so you have a 1-percent risk that, if you are granting this to a person, that there will be derogatory information of some sort found in one of our files that would require that person's citizenship to be revoked, which is harder.

Senator KYL. Indeed, a harder task. Well, one doesn't like to see criteria revised because there's insufficient personnel to do the job in the first place.

There are other important background checks that you all do where there are also long waiting lines. Just in the last 10 seconds, I would ask your folks to just send us up a little memo about all of the different kinds of background checks you do, what the status of the backlog is, and what kind of resources you would need to clear up those backlogs within reasonable periods of time. If you need some help in having us identify what I'm talking about, I'm happy to do it. But you all know the background checks that you have to conduct, and perhaps it would be best if that came from you.

Director MUELLER. We'd be happy to do that for you.

Senator KYL. Thank you very much.

Director MUELLER. I would give you just one example, is fingerprint checks. We establish—our system, I believe, is supposed to

handle something like 68,000 fingerprint checks a day, and we're up to somewhere around 150,000 fingerprint checks a day.

Senator KYL. A day?

Director MUELLER. A day. A day. At least 150,000. It is designed to do something like 68,000. And consequently, in the wake of September 11th there have been substantial additional demands placed upon us and we are moving as quickly as possible to develop the capacity to respond to those demands.

Senator KYL. Again, those are the kinds of things I think Congress will be very willing to respond to if we understood that there was a need for additional resources. We need to hear that from you. I appreciate that very much.

Director MUELLER. Yes, sir.

Senator KYL. Thank you.

Chairman LEAHY. Thank you, Senator Kyl.

Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman. Thank you, Mr. Director, for being here today and for all your good work over the years. Also, thanks to the brave men and women who work at the FBI.

The FBI's budget proposal last year included a request for $12 million and 59 staff to open a new National Security Analysis Center, known as NSAC. According to the FBI's proposal, this new center would engage in pattern-based data mining, which, in the counter-terrorism context, is the least-proven and most intrusive version of data mining, the type of data mining that Americans have been most concerned about. It would draw on potentially billions of records.

Representatives Brad Miller and Jim Sensenbrenner were so concerned about the proposal, that they asked the GAO to look at it. In their request they said, "The expanded and sweeping scope of the NSAC bears a striking resemblance to the Total Information Awareness Program which Congress terminated funding for in 2003 because of privacy and other concerns."

Now, Mr. Director, as you know, Representative Sensenbrenner and I often disagree, but he is right on this one: there is a striking resemblance. Is the FBI continuing Total Information Awareness under another name?

Director MUELLER. No. It is not a new database. It will not create new systems. It is a better understanding of information that we are entitled and authorized to have. Consequently, I do not consider it to be, and I would be surprised if we used in the initiative, the word "data mining". It is not a data mining initiative in the sense that we would be looking at broad categories of information that we otherwise would not be entitled to have.

I would be happy to provide you a briefing on it so that you can ask the questions with regard to specifics of what we are doing.

Senator FEINGOLD. Okay.

Director MUELLER. But I am comfortable and confident that, as it will be looked at by our privacy personnel within the Department, but also outside, that it'll pass muster and pass scrutiny. It is not a data mining initiative.

Senator FEINGOLD. I do appreciate those assurances. I look forward to the opportunity to get that briefing. But let me just follow

up by pointing out that your own documents say that the FBI will use "predictive models and patterns of behavior to identify sleeper cells". Now, surely you can understand why Americans might be concerned that the FBI is planning to look at billions of records to try to identify patterns of suspicious behavior.

Experts agree that this type of data mining is not appropriate in the counter-terrorism context. A chief scientist with IBM has argued that it will "waste taxpayers' dollars and needlessly infringe on privacy and civil liberties". So I guess I'd like you to tell me what steps you've taken to test the effectiveness of this technology and to protect Americans' privacy.

Director MUELLER. I am not certain I am familiar with the citations that you gave me and whether they were specific to this particular program, understanding this program. I'd be surprised if they were. But I'd be happy to get back to you in the context of the citations you just gave me and explain to you what this program does.

Senator FEINGOLD. Okay. We will follow up. You've always been responsive on these kinds of follow-ups, so I look forward to it.

Now, under the Federal Agency Data Mining Reporting Act, which became law last summer, all data mining programs for counter-terrorism or criminal purposes have to be reported to Congress. The first set of reports were due in January.

Mr. Director, these reports are critical to congressional oversight, but we have yet to receive a report from the FBI or the Justice Department. When can we expect that report, and will you make sure it includes detailed information about the new National Security Analysis Center?

Director MUELLER. I will check where we are on the report. I'll have to get back to you on that. But as I said, we will provide you the information you need on the NSAC.

Senator FEINGOLD. And the time for when the reports will be received?

Director MUELLER. Yes.

Senator FEINGOLD. Okay.

Yesterday, I met with police chiefs from Wisconsin. Since the beginning of the year, I've held some 30 town meetings across the State in truly incredible weather, and the number of people that have come to me to talk about Byrne grants and the drug problem, which I know Senator Kohl already talked about, is really astounding.

They confirmed that significant progress has been made in combatting methamphetamine abuse, which I was very pleased to hear, but they also cautioned that heroin is coming into the State and in many of these places taking the place of meth, including the more rural northern and western parts of the State. Are you seeing a similar replacement trend in other States, an influx of heroin replacing meth as meth use is reduced? If so, what is the FBI doing to address this?

Director MUELLER. I had not heard that. I would have to go back and check on that. That had not come to my attention. In the wake of September 11th, we had to move 900 agents from drug programs over to national security. Before I made that move, I did sit down with the IACP and various representatives of State and local law

enforcement, as well as DEA, and discussed it with others at DOJ, so some of the slack could have been picked up. But we are at this juncture, as a result of what happened September 11th, not participating in addressing the drug problem in this country as we were prior to September 11th. We do it in the context of addressing gangs and violent crime.

Senator FEINGOLD. A candid response. It's concerning, but I just thought I'd alert you to what the folks in Wisconsin are telling me is happening.

Director MUELLER. Yes, sir.

Senator FEINGOLD. Government officials, as well as declassified documents issued in response to a FOIA request have recently confirmed that both the CIA and the Pentagon have issued national security letters to obtain financial records from financial institutions here in the United States. As I'm sure you are well aware, an executive order that has been in place since 1981 places primary responsibility for domestic intelligence gathering with the FBI and limits the ability of other intelligence agencies to spy domestically, and that is for good reason.

In your view, what role should the CIA and military intelligence agencies play with respect to domestic intelligence-gathering operations? If other intelligence agencies need information on Americans, aren't they usually supposed to ask for follow-up from the FBI, which would have the expertise and appropriate safeguards in place to conduct domestic operations?

Director MUELLER. I would agree that usually that is the case. In most occasions, it does. I'm not certain of the authority which accords either the Agency or DoD to issue national security letters. I would imagine—and again, I'm not that familiar with it—it relates to perhaps the involvement of their own people in illegal activities, and so it's probably a very narrow basis for the use of national security letters. I know that in almost all cases we are brought in early by NCIS or other agencies when there is a necessity for following up on a lengthy criminal case. I'd have to get back to you on that.

Senator FEINGOLD. All right. Please do. Thank you for your answers, Mr. Director.

Chairman LEAHY. Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman.

Mr. Director, thanks to you. You've been there quite a while and I think you've done a terrific job under very difficult circumstances in a very difficult time. As you know, I feel that the FISA Act is probably the most important Act of this particular Congress. I'm very concerned about the fact that it's being held up and that the retroactive immunity provision seems to be the major hold-up in this matter.

Now, it is true that we can do surveillance up to the time that the Act expired, but what do we do with regard to doing surveillance now of foreign terrorists?

Director MUELLER. Well, Senator, I do believe it's important to pass the FISA statute that was originally passed last August, for a couple of reasons. First of all, we need clarity. We need agility to utilize the technological information that is flowing across our borders in a variety of different ways. To the extent that we do not

have the clarity, to the extent we do not have the simplicity, we are hampered, hindered, in terms of being able to get the information we need as quickly as possible.

I also, in response to a question from Senator Specter, indicated that I do believe we need the assistance, the partnership of the communications carriers in order for us to be effective and efficient. They are most knowledgeable on the information that are kept in their databases and how to utilize the software that they have developed themselves in order to be responsive to our, whether it be court-ordered or national security letter, requests. We need that cooperation and partnership in order to get the information we need swiftly so we can act on it.

Senator HATCH. Now, in that regard there are some 40 lawsuits, civil lawsuits, that have been filed against telecom companies that are classified—or at least the companies are classified—asking for hundreds of billions of dollars. Now, put yourself in the shoes of the general counsel of any of these telecom companies, assuming we know who they are. The government comes to them and asks for unrestricted help to help protect this country. You're the general counsel, and they naturally come to you. What's going to be your response?

Director MUELLER. Well, I think that it's not just the general counsel, it's the CEO and the Board of Directors that are concerned—

Senator HATCH. Well, not always. The Board of Directors sometimes isn't even told about it. Certainly the general counsel is consulted, the CEO, generally. But, I mean, aren't you going to say, hey, I want some protection here?

Director MUELLER. Yes. Also, I think they'd be concerned about publicity, the costs that would be incurred in litigating it in terms of depositions, interrogatories.

Senator HATCH. Right. You're concerned about third-party discovery.

Director MUELLER. Yes.

Senator HATCH. You're concerned about interrogatories, depositions, document requests, leaking of trade secrets, confidential e-mails and correspondence, possible disclosure of informant information. All of these, right?

Director MUELLER. That's a concern, sir.

Senator HATCH. And those are likely to be disclosed if we allow these lawsuits to go forward when these companies, patriotically, volunteer to be able to help here.

Director MUELLER. I think that would be a concern to general counsel.

Senator HATCH. Is that a fair appraisal?

Director MUELLER. I think that's a fair appraisal.

Senator HATCH. I do, too. The fact of the matter is, if I was general counsel of these companies I would not want to put my foreign workers at risk if the company is an international company, and most of them are, probably. Right?

Director MUELLER. In that, I'd have to know more about the scenario to say yes. I can understand that you would not want to put your workers at risk. You would not want to put the corporate

name at risk, and you'd be concerned about the amounts of money you'd be spending in the litigation.

Senator HATCH. Well, and aren't you also worried about the Agency or the Intelligence Committee's sources and methods being disclosed?

Director MUELLER. That's an issue, yes.

Senator HATCH. It's a big issue, isn't it?

Director MUELLER. Yes.

Senator HATCH. In addition, wouldn't any verdict in the case reveal whether the government had a particular and specific relationship with the telecom and the specific details as well?

Director MUELLER. It would unless there were precautions taken. I'm not certain what precautions you could take in that circumstances.

Senator HATCH. Fine.

Do you know of any of these companies that acted improperly or did they act in response to a request from the highest levels of our government?

Director MUELLER. I have not seen an instance where a company acted irresponsibly. In the wake of September 11th, communications carriers, within the law, tried to be as helpful as they could be. They were responsive to legitimate court orders and requests from the government.

Senator HATCH. Now, regarding the idea of government substitution relating to lawsuits against telecoms, let me just be absolutely clear. This Committee rejected that idea 13:5 in a bipartisan vote, and the entire Senate rejected that idea with a 68:30 bipartisan vote. That doesn't get us away from all of these leaks and disclosures that we've been talking about, does it?

Director MUELLER. No, sir. As we indicated before with Senator Specter, we agreed to disagree on that issue.

Senator HATCH. Okay.

Now, our national security is greatly dependent on cooperation of telecom providers. We can't do this by ourselves. The Intelligence Committee just can't do it by itself. Yet, many foreign governments are in quite the opposite situation, one which gives them an advantage in certain electronic interceptions. Many foreign telecoms are run by the respective host government, isn't that true?

Director MUELLER. Yes, sir.

Senator HATCH. Many others have government officials with controlling authority over them. Isn't that true?

Director MUELLER. I'm less certain about that.

Senator HATCH. Well, we don't have that here. Those countries don't have to worry about telecom cooperation. They can simply force the telecoms to cooperate. Is that correct?

Director MUELLER. That is true in certain countries where the telecommunications industries are basically nationalized and are a part of the government.

Senator HATCH. Well, from a law enforcement perspective can you elaborate on law enforcement's dependence on the voluntary cooperation of the telecom providers?

Director MUELLER. As I tried to indicate, we need the active partnership of the telecommunications carriers in this day and age, and more perhaps than we have in the past, because of the advent of

the various means and mechanisms of communicating, whether it be cell phones or e-mail in addition to regular telephones. Where you have a profusion of carriers in a variety of fora, it is tremendously important that we work together to develop the solutions that will provide us the information we need pursuant to appropriate legal process. We have a number of voice-over IP, you have a number of other technological advances that are propounded by the companies that are growing day in and day out.

In order to keep ahead with advanced technology and be able—and I always underline it, with appropriate legal authority—to get that information, we need the partnership of those that are putting together these new means of communications and understand how they are doing it and how we can best direct our inquiries to get the information we need to protect the American public.

Chairman LEAHY. Senator Hatch wants to ask one more question and I'll allow that. But I want to be very careful. We're skirting awfully closely to some highly classified material. I know neither Senator Hatch, the Director, or anybody else wants to go into that. I would just put that cautionary note.

Director MUELLER. Thank you, sir.

Senator HATCH. I'm trying to be very careful with my questions, having been read into these various situations.

Now, there have been claims that the emergency authority in FISA allows for "instantaneous monitoring of terrorists overseas". However, this claim falls flat when people understand that it takes a great deal of time for the Attorney General or Director of National Intelligence to personally approve the request from the field.

Can you explain how local agents do not have blanket authority to begin emergency surveillance under FISA?

Director MUELLER. There's a very extensive process which requires coming through Headquarters at FBI, then going to Department of Justice, and then, depending on what path is chosen, the Foreign Intelligence Surveillance Court.

Senator HATCH. I thank my Chairman for providing me the time.

Chairman LEAHY. I'd just note, the question of liability of the telephone companies, if the telephone company gets a warrant from the FISA court then there's no question of liability is there?

Director MUELLER. No.

Chairman LEAHY. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Mueller, and welcome.

Director MUELLER. Sir.

Senator KENNEDY. I'd like to give some focus and attention this whole issue on the naturalization of many applicants here that are for governmental agencies. I think in the time that I've been in the Senate and the Chairman of the Immigration Committee, one of the most moving conversations that I've had in talking to individuals who have achieved their citizenship, they talk about the two great moments of their life. That is when they receive and are sworn in as citizens, and also the first time they go to vote. Those are two very special moments. Dr. Martin Luther King said, "The most important civil right of all is the right to vote."

Now, you know what the backlog is on those individuals that are presently in line for naturalization?

Director MUELLER. Yes.

Senator KENNEDY. Do you want to tell us what it is?

Director MUELLER. We've got a backlog, I believe, of about 300,000.

Senator KENNEDY. Now, DHS, last fall, it was 1.4 million, and they have cleared up about 350,000. As I understand it, it's about a million at the present time. That's my information on that.

Director MUELLER. That may be DHS figures—

Senator KENNEDY. DHS figures.

Director MUELLER [continuing]. On immigration as opposed to the Name Check backlog for which we are responsible, which I do believe it's in that range.

Senator KENNEDY. We have seen over the past—and I'm just showing this chart—whenever we've had a fee increase, going over the history, for naturalization, the numbers of applicants have gone up. Going back to 1998, the numbers increased sharply. In 2002, it increased sharply. April, 2004, sharply. 2008, the numbers have gone up sharply. The reasons for that are multiple.

But one of the most powerful is the desire of individuals to be able to vote. We had an important debate on the immigration issues. There were groups that were out there trying to urge people to become citizens. But it's the desire for the right to vote. So we know, predictable, because we have seen the increase in the fees that have been requested by the agencies, and the total numbers for those that wanted to become citizens have gone up, and gone up dramatically.

So at the present time there's, as I understand it, approximately a million that are waiting in line to become citizens, and we have an election that's coming up. We have an election that's coming up. We know, as you just mentioned and commented earlier, that you are prepared, one, that you took note that there's very little derogatory information on those that are even applying for a green card. It's my understanding, historically, that that's a similar pattern to those that are going in for citizenship.

Given the importance and the significance of the right to vote and given the fact that these individuals are all willing to pay the increased fees that are necessary, the resources that are necessary, why not give the assurance that these individuals are going to be cleared so that they will be able to participate and vote in the election? If we're not going to be able to do it, why not extend to them the same kinds of rights that we're giving to individuals with the green cards?

Director MUELLER. Well, I think I can go so far as to say, we will do—we are doing what we can to reduce our backlog of that 300—I've been told it's about 346,000—as soon as possible. And as I think I indicated before, by July of this year we will expect to have gone through a substantial proportion of that backlog, given the additional resources that have been provided over the last 6 months by the U.S. CIS, which has enabled us to bring on, as of March of this year, 220 cleared contractors.

We have prioritized, in the sense that those who have been waiting in line longest are given the first priority now, and as I think I indicated, by July of this year we will have hopefully eliminated all of those who have been waiting in line for more than 2 to 3

years. It will take, given the number of contractors we have, until January of last year to be totally up to date.

From our perspective, I do believe that we have to go through the process. We discuss with our counterparts at DHS periodically how we can improve it, whether it be by additional personnel or changing the criterion, but I think we're on the appropriate path to reduce that backlog. I do not see how we could do it any sooner than we are projecting. I know we are going to provide a briefing to your staff—I believe it's on Thursday—on this. Perhaps out of that briefing, we'll have other ideas that we can adopt.

Senator KENNEDY. Well, your report, in terms of seeing a reduction of this by July, so what is basically the road block, then? Is that over the Department of Homeland Security?

Director MUELLER. Right now it is with us. We've brought the contractors on. They're being trained. It's the numbers. As I think I indicated, we get 79,000 name check requests each week and it's bringing the additional personnel on. Then the constraints are, we've got paper records throughout the country. A determination was made early on, in the wake of September 11th, is you didn't just look to determine whether a file was opened under a particular name, but we're required to go and search our files where that name shows up, even if that person shows up as a witness or something else.

Senator KENNEDY. Well, as you well know, up to probably 3 or 4 months ago, even the clearance time was—the average waiting time was 7 months. That was the average time. Now you've had a blip because you had the increase in the cost. We have the election going up. But it was 7 months, as I understand it.

So with the issue, the question is, there's increased numbers, but whether those individuals are going to have the right and the opportunity to vote in the fall. Obviously, in the fall, for the general election, they'll have to have a 30-day, at least, registration period, so it means that it has to be finished by early fall. So what assurances can you give to us—or can you—about those that have been in that particular backlog that have applied at the start of this year? Will their applications be considered?

Director MUELLER. Well, we are prioritizing those applications that have been pending because they have some mention in our files someplace. We are hoping to be through the vast majority of that by July. The other thing I can say is, if you apply this week to be a citizen, you have a 70 percent chance that, within 30 to 60 days, it'll be approved by us. So the vast majority of persons that apply to be citizens, we can resolve relatively quickly.

It's those that we have a problem with that we have prioritized, we've brought on new contractors, and which we hope to resolve substantially by July, which I do believe would be, from our perspective—we then pass it back to DHS—but from our perspective would put it back in the hands of DHS well in anticipation of the election.

Senator KENNEDY. Okay.

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman. And thank you, Mr. Director, for being here once again.

I have two areas of questions. The first deals with interrogation methods and waterboarding. As you know, there's been an intense debate in the Senate and elsewhere about the propriety and effectiveness of certain interrogation techniques which many believe to be torture. Now, last December, the Washington Post reported this debate has also ranged within our most important law enforcement and intelligence agencies, and the L.A. Times made a similar report a few months earlier.

Specifically, the Post revealed the following, that at least one high-level suspect—and that was Abu Zubayda—"credibility dropped as the CIA subjected him to a simulated drowning technique known as waterboarding", that he "provided interrogators with increasingly dubious information as the CIA's harsh treatment intensified in late 2002," that "a rift swiftly developed between the FBI agents who were largely pleased with the progress of the questioning and CIA officers", that "FBI Director Robert S. Mueller, III," I think you've heard of him, "eventually ordered the FBI team to withdraw from the interrogation". That was all in the Washington Post. Those are all quotes. The L.A. Times reported that several FBI agents "had begun complaining that the CIA-run interrogation program amounted to torture."

So that's very disturbing stuff, Director, and I want to ask you these questions: one, what is your view of the effectiveness, legality, and appropriation of interrogation techniques like waterboarding? And, second, was there a rift between the FBI and CIA as described in the Washington Post?

Director MUELLER. As to the first question, I can tell you that it's been the policy of the FBI over the years not to use any form of coercion in the questioning of individuals. That policy was reaffirmed in the wake of September 11th and the direction was given not to participate in interrogations where other techniques were being used.

Senator SCHUMER. Right.

Director MUELLER. As to the—

Senator SCHUMER. I just want to know, any of the quotes I gave, are any of them false information?

Director MUELLER. Well, that would be very difficult for me to give a blanket answer because, as least to some of the quotes that you are seeking an answer for, is classified and I could not give in this forum, or respond.

Senator SCHUMER. Okay.

Well, let me ask you, was there a rift—

Chairman LEAHY. If I could interject, Senator Schumer.

Senator SCHUMER. Please.

Chairman LEAHY. You had to be out of the room, but we had gone through all this earlier—

Senator SCHUMER. I see.

Chairman LEAHY [continuing]. And that this specific concern on the area of classification. Certainly if there are other areas—

Senator SCHUMER. Okay.

Chairman LEAHY. And certainly feel free to do this some more. But if we're going in—if we have a classified area, we can always arrange a time to go into a classified session.

Senator SCHUMER. You bet. Which I'd like to do. But this will not get into classified.

Was there a rift between the FBI and CIA along the lines described here?

Director MUELLER. Again, if you're talking about particular instances, I really feel constrained not to answer in this open forum.

Senator SCHUMER. Well, I don't see how that would violate any, just saying there's a rift. I'm not asking you to describe the details.

Director MUELLER. There periodically have been disagreements, generally, without any specific—referring to any specific incident.

Senator SCHUMER. Okay.

Director MUELLER. Yes, there have been disagreements as to handling of particular witnesses over a period—

Senator SCHUMER. And you don't want to answer the question, did you order the FBI team to withdraw from the interrogation of Abu Zubayda?

Director MUELLER. Again, I cannot get into that which may—

Senator SCHUMER. Okay.

Let's go to the next area, which deals with voter fraud.

Director MUELLER. Yes, sir.

Senator SCHUMER. Attorney General Ashcroft announced a new initiative for ballot access and ballot integrity in 2001. The last time you were before this Committee about a year ago, I asked you questions about the issue of prosecutions of election fraud. You might remember at the time, there were significant allegations, never refuted in any satisfactory way, that at least two U.S. Attorneys had been summarily fired because they didn't do the political heavy lifting of pursuing phantom voter fraud cases. Without a shred of evidence, David Iglesias, New Mexico, John McKay, I believe it was, of Washington State, were accused of not being vigorous in pursuing cases.

Moreover, without a shred of evidence, the phantom voter fraud has prompted some States to require everyone to present a driver's license or other ID before voting, even though that disenfranchises the poor, the old, and many minorities who don't have IDs. This infuriates me because I think this is tampering with the wellspring of democracy for political goals. We can say, well, no, we just don't want voter fraud. Let me quote for you from the political director of the Republican Party of Texas, George Bush's home State. It's where the primaries were yesterday.

Here's what he said: "Requiring photo IDs would cause enough of a drop-off in legitimate voting to add 3 percent to the Republican vote." That's an astonishing statement. I believe, it seems to me logical, that that's what motivates some of this voter fraud stuff, it's to prevent the poor and minorities from voting. To me, it's despicable and it's something I intend to pursue.

So let me see if there's really a problem here, because the record reflects no problem. I'd like to ask you about the results, if any, that the Justice Department has gotten in 6 years of this ballot integrity and access initiative. Particularly, I want to ask you about in-person voter fraud. In other words, the type of alleged fraud that can be cured by the requirement of a photo ID.

When I say "in-person fraud" I'm talking just about individuals who show up at the polling place, try to impersonate a registered

voter in order to cast a ballot wrongly. In the 6 years since the initiative was launched, can you tell me how many investigations of in-person voter fraud has the FBI conducted?

Director MUELLER. Sir, I'm happy to sit here and respond to questions, but that was not a question that was a statement that you made that is irrelevant to my role in terms of head of the FBI.

Senator SCHUMER. I didn't ask you to adopt the statement.

Director MUELLER. I understand.

Senator SCHUMER. I asked you—

Director MUELLER. I'd be happy to answer questions.

Senator SCHUMER [continuing]. How many investigations of in-person voter fraud the FBI conducted.

Director MUELLER. I'd have to get back to you on that.

Senator SCHUMER. Could you get back to me in writing within a week?

Director MUELLER. I can get back to you, sir. Yes. I'd have to find out where it is and to what extent we need to research that to get back to you.

Senator SCHUMER. Okay.

The Brennan Center, nonpartisan, did an analysis of all 95 voter fraud cases that DOJ brought between 2002 and 2005. They found that none of these cases was a case of in-person voter fraud that could have been prevented by an ID requirement. Do you have any reason to dispute that conclusion?

Director MUELLER. I am not at all familiar with that study.

Senator SCHUMER. Okay. If, again, you could get me that answer. And I'd like it within a week, because we have another hearing on this subject. I think it's really important. If this is such a big issue that States are busy passing voter ID, it's a huge case before the Supreme Court right now that has Bush v. Gore overtones, in my judgment—you don't have to agree—I think we need those answers, and we need them rather soon. So if you would get those to me quickly, I would very much appreciate it.

Director MUELLER. Yes, sir.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Whitehouse.

Senator SPECTER. Thank you, Mr. Chairman.

Welcome back, Director Mueller. It's good to have you with us.

Following up on some of the discussion we've had about the telecom immunity issues, should the good faith of telecoms be an important factor in Congress' determination about immunity here?

Director MUELLER. I have not given any thought to that issue. I'd have to think through that before I gave you an answer.

Senator SPECTER. It's asserted fairly broadly around this room, around this building, as a rationale in favor of immunity, that because they acted in good faith—you used the term, I think, earlier, patriotically. Is that—

Director MUELLER. I would focus on other issues. It's hard to quantify good faith, in some sense. Yes. I talk about partnerships and the necessity for a partnership in order to effectively address the threats that we have today. I would focus more on the down sides, substantial down sides, of not providing immunity, retroactive immunity, that I see as being the principal rationale for the

legislation that had come out of this Committee, as opposed to the good faith—yes, the good faith of the—I believe good faith is important, but I'm not certain where it fits in the calculus as to the rationale for going forward with litigation.

Senator SPECTER. Well, let me ask it less from the point of view of going forward with the litigation, but us going forward with the—

Director MUELLER. Legislation, I meant. Not litigation.

Senator SPECTER. Then we're together.

If it were determined that telecoms that may have participated in revealing private information about Americans to the government did not act in good faith, should that affect our judgment or should we go ahead, irrespective of the fact that they did not act in good faith?

Director MUELLER. I think the legislation should go forward, but I—

Senator SPECTER. Even if they did not act in good faith?

Director MUELLER. I don't want to excuse the failure to act in good faith. If there's some evidence or indication they did not act in good faith, then I do think there should be some mechanism for addressing it.

Senator SPECTER. Yes.

Director MUELLER. But I'm not certain that the mechanism should be the failure to produce the legislation that I think it necessary.

Senator SPECTER. Isn't the mechanism for determining the good faith of a party of litigation traditionally judicial?

Director MUELLER. Yes. But there are other mechanisms. The Inspector Generals of various agencies can look at not only just the actions of the agencies, but also the actions of the private industry as they intersect with the Agency. So I believe there are other mechanisms that can be put into place to assure that there is no abuse of that legislation that may be passed.

Senator SPECTER. But if you have a party in the litigation whose good faith is at issue, isn't the judicial forum the traditional forum for that determination, not an IG someplace else?

Director MUELLER. It is one of the fora, yes.

Senator SPECTER. In fact, in the history of the Republic has there ever been an occasion that you're aware of where Congress has stepped into ongoing litigation and made its own determination of the good faith of a litigant?

Director MUELLER. Well, phrased in that way, I don't know. I've not studied it and I don't know.

Senator SPECTER. Yes. I can't think of one either, which is why I asked the question. The concern I have is compounded by the fact, is it not the case that the majority of Members of Congress have not even been allowed to see the relevant materials that would enable this institution, the Congress, to make an informed decision about whether or not telecom companies that may have participated in this activity did so in good faith?

Director MUELLER. I don't know to what extent there have been briefings on the Hill, although I would say that in many of the areas the Intelligence Committee knows about, learns about, hears about, result in legislation in which the various members of the

House or the Senate did not have full knowledge of all the information that led the Intelligence Committee to request particular pieces of legislation, apart from this particular piece of legislation.

Senator SPECTER. Let me go to another topic and follow up a little bit on where Senator Leahy and Senator Schumer went earlier. I'd like to ask you to put you in a hypothetical situation. It is 8:02 in the morning of April 19, 1995. The FBI has intercepted Timothy McVeigh. The FBI is aware that there is a device that will detonate 1 hour later, 9:02, April 19, 1995. You don't know where that device is. You have an hour. Do you waterboard Timothy McVeigh? Setting aside questions about voluntariness, setting aside questions about admissibility, you're not trying to get legal evidence now, you're on a public safety mission to prevent an explosion. Do you waterboard Timothy McVeigh?

Director MUELLER. I would prefer not to answer hypotheticals. That's the difficult question you ask. I am quite careful to say, I believe, that our techniques and our protocols are sufficient and appropriate to our mission, given our mission in the United States, which is somewhat different than the mission of others, whether it be the military or the CIA.

Senator SPECTER. In that circumstance—

Director MUELLER. That's the horror that one—that's the horror that one would not want to see. I would hesitate to—I would hesitate—

Senator SPECTER. Would you waterboard?

Director MUELLER. No. I don't feel that I can give an answer at this juncture to a hypothetical like that because of what may be drawn from an answer from that hypothetical.

Senator SPECTER. I am just saying—

Director MUELLER. I am comfortable in telling us what our policies are, what I believe our policy should be given our mission, but I am uncomfortable in answering a hypothetical along those lines.

Senator SPECTER. It could happen today.

Director MUELLER. It could happen. It could happen.

Senator SPECTER. How would you respond?

Director MUELLER. Don't know.

Senator SPECTER. You don't know how you would respond?

Director MUELLER. I do not know how I would respond because there are a number of factors I'd take into account. I'm not certain it would be my response alone, whether the response of the President, or others. And so I hesitate to—I understand the hypothetical, but I hesitate to respond in one way or another given the structure of facts you've given.

Senator SPECTER. So you cannot rule out that, under those circumstances, FBI agents would waterboard an American for that kind of information?

Director MUELLER. I'm not going to speculate as to what would be done at that point in time. I can tell you that I would, in every instance, endeavor to utilize our protocol to get the information that's necessary to save those lives.

Senator SPECTER. My time has expired.

Thank you, Chairman.

Chairman LEAHY. Thank you very much.

I was just going to ask another question, but Senator Cardin is here.

Senator Cardin.

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

Mr. Director, I regret I couldn't be here for all the hearing. We had some conflicts. But I just wanted to spend a moment with you talking about two issues that I believe fall under your priorities under civil rights enforcement, and that is the preparations that you are making in regards to this coming election, in regards to potential voter fraud. We saw, in the 2006 elections, efforts made to try to suppress the minority vote. I have raised those issues, and other members of the Senate have raised these issues with the Department of Justice.

I just really want to emphasize that, as we go into this election season, if Federal laws are violated in an effort to try to suppress participation, that the FBI will be there to assist in making sure that our laws are complied with. I think a signal given by your Agency at this point perhaps could have impact on conduct during this election season and could be a healthy thing for our country.

The second area I would like you to comment on would be the enforcement of hate crimes laws. We saw that noose incidents have increased in this country, the number of episodes has increased in many communities, including in my home State of Maryland, and I would hope that the FBI would be very vigilant here in conducting investigations to make clear that such conduct will not be tolerated in the United States.

I know that you've talked about a lot of your priorities today, but these are two areas that I think your Agency has a particular ability and expertise that local law enforcement cannot do on its own, and would ask that you be mindful of these two areas and try to direct the necessary resources.

Director MUELLER. Well, with regard to the first one relating to the election coming up and voter fraud, whenever there is an election not only is there the FBI standing by to investigate allegations, but also the Justice Department has an Assistant U.S. Attorney in every district who has set aside time and actually has been designated as the person to handle those, both the agents as well as the—and in particular, the U.S. Attorneys have some training that they've received in order to handle appropriately allegations that may come in. I would expect this election to be no different than those that we've handled in the past, and we will have persons standing by to appropriately investigate allegations.

As to—

Senator CARDIN. On that point, just to underscore.

Director MUELLER. Yes, sir.

Senator CARDIN. And I'm very happy to hear that. To the extent that that becomes well known, it can affect, I think, the conduct in communities. So I would just urge you to not be shy in letting people know that those resources are being made available, to make it clear that violations of Federal law will not be tolerated.

Director MUELLER. That's true, and we do that. But I will tell you, having had some experience with this, there are occasions where one candidate thinks that they'll get ahead by making allegations against another candidate as to voter fraud. The one thing

you don't want is a headline saying candidate X is being investigated as a result of the allegation that comes from the opponent. So we have to be—in doing our investigations we have to be—have credible evidence that warrants us moving forward, but we will be standing by and investigating it.

Senator CARDIN. I agree with that point. But when literature is sent out to minority communities suggesting that they may be arrested if they try to vote with unpaid parking tickets or where information is sent out in minority communities giving them the wrong date of the election, I think those types of activities are not partisan political areas that your involvement could have an impact on the election, but are clear indications of people that have gone over the edge and need to be dealt with.

Director MUELLER. And those are the type of allegations we would be investigating.

Senator CARDIN. Thank you.

Now, on the second point relating to the noose instances of hate crime issues?

Director MUELLER. Our number-two criminal priority is civil rights, and hate crimes falls within that ambit. To the extent that there are allegations wherever in the country, we will do a preliminary investigation and then consult with the Civil Rights Division of the Department of Justice to determine whether any further investigation is warranted in any of these incidents that you mentioned.

Senator CARDIN. I appreciate that. I just really want to emphasize the point that we've seen an alarming increase in the use of a noose in communities, which of course is the iconic symbol of bigotry in our criminal justice system over a long period of time. I just would urge us to get ahead of this, particularly with the resources of your Agency, to make it clear we won't tolerate that type of conduct for those who are violating our rights and the civil liberties of all the people of our country.

Director MUELLER. We do that. We have—it's—we have Citizens Academies at each of our field offices in which we bring in groups of citizens and have them come in for a number of weeks and learn the FBI, and these are areas in which we explore within Citizens Academies our responsibilities in this regard. We use that and other mechanisms to inform persons as to our responsiveness to such crimes.

Senator CARDIN. And just, last, I would ask that you would keep the Committee informed in both of these areas as activities unfold so that we are informed as to what you are doing in regards to the rise of instances involving nooses and the hate crimes issues, as well as problems that may develop that look like are a pattern during this election season.

Director MUELLER. Yes, sir.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I'll just be brief on a couple things. I was a co-sponsor of the Emmett Till Unsolved Civil Rights Act that gives the Justice Department, and the FBI, especially, long-overdue tools to solve unsolved murders from the civil rights era. The Till bill passed the House

of Representatives with overwhelming bipartisan support. It was unanimously voted out of this Committee. The President and the White House have urged its passage.

One Senator has put a hold on it. He expressed his belief that the Justice Department does not need additional money to solve these cases. But I understand from the press your Agency has identified over 100 civil rights cold cases that merit additional review. Do you share my concern that the FBI and the Department of Justice could use these extra resources on these cold cases, or old cases from the civil rights era?

Director MUELLER. Yes, sir. I believe we have been canvassing our field offices to determine what cases might be reopened. We identified 95 such cases, opened on approximately half of them, and are now down to 26 cases that warrant further investigation. Those are 26 cases we will be putting our agents, analysts, and professional staff on. And it competes with other priorities, so we could always benefit from support in that particular area.

Chairman LEAHY. Well, we'll continue. Both the Republicans and Democrats who have supported this will continue to try to get the Emmett Till bill passed. I'm not naive enough to think that that was an era long gone and will never come back. I've always felt that in these areas the fact that people know that eventually the law catches up with them, whether on the lynchings, the burnings, the murders, whatever, that that serves a deterrent factor.

I think many of the crimes that we saw during that era were in a time when people thought they could act with impunity and immunity. I think we have to demonstrate, no matter who you are in this country, you cannot break the laws of that nature, you cannot do those kind of things without the long arm of the law catching up. I applaud you for those areas you've been able to work in and we'll continue to try to get you the resources.

Director MUELLER. If I might just add, that effort resulted in the successful prosecution of Seale last year, as you are well aware, for the 1965—'65—killing of Charles Moore and, I think it was, Henry Dee. So justice was some time in coming, but it did indeed come.

Chairman LEAHY. And I was delighted to see that happen.

Congress has been attempting, as you know, to update the FISA, the Foreign Intelligence Surveillance Act. When we ended up in negotiations on it, both the White House and the Republicans boycotted the negotiations. I state that as a matter of fact, not as a partisan thing. The law lapsed, even though there was an attempt to continue it.

In the last few days, I've been willing to enter back into negotiations and I'm hoping the rhetoric will be lowered. When, on the one hand, the White House will say, if this lapses we lose all our surveillance, and on the other hand, we're not willing to accept a continuation of the law. It's Alice In Wonderland.

But I find that surveillance that is addressed has continued. In fact, the only circumstance I am aware of in which wire taps were uncovered—you and I have discussed this—was the report by the Justice Department Inspector General where the FBI failed to pay telephone bills in foreign intelligence undercover cases. Some wire taps were then cut off. Bills were being paid late. There was not

an adequate system for accounting on these confidential case funds. We've discussed this a little bit already in today's hearings.

What's being done to make sure this sort of thing doesn't happen? Because aside from all the political rhetoric, you can't have the same government saying, gosh, we're afraid wire taps are being cut off. But it turns out the same government hasn't paid the bill, so of course wire taps were cut off.

Director MUELLER. Well, I would be the first to say we did not have an adequate system of assuring that the bills were paid on time. I think in excess of 40 of our offices had no problem whatsoever. There were several others that did have a problem. We have tracked down the indications where—the cases where a wire was cut off, supposedly as—I think as a result of a payment of a bill, and it results to two instances, neither of which adversely affected the investigation, and the lapse was fairly short. So, it should not have happened. We have put into place new mechanisms to assure that all the bills are paid on time. But the adverse impact as a result of, in these two instances, the line going down for a matter of days was minimal, at best.

Chairman LEAHY. Thank you.

You and I discussed the bullet lead analysis problem, where the National Academy of Sciences had issued a report discrediting the bullet lead analysis done at the FBI lab. You then discontinued that. We've talked about the fact both of us had the privilege to serve as prosecutors. One of the things you never—you certainly want to convict the guilty, but what you want to make sure, is you don't have flawed evidence that convicts the innocent.

I understand you're working with the Innocence Project to release cases where the FBI bullet lead analysis was done so they can find out whether that was flawed evidence or whether that brought about the conviction. Have you shared the list of cases that have been possibly tainted by faulty bullet lead analysis with the Innocence Project?

Director MUELLER. Well, let me, if I could, say by way of background, Mr. Chairman, we did commission a study back in 2003–2004 to look at the bullet lead analysis. A study did come back and say, of the three prongs of bullet lead analysis, the analysis part of it, as well as the laboratory part of it, were appropriate, but it was the possibility in the statistical part of it that could be overstated that resulted in us determining, in 2005, that we would no longer use that, that particular mechanism.

At that time we did notify the various defense counsel organizations. We notified the various law enforcement entities back through 1996 who had requested us to do that, and took some steps to—substantial steps, I would think—to alert those who might be affected.

We have gone back now and are putting together a list of those particular cases where we did testify, trying to pull the transcripts to determine whether or not the FBI laboratory witness overstated the statistical import of the evidence, and we will work with the Innocence Project to assure that that information is provided to the appropriate person, whether it be defense counsel, prosecutor, the like. I cannot tell you at this juncture the numbers, but we do intend to work with the Innocence Project on that.

Chairman LEAHY. Thank you. If you could have your staff just keep my staff apprised as that goes on, I'd appreciate it.

Director MUELLER. We will do that, sir.

Chairman LEAHY. I commend you for looking back.

Unless you want to add something to this enjoyable morning you've had here, Director Mueller—

Director MUELLER. No. The only thing, I do want to thank you and the Committee for the recognition that it's the people of the FBI that, day in and day out, regardless of the challenge, whether it be counter-terrorism, counterintelligence, violent crime, public corruption, or serving the public well, I appreciate those comments because it is true. We are lucky to be able to work with such fine men and women. So, thank you for those comments. Thank you for your support and suggestions.

Chairman LEAHY. Thank you very much.

We stand in recess.

[Whereupon, at 12:16 p.m. the Committee was recessed.]

[Questions and answers and submission for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

September 16, 2008

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

Dear Mr. Chairman:

Please find enclosed responses to questions for the record, which were posed to FBI Director Robert Mueller following his appearance before the Committee on March 5, 2008. The hearing concerned Oversight of the Federal Bureau of Investigation. This submission provides responses to a large number of questions posed by the Committee. The Department is working expeditiously to provide the remaining responses, and we will forward them to the Committee as soon as possible.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, they have no objection to the submission of this letter.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

Keith B. Nelson
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
Ranking Minority Member

Responses of the Federal Bureau of Investigation Based Upon the March 5, 2008 Hearing Before the Senate Committee on the Judiciary Regarding Oversight of the FBI

Questions Posed by Chairman Leahy

Biometric Database

3. Currently, fingerprints are generally collected in the criminal justice system when people are arrested, and those fingerprints go into the FBI's database. Of course, when someone is arrested, often no charges are brought, or the person is found innocent. Yet many innocent people who have the misfortune of being arrested at some point may now be deprived of their civil liberties and right to privacy. Their most sensitive personal identifying information will apparently be kept in a government database unless they go through a cumbersome procedure to try to get themselves removed from it.

b. Will you commit to pursue implementing a user friendly system to ensure that those who are found to be innocent are excluded from the government's biometric database?

Response:

The FBI has committed and will continue to commit to maintaining its records in compliance with the Privacy Act, the Federal Records Act, and other applicable Federal law. Absent an expungement order, an erroneous entry in the first instance, or other good cause, the FBI is prohibited by law from deleting identification records that are properly and lawfully collected based on some criminal justice event (such as an arrest) solely because of the occurrence of a subsequent event (such as an acquittal). Nevertheless, the FBI's Criminal Justice Information Services (CJIS) Division has an effective process in place by which records are updated, corrected, and amended as events (including acquittals) unfold in the administration of criminal justice and as they are reported to CJIS by the submitting agency (a requirement that is also part of the process). As new data are added and as new technology is developed to house and manage that information, this fundamental commitment to seek accuracy and currency will remain.

In addition, and most important, the subject of an identification record can obtain a copy of the record by submitting to the FBI a written request accompanied by

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00045 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.002

satisfactory proof of identity including name, date and place of birth, and a set of rolled-inked fingerprints on fingerprint cards or other forms commonly used by law enforcement agencies. If the subject believes the record is erroneous or incomplete and wants to correct the deficiency, he or she may seek correction directly from the agency that contributed the questioned information. The subject can also seek correction from the FBI, which will forward the request to the contributing agency. Upon receipt of a communication from the contributing agency, the FBI will make the changes to the subject's record.

Bullet Lead Analysis

5. In November, the Washington Post reported that the FBI had failed to identify cases where flawed bullet lead analysis done at the FBI laboratory may have led to wrongful convictions. The National Academy of Sciences issued a report in 2005 discrediting bullet lead analysis, and the FBI stopped conducting bullet lead testing that same year. You affirmed at the hearing that the FBI has recently been working toward an agreement with the Innocence Project to release the list of cases in which FBI bullet lead analysis was used, so that the parties can work together to more effectively identify and redress possible cases of injustice. The Judiciary Committee has also requested this list from the Attorney General and has not yet received a response.

a. Has the FBI now shared this list of cases possibly tainted by faulty bullet lead analysis with the Innocence Project yet? If not, when will the FBI do so?

b. Do you support sharing this list of cases with the Innocence Project, the Judiciary Committee, and anyone else necessary to ensure that any injustice can be corrected?

Response to subparts a and b:

As is discussed in more detail in the response to Senator Leahy's November 2007 letter to the AG, in 2005 the FBI sent to the National District Attorney's Association, the National Association of Criminal Defense Lawyers, the Innocence Project, and approximately 300 agencies letters outlining the FBI's decision to discontinue these examinations. The letters were sent so the recipients could take whatever steps they deemed appropriate to ensure no one was convicted based on inappropriate bullet lead testimony.

The FBI has committed to reviewing all testimony provided by FBI Laboratory personnel in bullet lead cases that resulted in convictions in order to determine whether they testified within the scope of the science. Because the FBI performed

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00046 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.003

bullet lead examinations for approximately 40 years, we cannot readily produce a list of all cases in which bullet lead analysis was performed. Because FBI laboratory personnel who conducted bullet lead examinations also conducted other types of forensic tests, the FBI has to examine all files worked by the universe of examiners who conducted bullet lead analysis. That process is on-going. As of mid-May 2008, the FBI had identified approximately 1,270 cases (covering the period of 1975 to 2004) in which bullet lead analyses resulted in "positive" results that may possibly have formed the basis of trial testimony.

As the Director has testified, we will be working with the Innocence Project (IP) to ensure all appropriate parties are notified. Specifically, as the FBI identifies cases in which bullet lead analysis was performed, we will provide to the IP the FBI file number, the names of the contributor and prosecutor and their contact information, contributor and prosecutor file numbers, the FBI Laboratory examiner's name, the defendant's name, and the FBI's assessment of the appropriateness of the testimony provided. The FBI will also offer the IP copies of the transcripts received from prosecutors. By providing a dual notification track (that is, notification to both the prosecutor and the IP), the FBI is confident that appropriate notification will made to any defendant who was or may have been adversely affected by inappropriate FBI bullet lead testimony. The FBI will be pleased to brief the Committee regarding this process.

11. In your written testimony, you stated that Phase I of the FBI's computer upgrade program – Sentinel – was deployed in June 2007, that Phase II is expected to be completed in July 2009, and that the entire Sentinel program is to be completed by May 2010.

a. Given the well-documented delays and cost overruns of Sentinel's predecessor – Trilogy – how confident are you that Sentinel will be fully deployed by May 2010?

Response:

As part of its Phase 2 planning, the Sentinel Program Management Office (PMO) reviewed and updated the development schedule for the remaining phases of the program. This schedule, placed on contract in October 2007, includes a completion date of May 2010. The program is currently tracking this schedule and, in fact, delivered the first capabilities early.

b. Is the Sentinel computer upgrade program currently operating within budget?

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00047 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.004

c. How much will Phase II of the program cost the American taxpayers?

Response to subparts b and c:

The Sentinel Program's Phase 2 is currently operating within the planned development budget of $187 million, with an additional funding level of $10 million for Operations and Maintenance (O&M). Both development and O&M efforts are currently operating within cost and schedule.

Investigations Into Private Security Contractors

13. Congress is currently considering legislation to hold private security contractors more accountable, not only in Iraq, but in all regions in which the United States has decided to use them. This legislation would amend the Military Extraterritorial Jurisdiction Act and give the FBI authority to investigate offenses by private security contractors worldwide.

b. Does the FBI have agents and investigators currently assigned to undertake investigations overseas into incidents similar to the ongoing Blackwater investigation?

Response:

The FBI operates Extraterritorial Squads whose responsibilities include responding to and investigating overseas violations of U.S. Federal law that fall within our jurisdiction. These investigations, which are conducted only in limited circumstances, are handled by squads that deploy internationally from the FBI's Washington, New York, Miami, and Los Angeles field offices.

Questions Posed by Senator Feingold

31. Last year, the FBI's budget proposal included a request for $12 million to open a new National Security Analysis Center (NSAC). The FBI's FY2009 budget request asks for another $10 million for the NSAC. Please answer the following questions about NSAC:

a. When will NSAC be operational?

b. Will the NSAC rely on commercial data about Americans?

c. According to the FBI's FY2008 budget proposal, the NSAC would engage in "pattern analysis," which is a form of data mining, and will use "predictive models and patterns of behavior ... to identify 'sleeper cells.'" You have assured the committee,

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00048 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.005

however, that the NSAC is "not a data-mining initiative." Please provide materials, in a classified context if necessary, explaining exactly what the NSAC does, what "pattern analysis" activities it will undertake, and why you do not consider them to involve pattern-based data mining.

Response to subparts a through c:

On 4/4/08, G. Clayton Grigg, the FBI's Chief Knowledge Officer, and John A. Boyle, head of the Foreign Terrorist Tracking Task Force, provided to Senate Judiciary Committee staff a classified briefing on the background, mission, and operation of the National Security Analysis Center. It is our understanding that this briefing fully addressed all issues raised.

Questions Posed by Senator Schumer

43. The Solicitor General and the Acting Assistant Attorney General for Civil Rights recently filed a brief in the U.S. Supreme Court in *Crawford v. Marion County Election Board*, urging the Court to uphold Indiana's voter identification law.

a. To the best of your knowledge, were you or others at the FBI consulted about the prevalence of in-person voter fraud in Indiana before the Administration filed this brief?

Response:

The FBI does not track in-person voter fraud as a separate category of election fraud. The FBI would not, consequently, have been able to consult about the prevalence of that specific violation.

b. Over the last six years, has the FBI investigated any in-person voter fraud allegations that arose in Indiana?

Response:

Because the FBI does not capture in-person voter fraud as a separate category of election fraud, we are unable to track or evaluate whether in-person voter fraud is a problem in Indiana.

c. Did anyone consult you or others at the FBI about the prevalence of in-person voter fraud in Georgia, before the Civil Rights Division of the Justice Department pre-cleared that state's voter identification law in 2005?

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00049 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.006

Response:

The FBI does not track in-person voter fraud as a separate category of election fraud. The FBI would not, consequently, have been able to consult about the prevalence of that specific violation.

44. Regarding the Justice Department's Ballot Access and Voting Integrity Initiative:

a. As a part of the current initiative, has the FBI been told or encouraged to step up investigations of individual voter misconduct?

Response:

DOJ's Ballot Access and Voting Integrity Initiative reflects its renewed commitment to combating election crimes. A single instance of voter fraud dilutes the effect of a ballot that has been honestly cast, and many such instances can subvert the entire election. DOJ therefore determined that protecting the integrity of the electoral process should include the possible prosecution of individual instances of voter fraud. Rather than providing what is, in essence, immunity for an individual who commits a federal crime, this approach affords prosecutors greater flexibility and discretion and allows prosecutive decisions to be made on a case-by-case basis, as is the case in other areas of criminal law enforcement.

b. Has the FBI been told or encouraged to pursue investigations of voter misconduct even if it appears that the misconduct was accidental rather than intentional?

Response:

Knowing and willful misconduct is typically an element of voter or ballot fraud violations. Consequently, the FBI has not been asked or encouraged to pursue investigations of voter misconduct that appears to be accidental.

Questions Posed by Senator Durbin

Civil Rights

49. In April 2005, you provided data to this committee indicating that the number of FBI investigations initiated for hate crimes had decreased from 1,604 in 1994 to 478 in 2003 – a decrease of 70%. The number of FBI investigations initiated for police misconduct

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00050 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.007

decreased from 3,063 in 1994 to 1,345 in 2003 – a decrease of 56%. And the number of FBI investigations initiated for the Freedom of Access to Clinic Entrances (FACE) law decreased from 227 in 1996 to 20 in 2003 – a decrease of 91%.

a. Please provide an explanation for these dramatic decreases in FBI investigations of hate crimes, police misconduct, and FACE.

Response:

Hate crimes, police misconduct, and violations of the Freedom of Access to Clinic Entrances Act are reactive crimes that are subject to increases and decreases as a result of numerous circumstances, such as proposed legislation, the enactment of new laws, current events, and anniversaries of historical events. These statistics are also influenced by a recent revision in how the FBI approaches certain investigations. For example, the FBI recently revised its criteria for initiating civil rights cases because the complete investigations of many previously opened cases ultimately did not support all of the elements of a Federal civil rights violation. The FBI reviewed these cases to identify commonalities so that even in the early stages of an investigation we can more accurately assess whether the facts will support a Federal civil rights prosecution. This, along with enhanced training and liaison with targeted communities and state and local law enforcement officials, has resulted in a decrease in the number of cases initiated, but an increase in the percentage of those cases resulting in conviction. For example, while the FBI initiated 1,947 Federal civil rights investigations in 2003 and achieved only an 8% conviction rate, in 2006 1,223 civil rights cases were initiated with a 16% conviction rate, and in 2007 936 cases were initiated with a 22% conviction rate.

b. How can you claim that civil rights enforcement is "our number-two criminal priority" – as you did in response to a question from Senator Cardin at the oversight hearing last week – given the sizeable decreases in the FBI's investigations of civil rights violations?

Response:

As discussed above, although the quantity of these investigations has decreased, their quality and thoroughness have increased, resulting in a greater number of convictions.

50. For each of the four categories of civil rights enforcement handled by the FBI -- hate crimes, police misconduct/color of law, FACE, and human trafficking -- please provide data for the past ten years indicating:

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00051 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.008

a. the number of investigations the FBI has opened each year in each category,

b. the number of FBI investigations that were pending each year in each category,

c. the number of arrests each year in each category,

d. the number of informations and indictments each year in each category, and

e. the number of convictions each year in each category.

Response to subparts a through e:

The information in the below charts addresses the last seven fiscal years through February 2008.

Civil Rights Program
Program Metrics FY 2002 - FY 2008 (2/29/08)

	2002	2003	2004	2005	2006	2007	2008
Cases Initiated	2159	1947	1800	1736	1223	936	413
Cases Pending	1337	1224	1222	1378	1563	1584	1629
Arrests	126	134	116	152	242	238	57
Info. & Indictments	129	168	165	173	241	194	89
Convictions	188	161	162	141	197	204	55
Sources Pending	35	42	57	67	108	103	109

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00052 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.009

Hate Crimes Sub-Program							
	2002	2003	2004	2005	2006	2007	2008
Cases Initiated	652	478	375	380	263	190	132
Cases Pending	363	339	260	299	341	310	366
Arrests	31	62	69	62	33	57	16
Info. & Indictments	47	66	54	62	41	32	22
Convictions	117	74	87	65	61	56	18

Color of Law (COL) Sub-Program							
	2002	2003	2004	2005	2006	2007	2008
Cases Initiated	1385	1345	1265	1124	716	546	183
Cases Pending	841	741	783	835	894	923	898
Arrests	29	32	31	38	59	25	13
Info. & Indictments	56	57	79	65	99	77	35
Convictions	55	56	52	59	64	84	17

Human Trafficking (HT) Sub-Program							
	2002	2003	2004	2005	2006	2007	2008
Cases Initiated	58	65	86	146	126	120	52
Cases Pending	66	75	100	157	194	227	232
Arrests	65	32	16	51	146	155	26
Info. & Indictments	26	40	32	45	97	81	30
Convictions	15	18	22	14	70	57	20

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00053 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.010

Freedom of Access to Clinic Entrances (FACE) Act Sub-Program							
	2002	2003	2004	2005	2006	2007	2008
Cases Initiated	23	20	18	11	17	6	6
Cases Pending	25	20	16	14	20	14	17
Arrests	1	8	0	1	4	1	2
Info. & Indictments	0	5	0	1	4	4	2
Convictions	1	13	1	3	2	7	0

51. In your March 5, 2008 written testimony, you indicated there are 141 Special Agents working on civil rights cases. In April 2005, you provided data to this committee indicating that there were 153 Special Agents assigned to work on civil rights cases in 2003. Your April 2005 data also indicated that the actual number of agents ("work years") working on civil rights cases was 114 in 2003, down from 182 agents in 1997. This is a decrease of 37% in FBI agents working on civil rights cases.

a. Why has there been such a significant decrease in the number of FBI agents who work on civil rights cases?

Response:

Following the terrorist attacks of 9/11/01, the FBI realigned its investigative resources to mirror its new investigative priorities. As a result, a portion of the FBI's criminal investigative resources, including Agents assigned to civil rights program matters, were directed to focus on counterterrorism, which had become a higher priority matter. The FSL for the civil rights program is 138, but the actual number of Agents working civil rights matters is 151, representing a 109% utilization of civil rights resources. While the number currently working civil rights is the same as the 2003 civil rights FSL of 151 Agents, this "overburn" of current civil rights resources clearly demonstrates the FBI's continuing commitment to these important matters and, in fact, represents an increase of 25% in civil rights resource utilization.

b. Please provide data about the number of FBI Special Agents who have been assigned to work on civil rights cases each year over the past five years, as well as the number of FBI "work years" devoted to civil rights cases each year over the past five years.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00054 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.011

Response:

Civil Rights Program Program Metrics FY 2002 - FY 2008 (2/29/08)							
	2002	2003	2004	2005	2006	2007	2008
FSL	153	153	153	153	152	141	138
Resource Utilization	104.35	114.34	122.04	135.76	131.89	141.60	151.65
% FSL Utilized	68.2%	74.7%	79.8%	88.7%	86.8%	100.4%	109.9%

c. Do all 56 FBI field offices have at least one Special Agent who works on civil rights cases? If not, please explain why, and list all FBI field offices that do not have a Special Agent assigned to civil rights matters.

Response:

In each of the FBI's 56 field offices, at least one SA is assigned to work civil rights cases.

52. In 2007, the White House issued a Statement of Administration Policy on the Local Law Enforcement Hate Crimes Prevention Act that provided a short legal analysis of the bill and recommended it be vetoed by the President.

a. I realize you are bound by this statement as a matter of policy, but do you personally agree with the legal analysis set forth in this Statement of Administration Policy?

b. Do you personally agree that the bill, if passed by both houses of Congress, should be vetoed by the President?

Response to subparts a and b:

As a component of DOJ, the FBI works with DOJ to articulate the Department's and the Administration's view of proposed legislation.

54. In 2006, 12,620 law enforcement agencies participated in the FBI's hate crime reporting program. As you know, such participation is voluntary.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00055 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.012

a. Are you satisfied with the level of state and local agency participation in the FBI's hate crime reporting program? If not, please describe steps taken by the FBI to encourage more agency participation in this program.

Response:

The FBI's hate crime data collection effort is part of the Uniform Crime Reporting (UCR) program, which is a nationwide, cooperative statistical effort that depends on the voluntary reporting of Federal, state, local, and tribal law enforcement agencies. Given the voluntary nature of the UCR program, the FBI must rely on the integrity of the law enforcement community to report incidents of bias-motivated crime. In conjunction with 46 state-level UCR programs, the FBI provides training, policy guidance, and data analysis to assist the law enforcement community in support of that effort. Reported statistics indicate that from 2005 to 2006, 200 additional agencies supplied hate crime information to the FBI.

Periodically, the UCR program forwards to state UCR program managers quality reviews that identify reported hate crimes by reporting agency, listing those agencies for which no information is received. At that time, the FBI encourages the submission of any missing or incomplete information. The UCR program has strongly endorsed the collection of hate crime statistics in electronic format. Currently, over 70% of the hate crime statistics are submitted in electronic format, which significantly improves the efficiency of the reporting process.

b. Has the FBI considered making participation in the FBI's hate crime reporting program mandatory? If not, why not?

Response:

The FBI appreciates the importance of collecting hate crime information, and we are pleased to serve as the national clearinghouse for crime data collection, managing a nationwide, cooperative statistical effort with more than 17,000 Federal, state, local, and tribal law enforcement agencies voluntarily contributing data regarding crimes brought to their attention. We also learn through our participation in advisory committees and other interactions with state, local, and tribal law enforcement officials that the collection of hate crime information constitutes a financial burden that includes the costs of upgrading records management systems and of training law enforcement personnel to identify bias-motivated crimes and to report them accurately. It appears to the FBI, therefore, that the impediment to greater participation is not a lack of will but is, instead, a lack of resources.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00056 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.013

c. Among the 12,620 agencies who participated in your hate crime reporting program, over 83% of them reported that no hate crime incidents had occurred in their jurisdiction. Do you believe such reports are accurate? If not, what steps can be taken to improve the accuracy of these reports?

Response:

The FBI's UCR program relies on the law enforcement community to accurately report hate crimes. In conjunction with 46 state-level UCR programs, the FBI provides training, policy guidance, and data analysis to assist the law enforcement community in support of that effort, continually reviewing incoming information for anomalies in the reported statistics. The FBI's UCR program also conducts extensive liaison with law enforcement at all levels to resolve errors and reconcile questionable data to ensure the most accurate possible data reporting.

55. The FBI was vigilant in its effort to investigate instances of "backlash" hate crimes in the United States against Muslims, Arabs, and Sikhs in the aftermath of the terrorist attacks of September 11, 2001. Thankfully, our nation has avoided another major domestic terrorist event. Has the FBI taken any steps to develop and coordinate a response to backlash hate crimes with state and local police agencies in the event of a future terrorist attack? If so, please describe any measures taken in this regard.

Response:

Each of the FBI's 56 field offices is charged with developing good working relationships with local and state law enforcement entities and developing coordinated responses to crimes in which we share investigative responsibility. Because state and local law enforcement officials typically respond to hate crimes, FBI field offices are charged with providing training to state and local organizations regarding the recognition and investigation of hate crimes. In addition, because an effective police response relies on familiarity, trust, and cooperation, these field offices are responsible for establishing liaison with communities likely to be targeted and maintaining a dialog that ensures we know the impact on these communities of any incidents, including the likelihood of backlash responses.

Crack Sentencing Disparity

64. Crack cases represent roughly one-quarter of all federal drug cases. In 2007, African Americans represented 82% of crack defendants but only 27% of cocaine defendants. In 2007, prison sentences for crack convictions were on average 43 months or 50% longer

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00057 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.014

than cocaine sentences. During a hearing on this issue on February 12, 2008, U.S. Attorney Gretchen Shappert, testifying on behalf of the Justice Department, acknowledged the disparate impact that crack laws have on the African-American community. I understand that many in that community believe that the criminal justice system is unfair in part because of the crack laws. Based on your experiences as a prosecutor and as FBI Director, do you think that this perception of unfairness has negatively affected the willingness of some members of the African-American community to cooperate with law enforcement?

Response:

Many factors affect an individual's willingness to cooperate with law enforcement officials, including fear of reprisal, peer pressure, and simply not wanting to become involved. While these factors may include the perceived unfairness of the criminal justice system, it would be very difficult to determine the specific issues on which this perception is founded or whether an individual's general perception influenced the decision to cooperate or not cooperate in a given instance.

Sentinel

71. According to your written testimony, Phase 2 is scheduled to be implemented in July 2009, with the final four phases scheduled to conclude in May 2010.

a. Does this mean the four-phase approach has been revised to include two more phases?

b. If so, how will the FBI implement four phases between July 2009 and May 2010, a period of less than a year? Please provide details on the new phases, including deliverables and deadlines.

Response to subparts a and b:

The Sentinel Program is not adding two more phases. There have been, and currently are, only four phases to Sentinel. The development and deployment approach has been modified within those four phases, as discussed in response to Question 67c, above.

c. Please provide an update on how the FBI is working with the Department of Homeland Security, other offices in the DOJ, and other law enforcement and intelligence agencies to ensure compatibility, interoperability, and information sharing between Sentinel and other information systems.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00058 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.015

Response:

The Sentinel Program is using the DOJ-mandated National Information Exchange Model (NIEM) to develop the information-sharing interfaces to relevant external systems. The Sentinel PMO participates in monthly meetings with the FBI's Enterprise Architecture Program Office (EAPO) and DOJ's Chief Technology Officer to coordinate NIEM compliant interfaces and review other issues related to the adoption of this standard. The PMO is also working with DOJ's Enterprise Architecture Program Management Office (EAPMO) to determine how the required governance support can be provided for Phase 2 information sharing requirements. The FBI's EAPO and DOJ's EAPMO continue to work with the Sentinel contractor to identify opportunities for savings and re-use by using the NIEM. This is an ongoing effort and part of the internal business process.

The Sentinel PMO also continuously reviews and comments on updates to the Common Terrorism Information Sharing Standards and participates in regular meetings with others in the community. In addition, the PMO interfaces with the FBI's Information Sharing Policy Board, the Office of the Director of National Intelligence Information Sharing Council, DOJ's Law Enforcement Information Sharing Program, and the Program Manager for the Information-Sharing Environment Working Group.

Next Generation Identification (NGI)

75. Currently, no large scale scientific study shows that face recognition can confidently and accurately identify a criminal in a crowd, especially at night.

a. What opportunities for redress are or will be available for individuals erroneously identified as criminals by the NGI system?

Response:

NGI will leverage a proven success model. Similar to latent fingerprints, probes will be searched against the NGI photo repository and facial recognition algorithms will return the highest scoring subjects in the FBI's database, often called "candidates." This candidate list will be returned to a facial recognition expert, who will forensically examine the probe against each candidate. Should a candidate be determined to be identical, the match will be verified by a second facial recognition expert through a valid scientific method referred to as blind verification. Blind verification is conducted by providing the same probe and candidate information to a second examiner independently without being

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00059 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.016

influenced by knowing the conclusion of the first examiner. Positive identification only occurs within the NGI system when two examiners concur that a probe positively identifies a candidate in the FBI repository. Today, much like the fingerprint services provided by the FBI Laboratory's Latent Print Unit, the FBI Forensic Audio Video Image Analysis Unit (FAVIAU) scientists perform a range of forensic comparisons, including facial images. The FAVIAU is currently establishing the necessary facial recognition training and certification protocols to support the NGI system. Like the protocols governing latent fingerprint examinations, facial recognition protocols will be designed to withstand the court challenges frequently referred to as Daubert or Frye hearings. With these safeguards in place to ensure the NGI system does not result in false identifications, the opportunities for redress will mirror the opportunities provided to those identified through the FBI's IAFIS.

b. What opportunities are or will be available for individuals to correct false information?

Response:

The FBI is a custodian of criminal history and certain civil applicant information submitted by its Federal, state, local, and other contributors. To assist in ensuring the integrity of information in the NGI repository, the FBI will, as recommended by the APB, require that retainable photo data be accompanied by fingerprints to verify identity unless a special memorandum of understanding exists between the FBI and the contributor. These contributors can submit transactions to add, modify, or delete their photo information should errors, court-ordered expungements, or other circumstances require it. The FBI's Special Processing Unit can also correct information maintained in the IAFIS or NGI databases.

The subject of an identification record can obtain a copy of the record by submitting to the FBI a written request accompanied by satisfactory proof of identity including name, date and place of birth, and a set of rolled-inked fingerprints on fingerprint cards or other forms commonly used by law enforcement agencies. If the subject believes the record is erroneous or incomplete and wants to correct the deficiency, he or she may seek correction directly from the agency that contributed the questioned information (if the FBI receives such a request, we will forward it to the contributing agency). Upon receipt of a communication from the contributing agency, the FBI will make the changes directed.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00060 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.017

Immigration Name Checks

79. The USCIS Deputy Director testified in January, the FBI records system is "an antiquated paper-based system that they're only beginning now to transform." In response to my written questions in 2006, you said multi-year name check delays often happen because the agent performing the background check is in one office, while the necessary file may be miles away in another office.

a. Is it possible to digitize records as needed, so these name checks can be completed within a reasonable amount of time?

Response:

When paper files must be reviewed, the FBI is scanning these files, creating an electronic data base to which analysts have remote electronic access.

b. How many years away is the FBI from this possibility?

Response:

As indicated above, it is currently possible to digitize records as needed and the FBI is developing the CRC to serve as a central records repository, which will make this process quicker and more efficient. Because we are still in the fairly early stages of this effort, it is too early to predict when it will be fully functional.

80. I was pleased to hear that the FBI has hired additional staff and contractors to process the name check backlog.

a. What is the average number of hours needed for an employee or a contractor to complete a name check that has been delayed at least one year?

Response:

The amount of time required to complete a name check that has been pending for over a year depends on a number of factors: how many hits the name check request generates (this affects the number of FBI files involved in processing that particular name check request), the location of the files needed to process the request, whether the required files are electronically available or in paper, and the amount of responsive information needed by USCIS. In the last few months, during which we focused on resolving USCIS name checks pending for more than

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00061 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.018

four years, the average closure rate for an experienced FBI employee or contractor was 0.8 name checks per hour.

b. You testified that the FBI will have hired 220 contractors by the end of March to help process the backlog. Please list the companies or other entities that are providing the contractors.

Response:

Contractors are being provided by Millican and Associates and by Booz Allen Hamilton, and detailees are being provided by the USCIS.

81. At a February meeting with Judiciary Committee staff, USCIS officials indicated that the USCIS was engaged in an internal review of whether the name check program is necessary to ensure national security.

a. Has USCIS asked for the FBI's views for their review?

Response:

No.

b. Do you believe the name check program is necessary to protect national security?

Response:

Yes. We believe the information provided by the FBI pursuant to a name check request is vital to our customers' adjudication processes related to national security. Customers have advised that the information provided through FBI name check requests is information that is important to their process and cannot be obtained elsewhere.

Questions Posed by Senator Grassley

Immigration Background Checks

82. When you testified, I expressed concern about the new policy between the FBI and the Citizenship and Immigration Service with regard to name checks for aliens seeking status

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00062 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.019

adjustment. I would like a detailed response on how your agency will work with CIS to spend the $20 million Congress appropriated to reduce the name check backlog.

Response:

The FBI provided detailed information as to how it would use funds provided by the USCIS. That information is contained in the USCIS' spending plan, which was submitted for Congressional review.

Bassem Youssef / "Exigent Letters"

84. The Youssef letter also stated that Mr. Youssef learned that OGC had "specific and actual knowledge" that phone records were being obtained without the required legal process, such as an National Security Letter (NSL), and that "attempts to post-hoc justify the NSL were not successful." The Youssef letter claims that a series of email communications in 2004 and early 2005 demonstrate that the OGC "attempted to devise legal maneuvers" around the requirements to articulate specific facts to justify requests for records. For example, the OGC allegedly developed a concept described as an "umbrella file" or "control file." The umbrella file would be a general investigation opened based on pre-existing threats to a target, such as a bridge. These generalized umbrella files could then be cited to justify NSLs seeking phone records of individuals who would otherwise be beyond the scope of FBI authority because there was insufficient predicate under FBI regulations to open a preliminary investigation with which an NSL could be associated.

a. Did the FBI OGC propose the use of "umbrella files"?

b. Does the FBI use umbrella files to justify NSLs or other investigative activities?

c. I understand that so-called "blanket NSLs" were later issued to cover requests that could not be justified otherwise. Please explain what a "blanket NSL" is and how it is different from an "umbrella file."

d. Is the use of either a blanket NSL or umbrella file a method for obtaining records that is legal, appropriate, and compliant with FBI regulations? Please explain why or why not.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00063 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.020

Response to subparts a through d:

This matter is currently under investigation by the OIG, making it inappropriate for the FBI to comment further.

Anthrax Investigation

90. I am extremely frustrated with the inability of the FBI to determine the source of leaked information in the anthrax case. The only thing that seems to have happened so far is a reporter has been fined for refusing to name the source of the leak while the officials who leaked sensitive information escape accountability. With the FBI's ability and willingness to obtain other people's phone records, I find it hard to believe that you cannot figure out which FBI officials were talking to reporters about the Anthrax case.

a. Your previous response to this question deferred to the DOJ Office of Professional Responsibility (OPR) and its Anthrax leak investigation. What role did the FBI play in initiating that investigation?

Response:

DOJ's OPR conducted investigations to determine who leaked to the media FISA information and the name of a person of interest in the FBI's anthrax investigation. The FBI did not have a direct role in those investigations. DOJ's OIG is currently investigating who leaked to the media sensitive information regarding the initial FBI anthrax investigation. The FBI also does not have a direct role in that leak investigation.

FBI Jet

91. I have requested that the Government Accountability Office (GAO) audit the FBI's use of executive jets, but investigators there believe you will resist their requests for flight logs and other necessary documents.

a. Will you commit to providing GAO with the flight logs and other documents they need to conduct their audit?

Response:

Upon written request by the GAO, the FBI will provide all relevant documents appropriate for dissemination in accordance with 31 U.S.C. § 716 and an

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00064 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.021

agreement between the Comptroller General and DOJ. Currently some of the flight logs are classified and the FBI is required to refer these documents to DOJ's Audit Liaison Group for review by the Attorney Liaison to determine if they can be released. If the documents cannot be released, the GAO will be provided appropriate justification.

b. While there may be concerns about security, GAO has former law enforcement personnel and people with top secret security clearances to do the work. Do you have any evidence that they can't be trusted to analyze sensitive flight logs without compromising the information?

Response:

GAO's access to information is limited by statute (31 U.S.C. § 716), pursuant to which certain records are not available to GAO. These may include records relating to foreign intelligence or counterintelligence activities and records specifically exempted from disclosure by statute.

Devecchio Ruling

92. In his order dismissing murder charges against former FBI agent Lindley DeVecchio, New York Supreme Court Judge Gustin L. Reichbach stated:

> **I was particularly struck by the testimony of Carmine Sessa, former Consigliere of the Columbo family and multiple murderer, and who testified that when he and his fellow mobsters were discussing the possibility that Greg Scarpa was an FBI informant, they ultimately discounted the idea, reasoning that it was impossible for Scarpa to be an FBI informant: that it would be antinomic for the FBI, charged with fighting crime, to employ as an informer a murderer as vicious and prolific as Greg Scarpa. Apparently, and sadly, organized crime attributed to the FBI a greater sense of probity than the FBI in fact possessed.**
>
> * * *
>
> **What is undeniable was that in the face of the obvious menace posed by organized crime, the FBI was willing, despite its own formal regulations to the contrary, to make their own deal with the devil. They gave Scarpa virtual criminal immunity for**

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00065 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.022

> **close to 15 years in return for the information, true and false, he willingly supplied. Indeed, this Court is forced to conclude that Scarpa's own acknowledgement of criminal activity to the FBI could only be explained by his belief that the agency would protect him from the consequences of his own criminality, which the record suggests is what they did.**
>
> * * *
>
> **Any sentient being reading Scarpa's informant file could divine that Scarpa was involved in illegal and violent acts. While lying about his involvement in murders, Scarpa freely acknowledged a host of other criminal activities including, as noted, loan-sharking. It is a belief bordering on thaumaturgy to think that a loan-shark operation could be conducted without violence; both threatened and actual. Under all the circumstances it would have been impossible for the FBI not to appreciate that Scarpa was involved in violence. And if the Bureau was not aware of it, it would suggest a level of incompetence that this Court is not prepared to attribute to this vital law enforcement agency. At best, the FBI engaged in a policy of self-deception, not wanting to know the true facts about this informant-murderer whom they chose to employ. There was testimony at this trial that informant files were to be reviewed at the highest levels of the Agency at least once a month. Even the most cursory review would have revealed the extent of Scarpa's criminality, which, as the Court has observed, it appears obvious the Bureau was not interested in knowing (Nov. 1, 2007).**

Given this blunt criticism and claims about the evidentiary record, I am curious about whether the FBI has taken any actions in response to this ruling.

a. Does the FBI disagree with any of the above claims? If so, please describe in detail which, if any, lack a factual basis and why.

Response:

> While the New York state criminal proceeding against Mr. DeVecchio was dismissed on 11/1/07, a closely related civil action remains pending against the United States and other defendants in the United States District Court for the

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00066 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.023

Eastern District of New York. Consequently, while the FBI disagrees, in part, with the comments made by Judge Reichbach in his order dismissing the criminal case, we are limited in our ability to respond to this question.

It is not true that the FBI had no interest in knowing about criminal activity by one of its informants. In fact, as is a matter of public record (*see, e.g.*, *Orena v. United States*, 956 F. Supp. 1071 (E.D.N.Y. 1997)), the FBI obtained sufficient evidence to federally indict Mr. Scarpa on RICO murder charges in 1992. Further, as a result of the discovery of informant misconduct occurring in Boston during roughly the same time period, the FBI's policy regarding the use of confidential human sources has been modified in an effort to avoid similar problems in the future.

It is important to understand the vital role confidential human sources play in the conduct of criminal investigations including, in particular, organized crime investigations. The successes the FBI has achieved in addressing the threat posed by organized crime would not have been possible without the use of sources, who provide the FBI with the direct, first-hand intelligence that furnishes probable cause to initiate undercover operations and Title III interceptions of criminal conversations. This vital information rarely comes from law-abiding citizens, but instead from those affiliated (as either members or associates) with the organization under investigation. This is because those affiliated with the organization under investigation are likely to have the best information about the organization, which in this case was the Colombo La Cosa Nostra Family. The FBI's use of Mr. Scarpa as an informant must be viewed in this context; he was used as an Organized Crime informant during the Colombo family "war" in the early 1990s, which was a time of intense mob violence in New York when at least 14 people were murdered and numerous others were seriously injured in frequent shootings.

It is also important to understand the FBI's policies and procedures regarding human sources in effect both now and during the time former SA DeVecchio was working with Mr. Scarpa. There was not then, nor is there today, a prohibition against operating as a source one who has been involved in criminal activity because, as indicated above, these individuals are often the source of the information the FBI needs to advance an investigation to a successful conclusion. The key to operating a source is control, over both the source and the source's activities, during the investigation. To be sure, FBI policy does not permit the operation of sources who engage in murder or other violent crimes. However, then, as now, FBI policies and procedures have permitted the limited involvement

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00067 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.024

of sources in criminal activity, when justified as a matter of investigative necessity.

Policy regarding review of a source's file in effect at the time former SA DeVecchio was operating Mr. Scarpa as a source required the review of source files every 90 to 120 days by the squad supervisor, and more frequently in "sensitive cases" ("sensitive cases" typically involve the operation of attorneys, physicians, and members of the clergy). Under that policy, because Mr. Scarpa was being operated by a Supervisory SA, the file review should have been conducted at a level higher than squad supervisor, but Judge Reichbach's statement that policy required review of the file at the "highest levels of the Agency at least once a month" was not accurate. The vast majority of FBI SAs and their supervisors who deal with the thousands of sources operated by the FBI do so in a manner consistent with FBI policy and AG Guidelines. The FBI has taken proactive steps to prevent future recurrences of the transgressions identified in this and other cases.

b. Have any of the FBI personnel involved in the activities criticized above and who are still employed with the FBI been the subject of referrals to Office of Inspector General or the Office of Professional Responsibility? If so, please describe the outcomes of those investigations. If not, please explain why not.

Response:

SA DeVecchio retired from the FBI in October 1996. An allegation involving a second FBI SA was reviewed by the FBI's New York Division, Criminal Investigative Division, and Office of the General Counsel. Based on these reviews, the FBI's Inspection Division determined that the allegation was without merit and that it did not warrant the initiation of an administrative inquiry. To the best of our knowledge, there have been no other formal referrals regarding any of the referenced individuals who are current FBI employees.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00068 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.025

Senator Edward M. Kennedy Questions for the Record
Senate Judiciary Committee Hearing on "Oversight of the Federal Bureau of Investigation"
March 5, 2008

Criminal History Background Checks

In a June 2006 report to Congress on criminal history background checks, the Attorney General stated that even though the FBI's database "is quite comprehensive in its coverage of nationwide arrest records for serious offenses, [it] is still missing final disposition information for approximately 50 percent of its records." In other words, in about half of its arrest records, the FBI database doesn't show whether initial charges were dropped or the individual was acquitted.

That's unacceptable, especially since more and more employers are using FBI rap sheets to do criminal background checks on job applicants. The FBI provides about 5 million background checks a year for employment and licensing purposes. Some private employers can also obtain access to FBI records. When the records are incomplete or inaccurate, they give a distorted view of the labor market.

It's obviously unfair to job applicants. When rap sheets are incomplete, employers may never learn that an applicant was cleared of any charges. Because racial profiling is still a reality in many communities, the problem disproportionately affects African-American and Latino applicants, and employers are also more likely to penalize minorities for having a criminal record.

I understand that the FBI has also proposed regulations to add "non-serious offenses" to the rap sheets. Non-serious offenses are juvenile offenses and offenses that are less than misdemeanors, such as loitering, vagrancy, and traffic violations. This change will only compound the problems caused by incomplete and inaccurate rap sheets.

Questions:

1. **Are you familiar with the Attorney General's report two years ago that nearly half of the arrest records in the FBI database have no information on the final disposition of the arrests?**

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00069 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.026

2. **Do you agree that it's important to guarantee that the FBI database is accurate and reliable?**

3. **Has the FBI made any effort to make sure that employers receive only accurate and complete information about the criminal history of workers?**

4. **Studies show that African-Americans are 15 times more likely than Whites to be arrested for "non-serious offenses," even though less than 20% of these arrests result in convictions. Do you agree that releasing non-serious offense records to employers will raise even greater concerns?**

5. **Making employment-related background checks more accurate would not only provide fairness to the people who are affected; it would also improve the safety and security of our workforce, and help more companies meet their employment needs. When the FBI does background checks on firearms purchasers, it already looks for complete arrest records, so we know such efforts are possible. Do you agree that the FBI needs to improve the reliability of information that's distributed to employers?**

Interrogation Practices

As you know, the nation continues to be haunted by the issue of torture. The 2002 Bybee "torture memo" by the Office of Legal Counsel defined torture in an absurdly narrow way. Along with the photos from Abu Ghraib prison, the memo caused worldwide outrage when it came to light. Just the other day, additional shocking photos from Abu Ghraib were revealed. We're still trying to learn the details of two additional torture memos issued in secret by the Office of Legal Counsel in 2005. We've learned that the CIA destroyed videotapes showing the use of abusive interrogation techniques. Both the Attorney General and the Director of National Intelligence have acknowledged that waterboarding would be torture if used against them, but they refuse to say that waterboarding is unlawful when used against others. The CIA's secret "black sites" and Guantanamo Bay continue to be symbols of the Bush Administration's hypocrisy and cruelty in the treatment of detainees.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00070 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.027

As you testified at the hearing, the FBI has long held the view that non-coercive forms of interrogation work best. But the Administration has consistently ignored Congress and the Bureau on the issue, and its torture policies have stained America in the eyes of the world. Any day now, it's expected that the President will add insult to injury by vetoing a bill to strengthen our prohibitions against torture.

The bill requires all U.S. government agencies—including the CIA—to comply with the Army Field Manual's standards on interrogation, which are consistent with the FBI's standards. As military leaders have long recognized, this approach will produce better intelligence, end worldwide outrage over our interrogation practices, and protect our own personnel from abusive treatment abroad.

Questions:

1. **Do you agree that the Army Field Manual's standards should be applied to all U.S. government interrogations? The Field Manual allows flexibility for interrogators, but it leaves no doubt that torture can never be used.**

2. **In September 2006, the Army's top intelligence officer, Intelligence Lt. Gen. John Kimmons, said: "No good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tells us that."**

    a. **Do you agree with General Kimmons?**

3. **A *Washington Post* article last December reported that the FBI and the CIA have repeatedly clashed over the use of coercive interrogation techniques. In the case of Abu Zabaida, the article said, "Tensions came to a head after FBI agents witnessed the use of some harsh tactics, including keeping him naked in his cell, subjecting him to extreme cold, and bombarding him with loud rock music." The article said that you eventually ordered the FBI to withdraw from the interrogation, because Bureau procedures prohibit agents from being involved in such techniques.**

    a. **Is the *Washington Post*'s account of the FBI's role in the Abu Zabaida interrogation accurate?**

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00071 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.028

4. **Many news stories have described a rift between the FBI and the CIA over interrogation, with the Bureau unwilling to go along with the CIA's extreme techniques and its cavalier approach to the law. It's been reported that the FBI withdrew personnel from Guantanamo because of the abuses that were occurring at the prison camp. FBI documents have catalogued the coercive techniques used there. One FBI agent told of observing a detainee who had been shackled overnight in a hot cell, soiled himself, and pulled out tufts of hair in misery. Another agent reported seeing detainees chained from hand to foot in the fetal position for up to 24 hours.**

    a. **Can you comment on the FBI's experience in Guantanamo—what the Bureau observed there, what role it played, how you came to withdraw your interrogators, and why?**

    b. **Can you comment on the rift that's been described in the media between the FBI and the CIA over interrogation techniques?**

    c. **What is your view of the CIA's so-called "enhanced interrogation program"? It clearly goes beyond any of the techniques the Bureau allows. Do you believe the CIA's "enhanced" techniques are not only unlawful, but also ineffective?**

5. **What can you tell us about the progress of the FBI investigation of the interrogation videotapes destroyed by the CIA? Attorney General Mukasey has said that the FBI has a lead role in the investigation.**

6. **In testimony before this Committee in January, Attorney General Mukasey was unclear on whether he would allow the investigation of the destroyed tapes to include the conduct shown on the tapes. Has the Attorney General authorized the FBI to investigate the content of the tapes, not just the act of destroying them?**

    a. **Is the FBI investigating whether the conduct shown on the tapes is torture?**

    b. **Will you make a public commitment that, to the extent you have the authority to do so, you will permit your investigators to look into the conduct shown on the tapes?**

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00072 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.029

7. **Have you taken any steps to decide whether investigations of other possible past acts of torture are needed? Have you considered whether an FBI investigation is needed for interrogations at Guantanamo?**

8. **In a recent study entitled "Captured on Tape: Interrogation and Videotaping of Detainees in Guantanamo," Professor Mark Denbeaux and colleagues used publicly available documents to examine interrogation practices at Guantanamo. They found that: (1) the FBI is one of many entities that has interrogated detainees at Guantanamo; (2) more than 24,000 interrogations have been conducted at Guantanamo since 2002; (3) every interrogation conducted at Guantanamo was videotaped; (4) the government kept meticulous logs of information related to interrogations at Guantanamo, so we know which videotapes documenting interrogations still exist, and which videotapes have been destroyed; and (5) any videotapes that still exist are in danger of being destroyed.**

    a. **Is each of these five statements accurate?**

    b. **What steps has the FBI taken to make sure that all videotapes of interrogations at Guantanamo are preserved?**

    c. **Will you commit to doing everything in your power to see that all of these videotapes, known and unknown, are preserved?**

    d. **Do you think all detainee interrogations should be videotaped? What is the official FBI policy on this question?**

    e. **If you believe that any of the information needed to respond to the previous four questions is classified, will you commit to providing your answers to the Committee in a classified setting?**

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00073 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.030

SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF ROBERT S. MUELLER, III
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
BEFORE THE JUDICIARY COMMITTEE
OF THE UNITED STATES SENATE
MARCH 5, 2008

Good morning, Chairman Leahy, Senator Specter, and members of the committee. I am pleased to be here today.

After the attacks of September 11, 2001, the Federal Bureau of Investigation's (FBI) priorities shifted dramatically as we charted a new course, with national security at the forefront of our mission. The intervening six years have seen significant changes at the FBI, and we have made remarkable progress. Today, the FBI is a stronger organization, combining greater capabilities with a longstanding commitment to the security of the United States, while at the same time upholding the Constitution and the rule of law and protecting civil liberties.

The FBI uses an enterprise-wide approach to understanding our threats and strategically targeting our resources to dismantle those threats. To stay ahead of national security threats, the FBI uses intelligence not just to pursue investigations, but also to develop greater awareness of the threats we face. The FBI structures its investigations to maximize the intelligence that can be derived from them to ensure that we fully exploit all of the intelligence collected. We also use this understanding to deliberately and strategically decide where and when to take action using intelligence, law enforcement, and other tools to detect, penetrate, and dismantle threats.

Today, I want to give you a sense of the FBI's current priorities, the changes we have made to meet our mission, and the challenges we are facing. I want to touch on some of our accomplishments and discuss long-term strategy for continued improvement of our intelligence operations, our information technology, and our human capital.

National Security Branch

Since September 11, 2001, the FBI has implemented significant changes to integrate our intelligence and operational elements and to enhance our ability to counter today's most critical threats. We have built upon our capacity to collect information and improved our ability to analyze and disseminate intelligence. Development of the National Security Branch (NSB) has been another step in enhancing the FBI's mission as a national security agency.

The NSB comprises the FBI's Counterterrorism Division, Counterintelligence Division, the Directorate of Intelligence, the Weapons of Mass Destruction Directorate, and the Terrorist Screening Center. The NSB's mission is to lead and coordinate intelligence efforts that drive actions to protect the United States. Our goals are to develop a comprehensive understanding of

53361.031

the threats and penetrate national and transnational networks with the desire and capability to harm us. Such networks include terrorist organizations, foreign intelligence services, those that seek to proliferate weapons of mass destruction, and criminal enterprises.

To be successful, we must understand the threat, continue to integrate our intelligence and law enforcement capabilities in every FBI operational program, and continue to expand our contribution to the intelligence community knowledge base.

Under the leadership of the NSB, the FBI has continued to make tremendous progress integrating intelligence and investigative expertise. A veteran counterterrorism agent recently became Executive Assistant Director of our National Security Branch. He exemplifies the caliber of the FBI's national security management team, and has played an integral role in shaping the FBI's new enterprise-wide counterterrorism strategy. I am confident he will build on the great foundation laid by his predecessors and successfully lead the FBI's national security mission into the future.

Counterterrorism

The mission of the Counterterrorism Division is to lead law enforcement and domestic intelligence efforts to defeat terrorism.

In the past six years, we have dramatically strengthened our ability to combat terrorism, and have had great success identifying, disrupting, and dismantling terrorist networks and threats. Today, intelligence is woven throughout every program and every operation. Much of our progress has been the result of investigative expertise gained in our nearly 100 years of our existence. That experience has allowed us to build enhanced capabilities on an already strong foundation.

Operational Successes

Building on this strong framework, we have seen numerous operational successes through our Joint Terrorism Task Force (JTTF) partnerships in the fight against international terrorism. With them, we dismantled a terrorist cell plotting to attack John Fitzgerald Kennedy (JFK) International Airport and to ignite an underground fuel pipeline. We stopped a cell of six individuals plotting to attack a government facility, most likely the army base at Fort Dix, New Jersey. We stopped an individual who planned to attack a shopping mall in Rockford, Illinois, with hand grenades.

We also collaborated with our federal and foreign partners on several counterterrorism investigations, including a joint FBI-Immigration and Customs Enforcement (ICE) investigation that resulted in the indictments of 40 individuals; investigation of car bombs in London and at the Glasgow, Scotland airport; and disruption of a planned attack on U.S. targets in Germany.

The FBI continues to play a vital role in U.S. military operations overseas to protect the U.S. and its interests from terrorism. FBI intelligence derived from Iraq and Afghanistan led to numerous threat assessments and initiation of preliminary and full investigations.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00075 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.032

The Weapons of Mass Destruction Directorate (WMDD) tasked field offices to conduct investigative activities on sources of possible WMD proliferation in the U.S. In 2007, the WMDD provided field offices with intelligence that led to more than 100 counterproliferation investigations. Other accomplishments include the indictment of a nuclear engineer suspected of mailing multiple WMD hoax letters; the indictment of a person responsible for an Internet-based threat to attack football stadiums with improvised radiological devices; and assistance to the United Kingdom in an investigation of the use of Polonium-210.

In addition, we have organized numerous international seminars and training conferences, and have worked to build relationships with our private and public sector partners. The WMDD also supported the Global Initiative to Combat Nuclear Terrorism, a joint U.S.-Russian initiative that seeks to enlist the support of willing partner nations to combat nuclear terrorism.

Law Enforcement Partnerships

Working with our federal, state, local, and tribal partners is key to our collective success. Three primary examples are set forth below, including our JTTFs, the Terrorist Screening Center, and the Foreign Terrorist Tracking Task Force.

Since 2001, we have tripled the number of 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. With nearly 3,900 task force members, these JTTFs have been essential in breaking up terrorist plots across the country, from Portland, Oregon; Lackawanna, New York; Torrance, California; and Rockford, Illinois; to the recent plots in Fort Dix, New Jersey and at JFK Airport.

The Terrorist Screening Center (TSC) – now under the umbrella of the National Security Branch – manages the one, consolidated terrorist watchlist, providing key resources for screeners and law enforcement personnel. These include a single coordination point for terrorist screening data; a 24/7 call center for encounter identification assistance; access to a coordinated law enforcement response center; a formal process for tracking encounters; feedback to the appropriate entities; and a process to address misidentification issues.

The Foreign Terrorist Tracking Task Force (FTTTF) uses innovative analytical processes and unique proprietary technologies to find, track, and remove known or suspected terrorists by tracking their electronic footprints. The FTTTF collects and analyzes a wide range of FBI, U.S. Government, and public source data, from biometric data to travel records, to keep foreign terrorists and their supporters out of the United States, and, if necessary, to locate, detain, remove, or prosecute such persons. Participants in the FTTTF include the FBI, the Department of Defense, U.S. Immigration and Customs Enforcement, Customs and Border Protection, and other representatives from the U.S. intelligence community.

The FTTTF also works with foreign partners, including Canada, Australia, and the United Kingdom in this effort. To meet its mission, the FTTTF has put in place information sharing agreements among participating agencies and other public and proprietary companies to aid in locating terrorists and their supporters who are or who have been in the United States. The FTTTF also has access to more than 70 sources of data containing lists of known and suspected

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00076 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.033

foreign terrorists and their supporters. The FTTTF shares data with the U.S. Intelligence Community and other government agencies to create a centralized data mart for use by trained FTTTF analysts.

Changes in Structure

As part of the FBI's efforts to develop an enterprise-wide understanding of threats and a strategic approach to dismantling those threats, the Counterterrorism Division has realigned its International Terrorism Operations Sections (ITOS). This realignment took effect on January 14, 2008, and will aid us in creating a comprehensive understanding of the threat environment, rather than just one aspect of a larger threat.

Instead of being structured by program (e.g., al Qaeda, Hizballah, Hamas), ITOS sections are aligned geographically to target comprehensive intelligence collection on terrorists and their activities. Two Strategic Operations Units – staffed with analyst and agent "Desk Officers" – will exploit subject matter expertise on the presence, nature, and scope of terrorist enterprises and their activities to drive operational activities against terrorist networks. Counterterrorism Desk Officers will work closely with Desk Officers from the FBI's Directorate of Intelligence, as well as from the intelligence community, to build a global understanding of terrorist enterprises and to target and dismantle these enterprises.

Today, we are focused on prevention, not simply prosecution. We have shifted from detecting, deterring, and disrupting terrorist enterprises to detecting, penetrating, and dismantling such enterprises – part of the FBI's larger culture shift to a threat-driven intelligence and law enforcement agency.

Counterintelligence

Foreign counterintelligence is a crucial component of the FBI's overall strategy, second only to counterterrorism. As a lead agency for foreign counterintelligence in the United States, the FBI has the responsibility to oversee the integration of U.S. law enforcement and intelligence efforts to mitigate this ongoing and daunting national security threat, consistent with our laws and policy.

Operational Successes

In Fiscal Year (FY) 2007, the FBI's counterintelligence efforts resulted in 24 convictions of persons seeking to do the United States harm by stealing our nation's most sensitive secrets.

Leandro Aragoncillo, a former FBI analyst and White House military staff member, was sentenced July 18, 2007, to 10 years in prison for espionage. He was arrested September 10, 2005, and pleaded guilty to three counts of espionage in a Newark federal court. While employed as an FBI analyst, Aragoncillo utilized FBI computer systems to search for documents pertaining to the Philippines, which he then downloaded and passed to Philippine political opposition figures seeking to oust the elected president. The investigation also determined that Aragoncillo's espionage activities had begun several years earlier, when he was a U.S. Marine assigned to the Office of the Vice President. Aragoncillo admitted to having passed material classified as high as Top Secret. Aragoncillo is believed to have stolen information from

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00077 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.034

hundreds of documents belonging to the CIA, the Department of State (USDS), the Defense Department (DoD), and FBI.

In December 2006, Fei Ye and Ming Zhong pleaded guilty in the Northern District of California to economic espionage to benefit a foreign government – the first such convictions under the Economic Espionage Act of 1996. Both Ye and Zhong were arrested on November 23, 2001, at the San Francisco International Airport with stolen trade secrets in their possession. Ye and Zhong stole trade secrets belonging to Sun Microsystems, Inc., and Transmeta Corporation. Ye and Zhong had formed a company in The People's Republic of China (PRC) called Supervision, Inc. to manufacture and market a computer microprocessor based on stolen trade secret technology. The city of Hanzhou and the province of Zhejiang in the PRC were government entities that had agreed to provide funding and share in the profits of the enterprise benefitting from the stolen technology. Ye and Zhong had also applied for funding from the National High Technology Research and Development Program of China, commonly known as the "863 Program."

In August 2007, a joint U.S. Immigration and Customs Enforcement and FBI investigation culminated in Xiaodong Sheldon Meng, a Canadian citizen and former Chinese national, pleading guilty to one count of economic espionage and one count of violating the Arms Export Control Act (AECA). Sentencing is scheduled for this year. Meng, a former employee of Quantum3D, Inc., in San Jose, California, stole numerous Quantum3D products designed for precision training of U.S. military fighter pilots in night vision combat scenarios. Meng passed the stolen technology for use by the Chinese People's Liberation Army Air Force, the Royal Malaysian Air Force, and the Royal Thai Air Force.

Counterintelligence Partnerships

The FBI also continues to work closely with its federal and private sector partners to coordinate activities and operations to counter foreign intelligence against intellectual property innovations that may impact national security.

The Domain Section of the Counterintelligence Division continues to expand counterintelligence outreach in all 56 Field Offices to state and local governments, universities and colleges, business communities, utilities and energy providers, as well as health, agricultural and other entities within any given territory.

For example, the National Security Higher Education Advisory Board provides a forum to discuss issues that affect not just the academic culture, but also the country, from campus security and counterterrorism to cyber crime and espionage. Presidents and chancellors from Carnegie Mellon, Penn State, NYU, UCLA, the University of Washington, and Iowa State, among others, share their concerns and their collective expertise. This group met three times this past year.

We also work closely with others in the Intelligence Community to address counterintelligence threats. We are part of a multi-agency effort to focus on one priority country's acquisition of sensitive technology. Through this effort, we are sharing intelligence

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00078 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.035

with foreign allies and working cases together. To date, 27 persons have been arrested in connection with this ongoing investigation.

Through these and other investigations, programs, and partnerships, we will continue to ensure that all available means are brought to bear to identify, prevent, and defeat intelligence operations conducted by any foreign power within the United States or against U.S. interests abroad.

Directorate of Intelligence

The Directorate of Intelligence is responsible for intelligence policy, strategic analysis, and intelligence collection management within the FBI. The FBI's intelligence program is defined by enhanced analytical capabilities, state of the art information technology, and an integrated intelligence structure.

We have doubled the number of intelligence analysts on board, from 1,023 in September 2001 to more than 2,100 today. We have increased the number of onboard language analysts from 784 in September 2001 to more than 1,300 today. We integrated our intelligence program with other agencies under the Director of National Intelligence.

But these agents and analysts are not merely collecting intelligence, they are acting on the intelligence, and disseminating it to those who need it, when they need it. For example, in FY 2007, the FBI disseminated 8,238 Intelligence Information Reports, and produced 244 Intelligence Assessments and 297 Intelligence Bulletins. This represents an increase of 1,008 total unique intelligence products over the same period in 2006. Our analysts played a key role in the National Intelligence Estimate on the threat to the Homeland and are regular contributors to Intelligence Community products. The vast majority of our products are available on the various intranet sites established by the Intelligence Community, and a substantial number of products are placed on the Law Enforcement Online network for our state, local, and tribal law enforcement partners.

We also have established Field Intelligence Groups (FIGs) in each of our 56 field offices, combining the expertise of agents, intelligence analysts, language analysts, and surveillance specialists. These FIGs serve as the lens through which field offices identify and evaluate threats. Through the FIGs, field offices contribute to regional and local perspectives on criminal and terrorist issues. FIGs also provide the intelligence link to the JTTFs, the state and local fusion centers, FBI Headquarters, and the Intelligence Community at large. In addition, FIG personnel have been embedded in numerous fusion centers and multi-agency intelligence centers across the country.

We are in the process of restructuring our FIGs, so they can better coordinate with each other, with street agents, and with agents and analysts at FBI Headquarters. I will discuss this in greater detail below.

Cyber Division

Protecting the United States against cyber-based attacks and high-technology crimes is the FBI's third priority.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00079 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.036

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.

We have reorganized the Cyber Division to improve its efficiency and effectiveness. We aligned the cyber intelligence program to identify and neutralize the most significant cyber threats. We now review caseloads, statistical accomplishments, and the utilization of sensitive investigative techniques on a monthly basis to ensure we are properly allocating our resources.

As a result of this strong framework, we have achieved significant results in both computer intrusion investigations and cyber crime investigations, including child exploitation cases.

Computer Intrusions

For example, an ongoing cyber crime initiative between the FBI and the Department of Justice 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 computer hacker. To date, we have shut down numerous botnets and have arrested and charged several botnet hackers with computer fraud and abuse.

Increasingly, cyber threats originate outside of the United States. 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.

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 2,400 in FY 2007. In total, more than 6,800 child predators have been convicted 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

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00080 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.037

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 on child exploitation cases is not limited to domestic activities. 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.

Cyber Partnerships

In the past six years, we have made every effort to build on existing partnerships to combat cyber crime.

The Internet Crime Complaint Center (IC3) is an alliance between the National White Collar Crime Center and the FBI. The mission of IC3 is to address crime committed over the Internet. For victims of Internet crime, IC3 provides a convenient and easy way to alert authorities of a suspected violation. For law enforcement and regulatory agencies, the IC3 offers a central repository for complaints related to Internet crime, uses the information to quantify patterns, and alerts federal, state, and local law enforcement to current crime trends.

To date, the IC3 has received more than one million consumer-filed complaints. More than 505,000 of these complaints have been referred to federal, state, and local law enforcement. In 2007, the IC3 received more than 206,000 complaints primarily related to the Internet, from online fraud and computer intrusions to child pornography. IC3 referred more than 90,000 complaints of crime to federal, state, and local law enforcement agencies for further action, with a reported loss in excess of $239 million

The FBI's IC3 Unit analyzes and links the related information from the consumer complaints received and has referred more than 5,400 identified cases, with an accumulative loss in excess of $386 million to law enforcement, resulting in more than 1,200 known investigations. In 2007, the FBI's IC3 Unit referred 637 cases to law enforcement, with a reported loss of more than $132 million.

The Cyber Initiative Resource Fusion Unit (CIRFU) is another example of collaboration. CIRFU is a fusion center, combining the resources and the expertise of law enforcement and the private sector. One can think of CIRFU as a hub, with spokes that range from federal agencies, software companies, and Internet Service Providers, to merchants and members of the financial sector. Industry experts from companies such as Bank of America and Target sit side-by-side with the FBI, postal inspectors, the Federal Trade Commission, and many others, sharing information and ideas. Together, we have created a neutral space where cyber experts and competitors who might not otherwise collaborate can talk about cyber threats and security breaches.

The FBI's InfraGard program is a more localized example of our private sector partnerships. Members from a host of industries, from computer security to the chemical sector,

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00081 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.038

share information about threats to their own companies, in their own communities, through a secure computer server. To date, there are more than 23,000 members of InfraGard, from Fortune 500 companies to small businesses.

Apart from these ongoing partnerships, we work with particular countries on isolated cyber issues. For example, we initiated a program focused on organized cyber crime groups in Romania, targeting victims both there and in the United States. In 2007, we coordinated the FBI's first-ever joint Intellectual Property Rights investigation with law enforcement authorities in China. And we continued participation in the Cyber Working Group, a collaborative effort among Australia, Canada, New Zealand, the United Kingdom, and the United States to develop measures and relationships to address the most serious criminal threats faced by all member countries.

Finally, pursuant to a directive signed by President Bush in January 2008, the FBI's Cyber Division is participating in a U.S. government-wide cyber effort that will help to protect against a rising number of attacks on federal agencies' computer systems. We look forward to working with our partners in the federal government in this effort.

The FBI's Criminal Programs

To meet our national security mission, the FBI had to shift personnel and resources, but we remain committed to our major criminal responsibilities. While Americans justifiably worry about terrorism, it is crime that most directly touches their lives. Currently, we have roughly a 50/50 balance 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 have the most substantial and lasting impact.

In recent years, we have moved away from drug cases and smaller white collar crimes, 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.

In FY 2007, the FBI's Criminal Investigative Division handled more than 53,000 cases, resulting in 17,728 arrests, 21,893 indictments, and 12,406 convictions. We maximized our resources by using intelligence to identify emerging trends and to target the greatest threats.

Public Corruption

Public corruption is the top priority of the Criminal Investigative Division. Public corruption erodes public confidence, and undermines the strength of our democracy. Investigating public corruption 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. More importantly, we are insulated from political pressure.

Today, there are roughly 680 Special Agents dedicated to more than 2,500 pending investigations. The number of pending cases has increased by 51 percent since 2003; the number of agents working such cases has increased by 62 percent. The number of convictions is high: in the past two years alone, we have convicted more than 1,800 federal, state, and local officials.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00082 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.039

The Public Corruption Program also targets governmental fraud and corrupt practices. The number of Foreign Corrupt Practices Act investigations has increased dramatically in recent years, from 13 cases prior to 2004 to more than 75 today, with 33 new matters in 2007 alone. To combat international corruption, the FBI's Public Corruption Unit has created a number of target-specific programs. For example, the International Contract Corruption Initiative addresses growing corruption within the global community. The International Contract Corruption Task Force addresses the systemic, long-term multi-billion dollar contract corruption and procurement fraud crime problem linked to the war and reconstruction efforts in Iraq and Afghanistan. This multi-agency task force combines the efforts of the FBI, the Defense Criminal Investigative Service, Army CID, the Special Inspector General for Iraq Reconstruction, U.S. AID, and the Department of State. We have agents on the ground in the Middle East, investigating nearly 60 cases.

Other key initiatives include the Hurricane Fraud Initiative, the Campaign Finance and Ballot Fraud Initiative, the Southwest Border Initiative, and the Capital Cities Initiative.

The Hurricane Fraud Initiative, for example, addresses contract and procurement fraud in the Gulf Coast region of the United States in the aftermath of hurricanes Katrina and Rita. To date, this initiative has resulted in more than 1,000 investigations, 150 indictments, and 88 convictions. More than 18,000 complaints have been screened, resulting in more than 600 indictments and informations in 20 states.

Civil Rights Program

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.

We are focusing more on the quality of our investigations, rather than the quantity, and this renewed focus is paying dividends. For example, 25 percent of cases initiated by the FBI's Civil Rights Unit resulted in arrests in FY 2007, compared to 19 percent in FY 2006. Of the cases initiated by the FBI in FY 2007, 22 percent resulted in a conviction, compared to just 16 percent in FY 2006. Today, there are approximately 141 Special Agents working civil rights cases. Last year, they initiated 936 investigations and worked 1,584 pending investigations, resulting in 238 arrests, 193 informations and indictments, and 189 convictions.

We are fine-tuning our administrative guidelines and our reporting requirements, to allow agents to spend more time investigating these vital cases. We are developing an internal database to house all incoming information on Civil Rights Program case initiations, so that we can better identify and analyze civil rights crimes trends and forecast those results to the field and to our state and local partners.

Two years ago, 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. The Civil Rights Cold Case Initiative provides the FBI, as well as state and local law enforcement agencies, the opportunity to review civil rights-era cold cases, in an effort to bring closure to families and generations adversely impacted by these crimes.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00083 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.040

As part of the Civil Rights Cold Case 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. To date, 52 cases have been opened, and of those cases, 26 are still ongoing. Agents investigating the remaining 26 cases have provided preliminary investigative conclusions for review by the Civil Rights Unit and the Civil Rights Division of the Department of Justice, to determine if additional investigation is necessary. Each will need to be assessed for its investigative and legal viability, and for those cases in which we can move forward, we will.

In June 2007, for example, James Seale, a former member of the Ku Klux Klan, was convicted of the kidnapping and murder of Henry Dee and Charles 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.

With regard to human trafficking, the FBI has commenced a Human Tracking Initiative to address modern-day slavery and related violations. The trafficking of persons is a significant and persistent problem in the U.S. and around the world. The majority of the human trafficking investigations under the FBI's Civil Rights Program stem from international persons trafficked to the United States from other countries. Victims are often lured with false promises of good jobs and better lives, and are then forced to work in the sex industry. However, trafficking may also take place in labor settings, including domestic servitude, prison-like factories, and migrant agricultural work. Today, we have roughly 41 agents working human trafficking cases. In 2007, these agents opened 120 cases and investigated 227 pending cases, made 155 arrests, obtained 81 indictments and/or informations, with 57 convictions.

Transnational Organized Crime

Transnational organized crime continues to evolve with advances in globalization and technology. At the same time, organized crime continues to present a serious threat to American society, to the safety of our citizens, and to our economy. Currently, there are nearly 545 Special Agents working organized crime cases. In 2007, these investigations have resulted in 869 indictments and informations, 1,175 arrests, 762 convictions, 195 disruptions of organized crime activity, and more than $250 million dollars in forfeitures or seizures.

The FBI's successful investigations, including an 80-count indictment and the arrest of more than 60 alleged members and associates of La Cosa Nostra in New York City this past February, underscore this ongoing threat, and the importance of working with our international law enforcement partners. Of the 62 individuals arrested, 25 of them – all members or close associates of the Gambino family – are charged with racketeering conspiracy, with a laundry list of individual offenses, from murder and robbery to extortion, drug trafficking, and fraud, amongst other charges. Suspects arrested also included alleged members of the Genovese and Bonnano organized crime families. Cases like these serve as a reminder that the organized crime threat is real, and should not be relegated to the annals of history.

We are also actively investigating Eurasian, Albanian, Asian, and African organized criminal syndicates.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00084 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.041

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 in Tirana, Albania, works to reduce the threat to American and Albanian societies posed by Albanian Criminal Enterprises operating in and around Albania. This recently formed task force already has located and arrested subjects in both FBI and Albanian National Police investigations.

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, as well as supporting specialized task forces addressing such transborder crimes, including human trafficking, financial crimes, smuggling of goods, terrorism, and other crimes.

Recognizing the growing threat posed by transnational criminal enterprises throughout the world, the FBI, in conjunction with the Department of Justice, has assessed the worldwide 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 the longest reach.

We all understand that no one agency can address the threats posed by global criminal organizations. It will take the unique expertise, talents, and international relationships of every agency on the Council, working together to target, attack, and dismantle these sophisticated groups. The FBI will dedicate the resources necessary to confront this threat and seek to make it a cooperative and consolidated mission. We must also continue to strengthen our working relationships with our foreign partners, both old allies and new partners alike.

To this end, the FBI has a Special Agent and an analyst assigned to the Joint Interagency Task Force West (JIATF West) in Honolulu, Hawaii. JIATF West provides U.S. and foreign military and law enforcement partners with the intelligence necessary to detect, disrupt, and dismantle drug-related transnational threats in Asia and the Pacific. Task force members include uniformed and civilian members of all five military services, as well as representatives from the Intelligence Community and from federal law enforcement agencies, including the FBI, the Drug Enforcement Administration, Immigration and Customs Enforcement, as well as officers from the Australian Federal Police and the New Zealand National Police.

In conjunction with this effort, an FBI contractor is embedded with the Royal Thai Police in Thailand, and is assigned to a task force responsible for building a criminal intelligence center in Bangkok. This intelligence center solicits intelligence regarding foreign transnational crime suspects from a multitude of police agencies around Thailand, including Cambodia, Laos, and Burma. Intelligence collected will be entered into computers provided by JIATF West. Intelligence analysts from the FBI and from JIATF West will provide training and guidance to their Thai counterparts. The Cambodian National Police have asked to participate in this effort; we will coordinate their participation through our newly opened Legal Attaché office in Phnom Penh, Cambodia.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00085 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.042

Together, we can identify links between organized crime in Southeast Asia and America. We can examine the means by which criminal enterprises utilize banking systems to move and launder proceeds. We can share information and expertise on human trafficking, narcotics, and child sexual exploitation cases. And we can develop long-term investigative and intelligence strategies for dismantling criminal enterprises in Southeast Asia.

Major White Collar Crime

The FBI routinely investigates large-scale financial crimes, including corporate fraud, commodities fraud, mortgage fraud, and health care fraud. Today, there are 1,180 agents working more than 15,400 cases.

Corporate & Securities Fraud

The number of agents investigating corporate fraud, including securities, commodities, and investment fraud cases, has increased 47 percent, from 177 in 2001 to more than 250 today. We have more nearly 1,750 pending corporate fraud cases, which is an increase of 37 percent since 2001.

In recent years, the FBI has handled a number of high-profile corporate fraud investigations, including Enron, HealthSouth, WorldCom, Qwest, Hollinger International, and 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, prosecuted, and put away the persons responsible for these crimes.

In FY 2007, the FBI obtained 587 indictments and informations, and 489 convictions. In addition, FBI investigations resulted in 30 insider trading indictments against executives from firms including Goldman Sachs Group, Inc, Morgan Stanley, Credit Suisse Group, and UBS Securities. The average loss per case is more than $100 million.

The FBI also has opened investigations to address the fraudulent backdating of options grants by company executives to realize greater profits by circumventing accounting and disclosure requirements. Recent accomplishments include the conviction of Gregory Reyes, former Chief Executive Officer of Brocade Communications Systems, Inc. – the first person to be tried for such matters.

To maximize its resources in this area, the FBI stood up the Corporate Fraud Response Team, which leverages the financial expertise of agents, analysts, and forfeiture investigators in FBI field offices across the country. This team was recently deployed to the Tampa Field Office to assist in the search of a Fortune 1000 company. Team members assisted with the collection of evidence and helped case agents determine what evidence was relevant. In just one week, 11 team members reviewed more than 600 boxes of seized documents.

We also are members 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 the 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

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00086 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.043

of Justice has obtained many corporate fraud convictions, including the convictions of more than 200 chief executive officers and presidents, and more than 50 chief financial officers.

Mortgage Fraud

In recent years, the FBI has seen a dramatic increase in the number of mortgage fraud investigations. To date, the FBI has more than 1,200 pending investigations, which is a 50 percent increase over FY 2006. Roughly half of these cases have losses in excess of $1 million, and several have losses greater than $10 million.

To date, the FBI has initiated sub-prime mortgage industry corporate fraud cases, in coordination with the Securities and Exchange Commission, on the basis of allegations of accounting fraud associated with sub-prime lenders, the securitization of sub-prime loans, and corporate investment in securitized sub-prime related investment products.

We also stood up a Mortgage Fraud Working Group with the Department of Justice and several federal law enforcement and regulatory agencies. Together, we will build on existing FBI intelligence databases to identify large-scale industry insiders and criminal enterprises conducting systematic mortgage fraud.

Health Care Fraud

The FBI has also seen an increase in the number of health care fraud investigations, with nearly 2,500 cases last year ranging from durable medical equipment to mobile testing fraud. The FBI is the primary investigative agency in the fight against health care fraud, and has jurisdiction over both the federal and private insurance programs.

The FBI currently has nearly 400 agents working health care fraud cases, with 625 convictions in FY 2007 alone, and an estimated loss of more than $60 billion. One noteworthy accomplishment is the southern Florida multi-agency Medicare strike force team, which, since May 2007, has indicted 74 cases and filed charges against 120 defendants who collectively billed the Medicare program more than $400 million.

Violent Crime

Several metropolitan areas continue to report decreases in the number of violent crimes in their communities, , and the FBI's preliminary Uniform Crime Report (UCR) for the first half of 2007 showed a 1.8 percent reduction in the number of violent crimes nationally. This is due in large part to the efforts of state, local and federal law enforcement agencies working together. Nevertheless, it is important to remain vigilant, as we were reminded when the FBI's UCR for 2006 showed a slight increase in the aggregate number of violent crimes in America.

To examine more closely recent crime trends, the FBI is working with the IDA Science and Technology Policy Institute, a research and analysis group, to conduct a detailed study of violent crime trends across the nation. Although the study is ongoing, initial data suggests the violent crime increase between 2004 and 2006 occurred predominantly in a group of select cities, and while this increase did not constitute a nationwide trend, it remains a concern for the FBI and our federal, state and local law enforcement partners. The second phase of this study, which is

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00087 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.044

currently under way, will examine the cause of the increase in violent crime in certain communities across the country.

The Department of Justice and the FBI to strive to maximize our resources through partnerships and task forces. We have increased the number of Safe Streets Task Forces to 193, with more than 1,800 federal, state, and local investigators from more than 500 law enforcement agencies. We have more than 600 Special Agents serving on these task forces – an increase of 38 percent since 2000.

Of these task forces, 141 are dedicated to violent gang activity. Forty-three task forces are dedicated to violent crime; nine are dedicated to major theft. In addition, there are 16 Safe Trails Task Forces to cover crimes committed in Indian Country, such as homicide, rape, child sexual assault, and narcotics trafficking.

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.

Violent Gang Activity

We also face significant challenges with regard to violent gangs, a nationwide plague that is no longer relegated to our largest cities.

Since 2001, for example, our violent gang caseload has more than doubled. Violent gang investigations increased by 11 percent in FY 2007 alone, for a total of 2,929 cases. The number of agents working such cases has increased by 70 percent since 2001.

In FY 2007, agents and analysts working violent gang cases saw significant results, including nearly 1,900 disruptions of violent gang activity, 533 dismantlements of neighborhood gangs, nearly 1,800 informations and indictments, more than 4,900 arrests, and 1,425 convictions.

We routinely work with our state and local partners to combat this threat. As noted above, there are 141 Safe Streets Violent Gang Task Forces across the country, dedicated to identifying, prioritizing, and targeting violent gangs. The Mara Salvatrucha (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 FY 2007, the MS-13 National Gang Task Forces had 108 pending gang cases and 24 pending 18th Street gang cases in FY 2007. Their efforts resulted in 22 informations and indictments, 265 arrests, 80 convictions, and 19 disruptions.

In addition to our task force participation, we stood up the National Gang Intelligence Center (NGIC) 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 multi-agency anti-gang task force created by the Attorney General.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00088 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.045

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.

Crimes Against Children

We are also working together to combat crimes against children. The Innocence Lost Initiative, a task force that brings together federal, state, and local entities, works to identify and disrupt child prostitution rings. Since its 2003 inception, the program has been expanded to 29 cities, with 23 dedicated task forces. Through this program, more than 300 children have been recovered and/or identified and 244 child predators have been convicted.

In addition, the FBI is currently developing the Innocence Lost Child Prostitution National Database, which will comprise more than 15,000 records of victims and subjects who are engaged in the commercial sexual exploitation of children. This information will be made available to assist federal, state, and local law enforcement throughout the nation in combating this crime problem and safely recovering children.

To address the 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 26 times. Thirteen victims have been recovered alive, and all but two investigations have been resolved.

Registered Sex Offender Locator Technology (ReSOLT) was developed and implemented to support the CARD teams and other investigators in matching and monitoring each state's Sex Offender Registry with public and proprietary databases. Investigators are able to retrieve address history and information related to relatives, associates, and other background details, as well as data concerning parks, schools, libraries, and other local establishments pertinent to sex offenders in the area of an abduction or mysterious disappearance of a child.

These many accomplishments in our criminal programs reflect the fact that we are doing more with less, and achieving strong results.

International Scope and Operations

I want to turn for a moment to the FBI's international 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 be an international law enforcement and intelligence agency. We must create new partnerships and solidify old

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00089 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.046

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, and we have expanded our global reach, through our Office of International Operations (OIO). OIO has aggressively pursued expanding the Legal Attaché program to those areas prone to criminal and terrorist related activities.

The FBI now has Legal Attaché offices – called Legats – in more than 70 cities around the world, providing coverage in 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.

During FY 2007, the FBI opened Legats in Dakar, Senegal; Phnom Penh, Cambodia; and San Salvador, El Salvador. We opened sub-offices in Cape Town, South Africa; and Sydney, Australia. Our Legats passed more than 35,000 intelligence disseminations to foreign governments. They provided more than 3,600 instances of investigative support, and trained more than 865 foreign partners.

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 remain vital to our collective security.

III. Long-Term Strategy: Information Technology, Human Capital, and Intelligence Operations

These many accomplishments are supported by changes in structure and operation, many of which were based upon your recommendations. Yet we are also reshaping our internal organization to best support terrorist and criminal investigations, particularly in three areas: information technology, human resources, and the structure of our intelligence program.

Information Technology

For example, we have continued to upgrade our information technology systems, including new and improved case management and analytic tools, systems to facilitate information sharing, and automation to streamline business processes. Although the FBI's information technology systems have presented some of our greatest challenges, they have also resulted in some of our most significant improvements in the past six years.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00090 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.047

Sentinel

Phase 1 of the Sentinel program was deployed Bureau-wide on June 15, 2007, providing a user-friendly, web-based interface to access information currently in the FBI's Automated Case Support (ACS) system. Information now is pushed to users and is available through hyperlinks, putting more information at their fingertips and moving employees away from dependence on paper-based files.

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 set the foundation for the entire enterprise. Phase 2 will add additional capabilities, such as electronic forms and electronic workflow, where agents and analysts can send cases and leads to supervisors for review, comment, and approval. Phase 2 is scheduled to be implemented in July 2009, with the final four-phases scheduled to conclude in May 2010.

Blackberry Deployment

Also in June 2007, we awarded a contract to Verizon Wireless to support a nationwide deployment of roughly 20,000 Blackberry devices to personnel at FBI Headquarters and field offices. This deployment commenced in August 2007, with much of FBI Headquarters and 53 of 56 FBI Field Offices complete. Blackberries are scheduled to be deployed to the remaining three Field Offices – Anchorage, San Juan, and Oklahoma City – in March 2008. We will then commence deployment to our Legal Attaché Offices, and to our Criminal Justice Information Services facility in West Virginia.

National Finance Center

To improve administrative business processes, we completed a successful migration of FBI payroll services to the National Finance Center, improving efficiency through various employee self-service functions. We also replaced the FBI's paper-based time and attendance system with a commercial off-the-shelf product giving employees an online, web-based system to record their time and attendance data.

These are just a few highlights of the many advancements we have made in our information technology structure.

Human Capital

Information technology is integral to our success, but people are the lifeblood of the Bureau. The FBI is a large organization with a global workforce and diverse needs. We are focused on creating a full-service human resources capability that maximizes our efforts to attract the most talented people, promote personal development, and develop outstanding leadership abilities. In other words, we are focused on a "cradle to grave" human resources outlook, from recruiting to retirement.

Training Initiatives

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00091 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.048

The FBI's Training and Development Division has made significant improvements in curriculum across all programs. They have introduced a new intelligence training program, expanded leadership, sabbatical, joint duty, and advanced degree programs, developed a Special Agent Career Path program, and are working with the Directorate of Intelligence to create an Intelligence Career Service career path.

During the past three years, the FBI's New Agent Training Program has undergone radical and progressive change to ensure that all new agents are equipped to deal with today's investigative and intelligence challenges.

In April 2008, the FBI will launch a revised 20-week New Agents Training Program that will be intelligence driven. The new program will incorporate more than 150 hours of additional training in practical exercises in national security and cyber matters, including 50 additional hours in counterterrorism and 60 hours in intelligence.

In addition, we have created an entirely new 10-week basic intelligence course for analysts, including 30 hours of joint training with New Agent trainees. Sixteen intermediate and advanced intelligence courses are in development. We will continue to develop new courses and enhanced training opportunities in the years to come.

Career Paths

We have implemented a process by which all New Agents trainees at Quantico are designated into a career path before they report to their first field office. The five career paths are counterterrorism, counterintelligence, criminal, cyber, and intelligence. Within the next six months, we anticipate that all incoming Special Agents will be pre-designated to one of five career paths at the time they are offered a position with the FBI, prior to reporting to Quantico for training.

We are also in the process of designating current agents into specialized career paths. To date, more than 9,100 on-board agents have been designated into a particular career path. Career paths are also under development for more than 3,840 professional staff, to include intelligence personnel, IT specialists, and security professionals.

Office of Integrity and Compliance

Finally, we have established an Integrity and Compliance Program and an Office of Integrity and Compliance (OIC) to implement that program. Notice of the resulting reprogramming has been submitted to Congress, with the concurrence of the Office of Management and Budget.

While many large corporations have compliance programs, few – if any –government agencies have analogous department-wide programs. Given the complex nature of the FBI's mission, as well as the number of rules, guidelines, and laws to which we are subject, we are focusing on identifying and mitigating risk of non-compliance. In developing our proposal, we welcomed the input of external privacy and civil liberties groups, as well as compliance experts in the private sector.

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00092 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.049

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 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 target investigative problems and rule violations, but will assess potential risks of non-compliance in all operations, programs, and divisions of the FBI, and take action to mitigate those risks. FBI Executive Assistant Directors meet quarterly with OIC staff to assess potential risks within their divisions. Together, we will ensure that we have the control mechanisms in place – through policies, procedures, and training – to mitigate potential risks.

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 core values of integrity and accountability in order to maintain public trust and confidence.

Strategic Execution Team: Improvement of FBI's Intelligence Program

We have conducted a comprehensive assessment of our intelligence program and concluded that we need to move further and faster to enhance our capabilities. At the urging of the President's Foreign Intelligence Advisory Board, we in the FBI began working with the consulting firm of McKinsey and Company to examine how we can accelerate our progress and we have identified a number of areas where we are focusing our efforts.

We have created a Strategic Execution Team (SET) of field and headquarters personnel to help drive implementation of needed changes across the organization. The SET team includes approximately 90 agents, analysts, and other professional staff, from FBI Headquarters and roughly 27 field offices. This team has focused its initial efforts on three critical areas: intelligence operations, human capital, and program management.

With the guidance of the SET, we are restructuring our FIGs, so they can better coordinate with each other, with street agents, and with analysts and agents at FBI Headquarters. Drawing from the best practices we identified, we have developed a single model under which all FIGs will function, to increase collaboration between intelligence and operation, and to provide accountability for intelligence gathering, analysis, use, and production. The model can be adjusted to the size and complexity of small, medium, and large field offices.

All FIGs will include a centralized strategic coordinating component. This will include a Chief Reports Officer who will be accountable for ensuring that field office intelligence production is timely, of high quality, and relevant to the requirements of our customers. It will include a Domain Manager who will work with investigative squads across all programs to construct a comprehensive operational picture of the field office territory, including its critical infrastructure, threats, and vulnerabilities. This component also will include personnel who will

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00093 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.050

create a consolidated, prioritized list of the intelligence requirements the office must address, and produce collection plans and strategies.

To enhance our collection capabilities, we are taking a two-pronged approach. First, we must ensure we are taking full advantage of our current collection capabilities in terms of what we know through our case work, and what we could know if we asked our existing source base the right questions. Tactical analysts will work with investigative squads, in all program areas, to ensure that collection plans are executed, and to help squads identify opportunities to address the intelligence requirements of the office.

Second, to enhance the picture of a threat developed through our investigations, the FIG will include a team of specially trained agents who will collect intelligence to meet requirements, conduct liaison with local partners, and focus on source development.

In terms of human capital, we have refined the Intelligence Analyst career path, including training, experiences, and roles that are required to develop a cadre of well-rounded and highly proficient analysts. We have also established core intelligence tasks for all Special Agents, further defined the Special Agent intelligence career path, and tailored individual development plans for all agents. Finally, we have developed a university recruiting program to hire additional intelligence analysts with targeted skill sets. We received hundreds of applications as a result of this effort.

* * *

We in the FBI are mandated by the President, Congress, the Attorney General, and the Director of National Intelligence to protect national security. For nearly 100 years, the FBI has used intelligence to solve cases; today, however, we rely on our agents and analysts working hand-in-hand with colleagues across the country and around the world to collect intelligence on multiple, interrelated issues. With the authority and guidance provided by the Intelligence Reform and Terrorism Prevention Act and other directives and recommendations, the FBI has implemented significant changes to enhance our ability to counter the most critical threats to our security.

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 United States 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 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, and civil rights – these are not our burdens; they are what make us better.

Mr. Chairman, I would like to conclude by thanking you and this Committee 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

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00094 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.051

additional Legal Attaché offices around the world, and, most importantly, to protecting the American people from terrorist attack, you have supported our efforts.

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.

# # #

VerDate Nov 24 2008 11:06 Nov 25, 2009 Jkt 053361 PO 00000 Frm 00095 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\53361.TXT SJUD1 PsN: CMORC

53361.052

STATEMENT OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE
HEARING ON OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION
MARCH 5, 2008

Today's hearing will continue our oversight of the Department of Justice as we examine the effectiveness of the Federal Bureau of Investigation in carrying out its critical responsibilities. I welcome back our FBI Director, thank him for appearing today, and thank the hard-working men and women of the FBI for their commitment to keeping us all safe.

We need to take stock of where we are on oversight matters that this Committee raised last year and whether progress has been made, and today we will. This year brings additional concerns. I was astonished to learn that the FBI's failures to pay its bills resulted in telecommunications companies shutting off wiretaps, including at least one FISA wiretap of suspected terrorists. After the Bush-Cheney administration and congressional Republicans refused to extend the Protect America Act, the statute expired, but the surveillance authorized under that statute continues. Ironically, the only shut down of surveillance has been when the telecom companies ceased surveillance due to the Government's nonpayment of fees. This is yet another example of the kind of incompetence that plagued the administration's actions in the aftermath of Katrina. It is unacceptable.

The confidence and credibility of the FBI has also taken a hit as the Bureau seeks to exploit increasingly potent technologies. Recent reports suggest that the FBI is engaged in a $1 billion program to create a massive biometric database, compiling not just fingerprints, but eye scans, palm prints, facial features, and other identifying features of millions of people. It is vitally important for the FBI to master emerging and enhanced technologies in the fight against crime and terrorism. But we must also be cognizant of the impact that such a database can have on the privacy rights and civil liberties of Americans. It is more important than ever that the FBI acts in ways that protect and enhance the rights and values that define us as Americans, not undermine them. For an organization that has suffered false start after false start in developing an internal computer network, and one that did not pay its bills on time, and one that recently abused national security letters and exigent letters, there is concern.

I also urge the Director to continue to work to address the untenable backlog in the National Name Check Program. Delays and backlogs there contribute to the inaction by the Department of Homeland Security on citizenship applications and on applications for visas by those who have aided American forces in Iraq.

Last year we focused on the FBI's improper use of national security letters and "exigent letters," its lag in hiring agents proficient in Arabic, and the continuing problems with its computer systems. We discussed at last year's oversight hearing the Inspector General's findings of widespread illegal and improper use of national security letters to obtain Americans' phone and financial records. The Inspector General found that the FBI

53361.053

repeatedly abused NSLs and failed to report these violations. Similarly troubling was the FBI's widespread use of so-called "exigent letters," which were used to obtain Americans' phone records, often when there was no emergency and never with a follow-up subpoena, even though the letters asserted both.

Last year we were assured the abuses were being corrected. I look to Director Mueller to demonstrate to this Committee that our oversight has been effective and that corrective actions have been taken, and I await the Inspector General's follow up reports.

I hope that the FBI is finally moving forward in obtaining the information technology that it needs to function efficiently in the Information Age. For years, we have heard of delays, failures, and budget overruns in the FBI's efforts to update its computer system, a project now known as Sentinel. I hope this stream of setbacks will finally come to an end. Likewise we need an update on the FBI's efforts to hire, train, and utilize its intelligence analysts, and to increase its ability to retain analysts and agents proficient in Arabic.

One area in which the FBI, along with our military, have led has been on the topic of torture and the effective interrogation of detainees. The FBI has consistently been a voice of reason on these issues. It seems to me that the FBI has concluded that tried and true interrogation tactics, which do not use cruelty and torture, are not only more consistent with our laws and our values, but are also more effective in obtaining information we can rely upon to help protect our nation.

Finally, I hope that the Bureau will work with our Committee to ensure that the FBI does not sacrifice its traditional leadership role in fighting crime. Violent crime has been back on the rise in recent years, as FBI resources dedicated to it have stagnated. The FBI is also uniquely suited to take on fraud and corruption, and it is not acceptable when other agencies and organizations seek to undermine its commitment in those areas.

This is the time for the FBI to recommit itself to its best traditions. I appreciate the Director's openness to oversight and accountability. That distinguishes him and his agency from much of the Department of Justice and this administration.

# # # # #

Senator Jon Kyl
Senate Judiciary Committee
FBI Oversight Hearing
5 March 2008

Statement for the Record

In his opening statement at today's FBI oversight hearing, the Chairman has once again suggested that President Bush and the Republican party are responsible for Congress's failure to update FISA before the expiration of the Protect America Act. In doing so, the Chairman has distorted the reason for the current impasse we face on FISA and understated the detriment that impasse has had on our nation's ability to collect vital foreign intelligence.

In his statement, the Chairman suggests that "the Bush-Cheney administration and congressional Republicans refused to extend the Protect America Act." This, however, could not be further from the truth, as the legislative record on efforts to close critical gaps in FISA is lengthy and deep in substance.

In 2006, there were extensive hearings and meetings on the issue of FISA modernization in the House and Senate, including an open hearing before the Senate Judiciary Committee entitled "FISA for the 21st Century," at which the Directors of the Central Intelligence Agency and the National Security Agency testified. On April 3, 2007, the Office of the Director of National Intelligence and the Department of Justice, "following over a year of coordinated effort," submitted to Congress a legislative proposal to bring FISA up to date "while continuing to protect the privacy interests of persons located in the United States." Director of National Intelligence (DNI) Mike McConnell followed this up on May 1, 2007, when he testified at an open hearing before the Senate Committee on Intelligence on the Administration's proposed FISA update.

The House and Senate had ample opportunity to debate the merits of FISA reauthorization before passage of the Protect America Act; and, as Director McConnell pointed out, on the issue of reforming FISA, "leaders of the Intelligence Community went far further in open discussions than in any other time" he could recall in his 40-year intelligence career. The Protect America Act passed the Senate on August 3, 2007, after months of substantive debate, and was supported by 15 members of the Majority party, including members of the Intelligence and Judiciary Committees.

Because the Protect America Act was a temporary solution, Congress was provided another six months to debate the merits of permanent FISA reform until the Protect America Act's scheduled expiration. Utilizing that time and a 21-day extension, Republicans and Democrats in the Senate, in conjunction with the Administration, were able to forge a bipartisan consensus on FISA reform legislation that would provide statutory authority to monitor terrorists while also ensuring ample oversight of U.S. intelligence activities. That legislation, the FISA Amendments Act of 2007, has the

53361.055

benefit of wide bipartisan support, having passed the Senate Intelligence Committee, 13 to 2, and the full Senate by a vote of 68 to 29 on February 12.

Despite bipartisan support for the FISA Amendments Act in the Senate, and the backing of the Administration, House Democratic leaders refused to allow a vote on the bill before the Protect America Act's expiration on February 16. Instead, they chose to convene for a scheduled recess, leaving U.S. intelligence agents without the authority to effectively monitor the communications of new foreign-terrorist targets, even when those terrorists are located overseas.

It is unfortunate that House Democrats remain steadfast in their refusal to pass the FISA Amendments Act, which DNI McConnell and Attorney General Michael Mukasey described in statement issued March 11 as "a bipartisan bill that would give our intelligence professionals the tools they need to keep America safe." DNI McConnell and Attorney General Mukasey have expressed their willingness "to work with Congress towards the passage of a long-term FISA modernization bill that would strengthen the Nation's intelligence capabilities while protecting the constitutional rights of Americans." I will encourage my colleagues in the House and Senate to accept the Administration's offer of assistance so that a sensible FISA modernization bill can be sent to the President in the near future.

The Chairman also suggests in his statement that "the only shutdown of surveillance has been when the telecom companies ceased surveillance due to the Government's nonpayment of fees." The Chairman's comment, however, blatantly ignores statements made by Attorney General Mukasey and DNI McConnell less than two weeks ago.

On February 22, Attorney General Mukasey and DNI McConnell wrote the Chairman of the House Intelligence Committee outlining problems that will likely arise as a result of the uncertainty caused by the Protect America Act's expiration. In a subsequent statement issued on February 23, Attorney General Mukasey and DNI McConnell clearly state that delays associated with that uncertainty have "impaired our ability to cover foreign intelligence targets, which resulted in missed intelligence information." They also warned that, even though private companies have largely continued to cooperate with our intelligence agencies, "our ability to gather information concerning the intentions and planning of terrorists and other foreign intelligence targets will continue to degrade because we have lost tools provided by the Protect America Act that enable us to adjust to changing circumstances."

Our nation's ability to monitor terrorists plays a vital role in the war against militant Islamists. In my view, when speaking on matters of such great importance, the Chairman should be mindful of the need for accuracy in his statements. All too often the Chairman has used his opening statements in recent months to lodge partisan accusations against the President and the Republican party, frequently painting a less than accurate picture. These are important matters that should be approached seriously and accurately, with a minimum of political commentary.

○

53361.056