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FEDERAL BUREAU OF INVESTIGATION (PART III)

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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FEDERAL BUREAU OF INVESTIGATION (PART III)

TUESDAY, SEPTEMBER 16, 2008

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

The Committee met, pursuant to notice, at 10:17 a.m., in Room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Lofgren, Waters, Delahunt, Sánchez, Cohen, Davis, Ellison, Smith, Coble, Goodlatte, Lungren, Issa, King, and Gohmert.

Staff present: Robert Reed, Majority Oversight Counsel; Caroline Lynch, Minority Counsel; and Renata Strause, Majority Staff Assistant.

Mr. CONYERS. Good morning, ladies and gentlemen.

We welcome Robert Mueller, our FBI director, to yet another hearing which he has graced us with his presence.

The Federal Bureau of Investigation is the anchor of our Nation's Federal law enforcement and has the important responsibility of not only combatting crime, conducting surveillance, initiating investigations but now have the responsibility of dealing with the issue of terrorism on top of all their other existing duties.

We appreciate the Bureau's efforts to get us answers on our letters, particularly the September 5 letter.

Director Mueller, we are trying to get a proposed copy of the Attorney General FBI guidelines. We are trying to identify what specific safeguards will prevent improper undercover FBI spying against domestic groups and citizens, abusive investigation techniques like pretext interviews; and improper racial and ethnic profiling.

I would also like a statement as to whether the guidelines of former Attorney General Edward Levy to protect against improper invasions of privacy were rescinded by former Attorney General Ashcroft and, if they were, will they be reinstated?

We have numerous questions on the anthrax issue, and we need an explanation of the improper collection of reporters' phone records and what disciplinary action will be taken for the FBI's improper collection of reporters' phone records and abuses, particularly concerning exigent letters and national security letters.

And, finally, we need to know how many FBI agents were devoted to mortgage fraud issues before and after a top FBI official warned about this problem back in 2004. Included in that is, of

course, an explanation of why fewer resources were devoted to mortgage fraud after the 2004 warnings.

So that is all we want to know, and that is why we welcome you here this morning.

I would like now to turn to the distinguished Ranking Member of House Judiciary Committee Lamar Smith of Texas.

Mr. SMITH. Thank you, Mr. Chairman. And, Mr. Chairman, your opening statement did pretty much cover the entire arena, I do believe.

Director Mueller, thank you for appearing again before the Judiciary Committee. We appreciate your willingness to do so.

Mr. Chairman, on Thursday we observed the seventh anniversary of the tragic events of September 11, 2001. As a Nation, we also breathed a sigh of relief that in 7 years we have not had a single foreign terrorist attack on American soil. That fact is not an accident and does not reflect a lack of effort on the part of our enemies. Many plots have been prevented.

I would like to congratulate Director Mueller and all the dedicated men and women he leads for him tremendous work in keeping this country safe. Due to his leadership and the tireless efforts of the men and women of the FBI, the Department of Justice and many others throughout the Federal Government, the Nation has enjoyed a level of safety that, in all honesty, most of us feared unlikely in the immediate aftermath of those attacks.

After September 11, the Bureau became the primary investigative agency tasked with not only investigating a crime after it has been committed but also with investigating terrorism and national security threats to prevent another catastrophic attack on our country.

This fundamental shift in duties is much easier said than done. It has required the Bureau to reshape its goals, how its trains its agents and its investigative techniques. It also has required the Bureau to break down the layers of bureaucracy to effectively collect, analyze and act on intelligence.

The Bureau and the Justice Department have been careful to review practices and procedures in order to ensure the strongest tools are available to prevent future terrorist attacks. And while I commend your many strides in this direction, we both agree that these efforts must continue.

Recently the Bureau and the Department of Justice informed Congress of their work to revise the Bureau's investigative guidelines so that the tools available for criminal investigations would also be available when assessing potential terrorist threats.

While the FBI continues its work to become a prevention-focused institution, it is also important that it continues to investigate traditional and newly emerging crimes, including public corruption, gang violence, mortgage fraud and white-collar crime, child exploitation and intellectual property theft.

Protecting our Nation from those who wish to do it harm, whether through acts of terrorism, violent crime, crimes against our children or other criminal enterprises, requires constant vigilance. It requires the FBI and Congress to remain at least one step ahead of the criminals themselves.

Finally, I would like to congratulate the Bureau on 100 years of service to the American people. During the past century, FBI agents have investigated our Nation's most serious crimes and handled high-profile cases, including investigations into the Oklahoma City bombing, the Unabomber, Al Capone, Bonnie and Clyde, Nazi spies, Robert Hanssen and Enron.

The success of the FBI is not the result of people simply doing their jobs. As new threats develop, law enforcement officials are constantly charged with finding new methods to combat these threats. Americans have never needed the FBI more, and today, after 100 years of service, we continue to be grateful for the FBI and all that it has done and is doing to protect us.

I thank you, Mr. Chairman, and I will yield back.

Mr. CONYERS. Thank you.

The Chair recognizes the distinguished Chairman of the Constitution Subcommittee, Jerry Nadler, of New York.

Mr. NADLER. Thank you, Mr. Chairman.

Director Mueller, I appreciate you being here to testify before the Judiciary Committee once again.

As you saw from the September 5 letter that the Chairman and Mr. Scott and I sent, as a Committee, we have many issues to discuss with you. These topics include how the FBI handled the anthrax investigation, whether the FBI has been vigilant enough in fighting mortgage fraud and the new Attorney General Guidelines regarding the FBI.

As you may recall, we asked for written responses in advance of the hearing. Unfortunately, we did not receive that response until last night, and not having those answers until just before today's hearing makes meaningful oversight much more difficult. The executive branch and the American people benefit when Congress is exercising its constitutional responsibility to conduct oversight.

In particular, we are very interested in discussing the new guidelines regarding the FBI. I am sure Members will be asking many questions about them. Since we have not yet been given the actual text of the guidelines to keep and review, here again, the Committee's oversight role is unnecessarily more difficult. And I must, at this point, register my displeasure with the decision by the FBI to show the guidelines to staff but not to allow them to keep a copy or not to allow the Committee to see it.

These guidelines are not secret, they are going to be public in a few weeks, and I don't understand how it serves the purposes of open government to keep from the Committee to this moment guidelines that are going to be open in public in a few weeks as if it is the purpose of the FBI to make sure that the Committee doesn't have enough information to ask intelligent questions before they go into effect. I am sure that is not the purpose. Perhaps you will tell us what the purpose of that secrecy policy is.

From what I know about them, I am very concerned about the expanded authority being given to FBI agents. The ability to conduct physical surveillance, conduct pretext interviews, and so forth, in terrorism investigations without having to suspect a crime has occurred and without getting the approval of a supervisor leaves room for racial profiling and other forms of discriminatory treatment.

We have seen problems before when we gave too much authority to the FBI with respect, for example, to the national security letters. Two Department of Justice IG reports detailed widespread abuses. Peoples' private information was improperly accessed by the government, and almost everyone who receives an NSL is gagged from talking about it, a potential violation of the First Amendment.

I don't think the FBI has demonstrated that it is using its expanded NSL authority appropriately. There is legislation that I have introduced which would address these problems. Among other provisions, it would reform NSL's and better protect American civil liberties and constitutional rights.

I also would like to discuss the FBI's investigation into the anthrax case. Many serious questions have been raised about the arguments and evidence the FBI has shown. These questions have not been answered, and many outstanding issues remain. I am glad you are here this morning so we can get some answers.

With that, I want to again thank Director Mueller for being here. I look forward to hearing his testimony and his answers to questions.

I thank the Chairman.

I yield back the balance of my time.

Mr. CONYERS. Thank you.

The Chair recognizes a Member who has worked on the issues of crime in this Congress and in the country for many years. He is Bobby Scott of Virginia, and we recognize him and yield to him now.

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you, Mr. Director, for appearing with us today. There are a number of questions, and the format we have is insufficient to get into an in-depth dialogue on all the issues that we want to get into, so we will just mention those and, hopefully, we will get many of the responses in writing from you on the issues.

In addition to those articulated by the Chairman of the Constitution Subcommittee, there are several others that we would like to get a status report on, one of which is the contractor abuse. There apparently are billions of dollars unaccounted for in Iraq, and we understand that there are some investigations going on as to whether or not crimes were committed as a result of that, and hopefully we can follow up on that.

As you know, another issues involves torture and prisoner abuse. It is my understanding that the FBI has been fairly good on this issue, having a protocol that does not allow agents to torture, but there seems to be some evidence that agents were there when others were not so restrained, and we would like some information on that.

On background checks, the FBI database, according to a 2006 Department of Justice report, indicated that for approximately 50 percent of the records, the final disposition information was not there so that a person who was arrested would have the arrest show up on the record but the subsequent exoneration would not show up on the record. We would like to see what we are doing or what we need to do to make sure the background check information is as up to date as possible.

On the mortgage fraud issue, obviously, today and yesterday it is a very high priority. Trillions of dollars, obviously, being lost in the stock market as a result of potential crimes that have been committed and mortgage fraud. If money has been lost, somebody has made the money, and we want to find out what progress has been made on mortgage fraud.

On identity theft, when we passed the Identity Theft Penalty Enhancement Act several years ago, we allocated $10 million to the department to track down identity theft and be interested to know what kind of progress we are making on that.

Over the weekend "60 Minutes" reported on a problem in laboratories involving ballistic tests—the reliability of some ballistics tests—and suggested that there may be some in jail today based on tests that have subsequently been found not to be reliable. We would like to see what we are doing to make sure that justice prevails in that situation.

Finally, two other issues. We have had many complaints about crimes being committed by United States persons over in Iraq, and jurisdiction and who would prosecute such crimes has been the issue. Has the FBI actually followed through, investigated and prosecuted crimes that are committed by U.S. persons abroad?

And, finally, in the civil-rights area, does the FBI have jurisdiction and an interest in voter-fraud cases. For example, if registrars are illegally discouraging voters from registering, does the FBI have jurisdiction over those kinds of cases.

Look forward to your responses, either here today or in writing later, to those issues and the ones that the gentleman from New York mentioned.

And with that, I be appreciate, Mr. Chairman, the opportunity to be here today and yield back the balance of my time.

Mr. CONYERS. Thank you, Chairman Scott.

I am now pleased to recognize Mr. Louis Gohmert of Texas, the Ranking Member on the Crime Subcommittee.

Mr. GOHMERT. Thank you, Mr. Chairman.

And thank you, Director Mueller, for being here today.

Yesterday we passed a bipartisan resolution congratulating the FBI on 100 years of service. The FBI, obviously, was born out of a very difficult time in this Nation's history, and here we are 100 years later reliant so heavily on the FBI, and we truly do appreciate the hard work and the dedication of the men and women of the FBI.

Since the 2001 terrorist attacks, the FBI has had the difficulty of balancing their traditional criminal investigations with new responsibilities, conduct national security and counterterrorism investigations, and that certainly has not been a simple task. Unfortunately, we continue to hear about mistakes or misuses by the FBI of investigative authorities, particularly within the area of national security.

We know from the IG's 2007 report that on 739 occasions the FBI obtained telephone toll billing records or subscriber information from three telephone companies without first issuing NSL's or grand jury subpoenas. We know these exigent letters were signed by the FBI headquarters' Counterterrorism Division, personnel who were not authorized to sign NSL's. We have heard testimony here

and also have heard from other sources about how badly undermanned the Counterterrorism Division may be and that it is a very difficult assignment that most do not relish the idea of having to go serve in.

We know that the personnel regularly issued NSL's seeking electronic transactional records exclusively from control files, rather than investigative files, which is a practice not permitted under FBI policy. But what we didn't know until recently is that exigent letters were issued in 2004 on four reporters for The New York Times and The Washington Post stationed in Indonesia.

Personally, I have had concerns about The New York Times releasing classified information and whether or not some laws may be violated, and that it may be appropriate to do a thorough investigation of how that all came about, but still we have to utilize legal bases to go after such an investigation. As we talked about in a prior hearing, when law enforcement breaks the law, who has authority to raid their offices? Who has authority to get a subpoena and go look at records there in those offices?

It is my understanding that, following the 2007 IG report, the FBI, under your leadership, Director, had ceased use of exigent letters altogether. It is troubling to continue to hear about issues that arise, we think we have dealt with them and then something else come up. And as you now talked about, I continue to wonder if some of these issues arise as a result of the 5-year-up-or-out policy that has forced, under some accounts, thousands of years of experienced staff to leave, rather than being willing to come to Washington at the end of your 5-year term.

I have been concerned about this policy for sometime. I thought it was hundreds, but there has been information recently we have lost thousands of years of experience.

And I look at the director of the FBI: Would I want someone serving there with a cornucopia of experience that you have as a servant of this Nation, or would I want somebody with 6 years' experience? I know which I would want, and I would love to have that go back to being the policy in the local offices as well.

In any event, Director Mueller, knowing your background—you are a patriot, you are a hero, you truly have a servant's heart to protect this country, and we appreciate that. I know you care deeply, but I also know that some of the seasoned agents—well, the seasoned agents that we have lost also felt the same way about this country. They love it as well.

But I look forward to hearing your thoughts on these issues. Hopefully, we can address them so these don't keep coming up, and I thank you for your appearance here today.

Thank you.

Mr. CONYERS. Thank you, Judge Gohmert.

We are pleased to have Robert Mueller, III, director of the FBI since September 4, 2001. He has had a long career in public service and in the law as well. He has been an assistant United States attorney in San Francisco and in Boston and in Washington, D.C. He served as assistant attorney general for the Criminal Division in the early 1990's, returned to San Francisco in 1998 as a United States attorney and has also been in private practice on at least two occasions with prominent national law firms. He was called

back from San Francisco to Washington in early 2001 to be acting deputy attorney general, where he served until assuming his current post.

Once again, we welcome you to the Committee.

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

Mr. MUELLER. Good morning, Chairman Conyers, Representative Smith and Members of the Committee. I am indeed pleased to be here today to answer your questions.

When I have come before the Committee in the past, I have discussed the FBI's transformation, and I have recounted our many, what I believe to be, improvements and accomplishments. Marking milestones is about more than looking backward, it is also about looking forward. So today I want to focus on what the FBI is doing and will continue to do in order to ensure that we serve the American public for the next 100 years.

In the interest of time, I will focus on four specific areas: intelligence, technology, human capital and the new Attorney General Guidelines, to which you have alluded. By giving attention to these and similar areas, we will be prepared to confront the threats of the future, from mortgage fraud to terrorism, from crimes against children to violent gangs.

First, intelligence. Intelligence is crucial to every investigation and operation that the Bureau undertakes. The FBI has always excelled at gathering intelligence, even if we did not always call it that, and utilizing that intelligence—those facts—to build cases that led to courtroom convictions.

After September 11, we realized that we also had to strengthen our intelligence analysis and sharing. I have discussed our efforts in great detail in the past, from ramping up, hiring and training of intelligence analysts to establishing the Directorate of Intelligence and then the National Security Branch at headquarters.

But intelligence gathering does not happen in headquarters, it happens out in the communities we serve. And so each field office established a field intelligence group made up of agents, analysts, linguists and surveillance specialists. These are the operational arms of our intelligence program and crucial as well as—and crucial to their efforts are our partnerships with other Federal, state and local agencies.

Their work is not limited to counterterrorism threats. For instance, field offices near research universities or defense contracting firms are also focusing on potential espionage or proliferation threats. Offices along the Southwest border are focusing on violent transnational gangs. And our offices around the country, from large cities to rural areas, are concerning themselves with violent crime.

To accelerate our improvements in our intelligence capabilities, we established what we call a Strategic Execution Team to help us assess our intelligence program, evaluate best practices, decide what works, what does not work and then standardize it across the Bureau. And that effort continues and has been integral to the FBI's effort as a full partner in the wider intelligence community.

We regularly share intelligence with our partners in more than 18,000 state and local law enforcement agencies around the country. We also collaborate closely with our international counterparts, and as the world continues to flatten and threats continue to migrate across borders, it is more important than ever for the FBI to be able to develop and disseminate information that will assist our partners.

Second, we have made substantial progress in replacing and transforming the FBI's information technology systems to help us confront current threats and mission needs. Sentinel, a Web-based case-management system designed to support both our law enforcement and intelligence mission, is progressing on time and within budget. The first phase was successfully deployed in June, and the remaining phases will continue to deliver additional capability through the end of the program in the summer of 2010.

We have also expanded our desktop Internet access to over 19,000 agents, analysts, task force and support personnel, and when completed, we anticipate approximately 39,000 desktops will have been deployed at all FBI locations.

In addition we have deployed over 20,000 BlackBerrys that have e-mail Internet browsing and custom features, and we are deploying other information technology systems that will dramatically enhance our ability to efficiently carry out our mission.

Third, as you know, we have been hard at work continuing to build a strong human resources program to ensure we have optimal recruiting, hiring, training and retention for our employees. Historically, the FBI has attracted recruits from law enforcement, legal, military communities, particularly to fill our special-agents ranks, and this has served us well as a law enforcement agency. But as we have developed into a national security organization, we also require employees with specialized skills: intelligence analysts, scientists, linguists, computer experts.

We are strengthening our relationships with universities as a primary source of recruiting individuals who want to build a career in national security at the FBI. We are conducting a separate targeted intelligence hiring initiative to bring hundreds more intelligence analysts on board. Our programs are modeled after successful programs in other intelligence agencies, as well as in corporate America.

We have worked hard to develop and provide more training opportunities for employees at all levels, and we are focused not just on building isolated skills but on building a culture of leadership.

The FBI has always been fortunate to have tremendously talented leaders. Many of them rose through the ranks of the Senior Executive Service, some were recruited from outside the FBI, and others simply led from whatever position they held. But we cannot have leadership on an ad hoc basis. We must continue to have an ethos of leadership at levels.

Fourth, while our employees are collecting, analyzing and sharing intelligence under an improved internal framework, they will also be operating under new investigative guidelines.

Let me spend a few moments discussing the new Attorney General Guidelines for domestic FBI operations, which are in the process of being finalized and which have been briefed to your staff.

With the input of this Committee, it is my hope and expectation that we can make these guidelines effective for agents operating in the field in the near term.

Up to now, special agents have depended on several sets of guidelines to guide their investigations. Each set was tailored to a particular program area and, therefore, different rules governed different types of investigations. These differences were especially pronounced for national security investigations versus criminal investigations.

To give you a few examples, in the guidelines governing national security investigations prohibited recruiting or tasking sources unless the FBI had at least a preliminary investigation open. They also prohibited physical surveillance other than casual observation, while the general crimes guidelines, which governed other criminal investigations, did not contain these limitations. So, ironically, in my cases an agent could readily use physical surveillance to watch a suspected smuggling route for drugs or counterfeit blue jeans but not for a terrorist bomb.

In the past these rules may have been sufficient and appropriate to the threats they were meant to address, but criminal threats and national security threats do not now fall neatly into separate categories. The threat of today and of the future is a dangerous convergence of terrorists, hostile foreign governments and criminal groups operating over the Internet and through interconnected sophisticated networks.

We may see organized crime laundering money for drug groups, drug groups selling weapons to terrorists, terrorists committing white-collar fraud to raise money for their operations and, most threatening of all, hostile foreign governments arming terrorists with an arsenal of biological, chemical or radiological weapons.

Different rules should not apply depending on how the agent decides to describe what he or she is investigating.

I must emphasize that the new guidelines are not designed to give the FBI any broad new authorities. The new guidelines will—the last vestige of the wall separating criminal and national security matters. They will replace five separate sets of guidelines with a single uniform set of rules to govern the domestic activities of our employees.

They set consistent rules that apply across all operational programs, whether criminal or national security. They will give us the ability to be more proactive and the flexibility to address complex threats that do not fall solely under one program. They will eliminate virtually all inconsistencies that have the potential to cause confusion for our employees.

Several bipartisan commissions, the Congress, the American people have asked and expect the FBI to be able to answer a question such as, "Are there sleeper cells in this country planning attacks like those our international partners in London and Spain have suffered since September 11th?"

In order to answer these questions, the FBI has to expand its intelligence collection beyond that which is collected as part of predicated investigations. It must examine threats in a proactive fashion and not simply rely on information that is volunteered to us.

We have asked our employees to think proactively about the threats and vulnerabilities in their areas of responsibility, and our employees are up to the task. But they need consistent, clear guidelines that do not vary based on whether they are facing a threat from MS-13 or Hezbollah.

The FBI has the responsibility, indeed the privilege, of upholding the Constitution. We know that, if we safeguard our civil liberties but leave our country vulnerable to terrorism and crime, we have lost. If we protect America from terrorism and crime but sacrifice our civil liberties, we have also lost. We are always mindful that our mission is not just to safeguard American lives but to also safeguard American liberties. We must strike the appropriate balance at all times.

Finally, I am well aware of the public's interest, as well as the interest of this Committee, in the anthrax investigation. As you know, the Department of Justice and the FBI do not typically publicly disclose evidence against a suspect who has not been charged, in large part because of the presumption of innocence afforded an accused.

But because of the extraordinary and justified public interest and with special concern for the victims of the 2001 and 2002 anthrax mailings, we, the Department of Justice and the United States Postal Service briefed victims, Members of Congress and the media to provide information unsealed by the district court after the death of the person we believed was responsible for the attack. This included information about science developed during the investigation, and that was central to the ultimate focus of the case on Dr. Bruce Ivins.

The science employed was developed and validated throughout the investigation with the help of more than 60 outside experts and researchers. Nevertheless, because of the importance of science to this particular case and to perhaps cases in the future, we have initiated discussions with the National Academy of Sciences to undertake an independent review of the scientific approach used during the investigation.

We have worked diligently to provide as much information as we can within legal parameters, including privacy rights and also mindful that, for the time being, this case remains open while certain investigative activity winds up.

One last point, Mr. Chairman. Given the headlines of the last few days, we will say that although we have—referring, quite obviously, to the mortgage crisis that is affecting our economy—we will say that, although we have currently over 1,400 open cases and almost 500 convictions just in the last 2 years, the Committee should understand that, just like the S&L crisis in the early 1990's and the corporate excesses of the beginning of this decade, the FBI will pursue these cases as far up the corporate chain as necessary to ensure that those responsible receive the justice they deserve.

And, Mr. Chairman, I would like to conclude by thanking you and the Committee for your support, your suggestions, and I certainly would be happy to answer any questions you might have.

[The prepared statement of Mr. Mueller follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT S. MUELLER, III

Department of Justice

STATEMENT OF

ROBERT S. MUELLER, III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

CONCERNING

"THE FEDERAL BUREAU OF INVESTIGATION"

PRESENTED

SEPTEMBER 16, 2008

I. Introduction

Good morning Chairman Conyers, Ranking Member Smith, and Members of the Committee. I am pleased to be here today.

As you know, the Federal Bureau of Investigation (FBI or Bureau) marked its 100th anniversary this past July. We were honored to have several of you join us for our celebration at the National Building Museum. We looked back over our century of service to America — from the earliest days, when 34 investigators focused on the few federal crimes that existed, to today, when over 30,000 employees are combating crime and terrorism across the country and around the world.

The crimes we confront have changed dramatically through the decades, from violent gangsters to Nazi saboteurs, from foreign spies to organized crime rings, and from computer hackers to terrorists. And the FBI has changed along with them, always evolving to meet the threats of the moment. Each historic period has prepared us for the challenges of the future. And while it is a time of tremendous change in the Bureau, our values will not change. The rule of law, civil liberties, and civil rights–we do not perceive these as our burdens but among our core missions, as they have been for the past 100 years. And while I assure you that we are preserving the finest traditions of the FBI, it is the future that I would like to talk about today.

When I have come before this committee over the past several years, I have discussed the FBI's transformation from an organization whose primary mission was law enforcement into a national security organization that is focused on preventing crime and terrorism, not just investigating the perpetrators after the fact. And I have recounted our many improvements and accomplishments in each of our priority areas.

But marking milestones is about more than looking backward; it is also about looking forward. And so today I want to focus on what the FBI is doing — and will continue to do — in order to ensure that we can serve the American public for the next hundred years. In the interest

of time, I will focus on four specific areas: intelligence, investigative techniques, technology, and human capital.

* * *

II. Intelligence

First, intelligence. Intelligence is crucial to every investigation and operation the Bureau undertakes. The FBI has always excelled at gathering intelligence, even if we did not always call it that, and using it to build cases that led to courtroom convictions. After the attacks of September 11, 2001, we realized that we also had to strengthen our intelligence analysis and dissemination.

I have discussed our efforts in great detail in the past, from ramping up hiring and training of intelligence analysts to establishing the Directorate of Intelligence and the National Security Branch at Headquarters. But intelligence gathering does not happen at Headquarters, it happens out in the communities we serve.

And so each field office established a Field Intelligence Group (FIG), made up of agents, analysts, linguists, and surveillance specialists. These are the operational arms of our intelligence program. Their mantra is "Know Your Domain," and they are focused on identifying and assessing every threat in their regions.

Their work is not limited to counterterrorism threats. For instance, a field office near a research university or defense contracting firm might also focus on potential espionage or proliferation threats. An office along the Southwest border might also focus on violent transnational gangs. And our offices around the country from large cities to rural areas are concerning themselves with rises in violent crime where they occur.

As the FIGs evolved, each office developed its own model for intelligence gathering and operations. As our intelligence capabilities continued to increase, it was necessary to evaluate

the different models that had emerged and move towards uniformity. And so we established a Strategic Execution Team (SET) to help us assess our intelligence program, evaluate best practices, decide what works and what does not work, and then standardize it across the Bureau. The purpose of the SET is to accelerate improvements to our intelligence capabilities, to ensure we are an intelligence-driven organization and to drive a change in mindsets throughout the FBI. To do this, we restructured the FIGs so they all conform to one model, which is slightly modified depending on whether the size of the field office is considered to be small, medium, or large. As newly restructured, we believe the FIGs will be able to better coordinate with each other and with Headquarters. And because they all follow a single model, a Special Agent or analyst working on the FIG in the Atlanta office could easily transition to the FIG in the Albany office.

This effort has been integral to the FBI's effort to establish itself as a full partner in the wider intelligence community. The FIGs now have well-defined requirements for intelligence gathering, analysis, use, and production. And managers are now accountable for ensuring that intelligence production is high-quality, lawful, and relevant to the requirements not just of their local community but of the larger intelligence and law enforcement communities. In short, the FIGs now operate consistently with the FBI's position as a full and active member of the intelligence community.

We regularly share this intelligence with our partners in more than 18,000 law enforcement agencies around the country. We also collaborate closely with our international counterparts. And as the world continues to flatten and threats continue to migrate across borders, it is more important than ever for the FBI to be able to develop and disseminate information that will assist our partners.

Our national security is at stake. Indeed, our global security is at stake. And so we are hard at work implementing the recommendations of the SET. We have already implemented the recommendations in 24 field offices. By December, we will complete the rollout to the remaining field offices.

This is not a program that is being implemented as a quick fix. This work is critical to the long-term success of the FBI. We are training FBI personnel at all levels in order to inculcate the intelligence mission long past the rollout. We have clear metrics for success and clear accountability for ensuring they are met. We are committed to fully implementing these plans and making our intelligence capability second to none.

II. Investigative Techniques/Attorney General Guidelines

Our employees are collecting, analyzing, and sharing intelligence under an improved internal framework, and soon they will also be operating under new investigative guidelines. I would like to spend a few moments discussing the new Attorney General Guidelines for Domestic FBI Operations, which are in the process of being finalized and which have been briefed to your staffs. With the help and input of this Committee it is my hope and expectation that we can make these guidelines effective for agents operating in the field in the near term.

Special Agents have previously depended on several sets of guidelines to guide their investigations. Each set was tailored to a particular program or topical area, and different rules therefore governed different types of investigations. These included different rules for national security investigations versus criminal investigations.

To give you a few examples, the guidelines governing national security investigations prohibited recruiting or tasking sources unless the FBI had at least a Preliminary Investigation open. They also prohibited physical surveillance other than casual observation in that context. The General Crimes Guidelines, which governed other criminal investigations, did not contain these limitations.

For the most part, these rules were sufficient and appropriate for the threats they were meant to address. However, criminal threats and national security threats no longer fall neatly into separate categories. The threat of today, and of the future, is a dangerous convergence of terrorists, hostile foreign governments, and criminal groups operating over the Internet and through interconnected, sophisticated networks. We may see organized crime laundering money

for drug groups. Drug groups selling weapons to terrorists. Terrorists committing white-collar fraud to raise money for their operations. And most threatening of all, hostile foreign governments arming terrorists with an arsenal of biological, chemical and radiological weapons.

Historically, the Attorney General Guidelines have been periodically updated to address the increased sophistication of the threats we face and updated to ensure that civil liberties are protected as more sophisticated tools became available to counter these threats. The new Attorney General Guidelines are the next logical step in the evolution of the Guidelines and a necessary step if the FBI is to continue its transformation from a traditional law enforcement agency into an intelligence-driven organization that succeeds as both a premier law enforcement agency and a full-fledged member of the United States Intelligence Community. The result is a single set of guidelines that are reconciled, consolidated, and most importantly simplified. No longer will there be different rules for different types of investigations.

The new guidelines will replace five separate sets of guidelines with a single set of rules to govern the domestic activities of our employees. The new guidelines set consistent rules that apply across all operational programs, whether criminal or national security. They will give us the ability to be more proactive and the flexibility to address complex threats that do not fall solely under one program. They will eliminate inconsistencies that have the potential to cause confusion and create compliance traps for our employees.

The new guidelines are not designed to give, and do not give, the FBI any broad new authorities. The vast majority of the authorities outlined in the guidelines are not new, but techniques that were permissible under certain circumstances for criminal matters will now also be available for national security matters, and vice versa.

The FBI has the responsibility — indeed, the privilege — of upholding the Constitution. We know that if we safeguard our civil liberties but leave our country vulnerable to terrorism and crime, we have lost. If we protect America from terrorism and crime but sacrifice our civil liberties, we have lost. We are always mindful that our mission is not just to safeguard American

lives, but also to safeguard American liberties. We must strike a balance. The new guidelines have been carefully designed to ensure that we can and do strike that balance.

The new guidelines and policy frame work will provide strong oversight and accountability. They will help us to realize the improvements being implemented across the field by the SET, which I just discussed. And they will allow us to be more proactive, more predictive, and more preventative — and better able to meet the threats of the future.

III. Technology

The third area of focus is technology, which goes hand-in-hand with intelligence. Our mission is to gather the right intelligence, analyze it the right way, and share it with the right people at the right time. In order to do that, we must have the right technology.

As you know, we have made substantial progress in replacing and transforming the FBI's information technology systems to help us confront current threats and mission needs.

Our flagship program is Sentinel, a web-based case management system designed to support both our law enforcement and intelligence mission. Phase I was deployed Bureau-wide in June 2007. Information is accessible as web content rather than the former green screen presentation. Sentinel will move us from our dependence on paper files and will make information more accessible, faster, and easier to analyze.

Phase I set the foundation for the entire enterprise. Working with Lockheed Martin, we are developing and incrementally delivering Phase II service. The first Phase II delivery occurred this April and continues through Summer 2009. The remaining phases will continue to deliver additional capability through the end of the program in Summer 2010.

Other information technology systems that will dramatically enhance our ability to efficiently carry out our mission include: DELTA, which is a human source management database that will provide a uniform means to administer all facets of human source operation

more efficiently and accurately; the Operational Response and Investigative Online Network, which is the next generation Crisis Information Management System and provides case-management and related information-processing capabilities to support federal, State, local, and tribal law enforcement and emergency personnel at special events or other critical incidents; and e-GUARDIAN, a suspicious incident reporting information-sharing system for federal, State, and local law enforcement.

We are also working to strengthen the information technology programs that allow us to communicate with our partners.

For example, we have improved our ability to disseminate intelligence reports by integrating our reports and messaging systems, allowing intelligence reports to be created, reviewed, and disseminated without interruption. We have also launched an initiative to consolidate the FBI's Unclassified Network with Law Enforcement Online (LEO), which is the secure network we use to share unclassified information with registered law enforcement partners. This will provide a single platform for FBI employees to communicate with internal and external partners. LEO already supports over 115,000 of our partners. We have also expanded our desktop Internet access to over 19,000 agents, analysts, task force, and support personnel. When completed, we anticipate approximately 39,000 Internet-connected desktops will have been deployed at all FBI locations. In addition, we have distributed over 20,000 BlackBerry devices that have email, Internet browsing, and custom features to FBI personnel.

Another one of our near-term goals is to make LEO the system of choice for transmitting international fingerprint cards from all over the world. And we have initiated an Advance Authentication project to implement stronger, simpler user authentication for LEO users. This is scheduled to deploy in November 2008.

We are also in the midst of developing the Next Generation Identification (NGI) system. NGI will expand the FBI's Integrated Automated Fingerprint Identification System (IAFIS), beyond fingerprints to advanced biometrics. It will also produce faster returns of information, enabling law enforcement and counterterrorism officials to make tactical decisions in the field.

Criminals ranging from identity thieves to document forgers to terrorists are taking advantage of modern technology to shield their identities and activities. This trend will only accelerate. And so our new system will include not just fingerprints, but additional biometric data from criminals and terrorists. It will give us — and all our law enforcement and intelligence partners — bigger, better, and faster capabilities as we move forward.

Part and parcel with our work to improve and enhance our ability to manage, make available, and quickly search biometrics information are efforts we have ongoing to enable our own Agents and our partners with deployable biometrics tools. We are presently piloting a number of systems that hold promise to be very useful in not only the collection of biometrics data, but also support the rapid search of biometrics databases in the field. The true power of advanced biometrics in the national and homeland security arenas is only realized when authorized users, ranging from patrol officers working the streets of America to Department of State officers screening Visa applicants abroad, have the ability to quickly gather data on those persons they encounter and in real time search appropriate databases. That kind of capability requires close collaboration with other federal, State, and local agencies, who also collect and store biometric data; the development and deployment of portable and interoperable technology; and strict adherence to all applicable laws and regulations to ensure our actions protect privacy and preserve civil liberties. Such collaboration has taken a giant leap forward with the completion of a memorandum of understanding between the Departments of Justice, State, and Homeland Security for the sharing of their respective biometric data, and will become operational this October.

And we have also developed a system called the Law Enforcement National Data Exchange (N-DEx). N-DEx is a national information-sharing system, accessible to law enforcement agencies through a secure website. It will allow nationwide searches from a single access point. We successfully completed the initial deployment this past March and will continue to refine it.

Law enforcement officers will now be able to search databases for information on everything from tattoos to cars, allowing them to link cases that previously seemed isolated.

They will be able to see crime trends and hotspots, access threat level assessments of individuals or locations, and use mapping technology. It is not a new records system; it just allows us to connect the information we already have. Crime and criminals move freely across jurisdictions, and so must we. N-DEx is exactly the type of technology we need to connect dots and connect law enforcement agencies from coast to coast.

IV. Human Capital

Everything I have just discussed — the SET initiative, the new Attorney General Guidelines, and improved technology — will strengthen the FBI's intelligence capability and make us a world-class national security organization. That is the goal we strive for every day. And this goal begins and ends with the FBI's most important asset — its people.

As you know, we have been hard at work building a strong Human Resources program in order to ensure we have optimal recruiting, hiring, training, and retention of our employees.

Our current challenges are threefold: One, we confront an aging workforce. About 70 percent of our employees are between the ages of 35 and 54, and another 10 percent are older than 55. Two, we require a workforce with a broad range of highly specialized skills. And three, we need to not just retain these employees but also train them to lead the FBI into the future.

Historically, the FBI has attracted recruits from the law enforcement, legal, and military communities, particularly to fill our Special Agent ranks. This has served us well as a law enforcement agency. But as we develop into a national security organization, we also require employees with specialized skills — intelligence analysts, scientists, linguists, and computer experts.

And so we are implementing a number of programs to target our recruitment of individuals with these critical skills and to fill our ranks with fresh talent — people who are ready to build on the foundation laid by our senior employees. New employees are bringing

significant skills and experiences acquired from prior employment or academic pursuits. In our current New Agents classes we have individuals with backgrounds in computer network engineering, computer programming, Arabic language and literature, and in various sciences. Several trainees also bring with them prior intelligence experience, military and otherwise.

We have approached our human resources challenges strategically, just as we would a complex investigation or operation.

First, we are strengthening our relationships with universities as a primary source of recruiting individuals who want to build a career in national security at the FBI. Our goal for the next several years is to hire 300-400 recent college graduates per year. We also plan to hire about 300 Honors Interns each summer, with the hope of bringing them on board in the future and creating a pool of talent for agent and non-agent careers in the Bureau.

Second, we are conducting a separate targeted intelligence hiring initiative to bring hundreds more intelligence analysts on board. Our program is modeled after successful programs in other intelligence agencies. We are using what we call the "best athlete" approach, targeting students at selected colleges and universities. We are looking for students pursuing analytic majors, including the hard sciences, math, economics, and engineering, as well as students with foreign language skills.

In addition, as part of the SET initiative, we piloted new recruiting techniques for intelligence analysts on four campuses, employing some of the same methods that have worked for successful corporations. We plan to apply what we have learned to our future recruiting efforts.

Third, we are expanding our career paths for intelligence analysts and intelligence Special Agents so that we can grow a highly skilled cadre of intelligence professionals. The analyst career path provides early training, mentoring, and a range of job experiences, as well as opportunities for advancement. Analysts will rotate through a series of positions to become fully familiar with all aspects of the intelligence cycle, and then can choose a specialty considering the

needs of the organization, and progress all the way up through the ranks of the Senior Executive Service.

We have also developed a career path for Special Agents who specialize in intelligence. While all agents play a role in intelligence collection, Intelligence Special Agents are playing dedicated roles on the Field Intelligence Group. This follows a recommendation of the SET initiative. Intelligence Special Agents focus on collecting intelligence against requirements by conducting liaison and managing human sources. In essence, they are dedicated Human Intelligence (HUMINT) collectors, whose mission is to recruit and use human sources to fill in "the spaces between the cases."

Fourth, we are strengthening our training programs. The FBI Academy at Quantico and the National Academy have long been considered premier law enforcement training academies. We need to build a similar program that focuses solely on intelligence. And so we have established an Intelligence Training Section at Quantico. We have also developed HUMINT training courses jointly with the Central Intelligence Agency (CIA), and we are leveraging CIA instructors to provide the training. And we have revamped the New Agents Training curriculum to include an additional 100 hours of national security and intelligence training.

We have worked hard to develop and provide more training opportunities for employees at all levels. We have leveraged technology for many courses, which employees can take online through our Virtual Academy. We are aiming to increase the length and number of training opportunities available to the greatest extent possible, given budgetary constraints. Where we cannot provide specialized training courses ourselves, we plan to expand our partnerships with other Intelligence Community programs, noted academic universities, and private industry.

We are focusing on developing leadership at all levels, to ensure the FBI has solid leadership as we move into our second century of service. Career paths are an important part of our effort, because each time employees move another step along their career paths and up the ladder, they build invaluable skills, which they bring to their next assignments. One of our goals is to establish career paths for all professional staff, not just agents and analysts.

Finally, we are focused not just on building isolated skills but on building a culture of leadership. We have developed a number of leadership programs, each of them geared to specific levels of management. For example, we partnered with the Kellogg School of Management to provide leadership training to our managers and executives. We initiated a succession plan for Senior Executive Service positions, to ensure we have highly-qualified managers moving up through the ranks and ready to take the places of retiring employees. We are working to create higher-level, senior management positions and leadership opportunities for all personnel, including our intelligence cadre and professional staff. We want to emphasize to our people and to the American public that leadership is a core value at the FBI and anyone can be promoted into senior positions based on their leadership ability, not just based on their job title.

The FBI has always been fortunate to have tremendously talented leaders. Many of them rose through the ranks of the Senior Executive Service, some were recruited from outside of the FBI, and others simply led from whatever position they held. But we cannot have leadership on an ad hoc basis. We must have an ethos of leadership at all levels.

That is why we are placing such an emphasis on human capital. We know how important it is to invest the time and resources in our employees, and develop their leadership potential over time. The men and women of the FBI have always been willing to do whatever it took, with whatever equipment they had, to carry out the mission of the FBI. They are extraordinarily dedicated public servants. A recent survey of FBI employees that included standardized questions that are asked in private industry and in other sectors of government, including the intelligence community, supports this. The survey highlighted the fact that our employees overwhelmingly feel that their work is important, that they enjoy their work, and that they are committed to the mission of the FBI. Enhancing the leadership capability of those who are leading such motivated and talented individuals and investing the time and resources into developing all employees through all levels of the organization can only enhance the FBI's ability to accomplish our national security mission. We are committed to providing the training, the mentoring, and the job experiences that will hone their management skills. We know that

today's young employees are the leaders of tomorrow's FBI, and we are committed to ensuring that the FBI has continuous and strong leadership well into the future.

* * *

VI. Conclusion

Over the past 100 years, the FBI earned a reputation for protecting America that remains unmatched. As we round the corner on a century of service, we in the FBI are always mindful of the dedicated people who came before us — the agents and professional staff who worked so hard to build the FBI into the agency that we cherish and on which America depends. Whenever I swear in a class of New Agents, I always tell them that when they go anywhere in the world and tell someone they are an FBI Special Agent, they will immediately have that person's respect. We are determined that they always will.

Unlike the FBI of 1908, today's FBI is much more than a law enforcement organization. The American public requires that we be a national security organization, driven by intelligence and dedicated to protecting our country from all threats to our freedom.

For 100 years, the men and women of the FBI have dedicated themselves to safeguarding justice, to upholding the rule of law, and to defending freedom. As we look back on the past 100 years, we renew our pledge to serve our country and to protect our fellow citizens with fidelity, bravery, and integrity for the next 100 years, and beyond.

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 seven years — and many of the goals we will realize in the future — are in great part due to your 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. I would be happy to answer any questions you may have.

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Mr. CONYERS. Thank you very much.

The Chair neglected to mention that we are grateful to your Chief of Staff Lisa Monaco and FBI General Counsel Valerie Caproni, and there are two others with them, and we are grateful to them as well.

Mr. MUELLER. Thank you.

Mr. CONYERS. Now, you have given a very thoughtful look at the good things that have come out of the Bureau, which is totally appropriate, but it is like we didn't make any opening statements hardly at all. I mean, look, for months we have been trying to get a reasonable response to the seven questions that I have put to you in my opening. I asked someone to give them to you in writing at the beginning.

What is this? I mean, we only get 5 minutes up here each. You know that. What can we accomplish between two people talking every 5 minutes? By then it's the end of the hearing, and we go back and start writing you more letters? How come we can't get some straight answers on the questions that I sent you, I ask you, I give you in person? What is this?

Mr. MUELLER. Mr. Chairman, there are a number of mechanisms for my working with the Committee. I have always made myself available to sit down and discuss particular issues. When it comes to questions for the record, as I am sure you understand, we draft responses, it goes through a thorough review by the Justice Department, and there is, inevitably, some delay.

We understood the question that you had put to us, and we worked to get the response to the letter back to you by as soon as we could yesterday—it does have to go through the review process. But we do our level best to either orally or in writing get you responses to your questions as soon as we can.

I also, as I think you understand, and the other Members of the Committee to the extent that you would like to, not in this format but another format—to sit down and discuss the issues. I am available to sit down and discuss what issues may be on your mind. Whether it be myself or my general counsel or my chief of staff or others in the organization, to the extent that briefings are requested and, certainly, from our perspective, necessary, we have tried to make persons within the Bureau available both to you, as well as to your staff.

And my own—I am sure you will correct me if I am wrong, but I thought we had a—have had a very good relationship with this Committee and have been responsive, not, occasionally, because of necessity of vetting but—there has been delay—but, nonetheless, we have been forthcoming and straightforward with our answers.

Mr. CONYERS. Director Mueller, we have a very good relationship. But we just don't get anything. You don't give us anything. And at a song and dance hearing like this, 5 minutes each from 25 Members, what is that going to get us? Where will we be if we never had the hearing in the first place?

I mean, look, these are serious, important questions that we keep writing you, meeting with you about, talking with you, holding hearings, and you say we have a good relationship. Well, maybe it is, but we don't get any information in this relationship.

Mr. MUELLER. The only—what I can say——

Mr. CONYERS. Well I gave you——

Mr. MUELLER [continuing]. Seven is——

Mr. CONYERS [continuing]. Seven questions. You didn't mention them. I mean are you, like, "So. This is another set of the same questions they keep on asking me?"

Mr. MUELLER. We worked hard to respond to your letter. I do believe we got a response to that letter last evening after it had been vetted throughout the administration. I met with you, as you are aware, and we discussed some of these issues, and I would be happy to meet with any of the other Members and discuss these issues.

Mr. CONYERS. Why won't you give us what we ask for? That is all I want to know. If you are not going to give it, at least I can rationalize or tell the Committee why we are not getting it. I am not forcing you to give it to me, but if you are not going to give it to me, you could give me some direct answers so I don't have to do this in the Committee.

Mr. MUELLER. Mr. Chairman, we did respond to your letter. It was received. I think it was sent up last night after it had been vetted. And that was on very short notice. So I do believe we have tried to be responsive. And the questions for the record, we try to be responsive to each one of the questions for the record we have and receive, and I do believe we have been responsive to those questions.

Mr. CONYERS. On July 28 in Cleveland, we had an FBI and, I guess, police raid. Two-hundred officers came to Jimmy Demora's home to find out who paid for the paving of his driveway. And it just so happens he is the chairman of the Cuyahoga County Democratic Party, as well as a commissioner on the county board, and also involved is Frank Russo, the Cuyahoga County auditor. Can you give us some information about this?

Mr. MUELLER. Well, I am not familiar with the particular search that apparently was executed on that day or the specifics of the investigation, but I would be glad to get back to you, to the extent that we can, since it, quite probably, is an ongoing investigation—with what information we can, and we will do it promptly.

Mr. CONYERS. Thank you.

Mr. Lamar Smith?

Mr. SMITH. Mr. Chairman, I am going to defer to the gentleman from North Carolina, Mr. Coble, who has a conflict in about 2 minutes in another hearing, and then I will ask my questions later on.

Mr. COBLE. I thank the Ranking Member.

Thank—transportation hearing is going on now, Mr. Chairman. I have got to attend.

Director, good to have you with us.

Director, you mentioned the mortgage crisis problem regarding the bad actors, and I think, in some instances, the bad actors can be the lenders as well as the borrowers.

Let me put a two-part question to you. Is mortgage fraud primarily a Federal offense, A, and, B, what role does state prosecutor—the state banking regulators play in identifying and shutting down fraudulent lenders?

Mr. MUELLER. Let me, if I could, respond to the first part of the question by saying it is both a Federal offense but also a state and

local offense. And recognizing that, we now have 42 task forces around the country, which include personnel from the Federal authorities, but in many cases personnel from state authorities as well, and we will take cases either in the state criminal justice system—to the state criminal justice system or the Federal system as is warranted.

We have over 1,400 mortgage-fraud cases that are directed principally at brokers, appraisers, buyers, lenders and the like. We have another set of cases which are directed at large institutions, where we are looking at allegations of misstatements of assets. We have 24 of those cases we are currently looking at.

That latter group of cases are ones that most likely, if there are charges to come from them, will be Federal charges. But in terms of the other class of cases, where you have brokers and appraisers and buyers and the like, they can go either federally or locally, and we bring them in whichever jurisdiction makes some sense given the particular case.

Mr. COBLE. Thank you, sir.

Director, some critics assert that scarce Federal law enforcement resources should not be expended on the investigation and prosecution of intellectual property rights cases. They contend that private right' holders should look to their own resources to protect their intellectual property rights and that Federal law enforcement authorities should be encouraged to focus on what they call "higher priority matters." What do you say to that?

Mr. MUELLER. We do have jurisdiction, along with other entities, to investigate and prosecute—or investigate and turn over to the prosecutor the investigations of intellectual property cases. We have a number of priorities. Intellectual property is something that we handle when we can bring something special to the table and this—as I indicated in my remarks, in this increasingly flattened world, where globalization means that crooks can cross borders at will, whether it be with the Internet or otherwise, many of the intellectual property investigations require a—or have an international nexus. And when that occurs, we have over 60 legal attache officers around the world, and we involve them in those large investigations.

We recently had a case, as an example, we did it with ICE and with Customs and Border Patrol and in conjunction with the Chinese authorities in which we seized millions and millions of dollars of counterfeit goods and a number of persons were arrested. That case is indicative of the type of effort we will put in when it is a case that lends itself to being handled by the Bureau.

Mr. COBLE. Thank you. Thank you, Director.

Speaking of crossing borders, put on your immigration hat, Mr. Director, if you will. What are the risks that the violence caused by increasingly brazen drug cartels in Mexico will spill over across the border into the U.S., particular as to border towns?

Mr. MUELLER. What our great concern is, as the Mexican authorities have cut down drugs coming to the United States as well as—in conjunction with Department of Homeland Security cut down on numbers of persons coming across the borders, there has been a battle between the cartels—in that arena.

Most of the violence occurs south of the border. However, there have been a number of instances where there have been kidnappings of individuals—American citizens—who have traveled either to their business or to visit family in Mexico and have been kidnapped. Where that has occurred along the border, we have established antikidnapping task forces in conjunction with state and local law enforcement and also with vetted counterparts across the border in Mexico.

We have had a few instances where the violence has spilled across the border in the sense that there have been shootings on this side involving persons who were participants or associated with a group south of the border, but they, thankfully, have been relatively few.

We are looking and monitoring the situation to assure that violence that is occurring south of the border does not spill in to the United States, and if it does, we, along with the other Federal authorities and state and local authorities, will take swift action.

Mr. COBLE. I see my time has expired.

Thank you, Mr. Director.

I yield back, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Coble.

Chairman Jerry Nadler?

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Director, first, before I give my questions, let me congratulate you on what was—on your role in standing up heroically against abuse of power as revealed in the last couple of days in The Washington Post with respect to a few years ago. And I mean that sincerely.

Now, I want to talk some—ask a couple questions about the anthrax investigation.

Now, the FBI has said that—essentially that this fellow, Ivins, apparently was the culprit. And he is, of course, deceased. Now, in understanding the bottom line of the Bureau's investigation and how accurate we can take it to be, it is important to understand the actual nature of the murder weapon, that is, the anthrax that was sent through the mails.

The scientists at the U.S. Armed Forces Institute of Pathology who examined the powder contained in the letter to Senator Daschle's office said it contained silica. Now, some observers say the silica may have been a sophisticated additive designed to make the powder a more deadly killer. Now, this additive requires special expertise to apply to anthrax spores, an expertise that, according to his former boss at USAMRIID, the chief suspect, Mr. Ivins, simply did not have.

Now, the briefing last month convened by the Justice Department to lay out details of its case, government scientists said the powders in the attacks contained no additives, only some silicon, which they described as naturally occurring.

Now, scientists say that a percentage of silicon higher than half of 1 percent has never been recorded in the scientific literature as naturally occurring. So if that percentage is higher than half of 1 percent, it would be indicated that it was not natural, that it was added by a sophisticated operator.

So for the record I want to ask you, what was the percentage of weight of the silicon in the powders that your experts examined?

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

Mr. NADLER. I assumed you were going to say that.

Mr. MUELLER. But I will tell you that issue came up early in the investigation. It was vetted not just by our scientists but scientists around the country who specialize in this. And the last point I would make is that we—as I have indicated, we are in discussions with the National Academy of Sciences to do an independent review, in which that issue, quite obviously, would be one of those issues addressed.

Mr. NADLER. But you can tell us what that percentage was?

Mr. MUELLER. I believe I can, yes.

Mr. NADLER. Thank you.

Now, if the percentage is greater than half of 1 percent—or certainly greater than 1 percent—then that would be a strong indicator that the anthrax was manipulated deliberately to be a very sophisticated killer. There are only a handful of facilities in the United States which have been publicly identified as having the experienced personnel and equipment necessary to make anything approaching such an anthrax powder, including the U.S. Army's Dugway Proving Grounds and the Battelle Memorial Institute in Jefferson, Ohio, a CIA contractor.

Were those facilities ever targets in the investigation?

Mr. MUELLER. Using "target" is somewhat a weighted word in terms of——

Mr. NADLER. Well, were they ever looked at?

Mr. MUELLER [continuing]. In terms of what we looked at in the course of the investigation, you can assume that we looked at every laboratory in the United States and several overseas that had both the type of the Ames anthrax that we found in this case but also had individuals capable of undertaking the drying and preparing of the anthrax that was sent in the letters.

Mr. NADLER. Well, if—and the addition of the silica if that proves to be the case.

Now, if these facilities were looked at, could you tell us how and why they were ruled out since, obviously, you zeroed in on Fort Dietrich and on Mr. Ivins?

Mr. MUELLER. I would have to get back to you on individual facilities. I would think, as you are well aware, that, over a period of time, we developed the genetic morphology of the anthrax used in the letters and—which was relatively unique, having four separate distinct genetic markers, and that led to identifying the vial that was labeled RMR1029 and was found in Dr. Ivins's laboratory. And so there was a clear identification of the anthrax in the letters back to being—referred—or related back to the anthrax that was in the vial in Dr. Ivins's laboratory.

And that, in and of itself would give you one means of eliminating others, although to the extent that there was anthrax that had been distributed from that vial, we traced all of that anthrax and eliminated any other persons who may have had access or utilized that access as a suspect which is——

Mr. NADLER. Final question. Do you agree, as many have suggested, that there may be a need for an independent review of the

evidence, especially given that bioforensics is such a new field, and would the Bureau cooperate with such an effort, and what possible downside could there be from such a review if it were to take place?

Mr. MUELLER. Well, as I have indicated that—we are in discussions with and are going to request of the National Academy of Sciences review the work that was done in the course of this investigation and it is an independent review by a panel of scientists that will be pulled together by the National Academy. Many of the scientists the National Academy ordinarily would seek to have on a panel are scientists that were already used in the course of the investigation. But as I say, the National Academy is an independent entity and will be conducting a review.

Mr. NADLER. Well, thank you, and I just want to say I hope you will get back to us relatively quickly with the weight of the percentage of the silica and why these other facilities were ruled out.

Mr. MUELLER. Will do so, sir.

Mr. NADLER. Thank you.

I yield back.

Mr. CONYERS. Thank you, Chairman Nadler.

Ranking Member Lamar Smith?

Mr. SMITH. Thank you, Mr. Chairman.

Director Mueller, I would like to go back to three subjects that you touched upon in your opening statement just to get you to elaborate a little bit more upon them.

The first is what, again, are some of the disadvantages, defects of the current system when it comes to trying to prevent terrorist attacks?

Mr. MUELLER. Well, with particularly the Attorney General Guidelines, which is one of the subjects, I know, we wish to address today, there is several reasons why they need to be changed.

The first is, as many entities that have looked at what happened on September 11—whether it be the Joint Congressional Committees, the 9-11 Commission, the WMD Commission—have looked at the Bureau, they have come to say that the Bureau needs to be more proactive, you have to prevent another September 11. It is not sufficient that you do the job of investigating after the attack and brining the persons responsible to justice.

And we have to build up our intelligence. And in doing so, we have to understand that we need all of the tools—the ones that we use on the criminal side—to be applicable on the national security side. If we can do surveillances, pretext interviews and the like on the criminal side, when we have a threat, we should be able to do the same thing on the national security side. So the purpose of the guidelines is to eliminate that wall, allow us to utilize those techniques to prevent terrorist attacks, as well as to investigate them after the fact.

Mr. SMITH. Next question is this: I think you have made a persuasive argument on the need to change the rules or guidelines. Can you give us, though, some visual, graphic, real-life examples of the kinds of terrorist crimes that could be prevented if you—when you implement these new rules and guidelines that could not be prevented under the current rules and guidelines?

Mr. MUELLER. Let me use, perhaps, two examples. One is the Phoenix memorandum. Most people are familiar with the fact that a very good agent in Phoenix prior to September 11 noted that individuals from the Middle East who were associated with more radical elements in the Phoenix area were taking flight lessons. He drafted a memorandum, it was sent back to headquarters, and no action was taken on it by the time of the attacks.

It is that kind of threat and identification of a very suspicious circumstance that would warrant further investigation. And under the preceding guideline, it would be problematic in order to undertake the activities we wanted to follow up on.

Another example would be we know, quite obviously, that in western Pakistan now—that there are camps in which individuals are being trained. The U.K. knows that very well because individuals who were involved in the 2005 attacks and later attacks had traveled to Pakistan for training in the camps and then come back.

I believe the American public, this Committee would want us to understand that potential threat and do what is necessary to try to identify persons who had traveled to Pakistan—whatever their heritage, whatever their background, whatever their ethnicity—to determine who is going to Pakistan to obtain that training and may be coming back to the United States to undertake an attack. Under the previous guidelines, undertaking that type of investigation would be problematic because we had not focused on one particular crime and one individual.

Mr. SMITH. Okay. Thank you, Director Mueller.

One last question, and you did mention this in your opening statement. It is true, I believe, that some of these rules and guidelines—most of them—can now be used to try to solve the usual types of crimes that we would consider sort of everyday crimes but under current rules cannot be used to try to prevent terrorist attacks. I don't know what the genesis of that distinction was, but clearly, in this day and age, as a—and the subsequent era of 9-11, we need the same tools and guidelines that have been used to solve robberies to enable us to prevent terrorist attacks.

I don't know if you want to comment on that any more than you already had, but it clearly seems to me that, if you are going to use them for one type of crime, you ought to be able to use them for other types—to prevent other types of crime as well.

Mr. MUELLER. Well, perhaps I could use an example. If we received word that there was drug dealing out of a particular bar in a area of the city, under the criminal guidelines we would be able to put up a surveillance on that bar to determine whether or not a person was—whether there was drug traffic coming in or not, we could send an agent doing pretext interviews to gain information. We could recruit and task sources to go in to determine whether there was drug trafficking in that bar.

However, if the allegation was that Al Qaida was recruiting suicide bombers in that bar or Hezbollah was seeking to generate funds in that bar, we would be precluded by the national security guidelines from conducting a surveillance, recruiting and tasking sources or doing a pretext interview. We would be limited to going in there and saying, "Okay. I am the FBI. Is there any illegal activity happening here?"

And that is the contradiction between the two sets of guidelines.

Mr. NADLER. That is a good example, and it is a good one to end on as well.

Thank you, Director.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Lamar Smith.

Chairman Bobby Scott?

Mr. SCOTT. Thank you.

And thank you, Mr. Director.

There is concern about the upcoming election—that if be fair. It looks like—every indication—there will be several states that will be extremely close so we want to make sure there is no problem. If someone were running a voter scheme to violate your right to vote, would that be something the FBI would have an jurisdiction over or an interest in?

Mr. MUELLER. We would. I will tell you that we have a person steeped in election law in every one of our field offices who will be alert at the time and before the election. I won't go so far as to say we have got a task force, but we have people standing by in the course of each election to respond to complaints along those lines.

Mr. SCOTT. And—and——

Mr. MUELLER. And we do it in conjunction with the Department of Justice.

Mr. SCOTT. And if voter registrars, for example, were giving out information that was inaccurate, would that be something—and discouraging people from registering to vote—would that be something the FBI would have an interest in?

Mr. MUELLER. I would have to look specifically at the statutes, but my assumption would be that, with the Department of Justice, it is something we would examine.

Mr. SCOTT. Thank you.

Mr. MUELLER. Depending on the intent and, quite obviously, the facts of the situation.

Mr. SCOTT. You are familiar with the report that was on "60 Minutes" over the weekend about ballistics tests?

Mr. MUELLER. Yes.

Mr. SCOTT. What—and apparently, at the time the report was given, there were people in jail based on evidence that has subsequently been found not to be reliable?

Mr. MUELLER. What I believe you are talking about is "60 Minutes" had a story about what we call "bullet lead analysis," which was an analysis we did for a number of years several years ago. We went to—I believe it was the National Academy of Sciences—and said, "We believe the science is appropriate. Would you review it." They reviewed it, said the science is appropriate but it lends itself to experts at trial exaggerating the import of the science.

We decided to discontinue that. At the time, we sent letters out to prosecutors that had had cases in which that bullet lead analysis expertise was utilized. We sent it out to National Association of Defense Attorneys. We identified and sent letters to the departments that had utilized it, as well as the prosecutors.

We came to find that in several circumstances, a number of circumstances, that was insufficient. And since then we have gone back and are pulling all of the transcripts of the trials in which our

expertise was used to determine what impact the expert had and to determine whether or not the expert stayed within the confines of his expertise.

And we are doing this with the Innocence Project, I might add, who did a very good job of looking at this issue, bringing it to our attention and then is working with us to make certain that we evaluate the import of this testimony in each case in which it was used.

Mr. SCOTT. Thank you. And on mortgage fraud, is your investigation on fraud in the mortgage industry aimed at individual cases or an organized, systematic situation where the entire industry was involved in defrauding people out of their money?

Mr. MUELLER. We are looking at all—I guess I would say all levels of the issue. On the one hand, as I indicated before, we are looking at brokers and appraisers and buyers and lenders at the local level, but we also have 24 investigations that are looking at corporations—large corporations, where the allegations would be that there were misstatement of assets. So we are looking at it from the large corporation perspective, as well as various schemes that were undertaken at the local level.

As I said, we have had in the last 2 years, I think, more than 500 indictments—I am not sure of the actual number of convictions but—and we currently have 1,400 cases of the state—the local variety and 24 cases of the corporate variety.

Mr. SCOTT. What is the jurisdiction of the FBI over the Federal Prison Industries?

Mr. MUELLER. I don't think it is a question of jurisdiction. I do believe that is a question of purchase of furniture from prison industries that has been an issue. And as to that, I know it was raised before, we went back to our legal counsel and to the purchasing department to make certain that we are maximizing our ability under the law to look at the purchase of furniture from the prison industries. And we have followed the law with regard to those purchases.

Mr. SCOTT. Is the Federal Prison Industries an important agency as far as the FBI is concerned?

Mr. MUELLER. My understanding is it is part of the Bureau of Prisons, quite obviously, and we are close to our sister agency, but we have to follow the law when it comes to purchases, understanding that the desirability of assisting the Bureau of Prisons and providing work for its inmates and producing furniture that then can be sold. We have to—whatever purchases we make have to be done according to the applicable purchasing regulations.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CONYERS. Darrell Issa, California, serves with distinction on both the Intelligence Committee and the House Judiciary Committee.

Mr. ISSA. Thank you, Mr. Chairman.

And, Mr. Chairman, before I begin, I would like to suggest that we look at Mr. Scott's reference to prison industries and on a bipartisan basis look at the history of unsuccessful reform to make that an industry in which government would want to buy the output, and I would offer—I am a former appointee to the California Prison Industries board. I would be more than willing to work on the re-

form that could lead to improvement in the skills training and the output, and hopefully that would help solve a problem that I know vexes all of us here on the podium.

Mr. SCOTT. If the gentleman would yield?

Mr. ISSA. Of course.

Mr. SCOTT. We have had bipartisan cooperation on that and, unfortunately, bipartisan opposition. So I would be more than willing to work with you on that.

Mr. ISSA. I thank you, Chairman.

Mr. Chairman, thank you for yielding time.

Director Mueller, this is never an easy place for you to come so I will start off by saying congratulations on being at the helm on the 100th anniversary of the creation. You know, the fact is the FBI has gone from 30 or so—30,000 over the last 100 years and has proven to be the one go-to for all levels of investigation.

And I would like to touch on a couple of things because I am concerned today that, because we give you everything to investigate, that perhaps how you prioritize has been a problem.

First of all, in dealing on a global basis with the global war on terror and the resources you have had to be put in foreign embassies and so on, have you been given the resources necessary to do that while continuing to increase your vigilance in the other areas of Federal crime?

Mr. MUELLER. Well, we had to—in the wake of September 11, we moved almost 2,000 agents from the criminal side of the house to national security, and national security being counterterrorism, as well as counterintelligence give the threats from various countries wishing to steal our secrets. And the third aspect of national security is cyber security. So those three national security priorities received almost 2,000 agents.

The directive to every one of our special agents in charge is you have to know what is happening in your domain, in your jurisdiction when it comes to counterterrorism. That is number one. Counterintelligence is number two, and cyber is number three. Then you hit the criminal priorities.

And we have had to, on the criminal side, prioritize. We took, I would say, better than half of those agents from the drug program. We have very significantly ratcheted back our participation in the war on drugs, limiting it to participation in the OCDETF program.

Mr. ISSA. Okay. Director Mueller, because my time is limited, I would like to follow up because I think you have made my point very well.

The war on terror, China and other countries' relentless attack on cyber world—both DOD but also even the U.S. House of Representatives has been invaded, and Trojans have been put inside our computers by China, other countries as well. You have never been given significant new resources for that. You have never been given significant resources for all the other counterterrorism you are doing.

Can you tell this Committee today—or can you respond in writing—recognizing that you transcend administrations, what it is going to take give 100 percent appropriate effort in those new tasks, including this exponentially growing attack on the Internet

while getting you back to historic levels of such things as the gentleman from Virginia mentioned?

Look, we have got House and Senate members who are implicated in receiving discount loans from Countrywide. We have tens of thousands of people who in some way, shape or form were part of the problem of subprime, and you have made it clear, you are resources are limited and some of your investigation capability of September 11 left those areas.

So because the time is limited, and because I know that the majority will ask a lot of other questions, I would really appreciate it if you would give me a short response and then go on beyond this so this Committee could begin to look—because my guess is that you are 30,000 men and women and your budget should have been increased by a good 10,000 if you were to deal with cyber security and with the threat of Al Qaida and other groups, and please respond.

Mr. MUELLER. We continuously put in requests for resources. It goes through the Department of Justice, OMB, the administration, quite obviously, as you are all too well familiar——

Mr. ISSA. But they have never asked for those kinds of numbers, and this is your chance.

Mr. MUELLER. I would be happy to. We have a 5-year plan in which we have laid out the growth of the Bureau. I would be happy to come and try to make that available to you with the assistance of Department of Justice.

And it is a question of prioritization, and we have done everything we can to make certain that we have our prioritization right. As I say, we are not doing what we did on the war on drugs, and we are not doing as many smaller white-collar criminal cases apart from the mortgage-fraud case that we have done before. And it is continuously an effort to request new resources while prioritizing the resources that we have. But I would be happy to provide you some information with regard to the future of the Bureau and what we expect and hope.

Mr. ISSA. Thank you, Director, and, hopefully, it will be your information and your aspirations.

Mr. MUELLER [continuing]. My aspirations.

Mr. ISSA. Thank you.

Mr. CONYERS. Thanks, Darrell Issa.

Chairwoman Zoe Lofgren Immigration Committee, California?

Ms. LOFGREN. Thank you, Mr. Chairman.

And, Director Mueller, it is good to see you again.

I want to get back to a topic that I have raised, I think, every time you have appeared before the Committee, and that has to do with the FBI name checks for immigration purposes. Specifically, I know there have been changes made in the processing of legal permanent resident requests that USCIS made to expedite, but certainly they have not, nor would I suggest, that they make any changes when it relates to citizenship applications.

So the question is where are we? A year ago—actually, a little over a year ago, you indicated that we were on the verge of taking a great leap forward on the FBI name checks, and then again in April of this year, you indicated that we would have—the leap had

not yet occurred but that we were going to get all of the FBI name checks down to a 30-day period.

However, this June the inspector general indicated that the name check program is using outdated technology and that the staff is poorly trained, that the supervisors are overworked and that they are falling behind. So I want to know where are we? Are we 90 days current? Are we 30 days current?

Mr. MUELLER. I am ready for you, Congresswoman. I knew—I anticipated——

Ms. LOFGREN. I knew that you knew I would ask this.

Mr. MUELLER. Since we first discussed this, we have done a number of things to address it. We have raised the fees, revised criteria, prioritized the workload, we are building a central records complex and we hired over 200 contractors to address this.

As a result, in July of this year, we eliminated the backlog where we had cases pending longer than 2 years. By November this year, we will have eliminated the backlog of any case that is pending longer than 1 year. And by June of 2009, we hope to have 98 percent done within 30 days.

Ms. LOFGREN. Well, if I may, right now, you know, in the—1990's are done within a few minutes because of the mechanization.

Mr. MUELLER. Yes. Yes.

Ms. LOFGREN. It is the problem when that doesn't work where we have these big delays. So when are we going to get to the 30-day goal that USCIS——

Mr. MUELLER. I do not believe that you will get—in certain cases you will not get to the 30-day goal, which is why it is 98 percent. You will have persons that come up—and multiple files. We have, I think, it is something like 100, 172 million. What is it—172—yes. We have got miles and miles and miles of files. We cannot digitize all the files. We will always have files from many years ago, although we are not going back now as often as we did, where we have to go to paper files. And those paper files can be located anyplace around the country.

And, consequently, we will never, I don't believe, be able to have 100 percent done within 30 days, but it will very, very few, and it will be down to—as we said, 98 percent will be done within 30 days.

Ms. LOFGREN. Let——

Mr. MUELLER. And as I said—the other thing I think is important to note is that, as of November of this year, we will have totally limited the backlog of those that were pending longer than 1 year. So it may be 30 days, it may be 45 days, it may be 60 days, but it will be nowheres like it was 2 or 3 years ago.

Ms. LOFGREN. Do you have information of the name checks that were in this process what percentage of individuals were found problematic and illegible as a consequence of the search?

Mr. MUELLER. I think I heard at one point it was very low, but I would have to get back to you with that statistic.

Ms. LOFGREN. Could you get that information if you have it?

Mr. MUELLER. Yes, I could. Yes. Yes.

Ms. LOFGREN. I mean, if you don't have it, I wouldn't want you to put a huge amount of personnel into finding it, but I would like—I am interested in knowing that.

Mr. MUELLER. I will make one point if I could is, even if it is low—and I expect it to be fairly low—you don't know where that one person——

Ms. LOFGREN. No.

Mr. MUELLER [continuing]. Where that person——

Ms. LOFGREN. As you have—I have not suggested that this be—as I opened, that this be abbreviated in any way, but I am interested in——

Mr. MUELLER. Yes, ma'am.

Ms. LOFGREN [continuing]. In the statistics.

I will just express a concern and I know that you did address your interest in technology in your testimony and talking about deployable biometric tools. But those goals, which I think are useful ones and important ones, seem to be at odds with the intensive by-hand search of paper files that you have just described for the name check. Can you rectify your statement about the new technology and where we are in this name check?

Mr. MUELLER. Well, it is time, personnel and money to digitize every file the Bureau has and——

Ms. LOFGREN. Well, certainly, some files are closed. Some files everybody is dead. I mean you don't want to do that.

Mr. MUELLER. What we have done is, where we are looking at a file, we will digitize that file. In other words, if it comes up—if there is something comes up in the course of a background check, we will digitize that file and—at least I—in most cases I think we do—when the possibility will be that that files need to be retrieved again.

We are utilizing technology to both digitize and have files remotely reviewed. We are using technology we can in this—addressing this particular problem, but the idea would be to digitize everything. But OCR'ing a handwritten record would take forever, and it wouldn't——

Ms. LOFGREN. You could——

Mr. MUELLER [continuing]. Do what you——

Ms. LOFGREN [continuing]. You could make it searchable.

Mr. MUELLER. It might well, but you have to code it or you have to OCR it in order to make it retrievable in a digital file. So there is some pushes and takes in terms of what you can do in terms of digitizing all our files. Ideally, the model is digitize everything and make it immediately searchable, but it is an ideal that really you can't obtain and so you have to have a number of strategies to maximize your ability to retrieve those records quickly.

Ms. LOFGREN. I know my time has expired, Mr. Chairman.

But I am very interested—and I don't know whether you want to do it here in a public forum or at a more discreet forum, but we have, as we digitize information, I do have a concern about what security we have in place to keep that database secure from intruders. And I don't want to talk about the FBI, but the Federal Government as an entity does not have a great track record of maintaining security of its databases so I am very, very interested in what you have deployed in that area, and whether you want to address that now or at a later day, I——

Mr. MUELLER. We are very concerned about that, quite obviously, and what I would have to do, I think, is get back to you, if I could,

with some information on the particular processes, audit trails and the like that——

Ms. LOFGREN. I would very much appreciate that.

Thank you, Mr. Chairman.

Mr. CONYERS. Dan Lundgren is a former Member of Congress who did a stint as attorney general of California and is now back with the Committee.

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

Thank you, Director Mueller, for being here.

Let me go back to something that we have gone over in your previous appearances here, and that is the experience we had with national security letters and exigent letters. And we saw the report from the inspector general on that and your response of the changes that you had made to ensure that we didn't have those problems.

But I would like to ask once again, was there any disciplinary action taken with respect to anybody on that? Because, as I recall, the conclusion of the inspector general was not that there was any intentional wrongdoing or criminal activity but that it was essentially—I will use a word that he didn't use but it sounded like sloppiness and lack of training of the agents of the seriousness of it, lack of enforcement by the SAC's and so forth.

And while I appreciate you have made changes—and I think you have made changes—to ensure that doesn't happen again, was anybody ever found at fault, or was it just one of these things where we say, "Well, gee, no one did a good enough job, and that is too bad"?

Mr. MUELLER. We, as I believe you are aware, the investigation is ongoing in exigent letters, which is one of the areas that was harshly described by the IG, and that is an ongoing investigation. My expectation is, as this happened in other similar instances, that the IG will reach some findings with regard to individuals, and I will look at those findings and determine whether or not action should be taken.

With regard to the over-arching problem that you——

Mr. LUNGREN. Right.

Mr. MUELLER [continuing]. You, I think, paint a picture of what happened, and it is very difficult that, other than me, who did not to put into place the appropriate procedures—not procedures because procedures were in place but the compliance to ensure that it was done to point one person who was responsible for what was a widespread departure from the procedures that have been put in place.

Mr. LUNGREN. And what about the question we have talked about before, which was the legal advisor to the SAC is someone who is in the chain of command underneath the SAC and, therefore, very much—their advancements or their evaluations are very much in the bailiwick of the person to whom they are to give legal advice. And one of the questions that arose during this whole process was why didn't any of the legal advisors to the SAC's every raise this problem. And the question was whether or not there ought to be a greater chain of command from your general counsel to those legal advisors? What have you done with respect to that?

Mr. MUELLER. A couple things. We had a substantial training program and—with CDC's in terms of their responsibilities, particularly when it goes to this particular program, and we have in process a change of changes with regard to the selection and the performance evaluations with regard to CDC's in which the general counsel will play a much more substantial role. That has not been finalized at this point.

Mr. LUNGREN. Let me raise what may be a touchy question from both your side and our side.

One of the things that is raised with me when I go to other Members and talk to them about the responsibilities of your bureau and the necessary authority for your bureau and even adopting these new guidelines from the Department of Justice is a concern that was raised amidst the investigations of some Members of Congress.

And why it is touchy is because I don't want to say anything that would suggest you shouldn't be doing that, but at the same time, there have been leaks that have come out of the Department of Justice. I recall, when Speaker Hastert raised the institutional constitutional question about the manner in which a subpoena was carried out here on the capital grounds, that, when Speaker Hastert raised that with respect to a subpoena served on a Member of the other party but nonetheless a Member of the House of Representatives, a leak appeared out of the Department of Justice, which appeared to call in to question Speaker Hastert and whether or not he was under investigation. You may recall there were three different statements that were released to finally putting that to bed. And at least some Members said to me it appeared that that came from the FBI.

There have been some other investigations of Members where leaks have taken place, and when I try and assure other Members that, look, there ought to be investigations of Members of Congress where there appears to be wrongdoing, not all of those most likely are going to end up in finding criminal activity. At least in my experience as attorney general of California investigating public officials is many of them never did arise to criminal liability.

But what would you have me say to Members who say, "You are asking us to extend the authority of the FBI. You are asking us to give them greater power with respect to national security letters. You are asking us to pass on these new guidelines, and yet we see in our own experience that there appear to be leaks from time to time and nothing ever appears to happen. You and I have had this discussion. You said, if you could find them, you would punish them.

But the problem is Members sit there and say, if they can't control that, how can you convince us we ought to give them additional authority or even continue the authority that they have? That is the dilemma I have when I am talking to other Members. And, again, it is touchy because it is a proper role for you to play. I don't want anybody to believe that I am saying, you know, "Back off of investigations," but a leak can destroy a Member, but, more importantly, it can undermine the independence of the legislative branch versus the executive branch, and I know you understand that.

What do you say to a Member—or what should I say to a Member—with respect to that kind of a problem, where it appears that leaks occur and nothing every happens?

Mr. MUELLER. I would start by saying I abhor leaks. Everybody in the organization knows that. They have for some time. We will investigate and do investigate leaks and as aggressively as we investigate anything else.

I would say too often that we are the entity that people turn to as the leaking institution when in very many of these cases it is not the FBI at all, it is others who have access to the investigation, whether it be the Department of Justice or defense counsel or other players.

And the last point I would make is I would like nothing more than to successfully prosecute, whether it be somebody in the FBI or elsewhere, but all too often the one entity that has the evidence as to the leaks is unattainable, quite obviously, and that would be the reporters. And so you have one party that you are looking at, but you do not have access to the information on the other side that would enable you to actually bring the case before a jury.

All I can tell you is that it hurts the reputation of the FBI, it undercuts our prosecutions and our investigations, and I do whatever I can—I do, I think, what I can to assure that there is no leak from the FBI in these very sensitive investigations. I mean, we have any number of sensitive investigations that are maintained confidential all the way up in time until indictment, and, as I said, the abhor the leaks and other investigations that are disclosed prior to the appropriate time.

Mr. LUNGREN. Thank you.

Mr. CONYERS. Thank you.

The Chair recognizes the a civil-rights and voter-rights champion on Judiciary Committee, Maxine Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I am sorry I could not be here for the entire hearing. I have been running between several Committees here, but I am very pleased that you are holding this hearing.

And I would like to welcome our FBI Director, Mr. Mueller, today.

I wish I had time to talk more about mortgage fraud, but I would like to just say, from the information that I have, I am very pleased to see that the FBI has been doing a rather good job in dealing with this issue, and I hope to be able to talk with Mr. Mueller at some time in the near future.

I have to bring up another very, very urgent issue at this time that deals with what is happening, not only in my district in one of the small cities there, the city of Inglewood—and I don't know if he has been briefed on this—but what appears to be happening in too many places around the country.

You may be aware of the problem in the city of Inglewood, California, where in the last 4 months four residents have been shot and killed by Inglewood police officers under what can be described as questionable circumstances. I asked the Department of Justice to investigate these incidents to determine whether there is a pattern or practice of discrimination or other police misconduct that

could result in the violation of civil rights or other Federal criminal statutes.

I have not received an answer yet about my specific request, but I would like to know from you whether there are other investigations looking in to these kinds of problems? Have you been made aware of the problems in the city? I know you probably hear a lot about complaints about police misconduct all over the country, but Inglewood emerges pretty much on the radar screen of many of the people who watch these issues all over the country because each month for the past 4 months an African-American male has been killed by this police department.

Mr. MUELLER. I am not familiar with the specifics of Inglewood. I will tell you that, when we receive allegations or patterns of what appear to be—suspicious patterns which may raise to the level of a violation of the civil-rights laws, we do investigate along with the Department of Justice. I would have to get back to you on that particular set of allegations.

Ms. WATERS. Do you know of any investigations that may be going on on this time in any cities in the country around police misconduct?

Mr. MUELLER. Oh, I am sure we——

Ms. WATERS. The pattern——

Mr. MUELLER. I am sure we have numerous investigations. I can get you the numbers. I don't know it off the top of my head. But at any point in time we have a number of investigations into police brutality in a variety of forms.

Ms. WATERS. All right. Well, I appreciate that, and your offer to get back to us with information about Inglewood would be very helpful.

And since I have just a few more minutes left here on the time that I have to raise questions, let me just ask you a little bit about the mortgage-fraud work that you have been doing.

As you know, aside from just the regular operation of the new products that were put on the market, like the ARM's—the adjustable rate mortgages—and the resets and all that caused part of the subprime meltdown, we have a lot of allegations of people who actually did not know what they were signing or somebody else signed for them, they were misled about the ability to refinance and other things that look as if there was mortgage fraud.

Have you discovered any specific operation or operations that you could safely say were involved with mortgage fraud?

Mr. MUELLER. Yes. We have had a number of prosecutions over the last 2 years, I think, in excess of 500 of a variety of mortgage-fraud schemes that preyed on unwitting consumers and others. So, yes, around the country, particularly in those pockets where the subprime mortgage crisis is affecting the community is where many of these investigations reside.

We also, as I indicated earlier, have a number of investigations going against financial institutions who may well have misrepresented their assets in the course of filings and otherwise. And so we are looking at it from both the top, as well as those schemes, at what would be the bottom of the pyramid.

And we are doing it in 42 task forces around the country, and on those 42 task forces will be agents and specialists and experts

from a variety of Federal agencies, as well as from state and local law enforcement, and then we will choose the particular jurisdiction in which to file the case depending on the circumstances of the case.

Ms. WATERS. Well, just to alert you probably read the newspapers about it already—the foreclosure problem that we have is not simply a problem where people are losing their homes. It is not simply a problem where the value of homes and communities is being driven down. Because those homes that are not foreclosed are losing value because they are next door to or on the same block as houses that are not being kept up, and we tried to do something about this in the housing legislation that we passed.

But the latest scheme is that we hear that people are going to be challenged at the polling place, whose addresses match up with the homes that have been foreclosed. For example, we are told, and information is being revealed, that there will be lists of foreclosed homes and people will be asked at the polling place who represent that this is their voting address, this is their home, and it is very, very serious. And I never dreamed that foreclosure would bring us even this additional problem.

But whether we are talking about people whose homes have been foreclosed on or people maybe who have lost their homes through storms and hurricanes and damage—all of that—this business of challenging people at the poll about whether or not they are a resident of the state because they are address appears to be a foreclosed property is something that we all are going to have to deal with. Have you heard about this?

Mr. MUELLER. I had not heard about it, but I can understand it. But I am not a—I must confess, I am not that familiar with the election laws as they apply to circumstances such as this and particularly different——

Ms. WATERS. Who enforces the Voting Rights Act?

Mr. MUELLER. We would do the investigation. The Justice Department would be doing the prosecution.

Ms. WATERS. Okay. So I am bringing it to your attention in this hearing today that there are allegations and newspaper reports of foreclosure lists being used as a way to challenge voters at the polls. I am adding to that people who are the victims of storms and hurricanes and natural disasters because they would fall in the same category. And I am asking you to get in front of it and ask the appropriate entities in the Department of Justice to take a look a this, and let's not have this fight on election day at the polling places.

Mr. CONYERS. Would the gentlelady yield?

Ms. WATERS. Yes. I will yield to the Chairman.

Mr. CONYERS. Who is in charge of this in the Department of Justice, sir?

Mr. MUELLER. I would have to look. I am not—hold on just a sec. It is the Civil Rights Division.

Mr. CONYERS. Uh-huh. And that is——

Mr. MUELLER. I will follow up on it.

Mr. CONYERS. Okay. Do you know who is in charge of the Civil Rights Division?

Mr. MUELLER. I must confess, off the top of my head, I do not at this juncture.

It is acting A.A.G. Grace Chung Becker.

Mr. CONYERS. Ms. Becker is coming over——

Ms. WATERS. She is coming over?

Mr. CONYERS. Yes, Ms. Waters. We have a hearing scheduled with her.

Ms. WATERS. Well, I guess one of the things that I am taking the opportunity to do is sound the alarm so that we are not talking about it after the election what happened and investigating. This can be stopped now. We believe it is unconstitutional, it is a violation of the Voting Rights Act, and we shouldn't linger with this. We got an election coming up. And we don't want to see these challenges based on foreclosure or natural disasters. Okay?

Mr. CONYERS. The Chair is pleased now to recognize Bill Delahunt, the former Massachusetts prosecutor and a Member of the Foreign Affairs Committee, as well as Judiciary Committee.

Mr. DELAHUNT. Thank you, Mr. Chairman.

I would welcome Mr. Director. Let me echo the compliments that I think Mr. Nadler sent your way earlier. I was watching his testimony, and let me say that I am pleased with the report of the inspector general regarding the FBI's behavior in terms of enhanced interrogation techniques at Guantanamo. And I also read the two-part series reviewing the book on The Washington Post, and you are to be commended personally, as well as the agency.

Mr. MUELLER. Thank you.

Mr. DELAHUNT. I would like to just have a conversation for my limited time about how do we improve the efficacy of oversight in terms of this Committee and the Bureau? I would like you to go back to your office and reflect on how together we could accomplish that.

I think you heard the Chair of the full Committee in his opening remarks. His frustration was palpable. It is clear that the Bureau has a significant investment in how it is perceived, not just here in Congress but, more importantly, by the American people because, if there is a lack of confidence, it is dangerous because the Bureau and the Department of Justice are integrated into the judicial branch in some aspects, obviously.

And I share that frustration, and we need timely oversight to reassure the public that the Bureau with its power and its lack of transparency simply because of its mission in many respects is being conducted. I think we have to address that.

And let me suggest to the Chair——

Well, before I get to talking to Mr. Conyers, let me note that, as you are aware, Mr. Lungren and I have had an interest and we have had discussions with you personally on the issue of informant guidelines. I appreciate that, and I hope to have further discussions with you on that matter.

But the new attorney general's secret guidelines at this point in time, even if they were adopted, what kind of assurances will the American people have and this Committee that they are being fully complied with? That goes to the significance of vigorous, timely oversight. Not that we are questioning the integrity of individuals

in the FBI, but we know from our experience as a democracy that checks and balances work; otherwise, we put our democracy at risk.

But as I was suggesting to you, this format doesn't work—5 minutes, an appearance once or twice a year by yourself or even your designee in an open session. I would ask you to consider designating individuals within the Bureau to constantly communicate with members of the staff, who will be vetted and preapproved by the Chair and the Ranking Member, to maintain a constant flow of and exchange of information. There is so many issues to attend to, we are busy here, we leave here and we are on to something else. A 5-minute rule doesn't work. We are not going to get the kind of information that is necessary in a short, brief exchange like this.

And I would encourage the Chair to consider reviewing the rules of the Committee, whether it is extending the time for questioning, whether it is having staff or individual Members interview FBI prior to public hearings so that we know what we are getting into, whether it is the creation of a Subcommittee under your direction to focus in on specific areas of significant concern, as is constantly being brought up here.

But it is not working, and I am not suggesting that it is the responsibility exclusively of the FBI, the Department of the Justice or, clearly, this particular director, whom I have worked with in the past and for whom I have respect. But it isn't working, and I think it is important that we work together to ensure that there is vigorous, timely oversight so that the American people feel confident that a system of checks and balances is working in terms of an agency that, by its very nature, operates with limited transparency.

I, for one, would be willing—I chair Oversight on Foreign Affairs. We have different rules there, which basically is we have no rules. We just go on and on and on, and Mueller would be there for an hour and a half. But I think it is much more effective, and I really do think that it is time that we reconsider revising our rules and maybe even adding an additional Subcommittee that you could appoint a Chair to that would report to you directly because it is not working now.

And with that, Mr. Chairman, I yield back.

Mr. CONYERS. Well, let's invite Director Mueller to make a response if he chooses.

Mr. MUELLER. I am going to start by saying, I guess I am glad I am in this Committee and not in total anarchy in some other Committee. [Laughter.]

But the—several aspects perhaps. First, in terms of questions for the record, I don't care which administration it is—and I have been in a number now—you are somewhat always going to be frustrated because, whatever administration it is wants to do the vetting of the questions that are going in, and that takes a long time, and it gets prioritized, and that which is important gets vetted early, and that which is perceived by others who have to look at it does not. And so, regardless of the administration, I think there will be some frustration.

I do believe that it is important for us and the staff of the Congressional Affairs Office and the FBI to work very closely with the

staff of the Committee, and we have, and we have attempted to respond to questions and to provide briefings upon request.

Lastly, I would say that I would be—and have—if there is an issue that I can come up and discuss with the Committee as a whole or a segment of the Committee that has a particular interest in an issue, such as the issue of handling informants, I am always to come up and have an informal dialogue for whatever it takes to have a dialogue—a discussion—that is not in the somewhat formalistic confines of a hearing but in addition to a hearing. And so whatever I can do to make it work better with the structures we currently have, I am willing to try.

Mr. CONYERS. Thank you.

Attorney Artur Davis, a former member of the Department of Justice, from Alabama.

Mr. DAVIS. Thank you, Mr. Chairman.

And I will have to be brief, Mr. Director, as we have a vote that has got about 6 minutes left on it.

But let me try to turn, if I can, to the question of the new Attorney General Guidelines. I know you have been asked about that, but I wanted to flesh out some areas that are left over.

You probably saw The New York Times story by Eric Lichtblow on August 21, and this is his characterization—his phrase—but he opens the story by saying that the new standard doesn't require, "a clear basis for suspicion."

The Supreme Court and, to my knowledge, no other court have ever grappled with the question of the relationship between the standard for investigation in a FBI bureau context and, say, the relationship between that standard and the conventional *Terry* standard that we have. As you know from your days on the street, your days as a prosecutor, *Terry v. Ohio* states that there has to be a clear, articulable basis for a police encounter with someone. And that is kind of informally been thought to be the standard for opening up some kind of an investigation, I suppose, and the departmental context. This seems to weaken that standard. So I want you to comment on that for a second.

What, based on your time as a U.S. attorney and your time now as director of the Bureau, what do you understand the relationship to be between, say, a *Terry* standard for a police encounter and the Bureau's own internal standards for opening an investigation?

Mr. MUELLER. I guess I would start by saying I am not certain I would agree that the appropriate analogy is a police encounter because there is, I believe, some Fourth Amendment—there is a Fourth Amendment right that attends to a person walking on the street, although it is not the same as, quite obviously, a search warrant. And I am not certain that is the correct analogy.

I do believe that we open investigations on the criminal side with an allegation. It can be a criminal tax case in which a spouse says the other spouse is breaking the income tax laws. We open an investigation, we do it on that allegation, and it may well turn out that it was one spouse trying to get back to another——

Mr. DAVIS. Well, given time constraints, let me jump in.

As I understand the plan, as it has been characterized in print, agents pursuing national security leads could employ physical surveillance, deploy informants and engage in pretext interviews.

Now, some of those do look a lot like what *Terry* means to guard against, encounters with individuals.

So do you believe that the new standards create a doctrine that is less than the *Terry* standard of reasonable, articulable suspicion?

Mr. MUELLER. Well, it is not a new doctrine. It is the ability to employ particular methods at a particular point in time with regard to, on the national security side——

Mr. DAVIS. I understand.

Mr. MUELLER [continuing]. But tied to——

Mr. DAVIS. Is it less than the *Terry* standard of reasonable, articulable suspicion, in your opinion?

Mr. MUELLER. Yes.

Mr. DAVIS. And how would you define the new standard?

Mr. MUELLER. It can be an allegation. It can be a threat. It can be, for instance, a perceived threat by the U.S. government that one particular country is intent on stealing its secrets and, therefore, you have to identify the secrets that they are going to try to steal and then address the threat and identify those persons who are going to—or intend to steal the secrets.

Mr. DAVIS. Should there be——

Mr. MUELLER [continuing]. Can identify a particular person at the point, you know the threat is there. Or I used the example previously of western Pakistan, where we know persons are going for training in terrorist camps.

Mr. DAVIS. But let me jump in again given time constraints.

Should there be a more protective standard for American citizens than non-American citizens?

Mr. MUELLER. I don't believe that is the case. We operate within the United States—fully 99 percent of our encounters——

Mr. DAVIS. I understand that. But should there be a more protective standard for an American citizen who might be subject to physical surveillance, as opposed to a non-American citizen?

Mr. MUELLER. Well, there is that distinction in certain of the more intrusive areas, such as interceptions and the like. I do not believe at the outset, where you have an allegation or you have a threat that you are investigating, that there ought to be a more substantial standard.

Mr. DAVIS. Well, let me just end this, Director, by saying that I think that the problem, frankly, doesn't so much lie with your intent. I think you have been an outstanding director of the Bureau. The problem, as we know, lies with how individual agents may take the new grant of authority. And you and I both know that good agents try to push the bounds. And if you lower the scope, if you lower the standard, they are going to engage in more aggressive conduct.

It seems there are a lot of open questions here as to whether American citizens should be subjected to a more protective standard. I would argue they should. And, finally, it seems there are very real questions as to exactly how this new scope of authority is going to operate and practice, not in theory but in practice.

Mr. MUELLER. I meant to point out and should have pointed out that there is one area in which you can't collect. You cannot collect on a U.S. citizen, for instance, who is—solely to monitor First

Amendment activities, whatever those First Amendment activities might be. Now, that is a different standard than for noncitizens.

But, nonetheless, I do believe that the bar should be relatively low in terms of initiating what we call an assessment to determine whether or not it is a valid threat or not.

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

We have in Michigan in the Macomb County the Republican Party Chair, Mr. James Carabelli, announcing that they are going to examine whether people are using the polls who once lived in foreclosed homes.

We have another issue in which attorney Eric Doster, a lawyer for the Michigan Republican Party, who is involved in election-day challenges to voters, saying that they intend to use the practice of voter caging, in which, based on returns of mail, that anybody that fits in to that category, will also be challenged.

Can you help us initiate an investigation into these two considerations?

Mr. MUELLER. Our protocol, when it comes to election crimes, is to consult with the Department of Justice and put the fact pattern that you have described to the Department of Justice—I think it is the Election Crime section—and to the extent that further investigation is warranted, we will do so at the direction of the Election Crimes section.

Mr. CONYERS. Can I be advised of the outcome of that?

Mr. MUELLER. Yes, sir. We will get back to you——

Mr. CONYERS. Between today and tomorrow?

Mr. MUELLER. We will try to do so. We will have to get the fact pattern from your staff and then consult with the Department of Justice and perhaps have the department get back to you. If not, we will get back to you one way or the other.

Mr. CONYERS. Thank you.

And thank you very much for your attendance today.

Mr. MUELLER. Thank you.

Mr. CONYERS. That ends the Committee hearing.

Mr. MUELLER. Thank you, sir.

[Whereupon, at 12:11 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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

Thank you, Mr. Chairman, and ranking member, for convening today's very important hearing on the oversight of the Federal Bureau of Investigation (FBI). The Committee has general oversight jurisdiction over the FBI as part of the Department of Justice. There are a number of issues relating to the FBI which require congressional oversight, including the FBI's use of national security letters (NSLs) and Section 215 orders for business records, the Sentinel Program, name-checks for immigration beneficiaries, and wire-tapping of congressional offices, among other issues.

The FBI was established in 1908 and has approximately 30,341 employees, 12, 590 of which are special agents. In fiscal year 2007, the FBI's total budget was approximately $6.04 billion, including $318 million in program increases for its counterterrorism, surveillance, information technology, forensics, training, and information sharing programs.

The goal of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In executing its priorities, the FBI produces and uses intelligence to protect the nation from threats and to bring to justice those who violate the law.

The FBI lists ten priorities: 1) protect the United States from terrorist attack; 2) protect the United States against foreign intelligence operations and espionage; 3) protect the United States against cyber-based attacks and high-technology crimes; 4) combat public corruption at al levels; 5) protect civil rights; 6) combat transnational/national criminal organizations and enterprises; 7) combat major white-collar crime; 8) combat significant; 9) support federal, state, local and international partners; and 10) upgrade technology to successfully perform the FBI's mission.

Last month, the Justice Department's Office of the Inspector General (OIG) released its report on the FBI's use of National Security Letters (NSLs) in 2006. OIG stated in that report that since the issuance of its March 2007 report, the FBI and the Department have made progress in implementing the recommendations from the 2007 report and adopting other corrective actions regarding the use of NSL. OIG noted that the FBI has issued guidance on the use of NSLs, provided mandatory training to FBI employees on the use of NSLs, and developed a new data system to facilitate the issuance of NSLs and improve accuracy of NSL data in required congressional reports.

The FBI also created a new Office of Integrity and Compliance to ensure that national security investigations and other FBI activities are conducted in a manner consistent with appropriate laws, regulations, and policies. Importantly, the OIG report noted that the policies initiated from top levels did not always adequately filter down to the FBI field offices.

The OIG provided several recommendations for the information to be implemented in the field offices. The OIG noted that it was troubled by the fact that 11 blanket NSLs issued by headquarters in 2006 that sought telephone data on 3,800 telephone numbers did not comply with the Patriot Reauthorization Act requirements regarding these provisions, internal FBI policy, or both.

OIG also identified 84 possible intelligence violations involving the use of NSLs, of which the FBI determined that 34 needed to be reported to the President's Intelligence Oversight Board. OIG also found that Section 215 orders were the subject

of processing delays. These delays were the result of too few resources being allocated to handle the requests, a complex review process, and legal questions regarding whether the applications met the statutory requirements.

The March 2008 OIG report also determined that the FBI is the only component of the Justice Department that nominates known or suspected terrorists for inclusion on the consolidated terrorist watchlist. The OIG report has found that the FBI has not been diligent in updating or removing information concerning suspected terrorists.

The FBI runs the National Name Check Program to provide information in FBI files to other government agencies requesting information about an individual. The United States Citizenship and Immigration Service (USCIS) within the Department of Homeland Security and the Department of State requests such information for most immigration beneficiaries before any either agency grants a benefit. There is a backlog of name checks cases that have not been addressed by the FBI.

The FBI wiretaps came under increasing scrutiny when they picked up the voices of several members of Congress in their conversations with Congressman Rick Renzi. The wiretaps reportedly were authorized pursuant to the FBI's investigation of Congressman Renzi's land deal. There has been no indication of any wrongdoing by any member other than Congressman Renzi.

Violent crime is on the rise and Congress under the Bush Administration has severely cut federal crime-fighting funds. Since 2002, the Bush Administration has cut $2 billion from federal crime-righting funds. The cuts would come from funds for grants to state and local law enforcement. Thus, the Administration is dedicating vast federal resources to counter-terrorism but it has done so at the expense of state and local law enforcement. For example, I have implored the head of the Department of Justice, Attorney General Michael Mukasey, to investigate the myriad abuses by prison officials at the Texas Youth Commission and abuses by the prison officials at Harris County Jail. At the Texas Youth Commission there were allegations of sexual and physical abuse of children and youth by prison officials. In Harris County Jail, prisoners were denied medical treatment, access to religious services, and other abuses. Today, I would like to know what steps the FBI is prepared to take to curb abuse directed at the incarcerated and perpetrated by prison officials.

Another area of concern with the FBI is the need to address contractor abuse. In December 2007, the Crime Subcommittee held a hearing in December on the enforcement of U.S. federal criminal laws to protect U.S. contractors in Iraq. The hearing was held to address the rape of Jamie Leigh Jones by U.S. contractors employed by KBR/Haliburton. The Department sent no witnesses to the hearing because it indicated that it was investigating the matter and has failed to respond to several letters issued by the Committee in January.

Jamie Leigh Jones, from my District in Houston, Texas, testified that in July 2005, she was approximately 20 years old, and was on a contract assignment in Iraq for KBR/Haliburton, when her fellow male contractors drugged, imprisoned, and repeatedly gang-raped her.

Neither the Department of Justice nor the FBI have brought criminal action against the alleged assailants. Despite claims to the contrary Title 18, Part I, Chapter 1, Section 7, of the United States Code, entitled "Special maritime and territorial jurisdiction of the United States defined," the United States has jurisdiction over the following: "any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States" does allow for the Department to prosecute Ms. Jones's alleged assailants. I have concerns and questions regarding what the FBI is doing about Ms. Jones: why was there a failure to prosecute individuals in this case.

I am also concerned and want answers as to why it taking such a long time to address the backlog of name checks with respect to the watchlist. Specifically, I want to know why it takes so long to remove persons' names from the watchlist when they are wrongfully added—this wrongful addition of names disproportionately affects African Americans and persons with Muslim sounding names. I would like an explanation of the criteria used in adding and removing names from the watchlist.

Other issues of concern are that the FBI has declined to investigate illegal mailers sent to African Americans in Dallas threatening criminal punishment if they registered to vote through ACORN. The FBI claimed that no federal law was violated.

These reports of voter suppression surfaced from the election primaries in Dallas, Texas. Specifically, there were reports that African American voters were sent letters threatening them with criminal punishment if they registered to vote. Neither the DOJ nor the FBI have taken action. My question is whether the FBI is taking

action and what the FBI is doing or plans to do to address this recent allegation of voter disenfranchisement.

Mr. Chairman, I look forward to hearing some answers to the questions from our distinguished panelist. Mr. Chairman, I yield the balance of my time.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 17, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Director Robert S. Mueller III, following Director Mueller's appearance before the Committee on September 16, 2008. The subject of the Committee's hearing was "Oversight of the Federal Bureau of Investigation." The data in these responses is current as of Decembe 18, 2008. We hope this information is helpful to the Committee.

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

Sincerely,

M. Faith Burton

M. Faith Burton
Acting Assistant Attorney General

Enclosure

cc: The Honorable Lamar Smith
Ranking Minority Member

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Based Upon the September 16, 2008 Hearing Before the
House Committee on the Judiciary
Regarding FBI Oversight**

Questions Posed by Chairman Conyers

1. During the hearing, Chairman Conyers asked you about the July 2008 FBI raids of the homes and offices of Mr. Jimmy Dimora, Chairman of the Cuyahoga County Democratic Party and Commissioner on the County Board, and Mr. Frank Russo, the County Auditor. In response, you explained that you would have to get back to me. Since the hearing, what have you learned about the specifics of the investigation?

Response:

Longstanding DOJ policy generally precludes the FBI from commenting on the existence or status of ongoing investigations. In addition to protecting the privacy interests of those affected, the policy serves to avoid disclosures that could provide subjects with information that might result in the destruction of evidence, witness tampering, or other activity that would impede an FBI investigation.

2. During the hearing, Congresswoman Maxine Waters inquired whether you were aware of instances in which four Inglewood, CA residents had been shot by Inglewood police this year. You mentioned that you would have to get back to her. What, if anything, have you learned about the these shootings?

Response:

The FBI's Los Angeles Division is aware of these incidents and, where appropriate, FBI Special Agents (SAs) are working with state and local officials to determine if any Federal laws were broken. The Los Angeles County Sheriff's Office has asked an Office of Independent Review to assess each incident and prepare a report of the review's findings.

3. When did the FBI originally inform the Defense Department that Dr. Bruce Ivins was the prime suspect in the Amerithrax investigation?

Response:

In October 2007, when Department of Justice (DOJ) prosecutors and FBI SAs accumulated sufficient evidence to demonstrate probable cause to believe Ivins was involved in the mailings, the United States Army Medical Research Institute of Infectious Diseases (USAMRIID) was notified of this possible involvement. USAMRIID was additionally notified when a United States District Judge approved search warrants for Ivins' home, office, and vehicles, and it is the FBI's understanding that USAMRIID immediately restricted Ivins' access to areas containing biological agents and toxins.

The Department of Defense (DoD) was notified when the FBI began the anthrax investigation, well before Ivins was identified as the main suspect, and worked cooperatively with FBI investigators throughout the investigation. From 2002 through 2005, the FBI had numerous contacts with USAMRIID regarding those who had access to the Ames strain of anthrax. In November 2006, the focus of the anthrax investigation was on the universe of employees who had access to a flask of Bacillis anthracis spores at USAMRIID. As the investigation continued, senior personnel at USAMRIID were informed in January 2007 that the spores in the letter attacks genetically matched spores at USAMRIID and that the FBI believed someone from USAMRIID was the mailer. Senior officials at USAMRIID offered continued cooperation in the investigation and took steps both to increase operational security and to assist the investigation.

4. While state and local officials investigate the vast number of hate crimes in America, the Justice Department and the FBI currently have limited jurisdiction to investigate and prosecute some of these cases, as well. In the aftermath of the September 11th terrorist attacks, the nation witnessed a disturbing spasm of violent attacks against American citizens and others who appeared to be of Muslim, Middle Eastern, and South Asian descent. The Department successfully prosecuted a number of these cases - prompting a significantly decline in the number of attacks.

a. How many criminal civil rights investigations involving racial, religious, or national origin bias did the FBI initiate in Fiscal Year (FY) 2007 and FY 2008?

Response:

In Fiscal Year (FY) 2007, the FBI initiated 141 criminal civil rights investigations involving racial, religious, or national origin bias. The FBI initiated 140 such cases in FY 2008.

b. How many of these investigations resulted in indictments?

Response:

In 2007, 32 of these cases resulted in indictments, while 43 resulted in indictments in 2008.

c. What training do FBI agents undergo to learn how to investigate these types of crimes?

Response:

In addition to comprehensive training regarding investigative methods and techniques that is generalized to all investigations, all FBI SAs receive two hours of training specifically concerning the FBI's Civil Rights Program, including hate crime investigative matters, during New Agents training. SAs assigned to investigate Civil Rights Program matters in the FBI's field offices receive yearly training during the FBI's annual Civil Rights conference and participate in hate crime training sponsored by our liaison partners in such organizations as the

National Organization for the Advancement of Colored People and the Anti-Defamation League. In addition, field offices are responsible for hosting Civil Rights Conferences to enhance the offices' liaison relationships with local law enforcement partners and non-governmental organizations.

5. The FBI's data collection work under the Hate Crime Statistics Act of 1990 has proven to be a powerful mechanism to confront violent bigotry against individuals on the basis of their race, religion, sexual orientation, or ethnicity -- and a spark for increased public awareness of the problem.

a. Should the Bureau's 1999 training manuals on how to identify, report, and respond to hate crime be revised and updated to better reflect post-911 realities? If not, why not?

Response:

The Uniform Crime Report (UCR) program is evaluating the current Hate Crime reporting program and exploring opportunities for program enhancement, including the possible inclusion of narrative comments or structured narrative fields. This evaluation must include consideration of how to ensure the value of subjective, unstructured narrations and how to limit the burden on those drafting the narratives to accurately and succinctly depict incidents. Once the FBI has evaluated this issue, recommendations will be provided to the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) for review and recommendation to the FBI Director.

The FBI is reviewing all training materials, including both hard copy and web-based materials, to ensure law enforcement has the tools it needs to accurately and efficiently report hate crimes. Recommendations based on this review will be presented to the CJIS APB to ensure consensus within the law enforcement community.

b. Should the FBI's accompanying Hate Crime Incident Report be revised to include additional boxes for "Anti-Arab," "Anti-Sikh," and "Anti-Hindu"? If not, why not?

Response:

The FBI's UCR program collects hate crime data in accordance with the Hate Crime Statistics Act of 1990, as amended, and in compliance with the standards for race and ethnicity designations established by the Office of Management and Budget (OMB). The current Hate Crime Incident Report Form collects "Anti-Islamic (Muslim)" data under the category of "religious bias motivation." The FBI recognizes the possible value of establishing separate categories for "anti-Arab," "anti-Sikh," and "anti-Hindu," but there is no current consensus on how to define these terms (for example, should they be based on geography, culture, religion, or native language). Therefore, absent a consensus on definitions for these categories within the law enforcement community, or the establishment of definitions through legislation or executive guidance, the FBI does not intend to include "anti-Arab," "anti-Sikh," or "anti-Hindu" bias motivation types.

6. As states continue to enact hate crime statutes, the clear trend has been to include gender-based crimes in these laws. In 1990, at the time the Hate Crime Statistics Act was passed, only seven of the statutes in the thirty-one states that had hate crime laws included gender. Today, including the District of Columbia, twenty-seven of the forty-five states with penalty-enhancement hate crimes statutes include gender-based crimes. Twelve states now include gender in their hate crime data collection mandate. Gender-based crimes are also subject to Federal sentencing enhancements under 28 U.S.C. § 994. Should the FBI's Hate Crime Report include a box in the Bias Motivation section for gender-based hate crimes? If not, why not?

Response:

The categories of bias reported in the UCR are based on the Hate Crime Statistics Act of 1990, as amended, and OMB's minimal standards for race and ethnicity designations. While the FBI does not anticipate revising the bias motivation categories absent revision of these authorities, there is no legal impediment to seeking additional voluntary reporting from law enforcement. If the FBI were to contemplate this, we would seek consideration of the proposal by the CJIS APB.

7. According to the American Arab Anti Discrimination Committee (ADC), the FBI shifts much of its work regarding hate crimes investigations to local police departments who do not make those crimes a priority or have the resources to adequately investigate them.

a. Is this true? If so, why?

Response:

The FBI does not shift its work to local police departments. The FBI works closely with city, county, and state law enforcement agencies to pursue any credible allegation that a Federal hate crime statute has been violated. In cases in which a local police department is appropriately pursuing a hate crime investigation, the FBI will monitor the investigation and any subsequent prosecution to ensure justice is pursued. If, though, a local agency is inadequately addressing a violation or lacks sufficient resources to pursue the matter, the FBI will offer assistance, as appropriate, and will initiate a separate comprehensive Federal probe if there is probable cause to believe Federal hate crime statutes have been implicated.

b. According to ADC, Immigration and Customs Enforcement (ICE) continues to engage in profiling in its approach to investigations involving American Arabs. The FBI carries out some of ICE's work. What is the FBI's investigative approach to American Arabs?

Response:

The FBI does not investigate individuals based upon their race, religion, or ethnicity. The FBI's Domestic Investigations and Operations Guide prohibits the opening of an investigation based on arbitrary or groundless speculation, solely on

the exercise of First Amendment rights, or solely on the race, ethnicity, national origin, or religious practice of any person or group.

8. There were some reports that the FBI allegedly participated in home raids and other seizures of left-wing protestors in Minnesota during the time of the Republican National Convention. Is this true?

Response:

Neither current FBI policy, provided in response to Question 7b, above, nor the policy in place at the time of the Republican National Convention permits investigation based solely upon an individual's race, religion, or ethnicity. The FBI's Domestic Investigations and Operations Guide prohibits the opening of an investigation based on arbitrary or groundless speculation, solely on the exercise of First Amendment rights, or solely on the race, ethnicity, national origin, or religious practice of any person or group.

9. There were also reports that the raids were aided by informants who were planted in the protest groups?

Response:

The FBI did not plant confidential human sources in the extremist groups protesting during the Republican National Convention. The FBI did, though, develop sources among the participants in extremist groups that had the stated intention of disrupting the Convention through criminal activities. These sources were already active in these groups when they agreed to provide to the FBI information regarding the groups' planned criminal activities.

10. If these reports are true, isn't this the equivalent of federal government sponsored domestic spying?

Response:

Reports that the FBI planted human sources in the protest groups are inaccurate.

11. Several agents raised concerns about their participation in abusive interrogations in November of 2002 with Counterterrorism Division Deputy Assistant Director John Pistole, Assistant General Counsel Spike Bowman, Section Chief Andrew Arena and others. Did any of these FBI managers discuss the ongoing concerns of the agents with you?

Response:

As noted in the report of the DOJ Office of the Inspector General (OIG) on the FBI's involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq (hereinafter the OIG Report), the FBI Director recalls discussing agents' concerns regarding the FBI's participation in interrogations that were conducted by other governmental agencies and involved techniques not used by the FBI in the United States. As indicated in the OIG Report, Director Mueller recalls speaking with FBI Assistant Director Pasquale D'Amuro about

these techniques and making the determination that the FBI would not participate in such interrogations.

12. According to the IG's report, FBI agents at Guantanamo Bay began keeping a "war crimes" file in the FBI office at GTMO. According to the report, at some point in 2003 the FBI On Scene Commander received instructions from the Military Liaison and Detainee (MLD) Unit Chief not to maintain an separate "war crimes" file because investigating allegations of abuse was not the FBI's mission.

a. What happened to the war crimes file that FBI agents kept at GTMO?

Response:

The OIG Report's reference to a "war crimes file" refers to a local file kept by the on-scene commander documenting detainees' claims of mistreatment. Although initially such allegations were maintained in this "war crimes" file, subsequently they were placed in the individual detainee's file and were referred to the military for investigation.

Consistent with Section C.2 of the "Memorandum of Understanding Between the Departments of Justice And Defense Relating to the Investigation and Prosecution of Certain Crimes" (hereinafter MOU) and implementing DoD Directive 5525.7 (1985), the FBI referred all such allegations known to the FBI to DoD for investigation. Pursuant to the MOU, the responsibility to investigate belongs to DoD, which is required only to provide notice of such investigations to DOJ. A DoD investigative agency may refer a case to DOJ if the evidence supports prosecution in civilian court.

b. Did the FBI investigate any of the war crimes allegations documented in this file?

Response:

As discussed in more detail above, the FBI referred these allegations of mistreatment to DoD for investigation and prosecution.

13. The IG report indicates you discussed the FBI's participation in interrogations where aggressive techniques were being used with Counterterrorism Assistant Director Pasquale D'Amuro in August of 2002, and that you and D'Amuro agreed that the FBI should not participate in such interrogations.

a. Do you have notes of this meeting?

Response:

No.

b. The IG report indicates you had another meeting, also in August of 2002, with D'Amuro and International Terrorism Operations Section Chief Andrew Arena in which you said the FBI was not going to get involved with other agencies in using these aggressive techniques at any location. Do you have notes of this meeting?

Response:

No.

c. You told the IG that you intended this order for FBI agents not to be involved in aggressive interrogations to be a "bright line rule."

1) Did you issue a formal order to FBI agents in the field to alert them to your directive that they not participate in aggressive interrogations?

Response:

No new guidance was issued in 2002 on this issue, but the existing FBI policy remained in effect without alteration. That policy provided that "no attempt [may] be made to obtain a statement by force, threats or promises." In 2004, that policy was specifically reiterated in a 5/19/04 Electronic Communication from the FBI General Counsel to all FBI divisions which states, "It is the policy of the FBI that no interrogation of detainees, regardless of status, shall be conducted using methods which could be interpreted as inherently coercive, such as physical abuse or the threat of such abuse to the person being interrogated or to any third party, or imposing severe physical conditions."

2) Were you aware that agents in the field were continuing to seek guidance from FBI headquarters through May of 2004 regarding whether they should participate in aggressive interrogations?

Response:

The FBI Director was aware that the above-cited May 2004 Electronic Communication triggered some questions to FBI Headquarters. We are unaware of any agent seeking permission to participate in aggressive interrogations exceeding the bounds of FBI policy.

3) Were you aware agents were participating in interrogation that included the use of abusive techniques during this time period?

Response:

As noted in the OIG Report, there was no significant FBI involvement in interrogations involving techniques outside FBI policy. The Director's knowledge of those who did exceed FBI policy is derived from that OIG Report.

Questions Posed by Representative Nadler

14. What is the percentage of weight of the silicon in the powder used in the 2001 anthrax attacks?

Response:

FBI Laboratory results indicated that the spore powder on the Leahy letter contained 14,479 ppm of silicon (1.4%). The spore powder on the New York Post letter was found to have silicon present in the sample; however, due to the limited amount of material, a reliable quantitative measurement was not possible. Insufficient quantities of spore powder on both the Daschle and Brokaw letters precluded analysis of those samples.

15. How, on what basis, and using what evidence did the FBI conclude that none of the laboratories it investigated were in any way the sources of the powder used in the 2001 anthrax attacks, except the U.S. Army Laboratory at Fort Detrick, Maryland? Please include in your answer why laboratories that have publicly identified as having the equipment and personnel to make anthrax powder, such as the U.S. Army's Dugway Proving Grounds in Dugway, Utah and the Battelle Memorial Institute in Jefferson, Ohio, were excluded as possible sources.

Response:

Initially, the spores contained in the envelopes could only be identified as Bacillus Anthracis (Anthrax). They were then sent to an expert, who "strain typed" the spores as Ames. Once the strain type was identified, the FBI began to look at what facilities had access to the Ames strain. At the same time, science experts began to develop the ability to identify morphological variances contained in the mailed anthrax. Over the next six years, new scientific developments allowed experts from the FBI Laboratory and other nationally recognized scientific experts to advance microbial science. This advancement allowed the FBI to positively link specific morphs found in the mailed anthrax to morphs in a single flask at USAMRIID. Using records associated with the flask, the FBI was able to track the transfer of sub samples from the flask located at USAMRIID to two other facilities. Using various methods, the FBI investigated the two facilities that received samples from the parent flask and eliminated individuals from those facilities as suspects because, even if a laboratory facility had the equipment and personnel to make anthrax powder, this powder would not match the spores in the mailed envelopes if that lab had never received a transfer of anthrax from the parent flask.

Questions Posed by Representative Jackson Lee

16. Reports of voter suppression in the current election in Dallas, Texas have surfaced. Specifically, it has been alleged that Black voters were threatened with criminal punishment if they registered to vote through ACORN. The DOJ and the FBI have done nothing about this situation. What is the FBI doing to address voter suppression of African Americans?

Response:

In conjunction with DOJ, the FBI advised its field offices prior to the 2008 election to aggressively pursue all credible allegations of voter fraud, including instances of voter suppression. The FBI's Election Crime and Civil Rights Coordinators in the field were specifically trained on issues related to voter fraud and were instructed to quickly address all such matters of which they were aware.

17. Were you aware that Marion Bowman, Deputy General Counsel at the FBI's National Security Law Branch, raised the concerns of FBI personnel based at Guantanamo about abusive interrogation with the Office of Department of Defense General Counsel, Jim Haynes, as early as November 2002? Were you aware those concerns were ignored? What is currently being done?

Response:

The Director became aware long after November 2002 that Mr. Bowman had raised concerns with DoD. Any questions regarding action taken or not taken by DoD in response to those concerns should be referred to that agency.

18. Mr. Director, I have implored the Department of Justice, Attorney General Michael Mukasey, to investigate the myriad physical and sexual abuses committed by prison officials at the Texas Youth Commission against youth and the abuses committed in the Harris County jail in Texas. What steps can you tell me that you will take in curbing abuses directed at children and other incarcerated persons?

Response:

The protection of the civil rights of all Americans is among the FBI's top ten priorities, and the FBI is committed to investigating civil rights violations. The FBI will review all such complaints and handle them in accordance with Federal law and our investigative guidelines. Several Federal criminal and civil statutes afford the FBI the authority to investigate civil rights offenses, including those committed against children and incarcerated persons. For example, the FBI may investigate the criminal deprivation of an individual's rights by a government employee acting "under color of law" to willfully, intentionally, and unreasonably deprive the victim of a constitutionally protected civil right. In addition, included among protected civil rights is the right to be free from sexual assault while incarcerated. Prison officials have a duty to protect from harm those who are incarcerated whenever reasonably possible and to ensure the provision of reasonable medical care when needed. In conjunction with DOJ, the FBI also has the authority to conduct civil investigations that may result in civil remedies in Federal court against law enforcement agencies whose policies or practices foster patterns of misconduct by their officers or correctional officials. Finally, the FBI supports the Attorney General's exercise of the authority to initiate civil actions against mental health care facilities, nursing homes, and juvenile facilities, among other entities, in response to allegations of systemic deprivations of the constitutional rights of institutionalized persons.

19. You indicated in your statement that you are prosecuting contractor abuses abroad. However, one infamous case has gone unnoticed. Jamie Lee Jones from the 18th Congressional District of Texas was kidnapped and raped over a period of days. Title 18, Part I, Chapter 1, Section 7 of the USC, entitled "Special maritime and territorial jurisdiction of the United States defined" provides in pertinent part that the U.S. has jurisdiction over any offense committed by or against a national of the U.S. Why was there a failure to prosecute this case?

Response:

The Department of State's Diplomatic Security Service investigated this case, with the FBI providing laboratory analysis in support of the investigation. Questions regarding the investigation should be referred to the Department of State, and any questions regarding prosecution should be referred to the appropriate DOJ component.

20. Can you explain why it takes so long to remove names from the controversial watchlist?

Response:

The Terrorist Screening Center (TSC) has robust processes in place to ensure the Terrorist Screening Database (TSDB) remains thorough, accurate, and current, as required by Homeland Security Presidential Directive 6, including a process by which records no longer appropriate for inclusion in the TSDB can be removed. Records are removed from the TSDB when it is determined that the individual is no longer reasonably suspected of being a terrorist. This process requires an in-depth examination of the information supporting these records, including contacting the originating agency or case agent to verify that the record should be removed. Often, the nominating agency must contact its sources or conduct further inquiries to verify the individual's status with respect to the watchlist. The TSC handles each request for removal as expeditiously as possible while ensuring that the watchlist is as thorough and accurate as possible.

21. What efforts are the FBI undertaking to curb racial profiling. For example, last May, prosecutors publicly named 306 individuals and organizations as "unindicted co-conspirators" in conjunction with a case in Texas. This may violate their Fifth Amendment rights and also the Department of Justice Guidelines. Do you believe that publicly naming unindicted co-conspirators helps your outreach and investigative efforts in the Muslim-Americans community?

Response:

The decision to name unindicted co-conspirators is typically made by those outside the FBI. The FBI is committed to pursuing all credible allegations of Federal civil rights violations, including claims that an individual, whether acting under color of law or not, used force or a threat of force to target a person because of that person's race, religion, or national origin or because that person was engaging in protected activity. If a person believes she or he is a victim of a Federal civil rights violation, regardless of whether the person has been indicted

for a related or unrelated crime, that person is encouraged to contact the local FBI office and file a complaint. The FBI remains steadfast in its continuing commitment to developing and enhancing its relationship with the Muslim-American community.

22. What is the FBI doing to eliminate the backlog in DHS name and background checks?

Response:

The U.S. Citizenship and Immigration Services (USCIS) and FBI developed a joint plan with specific milestones based on the implementation of new business processes and an increase in staffing. Since the plan's implementation in early 2008, the first milestones (which were to process all name checks pending for more than four years by March 2008, to process all name checks pending for more than three years by May 2008, and to process all name checks pending for more than two years by July 2008) have been met. Based on the productivity achieved in the past several months, the USCIS and FBI are confident that we will reach the last milestones (which are to process 98 percent of all name checks within 30 days and to process the remaining two percent within 90 days) by June 2009.

To place this progress in perspective, in early April 2008 the number of pending FBI name checks for all immigration applications filed with USCIS was 288,509. As of October 28, 2008, this number had been reduced by over 95% to 14,316. In accordance with the joint plan, USCIS is placing officers at the FBI's National Name Check Program facility to assist in ensuring the efficiency and effectiveness of the name check process and in sustaining both short processing times and a continued high level of customer service.

Questions Posed by Representative Goodlatte

23. What is the status of the FBI's efforts to prosecute criminals involved in Organized Retail Theft rings? Have there been any recent prosecutions?

Response:

The FBI investigates Organized Retail Theft (ORT) rings, also know as Organized Retail Crime groups, focusing on the criminal enterprise aspect of these crimes in order to identify the breadth of criminal activity perpetrated by these groups and their associations with other criminal enterprises. The following public-source information highlights some of the FBI's recent investigative successes relative to ORT groups.

- In November 2003, 11 subjects were indicted on Federal charges in Chicago for participating in an interstate theft and fencing operation that sold more than $2 million in stolen merchandise through thousands of Internet auctions. The defendants stole property from retail home improvement stores in at least 11 states, as well as from interstate cargo shipments, and then sold the stolen goods at a discount to successful

bidders through the eBay Internet auction site. Each of the 11 subjects was subsequently convicted on Federal charges. This investigation was conducted by the Chicago Police Department, United States Postal Inspection Service, and the FBI.

- In June 2004, 48 subjects were indicted on various Federal charges in Portland, Oregon, in one of the largest stolen property and fencing operations on the West coast. This investigation involved an ORT ring that stole products from grocery, department, and drug stores, reselling them in second-hand outlets in the Portland area and shipping them to out-of-state distributors. This investigation was a collaborative effort by private industry, city and county police, and the FBI. Seizures during this investigation included nearly $7 million worth of stolen property and $1 million in cash. Seven out-of-state wholesalers/distributors and 26 local fencing operations were put out of business as a result of this investigation. Of the original 48 indicted subjects, 42 were subsequently convicted, 4 are currently pending trial, and the charges against 2 subjects were dismissed.

- In July 2008, a Federal grand jury in Dayton, Ohio, indicted four subjects for conspiring to manufacture and use fraudulent Universal Product Code (UPC) labels on an estimated $1.6 million in merchandise fraudulently obtained from large retail stores in Ohio, Indiana, Illinois, Texas, and Pennsylvania. The fake UPC labels were created using a computer and were placed over the real UPC labels on merchandise that was then purchased on eBay at a much lower price than the actual retail value. The FBI and local police executed a search warrant, recovering the computer used to make the UPC labels as well as items of stolen merchandise to which fake UPC labels were still attached. Three of the subjects have been convicted on Federal charges to date.

- In August 2008, seven subjects were indicted on Federal charges in Broward County, Florida, as part of an ORT ring investigation pursuant to which PharmaCare Health Services, a secondary source of health and beauty care products, was raided and shut down by investigators from the Internal Revenue Service, U.S. Immigration and Customs Enforcement, Broward County Sheriff's Office, and FBI. PharmaCare Health Services worked as a wholesaler, buying stolen and damaged items in bulk quantities and selling them to retail businesses. (The stolen items included approximately $7.9 million in over-the-counter medications and health and beauty aids stolen from Walgreens, Target, CVS, and Rite Aid stores.) The products were cleaned, repackaged, and re-labeled in order to create the appearance that they had been purchased directly from the manufacturer. Two of the subjects have been convicted to date.

24. I submitted a question to Attorney General Mukasey during the last DOJ oversight hearing about the status of the LerpNET database that Congress created to help gather information about these crimes. In a July response, DOJ stated that:

> **"Law enforcement will be able to access LERPnet via Law Enforcement Online to search reported incidents and track retail theft throughout the country. A Memorandum of Understanding between the FBI and the NRF to provide this access is in its final review phase."**

Has that Memorandum of Understanding been approved? If not, what is holding it up?

Response:

The FBI has signed the LERPNet Memorandum of Understanding and returned it to the National Retail Federation for the appropriate signatures.

25. Our federal Internet gambling laws were designed to help the states enforce their own laws relating to gambling by helping ensure that any gambling activity that may be legal in one state does not spill over into states that do not allow such activity. Would the FBI support or oppose legislation that weakens the Wire Act (section 1084 of the criminal code) by limiting the types of gambling covered by that Act?

Response:

The FBI would be pleased to provide its views of this proposed legislation to DOJ pursuant to DOJ's role in assisting in the development of the Administration's position.

26. Committee Republicans recently held a forum in which grieving mothers told of the devastating consequences to their families of murders committed by illegal immigrants, most of whom had been arrested previously. What more can the FBI do to help prevent the terrible toll of crime committed by illegal immigrants, and how do "sanctuary cities" thwart your efforts to combat crimes by illegal aliens and locate fugitive criminal aliens?

Response:

The FBI remains committed to investigating the most serious violent crimes that fall within our Federal investigative jurisdiction, whether those crimes are committed by American citizens or illegal aliens. To fulfill this commitment, the FBI has emphasized a task force approach through our Safe Streets Task Force program that targets gangs and other threats related to violent crime. These task forces are comprised of Federal, state, and local investigators, and act as a force multiplier, combining valuable resources and focusing them on the targets that pose the most serious risks to our communities. The FBI currently manages and leads approximately 152 gang task forces and 41 violent crimes task forces across the country. Although these task forces do not investigate immigration-related violations, violent fugitives and illegal aliens engaging in criminal acts are arrested during task force operations. These efforts are productive even in local jurisdictions dubbed "sanctuary cities."

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