

**COMMERCE, JUSTICE, SCIENCE, AND RE-  
LATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2009**

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WEDNESDAY, APRIL 16, 2008

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2 p.m., in room SD-124 Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Shelby, and Stevens.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

**STATEMENT OF HON. ROBERT S. MUELLER III, DIRECTOR**

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. The Commerce, Justice, Science Subcommittee will come to order.

There are many hearings going on right now. I know the hearing on the supplemental is wrapping up and we have a vote at 2:15. So, I know Senator Shelby is on his way, Director Mueller.

I want to exercise the prerogative of the Chair and give my opening statement. By that time Senator Shelby will be here. We hope to hear your testimony, then we'll recess and then come back for questions and answers. But I think that there are five hearings on appropriations going on simultaneously. Here he is.

Good afternoon, and welcome. Today, the Commerce, Justice, Science Subcommittee will hear from Director Robert Mueller, the head of the Federal Bureau of Investigation (FBI), for its budget priorities for fiscal year 2009. We've had a very productive relationship with Director Mueller and his team and he can count on us to work with him.

We regard this year as a year of transition. This time next year, we will have a new President and whatever we do with this year's budget for the FBI will be the operating budget for that President's first term.

I want to make sure the FBI has the right resources to fulfill its mission, to fight terrorists, violent criminals, cyber crooks, and also predators on our children.

The FBI has so many multiple roles, it truly is not J. Edgar Hoover's FBI anymore, and it isn't even Judge Webster's FBI anymore.

It is a new modern FBI with multiple responsibilities, both as an intelligence and law enforcement agency, responsible for keeping 300 million people safe from terrorists, as well as, criminals.

The President's budget request is \$7.1 billion, a \$450 million increase above the 2008 passed omnibus. This will be a 7 percent increase and it should help with funding for more special agents and more intelligence analysts.

While we work to get the FBI the right resources, we also have to make sure that we have the best management practices. We know the FBI is hiring to meet our Nation's needs and we want to discuss with him the issues related to recruitment, retention, and training.

In the area of counterterrorism, most increases in the FBI budget are in this category. We all agree this is a top priority. For counterterrorism, the budget proposes \$3 billion, a \$234 million increase above the 2008 omnibus. Counterterrorism is now 40 percent of the FBI's budget. This has been quite a transformation in the last 5 years.

For intelligence, the budget proposes \$1.4 billion, a \$208 million increase over 2008 and an 18 percent increase. I'm pleased that the FBI proposes major investments in intelligence gathering, fighting cyber crime, dealing with these issues related to weapons of mass destruction and improvised explosive devices (IEDs).

At the same time, we need to know how the FBI is improving its management and oversight of critical intel tools. We know that the inspector general has raised flashing yellow lights about national security letters and to be sure that they are sent and used appropriately, the terrorist watch list, when you get on, how soon does it take to get the bad guy on it, and how soon does it take a good guy off of it inadvertently placed there, and also we're concerned that the FBI wiretap bill was unpaid. We cannot miss a ring on that number. The FBI must improve its accuracy and protect our privacy.

Then we go to the crime budget. There is a surge in crime in the United States of America and we need our FBI. We are very concerned that over the years, funding for the FBI in the terrorist area was taken at the expense of crime.

This year, the request is \$2.3 billion for the FBI's traditional crime-fighting efforts, a \$105 million increase over the 2008 omnibus level, but the budget has no new funds for the surge in violent crime, the additional surge responsibility of investigating the mortgage fraud disclosures which I know the chairman's an expert in, and also continuing our efforts to deal with a rising crime against children, the child predator issues from those who stalk children in our communities to the growing international child pornography rings.

Since September 11th, the FBI has shifted 2,000 agents from violent crime to counterterrorism work. Local law enforcements taken up this slack. They're stretched to the limit. So, if we're going to have a surge of help in Baghdad, we need a surge of help in Baltimore.

We support the idea of the joint Federal-State task forces. We have seen the work, the excellent work the FBI has done with

these joint Federal-State task forces in fighting violent gangs, drug dealers, and child predators.

If we can put \$5 billion into the Iraqi police force, we can put more money into our FBI. Given all the FBI's important roles and responsibilities, we want to be sure that they have the right resources, that they are able to hire and keep the right people and that they have the modern technology that we need to fight these new techno-threats against the United States.

We want to very much hear the Director's priorities and to work with him in a spirit of bipartisan partnership to keep America as safe as we can by having a strong FBI and we're going to be smarter in the way we work with you and fund this in order to get the job done.

I now turn to Senator Shelby for any comments he has to make.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Madam Chairwoman. Before I begin my opening statement, I would want to take a moment to commend the chairwoman for her fiery comments to the OMB Director in the supplemental hearing that took place moments ago.

Senator Mikulski, I stand with you in the fight to increase State and local funding in the supplemental and thank you for being the leader in this effort.

Director Mueller, thank you for joining us today. We had a nice meeting in my office yesterday to discuss the Federal Bureau of Investigation's 2009 budget request.

I want to begin by thanking the men and women of the FBI who work every day to protect the Nation. We're all indebted to them for the sacrifices they make to protect us.

Since your arrival as the sixth Director of the FBI, Congress has tasked the FBI, Mr. Director, with more responsibility than any other Federal law enforcement agency resulting in more challenges and changes than ever before. No one knows this more than you.

The FBI is the Nation's premier law enforcement, counterterrorism, and counterintelligence agency. The Bureau's missions include fighting terrorism, foreign intelligence operations, cyber crime, public corruption, white collar crime, and violent crime.

The FBI request for 2009 is \$7.1 billion. This is a \$448 million increase over the 2008 omnibus funding level. While this represents an increase, the FBI has a \$56 million shortfall in the 2009 budget request.

The bottom line may have increased but funding for the core missions and the responsibility has not. This hole in the budget increases the pressure on the FBI to do more with less.

Based on my review of your request, Mr. Director, combined with the likely fiscal constraints of this subcommittee, we will need your assistance as we face tough funding decisions. This subcommittee and the Bureau share the difficult task of targeting these limited resources in a manner that safeguards taxpayer dollars while preserving public safety.

I want to re-emphasize the chairwoman's point that since 9/11, the FBI has shifted 2,000 agents from violent crime into counterterrorism and while this shift was necessary, it has created a huge burden on our State and local enforcement agents.

This budget abandons our State and local law enforcement officials and cuts at all the grants that would have helped them to meet our most critical needs. We will work with you, Mr. Director, to ensure that we provide the FBI with the resources necessary to assist these critical partners in our fight against crime.

Director Mueller, Congress has provided nearly \$100 million for the FBI's render safe mission for critical equipment and air assets to counter the explosive devices in the United States. The FBI's render safe mission requires the FBI to have the capability to access, diagnose, and render safe chemical, biological, radiological, or nuclear devices within the United States and its territories.

The FBI's responsible for all render safe operations involving weapons of mass destruction in the National Capital Region. It has been approximately 1 year since the chairwoman and I worked with you in good faith to provide the FBI with the funding needed for this mission.

I understand as of today, the Office of Management and Budget (OMB) has still not released \$38 million in funding appropriated in last year's war supplemental necessary for the Bureau to perform its critical weapons of mass destruction (WMD) and render safe missions. The availability of that funding expires in less than 6 months, September 30, 2008.

I look forward to hearing your plans on how the FBI will be fully obligating these funds prior to their expiration.

Currently, the FBI has on-call assets from other agencies. These same on-call assets are also responsible for conducting other critical missions. If these assets are not designated for both the U.S. Government and the FBI, how will the FBI use them to carry out a render safe response during a crisis? These assets could be double-booked.

The FBI's Hazardous Device School, HDS, is a crown jewel of the Federal Government's effort to provide training to Federal, State, and local bomb technicians. In partnership with the Army, this facility has trained more than 20,000 bomb technicians. That is a proven record of success.

A November 2007 Congressional Research Service (CRS) report stated that IEDs, roadside bombs, and suicide car bombs caused 70 percent of all American combat casualties in Iraq and 50 percent of all combat casualties in Afghanistan. The report also notes that "there's a growing concern that IEDs might eventually be used by insurgents and terrorists worldwide, including in this country."

The administration's most recent homeland security strategy recognizes the potential threat of IEDs being used by terrorists here. IEDs are clearly a threat. We need to understand and prepare for them. We cannot afford to be complacent and pretend that it cannot happen here.

The question is will we be prepared when they arrive? There has been more than 13,000 IED and evidentiary submissions from Iraq and Afghanistan in 2007. These submissions cause backlogs that require Federal, State, and local law enforcement to wait an average of 200 plus days to receive the results of forensic examinations from the FBI lab.

We need to make sure that the FBI and its lab have the resources it needs to handle not just the influx of work associated

with the war on terrorism but also provide timely forensic assistance to law enforcement. We must ensure that the Terrorist Explosive Device Analytical Center has the forensic and technical capabilities it needs to support its critical mission of countering the IED threat from terrorists without denying those same services to others who depend on the FBI for lab support.

This threat, I believe, is not going to diminish. There are many other issues, Mr. Director, I'd like to discuss, including national security letters, critical rebuilding of the FBI Academy and the use of resources with the FBI's priority missions, and I look forward to your thoughts on these issues and many others.

Thank you for joining us.

Senator MIKULSKI. Thank you, Senator Shelby, and again Director Mueller, we just want to assure you we're going to move on your budget in a bipartisan way. Our thoughts are identical on this, but why don't you go ahead with your testimony?

STATEMENT OF HON. ROBERT S. MUELLER III

Mr. MUELLER. Thank you, Madam Chairwoman, and Senator Shelby. Thank you for having me here today to discuss the issues relating to our 2009 budget request.

I did submit a longer statement. I would hope that it would be made part of the record.

As you are aware, the FBI's top three priorities are counterterrorism, counterintelligence, and cyber security. These priorities are critical to our national security and to the FBI's vital work as a committed member of the intelligence community.

Also important are our efforts to protect our communities from the very real threat of crime, especially violent crime. In the counterterrorism arena, al-Qaeda and related groups continue to present a critical threat to the homeland, so do self-radicalized homegrown extremists and they are difficult to detect, often using the Internet to train and operate.

At home, through our domestic joint terrorism task forces and abroad with our legal attachés and our international partners, we together share real-time intelligence to fight these terrorists and their supporters.

An important aspect of the fight against terrorists is the threat of weapons of mass destruction and the FBI's commitment to our render safe mission to prevent, prepare for, and respond to the threat of a WMD in the United States.

We appreciate the resources that you have provided for this endeavor and with your ongoing support, we will continue to work on this critical issue. I'm looking forward to discussing the funding in support of that particular initiative.

Another important effort is the work of the Terrorist Explosive Device Analytical Center, the TEDAC as it is called, as was pointed out by Senator Shelby. This center was established as an inter-agency laboratory for analyzing explosive devices used by terrorists worldwide and it does use the most contemporary forensics techniques available to do so, providing that information to our troops on the ground in Iraq, Afghanistan, and elsewhere.

With regard to the counterintelligence threat, protecting our Nation's most sensitive secrets from hostile intelligence services or others who would do us harm is also at the core of the FBI mission.

In furtherance of this priority, we reach out to businesses and universities. We join forces with our intelligence community partners and we work closely with the military to help safeguard our country's secrets.

As was pointed out by you, Madam Chairwoman, cyber threats to our national security and the intersection between cyber crime, terrorism, and counterintelligence is increasingly evident.

Today, the FBI's cyber investigators focus on these threats and we partner with Government and industry. One way we do so is through our sponsorship of a program called Infraguard, an alliance of more than 23,000 individual and corporate members to help identify and prevent cyber attacks.

We have also asked for your specific support of our efforts in connection with the comprehensive national cyber security initiative. The FBI's unique position as both an intelligence and law enforcement agency allows us to rapidly respond to cyber events at U.S. Government agencies, military installations, and within the broader private sector.

I am mindful of your ongoing interest in the FBI's progress in building an intelligence program while combating these threats. The FBI has made a number of changes in the last several years to enhance our capabilities.

Today's intelligence is woven throughout every FBI program and operation. By utilizing this intelligence, we have successfully broken up terrorist plots across the country, from Portland, Oregon; Lackawanna, New York; Torrance, California; Chicago, Illinois, to the more recent Fort Dix, and JFK plots.

We have increased and enhanced our working relationships with our international partners, sharing critical intelligence to identify terrorist networks and disrupt planned attacks around the globe.

We have doubled the number of intelligence analysts on board and tripled the number of linguists. We have tripled the number of joint terrorism task forces, from 33 in September 2001 to over 100 to date. Those task forces combine the resources and expertise of the FBI, the intelligence community, military, State, local, and tribal law enforcement.

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

Also, public corruption remains the FBI's top criminal investigative priority. In the past 2 years alone, we have convicted over 1,800 Federal, State, and local officials for abusing their public trust.

Similarly, our work to protect the civil rights guaranteed by our Constitution is a priority, which includes fighting human trafficking, as well as, our focus on the civil rights cold case initiative.

Gangs and violent crime continue to be as much a concern for the FBI as it is for the rest of the country. The FBI's 143 Safe Streets violent gang task forces leverage the unique knowledge of State

and local police officers with Federal investigative resources to combat this growing problem.

The FBI also sponsors 52 additional violent crime and interstate theft task forces, as well as, 16 safe trails task forces targeting crime in Indian country.

The FBI combats transnational organized crime in part by linking the efforts of our Nation's 800,000 State and local police officers with international partners. This is accomplished through the FBI's legal attaché offices of which we have over 60 at this juncture around the world.

And finally, major white collar crime. From corporate fraud to fraud in the mortgage industry clearly continues to be an economic threat to the country. For example, in recent years, the number of pending FBI cases focusing on mortgage fraud, including those associated with subprime lending, has grown nearly 50 percent to over 1,300 cases. Roughly one-half of these cases have losses of over \$1 million and several have losses greater than \$10 million. In addition, the FBI will continue our work to identify large-scale industry insiders and criminal enterprises engaged in systemic economic fraud.

As I believe both of you have pointed out and we, too, recognize that for the past 100 years of the FBI's history, our greatest asset has been our people. We are building on that history with a comprehensive restructuring of our approach to intelligence training for both our professional intelligence analyst cadre, as well as, for new FBI agents coming out of Quantico.

We have and will continue to streamline our recruiting and hiring processes to attract persons having the critical skills needed for continued success of the FBI's mission.

I also remain committed to ensuring our employees have the information technology infrastructure they need to do their jobs. This includes the continuing successful development of the Sentinel Case Management System, as well as, other information technology (IT) upgrades.

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

Among the reforms was the creation of a new Office of Integrity and Compliance within the Bureau to identify and mitigate potential risks.

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

#### PREPARED STATEMENT

Madam Chairwoman, Senator Shelby, I appreciate the opportunity to testify this afternoon and look forward to your questions.

Thank you.  
[The statement follows:]

PREPARED STATEMENT OF ROBERT S. MUELLER III

Good afternoon, Chairwoman Mikulski, Senator Shelby, and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the President's fiscal year 2009 budget for the Federal Bureau of Investigation (FBI). I would also like to thank you for your continued oversight of the Bureau and for your efforts to ensure our success as we pursue the shared goal of making America safer.

After the attacks of September 11, 2001, the FBI's priorities shifted dramatically as we charted a new course, with national security at the forefront of our mission. The intervening 7 years have seen significant changes at the FBI, and we have made remarkable progress. Today, the FBI is a stronger organization, combining greater capabilities with a longstanding commitment to the security of the United States, while at the same time upholding the Constitution and the rule of law and protecting civil liberties.

2009 BUDGET REQUEST

The fiscal year 2009 budget for the FBI totals 31,340 positions and \$7.1 billion, including program increases of 1,129 new positions (280 Special Agents, 271 Intelligence Analysts, and 578 Professional Support) and \$447.6 million. These resources are critical for the FBI to perform its national security, criminal law enforcement, and criminal justice services missions. Most importantly, the additional funding requested will continue to build upon our on-going efforts to integrate and cement our intelligence and law enforcement activities. These resources will allow us to create an awareness of, and become receptors for change in threats, and have the ability to make immediate adjustments in priorities and focus in an environment where national security threats and crime problems are constantly changing and shifting.

Guiding the development of the FBI's budget strategy are six enterprise-wide and interdependent capabilities that the FBI needs to effectively perform its national security, criminal investigative, and criminal justice services missions. These end-state capabilities are:

- Domain and Operations*.—A mature enterprise capability for employing intelligence and analysis to identify and understand the national security threats and crime problems challenging America, and developing and executing operational strategies to counter these threats and crime problems;
- Surveillance*.—A surveillance (physical, electronic, human source) and operational technology capability to meet operational requirements;
- Partnerships*.—An established and productive network of partnerships with local, State, Federal, and international law enforcement and criminal justice agencies;
- Leveraging Technology*.—An enhanced capability for providing forensic, operational technology, identification, biometric, training, and criminal justice services to the FBI workforce and our local, State, Federal, and international partners;
- Workforce*.—A professional workforce that possesses the critical skills and competencies (investigative, technical, analytical, language, supervisory, and managerial), experiences, and training required to perform our mission; and
- Infrastructure*.—A safe and appropriate work environment and information technology to facilitate the performance of the FBI's mission.

The FBI's 2009 budget strategy builds upon both current knowledge of threats and crime problems and a forward-look to how we anticipate terrorists, foreign agents and spies, and criminal adversaries are likely to adapt tactics and operations in a constantly evolving and changing world. This forward-look helps inform and determine the critical operational and organizational capabilities the FBI must acquire over the same time period to remain vital and effective in meeting future threats and crime problems.

We also linked our budget plan to the FBI's Strategy Management System to ensure the investments in new resources were tied to our strategic vision and goals. I will highlight some of the key components of our budget request below.

DOMAIN AND OPERATIONS

In order for the FBI to be successful, we must be able to fully utilize our intelligence analysis techniques to establish a mature enterprise capability for identifying and understanding the national security threats and crime problems facing

the United States, and to develop and execute operational strategies to counter these threats and problems.

This budget requests 568 new positions (190 Special Agents, 158 Intelligence Analysts, and 220 Professional Support) and \$131.0 million to improve intelligence analysis and conduct intelligence-driven terrorism investigations and operations. These resources will enable the FBI to conduct investigations to prevent, disrupt and deter acts of terrorism and continue to strengthen working relationships with our Federal, State and local partners; provide support to the National Virtual Translation Center, which serves as a clearinghouse to facilitate timely and accurate translation of foreign intelligence for elements of the Intelligence Community; leverage and expand existing Foreign Terrorist Tracking Task Force (FTTTF) operations to support all National Security Branch (NSB) mission areas to include Counterintelligence, Weapons of Mass Destruction (WMD), Domestic and International Counterterrorism, and Intelligence; and address growth in the number of terrorism and counterintelligence-related computer intrusion cases.

The National Counterterrorism Center's WMD Threat Assessment, 2005–2011 reaffirmed the intent of terrorist adversaries to seek the means and capability to use WMD against the United States at home and abroad. Within the United States Government, the FBI has been assigned responsibility for Render Safe operations involving WMD in the National Capital Region and for the rendering safe of deliberate deployments of WMD throughout the remainder of the United States. To carry out its critical responsibilities in the area of WMD, the FBI must continue to build the capacities and capabilities of its Render Safe Program while ensuring that the FBI is adequately staffed and equipped to forensically respond to a terrorist incident, whether it be Chemical, Biological, Radiological, or Nuclear. The FBI's fiscal year 2009 budget includes 132 positions (43 Special Agents and 89 Professional Support) and \$65.8 million to enhance the FBI's capabilities to prevent, prepare for, and respond to the threat of WMD. These resources will allow the FBI to enhance strategic partnerships with foreign intelligence, law enforcement, security, public health, agricultural, chemical, and other public and private sector agencies and organizations that are vital to the early detection of a potential WMD incident.

The FBI's fiscal year 2009 budget for Domain and Operations also includes an enhancement of 211 positions (35 Special Agents, 113 Intelligence Analysts, and 63 Professional Support) and \$38.6 million to support investigative, intelligence, and technical requirements of the Comprehensive National Cybersecurity Initiative.

The threat of cyber-related foreign intelligence operations to the United States is rapidly expanding. The number of actors with the ability to utilize computers for illegal, harmful, and possibly devastating purposes continues to rise. Cyber intrusions presenting a national security threat have compromised computers on United States Government, private sector, and allied networks. The FBI is in a unique position to counter cyber threats as the only agency with the statutory authority, expertise, and ability to combine counterterrorism, counterintelligence, and criminal resources to neutralize, mitigate, and disrupt illegal computer-supported operations domestically. The FBI's intelligence and law enforcement role supports response to cyber events at United States Government agencies, United States military installations, and the broader private sector.

#### SURVEILLANCE

Shifting from a reactive criminal prosecution approach to a prevention and intelligence-driven focus in our counterterrorism program is taxing the FBI's capacity to gather intelligence through both physical and electronic surveillance. The capacity to carry out extended covert court-authorized surveillance of subjects and targets is absolutely critical to the FBI's counterterrorism and counterintelligence programs. Surveillance activities—physical and electronic—give us insight into and awareness of our adversaries, which, in turn, create opportunities to identify sleeper cells, disrupt support networks and communications, and recruit assets. We need a vigorous surveillance capacity to keep on top of known and emerging targets. Additionally, we must be able to develop and deploy new operational technologies and techniques to counter a more technically sophisticated adversary and to exploit and share the information we gather.

In fiscal year 2009, we seek an enhancement of 145 positions (10 Special Agents and 135 Professional Support) and \$88.5 million to strengthen surveillance capabilities. These resources will enable the FBI to increase the number of physical surveillance teams; replace aging surveillance aircraft; develop new techniques and tools to address emerging technologies; meet demands for new audio and data collection and upgrade or replace obsolete digital collection system equipment and components; and develop new techniques and tools for tactical operations.

## PARTNERSHIPS

The FBI prides itself on establishing and maintaining a productive network of partnerships with local, State, Federal, and international law enforcement and criminal justice agencies. In order to do this, we must enhance our capability and capacity to collect, manage, analyze, and share information within the FBI and with our Intelligence Community (IC), law enforcement, and allied partners. The fiscal year 2009 budget includes 3 positions (2 Special Agents and 1 Professional Support) and \$5.7 million to expand the FBI's presence overseas to obtain intelligence relative to threats involving the homeland; open and staff a new Legal Attaché office in Algiers, Algeria, which will address a significant number of counterterrorism cases and leads in that region; and enhance the FBI's ability to participate in State and local intelligence Fusion Centers, which have become an important component in maintaining the flow of information between and within Federal, State, local, and Tribal Governments.

## LEVERAGING TECHNOLOGY

Technology is the cornerstone to fulfilling the FBI mission as well as creating efficiencies for both FBI personnel and our Intelligence and Law Enforcement Community partners. Leveraging technology will allow the FBI to provide forensic, analytical, and operational technology capabilities to FBI investigators and analysts, law enforcement officers, and the intelligence community. Without enhanced resources to invest in applied research, development, knowledge building, testing, and evaluation, the FBI will not be able to take advantage of emerging technologies or adapt to a constantly changing and evolving threat and operational environment.

For example, the use of DNA technology continues to be an important tool for law enforcement; it not only helps identify suspects, but it can also be used to ensure innocent persons are not wrongly convicted of a crime. The FBI Laboratory continues to support forensic exploitation analysis for FBI investigations, State and local cases, and terrorist identification from Improvised Explosive Devices (IEDs) obtained from in-theater operations in Iraq and Afghanistan. The FBI's fiscal year 2009 budget includes 52 Professional Support positions and \$32.1 million for DNA-related initiatives and enhanced counterterrorism and forensic analysis support for FBI investigations. The failure to provide timely examination results can affect information available for prosecutors during trials or negotiating plea agreements, or can cause a delay in the gathering of intelligence to support the identification of terrorists and their associates, which could impact the safety of United States troops overseas. By enhancing the forensic capabilities of the FBI Laboratory, the FBI will be better positioned to solve crimes and offer assistance to partner law enforcement agencies.

The FBI must also keep pace with evolving technology. Currently, all wireless carriers in the United States are upgrading their networks to 3rd Generation wireless technology. This upgrade will radically transform voice, internet, email, short message service, multimedia services and any future services from circuit-switched data to packet transferred data. The FBI, along with the rest of the Intelligence Community, has created a Joint Wireless Implementation Plan, which will allow us to provide the field with advanced tools and technologies as well as provide adequate training on the use of duly authorized wireless intercept and tracking tools. The fiscal year 2009 budget includes \$4.1 million to assist us in keeping abreast of this cutting edge technology and the ability to counter the technology posed by our adversaries.

## WORKFORCE

The FBI remains committed to a professional workforce that possesses the critical skills and competencies (investigative, technical, analytical, language, supervisory, and managerial), experience, and training required to perform our mission. With an expanding mission and a growing workforce there will be an increase in workforce-related challenges that need addressing. We must be able to attract strong candidates to fill Special Agent, Language Analyst, Intelligence Analyst, and Professional Support positions, bring these candidates on-board in a timely manner, and provide them with professional training.

The fiscal year 2009 budget includes 18 positions and \$43.6 million to address these workforce requirements, including resources for National Security Branch Training, which will enable the FBI to expand the number of Domestic Human Intelligence (HUMINT) Collection Courses, develop and deliver a HUMINT training program that specifically addresses terrorist organizations, and provide training to Cyber investigators on national security-related computer intrusions; the Foreign

Language Proficiency Pay Program (FLP3), which will dramatically increase the FBI's recruitment and retention of highly qualified language professionals, especially those with expertise in Arabic, Urdu, and Chinese; pay modernization efforts, which will align FBI efforts more closely to the pay modernization plans established by the Office of the Director of National Intelligence (ODNI); and the FBI's Personnel Security Program, which will expedite the investigation, adjudication, and polygraph examination for prospective FBI employees and contractors.

As a leader in the Intelligence and Law Enforcement Communities, the FBI must be equipped to hire, train, and pay the specialized cadre of personnel that the FBI employs.

#### INFRASTRUCTURE

Critical to the success of the FBI's mission are safe and appropriate work environments and state-of-the-art information technology (IT). Over the years, the FBI has made substantial investments to upgrade its information technology architecture, including the purchase of computer workstations and software for employees and networks for connectivity both within the FBI and with external partners. Additionally, the FBI is moving forward to invest in upgrading field and training facilities to ensure secure and adequate workspace. However, the FBI still faces gaps in its capacity to support all of its critical projects and initiatives. Continued investments are needed to close the gaps to ensure the availability of critical FBI IT systems, applications, facilities, and data in the event of a disaster. The fiscal year 2009 budget includes \$38.2 million to continue to develop facilities and IT support and services.

The FBI prides itself on its ability to share information in a timely manner. The fiscal year 2009 budget includes resources to enhance and extend the unclassified network (UNet) and integrate it with the Law Enforcement Online, as well as upgrade our IT disaster recovery locations. This funding will enable the FBI to increase information sharing capabilities within the Bureau as well as with outside entities, like the Intelligence Community. Additionally, this funding will support the creation of backup IT capabilities to be available in the event of a catastrophic disaster.

The FBI's budget also includes upgrades to our field facility infrastructure, expansion of the FBI Academy, and security for field office expansion. The FBI is in dire need of adequate space for FBI personnel and the large number of FBI-led, multi-agency task forces such as Joint Terrorism Task Forces, Safe Streets Task Forces, Health Care Fraud Task Forces, and Field Intelligence Groups. These resources will support the FBI's facility requirements to ensure adequate, safe, and secure working environments. The budget also includes resources to consolidate FBI records at the Central Records Complex (CRC). The CRC will enable us to efficiently locate and access all of our records quickly, thus allowing us to more effectively process name checks.

#### STRATEGIC EXECUTION TEAM: IMPROVEMENT OF FBI'S INTELLIGENCE PROGRAM

Before closing, I would like to tell the Committee about our Strategic Execution Team (SET) and describe some of the changes that team has brought about toward improving FBI intelligence activities. This team exemplifies the commitment of the men and women of the FBI to successfully integrating our intelligence and law enforcement activities.

We recently completed a comprehensive self-assessment of our intelligence program and concluded that we need to move further and faster to enhance our capabilities. In consultation with the President's Intelligence Advisory Board, we began working to examine how we can accelerate our progress and we have identified a number of areas where we are focusing our efforts.

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

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

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

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

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

We in the FBI are mandated by the President, Congress, the Attorney General, and the Director of National Intelligence to protect national security. For nearly 100 years, the FBI has used intelligence to solve cases; today, however, we rely on our agents and analysts working hand-in-hand with colleagues across the country and around the world to collect intelligence on multiple, inter-related issues. With the authority and guidance provided by the Intelligence

Reform and Terrorism Prevention Act and other directives and recommendations, the FBI has implemented significant changes to enhance our ability to counter the most critical threats to our security.

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

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

#### CONCLUSION

Madam Chairwoman, 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 7 years are in part due to your efforts and support through annual and supplemental appropriations. From addressing the growing gang problem to creating additional Legal Attaché offices around the world, and, most importantly, to protecting the American people from terrorist attack, you and the Committee have supported our efforts.

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

#### MORTGAGE FRAUD

Senator MIKULSKI. Thank you very much, Director Mueller. We have about 4 minutes left in the vote. Senator Shelby and I are going to dash to the vote. This subcommittee will stand in recess. The first one back will reopen the hearing.

This subcommittee will reconvene for the purposes of asking questions.

Senator Shelby, I am going to take about 5 minutes, turn to you and then we'll come back for a second round. I know your ranking membership on the Banking Committee is taking a lot of your time.

So, my first question is going to deal with mortgage fraud and the whole issue of predatory lending. As we look at what are the resources that the FBI needs, we know we've talked about the national security issues related to counterintelligence, counterterrorism, and the cyber initiative, I'll come back to that, but you've also gotten a surge responsibility related to mortgage fraud and the FBI mortgage load, the FBI mortgage fraud workload is increasing dramatically.

The suspicious activity reports of mortgage fraud is up 300 percent. We know that your workload has increased and it requires a very sophisticated—all of your agents are sophisticated, but this goes to forensic accounting and a whole lot of other very technical fields.

Could you share with us what is it that you need in order to continue to do the type of investigations America needs you to do? We know that the workload has increased, that you have 138 agents dedicated to investigating mortgage fraud.

How many more agents do you need? Will you be able to add them? What is it that you need in the budget to really be able to meet this kind of surge demand?

Mr. MUELLER. Madam Chairwoman, as you point out, we've had a tremendous surge in cases related to the subprime mortgage debacle.

We currently have almost 1,300 cases that have grown exponentially over the last several years and we expect them to grow even further. We also, as I pointed out in my statement, have 19 cases involving institutions themselves, where mortgage fraud may have contributed to misstatements and the like as you have pointed out, each of these cases, particularly the larger ones, require forensic analysis.

We currently have a total of 150 agents who are working these cases. The vast majority of agents are working cases on brokers, buyers, lenders and the like and other agents that are working on the corporation misstatements. We also are participating in 33 task forces around the country.

What we have found is that, over the last couple of years, we have had to take agents from other areas, whether it be healthcare fraud or other financial fraud cases, and put them on this area.

When the budget was put together, the subprime mortgage cases had not grown to the point where we could anticipate the extent of the surge. Even at this point, I'm not certain at this point we can see the extent of the surge.

What I'd like to do is be able to get back to you in terms of how many additional resources we need to address this.

[The information follows:]

#### MORTGAGE CASE RESOURCES

The FBI will work with the Department of Justice, the Office of Management and Budget, and Congress to convey the full resource requirements required to address Mortgage Fraud investigations.

Mr. MUELLER. One other point that you have raised in the past, as I recall, and that is the possibility of seeing an upsurge in cases relating to reverse mortgages. That is something that we are seeing and may well need additional resources to address.

It is still too early to discern the full contours of the extent of the number of cases that we'll have to address, but we'll keep in touch with the subcommittee on that.

Senator MIKULSKI. Well, we want very much to work with you because we feel that the enforcement of existing laws and holding people accountable through rigorous and fair investigations are what is very much needed.

We need to not only protect the American people with their foreclosures but we have to make sure that we maintain confidence in the financial institutions. If we have a collapse of confidence, this could have even far more draconian effects on our economy.

So, we'd like to hear back from you about what do you need to do the job that you're required and we request you to do. What we're looking for is full budgeting, not only the number of agents but the other kind of technical assistants you might need from others that are agents, as well as clerical help, et. cetera. This is enormously significant, important and timely. So, we look forward to hearing from you on that.

#### STATE AND LOCAL VIOLENT CRIME

The other area that I want to move on is the whole issue of State and—excuse me. State and local violent crime. State and local law enforcement strongly support the joint Federal-State task forces. We hear that everywhere, but we're concerned that you've not had the resources to expand the program.

In the President's request to us, there's no additional funding to expand these excellent task forces where we maximize the resources of the Federal Government and utilize the resources of State and local.

You know that crime is up, robbery, aggravated assault, murder. So, our question to you is with the violent crimes on the rise, what is it that you think—what would be the desirable number you would like to expand the joint task forces and what would it take to do that?

Mr. MUELLER. Well, as I think I pointed out, we have 182 violent gang crime task forces now, we continue to expand. We have 16 safe trails task forces, 23 child prostitution task forces, and 9 major theft task forces around the country.

Senator MIKULSKI. Say that last one again.

Mr. MUELLER. We have 23 child prostitution task forces and nine major theft task forces around the country today.

Senator MIKULSKI. Child prostitution?

Mr. MUELLER. Child prostitution task forces, yes. Children that are—

Senator MIKULSKI. Lured into this?

Mr. MUELLER [continuing]. Lured into child prostitution rings, yes, around the country.

Senator MIKULSKI. God.

Mr. MUELLER. Whether it be violent crime or areas such as this, it is our belief we have approximately 12,500 agents at this juncture, and we leverage our resources by task forces with our State, local, and other Federal counterparts.

Regardless of the vehicle on the Federal side, I do believe that it's important that the State and local police departments, and

sheriffs' office's are encouraged to participate in these task forces. Regardless of the vehicle, to the extent that funds are made available and tied into participation on task forces, it maximizes our ability and the ability of State and local law enforcement to address a number of these issues that you have raised.

Senator MIKULSKI. Well, I'm going to come back to crimes against children. I'm going to turn now, my time is up, to Senator Shelby. I was a child abuse social worker. You know, all crimes are terrible but crimes against children are heinous. So, we'll come back, and we know the FBI's been just great on this, on the Internet predator and so it's a tough duty.

Senator Shelby.

#### RENDER SAFE MISSION

Senator SHELBY. Thank you, Madam Chairwoman. Mr. Director, I alluded in my opening statement to the \$38 million provided in the 2008 war supplemental with the OMB program, associate directors for justice, which it's my understanding they have refused to release.

When these—when requested, these funds were critical, we were told, for the Bureau to perform its WMD and render safe missions. These funds have been available for obligation for approximately 1 year and will expire, as I mentioned, in 6 months.

Two questions. Are these funds critical to successfully carry out your mission?

Mr. MUELLER. They are, Senator, and let me explain a little bit about the mission to the extent that I can do so without going into classified matters.

That mission requires us to put together WMD response teams, which include persons with the skills to be able to render safe various WMD devices. However, it also requires supporting command, control, communications, logistics, scientific and hazardous materials support elements as well, and coupled with that is a necessity for mobility of getting those resources to the site of the device.

We have had tremendous support in long distance and getting those resources necessary for the program. We have been working with OMB to get the support for the release of that 38,000 that you mentioned.

Senator SHELBY. \$38 million.

Mr. MUELLER. \$38 million. Maybe it's a wee bit more than what I said. The \$38 million that you mentioned, and it is tremendously important because we do have the responsibility for the National Capital Region, as well as, responsibility across the country and consequently that's important to us.

Senator SHELBY. Why is it—what's the hold-up with OMB?

Mr. MUELLER. Well, we're in discussions with representatives of OMB and our hope is that these funds will be released relatively shortly.

Senator SHELBY. Okay.

Senator MIKULSKI. Mr. Chairman, may I interrupt—

Senator SHELBY. Yes, you may.

Senator MIKULSKI [continuing]. Without in any way taking from your time?

I am very disappointed in this, and I think my colleague and I would like to—we just had kind of a dust-up with OMB over law enforcement, at least I had a dust-up with them, and they've got to release the money and we would again work on a bipartisan basis to write a letter to him or to ask for the release of the money.

It was appropriated in the supplemental. You need the money and this is a pretty important mission, so much so that we can't even talk about it except in a classified way. It doesn't get any bigger deal than that.

So, Senator Shelby, why don't, after the hearing, you and I put our heads together and see if we can't spring this?

Senator SHELBY. We want to work with the Director on this.

Senator MIKULSKI. Yes, absolutely.

Mr. MUELLER. Let me just say that OMB has been supportive of this, in supporting our mission. This is the one outstanding issue there is, but they have been tremendously supportive of our mission.

Senator SHELBY. Do you think you'll resolve this on your own?

Mr. MUELLER. It is my hope that we can. As I say, we've had discussions with OMB recently as well.

Senator SHELBY. Okay.

Senator MIKULSKI. Well, we do the supplemental, the new supplemental, the new new new supplemental, and if it hasn't been—we've got to get that done, but we're going to be holding—we're going to be moving the supplemental in 2 weeks to the floor. So, let's—if we can't get it done in 2 weeks, we have to go to plan B. Okay?

Mr. MUELLER. Okay. Yes, ma'am.

#### FUNDING GAP

Senator SHELBY. Thank you, Madam Chairwoman. Budget for shortfalls. The budget the administration has submitted on behalf of the FBI proposes an additional \$450 million to partially fund the implementation of the Bureau's intelligence mission and national security initiatives.

This budget request fails to fix a \$56 million gap in your base funding. During the 2008 budget process, Chairwoman Mikulski and I worked to provide the resources that you needed, Mr. Director, to close a \$139 million shortfall in your budget. We expected the administration to fix the problem it created and we're disappointed that once again we're facing the substantial base shortfall in the FBI.

With that in mind, what would be the impact on the FBI if there was a long-term continuing resolution for the first 90 to 180 days of 2009? I know I don't want to contemplate that. It would be an impact.

Mr. MUELLER. I want to thank the subcommittee for its efforts last year on the shortfall. Most of it was taken care of. To the extent it was not, it did affect our ability to fully fund programs, such as the deoxyribonucleic acid (DNA), cyber, surveillances and the like.

If there is a continuing resolution and I would say 90 days, it would probably have an impact or shortfall of approximately \$30 million and that would result in a—could conceivably result in a

hiring freeze and it would require across-the-board reductions in all of our programs, and I do point out that from experience. I know that a number of the national security-related budgets were passed earlier last year. These include the Department of Homeland Security (DHS), quite obviously the military, as well as, the intelligence budgets. Now that we are a partner in the intelligence community, I would hope that the subcommittee would look at the impact of continuing resolutions. I recognize perhaps that we do need a budget as soon as possible, if we are to maintain and increase the programs that we have been discussing here.

Senator SHELBY. So basically, it could affect you carrying out your missions?

Mr. MUELLER. Yes. Yes, sir.

#### SHIFT OF CRIMINAL AGENTS TO COUNTERTERRORISM

Senator SHELBY. And the subject of realignment of FBI, I guess, from criminal cases to terrorism, since 9/11, the FBI has shifted more than 2,000 agents from criminal investigations into terrorism. I agree that terrorism is the highest priority and represents the gravest threat to national security.

I think it's also shortsighted for us to continue to cannibalize the criminal side of the FBI when we should be requesting more agents and resources to provide the FBI with the means to fight the threat of terrorism, as well as, help State and local law enforcement fight the rising crime epidemic gripping our communities.

Mr. Director, are you satisfied that the FBI is reaching the right balance in resources between its national security and the criminal investigation missions or could you do more with more resources?

Mr. MUELLER. Well, the answer to the last part of that question is yes, we could do more with the resources.

The fact of the matter is—

Senator SHELBY. Without the resources, you've got one hand tied behind you.

Mr. MUELLER. We do, and the fact of the matter is, you've used the word "cannibalize," and I think that is appropriate, we've taken resources from the criminal side of the house to meet our national security responsibilities and to build up the intelligence side of the house which was absolutely essential in the wake of September 11th.

We increasingly find that State and local law enforcement want us back working on task forces with them. Not across the country generally but in certain places across the country warrants a back-fill of those agents who we've had to take from the criminal side of the house and put on the national security side of the house.

Likewise, with the subprime mortgage crisis, the Innocent Images task forces, the growth of the Internet and the cyber challenges present unique threats that we now face. On the criminal side of the house, I do believe it's important to recognize that we have certain particular skills that could augment State and local law enforcement. Furthermore, we should consider building up those agents and the other support functions that we've had to push over to the national security side since September 11th.

## TERRORIST EXPLOSIVE DEVICE ANALYTICAL CENTER

Senator SHELBY. I want to get into the subject of the FBI labs. The Terrorist Explosive Device Analytical Center, TEDAC we call it, accounted for almost two-thirds of the evidence submitted to the FBI lab for processing in 2007. This increased workload has affected the lab's ability to assist other agencies, including State and local law enforcement.

The budget, this budget contains a request to reduce the backlog of the Federal Convicted Offender Program, but there appears to be minimal new resources to address the workload generated by TEDAC.

Is the case turnaround time, which I'm told, Mr. Director, is currently averaging around 200 days, for processing evidence in the FBI lab an impediment to cases and prosecutions?

Mr. MUELLER. Yes.

Senator SHELBY. If not, could it be?

Mr. MUELLER. Yes, it is. We have two challenges here. One is IEDs, as you pointed out, and to bring in our expertise, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF's) expertise to IEDs, whether they be in Iraq and Afghanistan or elsewhere around the world, and not only identifying—

Senator SHELBY. Sometimes here, although—

Mr. MUELLER. Or perhaps here—

Senator SHELBY [continuing]. I'm not suggesting—

Mr. MUELLER [continuing]. Ultimately.

Senator SHELBY [continuing]. That.

Mr. MUELLER. But identifying the engineer, the persons responsible for the various mechanisms that are used, but also utilizing DNA and fingerprints, contributing to intelligence has been tremendously effective for the military.

On the DNA side of the house, that has meant a delay and we've also had additional responsibilities on the DNA side of the house when broader categories of individuals whose specimens need to go into our databases and so on both fronts, we're facing a shortfall and have requested funds to address that shortfall.

Senator SHELBY. So TEDAC basically is not sufficient a resource to do its job, not the job you would want it to do?

Mr. MUELLER. Well, again we've had to take resources from the criminal cases to address the national security which in this case is TEDAC as opposed to the services that have traditionally provided, not only to our investigators on the criminal side but also State and local investigators, and we have had to, to a certain extent, dry up the support we give the State and local laboratories traditionally in order to meet the national security demands that have been placed upon us.

Senator SHELBY. Senator Mikulski, I hope that we'll look at this hard and fast as we get into this to make sure that we fund it properly.

Senator MIKULSKI. Absolutely. I find it—I find this very troubling.

## FBI ACADEMY

Senator SHELBY. Quantico, very important, the FBI Academy in Quantico. Not only trains all FBI special agents but also trains intelligence analysts, as well as, State, local and international law enforcement National Academy students.

Some of us are concerned that your training infrastructure needs are not being met here. It's a question of resources. The FBI Academy has expanded over the years and still struggles to satisfy all of the requirements of students and faculty to ensure that your agents, analysts and the National Academy students have the finest training capability available.

In 2009, the FBI requested \$9.8 million for FBI Academy instruction. Does this funding satisfy all your needs or is this just meeting the minimum?

Mr. MUELLER. Our buildings we have at Quantico for agents and the like are 40 years old at this juncture. We have gotten funds in past years to upgrade them, but it is certainly not enough.

We have additional demands, as I indicated in my remarks, and we've doubled the number of investigative or intelligence analysts. They need to be trained and that has put a demand on the facilities at the FBI Academy.

One of the crown jewels of the Bureau is the National Academy and the training that is done for not only State and local law enforcement, but also international law enforcement. There have been demands to expand our classes, both for State and local, as well as, international, and so we have additional demands, as well as, a relatively old structure that we would like to expand our capabilities of the FBI Academy to address these demands but also we have to continue to upgrade our facilities to meet our training needs.

An example is as we get enhanced technology in the Bureau, the buildings are 40 years old and do not have the wiring that enables us to put in the classified networks that we need to provide the instruction for both our analysts, as well as, our agents.

## CYBER SECURITY INITIATIVE

Senator SHELBY. The national cyber security initiative. I don't know what you can talk about here. We might need a classified briefing, Mr. Director, but to talk about the role of the national cyber security initiative, why it's important and also the resources. Is that more a place for a classified hearing than this?

Mr. MUELLER. I think I can talk generally about this initiative and then if it would be helpful, we can certainly go to a different session.

The challenge of protecting the variety of networks, Government and private, is going to be increased over the years. We have the example that you mentioned, Madam Chairwoman in Estonia recently where it was subject to a wave of cyber attacks which could happen not only to Estonia but around the world.

We have the responsibility to prevent and investigate the attacks within the United States. Most often, attacks do not occur within our borders but from outside our borders, which requires the integration of our experts with experts from other countries and the use of our legal attachés.

In the last year or so, we have joined with our counterparts at the National Security Administration (NSA), Department of Defense (DOD), and the Department of Homeland Security to put together what is called the national cyber investigative joint task force which has us working in an integrated fashion to address these threats.

We need to build on our capabilities, as well as, the capabilities of the Government overall. We have requested 211 positions and \$39 million in this budget to address the challenges we see from the threat of cyber attacks.

Senator SHELBY. Thank you. Thank you, Madam Chairwoman.

Senator MIKULSKI. Senator Shelby, we are going to have a classified conversation about this rather than a formal hearing in which you and I and others can participate.

I discussed this with Director Mueller yesterday. There are things that really are said elsewhere and last week, Senator Stevens presided over a DOD hearing on the DOD aspects. This is a pretty big deal.

Interestingly enough, Business Week this week has a whole—that's their front page about the possible attacks on corporate networks which, of course, have significant effect, financial networks, et cetera.

So, we're going to hold a conversation with you to make sure that we're on the right track in terms of technology, workforce, while the administration works out a complicated governance approach.

Also, if you would like to have an additional classified conversation on the Render Safe Program, we would want to cooperate with you on arranging it. It's really needed.

Senator Stevens, we're happy to see you today.

Senator STEVENS. Thank you. I've got other hearings going on. My neighbor is here, but I wondered about the concept of the arrangements the FBI has with the Department of Homeland Security.

It seems to me we're spreading this whole thing across the Government now. We had the hearing on DOD, as you said. We're having one on Homeland Security.

Are you sharing across the board now in terms of these operations? You relate to a certain extent with Homeland Security, right?

Mr. MUELLER. Yes, sir. Whether it be the cyber initiative where we have roles, we work with Department of Homeland Security on the national cyber investigative joint task force that I just mentioned, but beyond that, we are working with Homeland Security fusion centers that have been established States around the country.

We work very closely with them in terms of protecting our borders against terrorists. Are, I would say, across the board integrated with the Department of Homeland Security across the country.

The last point I would mention is on joint terrorism task forces. We have over 100 joint terrorism task forces around the country now and we have members from various elements of the Department of Homeland Security that participate in task forces.

Senator STEVENS. Senator Mikulski mentioned, as a matter of fact, that was a classified issue. We can't talk about numbers, but I can tell you I was shocked with the numbers we saw, and I think you were, too, weren't you, Madam Chairman, in terms of the whole question of preparing to deal with the defense against cyber attacks.

We've got a massive amount in the Defense Appropriations Subcommittee. We've got some in Homeland Security. Do you have part of that cyber attack in this budget?

Mr. MUELLER. We have a piece of it, yes, and——

Senator STEVENS. We need to know how it all fits together and how much it really is, if it's stretched so far, is what I'm asking.

Mr. MUELLER. We have a piece of it and we have worked with others in the community to set out a 5-year plan for what we need to build to address this particular threat.

Senator STEVENS. Would it be proper to suggest that maybe one of these days we should have a classified hearing with all three there——

Senator MIKULSKI. You know,——

Senator STEVENS [continuing]. To discuss this in depth?

Senator MIKULSKI [continuing]. I absolutely do. We encouraged Director McConnell, the head of the DNI, to meet separately with the appropriators involved with this.

For those of us on the Intel Committee, we got an overall picture and we were concerned exactly what you're raising, Senator. How does it all fit together? How do we sequence what we need to fund because you don't fund everything at the same time, and then the overall question, sir, about who is in charge?

But I think, why don't we cooperate with Senator Byrd and Senator Inouye and the ranking members and let's have a conversation about this?

Senator STEVENS. I hope you understand what we're saying. We—I believe we want redundancy and I do believe we want everyone involved to use their expertise, but the problem is, is do we have an overlapping of funding that is warranted?

I tell you, if you saw the figures we saw projected out for the next 5 years, it was a substantial increase that we're looking at, and I don't know, we haven't got yours for that 5-year period, but I do hope we can find some way to be assured that the money follows the assignment responsibility that we don't have a duplication of funding occurring without intention to do so and just not really realizing how much jointness there is in this operation.

Mr. MUELLER. I think——

Senator STEVENS. I'm talking about cyber now.

Mr. MUELLER. Right. We're talking about cyber. The Director of the DNI, Admiral McConnell, would be very willing to sit down with Mike Chertoff, myself and others to explain and lay out exactly how the pieces come together.

I do understand substantial funding——

Senator MIKULSKI. Do you want to do that?

Senator STEVENS. Yes. Thank you very much.

Mr. MUELLER. Thank you.

Senator STEVENS. That's my answer.

## SENTINEL

Senator MIKULSKI. Thank you very much, Senator Stevens.

We will pick up on this because it's not only the money but it also goes to what needs to be done when, by whom, and who's in charge, number 1, and number 2, who will provide the technological assurances that we don't—that it's a boon, not a boondoggle. So, we don't need to go into that here.

I want to raise, though, something that was a boondoggle that we turned into a boon which goes to our favorite program of the Sentinel. If I could, I'd like to focus on some of the oversight issues.

Some years ago, this subcommittee was faced, as you were, where the fact that the attempt to develop an electronic case management system called Trilogy became deeply troubled and dysfunctional. We then moved to a new effort called the Sentinel.

This is a very important tool because right after 9/11, the case management issues were not only what did we know and when did we know it but did we know how to connect the dots and that's why we looked for a new case management system. It wasn't only to be cool and groovy with electronics and be paperless, it was to have a better chase.

So, having said that, while we're here today to stand sentry on the Sentinel. So, could you tell us where we are and how is the progress coming?

Mr. MUELLER. As you point out, in the wake of September 11th, we had a contract to complete that had been started before September 11th called Trilogy. It was called Trilogy because there were three legs to the stool. Two of them were successful; that is, the networks themselves and other aspects of putting in place the infrastructure. What was not successful was the third leg of the stool and that was the software.

We had to make a very difficult decision and say we could not go forward on that and, as you point out, it was replaced by Sentinel, which is contracted by Lockheed Martin, is a forward-based system.

Phase 1 was successfully deployed in June 2007 and with the lessons from the deployment of phase 1, we have gone to what is called an incremental development strategy for phases 2 through 4.

We have had 12 builds since June on phase 1 which is part of that incremental development strategy, and phase 2 is on schedule and within planned costs.

As an aside, I would say that the FBI and Lockheed Martin deployed phase 1 on budget and a few weeks late, but phase 2 is on schedule and currently within planned costs. Indeed, on April 4, we delivered the Enterprise Portal, which is a key component of the Sentinel project.

I meet with CEO Bob Stevens of Lockheed Martin quarterly to make certain that this program is on track. Others who are much more involved in the program on a daily basis meet with their counterparts at Lockheed Martin regularly to make certain it is on track. I don't think there's another program that has more oversight than Sentinel from the inspector general, the Government Accountability Office (GAO), and Congress.

I'm confident at this juncture that we are proceeding as we should be on this project, but I welcome the scrutiny and am happy to brief anyone on where we are to make certain that you also share that confidence that I have that we are on track.

Senator MIKULSKI. Well, we understand from GAO that they say that Sentinel is on track and also on budget. So, it's on track in terms of its technology development, but we're also concerned that some of the most difficult parts lie ahead which is the conversion of case files from the old database to Sentinel.

We just encourage you to really stand your continued vigilance on this because I think now we're also moving to some of the really tough parts and those that will determine the efficacy of its operation.

Mr. MUELLER. May I add one comment on that, —

Senator MIKULSKI. Sure.

Mr. MUELLER [continuing]. Madam Chairwoman. We have been focused and rightfully so on Trilogy and also Sentinel, but since September 11th, we recognize the necessity of putting information relating to counterterrorism into a searchable database. In the wake of September 11th, we developed what was called the investigative data warehouse for our counterterrorism information. This database has been built up over time, and is a different database than that which had supported our case structure before. It is the latest in terms of technology and gives us the capability to connect the dots in the counterterrorism arena, similar to what we're moving to overall with Sentinel.

So, we have not stood by waiting for the development of Sentinel but have put into place the mechanism a number of years ago to meet that shortfall.

One last point on information technology, if I could. We have in the last year put out approximately 20,000 Blackberries to our agents, analysts, and others that enable us to be on the cutting edge of communication and capability to accomplish our mission.

In the next year or so, we will be putting in almost 25,000 UNeT computers, which is the Internet. As you know, we operate at the secret level but everybody should have Internet capability on their desk as opposed to having to go down to some other work station. We have already put in 12,000 those UNeT units. In 2008, we're going to put in another 14,000. By the end of 2009, everybody will have UNeT capability.

Senator MIKULSKI. Well, I'm glad you brought all of that up. You know, when we think of the FBI, we think of agents, then we think of analysts, then we think of linguists. We don't think of the incredible support that we need to provide to our very talented and dedicated people who, I'll say, are in the street, whether that's Baghdad or Baltimore or whatever, but you need to have the kind of support staff, like I know you hired a chief information officer, and isn't that when we began to kind of right the ship on Sentinel and some others? Then that person needs to have the support.

So, when we look at your appropriations, it's not only, you know, how many agents and do they have the guns and all of that is important, but you also need to have these other highly technical people to make sure that our agents, analysts, et cetera, are right resourced, isn't this right?

Mr. MUELLER. Absolutely. Since September 11th, we have had to put in place a chief information officer office and bring on board the talent and the capabilities to do that. We needed an architecture that would span the Bureau as a whole. We needed to develop a Government structure so that you identify and prioritize the particular projects that you're going to undertake as an organization.

We've made substantial strides, but I will tell you we still have, we still have gaps that we need to fill in terms of providing the infrastructure, and the IT that the Bureau needs. We're working hard to fill those gaps, but I would be remiss if I thought that we were there. We've made a lot of strides but we've got a ways to go.

#### TERRORIST WATCH LIST

Senator MIKULSKI. Which takes me to—I've got about two more questions—the terrorist watch list. The inspector general has identified concerns about the terrorist watch list and going back then to those dark days after 9/11 and the 9/11 Commission, the Intel Committee's investigations, one of the things, issues that emerged was the efficacy of our watch lists, and according to the Department of Justice (DOJ) inspector general, he has identified serious flaws in the FBI terror watch list and also DOJ, Department of Justice, which means a real time lag in putting terrorists on the watch list and then also because of identical names or complexity, getting good people off of that watch list.

Could you tell us your response to the inspectors general flashing yellow lights on this?

Mr. MUELLER. Let me start by saying that I believe the watch list is a success story. I believe it was 12 agencies who had separate watch lists. Since 2003 we have pulled together those 12 agencies and established a watch list procedure. A nomination process for international nominees come from the National Counterterrorism Center and domestic nominees come from the FBI.

It has been successfully in operation, integrated with Border and Customs individuals, the State Department, as well as State and local law enforcement.

The inspector general report did point out deficiencies in two areas and I will just single out those two areas. In the nomination process, the inspector general indicated that the FBI had established appropriate procedures for nominating, appropriate criteria for nominations, and appropriate quality controls.

The inspector general did point out that we were not updating our watch list entries as fast as we should and there were field offices that had submitted incomplete and/or inaccurate information. The inspector general looked at a number of organizations, as well as ours, and pointed out those deficiencies.

We have put into place software fixes and additional training to address these concerns. Of the 18 recommendations that the inspector general had, the FBI has closed 4 and we are waiting for another 12 to get approved from the inspector general.

One last point I'd make on the other aspect that you mentioned, the redress issues relating to a watch list. Recommendation was made that we put together a multiagency working group to address that. In September 2007, put together and had signed off by each

of the contributing agencies an memorandum of understanding (MOU) that would establish and did establish a redress officer in every one of the agencies and a unit in every one of the agencies to address that.

There is still a backlog, but we have in place the mechanism that we need in my mind in each of the agencies to assure swifter redress so those persons who should not be on the watch list are taken off the watch list.

As I said, of the 18 recommendations that the inspector general has made, 16 of those are on the verge of being completed and there are 2 that we're still working on.

#### FIGHTING CRIMES AGAINST CHILDREN

Senator MIKULSKI. Well, thank you very much. I think with that, it gives us the assurance that, number 1, you take the inspector general concerns seriously and as we've talked about, both at this hearing and also in other conversations with you, that those issues that the inspector general did raise, that you, through your team, have addressed them. So, we do appreciate that.

I just have one general area I'd like to come back to. You know, the crimes against children. It really took my breath away to hear about something called a joint task force on child prostitution, and I know Senator Shelby has just been a fantastic colleague and ally on issues related to trafficking, the child predator thing even in other parts of this appropriation, implementation of the Adam Walsh bill.

We know that the FBI was given some time ago, even at the dawn of the Internet, the responsibility for dealing with child predators on the Internet.

Could you just tell us what basically are you—are the programs you're responsible for the protection of children and do you feel that you need more support in this? Because I tell you, it just—you know, it seems that there's no end to how vile the world can be.

Mr. MUELLER. Well, this is a daunting problem. We could probably take all of our agents and still have work to do in terms of addressing the exploitation of children in a variety of horrific ways.

I mentioned child prostitution, the task forces that we have addressing that. Human trafficking of persons, often children, is one aspect of that and you are knowledgeable about the FBI's Innocent Images Program which is where much of the work is initiated, particularly the international work is accomplished out of the task force up in Maryland.

We currently have almost 270 agents who are working on Innocent Images cases. We have a total of 5,300 Innocent Images cases which are child pornography, the child predators on the Internet. We have on the international task force that we established in 2004, we have worked with 47 separate investigators from 21 different countries to address child pornography and child predators on the Internet.

Senator MIKULSKI. Do they come to the Calverton facility for training?

Mr. MUELLER. Yes, they come to the Calverton facility and work on a task force shoulder to shoulder with the FBI.

Senator MIKULSKI. Do they get training there, too?

Mr. MUELLER. Trained, and as we work together, we train together, then we work cases together. We recently had a case of a group of child predators on the Internet. We arrested persons in Australia, the United Kingdom, the United States, and other European countries. They had believed that they were free from the scrutiny of law enforcement by encrypting their files. They had something like 15,000 child pornographic files that had been encrypted. This case and it was emblematic of the work that we need to do internationally with our counterparts to address problems such as this.

So internationally and domestically, we have put what resources we can to address a problem that is growing.

Senator MIKULSKI. Well, we want to do all we can for you to be supported not only at the Calverton effort but in these task forces. You know, if you say to the American people, the taxpayer, I mean, they would want us to make this a priority.

So, we have other questions, but we will submit them for the record.

Senator Shelby, do you have any others?

Senator SHELBY. I have no further questions. I'm just glad to hear from the Director.

Senator MIKULSKI. Yes, we're glad to hear from you, Director. We thank you for your candor and for your forthcoming in answering our questions, and we thank you and look forward to working with you as we put together both this 2009 appropriation as well as the supplemental because some of the issues will be addressed there.

#### ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, the Senators may submit additional questions, we ask for the FBI to respond within 30 days.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

##### BULLET LEAD

*Question.* More than four months ago, in a letter I sent to you that remains unanswered, I expressed my concerns that flawed bullet lead analysis done by the FBI for many years may have led to wrongful convictions. The National Academy of Sciences issued a report in 2005 discrediting bullet lead analysis, and the FBI stopped conducting bullet lead testing that same year. Over the last two years, however, the Justice Department has not taken steps to find or correct the cases where it was misused. As a former judge, I am sure you share my fear that this faulty forensic evidence may have been introduced in the estimated 2,500 cases where it was used. In my letter in November, I asked you to provide the Judiciary Committee with the list of cases where FBI bullet lead analysis was used, and to advise the Committee what steps you've taken to correct any unjust convictions resulting from bullet lead analysis.

Please state whether you have taken any action in response to my letter and explain your response.

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

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

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

*Question.* When can I expect a response to my letter?

*Answer.* DOJ is completing its response to the letter and will be transmitted to your office presently.

*Question.* According to press accounts, the FBI agreed in November to provide a list of all cases where bullet lead analysis was used to the Innocence Project in order to begin working to identify cases where there may be problems.

Please state whether you support this collaborative effort and explain your response.

*Answer.* In an FBI press release on November 17, 2007, the FBI announced that it has undertaken an additional round of outreach, analysis, and review efforts concerning bullet lead analysis. This has included joint work with the Innocence Project, which has done legal research to identify criminal cases in which bullet lead analysis has been introduced at trial.

The Department of Justice, including the FBI, takes this issue very seriously, and we are developing procedures to ensure that appropriate disclosures are made to the relevant parties. Thereafter, the parties involved can make an assessment of the effect of any potentially erroneous testimony.

*Question.* Has anyone in the Justice Department taken any steps to support or oppose this agreement between the FBI and the Innocence Project?

*Answer.* Please see the response to subpart a, above.

#### UNANSWERED QUESTIONS

*Question.* As of May last year, the Justice Department reported to the Judiciary Committee that there was only one FBI agent assigned to Iraq and one assigned to Kuwait to investigate significant contracting fraud. Since May 2007, has the Justice Department assigned more full-time FBI agents or other federal investigators to work on contracting fraud cases in Iraq and Afghanistan? If not, why not?

*Answer.* The FBI currently has Special Agents (SAs) deployed in Iraq, Afghanistan, and Kuwait to provide full-time support to the International Contract Corruption Initiative, which addresses major fraud and corruption in the war and reconstruction efforts in Iraq and Afghanistan. These deployments are conducted in 120-day rotation cycles and SAs work jointly with the Defense Criminal Investigative Service, Army Criminal Investigation Command Major Procurement Fraud Unit, Special Inspector General for Iraq Reconstruction, and U.S. Agency for International Development, who also have agents deployed to address this crime problem. The FBI's overseas assignments in direct support of this multi-agency initiative are as follows: one SA in Kuwait; one Assistant Legal Attaché and two SAs in Iraq; and two SAs in Afghanistan.

*Question.* In November, I sent you a letter expressing my concerns that flawed bullet lead analysis done by the FBI for many years may have led to wrongful convictions. As you know, the National Academy of Sciences issued a report in 2005 discrediting bullet lead analysis, and the FBI stopped conducting bullet lead testing that same year. But over the last two years, the Justice Department has not taken steps to find or correct the cases where it was misused. As a former judge, I am sure you share my fear that this faulty forensic evidence may have been introduced

in the estimated 2,500 cases where it was used. Two months ago, I asked you to provide the Judiciary Committee with the list of cases where FBI bullet lead analysis was used, and to advise the Committee what steps you've taken to correct any unjust convictions resulting from bullet lead analysis. When can I expect a response to my letter? Have you taken any action in response to my letter?

Answer. Please see the response to Question 1, above.

*Question.* According to press accounts, the FBI agreed in November to provide a list of where all bullet lead analysis was used to the Innocence Project in order to begin working to identify cases where there may be problems. Do you support this collaborative effort? Has anyone in the Justice Department taken any steps to support or oppose this agreement between the FBI and the Innocence Project?

Answer. Please see the response to Question 2, above.

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QUESTION SUBMITTED BY SENATOR BYRON L. DORGAN

TRIBAL JUSTICE FUNDING

*Question.* The Justice Department dedicated 102 Federal Bureau of Investigations agents to investigate violent crimes in Indian country in 1998. Congress provided funding for an additional 30 agents in fiscal year 1999, and an additional 27 agents in fiscal year 2005. As a result of these appropriations, there should be 159 FBI agents dedicated to violent crime in Indian country. However, there are only 114 FBI agents dedicated to Indian country today. Can you please explain this discrepancy?

Answer. As of June 2008, there are 104 FBI Special Agents working on Indian Country (IC) matters. Of this total, 30 were appropriated in fiscal year 1997, 30 in fiscal year 1999, and 10 in fiscal year 2005 (the FBI's fiscal year 2005 appropriation included 27 positions, 10 of which were Special Agents). The remaining 34 Special Agents currently working IC matters have been assigned by their respective field offices to address specific IC issues.

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QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

PAY AND BENEFITS OVERSEAS

*Question.* What efforts has the Department of Justice taken to ensure retention of its best and brightest, particularly in the enforcement agencies out in the field and those agents and employees working outside the United States?

Answer. While Department of Justice law enforcement officials working outside the United States may be eligible for certain additional pay or benefits based on the location, the retention incentives available to those employees are the same as the incentives available to those located in the United States.

The FBI continues to use the authorities it received in the 2005 Consolidated Appropriations Act, some of which expire at the end of 2009, to better compete with private industry and improve attrition rates. These authorities include recruitment, relocation, and retention incentives, student loan repayment, and the University Education Program. Recruitment bonuses allow the FBI to competitively recruit employees who possess special qualifications for hard-to-fill FBI positions, relocation bonuses increase the number of employees interested in hard-to-fill positions within the FBI by, in effect, reducing the employee's relocation costs, and retention allowances are used to retain current employees who possess high-level or unique qualifications or who fill critical FBI needs. Retention allowances may be provided on either an individual or group basis to help the FBI retain certain employees or categories of employees, such as intelligence analysts and police officers.

The FBI has also used education benefits to improve the quality and job satisfaction of our workforce. For example, in order to improve our recruitment and retention of Intelligence Analysts, the FBI repaid 359 student loans for these employees in fiscal year 2007. The FBI has also used the University Education Program to fund tuition expenses for current employees seeking to obtain certifications and academic degrees, approving payments for 679 participants in fiscal year 2008.

*Question.* Is danger pay provided to agents and DOJ employees actively working along the Southwest Border?

Answer. The FBI's Legal Attaché (Legat) office in Mexico maintains a presence in Mexico City, Guadalajara, and Monterrey, but does not maintain a permanent presence along the Southwest Border. Currently, neither FBI employees assigned to the Mexico City Legat nor those assigned in the United States near the Southwest Border are afforded danger pay. It is the FBI's understanding that DEA personnel

working in Mexico have been eligible to receive a danger pay allowance of 15 percent of basic pay since approximately 1991. In April 2008 the FBI's Mexico City Legat asked FBI Headquarters to consider affording danger pay to all FBI personnel in Mexico based on the hostile environment in Mexico, including threats from organized crime fugitives, rebels, and terrorist groups, as well as street and residential crimes. This request is under review.

SUBCOMMITTEE RECESS

Senator MIKULSKI. This subcommittee stands in recess subject to the call of the Chair.

Mr. MUELLER. Thank you, Madam Chairwoman, Senator.

[Whereupon, at 3:22 p.m., Wednesday, April 16, the subcommittee was recessed, to reconvene subject to the call of the Chair.]