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OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

WEDNESDAY, MARCH 25, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 9:35 a.m., in room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Feingold, Schumer, Durbin, Cardin, Whitehouse, Wyden, Klobuchar, Kaufman, Specter, Grassley, Kyl, and Sessions.

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

Chairman LEAHY. Good morning. Oversight is one of the Congress' most important responsibilities, and one that this Committee will continue to fulfill, as it has in past Congresses and will in this Congress. Today, we welcome back to the Committee Director Mueller of the Federal Bureau of Investigation, no stranger to this Committee. It is now 6 months since our last FBI oversight hearing, and we will soon hold an oversight hearing with Secretary Napolitano, and then with Attorney General Holder, who had his confirmation hearing before us 2 months ago.

So we will talk about the effectiveness of the Federal Bureau of Investigation in carrying out its critical missions to keep us secure while upholding the rule of law.

We had a commemoration—and I was pleased to be there—of the 100th anniversary of the FBI last year. I want to quote something from what Director Mueller said. He said:

"It is not enough to stop the terrorist—we must stop him while maintaining his civil liberties. It is not enough to catch the criminal—we must catch him while respecting his civil rights. 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. The rule of law, civil liberties, and civil rights—these are not our burdens. They are what make us better. And they are what have made us better for the past 100 years."

I talked to the Director after that and commended him for that speech. In fact, I referred to it on the floor of the Senate and put it into the record.

There are many vital issues on which we have to work together. One of particular importance is aggressive enforcement of the mortgage fraud and financial fraud that contributed to the massive eco-

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nomic crisis we are facing. I see Senator Grassley here. He and I introduced and passed out of this Committee legislation, which I understand may be on the Senate floor next month in that regard. As Director Mueller will share with us, the FBI's mortgage fraud caseload has more than doubled in the past 3 years, with all signs pointing to a continued increase in fraud cases. Then there is, of course, the need to police the use of the recovery funds. All these are straining the FBI's resources.

I think the FBI is taking good steps to bulk up fraud enforcement and using creative measures, including new technologies and also interagency task forces. In his budget outline, the President showed leadership by committing to provide additional resources to the FBI to investigate and prosecute mortgage fraud. In my view, we have to do still more. More is needed to give investigators and prosecutors the resources they need to aggressively detect and prosecute these insidious forms of fraud. The Fraud Enforcement and Recovery Act of 2009 that I have mentioned—Senator Grassley and Senator Klobuchar and Senator Kaufman and Senator Schumer and I introduced that legislation—will do exactly that. I appreciate the Bureau's assistance in developing this important legislation. Yesterday, the Majority Leader said he is going to try to have it on the floor during the first week we are back after the Easter recess. I suspect it will pass overwhelmingly, and I hope we can get a time agreement to do that.

Over the last couple of years, the Director has identified public corruption as the Bureau's top criminal priority. Recent high profile cases make clear the importance of aggressive enforcement of corruption laws. The Public Corruption Prosecution Improvements Act—that is a bill I introduced with Senator Cornyn of Texas—will give investigators and prosecutors the tools they need in this regard, and that has also been reported to the Senate.

There are other issues that have arisen during the past few years. One is the misuse of "exigent letters," to obtain phone records and other sensitive records of Americans, including reporters, without a warrant. These letters claimed emergency conditions that were not applicable and promised a follow-up legal process that never came. I hope that the Director will be able to assure us, and the Inspector General will confirm, that appropriate steps have been taken to prevent a repeat of that abuse. I will ask the Director to address concerns we have that the records may have been illegally obtained through these exigent letters and then inappropriately retained by the Government.

I have been concerned—and I have discussed this with the Director—about the FBI's responsiveness to requests for information under the Freedom of Information Act. Open Government is key to a strong democracy. It is a principle that has been embraced by the new President and the Attorney General. The FBI has got to be faster in their responses.

Now, during this hearing we will discuss, as we always do, the good and the bad: how the FBI worked to clear the backlog in name checks for immigration and voting purposes; how the FBI has improved its crime lab testing; but also which problems remain; and the expiring provisions of the PATRIOT Act.

In the area of violent crime, there are disturbing signs that crime rates may increase significantly in response to the financial crisis, and we will talk about that.

But, mostly, I applaud the Director's efforts to recommit the FBI to its best traditions. He has done it through not only his statements but his personal example and leadership. And I appreciate his openness to oversight and accountability. I might state parenthetically that there has never been an instance when I have called him when I have had a question about some action that the Director has not been on the phone immediately and been responsive.

Senator Specter.

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

Senator SPECTER. Thank you, Mr. Chairman.

Before addressing the oversight hearing today, a very important one, on FBI Director Mueller, I want to comment about a matter which you just raised with me, and that is the confirmation hearing of nominee Judge Hamilton for the Seventh Circuit. I wrote to you yesterday on the subject because of concern which I have, as well as my caucus, on the timing, and I would ask that that letter be made a part of the record.

Chairman LEAHY. It was answered. You read it first in the press, and then I read it second, and so it has been in the public record because we have already viewed it in the press, but we will put it in the record. As I also mentioned to you this morning, I have had a number of times that at requests from your side of the aisle, I have delayed hearings and all, confirmation hearings, and then had further delays put in even though I have tried to cooperate that way, Attorney General Holder being one example where we delayed it for a week or two, and then it was put over another week, and then delayed for another week on the floor. And he subsequently was confirmed with the largest vote of the last four Attorneys General.

I mentioned at a markup here recently having put over, at the request of Republicans, a couple nominations and delayed them to give them more time, and then unexpectedly they were put over under the rule by the Republicans, and I was somewhat frustrated that it seemed to be one-sided. But I know that Judge Hamilton is strongly supported by Senator Lugar and Senator Bayh. We will have the hearing, but then we will have almost 3 weeks after that before any markup comes up because of the Senate calendar.

Senator SPECTER. Well, if I may return to the subject I started on and thought I had the floor on, the issue is not the time after the hearing on preparation. The issue is on time for preparation to ask questions at the hearing. That is what the hearing is about. And I was about to say that Judge Hamilton has a very extensive record on the Federal district court, some 1,200 opinions.

Now, in the time sequence set forth in the letter—and let me say that my Chief Counsel handed me a note that we did not release the letter to the press. And if there is any proof to the contrary and we identify somebody on my staff who did it, he will not be on my staff any longer.

But let us get to the substance, which is important, on the confirmation process, and that substance is that it is a lifetime appointment. And when a comment is made by the Chairman to me that when you have a conservative Senator like Dick Lugar approving this nominee that is sufficient, well, it is not sufficient. There is a little thing called the Constitution, and it calls for confirmation by the Senate. It does not call for approval or recommendation by the home-State Senator. True, that is indispensable under our blue slip policy, or at least under the blue slip policy when we had a Republican President. And that is another practice that the Republican Caucus is going to insist on continuing. But Dick Lugar does not confirm. The Senate does, and the recommendation of the Judiciary Committee is indispensable on that.

There needs to be time to make an analysis. To have a period of time after the hearing, does not do any good unless there is another hearing. And I know that is not contemplated and that is not necessary.

Now, Director Mueller, thank you for coming and on to lesser serious subjects like terrorism and violent crime and the death penalty and other subjects which are very much in the forefront of the concern of the American people and this Committee.

Terrorism remains a major problem in this country, and the first question I am going to ask you is whether you are in a position to assure the American people of two things: No. 1, that the mistakes on 9/11 will not be repeated; and, second, that we have made significant advances overall on coordination in the fight against terrorism with respect to the duties that the FBI has.

We have enormous problems on violent crime, and we have a way in this country of saying that we cannot afford to pay for the prosecution and incarceration of violent criminals because of our government's other financial obligations. Well, that is unsatisfactory. Security is number one. National security is at the top of the security list, and terrorism is at the top there. But so is domestic security. And where you have public officials saying the death penalty ought to be eliminated because we cannot afford to enforce it, well, in my view, that is not acceptable.

If there is a decision made in this country that we ought to change the rules and not have the death penalty, that is one thing. My own view, from experience as a district attorney, is that it is a deterrent if it is properly used. It has to be properly used, but that is a complicated subject. The issue as to whether we can afford it is one which I want to take up with you. Our prisons are overcrowded, but we cannot let violent criminals loose.

Now, if we can make better judgments as to who ought to be detained, fine. We ought to be doing that. If we can work through prevention, rehabilitation of drug addicts, mentoring of at-risk youth, taking second-chance people and getting them out of the crime cycle so they do not go back to prison, that is something we need to do. And you have some important things to say on those issues.

Then I want to talk to you about white-collar crime. I see too many major prosecutions ending in fines which turn out to be licenses to do business, licenses to violate the law. Certainly prison is a deterrent for white-collar crime, and I want to know what is

going on. Actually, it is not that I want to know, America wants to know what is going on with all of the fraud which has led us to the terrible economic situation we have now where there have been misrepresentations about balance sheets and widespread selling of insurance around the world without a reserve. Has there been a representation here which has been breached? Is there fraud? Fraud is a crime. In this magnitude, there ought to be jail sentences to deter others, and that is a subject that I will want to talk to you about.

Then I am going to want to ask you about what kind of oversight there is on corruption prosecutions. There was the prosecution of a Senator, Ted Stevens, which has drawn severe criticism from the presiding Federal judge, contempt citations against Federal prosecutors; an FBI agent was implicated—there is an issue as to what happened there, and it may be a matter for oversight by this Committee when the case is finished, or perhaps even sooner. It is a matter for the Chairman. But I will want to know what the FBI is doing on that case and what the FBI is doing in terms of providing oversight.

As a district attorney, I saw many young prosecutors cut corners looking for big targets, publicity, high-profile cases, and the prosecutors have to be quasi-judicial and not do that. And that applies to the FBI agents as well, a subject that I want to take up with you.

Finally, you come on a very busy day, Director Mueller, but you are used to that. We have Justice O'Connor testifying before another Committee that I am on. We have Governor Rendell testifying before a third Committee. So, as you know, Senators will come and go. But we are very concerned with what you have to say.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Please go ahead.

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

Mr. MUELLER. Thank you very much, Mr. Chairman, Senator Specter, and Members of the Committee.

As you know, we in the FBI have undergone unprecedented transformation in recent years, from developing the intelligence capabilities necessary to address emerging terrorist and criminal threats, to creating the administrative and technological structure necessary to meet our mission as a national security service.

Today, the Bureau is a stronger organization, combining better intelligence capabilities with a longstanding commitment to protecting the American people from criminal threats. And we are also mindful that our mission is not just to safeguard American lives, but also to safeguard American liberties.

Certainly the threats currently present in the national security arena continue to be a grave concern. Terrorism remains our top priority, and as illustrated by the recent Mumbai attacks, we cannot become complacent. Al Qaeda, lesser known groups, and homegrown terrorists will continue to pose a threat to the United States.

We must also continue to guard our country's most sensitive secrets from hostile intelligence services and remember that our Nation's cyber infrastructure is vulnerable to compromise or disruption, be it from a terrorist, a spy, or an international criminal enterprise.

But these three are by no means our only priorities. While Americans justifiably worry about terrorism, it is crime in their communities that often most directly impacts their daily lives.

Public corruption continues to be our top criminal priority. The FBI has 2,500 pending public corruption investigations and in the last 2 years alone has convicted more than 1,600 Federal, State, and local officials. And we remain committed to ensuring those given the public trust do not abuse it.

Economic crime is, of course, a critical concern now more than ever. For example, the FBI's mortgage fraud caseload has more than doubled in the past 3 years from 700 to more than 2,000 active investigations. We currently have more than 560 pending corporate fraud investigations, including cases directly related to the current financial crisis.

In response, we have been shifting personnel within the criminal branch to the extent possible; we have been using new analytical techniques to better identify trends and violators; and we have been building upon existing partnerships to further leverage expertise and resources.

For example, we created the National Mortgage Fraud Team at FBI headquarters to prioritize pending investigations, provide additional tools to identify the most egregious violators, and provide strategic information to evaluate where additional manpower is needed. We have also established 18 mortgage fraud task forces and 47 working groups with other Government agencies across the country so that we may more effectively focus on particular problem areas.

While the FBI is surging to mortgage fraud investigations, our expectation is that economic crimes will continue to skyrocket. The unprecedented level of financial resources committed by the Federal Government to combat the economic downturn will lead to an inevitable increase in economic crime and public corruption cases.

Historically, the Bureau handled emerging criminal threats by transferring personnel within its criminal branch to meet the new threat. After 9/11, we have lost some of this elasticity. In response to the September 11th attacks, the FBI permanently moved approximately 2,000 of its criminal agents to our national security branch. This transfer has substantially improved our counter terrorism program, and we have no intention of retreating from preventing another terrorist attack on American soil as our No. 1 priority.

But the logical consequence of cannibalizing our criminal resources to augment our national security efforts is that we have reduced the ability to surge resources within our criminal branch. Although we have begun an effort to rebuild our criminal resources back to our pre-9/11 levels, we still have a substantial way to go.

As always, the FBI will set priorities to attack the most severe threats, but a note of realism is in order in light of the scale of the

FBI's existing mission after September 11th and the degree of strain on our current resources.

Violent crime is also a very serious concern, and although data indicates violent crime declined across the country in recent years, the citizens of many communities, especially small to mid-sized cities, continue to be plagued by gang violence and gun crime. Since 2001, our gang cases have doubled, and the spread of international gangs, such as MS–13, has increased. The FBI continues to combat this threat through more than 200 safe streets, gang, violent crime, and major theft task forces across the country. These task forces enable us to work effectively with State, local, tribal, and international partners to provide an immediate response to surges in violent crime. And so, too, must we continue our work with State and local counterparts to combat crimes against children, the most vulnerable members of our communities.

We are also deeply concerned about the high levels of violence along the Southwest border. Gang activity, drug cartel competition for supremacy, murders, and kidnappings plague the border in both the United States and in Mexico. These crimes can even impact communities deep in America's heartland.

In recent visits with my counterparts in Mexico, I was again convinced that they are as concerned and certainly as committed as we are. This commitment is underscored by the fact that several of the top police and justice officials with whom we have in the past forged relationships have been assassinated by drug gangs. We will continue our strong alliance with our Mexican law enforcement partners to address this border-related crime.

I also want to update you on key changes we have made within the FBI, both in our structure and in the way we do business to more effectively meet the challenges presented since September 11th.

We know that the FBI's best and strongest asset is our people, and so we have paid attention to recruiting, training, and maintaining a work force with the skills necessary to meet the challenges of today's mission. Our hiring goals includes agents, analysts, IT specialists, linguists, and professional staff. In this year alone, we have received more than 300 applications and have extended already 4,400 job offers.

We have strengthened our training at the FBI's Quantico Training Academy for both agents and analysts. The numbers of State, local, and international law enforcement executives graduating from the FBI National Academy has grown, and we are revamping our approach to developing leaders at all levels within the FBI, recognizing that today's new employees are the leaders of tomorrow's FBI.

Finally, a few words regarding improvements in FBI technology. Sentinel, our web-based case management system, is on time and on target. Blackberry with Internet capabilities have been issued to over 24,000 of our personnel. We currently have more than 30,000 workstations in the FBI Unclassified Network providing desktop Internet connectivity to employees throughout the enterprise. We are also strengthening several information technology programs described more fully in my formal statement that will

allow us to communicate and share information with our law enforcement and intelligence partners.

In closing, let me thank this Committee for your support for the men and women of the FBI, and I look forward to working with the Committee on these and other challenges facing our country.

Thank you, Mr. Chairman.

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

Chairman LEAHY. Thank you very much, Director Mueller, and let me just on a couple of the things you talked about and that we have talked about here. I mentioned the wave of mortgage and securities fraud, and, of course, when you have an economic downturn and you add mortgage and securities fraud, it just makes it worse for all Americans.

The number of mortgage fraud allegations throughout the country has increased almost tenfold since 2002. I know the FBI's mortgage fraud investigations have doubled in the last few years. We can talk about the unprecedented fraud and scandals like the Madoff $50 billion Ponzi scheme. If you saw that in a book of fiction a year ago or a couple years ago, everybody would say that is impossible. But they have undermined confidence in our economy, and I think that may be the tip of the iceberg.

Now, the FBI can only do so much. It has had people reassigned to counter terrorism and other areas. We have seen white-collar crime prosecutions drop off as a result, or investigations. I think back to the 1980's during the savings and loan debacle, and I read with—Senator Specter made reference to the fact that it might become just a cost of doing business if you are just having fines. And I feel very strongly in some of these instances that if the people involved in it think they are actually going to go to prison, that shapes their mind a lot more than losing 5 percent off their profits in a fine. That is why I mentioned Senator Grassley, Senator Kaufman, and others introduced this Fraud Enforcement Recovery Act.

In our act, we have increased tools and resources for the FBI, and I mean this seriously: Are those increased tools and resources things that would actually help the FBI? Would it make you more effective in this area of mortgage fraud and white-collar crime?

Mr. MUELLER. Absolutely. Certainly whatever additional resources we can receive or do receive with regard particularly to mortgage fraud, the sub prime crisis, will go to addressing the caseload of over 2,000 that we have currently around the United States, with an expectation that will increase.

I will note that in the stimulus package the Senate had recommended adding 165 special agents, and that was not adopted by the House. But that additional complement of resources would have been exceptionally helpful, and those resources that are in the Fraud Enforcement Recovery Act will be put to good use.

Also, the redefinition of the definition of "financial institution," expanding securities fraud provisions to include fraud relating to options, futures, and commodities, and a number of the other provisions of FERA will be tremendously helpful in giving us the tools to investigate, ultimately to help prosecutors prosecute, and, finally, to obtain the convictions and the jail sentences that are the deterrent to this activity taking place in the future.

Chairman LEAHY. Thank you. I notice that today the Secretary of State has gone to Mexico, and the relationship has been somewhat strained, and the question of drug crime and the drug cartels. A recent article I read in a major publication asked is Mexico becoming a failed state or a mediocre state, either way being bad news to the United States. I am not asking you to state what kind of a state they are. But they are our second largest trading partner, and they are a democratic country, and yet since January of last year, they have had more than 7,000 people killed in drug-related violence. Some of it is horrendous—police, military, people involved in drugs, ordinary citizens, kidnappings, extortion, a lot of it spilled over the borders, into California and Texas and other border States. You have traveled to Mexico.

You have seen some of these problems firsthand. The Obama administration announced a plan to redouble our efforts to work with them. How do we work with them with the amount of corruption there is there? I think everybody here wants to work with them, wants to help. How do we do this? I seems like an almost Herculean task.

Mr. MUELLER. Let me start by saying I do believe President Calderon is taking an exceptionally principled approach to address drug trafficking in Mexico, and as a result of his efforts—his efforts to address corruption, his efforts to put in place a police force that is free of corruption, his efforts to change the criminal justice and judiciary system to eliminate corruption—all of those have resulted, to a certain extent, in a short-term peak of violence.

But I have no doubt about President Calderon's desire to address this and continue to address this. We work closely with the Attorney General, Medina Mora, and the Director of Public Security, Garcia Luna. And every one of those individuals is adamant about pressing forward with this war on the narcotics traffickers.

You asked the question about the extent of public corruption. Yes, there is, and we in the Bureau as well as the DEA traditionally have worked with vetted units, and a key to addressing the public corruption is having vetted units that are vetted by both ourselves as well as the Mexican authorities so that you know that those individuals who are handling these cases are free of the corruption that has been seen in Mexico.

I would also say that the violence has peaked in a number of cities—Juarez and Tijuana, to mention just a few. And it requires, I do believe, a thorough and—a surge, if you will, in those cities to drive down the homicides that were prevalent in those two cities, and we are seeing that now in Juarez as an example.

Chairman LEAHY. We may want to have your Department send somebody up here just for a private briefing of a number of members who have asked questions about this, and we can do it in a more secure room and discuss it, because they are concerned.

My last question before we go into that—and I will up on the Mexican thing. The FBI's General Counsel provided the Committee with a briefing on steps the FBI has taken following the discovery that more than 700 so-called exigent letters were used improperly to obtain thousands of citizens' telephone and other records. The FBI was supposed to use national security letters to obtain this. They did not. The FBI supervisors, agents, and analysts from a

particular FBI unit obtained records in violation of the law by sending letters promising that subpoenas would be issued, even though none ever were. The Inspector General is investigating this.

I understand that the FBI has now issued new retroactive national security letters after the fact in order to justify holding onto more than half these records. In some cases, the FBI has decided to hold onto records without issuing any new letters.

If the FBI did not have the legal authority to obtain the records in the first place, what legal authority do you have to hold onto them years later? And what kind of legal authority is there for issuing retroactive national security letters?

Mr. MUELLER. In the cases where we have a legal basis to obtain those records—in other words, a touchstone for the issuance of a national security letter in which we would have appropriately used the particular protocol or format, then we have kept those records. But there has to be a touchstone which enables us, gives us the legal right to obtain those records.

Let me say more generally that I believe that the Attorney General—not the Attorney General but the Inspector General, when he finishes his report—and he has not yet finished—will find that, yes, there were substantial lapses in internal controls, that we did use exigent letters in circumstances where we should not, where there was not the exigency, and that at least in one area where we attempted to rectify it, we did not do it appropriately.

My expectation is that he will find that those things occurred. They occurred back in 2006, 2005, and 2004. We stopped utilizing exigent letters in 2007, and my belief is that we put into place a number of procedures that will assure that this will not happen again, including a compliance office that looks at compliance not just when it comes to national security letters, but other areas of the Bureau where we have an obligation under the statutes, under the laws, to comply, and we want to make certain that we do not repeat what happens with the national security letter issue.

Chairman LEAHY. Thank you. When I come back, I want to go back to the retroactive issue.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Director Mueller, with so many topics to be discussed and only 7 minutes to do it, I would ask you to submit responses on my terrorism questions in writing.

Mr. MUELLER. Yes, sir.

Senator SPECTER. And the questions are: On the errors that you and I discussed here 7 years ago with Moussaoui and the Minneapolis office and the coordination with the CIA leading to 9/11, are those specific problems now corrected?

Second, overall, are we in better shape today—I know the answer is yes; we discussed this informally, but some specification as to what has been done I think would be very helpful for the American public to have. A statement from the Director of the FBI, not enormous but summarizing what has been done, could give us assurances. Nothing is a foolproof system, obviously, but I know a great deal of effort has been undertaken that you have been at the center of, and you have been there all the time, unlike the CIA Directors or the DNI,which is only a recently created office. So you have a

unique perspective on it, and if you would respond in writing, I would appreciate it.

Let me take up the question of our ability to afford security from violent crime. Taking a look at some of the offenses, Federal offenses which are punishable by the death penalty—assassination of the President, espionage, treason, killing of a Federal witness to prevent testimony at a trial, drug kingpins, hijacking of airplanes resulting in death—in your judgment, should the death penalty be retained on those offenses and generally where the Congress has established a death penalty?

Mr. MUELLER. In appropriate cases, yes.

Senator SPECTER. And while it is not Federal jurisdiction, what is your response to the repeated public comments now by State officials that the death penalty needs to be abandoned because it is too expensive to carry it out? What do you think about that?

Mr. MUELLER. I am not familiar with those comments. I would go back to the initial question you asked: Is the death penalty appropriate and still appropriate in certain of the actions that fall within the statutes that carry the death penalty as the appropriate penalty? I believe, yes, there are certain instances where I believe the death penalty is appropriate. I know other countries disagree with that, but, nonetheless, I believe in certain instances it is appropriate.

Senator SPECTER. With respect to our prison population, is there any substitute for incarcerating violent criminals for public safety?

Mr. MUELLER. Talking about violent criminals, it depends, quite obviously, on the individuals. But generally a person who has a proclivity for undertaking violence, the likelihood of rehabilitation diminishes, and incarceration may be the only protection for the American public.

Senator SPECTER. Let me ask you this, Director Mueller: With respect to prisoners in the Federal prison system, I would appreciate it if you would give some thought to the question of what could be done with them. Your Bureau knows them thoroughly; you have investigated them—where could we make a segregation with a view to release some of them or differentiate in their sentencing? That is a little bit outside your purview, but you have the necessary expertise—I am going to direct the same question to the Attorney General.

I want to move on now to the white-collar crimes. You say you have some 700 cases. The thought occurs to me that it would be very salutary if you could move ahead on some of them promptly. We just had a prosecution in Philadelphia, a Federal prosecution of a State Senator, Vincent Fumo. There were more than 100 counts. The investigation took years. The trial took months. All of that was not necessary. I was a district attorney myself, handled complex cases. You could move through the cases, and the investigation without bringing hundreds of counts.

Let me ask you to take a look at that issue, too, and respond in writing if there are some of those cases that could be expedited. Public attention is very brief, and it would be, I think, very helpful to our overall system in this economic crisis to give public assurance—regarding a question I hear all the time: What is going on? Where is the accountability? Who is going to go to jail? Well, we

are not going to send people to jail who do not deserve to go to jail, but if they deserve to go to jail, my core question I am sure you understand is: What can we do to expedite the investigations and prosecutions to narrow the timeframe? If there is some more investigation and prosecution required to succeed, you can investigate further. You do not have to have 100 charges.

A final subject I want to talk to you——

Mr. MUELLER. I would just address that very briefly to say that we are working with a number of U.S. Attorneys and with the Department of Justice for what we call "fast-track prosecutions" in a number of areas, and we are doing—as I indicated in my remarks, we are prioritizing our cases to get the most egregious early and put those persons away.

So we share your concern and your desire for a fast-track approach to a number of these cases, of which we have 2,000 at this juncture.

Senator SPECTER. Well, maybe you could narrow the interval even further and expedite cases even further as examples for deterrence.

A final subject that I want to bring up with you is the one I mentioned, the Stevens prosecution, and in this case, the trial judge severely admonished the Department of Justice for inappropriate conduct. FBI agent, Chad Joy, alleged that prosecutors knowingly withheld Brady evidence, and that a member of the prosecution team relocated a witness to keep him from testifying because he had done poorly in a mock cross-examination. FBI Agent Joy said a female FBI agent had an inappropriate relationship with Allen, a key witness. There were also contempt citations, and the FBI agent was involved. Now you and I discussed it informally, but I think it is important to put it on the record.

I alluded in my opening statement to problems which I saw where prosecutors were anxious for notoriety, to bag a big target, and this required a lot of supervision. And my question to you is: What kind of supervision—and I am going to put a similar question to Attorney General Holder. I understand he is making a personal review of the Stevens matter with regard to impropriety on the part of prosecutors, which the judge has already made contempt findings.

But what efforts are made at the senior echelon, mature people in your Bureau to make sure that your FBI agents do not overstep and act inappropriately because of their desire to get a so-called big target?

Mr. MUELLER. Let me start by saying, Senator, as you are aware, in that particular case the issues that you raised are the subject of post-trial motions and are being addressed not only by the judge in the post-trial briefings and hearings, but also by a team at the Justice Department that is looking at the allegations where they would relate to the prosecutors or the FBI.

You also, I think, are quite aware that in a public corruption case, particularly a serious public corruption case, the decision whether or not to take action is overseen by a number of people at levels whether it be the Assistant Attorney General in charge of the Criminal Division, the Deputy Attorney General, and ulti-

mately the Attorney General to assure that the case is appropriately brought.

If in the course of that case there are allegations, whether it be attributable or against a prosecutor or an FBI, then that is investigated, FBI agents by ourselves, but also by the Department of Justice, as well as the prosecutors by the Department of Justice in the form of OPR or others. And so it is going on at least two tracks currently, the most important one being the post-trial motions in that particular case, and, therefore, I am somewhat precluded from speaking more about it.

Senator SPECTER. The question of the FBI's procedure regarding senior supervision is a generalized one. That was where I led you. I was not surprised to hear the reasons you cannot answer in specific cases. I am well aware of those. There is a value sometimes in the publicity on a question, even though there is not an answer. But the question I asked you does not involve a case specifically: Do you have senior people in the FBI supervising conduct, especially in these so-called big target cases?

Mr. MUELLER. Absolutely. We have it at the supervisory level in the field office. We have it at the special agent in charge in the field office. Back in the Criminal Division, we have the section chief and then the Assistant Director in charge of the Criminal Division, all of whom will be familiar with the facts and the conduct of the investigation, and ultimately in terms of the conduct both in the course of the investigation at trial, it would be myself and my Deputy, John Pistole. There are various levels of supervision. And when we receive allegations or assertions of conduct that should be investigated of our own people, we initiate that investigation very quickly and follow through.

And to the extent that it is conduct that is raised at a serious level, we first go to the Inspector General to determine whether or not the Inspector General should take a look at the conduct, looking as an objective third party, and basically in most cases the Inspector General has a right of first refusal.

Senator SPECTER. Well, I like the detail of that answer, especially the part where you get involved.

Thank you very much.

Senator FEINSTEIN [PRESIDING.] I would like, if I might, to go over the order. Following my questions, the order is Grassley, Feingold, Kyl, Schumer, Sessions, Cardin, Klobuchar, Kaufman, and Whitehouse.

Welcome, Mr. Mueller, and thank you very much again for your service. It is appreciated. My first question is one that involves one particular case, and that is the case of a murder in Loudoun County of a highly decorated Special Forces retired colonel and his wife, a retired Army captain. They were out for a walk. A van stopped. He was beaten to death. She was badly beaten, is in a hospital. It is murder and attempted murder.

Can the FBI become involved in that case?

Mr. MUELLER. I am familiar with the facts raised in the newspapers. I have not followed up, but I will have to get back to you on whether or not we would have some role to play. Certainly if requested by the local authorities, yes; otherwise, we would have to look and see whether there is a Federal nexus that would war-

rant our participation. We would, quite obviously, in a case like that——

Senator FEINSTEIN. I would appreciate if you would look at that. This is a very unusual situation, it seems to me, and a horrible one. And I think everyone is extraordinarily upset by it, and we need to move fast. So I would appreciate it.

What is the FBI, Mr. Mueller, doing to prevent the supply of guns from the United States to Mexico? The Mexican ambassador and the Mexican Government has told us that 90 percent of the guns going to the cartels in Mexico are coming right from the United States of America. So my question is: What is the FBI doing about it?

Mr. MUELLER. I would say that we are supportive. ATF has the major role in gun investigations. When we come across in the course of our investigations individuals who are trafficking in weapons, we immediately bring in the ATF and will work with the ATF on joint cases.

To the extent that we pick up guns in the course of our investigation——

Senator FEINSTEIN. No, my question is different. Is there a specific effort now going on to take a look at the straw purchasing that is going on and other transmitting of weapons down into Mexico?

Mr. MUELLER. It is, and that is being undertaken by ATF, and we are supportive of ATF.

Senator FEINSTEIN. But do you believe that is sufficient? You know, Senator Durbin as the Chair of the Subcommittee and I as the Chair of the Caucus on International Narcotics Control had a hearing. The Attorney General of Arizona testified, and it is really a terrible situation where these guns are just coming down in bulk into Mexico and fueling the cartels. And I wonder if just having ATF, which has always had, in my view at least, a restricted role, is enough to stop this.

Mr. MUELLER. Well, I will say we do not have a focused effort in that particular area. Along the border we address public corruption on our side of the border in which we have substantial numbers of cases, with the drug-trafficking individuals maybe paying off persons along the border. We have substantial threats with regard to kidnappings, Americans who will travel to Mexico, either because of their businesses or families, who will be kidnapped. We have extortions. We have gang activity trans-border, all of which keeps us quite occupied.

We do not have a focused effort on ourselves. We are supportive in each of our field offices of ATF's efforts. But I will go back and take a look and see what more we can do in that particular area, because I do not disagree at all that substantial numbers of guns are coming from the United States, and it is fueling the violence south of the border.

So I would be happy to go and take a look and see if there is something more we can do in that regard.

Senator FEINSTEIN. Yes, and you can be assured I will follow up.

Mr. MUELLER. Yes.

Senator FEINSTEIN. I appreciate that very much.

In September of 2004, Chris Swecker, the Assistant Director of the Criminal Investigative Division at the FBI, said that mortgage

fraud could cause multi-billion-dollar losses to financial institutions. CNN reported that he said that this fraud has the potential of being an epidemic and, "We think we can prevent a problem that could have as much impact as the savings and loan crisis." Despite this early warning, the L.A. Times reported on August 25, 2008, that the FBI has actually reduced the number of agents devoted to investigating mortgage fraud.

Can you tell us exactly what the situation is, why agents are reduced, and what the position of your agency is with respect—I can tell you, in California it is a big problem.

Mr. MUELLER. Well, let me start by saying that I believe Chris Swecker was prescient in terms of anticipating it.

Senator FEINSTEIN. I believe that, yes.

Mr. MUELLER. But you did not see the rise for a couple of years, the rise in mortgage fraud. What triggered or what was the catalyst to much of this is the drop in the housing markets.

We actually had done a number of cases in mortgage fraud back in 2000 and 2001, particularly in this area. What we found over a period of time is, because the housing market was moving so rapidly ahead, that much of the fraud was, and particularly the values were minuscule because the property market kept going up. And, consequently, the triggering factor to what you see today in the vast majority of the mortgage fraud cases we have were triggered by the decline in market values over a period of time.

That does not mean that we could not have put additional resources on it, but at that time, we had other priorities that we were focused on, and not this one. I do not believe, though, had we put more agents—it would have been relatively few, and I do not believe that that would have prevented what had occurred over the last couple of years.

Senator FEINSTEIN. Well, I can tell you it is out there, it is a problem. I can tell you there are people that are selling mortgages that are unqualified. They misrepresent, and, you know, we have had actual cases. There actually was a special targeted team working the L.A.-Riverside-San Bernardino area. I think the FBI was involved. It made several arrests. But that really needs to be done on an ongoing basis, and my question, I guess, is: What are you going to do about this?

Mr. MUELLER. Well, in the last 2 years, we have had 800, 900 prosecutions, successful prosecutions across the country. Last summer, we had a series of cases around the country which came to fruition about the same time called "Malicious Mortgage," in which we had locked up a number of persons. And you will continue to see day in and day out other successful investigations and prosecutions, putting away the persons that are responsible for this.

But as I have indicated, the numbers of frauds have grown over the last 2 years, and we can address just so many with the agents that we have.

Senator FEINSTEIN. Yes, but you have reduced the number in Los Angeles, and if you would look into that, too, as the third thing and let me know why.

Mr. MUELLER. Over the last 2 years, we have increased the numbers of agents. When he testified—I have not looked back at the date when he testified, which I think was maybe 2004, 2005. But

certainly over the last several years, we have increased the number of agents that are doing mortgage fraud.

Senator FEINSTEIN. All right. Then that report was not correct, you are saying.

Mr. MUELLER. It may have been correct at the time, at or about the time that he testified and shortly thereafter. But for the last couple of years, we have increased the number.

Senator FEINSTEIN. I am referring to a report in the L.A. Times on August 25, 2008, that the number of agents have been reduced that are investigating mortgage fraud.

Mr. MUELLER. As of that date, I do not think—I do not believe that is accurate as of that date.

Senator FEINSTEIN. If you could check.

Mr. MUELLER. I will check on that, yes.

Senator FEINSTEIN. This is an area—if you could speak quickly a little bit about—well, I am already over my time so do not speak. Thank you very, very much.

Senator Grassley, you are up next.

Senator GRASSLEY. Thank you. As I usually do, I want to give you an update on where we are in some of our correspondence. The Committee has not received answers from your agency to all questions for the record from either September 2008 or March 2008. When I last met with Attorney General Holder—this was in December before he was actually appointed—I provided him with a collection of my letters to the Justice Department, including the FBI, that were still considered unanswered, and he pledged to review them, if confirmed. I generally ask that my letters be answered within 2 weeks, but, on average, replies were 371 days.

By the way, I gave him a folder probably that thick. I also gave the Secretary-designate for HHS a folder that big of letters that have not been answered. So the Justice Department is not necessarily the worst ones. But I get tired of waiting for replies.

After this hearing was scheduled, I recently received two additional replies to letters that had been outstanding for several months, and I want to use the word "reply" rather than the word "answers" because oftentimes FBI and Justice Department staff will send a reply that does not actually answer a question.

So a very short answer to this question, please: Do you agree that it should not take months or years for members of this Committee to get substantive answers to our legitimate oversight questions?

Mr. MUELLER. Not only do I agree, but I would be—I would tell you, the March QFRs from 2008, we sent answers over to the Department of Justice in June. The September 2008, we sent answers over in December. I discussed with the Deputy Attorneys General the necessity of responding so that I do not get the same questions each time that we come—that I appear before this Committee.

So I am hopeful that——

Senator GRASSLEY. I think you are saying that you have answered our questions, but they are buried in the bureaucracy at Justice. Is that——

Mr. MUELLER. There is a process that one goes through where the questions go to Justice for clearance as well as OMB for clearance.

Senator GRASSLEY. I tried to explain to the Attorney General and every other Democratic nominee for Cabinet that you have got this stuff unanswered that comes from the Bush administration, surely wouldn't you want to clear this up so if it is answered next September, the Obama administration is not being connected with it when it is the fault of some previous administration? It would seem to me like you would want to—not you. Everybody would want to get them cleared up.

Well, I am a little bit exasperated because of President Obama's commitment to openness and transparency in Government and the policies that the new administration has put in place, and I would expect that all of the executive branch agencies would be more responsive to my requests. I say that with confidence because the President made a very big issue out of being more transparent during the campaign.

Let me move on. The Government Accountability Office 2008 Performance and Accountability Report says the following: "Most departments and agencies are very cooperative with our requests for information. However, our experience with some agencies, such as the Department of Justice, has proven more challenging."

Why do you think that the General Accounting Office had to single out the Justice Department as particularly uncooperative with its requests for information?

Mr. MUELLER. I do not know, sir. I would have to look into whether that statement encompasses—the Department of Justice would encompass the FBI. I am not certain whether it is directed at the FBI. If it is, I would want to look at that and see what the issue is as we try to cooperate and coordinate——

Senator GRASSLEY. Before I ask you the next question, since the Chairman is not here, I would like to have the Chairman's staff take note of something I learned from Senator Baucus on our Finance Committee and nominees before that and not getting information out of the administration at that time. He put holds on people that were under the jurisdiction of the Treasury Department. He put holds on those nominations until he got answers, and I think it is about time that not only for my own part but for the Chairman's part, who often says that he does not get answers to his letters and inquiries, that we ought to think in terms of doing something like that in the case of nominees for Justice Department Assistant and Deputy Secretaries.

For several years before Countrywide Financial was purchased by Bank of America, it operated a VIP loan program that gave discounts on mortgages to, among others, influential public figures and Government officials. About 30 such loan recipients were publicly named in press reports. House Republicans of the Governmental Oversight Committee obtained some disturbing internal Countrywide e-mails where executives explicitly considered borrowers' "political influence" in making loan decisions. The FBI has been investigating these issues since last year. However, my office has received reliable information that investigators have not yet obtained basic documentations for loans. The last thing that we need is slow-walking this kind of investigation.

Given that American taxpayers' now substantial investment in Bank of America, I would hope that their cooperation with law en-

forcement would be even more swift and certain. Will you look into this matter and assure this Committee that all the relevant documents are being shared with law enforcement entities in them? And then before you answer that, is there any legitimate reason why investigators would not have actually already obtained the Countrywide Financial loan files from Bank of America by now?

Mr. MUELLER. Let me say generally that I am briefed on the—I have for several months been briefed about every other week on the cases relating to the subprime mortgage crisis, and in those briefings we talk about very generally, not necessarily specifically, any issues that might come up that would delay investigations, and we address those. We are anxious to make certain that we press ahead as fast as we can on all investigations.

Yes, I would be happy to get back to you with an answer as to, without talking about a specific investigation or specific set of documents, whether we have met any hurdles in terms of pursuing those investigations. I have not heard of any such, but I will make the inquiry and get back to you on that.

Senator GRASSLEY. Thank you very much.

Thank you, Madam Chair.

Senator FEINSTEIN. Thank you, Senator Grassley.

Senator Feingold.

Senator FEINGOLD. I thank the Chair. And it is good to see you again, Mr. Director.

The last time you were before this Committee, we spoke at some length about the draft Attorney General Guidelines for Domestic Investigations that the Department was rushing to finalize before the last administration left office. I went back and looked at the transcript of our conversation, and I just want to ask you a few things about that.

First, you said at that time, despite my complaints about the procedures by which we were being shown the draft that you were incorporating suggestions that had been made by Members of Congress and by outside experts. Yet the final guidelines that went into effect in December, in my view, were not appreciably different than the draft that we saw prior to your appearance in September. As you know, the main concern that many of us had about the new guidelines when we saw the draft, and we expressed them to you and the former Attorney General, was that they permit FBI agents to initiate an assessment without any suspicion of wrongdoing whatsoever. And those assessments can include physical surveillance, recruiting sources, and pretext interviews. You chose not to revise that basic approach.

Why do you think it is necessary to give agents such broad authority? And what protections are in place to prevent that authority from being abused?

Mr. MUELLER. We have had that authority in the criminal side of the house for years, as I think we discussed previously. We have not had on the national security side. And it is not an authority. It is the approval under the guidelines of the Attorney General. We have the authority to do it. It is a question of whether it fell within the guidelines by the Attorney General.

When you are looking at trying to prevent an attack in the United States, that is far different than doing investigation after

an attack occurs. And you have to take tidbits of information that may relate to a particular individual, a grouping of individuals, to determine whether or not those individuals pose a threat.

I am wont to say if you go back to September 11th and you look at the memorandum that was produced by Ken Williams, who is an agent out of Phoenix, about individuals who were going to flight training who might present a risk to the American public, we were excoriated for not following up on that memorandum. You asked what should we have done. Should we have then gone to flight schools and see whether there was a threat there? The assessment process allows us to address threats such as that when there is some information that there may be a threat that exists. It requires a proper purpose, not necessarily the predication on a particular individual. And that is an example where I think if we had pursued it under the assessment capabilities, perhaps we would have come up with something, which is why I think it is important that we maintain that capability.

Senator FEINGOLD. We could debate in that example whether or not there was a suspicion of wrongdoing, but I do not want to spend all my time on that. So let me ask you about just what protections are in place to prevent abuse. Mr. Director, you have had to call me and tell me that there is going to be a disturbing report about other authorities that were given to the FBI and say, you know, "I am sorry this happened because sometimes authorities are abused." So what would you say about that?

Mr. MUELLER. Well, in sensitive areas, it requires that in order to open an assessment you have to go through the counsel on the particular office and have the approval of the special agent in charge. There are certain other categories that are carved out where they are particularly sensitive when it relates to religious institutions or educational institutions and the like, and you want to undertake some sort of assessment, there is a scale of approvals that are required to look into the particular instance to assure that it is not just an agent who is on his or her own undertaking that activity without any scrutiny and approval process in place. So we have carved out areas that are particularly sensitive for enhanced scrutiny and approvals.

We are working with the Department of Justice to go into our field offices periodically and do a scrub and look at the approval process to determine whether or not the i's have been dotted and the t's crossed so that we don't have another national security letter issue.

Senator FEINGOLD. All right. Let me move on to another——

Mr. MUELLER. Those are two of the things that we are doing.

Senator FEINGOLD. Thank you, and we will pursue this more in the future. I will continue to be interested in it.

Attorney General Holder said at his confirmation hearing that he would revisit the guidelines once there had been a chance to see how they are working. What is your estimate of the number of assessments conducted using these new authorities? And how many of those assessments resulted in preliminary or full investigations?

Mr. MUELLER. I would have to look at those and get back to you on that.

Senator FEINGOLD. Would you get back to me on that? All right.

Let us turn to something we have discussed before, the need for the FBI to gain the trust of the American Muslim community to assist in the effort to stop terrorism. I was disappointed to learn of a recent statement from the American Muslim Task Force on Civil Rights and Elections, signed by ten leading U.S. Muslim organizations, indicating that they are considering suspending their work with the FBI. According to a news report, "The groups claim the FBI has sent undercover agents posing as worshippers into mosques, pressured Muslims to become informants, labeled civil rights advocates as criminals, and spread misinformation."

Can you determine and report to this Committee whether mosques have been entered by FBI agents who were informants without disclosing their identities under the authority of the Attorney General guidelines? And if so, how many?

Mr. MUELLER. Well, there are a number of questions in there. I would hesitate to provide information on ongoing investigations, quite obviously. I will say that we do not focus on institutions. We focus on individuals. And I will say generally if there is evidence or information as to an individual or individuals undertaking illegal activities in religious institutions with appropriate high-level approval, we would undertake investigative activities, regardless of the religion. But we would single that out as an exceptionally sensitive circumstance that would require much vetting before that occurred.

Senator FEINGOLD. So, in theory, it could include entering a mosque under a different identity?

Mr. MUELLER. I will stick with my answer.

Senator FEINGOLD. All right. Let me ask you one more thing before my time is up. Do you think——

Mr. MUELLER. Could I say one other thing?

Senator FEINGOLD. Absolutely.

Mr. MUELLER. You allude to issues with regard to the Muslim community. Let me say that the Muslim community has been tremendously supportive of the Bureau since September 11th.

Senator FEINGOLD. Absolutely

Mr. MUELLER. They have been supportive. The outreach and the relationships have been exceptional.

Senator FEINGOLD. That is exactly why I am bringing this up.

Mr. MUELLER. But there are instances where we will have an issue with someone or an individual or individuals in the Muslim community that needs to be resolved.

Senator FEINGOLD. All right. Let me ask one more question——

Mr. MUELLER. But the vast majority——

Senator FEINGOLD [continuing]. Before my time is up, on this point, Mr. Director. Do you think that the new Attorney General guidelines are helping or hurting the FBI's relationship with the U.S. Muslim community? In light of this task force statement, how do you plan to improve that relationship?

Mr. MUELLER. Well, I periodically meet with the leaders of the Muslim community. I believe we will be doing it shortly in a future—once again. Each of our offices meets weekly or monthly with members of the Muslim community. My expectation is that our relationships are as good now as before the guidelines generally across the country. There may be an issue here or an issue there

with a particular institution or individuals. But I do not believe that it undercuts our relationship with the Muslim community around the country. The Muslim community understands that the worst thing that could happen is that there be another terrorist attack in the United States. It has been tremendously supportive and worked very closely with us in a number of instances around the country. So I do not believe that the guidelines or the other issues adversely impact that relationship.

Senator FEINGOLD. Thank you, Mr. Director.

Senator FEINSTEIN. Thank you, Senator Feingold.

Senator Kyl, you are next up.

Senator KYL. Thank you, Madam Chairman.

Director Mueller, thank you for being here. I want to follow up on questions my colleague from Wisconsin just asked because obviously you appreciate how important it is to distinguish between the Muslim community, which you just described, and groups which support terrorists and obviously, therefore, are the subject, at least potentially, of investigative activities.

On February 23rd of this year, Senators Schumer and Coburn and I wrote you a letter commending your decision to sever ties with the Council on American-Islamic Relations, CAIR, and asking some questions about the scope of the new policy. I think your staff has been advised that I would ask you why we have not received a response to that letter yet. We thought that the decision that was made was prudent and long overdue, especially in light of the fact that the Government itself introduced evidence that demonstrated the links between CAIR and Hamas, which led the Government to label CAIR and specific members as "unindicted co-conspirators" in the Holy Land terror finance trial. In fact, agents of the Bureau testified and affirmed the evidence of these links. My understanding is that Representative Wolf has also written a letter somewhat similar to ours and made various inquiries.

Can you tell us why we do not have a response yet and when we might be able to expect a response?

Mr. MUELLER. No. I will go back and see where that is and try to get that out swiftly to you.

Senator KYL. We would appreciate it very much. Just let me summarize a couple of the questions. Perhaps these are questions you can answer right now.

Is it, in fact, correct that the Bureau has cut off its ties with CAIR?

Mr. MUELLER. I prefer not to discuss any particular organization in the Muslim community. I can tell you that where we have an issue with a particular organization, we will take what steps are necessary to resolve that issue.

Senator KYL. Well, whatever the policy is, which I gather you will describe, is that a Bureau-wide policy? Does it apply to the regional offices and district offices and so on, the field offices?

Mr. MUELLER. We try to adapt, when we have situations where we have an issue with one or more individuals, as opposed to an institution, or an institution, writ large, to identify with some specificity those particular individuals or issues that need to be addressed. We will generally have—individuals may have some maybe leaders in the community whom we have no reason to be-

lieve whatsoever are involved in terrorism, but may be affiliated in some way, shape, or form with an institution about which there is some concern and which we have to work out a separate arrangement. We have to be sensitive to both the individuals as well as the organization and try to resolve the issues that may prevent us from working with a particular organization.

Senator KYL. Even though you have said you prefer not to talk about specific organizations in this hearing, I guess the question still remains whether the information that we received that this particular organization was no longer one with which you were having a direct relationship, is that information incorrect?

Mr. MUELLER. I think what I would prefer to do, if I could, is provide that letter to you where I can be more precise in terms of——

Senator KYL. All right. That is fair enough.

Mr. MUELLER [continuing]. And have some opportunity to review exactly specifically what I say.

Senator KYL. I appreciate that. Let me maybe carry it a little bit further into an easier area for you. The Holy Land case also dealt with the Muslim Brotherhood, and I just wanted to quote from one Government exhibit, Exhibit Number 3–85, from that trial, and this is also known as Ekwan: "The Ekwan must understand that their role in America is a kind of grand jihad in eliminating and destroying the Western civilization from within and sabotaging its miserable house by their hands and the hands of the believers so that it is eliminated and God's religion is made victorious."

Are members of the Muslim Brotherhood or the organization itself active at all in the United States, to your knowledge?

Mr. MUELLER. I would say generally we have investigations that would address that issue, yes.

Senator KYL. And do you have a policy about meeting with that organization or its members?

Mr. MUELLER. I would not say we have a written policy, but I can tell you that before we—that in the course of our liaison activities, we certainly search our indices to make certain that when we meet with individuals, that they are not under investigation, and that we can appropriately maintain liaison relationships with them.

Senator KYL. There has also been a fairly public case—in fact, Senator Lieberman held a hearing in the Homeland Security Committee concerning a problem in Minnesota, and I suspect you are familiar with that.

Mr. MUELLER. Yes.

Senator KYL. This is the so-called Al-Shabaab group and some Somali youth who have left that community and, in fact, at least one who is, I gather, believed to be involved in a suicide bombing. Can you tell us anything about your work in that area?

Mr. MUELLER. I think it has been, to a certain extent, publicized that individuals from the Somali community in Minneapolis have traveled to Somalia to participate with al-Shabaab, and there are ongoing investigations into that issue. Again, we are working with the Somali community in Minneapolis and other cities around the United States to combat that radicalization that has occurred.

Senator KYL. So then it is correct to describe a radicalization process that is occurring at least in one community in the United States that has resulted in one of these individuals going abroad and at least allegedly committing an act of terrorism? Would that be accurate?

Mr. MUELLER. That is accurate.

Senator KYL. Can you quantify your belief as to how widespread this might be in the United States? And by that, I mean the attempts to radicalize young——

Mr. MUELLER. Well, radicalization comes in a number of forums—or fora, perhaps I should say, the Internet being one of the principal ones now. It also can be individuals. It can be members of a community. I do believe that what we have seen in Minneapolis is not widespread throughout the United States, and that it is, I believe, a matter of public record that one individual who was so radicalized became a suicide bomber in northern Somalia back in October of 2008. We have not seen that occurrence again, but we do not want to see it either and the parents of the individuals do not want to see it either. And so, again, we are working with the community to make certain that any pockets of radicalization are identified and addressed, whether it be in Minneapolis or around the country.

Senator KYL. I appreciate that and would just note if we could get a response to that letter, I think it would be very helpful. I am not sure of the origin of it, but for some reason, a lot of my constituents over the last several weeks have approached me and asked me questions. Somebody, I think, must be spreading the word that there are potentially a lot of these organizations around the United States, a lot of people being radicalized, and it is a matter of great concern. And I have tried to suggest that, at least from my knowledge, it is not widespread, that the FBI obviously would have a handle on it.

But to the extent that you can get the information to us so we can assure our constituents of what is, in fact, going on, I think that would be very helpful.

Mr. MUELLER. Yes, sir.

Senator KYL. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY [presiding]. First, I want to thank Senator Feinstein for filling in while we were trying to do appropriations and this, and, Senator Cardin, please go ahead, sir.

Senator CARDIN. Thank you, Mr. Chairman.

Let me thank you, Director Mueller, for your service and thank you for being here today. I want to talk about the PATRIOT Act, if we might. There are three major provisions that will sunset during 2009 that will need to be taken up by Congress, and this Committee will have a significant role in regards to the reauthorization and perhaps modifications of the roving wiretap, the business records, and the lone-wolf provisions.

I would hope you could share with us the importance of these provisions, whether you believe that there will be efforts made to extend these sunsets and whether you will be recommending modifications in these laws, and what process you are intending to go

through to work with Congress as we take up these issues, which in the past have been somewhat controversial.

Mr. MUELLER. My hope, quite obviously, is that they will be less controversial as they come up this time because we have seen their use and have some track record with it.

Starting with the business records provision, 215, we have utilized that 223 times between 2004 and 2007. We do not yet have the records or the total for 2008. But it has been exceptionally helpful and useful in our national security investigations.

With regard to the roving wiretap provision, that is also sunsetting. We have used that 147 times, and that also has eliminated a substantial amount of paperwork and I would say confusion in terms of the ability for us to maintain surveillance, electronic surveillance on an individual where we can utilize that roving wiretap provision.

As to the lone-wolf provision, while we have not—there has not been a lone wolf, so to speak, indicted, that provision is tremendously helpful. Where we have a difficulty in showing a tie between a particular individual about whom we have information that might be supporting terrorism and be a terrorist, but we have difficulty in identifying the foreign power for which he is an agent, whether it be a terrorist group or otherwise, what we call the "Moussaoui problem," where the issue was the inability for us to tie Moussaoui to a particular terrorist group, so that also is a provision that has been, I believe, beneficial and should be re-enacted.

I have not yet had an opportunity with the new administration to have a discussion about the position. I know we will be working with the Department of Justice on these three provisions, but my hope is that the Department will support the re-enactment of all three and that we can sit and work with Congress to explain, if necessary, more fully how important they are to our work.

Senator CARDIN. Well, I very much appreciate your response. Having the total numbers of use is useful and very helpful. In regards to the business records, there has been some press that has been less than favorable on some of the applications, but this may not be the right forum to get into more detail. But I do think it is important that the Judiciary Committee in its oversight function and the Intelligence Committee in its oversight function examine more specifics, for two reasons.

One, I think most of us believe these tools are extremely important, and we want to make sure that you have the tools that you need. We want to make sure that there is the appropriate oversight, and we normally get more attention as we get closer to the deadlines for extending sunsets than at other times during the year. And we want to make sure we take advantage of this opportunity to get a better understanding so we are on the same page as to what tools are needed.

And the third point is there may need to be modifications, not necessarily restrictions, there may need to be fine-tuning of these provisions to make sure that they are more effective and used as intended by Congress.

I would just encourage you to work with the Chairman of our Committee and the Chairman of the Intelligence Committee so that we can feel more comfortable working with the administration. I

know it is early in the new administration, but this issue is going to come up quicker than we think, and the one thing I do not want to see happen is that we have a deadline without an opportunity to be fully comfortable with a bill that would extend the provisions in the PATRIOT Act.

I would like to ask one more question on a different subject, and this deals with the security risk assessments for all individuals with access to select agents and toxins. As you know, I represent Maryland, home of Fort Detrick, where the major problem with Dr. Ivins took place, and there was a lot of discussion about looking at the procedures used for security clearances and revoking security clearances.

Could you update us as to where we are as far as a comfort level, knowing that those people who have access to toxins are, in fact, being cleared appropriately for the sensitivity of their positions?

Mr. MUELLER. I know in the wake of the attacks in October—actually, September or October of 2001, that there were upgrades made. But upon the identification of Dr. Ivins as being the principal person involved, a wholesale review was ordered by the Department of Defense. And I am not certain where that review is. We would have to get back to you on that.

Senator CARDIN. And I appreciate that, and that is fine. I do believe you have the responsibility on some of the security clearance issues, so it does involve—am I correct on that?

Mr. MUELLER. In some of it, although I would have to check on it, but I think most of the security clearance work is done by DOD itself as opposed to us. But I will have to check on that.

Senator CARDIN. I appreciate it.

Mr. Chairman, I would just stress I would hope that we will have the opportunity to return to the issues of the PATRIOT Act far in advance of the deadline for the end of this year where we have to act.

Thank you, Mr. Chairman.

Chairman LEAHY. And I can assure the Senator we will, because the sunset provisions were put in there basically to force not only the Congress but the administration to look at the parts that are expiring and make sure, if we renew them, that we do it in a justifiable fashion. So I assure the Senator we will.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman, and I think the PATRIOT Act was carefully constructed. We had some very vigorous hearings, and I believe all the provisions in it are consistent—do you not agree, Mr. Mueller—with traditional law enforcement methods, many of which are being used in other circumstances and even against terrorism and that care was taken not to violate any of the great constitutional protections that we cherish in this country?

Mr. MUELLER. I do. I am, not surprisingly, a strong supporter of the PATRIOT Act, particularly the areas where it broke down the walls between ourselves and the intelligence community. Senator Specter alludes to the changes since September 11th. One of the substantial changes since September 11th has been, quite obviously, our sharing of information with the intelligence community and vice versa, and that was attributable to the PATRIOT Act.

These three provisions that are to sunset are important provisions that we hope will, again, be re-enacted when it comes up for a vote.

Senator SESSIONS. Well, we will need to focus on making sure that you report that correctly and that they are used correctly, and oversight is always healthy in this country.

Director Mueller, thank you for your leadership. I think the American people can go to bed at night knowing that their Director of the FBI is working as many hours as he can put in a day, and your team is, to focus on making this a safer, more lawful country. I am proud of what you do. But oversight is good, even for the FBI, wouldn't you agree?

Mr. MUELLER. I agree.

Senator SESSIONS. You believed that when you were not in the FBI, I am sure.

Mr. MUELLER. I agree.

Senator SESSIONS. All right.

Mr. MUELLER. Occasionally, it is tough, but I agree.

Senator SESSIONS. The Wall Street Journal reported that the Attorney General is considering some Guantanamo subjects. The Washington Post today has an article that the outcry is growing in Alexandria, Virginia, over a prospect no one seems to like: terrorist suspects in suburbs. The historic, vibrant community less than 10 miles from the White House is a family friendly zone, they say, but it looks like now we might be having criminal trials in the Alexandria Federal courthouse. And the quote from the mayor was, "We would be absolutely opposed to relocating Guantanamo prisoners to Alexandria. We would do everything in our power to lobby the President, the Governor, the Congress, and everything else to stop it."

But the question is: If these individuals are released or tried, to what extent is the FBI by necessity forced to direct resources to try to make sure that they do not commit terrorist acts inside the United States? Does that put an additional burden on you and your agency? Don't you have responsibilities to make sure that someone who has been identified, at least at one point, as associated with terrorism is not likely to get loose here?

Mr. MUELLER. I believe we would have the responsibility to evaluate the risk and minimize any risk for individuals, whether it be Guantanamo or individuals coming into the country about whom we have information that they may have been at one point in time associated with terrorism.

Senator SESSIONS. So that is an additional burden on you.

Mr. MUELLER. We would——

Senator SESSIONS. I know a lot of our friends, people watch the television and they see these interesting shows. But as a practical matter, you are not able to put individual FBI agents on the hundreds of people here if they are moving about this country 24 hours a day surveilling them. And those things are not realistically possible in the world we live in, are they?

Mr. MUELLER. Well, we have to prioritize our surveillances, whether it be electronic surveillance or physical surveillance, and we do that on a daily basis. And to the extent that there are individuals that are coming into this country that have or present some

threat, we would prioritize and utilize what resources we thought were necessary to make certain that an individual or individuals did not constitute a threat to the American public.

Senator SESSIONS. Well, we have the Uyghurs who are terrorists, apparently, targeting China, a nation that we want to live in harmony and peace with, and they apparently, according to these articles, are one of the groups most likely to be released. So I think it is a matter of great importance, and there is no free lunch here. We place ourselves at greater risk if more and more of these people end up being released because we did not have sufficient evidence in a criminal trial when historically, in my opinion, these individuals are unlawful combatants and perhaps were arrested on the battlefield. And we may not have the kind of normal evidence you would have, wouldn't you agree, to try a case in a Federal district court?

Mr. MUELLER. There are occasions where we have individuals about whom we have information that would either be inadmissible in Federal court or because it would disclose sources and methods, one would not want to put that information into Federal court. There are instances where that is an issue.

Senator SESSIONS. Mr. Mueller, you and I talked previously, and Senator Feinstein raised some of these issues with you. I would point out the chart that I think I shared with you that the Administrative Office of Courts shows prosecutions for bank embezzlement, financial institution embezzlement, financial institution fraud being tried in the Federal courts to be declining and that these are primarily traditionally FBI-investigated cases.

Are you looking at those numbers? And what do we need to do to be able to increase those prosecutions, particularly in this time where we are seeing reports of more fraud occurring in our financial markets?

Mr. MUELLER. In the wake of September 11th, as I have indicated in remarks earlier, we have moved 2,000 agents from the criminal side to the national security side to address counterterrorism. Many of those agents have been working—a vast majority—not the vast, but a majority of them have been working on smaller drug cases. A substantial number, though, have been working on smaller white-collar criminal cases that we could no longer afford to do. The tellers who would be embezzling from a bank, for instance, where the losses are relatively small, we had thousands of those cases that we could no longer do. We have had to prioritize, and we had to prioritize earlier, 5, 6 years ago when we had Enron, HealthSouth, WorldCom, a number of large financial fraud cases where we needed to allocate appropriate personnel to address those cases.

And so I do not believe you will see the same numbers in Federal court because there are so many fraud cases out there, mortgage fraud cases, institutional fraud cases, of a size that dwarf some of the smaller ones that we traditionally have done. So the numbers will not be there. I do believe that the impact and import of the investigations and prosecutions will be exceptionally substantial compared to some of the work that we had done 5 or 10 years ago.

Senator SESSIONS. I think that is important. I also like the idea that you have a fast track in some of these prosecutions. You can

take 3 years with one if you want to sometimes, and sometimes in 6 months a case can be tried and a person sent to jail where they need to be. And those are things a good leader like you know how to do, and I hope the Department of Justice cooperates with you. And I would like to see more of these prosecutions.

We have always heard, every time this has been raised, "We are prosecuting bigger cases." For the last 30 years, that is what happens. When the numbers go down in an office, you say, "Well, we are prosecuting bigger cases. It takes more time."

I am not really sold on your argument there.

Mr. MUELLER. I would ask you to look at the cases. I would ask you to look at an Enron or HealthSouth or a WorldCom and the impact on it, and you as a prosecutor would know the efforts that go into those cases. Look at the public corruption cases, the efforts that go into the public corruption cases in terms of the type of investigative activity. And if you look at our record over a number of years, the last number of years, particularly since September 11th, in terms of addressing public corruption, we have doubled, if not tripled the number of prosecutions in that arena.

Senator SESSIONS. There has always been big cases.

I thank the Chair.

Chairman LEAHY. We will not get into war stories. All the former prosecutors are out here. We had big cases or smaller cases.

I yield to Senator Schumer.

Senator SCHUMER. I am one of the—I may be the only non-former prosecutor on this podium right now. I do not know if Ted is a former prosecutor, but maybe he joins me as the lonely group of non-former prosecutors.

Mr. Mueller, thank you again for being here and for your service to our country. My first two questions relate to personnel and amounts of personnel—first, at the Mexican border. Obviously, these drug cartels are a big problem. Obviously, some of the responsibility is DEA, some of the responsibility with the guns is ATF, but the FBI has responsibility everywhere. So let me ask you these two questions.

Do you have enough agents to do the job at the border, given the increase in the amount of crime that we have that has shocked Americans?

Mr. MUELLER. Our focus on the southwest border has been in a number of areas. First of all, public corruption, the monies that are generated through narcotics trafficking to various U.S. officers, and we have a number of those cases. We have kidnappings that have grown, particularly in the San Diego office as well as the El Paso office, with Juarez across the river. We have gang activity that is north of the border that is in some ways aligned with the cartels south of the border. We could always use additional resources. All of us could use additional resources. And our hope is that if Congress sees fit to give us resources in that regard, that you do it in conjunction with State and local law enforcement.

Senator SCHUMER. Sure.

Mr. MUELLER. I believe we work much better if we work shoulder to shoulder with State and local law enforcement.

Senator SCHUMER. Well, look, I think just my perusal, you do need more resources, and I think you will find cooperation on both

sides of the aisle to get them, and it is something I will be working for in the new budget.

What about the creation of an entirely new unit devoted specifically to the investigation and dismantling of violent narcotics cartels at the border? Obviously, again, this presents new challenges. It is international, two nations. But some kind of unit that just focuses on this. I have found that when the FBI has these task forces and other units, they really get the job done. Whereas if one piece is in this division, one piece is in that division, it does not become as effective.

Would you consider setting up a separate unit just focused with the right personnel from the right departments to focus on the cartels that are running across our border and doing harm on both sides of it?

Mr. MUELLER. Let me speak to two vehicles already that are there. The OCDETF program, the Organized Crime Drug Enforcement Task Force program, in which we are substantial participants, still is, I think, a vehicle that for the last 10, 15 years has been looking at the cartels, principally led by DEA, but DEA's reason for being is to address those cartels. And in the vehicle of the OCDETF program, I believe we play an important, a substantial role.

Second, what we have done is, in my trips to Mexico and along the border, I do believe that more could be done in consolidating the intelligence. Our intelligence would go from our legal attache office in Mexico to headquarters and down to our borders. So we are establishing a focused unit to bring together the intelligence down in El Paso next to the EPIC, which is the El Paso Intelligence Center.

Senator SCHUMER. I would say, you know, this is a new problem. Maybe it is an old problem, but a problem that has gotten a lot worse. I would urge some kinds of focused task forces, not just participation in the DEA, because it is a much broader problem than just drugs. Drugs are both a cause and effect.

Let me go to financial problems and financial crimes. What I have found, I have heard from my local DAs, particularly my DA in Brooklyn, lots of different kinds of mortgage fraud, and not just on an individual basis but among different groups. When he goes to the U.S. Attorneys there, they say, well, we are busy, we are busy with terrorism. This is the Eastern District or the Southern District. We are busy with, you know, the airports and drugs and all of that. We do not have enough personnel to look into these kinds of things, even though Federal law might be more appropriate than State law in some of these.

And then we have, of course, the kinds of financial crimes, the larger financial crimes that were talked about. Senator Leahy, Senator Grassley, and myself have put in legislation to increase the number of agents as well as the number of U.S. Attorneys to look into this, and I think that legislation, Mr. Chairman, will be coming to the floor in a few weeks.

Chairman LEAHY. I understand right after the recess.

Senator SCHUMER. Yes. But we are just adding, I think it is, 75 agents and a number of prosecutors. I do not recall the number. Given that the priorities are shifting—as they always are; that is

your job—do you have enough personnel to go after both the larger and smaller financial frauds which we have seen and seem to have become almost endemic over the last decade? Do you need more personnel? Is the proposal that we, Senator Leahy, myself, and others have sponsored enough? Could you give us some degree of that? Because, again, I am hearing from my local law enforcement that when they go to the Feds and say, "You should look at this," they say, "We would love to, but we cannot. We do not have enough personnel."

Mr. MUELLER. I would distinguish the U.S. Attorney's Office from the Bureau.

Senator SCHUMER. Yes, but they are saying the personnel is not just the prosecutors but the agents.

Mr. MUELLER. We have refocused, again, a number of agents, we have increased the number of agents that are addressing mortgage fraud and a larger financial fraud related to the subprime mortgage market. We have received—I think we received 25 agents in the 2009 budget, and my hope is that, thanks to your efforts, we will receive additional agents.

I will tell you that when we went through the savings and loan crisis back in, probably, 1992——

Senator SCHUMER. Yes. You were very successful. I helped put that together.

Mr. MUELLER. We were. And we had approximately a thousand agents working it, as opposed to maybe 500 or 600 that with the best effort this year——

Senator SCHUMER. So let me ask you, if we gave you more in the area of financial fraud, you could certainly use them.

Mr. MUELLER. Yes. And what we have had to do is prioritize, utilizing a number of mechanisms to identify the more egregious offenders and focus on those offenders and couple that with a fast-track prosecution methodology that would push persons through the——

Senator SCHUMER. All right. One final question. Given the fact that we only have an acting DEA, an acting ATF, you know, we do not have the people in place, would you consider a trip to the Mexican border, provided it is safe, to just figure out what is going on and visit it yourself?

Mr. MUELLER. I have been there. I have been there, Mexico. I was there maybe 2 months ago. In the last year, I have been at least twice to the border, and I plan to be down there in May.

Senator SCHUMER. Good.

Mr. MUELLER. The last time I was there, I recognized that we could do a better job consolidating intelligence, and out of that visit comes the consolidated mechanism that we are putting in El Paso.

Senator SCHUMER. Great.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Schumer.

Normally Senator Klobuchar would be next, but I understand she would yield to Senator Kaufman. Senator Kaufman, please.

Senator KAUFMAN. Thank you, Senator Klobuchar. I really appreciate that. And thank you, Mr. Chairman, for holding these hearings. I just think these oversight hearings are so incredibly im-

portant because they allow us to talk on a regular basis so we do not get too far off track. So I think that is great.

And, Director Mueller, it is great to see you again. It is great that you are here. It seems like you were just appointed.

One of the things clearly we are concerned about is the financial fraud, and we have a bill, a group of us have a bill, S. 386, to do that. And I know you have talked about it before. One of the things, could you comment on—you talked about what you are doing now. Can you comment on the urgency of getting these FBI agents to help you deal with the financial fraud problems?

Mr. MUELLER. Financial fraud, you know, your basic mortgage fraud case, maybe three or four individuals are in a conspiracy—the appraiser, the lender, and two or three others. It is a lot more complicated than your usual narcotics case or bank robbery and the like, and it takes not only the expertise of the agent, but forensic accountants to put the matter together and to develop the evidence. And you cannot get bogged down in the paperwork.

There is a mentality in the past of putting persons in a room full of thousands of pieces of paper and going through and adding up all of the counts so that you get the maximum sentence. We cannot afford to do that. And they are complicated, and it takes not just the agents, but it takes the forensic accountants, it takes the intelligence analysts to do the job. And we talk about more than 40 institutional cases that we have in which there are allegations that have been raised, large financial institutions, the extent of the information that needs to be reviewed, most of it now digitally maintained, not only by ourselves but the SEC and the coordination with the SEC and ourselves and the prosecutors. It becomes a substantial issue. And so it is not just the agents, but it is also the team that you need to put into place to address these, understanding that we have to identify the most egregious actors, move quickly to indict them, and then move on to the next one.

Senator KAUFMAN. Also, this is unusual in that it is not just the mortgage brokers that are doing this. You go all the way up the chain to the people who securitized the mortgages, the rating services maybe that have conflict of interest in dealing with the rating at the same time they were doing business. Then you get to the bankers, then you get to the brokers. So, I mean, I assume we are going to be looking at all these different players in terms of possible financial fraud.

Mr. MUELLER. We are.

Senator KAUFMAN. Good.

Mr. MUELLER. Some of our initial indictments over the last year have been exactly in that arena.

Senator KAUFMAN. There has been an explosion of this. That is why I am concerned about the urgency of this thing that as time passes, obviously you are talking about complex litigation to start with, now you are talking about complex litigation that is 2 months, 4 months, 6 months later. And that is why I think that it is urgent that we get you the FBI agents.

Mr. MUELLER. I agree.

Senator KAUFMAN. Over the past decades, you have done an amazing job with organized crime—in fact, really bringing it under

control. Is there any thought about using some of those resources to go after the drug gangs and the drug organizations?

Mr. MUELLER. Well, we have, but we cannot keep our—not take our eye off of organized crime. It has expanded dramatically since the days in which we were focused principally on La Cosa Nostra. Now you have Bulgarian organized crime, Armenian organized crime, Asian organized crime, Russian organized crime—and Armenian, if I have not mentioned Armenian organized crime—in pockets around the country that need to be addressed.

But we also recognized that what has contributed substantially to the violence on the streets are gangs—MS13, 18th Street Gangs, Latin Kings. And what you have seen in terms of our organized crime program is a recognition that these violence-prone gangs are as important if not more important than the traditional families that we have seen. So there has been some shifting of resources to address this organized criminal—or these new organized criminal structures, and we continue to look at it.

Senator KAUFMAN. Great. Perfect. Turning to violent crime, you know, community policing, community prosecution, intelligence-based policing—I mean, how is the FBI working to help local law enforcement, local prosecutors to deal with the violent crime problem. I know you are doing a job. I just would like to know what you are doing.

Mr. MUELLER. We have approximately 200 task forces around the country. My own view is that we learn a tremendous amount by sitting shoulder to shoulder with State and local law enforcement. When I handled homicides here in the U.S. Attorney's Office, I worked with the Metropolitan Police Department, the homicide detectives, who were some of the best law enforcement agents I have ever had the opportunity to work with. I think we make a much greater impact when we work on task forces together with State and local law enforcement. That is the way we choose to address it.

I also am not unaware that when we are not doing a number of drug cases, we lose contact with the street. And we need to maintain as an organization not only the contact and the liaison—or the contact with the street so we know what is going on with the street, but liaison with those who are the street day in and day out. And so that is the way we are seeking to address it.

We have Safe Trails Task Forces that combine State and local law enforcement for addressing violent crime in Indian country as well. So through these various task forces, whether it be in these areas such as Indian country or in the communities around the country, we try to address it through the task force mechanism.

Senator KAUFMAN. Great, and I think that really, as you say, is the key—community policing, community prosecution, getting back into the community, and the FBI obviously can play an incredible role in that, and that is what you are doing.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Kaufman.

Senator Klobuchar.

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

Thank you, Director, for being here, and I enjoyed our meeting this week. I know that Senator Kyl asked you about the investiga-

tion going on in Minnesota, so I appreciate you talking with me this week about this.

I was just listening to all of this and thinking about the increase in the mortgage investigations that you are engaging in and the increase in some of the white-collar crime because of the state of the economy, seeing very strongly why we are doing this bill. But the other area that you and I talked about but I think it is worth mentioning is just the large portion of the economic recovery package—and I know you mentioned this to me—that is going to State and local governments, and just the potential for corruption, embezzlement.

Obviously, we want to have that not happen, and so could you talk a little bit about how you think we could best prevent that from happening in the first place, and then how the FBI is going to prepare to investigate it when there are all these other things going on.

Mr. MUELLER. We have had lengthy discussions with the Inspectors General that have been put into place to address the flow of funding that will be coming through the Federal Government. In order to try to put into place the recordkeeping systems that will enable us to quickly identify with algorithms areas where monies are not going where they should go, and identifying the various players in a complicated commercial transaction who may be the persons that we need to look to down the road.

We find with the mortgage fraud crisis, every county is a little bit different in terms of maintenance of the records, and often it is difficult for us to quickly identify the participants in a particular transaction and identify other transactions that that perhaps guilty individual has been involved in.

And so putting in place the information early on as these funds are going to be parceled out to various states and counties and municipalities is part of it. Working closely with the IG to identify mechanisms or telltale signs or trip wires that will enable us to quickly focus on where monies are going astray is what we are trying to do now as we embark on this era of substantial monies being put out by the Federal Government.

Senator KLOBUCHAR. And another challenge you mentioned was just that a lot of people that were convicted in the 1990s, some of them very violent offenders, their scheduled release dates are coming up now or in the next few years. And what steps are you taking to prepare for that? How can we help with that?

Mr. MUELLER. I have concern that a number of people were locked up by efforts of prosecutors and law enforcement in the 1990's, and many violent offenders, which contributed substantially to the reduction in violent crime over the years.

Senator KLOBUCHAR. I remember that time. I was a prosecutor then.

Mr. MUELLER. You were a prosecutor. And my concern is that their sentences will be up, and they will be coming out to an economy that does not have jobs and coming out without a skill set that would give them the ability to be competitive in a very tight economy, and that that would contribute to an uptick in violent crime. And we along with a number of the entities—PERF, Major City Chiefs, Major City Sheriffs, organizations—are talking about ways

we can work together in anticipation of what may be an uptick in violent crime down the road.

Senator KLOBUCHAR. One of the things that you talked about with Senator Kaufman and that you and I talked about is the effectiveness of the joint task force and how important that is when you are dealing with either drug crime, violent crime, or some of these financial crimes. And I have certainly seen that in our State, particularly with the suburban police departments that can all work together.

Can you talk about how we can create more incentives for financing those so that we make sure that our money is used most effectively when we send it to the local level?

Mr. MUELLER. I have been supportive over the years in terms of financing, providing, augmenting financing for State and local law enforcement. I do believe, though, it would be helpful, as monies are allocated by Congress to State and local law enforcement, that it be tied into an incentive for a task force structure so that the monies would be utilized to incentivize, to encourage State and local law enforcement to work with the Federal Government.

It is my experience as a U.S. Attorney that I was not knowledgeable as to the grants that were going to particular police departments, and the grants going to particular police departments may well have been as a result of exceptionally capable grant writers as opposed to being part of a larger scheme of what are the issues, what are the threats within a particular district or division, and how do we work together to address those particular threats where the monies will be coming through the grant process.

Senator KLOBUCHAR. And you mentioned the local law enforcement, and in our State, as you know, we have had good relationships between Federal law enforcement and local law enforcement. That has not always been true everywhere in the country. With a new administration coming in now, a new Attorney General, and potential there with the new U.S. Attorneys, do you have ideas about how we can improve relationships between local—not just local law enforcement, also local prosecutors and those on the Federal level?

Mr. MUELLER. Well, as a result of September 11th, one of the beneficial—of the very few, I guess, beneficial results of that attack was the understanding that we all have to address terrorism within our districts together. And a number of vehicles were established. For us, it was the Joint Terrorism Task Forces. We went from, I think, 35 to we have 106 now. U.S. Attorneys' Offices have since then and continuously pulled together the various prosecutors and sat down with the various law enforcement agencies to address terrorism. And those relationships I believe have expanded to other areas that traditionally we perhaps have stayed apart.

I do think that in a transition from one administration to another, the smoothest often is with law enforcement because we all speak the same language and we all have the same goals. And, consequently, across the country, I do not see much of a change in terms of relationships. In fact, a number of persons who have been U.S. Attorneys before may well be back being U.S. Attorneys again, so they are familiar with the ground and the operating relationships.

Senator KLOBUCHAR. Very good. I think I told you this story. Mr. Chairman, when we had a new U.S. Attorney come in and we decided—I was the local prosecutor—that we would get the groups together, the prosecutors on both sides together, and he hosted a little party for us in their office. And, Mr. Chairman, I never told our office that before we got there—I was there early—he got on the loudspeaker and said, "Nail down the furniture. The cousins are coming over." But we were able to actually build a much better relationship because of making that a focus, and we were able to share casework better, especially so that when 9/11 came, we were able to take on a number of the white-collar cases that they would have had before.

So thank you very much for your work.

Chairman LEAHY. Before I yield to one of those Federal cousins—Senator Whitehouse—we are trying to get all the prosecutors here. Director, I am going to put into the record on behalf of Senator Grassley a number of letters and documents regarding oversight that he wanted in the record, and also a description of the Leahy-Grassley-Kaufman-Klobuchar, et cetera, Fraud Enforcement Recovery Act, which speaks of adding 190 special agents and more than 200 forensic analysts and other staff to address mortgage and financial fraud. That will be made part of the record.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman. And welcome, Director Mueller. I have served both as U.S. Attorney but also been the cousins and served as Attorney General. And when I was Attorney General, we went over to visit the U.S. Attorney's Office. The only things that were at risk were the pads and pencils that we tried to supplant our meager resources with. We were nowhere near energetic enough to put the furniture at risk. So I applaud my colleague from Minnesota.

The cyber issue is one that you address at some length in your testimony, and I appreciate that very much. It is less a type of crime than an arena of crime and other misconduct. It ranges from simply people who are expert hackers showing off their stuff to traditional criminal activity to what we would consider to be advanced industrial espionage to what we would consider to be national security espionage, and it creates the risk of outright acts of destruction and war being taken against our country through the cyber medium.

In all of that, my fear is that our resources are presently inadequate to the task, and that the way in which we address the cyber threats creates very considerable civil liberties and privacy risks. Having just been through the unfortunate episode of the Bush administration's warrantless wiretapping of Americans and the remarkable role, frankly, played by the Department of Justice in standing up to that—and yourself, I might add—what would your advice be for us as Members of Congress as to the authorities, the resources, or the resolutions of difficult issues, like civil liberties issues, that you need us to do in order for our country to be more effective? You were not the spear point, but you work off of authorities that we give you. You work off resources that we give you, and you work constrained by unresolved questions that we leave unresolved. If you were going to give us the top three or four things

that we should be focusing on to address the cyber threat, what would those be?

Mr. MUELLER. Well, I think the civil liberties issues are less extant when you are looking at the ability of state actors to penetrate whether it be defense or the stock market or what have you, and that how you protect those networks is one issue, where one would have more leeway because they are networks that are controlled by the Federal Government.

The issue about other networks, dot-coms, edu, and the like, that are not controlled by the Federal Government raises a number of privacy issues that need a broader discussion and, quite obviously, in the Judiciary Committees and others. At some point——

Senator WHITEHOUSE. How far along in that discussion do you feel we are from the point of view of providing you with policy support for the decisions you need to make?

Mr. MUELLER. Well, I do not think the discussion is far along at all. I do think it is in part attributable to the change of administrations, because the view taken by the previous administration is being reviewed by this administration. And at the time that that review is completed——

Senator WHITEHOUSE. This is the 60-day review you are referring to?

Mr. MUELLER. Yes.

Senator WHITEHOUSE. OK.

Mr. MUELLER. Yes. But part of it is education in terms of educating on the issues, the extent of the issues, and then the second part of it is the solution. And my expectation is those discussions will increase substantially in the next several months as this administration has an understanding and a view as to how we solve particularly the issue of a tax on the Internet and the like, the dot-gov, and outside of the more classified issues that relate to state actors and terrorists and the like. But in my mind, in some sense, too, there are baskets of issues that require different solutions.

Senator WHITEHOUSE. So if we focus briefly on the civil liberties side, your sense is that the discussion as to where the policy line should be drawn is at a fairly preliminary stage and does demand further work by Congress, correct?

Mr. MUELLER. Absolutely, yes.

Senator WHITEHOUSE. And with respect to the resources and authorities side, what recommendations have you with respect to those areas? Do you feel that you have the cyber resources that you need? Do you feel that you have the authorities that you need?

Mr. MUELLER. I do not think anybody feels they have the cyber resources they need to do the job. In the 2009 budget, we received 31 agents, 52 personnel, $19 million. But with the growth of the cyber arena, as you call it, which is appropriately so because it infects or affects—either infects or affects—everything we do now, it is growing by leaps and bounds. And all of us struggle to keep up with it, and there are new and innovative ways of undertaking intrusions into systems and extracting information that the defense is one step behind the attackers. And all of us, I think we could use more resources, although we are very adept and we have got—whether it be the military and NSA and ourselves, we have got some very, very talented people to address——

Senator WHITEHOUSE. I have got just a few seconds, so if you do not mind, let me cut you off and ask one last question. You are going to be looking, obviously, at financial fraud in a very big way. A great number of questions from the Senators here have focused on this concern. What I would ask is your assurance that your instruction to your organization will be to pursue those investigations as high up as they can be driven. We both know from our experience that it is actually a good deal easier to stop at the bottom layer where you have got one or two people bagged with, you know, a bad e-mail or a falsely signed document or something, and that to push it up to higher levels requiring conspiracies to be proven and much more investigative effort to be dedicated is a management choice that has to be made. And I would ask your assurance to all of us that in that balance you will be pressing your organization to push upward as far as the facts and the law will drive; and if you need additional resources to make that work, that you will ask us for those. I don't want to have this be civil Abu Ghraib in which a couple of home mortgage dealers in, you know, Cranston, Rhode Island, get prosecuted and the guys at the top get away with it.

Mr. MUELLER. You have my assurance. You also should know that my approach in these cases is not the traditional white-collar crime but the narcotics case approach. The fastest way to get these cases done is to obtain the intelligence indicating who was in what place at what time and then have persons cooperate, and cooperate as far to the top as you can go as fast as you can go, as opposed to putting agents in a big room with a lot of paper and trying to sort through the paper. And in my experience, when it comes to white-collar crime, I put narcotics prosecutors in charge of that because I thought they were as effective as any. And so you have our assurance that we will utilize that approach to go as far as we can in the organizations.

Senator WHITEHOUSE. Thank you.

Chairman LEAHY. Thank you very much, Senator Whitehouse.

Senator Durbin.

Senator DURBIN. Mr. Director, thank you for being here today. It is good to see you again, and I know that there have been questions asked earlier about the Mexican drug cartels, and I would like to focus on one particular aspect.

Arizona Attorney General Goddard testified before my Subcommittee last week in reference to the battles being fought in Arizona over these drug cartels and their activities. He described in shorthand term that the cartels are shipping drugs and humans into the United States and we are shipping cash and guns into Mexico. It seems to be the equation, the sad and tragic equation that takes place.

Now, I want to ask you about two aspects of that, and I know one has been touched on already. But let me give you an illustration of why I am asking this question. Last week, a State judge in Arizona dismissed charges against a gun dealer who was accused of knowingly selling about 700 weapons through intermediaries to two smugglers who shipped the weapons to a Mexican drug cartel. Several of the weapons were recovered in Mexico after shootouts with the police, including a gunfight last year in which eight Mexi-

can police officers died. The case shows how difficult it is to convict gun dealers in the United States who were knowingly supplying weapons to Mexican drug cartels.

As I understand it, it is not a Federal criminal offense to traffick firearms in the United States, and in order to prosecute gun dealers and purchasers who knowingly sell and purchase guns for Mexican drug cartels, Federal law enforcement has to charge these individuals with paperwork violations, such as making false statements on purchase forms. These paperwork offenses have low penalties and can be hard to establish and obviously are not a priority when it comes to prosecution.

Now, the estimate on the volume of firearms from the United States to Mexico is wide ranging. The highest estimate I have read comes from the Brookings Institution, which suggests 2,000 firearms a day from the United States shipped into Mexico to engender these drug wars where they are killing off one another, the police, and innocent people.

I think we bear some moral responsibility to slow this flow of guns into Mexico, particularly in examples such as I have given you. No one buys 700 weapons for self-defense or for sporting or hunting purposes. It clearly is a purchase for the sole reason of resale, and in this case, we had a gun dealer who was found to have done this and could not find a law to prosecute him under.

What is your impression?

Mr. MUELLER. I am not familiar with that case. I know that we—by "we," I mean the Federal Government—prosecute any number of cases each year of straw purchasers and that that is a substantial focal point for ATF. That sounds outrageous that under those circumstances, as you describe it, the person would not be jailed, and I will go back and look at the legal framework, as you obviously are, to make certain that this does not happen. And it is not just guns to Mexico, but it is guns within the United States gangs and straw purchasers.

Senator DURBIN. Absolutely.

Mr. MUELLER. And so it is a substantial problem, both domestically as well as, as was highlighted in the last week or so, with regard to what is happening in Mexico.

Senator DURBIN. Your background is in the law and law enforcement. My world is political. And in the world of politics, many people are shying away from even discussing this question. But I think I am going to ask you in your official capacity to take a look at the existing laws as they relate to straw purchasers. I do not believe that we can turn our back and say that this Mexican drug cartel is just a bunch of angry Mexican gang members killing one another off. I mean, we are, in fact, providing firearms that arms these drug cartels and, unfortunately, creates mayhem.

I had a meeting, a private meeting, with a Mexican mayor in a border city who has shipped his family to America because they are not safe to be there. And many like him are threatened every single day—threatened with American weapons, bought illegally in the United States and shipped in volume into Mexico. So I will ask you to look at that.

The other thing that Attorney General Goddard brought up was the transfer of funds from the United States to Mexico, and he

talked about several things that we are looking into. One is the stored value card, which I was not aware of, but it is the equivalent of a credit card that has some dollar value associated with it that can be used. And he raised the question as to whether or not we are looking at that as a means of transferring money across the border, a simple little plastic card.

I do not know if you are familiar with that or have looked into it. He suggested law enforcement should be able to read the cards—how much money is on this card?—since there are limitations to how much cash you can take over the border.

Have you run across this issue?

Mr. MUELLER. I had not until, I think, your staff in preparation for the hearing raised it to me as being an issue. Periodically, there are new mechanisms that come up for shipping funds across the country. Some of them are by the Internet now, some that are remitter organizations. When we are looking at these cards, one of the things—I do not know whether you suggested it, or others—as you look at the registration and the tracking of those cards to give us a mechanism for tying the monies into particular individuals who may be involved in illegal activity, and that is something we will look at as a result of your inquiry.

Senator DURBIN. Thank you. We estimate $10 billion is being transferred in drug proceeds from the United States into Mexico each year—thousands, maybe hundreds of thousands of firearms, and $10 billion. And I have spoken to representatives of the Mexican Government who are doing their best in the face of 6,000 or more being killed last year in their country, put the military on the border, but they expect us to do our part, too, to reduce where we can this flow of firearms and flow of cash and, I guess the bottom line, address the drug laws in America.

I only have a few seconds left, and I will not have time to get into a long list of questions on one of our favorite topics, and that is technology at the FBI. And I do know—and we have talked about it at length—that you inherited one of the most backward systems in the Federal Government that at the time of 9/11, the computer capacity as the FBI was not as proficient as you might find off the shelf at a Radio Shack in a shopping center.

But things have changed. There have been some false starts, and I believe now that the Sentinel program is underway. There is a GAO report that came back with some observations. I would like to give you an opportunity to comment on those in an orderly way so that we can be brought up to date.

Mr. MUELLER. There are a number of areas that we have made substantial progress. Sentinel is on target, on budget. We now have 24,000 BlackBerrys, the basic accoutrements of the technology age. One of the issues was we work on a Secret platform. Everybody has Secret. We have upgraded where necessary to the Top Secret, which requires SCIFs and secure areas, but also the second set of computers and the networks, and we also now are up to 30,000 out of 36,000 computers that can handle the Internet for our employees.

And so we have to operate it, have three networks: you have to have the unclassified, you have to have the Secret, you have to have the Classified. We have made substantial strides. We still

have work to do. This year, I will tell you, on Sentinel is sort of the year we get over the mountain. And so we have been meeting every other week or so, and we are pushing it forward. We have made substantial strides, but I am not going to declare victory until Sentinel is in and everybody has it. And we are not just up with everybody else but ahead of everybody else.

Senator DURBIN. Well, the best law enforcement agency in the world should have the best technology, and I know this has been a mountain that you have climbed, and I have joined you in a few of those hikes in the past.

Thank you.

Mr. MUELLER. Thank you.

Chairman LEAHY. Thank you very much.

I guess our last questioner is going to Senator Wyden, and then I know we have a roll call vote at noon. Don't we, Mr. Leader?

Senator DURBIN. I don't think so.

Chairman LEAHY. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman, and, Director Mueller, welcome, and I want to pick up exactly where Senator Durbin left off, and that is this question of the information technology issue.

Do all FBI analysts and agents now have access to the Internet at their desktops?

Mr. MUELLER. Thirty thousand out of 36,000. The reason that we do not have the last 6,000 at this juncture is because several offices, it would be financially—it would be—to put in the networks and, that is, do the wiring and the like, would be—does not make any economic sense, particularly when these offices are going to move very shortly. And so to the extent that we have been able to put in the second network we have, with just about everybody in the organization, even if they do not have it at their desks, those other 6,000 computers we want, they will have access to the Internet nearby.

Senator WYDEN. That obviously has been something that has been troubling to people, and as you know, I have asked about this in the past in my other capacity as a member of the Intelligence Committee.

With respect to the move, when will it be possible to say that all FBI analysts and agents have access to the Internet at their desk? In other words, you have said there are going to be 6,000 people still because of expensive facilities and the like. On what date will it be possible to say that the agency is really getting close to the point of 21st century technology?

Mr. MUELLER. Well, I would say we are at 21st century technology. There are these pockets in particular offices, and by the end of the year, we would expect to be 99 percent done. But I would say we are in the 21st century. I mean, there is nobody, I do not believe, who does not have ready access to the Internet at this juncture.

Senator WYDEN. I know it has been frustrating for you. I think people were incredulous when I asked these questions earlier, and I know progress has been made, and that is why I am asking it again.

Mr. MUELLER. Thank you.

Senator WYDEN. With respect to secure case management computer systems—and this is another area where you all have spent a lot of time—it is my understanding that there is currently no way to share audio or video files on this system now. Is that correct?

Mr. MUELLER. I do not think that is correct. I know we have mechanisms to do that. I would have to get back to you with the specifics of it.

Senator WYDEN. Would you?

Mr. MUELLER. I will.

Senator WYDEN. Because that was my understanding, that it was not currently possible to share that information. If you will get back to me, that would be great.

Mr. MUELLER. I will. I do not think that is accurate.

Senator WYDEN. With respect to the role of intelligence analysts, I think it is well understood that they are going to be critical in terms of the Bureau's function. In 2004, the Congress gave the agency special authority to hire 24 senior intelligence analysts. But in 2007, when I asked about this, I was told that only two of these senior positions had been filled.

So, again, I am just reporting to you what I have been told, but I have been told now that only five of these senior intelligence spots have been filled. This is five out of the 24 that the Congress felt strongly about.

Do you know if that is correct?

Mr. MUELLER. I will have to go and check on that. I do believe it is more than five, but I would have to check on that. I know we took some of those spots and utilized them in a way that made more sense to the organization, but I will have to get back specifically on that to you.

Senator WYDEN. Do you know if the agency plans to fill all 24 of the spots?

Mr. MUELLER. That is where I am—I would have to get back to you, because I believe that we were utilizing those spots in a way that was consistent with the intent of the statute but may not be the exact spots as put into the statute.

Senator WYDEN. So you will get back to me on that one.

Mr. MUELLER. We will do that.

Senator WYDEN. OK. Let me ask you about one other one, and that is the question of the FBI briefing congressional committees on terrorism and counterintelligence inquiries. The concern here is that frequently it has not been possible to get those briefings and the Linder letter is cited as the justification. So when the FBI withholds information on national security matters, obviously it is hard then for the Congress to assess security threats to the country or how well the FBI is adapting to meet the threats.

So I understand the need to be able to protect U.S. person information, and I think it is obvious that this Committee and Members of the U.S. Senate do not want to do anything to jeopardize ongoing inquiries. But at the same time, this status quo makes it hard to do sensible and thoughtful congressional oversight. So I think it is time to make a change here. I think it is time to reverse policy here, and my question is: In your view, can briefings from the FBI and the DOJ be structured so that the Congress gets the intelligence information it needs for effective oversight without compro-

mising what you need to be able to do your investigations and your prosecutions? It seems to me you have this Linder letter, and certainly the Congress is frustrated because we do not feel that we are getting the information we need about terrorism and counterintelligence investigations. Your people, I am sure, chafe at the idea of doing these briefings because they are concerned about compromising ongoing prosecutions and investigations.

How do we get to a sweet spot where you can do your work, which is, in my view, vitally important to the country and the Congress can do some oversight?

Mr. MUELLER. A short answer is yes, we can work on this issue, and I will tell you, we have frustration because now that we disseminate a lot of the information, particularly in the counterterrorism arena, what we are finding is the information we disseminate is coming up and being briefed to the Intelligence Committee by others, where we are precluded by the Justice Department in briefing that which we have provided to the other agencies.

And so we will be working with the Department of Justice to work out a mechanism whereby we can brief on intelligence matters without adversely impacting ongoing investigations.

Senator WYDEN. In your view—and I appreciate that because your answer certainly suggests that you are open to it—what would be a plan, what would be an alternative to a Linder letter in your view, just conceptually?

Mr. MUELLER. I would think that certainly in intelligence we could brief on matters that we have distributed to the intelligence community, unless there is a particular concern relating to a particular ongoing investigation. There also are mechanisms to—one of the problems we have is that by reason of either statutes or other Presidential directives, we are unable to—or should not utilize in briefings names of, for instance, United States citizens that could be part of it, where you can talk generally without doing the specifics. So that there are mechanisms that could be adopted that would protect not only U.S. citizens but also ongoing prosecutions.

One of the concerns one has is the fact that most of our intelligence is developed on U.S. citizens that have a higher degree of privacy interest and rights than perhaps others that the agency is looking at overseas.

Senator WYDEN. My time——

Chairman LEAHY. A roll call vote has begun. We are going to end this at noon. I realize you were not here for much of it and you did not know that, but go ahead. You had another question.

Senator WYDEN. Mr. Chairman, I would just wrap up very quickly.

I think this is a constructive approach that you are outlining, Mr. Director. I would hope that we could narrow the times when there was not a brief, narrow the number of instances where the Linder letter was invoked. I am interested in working with you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Wyden.

Senator Sessions, you wanted 3 more minutes.

Senator SESSIONS. Thank you. You are very kind, Mr. Chairman.

Mr. Director, we are all concerned about the violence in Mexico. You have been asked about it previously. We had a hearing about

that recently with ATF and Homeland Security and some other agencies, not FBI. But it strikes me that the new President there is standing up not because we have told him what to do, but because he understands the threat to Mexico, and he has challenged these organizations, and a lot of the violence we are seeing is because the government is challenging them. But they are a powerful force. They have the ability to assassinate, kidnap, murder leaders and mayors and police chiefs that stand up against them, and it is a very dicey time. And I think we should do what we can to help.

It strikes me that the best way we could help would be to vigorously prosecute the parts of those organizations that are operating in the United States, that are selling drugs and cocaine and methamphetamine and other drugs in this country, collecting the money, sending it back to buildup the wealth and power of these cartels.

So I guess my question to you is: Do you fundamentally think that is perhaps the best thing we can do to help? Are we doing enough? And will the FBI participate?

Mr. MUELLER. We participate, as I indicated before, in OCDETF, as you are familiar with. We are a strong participant in that. That is an area where we have maintained our participation.

Second, we work with DEA and ATF and the other agencies through the OCDETF mechanism to address the cartels throughout the United States.

Senator SESSIONS. OCDETF is the Organized Crime Drug Enforcement Task Force that has multiple agencies participating to target the biggest kind of drug organization.

Mr. MUELLER. And as a result of that, there have been a number of prosecutions over the years, and to the credit of President Calderon, he has increased substantially the extradition to the United States of those cartel leaders. There were 95 last year. There are 23 this year. The 95 last trebled the extraditions from 3 years previous.

Senator SESSIONS. So you are finding more cooperation than we have had before with Mexico.

Mr. MUELLER. Absolutely.

Senator SESSIONS. I think that is the partnership that we should push forward with. Many of these guys that flee back and forth across the border move back and forth. We will prosecute them if they will extradite them. We will put them in a firm Federal prison where they cannot buy their way out of jail or break out of jail. I think it can help, Mr. Chairman, to reduce the power of these cartels and strengthen the ability of the strong Mexican President to be successful.

Mr. MUELLER. Thank you, sir.

Chairman LEAHY. I thank the Senator from Alabama.

I agree with him that we have got to help Mexico get this under control. They are, as I said in my opening statement, the second largest trading partner that the United States has. They are our southern border. They are a significant democratic nation, and to have their democracy basically torn apart by public corruption and drug money is something they do not want, certainly President Calderon does not want. You have been down there, Director

Mueller. You know that both sides of the border are damaged if it continues.

So I will put my full closing in the record, but I do thank the Director not only for his service but for working with us. We have raised a number of issues. We will continue to work together, and I appreciate him doing that, and I thank you for being here.

Mr. MUELLER. Thank you, sir.

[Whereupon, at 12:05 p.m., the Committee was adjourned.]

[Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 15, 2009

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

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Director Robert S. Mueller III, following Director Mueller's appearance before the Committee on March 25, 2009. The subject of the Committee's hearing was "Oversight of the Federal Bureau of Investigation." We hope this information is helpful to the Committee.

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

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Minority Member

Responses of the Federal Bureau of Investigation to Questions for the Record Arising from the March 25, 2009, Hearing Before the Senate Committee on the Judiciary Regarding Oversight of the FBI

Questions Posed by Chairman Leahy

FOIA

1. Earlier this month, the Attorney General issued new FOIA guidelines that restore the presumption of disclosure and openness for government information. The George Washington University's National Security Archive – an independent non-governmental research institute – recently found that the FBI provided a "no records" responses to 57% of its FOIA requests and that the Bureau provided responsive documents in less than 14 % of all of its FOIA cases last year. The Bureau's own FOIA reporting also shows that on average FOIA requesters have to wait more than a year (374 days) to receive a response from the FBI to complex FOIA requests. What steps is the Bureau taking to comply with the Attorney General's new FOIA guidelines and with the spirit of President Obama's January 21, 2009 FOIA memorandum?

Response:

The FBI is working to fully comply with the Attorney General's recent Freedom of Information Act (FOIA) guidelines. In cooperation with the Department of Justice (DOJ), the FBI is reviewing its use of FOIA exemptions to ensure they are applied with a "presumption of openness," as required by those guidelines. The FBI is also reviewing all pending litigation to determine whether "there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information," which is a factor in DOJ's determination whether it will defend pending FOIA litigation. The FBI has long recognized the necessity of "timely disclosure" and has been engaged in a multi-pronged approach designed to accelerate response times. Through information technology and process improvements, the FBI has achieved the lowest response times in the FBI's 30-year history of responding to FOIA requests. Additional reductions in processing times will be realized as we continue to index records, tag metadata, implement Sentinel, and deploy an enterprise-wide Record Management Application.

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2. The Bureau's current FOIA policy is to only search for responsive records contained in its main files within the Central Records System, *i.e.* individuals or topics that are the subject of an FBI file, unless a FOIA requester specifically asks for a more detailed search. This policy excludes potentially responsive records that might be contained within those files, but that are not referenced in the subject of the file. In addition to denying FOIA requesters access to all of the records that they are entitled to, the FBI's recordkeeping system - which is also used by FBI agents to conduct criminal investigations - could endanger the FBI's vital law enforcement mission.

a. Why does the FBI continue to use an antiquated record-keeping system, where records have to be manually indexed by FBI agents, rather than using a full-text retrieval system — the modern standard for information processing in both the public and private sectors?

Response:

The FBI has long recognized that the maintenance of paper records comprising over two billion pages in 265 separate locations is a hindrance to law enforcement and to efficient records management. In response, the FBI has reconstituted its Records Management Division and begun the development of an electronic case file system (Sentinel). The FBI's simultaneous development of an enterprise-wide Record Management Application for all electronic records will ensure the FBI exceeds the modern standards for the search and retrieval of records. In addition, the FBI is currently inventorying and indexing all official records, worldwide, and will digitize any records requested for FOIA or other review.

b. Why does the Bureau only search its main files for responsive records, unless the FOIA requester engages in time consuming correspondence with the FBI or sues the FBI to obtain a more thorough search?

Response:

The FBI searches its "main files" in response to FOIA requests in order to comply with the requirement for "timely disclosure." We do not review all possible cross references in order to identify those that may be responsive, because the time and resources required to conduct this review and verification would bring the FBI's current FOIA process to a standstill. While the benefits from indexing and digitizing records will significantly advance the FBI's ability to respond to requests in a timely manner, including the checking of cross references, in the interim the FBI is fully committed to meeting the judicial standards for conducting a "reasonable search." In instances in which requesters can describe specific

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circumstances indicating where and when they might be referenced in FBI files, these references will be searched.

c. What is being done to improve the accuracy of FBI FOIA records search procedures, so that FOIA requesters can have a reasonable chance of obtaining responsive documents from the FBI?

Response:

Of those instances in which requesters appeal to DOJ the FBI's determination that there are no responsive records, responsive FBI records are identified in only five percent of the cases. In the FBI's own spot check of "no record" determinations, the FBI has found additional responsive records in one to two percent of the reviews. We believe these fairly low rates are a testament to the thoroughness of the initial searches of the current voluminous paper records comprising over two billion pages. That said, we believe both accuracy and timeliness will be improved by the measures noted above, including the indexing of records, tagging of metadata, implementation of Sentinel, and deployment of an enterprise-wide Record Management Application.

Public Corruption

3. There has been a shift of resources away from public corruption investigations and prosecutions over the past seven years. There have been fewer agents and prosecutors assigned and fewer cases brought. I appreciate that the FBI continues to consider public corruption its top criminal priority.

Senator Cornyn and I introduced a bi-partisan anti-corruption bill, the Public Corruption Improvements Act of 2009, that would provide additional funds to the FBI and other components at the Justice Department for the investigation and prosecution of public corruption offenses. This additional funding would allow law enforcement to continue to devote resources to counterterrorism, while restoring the ability to effectively combat fraud and corruption. The bill would also provide needed legal tools to federal prosecutors and close major loopholes in the corruption law.

Do you support efforts like the Leahy-Cornyn public corruption bill that would give federal investigators and prosecutors the additional tools and resources they need to most effectively combat public corruption?

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Response:

The FBI appreciates this Committee's efforts to ensure we have the tools and resources we need to effectively address all of our responsibilities, including our role in combating public corruption. DOJ, including the FBI, strongly supports this Committee's efforts to close gaps in current law and to provide additional tools and resources that will enable public corruption prosecutors and investigators to more effectively and efficiently prosecute public corruption offenders. The FBI will be pleased to continue to work with the Office of Management and Budget (OMB) and DOJ to provide the Administration's views of proposed legislation, using that separate "views" process to provide more detailed comments regarding the proposed legislation.

Interrogations

4. In 2002, you ordered FBI agents not to participate in the harsh interrogation program being conducted at Guantanamo Bay and other detention centers, and instead to adhere to FBI rules for interrogations. You were previously limited in discussing this issue because much of the information was still classified. But last May, the Department of Justice Inspector General Glenn Fine issued an unclassified report on this issue.

The IG report states that in spite of signoff from the Justice Department's Office of Legal Counsel on the legality of CIA interrogation techniques, you refused to allow FBI agents to participate in these interrogations. The report notes that this issue of whether the FBI would participate in interviews in which other agencies used non-FBI interrogation techniques arose repeatedly as more detainees were captured. You refused to allow your agents to participate in these interrogations.

Now that we have these public conclusions from the unclassified IG report, can you explain to us why you told your agents not to participate in the CIA interrogations of these detainees?

Response:

Longstanding FBI policy, adopted prior to the attacks of 9/11/01 and reiterated in 2004, provides that "no interrogation of detainees, regardless of status, shall be conducted using methods which could be interpreted as inherently coercive, such as physical abuse or the threat of such abuse to the person being interrogated or to any third party, or imposing severe physical conditions." (5/19/04 Electronic Communication from the FBI General Counsel to all FBI divisions.) The FBI's policy has not changed since the attacks of 9/11/01.

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Questions Posed by Senator Feingold

5. When and to what extent will the Domestic Investigations and Operations Guide ("DIOG"), which implement the Attorney General Guidelines for Domestic FBI Operations ("AGG") be made public, as promised by you in September 2008, and the Attorney General in his confirmation hearing earlier this year?

Response:

The FBI is currently working to identify what portions of the Domestic Investigations and Operations Guide (DIOG) can be publicly released without compromising the FBI's investigations or intelligence gathering mission.

6. A December 15, 2008 letter from General Counsel Valerie Caproni indicates that the DIOG layers more oversight and limitations onto the AGG. Wouldn't it be preferable to include those mechanisms in the AGG themselves?

Response:

We do not believe it would be beneficial to include in the Attorney General (AG) Guidelines limitations that are imposed on the FBI by the FBI. The AG Guidelines address the conduct in which the FBI is permitted to engage in pursuit of its domestic mission. Merely because DOJ has found particular conduct legally unobjectionable, though, does not mean the FBI wants its employees to engage in such conduct. In some cases the differences exist because the activities are new and the FBI wants an opportunity to assess how the authorities will be implemented in "real world" contexts. For example, unpredicated assessments are a new category of conduct and, as with any new activity, the FBI believes it is important to establish rules that err on the conservative side until we are sure we understand where the risks lie, and that our employees fully understand the new rules under which they are operating. If it becomes clear that we have set approval levels too conservatively or not conservatively enough, the FBI will be able to make adjustments through revisions to the DIOG without requiring a re-draft of the AG Guidelines.

7. Does the FBI have the ability to amend the DIOG in the future without public notification? Will you consult with Congress before making changes to the DIOG?

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Response:

Please see the response to Question 6, above. If the FBI makes significant changes to the DIOG, we would be pleased to brief our oversight committees on those changes.

8. A December 15, 2008 letter from General Counsel Valerie Caproni to Chairman Leahy stated that physical surveillance only occurs in public places where "there is no constitutionally protected expectation of privacy." I am concerned that physical surveillance in churches, mosques, and of peaceful protest will chill protected First Amendment activity. Do the AGG and/or the DIOG address this?

Response:

The FBI takes great care to avoid chilling First Amendment activities. Both the AG Guidelines and the DIOG address this issue, with the DIOG repeatedly stressing that investigative activity cannot be based solely on conduct protected by the First Amendment and that no FBI activity should occur for the sole purpose of monitoring the exercise of First Amendment rights.

Any investigative matter that involves a religious or political institution is considered a "sensitive investigative matter" (SIM). All SIMs, whether they are assessments or predicated investigations, require legal review and approval by a Special Agent in Charge (SAC). Before approving a SIM, the SAC must consider: the nature of the violation or threat; the significance of the information sought to the violation or threat; the probability that the proposed course of action will be successful; the risk of public exposure; if there is such a risk, the adverse impact or the perception of an adverse impact on civil liberties and public confidence; and the risk to the national security or the public welfare if the proposed course of action is not approved (*i.e.*, the risk of doing nothing).

The DIOG treats surveillance conducted during assessments (which is the only change the new AG Guidelines make to the rules that have long governed this sort of physical surveillance) differently than it treats surveillance conducted during predicated investigations. In order to conduct physical surveillance during an assessment, the agent proposing the surveillance must obtain supervisory approval, indicating in the request the purpose and objective of the surveillance. In order for the supervisor to approve the physical surveillance, the supervisor must find that: 1) there is an authorized purpose and objective for the assessment; 2) the assessment is based on factors other than the exercise of First Amendment rights or the race or ethnicity of the subject; 3) the assessment constitutes an appropriate use

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of personnel and resources; 4) the surveillance is likely to further an objective of the assessment; 5) surveillance is the least intrusive method that is reasonable under the circumstances; and 6) the anticipated value of the assessment justifies the surveillance. Approved surveillance is limited to a 72-hour period, although that period may be repeated based on all the same findings.

9. You agreed with me at a hearing in September 2008 and I assume you still do now, that it would be counterproductive for the FBI to engage in racial profiling in national security investigations. Yet, the Guidelines permit the use of race as a factor in determining whether an assessment will be undertaken. And the FBI General Counsel's December letter to Senator Leahy concerning implementation of the Guidelines makes it clear that is the case. How can you be sure that racial profiling, which you told me in September would be counterproductive and wrong, is not taking place?

Response:

The FBI will not engage in racial profiling in either criminal or national security matters; the letter from the FBI's General Counsel to Senator Leahy did not state otherwise.

Racial profiling, or the invidious use of race or ethnicity as the basis for targeting suspects or conducting stops, searches, seizures and other law enforcement investigative procedures, has no place in law enforcement. It is an unconstitutional, ineffective and unproductive law enforcement tool. The FBI does not engage in racial profiling in either criminal or national security matters. Federal law enforcement officers may consider race and ethnicity in conducting activities in connection with a specific investigation or assessment, however, to the extent that there is trustworthy information, relevant to the locality, time frame or assessment, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, organization or activity.

10. Since assessments do not require supervisory or headquarters approval, how do you know what criteria agents are using to initiate assessments?

Response:

The DIOG identifies six types of assessments, all but two of which require supervisory approval before they can be initiated. The assessments that do not require supervisory approval both involve the sort of prompt and limited checking of leads that also did not require supervisory approval under the prior AG Guidelines. If, however, these types of assessments involve SIMS, legal review

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and supervisory approval are required. SIMs can include the activities of U.S. public officials or political candidates (for example, matters involving corruption or threats to the national security), religious or political organizations or prominent members of those organizations, or members of the news media; can include matters having an academic nexus; or can be any other matter that should, in the judgment of the official authorizing the investigation, be brought to the attention of FBI Headquarters (FBIHQ) or DOJ officials. Even if these types of assessments are not sensitive, supervisory review must be obtained in order to continue them for more than 30 days. The FBI's Office of Integrity and Compliance has instituted a compliance monitoring program that requires FBIHQ program managers to review a statistically valid number of assessments opened in their programs on a routine basis to ensure compliance with these DIOG requirements.

11. Does the FBI develop terrorist profiles? Do these profiles come from FBI data mining operations?

Response:

In developing their investigative cases, FBI agents consider evidence developed from FBI investigative efforts, intelligence drawn from the United States Intelligence Community (both open source and non-open source), and intelligence derived from foreign allied services. When assessing this information to determine whether it contains indicators of terrorist activities, human judgment is part of the analytical process, and indicators are subject to constant validation as new information is learned. The FBI does not develop terrorist profiles, does not consider any single indicator to be a definitive predictor of terrorist or criminal activity, and does not view the presence of a single indicator as constituting sufficient predication to open an investigation.

12. Have you authorized the FBI to open national security investigations or assessments based only on profiles developed by the FBI or others, without any actual evidence of wrongdoing?

Response:

No. The FBI uses three primary types of inquiries (assessments, preliminary investigations, and full investigations), none of which are initiated based upon profiles. Assessments do not require factual predication that a specific person or group is engaged in wrongdoing (such facts would justify a preliminary or full investigation), but they do require a proper purpose. Assessments can be opened to respond to a lead, to assess the existence of a threat or vulnerability in the

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community, to assess the effectiveness of a source, to plan overall strategy, or (with FBIHQ approval) to collect positive foreign intelligence to address national requirements issued by the Office of the Director of National Intelligence (ODNI). National security preliminary investigations require "information or an allegation" indicating the existence of a national security threat, while full investigations of national security matters can be opened only when there is an "articulable factual basis" that reasonably indicates the existence of a national security threat.

13. Does the FBI use data pools to develop profiles? If so, which ones, and what are you doing to ensure the data in these systems is accurate and relevant?

Response:

The FBI does not develop terrorist profiles. The FBI does search various data bases using indicators of crime or terrorism that are developed as discussed in response to Question 11, above. These indicators are derived from conduct, patterns of behavior, and/or affiliations known to be associated with terrorism and other crimes or derived from specific intelligence reporting. For example, if specific intelligence reporting indicates that an unidentified terrorist is arriving in New York City during a specific time period after traveling from a certain location through a circuitous route, the FBI will search available government data bases to obtain a list of individuals who fit that travel pattern. That list will then be compared to FBI investigative data bases to determine if any person on the list is the subject of a terrorism investigation. Information developed from these searches provides investigative or analytical leads to be followed up by using traditional and appropriate investigative techniques and analysis as authorized by the AG Guidelines.

The FBI searches a variety of data bases using such indicators. While each data set provider is responsible for its own data, data sources are continually evaluated for accuracy, relevancy, timeliness, and completeness. In addition, agents and analysts are trained to assess quality based on reporting histories and confirmation by other sources, and are aware that information received through other sources must be verified as part of case management activities.

14. Please describe the records that the FBI must keep under the AGG or the DIOG to document assessments and investigations. If such records are not created and maintained, why not? If such records exist, will you agree to share them with Congress under appropriate classification procedures if necessary?

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Response:

All assessments and investigations conducted by the FBI require appropriate documentation. The DIOG describes the documentation and record-keeping requirements for each type of assessment and investigation. The FBI can provide sample documentation for Congressional review.

15. How many assessments has the FBI conducted and completed using the new authorities provided by AG Guidelines that were put into effect in December 2008? How many preliminary or full investigations were initiated based upon information developed in those assessments? How many assessments are still ongoing?

Response:

The AG Guidelines delineate six types of assessments. Type 1 and 2 assessments are designed to seek information, either proactively or in response to investigative leads relating to violations of Federal criminal law or threats to national security, as they pertain to individuals, groups, or organizations. While these assessments are, by their nature, expected to be of short duration, FBI policy does not impose a time limit on them.

Type 3 assessments are designed to identify and obtain information about potential targets of, or vulnerabilities to, criminal violations of Federal law or threats to national security. Type 4 assessments permit the FBI to obtain information to inform or facilitate intelligence analysis and planning. Type 3 and 4 assessments may continue for as long as necessary to achieve their authorized purpose or objective.

Type 5 assessments allow the FBI to obtain information to assess the suitability, credibility, or value of particular individuals as human sources. All activities conducted in this type of assessment must follow the AG Guidelines Regarding the Use of FBI Confidential Human Sources and the FBI's policy implementing these guidelines.

Finally, Type 6 assessments authorize the FBI to seek information, proactively or in response to investigative leads, relating to matters of foreign intelligence interest responsive to foreign intelligence requirements. These assessments may continue for as long as necessary to achieve their authorized purpose or objective and are closed once that objective is met.

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The statistics associated with the number of assessments the FBI has conducted and how many of these assessments have been converted into predicated investigations are sensitive and are, therefore, provided separately.

16. The last time the FBI was given broad discretion to investigate people who were not suspected of wrongdoing was when the Patriot Act authorized the FBI to use National Security Letters against Americans who were not agents of a foreign power, but only "relevant" to an investigation. The Department of Justice Inspector General found widespread misuse and mismanagement of this authority. How can we be sure that the even greater authority provided in the AGGs to investigate Americans with even less of a threshold for starting "assessments," and no reporting requirements, will not lead to similar abuses?

Response:

The 2007 report by DOJ's Office of the Inspector General (OIG) regarding the FBI's use of National Security Letters (NSLs) expressed significant concerns regarding the issuance and documentation of NSLs. The report demonstrated the need for the FBI not only to take action to address the immediate concerns raised by the OIG, but also to ensure that the necessary policy, training, and oversight is in place to prevent similar situations from occurring with other aspects of FBI investigations. It is important to note that the concerns raised by the report, although serious, were not pervasive. For example, of the 293 NSLs the OIG examined in its 2007 report, 22 (or 7 percent) involved unreported potential intelligence violations. Of those 22 potential violations, 10 were third-party overproductions, leaving a net potential FBI violation rate of 4 percent. Only five of the errors (1.7 percent of the total sample) involved FBI errors that resulted in the FBI obtaining information it was not authorized to obtain.

Although the "true" error rate was only 1.7 percent, it was still unacceptable. Accordingly, the FBI has taken significant actions to eliminate or mitigate the problems identified in the course of the OIG review. Perhaps the most notable NSL-specific action (among policy changes and increased training) was the addition of an NSL subsystem to the FISA management system. This system is programmed with drop-down menus and other user friendly features to make the NSL process less time intensive for agents and analysts while simultaneously increasing the accuracy of the process and decreasing the sorts of human errors noted in OIG reports. No NSL prepared within the system can now issue unless vital information is included, such as the subject of the NSL, the predication for the NSL, the type of NSL requested, the recipient, and the specific targets of the NSL. In other words, the automated system captures all the information required for

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Congressional reporting before the NSL is generated. In addition to improving the accuracy of Congressional reporting, this system ensures that each NSL receives the required legal and supervisory review. Providing one database for the automated generation of NSLs also reduces the time-consuming manual process for generating the required documentation and ensures consistency between the documents reviewed and the NSLs actually issued. After a pilot project, the system became operational in all FBI field offices and at FBIHQ on 1/1/08.

In addition to taking NSL-specific action, the FBI established an Office of Integrity and Compliance (OIC) to formalize the efforts of executive management to identify and mitigate significant areas of risk. This office focuses the attention of executive management on aspects of the FBI's operations and business processes that pose compliance risks. Through this office, rather than merely reacting to problems once they arise, the FBI is proactively identifying areas of legal risk and developing policy and training to mitigate those risks.

The AG Guidelines and the DIOG contain numerous measures designed to ensure their authorities will be used properly. Most fundamentally, the AG Guidelines and the DIOG authorize only relatively passive, non-intrusive investigative techniques in assessments - NSLs are not authorized nor, with one very limited exception, are other forms of legal process that demand information from third parties. Furthermore, the DIOG imposes an extensive approval, review, and oversight regime to govern the use of assessments. In addition, in many instances there are reporting requirements, especially in those assessments involving sensitive investigative circumstances and undisclosed participation in organizations. The guidelines also require DOJ's National Security Division, in conjunction with the FBI's Office of the General Counsel, to conduct regular reviews of all aspects of FBI national security and foreign intelligence activities. These regular reviews of FBI field offices and headquarters divisions, along with periodic Inspection Division audits, facilitate the OIC's identification of risk areas. Finally, the FBI has learned from the management errors involving NSLs and has imposed a much better system to capture assessment initiation, approval, and progress so the use and conduct of assessments can be monitored and reviewed.

The FBI has also developed a comprehensive training plan to implement the AG Guidelines. Before the implementation of the AG Guidelines and the DIOG, a mandatory 19-module Virtual Academy course was launched. This was followed by a two-day conference on the DIOG for all Chief Division Counsels (CDC) hosted by the OGC, OIC, and Corporate Policy Office (CPO). Finally, the OGC, OIC, and CPO hosted a series of conferences for all CDCs, Division Policy Officers, and Division Compliance Officers to "Train-the-Trainers" on the DIOG's

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standards for operational activities. The attendees were certified as trainers upon successfully passing an exam that is scenario driven and designed to test their ability to apply the DIOG's standards and concepts. These trainers are now training their division personnel, who will also be required to pass the exam.

17. An Inspector General's audit of the FBI's Terrorist Threat and Suspicious Incident Tracking System published in November 2008 found 1,785 instances where the FBI may have used federal grand jury subpoenas to gather information about people where no preliminary or full investigation had been opened. Is it appropriate for the FBI to use a grand jury to obtain private records regarding a person that the FBI is not even investigating?

Response:

The AG's new Guidelines for Domestic FBI Operations, which went into effect in December 2008, specifically authorize the use of certain investigative methods during the assessment stage - before a preliminary or full investigation are opened - including the use of grand jury subpoenas for telephone or electronic mail subscriber information. During the OIG audit of Guardian, two sets of AG Guidelines governed the FBI's efforts to address potential terrorist threats and suspicious incidents: the AG's Guidelines on General Crime, Racketeering Enterprise, and Terrorism Enterprise Investigations (General Crimes Guidelines); and the AG's partially classified Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSI Guidelines).

To determine whether the FBI's use of grand jury subpoenas in the instances noted in the IG's audit was consistent with the now-superseded AG Guidelines, the FBI consulted with DOJ's Office of Legal Policy, which determined that the FBI's use of grand jury subpoenas to assess the threats in these instances was permissible under the former AG Guidelines.

18. There have recently been reports that the Terrorist watch list now has 1 million entries, which, after accounting for duplicate entries, represents approximately 400,000 individuals. This is a 32% increase since 2007. How is the new Terrorist Encounter Review Program, under which the watch list status of people who are frequently in contact with U.S. officials (when they fly, for example) is reviewed, working? What factors play into the steady increase in the number of names on the watch list, and do you feel that the current list with 1 million entries representing 400,000 people is more accurate than previous lists?

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Response:

While the Terrorist Encounter Review Program (TERP) has been successful, we continue to refine the program and to work with our partners to identify additional ways to limit misidentification based on similarities among names and other data to the greatest possible extent.

The United States Intelligence Community continues to identify individuals who meet the stringent "reasonable suspicion" standard for inclusion on the watchlist. Between March 2008 and March 2009, each day there were an average of more than 1,600 nominations for inclusion on the watchlist, 4,800 nominations for modification of existing records, and 600 nominations for the removal of records from the watchlist. Although each nomination for addition does not necessarily represent a new individual, but may instead involve an alias or name variant for a previously watchlisted person, every nomination must be evaluated to ensure it meets the Terrorist Screening Center's (TSC) "reasonable suspicion" standard. Each nomination is submitted through a three-phase review process that includes the nominating agency, the FBI's Terrorist Review Examination Unit (for domestic terrorists) or the National Counterterrorism Center (for international terrorists), and the TSC's nominations unit. This process ensures careful review of each watchlist nominee.

While the number of people on the watchlist has increased since the list's establishment, we are confident that the many measures taken to verify identities and backgrounds have ensured the list's improved accuracy. And, though the number on the list is substantial, fewer than 5 percent of those on the watchlist are U.S. persons (U.S. citizens and legal permanent residents). Approximately 9 percent of those on the watchlist are also on the "No Fly" list.

19. The National Security Archive recently named the FBI the winner of the 2009 Rosemary Award for the worst Freedom of Information Act performance by a federal agency. Over the past four years the FBI told 66 percent of FOIA requesters that it found no responsive records. The average for all federal agencies is 13 percent. There is also concern about the time it takes the agency to give a response. Why do you think the response rate of the FBI is so low compared to other agencies and what is the FBI doing to improve its responsiveness to FOIA requests?

Response:

The FBI receives approximately 1,500 FOIA and Privacy Act requests each month, a request volume that is among the highest of all Federal agencies. The FBI is

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unique in that we receive numerous requests from individuals asking if they or other individuals, organizations, events, or issues are the subjects of FBI records. For the overwhelming majority of these requests, there are no responsive FBI records.

Please see the response to Question 2, above, for an explanation of the FBI's efforts to improve the accuracy and timeliness of our FOIA responses.

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Questions Posed by Senator Durbin

20. As you know, the Byrne-JAG program provides vital grants to state and local law enforcement for criminal justice activities. There are about 15 communities in Illinois, including Champaign, Decatur, and East St. Louis, that have been eligible for direct local grants under Byrne-JAG in previous years. However, these communities recently learned that they are no longer eligible for direct local grants because of a change in the law that took effect this year requiring the communities to provide the FBI with certain Uniform Crime Reporting (UCR) data covering 3 of the past 10 years.

These communities are now working around the clock with the Illinois State Police to provide all needed UCR data to the FBI, so they can restore their eligibility for local Byrne-JAG grants as quickly as possible. Because this Congress and the new Administration have committed to funding the Byrne-JAG program, including by providing over $2.5 billion in Byrne-JAG funding in the recently passed stimulus and omnibus spending bills, it is crucial that these communities restore their eligibility as quickly as possible so they don't miss grant deadlines. I am told that these communities and the Illinois State Police have been in contact with the FBI to try to get this matter resolved.

Will you commit to help these communities get the necessary UCR information reported so they can restore their Byrne-JAG local grant eligibility as quickly as possible?

Response:

Before 1960, individual Illinois state agencies provided annual crime report data directly to the FBI, but in 1960 the Illinois State Police (ISP) began voluntarily providing annual Uniform Crime Report (UCR) state data to the FBI in the legacy FBI UCR Summary format. In early 1994, 93 percent of Illinois' crime reporting agencies began reporting to the FBI's National Incident-Based Reporting System (NIBRS), while the remaining 7 percent of the agencies continued to provide data in the UCR Summary format. A review of the 1994 NIBRS data revealed significant data quality issues requiring ISP attention. Later in 1994, the ISP alerted the FBI that much of the information provided in the NIBRS format was invalid and that there had been serious under reporting. The ISP was concerned that the inaccuracy of the NIBRS data would have a significant impact on the allocation of grant monies to those agencies that submitted NIBRS data. At the ISP's request, the suspect information was removed from the 1993 publication and, due to internal issues within the state, Illinois agencies were unable to convert back to the historical UCR Summary format for future reporting years. Since 1993, the

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FBI has received crime data from only a small number of Illinois agencies representing cities with populations of 100,000 or more.

Representatives of the FBI's UCR Program met with the ISP's Information and Technology Command on 4/1/09, during which discussions focused on the policy requirements for meeting Federal reporting guidelines. The ISP has indicated that they will concentrate on providing UCR data for 2006-2007 from all Illinois agencies. In addition, the ISP will work toward the submission of complete Federally compliant data for 2008 by the end of 2009 and the implementation of a Federally compliant reporting system for the submission of 2009 data by 2010.

To assist the ISP, the FBI has offered procedural guidance and training associated with reporting UCR data. In addition, we have offered to reopen past-year master files to accept missing data and analyze crime trends (limited analysis will be available due to the lack of historical data), and to forward the data to DOJ's Bureau of Justice Assistance (BJA) for their use in future grant administration. This offer of assistance is contingent on the ISP's ability to implement Federal policy in their UCR reporting practices, including obtaining data from contributors, conducting analysis, and forwarding data to the FBI in the acceptable technical framework.

Since the failure to report UCR data to the FBI is not limited to Illinois, the FBI is seeking ways to ensure that all of the nation's more than 17,000 law enforcement agencies are provided the opportunity to submit missing data. Among these efforts, the FBI plans to reopen the UCR master files for the years 2006-2007 in order to accept any missing 12-month data for those reporting years. The FBI will evaluate any data submitted under this program and forward it to the BJA. This initiative will assist the submitting agencies qualify for grants but will not allow agencies to adjust figures already provided to the FBI.

21. One particularly offensive type of housing scam we are seeing today is the foreclosure rescue scam. These are the truly despicable efforts to prey on those who are about to lose their homes – for example, by promising to help someone avoid foreclosure for a fee, and then pocketing the fee and skipping town. Increasingly, we are seeing situations where con artists convince distressed homeowners to give them title to the property, and then siphon off the equity and leave the homeowner in foreclosure.

a. What resources is FBI devoting specifically to deal with this problem of foreclosure rescue scams?

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Response:

The FBI does not specifically track the resources allocated to address foreclosure rescue scams. Clearly, though, the rapid increase in home foreclosures has led to an increase in the number of schemes and scams associated with these foreclosures. The FBI is currently investigating more than 2,300 mortgage fraud cases, an increase of almost 400 percent since the end of Fiscal Year (FY) 2003, and we have over 250 agents dedicated to these investigations.

b. Is additional statutory authority needed to combat these scams?

Response:

The FBI appreciates this Committee's efforts to ensure we have the tools and resources we need to effectively address all of our responsibilities, including our role in combating foreclosure rescue scams. DOJ, including the FBI, strongly supports this Committee's efforts to close gaps in current law and to provide the additional tools and other resources needed to address these emerging crimes. The FBI will be pleased to continue to work with DOJ to identify any additional authorities needed to combat these scams.

c. Please discuss how FBI and DOJ are coordinating with FTC, HUD and other federal, state and local agencies to prevent these scams and warn consumers about them.

Response:

The FBI's primary means of coordinating mortgage fraud matters with other Federal, state, and local agencies is through mortgage fraud task forces and working groups that include representatives from Federal, state, and local law enforcement organizations and are located in Washington, D.C., and throughout the United States. FBI field offices host or participate in approximately 18 mortgage fraud task forces and 49 related working groups that are strategically placed in areas identified as high-threat areas for mortgage fraud. The compositions of these task forces and working groups vary by location, but typically include representatives of the Department of Housing and Urban Development (HUD), the U.S. Postal Inspection Service, the U.S. Secret Service, the Internal Revenue Service (IRS), the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), and the Federal Deposit Insurance Corporation (FDIC), as well as numerous state and local law enforcement agencies. The task forces and

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working groups operate as force multipliers focused on the most serious mortgage fraud problems in each region, including foreclosure rescue scams.

The FBI also coordinates its efforts with other Federal, state, and local agencies through its participation in the National Mortgage Fraud Team (NMFT), which was established at FBIHQ in December 2008 and is responsible for the management of the FBI's mortgage fraud program. FBI representatives to the NMFT also participate in the Washington D.C.-based National Mortgage Fraud Working Group (NMFWG), which is chaired by DOJ and represents the collaborative effort of numerous Federal agencies. The NMFWG serves as the hub of the U.S. Government's criminal, civil, and regulatory fight against mortgage fraud.

22. Director Mueller, in 2006 the Attorney General issued a report on criminal history background checks, which called into question the FBI's maintenance of its criminal record database called the "Interstate Identification Index." This database is used increasingly in the United States by employers conducting background checks on job applicants.

The 2006 report stated: "Although it is quite comprehensive in its coverage of nationwide arrest records for serious offenses, the [Interstate Identification Index] is still missing final disposition information for approximately 50 percent of its records." As a result of this missing information, thousands of job applicants across America have had their background checks delayed and jobs denied.

a. In the context of doing background checks under the Brady gun laws, the FBI works to track down these missing dispositions so that it is sending out the most accurate information possible. Would you support using the same process to track down missing dispositions in the context of employment background checks?

Response:

The FBI is always concerned with the accuracy and completeness of the criminal history record information (CHRI) in the Fingerprint Identification Records System and the Interstate Identification Index. For the receipt of such information, however, the FBI must rely on the voluntary submission of arrest and disposition information by Federal, state, local, and tribal law enforcement and criminal justice agencies.

The FBI has been working to process electronic fingerprint submissions within 24 hours for certain employment and licensing purposes, and is able to respond within 2 hours in most cases. DOJ has not adopted a formal position on whether it would be advisable to use the process employed pursuant to the "Brady gun law," i.e., the

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National Instant Criminal Background Check System, to locate and obtain missing dispositions for employment background checks.

b. Specifically, what is the FBI's position on a bill introduced by Representative Bobby Scott called the Fairness and Accuracy in Employment Background Checks Act? If you oppose this bill, please explain the basis for your opposition.

Response:

The Administration has not taken a position on the Fairness and Accuracy in Employment Checks Act of 2008, which was introduced in the 110th Congress.

c. Given that there is a racial disparity in arrests of African Americans and Latinos in the United States, do you think there is also a racial disparity in the impact the incomplete FBI criminal history database has on minority job applicants?

Response:

The FBI does not have the data necessary to answer this question.

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Questions Posed By Senator Whitehouse

23. In your written testimony, you note that as the FBI develops into a national security agency, it requires "employees with specialized skills – intelligence analysts, surveillance specialists, scientists, linguists, and computer experts." You also state that you plan to hire 2800 professional staff in FY09, along with 850 new agents. Given the need for hiring new analysts and special agents (particularly those with language ability or international backgrounds), is the FBI encountering any difficulties due to the security clearance process?

Response:

The FBI works hard to educate applicants to the various security requirements during the recruitment process in order to allow unqualified applicants an opportunity to withdraw from the process. In recognition of their unique circumstances, applicants with foreign language fluencies, in particular, are provided with detailed information regarding security requirements during recruitment. Because the security process includes review of all of the candidate's circumstances, though, the FBI can review the applicant's entire background rather than disqualifying an applicant because of a single incident or occurrence. The FBI has modified several security processes to increase our flexibility in hiring while continuing to ensure national security.

The primary challenge to processing the applications of those with substantial time in other countries, which is often the case with applicants who have foreign language skills, is verifying the foreign addresses, education, jobs, and references included in their applications. The FBI has limited the background investigations conducted in foreign countries to minimize the risk of making these candidates potential targets for foreign intelligence services. In lieu of these investigations, we have increased the use of a number of other checks that can be made without compromising the candidate's safety, including inquiries posed to the Central Intelligence Agency and the National Security Agency, requests for record reviews by the U.S. Citizenship and Immigration Services, and analysis by FBI specialists trained to handle "high risk" applicants. We will continue to review the means by which these highly valuable candidates' applications are reviewed to ensure the background investigation process is as effective and efficient as possible without compromising the security of potential FBI employees.

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24. Is the FBI losing good applicants because the process takes too long, or is [it] too onerous for candidates with international contacts?

Response:

Although the FBI does not maintain statistics on the number of applicants lost because of delays in the clearance process, the FBI's background investigation process is similar to that undertaken by other government agencies, with the initial application, the Standard Form 86, being used government wide. The FBI has been working hard to satisfy the standards for suitability and security checks approved by the ODNI and the Office of Personnel Management (OPM) pursuant to the Revised Federal Investigative Standards. The time required to complete our background investigations has been reduced and we now complete approximately 90 percent of these investigations within the 90 days required by the ODNI. The FBI looks forward to further improvement in the processing times of all agencies, because reciprocity will reduce the amount of time required to process applicants transferring from other agencies.

25. On average, how many days does it take for a clearance to be processed for analysts? For agents? What is the backlog of clearances yet to be processed?

Response:

While the FBI does prioritize intelligence analysts when conducting background investigations, we do not capture the metric to differentiate the clearance rate for analysts versus other professional support positions. Following are the processing times for both Special Agents and professional support applicants.

SPECIAL AGENT APPLICANTS				
Fiscal Year	**# Cases Received**	**# Cases Discontinued**	**# Applicants Hired**	**Average Processing Time***
2007	1,296	854 (66%)	345 (27%)	Data Not Available
2008	1,865	1,141 (61%)	904 (48%)	94
2009 to date	1,144	838 (73%)	493 (43%)	63

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REASONS FOR DISCONTINUING APPLICATION	FY07	FY08	FY09
Administrative/Medical/Fitness	331	260	159
Polygraph	206	383	339
Illegal Drugs (Use/Sale)	5	37	19
Not Interested/Not Available	211	379	237
Suitability and Security Issues	94	77	75
Totals	854	1,144	838

PROFESSIONAL SUPPORT APPLICANTS				
Fiscal Year	**# Cases Received**	**# Cases Discontinued**	**# Hired**	**Average Processing Time***
FY 2007	2,150	1,504	918 (43%)	Data Not Available
FY 2008	5,423	2,644	1,743 (32%)	72
FY 2009 to-date	3,550	1,898	753 (21%)	71

*The "average processing time" data is drawn from the FBI's reports to the ODNI, which requests the average number of days for the fastest 90% of cases.

REASONS FOR DISCONTINUING APPLICATION	FY 2007	FY 2008	FY 2009
Administrative/Medical	440	309	173
Polygraph	438	1,138	825
Illegal Drugs (Use/Sale)	89	325	121
Not Interested/Available	384	537	483
Suitability/Security Issues	146	327	287
Totals	**1,504**	**2,644**	**1,898**

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26. Is there anything Congress can do to help?

Response:

The FBI appreciates this Committee's continued support in ensuring that we have the personnel and other resources to effectively address our responsibilities. We will be pleased to continue to work with DOJ and OMB to determine what additional authorities or other resources might assist us in recruiting qualified applicants and getting them on board as quickly as possible.

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Questions Posed By Senator Wyden

27. Is it currently possible to share audio or video files on the FBI's secure case management system? If not, when will this be possible?

Response:

The FBI responded to this inquiry by letter to Senator Wyden from Richard Powers, Assistant Director of the FBI's Office of Congressional Affairs, dated 5/12/09.

28. In 2004, Congress gave the FBI special authority to hire twenty-four senior intelligence officers, but in 2007 witnesses testified that only two of these senior positions had been filled. Anecdotal reports indicate that even now only five of these senior intelligence spots have been filled. Is this correct? If so, why has it taken so long to fill these senior intelligence positions? Does the FBI still plan to fill all twenty-four of them?

Response:

Although the FBI received authorization to create 24 Senior Intelligence Officer (SIO) positions in 2004, Congress did not appropriate funding for these positions. The FBI redirected money from its base budget to fund ten SIO positions, filling the first of these in February 2007, with six of these ten SIOs now in place.

29. The June 2002 FBI Law Enforcement Bulletin included an article by Ernest J. Duran on pursuing prosecutions using Article IV of the Mexican Federal Penal Code, which allows for the prosecution of Mexican nationals who have allegedly committed a crime in the U.S. and then fled back to Mexico. Is Article IV a useful tool in combating drug trafficking and other criminal activity by Mexican Drug Trafficking Organizations (DTOs)? Would greater involvement in Article IV cases by the Department of Justice allow law enforcement officials to pursue additional Mexican national criminal suspects? Would a federal program to provide support, training and coordination for state and local prosecutors be helpful in pursuing Article IV cases?

Response:

As an investigative body, the FBI cannot address how best to pursue prosecutions. From an investigative standpoint, it is the FBI's experience that the Mexican government has been working closely with the United States Government to extradite subjects from Mexican territory who are wanted for violations of U.S. law, and the FBI believes it would be optimal to maximize the enforcement of United States laws by asserting United States jurisdiction. That said, it is the FBI's

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understanding that prosecutions under Mexico's Article IV are an alternative to extradition that was most widely used during a period in which Mexico did not extradite its nationals and there was no available means of obtaining justice for fugitives who fled to Mexico. During the last few years, though, due to favorable developments in the extradition relationship with Mexico and in light of the recent record numbers of extraditions from Mexico for a wide variety of offenses, Article IV prosecutions have become a less attractive alternative. It is our understanding that a few states continue to dedicate resources to transferring prosecutions to Mexico, and have developed expertise in doing so; the Federal government's policy of encouraging extradition for crimes committed in or against the United States has, though, substantially reduced the role of Article IV prosecutions.

30. Oregon has addressed the problem of meth production by classifying pseudoephedrine (PSE) as a Schedule III drug, which requires a prescription. Local meth labs in Oregon have been virtually eliminated – the number of labs has been reduced by 96% since the peak in local production. Meth continues to be readily available due to "smurfing" of PSE in other states and international trafficking of meth.

a. Does the FBI consider meth to be a significant contributor to other criminal activity?

b. Does the FBI have strategies in place to combat meth both domestically and with regard to international trafficking?

Response to subparts a and b:

The FBI does consider the illegal production and sale of methamphetamine to be a significant contributor to other criminal activity, including assaults, identity theft, and various property crimes. The FBI's strategy for combating the methamphetamine problem, both domestically and internationally, is to collect and exploit human intelligence, to develop leads, and to collect evidence regarding criminal enterprises that produce and traffic in illegal drugs. In coordination with our Federal, state, and local partners, the FBI targets the major drug trafficking organizations, gangs, and other criminal enterprises that are responsible for a significant amount of the methamphetamine production and distribution.

c. How would you characterize any changes in the trafficking and availability of meth over the past year or two?

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Response:

Ephedrine and pseudoephedrine (PSE) import restrictions in Mexico and other Central American countries contributed to a decrease in methamphetamine production in this region in 2007 and early 2008. Reduced Mexican methamphetamine production resulted in decreased methamphetamine availability in many U.S. methamphetamine markets in 2007 and in some markets during early 2008.

Law enforcement reporting confirms the supply disruption evidenced by methamphetamine availability data. According to law enforcement reporting, methamphetamine supplies in several drug markets were significantly restricted after June 2007, a situation that has persisted to date in some drug markets. For instance, law enforcement reporting from the Pacific region in August 2008 indicated that some wholesale suppliers who could readily access 20 pounds of methamphetamine before mid-2007 were able to access only 10 pounds afterwards. Similarly, some wholesale distributors who were supplying 10 pounds prior to mid-2007 were able to supply only one or two pounds thereafter.

Methamphetamine availability stabilized and may have increased after the first half of 2008. It appears that this is the result of multiple factors. For example, drug trafficking groups are increasingly using traditional smuggling techniques to circumvent Mexican and Central American ephedrine and PSE import restrictions. In addition, domestic production of the drug has increased, in part because producers are circumventing state and Federal PSE sales restrictions by making numerous small-quantity PSE purchases from multiple retail outlets. In addition, drug trafficking groups appear to be increasing their high-potency hydroponic methamphetamine production both in Mexico and in the United States. Most significantly, though, domestic "smurfing" has become a major problem and is directly responsible for the rise in the number of small methamphetamine labs. Drug trafficking groups have identified weaknesses in the Combat Methamphetamine Epidemic Act (CMEA) and are exploiting these weaknesses. Specifically, they recognize that the logbooks maintained in accordance with the CMEA are not interconnected and are rarely used by retail outlets to determine whether a customer is exceeding CMEA-imposed limits. State and local law enforcement agencies are struggling to gather information from these logbooks to identify smurfing rings, which have exploded in California, Tennessee, and other states. Often these rings operate across state boundaries, compounding the problem.

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d. Would making PSE a Schedule III drug provide the FBI and other law enforcement agencies with better information on the sale of meth precursors, and help in tracking and controlling the production of meth?

Response:

If PSE were a Schedule III drug, the FBI and other law enforcement agencies would be able to obtain better information on the sale of methamphetamine precursors, thereby helping to track and control the production of methamphetamine made with PSE. It is difficult to argue the success Oregon has experienced by placing ephedrine and PSE products in Schedule III; Oregon's methamphetamine lab seizures plummeted and there was little or no backlash from the general public. Reducing the number of methamphetamine labs in that state also reduced the costs associated with clean-ups, reduced the overtime costs for law enforcement, and made law enforcement officers available to pursue other, more important law enforcement matters. Most importantly, by reducing the number of methamphetamine labs, we reduce the number of children exposed to toxic chemicals and potential explosions, as well as the toxic waste resulting from methamphetamine production. Although currently PSE can be sold in a variety of retail outlets (including gas stations, convenience stores, and truck stops), if PSE were a Schedule III drug, it could be dispensed only pursuant to prescription and only by pharmacies licensed by their states and registered with the Drug Enforcement Administration (DEA). This would virtually eliminate the smurfing of these products and the need for the interconnectivity of logbooks.

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Questions Posed by Senator Hatch

31. After the attacks of 9/11/01, I understand why the FBI shifted some of its focus to terrorism. I am grateful for the hard work and investigative efforts that the FBI has contributed to keeping this country free of future attacks. However, it appears to me that other investigative areas have suffered. The FBI has a $6.8 Billion dollar budget and 12,977 Special Agents. You have 56 domestic field offices. Last month, in a Senate Judiciary Committee hearing on "Strengthening Fraud Enforcement", Deputy Director John Pistole testified that the FBI has only 240 agents assigned to investigate white collar crime offenses - 240 out of 12,977. That is about 2% of the Special Agent work force or less than 4 agents per domestic field office. Deputy Director Pistole also stated that during the height of the Savings and Loan crisis in the late 1980's and 1990's, there were over 1,000 agents investigating fraud related to this crisis. Director, does the FBI need to step aside and focus more on terrorism and violent crime because these numbers are indicative of that?

Response:

In the referenced testimony, Deputy Director Pistole was referring to the number of agents working on mortgage fraud investigations, not on white collar crime matters as a whole. Although the number of agents assigned to white collar crime matters has decreased by 354 agents since 2001, there were approximately 1,869 agents working on these matters as of April 2009. Because public corruption is the FBI's top criminal priority, approximately 694 of these agents were investigating public corruption cases, including government fraud, while 1,175 agents were working on other white collar crime matters.

Although 143 positions (including 50 agents) and $25.5 million in additional resources are included in the President's FY 2010 budget request to Congress for mortgage fraud-related investigations, as it currently stands the number of agents assigned to criminal cases has decreased by approximately 1,347 since the attacks of 9/11/01. To address this decrease, the FBI has made difficult choices in determining how to most effectively use the available agents. In 2002, the FBI established as its criminal program priorities: public corruption, civil rights, transnational and national criminal enterprises, other white collar crimes (which include financial institution fraud, corporate fraud and health care fraud), and violent crimes. Despite the reduction in agent positions, though, protecting the nation from traditional criminal offenses has always been, and remains, a core function of the FBI, and over half of all FBI agents remain assigned to these criminal matters.

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32. Recently, the National Academy of Sciences issued a report to Congress on the current needs of the Forensic Science community. The report was hypercritical of the present conditions of the forensic science community, state & local crime labs and even took issue with FBI expert testimony. Two weeks ago this committee heard testimony from Judge Harry Edwards, the Co-Chair of the committee that authored this report. During that hearing there were discussions about the validity of fingerprint evidence. Some of my colleagues are questioning the veracity of fingerprints. They went so far as to quote the report: "with the exception of nuclear DNA analysis, however, no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty demonstrate a connection between evidence and a specific individual or source."

a. The FBI maintains the Automated Fingerprint Identification System, referred to as AFIS. Every felon arrested in the country is fingerprinted and given an FBI number and an NCIC fingerprint classification and entered into AFIS. As you know this important law enforcement tool is used to compare unknown prints to the database of known inked prints of arrested subjects. This database uses complex mathematical algorithms to complete this analysis. I am well aware that the FBI has been the keeper of fingerprint cards from persons arrested in this country since the 1920's. In your time at the Department of Justice, both as a U.S. Attorney and FBI Director, are you aware of any incidence of two separate individuals ever having the same fingerprint?

Response:

No. In more than one hundred years of scientific research and practical application throughout the world, the FBI is aware of no instance in which two separate individuals had the same fingerprints. This is true even though millions of fingerprint searches and comparisons have been conducted using various fingerprint classification systems and relying on hard copy fingerprint files, the FBI's Integrated Automated Fingerprint Identification System (IAFIS), and other automated systems.

b. Can you provide what quality assurance measures are in place to ensure the reliability of fingerprint identifications made by FBI technicians?

Response:

The FBI analyzes fingerprints in two very different contexts. The FBI's Latent Print Operations Unit compares friction ridge impressions in the context of both crime scene examinations and efforts to identify victims of mass fatalities. There are multiple quality assurance measures in place to ensure the reliability of these latent print identifications, starting with the extensive training received by

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fingerprint examiners. This training begins with a vigorous 18-month training process that establishes and tests their competence, and is followed by annual proficiency (competency) testing. A rigorous "case acceptance" standard is in place, requiring that evidence meet an established quality level before any examinations are conducted. Examiners follow a validated and approved standard methodology for analyzing latent prints to determine their suitability for identification before any comparisons are conducted. All information used in the analysis and any subsequent comparisons is documented in the examiner's case notes. If an identification is made, additional quality-assurance measures are applied, including independent examination by a different examiner. If only a single latent print is examined and is excluded or inconclusively compared to an individual, a blind, independent examination is conducted by another examiner. The documentation from these examinations is then technically reviewed by yet another examiner to ensure that the required quality assurance standards were met. This methodology was reviewed during the most recent accreditation assessment and found to comply with international accrediting standards.

The FBI's Biometric Services Section (BSS) uses IAFIS to process both electronic and paper ten-print fingerprint identification submissions. The BSS has several quality assurance measures in place to ensure the reliability of their fingerprint identifications. Using IAFIS as a tool, the ten-print fingerprint examiners also practice blind verification, as described above, and approximately ten percent of all IAFIS transactions are randomly reviewed for quality. Quality assurance measures also detect conflicting fingerprint comparison decisions made by separate fingerprint examiners and, if discrepancies are detected, processing ceases and the transaction is forwarded to quality assurance personnel for additional review.

33. The backlog of DNA cases in this country is shameful. One excellent database that retains DNA information from offenders is the FBI's Combined DNA Index System, referred to as CODIS. In my opinion this is another great resource for law enforcement. The Department of Justice – Office of Inspector General submitted its semi-annual review of DOJ agencies to Congress. One area the OIG noted was the lack of compliance by state crime labs with the FBI quality assurance standards regarding submitted DNA profiles. The OIG also noted the submission of incomplete profiles. What quality assurance inspections does the FBI conduct of state labs?

Response:

All forensic law enforcement laboratories that participate in the National DNA Index System (NDIS) using Combined DNA Index System (CODIS) software are required by the Justice For All Act of 2004 to undergo external audits based upon

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the FBI's quality assurance standards at a minimum of every other year. An NDIS-participating laboratory must submit the audit results and any corrective actions to the FBI's Laboratory for review and approval to ensure compliance with the quality assurance standards. In 2008, the FBI implemented NDIS Participation Assessments, pursuant to which the FBI audits NDIS-participating laboratories to ensure that their operation of CODIS complies with established NDIS Operational Procedures, Federal law, and state law.

34. The Obama administration has made its mind up to close the Guantanamo Bay Detention facility in approximately 10 months. As you are aware, more than 500 detainees have been released since 2002. When detainees are transferred, some countries initially incarcerate these detainees and then unexpectedly release these men. It has been long documented that at least 60 former detainees have returned to carrying out terrorist activities against U.S. interests. For example, the #2 in charge of al Qaeda in Yemen is believed to be a planner of the U.S. Embassy attack in Yemen in 2007. I am sure this was a case of interest to the FBI considering an American citizen was killed in the attack. The administration recently issued a statement that only those detainees who provided substantial support to al Qaeda or the Taliban will be detained. This whittles the number of detainees down from 240 to around 100. These 100 are considered to be the most dangerous group out of all the detainees. Director, you have pointed out that there are 61 Legal Attaché Offices worldwide. What steps if any can the FBI take to ensure that any detainees remanded to the custody of other nations remain incarcerated?

Response:

The FBI's Legal Attachés (Legats) are the FBI Director's representatives in the countries they cover, operating in those countries within the constraints of the host countries' laws. Consequently, Legat personnel further the FBI's international mission principally through information sharing and the coordination of investigative interests between the Legats and their foreign law enforcement and intelligence service counterparts. This information sharing includes, where appropriate, information regarding terrorists and detainees remanded to the custody of the host country. When the United States Government is in a position to provide adequate unclassified evidence to support a host country's prosecution and it is appropriate to do so, Legats actively support the host country's prosecution efforts and can often assist in investigations leading to host country prosecution. The role of Legat personnel is not, though, to ensure that the detainees released to other countries are further investigated or incarcerated, as such matters are within the discretion and authority of these host countries.

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35. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by suspects. Director, how important are these tools in furthering the FBI's mission in investigating terrorism activity here in the United States?

Response:

These tools are extremely important in the FBI's investigative work and we have a solid track record of using both of them. The FBI began using the business records authority in 2004, obtaining approximately 236 orders from the FISA Court to produce business records from that time through Calendar Year (CY) 2008. The business records authority has been exceptionally useful in our national security investigations; some of these orders have been used to support important collection operations, of which Intelligence Committee Members and their staffs are aware. Roving wiretap authority has similarly increased the FBI's efficiency in critical investigations. The FBI has obtained roving wiretap authority an average of approximately 22 times per year from 2004 through CY 2008. It is the FBI's hope that both tools will be extended.

36. Congress granted the FBI the authority to use National Security Letters (NSL) in counterterrorism and counterintelligence investigations. The use of NSLs are invaluable in these investigations. Their use also pre-dates the attacks of 9/11/01. Periodic reviews by the Department of Justice – Office of the Inspector General indicate that the FBI is taking great steps to prevent the unauthorized use of an NSL in investigations. This is largely in part to your commitment to ensure that this invaluable tool is not abused. Can you briefly give me an update on NSL usage since last year's OIG report?

Response:

As the inquiry recognizes, the FBI has taken significant steps to improve compliance with regard to NSL usage, revising policy to address concerns raised by DOJ's OIG, increasing training on the proper issuance and handling of NSLs, and creating an Office of Integrity and Compliance to insure that the FBI will continually improve compliance with statutes, guidelines, and policy governing the use of NSLs and other investigative tools. Perhaps most significantly, on 1/1/08 the FBI mandated the use of a web-based, automated NSL creation system that prompts the drafter to enter all information necessary to create an NSL. This system supplies the appropriate statutory language and ensures that the NSL and the supporting memorandum are internally consistent. An NSL can be issued from this system only after all the required officials have approved it within the system.

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This system has increased the accuracy of NSL reporting and has reduced typographical and other non-substantive errors. The FBI continues to look for ways to ensure that the few NSLs prepared outside the system (generally due to the classification level of the underlying facts) are similarly well controlled.

In its March 2008 review of the FBI's use of NSLs, which assessed these corrective actions, the OIG found that the FBI and DOJ had made significant progress in implementing its recommendations and in adopting other corrective actions to address problems in the use of NSLs. Since that OIG report, for the year ending on 3/15/09, the FBI issued more than 14,000 NSLs.

37. It is my understanding that the FBI investigates crimes against children through two major investigative units: the Innocent Images National Initiative Unit and the Crimes Against Children Unit. The Innocent Images Unit is a component of the cyber crime section. I was curious as why this important unit was not mentioned or recognized in your remarks regarding cyber crime and the global reach of the FBI. I am sure this was not an intentional oversight given all the important work the FBI does in this investigative area. The pervasiveness of the internet has resulted in the dramatic growth of online sexual exploitation of children. I am aware that the FBI has experienced problems in staying ahead of the backlogged evidence requiring forensic computer analysis.

In February of 2008, the Deputy Attorney General issued a memorandum to different entities within DOJ. This memorandum outlined short and long term strategies for handling the increasing volume of these investigations. One of the short term strategies endorsed an FBI plan to hire additional forensic computer examiners and establish new forensic laboratories dedicated to conduct analysis of seized computers from significant child exploitation cases. Director, how is the FBI doing at achieving this goal? How many agents are assigned to investigate these violations?

Response:

The FBI's Innocent Images National Initiative (IINI) includes the assignment of 294 agents in the field to address child sexual exploitation. In addition, the IINI has established a forensic computer laboratory, the Innocent Images Forensic Laboratory (IIFL), that is dedicated to analyzing seized data from high-priority, complex child exploitation cases. Currently, the IIFL is staffed with seven forensic examiners, with three additional examiners currently in the hiring process. The IINIU has been funded to expand the existing laboratory and to hire seven additional examiners.

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The law enforcement community continually faces new challenges in investigating child exploitation cases. Emerging communication and computer technologies constantly challenge the abilities of investigators and forensic examiners to remain ahead of these technologies. Computer storage media have continued to grow in storage volume and to decrease in price, and wireless networks and other devices have become increasingly capable, allowing users to be constantly online and connected to the Internet and to other users.

38. I am a strong supporter of the Adam Walsh Act. This July, states will be required to enact provisions of the Adam Walsh Act establishing a Sex Offender Registration and Notification Act (SORNA). States are indicating that given the economy and budget cuts, implementing this database is not feasible at this time. Under SORNA, the FBI is responsible for maintaining the National Sex Offender Registry and can provide technical assistance to states for implementing their own registry. DOJ has grant incentives in place to entice states to set up this database and help defray costs. In my opinion, this database is an excellent tool. It contains information on sex offenders from federal cases as well as information submitted by states. Unfortunately, as I stated, not all states are uploading information to this database due a wide array of reasons. Director, what steps is the FBI taking to encourage states to submit accurate and timely information?

Response:

All 50 states, the District of Columbia, and 3 U.S. territories currently participate in the National Sex Offender Registry (NSOR), which contains over 572,000 records. According to figures provided by the National Center for Missing and Exploited Children, the NSOR includes over 85 percent of the registered sex offenders in the United States. States responding to past FBI canvasses have cited a lack of resources as the reason for their limited participation in the NSOR.

To encourage states to submit accurate and timely information to NSOR, the FBI has made several changes, including making certain fields voluntary. NSOR is also being enhanced in several respects, including changes to capture new data elements defined in the Adam Walsh Act. In addition, DOJ's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking is providing the states with technical assistance to aid them in implementing their registries as outlined in Section 123 of that Act.

39. The southwest border with Mexico has been the scene of unprecedented violence. Homicides have been attributed to confederates of the Mexican Cartel in Texas. In Arizona, 200 Kidnappings have been linked to the Mexican Cartels. This tells me that the tentacles of the 5 Major Mexican Cartels extends deep into our country and beyond the southwest

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region. Last week we heard testimony from the other DOJ agencies (ATF & DEA) and their response plan for dealing with the cartel situation. In your statement you mentioned the Bilateral Kidnapping Task Force. Can you give us some more details on the FBI's involvement in this task force and your assessment of the Mexican government's overall cooperation in addressing cartel violence?

Response:

The Bilateral Kidnapping Task Force (BKTF), which was in place from 2006 to mid-2008, involved the FBI's San Antonio Division, the Legat for Mexico, FBI agents assigned to Resolution 6, and Mexico's Secretaria de Seguridad Publica (SSP), which is Mexico's federal investigative agency. The BKTF provided actionable information on kidnapping cases to the SSP for follow-up investigation in Mexico. Although the BKTF is no longer operational, the FBI continues to work successfully with law enforcement officials at Mexico's state level on kidnapping investigations and we are currently exploring the possibility of identifying two or three members of the Mexican Anti-Kidnapping Unit who can be successfully vetted, provided with additional training, and brought into a more formalized cooperative investigative arrangement with the FBI. The FBI is also training up to 20 Mexican law enforcement officials on Project Pin Point, which uses mapping software to analyze the interrelationships of crime-related data to identify possible subjects, witnesses, and other relevant information. This information is then used in conjunction with FBI and local-source information to develop intelligence on FBI and joint cases.

40. Your prepared statement mentions the great strides the FBI has made in reducing the backlog of name check requests for immigration applications and petitions. In October 2008, the Department of Justice – Office of the Inspector General, submitted its semi-annual review of DOJ agencies to Congress. One area the OIG noted was the use of inefficient and outdated technology used in the National Name Check Program. The OIG stated that this lack of technology contributed to the backlog and delay in completing these checks. In your statement you note that the FBI is currently operating at an efficiency rate of 98%. Can you explain what measures the FBI took to improve its performance?

Response:

At the beginning of FY 2008, there were over 544,000 pending name checks waiting to be processed. To a large degree, this situation reflected the significant workload created by the United States Citizenship and Immigration Services (USCIS) FY 2003 resubmission of 2.7 million name checks to obtain more

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extensive information, as well as by a lack of adequate staff to process normal incoming name checks on a timely basis.

Increased user fees and Congressional appropriations provided to the FBI through the USCIS enabled the FBI to hire additional staff to process name checks. The FBI's National Name Check Program (NNCP) also took a number of other steps to reduce the number of pending name checks. Business plans were established with USCIS and OPM, which are the NNCP's two largest customers, representing approximately 81 percent of the annual name check volume. These business plans contained milestones to gauge progress toward the goal of eliminating name check backlogs. When that goal is reached, the ongoing effort will be to maintain a steady state of name check processing where, for example, by the end of June 2009, 98 percent of the name check requests submitted by USCIS are completed within 30 days of submission, and 100 percent of the name check requests are processed within 90 days. In addition to the business plans, the NNCP has instituted a number of management and process improvements.

Improved Business Planning

- **Business Partnerships** – As previously discussed, the NNCP partnered with the USCIS and OPM to develop business plans to address pending name check requests from these customers. The FBI has also worked in partnership with other government agencies to streamline the name check process and to meet mandated performance standards, such as those in the Intelligence Reform and Terrorism Prevention Act of 2004, which requires that 90 percent of all security clearance related name checks be completed in 30 days or less.

- **Business Modeling Tools** – The FBI funded the development of a business forecasting model to more accurately anticipate name check production levels, as well as to better predict the resources that will be needed to meet future performance benchmarks. The model allows the FBI to set target time lines for each customer's business plan based on the number of incoming name checks and predicted production rates.

- **Specialized Skill Sets** – The FBI procured additional contract expertise in the areas of Business Statistics/Risk Analysis, Financial Management, Information Technology, and Production/Throughput. The addition of these skill sets has improved the FBI's ability to analyze data and prepare reports, allowing us to quickly develop and update business forecast models. Our enhanced ability to plan and develop the financial aspect of the NNCP

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allows us to focus on business automation, the implementation of new information technology systems, and the evaluation and implementation of additional ways to increase throughput.

Process Improvements

- **Workflow Improvements** – During FY 2008, portions of the name check process were re-engineered to improve efficiency and effectiveness. One major improvement was the restructuring of the name check process based on data showing that portions of the File Review phase of the name check process added little value; this entire step has been discontinued except on an as-needed basis. This modification has reduced queue times and contributed to an increase in productivity. In addition, "Tiger Teams" have been established to focus on the more complex name checks, allowing other analysts to concentrate on name checks that can be processed quickly and preventing the accumulation of new uncompleted cases.

- **Improved Information Technology** – A new computer system is currently under development to consolidate the functions of the NNCP and the Name Check Dissemination Database systems. The new system, called Name Check Analysis and Dissemination System, will offer a best-in-industry technology that includes a single platform for the name check process. This system will fully automate the submission of requests to the NNCP, the processing of these requests by NNCP staff, and the return of the results to our customers.

More Efficient Use of Human Resources

- **Performance Standards** – In order to maintain expected productivity and to reach established benchmarks, performance-based metrics were developed for new employees, including both FBI staff and contractors. The metrics are designed to be achievable, while providing incentives to encourage higher levels of employee performance.

- **Priority Workflow Management** – The FBI has implemented a workload management plan that manages work allocation relative to resources. This plan allows for the prioritization of selected target areas (such as the oldest cases, cases with just one associated file, etc.).

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- **Training of NNCP Personnel** – The NNCP has developed training materials for both new employees and current employees undergoing refresher training.

File Automation

Conversion of the FBI's paper files into an electronic format is one of the most critical aspects of the NNCP's process improvements. While most name checks can be resolved through an electronic verification that an individual's name is not contained in the FBI's investigative files, checks producing matches (or "hits") usually require labor-intensive efforts to locate, retrieve, and review paper files. There are 265 FBI locations that house information that may be pertinent to a name check request, and the number of files to be retrieved (and the number of locations affected) depends on the number of hits returned during the electronic match. In contrast, once files are electronically available, an NNCP analyst will have immediate electronic access to this information and will be able to more expeditiously complete the necessary review.

The FBI is currently scanning paper files and, since 2003, has digitized nearly 72 million images from FBI files and other investigative documents - 26 million images were scanned in FY 2008 alone. The conversion of paper files to electronic form will be greatly enhanced by the construction of the CRC, which will be the central storage facility for all FBI closed files and FBIHQ files. The availability of a central repository will expedite access to records that are currently scattered around the world. Any records that are requested for name check or other purposes will be scanned and will then be available in electronic format if they are needed again in the future.

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Questions Posed by Senator Grassley

Status of Previous Inquiries

41. For each Senate Judiciary Committee hearing on FBI oversight in the last 5 years, please provide:

a. The date on which the FBI submitted answers to questions for the record to the Department of Justice for review and approval.

b. The date on which the Department of Justice provided those answers to OMB for approval.

c. The date on which the answers were provided to the Committee.

Response to subparts a through c:

The requested information follows.

Hearing Date	# of QFRs	Date to DOJ	Date to OMB	Date to SJC
05/20/04	273	10/29/04	Unknown	04/01/05
04/05/05	65	04/29/05	6/14/05	07/01/05
07/27/05	94	09/23/05	Unknown	01/03/06
05/02/06	230	07/10/06	Unknown	11/30/06
12/06/06	341	02/08/07	April 2007	06/14/07
03/27/07	186	07/31/07	Unknown	01/25/08
03/05/08	230	06/27/08	08/21/08	Partial Submission 9/16/08
09/17/08	82	12/15/08	03/23/09	04/27/09

42. Why were answers to some questions for the record from the March 2008 Committee hearing provided prior to the March 2009 hearing, while others were delayed and have still not been answered? By what criteria were some questions chosen to be answered and others were not?

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Response:

The Department provided a partial response to the referenced questions in September 2008, before the Director's 9/17/08 testimony before the Committee. It is the FBI's understanding that DOJ's Office of Legislative Affairs has been working with your staff to identify with precision any current requests for which answers have not yet been provided and has provided to your staff an annotated notebook containing replies to a number of your earlier requests. We will continue to work with you and your staff to respond as fully as possible to all current requests.

43. You indicated at the hearing that you would look into why the Government Accountability Office specifically mentioned problems with obtaining information from the Justice Department. What did you find and what would you recommend be done to improve the Justice Department's level of cooperation with GAO?

Response:

We have reviewed the Government Accountability Office (GAO) report involved (GAO Report GAO-09-2SP, dated 1/15/09), and its specific reference to agencies that have made GAO's attempt to obtain information "challenging." That reference identifies three agencies, including DOJ, but only provides details as to the challenges posed by one of the other identified agencies. The report does not specify any particular DOJ component, and we believe the FBI and GAO have worked well together on these and other matters. The FBI endeavors to cooperate fully with GAO requests by providing any information that can be released, and we will continue to do so.

"Friends of Angelo" / Countrywide-BoA Cooperation

44. You indicated at the hearing that you would look into the level of progress in obtaining loan documents related to public figures from Bank of America in the investigations of the Countrywide VIP loan program. Having done that, what did you find?

a. Has the FBI obtained all the relevant loan documents from Bank of America for the approximately 30 or so public figures reported to have received VIP loans?

b. On what date were all the relevant loan documents first requested by investigators?

c. On what date did Bank of America provide all of the documents?

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d. Are there any remaining documents requested that have not yet been provided? If not, please explain why not and when Bank of America is expected to comply.

e. Has the FBI shared the loan documents with all other federal law enforcement entities who have requested access to them? If not, please explain why not and indicate when those documents will be shared.

Response to subparts a through e:

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

Anthrax Investigation

45. I recently received a reply from the Justice Department to a letter I wrote last year asking about the Anthrax investigation. In its reply, the Justice Department said that Dr. Stephen Hatfill was conclusively eliminated as a potential suspect in the Spring of 2006. That's four years after the government publicly branded him a "person of interest" and instructed his federally funded employer to fire him in 2002. Yet, *two more years* passed after the FBI knew he was innocent before anyone bothered to inform Dr. Hatfill in 2008 that he had been cleared.

a. When did you personally know that he had been eliminated as a suspect? Did you know in Spring 2006?

b. Why did it take two years to tell him he had been eliminated as a suspect?

Response to subparts a and b:

By early 2005, there were strong indications from the ongoing genetic analysis of the mailed spores that the parent material (RMR-1029) for the spores came from the United States Army Medical Research Institute of Infectious Diseases. However, the genetic testing continued for two more years by scientists both within the FBI and in outside organizations in an effort to confirm these earlier indications. Ultimately, by the fall of 2007, the FBI was able to conclude to a reasonable degree of scientific certainty that RMR-1029 was the parent material of the mailed spores.

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RMR-1029 was created in 1997 by Dr. Bruce Ivins, who was its sole creator and custodian.

c. Was his lawsuit against the government a factor in that two-year delay?

d. Is it a coincidence that Dr. Hatfill's lawyer was informed of the FBI's findings only after he had settled the case against the government for nearly $6 million?

Response to subparts c and d:

The settlement of *Hatfill v. Mukasey, et al.* (D.D.C.), resolved complex litigation that had been pending since 2003. The lawsuit included constitutional tort claims against Federal officials in their personal capacity and Privacy Act claims against DOJ and the FBI. The constitutional tort claims were dismissed in 2005 (including the claim against former AG Ashcroft based on his having publicly referred to Dr. Hatfill as a "person of interest"). The Privacy Act claims (which alleged improper leaks, among other things) remained pending at the time of the settlement.

46. You have indicated that the FBI will cooperate with an independent review of the scientific evidence developed in the case.

a. What is the status of the independent review by the National Academy of Sciences?

Response:

The contract for the National Academy of Sciences (NAS) study of the science used in the Amerithrax case has been awarded and, in preparation for the initiation of the NAS study, the FBI has briefed the NAS Committee on Science, Technology, and Law. This NAS study is one part of a multi-phase external review and validation effort that includes the presentation of the science involved in this case to multiple professional societies (*e.g.*, the American Society for Microbiology) and government science organizations (*e.g.*, the Executive Branch Office of Science and Technology Policy (OSTP)), as well as the publication in major peer-reviewed technical journals of several papers regarding both the research and the scientific approach used in the case.

b. Are you opposed to an independent review of the FBI's detective work, in addition to a review of the scientific evidence?

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Response:

Because of the importance of science to this particular case, investigative steps were often taken to address leads developed by newly evolved science. In addition, the significance of information or evidence we acquired often took on new or enhanced meaning as scientific advances were made. Consequently, a review of the scientific aspect of this case would be the logical first step. There is also ongoing criminal and civil litigation concerning the Amerithrax investigation and information derived therefrom, and an independent review of the FBI's "detective work" at this time could adversely affect those proceedings.

OPR Reforms

47. In 2004, the Bell-Colwell Commission thoroughly examined inconsistencies in the FBI's internal process for employee discipline and proposed significant changes. Consistency is the key to ensuring that the system is fair. However, despite the FBI's reforms, my office continues to receive complaints from sources who wish to remain anonymous for fear of retaliation. They allege that internal disciplinary matters continue to be unfair and inconsistent. Unfortunately, every time I try to find out whether the claims in any particular case have any merit, the FBI refuses to answer any questions about it. Among the more recent allegations is the claim that a large percentage of decisions by the Office of Professional Responsibility are overturned on appeal. This benefits the few agents with the ability and resources to pursue an appeal.

a. Will you provide the Committee with statistics on how many OPR decisions are made each year, how many are appealed, and how many of the appeals result in a reduction in the discipline imposed?

Response:

FY 2005. In FY 2005, the FBI's Office of Professional Responsibility (OPR) adjudicated 143 cases that could be appealed (*i.e.*, the sanction imposed was suspension, demotion, or dismissal, rather than a lesser sanction, such as a letter of censure, which cannot be appealed). In FY 2005, the FBI's appellate authorities received 28 appeals and processed 31 appeals (including appeals from prior FYs), resulting in 7 modifications or reversals.

FY 2006. In FY 2006, OPR adjudicated 215 cases that could be appealed. The FBI's appellate authorities received 78 appeals and processed 47 appeals (including appeals from prior FYs), resulting in 8 modifications or reversals.

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FY 2007. In FY 2007, OPR adjudicated 185 cases that could be appealed. The FBI's appellate authorities received 68 appeals and processed 104 appeals (including appeals from prior FYs), resulting in 18 modifications or reversals.

FY 2008. In FY 2008, OPR adjudicated 219 cases that could be appealed. The FBI's appellate authorities received 101 appeals and processed 90 appeals (including appeals from prior FYs), resulting in 18 modifications or reversals.

b. Would you be willing to cooperate with an independent review of particular agent discipline cases to verify whether similar cases result in similar outcomes?

Response:

The FBI is currently cooperating with two separate independent reviews of its disciplinary system and disciplinary decision-making. DOJ's OIG is currently reviewing the FBI's disciplinary system as part of its regular audit of DOJ disciplinary systems and OPM is conducting a Human Resource Accountability Audit of DOJ that includes the FBI's handling of employee misconduct cases.

Elizabeth Morris Firing

48. One specific example of alleged retaliation and unfair FBI discipline involves former Special Agent Elizabeth Morris. She was fired in March 2007 after she lodged a complaint with a supervisor against another agent regarding the inappropriate use of subpoenas. Two local prosecutors in New York with personal knowledge of the facts were so disturbed by the FBI's shoddy internal investigation that they took the unusual step of writing to the FBI to correct the record and defend Agent Morris. I submitted questions for the record on the Morris case last September and again wrote to the FBI in October. I finally received a reply just last week. However, the reply failed to answer a single one of my questions, citing "privacy interest and long standing department policy of not disclosing non-public information from OPR investigation." From the other information my staff gathered, it appears that rather than investigating Morris's allegations, the FBI targeted her instead. However, I've only heard one side of the story because the FBI won't answer my questions.

a. How can Congress test whether the allegations we receive have any merit if the FBI won't cooperate?

Response:

By letter to Special Agent Morris dated 3/27/07, the FBI's OPR explained that, consistent with internal FBI procedures, Morris had availed herself of multiple

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appellate opportunities, including an oral presentation to the Assistant Director of the FBI's OPR and a written appeal to the FBI Human Resources Division's Disciplinary Review Board, both with the assistance of her attorney. The FBI has developed a process that permits multi-level appellate review in order to ensure that each such personnel action allows the employee involved a full opportunity to obtain extensive and thorough review of the matter.

b. When will you provide answers to the questions for the record posed in September 2008?

Response:

DOJ responded to these questions on 4/27/09.

FBI Sentinel Timeline

49. The DOJ OIG released an audit report in December 2008 on the ongoing implementation of the Sentinel Case Management Computer system. In that report, the OIG noted that since the initial contract the target completion date for the system has extended from December 2009 to June 2010, with a $26 million increase in the total cost. Given the problems that occurred with the failed Virtual Case File procurement that resulted in taxpayers paying $170 million and getting nothing in return, I remain concerned about the implementation of Sentinel. On September 17, 2008, your written testimony to this Committee stated that Phase II of Sentinel started in April 2008 and would "continue through Summer 2009". Your written testimony indicates the Phase II roll out has been updated to reflect a target completion date of "Fall 2009". While these statements are only slightly different, I'd like to know whether this difference indicates a slip in the implementation schedule.

a. The newest estimates for the Sentinel system are a cost of $451 million and a completion date of December 2010. Can you explain the differences between your September testimony and today's testimony?

Response:

As provided in previous written statements, the anticipated completion of the Sentinel program remains the Summer of 2010. The estimated total cost of Sentinel, including program management, systems development, and operations and maintenance, remains $451 million over six years.

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b. Have you been warned of any potential problems with the roll out of Phase II of Sentinel?

Response:

The FBI anticipates the roll out of Phase 2 will be accomplished on schedule.

c. Does the FBI believe there will be any additional delays and cost overruns on Sentinel?

Response:

The FBI believes the program will be completed on time and within budget.

Mortgage Fraud Cooperation

50. In February, Deputy Director Pistole testified about the FBI's efforts to stamp out fraud in the mortgage industry. He discussed the FBI's current efforts compared with efforts undertaken as part of the savings and loan crisis in the late 1980's and early 1990's. Mr. Pistole discussed how the current financial crisis dwarfs that of the Savings and Loan crisis. I was interested in his testimony about the partnerships that the FBI has to combat mortgage fraud. Specifically, that there are currently 16 mortgage fraud task forces and 39 mortgage fraud working groups. While I appreciate the efforts to coordinate law enforcement efforts with the task forces and working groups, I'm always concerned with any federal investigations that have overlapping jurisdiction. In my time I've seen a number of turf battles erupt between agencies, and the FBI is no stranger to them.

a. What protections and safeguards are in place to ensure that mortgage fraud investigations are not caught up in unnecessary bureaucratic squabbles between federal law enforcement agencies?

Response:

The various mortgage fraud task forces, working groups, and well-established liaison relationships constitute the protections and safeguards that are in place to ensure mortgage fraud investigations are managed efficiently by the relevant Federal law enforcement agencies. In this task force environment, the FBI and other participating Federal agencies share intelligence and investigative information, coordinate investigative initiatives and strategies, and work together closely to reach a common goal. The FBI's field offices currently host or participate in approximately 18 mortgage fraud task forces and 49 working groups;

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these numbers have increased in the short time since Deputy Director Pistole's 2/11/09 testimony before this Committee because the FBI is aggressively forging new task forces and working groups around the country. With representation from Federal, state, and local law enforcement organizations, these task forces are strategically placed in areas identified as high-threat areas for mortgage fraud. The compositions of these task forces and working groups vary by location but, as discussed in response to Question 21c, above, typically include representatives of HUD, the U.S. Postal Inspection Service, the U.S. Secret Service, the IRS, FinCEN, and the FDIC, as well as numerous state and local law enforcement agencies. The task forces and working groups act as force multipliers focused on the most serious mortgage fraud problems in each region, including foreclosure rescue scams.

Also as discussed in response to Question 21c, above, the FBI additionally coordinates its efforts with other Federal, state, and local agencies through its participation in the National Mortgage Fraud Team (NMFT), which was established at FBIHQ in December 2008 and is responsible for the management of the FBI's mortgage fraud program. FBI representatives to the NMFT also participate in the Washington D.C.-based National Mortgage Fraud Working Group (NMFWG), which is chaired by DOJ and represents the collaborative effort of numerous Federal agencies. The NMFWG serves as the hub of the U.S. Government's criminal, civil, and regulatory fight against mortgage fraud.

b. Do you believe that all the increased attention to mortgage fraud and complex financial crimes will require a formal agreement or memorandum of understanding between agencies with overlapping jurisdictions? Why or why not?

Response:

Many of the task forces discussed above already operate under an official Memorandum of Understanding (MOU). If any of our partner agencies believe additional formal agreements, or MOUs, would be beneficial in this context, the FBI would gladly participate in formalizing these relationships. However, as indicated above, the FBI already works very closely with our partner agencies at the Federal, state, and local levels to successfully coordinate financial crime investigations. At this point, additional MOUs or formal agreements do not appear to be necessary.

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Money Laundering Investigations

51. Last week there was a Joint Judiciary Subcommittee hearing on the increasing threats along the Southwest Border. As the co-chairman of the Caucus on International Narcotics Control, I was interested to hear about the law enforcement responses from the DEA, ATF, and ICE. While the FBI was not present as a witness, I want to know what efforts the FBI is undertaking to help federal law enforcement stop the flow of illegal proceeds out of the country. Criminal Money Laundering is a major vulnerability that needs to be addressed. Criminals and terrorists will stop at nothing to fund their illegal activity, and we need a comprehensive effort to interdict these laundered proceeds. I believe cracking down on money laundering will help to cut off the illicit funds that are fueling the current wave of violence along the Southwest Border. I'm increasingly concerned that as we begin to unravel many complex financial crimes related to the current spike in cases, we may uncover more and more criminal money laundering. For example, media reports that the ongoing investigation into Stanford financial may have a criminal money laundering component. Further, I'm concerned after last week's joint hearing that there may be problems in coordinating money laundering investigations given overlapping jurisdictions. I've asked Attorney General Holder and DHS Secretary Napolitano to update the 1990 MOU regarding Money Laundering investigations.

a. Director Mueller, would you support efforts to update the 1990 Money Laundering MOU? Why or why not?

Response:

The 1990 MOU clearly delineates the roles and responsibilities of the entities that were addressing money laundering issues facing the United States at that time. These roles and responsibilities continue in large part today, though many organizational names and affiliations have changed with the creation of the Department of Homeland Security (DHS) and with realignments in DOJ and elsewhere. In order to make the lines of responsibility clear in the face of these many changes, the FBI supports updating the MOU to address these organizational changes and to update statutory references to address the interim passage of relevant statutes, including the USA PATRIOT Act and changes to statutorily recognized "specified unlawful activities." We also recommend the inclusion of a section addressing information sharing between the parties to the MOU to ensure there are no impediments to the sharing of information between intelligence and investigative entities.

b. A second MOU between DOJ and DHS exists regarding Terrorist Financing Investigations. Given the significant overlap between criminal money laundering

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and terrorist financing, wouldn't it make sense to solidify both MOUs into one up to date document? Why or why not?

Response:

The FBI believes it would be helpful to include the issues currently addressed in both the money laundering MOU and the terrorism financing MOU in a single MOU that covers both areas to ensure that there are no intelligence gaps in the management of these two programs. For example, because the lines between the terrorism aspects and the non-terrorism aspects of money laundering crimes can be blurred, and because the underlying "specified unlawful activity" regarding money laundering techniques can be irrelevant to the scheme itself, addressing both areas in one MOU would help to ensure that these blurred lines do not result in intelligence gaps.

High Vacancy Rates in Counterterrorism Units

52. Last year, we learned that certain key counterterrorism units had unusually high vacancy rates. The FBI was reportedly having trouble attracting enough qualified people to those critical operational units at the core of its number one priority.

a. Have you determined why those vacancy rates were so high and so many critical positions went unfilled?

Response:

A review of demographic information pertaining to the FBI's agent workforce indicates that the FBI's staffing challenges are exacerbated by pre-9/11 hiring freezes, which have resulted in a current shortage of agents with 8 to 13 years of experience. Historically, this group has provided the FBI with a large percentage of the Supervisory Special Agent candidates who fill the positions in operational units at FBIHQ.

b. What have you done to address the problem and how effective have you been in reducing the vacancy rates?

Response:

Over the last year, the FBI has made great strides in improving the agent staffing levels in national security programs at FBIHQ. Key factors in that success have included the Headquarters Staffing Initiative (HSI) and the Special Agents Headquarters Assignment program, along with aggressive recruiting by component

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divisions. To date, approximately 840 FBIHQ positions have been filled through the HSI, which is used to staff critical FBIHQ positions with experienced agents while providing other positive alternatives for those who are eager to continue their career development but do not believe these FBIHQ positions are a good fit. Although the HSI permits candidates for supervisory FBIHQ positions to choose between permanent transfers and temporary assignments, approximately two-thirds of them have immediately selected permanent, rather than temporary, assignments, and a growing number of agents who initially selected temporary assignments are also converting to permanent assignments.

The FBI continually reevaluates its staffing goals and the assumptions that frame them. One such assumption, recently challenged, is that all functions that have historically been performed by Supervisory Special Agents must continue at the supervisor level. The FBI is undertaking a thorough re-evaluation to determine which FBIHQ agent positions must be filled by supervisory personnel and which might be filled by nonsupervisory agents. Our ability to fill certain positions with nonsupervisory agents in the applicable career path will enable us to resolve or reduce some of our most critical staffing shortages. Pursuant to this re-evaluation, over 40 agents have volunteered and have been selected for nonsupervisory positions in the Counterintelligence Division, Counterterrorism Division, and Directorate of Intelligence since June 2008. The ability to fill previous supervisory positions with nonsupervisory agents will offer several benefits: it will provide a significant career development opportunity for nonsupervisory agents, reduce FBIHQ supervisory staffing needs to attainable and sustainable levels, and nearly eliminate short-term temporary duty for this purpose, which is a less effective means of staffing FBIHQ and can be disruptive to field operations.

c. Last year one key unit was reported to be working at only 62% of full staffing levels. What is the number in that unit today?

Response:

Over 90 percent of the Funded Staffing Level for International Terrorism Operations Section I is currently staffed, a significant increase from the 62 percent level of last year.

d. Are there any FBI units operating at 75% capacity or less?

Response:

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

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Questions Posed by Senator Coburn

Child Exploitation

53. The Protect Our Children Act was signed into law last fall. The first section of that law requires a National Strategy for Child Exploitation and Interdiction to be established. Part of that strategy involves gathering information on the efforts of various agencies to prevent child exploitation, and how the agencies coordinate with one another.

a. Has the FBI begun participating in this strategy?

Response:

Yes. DOJ is undertaking a formal Threat Assessment as a basis for this strategy, and the FBI is participating in the development of this assessment.

The FBI's Innocent Images National Initiative (IINI) program manages 38 Innocent Images on-line undercover initiatives, which proactively target on-line child exploitation offenders both across the United States and internationally. The IINI provides training for those who work on these initiatives, as well as for other Federal, state, local, and international law enforcement agencies requesting this training. For example, the IINI is among the sponsors and partners in the largest conference on child exploitation matters, the Crimes Against Children conference in Dallas, at which the IINI presents numerous case studies and other training. In addition, frequent presentations regarding the prevalence on the Internet of child exploitation material, prevention tools, and general Internet safety are provided to citizens' groups, parent/teacher organizations, and others by the IINI, the FBI's Innocent Images Operations Unit, and others in the FBI.

b. What are the current methods the FBI uses to combat child exploitation - both on- and off-line - such as prevention and investigation techniques?

Response:

The FBI's initiatives to combat child exploitation include both the efforts of our Cyber Division to address Internet-related child exploitation and the efforts of our Criminal Investigative Division to address the exploitation that does not involve the Internet. These efforts are coordinated closely to ensure all aspects of child exploitation crimes are fully addressed. For example, the FBI's IINI and its Crimes Against Children Unit (CACU) both have agents and professional support personnel assigned to the National Center for Missing and Exploited Children

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(NCMEC) to assist in coordinating investigations of both online and off-line crimes against children If a case involves online child sexual victimization or an Internet nexus, the IINI will address the matter, and if the case involves a traditional child abduction or child prostitution ring, the CACU will investigate.

As discussed above, the FBI's efforts to address Internet-related child exploitation are numerous. The IINI program manages undercover online initiatives, proactively targeting on-line child predators using sophisticated investigative techniques. For example, the FBI has been working to develop software that can identify offenders in areas of the Internet where child sexual exploitation material is heavily distributed. The IINI program also conducts community awareness programs; these programs include the FBI's Safe Online Surfing outreach program, which teaches children safe Internet surfing through a sophisticated interactive on-line treasure hunt.

In addition to these Internet-related investigative efforts, the FBI is involved in numerous non-cyber related initiatives designed to combat and investigate child exploitation, including the following:

Child Abduction Rapid Deployment (CARD) Teams. To enhance the FBI's response to abductions and the other disappearances of children, the FBI has created regional CARD teams to enable us to deploy investigators with specific experience regarding crimes against children, particularly non-family child abductions. These CARD teams have rapid response capabilities and can provide investigative and technical assistance to FBI field divisions during the most critical hours following a child abduction. The nation-wide CARD team cadre consists of 60 field agents, with teams distributed throughout the five regions of the United States consistent with the FBI's "corporate management" structure. The Registered Sex Offender Locator Technology was developed and implemented to support the CARD teams and others investigating crimes against children by monitoring and cross-matching the states' sex offender registries with public and proprietary databases. With this technology, investigators are able to retrieve address histories and other background information and to identify parks, schools, and other establishments that may be relevant if a sex offender is involved in the child's disappearance. CARD team deployments are initiated when a child abduction or critically missing child case is reported to FBIHQ, an FBI field office, or the NCMEC. Upon deployment, CARD teams are placed under the supervision of the Special Agent in Charge of the division requesting assistance. CARD team resources have been deployed 39 times since March 2006, resulting in the safe recovery of 18 child victims.

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Innocence Lost National Initiative. In June 2003, the FBI implemented the Innocence Lost National Initiative to address the growing problem of children recruited into prostitution. Through this initiative, which is supported by NCMEC and the Child Exploitation and Obscenity Section of DOJ's Criminal Division, 679 children have been located and recovered, 46 criminal enterprises have been disrupted (36 of these enterprises have been dismantled), over $3 million in assets have been seized, and there have been 433 convictions resulting in three life sentences and several sentences ranging from 30 to 40 years of confinement. Among the tools used in this initiative is the Innocence Lost Database (ILD), which was deployed in June 2008 to help law enforcement officials identify domestic child victims of prostitution, collect and track intelligence regarding suspected pimps, and build intelligence-driven enterprise-level investigations. Criminal organizations are fluid and traffic victims between states to reach more profitable locations, making it difficult to address the crime problem through the efforts of local law enforcement organizations alone. The ILD is an intelligence-driven database that houses information on suspected pimps, child victims, and adult prostitutes in an effort to connect enterprises and share intelligence.

"Child Sex Tourism" Initiative. "Child Sex Tourism" (CST) is travel abroad to engage in the commercial sexual exploitation of a child under the age of 18. Some CST offenders, usually novices to the commercial sex trade, plan their travel through U.S.-based tour companies or tour operators, while other offenders plan their travel independently. Information on the procurement of children in foreign destinations is readily available through pedophile newsgroups and Internet forums. In certain countries where there is a thriving commercial sex industry, this information can be obtained in-country from such sources as taxi drivers, hotel concierges, and newspaper advertisements. Studies indicate that Southeast Asian countries, particularly Cambodia, the Philippines, and Thailand, are the most common destinations for child sex tourists. Latin American countries, such as Costa Rica, Mexico, and Brazil, are also emerging CST destinations. An estimated 25 percent of child sex tourists in the above Southeast Asian countries are U.S. citizens, while an estimated 80 percent of those in Latin American countries are U.S. citizens. The FBI has implemented joint operations overseas with the governments of a couple of the top CST destination countries. These operations target child sex tourists who do not plan their illegal activities from the U.S., but rather seek to procure children once they arrive at their destination. The purpose of these operations is to coordinate with host country law enforcement to gather evidence against U.S. offenders that is admissible in U.S. courts, with the goal of extraditing those offenders back to the U.S. for prosecution. In addition to these operations, which react to existing crimes, the CST initiative employs a proactive investigative strategy designed to identify and disrupt the activities of sexual

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predators before they are able to victimize additional children. In conjunction with host country authorities and interested non-governmental organizations, the CST initiative uses both undercover employees and confidential human sources to identify predatory individuals and groups operating in areas with high incidences of child sexual exploitation. These operations are designed to collect evidence against predators that facilitates their arrest and prosecution by both host country and U.S. authorities.

54. a. How does your Innocent Images Initiative coordinate with the efforts of the Justice Department and other agencies to address child exploitation?

Response:

Within DOJ, the FBI's IINI coordinates investigative efforts directly with DOJ's Child Exploitation and Obscenity Section, where a trial attorney is assigned to IINI and works closely with that program. In addition, most FBI child exploitation cases are prosecuted by the 94 U.S. Attorneys' Offices around the country. Coordination of the IINI's efforts with those of other agencies is facilitated by DOJ's Internet Crimes Against Children (ICAC) task force program, which was created to help state and local law enforcement agencies respond to child sexual exploitation crimes and is composed of 59 task forces. The IINI and ICAC programs have established joint training for peer-to-peer investigations and are currently working together to develop other joint training for FBI agents and ICAC personnel. To date, IINI and ICAC have held four peer-to-peer training classes and are discussing the feasibility of conducting at least three additional classes in FY 2009.

b. What other programs at the FBI are dedicated to combating child exploitation?

Response:

Please see the response to Question 53b, above.

55. What is the status of the backlog of child exploitation cases at the FBI's forensic laboratories?

a. If there is a backlog, do you have a plan for reducing it? How?

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Response:

As of 4/17/09, the FBI's Computer Analysis Response Team (CART) forensic backlog for child exploitation cases is 423 cases and 70,286,497 MBs of known data. This includes requests received more than 30 days ago without a lead examiner and requests received more than 60 days ago without a completed exam or with incomplete exams. The FBI plans to reduce the backlog through our creation of the Innocent Images Forensic Laboratory (IIFL), which will reduce the burden on field CART examiners by handling complex child exploitation cases and conducting more routine forensic examinations for those field offices with Innocent Images backlogs.

b. To address any backlog in computer forensics, the Protect Our Children Act provided the Attorney General with the authority to establish additional regional computer forensic labs under the FBI's current program. Has this resource been used to address any backlogs in your computer forensic labs?

Response:

The FBI established the IIFL to analyze seized data from high-priority, complex child exploitation cases. This laboratory is staffed with seven forensic examiners, with three additional examiners currently in the hiring process. The FBI has been funded to expand the existing laboratory and to hire seven additional examiners.

56. In your testimony, you note that "just as there are no borders for crime and terrorism, there can be no borders for justice and the rule of law." Crimes against children are often international in nature, including manufacturing, possession and trade of online child pornography.

a. What additional steps does the FBI take to fight child exploitation and pornography on an international playing field?

Response:

Among the FBI's tools for combating child exploitation and pornography is the Innocent Images International Task Force (IIITF), which became operational in 2004 and is comprised of child exploitation investigators from numerous countries. These investigators receive six weeks of IINI training, during which IIITF officers work jointly with FBI agents and intelligence analysts on current cases or on their own investigations. The exchange of information between IIITF officers and FBI agents and analysts has produced a wealth of intelligence that has been

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instrumental in defining new online threats and revealing emerging trends, enabling us to disseminate intelligence products that are highly valuable to investigators. The IINI maintains contact with IIITF officers upon their return to their home countries, facilitating joint investigations of crimes involving the interests of both the U.S. and our international counterparts. IIITF members have included investigators from Norway, Croatia, Belarus, Germany, the United Kingdom, Latvia, Australia, the Philippines, Thailand, Ukraine, Finland, Canada, Fiji, Sweden, New Zealand, Indonesia, and Cyprus.

b. Are any of your Legal Attaché offices staffed to address international child exploitation? If so, what methods and techniques do those offices employ?

Response:

As noted in response to Question 34, above, the FBI's Legats are the FBI Director's representatives in the countries they cover, operating in those countries within the constraints of the host countries' laws. Consequently, Legat personnel further the FBI's international mission principally through information sharing and the coordination of investigative interests with their foreign law enforcement and intelligence service counterparts.

FBI Legats have used the IINI's contacts to address child exploitation crimes in many of the countries in which the IINI has established cooperative relationships. FBI representatives have made presentations regarding child exploitation and pornography at various international conferences and symposiums and the FBI has conducted training for our international law enforcement partners in their countries on these topics.

c. How do you coordinate with other countries to address these issues?

Response:

As noted above, the IIITF is among the FBI's tools for combating child exploitation and pornography internationally, with membership being drawn from many of the countries in which these problems are the most intractable. In addition, the IINI coordinates with FBI Legats on these matters, and the Legats maintain close working relationships with host country intelligence and law enforcement authorities on these and other matters.

The FBI also participates in a number of national operations that target child pornography offenders operating internationally. In those cases, which can identify

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hundreds and even thousands of targets at one time, the FBI partners closely with other U.S. law enforcement agencies (including U.S. Immigration and Customs Enforcement (ICE), the Postal Inspection Service, and ICAC task forces), prosecutors (DOJ's Child Exploitation and Obscenity Section and U.S. Attorneys' Offices), and foreign law enforcement officials to ensure coordinated enforcement actions both inside and outside the United States.

Mortgage Fraud

57. There has clearly been a surge in mortgage fraud cases in the past year. In your testimony, you note several examples of how the FBI is addressing its caseload, including various teams and task forces in which FBI participates. Do you believe that federal criminal law is sufficient to address the mortgage fraud crisis? Which statutes are most commonly used to prosecute these crimes? Please explain.

Response:

Typical mortgage fraud cases involve mail and/or wire fraud statutes and often contain money laundering and conspiracy elements as well. The FBI would be pleased to work with the Congress and others in DOJ to ensure the available Federal criminal laws are sufficient to address the mortgage fraud crisis.

58. How, specifically, does the FBI coordinate with other federal agencies when investigating mortgage fraud cases? Which agencies do you most actively use as partners?

Response:

Please see the response to Question 21c, above.

National Academy of Science's Forensic Report

59. Based on the role of forensic science at the FBI, do you agree with the findings of the National Academy's recent report on the state of forensic science?

Response:

The FBI agrees with many of the recommendations of the NAS and fully supports initiatives to maximize:

- The quality and rigor of forensic analyses.

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- The education and training of forensic practitioners.
- Rigorous quality assurance programs to ensure the results and interpretations of forensic analyses, and the conclusions drawn from them, are accurate and within acceptable scientific boundaries.
- The proper interpretation and use of forensic analysis results in criminal proceedings.

The FBI also agrees that additional research is needed to enhance the existing body of knowledge in the forensic sciences to improve efficiency and effectiveness in forensic science laboratories through the development of new technologies and tools. For example, we agree that more research is needed in the areas of human observer bias and other sources of human error to minimize the possibility that these errors will affect forensic analysis, the interpretation of forensic results, and the accuracy and quality of courtroom testimony. Specifically, the FBI supports (Recommendation 1): standardizing terminology across the forensic science community (Recommendation 2); more research on the accuracy, reliability, and validity of the forensic sciences (Recommendation 3); more research on human observer bias and sources of human error in the forensic sciences (Recommendation 5); the development of standards, practices, and protocols for use in forensic sciences (Recommendation 6); lab accreditation and practitioner certification (Recommendation 7); stronger quality assurance and control procedures (Recommendation 8); the establishment of a code of conduct, including ethical principles (Recommendation 9); higher education in the forensic sciences (Recommendation 10); the improvement of the medicolegal death investigation system (Recommendation 11); Automated Fingerprint Identification System interoperability (Recommendation 12); and the use of forensic science to aid homeland security (Recommendation 13).

The FBI believes two of the recommendations need further study: the creation of a National Institute of Forensic Science to oversee the nation's entire forensic science community (as discussed further in response to Question 60a, below) and the removal of all forensic science labs from the administrative control of law enforcement agencies or prosecutors' offices.

As the Committee knows, in response to the NAS report, the OSTP's National Science and Technology Council established the Subcommittee on Forensic Science. This Subcommittee, on which a DOJ official serves as co-chair, has assembled scientists from across the Executive Branch to study and address the NAS' findings and recommendations. The work of the Subcommittee is ongoing.

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60. a. Do you support the National Academy's recommendation that Congress establish and appropriate funds for an independent federal entity, the National Institute of Forensic Science (NIFS)? Why or why not?

Response:

The FBI believes further study is needed regarding the recommendation to establish the National Institute of Forensic Science. The report is correct that the nation's forensic science community is currently decentralized. This is understandable given the historical development of the field, the number of independent law enforcement, prosecutorial, and forensic science entities, and the key role of state and local law enforcement in the criminal justice system. Efforts are currently underway to defragment this community, with efforts to standardize quality control and implement uniform standards being undertaken by such national organizations as the American Society of Crime Laboratory Directors (ASCLD) Laboratory Accreditation Board (LAB), the Scientific Working Groups (SWGs), the National Institute for Standards and Technology (NIST), and the American Society for Testing and Materials. It is not clear that a new organization is necessary to move this work forward. However, as noted above, the Subcommittee on Forensic Science is studying the NAS' recommendations and that process is ongoing.

b. Are any standards for forensic science currently in force? If so, who or what organization or agency ensures that those standards are followed?

Response:

Currently, the only forensic science entities that have mandated accreditation requirements are forensic DNA and offender DNA database laboratories. Through the DNA Identification Act of 1994, Congress mandated the development and implementation of quality assurance standards for forensic DNA and offender DNA database laboratories (known now as the FBI's Quality Assurance Standards for Forensic DNA and Convicted Offender DNA Testing Laboratories (QAS)). Compliance with the QAS (which include mandatory accreditation) is required of all DNA laboratories that receive Federal funding for analysis or submit DNA profiles to the National DNA Index System (NDIS). DOJ's OIG inspects NDIS-participating laboratories to ensure, among other things, their compliance with NDIS policies relating to data inclusion, storage, and expungement requirements. In addition, as mandated by the Justice For All Act of 2004 and the QAS, all forensic law enforcement laboratories that participate in NDIS using CODIS software are required to undergo external audits at least every other year.

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The FBI is responsible for oversight of the NDIS and for ensuring that NDIS-participating laboratories comply with the QAS. For example, NDIS-participating laboratories must submit to the FBI Laboratory any audit results and must identify corrective actions taken in response to external audits so the FBI Laboratory can ensure compliance with the QAS. In 2008 the FBI Laboratory implemented NDIS Participation Assessments, which are FBI audits of NDIS-participating laboratories to ensure their operation of CODIS complies with established NDIS Operational Procedures and with Federal and state law.

There are no mandated standards for other forensic science disciplines, nor are there mandates for the accreditation of laboratories or for the certification of forensic experts. While a variety of working groups organized by the FBI, the National Institute of Justice, and NIST have established recommendations for many of these disciplines, there are currently no mechanisms by which these recommendations can be enforced.

c. Aren't most criminal prosecutions state and local matters? Wouldn't the creation of a federal agency raise concerns regarding the appropriate role of the federal government in predominantly state and local responsibilities?

Response:

While most criminal prosecutions using forensic science services are state and local matters, the state and local forensic science laboratory community believes Federal mandates and funding will improve forensic science capabilities and quality across the United States. The Consortium of Forensic Science Organizations, which represents a number of key forensic science organizations including ASCLD, ASCLD-LAB, the American Academy of Forensic Sciences, and the National Association of Medical Examiners, supports many of the NAS study recommendations.

d. How would a new federal entity regulating forensic science affect the FBI?

Response:

It is the FBI's assessment that, depending upon the level of regulation imposed (including any auditing and reporting requirements), there could be interruptions in service and/or less timely service. We base this assessment on the experience of Virginia, where a state forensic science oversight board must approve all proposed changes to standard operating procedures and new technologies. The imposition of a review board such as this at the Federal level, overseeing such activities in

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laboratories across the U.S., could cause delays because of the volume of the activities being regulated. While the FBI believes the organizations discussed above provide appropriate and effective levels of oversight, we are not certain that a higher degree of regulation could avoid being unnecessarily burdensome. While we concur in the goal of fostering an independent-thinking and problem-solving mind set among forensic scientists, it is not clear that this would be achieved through more detailed oversight.

Mexican Drug Cartels

61. In your testimony, you highlight concern over the violence on the Southwest border, and two task forces in which the FBI participates. How cooperative and effective do you believe the Mexican government has been in these endeavors?

Response:

The Mexican government has been highly cooperative with U.S. law enforcement efforts relative to Southwest border violence. The Mexican government has, for example, facilitated the arrest of a high-level drug trafficking suspect, Vicente Zambada Niebla (the son of Ismael Zambada Garcia). The Mexican government has also cooperated with U.S. law enforcement efforts to investigate matters that affect the citizens of both the United States and Mexico, including kidnappings, fugitive investigations, weapons trafficking, auto theft, and drug investigations.

62. What do you believe are the biggest problems that contribute to violence at the Southwest border? What is the FBI doing to address these problems?

Response:

The biggest problem contributing to the violence along the southwest border is the ongoing drug war between major Mexican Drug Trafficking Organizations (MDTOs) for the control of territory and of the major trafficking routes into the United States. Shifts in alliances among the MDTOs and pressure applied to the MDTOs by the Calderón government have given rise to violent drug-related confrontations along the border, with drug-related murders in Mexico more than doubling from 2007 to 2008. The FBI believes the violence will continue, as Mexican military and law enforcement efforts to disrupt and dismantle MDTOs increase and the MDTOs adapt to these efforts and establish new territories and hierarchies. We base this belief on several significant trends, including the following.

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- MDTOs have altered operations in an apparent attempt to increase efficiency by controlling the middle men (brokers) in light of the increased pressure imposed by the Mexican government.

- Historically, the Tijuana Cartel has employed the Mexican Mafia (EME) prison gang in the role of enforcers, to conduct extortions, and to distribute narcotics in Southern California. With the decline in the Tijuana Cartel's power, the EME is now forming business relationships with MDTOs affiliated with the Sinaloa Cartel, specifically the Guzman-Loera Organization and the Zambada-Garcia Organization. The Gulf Cartel and the Zetas have associated themselves with the Texas Syndicate, which is a Texas-based prison gang. U.S. street and prison gangs continue to serve as distributors for drugs smuggled into the U.S.

- As more Colombian cocaine is moved to Europe to take advantage of the higher European street values and the strength of the Euro against the U.S. dollar, MDTOs are seeking other means of generating income, such as alien trafficking and smuggling, kidnapping for ransom, and petty crimes.

- MDTOs have increased their high-potency hydroponic marijuana and methamphetamine production, both in Mexico and in the United States. According to uncorroborated confidential source reporting, these organizations are increasing their direct presence and control over drug production and distribution within U.S. borders, including increased alliances with U.S. gangs.

The FBI has worked hard to respond to this evolution in the drug trade, and has seen some recent successes. In FY 2008, the FBI participated in investigations of 403 Organized Crime Drug Enforcement Task Force (OCDETF) and Criminal Enterprise cases with a nexus to Mexican drug trafficking and 298 OCDETF and Criminal Enterprise cases with a nexus to violent gangs. As a result of these investigations, there were 2,621 arrests, 1,036 indictments, and 620 convictions in FY 2008. This success is the result of several different initiatives, including the following.

- Development and maintenance of the Southwest Border Intelligence Group (SWIG), which is co-located with the El Paso Intelligence Center (EPIC). The SWIG serves as the central repository and distribution point for FBI intelligence on both criminal and national security issues for this region, providing summaries of operational interactions between the FBI and

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Mexican law enforcement authorities and coordinating FBI/Mexican support efforts.

- Use of the FBI's Violent Gang Safe Streets Task Forces (VGSSTFs) to address violent street and prison gangs operating along the border. The FBI's MS-13 National Gang Task Force has established the Central American Fingerprint Exchange (CAFÉ) and Transnational Anti-Gang (TAG) initiatives, which coordinate and share gang-related intelligence between the United States, Mexico, and the countries of Central America. The CAFÉ and TAG initiatives are funded through the Mérida initiative, which focuses on fostering cooperation and combating the threats of drug trafficking, transnational crime, and insecurity in the western hemisphere.

- Co-chairing the Anti-Drug Intelligence Community Team working group on Mexican spillover violence, which produces intelligence products on the issue.

- Ensuring that information is shared effectively across the numerous organizational lines involved. These information sharing efforts include maintenance of the Southwest Border Initiative Special Interest Group on Law Enforcement Online, which serves as a "one-stop shop" for recent intelligence and operational information available to U.S. Government personnel working on Southwest border issues, and a monthly conference call focusing on the Southwest border during which representatives from the FBI, DHS, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and DEA identify issues and trends that can benefit from a multi-agency approach.

63. How does the FBI coordinate with agencies such as ATF, DEA and ICE at the Southwest border?

Response:

The FBI has numerous mechanisms for coordinating with the other agencies involved in southwest border issues. Most broadly, this coordination is accomplished through subject matter-based agency-to-agency contact. For example, all FBI field offices, including those responsible for the states along the southwest border, include squads specifically responsible for criminal enterprise, violent crime, and public corruption investigations. These squads work closely with their counterparts in the ATF, DEA, United States Marshals Service (USMS), ICE, and other relevant agencies to coordinate the many activities in which they

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have complementary roles. In addition, there are several task forces and working groups that focus on particular aspects of the problems arising along our southwest border. These groups include the following.

- EPIC - This Center, which is led by the DEA and includes the participation of numerous Federal, state, and local agencies including the FBI, ATF, and ICE, was initiated to collect and disseminate information concerning drug, alien, and weapon smuggling. The FBI relies on the capabilities afforded by EPIC's multi-agency environment, coordinating its drug investigations closely with EPIC to ensure de-confliction and the efficient use of OCDETF resources.

- OCDETF - OCDETF serves an important coordinating role in this region. In addition to the activities discussed above, an OCDETF Strike Force comprised of twelve FBI agents, nine DEA agents, three Deputy U.S. Marshals, two ICE agents, and one Texas Ranger was created in El Paso, Texas, and works closely with DEA's Resident Office in Juarez to gather intelligence and, when possible, assist in operations. Among other things, this Strike Force's investigations target Mexican Consolidated Priority Organizational Targets (CPOTs), who are responsible for a large amount of violence around the border. Another OCDETF Strike Force, operating in the FBI's San Diego Division since January 2007, has also targeted Mexican CPOTs, identifying a number of Arellano-Felix MDTO kidnapping/homicide cells working within southern California. The San Diego Strike Force works closely with that Division's Violent Crime/Major Offender Squad to relay intelligence gleaned during drug enterprise investigations that involve violent crime issues. This Strike Force also regularly reports on corruption within the Mexican government.

- The OCDETF Fusion Center (OFC) is a comprehensive data center containing drug and related financial data from the FBI, DEA, ATF, IRS, USMS, U.S. Coast Guard, U.S. Customs and Border Protection (CBP), National Drug Intelligence Center, EPIC, FinCEN, the Department of State's Bureau of Consular Affairs, and other key players in the international drug enforcement effort. The OFC provides critical law enforcement intelligence support for long-term and large-scale investigations, complementing the mission of the DEA-led, multi-agency Special Operations Division by providing non-communications intelligence at an operations level. The OFC conducts cross-agency and cross-jurisdictional integration and analysis of drug-related data to create comprehensive pictures of targeted organizations through its fused database,

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Compass. Using the protocols established by the Special Operations Division, the OFC passes actionable leads to field investigative units.

- High Intensity Drug Trafficking Area (HIDTA) Program - The FBI's El Paso Office participates in the regional HIDTA program, in which executive managers of numerous Federal, state, and local law enforcement agencies participate in monthly meetings to discuss the border violence and to look for trends and possible crossover into the U.S.

- SWIG - As noted above, the SWIG serves as the central repository and distribution point for FBI intelligence on both criminal and national security issues for this region. The SWIG is currently being moved from FBIHQ to EPIC, where it will be co-located with ATF, DEA, and ICE personnel.

- Resolution Six, Mexico (R-6) - The purpose of R-6 is to enhance the inter-agency coordination of drug and gang investigations conducted in Mexico, with R-6 personnel working in coordination with the Mexican military and law enforcement authorities to gather intelligence in pursuit of the MDTOs and individuals responsible for lawlessness along the southwest border. R-6 priorities include confidential human source development, supporting domestic cases appropriate for U.S. prosecution, cultivating liaison contacts within Mexico, and supporting bilateral criminal enterprise initiatives. The R-6 program is supervised by personnel located in numerous critical cities, including Mexico City, Juarez, Tijuana, Hermosillo, and Guadalajara.

  Some R-6 personnel are co-located with the DEA to facilitate the coordination of drug investigations and participation in the R-6/DEA Electronic Intelligence Collection Initiative. The goal of the electronic intelligence collection initiative is to identify and collect intelligence on drug cartel structures in order to disrupt and dismantle these criminal enterprises. This initiative will be worked with Mexico's Secretaria de Seguridad Publica (SSP); once reliable and significant intelligence is obtained, the SSP will present the findings to Mexican federal prosecutors and initiate formal investigations. R-6 personnel also coordinate intelligence sharing and operations with ATF and USMS personnel stationed in Mexico in support of domestic FBI drug and organized crime investigations.

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- VGSSTFs - A number of FBI VGSSTFs are working closely with Federal, state, and local law enforcement agencies to address violent street and prison gangs operating along the Southwest border. Over the past several years, gangs such as the Mexican Mafia, the Almighty Latin Kings, and the Hermanos de Pistoleros Latinos have been linked to the smuggling and distribution of drugs for MDTOs. With their alliances to MDTOs, these gangs have committed murders and other violence in an effort to control territory along the southwest border.

- Border Corruption Task Forces - The FBI participates in six border corruption task forces along the southwest border. Among these is the National Border Corruption Task Force, which is a partnership between the FBI and CBP Internal Affairs (CBP-IA) to be based at FBIHQ. The FBI and CBP-IA intend to coordinate their investigative efforts and resources and to conduct joint corruption training for field agents and managers.

- The DEA Special Operations Division (SOD) - The DEA-led, multi-agency SOD coordinates southwest border operations, as well as operations in other regions, among the participating agencies that include an FBI Deputy Special Agent in Charge and several FBI agents, ICE, and several other law enforcement agencies and U.S. military components. SOD actively supports multi-jurisdiction, multi-nation, and multi-agency investigations, working jointly with Federal, state, and local agencies to coordinate overlapping investigations and to ensure that tactical and strategic intelligence is shared between law enforcement agencies.

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SUBMISSIONS FOR THE RECORD

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 5, 2009

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

This responds to your letter, dated August 7, 2008, to Director Mueller and Attorney General Mukasey regarding the investigation of former Fort Detrick researcher Dr. Bruce Ivins.

As you are aware, the Department and FBI have addressed most, if not all, of the issues you raised in briefings attended by your staff on August 14th and September 11, 2008. Although longstanding DOJ policy generally precludes the FBI from commenting on ongoing investigations, the Department and FBI have sought to provide as much information as possible to Congress mindful that some of that information could be disclosed only upon the unsealing of documents by a United States District judge. Outlined below are additional answers to your August 7 letter to the extent possible at this time.

1. *What is the date (month and year) that the FBI determined that the anthrax came from a specified flask in Ivins's lab ("RMR 1029")?*

By early 2005, there were strong indications from the ongoing genetic analysis of the mailed spores that the parent material (RMR-1029) for the spores came from the United States Army Medical Research Institute of Infectious Diseases (USAMRIID). However, the genetic testing continued for two more years by scientists both within the FBI and outside organizations, in an effort to confirm these earlier indications. Ultimately, by the fall of 2007, the FBI was able to conclude to a reasonable degree of scientific certainty that RMR-1029 was the parent material of the mailed spores. RMR-1029 was created in 1997 by Dr. Bruce Ivins.

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The Honorable Charles E. Grassley
Page Two

2. *When (month and year) did the FBI determine that Dr. Hatfill never had access to the anthrax used in the killings?*

In the spring of 2006, access records for relevant hot suites at USAMRIID were analyzed and it was determined that Dr. Hatfill did not have access to suites containing the genetically positive material.

3. *How did the FBI determine that Dr. Hatfill did not have access to the anthrax used in the killings? Was that because the FBI determined that Dr. Hatfill no longer worked at USAMRIID when the powder was made?*

Please see response to Question 2, above.

4. *Was Dr. Hatfill or his counsel informed that Dr. Hatfill had been cleared of any involvement in the anthrax killings before the Department of Justice offered a settlement to him? Was he informed before signing the settlement agreement with him? If not, please explain why not.*

The Department agreed to the Hatfill settlement on June 17, 2008. In an August 8, 2008 letter from Jeffrey Taylor, U.S. Attorney for the District of Columbia, Dr. Hatfill's attorney was notified that Dr. Hatfill was not believed to be involved in the 2001 anthrax mailings.

5. *Was Judge Walton (the judge overseeing the Privacy Act litigation) ever informed that Dr. Hatfill had been eliminated as a suspect in the anthrax killings? If so, when. If not, please explain why not.*

Judge Walton was not notified of the elimination of Dr. Hatfill as a suspect in the criminal investigation because Judge Walton was presiding over the Privacy Act litigation, a civil matter that was separate and distinct from any criminal aspect of the investigation. The notification of Dr. Hatfill's elimination as a suspect in the criminal investigation was sent to Dr. Hatfill's attorney by way of the August 8, 2008 letter from Jeffrey Taylor, U.S. Attorney for the District of Columbia.

6. *Was Dr. Ivins ever polygraphed in the course of the investigation? If so, please provide the dates and results of the exams(s). If not, please explain why not.*

For the reasons described in the beginning of this letter, we are unable to provide details about any specific investigative steps or strategies employed in this case, other than those already described.

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The Honorable Charles E. Grassley
Page Three

7. *Of the more than 100 people who had access to RMR 1029, how many were provided custody of samples sent outside Ft. Detrick? Of those, how many samples were provided to foreign laboratories?*

RMR-1029 was provided to two domestic facilities outside of Ft. Detrick. No foreign laboratories received RMR-1029.

8. *If those with access to RMR-1029 in places other than Ft. Detrick had used the sample to produce additional quantities of anthrax, would that anthrax appear distinguishable from RMR-1029?*

No. We know that the anthrax which was mailed was a subsequent growth from RMR-1029, and that subsequent growth possessed the same four genetic mutations identified in RMR-1029.

9. *How can the FBI be sure that none of the samples sent to other labs were used to create additional quantities of anthrax that would appear distinguishable from RMR-1029?*

Investigators identified the facilities that received RMR-1029 from Ft. Detrick, and were ultimately able to conclude that researchers at those facilities were not involved in the mailings through extensive investigation.

10. *Please describe the methodology and results of any oxygen isotope measurements taken to determine the source of water used to grow the spores used in the anthrax attacks.*

Oxygen isotope measurement is an unreliable method for this type of evidence. Use of this method was considered, but not pursued, for that reason.

11. *Was there video equipment which would record the activities of Dr. Ivins at Ft. Detrick on the late nights he was there on the dates surrounding the mailings. If so, please describe what examination of the video revealed.*

At the time of the 2001 mailings, there was no video surveillance equipment in the laboratories at USAMRIID.

12. *When did the FBI first learn of Dr. Ivins' late-night activity in the lab around the time of the attacks? If this is powerful circumstantial evidence of his guilt, then why did this information not lead the FBI to focus attention on him, rather than Dr. Hatfill, much sooner in the investigation?*

The analysis of investigative material evolved over time. The Amerithrax Task Force conducted numerous searches and thousands of interviews during the course of the investigation, and scientific advances during this period resulted in a testing process that, by early 2005, helped the investigators narrow their focus and identify additional evidence.

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Although it was known in early 2005 that Dr. Ivins was in the hot suites at night, the relevance of the information was not clear until the investigation determined the source of the material for the mailed spores. Once the source of the material for the mailed spores was determined, a thorough review of Dr. Ivins' access patterns over time, the projects and experiments he was working on, and whether other researchers were present with him in the hot suites demonstrated the unusual nature of his late-night activity in the lab.

13. *When did the FBI first learn that Dr. Ivins was prescribed medications for various symptoms of mental illness? If this is circumstantial evidence of his guilt, then why did this information not lead the FBI to focus on him, rather than Dr. Hatfill, much sooner in the investigation? Of the 100 individuals who had access to RMR-1029, were any others found to suffer from mental illness, be under the care of a mental health professional, or prescribed anti-depressant/anti-psychotic medications? If so, how many?*

As a consequence of Federal laws and regulations regarding health information privacy, the FBI has not obtained the full picture of Dr. Ivins' mental health during this investigation. Based upon the information received during the investigation, including behavior witnessed by FBI agents, the FBI searched Dr. Ivins' home. In addition, a review of Dr. Ivins' emails indicated significant mental health concerns; for example, in the months before the attacks Dr. Ivins admitted in an email that he had "incredible paranoid, delusional thoughts at times."

As with Dr. Ivins, the mental status of other individuals who may have had access to RMR-1029 is similarly protected by Federal laws and regulations regarding health information privacy.

14. *What role did the FBI play in conducting and updating the background examination of Dr. Ivins in order for him to have clearance and work with deadly pathogens at Ft. Detrick?*

It is the FBI's understanding that the Office of Personnel Management (OPM) is the agency responsible for conducting background/security clearance investigations for Department of Defense (DoD) personnel.

Under Executive Order 10450, a National Agency Check (NAC) is required as part of the pre-employment vetting and background investigation process conducted with respect to all U.S. Government employees. The FBI's role in the NAC is limited to a search of the FBI's Central Records System, which contains the FBI's administrative, personnel, and investigative files. At OPM's request in June 2004, the FBI conducted a search of its Central Records System and identified no derogatory information.

The FBI's Bioterrorism Risk Assessment Group (BRAG) conducts Security Risk Assessments (SRAs) on individuals who require access to select agents and toxins. The SRA, which is conducted through database searches and is not a full background investigation,

complies with the requirements of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. That Act provides for denial of access based on 11 identified "prohibitors." Neither the SRA conducted in October of 2003, nor the one conducted in September of 2007, revealed prohibitors as defined in the Act and the FBI consequently identified no basis for restricting Ivins' access. It was not until Ivins was adjudicated as "mentally defective" in July 2008 that the FBI was able to begin restriction procedures.

15. *After the FBI identified Dr. Ivins as a sole suspect, why was he not detained? Did the U.S. Attorney's Office object to seeking an arrest or material witness warrant? If not, did anyone at the FBI order a slower approach to arresting Ivins?*

Each FBI case is monitored to assess the potential risk to public safety as the FBI works to ensure the investigation is thorough and complete. In this matter, the FBI communicated with DoD officials; once USAMRIID was advised of information regarding Dr. Ivins, they immediately restricted his access to areas containing biological agents and toxins.

16. *Had an indictment of Dr. Ivins been drafted before his death? If so, what additional information did it contain beyond the affidavits already released to the public? If not, then when, if ever, had a decision been made to seek an indictment from the grand jury?*

DOJ was preparing to bring charges against Ivins at the time of his death. The FBI cannot comment further on internal Department deliberations.

17. *According to family members, FBI agents publicly confronted and accused Dr. Ivins of the attacks, showed pictures of the victims to his daughter, and offered the $2.5 million reward to his son in the months leading up to his suicide. These aggressive, overt surveillance techniques appear similar to those used on Dr. Hatfill with the apparent purpose of intimidation rather than legitimate investigation. Please describe whether and to what degree there is any truth to these claims.*

Dr. Ivins' adult children were interviewed pursuant to the FBI's November 1, 2007 search of his residence. The interviews were conducted individually and in private settings. The investigators interviewing his daughter showed her photographs of the victims taken prior to the anthrax attacks explaining they were investigating the deaths of these victims and needed to obtain closure for the victims' families. At no time did they tell her that Dr. Ivins had killed these victims.

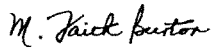
Likewise, during the interview of Dr. Ivins' son, he was shown a reward poster that outlined the crime. The interviewer explained to Dr. Ivins' son that the investigation of the anthrax attacks was still active and that there were questions the investigators needed to ask. When Dr. Ivins' son asked to speak to an attorney, the interview ceased. Dr. Ivins' son was not offered financial or other benefits for his cooperation.

18. *What additional documents will be released, if any, and when will they be released?*

This matter is still pending as there are a number of investigative steps remaining until the case can be closed. As such, there are no immediate plans to release any additional documents.

We appreciate your interest in this matter. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,



M. Faith Burton
Acting Assistant Attorney General

cc: The Honorable Max Baucus
Chairman

DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

March 5, 2007

Candice M. Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Re: Special Agent Elizabeth R. Morris

Dear Ms. Will:

I write this letter to advise you of critical factual errors contained in Mr. Bryan Chehock's letter to Special Agent ("SA") Elizabeth R. Morris dated December 7, 2006 recommending her dismissal from the FBI and also to apprize you of additional relevant facts not disclosed in that letter.[1]

I am Chief of the Rackets Bureau in the New York County District Attorney's Office. For over twenty years I have personally led and supervised investigations and prosecutions of organized crime, labor racketeering, political corruption and white collar criminal enterprises. These investigations have employed countless court-authorized eavesdropping warrants and the management and debriefing of hundreds of confidential informants. I have been a prosecutor for over thirty years and have worked with many federal law enforcement agencies during that time.

I was the principal supervisor of several assistant district attorneys -- Vincent Heintz, Cesar de Castro, and Eric Seidel -- who participated in the joint FBI – New York County District Attorney investigation into Albanian organized crime activities. Mr. Seidel and I were involved in the day-to-day supervision of the investigation.

In his letter, Mr. Chehock accused SA Morris of knowingly providing "false/misleading information" in an April 7, 2006 supplemental affidavit ("the supplemental affidavit") in support of an eavesdropping application. Primarily he claims that SA Morris: (1) lacked candor under oath when she misrepresented the duration of a confidential informant's ("CI's") relationship

[1] As indicated below, these errors may be attributed to the fact that FBI OPR did not interview anyone from this Office before reaching its conclusions. Since members of the District Attorney's staff certainly had information relevant to OPR's investigation, it is puzzling that, having scheduled interviews with District Attorney personnel, those interviews were cancelled by the FBI.

with the FBI and the contact between that informant and the leader and members of the criminal enterprise; and (2) lacked candor when she was questioned by her supervisors.[2] Based upon an internal review of our own actions in this matter, we have concluded that SA Morris' representations in the affidavit were not knowingly false and that she did not intentionally conceal or omit material facts or fail to be forthright.

The District Attorney's Office Had No role in the Decision to Terminate Eavesdropping.

Mr. Chehock claims that "the FBI, *in conjunction with the District Attorney*, shut down the court approved interceptions." (emphasis added). This statement is simply false. The judicially authorized eavesdropping warrant obtained by application of Robert M. Morgenthau, the District Attorney of New York County, was unilaterally terminated by the FBI without notice to, or consultation with, Mr. Morgenthau or any member of his staff. To the extent that Mr. Chehock's assertion creates the inference that the District Attorney's Office credits the accusations against SA Morris, his statement is simply wrong.

Any Errors in the Supplemental Affidavit Were Not Material.

Mr. Chehock's argument that SA Morris affidavit contained "material misrepresentations" is also wrong. Mr. Cherhock fails to recognize the appropriate legal standard and engages in no analysis under that standard. It is clear, that to constitute a "material misrepresentation" there must be either an intentional falsehood or reckless disregard for the truth. Even then, the relevant analysis is to determine if the facts contained in the affidavit, disregarding the questionable material, would still provide probable cause to support the warrant. Here, the supplemental affidavit and subsequent affidavits are replete with factual allegations that make clear that there was probable cause to support the warrant even if the alleged misrepresentations were excised.

It is notable that the only alleged "material misrepresentations" Mr. Chechock cites are two of the numerous items of information contained in the eavesdropping warrant affidavits, specifically that the CI and the leader of the criminal enterprise were not in continuous or constant contact and that the CI had an informant relationship with the FBI for approximately one year. Even if that were the case, these two items were not material to probable cause – a position this Office would have plainly pointed out if we had been given the opportunity to participate in the decision to terminate the wire.

Furthermore, it is clear that the CI had met with the leader of the enterprise in January or February 2006 and had even been intercepted by SA Picca in conversation with the number two person in the enterprise in June 2006. We understand that SA Ryan claimed to have made changes to the supplemental affidavit that were not incorporated by SA Morris. However, even those changes regarding the duration of the FBI's contact with the CI and the CI's continuous relationship with the leader and members of the criminal enterprise were not materially different ("less than one year" and "limited recent contact" with the leader) from the language in the supplemental affidavit.

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[2] In this letter I am not addressing this second claim because this Office is not aware of or witness to any relevant interaction between SA Morris and her supervisors.

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SA Ryan is Responsible for Any Error Regarding the Length of Time the CI Served as an FBI Informant.

Principally, Mr. Chehock's errors of fact seem to be based upon an undue reliance on SA Ryan's representations. However, many of those representations are contradicted by ADA de Castro. Mr. de Castro was the principal author of the affidavits submitted in the case. In the days prior to the submission of the April 7, 2006 affidavits, Mr. de Castro asked SA Morris how long the CI had a relationship with the FBI and she responded that she did not know. He witnessed a telephone call to SA Ryan in which SA Morris asked SA Ryan about the length of the FBI's relationship with the CI. Mr. de Castro recalls that he heard SA Morris say during that conversation "one year" and that after ending the conversation with SA Ryan, SA Morris told him that Ryan had said that the relationship comprised approximately one year. In addition, Mr. de Castro witnessed Morris reading portions of the supplemental affidavit concerning the CI to Ryan over the telephone, and on at least two occasions, he personally spoke with Ryan and asked her if the affidavit was accurate. She responded that it was. Mr. de Castro told SA Ryan that his purpose in inquiring was to ensure the accuracy of the hearsay information contained in SA Morris' supplemental affidavit. He specifically recalls SA Ryan using the words "it looks good" when referring to the affidavits in support of eavesdropping which included the supplemental affidavit. SA Morris never sought to discourage Mr. de Castro from inquiring of SA Ryan about the length of the FBI's relationship with the CI. In fact, SA Morris encouraged the contact and expressed to Mr. de Castro a clear desire for accuracy. On numerous occasions, SA Morris said to Mr. de Castro that SA Ryan was solely responsible for the CI and that she would have to consult with SA Ryan regarding any information relating to the CI. Furthermore, SA Ryan never provided Mr. de Castro with an edited draft of any affidavit or ever expressed concern regarding the accuracy of any affidavits despite his frequent contact with her. In contrast to SA Ryan, SA Morris would correct inaccuracies in the affidavits as well as typographical errors when Mr. de Castro reviewed edits with her.

SA Morris described to Mr. de Castro a debriefing of the CI that had been memorialized in an October 2005 FBI report. That report, a copy of which is contained in the investigative files of the case, appears to be a report of a debriefing of the CI by the Drug Enforcement Agency ("DEA") in which the DEA concluded that the source had valuable information regarding the FBI's targets and recommended further debriefings of the CI. Mr. de Castro, upon learning that SA Ryan had first met with the CI on March 21, 2006, was astonished because SA Ryan had led him to believe that contact with the CI had been established prior to February 2006 when Special Agents Ryan and Morris asked us to apply for pen registers. SA Ryan further told Mr. de Castro that she normally met with the CI in a diner or other public place. Only in discussions with the FBI after the termination of eavesdropping did this Office learn that SA Ryan claimed that she only met with the CI for the first time on March 21, 2006.

The CI Met With the Leader of the Criminal Enterprise in January or February 2006 and Was Intercepted Speaking With the Number Two Person in the Enterprise on June 20, 2006.

Our investigation has discovered that: (1) the CI and the leader of the criminal enterprise had an argument in late 2005 and stopped speaking and seeing each other for a few months; (2) nonetheless, the CI stayed in regular contact with other members of the criminal enterprise; (3) in

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January or February 2006, the CI met and spoke with the leader of the criminal enterprise and at least one other member of the criminal enterprise; and (4) the CI is still in contact with members of the criminal enterprise.

As late as June 20, 2006, SA Picca intercepted the CI speaking with the number two person in the criminal enterprise. SA Picca inexplicably minimized a significant portion of that conversation despite the fact that he knew that one of the parties was the CI whose contact with the enterprise he had questioned. Shortly after this intercept, the number two person in the criminal enterprise called the leader to discuss their concerns about the CI.

The FBI's Office of Professional Responsibility Failed to Interview Prosecutors that Drafted the Affidavits.

On August 24, 2006, after arranging a scheduled interview of Mr. de Castro with the FBI's Office of Professional Responsibility ("OPR") and attempting to schedule an interview with former assistant district attorney Vincent Heintz, I received a voicemail message from Fran Gross of OPR, a transcript of which is attached. In the voicemail, which we have preserved, Ms. Gross told me that she needed to cancel the meeting with Mr. de Castro, that she was satisfied that she had collected sufficient information to resolve "a dispute between our employees" and told me that we could call her if we wished. After failing to consult with us on the termination of court authorized eavesdropping, yet another FBI team was telling us that our input was not necessary to resolve an important issue relating to the discontinuance of a criminal investigation to which we had devoted countless hours of professional effort. We certainly did not anticipate that this "dispute between [your] employees" would lead thereafter to a recommendation to terminate SA Morris. Again, had the FBI conducted the scheduled interviews, it would have learned the relevant facts which of which either Mr. Chehock is unaware or simply ignored in reaching his conclusion and recommendation.

Conclusion.

SA Morris worked with this Office on an almost daily basis during the investigation. We have no reason to believe that SA Morris ever knowingly misrepresented the truth, failed to be forthright, or concealed or omitted any material fact. SA Morris exhibited professionalism, care, attention to detail and diligence throughout the entire investigation. We believe that the recommendation to terminate SA Morris is wrong because it is based on incomplete and factually wrong information and is therefore fundamentally unfair. Accordingly, we respectfully recommend that you reject Mr. Chehock's recommendation and reinstate SA Morris to the FBI. We would be happy to work with SA Morris in the future.

Sincerely,

_____

Patrick Dugan
Assistant District Attorney
Chief of the Rackets Bureau

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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

August 7, 2008

Via Electronic Transmission

The Honorable Michael B. Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Attorney General Mukasey and Director Mueller:

Thank you for ensuring that Congressional staff received an advanced briefing yesterday of the information released to the public in the Amerithrax investigation. The three affidavits provided represent an important, but small first step toward providing Congress and the public a full accounting of the evidence gathered by the FBI.

At yesterday's briefing, Justice Department and FBI officials invited follow-up questions after there had been time to read the affidavits. Indeed, there are many important questions to be answered about the FBI's seven-year investigation, the basis for its conclusion that Dr. Bruce Ivins conducted the attacks alone, and the events leading to his suicide. To begin this inquiry, please provide complete and detailed answers to the following questions:

1) What is the date (month and year) that the FBI determined that the anthrax came from a specified flask in Ivins's lab ("RMR 1029")?

2) When (month and year) did the FBI determine that Dr. Hatfill never had access to the anthrax used in the killings?

3) How did the FBI determine that Dr. Hatfill did not have access to the anthrax used in the killings? Was that because the FBI determined that Dr. Hatfill no longer worked at USAMRIID when the powder was made?

4) Was Dr. Hatfill or his counsel informed that Dr. Hatfill had been cleared of any involvement in the anthrax killings before the Department of Justice offered a settlement to him? Was he informed before signing the settlement agreement with him? If not, please explain why not.

5) Was Judge Walton (the judge overseeing the Privacy Act litigation) ever informed that Dr. Hatfill had been eliminated as a suspect in the anthrax killings? If so, when. If not, please explain why not.

6) Was Dr. Ivins ever polygraphed in the course of the investigation? If so, please provide the dates and results of the exam(s). If not, please explain why not.

7) Of the more than 100 people who had access to RMR 1029, how many were provided custody of samples sent outside Ft. Detrick? Of those, how many samples were provided to foreign laboratories?

8) If those with access to samples of RMR 1029 in places other than Ft. Detrick had used the sample to produce additional quantities of anthrax, would that anthrax appear distinguishable from RMR 1029?

9) How can the FBI be sure that none of the samples sent to other labs were used to create additional quantities of anthrax that would appear distinguishable from RMR 1029?

10) Please describe the methodology and results of any oxygen isotope measurements taken to determine the source of water used to grow the spores used in the anthrax attacks.

11) Was there video equipment which would record the activities of Dr. Ivins at Ft. Detrick on the late nights he was there on the dates surrounding the mailings? If so, please describe what examination of the video revealed.

12) When did the FBI first learn of Dr. Ivins' late-night activity in the lab around the time of the attacks? If this is powerful circumstantial evidence of his guilt, then why did this information not lead the FBI to focus attention on him, rather than Dr. Hatfill, much sooner in the investigation?

13) When did the FBI first learn that Dr. Ivins was prescribed medications for various symptoms of mental illness? If this is circumstantial evidence of his guilt, then why did this information not lead the FBI to focus attention on him, rather than Dr. Hatfill, much sooner in the investigation? Of the 100 individuals who had access to RMR 1029, were any others found to suffer from mental illness, be under the care of a mental health professional, or prescribed anti-depressant/anti-psychotic medications? If so, how many?

14) What role did the FBI play in conducting and updating the background examination of Dr. Ivins in order for him to have clearance and work with deadly pathogens at Ft. Detrick?

15) After the FBI identified Dr. Ivins as the sole suspect, why was he not detained? Did the U.S. Attorney's Office object to seeking an arrest or material witness warrant? If not, did anyone at FBI order a slower approach to arresting Ivins?

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16) Had an indictment of Dr. Ivins been drafted before his death? If so, what additional information did it contain beyond the affidavits already released to the public? If not, then when, if ever, had a decision been made to seek an indictment from the grand jury?

17) According to family members, FBI agents publicly confronted and accused Dr. Ivins of the attacks, showed pictures of the victims to his daughter, and offered the $2.5 million reward to his son in the months leading up to his suicide. These aggressive, overt surveillance techniques appear similar to those used on Dr. Hatfill with the apparent purpose of intimidation rather than legitimate investigation. Please describe whether and to what degree there is any truth to these claims.

18) What additional documents will be released, if any, and when will they be released?

Please provide your responses in electronic format to Brian_Downey@finance-rep.senate.gov no later than August 21, 2008. Please have your staff contact Jason Foster at (202) 224-4515 with any questions related to this request.

Sincerely,

Charles E. Grassley
Ranking Member

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VINCENT G. HEINTZ, ESQ.
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BRONX, NEW YORK 10471
(646) 879-9452
vheintz@earthlink.net

February 21, 2007

By Express Delivery

Delivery c/o Richard Swick, Esq.

Candice M. Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Re: Special Agent Elizabeth Morris

Dear Ms. Will:

1. I write in connection with the FBI's ongoing review ("the Review") of the conduct of FBI Special Agent Elizabeth Morris during the course of a joint investigation conducted in 2005 and 2006 by the FBI and the New York County District Attorney's Office ("the Investigation").

2. Before preparing this letter, I was permitted to read a letter addressed to Special Agent Morris from the FBI's Office of Professional Responsibility (OPR) ("the OPR Letter"), outlining various conclusions of fact underlying a preliminary recommendation that Special Agent Morris be dismissed from the rolls of the FBI for making material false statements in court submissions related to the Investigation. I offer this letter to provide context for, clarify and otherwise correct certain assertions contained in the OPR Letter. This letter does not contain all of the facts and information known to me concerning the Investigation.

Background

3. I served as an Assistant District Attorney in the Rackets Bureau of the New York County District Attorney's Office from June 1999 until May 2006, when I left public service to enter the private sector. During that time, and in prior employment with other prosecutors' offices over a period of 13 years, my work concentrated on the investigation and prosecution of complex criminal enterprises, to include traditional and non-traditional organized crime groups and white-collar crime. During my service, I drafted and administered the execution of hundreds of eavesdropping warrants and applications, pen register orders and applications, and other forms of

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criminal investigative process. The form, content and execution of those warrants, orders, and subpoenas uniformly passed judicial muster during litigation in both state and federal courts.

The Investigation

4. In late 2005, I was assigned to the Investigation, which targeted an organized crime enterprise. Special Agent Morris was the lead investigator. Between the time of my assignment and my first court submission in early 2006 (a pen register application for which I was the affiant), I met with Special Agent Morris in my office on several occasions to review evidence, set goals and develop an investigative plan.

5. During our meetings, Special Agent Morris briefed me concerning the FBI's information about the targets, to include the sources of such information. Those briefings included verbal reports as well as the provision of documents such as financial records obtained from FinCEN and financial institutions, records from telephone service providers, open-source Internet database searches, and reports from confidential informants.

Confidential Informant "Dakota"

6. Special Agent Sheila Ryan was present in my office during two of my meetings with Special Agent Morris. The first of those two meetings lasted approximately fifteen minutes. The second meeting lasted a shorter time.

7. At these meetings, Special Agent Ryan provided information that she had received from a confidential informant registered with the Drug Enforcement Agency (DEA). Special Agent Ryan said that she had an ongoing arrangement with the DEA to provide her with information from that informant. I later identified that informant with the codename "Dakota" for the purpose of court submissions. While meeting with Special Agent Ryan, I asked her whether Dakota was still in contact with the targets of the Investigation, and whether the arrangement with the DEA was ongoing, such that the Investigation might receive future intelligence from Dakota. Special Agent Ryan answered these questions in the affirmative.

8. During a meeting with Special Agent Morris, I reviewed a memorandum authored by Special Agent Ryan that summarized information provided by a DEA agent to another FBI agent (whose name I did not recognize and do not now recall). The memorandum, which was part of a larger file that Special Agent Morris handed to me, offered facts derived from Dakota's access to the principal target of the Investigation, to include pedigree information and an outline of criminal activities. The memorandum was dated sometime in mid 2005, indicating to me that Dakota had been providing information to the DEA, and the DEA had been sharing some of that information with the FBI, for the better part of a year.

9. As a result of Special Agent Ryan's statements, the facts outlined in her report, and other investigative sources being relied upon in the Investigation (to include another FBI informant, whom I codenamed "Tango" for the purpose of court submissions), I drew and to this day maintain the following conclusions: (a) Dakota had first-hand knowledge of some of the activities under Investigation, to include those of the principal target (who is described in the

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OPR Letter as "the Leader"); (b) Dakota had ongoing access to the criminal enterprise under Investigation; (c) Special Agent Ryan had established an ongoing arrangement with the DEA to obtain information through the DEA from Dakota in the controlled setting of a registered confidential informant relationship; and (d) as a result of that long-term arrangement, by the time that we began drafting papers for judicial submission, Special Agent Ryan had been receiving information from Dakota through the DEA for the better part of a year.

10. I relied on the facts supplied by both Special Agents Ryan and Morris in a pen register application that I submitted to the court in early 2006. With respect to the informant reports from Dakota, it is my recollection (I do not now have access to those papers) that I expressly advised the court that Dakota was an informant for a federal law enforcement agency other than the FBI. The court granted my application and the pen register order was executed soon thereafter.

The Electronic Surveillance Phase of the Investigation

11. Pen register data obtained in early 2006 corroborated information provided by Tango and Dakota as well as information from various other sources and methods used during the Investigation. Based upon that data, the facts known to the Investigation prior to my initial pen register application (to include the information from Dakota and Tango), and additional facts, my Bureau Chief, Assistant District Attorney Patrick J. Dugan, authorized me, on my recommendation, to draft and submit for review an application for a warrant to conduct electronic surveillance over certain communications facilities. Mr. Dugan assigned a colleague, Assistant District Attorney Cesar deCastro, to work as my partner on the Investigation, to include the task of preparing the necessary papers to obtain and execute an eavesdropping warrant.

12. Special Agent Morris was assiduous in proofreading the draft eavesdropping papers for accuracy and completeness. She paid particular attention, as did Assistant District Attorney deCastro and I, to the language used to describe informant reports and their sources so as to inform the court in an accurate manner and to preserve the identities of confidential sources should the judicial submissions ever be disclosed through court-ordered discovery. I understood that throughout the drafting process Special Agent Morris was in contact with other members of her squad, to include Special Agent Ryan, to review and update that information. One example of that contact is my recollection of Special Agent Morris and ADA deCastro making phone calls to the FBI offices at 26 Federal Plaza to obtain final verification of key facts just prior to presenting the proposed application and supporting papers to District Attorney Robert M. Morgenthau for review and signature.

Assertions in the OPR Letter

13. The OPR Letter (at 1) asserts that in an affidavit of April 7, 2006, Special Agent Morris made the following statement knowing it to be false: "CI [Dakota] had an informant relationship with the FBI for approximately one year."

(a) First, the statement on its face clearly qualifies the duration of the relationship as "approximately one year" (emphasis added).

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(b) As detailed in paragraphs 7 though 9, above, this statement was fundamentally accurate. As I believe was pointed out to the court elsewhere in the submission of April 7, 2006, the FBI's receipt of intelligence from Dakota had, at the time of the affidavit's drafting, started some time in mid-2005, through the cooperation and assistance of another federal law enforcement agency, that being the DEA. As with any court submission, the sworn allegations in the submission of April 7, 2006, were intended to be construed together, as a unified presentation concerning the facts and circumstances of the Investigation. Thus, a fair reading of the submission *in toto* clearly undermines the assertion that this statement was patently false or that is was somehow misleading.

(c) It appears that those conducting the Review presumed that this statement and the others addressed below were *per se* "material." (The OPR Letter offers no definition of "material.") As a prosecutor who drafted the affidavit, it was and remains my judgment that the exact duration of the Dakota relationship was not material to the application; this was incidental material offered to provide the court with a full context of the history and background of the investigation.

(d) Finally, the statement captures the sum and substance of the informant relationship as relayed to me prior to the drafting of the affidavit by Special Agent Ryan, as specified in paragraphs 7 through 9, above.

14. The OPR Letter (at 1-2) asserts that in the affidavit of April 7, 2006, Special Agent Morris made the following statement knowing it to be false: "The CI reports that the CI is still in continuous contact with the Leader and members/employees of the Leader's enterprise." As with the statement addressed in paragraph 13, above, this statement captures the sum and substance of Dakota's access to the targets of the Investigation as reported by Special Agent Ryan to me in person and as recorded in her memorandum that she prepared. Based on my Review of the OPR Letter, I understand that Special Agent Ryan has advised those conducting the Review that this statement was or came to be inaccurate because Dakota at some juncture had a "falling out" with "the Leader." Three sets of facts present themselves in response to that assertion:

(a) By implication, Special Agent Ryan's report to those conducting the review confirms that Dakota remained in contact with the other targets.

(b) The Investigation targeted a large criminal enterprise with numerous coconspirators and entities performing disparate roles on a continuing basis. For this reason the eavesdropping authority sought and granted had an expansive scope in terms of persons to be intercepted. (Indeed, it was for this reason among others that eavesdropping authority was needed to achieve the goals of the Investigation in the first instance.) Any distinction between the Leader and members of the enterprise in this context had, at most, marginal bearing on the value of Dakota's information in articulating probable cause. Phrased alternatively, for Special Agent Morris to have attested that Dakota was "still in continuous contact with members/employees of the Leader's enterprise" would have achieved the same result in terms advancing the investigation. The distinction was immaterial in terms of probable cause. A close

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review of the eavesdropping warrant and its incorporated papers will confirm this point. Indeed, had Special Agent Ryan made me aware of this "falling out," I would have proposed to Special Agent Morris that we offer that fact to the court in her sworn submission as evidence of the limitations on informant operations to obtain the evidence sought, such a showing of necessity being required in applications for eavesdropping authority under both New York State Criminal Procedure Law Article 700 and Title 18, United States Code, Section 2510 *et seq.* ("Title III"). Hence, no reason could or did exist for Special Agent Morris to make a purposefully false statement to this effect.

(c) The continuity of Dakota's contact with "the Leader" was a fact exclusively within the domain of Special Agent Ryan to know, verify and communicate promptly. Her control over information from Dakota is confirmed in the OPR Letter: "According to [Ryan], the CI was a former employee of the Leader but had a falling out with the leader in October 2005" (emphasis added). As set forth in more detail below, Special Agent Ryan had the ongoing option of communicating any mistakes in or updates to the initial representations that she made to the District Attorney's Office concerning Dakota's access to "the Leader" or any other matter. As with my pen register application, the Morris affidavit of April 7, 2006 describes that access in the same terms and sense reported to me by Special Agent Ryan. At no subsequent time did she advise me of any potential inaccuracy in her initial reports.

15. The OPR Letter (at 3) quotes Special Agent Ryan as having informed those conducting the Review that she "specifically informed [Special Agent Morris] that the CI was not in continuous contact with the Leader," and that " [Special Agent Ryan] had first met with the CI on March 21, 2006 and therefore the CI had only been providing information for one year."

(a) The second of these assertions – that Dakota "had only been providing information for one year" – directly contradicts the assertion addressed in paragraph 13, above, that it was materially false for Special Agent Morris to have asserted that Dakota's track record of providing information had extended over the course of "approximately one year."

(b) Irrespective of the occurrence or import of communications between Special Agents Morris and Ryan, Special Agent Ryan's assertion to those conducting the Review that Dakota was not in continuous contact with "the Leader" contradicts Special Agent Ryan's statements to me in my office about Dakota's access to the targets of the Investigation.

16. Prior to the initiation of electronic surveillance, I held a meeting with all of the members of the FBI squad assigned to the Investigation at the District Attorney's Office. During that meeting, various Special Agents, to include Special Agents Morris and Ryan, and their squad chief, Supervisory Special Agent Thomas Uber, among others, were sworn in as Special Rackets Investigators of the District Attorney's Office. Thereafter I personally administered written and oral instructions to the squad concerning the requirement to minimize the interception of communications not subject to eavesdropping. These are commonly known as "minimization instructions." I expressly tasked each of the Special Agents assigned to the Investigation (1) to read and sign a copy of my written instructions, and (2) to read and sign a copy of the eavesdropping warrant and all incorporated papers, to include Special Agent Morris's affidavits of April 7, 2006, which were annexed to, incorporated in and thus part and parcel of the warrant

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itself. I made clear at that meeting that the requirement to read these documents in their entirety was of legal, Constitutional dimensions. As I explained in my minimization instructions, an agent or officer executing a search warrant or eavesdropping warrant must, by definition, read the warrant in order to be guided in a meaningful way by the limitations of the issuing magistrate. Against this backdrop, Special Agent Ryan's report to those conducting the Review that "she did not learn of the final language in the April 7, 2006, affidavit until July 7, 2006" presents two possibilities: (a) Special Agent Ryan ignored the legal requirement to read the warrant and all incorporated papers prior to listening to the subjects' communications; or (b) she did review the entire court submission when and as directed, found no material mistakes warranting escalation to her leadership or to my Office, and then some months later made an incorrect material assertion to those conducting the Review.

17. Based upon my personal supervision of the minimization process and the early phases of the execution of the warrant, I believe that Special Agent Ryan, her supervisor and her fellow agents understood and followed the straightforward instructions that I delivered during the minimization meeting. For them to have done otherwise would have constituted an unthinkable breach of professional and legal standards, signaling a complete breakdown in oversight by Supervisory Special Agent Uber. Aside from Special Agent Ryan's assertions, which I cannot and do not credit, I have no reason to believe that this occurred. This leaves the possibility that Special Agent Ryan was inaccurate when she told the Review about a July 2006 epiphany concerning the supposed discovery of "false" statements in the submission of April 7, 2006.[1]

18. Before turning from the discrete allegations in the OPR Letter, I wish to offer some final and general observations. Special Agent Ryan and perhaps others have recited a set of allegations to those conducting the Review that essentially depict Special Agent Morris as having been willfully cavalier with the details concerning informant Dakota. Wholly absent from the OPR Letter is any articulation of why Special Agent Morris would have made such false statements. Having been one of the prosecutors during the formative stages of the investigation, I cannot let pass the opportunity to emphasize in the strongest terms that nothing whatsoever could have been gained through the falsification of the particular allegations that are the focus of the OPR Letter.

(a) Probable cause would have existed without resort to any of Dakota's information. As a review of the court submissions will confirm, there was an abundance of evidence concerning the crimes under investigation. Special Agent Morris and I discussed this point prior to and during the drafting process that led to the execution of the affidavits of April 6, 2007. Thus, there was no need or motive to bolster Dakota's track record or basis of knowledge.

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[1]While the reason for any inaccuracy is for Special Agent Ryan to explain, one possible conclusion appears to flow from these circumstances. At some point, Special Agent Ryan may have had to reconcile one of her core statements to her chain-of-command and those conducting the Review -- that she attempted to correct facts that she originally provided to Special Agent Morris, and that Special Agent Morris ignored her -- with the information that she herself originally provided concerning Dakota as it was ultimately presented in court submissions. To effect that reconciliation, she may have found herself forced to say that she did not read the warrant and incorporated papers until three months after eavesdropping commenced.

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(b) Special Agent Morris was the lead agent on the Investigation. Dakota was not Special Agent Morris's informant. As such, she did not stand to expand her control over the Investigation, or to earn enhanced "credit" for its successful outcome, by falsely embellishing the value of Dakota, another agent's source. This same fact -- that information from Dakota was being provided exclusively through another agent on Special Agent Morris's squad – drives the conclusion that assuming *arguendo* that Special Agent Morris had the intent to mislead the court (and there is not the slightest evidence that she did [see paragraph 18(d) below]), doing so by manipulating facts from another agent's source in papers that the entire squad would have to read would inevitably and promptly have been discovered. Such a venture would have been obviously self-defeating and professionally self-destructive.

(c) There is no question whatsoever that (i) the informant in fact existed (the historical concern surrounding confidential informants), (ii) the basis of the information obtained from Dakota was that informant's long-term interpersonal dealings with the targets, or (iii) the core of the information obtained from the informant was valid.

(d) In context, the allegations the OPR Letter are unfounded as a matter of fact. Further, they simply make no sense.

Communication between the FBI and the
New York County District Attorney's Office

19. As indicated above, I met with Special Agent Ryan on two occasions in my office in the presence of Special Agent Morris. In addition, I met with their entire squad prior to the eavesdropping phase of the Investigation at 26 Federal Plaza and provided my personal contact information. At another juncture, Special Agent Morris and I arranged for her squad supervisor, Thomas Uber, to meet with my Bureau Chief, Assistant District Attorney Patrick J. Dugan, in order to discuss investigative goals and methods at a senior supervisory level. On the eve of the inception of electronic surveillance, I provided oral and written minimization instructions to their entire squad. At each one of these meetings, I made it clear that I was available to support any member of the investigative team at any time with legal guidance. Indeed, my written minimization instructions expressly invited any member of the team to contact Assistant District Attorney deCastro or me directly "at any hour of the day or night" with a question or concern. Under these circumstances, it is difficult to accept the implicit assertion by Special Agent Ryan to those conducting the Review that Special Agent Morris was the sole available conduit of communication between the FBI and the prosecutors responsible for drafting accurate court submissions and administering the execution of the warrant. Had Special Agent Ryan at any point harbored a concern about the form or content of the prior or future court submissions, she was armed with the necessary information and bore the responsibility to alert the District Attorney's Office immediately. During my assignment to the Investigation, neither she nor any other member of her squad contacted me.

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Special Agent Elizabeth Morris

20. Special Agent Elizabeth Morris enjoys a reputation for integrity and professionalism among my former colleagues in the New York County District Attorney's Office as well as the NYPD's Organized Crime Investigation Division. She is recognized as a team player and team builder. She is diligent and thorough. She has clearly dedicated herself to the even, fair enforcement of the laws. The allegations contained in the OPR Letter require the imputation of motives to Special Agent Morris that I believe she is incapable of possessing.

The Ongoing Review

21. Some months ago I learned of the Review from both Special Agent Morris and my former colleagues in the District Attorney's Office. I advised my colleagues that I was willing to meet with the persons conducting this Review and provide any information requested. Thereafter I learned the names of two agents from FBI Headquarters who, as I was told, would contact me. As of the time of this writing, I have received no requests from the FBI for information. This is deeply troubling, given my role in drafting the court submissions at the heart of the ongoing Review and the severity of the penalty recommended in the OPR Letter. I remain prepared to speak with the FBI concerning any aspect of the ongoing Review.[2] Please contact me if you have questions or if I may provide additional information. Thank you for your careful consideration of this matter.

Sincerely,

Vincent G. Heintz, Esq.

C.c.: Richard Swick, Esq.
Swick & Shapiro
1225 Eye Street
Washington, DC 20005

[2]The only limitation to my in-person availability is that I anticipate entering active duty with the United States Army National Guard in the fourth quarter of 2007 and then deploying overseas for a one-year combat tour in Afghanistan. Please contact me prior to that time if you desire an interview.

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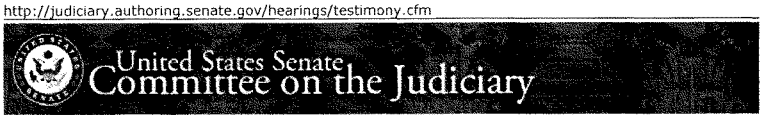

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Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 25, 2009

OPENING STATEMENT OF SENATOR PATRICK LEAHY (D-VT.),
CHAIRMAN, SENATE JUDICIARY COMMITTEE
HEARING ON "OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION"
MARCH 25, 2009

Oversight is one of Congress's most important responsibilities, and one that this Committee will continue to fulfill. We did so in the last Congress, and we will do so in this Congress. Today, we welcome back to the Committee Director Mueller of the Federal Bureau of Investigation. It is now six months since our last FBI oversight hearing. I hope soon to hold an oversight hearing with Secretary Napolitano, and then with Attorney General Holder, who had his confirmation hearing before us just two months ago.

Today we examine the effectiveness of the Federal Bureau of Investigation in carrying out its critical missions to keep us secure while upholding the rule of law. In commemorating the 100th anniversary of the FBI last year, Director Mueller said:

"It is not enough to stop the terrorist - we must stop him while maintaining his civil liberties. It is not enough to catch the criminal - we must catch him while respecting his civil rights. 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. The rule of law, civil liberties, and civil rights - these are not our burdens. They are what make us better. And they are what have made us better for the past 100 years."

I agree. Today, we continue to conduct the oversight needed to be sure that the FBI carries out its responsibilities while maintaining the freedoms and values that define us as Americans.

There are many vital issues on which we can and must work together. One of particular importance is aggressive enforcement of the mortgage fraud and financial fraud that contributed to the massive economic crisis that is affecting so many Americans. As Director Mueller will share with us, the FBI's mortgage fraud caseload has more than doubled in the past three years, with all signs pointing to a continued increase in fraud cases. And then there is the need to police the use of the recovery funds. These cases are straining the FBI's resources.

The FBI is taking good steps to bulk up fraud enforcement and using creative measures, including new technologies and inter-agency task forces. In his budget outline, the President showed leadership by committing to provide additional resources to the FBI to investigate and prosecute mortgage fraud. In my view, we must do still more. More is needed to give investigators and prosecutors the resources they need to aggressively detect and prosecute these insidious forms of fraud, and to provide the tools to do so efficiently and effectively. The Fraud Enforcement and Recovery Act of 2009 that I have sponsored with Senators Grassley, Schumer, Klobuchar and Kaufman will do exactly that. I appreciate the Bureau's assistance in developing this important legislation and its support for it. That bill was reported by this Committee on March 5. I hope a time agreement can be reached to consider this legislation in the Senate.

Similarly, over the last couple of years, Director Mueller has identified public corruption as the Bureau's top criminal priority. Recent high profile cases make clear the importance of aggressive enforcement of

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corruption laws to restore the public's confidence in government. The Public Corruption Prosecution Improvements Act, a bipartisan bill I introduced with Senator Cornyn, will give investigators and prosecutors the tools they need to ensure that corruption is never tolerated and is, instead, uncovered and punished. That bill has been considered and reported by this Committee as well, and is awaiting Senate action.

There are other issues that have arisen during the last few years on which we must work together to ensure that past problems are corrected. One is the misuse of "exigent letters," to obtain phone records and other sensitive records of Americans, including reporters, without a warrant. These letters claimed emergency conditions that were not applicable, and promised a follow-up legal process that never came. I hope that the Director will be able to assure us, and the Inspector General will confirm, that appropriate steps have been taken to prevent a repeat of that abuse. Moreover, I am concerned that records illegally obtained with these exigent letters may have been inappropriately retained by the government, and I hope that the Director will address these concerns.

I was also disturbed to see a recent study which showed that the FBI has been slower and less responsive than it should be in processing requests for information under the Freedom of Information Act. Open government is key to a strong democracy. It is a principle that has been embraced by the new President and Attorney General. The FBI needs to improve its responsiveness.

During this hearing we will discuss the good and the bad: How the FBI worked to clear the backlog in name checks for immigration and voting purposes; how the FBI has improved its crime lab testing; and how problems remain. We will begin our discussion of the expiring provisions of the PATRIOT Act, and what needs to be done in that regard.

In the area of violent crime, there are disturbing signs that crime rates may increase significantly in response to the financial crisis, and we need to explore the impact of cuts over the last several years in Federal aid to state and local law enforcement.

I applaud Director Mueller's efforts to recommit the FBI to its best traditions through his personal example and leadership. I appreciate the Director's openness to oversight and accountability, and look forward to his testimony. I thank the hardworking men and women of the FBI.

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Department of Justice

STATEMENT OF

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

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

HEARING ENTITLED

"OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION"

PRESENTED

MARCH 25, 2009

I. Introduction

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

As you know, we in the Federal Bureau of Investigation (FBI) have undergone unprecedented transformation in recent years, from developing the intelligence capabilities necessary to address emerging terrorist and criminal threats, to creating the administrative and technological structure necessary to meet our new mission as a national security service.

Today, the FBI is a stronger organization, combining greater intelligence capabilities with a longstanding commitment to protecting the American people from criminal threats. We are also mindful that our mission is not just to safeguard American lives, but also to safeguard American liberties.

I want to give you a brief sense of the FBI's current priorities, the key changes we have made in recent months, and the challenges we face.

II. FBI Transformation

In the aftermath of the September 11, 2001, attacks, counterterrorism became our top priority, and it remains our top priority today. Indeed, our top three priorities – counterterrorism, counterintelligence, and cyber security – are national security related. As a result of that shift in our mission, we have made a number of changes in the FBI, both in structure and in the way we do business.

A. Restructuring of FBI Intelligence Program

We have expanded our counterterrorism operations and developed our intelligence capabilities. We stood up the National Security Branch and the Weapons of Mass Destruction Directorate. We integrated our intelligence program with other agencies under the Director of National Intelligence, with appropriate protections for privacy and civil liberties. We participate in, and share information with, multi-agency intelligence centers, including the Organized Crime Drug Enforcement Task Forces (OCDETF) Fusion Center, the El Paso Intelligence Center (EPIC), and the National Drug Intelligence Center (NDIC). We hired hundreds of intelligence

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analysts, linguists, and surveillance specialists. And we created Field Intelligence Groups in each of our 56 field offices. In short, we improved our national security capabilities across the board.

But we also recognize that we must continue to move forward, to refine programs and policies already in place, and to make necessary changes to our intelligence program.

To that end, we established a Strategic Execution Team (SET) to help us assess our intelligence program, and to standardize it throughout the FBI. The SET, made up of agents and analysts, developed a series of recommendations for accelerating the integration of our intelligence and investigative work.

The SET improvements will ensure that we capitalize on our intelligence collection capabilities and develop a national collection plan to fill gaps in our knowledge base. Our objective is to defeat national security and criminal threats by operating as a single intelligence-led operation, with no dividing line between our criminal and counterterrorism programs. We want to make sure that nothing falls through the cracks.

To this end, we have restructured the Field Intelligence Groups (FIGs) in every field office across the country. FIGs are designed to function as the hub of the FBI's intelligence program. They ensure that each field office is able to identify, assess, and attack emerging threats before they flourish.

Following the SET's recommendations, the FIGs now conform to one model, based on best practices from the field, and adapted to the size and complexity of each office. Each FIG has well-defined requirements for intelligence gathering, analysis, use, and production. Managers are accountable for ensuring that intelligence production is of high quality and relevant not only to their own communities, but to the larger intelligence and law enforcement communities.

As a result of these changes, the FIGs can better coordinate with each other and with Headquarters. They can better coordinate with law enforcement and intelligence partners, and the communities they serve. With this integrated model, we can turn information and intelligence into knowledge and action, from coast to coast.

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These changes are part of our ongoing campaign to "Know Our Domain," as we say. Domain awareness is a 360-degree understanding of all national security and criminal threats in any given city or community. It is the aggregation of intelligence, to include what we already know and what we need to know, and the development of collection plans to find the best means to answer the unknowns. With this knowledge, we can identify emerging threats, allocate resources effectively, and identify new opportunities for intelligence collection and criminal prosecution.

We are now in the process of implementing SET concepts at FBI headquarters, to improve strategic alignment between the operational divisions and the Directorate of Intelligence. We want to better manage national collection requirements and plans, and ensure that intelligence from our Field Offices is integrated and shared with those who need it at FBI headquarters and in the larger Intelligence Community.

This is not a program that will be implemented as a quick fix. The work of the SET is critical to the long-term success of the FBI. We are training FBI personnel at all levels in order to help us execute these plans long past the initial rollout. We have clear metrics for success, and clear lines of accountability to ensure that we reach our goals. We are committed to implementing these plans and making our national security and intelligence capabilities even stronger.

B. Improvements to FBI Technology

I want to turn for a moment to recent improvements in FBI technology. We cannot gather the intelligence we need, analyze that intelligence, or share it with our law enforcement or intelligence partners, without the right technology.

One of our most important programs is Sentinel, our web-based case management system. Phase I was deployed FBI-wide in June 2007. Information is now pushed to users electronically, moving employees away from dependence on paper files and making it faster and easier to access and connect information.

Phase I set the foundation for the entire enterprise. We are working with Lockheed Martin to implement Phase II in increments, with a target completion date of Fall 2009.

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Throughout this phase, we are delivering new capability to all users with the migration of full Administrative Case Management to Sentinel. Phases III and IV are scheduled to be delivered in early Spring 2010 and Summer 2010, respectively.

Proper training will be provided to all users, ensuring maximum exploitation of Sentinel's capabilities.

We are also strengthening the IT programs that allow us to communicate and share with our partners. For example, we launched an initiative to consolidate the FBI's Unclassified Network with Law Enforcement Online (LEO), which is the unclassified secure network we use to share information with registered law enforcement partners.

This will provide a single platform that allows FBI employees to communicate and share with their internal and external partners. Currently, LEO provides a secure communications link to and among all levels of law enforcement and is available to more than 18,000 law enforcement agencies. LEO has a user community of more than 137,000 vetted members.

As part of the LEO platform, the FBI is delivering the eGuardian system – an unclassified counterterrorism tool available to our federal, state, local, and tribal law enforcement partners through the FBI's secure LEO internet portal. The eGuardian system will work in tandem with Guardian, the FBI's classified web-based counterterrorism incident management application. Guardian makes threat and suspicious activity information immediately available to all authorized users. Guardian will then make available unclassified threat and suspicious activity information through eGuardian, enabling law enforcement personnel to receive the most current information. In return, any potential terrorist threat or suspicious activity information provided by law enforcement will be made available in Guardian entries and outward to the FBI task forces.

In September 2008, we piloted eGuardian to several fusion centers, the Department of Defense, and the Federal Air Marshal Service. Today, eGuardian has been deployed nationwide to enable near real-time information sharing and tracking of terrorist information and suspicious activities with the FBI's federal, State, local, and tribal partners.

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We are also in the midst of developing what we call "Next Generation Identification" system, which expands the FBI's fingerprint-based identification, known as the Integrated Automated Fingerprint Identification System, to include a wide range of biometric data. This will better enable us to find criminals and terrorists who are using the latest technology to shield their identities and activities. In support of our multi-modal biometrics efforts, we have also established the Biometrics Center of Excellence at our Criminal Justice Information Services (CJIS) complex in West Virginia. Its mission is to serve as a research and development, test and evaluation, and standards promulgation center for not only U.S. law enforcement, but for other government entities that share similar challenges in the positive identification of individuals of concern.

We have also developed a system called the Law Enforcement National Data Exchange, (N-DEx). N-DEx is a national information-sharing system, accessible to law enforcement agencies through a secure website. It will allow nationwide searches from a single access point and leverages the current IT infrastructure managed by our CJIS division that already interconnects almost every US law enforcement agency. We successfully completed the initial deployment last year and will continue to refine and expand it.

Through N-DEx, law enforcement officers will now be able to search databases for information on everything from tattoos to cars, allowing them to link cases that previously seemed isolated. They will be able to see crime trends and hotspots, access threat level assessments of individuals or locations, and make the best use of mapping technology. It is not a new records management system, but one that allows us to share and link the information we already have.

We are also working to improve our confidential human source management system. Intelligence provided by confidential human sources is fundamental to the FBI mission. To better manage that data, we are putting in place a program known as DELTA. DELTA will provide FBI agents and intelligence analysts a uniform means of handling the administrative aspect of maintaining human sources. It will also enable FBI headquarters and field offices to better understand, connect, operate, and protect confidential human sources.

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We are also improving our crisis management systems. The Operational Response and Investigative Online Network (ORION) is the FBI's next-generation Crisis Information Management System, which provides crisis management services to federal, state, local, and tribal law enforcement and/or emergency personnel. ORION standardizes crisis and event management processes, enhance situational awareness, and support the exchange of information with other command posts.

ORION provides a web-based crisis management application hosted on the Sensitive But Unclassified and FBI Secret networks that is also deployable in a stand-alone configuration via Critical Incident Response Group Fly-kits to locations without Internet or Secret network access. The ORION application is accessible from almost any desktop with FBINET or UNET connectivity using a standard web browser. It has been used at both the Democratic and Republican national conventions, major sporting events, to include the Olympics, and this year's Inauguration.

I know the FBI's progress in reducing the backlog of name check requests, especially in the area of immigration, has been of great interest to Members of Congress. We have made significant improvement during Fiscal Year (FY) 2008, with that trend continuing into FY 2009. At the beginning of FY 2008, the FBI had over 402,000 pending name check requests submitted by the United States Citizenship and Immigration Services (USCIS), with over 380,000 of those pending for more than 30 days. In FY 2009, the FBI is processing over 98 percent of all incoming USCIS name checks within 60 days, and as of March 9, 2009, has only 34 USCIS name check requests pending for more than 30 days. The FBI will build on this success and will further streamline and improve the name check process.

C. Human Capital

These improvements in structure and technology will strengthen the FBI's intelligence capabilities. But we know that people are the FBI's best and strongest asset – one we must capitalize on to achieve our mission.

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As you know, we have been hard at work building a strong Human Resources program to ensure we have the optimum recruiting, hiring, training, and retention practices for our employees.

The changing workforce of the United States will have different expectations than previous generations, challenging the FBI to evolve its career development practices and offer new opportunities for growth in order to attract talent. We must also continue to enhance our intelligence capabilities, adding to the skill sets of on-board employees. Finally, we must ensure there is sufficient leadership bench strength to lead the organization now and into the future.

Historically, the FBI has attracted recruits from the law enforcement, legal, and military communities, particularly to fill our Special Agent ranks. This has served us well as a law enforcement agency.

But as we develop into a national security agency, we also require employees with specialized skills — intelligence analysts, surveillance specialists, scientists, linguists, and computer experts.

Our hiring for Fiscal Year 2009 includes goals to bring on board approximately 2,800 professional staff, including intelligence analysts, information technology specialists, language specialists, and 850 new agents. Through our recruiting efforts, we have received more than 300,000 applications. We have extended more than 4,400 job offers and continue to work through the tremendous response from Americans who want to dedicate their careers to public service.

In order to help our people achieve their career aspirations, we have created career paths for agents and analysts alike. For example, the intelligence analyst career path provides early training, including a developmental rotational program, mentoring, and a range of job experiences, as well as opportunities for advancement. We have also developed a dedicated career path for Special Agents who specialize in intelligence. Our goal is to establish career paths for all employees.

We are also focused on strengthening our training programs. The FBI Academy at Quantico and the National Academy have long been considered premier law enforcement

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training academies. We are enhancing our Intelligence Training School at Quantico to build similarly strong intelligence skill sets. We are leveraging our Intelligence Community partners to help us develop curriculum and provide expert instruction, including a recently introduced human intelligence training course that we developed jointly with the CIA.

Finally, a 2009 priority is to revamp our approach to developing leaders at all levels of the FBI. To that end, we have launched a leadership development initiative to identify and implement an interconnected set of leadership training and developmental experiences for all employees, at all levels.

In order to support our human resources programs, we have also launched an initiative to transition the FBI to an updated Human Resources Information System. We are moving forward to implement a best-in-class platform that is already utilized across the government community, which will provide us with the technological infrastructure that managing a strong Human Resources program requires.

We are committed to investing the time and resources to provide the training and development, mentoring, and job experiences that will hone our employees' management, leadership, and technical skills. Today's new employees are the leaders of tomorrow's FBI, and we are committed to ensuring the FBI has continuous and strong leadership well into the future.

II. Threat Overview

These improvements are necessary for the work ahead of us. The threats we face are diverse, dangerous, and global in nature.

A. Counterterrorism

As you know, terrorism remains our top priority. We have not had a terrorist attack on American soil in more than seven years. But we are not safe, as illustrated by the recent attacks in Mumbai, India.

Today, we still face threats from Al Qaeda. But we must also focus on less well-known terrorist groups, as well as homegrown terrorists. And we must consider extremists from visa-waiver countries, who are merely an e-ticket away from the United States.

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Our primary threat continues to come from the tribal areas of Pakistan and Afghanistan. But we are seeing persistent activity elsewhere, from the Horn of Africa to Yemen.

We are also concerned about the threat of homegrown terrorists. Over the years since September 11, 2001, we have learned of young men from communities in the United States, radicalized and recruited here to travel to countries such as Afghanistan or Iraq, Yemen or Somalia. We must also focus on extremists who may be living here in the United States, in the very communities they intend to attack.

Given these substantial threats, terrorism will remain our top priority. But it is by no means our only priority.

B. Violent Crime

While Americans justifiably worry about terrorism, it is crime that most directly impacts their daily lives. We understand that national security is as much about stopping crime on our streets as it is about preventing terrorism.

It comes down to squaring priorities with limited resources. We currently have roughly a 50/50 split in resources between national security and criminal programs. To make the best use of these resources, we will continue to focus on those areas where we bring something unique to the table, and to target those criminal threats against which we will have the most substantial and lasting impact, from public corruption, violent gangs and transnational criminal enterprises to financial fraud and crimes against children.

Data from the Uniform Crime Report indicates that violent crime continued to decline across the country in 2008. But this may not reflect what is actually happening on the streets, particularly in small to mid-size cities. Street-level crime is a key concern, with gang violence and gun crime largely to blame.

Since 2001, our gang cases have more than doubled. We have more Safe Streets Task Forces in more mid-size cities. We have more than 200 Safe Streets, Gang, Violent Crime, and Major Theft Task Forces across the country, with more than 850 FBI agents. And we continue

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to work in tandem with our state and local partners to provide a balance between immediate responses to surges in violent crime and long-term solutions.

We are deeply concerned about the high levels of violence along the Southwest border. All too often, this violence can be traced back to three things: drugs, human smuggling, and gang activity. Because gangs are a transnational threat, the FBI formed the MS-13 National Gang Task Force. These agents and analysts coordinate investigations with our counterparts in Mexico and Central America.

Of course, drug-related violence is not new to the border area. But there have been shifts in alliances among Mexican drug trafficking organizations. These Mexican cartels are vying for control over Southwest border territory, leading to an increase in violence.

Mexican authorities are struggling to cut off drug smuggling routes from Mexico to the United States. One of the consequences of their efforts has been a surge in violent crime, particularly homicides. As law enforcement organizations crack down on these drug trafficking organizations, they turn to other means to make money, including kidnapping and extortion.

To address the surge in kidnappings, the FBI works closely with Mexican police officials on a Bilateral Kidnapping Task Force. This task force investigates cases along the border towns of Laredo, Texas, and Nuevo Laredo, Mexico. To combat drug-related violence, FBI agents participate on Organized Crime and Drug Enforcement Task Forces strike forces, which target the most significant drug trafficking organizations in the region.

In sum, we are taking what we have learned about intelligence and we are applying it to criminal investigations. Rather than focusing on the number of arrests, indictments, and convictions, we are focusing on the intelligence we need to prevent crime in the first place. And we are maximizing limited resources by working with partners here at home and abroad.

C. Economic Crime

We will continue to dedicate the necessary resources to defeat these diverse violent crime threats. But we must also focus on white collar and economic crime, including public corruption and mortgage fraud.

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In the wake of September 11th, we were confronted with radical changes to the FBI – changes that were necessary to address the terrorist threat. Yet at the same time, we faced a rash of corporate wrongdoing, from Enron and WorldCom to Qwest. We needed to prioritize our resources.

Public corruption is our top criminal priority. We have 2,500 pending public corruption investigations – an increase of more than 58 percent since 2003. In the past five years, the number of agents working public corruption cases has increased by almost 60 percent. And we have convicted more than 1,618 federal, state, and local officials in the past two years alone.

Apart from public corruption, economic crime remains one of our primary concerns. Our mortgage fraud caseload has more than doubled in the past three years, from 700 cases to more than 2,000. In addition, the FBI has more than 566 open corporate fraud investigations, including matters directly related to the current financial crisis.

These cases are straining the FBI's resources. Indeed, we have had to shift resources from other criminal programs to address the current financial crisis. In Fiscal Year 2007, we had 120 agents investigating mortgage fraud cases. In Fiscal Year 2008, that number increased to 180 agents, and currently over 250 agents are assigned to mortgage fraud and related cases.

Unfortunately, there is no sign that our mortgage fraud caseload will decrease in the near future. To the contrary, Suspicious Activity Reports (SARs) from financial institutions have indicated a significant increase in mortgage fraud reporting. For example, during Fiscal Year 2008, mortgage fraud SARs increased more than 36 percent to a total of 63,173. So far in FY 2009, there have been 28,873 mortgage fraud SARs filed. While the total dollar loss attributed to mortgage fraud is unknown, seven percent of SARs filed in Fiscal Year 2008 indicated a specific dollar loss, which totaled more than $1.5 billion.

To make the best use of our limited resources, the FBI has found new ways to detect and combat mortgage fraud. One example is the use of a property flipping analytical computer application, first developed by the Washington Field Office, to effectively identify property flipping in the Baltimore and Washington areas.

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This original concept has evolved into a national FBI initiative that employs statistical correlations and other advanced computer technology to search for companies and persons with patterns of property flipping. As potential targets are analyzed and flagged, information is provided to the respective FBI Field Office for further investigation.

In addition, sophisticated investigative techniques, such as undercover operations and wiretaps, not only result in the collection of valuable evidence, they provide an opportunity to apprehend criminals in the commission of their crimes, thus reducing loss to individuals and financial institutions. By pursuing these proactive methods in conjunction with historical investigations, the FBI is able to realize operational efficiencies in large scale investigations.

In December 2008, the FBI dedicated resources to create the National Mortgage Fraud Team at FBI headquarters. The team has specific responsibility for the management of the mortgage fraud program at both the origination and corporate level. They will assist FBI field offices in addressing the mortgage fraud problem at all levels. And they will provide tools to identify the most egregious mortgage fraud perpetrators, prioritize pending investigations, and provide information to evaluate where additional manpower is needed.

One of the best tools the FBI has for combating mortgage fraud is its long-standing partnerships with government and industry partners. Currently, there are 18 mortgage fraud task forces and 47 working groups across the country. These task forces are strategically placed in areas identified as high threat areas for mortgage fraud.

Partners are varied, but typically include representatives of Housing and Urban Development, the U.S. Postal Inspection Service, the Internal Revenue Service, Financial Crimes Enforcement Network, the Federal Deposit Insurance Corporation, and State and local law enforcement officers. This multi-agency model serves as a force multiplier, providing an array of resources to identify the source of the fraud and finding the most effective way to prosecute each case.

Last June, for example, we worked closely with our partners on "Operation Malicious Mortgage", a multi-agency takedown on mortgage fraud schemes, with more than 400 defendants across the country. Thus far, 164 defendants have been convicted in federal, State,

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and local courts for crimes that amount to more than $1 billion in losses. Forty six of our 56 field offices took part in the operation, which has also resulted in the forfeiture or seizure of more than $60 million in assets.

The FBI is one of the Department of Justice (DOJ) participants in the national Mortgage Fraud Working Group (MFWG), which DOJ chairs. Together, we are building on existing FBI intelligence databases to identify large industry insiders and criminal enterprises conducting systemic mortgage fraud.

We also continue to foster relationships with representatives of the mortgage industry to promote mortgage fraud awareness. We are working with industry partners to develop a more efficient mortgage fraud reporting mechanism for those not mandated to report such activity. This Suspicious Mortgage Fraud Activity Report concept is under consideration by the Mortgage Bankers Association.

III. Global Reach of the FBI

Like other federal agencies, we are worried about the economic downturn and the impact on criminal and terrorist threats against the United States. But at the same time, we understand that our role cannot be limited to the domestic front. Just as there are no borders for crime and terrorism, there can be no borders for justice and the rule of law.

Through our 61 Legal Attaché offices around the world, our international training programs, and our joint investigations, we have strengthened our relationships with our international law enforcement partners and expanded our global reach.

Global cooperation is not merely the best way to combat global crime and terrorism, it is the only way. And we must cooperate not only with our international law enforcement and intelligence partners, but with our private partners as well.

Consider cyber crime, for example. As the world grows more dependent on information technology systems, keeping these systems viable and secure has become an increasingly urgent national priority. Our increased reliance on technology has created an irresistible target for criminal activity, and that activity is by no means limited to the United States.

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Currently, the largest source of transnational cyber crime is Eastern Europe. Annual estimated loss to financial institutions in responding to these attacks exceeds $200 million in the United States alone.

To combat this growing threat, the FBI has developed close working relationships with law enforcement partners within high-value target countries such as Russia and Romania, and also with allies who are victimized by these cyber criminals. We have close working relationships with countries such as Australia, New Zealand, Canada, the United Kingdom, Italy, the Netherlands, Germany, France, Poland, Estonia, and Japan, and these partnerships are paying off.

For example, in November of last year, cyber criminals executed a highly sophisticated scheme to defraud a major payment processor. Hackers gained access to the network of this payment processor and increased the funds available for a small number of payroll debit cards.

In less than 24 hours, more than $9 million was withdrawn in connection with more than 14,000 automated teller machine transactions in 28 different countries, from the Ukraine to the United States, Canada, Italy, and Japan, among others. To date, there are more than 400 known victims, and the investigation is ongoing.

From a law enforcement perspective, the ability to respond to these attacks is hampered by their scale and their international scope. We simply do not have the resources required to address this problem in its entirety. The growing global threat will continue to pose problems so long as attacks continue from technically sophisticated, underemployed, underpaid actors operating from countries whose diplomatic relations with the United States may be less than ideal.

We also confront a patchwork of laws, regulations, and private industry requirements – all of which prohibit reporting and investigation on an international scale. By extension, a lack of reporting of such security breaches inhibits information sharing and hampers law enforcement and private industry in the long run.

Global cooperation addressing these cyber threats would better equip victim organizations and support a comprehensive and unified approach by law enforcement, giving us

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the means to leverage the collective resources of many countries. A global response will ensure deterrence, enhance confidence, and increase security in the long run. For these very reasons, we will continue to build partnerships with our international law enforcement and intelligence counterparts, and our private sector partners as well. And we will continue to investigate these kinds of transnational threats to the fullest extent of our reach and our resources.

IV. Conclusion

Over the past 100 years, the FBI has earned a reputation for protecting America that remains unmatched. Many of our accomplishments over the past seven years are in part due to your efforts and your support, and much of our success in the years to come will be due to your continuing support. From addressing the growing gang problem to creating additional Legal Attache offices around the world, to compensating our personnel and protecting the American people from terrorist attack, you have supported our mission and our budget requests.

Mr. Chairman, I would like to conclude by thanking you and this Committee for your service and your support. On behalf of the men and women of the FBI, I look forward to working with you in the years to come. I would be happy to answer any questions you may have.

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

March 24, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Patrick:

I write to request that you not schedule a hearing for the nomination of Judge David Hamilton to the Court of Appeals for the Seventh Circuit before the upcoming Senate recess. While I also have some concerns about scheduling a hearing on the nominations of Mr. Ron Weich to be Assistant Attorney General for Legislative Affairs and Mr. Gil Kerlikowske to be the Director of the Office of National Drug Control Policy for Wednesday, April 1, 2009, these concerns are not as significant as those I have about Judge Hamilton's nomination schedule.

On February 6, 2009, I wrote to you to convey my concern over the expedited schedule for consideration of several executive nominations and I suggested that, at a minimum, Senators should be afforded at least two weeks to evaluate executive nominees' records prior to their hearings. The Judiciary Committee did not receive Mr. Weich's or Mr. Kerlikowski's questionnaires until after 6 p.m. on Wednesday, March 18 and supplements to those materials were received on Friday, March 20. An April 1 hearing does not give the Committee a full two weeks to examine their records. Notwithstanding, I recognize the need to fill these important executive positions, and I am willing to move forward on these nominations before the Senate recess. A hearing for Judge Hamilton on April 1 is a different matter.

Judge Hamilton's nomination was announced on March 17, but the Committee did not receive his questionnaire until after 8:30 p.m. on March 18 and the attachments to his questionnaire arrived after 5:00 p.m. on March 19. Those materials were still not complete, and Judge Hamilton supplemented his materials on March 23. Judge Hamilton has been a district court judge for almost 15 years and has authored over 1200 opinions. In addition, he has submitted approximately 2000 pages of speeches, articles, and public policy papers relating to his nomination. Members cannot prepare for a hearing for a lifetime appointment to a circuit court in a mere thirteen days, especially when they are expediting review of two executive nominations. I also would note that, during the Bush Administration, Members were afforded an average of 138 days to evaluate a circuit court nominee prior to a hearing, and no nominee was considered in this short a period of time. Similarly, during the Clinton Administration, Members were afforded an average of 117 days to evaluate circuit court nominations. There are no extraordinary factors counseling expedited review of this nomination; the Seventh Circuit seat is not a judicial emergency and the seat has only been vacant for a few months.

I hope you will agree to postpone the hearing for Judge Hamilton until after the recess in order to give Members an appropriate amount of time to prepare.

Sincerely,

Arlen Specter

Pat – If you insist on this schedule for Hamilton, you will start off on the first Pro Obama nomination in a very confrontational manner which will provoke opposition & prove counter productive.

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