



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,

A handwritten signature in cursive script, appearing to read "Ronald Weich".

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Minority Member

ACLU Sect. 215-2640

**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.

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

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?

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.

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?

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

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

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

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?

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.

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

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

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?

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

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.

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

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?

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

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

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.

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.

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

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.

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

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?

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.

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.

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.

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

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

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.

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. 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 IINI has been funded to expand the existing laboratory and to hire seven additional examiners.

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

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

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.).

- **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.

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 Partial Submission
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?

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?

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.

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?

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.

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

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.

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;

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.

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**

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

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.

ACLU Sect. 215-2691

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

(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.

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

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?

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

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

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.

- 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.

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.

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

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.

- 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

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

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,

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.

- 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.