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OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

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COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

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OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

WEDNESDAY, SEPTEMBER 16, 2009

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

The Committee met, pursuant to notice, at 10:04 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Feinstein, Feingold, Schumer, Cardin, Whitehouse, Klobuchar, Kaufman, Specter, Franken, Sessions, Hatch, and Grassley.

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

Chairman LEAHY. Good morning. I always hate to rush the photographers. If I do this wrong, I hear about it at family gatherings. [Laughter.]

And the photographers understand what I am talking about.

Today we hold our second hearing this Congress on oversight of the Federal Bureau of Investigation. Of course, we welcome the Director, Robert Mueller, back to the Committee. As Senator Sessions and I were saying to Director Mueller just before we started, there is a briefing underway on Afghanistan, and that is why a number of Senators have to be gone. Others may be delighted to be here. I see Senator Grassley, my old friend of decades here. He would probably rather be here than Finance these days.

But I appreciate Director Mueller's continued dedication to working with Congress to ensure that the FBI can effectively pursue its critical missions in law enforcement and national security while maintaining the values and freedoms that define us as Americans.

Last month, Attorney General Holder announced a heightened role for the FBI with the formation of a High-Value Detainee Interrogation Group to interrogate the most dangerous and high-value terrorist suspects. The group, bringing together experienced professional interrogators, analysts, subject matter experts, and linguists from across the intelligence community, the law enforcement community, and the Department of Defense, is going to be housed within the FBI. I have talked with Attorney General Holder about this. I understand the internal debates that went on on this matter, but the HIG is being created to improve the ability of the United States to interrogate dangerous terrorists effectively, and doing it in a manner not only consistent with our law but consistent with the values that make America different than other

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countries. And I think it is a welcomed signal the administration has chosen to house the HIG within the FBI. The FBI is an agency with a long history of proven success in interrogation without resorting to extreme methods that violate our laws and our values and fail to make us safer.

In March, when the Director was before us, I noted his important statement last year commemorating the 100th anniversary of the FBI. In fact, I got a copy of that and put it in the Congressional Record. The Director said, "It is not enough to stop the terrorist—we must stop him while maintaining his civil liberties. It is not enough to catch the criminal—we must catch him while respecting his civil rights. It is not enough to prevent foreign countries from stealing our secrets—we must prevent that from happening while still upholding the rule of law. The rule of law, civil liberties, and civil rights—these are not our burdens. They are what make us better. And they are what have made us better for the past 100 years."

I agree with him.

The Committee is soon going to turn to discussion of the expiring provisions of the USA PATRIOT Act, what needs to be done in that regard. During the past few years, audit provisions included in the previous PATRIOT Act statutes brought to light the misuse of certain tools provided by the PATRIOT Act. For example, National Security Letters allow the Government to collect sensitive information, such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I noted that, with no real limits imposed by Congress, the FBI could store this information electronically and use it for large-scale data mining operations.

We know that the NSL authority was significantly misused. In 2008, the Department of Justice Inspector General issued a report on the FBI's use of NSLs, revealing serious over collection of information.

I have also closely tracked the use of Section 215 of the original PATRIOT Act, which authorizes an order for business records. I have long believed that greater oversight of this section is required, including broader access to judicial review of the nondisclosure orders that are so often issued with Section 215 demands for records.

Finally, I have raised concerns over the misuse of exigent letters to obtain phone records and other sensitive records of Americans, including reporters—including reporters—without a warrant, without emergency conditions, and without a follow-up legal process. Director Mueller has assured us that appropriate steps have been taken to prevent a repeat of that abuse. He has helped address concerns that records illegally obtained with these letters may have been inappropriately retained by the Government.

So I hope he would agree that as we consider the reauthorization of expiring provisions of the PATRIOT Act, we should keep in mind the proven effectiveness of audits, reviews, and continuing oversight by Congress.

Our oversight also includes review of the FBI's traditional, and vital, law enforcement role. The FBI has just released the 2008 crime statistics, and the work of law enforcement and the trend

lines are to be commended. I hope that the preliminary indications for this year show the continuation of these trends despite the economic downturn and financial crisis and that the assistance we were able to include in the economic stimulus package to State and local law enforcement will help to keep crime down throughout the country.

In May, Congress passed and the President signed into law the Fraud Enforcement and Recovery Act which gives investigators and prosecutors the resources they need to aggressively detect and prosecute the mortgage fraud and financial fraud that contributed to the massive economic crisis.

Director Mueller, I want to thank you personally and the Bureau for the help you gave us in putting together that important piece of legislation. The testimony of your Deputy and others who came up here was extremely important to make sure that we wrote a law that would actually give law enforcement the tools they need to combat this really vicious and malicious form of fraud.

I think we need a similarly aggressive approach to combating health care fraud, another insidious form of fraud that victimizes the most vulnerable Americans and drives up the cost of health care for all of us. And seeing Senator Grassley here, I might note that Senator Grassley was my chief cosponsor on that piece of legislation and helped make sure that we got it voted on the floor, and I know it was applauded when it was signed into law by the President. So I applaud the Department for its commitment to reducing waste and excess in the health care system.

I thank Director Mueller for coming here, and once I again I thank the hard-working men and women of the FBI, and I look forward to your testimony.

Senator Sessions, you wished to say something.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. Thank you, Director Mueller. Not often enough in our country do we have people holding positions for which their background and learning and experience equip them exceptionally well, and I believe you are one of the most capable leaders we have in our country. You are utterly experienced in the matters that you handle now every day, and I thank you and all your agents who work tirelessly to make sure that we are not subject to another attack in this country and to fight crime and fraud throughout our country.

And I know a lot of us were dismayed last month when Abdel al-Megrahi, the person who was involved in the bombing of Pan Am Flight 103 at Lockerbie was released. And thank you for speaking directly on behalf of the feelings of so many of us that this was an unconscionable and unacceptable decision to release that murderer, and the political environment that he was released in made it even worse. Every now and then a leader like yourself needs to speak out on those kinds of issues, and I appreciate that.

There are a number of issues I would like to talk to you about. I am on the Armed Services Committee, and I need to be at this briefing on Afghanistan. It is at a critical stage now, so I will not

be able to stay throughout this hearing. But some of the questions I will submit to you in writing and ask a few before I leave.

Last month, Attorney General Holder announced he was establishing a High-Value Detainee Interrogation Group. The interrogators will operate out of the FBI under the guidelines established by the Army Field Manual. According to a Department press release, the group would be subject to the National Security Council for "policy guidance and oversight." Beyond the Department's announcement and a few press reports, we know very little about how it will operate, either administratively or operationally. We need to learn more about that.

I would just say this: That is an odd mixture. The FBI's entire heritage and background and training is focused on civil law enforcement in America and prosecution of cases in Federal courts, primarily, in this country. We have always had military commissions. They are referred to in the Constitution, and we have had them before to deal with people who are unlawfully at war with the United States. And they are not treated in the same way, and I do not understand this at all. It really is an odd mixture to me. It is blurring lines that should not be blurred.

Last week, we had testimony from the National Academy of Sciences on strengthening forensics in America, and they questioned whether law enforcement should be involved in any of the forensic activities. I think perhaps the greatest technological development in criminal justice history is the FBI fingerprint program and its availability to every law enforcement agency in America, and it is used hundreds of thousands of times every week. And this would be an issue that I think we need to talk about, whether the FBI would be required, if that policy were to be effected, to somehow transfer this out of the oversight that you have so ably given it for so many years.

This week, the Committee will consider legislation to shield journalists from being compelled to testify or produce any documents in investigations relating to certain protected information. I believe this information will do considerable—this legislation as written will do damage to our national security. There are reasons, very good reasons, that nations have to maintain a certain amount of secrecy, and I think we need to be aware of that, and I hope to ask you questions about that.

So thank you for being here today. I look forward to your testimony, and I will probably submit some written questions to you later.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. We will keep the record open for any other statements, and, Director Mueller, please feel free to go ahead, sir.

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

Mr. MUELLER. Thank you, and good morning, Chairman Leahy, Senator Sessions, and members of the Committee. Thank you for having me here today.

When I was before the Committee back in March, I updated you on our national security threats, our strategies to prevent those threats from occurring, and ongoing efforts to develop our intelligence capabilities and infrastructure. The statement I have submitted today focuses on criminal threats as well as our other priorities. I might say, in fighting crime the FBI continues to focus on areas where our skills and our expertise will have a substantial and a lasting impact.

Today's FBI is not an intelligence service that collects but does not act, nor are we a law enforcement service that acts without knowledge. We are a security service fusing the capability to understand the breadth and the scope of threats with the capability to dismantle those same threats, whether they be terrorist or criminal.

On the counterterrorism front, al Qaeda continues to present a threat to the homeland. Domestically, through our Joint Terrorism Task Forces and overseas through our legal attachés and international partners, we work to detect and identify any potential al Qaeda operatives who may have access to the United States. We are also alert to homegrown or self-radicalized terrorists. And we work closely with impacted communities, our law enforcement partners, and the intelligence community to identify and to disrupt these threats.

Closer to home, we are focused not only on terrorist threats but also on the threats posed by violent crime and white-collar crime. To address these threats, we have moved from a quantitative to a qualitative approach. We are using intelligence to identify the greatest threats to each of our communities. To be effective, we need to collect intelligence that reveals any links between our existing cases and also fills in gaps in our knowledge base.

Intelligence gathering differs from city to city and State to State, just as criminal and terrorist threats differ. And just as partnerships have been key to our efforts against terrorism, partnerships are critically important in addressing criminal threats as well. Partnerships have enabled us to achieve notable successes in the fight against public corruption, our top criminal priority.

Take as an example our efforts along the southwest border where we have focused efforts and concentrated agents. With 120 of the 700 agents we have fighting corruption assigned to the southwest border, we already have over 100 arrests and 130 indictments and over 70 convictions in this fiscal year.

We are seeing success in the fight against violent crime as well. Earlier this week, we released the Uniform Crime Report depicting crime statistics for 2008. And for the second year in a row, there has been a decrease in violent crime. And while the report does not give the reasons for that decrease, I do believe that the drop in violent crime says much about the efforts of State and local law enforcement and the efforts of State and local law enforcement with the Federal agencies.

Within our criminal program, our field offices continue to work with our law enforcement partners in Safe Streets, OCDETF, Violence Crime Task Forces in order to fight crime in the communities that you represent.

Yet despite the positive trends in this year's report, violent crime continues to plague many communities, especially small- to mid-sized cities. Gangs are morphing, multiplying, and migrating, entrenching themselves not just in our inner cities but increasingly in suburbs and rural areas.

The FBI focused its efforts on the most violent and criminally active gangs, those that function as criminal enterprises. This model enables us to remove the leadership and the most dangerous members of violent gangs and seize their criminally obtained assets. Our goal is not just to disrupt their activities, but to dismantle their organizations entirely.

We are also focused on economic crime, primarily mortgage fraud, health care fraud. These are not victimless crimes. They impact all Americans by stealing taxpayer dollars and undermining the integrity of our financial and health care systems. We currently have more than 2,400 pending health care fraud investigations and more than 2,600 pending mortgage fraud investigations.

Our investigations are focused on partnerships, intelligence, and information sharing, and through task forces and working groups and targeted law enforcement actions, we are having success both in generating cases but also successfully committing those responsible for those cases and in general combating fraud.

In April of this year, 24 individuals were charged as a result of a joint FBI-IRS investigation that identified an extensive mortgage fraud scheme based in San Diego, California. The scheme involved 220 properties with a cumulative sale price of more than $100 million. Joint investigations such as this successful investigation and prosecution mean that additional resources for identifying perpetrators of fraud and additional prosecutive options for bringing them to justice are essential.

Similarly, in June, I joined the Attorney General and Secretary Sebelius in announcing indictments against 53 persons in a combined enforcement effort targeting fraud schemes that threaten Medicare. These schemes involve persons who arranged unnecessary or non-existent treatment for straw patients who were willing to go along with the scheme for money. Our investigative partnerships, in this instance through the Department of Justice and HHS, ensure the prompt resolution of complex health care fraud cases and contribute to the prevention of fraud and abuse.

In closing, I would like to thank the members of the Committee for your support of the men and women of the FBI. We continue to look forward to working with this Committee on these and other threats and challenges facing our country. Mr. Chairman, Senator Sessions, and members of the Committee, I appreciate the opportunity to appear here today, and I look forward to answering your questions.

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

Chairman LEAHY. Thank you very much, Director. Incidentally, there has been some mention of the Lockerbie matter, and as I said, several of us, myself included, were at a meeting over a long weekend, the 1st of September, and the Labor Day weekend, on the meeting of the United States-United Kingdom Interparliamentary Group that meets every 2 years. And we raised with our counter-

parts from England the strong and bipartisan displeasure with the release of the Lockerbie bomber. I raised the point that it was very unusual for you to speak out as you did and that I strongly agreed with what you said.

Now, I said in my opening statement I was pleased to see the Obama administration housing the High-Value Detainee Interrogation Group in the FBI. You have had a long tradition of conducting interrogations that have produced valuable—more than valuable, actionable intelligence. Former FBI Agent Ali Soufan testified to this Committee about his interrogation of Abu Zubaydah almost immediately after he was captured. He used FBI techniques that had proven useful time and time again. And he learned that Khalid Sheikh Mohammed was the mastermind of the 9/11 attacks, and he discovered Jose Padilla—something that he has had to point out a number of times when the record has been misstated.

What lessons in the long history of FBI interrogations will you import to this High-Value Detainee Interrogation Group now that it is going to be housed at the FBI?

Mr. MUELLER. Let me start by saying that the concept is to have this combined group administratively housed within the FBI. Speaking specifically of the FBI, we have had a tradition of negotiation and interrogation over a period of years that is dependent principally on building a rapport. It is one way to go. We believe we are successful at it. Many of our agents have spent years on the streets as police officers before they come to the Bureau conducting interrogations in many environments and in many ways and have some expertise.

There are other substantial capabilities and expertise in terms of interrogation elsewhere in the country in other organizations—in particular, intelligence organizations. And I believe the concept is to bring together this expertise in terms of what techniques work legally and are appropriate under the current statutes and regulations, but more particularly put together not only the capabilities of an interrogator, but also assure that from each of the agencies you have subject matter experts, if it is terrorism or some counterintelligence arena, that you have subject matter expertise as well as expertise and background of the person to be integrated so that that capability is used to full effect in gaining the information you need.

I will say at the outset that what one wants to do is give the policymaker the options on the table for how you proceed, and to the extent possible, if there is the possibility or anticipation of a court proceeding in the United States, leave open that option.

By the same token, I must say that the most important thing for us, whether it be the FBI, the CIA, or the intelligence community, is to gain that intelligence information that will prevent attacks in the first place as opposed to the prosecution of somebody who has successfully undertaken that attack.

Chairman LEAHY. Will you have oversight of the HIG to make sure that their methods are legal and effective?

Mr. MUELLER. Yes, we will.

Chairman LEAHY. What about the Army Field Manual? Does that give any guidelines?

Mr. MUELLER. It is, but, you know, the Army Field Manual, which is the manual that is being used to conduct investigations particularly overseas by the military in places like Afghanistan and Iraq, has a set of procedures. There may be other procedures there that are not contained within the Army Field Manual that may be wholly useful and legal that should be undertaken as well. And that is something that has to be explored.

Chairman LEAHY. But your department will have the oversight in that?

Mr. MUELLER. Our department has, yes, the oversight in terms of we are putting it together, but I will tell you it is going to be, I hope, FBI leadership with CIA as the deputy. I have had conversations with Leon Panetta. We are agreed that this is a valuable contribution and is going to be a joint effort.

Chairman LEAHY. Then in that regard—and you have been very responsive to this Committee's jurisdiction for oversight—I assume that you will be responsive to oversight requests from the Committee on how this group is working.

Mr. MUELLER. Absolutely.

Chairman LEAHY. I realize, of course, in that regard there will be areas that will have to be responded to in a classified fashion, as well as others that can be done in an open fashion.

Mr. MUELLER. May I mention two other aspects of it, Mr. Chairman, if I might, and that is, the importance of having uniform training and building training curricula that each of the agencies contributes to and understands and build the best possible training capabilities, but also pulling together the science, the capabilities that are known in academia in one place so that we can look at it and develop the best possible techniques, legal techniques to proceed.

Chairman LEAHY. When Congress included in the 2006 PATRIOT Act reauthorization a requirement that the Justice Department's Office of Inspector General conduct audits and reviews of the use of National Security Letters authority and Section 215 orders for business records, the Inspector General found some significant abuses, including widespread misuse of NSLs, so-called exigent letters, also claiming emergency circumstances to keep and obtain evidence the Government was entitled to.

You have told the Committee about the important steps—and you and I have discussed it privately, too—that the FBI has taken in light of these audits to change these procedures. The Justice Department sent a letter to me this week. The oversight provided since 2001 and the specific oversight provisions added to the statute in 2006 have helped to ensure the authority is being used as intended.

Would you agree with that, the congressional oversight and the audits mandated have been helpful in encouraging the FBI to improve its procedures to make sure these are being used in the way they should be?

Mr. MUELLER. Well, I will at the outset say that we have for several years now used totally revised procedures that have answered and responded to the criticisms of the Inspector General, most particularly in the Office of Integrity and Compliance within the FBI, which has now become a model for such offices.

Whichever mechanism reviews it is of less importance to me than there be periodic outside review. My belief is that this could well be handled by the annual reviews that are done by the National Security Division of the Department of Justice, which has an oversight role in this particular arena. But I do believe that there should be some outside review, periodic review. My suggestion would be that it be with the—wrapped into, rolled into that review which is already undertaken by the National Security Division, Department of Justice.

Chairman LEAHY. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you.

With regard to the threat of terrorism and al Qaeda, do we have any reason in this country to feel that that threat is less today? Or can you tell us if there are any indications that, in fact, the threat may be growing?

Mr. MUELLER. As I think I have repeatedly testified and discussed, the threat is always there, and the concern is that we become complacent. I tend to look at the al Qaeda threat in three areas:

One is arising directly out of Waziristan or the federally administered tribal areas, where you have individuals or any plot that is controlled by individuals in that area.

You then have individuals in other countries, whether it be the U.K., the United States or elsewhere, who have been radicalized in some way, shape, or form, who may travel to Pakistan to obtain additional training, which is the second level, and I call that a hybrid threat, and then come back and pretty much on its own, not controlled necessarily by the al Qaeda hierarchy in Pakistan. That is the second level.

And the third level is self-radicalized, on the Internet or otherwise, individuals who have no contact with al Qaeda in Pakistan, but subscribe to the same extremist ideology that present a threat. It has continued to present a threat over the last 8 years and presents a threat today.

Senator SESSIONS. With regard to the media legislation, the media shield bill, you and a number of intelligence community colleagues opposed the predecessor of that bill in a letter stating, "The high burden placed on the Government by these bills will make it difficult, if not impossible, to investigate harms to the national security and only encourage others to illegally disclose the Nation's sensitive secrets."

Are you aware of any Nation that has not found it necessary to maintain secrets regarding their national security?

Mr. MUELLER. I cannot purport to be an expert, but I do not know of any.

Senator SESSIONS. Throughout the history of modern nations, they all have intelligence agencies and have to operate with some degree of secrecy. Isn't that true?

Mr. MUELLER. True, but I do believe that we are somewhat unique in that there is a First Amendment, which many countries do not have as well.

Senator SESSIONS. Well, are you saying the First Amendment prohibits the U.S. Government from maintaining secret investigations of al Qaeda or other things of that nature?

Mr. MUELLER. That is not at all what I am saying, and the letter that I——

Senator SESSIONS. I did not think so.

Mr. MUELLER [continuing.] Participated in writing on January 23rd, it was my view then and my view now with regard to the legislation.

Senator SESSIONS. Thank you for that. I think it is important that we get that right, that legislation, and not make a mistake on it.

Would you share with the members of the Committee what kind of rules are in place and, for the most part, have been in place for many, many years, 20, 30 years, about agents and Assistant United States Attorneys, Federal prosecutors, when they make inquiry of media people? Can an agent go out and interview a newspaper person or can an Assistant United States Attorney issue a subpoena on their own to a newspaper person?

Mr. MUELLER. The basic rule, it cannot be done without the approval of the Attorney General.

Senator SESSIONS. The Attorney General himself or herself.

Mr. MUELLER. Yes.

Senator SESSIONS. This is one of the highest protective standards in the Department of Justice, is it not?

Mr. MUELLER. Excuse me just one second.

I wanted to make certain that—I know at one point when I was at the Department of Justice, I was involved in one of these, and I was Acting Deputy, and I wanted to make certain. It was my role to advise the Attorney General, because it is the Attorney General's responsibility to sign those.

Senator SESSIONS. Well, the point of which is this is institutionally deep in the culture of the Department of Justice.

Mr. MUELLER. Yes.

Senator SESSIONS. The FBI and the Department of Justice that it is a very sensitive matter to inquire of a free news person in America, and it should only be done after the most careful review, and there are standards set out in the U.S. Attorneys' manual that have to be met, are there not, before such things like——

Mr. MUELLER. That is correct. And if you look at the record, and I think the—I know in submissions from the Department, the numbers of occasions on which approval has been given is minuscule over the years.

Senator SESSIONS. That is correct. It just almost is not done unless it has to be done for some very significant reason. I am not sure that is always wise, but I think to err has been on the side of protecting the media if there has been any error in recent years for the most part.

Let me ask you about this entire—the high-value detainees and whether or not they will be mirandized. The President said of course we are not going to give Miranda to people we arrest who are combatants against the United States, at war against us. But it appears to me that is exactly where we are heading if this commission or group that was formed within the administration to

study it, they have required and opined that most prosecutions would be in Federal courts and not in military commissions, or the presumption is that they would be in Federal courts and not military commissions.

And isn't there—just yes or no—a big difference, a significant difference between the evidentiary standards of a military tribunal and a Federal court prosecution?

Mr. MUELLER. Well, it may well be, but I do believe there is a great deal of confusion about this. We have been working over in Iraq and Afghanistan——

Senator SESSIONS. Wait a minute. It may well be. There is a difference between a military commission with regard to Miranda warning and a trial in a United States district court——

Mr. MUELLER. There may be.

Senator SESSIONS. Yes or no?

Mr. MUELLER. There may be.

Senator SESSIONS. I think there is. All right. Now, if you are going to try a case in a Federal district court, Director Mueller, aren't you required to comply with the rules of evidence that are in force in that court?

Mr. MUELLER. Yes.

Senator SESSIONS. And if you are going to bring a witness in who has confessed to a military interrogation and try to try them in a Federal court and they have not been mirandized and they confessed, can't the defense lawyer likely prevail in suppressing the confession?

Mr. MUELLER. He would certainly try and likely prevail.

Senator SESSIONS. And doesn't that mean then if a presumption is in place that these cases are going to be tried in Federal court that we need to be mirandizing everybody arrested in the war on terror——

Mr. MUELLER. I do not believe that follows. I do not believe that follows.

Senator SESSIONS. Well, who would we not mirandize?

Mr. MUELLER. Most of the individuals that are picked up in Afghanistan and Iraq have not been mirandized, although we have been a participant in interrogations for the last 5, 6 years. There are occasions, and a very few occasions, where the determination has been made to mirandize somebody for a reason principally to hold out the option of being able to try that person in another court.

Senator SESSIONS. Oh, to hold out the option. So if you are going to try them in Federal court, they should be mirandized. Right?

Mr. MUELLER. If you want the statement, a particular statement at a particular time admissible in a Federal court, generally that has to be mirandized.

Senator SESSIONS. I think that is correct.

Mr. MUELLER. I agree.

Senator SESSIONS. And so if you have got a presumption that these cases are going to be tried in Federal court, why wouldn't the rule be pretty normal in the field by military interrogators and others to give Miranda warnings? Wouldn't it be making a mistake not to? And isn't that likely to reduce the amount of intelligence they gather?

Mr. MUELLER. I think you could make—sit and look at it and determine what kind of information the person has, regardless of what court the person——

Senator SESSIONS. Who is going to look at it, Director Mueller?

Mr. MUELLER. Who is going to look at it?

Senator SESSIONS. Who is going to be making——

Mr. MUELLER. The National Security Council in terms of is the intelligence more important than holding out an option in Federal court. And sitting and looking at that, you would want that option available, if it could be available, and not to the detriment of gaining the intelligence you need to prevent terrorist attacks.

Senator SESSIONS. I think it creates quite a bit of pressure to give Miranda warnings on many, many, many cases if the presumption is those cases are going to be tried in Federal court and not a military commission, that this is going to reduce the amount of intelligence obtained on the battlefield that we have never given Miranda warnings before in the history of this country of those who are at war against us, and it represents a significant problem. And I do not agree with you on that, and you can minimize it, and we will ask some written questions. But I feel strongly about it. This is an alteration of military effort, war, through a civilian prosecution, and it is a dangerous trend, in my opinion.

Chairman LEAHY. Director Mueller, isn't it a fact——

Senator SESSIONS. Well, why ask——

Chairman LEAHY. Well, you have gone way over your time, but I just want to cut to the chase here. If soldiers are on the field, they have been in battle, they have captured some people, they do not give the Miranda warning to them when they capture them, do they?

Mr. MUELLER. No.

Chairman LEAHY. Of course not. And I wanted that clear because I have actually had letters from people who have listened to some of this hoopla that goes that say, "How can you capture somebody and you have to give them a Miranda warning?" Nobody does. My son was in the marines. You were in the military. Of course we do not do that.

Senator Kohl.

Senator SESSIONS. I would just say the presumption came into place on July 20th of this year that these cases would be tried in Federal courts, and that inevitably requires a far more—a far larger increase in Miranda warnings than ever has been done in the history of this Republic, or any other nation, to my knowledge.

Chairman LEAHY. I might note that we have an awful lot of people captured on the battlefield that are never going to see a Federal court and are never going to be held anywhere else. And when you win a battle and you capture somebody, you do not give a Miranda warning.

Senator Kohl.

Mr. MUELLER. And I do believe, sir, if you ask the commanders in the field—in Afghanistan or Iraq—to determine whether or not—the issue of whether or not you give Miranda warnings has ever interfered with their ability to do their job, I think they would say no, and it is important to have the FBI there and the FBI's expertise there.

Senator SESSIONS. You think the FBI needs to be involved in interrogations in Iraq now?

Mr. MUELLER. In some, yes.

Senator SESSIONS. In some?

Mr. MUELLER. Yes.

Senator SESSIONS. Are you going to pick and choose?

Mr. MUELLER. We do it with——

Chairman LEAHY. Let's hold that for the next round.

Senator SESSIONS. I think this is an important issue.

Chairman LEAHY. Well——

Senator SESSIONS. We have muddled entirely the classical distinction between war and criminal prosecution.

Chairman LEAHY. Senator Sessions, I have allowed you to have twice as much time even as I took in questions, and I want to make sure, though—we have a number of Senators who also want to go to this briefing. I want them to have a chance.

We will go to Senator Kohl.

Senator SESSIONS. I will excuse myself to go see what we can do help win this war in Afghanistan.

Chairman LEAHY. Then we will go next to Senator Grassley, and then we will go next to Senator Feinstein, and then we will go next to Senator Hatch.

Senator KOHL.

Senator KOHL. Thank you, Mr. Chairman.

First, I would like to thank the FBI for your assistance, with the serial murder string in Milwaukee that spanned over 20 years. The FBI was instrumental to this investigation, resulting in a major arrest, as I am sure you are aware. On behalf of our chief, our mayor, victims' families, and the entire city, we would like to thank you and the FBI.

Mr. MUELLER. Thank you. Thank you, sir. It was a joint effort, and I appreciate Ed Flynn's comments in that regard.

Senator KOHL. Thank you so much.

As you said in your remarks at the outset, major crime across the country is showing some decrease, but it seems to be centered in the largest cities across our country. We in Wisconsin have experienced the same kind of a decrease in Milwaukee. It has been major and recognized and very much appreciated. But in cities of medium and smaller size around our State, we also have experienced significant increases in major violent crime.

For example, in Racine, the number of violent crimes went from 391 in 2005 to 542 in 2008. And in Madison, the number went from 839 violent crimes in 2005 to 891 in 2008. And in other cities, like LaCrosse, we have had similar significant increases in violent crime from 2005 to 2008.

As you indicated, this also seems to be a pattern around the country. To what do you attribute it? And what are some of the thoughts you have about addressing this serious issue?

Mr. MUELLER. Let me just say maybe three things.

The first is that the quality of policing in cities makes a substantial difference.

Second, I do believe the spread of gangs can have a huge impact in the rise of crime in particular cities, the MS–13, the Latin

Kings, you name those, and to the extent that they gain a foothold in a community and you see crime rising.

And, last, although the violent crime statistics have gone down over the last couple of years, I do believe that we will face some resurgence in the future. You have a number of persons being released from prison, in some cases because of the shortage of prison space. You have a number of persons who have spent substantial periods of time, having been arrested 10, 15, 20 years ago, coming out and coming out to an economy that is very difficult to find a job. And, consequently, I do believe we have to watch this closely.

To that end, we are working closely with our State and local counterparts. My belief is always that we do a better job working in task forces and combining the capabilities and the skills of the local police departments and sheriffs' offices with the FBI, ATF, and DEA. And that maximizes our capabilities of addressing a particular violent crime program in a particular city.

Senator KOHL. I appreciate that, but what would explain the difference between the decrease in violent crime in the major cities around our country, including Wisconsin, and smaller to medium-sized communities?

Mr. MUELLER. I am not sure anybody can put their finger on it, and I am not certain that one answer fits all. As I go back, it may be the quality of policing; it may be the impact of taking out a particularly violent gang in a particular city; it may be a combination of utilizing social services along with the efforts of the Federal and State and local law enforcement authorities. I do not think there is one answer.

We tend to look at crime and say, Okay, what is the fix for crime generally in our cities, and too often it is individualized. And I do recognize the pattern in our larger cities has gone down more substantially than others, and to a certain extent, I think the argument can be made that it is the quality of policing in those particular cities.

Senator KOHL. Director Mueller, in your testimony you emphasize the importance of the FBI's coordination with local law enforcement by maintaining regular contact with the officers who are on the street day in and day out and to work, as you indicated, shoulder to shoulder with them.

I think we all agree that FBI coordination with State and local law enforcement is a critical component of fighting and preventing crime. For example, FBI agents are currently working with the Racine Police Department and sheriff's office to target violent street gangs and drug-trafficking organizations operating within that area in Racine. Their presence in the community is also important to further principles of community policing that have been successful.

What are some of the specific programs that the FBI has a been working on to achieve this shoulder-to-shoulder coordination? Are there any new programs or efforts on the horizon to improve the ones you are using now?

Mr. MUELLER. Well, as I said, the critical programs for us relate to working on task forces. Let me just do a count, if I could. We have almost 200 violent crime, violent gang task forces around the country. We have almost 2,100 agents working gangs and criminal

enterprises, which is a very substantial number for us. We have 17 Safe Trails task forces that have been set up to address violent crime in Indian country. We have 34 child prostitution task forces or working groups, and we have eight major theft task forces. And to the extent that persons are willing to sit down shoulder to shoulder with us and share experience and expertise in task forces directed at either a specific threat, like an individual gang, or a more generalized threat, we are always open to do that.

I believe we are most effective when we work closely together and share the expertise and capabilities in addressing these crimes.

Senator KOHL. Director Mueller, the FBI has a broad jurisdiction and a critical role to play in crime investigations and law enforcement in ways that impact every American. We count on the FBI to combat mortgage and corporate fraud, health care fraud, international and domestic terrorism, violent crime, crimes against children, and border violence, just to name a few.

In these tough economic times, we are all cautious about spending our money wisely and stretching each dollar as far as we can. The FBI's budget has increased slightly from year to year, but your needs and activities seem to grow considerably every year.

What has the FBI done to try to stretch the limited dollars that you have so that American taxpayers get the most for their dollar?

Mr. MUELLER. Actually, one of the more innovative and useful programs we have had is for several years now we bring in graduates of the various business schools around the country. We bring them in as interns, and then we bring them in for the FBI. They come out of business school with a desire to make a difference and with expertise in areas such as finance, procurement, and the like. And we set them to particular issues.

For instance, we had millions of dollars of savings in terms of utilizing rental cars in our rental fleet attributable to the fact that we had a group of individuals that took that particular problem and looked at a better way to do it that would save millions of dollars. And we have replicated that in a variety of areas throughout the Bureau.

We have to look at our facilities because we have 56 field offices around the country, more than 400 resident agencies, and we looked at savings in terms of we need the spread, we need to cover the country, but we also have to look at savings there.

I call it savings. Unfortunately, those who look at the Federal budget call it "cost avoidance" as opposed to "savings," but we are continuously driving to save money and be able to utilize those funds in the areas that they may be better spent.

Senator KOHL. Thank you so much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. Thank you, Director. It would be nice if I had the Department of Justice here with you because I think there are a lot of questions that they ought to be answering as well as you answering. But I have the opportunity to ask you so I will start out with where we were a year ago now.

I asked you a question about highlighting problems with cooperation between the FBI and ATF. You gave what I would have to con-

sider a legitimate answer: "DOJ requested the opportunity to provide consolidated responses on behalf of all involved DOJ components. The FBI has provided its input to DOJ for preparation of a consolidated response." The only thing is the Department of Justice has not responded.

So in this morning's paper, in regard to the same issue of cooperation between ATF and FBI, we find the Department of Justice, Inspector General Glenn Fine saying that there are repeated squabbles, and feuding over bomb investigations.

So it brings me to my first question with you about the article or about questions of the past. I have been asking about FBI-ATF relationships for over 2 years, and my last question was submitted, as I said, September 2008. I never received a response. It is completely unacceptable that I get more information from a newspaper article than directly from the Department of Justice.

I am particularly concerned about this latest news report because Committee staff received a briefing from your agency and the ATF last year in which they were told, this Committee staff was told, that the agencies understood the jurisdictional problems and that these conflicts had been resolved, hence raising questions about the Inspector General's report seemingly refuting statements that we had in staff briefings.

So I want to know what the real story is. Could you tell me, please, what is the true state of cooperation between the FBI and ATF? Specifically, have the jurisdictional problems been resolved? And I suppose in connection with answering that specific question about jurisdictional problems, have they been resolved, can the current memorandum of understanding be improved in any way?

Mr. MUELLER. First of all, they have not all been resolved, as the IG points out. There are still issues. A year ago, we had just entered into an MOU which addressed a number of the issues in terms of responsibility when one gets to a scene.

As I think you are aware, inasmuch as we have responsibility for terrorism, it is important for us. And I do believe it is tremendously important for us to be on the scene and utilizing our capabilities, both domestically and perhaps internationally, when there is a possibility of a terrorist event.

If it does not turn out to be a terrorist event and falls within the purview of ATF, then it is appropriate that ATF have it.

When we last talked a year or so ago, it was our expectation that the MOU would satisfy that. As the IG is pointing out, it does not satisfy it because two sides of it are interpreting it different ways, and it has to be resolved.

I will tell you that at our level and the top levels, I think the cooperation is excellent, is good, has been for a year or two. When you get down to the field, there are pockets where it is not so good. And I generally think that it is not institutional but more individual, and each of our agencies has persons that perhaps live more in the past than they should, and so there is still work to be done, as the IG has pointed out.

Senator GRASSLEY. Well, for the taxpayers' benefit, I think that they would expect agencies within the same Federal Government working for the same American population would get along to get done what needs to be done and not waste time that way.

Let me go on to another——

Mr. MUELLER. Can I just mention one thing, if I could? If you look at the cooperation we have had, we have jointly investigated any number of places and done it exceptionally well, whether it be Oklahoma City or the 1993 bombings in New York. The ability not to get along is the exception in my mind and not necessarily the rule.

Senator GRASSLEY. Well, if it gets the Inspector General's attention, it seems to be still quite a problem. Let me go on to another one.

In February, I cosponsored S. 372, the Whistleblower Protection Enhancement Act, legislation updating whistleblower protection for all Government employees. It addresses a number of hurdles that good-faith whistleblowers face when bringing complaints alleging retaliation for protected whistle-blowing. The legislation was marked up in the Homeland Security Committee where a compromise substitute was adopted.

As an original cosponsor, I am deeply concerned by a provision that was included at the very 11th of hours which strikes the current whistleblower protection for FBI employees. That law was passed in 1978 and was not effective until 1997 when President Clinton issued a memorandum directing the Attorney General to establish whistleblower protections for FBI.

Those procedures have provided some basic level for protection for FBI employees now over the years and, while not perfect, are greater than if the Homeland Security Committee substitute became law. I am very concerned with this provision striking the existing provisions and have been working to determine who authored it. In chasing down where this came from, I have heard a number of different things. Some have said the provision came from the White House, others said the intelligence community, and others have directly stated it was done at the request of the FBI. I understand that the Committee members and the White House have said this provision will be removed, but I still want to know where and why it came to be.

So, Director Mueller, I am going to ask five questions, but they can be answered shortly. You have repeatedly stated your view that whistleblowers should not face retaliation. First question: Do you believe that current whistleblower protections under Section 2303 should be repealed?

Mr. MUELLER. I am not that familiar with the particular statutory numbers. I would have to get back to you on that.

Senator GRASSLEY. Well, do you have any idea where the provision for repeal came from?

Mr. MUELLER. No.

Senator GRASSLEY. Did any individual of the FBI have anything to do with drafting the provision?

Mr. MUELLER. I do not know.

Senator GRASSLEY. Would you get back to me on that?

Mr. MUELLER. Yes.

Senator GRASSLEY. Has the FBI provided any comment to the Department of Justice, White House, or other executive agencies regarding repealing the existing FBI whistleblower protections?

Mr. MUELLER. I do not know.

Senator GRASSLEY. Get back to me, please.

Mr. MUELLER. Yes, sir.

Senator GRASSLEY. Lastly, will you make—I hope you will make a commitment to me and this Committee that the FBI will not advocate to repeal the existing whistleblower protections outlined in Section 2303 as part of whistleblower reforms.

Mr. MUELLER. I cannot do that now. I would have to look at it. I am not really familiar with the issue.

Senator GRASSLEY. Well, you have kept telling me for a long period of time, ever since you have been in office, and predecessors to you, that you thought whistleblower protection was important for——

Mr. MUELLER. I do.

Senator GRASSLEY [continuing.] FBI people.

Mr. MUELLER. I would reiterate that I think whistleblower protection is important, and as we have discussed, every year I send out an e-mail to persons saying I will not abide, tolerate retribution. Any time I get a claim of whistleblower status, I send it immediately to the Inspector General so that there is no conflict of interest, and I think as I have indicated to you, and I think as has been proven over the years, I would not put up with retaliation against whistleblowers.

Senator GRASSLEY. On that last point, would you get back whether or not you would support any modification of 2303?

Mr. MUELLER. Yes, sir.

Senator GRASSLEY. As well as the other two.

Mr. MUELLER. Yes, sir.

Senator GRASSLEY. And does that have to go through the Department of Justice for you to answer my question on those points?

Mr. MUELLER. Yes.

Senator GRASSLEY. Well, will they get back to me? You probably do not know, because they have not gotten back to me over the year on the other one.

Chairman LEAHY. I will join with the distinguished Senator from Iowa to help get those answers because——

Senator GRASSLEY. Well, thank you. And I knew you would. Thank you.

Chairman LEAHY. Because the Senator from Iowa has been as much a leader on these whistleblower matters as any Senator of either party, and I will work with you on that.

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

Chairman LEAHY. Thank you.

Director Mueller, we have—there are sometimes so many jurisdictions that you have to appear before. I know one is, of course, the Intelligence Committee. We are fortunate that we have members of this Committee who, by tradition, also serve on the Intelligence Committee. And we are, of course, twice as fortunate to have the Chair of the Intelligence Committee here, and I will yield to her now.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. And welcome, Director. It is good to see you again.

Mr. MUELLER. Thank you.

Senator FEINSTEIN. Let me begin by using my capacity for a minute as Chairman of the Intelligence Committee to thank you. I have mentioned to you, I think on three prior occasions, about intelligence-related reports from the FBI not reaching the Committee in a timely way, and I want to tell you they are now reaching the Committee in a timely way. So thank you very much for achieving that.

Mr. MUELLER. And thanks also goes to the Department of Justice for that.

Senator FEINSTEIN. Well, maybe that is a precedent that material can flow more quickly. So I thank the Department of Justice.

Second, the FBI gang assessment indicated that violent gangs are moving from large cities to smaller cities. Senator Hatch and I have been working on a gang bill for 10 years now, which has stalled because of an objection from the House of Representatives to the fact that it has got an enforcement portion to it.

Could the drop in crime—in large cities be related in any way to the movement of gangs to smaller communities?

Mr. MUELLER. I have not looked at that, and will.

Senator FEINSTEIN. Would you?

Mr. MUELLER. Yes, I will. I have not looked at that.

Senator FEINSTEIN. Thank you very much. From an intelligence point of view on the subject that Senator Sessions raised about Miranda warnings, it is my understanding that the FBI just wants to keep the possibility of Miranda warnings on the table so that if you have been involved in an arrest of somebody that is likely to be tried in a Federal court, that warning can be given; but that soldiers are not giving Miranda warnings nor is there any request for them to do so. Is that correct?

Mr. MUELLER. That is true. And, in fact, we have been, as I say, operating with the military in Iraq and Afghanistan for a number of years. The military welcomes us and our expertise, and rare is the occasion that we will give Miranda warnings when we are participating in an interrogation in that environment.

On the other hand, you may pick up an individual who has been indicted someplace and you have the possibility of bringing that person back to the United States to face that indictment for a terrorist act that occurred some time before, and at least it ought to be put on the table as to whether or not you wish to mirandize that individual before you talk to him, both for—well, certainly to make a statement admissible in court in the United States, but that does not necessarily exclude that the person will be interviewed for intelligence purposes as opposed to the admissibility of a statement in a court in the United States.

Senator FEINSTEIN. Thank you. I am pleased we cleared that up. I think that is helpful.

In August, during the break, I had the opportunity to meet with the Bureau of Alcohol, Tobacco, Firearms and Explosives in Los Angeles and found it very interesting, and then later during that period of time, I saw this quote from Dewey Webb, the chief of the ATF office in Houston, saying that at least a dozen women in the past 2 years have surfaced in Federal gun-trafficking cases as suspects or cooperating witnesses in Houston and South Texas, essentially women with no criminal history, he asserted, were being used

to be straw buyers of high-powered weapons and then giving those weapons to relatives or to smugglers to bring them into Mexico.

What do you know about this? And what is being done about it?

Mr. MUELLER. It is principally the purview, as you point out, of ATF, but over the years a person who wants straw buyers will use women or others without any criminal background and often—it is not something new. It has been there for any number of years. Often, whether it be a woman or a man who is a straw buyer, it is the avenue you have to breaking down the ring and getting the cooperation you need to investigate successfully and to incarcerate the individuals who are responsible. So it is a phenomenon that has been there for a period of time.

Senator FEINSTEIN. Well, perhaps we can discuss that more fully another time.

Mr. MUELLER. Yes, ma'am.

Senator FEINSTEIN. But, you know, the Mexican Government is very concerned about the massive importation of guns from the United States into Mexico. Big guns, too.

Mr. MUELLER. Yes.

Senator FEINSTEIN. And we have to find a way to stop that, so I would like to talk with you. But I would like to turn now to a FISA matter.

Mr. MUELLER. Yes, ma'am.

Senator FEINSTEIN. The three sunsetting provisions of the PATRIOT Act: lone wolf, the business records, and roving wiretaps.

This is an issue where two committees have jurisdiction, both the Judiciary Committee and the Intelligence Committee. I spoke to Senator Leahy yesterday and indicated that we would like to work together, if possible, so we do not get into battles of sequential referrals and that kind of thing.

It was my thinking simply to extend those three provisions until the PATRIOT Act is up for reauthorization, which is 3 years hence. I believe Senator Leahy will submit a bill that does some other things as well.

I have just received a copy of a letter—written to me and the Vice Chairman of Intelligence dated September 14th by the Justice Department saying that they are in full support of reauthorization of all three provisions, and that if there were ideas for some changes, they would be happy to discuss them. The letter is signed by Ron Weich, and it is a rather forceful case for continuation.

I would like to ask you if you would discuss your use of those three provisions and their relevance today in the continuing concerns about terrorists infiltrating our country.

Mr. MUELLER. Well, let me start by saying I hope you reinforce each other to, again, pass these three provisions.

Chairman LEAHY. We will work it out.

Senator FEINSTEIN. Right.

Mr. MUELLER. First of all, the business records, 215. Between 2004 and 2009, we have used that more than 250 times. I make the point that that provision is used with the approval of the FISA Court. The business records that are sought there relate almost—not all the time, but almost solely to terrorist investigations in which the records that are received are absolutely essential to identifying other persons who may be involved in terrorist activities.

Senator FEINSTEIN. Involving a foreign terrorist.

Mr. MUELLER. Involving someone who is a foreign terrorist.

Senator FEINSTEIN. So you are prepared to say that there is no domestic exclusivity, but that this relates to a foreign terrorist?

Mr. MUELLER. Well, it relates to an agent of a foreign power.

Senator FEINSTEIN. Exactly.

Mr. MUELLER. As it says in the FISA statute.

Senator FEINSTEIN. So each one would.

Mr. MUELLER. Yes. My understanding is that 215 relates to——

Senator FEINSTEIN. It does——

Mr. MUELLER.—any investigation relating to——

Senator FEINSTEIN [continuing.] And I see that it has been used that way.

Mr. MUELLER. Yes.

Senator FEINSTEIN. Okay.

Mr. MUELLER. Let me just check and make sure. Yes.

Chairman LEAHY. Do you want to answer that question?

Senator FEINSTEIN. If he could just finish quickly on the lone wolf provision and the roving wiretap provision.

Mr. MUELLER. Roving wiretaps were used approximately 140 times over those same years, and it is tremendously important. With the new technology, it is nothing to buy four or five cell phones at the same time and use them serially to avoid coverage. And the roving wiretaps are used in those circumstances where we make a case that that is going to happen and we get approval for it. It is essential given the technology and the growth of technology that we have had.

As to the lone wolf, that has not been used yet, but my belief is it needs to be there where we have an individual, such as Moussaoui, whom we need to go up and get a FISA warrant, either for a search or an interception, and cannot identify specifically, with specificity, a particular foreign power, that is, a particularized terrorist organization that he belongs to, but we need to, as they say in this lone-wolf context, go to the FISA Court and say, Okay, this is a lone wolf, we cannot put the tie to this particular terrorist group, but here are the reasons why we need to go up on this individual.

So my belief is each of these three provisions are important to our work.

Senator FEINSTEIN. Thank you, Mr. Chairman, for allowing him to answer. Thank you.

Chairman LEAHY. Thank you.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman. I want to thank you, Director Mueller, for the great service you have given this country over all these years. We have been together a lot of times, and all I can say is that you are one of the heroes in this country, and so are all of those FBI personnel people who really protect us throughout all these years. I just want to tell you I sure appreciate you.

But I was relieved when the Census Bureau independently chose to terminate its relationship with the Association of Community Organizations for Reform Now, commonly known as ACORN. I am deeply troubled by the most recent controversy concerning that or-

ganization, and many other controversies, too. The disturbing behavior of ACORN employees was captured on video at ACORN offices in Brooklyn, New York, Baltimore, Maryland, Washington, D.C., and San Bernardino, California, giving guidance on criminal activity.

A documentary film maker posing as a prostitution ring leader entered these ACORN offices and received advice on how to maintain his enterprise and receive tax credits for doing so. I was basically shocked when this advice included, among other things, how to launder profits from an alleged prostitution ring that was going to involve under-age girls.

Now, during a meeting, ACORN representatives were informed that the girls were smuggled into the United States from a foreign country for the purposes of sex trafficking. ACORN employees were told by the film maker that the reason for obtaining the residence was to establish a brothel that would house these under-age girls.

Consistent amongst all three ACORN offices was the advice to lie to law enforcement, conceal the profits, and ensure that any of the under-age girls involved in the prostitution ring do not talk to law enforcement. One ACORN employee in Baltimore told the alleged prostitution ring leader that, "Girls under 16 don't exist" and "Make sure they keep their mouths shut."

Now, this heinous conspiratorial criminal activity is usually carried out by organized crime families. However, it appears that ACORN, which has offices in 41 cities nationwide, has decided to engage in offering expert advice on how to get caught running a sex slavery ring, money laundering, and even mortgage fraud.

Now, this was not random, and the consistency of the advice indicates that this system is systematic and widespread within ACORN. The complicit behavior of ACORN employees in multiple offices offering to assist persons engaging in sex trafficking is egregious behavior.

Now, can you tell me if you have been made aware of all these issues and if the FBI field offices in Washington, Baltimore, and New York are examining these incidents?

Mr. MUELLER. I think the first time I heard of this incident to which you refer was last evening, and beyond that, I do not know where we are. Clearly, given what you have said, it is something, in consultation with the Department of Justice, that we would look at.

Senator HATCH. This is what I have been led to believe, and I would sure appreciate it if you would look at it and do something about it.

Now, last month, the White House and the Attorney General announced the formation of a new working group comprised of Federal law enforcement and intelligence personnel for the sole purpose of interrogating high-value detainees. This has been referred to as the HIG. You are familiar with that.

Mr. MUELLER. Yes, sir.

Senator HATCH. Okay. According to both the White House and the Attorney General, the HIG will be housed inside the FBI, and a senior FBI official will be in charge of the HIG.

Mr. MUELLER. Yes.

Senator HATCH. However, the administration has stressed that the HIG will not be a sub-unit of the FBI or DOJ. Now, that point by the administration does not shed light on who the HIG will report to, either the FBI or the National Security Council.

Now, if the only goal of the administration is to prosecute high-value detainees in Article III courts, the development of evidence will be key to the Government's case.

What I have reservations about is evidence that was developed by the intelligence community. For instance, in some cases the Government may not be willing or able to produce the source of the evidence in court.

Furthermore, the evidence may be the fruit of information obtained from foreign intelligence or foreign investigations. This information could lead investigators down a line of questioning during an interrogation that they will have to explain in court.

If trying these cases in Federal criminal courts is the ultimate goal, what solution does the FBI propose to address hearsay evidence exclusions? And just one follow-up question: Will the FBI implement a policy on the HIG to begin each intelligence interrogation with a Miranda warning? Is the FBI currently mirandizing detainees in Afghanistan? I think you have approached that. But if you could answer those three questions.

Mr. MUELLER. I think the heart of the issue is prosecution is not the ultimate goal of every interrogation. It may well be intelligence gathering. But by the same token, you should not avoid the possibility that you may be able to obtain evidence that would result in a prosecution. And, consequently, the effort is to look at an individual, determine what is the evidence you have on them. Is the evidence admissible into a courtroom? Does it come from intelligence sources where it is problematic given the reasons that you said, it may have come from a source or method that would be disclosed or may have come from a foreign country?

But tie that together and say, What do we have on this individual? Firstly, how does it tie together to maximize our ability to interrogate that individual? And the information that you need to effectively interrogate an individual may well come from law enforcement sources or it may well come from intelligence sources. But the persons who are doing the interrogation should have that information in front of them, and in unique cases—this is high-value targets, and as I said before, maybe somebody has been indicted before—at least have the option of giving Miranda warnings in certain circumstances where it is appropriate that would help the prosecution, not to the detriment of gathering intelligence.

And so the group, the HIG units are a combination of intelligence and law enforcement, FBI, but intelligence in terms of CIA, in terms of DIA, with the combined expertise so we can more effectively do it and make certain we have the intelligence on the table.

The other thing that we have in this country that many countries do not have is the Classified Information Procedures Act, which enables us, as happened with Moussaoui and other cases, to successfully try individuals while still protecting sources and methods, while still protecting information that may have come from overseas.

Senator HATCH. Well, thank you.

Thank you, Mr. Chairman. My time is up, and I will submit the rest of my questions. Thank you, Mr. Director.

Chairman LEAHY. We are going to be having votes on the floor soon. What I am going to try to do is keep this going during that time and have people take turns going over there.

Next is Senator Feingold, of course, and then it will be Senator Kaufman and Senator Franken. I have the rest of the list here. Senator Feingold, Senator Franken, Senator Whitehouse, Senator Klobuchar, Senator Schumer, and Senator Cardin.

Senator Feingold.

Senator FEINGOLD. Thanks, Mr. Chairman.

Let me begin, Director, good to see you again. I would like to first associate myself with Senator Kohl's comments about violent crime in Wisconsin. The overall trend of violent crime decreasing is, of course, heartening, but I urge you to continue to work closely with State and local law enforcement on these issues.

Director, as to the PATRIOT Act, three provisions of the PATRIOT Act expire, as we know, at the end of the year, and yet critical information about their implementation has not been made public—information that I think would have a significant impact on the debate.

During the debate on the Protect America Act and the FISA Amendments Act in 2007 and 2008, I felt that critical legal and factual information remained unknown to the public and to most Members of Congress. This is information that was certainly relevant to the debate and might even have made a difference in the way some people voted.

During the last PATRIOT Act reauthorization debate in 2005 a great deal of implementation information remained classified. This time around I think we have got to try to find a way to have an open and honest debate about the nature of these Government powers while, of course, protecting national security secrets.

I have raised this repeatedly, as you know, with administration officials over the past couple of years. I did so most recently in June in a classified letter also signed by Senators Leahy, Durbin, Wyden, and Whitehouse.

I appreciate that the Justice Department letter this week made public for the first time that the lone-wolf authority has never been used, as you just confirmed. That is a good start since this is a key fact as we consider extending that power. But there is also information about the use of Section 215 orders that I believe Congress and the American people deserve to know.

I realize that you are not the sole person to make this decision, but I am asking you today for your commitment to advocate for finding a way to allow some limited information to become public so we can have a real debate about this. Will you make that commitment?

Mr. MUELLER. I do not think I can because there is inevitable tension between, particularly when it comes to national security, keeping the information classified because not to do so would harm national security. On the other hand, I understand what you are saying in terms of what you learn on the Intelligence Committee would be useful in the debate on the floor, and there is a tension. But I do believe that the information that is provided to the Intel-

ligence Committee in a classified setting is appropriately provided to the Intelligence Committee in a classified setting, and while there is that tension there, I can not give you the commitment that I would advocate for releasing more information than we have in the past.

Senator FEINGOLD. Well, I hope you will reconsider that. The fact is you have made public that the lone-wolf provision has never been used. That is something that perhaps other people would like to know. But you have chosen to do that, so obviously you are not applying this as an across-the-board rule. And I know that the number of times Section 215 orders have been issued is something, but it does not come close to providing the kind of information about the use of the authority that I think is needed for meaningful public debate.

Mr. MUELLER. And that may be where we disagree.

Senator FEINGOLD. And I just want to say that I feel as strongly as anybody in this body and in this country about keeping things secret that have to be kept secret. And my feeling and understanding about that has increased greatly as a member of the Senate Intelligence Committee for the past 4 years. But I really do believe there is a way to do this, and I hope you will work with us and consider appropriate disclosure that is not harmful to our country but allows us to have a real debate.

Mr. MUELLER. I would do that in terms of particular pieces of information, yes.

Senator FEINGOLD. In December, the U.S. Court of Appeals for the Second Circuit found that the gag order provisions of the National Security Letter statute violate the First Amendment. Has the FBI changed its procedures for NSL gag orders to address the constitutional problems identified by this decision? And if so, has it made these changes nationwide, or are they just changed in the States that are in the Second Circuit?

Mr. MUELLER. Let me check one thing, if I might.

[Pause.]

Mr. MUELLER. We made the change across the country.

Senator FEINGOLD. Okay, good. While the court's decision was specific to NSLs, it has implications for the gag orders associated with the Section 215 orders as well. Has the FBI made any changes to these procedures as a result of the Second Circuit's decision?

Mr. MUELLER. Not in that venue. We disagree with the application of the Second Circuit opinion to these other procedures.

Senator FEINGOLD. All right. We will take that up in the future then, but I appreciate the answer.

As Senator Leahy already mentioned, last year the DOJ Inspector General issued a second set of reports on the FBI's use of the National Security Letters and Section 215 of the PATRIOT Act. In light of the upcoming reauthorization process, I want to follow up on a particularly troubling incident discussed in one of these reports.

The IG said that the FBI had issued NSLs to obtain financial records in an investigation after the FISA Court had twice refused to approve Section 215 orders in the same investigation because of First Amendment problems. This obviously leaves me very con-

cerned about how seriously the FBI takes First Amendment issues in the course of its investigations.

Do you think it was appropriate for the FBI to seek information using NSLs, an investigative tool that does not require judicial approvals, to get around the FISA Court's refusal to approve a Section 215 order?

Mr. MUELLER. I am not familiar with this incident. Quite clearly, in the way you have characterized it in terms of judge shopping or process shopping, I am not certain that is appropriate. But I am not familiar with the incident, and I will have to get back to you.

Senator FEINGOLD. Well, the report was issued a year and a half ago. Has the FBI taken any action to ensure that this does not happen again?

Mr. MUELLER. There are a number of issues we looked at in the wake of the two to three IG reports, and on this one I cannot give you a specific answer at this time. We would have to get back to you.

Senator FEINGOLD. Well, I look forward to hearing from you, and you have been responsive to my requests in the past, so I look forward to hearing from you as soon as possible.

I would like to ask you finally about roving FISA wiretaps, one of the provisions of the PATRIOT Act that is due to sunset. I never objected to granting this authority to the FBI. My concern as with a lot of the PATRIOT Act provisions, was that adequate safeguards were not included.

For example, in the criminal roving wiretap statute, there is a requirement that before a new phone or computer can be wiretapped that has not explicitly been approved in advance by a judge, there must be reason to presume that the target of the surveillance is nearby. This is sometimes referred to as the ascertainment requirement. It helps ensure that the FBI does not tap the wrong phone or computer being used by an entirely innocent American.

Why not include a similar requirement for the FISA roving taps?

Mr. MUELLER. It is my understanding—and, again, I have not looked at it in a while—that we are required to show that there is a likelihood that the individual will be using many phones in order to get the approval for that particular provision. It seems to me that that satisfies the due process, the constitutional requirements, and is adequate. To prove more would mean that we would be going back to the judges day in and day out in this day where cell phones are throwaway cell phones. Given the technology now, in many places, as we have seen in the debate on FISA, the statutes do not keep up with the technology.

In drafting and adding another requirement, it will inhibit our ability to swiftly track those individuals who are seeking to avoid surveillance, counter-surveillance, and——

Senator FEINGOLD. Is that the consequence in the criminal roving wiretap statute?

Mr. MUELLER. Well, criminal rule is much—I think is—ask my opinion, it is too restrictive.

Senator FEINGOLD. Okay.

Mr. MUELLER. It is too restrictive.

Senator FEINGOLD. Fair answer.

Mr. MUELLER. And we would be far more effective on criminals if we went back to looking at Title III given the new technology. Title III has been on the books for a number of years. Technology has changed dramatically.

Senator FEINGOLD. Thank you Director Mueller.

Chairman LEAHY. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, and thank you, Mr. Director.

First of all, Director Mueller, I want to thank you for providing me with briefings on Somali individuals from Minnesota who returned to Somalia to join Islamic extremists. After those briefings, I am satisfied that the FBI is doing a very good job on the ground in the Twin Cities. Obviously, these individuals are a rare exception within the Somali community in Minnesota, which is a patriotic and hard-working and important part of our State.

One of the many things that makes this country special is that we are a melting pot, and we have people with the cultural background and language skills that we need for these investigations. How is the FBI doing on this front? Do we have enough Arabic-speaking translators, for example, for terror investigations?

Mr. MUELLER. I cannot say we are doing as well as I would like. We have almost doubled our capability since September 11th, but that was a small capability to begin with.

When it comes to Somali speakers or Pashtu or others where there are various clan dialects and the like, it becomes even more problematic. We have had substantial outreach programs since September 11th in trying to attract those who have those capabilities, both in terms of providing translating capabilities but also as agents to be able to operate.

We are not where we want to be. It is tremendously difficult, but we have done everything we possibly can to encourage, recruit, and bring in persons from diverse backgrounds.

Senator FRANKEN. Okay. Thank you. The task force has been discussed today. I am concerned about rendition, and I can see from a release on the task force from the Department of Justice on August 24th that actually we are going to—you are calling it transfers or it was called transfers in this, but that is rendition, isn't it?

Mr. MUELLER. Well, there are renditions, somebody can be rendered from another country pursuant to an extradition treaty. I mean, that is also called rendition. Somebody can be transferred from another country as a result of the other country putting the person on the plane to the United States. That is a rendition, albeit without any extradition paper. There are other issues——

Senator FRANKEN. My question is: Are we going to continue the policy of rendition where we send folks, prisoners, to other countries? And will the FBI be handing folks over to the CIA for rendition?

Mr. MUELLER. We have not done that in the past. We will not do it in the future. I gave a brief description of that because, yes, we have been involved in renditions, but not the renditions I think you are asking about.

Senator FRANKEN. Okay. I just want to make sure that there are no transfers of people to other countries for torture, and——

Mr. MUELLER. We certainly would not do that. When we transfer somebody to another country—actually, generally it is the Marshals Service, and it is pursuant to paper, extradition——

Senator FRANKEN. Okay, and you do not hand them over to the CIA?

Mr. MUELLER. No. Have not, will not.

Senator FRANKEN. Okay. The FBI has a human-trafficking initiative that investigates and arrests traffickers. In Minnesota, there is a serious problem with trafficking in Native American communities. People are trafficking Native American women. In fact, the Minnesota Indian Women's Resource Center recently found that 27 percent of its clients, Native American women, were victims of human trafficking as defined by Minnesota law.

I want to know if human trafficking is a priority at the FBI. And how many full-time employees investigate human trafficking at the FBI? And how many man-hours are spent investigating human trafficking at the FBI?

Mr. MUELLER. I had not been aware, prior to the mention by your staff, that this question might be coming up about human trafficking of Native American women. It is something I have to look into. I do not believe that——

Senator FRANKEN. Please.

Mr. MUELLER. We will. I can tell you that we have over 100 agents at work in Indian country. We have maintained that since September 11th despite the other priorities. But I would have to get back to you as well as to the number of agents and others we have that are working on human trafficking in general, and I will do that.

Senator FRANKEN. Please get back to me on that and on how many of your investigations have centered on trafficking of Native American women.

The FBI gathers crime statistics from around the country, but in Minnesota, Indian tribes actually do not participate in our State's crime-reporting program. State laws says actually that they cannot. This means that crimes on Indian reservations are underreported in national statistics and that Indian tribes themselves have difficulty tracking and analyzing crime, and this is a big problem.

Do you know how many Indian tribes and reservations participate in the Uniform Crime Reporting Program?

Mr. MUELLER. I do not. I might be able to get back to you, but it is a voluntary reporting structure.

Senator FRANKEN. I have about a little bit over a minute left, so I am just going to—you know, we hear a lot about cyber terrorism, but I think a lot of folks do not have a clear idea what it is and how it can actually harm people in the country and just how fighting it is crucial in our war on terror.

Can you tell me what cyber terrorism is and how it can actually result in the loss of lives? Or do that for our people watching.

Mr. MUELLER. Well, if you have an attack, if you have a denial-of-service attack or a worm or a virus, quite often you do not know who is responsible for that. Is it a state actor? Is it a country someplace? Is it a terrorist or a terrorist group? Or is it an individual?

Whatever the activity is, you have to trace it back and attribute it to one of the three. Generally, with terrorists, it could be dis-

rupting a communications network. The possibilities are shutting down an electrical grid, shutting down a stock exchange. In other words, any activity that would bring attention to the terrorists that would disrupt our capabilities would probably be called a terrorist activity.

Senator FRANKEN. Can they do stuff with satellites? Can they do stuff with air traffic control?

Mr. MUELLER. Air traffic control is one that we would be concerned about, but it generally is off the Internet and utilizing the Internet as the vehicle as opposed to statutes. You also have the more recent example of the Russians disrupting the Georgian command-and-control capabilities before the invasion of Georgia by Russia.

It is that kind of activity, either state-sponsored or terrorist-sponsored, that can shut down various networks of the military or in the private arena as well.

Senator FRANKEN. And presumably we have really smart people working on this. I remember the FBI several years ago did not have the best—this is before you took office—did not have the best computer system.

Mr. MUELLER. Luckily, we do have very smart people. I really rely on them.

[Laughter.]

Mr. MUELLER. As do other agencies.

Senator FRANKEN. I am very reassured. Thank you. Thank you, Mr. Director.

Mr. MUELLER. If I may make one other point on that.

Senator FRANKEN. Sure.

Mr. MUELLER. This is the wave of the future, though. For the FBI, it is absolutely essential that we attract, we bring in these people, because the battlefields of the future are going to be in the cyber arena, and we have to grow in the same way that NSA and the intelligence community and the military have to grow to address those threats of the future.

Senator FRANKEN. Thank you.

Senator WHITEHOUSE [presiding.] Director, Chairman Leahy has gone to the vote. He will be back shortly, but in the meantime, it is both my turn and my temporary chairmanship, so I guess I call on myself.

[Laughter.]

Mr. MUELLER. Do I call you "Mr. Chairman"?

Senator WHITEHOUSE. Better not do that.

First of all, I welcome you here and thank you for your continued leadership of the Federal Bureau of Investigation, which is an organization that Americans are very proud of. You have been given a significant new responsibility with respect to the High-Value Detainee Interrogation Group, and very recently. It was, I think, the end of August when this was announced.

I am wondering what your administrative benchmarks are for the next couple of months to keep that process moving forward and to discharge the obligations that you have received. What do you see as your next steps? When do you think the group will be fully operational? What are the key benchmarks on the way there?

Mr. MUELLER. Let me start by saying we are in the midst right now of following up with protocols for this group, but as important as anything else is the leadership, both the leadership from the Bureau and the leadership from the intelligence community. And we are exploring names and options for that.

The third area that we are—there is outreach to other persons who have done research in this area to try to bring in early the lessons learned and research from Phil Heymann at Harvard, Defense Intelligence Committee, other areas who have been looking at this over the last 3 years. So we start with some accumulated knowledge upon which we will build.

But in my mind, the two critical issues are bringing together our organizations to work closely together and understand and have consensus on the goal of this structure and, second, the leadership of it that should be supported by all participants.

Senator WHITEHOUSE. And could you put that into some kind of a time horizon for me?

Mr. MUELLER. I would say by the first of the year, but I tend to be impatient. I will give you a longer——

Senator WHITEHOUSE. That is an admirable quality.

Mr. MUELLER.—time horizon than I would like. I can tell you that just about every other day I am looking at one or another piece of it.

Senator WHITEHOUSE. Very good. I should take this opportunity to congratulate you for the success that the FBI has had in its role in these high-value interrogations. The very identity of Khalid Sheikh Mohammed as the architect of the 9/11 horrors was something that was achieved by an FBI-led interrogation. It was a joint effort. There were CIA and FBI interrogators present. But I wanted to take this opportunity to congratulate you because you played an effective role.

Mr. MUELLER. Can I just——

Senator WHITEHOUSE. Yes.

Mr. MUELLER. Can I just insert something?

Senator WHITEHOUSE. Please.

Mr. MUELLER. That is, we have participated in interrogations with the Agency and the military. There have been successes across the board. And in my mind, we are not where we are today without the activities and capabilities of the Agency in terms of addressing the war on terror and the military. And while I appreciate the congratulations, I must say that we do spend a lot of time in attributing successes to particular areas given the policy debate, but the fact of the matter is the Agency has been absolutely instrumental in bringing the safety to the extent that we have it today. And I did want to make that point as——

Senator WHITEHOUSE. That is a very good point, and I think you are wise and administratively generous and prudent to make it—and accurate, I believe, also. But I also think that the FBI's role has been undersung, and I want to take this opportunity to express my appreciation for your agency's efforts.

Mr. MUELLER. Thank you.

Senator WHITEHOUSE. As we look toward bringing people from Guantanamo to the United States for further detention, for prosecution as criminals, for incarceration, presumably, after a convic-

tion, what is the FBI's assessment of the security risks that that process presents? Do you believe that the Federal Bureau of Prisons, for instance, has any—how big of a hazard would the detention of these folks in the custody of the Federal Bureau of Prisons be to the United States?

Mr. MUELLER. I think it depends on the circumstances, depending on where the Bureau of Prisons puts a person. Quite obviously, you have been out to Colorado and seen Florence, I think, and there is very, very little risk there. In most Federal prisons, there is very, very little risk.

County jails are somewhat different. My expectation is that when you are bringing persons from overseas who are involved in terrorism, they will be given top priority in terms of assuring that not only are they incarcerated, cannot escape, but also that they do not affect or infect other prisoners or have the capability of affecting events outside the prison system.

Senator WHITEHOUSE. Assuming appropriate prioritization for these individuals, do you have any doubts about the Federal Bureau of Prisons' ability to keep them secure?

Mr. MUELLER. Yes.

Senator WHITEHOUSE. You do not have any doubts or you do have doubts?

Mr. MUELLER. Well, I know, I think the Bureau of Prisons—I do not—I do not know the circumstances. My expectation is the Bureau of Prisons along with the Marshals Service will provide adequate and appropriate security.

Senator WHITEHOUSE. Very good.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Senator Whitehouse. Good to see you again, Director Mueller.

I just wanted to talk with you a little bit about the white-collar area. I know you devoted some of your testimony to that, and while I see the prosecution of violent crimes and the investigation of violent crimes as well as terrorism to be priorities of your work, I also have always believed that it has been very difficult for local law enforcement to handle some of these complex cases coming from that angle that my previous job before I came to the U.S. Senate.

One of the things we have talked about at previous hearings is the potential for fraud with the TARP money and the stimulus money, and I wondered if there were—without revealing specific cases, if the FBI is prepared for that type of fraud that we might see.

Mr. MUELLER. I think in the out-years we are going to need additional resources. We have been given some resources. We requested additional resources in the 2010 budget, and our expectation is we will ask for more in the 2011 budget. And there is no doubt in my mind that with the monies that are flowing freely, relatively freely through the Federal Government, we have to work closely with the IGs to identify where those monies are flowing and who is going to take a piece of it—whether it be through fraud or public corruption.

But with those amounts out there, there is no doubt that there will be a number of people who seek to obtain those amounts illegally, and it will take us as well as the Inspector Generals as well

as new ways of identifying and maintaining data that will enable us to get to the heart of a scheme relatively early, and through manipulating that data or pulling in that data, be able to make a prosecutable case that much quicker. And we are working on that at this point in time.

There is no doubt in my mind, whether it be from the TARP or the stimulus package and the like, that there is going to be fraud, abuse, betrayal of the public trust.

Senator KLOBUCHAR. And you also have testified about the health care fraud and the work that is being done there, and as we deal with cost savings for health care and looking for those savings, one of the things I was most startled by were some of the estimates that the health care fraud costs taxpayers $60 billion a year, it potentially is 20 percent of total Medicare spending. I know when I was a prosecutor, we had a number of cases involving this that were quite shocking, and some of it is technology because people are able to get into hospital systems and start ripping things off or getting identity numbers and things like that. And then some of it is just providers, which is actually the scariest part, people putting patients at risk or doing multiple billings, multiple surgeries.

So could you address what the FBI is doing in that regard? And I also have a bill on this to require direct depositing or electronic funds transfer for the Medicare payments because the regulations have not been uniformly enforced, and to me that is a simple no-brainer that we would have direct depositing so that would also help us to prohibit some of this fraud.

Mr. MUELLER. I can tell you at this point we have almost 2,500 cases. This year alone, we have had 490 convictions in health care fraud cases. We have ten task forces around the country, and we have about almost 800 persons working on health care fraud in which 460 are special agents.

That is not enough to address the problem, and as the health care debate goes on and if, indeed, there is a health care bill, we would hope that there would be provisions in there that would address this particular issue. Perhaps the one that you just suggested would be one. And our people I know are looking at what might come out and how we can at the outset put into place the records and the capability of access to those records so that we can identify the fraud schemes without waiting for somebody to walk in the door.

Senator KLOBUCHAR. Exactly, and I would think your input from the agency would be very important as we go forward. I believe this has got to be part of any kind of health care reform bill when we are looking at those kinds of numbers and we are trying to save money. And like I said, some of these schemes can be really easy. We had someone that just collected Social Security numbers at a hospital because they happened to be in a drawer in a little stack in a rubber band. Obviously, they have changed their procedures since then. That was just a straight identity theft scheme using the Social Security numbers. But there are much more complex schemes, as you know.

Mr. MUELLER. Well, on a number of occasions, the Attorney General and Secretary Sebelius have spoken out about this and are

concerned about it and have taken the opportunity to make the point in press conferences relating to health care fraud where there have been successful conclusions to investigations.

Senator KLOBUCHAR. Exactly. And I know, again, how high-cost these investigations can be, but it is my hope, when you look at that Madoff case—which, of course, was SEC; it was not your issue. But to have all of those whistleblowers that have called and tried to report that and $65 billion stolen, the costs of these investigations may be high, but the cost of not doing anything is so much higher. So thank you on that.

The last thing I wanted to ask you about was we recently had a hearing on the National Academy of Science report on forensic science, and as you know, they released a report in February on some of the changes they would like to see, some recommendations in the forensic science area. We had a very interesting hearing with police chiefs and prosecutors and people from the Innocence Project there, and we actually found some general agreement. There were clearly disputes about some of the language in the reports that the prosecutors did not like, but there was some general consensus on accrediting some of these forensic science labs and some certification and also funding for more training in this area and also taking care of some of the backlog that we have seen across the country.

Could you comment on the FBI's view on that?

Mr. MUELLER. Well, I think our view is that we absolutely believe that accreditation is tremendously important. We have sought it and received it. But I think that that is absolutely essential to raising the capabilities of laboratories around the country. Training, quite obviously, always contributes to that. The one area in which there was some discussion, and that is, separating the forensics laboratory from the——

Senator KLOBUCHAR. The police.

Mr. MUELLER. The police. In our case, I think it would have a substantially detrimental effect.

Senator KLOBUCHAR. Right. I agree.

Mr. MUELLER. And you as a prosecutor——

Senator KLOBUCHAR. I totally get that part of it. That is why I am trying to find the consensus pieces, and there was a consensus on the accreditation, funding, training, backlog, and then just some of these certification issues.

Mr. MUELLER. We are on that train.

Senator KLOBUCHAR. Okay. Good. Very good. Thank you very much, Director.

Senator WHITEHOUSE. I think we await the return of the Chairman from the vote. It should be very shortly. If you do not mind, I will take an extra moment and follow up with you, until he gets here, on the questions for the record that I asked when you appeared before the Committee on March 25th having to do with issues surrounding the security clearance, background checks, the hiring process for the individuals that the FBI needs to bring on board as it takes more and more of a national security-oriented role, people with foreign experience, people with foreign language capability, people who have more national security backgrounds and so forth.

You have a very considerable security clearance process, and I gather from the response that I have been given that you have been able to manage quite effectively to keep the security clearance process within the 90-day timeframe that is suggested for trying to bring people on board, and that in driving it to that standard, you feel you have also been able to meet national security and clearance security requirements.

Could you comment a little bit more about what it took to get there? Was that an easy step? And did it sort of fall within ordinary chains? Or did you have to really press matters to get that accomplished?

Mr. MUELLER. It has impact in two areas. One is our ability to hire any given year. We get a 1-year budget, and often we do not get our budget because there is a continuing resolution, and so we have a much truncated time in which to bring those persons on board.

Our Human Resources Division is completely revamping its procedures, and while we will not get everybody on board or will not by September 30th, we will be by the first of the year. Certainly with agents and analysts, we actually are above our numbers in hiring there, and we are just a bit down on the professional staff.

We also have looked in the context of the overarching review that has been done by the Office of the Director of National Intelligence as to how to restructure our security checks for our people and have done that, and then working—I am not certain where we are in terms of the 90-day timeframe. I would have to get back to you on that. But I do believe that we are working with the ODNI and the rest of the intelligence community to fix this problem.

Senator WHITEHOUSE. I appreciate that. The Chairman has returned.

Chairman LEAHY [presiding.] Thank you. Thank you, Senator Whitehouse, for filling in.

We have checked with whether Senators Schumer, Cardin, or Specter are coming back. The votes, as I think they probably told you, Director, is a whole series of votes. But you have been here before. You know how that sometimes works.

Mr. MUELLER. Yes, sir.

Chairman LEAHY. I would state, however, that we have had—on our side of the aisle, we have had 11 Senators who have taken part in this, 11 Democratic Senators. We have also had the distinguished Ranking Member, Senator Sessions, and two senior, very senior members of the Republican Party take part—14 of us. It shows how serious we take this. I would note that you take the question of oversight seriously. You and I talk not just here, but we talk during the weeks and the months as we go along.

I would note that in the spring the National Academy of Sciences issued a comprehensive report on the need to improve forensic sciences in the United States. The Judiciary Committee has held two hearings on this already. I have been disturbed by some of the things I have heard.

When I was a prosecutor, I used forensic evidence all the time. We did not have DNA then, but we used everything else. I know how valuable it can be both to the prosecution and the defense, but it is valuable only if it is accurate and reliable and if it reflects

state-of-the-art and technique. I think we have to have total confidence.

As you know and I know, there are some cases that have no forensic evidence. But when it is there, for the interest of justice, it has to be accurate. It has to be something both sides can agree on.

In the 1990's, I recall the FBI faced some similar problems. We learned the FBI laboratory was not living up to the highest standards. Ultimately, the FBI worked with the Congress, and we built an entirely new FBI laboratory. A massive undertaking. I think it was about $100 million, years.

Now the FBI is at the forefront of forensic science. In fact, one area that we see now that people agree as being solidly reliable, DNA, actually the standards were developed by the FBI.

What do we do with forensic programs around the country? Some argue that we should have one national lab. Others say that State labs can be good. And as you know, some States have very good labs; some States do not. How do we establish standards so, if you are trying a case in Vermont or California or Ohio and forensic science is used, that there is some touchstone standard, like the National Academy of Sciences said, that we can look at and say, Okay, we know this is good?

Mr. MUELLER. I do believe that accreditation is tremendously important, and driving persons to upgrade laboratories and shaming them into seeking accreditation. And it is going to require the support not just of the laboratories themselves, but it costs money to upgrade a lab. It takes money to train the various technicians you need.

Chairman LEAHY. Money and time.

Mr. MUELLER. Money and time, and you need everybody to be pushing it. Particularly, in this case, it should be the judges, it should be the prosecutors, it should be defense counsel, it should be the technicians themselves. And as you have pointed out, the guilt or innocence of somebody is often dependent on the quality of that forensic evidence, even before DNA.

The other aspect of it is, as everything else, we need to work together. You indicate that we established the standards with regard to DNA. Well, we did it with a working group of individuals from around the country, from a variety of laboratories, so that it was not the FBI dictating; it was law enforcement within the United States coming together with an appropriate solution and standards. The same thing can be said for CJIS, the Criminal Justice Information Services, where we have a board which is made up mostly of State and local law enforcement that we basically are the administrator, and that works exceptionally well.

So having the money, having the push, having the accreditation, and then having the input of a board from State and local law enforcement are, I would say, the key components.

Chairman LEAHY. And this is something really that affects everybody in the criminal justice system. It affects the judges, defense attorneys, prosecutors. We have talked about this before. A prosecutor wants to make sure they have got the right person. The worst thing is you convict the wrong person because it means whoever committed the crime is still out there going free, plus the obvious violation of convicting the wrong person.

You have what I call the "CSI factor." You go into court and everybody says, "Well, where is the DNA?" Well, a lot of cases do not have DNA. Or, "Where are the fingerprints?" A lot of cases do not have fingerprints. "Where is the ballistics?" A lot of cases do not have it.

But when it is there, it ought to be something where—the argument is we all agree on—I mean, agree on the finding; otherwise, I think we are going to be in for some real difficulty, especially with some of the court cases that come down about requiring the testimony of the person who actually did it. That could be almost impossible, and I know your laboratory helps local law enforcement all around the country, and that could create a real problem.

Let me ask you another thing while the staff is checking if there are others coming back. We saw the murder of Marcello Lucero, an Ecuadorian immigrant, brutally killed in Long Island, and we have seen other such crimes against Latinos and immigrants. The Southern Poverty Law Center showed that FBI statistics suggest a 40-percent rise in anti-Latino hate crimes across the Nation between 2000 and 2007.

What is happening here, and what steps are being taken? I think both of us abhor hate crimes of any sort, whether they are against Latinos, blacks, people because of their gender or sexual identification. But is there an increase in Latino immigrant hate crimes?

Mr. MUELLER. I had not been aware of that. I will have to go and check on that. But whenever we get allegations in that regard, in consultation and in conjunction with the Department of Justice to determine the applicability of our jurisdiction, we thoroughly investigate and try and convict. I will have to get back to you on that increase. I had not recognized that. I know we have a problem with reporting of hate crimes because some believe it is a somewhat nebulous category. Some are unwilling to put it into that category, and our statistics, as I say, are dependent on State and local law enforcement providing that information.

We have in the last couple of years, when we have our meetings with regard to the information that is provided to CJIS, focused on that particular issue in order to encourage State and local law enforcement to spend more time and enable us to have accurate statistics in that regard.

Chairman LEAHY. Well, the late Senator Kennedy had espoused hate crime legislation, and I am proud to follow his lead in doing that. We have legislation pending that would increase the tools for Federal investigators, but also to State and local law enforcement to deal with hate crimes. We know this happens. We saw the murder of a guard at the Holocaust Museum, and your Department was involved, something that all of us found as shocking, I think, as you might see. Do you think if we pass a bill we might be able to help law enforcement curb the trend of crimes on ethnicity or race or sexual orientation or bias? Would that help us?

Mr. MUELLER. I would have to take a look at it, but it might well.

Chairman LEAHY. Thank you.

I see Senator Schumer here. I yield to Senator Schumer. You voted, I take it.

Senator SCHUMER. I did. Thank you, Mr. Chairman. First, let me thank you. I know you asked many more questions than you thought you would, and you are a good friend, a great leader, and a wonderful Chairman, so thank you for doing that. And I hope the questions, Mr. Director, were not too difficult that I caused to be asked.

Anyway, I have a bunch of questions. The first relates, of course, to what happened in New York a few days ago. We marked the eighth anniversary of our terrorist attacks, the 9/11 attacks, last Friday in solemn ceremonies, seeing the families still wearing the pictures of the people they lost. And we marked this day with remembrance, but also rededication to the country's national security.

As I have said publicly, I think the FBI does a very good job and is light years better than they were on 9/10/2001. And a lot of that is to your credit, Mr. Director, and the men and women who work for you, the thousands and thousands who do it. In New York, we have a very good task force.

Now, my question is just, you know, this recent report put New Yorkers on edge. It came at a time right after 9/11. There are all sorts of rumors flying around, so I just want to ask you a question, and I know that this is an ongoing investigation. Not much can be said of it in public, nor should it, so that the investigation is not compromised.

However, here is the one question I have. Could you assure New Yorkers and the American public that the situation is under sufficient control and there is no imminent danger to their safety?

Mr. MUELLER. I can say that I do not believe there is imminent danger from that particular investigation, from what I know of that particular investigation.

Senator SCHUMER. Okay. I think we will leave it at that. I want to urge you to continue the Joint Terrorism Task Forces, a very successful enterprise, and I would urge continued cooperation. I intend to visit it shortly. They invited me to come, and I will be there.

Mr. MUELLER. Let me also put in and say without any reservation that our relationships with NYPD in this and other investigations could not be better, and that New Yorkers are well benefited by the work of NYPD and Ray Kelly in making the city safe. And in situations where there are investigations being conducted, we have a very good working relationship and will continue that relationship.

Senator SCHUMER. Good. Glad to hear it. I know it to be the case, and thank you for saying it.

The next question relates to the terror alerts. As you know, Tom Ridge, the former Secretary of the Department of Homeland Security, recently wrote a book. It was entitled "The Test of our Times." The book reveals how some, including former Attorney General Ashcroft, former Secretary of Defense Rumsfeld, he said, pressured him to elevate the national security threat just days before the 2004 election in what he suspected was an effort to influence the election. That is his characterization, not mine. Furthermore, he stated you were on his side against raising the terrorist level.

Could you please provide us with what you know happened then? Is it true that you were against raising the alert level?

Mr. MUELLER. I cannot speak to the particular incident that is recounted in Tom Ridge's book. What I can say is I do believe throughout the years that we have been dealing with terrorist attacks that any person sitting at the table was interested in doing the right thing, not for political reasons. Each one sitting at the table when these decisions were made understands the decision may well relate to whether a person lives or dies as a result of a terrorist attack. And I did not see political considerations in those discussions.

Senator SCHUMER. Those specific discussions.

Mr. MUELLER. Throughout.

Senator SCHUMER. Thank you. The next question relates to the security of FBI data bases and cyber security experts. The administration released a new National Intelligence Strategy yesterday, and it designated cyber security as a new top priority for the intelligence community. That makes a great deal of sense. You told the Committee this morning how important this area is and how important it is to hire appropriate experts.

A report issued by a private consulting firm, Booz Allen, this summer highlighted numerous continuing problems our Government has in hiring enough capable cyber security experts, and you cannot do this work without highly qualified personnel.

So, first question: Does the FBI have sufficient experts to meet the Nation's growing cyber security needs? And, similarly, is the FBI expanding its efforts to recruit and retain such experts?

Mr. MUELLER. Yes, in the wake of September 11th, we changed the definition of our hiring needs, and cyber capabilities was one of those areas that we immediately focused on. And since then, we have brought in any number of persons who were program analysts, software developers, all range of cyber expertise in that particular category, are still recruiting for that category. It is a—what do I want to say? It is one of the categories that we understand is absolutely essential to get the right people in it and one that is going to expand.

The other aspect that I do believe that is tremendously important is we have a cyber task force that is relatively large. That includes personnel from any number of agencies so that we tap in not only to the expertise of the FBI, but also the expertise of the intelligence community, the military, and others.

Senator SCHUMER. Are you having, though, some difficulties in finding enough cyber security experts?

Mr. MUELLER. No.

Senator SCHUMER. No?

Mr. MUELLER. No.

Senator SCHUMER. Good. I am going to ask the GAO to conduct a report on the hiring of cyber security experts, not just in the FBI but in other parts of the Government as well, so we can comprehensively identify any systemic deficiencies and work together to keep our intelligence agencies fully and appropriately staffed.

Chairman LEAHY. Is that it?

Senator SCHUMER. That is it.

Chairman LEAHY. Thank you.

Director, we are now several minutes into a 10-minute roll call vote. I will recess the hearing now, again with thanks to you. I appreciate, as I said before, that you have always been available when I have had questions, and I appreciate your testimony here today. We share a common interest in law enforcement—look forward that we can be proud of. Again, I compliment you for your speech on the anniversary, on the FBI's anniversary.

Mr. MUELLER. Thank you.

Chairman LEAHY. We stand in recess.

[Whereupon, at 12:10 p.m., the Committee was adjourned.]

[Questions and answers and submission follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 2010

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 for the record posed to Federal Bureau of Investigation Director Robert Mueller following his appearance before the Committee at an oversight hearing on September 16, 2009.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance on other matters. The Office of Management and Budget has advised us that from the perspective of the Administration's program, they have no objection to submission of this letter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Minority Member

Responses of the Federal Bureau of Investigation to Questions for the Record Arising from the September 16, 2009, Hearing Before the Senate Committee on the Judiciary Regarding Oversight of the FBI

Questions Posed by Senator Schumer

1. In the past, USCIS had encountered delays in obtaining the results of FBI name checks for applicants for citizenship and other benefits, and had issues regarding the usefulness of these results. I know that the FBI and USCIS have taken a number of actions that have improved these checks. For instance, the FBI dedicated more staff to process name checks, and USCIS provided additional funding and training to FBI staff. As a result, the number of pending name checks has decreased greatly and I want to commend you on that. Within this framework, the FBI had set a goal of being able to complete all name checks within 90 days of receipt by June 2009.

a. Has that goal been met? And if not what are the barriers to meeting this goal?

Response:

The FBI had established goals of completing 98% of the U.S. Citizenship and Immigration Services (USCIS) name check requests submitted to the National Name Check Program (NNCP) within 30 days and of completing the remaining 2% within 90 days, and it met these goals one month ahead of schedule. The NNCP continues to meet these goals, with no USCIS name check requests currently pending for more than 30 days.

b. If we are successful in achieving comprehensive immigration reform, will the FBI have the capacity to conduct timely name checks so that only people who are supposed to obtain legal status can obtain legal status?

Response:

The NNCP has sufficient personnel to process the current level of incoming USCIS name check requests and is structured to accommodate staffing increases if a surge associated with an event such as comprehensive immigration reform should occur. Once the NNCP becomes aware of an increase in demand and the time constraints involved, it will rely on processes already in place and a proven name check model to predict the staffing needed to process the increased volume.

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c. Will you commit to working with me to make sure the FBI is in the best possible position to handle these new applications in an timely, efficient, cost-effective and accurate mater?

Response:

The FBI appreciates Senator Schumer's interest in this area and support for the FBI's efforts to improve the name check process. We will be pleased to continue to work with the Congress to make this process more efficient and effective and to ensure we are able to address any new challenges.

2. Early this month, articles published in both the New York Times and the Wall Street Journal reported that some believe that the case of Phillip Garrido – who kidnapped, and sexually enslaved a child for 18 years despite regular law enforcement visits – was a tragedy stemming from an unwieldy sex offender registry database. That this database has grown so large that it is nearly impossible for law enforcement to track every offender and investigate every tip. As you know, the Crimes Against Children Unit at FBI Headquarters coordinated the development of this registry and continues to lead its implementation. I believe that this registry has been an important tool for assisting law enforcement and informing concerned communities; however, I did find these reports disturbing.

a. Could you give us a rough estimate of the number of offenders listed in National Sex Offender Registry?

Response:

As of 10/1/09, the National Sex Offender Registry (NSOR) contains 590,186 records. All 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands contribute to the NSOR.

b. How does the FBI monitor this database?

Response:

The primary responsibility for the entry and maintenance of accurate, timely, and complete records lies with the entering agency. As the manager of the National Crime Information Center (NCIC) system (which includes the NSOR), the FBI helps to maintain the integrity of the system through such mechanisms as automatic computer edits that reject certain common types of data errors, quality control checks by the FBI's Criminal Justice Information Services (CJIS) Division, and periodically providing lists of all records on file for validation by the agencies that entered them.

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The accuracy of all NCIC records is critical to the value of the NCIC system, and is checked both upon initial entry and periodically thereafter. Upon initial entry into the NCIC system, the record data is reviewed by a second party, who ensures that all available cross checks are made and that the information in the NCIC record matches the information in the investigative report. Thereafter, NCIC policy requires regular record validation, pursuant to which entering agencies review their records annually. Validation obliges the Originating Agency Identifiers (ORIs) to confirm that the record is complete, accurate, and still outstanding or active. Validation is accomplished through review of the original entry and the current supporting documents.

All Federal and state CJIS Systems Agencies (CSAs) have established systems for triennially auditing facilities that operate workstations, access devices, mobile data terminals, and similar devices to ensure compliance with the policy and regulations imposed by both that state and the FBI. In addition to these CSA audits, the Federal and state CSAs are, themselves, audited at least once every three years by the FBI's CJIS Division to verify compliance with CJIS policy and applicable regulations. These compliance audits are conducted more frequently when there have been past failures to meet compliance standards.

c. Does the FBI investigate and respond to tips of sex offenders out of compliance?

Response:

The FBI investigates matters involving non-compliant registered sex offenders when they are related to higher priority substantive matters such as child abductions and child exploitations. The United States Marshals Service (USMS) had been designated by the Department of Justice (DOJ) as the primary Federal agency responsible for monitoring the compliance of registered sex offenders.

d. Do you have a rough approximation of how many tips the FBI receives annually?

Response:

The FBI currently has five open cases relating to non-compliant sex offenders. Because the USMS is the Federal agency primarily responsible for cases relating to the compliance of registered sex offenders, that agency would be in a better position to respond to this inquiry.

3. I worry about our ability to monitor registered sex offenders. Sex offender registry information provides communities an opportunity to protect themselves from sexual victimization, but that information requires labor intensive follow-up and proactive

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maintenance to be kept current. For this reason, I authored the Sex Offender Registration Tips Program Act (S.1146). If passed, this bill would develop a national information clearinghouse were the public could provide information concerning registered sex offenders believed to be out of registration compliance. These tips would be triaged by the non-profit Parents for Megan's Law, which would then send all viable information to law enforcement for appropriate action. I believe this Act would save law enforcement agencies countless staff hours, significantly enhance public safety and improve response time to addressing community concerns. Will you commit to reviewing such legislation in a timely fashion and working with the DOJ in providing views on the legislation referenced?

Response:

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

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Questions Posed by Senator Whitehouse

4. The Office of the Director of National Intelligence (DNI) refers leaks of classified information to the Federal Bureau of Information (FBI) for additional investigation and, when appropriate, eventual prosecution. As a matter of national security and employment discipline, it is important that leakers face repercussions for improper disclosure of classified information. It is equally important that the FBI receive adequate information about each leak in order to initiate a meaningful investigation.

a. Please describe the process through which the DNI refers leak cases.

Response:

Executive Order 12333, as amended, requires agencies in the Intelligence Community to report possible violations of Federal law by their employees to DOJ, which includes violations of the statutes relating to the unauthorized disclosure of classified information. These crime reports identify, among other things, the classified information that was leaked and the level of classification of the leaked information. DOJ's National Security Division (NSD) then assesses whether an investigation should be opened as a result of the reported leak. As part of this assessment process, DOJ requires the reporting agency to answer a series of specific questions to help evaluate whether an investigation would be productive. Should an investigation be deemed necessary, these questions are useful in guiding the course of that investigation. For example, DOJ usually has the referring agency specify in its crime report whether it would like DOJ to investigate the leak. Although the FBI has the authority to investigate a leak regardless of whether the reporting agency desires such an investigation, eliciting the reporting agency's determination of which leaks are sufficiently damaging to warrant an investigation helps us assess how best to use limited investigative resources.

In addition to responding to referrals, the FBI opens investigations whenever we become aware of a leak that we believe is significant, even without a referral. Similarly, we occasionally open an investigation based solely on an oral request from a senior Intelligence Community official. These investigations are conducted by the FBI in consultation with the NSD, which oversees and coordinates all leak investigations. The FBI and NSD regularly brief the reporting agencies on the status of these investigations.

Despite the experience and cooperative approach of the investigating parties, leak investigations may not progress to the prosecutorial phase for a number of reasons. It is common, for example, for the information that was leaked to have been appropriately disseminated throughout the federal government for official use, making the identification of the leak's source very unlikely. Further

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complicating investigations of unauthorized disclosures of classified information to the media is the fact that there are usually only two people who know how a leak occurred and the identity of the leaker – namely, the leaker and the reporter to whom the information was leaked. We have interpreted DOJ's formal policy on obtaining information from members of the news media, codified at 28 C.F.R. § 50.10, as requiring that such leak investigations focus on potential leakers rather than reporters. While this policy appropriately balances the importance of First Amendment freedoms with the strong national security interest in keeping classified information from disclosure, it necessarily limits the prosecutor's access to the reporter who received the sensitive information. In the rare case in which DOJ issues a subpoena to a reporter for information about the source of a leak, the information is not necessarily produced. There are often lengthy legal challenges to the subpoena, which on a rare occasion can entail a reporter electing to serve jail time for contempt rather than comply with the subpoena. In light of these limitations and the practical realities of leak investigations, the leaker often cannot be identified beyond a reasonable doubt, as is required for a successful prosecution.

When a prosecution cannot be undertaken or is not successful, administrative action by the leaker's agency may be an appropriate course of action to ensure that the leaker is prevented from again breaching the government's trust through additional leaks. While the FBI is not involved in pursuing these administrative actions, we are authorized to share with the referring agency the results of our investigations (with limited exceptions such as access to certain grand jury information).

b. Please provide the number of such referrals from the Intelligence Community for each of the last five years, and statistical information on dispositions of those matters.

Response:

While DOJ and the FBI receive numerous media leak referrals each year, the FBI opens only a limited number of investigations based on these referrals. As discussed in response to subpart c, below, in most instances the information included in the referral is not adequate to initiate an investigation. When this information is sufficient to open an investigation, the FBI has been able to identify suspects in approximately 50% of these cases over the past 5 years. Even when a suspect is identified, though, prosecution is extremely rare (none of the 14 suspects identified in the past 5 years has been prosecuted).

Following is the requested statistical information.

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Year	Referrals	Leak Investigations	# of Suspects Identified
2005	46	7	1
2006	29	9	5
2007	55	5	5
2008	23	3	1
2009	30	2	2

c. Is the information in the case files adequate to initiate investigations? What other material would be helpful to have? Are the cases generally meritorious?

Response:

In most cases, the information included in the referral is not adequate to initiate an investigation. The most typical information gap is a failure to identify all those with authorized access to the information, which is the necessary starting point for any leak investigation. In these cases, DOJ's NSD and the FBI work with the victim agency to obtain the additional information needed to make an informed decision as to whether investigation is appropriate.

As discussed in response to subpart a, above, while a majority of the cases are meritorious in the sense that they are based on an unauthorized dissemination of classified information, prosecution is often not pursued because the information was initially widely disseminated and, as a consequence, the leaker cannot be identified.

d. What recommendations do you have?

Response:

The FBI recommends that victim agencies continue to report possible violations of Federal criminal law regarding the unauthorized disclosures of classified information as required by Executive Order 12333 but, as is already the practice of the FBI, the CIA, and others, additionally consider providing this information to their internal security divisions for possible administrative action. Because indictments in media leak cases are so difficult to obtain, administrative action may be more suitable and may provide a better deterrent to leaks of classified information.

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Questions Posed by Senator Kaufman

5. What challenges has FBI encountered in investigating top-level participants in systemic mortgage fraud schemes?

Response:

We understand "top-level participants" in mortgage fraud schemes to be industry professionals such as real estate agents, settlement agents, appraisers, mortgage brokers, and loan officers. Each of these professionals plays a specialized role in the complex mortgage loan process.

Historically, mortgage fraud investigations have relied on an analysis of documentary evidence. Industry professionals participating in fraudulent conduct have, though, increasingly used knowledge and skills unique to their industry to create paper trails that have either insulated them totally from criminal prosecution or created enough doubt as to their "intent" to make prosecution unlikely. Because of the magnitude of the recent fraudulent activity, this approach has been revised to focus more on proactive investigative techniques that target industry professionals suspected of participating in fraudulent activities. These techniques include consensual recordings, court-ordered wiretaps, and undercover operations. The FBI is also relying heavily on liaison with industry professionals who participate in mortgage fraud task forces and working groups. Currently, 15 mortgage fraud task forces and 61 working groups are operational.

6. Does FBI have enough funding, agents, analysts, and other resources to address all fraud, and not simply mortgage fraud, throughout the financial system?

Response:

The FBI has increased efficiencies in many ways to address these crimes, using task forces, working groups, and other force multipliers. We appreciate the appropriation of $10 million in the FBI's Fiscal Year 2009 appropriation and an additional $35 million in the FY 2009 supplemental appropriation to address mortgage and corporate fraud, which will significantly expand our capabilities in these areas. We will continue to work with DOJ, the Office of Management and Budget (OMB), and the Congress to identify the funding needed to address the Administration's priorities.

7. In February, Deputy Director Pistole testified that 240 agents were assigned to mortgage fraud and approximately 100 additional agents were assigned to other corporate fraud. How do those numbers compare with the Bureau's allocation of resources today?

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Response:

As of 9/12/09, the FBI had 298 agents assigned to mortgage fraud and 110 agents assigned to corporate fraud.

8. Shortly after you last testified before this Committee, this body passed the Fraud Enforcement Recovery Act, which authorized $75 million in increased funding for fraud enforcement by the FBI. How many agents and support staff could you have hired with $75 million?

Response:

With an additional $75 million for fraud enforcement, we could have filled approximately 453 FBI positions (165 Special Agents, 60 Intelligence Analysts, 85 Forensic Accountants, and 143 Professional Staff).

9. The current version of the Department of Justice appropriations bill contains only $25 million in enhanced fraud funding, however. How many agents and support staff can you hire with this funding?

Response:

The President's budget for Fiscal Year (FY) 2010 includes an enhancement of $25 million and 143 positions for the FBI (50 Special Agents, 61 Forensic Accountants, and 32 Professional Staff).

10. Will that $25 million give FBI the resources necessary to combat mortgage, financial and other corporate fraud?

Response:

As noted in response to Question 9, above, an enhancement of $25 million would enable the FBI to employ 50 Special Agents, 61 Forensic Accountants, and 32 Professional Staff employees to address mortgage and other frauds. These additional agents, analysts, and staff will provide much needed resources to address the many mortgage fraud and other financial crime investigations that the FBI is currently pursuing. We will continue to work with DOJ, OMB, and the Congress to identify the funding needed to address the Administration's priorities.

11. Is FBI capable of effectively putting to use the full $75 million authorized in FERA next year?

Response:

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The FBI would be able to use an appropriation of $75 million to address the issues encompassed in the Fraud Enforcement and Recovery Act.

12. What has FBI done to look into criminal activity related to so-called "stated income" loans, where brokers, investment banks, and arrangers knew that the "stated income" far overstated the borrowers' actual income?

Response:

The FBI received over 61,000 mortgage fraud Suspicious Activity Reports in FY 2009, necessitating a prioritization scheme that ensures the most egregious offenders are investigated and prosecuted. Under this prioritization, individual home buyers who falsify their incomes and/or assets to purchase homes are not considered as high a priority as "fraud for profit" schemes that involve multiple loans or schemes designed to gain illicit proceeds from property sales. Examples of these "fraud for profit" cases include the "Beazer Mortgage Corporation" case and the "Kourosh Partow" case. The Beazer investigation resulted in a $50 million settlement for mortgage and accounting fraud, which included an admission of fraudulent mortgage origination practices involving stated income loans. The Partow investigation resulted in the prosecution of a Countrywide Home Loans branch manager and loan officer for his involvement in facilitating millions of dollars in stated income loans.

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Questions Posed by Senator Specter

13. According to the Pharmacia Settlement Agreement, "Pharmacia expressly and unequivocally admits that it knowingly, intentionally and willfully committed the crime ... and is in fact guilty of the offense, and agrees that it will not make any statement inconsistent with this explicit admission." Since corporations act through their agents and employees, why were no individuals charged with this crime?

Response:

The FBI is responsible for investigating cases rather than for determining what entities or individuals will be criminally charged in a given case.

14. The Pharmacia Settlement Agreement also states that "The United States expressly reserves the right to prosecute any individual, including but not limited to present and former officers, directors, employees, and agents of Pharmacia, in connection with the conduct encompassed by this plea agreement, within the scope of the grand jury investigation, or known to the U.S. Attorney." Do you think that the U.S. should prosecute officers, directors, employees, and agents of Pharmacia for the off-label marketing of Bextra?

Response:

Please see the response to Question 13, above.

15. On October 11, 2001, I was one of seven Senators to vote "no" on a motion to table an amendment introduced by Senator Feingold to limit the roving wiretap authority under FISA. The amendment would limit surveillance to those instances "...when the target's presence at the place where, or use of the facility at which, the electronic surveillance is to be directed has been ascertained...." Why should we not tie the availability of roving wiretaps to the standard established in the Feingold amendment?

Response:

Although there is an ascertainment requirement in Title III, such a provision should not be imported into the Foreign Intelligence Surveillance Act (FISA). In order to authorize surveillance, the FISA Court must find probable cause to believe the target is using or is about to use the targeted facility. If Congress were to add a requirement that the government know the target is proximate to the facility in order to use roving authority, we would be required to maintain constant physical surveillance of the target or risk missing communications we are otherwise entitled to intercept. Roving authority can only be obtained if the government demonstrates reason to believe the target will take actions to thwart surveillance. Given that we are starting with a subset of FISA targets who are

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quite savvy about law enforcement efforts and who tend to be surveillance conscious, adding a requirement that would necessitate constant physical surveillance is particularly ill advised. Since there have been no occasions on which the FBI has misidentified facilities that were being used or about to be used by the intended target when executing roving surveillance, it is not clear what benefit would be obtained from such an amendment, particularly in light of the substantial disadvantages it would afford.

Congress has already provided safeguards to ensure that facilities are appropriately targeted for roving electronic surveillance. Pursuant to 50 U.S.C. § 1805(c)(3),

> [a]n order approving electronic surveillance under this section in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown shall direct the applicant to provide notice to the court within ten days after the date on which surveillance begins to be directed at any new facility or place, unless the court finds good cause to justify a longer period of up to 60 days.

The required notice to the court must include:

(1) the nature and location of each new facility or place at which the electronic surveillance is directed; and

(2) the facts and circumstances relied upon by the applicant to justify the applicant's belief that each new facility or place at which the electronic surveillance is directed is or was being used, or is about to be used, by the target of the surveillance.

16. The Lone Wolf amendment to FISA was enacted to "fix" an alleged "problem" with FISA. Shortly after September 11, 2001, the FBI believed that FISA did not allow the FBI to gain access to a laptop computer used by Zacharias Moussaoui. It turns out that the FBI personnel were misinterpreting the FISA statute – the statute did not preclude such a search. However, the Lone Wolf provision was enacted to "fix" this problem anyway.

The Lone Wolf exception undermines the policy and constitutional justifications for FISA. When Congress enacted FISA, it carefully limited its application in order to ensure that the procedures established in FISA are reasonable in relation to legitimate foreign counterintelligence requirements and the protected rights of individuals. Their reasonableness depends, in part, upon an assessment of the difficulties of

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investigating activities planned, directed, and supported from abroad by foreign intelligence services and foreign-based terrorist groups.

Further, the Lone Wolf provision is unnecessary and, according to the Assistant Attorney General for the National Security Division, David Kris, has never been used. The current version of the PATRIOT Act would allow the government to seek a criminal warrant without concern of precluding future use of FISA. In virtually every case in which you could meet the probable cause standard for obtaining a FISA warrant for a lone wolf, you could meet the probable cause standard for a criminal warrant.

Given the minimal value of the Lone Wolf provision, and given its erosive effects on the justification for FISA, what is your best argument in favor of its reauthorization?

Response:

Although the narrowly tailored lone wolf provision has never been used, it is an important investigative option that must remain available. This provision gives the FBI the flexibility to obtain FISA warrants or orders in the rare circumstances in which non-U.S. persons engage in terrorist activities but their nexus to known terrorist groups is unknown. The fact that this provision has not been used does not negate the need for it, should the appropriate circumstances arise.

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Questions Posed by Senator Franken

17. How many full-time employees investigate human trafficking at the FBI?

Response:

The FBI's civil rights program includes the human trafficking subprogram, along with the hate crime, color of law, and Freedom of Access to Clinic Entrances Act sub-programs. FBI agents typically do not work solely in one program area, such as human trafficking, but instead work in multiple sub-programs. Each FBI Division is responsible for recognizing the human trafficking threat in that territory relative to the other civil rights sub-programs and for allocating their civil rights resources accordingly.

In FY 2009, the equivalent of approximately 47 full-time FBI "street" agents (GS-10 through GS-13) investigated human trafficking cases (this does not include supervisors such as Assistant Special Agents in Charge working in the field or Supervisory Special Agents working at FBI Headquarters). This reflects a fairly steady increase since a human trafficking initiative was launched near the end of the FY 2005; the equivalent of approximately 27 full-time agents worked these cases in FY 2005, approximately 32 in FY 2006, approximately 41 in FY 2007, and approximately 44 in FY 2008. It is important to recognize, though, that the human trafficking initiative was designed to improve our coordination with other Federal, state, and local law enforcement officials as well as with non-governmental organizations. As a result, the FBI now participates in approximately 70 different task forces and working groups addressing human trafficking, enabling the FBI to improve productivity exponentially. For example, while work-hours have increased by 72% since 2005, arrests for human trafficking have increased 270% (from 51 in 2005 to 189 in 2009) and convictions have increased 514% (from 14 in 2005 to 86 in 2009) during that same time frame. The FBI has located 30 child victims of human trafficking since 2006, though we had located no child victims from 2001 though 2005. Similarly, court-ordered restitution to human trafficking victims in FBI cases totaled just $5.6 million from 2001 through 2005, compared to $175 million in 2009 alone and $888 million since 2006.

In addition to cases worked as human trafficking investigations, some cases that involve human trafficking may also involve other offenses and therefore not be classified as human trafficking cases. For example, a subject who profits from child sexual exploitation could be charged with a number of different violations, including human trafficking offenses. The responsibility for investigating domestic child prostitution matters in the FBI falls, though, to the FBI's Crimes Against Children sub-program, and these cases would therefore not be classified as human trafficking investigations. As a result, the above statistics do not

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include those agents whose work is captured under other investigative classifications.

18. Approximately how many man-hours are spent each year investigating human trafficking at the FBI?

Response:

Recognizing that the standard work year of a Special Agent is 2,600 hours, the approximate hours spent over the past 5 years investigating human trafficking are as follows:

2005	70,200 hours
2006	83,200 hours
2007	106,600 hours
2008	114,400 hours
2009	122,200 hours

19. How many investigations into human trafficking have centered on Native Americans? How many have specifically focused on Native American women? Please provide information on the investigations that have occurred.

Response:

The FBI's Civil Rights Program captures data regarding the citizenship of victims of suspected human trafficking, and this information indicates that approximately 26% of the our human trafficking cases involve victims who are U.S. citizens. The FBI does not, though, capture a victim's demographic data beyond citizenship, so we are not able to provide a breakdown of the racial or ethnic makeup of these victims. We do know anecdotally that the FBI has investigated at least one allegation of human trafficking involving a Native American female, but the evidence in that case did not support a charge of trafficking under applicable Federal law.

20. How many Indian tribes participate in the Uniform Crime Reporting program?

Response:

Before the Bureau of Indian Affairs (BIA) and other Federal agencies began their recent coordination effort, there were only 25 active tribal ORIs in the Uniform Crime Report (UCR) program and only 18 of these ORIs were actively submitting data. Of these 18, only 12 agencies, representing 6 states, provided the 12 months of complete data necessary for the agency to be published in the annual

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publication, *Crime in the United States*. The remaining 6 agencies reported only sporadically.

Within the last year or so, work by the BIA, DOJ's Bureau of Justice Statistics, and others has increased the number of tribal ORIs in the UCR program to approximately 130 (this count varies from month to month). Of these 130 agencies, approximately 101 have provided 3 years of legacy UCR data to the FBI in order to qualify for future Byrne/JAG grants. Although the remaining 29 ORIs are active in the UCR subsystem and are capable of submitting UCR data to the FBI, they typically have not done so.

The data submitted to the UCR program must satisfy certain technical standards. Discussions with tribal law enforcement officials, the BIA, and other Federal agencies associated with Indian Country issues indicate that many of the Indian Country agencies may lack the Records Management System capabilities necessary to meet those standards or that funding may not be available to make necessary technical adjustments. While the FBI's UCR Program offers free training on UCR policy, procedures, and technical requirements to all law enforcement organizations, it appears that many tribal agencies may lack the staff necessary to manage the UCR reporting obligations.

21. Will you please confirm that it has always been and will continue to be the policy of the FBI to not transfer terror suspects to foreign governments for interrogation purposes?

Response:

Yes. The FBI has not, and will not, transfer terror suspects to other governments for interrogation purposes. It has been, and will continue to be, the policy of the FBI to treat all suspected terrorists in accordance with U.S. law.

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Questions Posed by Senator Grassley

Outstanding Responses to Committee Questions

22. The Committee still awaits responses to questions submitted from the March 2008 oversight hearing. Further, we just received the responses to the March 2009 hearing at 5:15PM on Tuesday, September 15, 2009 - the day before the hearing. It is exceedingly difficult for the Committee to do its job if you come up here to testify and we don't have responses to questions submitted at previous hearings - especially when those hearings occur at least six months prior.

This delay may be exactly what the Department of Justice - and the FBI for that matter - want. If we don't get answers in a timely manner, it will force me to hold up nominees for positions within the Department of Justice.

a. When can we expect to see answers to the March 2008 hearing?

Response:

The Department is committed to improving the timeliness of our responses to the Committee and continues to work with Committee staff to accomplish that goal. The Department is working to complete its review of outstanding questions submitted during the past Administration and will provide responses to the March 2008 questions as soon as possible.

b. What is the hold up to those responses? Does the FBI or DOJ have something to hide?

Response:

In 2008, the Department provided a partial response to the Committee's March 5, 2008, questions and currently is working to complete the review of the remainder of those questions. We respect the Committee's important oversight role and will provide responses to these questions as soon as possible.

c. In the March 2009 responses we received on Tuesday night, I found one particular response that was non-responsive. I asked a question to Director Mueller about how DOJ and the FBI prioritize what questions to respond to and what ones not to, when providing partial responses. The response simply stated that partial responses were provided, and that DOJ Legislative Affairs is working on responding to other outstanding request. Do you believe that was responsive to the question I asked? If so, please explain how it was responsive. If not, why was the response non-responsive? When can I expect a response that actually answers my question?

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Response:

The Department makes substantial efforts to provide complete responses to all of the Committee's questions after each hearing and seeks to avoid submitting partial responses. We are unaware of any policy or practice regarding the priority for responding to particular questions when a partial response is made.

d. In responses provided on April 27, 2009, responding to questions submitted following the Committee's September 17, 2008, FBI Oversight hearing, you provided the following response to my first question:

"DOJ requested the opportunity to provide consolidated responses on behalf of all involved DOJ components. The FBI has provided its input to DOJ for the preparation of that consolidated response."

To date, I have not received that response from the Department of Justice. Further, in your responses to questions submitted at the March 25, 2009, hearing received on September 15, 2009, your response to my first question indicates that you view all responses from the September 2008 hearing as complete. Your response to questions dated April 27, 2009, would indicate otherwise. When did FBI provide input to DOJ for "the preparation of that consolidated response" mentioned in the April 27, 2009, responses?

e. What "input" did FBI provide to DOJ? Please provide all information submitted to DOJ to develop that "consolidated response."

f. When can I expect the "consolidated response" from the Department of Justice?

Response to subparts d through f:

These questions refer to a prior Question for the Record (which arose from a 9/17/08 Committee hearing) in which Senator Grassley discussed the relationship between the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). DOJ's Office of the Inspector General (OIG) recently completed an audit report regarding this relationship, subject: "Explosives Investigation Coordination Between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives," dated 10/21/09. That report includes a "Consolidated DOJ Response to Audit Report Recommendations" at Appendix VIII.

Whistleblower Protections for FBI Employees

23. In February, I joined a number of my colleagues in sponsoring S.372, the Whistleblower Protection Enhancement Act of 2009. This legislation will update

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whistleblower protections for all government employees. It addresses a number of hurdles good faith whistleblowers face when bringing complaints alleging retaliation for protected whistleblowing. The legislation was marked-up in the Homeland Security Committee where a compromise substitute was adopted. As an original cosponsor, I'm deeply concerned by a provision that was included at the eleventh hour which strikes the current whistleblower protections for FBI employees. That law, codified at 5 U.S.C. 2303, was passed in 1978, but wasn't effective until 1997 when President Clinton issued a memorandum directing the Attorney General to establish whistleblower procedures for the FBI. Those procedures have provided some basic level of protections for FBI employees now for years, and while not perfect, are greater than if the Homeland Security Committee substitute became law.

I am very concerned with this provision striking the existing protections and have been working to determine who authored it. In chasing down where this came from, I have heard a number of different things. Some have said the provision came from the White House, others said the Intelligence Community, and others have directly stated it was done at the request of the FBI. I understand that the Committee members and the White House have said this provision will be removed, but I still want to know why it ever came to be.

a. Do you believe the current whistleblower protections under section 2303 should be repealed?

Response:

No. The FBI is committed to protecting whistleblowers from retaliation in the workplace. Under the current statutory scheme, whistleblowers have access to an administrative process for obtaining relief if they believe they have been retaliated against for a protected disclosure. The FBI has not advocated repealing the existing whistleblower protections.

While the FBI played no role in authoring the provision deleting section 2303, we note that another provision added at the same time as part of the mark-up expressly authorized the continuation of the procedures authorized under section 2303.

b. Do you have any idea where this provision came from?

Response:

No.

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c. Did any individual at the FBI have anything to with drafting this provision? If so, please provide a list of names and titles of the employees that had any hand in drafting the provision.

Response:

The FBI did not author any of the provisions at issue.

d. Has the FBI provided any comment to the Department of Justice, White House, or other Executive Branch agency regarding repealing the existing FBI whistleblower protections? If so, please provide all emails and correspondence documenting those discussions.

Response:

While the FBI has commented on draft legislation regarding whistleblower protections, we have provided no comments related to a repeal of whistleblower protections for FBI employees.

e. At the hearing, I asked you to make a commitment to me and this Committee that the FBI will not advocate to repeal the existing whistleblower protections outlined in section 2303 as part of whistleblower reforms, you said you'd get back to me. Will you make such a commitment now? Why or why not?

Response:

Yes. The FBI opposes any effort to weaken existing FBI whistleblower protections.

DOJ OIG OPR Investigation

24. In May 2009, the Department of Justice (DOJ), Office of Inspector General (OIG) published a report reviewing the FBI's Disciplinary System. The Inspector General's report found "deficiencies in the reporting, adjudicative, appellate, and implementation phases of the FBI's disciplinary system." The OIG also found that the double standard of discipline between higher-ranking and lower-ranking employees, continued to exist at the FBI.

At your confirmation hearing, you stated it is "very important that there be no double standards in accountability.... Any such double standard would be fundamentally unfair and enormously destructive to employee morale."

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I am disappointed to hear that despite your statement at confirmation, the Inspector General recently found that 33% of FBI employees surveyed believe a double standard exists while only 11% said there was no double standard. Further, I'm troubled that 8 years, 3 OIG reports, and 1 special Commission later, we are still hearing about problems with the disciplinary process at the FBI. All this time, effort, and money should have put to rest the issue of the double standard in employee discipline.

a. What concrete steps have you taken to ensure that FBI OPR conducts fair reviews of misconduct cases per the OIG recommendations? What specific efforts the FBI has taken under your leadership to address the "double-standard" of discipline in its ranks?

Response:

It is the FBI's understanding that DOJ's OIG used a statistical stratified random survey sample of 818 of the FBI's approximately 32,000 employees, and that 717 of these employees answered a question regarding a perceived "double standard" in the FBI's disciplinary process. Of these, 239 (about 33%) agreed with the question's premise that there is such a double standard, while the majority indicated either that they did not believe such a double standard exists (11%) or that they had no opinion as to the possible existence of a double standard (56%). We also note that only 15% of the survey respondents felt they would not be treated fairly and objectively if they became subjects of FBI misconduct investigations.

While we would prefer that there was absolutely no perception of a double standard, we are not surprised that a certain percentage of employees believe a double standard exists. The *perception* of a double standard between higher- and lower-ranking employees is not unique to the FBI, to the Federal government, or to the public sector. The FBI would be pleased to provide the Committee with examples of occupational literature showing that lower-ranking employees in large organizations often view the internal disciplinary process as unfair because they lack a proper understanding of the process. While the FBI believes we can do better to make the disciplinary system transparent and we are taking several steps to ensure this is the case, we are encouraged that a minority of FBI employees have this perception. We are also encouraged that when the OIG examined specific cases it found that, in general, the FBI's investigations of misconduct were thorough, the decisions to substantiate or not substantiate misconduct allegations were reasonable, and the FBI OPR's disciplinary decisions were reasonable.

Although the FBI does not believe there are problematic variations among the penalties imposed for comparable offenses, we are committed to a transparent, thorough, and consistent disciplinary process. Accordingly, the FBI has adopted

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the OIG's recommendation that the cognizant FBI division provide input in every employee misconduct case, and the FBI's OPR will consider this input in its adjudication of substantiated cases. The FBI has also adopted the OIG's recommendation that it document its consideration of precedent in all substantiated cases, even those in which a standard penalty is imposed.

b. The report also found that some appeals overturning misconduct allegations against SES employees by FBI/OPR were in fact, "unpersuasive and unreasonable". The implication being the SES employee got off when they shouldn't. In the FBI response to the report, Deputy Director Pistole seems to brush this finding aside stating, that the process has been changed and that the sample was too small. Have you personally reviewed these cases the OIG mentions?

Response:

The OIG reviewed the investigations and initial penalty determinations for all Senior Executive Service (SES) employee discipline cases occurring during the audit period and found that they were generally reasonable. The FBI Director is generally familiar with the six SES appeals during this period.

c. If you have, do you agree with the OIG?

Response:

The OIG found that FBI appellate officials mitigated five of the six appellate decisions reviewed. In one instance the OIG agreed with the mitigation, which was based on "new evidence" discovered after the OIG had completed its investigation. In another instance, the FBI Director reinstated the initial penalty, an action with which the OIG agreed. Thus, in only three of the six cases did the OIG disagree with the ultimate outcome, and two of those three cases were decided before the FBI changed the make-up of its Disciplinary Review Board (DRB) to increase representation and transparency. Regardless of whether the FBI agreed with the OIG's belief that the punishments imposed on those employees was too lenient, the FBI had already determined to change the process that gave rise to those two decisions well before the OIG began its audit because the process had an appearance of unfairness. In the final case, which was decided after the FBI changed the DRB process, the mitigation decision was taken notwithstanding the OIG investigation's findings because the newly constituted DRB believed those findings were in error in that instance. We appreciate that the OIG had strong opinions regarding the appropriate penalty (just as agents and prosecutors typically have strong views as to what penalty should be imposed on criminal defendants), but we believe this is an instance in which reasonable minds differ.

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d. If you have not, why not? Will you pledge to look at these cases and make your own determination as to whether they were wrongfully decided?

Response:

Please see the responses to subparts b and c, above.

e. Do you believe the FBI response adequately addresses the OIG's concerns of a double standard?

Response:

The FBI carefully reviewed the OIG's report and has taken action to address its 16 recommendations, all of which are resolved. With respect to the OIG's recommendations regarding the appellate process in particular, the FBI has clarified its policies on appellate officials' authority to modify findings of fact, and the FBI has re-emphasized to appellate officials the appropriate standard of review. The FBI has also committed to reading the evidentiary standard into the record immediately before deliberations on each appeal in the presence of the DRB's voting members. In addition, the FBI has replaced the SES DRB and non-SES DRB with a single DRB that is composed of both SES and non-SES members in order to increase both representation and transparency.

Counterterrorism Vacancies / GAO Access

25. In May of this year, GAO initiated a review of FBI counterterrorism vacancies at my request, jointly with a bipartisan group of Members from both House and Senate Judiciary Committees. The objectives of the review are human capital focused and are similar to prior work GAO conducted at the FBI from 2002-2004. The request was prompted by testimony from FBI whistleblower Bassem Youssef that key counterterrorism units responsible for combating al Qaeda were operating at significantly reduced staffing levels (approximately 60% of full capacity) due to the inability of the unit to attract and retain qualified personnel. The review is aimed at testing the veracity and accuracy of that testimony as well as obtaining a broader assessment of human capital challenges at the FBI. Specifically, the objectives of the current review are to assess: (1) the extent of FBI counterterrorism vacancies and the reasons for the vacancies, (2) the trends in these vacancy rates over time, (3) implications of these vacancies for the Bureau's mission, and (4) the authorities and strategies the FBI is using to address the vacancies.

The FBI worked closely with GAO when it conducted its work in 2002-2004. However, GAO has been essentially blocked from conducting its current work. The DOJ Office of Legal Counsel (OLC) is arguing that GAO does not have the authority to evaluate the majority of FBI counterterrorism positions, as these positions are scored through the National Intelligence Program (NIP) Budget.

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OLC is now taking this new position despite its failure to object to similar work conducted by GAO under the previous Administration. [*See e.g.*, *Data Inconclusive on Effects of Shift to Counterterrorism- Related Priorities on Traditional Crime Enforcement*, GAO-04-1036 (August 2004), *Human Capital Strategies May Assist the FBI in Its Commitment to Address Its Top Priorities*, GAO-04-817T (June 2004), *Progress Made in Efforts to_Transform, but Major_Challenges Continue*, GAO-03-759T (June 18, 2003), *Initial Steps Encouraging but Broad Transformation Needed*, GAO-02-865T, (June 2002), and *FBI Continues to Make Progress in Its Efforts to Transform and Address Priorities*, GAO-04-578T (March 2004).

a. Do you agree that the results of GAO's prior work on FBI transformation and human capital were beneficial to both the Bureau and the Congress?

Response:

The FBI welcomes input regarding ways in which we can improve our efficiency and effectiveness.

b. Why was the work cited above, which necessitated access to the same sort of information the GAO is currently being denied, was allowed then but is being blocked now?

c. Do you agree with OLC that GAO should broadly be denied access to any information related to human capital issues for positions funded under the NIP, even if it is completely unrelated to sources and methods? Please explain why or why not?

Response to subparts b and c:

The FBI cooperated with GAO inquiries in 2002-2004 that focused generally on the FBI's post-9/11/01 transformation rather than narrowly on the FBI's counterterrorism activities. However, with the post-2004 inclusion of FBI counterterrorism positions in the Intelligence Community, aspects of the review GAO proposed in 2009 would have constituted intelligence oversight. It is the longstanding position of the Intelligence Community to decline to participate in GAO reviews that evaluate intelligence activities, programs, capabilities, and operational functions. This position should not, however, significantly interfere with GAO's review of the FBI's human capital.

Corporation for National and Community Service

26.

a. What actions, if any, did the FBI take in its role on the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency

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(CIGIE) to investigate the complaint filed by Acting U.S. Attorney for the Eastern District of California Lawrence Brown against Corporation for National and Community Service (CNCS) Inspector General Gerald Walpin prior to the President's decision to fire him on June 10?

b. Has the FBI participated in any inquiry of the allegations against IG Walpin after his termination by the President? If so, please describe the nature and status of any such inquiry.

Response to subparts a and b:

The Inspector General Reform Act of 2008 (Public Law 110-409, 122 Stat. 4302 (10/14/08)) establishes the Integrity Committee as a component of the Council of Inspectors General for Integrity and Efficiency (hereinafter the Council). The Integrity Committee, which is chaired by the Assistant Director of the FBI's Criminal Investigative Division, is responsible for receiving and reviewing complaints of wrongdoing that concern an Inspector General (IG) who is a member of the Council or designated members of such an IG's staff. As required by the Act, the Integrity Committee adopted Policies and Procedures for evaluating complaints of wrongdoing. Under these Policies and Procedures, the Integrity Committee first reviews each complaint within its purview to determine whether it meets the threshold requirement that it allege substantially administrative misconduct (defined as a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; or abuse of authority in the exercise of official duties or while acting under color of office) or potentially involve conduct so serious that it may undermine the independence or integrity reasonably expected of an IG or an OIG senior staff member.

According to the adopted Policies and Procedures, if the allegation is within the Integrity Committee's purview, involves an allegation meeting the threshold standard, and has potential merit, the Integrity Committee will typically summarize the allegation(s) in a letter to the IG or designated staff member who is the subject of the complaint and request a timely response to the allegation(s). Once the response is received, Integrity Committee members consider the complaint together with the response at the following Integrity Committee meeting. The Integrity Committee may then take one of the following three actions:

1) Determine that the response sufficiently answers or refutes the allegation(s) and that further inquiry or investigation are not warranted.

2) Refer the allegation(s) to an agency of the executive branch with appropriate jurisdiction over the matter.

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3) If the matter appears to have potential merit but cannot be referred to another agency, submit the matter to the Integrity Committee Chairperson, who will cause the allegation(s) to be investigated.

The Integrity Committee members followed these procedures in reviewing the complaint against Gerald P. Walpin, former IG of the Corporation for National and Community Service. The Integrity Committee met and discussed the complaint against Mr. Walpin and to date the complaint has not been closed.

c. Did Acting USA Brown consult Integrity Committee Chairman Kenneth W. Kaiser or any other FBI official prior to filing his compliant? If so, when did any such communication occur? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.

d. Have you or anyone in your office had any communications about Brown's complaint to CIGIE's Integrity Committee? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.

e. Have you or anyone in your office had any communications about the removal of Gerald Walpin? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.

f. Have you or anyone in your office had any communications about the resignation, retirement, removal, or transfer of any other Inspector General? Please describe any such communications in detail and produce to the Senate Judiciary Committee any and all records related to such communications.

g. What is the nature and status of the FBI's inquiry into allegations that emails under subpoena by the CNCS OIG related to Sacramento Mayor Kevin Johnson were improperly destroyed?

h. On what date and why did the FBI begin its investigation of the destruction of Kevin Johnson's emails under subpoena by the Inspector General and other potential obstructions of the IG's investigation?

i. Has anyone at the FBI had any communications with any White House official or any political appointee of about that investigation? If so, please describe any such communications in detail.

Response to subparts c through i:

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DOJ responded to these inquiries in their response to the second Question for the Record posed by Senator Grassley following the Attorney General's 6/17/09 Senate Judiciary Committee hearing. To the extent these inquiries concern pending investigations, the Committee is reminded that 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.

Danger Pay

27. The National Southwest Border Counternarcotics Strategy and Merida Initiative have caused the reallocation of a significant number of DOJ employees to duty stations throughout Mexico. Unfortunately, the Government of Mexico's crackdown on the Drug Trafficking Organizations (DTOs) has resulted in an alarming rise in kidnappings and assassinations throughout Mexico. According to analysis conducted by the University of San Diego's Trans-Border Institute, nearly 10,000 people have been killed in drug related violence since war against the cartels began in January 2007. In June of this year, a 3,000-round and 50-grenade battle between drug criminals and the Mexican Army left 18 dead and 9 wounded in the quiet tourist town of Acapulco, Mexico.

In the midst of this violence, numerous personnel from DOJ and DHS are working shoulder to shoulder with their Mexican government counterparts to stamp out the dangerous drug cartels once and for all. Currently, due to a statutory exemption, only employees of the FBI and DEA to receive danger pay Mexico.

a. Do you believe that other DOJ components like ATF and the U.S. Marshals as well as DHS components like ICE and CBP assigned to Mexico are working in a less dangerous environment than FBI agents? If so, please provide specific examples highlighting the specific circumstances that outline the differences in dangers FBI agents face in Mexico.

Response:

The FBI assesses only the environments in which FBI personnel operate.

b. Do you believe that FBI and DEA personnel should be the only agencies eligible to receive danger pay in Mexico? Why or why not?

Response:

While danger pay is generally initiated or terminated by the Secretary of State (5 U.S.C. § 5928), Congress has provided that the Secretary of State may not

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deny requests by the Drug Enforcement Administration or FBI to authorize danger pay allowances (Pub. L. No 101-246, 104 Stat. 15, 42, Title I, § 151 (2/16/90) and Pub. L. No. 107-273, 116 Stat. 1758, 1817, Div. C, Title I, § 11005 (11/2/02), respectively). FBI employees assigned to certain locations in Mexico have received danger pay since November 2008. Although in April 2009 DOJ asked the Department of State (DOS) to authorize danger pay for employees of the ATF and USMS in several locations in Mexico, DOS denied the request. In light of DOS' denial, these employees cannot receive danger pay absent Congressional action.

c. Would you support efforts to allow danger pay to all DOJ and DHS personnel who risk their lives daily in support of our government's bilateral efforts with Mexico to fight the drug cartels?

Response:

The FBI is not in a position to comment on the benefits appropriate for employees of other agencies.

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Questions Posed by Senator Kyl

28. In early 2009, it was reported that the FBI had severed its formal ties with the Council on American Islamic Relations (CAIR). In an April letter to members of Congress, FBI Assistant Director Richard C. Powers explained that:

> **CAIR was named as an unindicted co-conspirator of the Holy Land Foundation for Relief and Development (HLF) in *United States v. Holy Land Foundation et al.* (Cr. No. 3:04-240-P(N.D.TX). During that trial, evidence was introduced that demonstrated a relationship among CAIR, individual CAIR founders (including its current President Emeritus and its Executive Director) and the Palestine Committee. Evidence was also introduced that demonstrated a relationship between the Palestine Committee and HAMAS, which was designated as a terrorist organization in 1995. In light of that evidence, the FBI suspended all formal contacts between CAIR and the FBI[1].**

In the prosecution of the Holy Land Foundation, the Justice Department also named the Islamic Society for North America (ISNA) as an unindicted co-conspirator. In a government memorandum, U.S. Attorney Richard Roper detailed the links between the ISNA, an affiliated organization known as the North American Islamic Trust (NAIT), and the Palestine Committee:

> **During last year's trial, numerous exhibits were entered into evidence establishing both ISNA's and NAIT's intimate relationship with the Muslim Brotherhood, the Palestine Committee, and the defendants in this case.... During the trial, the Court entered into evidence a wide array of testimonial and documentary evidence expressly linking ISNA and NAIT to the HLF and its principals; the Islamic Association for Palestine and its principals; the Muslim Brotherhood in the United States and its Palestine Committee, headed by HAMAS official Mousa Abu Marzook; and the greater HAMAS-affiliated conspiracy described in the Government's case-in-chief.... ISNA and NAIT, in fact, shared more with HLF than just a parent organization. They were intimately connected with the HLF and its assigned task of providing financial support to HAMAS.... During the early years of the HLF's operation, HLF raised money and supported HAMAS through a bank account it held with ISNA at NAIT.... From that ISNA/NAIT account, the HLF sent hundreds of thousands of dollars to HAMAS leader Mousa Abu Marzook, Nadia Elashi (defendant Ghassan Elashi's cousin and Marzook's**

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[1] Letter from Richard C. Powers, FBI Assistant Director for Congressional Affairs, to U.S. Senator Jon Kyl. April 28, 2009.

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wife), Sheikh Ahmed Yassin's Islamic Center of Gaza, the Islamic University, and a number of other individuals associated with HAMAS[2].

Please describe the FBI's current relationship with the Islamic Society for North America (ISNA), official and otherwise, and provide the FBI's assessment of ISNA's value as a partner in light of the group's history of providing a forum for anti-Semitic messages and defense of certain terrorist groups.

Response:

The FBI does not have an official relationship with the Islamic Society for North America (ISNA). ISNA leadership has, though, indicated a willingness to answer questions posed by the FBI regarding the organization and its outreach programs.

The FBI's community outreach includes engaging with both individual community leaders and national groups that are part of the fabric of our communities. These groups include the Arab-American Institute, the Arab-American Anti-Defamation Committee, and the Muslim Public Affairs Council. The FBI has terminated contact with the Council on American Islamic Relations (CAIR) following questions raised in a Federal prosecution based on an FBI investigation. CAIR has been offered an opportunity to answer those questions. ISNA was also listed as an unindicted coconspirator in that case and we have asked ISNA a number of questions, just as we did CAIR, and ISNA has indicated their willingness to answer those questions.

If the FBI is to successfully prevent terrorist attacks and operate as a threat-focused, intelligence-led agency, it is essential that we understand the communities we serve and protect, including Muslim-American and Arab-American communities. Because it is difficult to understand a larger community if we limit our engagement to those individuals or groups with which we agree on all issues, we vet groups with which we engage based not on their rhetoric or positions on controversial issues but on whether the individuals or group is involved in criminal activity. We talk to groups with which we do not agree on many issues and we talk to groups that do no agree with each other. This engagement is not necessarily an endorsement but is, instead, an effort to increase our understanding of a community vital to the FBI's investigative interests and to improve that community's understanding of the FBI.

29. Please provide a list of meetings held between FBI personnel and ISNA since 2007. Please note which meetings were not open to the public.

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[2] *USA v. Holy Land Foundation for Relief and Development, et al.*, 3:04-CR-240-G, Government's Memorandum in Opposition to Petitioners Islamic Society of North America and North American Islamic Trust's Motion for Equitable Relief, (N.D. Tex. July 10, 2008).

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Response:

The FBI's Office of Public Affairs met with representatives of ISNA on two occasions in June and July of 2009. The purpose of those meetings was to ascertain whether ISNA would be willing to meet with the FBI to answer substantive questions regarding their organization. Because of the FBI's intent and objective, these meetings were not open to the public.

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Questions Posed by Senator Sessions

High-Value Detainee Interrogation Group (HIG)

30. On August 24, Attorney General Holder announced that, based on the recommendations of the Special Task Force on Interrogations, the Administration was establishing the High-Value Detainee Interrogation Group (HIG). According to the Department of Justice press release, the HIG will operate out of the FBI, and the HIG will "be subject to policy guidance and oversight coordinated by the National Security Council." During the hearing on September 16, 2009, Chairman Leahy asked: "Will you have oversight of the HIG to make sure that their methods are legal and effective?" You responded: "Yes, we will."

a. Who will exercise oversight responsibility of the HIG, the FBI or the National Security Council?

Response:

The High-Value Interrogation Group (HIG) will be an interagency body that will operate under the administrative control of the FBI. The Director of the HIG, who will report to the FBI Director, will be responsible for the overall administrative supervision of day-to-day HIG activities and operations. The HIG Director will also be responsible for monitoring the activities of the HIG's interrogation teams on a proactive and recurring basis to ensure compliance with U.S. laws and international legal obligations regarding the treatment and interrogation of detainees. In coordination with other agencies participating in the HIG, the ODNI will provide guidance regarding the DNI's statutory responsibilities, including compliance with relevant intelligence community (IC) policies, standards, guidelines, and regulations. As with other interagency groups, such as the FBI's Terrorist Screening Center, the National Security Council (NSC) will coordinate policy guidance for the HIG.

b. If you are responsible for oversight, will the National Security Council have the authority to override any of your decisions?

Response:

Disagreements among the participating agencies as to the execution of the HIG's mission will be resolved through the NSC process, beginning with the Counterterrorism Security Group (CSG).

31. According to press reports, the director of HIG will be selected from the FBI, and his or her deputy will be selected from one of the intelligence agencies. During the hearing,

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you appeared to confirm this understanding, stating to Chairman Leahy with respect to HIG: "it's going to be – I hope FBI leadership, with CIA as the deputy."

a. Will the director of the HIG report directly to you, or directly to the National Security Council?

Response:

As noted in response to Question 30a, above, the Director of the HIG will be responsible for the overall administrative supervision of day-to-day HIG activities and operations. The HIG Director will report to the Director of the FBI. The Director of the HIG will receive legal guidance from DOJ and will receive guidance on IC matters from the ODNI. The HIG will coordinate its activities with relevant agencies through the CSG Director and will receive policy guidance that has been coordinated through the CSG.

b. If there are any disagreements between you and the National Security Council - about policy, tactics, or otherwise - who will make the final decision?

Response:

Policy disagreements among the departments and agencies participating in the HIG will be resolved through the NSC process, beginning with the CSG.

32. On July 20, 2009, the Detention Policy Task Force released its preliminary report, as well as a document outlining protocols for prosecution of detainees. The document outlining protocols states: "There is a presumption that, where feasible, referred cases will be prosecuted in an Article III court, in keeping with traditional principles of federal prosecution."

a. Do you agree that confessions and other self-incriminating statements made by a defendant to law enforcement personnel while the defendant is in custody are generally inadmissible in a subsequent trial if the defendant was not Mirandized prior to making the incriminating statements?

Response:

Generally, a statement elicited during a custodial interrogation in the United States[3] by any U.S. Government personnel without *Miranda* warnings is not admissible in the case in chief in a U.S. civilian criminal trial (a statement made

[3] *Miranda* warnings may be modified for detainees in custody outside the United States.

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in the absence of *Miranda* warnings can be used in a U.S. civilian criminal trial to cross-examine the previously interrogated defendant if he or she chooses to testify). Such a statement can, of course, be used for other purposes, including intelligence purposes, and may potentially be used in other fora (such as in a foreign trial).

b. If you agree that non-Mirandized self-incriminating statements are generally inadmissible in Article III courts, and if there is a presumption that cases will be tried in Article III courts - as the Detention Policy Task Force preliminary report stated - do you agree that there will be an operating presumption that the detainees must be Mirandized?

Response:

The presumption described in the Detention Policy Task Force preliminary report related to the disposition of Guantanamo detainees. There is no operating presumption that individuals detained overseas will be provided *Miranda* warnings before interrogation. A variety of factors govern the decision of whether to give *Miranda* warnings to such individuals. As a general rule, *Miranda* warnings are provided to those detained overseas only when (1) prosecution in the United States is contemplated and (2) those interacting with the detainee conclude that the possible benefit of obtaining a warned statement outweighs the risk that, upon being told he has the right to remain silent, the detainee will decline to be interviewed. The risk-benefit calculation is multi-faceted and includes, among other things, whether the detainee's statements are necessary to preserve prosecution as an option, whether all intelligence possessed by the detainee has already been obtained, and the likely effect of *Miranda* warnings on the detainee's willingness to speak with U.S. officials.

c. If a detainee is tried in an Article III court but acquitted - either because a confession was not Mirandized and therefore suppressed, or otherwise - will the former detainee be released in the United States?

Response:

This decision will not be made by the FBI.

d. If a detainee is tried in an Article III court but acquitted, can the detainee then be tried in by a Military Commission, or will double jeopardy apply?

Response:

This is a legal question outside the FBI's purview.

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33. According to the Washington Post, the HIG will determine on a "case by case" basis whether the High-Value detainees will be Mirandized. During the hearing, I asked you who will decide whether particular High Value detainees will be Mirandized. You indicated that the National Security Council will make that determination based on an assessment of whether the intelligence gleaned from the detainee is more important than "holding out an option" for a trial in federal court.

a. If a High Value detainee is captured on the battlefield, at what point in the process will the National Security Council make the determination regarding whether or not to Mirandize the detainee? Will the National Security Council make this determination prior to any questioning?

Response:

Miranda warnings are not given on the battlefield or in any other circumstances in which they could have an adverse impact on military or intelligence operations. HIG operations will neither change that baseline nor prevent or delay the interrogation of detainees captured on the battlefield. The HIG's first priority is the collection of intelligence to prevent terrorist attacks against the United States and its allies. An interrogator (military, law enforcement, or intelligence) seeking only to obtain intelligence from a detainee has no obligation to give *Miranda* warnings.

The NSC will coordinate the interagency formulation of policy guidance on such matters as the integration of intelligence and law enforcement efforts by the HIG. Implementation details on this and other issues remain to be determined but, as indicated in response to Question 32b, above, the FBI understands that the use of *Miranda* will continue to depend on numerous factors, including whether prosecution in a United States Article III court is an option, whether the detainee's statements are necessary to preserve prosecution as an option, whether all intelligence possessed by the detainee has already been obtained, and the likely effect of *Miranda* warnings on the detainee's willingness to speak with U.S. officials.

b. Will the National Security Council have agents in Iraq, Afghanistan and in other parts of the world in order to make these determinations?

Response:

The NSC will coordinate the interagency formulation of policy guidance for the HIG, which will not require its presence in Iraq and Afghanistan.

c. How will the National Security Council be able to determine that the intelligence is or is not more important than pursuing a prosecution in an

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Article III court, without first gleaning the intelligence information from the detainee?

Response:

The NSC will coordinate an interagency process that will consider the views of all relevant agencies. As indicated above, the FBI understands that the use of *Miranda* will continue to depend on numerous factors, including whether prosecution in an Article III court is an option, whether the detainee's statements are necessary to preserve prosecution as an option, whether all intelligence possessed by the detainee has already been obtained, and the likely effect of *Miranda* warnings on the detainee's willingness to speak with U.S. officials.

d. Do you agree that the administration of Miranda warnings to detainees will inevitably reduce the number of confessions and other intelligence gathered?

Response:

The HIG's first priority is the collection of intelligence to prevent terrorist attacks against the United States and its allies, and an interrogator (military, law enforcement, or intelligence) seeking to obtain only intelligence from a detainee has no obligation to give *Miranda* warnings.

As an institution, the FBI has a long history of being able to build rapport with individuals in its custody and to obtain valuable information from them, even after providing *Miranda* warnings. Over the last two decades, *Mirandized* statements have yielded information critical to our national security and have played a vital role in winning convictions and lengthy sentences in terrorism cases (*e.g.*, Ramzi Ahmed Yousef, 240 years in prison; Mohamed Rashed Daoud Al-'Ohwali, life in prison; Khalfan Khamis Mohamed, life in prison).

e. If the HIG intends to question High Value detainees for intelligence purposes prior to Mirandizing them, are you concerned that any statements elicited post-Miranda may still be suppressed in an Article III court based on the Supreme Court's treatment of "question first" policies in *Missouri v. Seibert*, 542 U.S. 600 (2004)?

Response:

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Implementation details for the HIG remain to be determined. As a legal matter, while *Seibert* is relevant to this issue, the outcome in that case may not be dispositive.

f. Do you believe that Military Commissions are constitutionally suspect, or that justice cannot be rendered by them?This is a legal question outside the FBI's purview.

g. Is there any legal reason that apprehended suspects at war against the United States should not be tried by Military Commissions? Aren't Military Commissions the most practical method of trial, and entirely consistent with law and history?

Response:

This is a legal question outside the FBI's purview.

PATRIOT Act Reauthorization

34. As you are aware, three provisions of the USA PATRIOT Act are set to expire at the end of this year. Without action, law enforcement would not be able to use these three important tools after December 31, 2009: section 206 of the USA PATRIOT Act, which governs "roving" wiretaps; section 215 of the USA PATRIOT Act, which allows federal agents to ask a court for an order to obtain business records in national security terrorism cases; and section 6001 of the Intelligence Reform and Terrorism Prevention Act ("IRTPA"), which allows intelligence investigations of lone terrorists not connected to a foreign nation or organization (also known as the "lone wolf" provision).

a. Last week, Assistant Attorney General Ronald Weich sent a views letter to Chairman Leahy recommending renewal of all three of these tools. The letter noted that the Office of the Director of National Intelligence concurred with the recommendations for renewal. In that letter, the Department of Justice specifically stated that the roving wiretaps provision "has functioned as intended and has addressed an investigative requirement that will continue to be critical to national security operations." Do you agree?

Response:

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

b. In that same letter, the Department of Justice also recommended the renewal of section 215, the business records provision. It stated, "the availability of a generic, court-supervised FISA business records authority is the best option for advancing national security investigations in a manner

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consistent with civil liberties. The absence of such an authority could force the FBI to sacrifice key intelligence opportunities." Do you agree?

Response:

Yes. This authority has been exceptionally useful in our national security investigations. It allows us to obtain records in national security investigations that we may be unable to obtain using National Security Letters (NSLs); the records that can be obtained using this tool are those that are typically obtained in a criminal case by using a grand jury subpoena. The operational security requirements of most intelligence investigations require the secrecy afforded by this FISA authority. We anticipate that there will always be national security investigations in which the FBI needs to obtain records that are not available through the use of NSLs and in which criminal investigative tools are either unavailable or insufficiently secure. The authority to obtain records under the supervision of the FISA Court in such cases is entirely appropriate. Moreover, the FISA Court's track record since this provision was added to FISA clearly establishes that the court is sensitive to the need to protect the privacy rights of unconsenting U.S. persons who may have some connection to the documents received pursuant to such an order.

c. The Department's views letter also recommended the renewal of the lone wolf provision, stating, "We believe that it is essential to have the tool available for the rare situation in which it is necessary rather than to delay surveillance of a terrorist in the hopes that the necessary links are established." Do you agree?

Response:

Yes. Although the narrowly tailored lone wolf provision has never been used, it is an important investigative option that must remain available. This provision gives the FBI the flexibility to obtain FISA warrants and orders in the rare circumstances in which non-U.S. persons engage in terrorist activities, but their nexus to known terrorist groups is unknown. The fact that this provision has not been used does not negate the need for it, should the appropriate circumstances arise.

Forensic Science

35. Director Mueller, two weeks ago the Judiciary Committee held a hearing to examine the findings of the National Academy of Science's (NAS) Report entitled "Strengthening Forensic Science in the United States." This is the second hearing the Judiciary Committee

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has held on the NAS Report this Congress. This Report was critical of most forensic science disciplines and called for the creation of a separate and independent federal agency to create uniform standards for the forensic disciplines. In fact, the Report states, "In a number of forensic science disciplines, forensic science professionals have yet to establish either the validity of their approach or the accuracy of their conclusions, and the courts have been utterly ineffective in addressing this problem."

At the first hearing on this subject, the sole witness at the hearing, Judge Harry Edwards of the D.C. Circuit, made the remarkable statement that "[w]ith 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." He then specifically faulted fingerprint evidence.

a. Based on your experience as a two-time U.S. Attorney, head of DOJ's Criminal Division, and current Director of the FBI, do you believe fingerprint analysis "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"?

Response:

Yes. Research has consistently demonstrated that friction ridge skin is unique and persistent in its arrangements. Specifically, research shows that even genetically identical twins have different friction ridge arrangements, and these arrangements do not change over the course of a person's life unless there is permanent damage to the skin. Given that these friction ridge arrangements on the skin are unique, prints of those arrangements will also be unique, provided that a sufficient quantity and quality of information is available in the print. The capacity for friction ridge impressions to be reliably connected to a single source is based upon the biology of the skin and the ability of an examiner to reliably interpret these impressions.

Fingerprint analyses should always be conducted subject to a strong quality assurance system. The FBI's Laboratory is an accredited facility that follows internationally recognized guidelines to ensure a quality work product. Routine proficiency testing of examiners has shown that competently trained examiners make reliably accurate identifications. There are numerous references in peer-reviewed scientific literature supporting the validity of latent print examinations, and recent research has corroborated these findings. We support a continuation of this research because it can only strengthen the science involved and improve laboratory work products.

b. How important is fingerprint evidence and analysis to the FBI's mission – both in the criminal and national security arenas?

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Response:

Fingerprint evidence and analysis play a vital role in the FBI's mission in both the criminal and national security arenas. Individuals can be linked to or excluded from items of evidence based on fingerprint analysis, and can be admitted to or excluded from visitation or access to the United States on the same basis. Fingerprints represent the most robust biometric in the world to date, contributing to countless investigations each year both by aiding in the directions these investigations take and by providing probative, reliable evidence in courts of law. For example, fingerprints were introduced in the prosecutions of those tried for the 1993 attack on the World Trade Center, the 1995 Oklahoma City bombing of the Murrah building, the 1998 embassy bombings in Africa, the 9/11/01 attacks, and numerous other terrorist crimes. In addition, through information sharing between the FBI, the Department of Homeland Security, and the Department of Defense, those entering the United States can be quickly screened against existing databases. This collaboration and information sharing has led to identifications of key individuals that otherwise would not have been made. These associations have played critical roles in both criminal and national security investigations worldwide.

In addition to criminal and national security applications, fingerprints have long been used to identify the victims of natural disasters, such as hurricane Katrina, and have more recently been the primary means of identifying fallen soldiers and other casualties of the wars in Afghanistan and Iraq.

36. The FBI has the largest publicly funded forensic laboratory in the country. The types of cases investigated by the FBI include terrorism, espionage, public corruption, civil rights, criminal organizations and enterprises, white collar crime, and violent crime. The FBI Crime Lab employs over 550 employees, and provides forensic science services to the FBI and any other duly constituted law enforcement agency. Do you agree that if we were to adopt the NAS Report's suggestion that forensic science labs be separated from law enforcement agencies, the FBI could no longer utilize its crime lab as it does currently?

Response:

Contrary to reporting in the popular press, the National Academy of Sciences report did not suggest that forensic science laboratories be separated from law enforcement agencies. That report states:

> Ideally, public forensic science laboratories should be independent of or autonomous within law

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> enforcement agencies. In these contexts, the [laboratory] director should have an equal voice with others in the justice system on matters involving the laboratory and other agencies. The laboratory also would be able to set its own priorities with respect to cases, expenditures, and other important issues.

(Report at page 6-1) (emphasis added).

The FBI's Laboratory already operates in this context within the FBI and, therefore, could continue to be used in the same way by the FBI. The FBI Laboratory has its own budget and sets its own priorities with respect to the expenditures necessary to meet its goals and objectives. The FBI Laboratory also establishes its own operational priorities, and is not pressured by others inside or outside the FBI to adjust its mission to meet their needs. To the contrary, the FBI Laboratory is held in high regard by other FBI divisions, which value its independent and high-quality work. The FBI Laboratory is led and managed by highly educated and thoroughly trained scientists, who oversee the laboratory's casework operations using valid and stringent scientific protocols and quality assurance procedures. In addition, the FBI Laboratory conducts a rigorous training program for all its forensic scientist practitioners and its operations are externally accredited to international laboratory standards.

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Questions Posed by Senator Coburn

37. President Obama's Special Task Force on Interrogation and Transfer Policies concluded that the U.S. Army Field Manual "imposes appropriate limits on interrogation" and "provides appropriate guidance to both inexperienced and experienced military interrogators." Despite this finding, they also concluded that forming a "specialized interrogation group" or the High-Value Detainee Interrogation Group (HIG) could improve interrogations. Will the HIG also be limited to the interrogation methods described in the U.S. Army Field Manual?

Response:

HIG personnel will not use any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by the Army Field Manual. This will not preclude HIG personnel from using authorized, non-coercive interrogation techniques that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises, such as those used by the FBI and other Federal law enforcement agencies. The HIG will oversee and coordinate research to develop new lawful, non-coercive techniques, and any such techniques would be available to the HIG as well.

38. The Task Force also recommended that the HIG be subject to policy guidance and oversight coordinated by the National Security Council. Will that be the case, and, if so, what role will Congress play in oversight of the HIG?

Response:

Policy guidance for the HIG will be coordinated through the NSC process, beginning with the CSG. As noted in response to Question 31a, above, the Director of the HIG will receive legal guidance from DOJ and will receive guidance on IC matters from the ODNI. Those agencies remain subject to Congressional oversight.

39. The Task Force recommends that the HIG be housed in the FBI, but that its principal function is intelligence gathering, rather than law enforcement. Moreover, the HIG is to be composed of "experienced interrogators, analysts, subject matter experts, and linguists," which are not traditional positions or functions for the FBI.

a. What makes the FBI uniquely-situated to house the HIG and what specific interrogation expertise (not law enforcement debriefings) does the FBI bring to the HIG?

Response:

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The HIG is designed to be an interagency group, not a sub-unit of the FBI staffed by IC elements. As a member of the IC, the FBI has dual law enforcement and intelligence roles and a 100-year history of success in interviewing and interrogating subjects of investigations from across a broad range of intelligence and criminal activities. Through this experience, the FBI has developed and honed the techniques necessary to elicit intelligence information through voluntary, non-coercive interviews and interrogations.

b. Could housing the HIG at the FBI subject HIG interrogators to the constraints of law enforcement and U.S. criminal law, such as having to provide *Miranda* warnings to terrorists prior to interrogating them?

Response:

The HIG is to be an interagency body staffed with personnel from the IC, who will retain their home agency authorities and limitations. The HIG's first priority is the collection of intelligence to prevent terrorist attacks against the United States and its allies. Interrogators, including FBI interrogators, seeking only to obtain intelligence from a detainee (as opposed to seeking to obtain evidence to introduce in a United States Article III proceeding) have no legal or policy obligation to provide *Miranda* warnings before an interrogation. It is established law that the Fifth Amendment is violated only if the fruits of an unwarned custodial interrogation are introduced against a person during an Article III trial. It does not violate the Fifth Amendment to conduct a custodial interrogation without *Miranda* warnings. Finally, HIG interrogators (regardless of agency affiliation) will not use any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by the Army Field Manual or that is not an otherwise authorized, non-coercive technique of interrogation that is designed to elicit voluntary statements and does not involve the use of force, threats, or promises.

40. The Director of National Intelligence (DNI) recently sent a memorandum to four FBI field offices which are to participate in a pilot program, designating the heads of those field offices as the DNI's Representative at U.S. locations. The DNI Representative is to "ensure IC elements are: 1) acting as an integrated community; 2) unified behind a common purpose; and 3) in pursuit of shared objectives."

a. Do you believe that Special Agents in Charge at FBI field offices are acquainted sufficiently with the capabilities and missions of the IC elements in their area to ensure that it is an integrated community?

Response:

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In order to adequately fulfill the FBI's role as a domestic national security and intelligence agency, FBI Assistant Directors in Charge (ADICs) and Special Agents in Charge (SACs) must be, and are, familiar with the capabilities and missions of the IC elements. Each of the four offices selected to participate in the pilot has a large and strong Joint Terrorism Task Force (JTTF) and a Counterintelligence Working Group devoted to protection against national security threats and composed of both IC representatives and state and local law enforcement officials. In addition, all ADICs and SACs are ultimately responsible for the myriad counterterrorism, counterintelligence, cyber, and weapons of mass destruction operations in their areas of responsibility, many of which are conducted jointly with the FBI's various IC partners.

The offices participating in the ODNI pilot program are the FBI's Los Angeles Division, New York Division, Chicago Division, and Washington Field Office. These are the FBI's four largest field offices and the officials who head these offices have among the FBI's most extensive backgrounds in national security and law enforcement investigations.

b. Are FBI field offices briefed on the National Intelligence Program (NIP) priorities framework, and will they be able to guide "shared objectives" with IC elements in their area?

Response:

The FBI's National Security Branch (NSB) is responsible for developing and implementing strategies for collecting against national intelligence requirements and for conveying these strategies to all FBI divisions. To fulfill that responsibility, NSB has developed an intelligence requirements and collection management process that actively manages the transmission of national and FBI intelligence requirements to the field. In 2005, the FBI created and staffed Field Intelligence Groups (FIGs) in all of its 56 field offices. In 2008, the FBI's Strategic Execution Team standardized the structure, roles, and processes of the FIGs, establishing collection management and domain management functions in each. The FIGs manage and coordinate intelligence priorities in the field, receiving and acting on integrated investigative and intelligence requirements. The FIGs also provide the intelligence link to the JTTFs, fusion centers, FBI Headquarters, and other IC agencies. Each field office reviews the National Intelligence Program priorities framework and, through domain assessments and analysis, provides a field perspective on the unique priorities in that area of responsibility. Consequently, the four DNI representatives have and will be able to use existing platforms to guide "shared objectives" with IC elements in their territories.

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c. Could the designation of DNI Representative burden the FBI's domestic law enforcement functions?

Response:

As part of the 18-month pilot program, the FBI is working with the ODNI to evaluate how the additional responsibilities of being a designated DNI representative will affect the FBI's domestic law enforcement functions. At the end of the pilot, the FBI and ODNI will assess the program's utility and offer recommendations on whether to continue the designation of DNI Representatives. At that point the FBI will be able to offer greater insight into the level of effort needed to continue this program and its impact on current domestic law enforcement functions.

41. Some of the FBI's greatest criminal investigations resulted from FBI undercover agents infiltrating criminal organizations. For example, FBI agent Joe Pistone was able to infiltrate the groups within the New York mafia. His investigation led to over 200 indictments and over 100 convictions of New York mobsters.

a. What priority does the FBI give to undercover investigations, especially in counterterrorism cases?

Response:

The highest priority of the FBI remains the prevention of another terrorist attack within the United States. Consistent with this priority, the FBI uses all lawful investigative techniques to detect, penetrate, and disrupt terrorist plans before they are executed.

The use of undercover investigations is central to the FBI's overall counterterrorism strategy, as evidenced by the fact that the performance appraisals of FBI field office executive managers are based, in part, on the number of ongoing counterterrorism undercover operations in the division's territory.

The remainder of this response is classified and is, therefore, provided separately.

b. To what extent does the FBI reward its agents for undertaking such a demanding and difficult lifestyle?

Response:

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FBI undercover work is considered a collateral duty within all FBI investigative programs unless the undercover employee (UCE) is assigned to a permanent undercover role. The FBI rewards UCEs in a variety of ways, including the following: 1) UCEs receive the job satisfaction and prestige associated with working against some of the most sophisticated and dangerous FBI targets; 2) a number of UCEs have traveled both within the United States and internationally in support of undercover assignments; and 3) successful UCEs may be recognized through various incentive-based awards programs available to all FBI personnel or may receive special FBI or DOJ awards for exceptional performance.

c. Does the FBI assess its agents for suitability for possible undercover operations?

Response:

While the FBI does not conduct assessments of all agents to determine their suitability for undercover operations (UCOs) because participation in UCOs is voluntary, we do assesses the suitability of such volunteers before they participate in UCOs. These assessments are conducted in several steps.

First, UCE candidates must submit applications containing professional background and personal information, accompanied by field office recommendations. This information is considered by UCE Undercover School Program Managers, who represent three FBI Headquarters divisions: the Counterterrorism Division, Counterintelligence Division, and the Criminal Investigative Division. Potential UCEs also meet with the relevant field office's Undercover Coordinator (UCC), who may be a certified UCE or have significant experience in managing UCOs. The UCC will determine if the potential UCE possesses the skills necessary to be safe and secure in this type of investigation.

If the UCC believes the potential UCE is suitable, the UCE candidate's executive management will review the matter. If that review is favorable, the UCE candidate will be evaluated by a specially trained psychological practitioner and experienced UCEs in the Undercover Safeguard Unit. The UCE candidate will be placed in several scenarios designed to assess the candidate's potential for success in UCOs. If this assessment is favorable, the candidate will receive training offered by the Undercover School. This intensive two-week course consists of classroom and real-world undercover scenarios. Seasoned UCEs staff the school as role players, instructors, and evaluators. Upon graduation, UCE candidates are certified as UCEs and are eligible to work in all FBI investigative programs (including criminal, foreign counterintelligence, or counterterrorism), though there may be additional evaluative steps depending on the nature of a UCO for which a certified UCE is being considered.

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SUBMISSIONS FOR THE RECORD

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 16, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Oversight Of The Federal Bureau Of Investigation
September 16, 2009

Today we hold our second hearing this Congress on oversight of the Federal Bureau of Investigation. We welcome Director Mueller back to the Committee. Congressional oversight is one of our most important responsibilities, and one that this Committee has continued to fulfill in this Congress.

I appreciate Director Mueller's continued dedication to working with Congress to ensure that the FBI is able to effectively pursue its critical missions in law enforcement and national security while maintaining the freedoms and values that define us as Americans.

Last month, Attorney General Holder announced a heightened role for the FBI with the formation of a High-Value Detainee Interrogation Group (HIG) to interrogate the most dangerous and high-value terrorist suspects. This group, bringing together experienced professional interrogators, analysts, subject matter experts, and linguists from across the intelligence community, the law enforcement community, and the Department of Defense, will be housed within the FBI. The HIG is being created to improve the ability of the United States to interrogate dangerous terrorists effectively, and in a manner consistent with the law. It sends a welcomed signal that the administration has chosen to house the HIG within the FBI, an agency with a long history of proven success in interrogation without resorting to extreme methods that violate our laws and our values, and fail to make us any safer.

When Director Mueller was before the Committee in March, I noted his important statement last year commemorating the 100th anniversary of the FBI. His words may be fitting now more than ever in light of the FBI's new responsibilities. He said:
"It is not enough to stop the terrorist – we must stop him while maintaining his civil liberties. It is not enough to catch the criminal – we must catch him while respecting his civil rights. It is not enough to prevent foreign countries from stealing our secrets – we must prevent that from happening while still upholding the rule of law. The rule of law, civil liberties, and civil rights – these are not our burdens. They are what make us better. And they are what have made us better for the past 100 years."

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I trust that Director Mueller will maintain this commitment as the FBI plays an integral leadership role in the formation and administration of this interrogation policy group.

The Committee will soon turn to discussion of the expiring provisions of the USA PATRIOT Act, and what needs to be done in that regard. During the past few years, audit provisions included in the previous Patriot Act statutes brought to light the misuse of certain tools provided by the Patriot Act. For example, National Security Letters allow the Government to collect sensitive information, such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I noted that, with no real limits imposed by Congress, the FBI could store this information electronically and use it for large-scale data-mining operations.

We now know that the NSL authority was significantly misused. In 2008, the Department of Justice Inspector General issued a report on the FBI's use of NSLs, revealing serious over-collection of information and abuse of the NSL authority.

I have also closely tracked the use of section 215 of the original Patriots Act, which authorizes an order for business records. I have long believed that greater oversight of section 215 orders is required, including broader access to judicial review of the nondisclosure orders that are so often issued with section 215 demands for records.

Finally, I have raised concerns over the misuse of "exigent letters" to obtain phone records and other sensitive records of Americans, including reporters, without a warrant, without emergency conditions, and without a follow-up legal process. Director Mueller has assured us that appropriate steps have been taken to prevent a repeat of that abuse and has helped address concerns that records illegally obtained with these exigent letters may have been inappropriately retained by the government.

I hope he will agree with me that, as we consider the reauthorization of expiring provisions of the Patriot Act, we should keep in mind the proven effectiveness of audits, reviews and continuing oversight by Congress to ensure effectiveness without abuse.

Our oversight also includes review of the FBI's traditional, and vital, law enforcement role. The FBI has just released the 2008 crime statistics, and the work of law enforcement and the trend lines are to be commended. I hope that the preliminary indications for this year show the continuation of these trends despite the economic downturn and financial crisis and that the assistance to state and local law enforcement we were able to include in the economic stimulus and recovery legislation is helping to keep crime down throughout the country.

In May, Congress passed and the President signed into law the Fraud Enforcement and Recovery Act to give investigators and prosecutors the resources they need to aggressively detect and prosecute the mortgage fraud and financial fraud that contributed to the massive economic crisis. I appreciate the Bureau's assistance in developing and supporting this important piece of legislation. We need a similarly aggressive approach to combating health care fraud, another insidious form of fraud that victimizes the most vulnerable Americans and drives up the cost of health care for all of us. I applaud the Department for its commitment to reducing waste and excess in the health care system by investigating and prosecuting this kind of fraud.

I thank Director Mueller for returning to the Committee, for his responsiveness to our oversight efforts, and for his personal example and leadership in returning the FBI to its best traditions. I thank the hardworking men and women of the FBI and look forward to the Director's testimony.

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Department of Justice

STATEMENT

OF

ROBERT S. MUELLER, III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

"OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION"

PRESENTED ON

SEPTEMBER 16, 2009

STATEMENT OF ROBERT S. MUELLER, III
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

SEPTEMBER 16, 2009

Good morning Chairman Leahy, Senator Sessions, and Members of the Committee. I am pleased to be here today.

As we discussed when I last appeared before your Committee, the Federal Bureau of Investigation (FBI) has undergone a significant evolution in recent years. From developing the intelligence capabilities necessary to address emerging terrorist and criminal threats to building the administrative and technological infrastructure necessary to meet our mission as a national security service, the men and women of the FBI have adapted to our country's ever-changing needs.

Safeguarding our national security remains our primary concern. Indeed, our top three priorities – counterterrorism, counterintelligence, and cyber security – are all related to national security. I will discuss those areas briefly, and then report on what the FBI is doing, and will continue to do, to address the threats posed by criminal enterprises. My focus today on our criminal programs reflects the FBI's belief that our national security depends on stopping crime, as well as on stopping terrorists.

On the counterterrorism front, Al Qaeda continues to present a threat to the Homeland. We work proactively to detect and identify any potential AQ operatives who may have access to the United States. Domestically, through our Joint Terrorism Task Forces, and overseas, through our Legal Attaches and international partners, we share intelligence and conduct operations to fight terrorists. With respect to self-radicalized or home-grown terrorists, we work with impacted communities, our law enforcement partners and other intelligence agencies to identify and disrupt threats.

Regarding counterintelligence, our adversaries continue to target political and military plans, technology, and economic institutions. We have a comprehensive strategy to improve our understanding of the threats and our ability to counter them.

Cyber-based attacks are a growing threat to national security. The FBI has a unique role in this area, as the only agency with the statutory authority, expertise and ability to combine counterterrorism, counterintelligence and criminal resources to counter this threat. We have also established the National Cyber Investigative Joint Task Force, which brings together eighteen of our law enforcement and intelligence community partners in a joint effort to address this challenging problem.

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Now, I turn to our work in the law enforcement realm. In fighting crime, the FBI continues to focus on areas where our involvement will have a substantial and lasting impact and where the FBI has a specific skill or expertise that will contribute to the success of the operation or investigation. Often times we bring our expertise to bear on joint investigations with our partners in federal, state and local law enforcement. We stand shoulder to shoulder to combat these threats, both operationally, and through the sharing of vital intelligence, in a way that was not done in the pre-9/11 world.

Before I outline our criminal programs, I want to emphasize that whether we are addressing threats to our national security or investigating criminal matters, we strive to protect civil liberties and privacy, not just lives and property.

Today I want to highlight priorities in our criminal programs.

White Collar Crime

Public Corruption

Benjamin Franklin was quoted as saying after the 1787 Constitutional Convention that "Keeping government honest and hence our freedoms intact requires eternal vigilance." Because Franklin's words are as true today as they were then, Public Corruption continues to be our number one criminal priority. The FBI recognizes that fighting public corruption is vital to preserving our democracy and to maintaining our credibility overseas. Whether in the back of a squad car, at a border crossing, in a courtroom, or along the halls of Congress, our public officials must carry out their duties in a just and legal manner.

Through our vigilance, we have achieved some notable successes. In the past two years alone, our efforts have helped convict 1600 federal, state and local officials. We have another 3200 public corruption cases pending, of which approximately 2,500 involve corruption of public officials. But more remains to be done. Because the interests at stake are so important and the magnitude of the problem so great, we have deployed approximately 700 agents to fighting corruption around the country.

The Southwest border is a particular focus of our corruption-fighting efforts. Of the 700 agents leading our charge against public corruption, approximately 120 are working along the Southwest border. We coordinate our investigative efforts along the borders with the Department of Homeland Security, Customs and Border Protection Internal Affairs (CBP-IA), as well as with other federal, state, and local law enforcement agencies, through multi-agency task forces. The result is over 400 public corruption cases originating from that region. So far in FY 2009, there have been over 100 arrests, over 130 indictments and over 70 convictions. Stronger cooperation with the governments of Mexico and Central America is an interagency goal of the United States Government.

One particular case highlights the potential national security implications of public corruption along our nation's borders. In that case, an individual gained employment as a

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Border Inspector for the purpose of trafficking in drugs. Through our collaborative efforts, she is off the streets today. In fact, she will be off the streets for the next 20 years. We cannot permit those willing to forsake their duties and responsibilities for personal gain to be protecting our borders.

In another public corruption investigation with national security implications, twenty-six current and former department of motor vehicle employees were indicted for taking cash bribes in exchange for fake driver's licenses, ID cards, and, frightening, a hazmat license. Those licenses could have ended up anywhere, used by anyone for any purpose.

Another of our recent operations netted corrupt officials from twelve different federal, state and local government agencies, who allegedly used their positions to traffic in drugs. To date, 84 of those subjects have pled guilty to related charges.

As these cases demonstrate, corrupt public officials compromise our democracy and our safety. They also waste our tax dollars.

We are directing our resources all over the country, but we cannot and, fortunately, do not, do it alone. We rely heavily on our partners at all levels of law enforcement. These cooperative and coordinated efforts are yielding results.

Mortgage Fraud

A byproduct of the upheaval in the housing market has been a drastic increase in mortgage fraud cases. In FY 2008, we had about 1600 cases. As of July 31, 2009, we had over 2600 cases pending. Most of these cases have involved losses of over $1 million. To meet this growing challenge, we have redirected investigative resources and assigned approximately 300 Special Agents the task of investigating mortgage fraud. In addition, we direct 15 task forces and 59 working groups that target mortgage fraud.

Mortgage fraud has devastated many American families during the economic downturn and contributed to undermining confidence in the U.S. financial system. The schemes have evolved with the changing economy, targeting vulnerable individuals, victimizing them even as they are about to lose their homes.

Our success in generating new cases is due in large measure to the innovative ways in which we are utilizing data. We employ statistical correlations and other advanced computer technology to identify patterns in the search for companies and persons engaged in activity that is indicative of fraud. In addition, agents analyze data compiled through Suspicious Activity Reports (SARs) filed by financial institutions and through the Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) reports. We have also worked with the mortgage industry to identify trends indicative of mortgage fraud and to educate the public about mortgage fraud. As potential targets are analyzed and flagged, the information is provided to the appropriate FBI field office for further investigation.

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The FBI's efforts in this area focus on fraud perpetrated by industry insiders. It is industry insiders who, in many instances, facilitate mortgage fraud. By focusing on these facilitators we expect to maximize our finite resources.

As is true across our criminal programs, our partnerships with other federal, state and local law enforcement agencies greatly enhance our effectiveness. Building upon our successful task force model, we have established Mortgage Fraud Task Forces across the country. These task forces are concentrated in areas at high risk for mortgage fraud. Partners vary across the country, but typically include Housing and Urban Development Office of Inspector General (HUD-OIG), the U.S. Postal Inspection Service (USPIS), the Internal Revenue Service (IRS), the Financial Crimes Enforcement Network (FinCEN), the Federal Deposit Insurance Corporation, and State and local law enforcement agencies. This multi-agency approach means additional resources for identifying perpetrators of fraud and additional prosecutive options for brining them to justice. The option of pursuing federal or state charges is particularly beneficial in high-volume markets.

In addition to the task forces, the FBI participates in the national Mortgage Fraud Working Group (MFWG), a collaboration of federal agencies, chaired by the Department of Justice (DOJ). The MFWG facilitates information sharing among the member agencies and with private organizations. The Working Group is building upon the FBI's existing intelligence database to identify industry insiders and criminal enterprises involved in systematic mortgage fraud.

In addition to task forces and working groups, the FBI has also participated in coordinated law enforcement sweeps targeting mortgage fraud. Last year, in just over three months, Operation Malicious Mortgage resulted in 144 mortgage fraud cases in more than 50 judicial districts, with over 400 defendants charged with losses totaling approximately $1 billion. The USPIS, the IRS, U.S. Immigration and Customs Enforcement (ICE), and the U.S. Secret Service all took part in this successful operation. Operation Malicious Mortgage followed Operation Continued Action in 2004 and Operation Quick Flip in 2005.

More recently, in April of this year, 24 individuals were charged with several crimes, including racketeering that related to an extensive mortgage fraud scheme based in San Diego involving 220 properties with a cumulative sales price of more than $100 million.

Health Care Fraud

The National Health Care Anti-Fraud Association estimates that each year, three percent of the nation's health care spending—or more than $60 billion—is lost to fraud. When one considers that the federal government accounted for one-third of the $2.2 trillion in health care spending in 2007 and that federal and state governments combined to cover 46 percent of health care costs that year, the government's stake in fighting health care fraud is clear. Moreover, with health care expenditures rising at three times the rate of inflation, it is equally clear that the stakes are rising and that only a concerted law enforcement response will succeed in addressing this problem.

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To this end, the FBI has formed investigative partnerships with other federal agencies, such as the Department of Health and Human Services-Office of the Inspector General (HHS/OIG), the Food and Drug Administration, the DEA, the Defense Criminal Investigative Service, the Office of Personnel Management, the IRS, the Department of Labor (DOL), and various state and local agencies The FBI also works actively with non-governmental organizations, such as the National Health Care Anti-Fraud Association, the Blue Cross and Blue Shield Association, the National Insurance Crime Bureau, and many other agencies, organizations, and professional associations in an effort to expose and investigate fraud within the system.

The interagency cooperation between the Department of Justice, the FBI, and the Department of Health and Human Services is significant. In May of this year, Attorney General Holder and HHS Secretary Sebelius launched the Health Care Fraud Prevention and Enforcement Action Team (HEAT), a team of key leaders from both DOJ and DHHS, that will enhance inter-agency coordination, intelligence sharing and training among investigators, prosecutors, civil fraud attorneys, and program administrators. Sharing real-time intelligence about health care fraud patterns and practices as well as implementing improved technology are top priorities of this team. This effort will enhance the prompt resolution of complex health care fraud cases and support the prevention of fraud and abuse.

HHS,DOJ and FBI are pursuing health care fraud in every region of the country, targeting resources in health care fraud hot spots. The number of pending FBI investigations has shown a steady increase. In FY 2008, FBI-led investigations resulted in over 800 indictments and informations and nearly 700 convictions. So far in FY 2009, the FBI has over 2400 pending cases, approximately 750 indictments and informations, and almost 500 convictions. The DOJ estimates that since the inception of the Health Care Fraud and Abuse Control program (HCFAC) in 1997, the DOJ has recovered more than $14.3 billion lost to fraud through criminal fines and Federal and State civil settlements in health care matters, predominantly stemming from Medicare fraud.

Earlier this month, the American pharmaceutical giant Pfizer, Inc. and its subsidiary Pharmacia & Upjohn Company, Inc. agreed to pay $2.3 billion to resolve criminal and civil claims arising from the illegal promotion of certain pharmaceutical products. This is the largest health care fraud settlement in the history of the DOJ, a settlement that, according to HHS, will return approximately $1 billion to the government. This case highlights the significant role individuals can play in combating fraud, as whistleblower lawsuits triggered the investigation. Six whistleblowers will receive payments totaling more than $102 million from the federal share of the civil recovery.

In late June of this year, our joint health care strike force efforts resulted in charges against 53 individuals accused of various Medicare fraud offenses, including conspiracy to defraud the Medicare program, criminal false claims and violations of the anti-kickback statutes. Strike Force operations in Detroit have identified two primary practice

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areas – infusion therapy and physical/occupational therapy – in which individuals devised schemes to defraud Medicare.

In late July, working in concert with our partners, we arrested more than 30 suspects in a major Medicare antifraud operation that spanned the country. In New York, Louisiana, Boston, and Houston, more than 200 agents worked on a $16 million fraud that ensnared several physicians.

Corporate Fraud

The FBI has over 100 Agents assigned to over 580 open corporate fraud investigations. We are on pace to significantly increase our production over last year. In FY 2008, we obtained 160 indictments/informations. As of July 31, 2009, we have already obtained over 130 indictments/informations and, more importantly, 140 convictions. Our successful efforts against corporate fraud have netted billions of dollars in restitution.

In late August of this year, former Stanford Financial Group CEO James M. Davis pled guilty to fraud and obstruction charges. Davis admitted that as part of the fraudulent scheme, he and his co-conspirators defrauded investors who purchased approximately $7 billion in certificates of deposit administered by Stanford International Bank Ltd. (SIBL), an offshore bank located on the island of Antigua. Davis and his co-conspirators misused and misappropriated most of those investor assets, including through more than $1.6 billion in undisclosed personal loans to a co-conspirator, while misrepresenting the company's financial condition, its investment strategy and the extent of its regulatory oversight by Antiguan authorities.

In related cases in June of this year, SFG Chairman Robert Allen Stanford, Chief Investment Officer Laura Pendergest-Holt and several other SFG executives were indicted for conspiracy to commit mail, wire and securities fraud; wire fraud; mail fraud; and conspiracy to commit money laundering. In addition, Stanford and Pendergest-Holt were charged with conspiracy to obstruct and obstruction of an SEC investigation.

As with other programs, we rely on partners to contribute their expertise. We work closely with the SEC, Financial Industry Regulatory Authority (FINRA), the IRS, Department of Labor, Federal Energy Regulatory Commission, Commodity Futures Trading Commission (CFTC) and the USPIS to investigate and build corporate fraud cases. In addition, the FBI is a member of the President's Corporate Fraud Task Force, comprised of investigators from the above agencies. The FBI also participates in the Securities and Commodities Fraud Working Group, a national interagency coordinating body established by DOJ to provide a forum for exchanging information and discussing trends in illegal activity, law enforcement issues and techniques. Finally, the FBI has worked with numerous organizations in the private sector to increase public awareness about corporate fraud and to obtain technical assistance regarding accounting and securities issues and background information on subject individuals and companies. This cooperative, multi-agency, public and private sector investigative approach has resulted in highly successful prosecutions.

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Violent Crime

Criminal Gangs

Criminal gangs and other illicit enterprises, operating in the U.S. and throughout the world, are of increasing concern for domestic and international law enforcement and for the intelligence community. Today, gangs appear to be more violent, more organized, and more widespread than ever before. According to the 2009 National Gang Threat Assessment, gangs are responsible for a staggering 80 percent of all crimes in some communities – from drug distribution to theft to homicide. We maximize our resources to combat these crimes by participating in Safe Streets, Gang, Violent Crime, and Major Theft Task Forces. The FBI's Violent Gang Safe Streets Task Forces operate as long-term embedded teams of federal, state, and local law enforcement officers and prosecutors that focus on disrupting the most violent and criminally active gang threats.

Some gangs are entrenching themselves not just in our inner cities but increasingly in our suburbs and rural areas. According to the National Drug Intelligence Center, 58 percent of state and local law enforcement agencies reported that criminal gangs were active in their jurisdictions in 2008, compared with 45 percent of state and local agencies in 2004.

Criminal gangs have developed networks within many of society's institutions, from the military to the prison system, and they engage in a wide range of criminal activities, from alien smuggling to mortgage fraud, from identity theft to extortion. Many of today's gangs actively use the Internet to recruit new members and to communicate with members in other areas of the United States and in foreign countries.

MS-13 continues to expand its influence in the United States. FBI investigations reveal that MS-13 is present in almost every state and continues to grow its membership, now targeting younger recruits than ever before. To counteract this growth, the FBI formed the MS-13 National Gang Task Force, which is based on a central, intelligence driven command structure to coordinate and develop investigations into federal investigations and prosecutions. Task force agents and analysts coordinate investigations with our counterparts in Mexico and Central America. Another anti-gang effort, the Transnational Anti-Gang Task Force (TAG) has already coordinated over 300 investigative leads this year and has coordinated requests for information from the El Salvador Attorney General's Office and the Policia Nacional Civil of El Salvador. TAG will expand to Guatemala and Honduras. The FBI uses the Enterprise Theory of Investigation and sophisticated investigative techniques with the goal of eliminating entire gangs, from street level operators to gang leaders.

Again, our partnerships are critical to combating this threat. In 2005, Congress established the National Gang Intelligence Center (NGIC) to address increases in gang activity and violence. The NGIC is manned by analysts from multiple federal agencies. The databases of each component agency are available to the NGIC, as are other gang-related databases, permitting centralized access to information. In addition, the NGIC provides operational and analytical support for investigations.

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Using these resources, we have identified those gangs that pose the greatest danger to our communities and targeted them with our combined investigative resources and the same federal racketeering statutes and intelligence and investigative techniques that have been used to attack organized crime. Through joint operations and long-standing relationships with our state, local, and international peers, we have had success.

For example, on May 21, 2009, the FBI's Los Angeles Field Office, in conjunction with the Los Angeles Sheriff's Department, DEA, ICE, BATFE, IRS-CID, and other federal, state and local law enforcement agencies, made 88 arrests and executed multiple state search warrants in an effort to dismantle the Varrio Hawaiian Gardens street gang. Of the 88 arrests, 63 arrests were pursuant to five federal indictments naming a total of 147 defendants. With 35 defendants already in custody prior to the takedown, there are now 98 defendants ready to be prosecuted in federal court on RICO violations and federal hate crime violations. This threat-focused, intelligence-driven takedown, involving more than 40 law enforcement agencies and 1,400 officers, was the largest of its kind in U.S. history.

In another example, on June 17, 2009, DOJ announced the indictments of 26 members of a prison gang on 109 felony charges. The indictments were the culmination of Operation North Star, a yearlong effort of the FBI Violent Street Gang Task Force. The investigation targeted members of prison gangs and their surrogates on the outside. Those surrogates, often girlfriends and wives of the prison inmates, given the task of conveying messages of prison gang leaders and facilitating criminal activity. The charges included money laundering, racketeering and supporting a criminal syndicate. Twenty-four of the 26 people indicted are in custody.

Border Violence

We continue to be deeply concerned about the high levels of violence in Northern Mexico. This violence is often connected to international cartel and gang activity. Drug-related violence is not new to the border area, but shifting alliances among criminal cartels poses additional challenges and opportunities for law enforcement. These international cartels are vying for control over lucrative smuggling corridors across the Southwest border, leading to increasingly violent competition between and within these organizations.

Mexican authorities continue their efforts to cut off drug smuggling routes from Mexico to the United States. As I have previously stated, under President Calderon, and with support from the United States, the government of Mexico has made record seizures of drugs, clandestine laboratories, and cash. In addition, Mexican law enforcement agencies have arrested many high-level drug cartel members, who are being extradited to face prosecution in the United States in record numbers.

As a consequence, some of these efforts have contributed to sporadic outbreaks of violent crime. As law enforcement cracks down on these drug trafficking organizations, the traffickers often turn against each other and against government authorities, increasingly resorting to violent crimes, such as murder, extortion, and kidnappings.

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To address the surge in kidnappings, the FBI works closely with Mexican law enforcement officials on a Bilateral Kidnapping Task Force, as well as with other task forces and working groups along the border. To combat drug-related violence, FBI agents work with the DEA, ATF, and DHS and participate on Organized Crime and Drug Enforcement Task Forces and strike forces, which target the most significant drug trafficking organizations in the region. We have also created the Southwest Intelligence Group, which we have housed with the DEA's El Paso Intelligence Center. Our intelligence group serves as a clearinghouse for all intelligence related to Mexico and provides analysis relating to crime along the border.

Crimes Against Children

To combat criminals who prey upon our children, the FBI has also relied heavily upon our partnerships. In June 2003, the FBI, in conjunction with the Department of Justice Child Exploitation and Obscenity Section and the National Center for Missing and Exploited Children (NCMEC), launched the Innocence Lost National Initiative (ILNI).

ILNI addresses the commercial sex trafficking of children within the United States. The victims of these investigations are all U.S. children. The FBI participates in 34 task forces and working groups throughout the U.S., joining with federal, state and local law enforcement agencies and U.S. Attorney's Offices.

The program brings state and federal law enforcement agencies, prosecutors, and social service providers from all around the country to NCMEC for joint training.

As part of its efforts, multiple times a year, the FBI's Crimes Against Children Unit coordinates a national sting operation called Operation Cross Country. ILNI task forces in 29 cities have participated in the operation by targeting venues such as the Internet, truck stops, motels, and the casinos where children are prostituted. Over 600 law enforcement officers from over 95 state, local and federal law enforcement agencies joined together to rescue 119 child victims and apprehend the predators. To date, over 113 defendants have been charged, largely with state and local violations. Every case initiated through the ILNI is reviewed for possible federal violations, and where applicable, those cases are presented to the appropriate United States Attorney's Office for prosecution.

Overall, the ILNI has resulted in over 300 indictments, almost 500 convictions, over 50 criminal enterprises disrupted and approximately 36 successfully dismantled. Since the inception of Innocence Lost, we have recovered 770 children and helped obtain stiff sentences for those responsible, including three life sentences and other sentences ranging from 25-45 years.

Conclusion

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What I have discussed today represents only a small cross section of the multi-faceted criminal investigations that the men and women of today's FBI are pursuing to keep our nation secure by keeping our streets and neighborhoods safe. We also continue to combat organized criminal enterprises, both national and international; investigate cyber crimes and sophisticated cyber attacks; address an ever increasing foreign intelligence threat; protect and defend civil rights; and focus on violent crime in Indian Country.

While we have invested considerable resources improving the way we transact our operational and administrative business, we also need to commit the time, effort and resources to cultivate our future leaders. One of our priorities this year has been the initiation of the Leadership Development Program (LDP). This program will better prepare our men and women, regardless of position or specialty, for the challenges of leadership within the FBI, and in the wider intelligence and law enforcement communities we serve. The LDP will engage our emerging leaders in a comprehensive leadership development process, tailored to address both individual aspirations, and the demanding leadership challenges faced by the FBI in the 21st Century.

While we continue to upgrade our technology, integrate new business practices, expand our intelligence capabilities, and develop our future leaders, I want to note that the strength of the FBI has always been, and will always be its people. While each and every FBI employee plays a vital role in providing the public the protection they expect, in a way that the Constitution demands, the Special Agent plays a unique role. No matter what his or her assignment, an FBI Special Agent faces extraordinary risks, each and every day. In the past 12 months, the FBI lost three of our own. We lost Special Agent Sam Hicks, a decorated Baltimore police officer who was part of the Pittsburgh Joint Terrorism Task Force; Special Agent Sang Jun, a top-notch cyber agent who served in the El Paso Division, and Special Agent Paul Sorce, a lifelong street agent who worked on the Detroit Violent Crimes Task Force. Each of these Special Agents made the ultimate sacrifice to keep America safe.

I thank you for inviting me here today. I look forward to working with the Committee as we continue to improve the FBI's ability to keep America safe and maintain and develop the capabilities we need to defeat current and future threats. I appreciate your continued support and would be happy to answer any questions you may have.

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