

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2008**

THURSDAY, APRIL 26, 2007

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

The subcommittee met at 10:30 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Patrick J. Leahy presiding.

Present: Senators Mikulski, Leahy, Kohl, Lautenberg, and Shelby.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF HON. ROBERT S. MEULLER III, DIRECTOR

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Let me mention before we start that, I've often used the expression that Senators are merely constitutional impediments for their staffs. And, in the United States Senate, if it wasn't for the superb staff members of both Republican and Democratic Senators, we would not be able to exist in this subcommittee. I've served on most of my years in the Senate to various integrations.

We've seen some wonderful people here, but Paul Carliner, who's sitting here to my left, this is his last hearing as clerk. He's spent 16 years in the Senate, but 8 years on this subcommittee. Paul is one of the reasons why the rest of us can do our work. He has shown the ability to reach out to Members on both sides of the aisle on very difficult things. Everybody on this subcommittee wants something, usually something different. And he's the one that's trying to do that. So, Paul, congratulations to you.

Mr. CARLINER. Thank you, Senator.

Senator LEAHY. And, Director Mueller, thank you for joining us today to testify before this subcommittee.

I also want to thank the Chair of our subcommittee, Senator Mikulski, for allowing me to open the hearing on her behalf. She's going to be joining us shortly, but she's on her way back from the formal send off for the 1,300 Maryland National Guardsmen that are going to be deployed to Iraq in the next few months.

Having attended too many of such events in my own State of Vermont, I know how hard the send off is for the guardsmen, their

families, and friends, for Senator Mikulski, and all those attending. And our hearts and prayers are with those brave Maryland soldiers and all our brave men and women preparing to leave and our hearts and prayers are with their families. I hope they come back safely.

Now, I know in the wake of the terrorist attacks, the Justice Department's focused much of its attention in the prevention of terrorism and the promotion of national security. I worry, however, that the budget proposal, if it's enacted, is going to divert critical resources and staffing from traditional law enforcement matters. We've seen a spike in violent crime, which is something I know concerns the Director very much. And, if we shift money into counterterrorism, we take it away from traditional criminal matters.

The fiscal year 2008 budget requests a realignment of 100 criminal agents, counterterrorism work. That would leave traditional criminal law enforcement significantly understaffed in the Bureau. If you realign these agents further it may further erode the Federal Bureau of Investigation's (FBI) ability to combat violent crime. It has been cited by the Office of Inspector General (OIG) as one of the top management challenges at the Justice Department.

And, since the FBI announced the Virtual Case File successor, the Sentinel Program, I really have not been confident of the Bureau's ability to manage the status and cost of this project. The FBI estimates that Sentinel will ultimately cost the American taxpayers \$425 million. A December 2006 OIG audit questioned the reliability of the total estimated cost of the program. It was originally expected the full Sentinel system would be deployed in 2009. Recently, however, we hear a familiar piece of news regarding the FBI's computer upgrade project. Apparently there will be delays in the deployment of phase one of the Sentinel upgrade, which jeopardizes the schedule for this much-needed computer system.

And, I worry—as one baseball great once said, it's *déjà vu* all over again—we tried Trilogy, we scrapped that. We were told that Virtual Case File would meet the FBI's needs and that's been scrapped. Now that delays in Sentinel have been announced, is not clear at all the third time's going to be the charm. It's been an expensive series of lessons, costing nearly \$423 million for these programs so far.

Another recent report by the Office of Inspector General found the FBI can't account for 160 laptop computers, and an equal number of weapons that were lost or stolen over a 3½-year period. And, this comes 4 years after a recommendation that they take steps to ensure the security of this equipment. And, even more troubling, in many cases, it was found the FBI could not even determine whether these lost or stolen computers contained classified or sensitive information, putting Bureau employees and other individuals at risk of becoming victims of identity theft.

I am deeply troubled by, as I've discussed with the Director and I know of his concern in this, the OIG's report finding widespread illegal and improper use of national security letters. We had a hearing on this in the Judiciary Committee.

So, we're at a crossroads. And, I think if we don't learn from the mistakes, progress won't be made.

I'll put my full statement in the record. It's quite a bit longer.
[The statement follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

Director Mueller, welcome and thank you for joining us today to testify before the Appropriations Subcommittee on Commerce, Justice and Science regarding the fiscal year 2008 budget request for the Federal Bureau of Investigation. You and I get to see each other from time-to-time when you come before the Judiciary Committee for oversight hearings. Today, however, I am here wearing my appropriator's cap and I look forward to hearing you make the case for the budget the President has proposed for the FBI in the coming year.

I also want to thank the chair of our subcommittee, Senator Mikulski, for allowing me to open this hearing on her behalf. She will be joining us shortly, but is on her way back from the formal send-off of the 1,300 Maryland National Guardsmen who will be deployed to Iraq in the next few months. Having attended several such events in my own home state of Vermont, I know how hard this sendoff must be for the Guardsmen, their families and friends, Senator Mikulski and all those attending. Our hearts and prayers are with those brave Maryland soldiers—and all of our brave men and women preparing to leave—and their families during this difficult time. We hope they will be returning home soon.

During recent years, the FBI has confronted the daunting challenge of protecting our nation against international terrorism in the wake of the attacks of September 11, 2001, the subsequent anthrax attacks and other threats. Director Mueller, you deserve credit for your efforts to assure the safety of the American people.

In the wake of terrorist attacks, I recognize that the Justice Department focused much of its attention on the prevention of terrorism and the promotion of national security. Its top priorities continue to be the prevention, investigation and prosecution of terrorist activities against U.S. citizens and interests, which is evident in the request for more than \$417 million in new investments for the FBI, including counterintelligence activities and justice information systems technology.

Nonetheless, I am concerned that this budget proposal, if enacted, would divert critical resources and staffing from traditional law enforcement matters, such as reducing the spike in violent crime, to support the Bureau's counterterrorism work. The fiscal year 2008 budget requests the realignment of one hundred criminal agents to counterterrorism work. This would leave traditional criminal law enforcement significantly understaffed at the Bureau. Realigning these agents may further erode the FBI's ability to combat violent crime and has been cited by the Office of Inspector General (OIG) as one of the top management challenges at the Justice Department. We must not allow daily responsibilities that keep our citizens safe to fall aside.

It has been over two years since the FBI announced it would scrap the three-year \$170 million effort to develop a modern case management system, known as the Virtual Case File, or VCF. I have repeatedly expressed to you, Director Mueller, my deep frustration over the millions of dollars wasted on "lessons-learned," and the fact that more than three years have passed since the original deadline while these technology goals are not met.

Since the FBI announced the VCF's successor, the Sentinel program, I have seen nothing to boost my confidence in the Bureau's ability to manage the status and cost of this project. While the FBI estimates that Sentinel will ultimately cost the American taxpayers \$425 million, a December 2006 OIG audit report questioned the reliability of the total estimated costs for the program. It was originally expected that the full Sentinel system would be deployed in 2009. Just recently, however, we learned a familiar piece of news regarding the FBI's computer upgrade project. Apparently there will be delays in the deployment of Phase I of the Sentinel upgrade, which jeopardizes the schedule for this much-needed computer system.

This latest setback is one of a string of costly delays in the FBI's efforts to upgrade its computers. Sentinel was launched after the FBI wasted five years and millions of taxpayer dollars on the failed Trilogy program. By my calculations, at least \$253 million has been invested in Sentinel alone from fiscal year 2005 to fiscal year 2007 between reprogramming dollars and Congressional appropriations. The President's fiscal year 2008 Budget proposes no funding for the project. The first of four program upgrade phases has yet to be completed, although we expected the entire Sentinel program to be up and running by 2009.

Director Mueller, this committee has to ask: Is this déjà vu all over again? You tried Trilogy and scrapped that. You told us that Virtual Case File would meet your needs and you scrapped that. Now that delays in Sentinel have been announced it's not clear at all that the third time will be the charm. This has been an expensive

series of lessons—costing nearly \$423 million for these three programs so far—learned on the backs of American taxpayers.

We must ensure that the FBI's technological capabilities keep pace, and to do so requires not only an emphasis on providing funds but also effective use and implementation. I hope the latter is not neglected and I remain seriously concerned about this project.

The pattern of incompetence and lack of accountability within the Bureau is also on display with its treatment of its own equipment and weapons. Another recent report by the DOJ OIG found that the FBI cannot account for 160 laptop computers and an equal number of weapons that were lost or stolen over a 3½ year period. This finding comes 4 years after the Inspector General recommended that the FBI take steps to ensure the security of this equipment. Even more troubling, in many cases it was found that the FBI could not even determine whether its lost or stolen computers contained classified or sensitive information, putting Bureau employees and other individuals at risk of becoming victims of identity theft and potentially compromising national security information.

I am deeply troubled by the DOJ OIG's report finding widespread illegal and improper use of National Security Letters (NSLs) to obtain Americans' phone and financial records. As Chairman of the Senate Judiciary Committee, I convened a hearing on NSL abuse several weeks ago. Inspector General Fine testified that his office found 22 separate instances where the FBI improperly abused NSLs in the review of just 77 FBI files. Not a single one of these violations had been reported by the FBI. On top of that, because the FBI still lacks the information technology that it needs to function efficiently in the Information Age, OIG found that the FBI database used to track NSLs malfunctioned, making it impossible to keep track of these letters. I fear that the violations the Inspector General uncovered are probably just the tip of the iceberg and that there could be thousands of additional violations among the tens of thousands of NSLs that the FBI is now using each year.

The FBI finds itself again at a crossroads. Acknowledging shortcomings is well and good, but the Bureau—and the Justice Department as a whole—must also learn from its mistakes if progress is to be made. The time has come for demonstrable progress by the Bureau on a learning curve that has gone on and on for far too long. Much work remains to be done and I have no doubt that the leaders and members of this Subcommittee will fulfill their obligation to the American people to carefully examine all of these issues.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman. We appreciate you being here in place of Barbara Mikulski. We know Senator Mikulski, the Chair, is tied up, but she's very involved in these issues.

Paul, I want to just say to you, we wish you well. As Senator Leahy said, you've served the Senate well, you've served this subcommittee very, very well and we wish you the very best in whatever your next step is. We'll miss you here. You have—on this side of the aisle—I know you work with the Democrats, but you have, when I was chairman of this subcommittee, you were a valuable resource to getting the job done here, for everybody, and we owe you a lot. And, we thank you for your service to the Senate and to the Nation.

Mr. CARLINER. Thank you, sir.

Senator SHELBY. Director Mueller, thank you for joining us today to discuss the Federal Bureau of Investigation's 2008 budget request. One week after your arrival as the sixth Director of the FBI, our Nation suffered its worst terrorist attack ever on U.S. soil. The September 11, 2001 attack—attacks on the World Trade Center and the Pentagon signified the transformation of a new FBI, focusing more on national security. Congress has tasked the FBI with more responsibility than any other Federal law enforcement agency, resulting in more challenges and changes than ever before.

The FBI is the Nation's premier law enforcement counterterrorism and counterintelligence agency that investigates

criminal activity and includes terrorism, foreign intelligence, operations, espionage, cyber-crime, public corruption, national criminal organizations, white-collar crimes, and significant violent crime. The FBI request for 2008 is \$6.4 billion. This is a \$391 million increase over the 2007 joint resolution funding level.

It has come to my attention, Mr. Director, that the FBI has a \$139 million shortfall in the 2008 budget request. Chairman Mikulski and I want to work with you to ensure that the FBI has sufficient resources to protect our Nation. Based on my review of your request, combined with the likely fiscal constraints of this subcommittee, we will need your assistance as we face tough funding decisions regarding the allocation of resources in your budget.

This subcommittee and the Bureau share the difficult task of targeting these limited resources in a manner that safeguards taxpayers' dollars, while preserving public safety. The Department of Justice's inspector general (IG) recently issued a report critical of the FBI's use of national security letters (NSL). The IG's review found that more than 60 percent of the files examined, including— included violations of the FBI's own policies and procedures.

The report also identified significant abuses in the use of exigent letters. The FBI regularly issued them when no emergency existed, often when there was not even a criminal case open. The lack of controls in the use of national security letters and exigent letters is very troubling, but as the former chairman of the Senate Select Committee on Intelligence, I also know that they're critical in your mission of keeping America safe.

Director Mueller, in our meeting last month, you committed to fix the deficiencies identified in the IG report and to implement its 10 recommendations. The FBI must carefully balance the privacy protections and civil liberties of Americans against the need to provide its agents critical information that's pivotal to mission success.

Chairman Mikulski and I have provided the FBI \$10 million in the current war supplemental bill to carry out the IG's recommendations to fix these problems.

We're extremely saddened, as you were, by the tragedy that took place on the Virginia Tech campus last week. I understand that the FBI dispatched 20 agents, four victim assistant specialists, and one terrorism victim specialist. I look forward to hearing from you, Mr. Director, about the FBI's role, and what these men and women are doing to assist those affected by this terrible event.

While I wholeheartedly support bringing the FBI into the 21st century and realize the importance of information technology in the FBI's mission, I have a number of unanswered questions about Sentinel's phase one implementation. Given your Trilogy failure, I will not support unlimited and unchecked resources and will not tolerate broken promises for the results of information technology (IT) projects that are not fulfilled or delivered.

I understand that things are on track and within budget, but I expect the questions of this subcommittee to be answered in a timely and complete manner. This has not occurred, but I'm hopeful that with your commitments here today, we'll be able to continue our support for this needed, important project.

The FBI's Hazardous Device School, HDS, at Redstone Arsenal, is the crown jewel of the Federal Government's effort to provide

training to Federal, State, and local bomb technicians. In partnership with the Army, this facility has trained over 20,000 bomb technicians in the past 36 years. That's a proven record of success.

HDS is the only pre-blast explosive training school in the United States. With the continued construction of the National Center for Explosive Research, Redstone Arsenal will become the home of Federal law enforcement explosives training and research. I'm working collaboratively to expand the Federal Government's explosive infrastructure and expertise here. I look forward to hearing from you, Director Mueller, to ensure that Redstone Arsenal is, and will continue to be, the law enforcement capital of explosives research and training.

There are other issues I'd like to discuss this morning, including the use of resources for the FBI's priority missions. In addition, I would like to talk about the relationship of the FBI Director to the new Director of National Intelligence and the financial and manpower implications for the FBI. I remain concerned that this new arrangement, while important, is placing additional personnel stresses on an overburdened FBI. I fear that some of the FBI's traditional law enforcement responsibilities will not be sufficiently supported by this budget request.

Director Mueller, I look forward to hearing your thoughts on the FBI's budget request and we also look forward to working with you on these and other important issues facing our Nation.

And, Madam Chairman, I just want to thank the men and women who work at the Federal Bureau of Investigation for what they do to keep this country secure.

Thank you.

Senator MIKULSKI [presiding]. Thank you very much, Senator Shelby, and good morning to everybody. I'm going to say just a few quick thanks before we go right into our hearing.

First, thank you, Senator Leahy, for opening this hearing and advising everyone that I was with our Governor, Governor O'Malley, to see off the first phase of National Guard deployment from the State of Maryland, 1,400 Marylanders have been called up, and will all be leaving in 90 days. So, we wanted to be there for them this morning.

So, Senator Leahy, thank you for that.

And, Director Mueller, thank you for accommodating the delay of starting this hearing.

I want to advise my colleagues that the Director must leave at noon. So we're going to go right into allowing you to testify, so I ask that during the questions, if you have things you want to incorporate from your opening statement, do.

I also want to thank Senator Leahy for acknowledging that today is the last hearing—the last public appearance of Paul Carliner—Ace Aide who's served me for 12 years. He has served the Nation for 12 years in his role as my clerk on Appropriations. We wish Paul well. We know wherever he goes, he will be outstanding. But also, it's a goodbye for the FBI's legislative Ace Aide as well, Eleni Kalisch.

Eleni, please stand up so people can know who you are.

Ms. Kalisch is going to be leaving the FBI. She has been the Director's liaison to this subcommittee and has done an outstanding

job. We always appreciated your candor and your cooperation, as you appreciated Paul's candor, we'll call it candor these days because we're being kind. But really, we wish you very well, Ms. Kalisch, in your new life. Because I think all of us know, we can't do our job without the worker bees and we thank our staff and again, reiterate how much we appreciate the FBI itself.

Senator Shelby outlined the budget concerns. I'm going to, essentially, agree with the issues that he's raised, and ask unanimous consent that my full statement be in the record.

And, note the fact that we've asked the FBI to essentially be two agencies, but the same agency. One agency to fight the global war against terrorism, to have an agency within the agency, our own, kind of American, uniquely American version of MI5, to really work in protecting our homeland, and at the same time to continue fighting violent crime, protecting children against exploitation, whether it's on the Internet or in the playgrounds, from despicable, heinous sexual predators. We are working to give them the resources to do both, which requires new people, requires new training, and requires us to stand sentry against those things that sometimes get out of our control.

So, in the course of this hearing, we're going to come back to know if you have the real resources to fight this new emerging spike in organized crime. How is it working to take on what we're asking you to deal with, the exploitation of children? Cyber-crime is despicable, whether it's a hacker against our national lab or whether it's a cyber-stalker against our kids. And, at the same time, the FBI is fighting the global war against terrorism.

I was recently in London and had the chance to meet with MI5, but while I was meeting with MI5 I was also meeting with the FBI office there. And I saw how the FBI and our intel agencies worked with a very treasured ally in disrupting that very ghoulish airline plot of last summer.

So, you've got a big job, we know that your budget has increased, but we want to make sure we're matching resources with mission and also standing sentry on our accountability issues. So, having said that, the statement I wanted to make on the details of the budget, I'll put into the record.

Why don't you go ahead and present your testimony, Director Mueller, and then we'll get right into the questions, which I think is the meat and potatoes of the hearing.

[The statement follows:]

PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

This is the second in our series of hearings focusing on security. Unfortunately, this comes in the aftermath of two tragedies—the tragic events at Virginia Tech last week and the death of FBI Special Agent Barry Lee Bush, a 20-year veteran of the FBI, who was killed in the line of duty in New Jersey three weeks ago. In both cases, we were reminded that violent crime is a growing problem in this country and the FBI's own statistics show it is on the rise.

The number one job of government is to keep our communities safe from violence. But the rise in violent crime and the critical ongoing fight against terrorism have placed new pressure on the FBI. Just look at the FBI's top priorities: combating terrorism, preventing the acquisition of weapons of mass destruction, stopping violent crime on our streets, stopping foreign intelligence operations, stopping the exploitation of children, and fixing their information technology infrastructure.

The FBI is both an intelligence and a law enforcement agency. It is no longer just a domestic law enforcement agency. It is now a global intelligence and law enforce-

ment agency operating in over 50 foreign countries. Unfortunately, compared to other intelligence agencies, the FBI share of the overall intelligence budget is small.

Yet, the FBI is charged with protecting 300 million Americans from a terrorist attack. In January, the President increased the FBI's role in counterterrorism by transferring the Render Safe mission from the Defense Department to the FBI. This means the FBI is now responsible for dismantling a nuclear device in the United States.

This has increased the FBI's responsibility and placed added pressure on its budget. I am very concerned about the rising rate of violent crime. Just look at the most recent statistics from the FBI: robbery is up by 9.7 percent, aggravated assault is up by 1.2 percent, murder has increased by 1.4 percent and for cities with populations of 500,000 to 1 million—the murder rate has increased by 8.4 percent.

However, since 9/11, the FBI has shifted almost 2,000 agents from violent crime into counterterrorism. This forced state and local law enforcement to take up the slack, because of rising crime rates, state and local law enforcement are stretched to the limit.

I believe we need more resources dedicated to violent crime. State and local law enforcement needs the FBI to help them fight street gangs like MS-13 and other types of organized crime plaguing our communities. Joint federal-state task forces are the most effective means to combat violent gangs, drug dealers and others who have a predatory intent. We should expand federal-state task forces to help locals fight crime on the streets.

Unfortunately, the President's budget cuts \$1.5 billion from state and local law enforcement. You cannot cut the COPS program when violent crime is on the rise. Our communities need federal resources to keep them safe.

In addition, I am concerned about the recent disclosure of abuses in issuing National Security letters. The Justice Department Inspector General [IG] found the FBI had no tracking or compliance procedures. This is unacceptable.

That's why we added \$500,000 to the IG's budget in the Supplemental Appropriations bill to continue oversight of the FBI on this subject. In addition, we directed that \$10 million of the FBI's budget be dedicated to implementing the IG recommendations to make sure the FBI fixes the problem.

The FBI must not only protect us from terrorists, they have to protect our privacy and our civil rights. I commend Director Mueller for his swift response to this problem and I look forward to hearing his long-term plan to correct these abuses.

This subcommittee will also maintain its vigilance on Sentinel, the FBI's long-delayed IT program. After the collapse of Trilogy, the FBI must stay on track, and see that this program does not fail.

At the Congress' request, both the GAO and the Justice Department IG are monitoring and overseeing this program. We will maintain our vigilant oversight to ensure that this program stays on track and that no taxpayer dollars are wasted.

The President's proposed budget for the FBI for 2008 is \$6.4 billion, a 5 percent increase over fiscal year 2007. The proposed budget for fiscal year 2008 provides funding for 11,868 special agents and 17,500 professional support personnel.

I want to point out to my colleagues that since 2001, the FBI's budget has increased by over 100 percent. Few other agencies have had a 100 percent increase to their budget in just six years. But given the critical mission of the FBI, even a 100 percent increase may not be enough to fulfill its mission of protecting the American public.

In counterterrorism, the budget proposes \$2.5 billion, a \$160 million increase over last year. This increase will pay for 176 additional special agents and 111 additional intelligence analysts in the counterterrorism division. Counterterrorism now accounts for 40 percent of the FBI's budget.

In the area of violent crime, the fiscal year 2008 budget proposes to spend \$2.1 billion, which is a \$50 million increase over 2007. This is just a 2.5 percent increase over 2007.

I have two concerns with this budget. First, the FBI's most recent statistics show a rise in violent crime across the country. When you add the \$1.5 billion cut to state and local law enforcement in the President's budget, it becomes a double cut. Second, a 2.5 percent increase is not enough, given the needs of our communities all across this country. State and local law enforcement want to expand their cooperation with the FBI.

The budget proposes to spend \$22 million to fight crimes against children, a 5 percent increase over last year. We must do more to fight sexual predators. Our neighborhoods and communities need to be protected from these horrible predators. Since many of these predators use the internet and come from other states, only the FBI can mount a national fight against these predators, in cooperation with state and local law enforcement.

Given all of these important roles and responsibilities, we must ensure that the FBI has the resources it needs. The lives of 300 million Americans depend on it.

Mr. MUELLER. Thank you and good morning, Madam Chair, Chairman.

And, let me also start off by thanking Paul Carliner for his service. Looking at it, not from either side of the aisle, but from this side of the bench, let me tell you that our relationship has been terrific. You have been tremendously helpful and understanding the needs of the FBI and translating them into pieces of legislation to give us the funds that we need to do our mission. And, I also want to join the others in thanking you for the service and tell you that there are also, always employment opportunities at the FBI.

And, let me also mention with Eleni Kalisch here, who has been, I must say, my strong right arm in what is an exceptionally important position in the FBI and that is a liaison with Congress. She has done a remarkable job. I hate to see her go, but I wish her good sailing and we will miss her. So, thank you, also for your service.

I appreciate the opportunity, Madam Chairman, to be here today to discuss our 2008 budget request. I'd also like to thank this subcommittee for its continued oversight and support of the Bureau, as we work together to keep the Nation safe, while preserving the privacy rights and civil liberties of all Americans.

As I said, the subcommittee is aware, and has pointed out, the FBI has been undergoing significant restructuring, realignment, and transformation for the past 5½ years. All designed to better position the Bureau to meet the threats and challenges of the future. And, the men and women of the FBI have demonstrated the ability and the willingness to embrace change for a better, stronger, and more effective organization. In order to continue to meet the evolving challenges facing the Nation, our 2008 budget request totals almost 30,000 positions and \$6.4 billion.

I would like to briefly address the five key challenges that are the focus of this budget request. First is combating terrorism; second, preventing the acquisition of weapons of mass destruction; third, defeating foreign intelligence operations; fourth, reducing child exploitation and violent crimes; and five, strengthening infrastructure and information technology.

COMBATING TERRORISM

The first challenge continues to be addressing the current terrorist threat environment. It is clear that the FBI's operational and analytical commitment to combating terrorism must continue to grow. And, therefore, our budget requests 231 new positions, 126 of which are agents. These resources will enable the Bureau to conduct investigations to prevent, disrupt, and deter acts of terrorism.

Our intelligence-driven focus in addressing terrorism, at this point, is taxing our physical surveillance and electronic surveillance intelligence-gathering capabilities. Therefore, we are seeking enhancement of 118 new positions, including 12 agents, \$65 million, to strengthen surveillance and technical collection capabilities.

The capacity to carry out extended covert surveillance of subjects and targets is essential to the FBI's counterterrorism and counterintelligence programs. Additionally, we must be able to develop and deploy new operational technologies and techniques to counter a

more technically sophisticated adversary and to exploit and share the information that we gather.

WEAPONS OF MASS DESTRUCTION

The second challenge that we are facing, addressed in the 2008 budget, is the intent of terrorists to seek the means and capability to use weapons of mass destruction against the United States.

In July of last year, we established the Weapons of Mass Destruction (WMD) Directorate to better integrate and leverage FBI counterproliferation and WMD intelligence analysis and prevention programs. We must continue to build this Directorate and we have requested 146 new positions toward that end, as well as \$19 million to continue to enhance our capabilities to prevent, prepare for, and respond to the threat of WMD.

FOREIGN INTELLIGENCE OPERATIONS

The third significant challenge addressed in our 2008 budget is, or budget request, is the foreign intelligence threat to the United States. Foreign powers continue their efforts to establish economic, military, and political preeminence and to position themselves to compete with the United States in economic and diplomatic arenas. Foreign adversaries are increasingly employing nontraditional collectors, such as students, visiting scientists, scholars, businessmen, as well as cyber-based tools, to target and penetrate U.S. institutions.

Our budget request includes a request for 119 positions, 55 of which are agents, and \$26.5 million to address these activities.

CHILD PORNOGRAPHY

The fourth program area included in our 2008 budget request is combating child pornography and obscenity, and protecting children from trafficking and other forms of exploitation. One of the most important and successful programs is the innocent images national initiative, which for 10 years, has targeted sexual predators who use the Internet to exploit children.

We have ongoing undercover operations across the country with more than 240 agents who investigate cases with their State and local counterparts. Unfortunately, there is no shortage of work in this arena. Our caseload has spiked from just 113 cases in 1996 to more than 2,100 last year. Our budget request proposes 14 new positions and \$2.4 million for the Crimes Against Children and Innocent Images Programs.

As this subcommittee is aware and has been pointing out in the opening statements, the country is experiencing an uptick in violent crime, particularly as it relates to gang violence. By our own estimates, there are now over 30,000 gangs across America and over 800,000 gang members. The FBI has established 131 violent gang task forces across the country, enabling FBI agents to work in lockstep with police on the street, sharing information, and conducting investigations together.

While combating violent crime remains a priority, the shift in resources from our criminal programs to our national security programs has been significant. And, in this current budget process,

I'm looking forward to working with the subcommittee to ensure that our criminal programs may be restored to appropriate resource levels.

I might add that, in this context, the budget process started 2 years ago. And consequently, when we sat down and addressed our priorities 2 years ago, we did not have the benefit of information that may have come along afterward, such as the recent statistics that indicate the uptick in violent crime. And so, as we go through this process, we want to work with the subcommittee to take into account those factors that may have come about over the last couple of years since we started this budget process.

I might also add in this context, that in addition to our investigative capabilities, the Bureau brings to local, State, and national efforts, efforts against violent crime, a number of proven crime fighting technologies, services, and tools that are used every day by law enforcement agencies throughout the country. Whether it be forensics, identification and information technologies, all are crucial for leveraging the capabilities of our State and local law enforcement partners in the fight against violent crime. This also, should be taken into context as we go through this budget process this year.

INFRASTRUCTURE AND INFORMATION TECHNOLOGY

Finally, the overall success of the FBI's mission requires the appropriate work environment and updated information technology. The 2008 budget includes \$15 million to provide technology support, and to prevent information technology obsolescence. This funding will enable us to upgrade networks and encryption to comply with mandated intelligence community protocols and to begin bringing desktops, laptops, servers, printers, into a 3-year technology refreshment cycle.

Our request also includes a total of \$11.5 million to address critical space requirements, including requirements associated with the FBI headquarters annex and \$4 million for the central records complex. The annex will provide additional space to ease existing fragmentation of headquarters, divisions and offices. The central records complex will consolidate most of our records into a single facility, moving from a system of paper records to digital records.

This covers, Madam Chairman, the five key areas, including violent crime, that are addressed in our 2008 budget request.

But before concluding my remarks, I would like to provide an update on the development of our information management system, known as Sentinel. As has been pointed out by Senator Leahy, Sentinel is being developed in four phases, and will be delivered in increments beginning this year. We have attempted to keep your staffs briefed, every 2 weeks, at this juncture, on the status of that project. Our contractor, Lockheed Martin, has completed the critical design and build of the software application and is presently in the testing phase. Once this testing is complete, we will begin piloting phase one at headquarters, followed by piloting in several field offices, during which time ourselves and Lockheed Martin will correct any additional issues that surface. And, shortly after we complete the testing in pilot offices, we will begin the rollout of

Sentinel training and the software application across the organization.

We had hoped to begin deployment this month. Currently, we anticipate beginning deployment next month. I will tell you that the schedule has shifted, as a result of some unforeseen technicalities, a total of 5 weeks. I will also tell you that we are on budget. We will continue to keep the subcommittee updated on our progress in the weeks ahead.

Madam Chairman, Senator Shelby, members of the subcommittee, I thank you for the cooperation and the support you have given to the FBI in the past and I ask for your support in providing the resources requested, not only in the 2008 budget, but also resources that may be necessitated by a change of circumstances over the last several months or years. Again, I appreciate the opportunity to testify this morning and look forward to answering your questions.

Thank you, Madam Chairman.

[The statement follows:]

PREPARED STATEMENT OF ROBERT S. MUELLER III

Good morning, Madam Chairman, Senator Shelby, and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss the President's Fiscal Year 2008 Budget for the Federal Bureau of Investigation (FBI). I would also like to thank you for your continued oversight of the Bureau and your efforts to ensure our success as we pursue the shared goal of making America safer.

2008 BUDGET REQUEST

The fiscal year 2008 budget for the FBI totals 29,373 positions and \$6.4 billion. The net fiscal year 2008 program increases total 714 new positions (231 agents, 121 intelligence analysts, and 362 professional support) and \$313.8 million. Our fiscal year 2008 budget is focused on improving the FBI's capabilities in addressing five key challenges: combating terrorism; preventing the acquisition of weapons of mass destruction; defeating foreign intelligence operations; reducing child exploitation and violent crimes; and strengthening infrastructure and information technology.

I recognize that there are many competing requirements for limited funding. Nonetheless, the FBI must continue the progress it has made to implement the President's directives and the recommendations of the 9/11 Commission and the Weapons of Mass Destruction Commission. At the same time, the FBI must be resourced to discharge its critical criminal investigative mission that also contributes to the overall safety and security of the Nation. In addition, for the FBI to be a full partner in the intelligence community it must have the tools, capacities, and capabilities to work closely with other members of the community. Finally, the FBI must find the proper balance between expanding our workforce and supporting on-board employees with the technology and infrastructure necessary to accomplish our mission. I believe the fiscal year 2008 budget will go a long way toward achieving these goals.

COMBATING TERRORISM

The current terrorist threat environment shows no signs of abating in the near term. Consequently, the FBI's operational and analytical commitment to combating terrorism is not expected to decrease. The FBI must remain vigilant for indications of terrorist groups shifting focus from the insurgency in Iraq and Afghanistan to acts that could be carried out against United States interests outside the current theater of operation and/or against the United States homeland. The FBI must also continue its efforts to deny terrorist groups and sympathizers the ability to raise funds and to carry out other operational and logistical support from the United States.

This budget requests 231 new positions (126 agents) and \$44.4 million to conduct intelligence-drive terrorism investigations and operations. Additionally, the fiscal year 2008 budget proposes the reallocation of 100 field special agents from criminal investigations to counterterrorism. These resources will enable the FBI to conduct investigations to prevent, disrupt, and deter acts of terrorism and continue to

strengthen working relationships with our Federal, State, and local partners; enhance our capacity for analyzing and exploiting information from growing volumes of seized terrorist digital media and communications; enhance the Terrorist Screening Center operations center; provide support to the National Virtual Translation Center, which serves as a clearinghouse to facilitate timely and accurate translation of foreign intelligence for elements of the intelligence community; and address growth in the number of terrorism and counterintelligence-related computer intrusion cases.

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

In fiscal year 2008, we seek an enhancement of 118 new positions (12 agents) and \$65 million to strengthen surveillance and technical collection capacities. These resources will enable the FBI to increase the number of physical surveillance teams; address growing workload for electronic surveillance involving broadband and other data network and internet communications; develop new techniques and tools to address emerging technologies; meet demands for new audio and data collection and upgrade existing and/or obsolete digital collection system equipment and components; address growing workload for covert entries and searches; and develop new techniques and tools for tactical operations.

An integral part of our national security program is the development and operation of human intelligence. Our budget request includes 85 new positions (6 agents) and \$22.3 million to strengthen human intelligence capacities. This funding will enable the FBI to provide staffing for field intelligence groups to comply with new human source validation standards and perform continuous assessments; continue development and deployment of Delta to support management of over 15,000 FBI human sources; deliver and deploy comprehensive human source targeting and development training; and remediate human source handling deficiencies. The intelligence derived from FBI human intelligence source collection also enables other agencies' success in their counterterrorism, counterintelligence, and counterproliferation missions.

We are fortunate that there has not been another major terrorist attack within the United States since September 11, 2001. This reflects positively, in part, on the hard and diligent work of FBI employees and those individuals who work alongside them, such as prosecutors and our partners in law enforcement and intelligence. However, we cannot afford to lessen our guard against the threat from terrorism. We must continue to invest in the resources and capabilities to counter an ever adapting and agile adversary.

PREVENTING THE ACQUISITION OF WEAPONS OF MASS DESTRUCTION (WMD)/RENDER
SAFE

The National Counterterrorism Center WMD Threat Assessment, 2005–2011, reaffirmed the intent of terrorist adversaries to seek the means and capability to use WMD against the United States at home and abroad. Denying these adversaries access to WMD is a top administration counterterrorism strategy priority. Within the U.S. Government, the FBI has been assigned responsibility for Render Safe operations involving all WMD in the National Capital Region. The responsibility to render safe WMD throughout the remainder of the United States belongs to the FBI, supported by the Department of Defense. To fulfill its critical responsibilities in the area of WMD, the FBI must continue to build to the capacities and capabilities of its WMD Directorate and the Render Safe Program.

The WMD Directorate was created in July 2006 to better integrate and leverage FBI counterproliferation and WMD intelligence analysis and prevention programs. The fiscal year 2008 budget seeks 146 new positions (29 agents) and \$19 million to continue to enhance the Directorate's capabilities to prevent, prepare for, and respond to the threat of WMD. These resources will allow the FBI to enhance strategic partnerships with foreign intelligence, law enforcement, security, public

health, agricultural, chemical, and other public and private sector agencies and organizations that are vital to the early detection of a potential WMD incident.

The fiscal year 2008 budget also includes enhancements of 9 positions (3 agents) and \$11 million to enhance the FBI's Render Safe Mission, which encompasses both the tactical and technical response to incidents involving WMD within the United States and its territories. The complete development of a robust render safe crisis response for the directed contingencies requires the FBI to develop command and control capabilities to support deployments and to provide the FBI and United States Government leaders with the information required to make time-critical decisions. The requested funding will allow the FBI to enhance its National Asset response staffing beyond current minimum levels and provide program personnel with adequate training, equipment, supplies, and services. Additionally, the requested funding will allow the FBI to upgrade its Render Safe technical tools so the operators will have the latest and most effective technology at their disposal to meet and dispose of this challenge.

DEFEATING FOREIGN INTELLIGENCE OPERATIONS

The foreign intelligence threat to the United States is increasing as foreign powers continue their efforts to establish economic, military, and political preeminence and to position themselves to compete with the United States in economic and diplomatic arenas. Foreign adversaries are increasingly employing nontraditional collectors—e.g., students and visiting scientists, scholars, and businessmen—as well as cyber-based tools to target and penetrate U.S. institutions. The fiscal year 2008 budget includes 119 positions (55 agents) and \$26.5 million to address these activities.

In November 2005, the FBI launched a Domain Management Initiative to focus attention on whether the FBI is conducting the right investigations to have the greatest impact on threats to national security. Continued implementation of the domain initiative will provide FBI leaders with a comprehensive and context decision-making environment. It will allow field office executive management to examine its target and regional environment and discuss the relative priority and focus of different activities. In addition, resources are needed to transform and leverage the capacities and capabilities of the Foreign Terrorist Tracking Task Force (FTTTF) into a National Security Analysis Center that would provide expanded analytical support to all FBI National Security programs by leveraging data and services residing in both FTTTF and the Investigative Data Warehouse.

REDUCE CHILD EXPLOITATION AND VIOLENT CRIMES

The FBI remains committed to fighting child pornography and obscenity, and to protecting children from trafficking and other forms of exploitation.

The fiscal year 2008 budget proposes 14 new positions and \$2.4 million for the Crimes Against Children (CAC) and Innocent Images National Initiative (IINI) programs. These resources will enhance field-based Child Abduction Rapid Deployment (CARD) Teams that provide onsite response and investigative and technical assistance in child abduction cases. The funding will also enable the IINI, which targets child prostitution, to enhance its capacity to disseminate intelligence regarding unregistered sex offenders and innocent images investigations.

In addition to its investigative capabilities, the FBI brings to local, State, and national efforts against violent crime a number of proven crime-fighting technologies, services, and tools that are used every day by law enforcement agencies throughout the country to solve crimes and put criminals in jail. FBI forensic, identification, and information technologies and tools are critical for leveraging the capabilities of our State and local law enforcement partners in the fight against violent crime. Access to these crime-solving services and capabilities is even more important in a post 9/11 environment where the FBI may not always be able to devote the level of special agent resources to violent crime as it has in the past. Over the past several years, State and local agencies have been provided grant funding to improve their digital forensic, DNA, automated fingerprint identification, and information sharing capabilities.

One of the consequences of these improved State and local capabilities is increased demand for services and access to the underlying and unifying FBI systems and connectivity. For fiscal year 2008, the FBI is requesting a total of \$90.5 million to improve its capacities and capabilities for providing forensic, identification, and information technologies and services for law enforcement, including IDENT/IAFIS Interoperability (\$10.0 million); Next Generation Identification (\$25 million); Law Enforcement Information Sharing/R-DEX (\$5 million); DNA forensic services, including Walsh Act implementation (\$14.6 million); Combined DNA Index System (\$7

million); Regional Computer Forensic Laboratories (\$6 million); and Computer Analysis Response Teams (\$22.8 million).

STRENGTHENING INFRASTRUCTURE AND INFORMATION TECHNOLOGY

Critical to the success of the FBI mission are a safe and appropriate work environment and information technology (IT). Over the past several years, the FBI has made substantial investments to upgrade its underlying IT architecture, including the purchase of computer workstations and software for employees and networks for connectivity both within the FBI and with our external partners. Having made these investments to bring IT in the FBI to near current state-of-the-art, it is now necessary to keep these investments current with technology.

The fiscal year 2008 budget includes \$15 million to provide enterprise IT support and prevent IT obsolescence. This funding will enable the FBI to address increased costs of software license/maintenance agreements, upgrade networks and encryption to comply with mandated intelligence community protocol, and begin bringing desktops, laptops, servers, and printers into a 3-year technology refreshment cycle.

Additionally, \$7.5 million is requested to continue to build and strengthen the FBI's IT program management capabilities. The Inspector General and others have repeatedly criticized the FBI for ineffective program management of IT projects. Funding requested will enable the FBI to increase management and oversight of critical IT projects, ensure compliance with FBI Life Cycle Management Directives, and enhance FBI IT policy and planning capacities.

The FBI requests a total of \$11.5 million to address critical space requirements, including \$7.5 million for fiscal year 2008 requirements associated with the FBI Headquarters (HQ) Annex and \$4 million for the Central Records Complex (CRC). The FBIHQ Annex will provide additional office space to ease existing fragmentation of headquarters divisions and offices. This funding will support the build-out of annex space, including furnishings, UNet and FBI Net connectivity, equipment, locks, alarms, and access control. The CRC will consolidate most of the FBI's records, which are currently dispersed in FBI locations across the Nation, into one single facility. The funding requested will support non-standard requirements associated with the construction of the permanent CRC facility, such as fencing, vehicle barriers, and guard booths. Construction of the CRC, a GSA build-to-suit/leased facility, is planned to begin in fiscal year 2008.

"UNFUNDED FTE" REDUCTION

The fiscal year 2008 budget reflects a reduction of 2,700 positions (576 special agent and 2,124 professional support) for the FBI. This reduction is part of a Department of Justice-wide effort to remove "unaffordable work-years" and to recast positions and work-years consistent with available funding. Let me assure you that the "unaffordable work-years" reduction is being targeted against vacant positions and that no on-board FBI employee's position will be affected by this action. The underlying causes for the accumulation of "unaffordable work-years" are the results of both internal workforce management decisions by the FBI and external decisions on the Bureau's budget.

CONCLUSION

Madam Chairman, Senator Shelby, and members of the subcommittee, today's FBI is part of a vast national and international campaign dedicated to defeating terrorism. Working hand-in-hand with our partners in law enforcement, intelligence, the military, and diplomatic circles, the FBI's primary responsibility is to neutralize terrorist cells and operatives here in the United States and help dismantle terrorist networks worldwide. Although protecting the United States from terrorist attacks is our first priority, we remain committed to the defense of America against foreign intelligence threats as well as enforcing Federal criminal laws while still respecting and defending the Constitution.

I recognize that the fiscal year 2008 request will require difficult decisions with respect to meeting the competing demands among the Department of Justice components as well as those of other agencies. At the same time, even in times of fiscal restraint, there is a strong public expectation that the government provides our Nation's safety and security. Protecting the Nation from terrorist attacks, the threat of WMD, foreign intelligence agents, and violence requires a strong and well-resourced FBI.

I ask for your support in providing the resources requested in the fiscal year 2008 budget so that we can fulfill our mission to safeguard the American people. I look forward to working with you on this budget proposal and other issues.

Once again, I thank you for your continued support of the FBI. I am happy to answer any questions you may have.

Senator MIKULSKI. Thank you very much, Mr. Director, and we're going to follow very closely our time. I'm going to get right to my questions. I'm going to go into three areas. The FBI fighting crime, the FBI fighting terrorism, and then making sure that the FBI has an accountability system for, not only Sentinel, but also the national security letters, where there seems to have been a big problem.

VIOLENT CRIME

I'd like to go right to the violent crime issue because, again, we'll come back to the fact that you're two agencies, but you're one agency. Violent crime is on the rise, we've heard about the data. Robbery is up 9 percent, aggravated assault is up. It's not just about the crime, it's also who's doing the crime, the new gangs, and the threat of meth.

As I looked at your budget, 60 percent of the FBI's money goes to counterterrorism, counterintelligence, and the intel function. Thirty-four percent goes to traditional crime-fighting responsibilities. My first question is, is that the right ratio? Or is it that as we scrambled to fight the global war against terrorism and the massive need to shift resources, have we kind of left fighting crime a little bit behind? What would you say would be the actual resources you need, or are they pretty well amplified in this statement?

Mr. MUELLER. First of all, let me say the percentage that you give in terms of dollars may be roughly accurate. I will tell you that in terms of agents assigned to national security responsibilities as opposed to the criminal responsibility, it's almost 50/50 on the street. I will tell you that since September 11, understandably I believe, we have taken resources—substantial resources—from the criminal side of the house to address the counterterrorism mission. We have tried to establish priorities that maximize our capabilities to augment State and local law enforcement and other authorities in particular areas.

I have always believed that when it comes to violent crime, the FBI should play a substantial role, because of our capabilities of reaching across jurisdictions. And, we have set up, as I—

Senator MIKULSKI. But Director, do you feel that the President's budget is enough for you and your agents and analysts, and so on, to do the job of fighting crime and having the important linkages to local law enforcement with the unique role the FBI plays?

Mr. MUELLER. I believe at this juncture, we ought to revisit, as will happen through the budget process—normally within the administration, with the Department of Justice, with the Office of Management and Budget (OMB), but also with the subcommittee, our allocation of resources, given the uptick in violent crime with the possibility, given the budget constraints, of augmenting the FBI. I absolutely believe that we would benefit from additional resources.

Senator MIKULSKI. Once we have this information, we'll talk with you about that in more detail.

TERRORISM

Let's go to the global war against terrorism. One of the things that I've noted, that in addition to the very important intel function that you perform, that you're also now playing a very important role in the issue of weapons of mass destruction, some of which is too sensitive for a public hearing.

But again, our question is—this requires very sophisticated people. These are people that require enormous scientific and technical backgrounds often more usually found in the Department of Defense (DOD), and it also takes a lot of money to do this. Could you share with the subcommittee, that as you do the surveillance and things that are important domestically and internationally, what about this new role of fighting the weapons of mass destruction? Should it be with you? And do you have the resources that you need to do this?

Mr. MUELLER. Well, responding to an attack of weapons of mass destruction in the United States is a responsibility of the FBI. I think it is appropriately a responsibility of the FBI, in large part because of the extent of integration we have with State and local law enforcement around the country, our presence around the country, and the expertise that we develop in this arena, some of it at Redstone Arsenal, as pointed out by Senator Shelby. So, I do believe we should have this mission.

But it is an expensive mission. It requires contributions from a number of different skill sets and, as the Senator is well aware, those who are on the intelligence side of the house as well as this side of the house understand that we have requested substantial funding in that regard and my understanding is we're getting substantial funding to assist in that. But it is an expensive proposition, but I do believe we appropriately have that mission.

Senator MIKULSKI. Well, my time has expired and I want to go by the rules. I would just like the subcommittee to understand, the FBI has now been given a very important responsibility, which is to, number one, make sure that a weapon of mass destruction does not fall into the hands of people who would want to use them in the United States of America. This is a pretty big job, against chemical, biological, and nuclear, big and small.

Mr. MUELLER. That's correct.

Senator MIKULSKI. That's a pretty big deal. Then, in addition, there is something that is in your materials and that is an open document, but Senators could also get a briefing on this, called Render Safe, which means the FBI has also the job—that if a nuclear weapon, big or small, is detected, their job is to defuse it. This is big deal and it, and again, requires enormous sophistication.

And, then also, for those who would want to bring these despicable and horrific weapons into our country, or seize them within our country, the stress, and the number, and the scientific and technological capability, even for surveillance is pretty significant. So, this isn't J. Edgar Hoover's FBI any more. And it's not like, let's hear a hoo-hah for gumshoe. So, we're talking about one, fighting gangs, dealing with meth, partnering with local law enforcement, and then these very sophisticated things.

I'm going to yield now to Senator Shelby, but I would hope, also, that perhaps Senator Leahy will be picking up on the question of those national security letters.

Senator LEAHY. We are, yeah, we are.

Senator MIKULSKI. Okay, thank you. Because that was a question I was going to go into.

Senator Shelby.

NATIONAL SECURITY LETTERS

Senator SHELBY. Director Mueller, the inspector general issued a report critical of the FBI's use of national security letters. While I understand the critical need for these tools, the lack of supervision in the use of the national security letters and exigent letters is very troubling. Can you tell us what steps you're taking to correct the deficiencies and when those steps will be completed? You've testified previously that you would prefer administrative subpoena authority in counterterrorism cases to the existing national security letters (NSL) authority. Why do you prefer one tool over the other?

Mr. MUELLER. Let me start with what steps we've taken to address the issues with regard to NSLs.

One of the first immediate steps we took was to expand on the audit that was done by the inspector general and to go across the country. I had 150 special agents, inspectors, visit every office to look at the use of national security letters. They have come back with information relating to the use around the country. I do not believe that, in the end, as we go through the information, there will be any startling differences between what we found and what the IG found. But nonetheless, it enables us to look at potential problems with more particularity.

We are reviewing those findings now and my expectation is that, in working with the IG in the next several weeks, we will have some conclusions from that 10 percent audit. We are going back and looking at the numbers reported, our software and databases, to determine how we can retroactively identify, with more precision, the numbers that may have been left out. And again, we are working with the IG on that.

I would say the third, well, let me talk about the third area, and that's the exigent letter issue. We have undertaken a joint investigation with the inspector general to determine how this happened, who was involved, and to make recommendations as to what further steps must be taken as a result of our findings. Again, it's a joint investigation with the inspector general. I think that will take several weeks, if not months, to follow-up thoroughly on that.

Most importantly, what we did not have in the FBI was a compliance system, a compliance program. Large corporations have compliance programs. And, we had put into place procedures, but we had no way of assuring, on a daily basis, that those procedures were being followed.

The \$10 million that you mentioned in your opening remarks, with regard to following up on the NSL issue, will be used to establish a compliance office, reporting to the highest levels of the FBI, and addressing—not just the issues that we found with NSLs—but other issues to make certain that, whether it be NSLs or other circumstances, where Congress has given us the capabilities, that we

are handling them appropriately, that the reporting to Congress is accurate and to make certain that what happened with NSLs does not happen again. And, I look at this as not just addressing the NSL issue, but addressing other issues within the Bureau that we can anticipate better and address, before the inspector general or Congress needs to address them.

The last step I would say that we're taking is understanding—and agreeing with—the concerns of privacy groups, legitimate concerns, about the use of NSLs. We have undertaken outreach to the privacy groups and the civil liberties groups, to explain what steps we're taking and to get input. We may not always agree and, quite obviously, there'll be occasions where we disagree, but we will have a dialogue as to how we can do better in this regard, and have elicited input from these privacy and civil liberties groups. Those are the five steps that we are taking.

Senator SHELBY. What would—you mentioned administrative subpoena authority in counterterrorism cases.

Mr. MUELLER. One of the issues with the national security letters is the authorities are spread across a number of statutes. The predication for it and understanding the use of a particular NSL may depend on the type of records requested and falls under separate statutes. Administrative subpoenas would, hopefully, put in one place this authority. It would give, as the latest iteration of the Privacy Act has given, the right for somebody to contest it, as well as us to enforce it. And, so my hope would be that the administrative subpoena process would replicate, somewhat, the NSLs, but be much simpler for us to operate under.

BUDGET REQUEST

Senator SHELBY. Mr. Director, can you tell this subcommittee if the 2008 budget request, in your judgment, would meet your current operating needs?

Mr. MUELLER. My belief is there should be further discussion with the Department of Justice, with OMB and also with this subcommittee, as to the budget, because circumstances have changed in the last couple of years that, in my mind, warrant a revisiting of the issues.

Senator SHELBY. Madam Chairman, I have a number of questions that I would like to—because of the interest of time and the Director's schedule—submit to the record, for the record, that I think are important.

Senator MIKULSKI. Without objection.

Senator SHELBY. Thank you.

Senator MIKULSKI. Thank you very much.

Mr. MUELLER. Can I add one thing? I'm sorry.

Senator SHELBY. Sure.

Mr. MUELLER. In response to Senator Shelby's last question, in terms of the budget formulation, one of the things we've been asked to do, and believe it's important to do, is have a strategy in the Bureau, a long-term strategy. Not a year-to-year strategy, but a long-term strategy.

We are looking at budget requests over a 5-year period and believe that, for us, we should be on a 5-year cycle of budget requests. And, as we have developed the strategy, we are putting in place

the requests over a 5-year period. That also will help, I believe, in supporting the discussion as to the budget request for 2008.

The last point I'd make, I have to correct myself, I said the Privacy Act, I did mean the Patriot Act, in terms of the changes of the abilities of persons to contests NSLs and for us to enforce them.

Senator SHELBY. A 5-year budget plan would help you to plan more readily, would it not?

Mr. MUELLER. It would.

Senator SHELBY. Thank you.

Senator MIKULSKI. Well, not only a 5-year budget plan, which we would certainly recommend because we could then look at how to pace this. But also the fact, that when we look at the funding of the intel agencies, you have to have more visibility to be at the table.

Let me turn to Senator Leahy and, subcommittee members we'll come back for a second round. Senator Leahy.

Senator LEAHY. Thank you, Madam Chair. I had the privilege of serving on the Appropriations Committee and also, as the Director knows, I serve on the Judiciary Committee. And, I just want to take this opportunity to note, the Judiciary Committee still has not received answers to the written questions that we gave in connection with your March 14 appearance, or your appearance last year on December 6.

Now, I understand that your responses have been submitted to the Department of Justice. That's all well and good, but we still don't have last year's responses or this year's responses. I don't think you would tolerate this kind of response time in FBI investigations.

Before you leave, I will give you a copy and resubmit these as questions from the Appropriations Committee. Maybe that will help you get it through the Department of Justice quicker, because their budget will also come before this subcommittee.

I've also raised with the Attorney General why they take so long clearing your answers to get them to us. We found last week that we will not get answers from him, but I would like to at least get answers from you.

SENTINEL

Now, we're a year into the Sentinel computer upgrade, the costs go up all time. The FBI informed the Judiciary Committee you'd encountered unexpected problems with the deployment of phase one that could delay it. What is the current status of Sentinel? Do you anticipate additional delays, or cost overruns?

Mr. MUELLER. We are on budget, in fact we're under budget at this juncture on the first phase of Sentinel. In terms of the time, as I indicated in my opening remarks, we had hoped that we would start deployment in April. It looks like it will be deployed next month.

We are in the final stages of the approval process with the contractor on phase one. One of the mistakes made by me, I would say early on, in terms of the computers, was pushing the process and the schedule. I had pushed hard, but I want to make certain that when it is deployed—my expectation is next month—that it works. I meet every week with the Sentinel team. I monitor it.

Senator LEAHY. That's just phase one. That's phase one.

Mr. MUELLER. Phase one. That is phase one. Now phase two, which is the more—in some senses, is the more important phase—because it addresses more of our business practices. We have started the planning on phase two. And we will have to—there are a number of lessons we learned in phase one that we'll have to implement in phase two.

Senator LEAHY. When do you think phase two, the more important part, will be fully deployed?

Mr. MUELLER. I cannot give you an answer now on that.

Senator LEAHY. This year?

Mr. MUELLER. I would be concerned in giving you an answer.

Senator LEAHY. But you don't see it as happening this year?

Mr. MUELLER. Not this year. The original expectation was it would take another year to 18 months after the deployment of phase one to deploy phase two. But one of the things we learned in the development of phase one is that some of the things we anticipated deploying in phases two, three, and four, could better be moved up and other aspects of it moved down to phase four. Consequently, we are reviewing the lessons learned in phase one and over the summer and the fall we'll be determining how we proceed with phase two, three, and four.

But, at this point, we have no belief that it is over budget or will be over budget. We have every belief, at this juncture, that we can do it under budget, in the timeframe that was originally set out for Sentinel.

Senator LEAHY. Well, are you still using Computer Sciences Corporation and CACI International?

Mr. MUELLER. No. Lockheed Martin is our contractor on Sentinel.

Senator LEAHY. Were Computer Sciences Corporation and CACI, in any way, part of the Sentinel contract team?

Mr. MUELLER. There was one aspect—let me just check—there was one aspect that one of the corporations that was involved in Virtual Case File is involved with Sentinel. I believe it was training, but it was a separate company, not part of the original company handling Virtual Case File. That is the case, there is one business element of one of those companies, at this point, that has a small role in Sentinel.

Senator LEAHY. Which one?

Mr. MUELLER. I believe it's, and I'd like to get back to you and firm it up, but I think it's Computer Sciences Corporation, it was bought by DynCorp.

Senator LEAHY. Well, please fill that for the record. Because I think if Computer Sciences and CACI were involved in the failed Virtual Case File project, I would hate to see them involved again. I'm also going to ask questions for the record on the integrated wireless network, 6 years in development, \$195 million already being spent, an anticipated overall cost of \$5 billion, and nobody has anything that works yet.

[The information follows:]

SENTINEL CONTRACTORS INVOLVED IN VIRTUAL CASE FILE

Two vendors are common to both Trilogy and Sentinel: Computer Science Corporation (CSC) and CACI. The division of CSC that worked on Trilogy, however, was part of a separate company at the time and not acquired by CSC until after the Trilogy contract ended. Furthermore, the after-acquired division of CSC will not be working on Sentinel, thus we anticipate little or no overlap of services or personnel. We have contracted with CACI to provide training for Sentinel, which was also CACI's role in the Trilogy contract. Training was not an issue in the execution of the Trilogy contract.

The FBI has strengthened its internal controls to avoid a repeat of problems experienced with Trilogy. Among other things, we have improved our contract oversight in two major ways. First, the Sentinel contract has clear reporting requirements and severable deliverables. In other words, we can stop work if we are not satisfied with a contractor's progress. Second, we have structured our contract management with clearly defined roles and responsibilities, so accountable personnel are reviewing all documentation and expenses. That process will be supplemented by internal audits of our financial management, as well as external oversight from Congress and the Administration.

Mr. MUELLER. Can I respond briefly, Senator, if we have time? The Trilogy project was, as you know, three pieces. The networks, the computers, and two-thirds of it was successful, the other third was not successful. But I will also say in the development of the Sentinel project, we have had the inspector general review us day in and day out, and the Government Accountability Office (GAO), and we have endeavored to keep the committees apprised of the status of Sentinel, offering weekly briefings, now giving bi-weekly briefings, too, so that there is no miscommunication in terms of where we are at any particular point in time in the development of this project.

Senator LEAHY. Thank you, Madam Chair.

Senator MIKULSKI. Thank you, Senator Leahy. You know, what's so great is, on our subcommittee now, we have the chairman of the Judiciary Committee, who has oversight of the FBI. We welcome you and your expertise.

Senator LEAHY. You might think it's greater than some of the witnesses might.

Senator MIKULSKI. And Senator Kohl is also a member of the Judiciary Committee. Senators, I think the Director would also be willing to brief both you and also your Judiciary Committee staff about the status of Sentinel. I think you'd be heartened about the progress.

Senator LEAHY. He does, he does.

Senator MIKULSKI. Okay, thank you.

Senator Kohl.

Senator KOHL. Thank you, Madam Chairman.

VIOLENT CRIME

Director Mueller, violent crime, as you've said, is on the rise across the country. When we ask State, local, and Federal officials in all our communities what needs to be done to get this problem under better control, they all give the same answer. They ask for greater Federal funding for State and local law enforcement. This administration is not giving our law enforcement officials the help that they need.

For example, in Wisconsin, our share of Byrne funding went from more than \$9 million in fiscal year 2002, all the way down to less than \$3 million in fiscal year 2006. As a result of cuts to the COPS

hiring programs, support to Milwaukee's Police Department to put more cops on the beat, went from more than \$1 million in 2002, down to zero these past 2 years.

It's no surprise that the rise in violent crime has come on the heels of reductions in this administration's financial assistance to State and local law enforcement.

Mr. Director, don't you agree that more Federal support for local law enforcement would greatly help our local communities in the battle against violent crime?

Mr. MUELLER. Well, I certainly am supportive of funding for State and local law enforcement from a variety of sources, including Federal. And, I would tell you that I believe that we work most efficiently when we work together with our State and local counterparts.

And, what I'd like to see is the funding tied into working in task forces. We have 131 Safe Street task forces around the country. It harnesses our ability to reach across jurisdictions to obtain evidence, to provide forensics help and the like, but also provides the prioritization of what needs to be addressed in the community and a task force concept, I think, is tremendously important when you address gangs and some of the contributing factors to violent crime.

So, I am, I have been and will continue to be, supportive of enhanced funding to State and local law enforcement in hopes that that funding will also be tied to participation on task forces, so that we maximize our work together.

Senator KOHL. Well is this an ongoing kind of a process? Because, as I said, the direct funding for things like Byrne and COPS has gone down. Has it been augmented in some other way to local law enforcement?

Mr. MUELLER. Again, I am supportive of funding the State and local law enforcement.

Senator KOHL. Right.

Mr. MUELLER. And, I'll leave the details up to the Department of Justice, that is the conduit for those grants.

Senator KOHL. But the problem is so severe out there, you know, that the question of where does it come from is not nearly as important as getting the money out there so that our local law enforcement people can do their job more effectively. Not 2 or 3 or 4 years from now, but yesterday and today. Isn't that true?

Mr. MUELLER. I am absolutely supportive of funding for State and local law enforcement and, as I said I believe, I am also supportive in the context of doing it so that we work together.

What we find, I will tell you, is it is increasingly difficult for State and local law enforcement to assign personnel to task forces because of the reduction in personnel. My belief is that task forces are tremendously important, and we ought to focus on the funding for State and local law enforcement in such a way that it enhances our joint efforts to address violent crime or counterterrorism or other threats, including cyber-crime and crimes against children, in a way that enhances our ability to work together and serves as an incentive for us to work together.

COPS PROGRAM

Senator KOHL. All right. Just talk about the COPS program and get some comment from you. The overall COPS program was funded just a few years ago at more than \$1 billion and this year the President's request for \$32 million really means, basically, the end of the program. Last year in my home town of Milwaukee, the police department had approximately 200 vacancies in an ideal force of 2,000. We used to have a program to deal with that problem and it was called, The Cops Universal Hiring Program. And, that program was instrumental at reducing crime in the 1990s.

Unfortunately that program has been entirely eliminated in this administration. So, would you agree that we need a new commitment to the COPS program? Especially when we're witnessing a surge in violent crime in our mid-size cities and other sized cities all across our country. Don't you agree that we need to increase Federal funding in order to help put more police on the streets?

Mr. MUELLER. Without regard to a particular program, I am supportive of enhanced funding for State and local law enforcement, particularly funding to working cooperatively between ourselves, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Drug Enforcement Administration (DEA), without regard to a particular vehicle.

I think the vehicle is less important than the fact that we address the threats that are out there, when it comes to the uptick in violent crime. I attended a meeting a couple days ago at the National Academy of Sciences. One of the issues discussed by a number of very influential and capable professors from around the country was why this uptick. You can look at the statistics across the Nation, but then every community is somewhat different.

What you do not want to do is, necessarily, just throw in resources without understanding what the problem is, what the solution is, and then assign those resources to effect that solution.

In my own mind, most of the threats cross jurisdictional borders now. The solution comes from working together, ourselves with State and local law enforcement. To the extent that local communities cannot afford the participation of State and local law enforcement on task forces, I believe there has to be a mechanism someplace, through some vehicle, so that there is an incentive for us to work together and that we address these issues, together, as opposed to addressing them individually. Because I think we're far more effective when we do it jointly.

Senator KOHL. I thank you so much.

And, I thank you, Madam Chairman.

Senator MIKULSKI. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

And, thank you, Director Mueller, for being here and for providing the leadership that you do for this important arm of our protection and safety in our society.

Oddly enough, Senator Kohl, my friend and colleague, hit on the subject, COPS. And, as I was looking over my notes, the thought occurred to me and I found out that at one point there were 120,000 police on the streets, 5,000 in my State of New Jersey from COPS. And, then your notes, Director, in your comments you say

access to local law enforcement partners in the fight against violent crime, access to these crime-solving services and capabilities are more important in a post-9/11 environment. So, it's hard to understand why that program might be eliminated when we need all the help we can get.

GUNS TO TERRORISTS

Let me get on to something that's come about. A GAO report that I requested in 2005 revealed that 35 known or suspected terrorists bought guns in a 5-month period of 2004. And, then I asked you to review what legislative changes might be needed, and you wrote me in March 2005—so, we're looking back more than 2 years—that Department of Justice create a working group to look into this.

Yesterday, the Department of Justice sent me, Vice President Cheney, and House Speaker Pelosi, a proposal to give the Attorney General the discretion to deny guns to terrorists. Do you think 2 years to move on something as sensitive and as helpful as this could be, borders on either outright neglect or lack of interest in the proposal? Should known terrorists be allowed to buy guns at all?

Mr. MUELLER. I can't speak to the delay, Senator. I think before one reaches any conclusion as to the delay, one would want to know what kind of dialogue there has been, whether it be within the administration, or between the administration and Congress. I see it was submitted yesterday. I would ask the opportunity to go back to look at this and then, to the extent that you have further questions in terms of what this legislation does, I'd be happy to answer them.

Senator LAUTENBERG. Okay. But, and the last part of my question, should one's name on a terror list be sufficient evidence to not allow a gun to be purchased? What do you think?

Mr. MUELLER. I think it depends on the circumstances. There are gradations. I do not want guns in the hands of terrorists. You look at what happened at Virginia Tech recently, and it calls for a revisiting of the legislation, not just at the national level, but at the State level in terms of the production of medical records and particular mental health records—

Senator LAUTENBERG. Okay. Thanks.

Mr. MUELLER [continuing]. When it comes to purchasing a weapon.

Senator LAUTENBERG. Thanks, Mr. Mueller. The one thing that we do know is that you're an intelligent, educated man, and I find it surprising that we can't get a specific answer that says, "No, they're terrorists." If you were good enough to use a somewhat humorous description, to get, to make it to the terrorist list and you can still buy a gun in this country, I think that suggests that there's a weakness there someplace.

BACKGROUND CHECKS TO INVESTIGATE CRIME

I want to get on to something else. Would there be any value, Mr. Mueller, to permit law enforcement to use background check records to investigate crime, perhaps even in the case of terrorism?

Mr. MUELLER. I'm somewhat uncertain of the question.

Senator LAUTENBERG. Well, that is—

Mr. MUELLER. Because, quite obviously, we use background information, to investigate allegations of terrorism.

Senator LAUTENBERG. All right. Let me go to the little, expansion of that. Do you think that destroying records that were used in approving a gun purchase in just 24 hours, is a good idea? Perhaps you can explain—well, let me get the answer to part a, then we'll go to part b.

Mr. MUELLER. Well, I know there's been substantial debate on how long records are retained. There's a substantial argument in my mind for retaining records for a substantial period of time, but this is an area where the policymakers will advise and then we will follow.

Senator LAUTENBERG. Fair enough. I'm glad that you concur with my view. Okay.

Thank you, Madam Chairman. Thanks.

Senator MIKULSKI. Thank you.

Well, Director, we are moving expeditiously to get you to where you need to go.

Mr. MUELLER. Thank you.

Senator MIKULSKI. I have two questions, one related to intelligence analysts and then the other to what we need to be able to train them.

INTELLIGENCE ANALYSTS

I am tremendously impressed with the FBI intelligence analysts that I've met, both overseas and here. But here goes to my questions. Two years ago, the IG released a report that nearly one-third of the intelligence analysts positions were unfilled because of rapid turnover and other problems and also, at that time morale was low, and there was a difficulty in retention. Can you tell us what you've been able to do over the last 2 years with the issues raised by that? Do you remember that?

Mr. MUELLER. Yes.

Senator MIKULSKI. And, then what are you doing to improve the training and retention of the intel analysts, particularly, you know, you had the agents on the street, but it is the analyst that's supposed to help the policymakers and the enforcers to connect the dots.

The so-called "connect the dot" problem.

Mr. MUELLER. We have tremendously talented analysts. We've doubled our analyst cadre since September 11, and the qualifications and capabilities of the analysts are superb. They have become an indispensable asset not just at headquarters, but in every office around the country.

The inspector general recently had a further report, in which, it was pointed out that we had a shortfall of 400 analysts in 2006 that we had not brought onboard. He indicated part of it was attributable to the length of time it took to get an analyst onboard. But, I will tell you, part of it, also, was our recalibration of our strength in what was called "hollow work-years" that had developed over a period of time. And so, we have a shortfall, currently, of approximately 160 analysts who we're trying to bring onboard. And, we will over the next months and into next year.

The delay in bringing people onboard that the IG mentioned, as well, is in some part attributable to the fact that we want to give them training. We want them to start the job with the training, and without slots for the training, we're delayed longer than we would like. And, I will tell you also, we are revamping the training. We have continuously done so—particularly in the wake of September 11, but we continue to revamp the training to make it more successful, I will tell you, more effective.

The other thing that the IG, I think, pointed out is that most of the analysts we brought onboard are exceptionally happy working at the FBI, enjoy their job, anticipate staying, so we're not, we are not where we would like to be. I'm not certain we would ever be there. I think we've made substantial strides with the analytical cadre.

Senator MIKULSKI. Yes, because that will go to training in Quantico.

Senator Shelby, you want to jump in here?

Senator SHELBY. Director Mueller, we realize it's—it's difficult and tedious to train analysts and, but in the recruitment area, because—how are you doing there? Because you're recruiting in the marketplace with everybody else?

Mr. MUELLER. Very well, very well.

Senator SHELBY. And, that's very important.

Mr. MUELLER. In the training, we have structured training so the analysts train with the agents for much of their time at Quantico, so there is an understanding of the kind of contributing skills that make us more successful.

The fact of the matter is, as the organization grows, the credibility and the capability of the analysts will impress the rest of the organization and bring us into more of a team than, perhaps, we've been in past years. And, both through the training, the working together, and the types of cases, whether they be intelligence or criminal that we're working, I think we're making strides there.

Senator SHELBY. Thank you.

Thank you, Madam Chairman.

TRAINING AT QUANTICO

Senator MIKULSKI. Which takes me to Quantico. Because all FBI agents and analysts, regardless of their responsibility are trained at Quantico, am I correct?

Mr. MUELLER. Well—

Senator MIKULSKI. Well, is it prime? Is my question.

Mr. MUELLER. All agents are trained at Quantico. There are areas of training that we do outside of Quantico, but certainly all new agents and analysts go through Quantico.

Senator MIKULSKI. Right. So, but, Quantico is the starting point?

Mr. MUELLER. It is.

Senator MIKULSKI. It is the starting point. Now, from what I understand from staff visits to Quantico, that Quantico because of when it was built, its original mission, which was the pre-9/11 FBI, that this is pretty dated, both in terms of being able to handle the number of people you wish to train, and what is required in unique training facilities now, with technology, et cetera. Could you share with the subcommittee what you think we need to do to help you,

to kind of, reinvigorate Quantico? So that when these talented people come to serve, and you have the curriculum to do it, that we're all helping you move in the direction we want you to move in?

Mr. MUELLER. We've had problems with the buildings at Quantico. It's years and years, I can't tell you exactly, but tens of years old. We've had problems, for instance, with information technology and instituting it there because it was not set up with the modern capabilities.

As we look 5 years down the road to the FBI, training is going to have to be expanded at Quantico, but also other places in the country. One of the gems, the jewels of the FBI is the National Academy, where every year we educate somewhat more than 1,000 State, local and, as important if not more important, foreign officers who become colleagues of ours, and my hope is that we could expand the National Academy. Because I think it's a jewel and it's tremendously important to the United States, not just domestically to have the capacity, but for the intersection of ourselves and the future with our counterparts overseas, to have that type of, not only dialogue, but building of relationships.

So, whether it be National Academy, the agents, the professional staff, analysts, we are going to be looking at our 5-year plan for expanding—not just renovating at Quantico—but looking at opportunities elsewhere as well.

And, we cannot continue to build a national security function, and continue to do what we do on the criminal side without enhanced facilities.

I will make one last plea, if I could, and that is, we are asked to be and appropriately so, I believe, the domestic intelligence agency for national security.

Senator MIKULSKI. That's a pretty big deal.

Mr. MUELLER. Part of the intelligence community. We have a single funding stream that comes through Commerce, Justice, and Science, as opposed to being looked, from the funding perspective, as part of the intelligence community. And, my request is that, if we have the responsibility and the role that I believe we should have, we should be looked at as a member of the intelligence community from the perspective of funding.

Senator MIKULSKI. You mean through an intel authorization?

Mr. MUELLER. Yes.

Senator MIKULSKI. Well, you know we can't get one through the Congress, so you actually get a better deal coming through us. We hear what you say.

Mr. MUELLER. Well, when I look at the various budgets, I'm not—

Senator MIKULSKI. Well, no, we understand that it, and again, this is an environment we can not discuss it.

Mr. MUELLER. Right.

Senator MIKULSKI. Senator Shelby chaired the Intel Committee and, of course, I'm a very proud member. And, Director, we would suggest that this is something we three could talk about, about what is the most effective way.

One quick question. When is this 5-year plan going to be done?

Mr. MUELLER. I believe we could start briefing you on it, probably, in a month.

Senator MIKULSKI. Well, one of which, too, will be the issue related to facilities because if we have to get started, then those things, as you know, are an extensive look ahead. So, we'll look forward to that.

But, listen, we promised you you'd be on your way and we want to thank you today for your testimony.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, Senators may submit questions for the record. We would appreciate the FBI's written response within 30 days. We, Mr. Director, we look forward to an ongoing conversation with you, once we get our allocation and so, we want to get you on your way.

And, we say to Eleni and Paul, good luck as they go on their new ways.

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

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

SENTINEL

Question. Now a year into the Bureau's Sentinel computer upgrade program, I remain concerned about the prospect of this program and its ballooning costs to American taxpayers. Last month, the FBI informed the Judiciary Committee that it had encountered unexpected problems with the deployment of Phase 1 of the Sentinel program that would delay the program. Even more troubling, the FBI could not tell Judiciary Committee staff how long it would take to remedy these problems, or how the delay would impact the overall schedule for Sentinel.

Director Mueller, what is the current status of the Sentinel program and do you anticipate that there will be additional delays in deploying the program or costs overruns?

Answer. The FBI has implemented Phase 1 of the Sentinel Project and our agents are now using it. The prime contractor, Lockheed Martin, has completed the design, development, and testing of the Phase 1 functionality and the FBI administered a two-week system acceptance test, which was followed by user acceptance testing. The system was then incrementally deployed and piloted in the Baltimore, Washington, and Richmond Field Offices and in one Division at FBI Headquarters (FBIHQ). In addition to testing the system's functionality, the pilot also assisted in testing the load of users on the system and in assessing the adequacy of the training materials.

After changing the deployment approach to allow for a pilot period, the system was delivered to all users. Changes in the deployment approach and delivery schedule were made to ensure an accurate measurement of performance by testing it with actual users, rather than through controlled testing.

The Sentinel Program Management Office and Lockheed Martin prepared users for training and deployment, training nearly 250 field office and FBIHQ users as Sentinel Training Advisors. This group is assisting contract instructors in providing training and assisting users in their divisions when questions arise. The training curriculum and materials continue to be refined to incorporate system updates and trainee feedback.

Question. What impact have the delays with Sentinel—and Trilogy before it—had on the Bureau's ability to fulfill its core mission?

Answer. The delays in updating the FBI's computer systems have had very little impact on the Bureau's ability to fulfill its core mission. All components of the FBI's Automated Case Support (ACS) system have continued to be operational and this information will be migrated to Sentinel. Phase 1 provides Sentinel's foundational base and enhanced access to the information contained in ACS. Phase 2 will bring additional capabilities to the users, including automated workflow, document and record management, public-key infrastructure, digital signatures, and role-based access controls.

Question. The December 2006 OIG audit report questioned the reliability of the total estimated costs for the program. How confident are you about the final cost estimate for the Sentinel program?

Answer. The estimated costs for the Sentinel program were developed consistent with the Federal Acquisitions Regulations (FAR), the Department of Justice (DOJ) Information Technology Investment Management (ITIM) process, and the FBI's Life Cycle Management Directive (LCMD) process. The FBI anticipates total program costs of approximately \$425 million, including costs for development, program management, Independent Verification and Validation, and two years of Operations and Maintenance (O&M) after we reach full operating capability. Any changes to those estimates will be vetted through the ITIM and LCMD boards, documented in accordance with the FAR, and provided to Congress.

Question. Based on this cost estimate, how much additional funding or reprogrammed funds will the FBI require to complete this program? If reprogramming is required, what programs do you anticipate will lose funds?

Answer. The FBI determined that no additional reprogramming was required for fiscal year 2007 Sentinel operations. The funding requested in the President's fiscal year 2007 budget, in combination with the fiscal year 2007 reprogramming for Sentinel, funded O&M for Phase 1 and system development, training, and program management costs budgeted for Phase 2. Funding for Phases 3 and 4 and for the remainder of O&M for all Phases will be requested in future budget submissions. As noted in the response to the Office of the Inspector General (OIG), the FBI evaluates the operational impact of any proposed reprogramming and takes that impact into consideration in all reprogramming decisions. The FBI routinely provides this impact assessment and other relevant information to DOJ, the Office of Management and Budget (OMB), and Congress.

Question. I am troubled by reports that two of the companies that are part of the Sentinel contract team—Computer Sciences Corp. and CACI International Inc.—also played roles in the earlier failed Trilogy effort. How do you justify entrusting these companies with taxpayer funds again?

Answer. Two vendors are common to both Trilogy and Sentinel—Computer Science Corporation (CSC) and CACI International, Inc. The division of CSC that worked on Trilogy (and actually a separate firm at the time of its Trilogy work, acquired by CSC thereafter) will not be working on Sentinel, so we anticipate little or no overlap of services or personnel. We have contracted with CACI to provide training for Sentinel, which was also the purpose of the Trilogy contract.

The FBI has strengthened its internal controls to avoid a repeat of the issues cited by the Trilogy auditors with respect to all vendors. Among other things, we have improved our contract oversight in two major ways. First, the Sentinel contract has clear reporting requirements and severable deliverables. In other words, we can stop work if we are not satisfied with a contractor's progress. Second, we have structured our contract management with clearly defined roles and responsibilities, so accountable personnel are reviewing all documentation and expenses. That process will be supplemented by internal audits of our financial management, as well as by oversight from Congress and the Administration.

VIOLENT CRIME

Question. Recently, the Seattle Post-Intelligencer reported that since the terrorist attacks of September 11 the number of criminal investigations conducted by the FBI has declined significantly, and white collar investigations in particular have dropped precipitously. Many cases that would have been pursued in the past are simply going unsolved. I have asked you in the past about declining prosecutions of public corruption cases and this study shows that the problem is even broader than was previously known. While it is crucial that the FBI devote all necessary resources to protecting the country from terrorism, that effort should not be at the expense of protecting the country from crime.

Americans count on the FBI to aggressively investigate crime, particularly those types of crime that cannot always be adequately addressed by the states, like corruption, fraud, civil rights offenses, and the most serious violent crime. The FBI's apparent retreat from fulfilling these core duties comes at a time of rising violent crime rates in the country and dwindling public confidence in the Department's objective handling of corruption cases.

Is the FBI capable of handling the dual tasks of protecting the country from terrorism and aggressively enforcing the nation's criminal laws at the same time? Why have you not been getting the job done?

What steps is the FBI taking to make sure that it does not sacrifice crucial criminal investigations and prosecutions as a result of increased emphasis on terrorism?

Answer. The number of FBI Special Agents (SAs) assigned to criminal cases has decreased by 1,335, or 21 percent, since the attacks of 9/11/01. Despite the loss of those SA positions, protecting the nation from traditional criminal offenses has always remained a core function of the FBI, and 53 percent of all FBI SAs remain assigned to these criminal matters.

To address this decrease, the FBI has made difficult choices in determining how to most effectively use the available agents. In 2002, the FBI established as its criminal program priorities: public corruption, civil rights, transnational and national criminal enterprises (which include violent gangs and the MS-13 initiative), white collar crimes (which include corporate fraud and health care fraud), and violent crimes (which include crimes against children).

Since the designation of public corruption as the top criminal priority, over 280 additional agents have been shifted from other criminal duties to address corruption cases. The FBI is singularly situated to conduct these difficult investigations, and our effectiveness is demonstrated by the conviction of more than 1,000 corrupt government employees in the past two years.

The FBI has also maintained a steady commitment to addressing civil rights matters. Pending Color of Law (excessive force) investigations increased 25 percent from 2001 to 2007, and Human Trafficking cases increased 323 percent during the same period. FBI investigations of Human Trafficking resulted in 29 indictments in 2001; since then there have been an average of 48 each year.

The FBI has addressed violent street gang matters through the establishment of Violent Gang Safe Streets Task Forces (VGSSTFs) that leverage Federal, state, and local law enforcement resources to investigate violent gangs in large, medium, and small cities and towns. There are currently 135 VGSSTFs composed of 600 FBI SAs and 1,170 state/local law enforcement officers.

Although the FBI has had to reduce the number of SAs working Governmental fraud matters since 9/11/01, FBI agents still respond to serious crime problems, as demonstrated by the FBI's current initiatives to address hurricane-related fraud and Iraq contract fraud.

The FBI also prioritizes investigations within its White Collar Crime Program, emphasizing corporate/securities fraud and health care fraud. The corporate fraud cases, in particular, are very labor intensive, but they are a priority for the FBI because so many represent the private industry equivalent of public corruption, where the dishonest actions of a few people in leadership positions cause tremendous monetary losses and undermine investor confidence, both of which can threaten economic stability.

The FBI's priorities have resulted in less of an emphasis on investigating traditional drug trafficking cases and more emphasis on assigning SAs to established Organized Crime Drug Enforcement Task Force (OCDETF) strike forces and High Intensity Drug Trafficking Area (HIDTA) initiatives that target violent gangs whose members are involved in drug trafficking.

The FBI has also shifted criminal resources to implement the child prostitution initiative and the Violent Crime Task Force initiative. The child prostitution initiative is a coordinated national effort to combat child prostitution through joint investigations and task forces that include FBI, state, and local law enforcement, along with juvenile probation agencies. This initiative has resulted in more than 500 child prostitution arrests (local and Federal combined), 101 indictments, 67 convictions, and the identification, location, and/or recovery of 200 children. To address violent crime, the FBI has partnered with other state and local law enforcement agencies to create 24 Violent Crime Task Forces throughout the United States. The FBI also funds and operates 18 Safe Trails Task Forces (STTFs) to address violent crime in Indian Country (IC).

In addition to the above initiatives, the FBI has continuously worked to use technology, intelligence analysis, and enhanced response capability to leverage criminal program resources. In October 2005, the National Crime Information Center's fugitive database was integrated with the Department of State passport application system, resulting in automatic notification when fugitives apply for United States passports. In December 2005, eight Child Abduction Rapid Deployment Teams were established in four regions of the United States. These teams are available to augment field office resources during the crucial initial stages of a child abduction. The FBI is currently developing a means of integrating sex offender registries and other public databases to better identify sex offenders in the vicinities of child abductions and to "flag" sex offenders who have changed locations without satisfying registration requirements.

Question. Congress has always been willing to support both of these core missions. We have up to now been given the impression that the FBI was getting sufficient

resources to do these jobs effectively. What more does the FBI need to live up to its responsibilities?

Answer. The FBI has appreciated the support of Congress in ensuring that we have the necessary resources to deter and respond to terrorism and other crimes. We will continue to work with DOJ, the Office of the Director of National Intelligence, OMB, and the Congress to assess what resources are necessary to meet our responsibilities, consistent with Executive Branch priorities.

INTEGRATED WIRELESS NETWORK

Question. I was interested to see the March 2006 audit report by the Justice Department's Office of the Inspector General regarding the progress of the joint Integrated Wireless Network (IWN) for the Departments of Justice, Homeland Security, and Treasury. The OIG found that despite over 6 years of development and more than \$195 million being spent on the IWN—out of an estimated \$5 billion in total estimated costs with a goal of supporting 81,000 federal agents by 2021—DOJ law enforcement agents have received little in the way of new, secure, compliant radio equipment through IWN. The causes for the risk of failure include uncertain funding to complete the project, disparate departmental funding mechanisms, a fractured IWN partnership, and the lack of an effective governing structure for the project. What results from this partnership likely will not be the seamless, interoperable system that was originally envisioned and therefore the communication systems may not be adequate in the event of another terrorist attack or national disaster.

The OIG offered four recommendations for the Justice Department in attempting to avoid the IWN train wreck looming on the horizon.

Do you feel that those recommendations should be followed in order for the IWN to become the seamless, interoperable system originally envisioned? If not, why and how best do you feel the goal of a seamless, interoperable system would be reached?

Answer. While a valid goal, seamless interoperability does not address the immediate needs of DOJ components. The nationwide trunked network originally envisioned by some has not been a simple or easy undertaking (as demonstrated by the challenges encountered in Washington State). A single nationwide system would put those users on the same network, but this would not always make the best use of the available spectrum. Using trunked networks within a single band (which are more spectrally efficient than large-scale, multi-channel conventional systems) would not resolve the interoperability issues inherent in a system in which Federal, state, and local users use alternate frequency bands.

Evolutionary solutions would provide opportunities for components to address their own internal requirements while addressing interoperability needs and unnecessary redundancy among DOJ components. Current FBI Land Mobile Radio (LMR) systems using the Digital Encryption Standard (DES), which is no longer approved for use in Sensitive but Unclassified systems, put users at risk for potential compromise. These antiquated component systems must be upgraded to meet security requirements (such as the Advanced Encryption Standard) while satisfying the narrowband mandate and providing enhanced feature sets.

Future capabilities will include not only multiband, multimode radios, but the ability to interoperate with state and local partners through multiple gateways.

Question. What part, if any, has the FBI played in implementing those recommendations? How would you define the Bureau's commitment and funding requirements to support the network?

Answer. The FBI has been working with others in DOJ since 1999, providing both technical expertise and personnel in their planning, design, infrastructure installation, site leasing, spectrum coordination, equipment testing, and decommissioning efforts, among others. For example, FBI personnel in both Seattle and Portland have played an active role in Integrated Wireless Network (IWN) implementation, providing expertise and support in order to help make the network there a functional reality.

The FBI's current network infrastructure includes over 3,000 sites nationwide, and the cost of system maintenance, site leases, and circuit costs are directly affected by IWN's size and capabilities. Reduction of the FBI's maintenance costs depends on the installation of new equipment as part of either IWN or FBI system/network upgrades. Cost savings can be realized either by fully implementing IWN as envisioned and decommissioning FBI sites or by downsizing DOJ components where permitted by system sharing.

Question. Through fiscal year 2006, approximately \$772 million has been appropriated to fund the DOJ Narrowband Communications Account. However, instead of funding new technological solutions and upgrades, nearly two-thirds of this fund-

ing has been used to maintain DOJ's antiquated legacy systems. The OIG report found that the majority of DOJ's communications systems are obsolete because the manufacturers no longer support them, maintenance is difficult and spare parts are hard to find. As the DOJ equipment continues to age, these costs are expected to increase by five percent each year.

Between a lack of money because funds that should be used for new technology solutions and upgrades are being poured into DOJ's antique legacy systems, and the rising cost of operating and maintaining legacy communications, can you tell me when you expect the IWN to be up and running so that the Bureau's agents can access and use the latest in interoperable technologies to communicate and coordinate with their fellow federal, state and local law enforcement partners?

Answer. Full migration to a new, DOJ-level, trunked VHF network requires not only extensive planning and spectrum coordination, but also site preparation and circuit leasing, and these to a much greater extent than if the upgrade were to a single organization's system. In order to deploy new systems, several issues must be addressed. For example, we must upgrade radios in the field as necessary; address licensing limitations and the need for compatibility with manufacturers' infrastructures; either negotiate new site leases or modify existing leases based on new requirements; address access and security requirements; and realign and approve spectrum allocations while formulating transition schedules. In the interim, although aging wideband legacy LMR systems are antiquated, they can be upgraded to newer, narrowband, conventional equipment relatively easily, networks can be expanded, and capabilities enhanced.

O&M expenses are a significant part of the cost of any large-scale system or network. Site repairs, security upgrades, network expansion, radio installations, personnel, and training are among the areas funded by DOJ components before the consolidation of those individual resources. The integration of multiple systems requires experienced engineers and government personnel who understand implementation needs to ensure proper oversight, control, and system availability. For example, even following integration, these networks must remain functional at key local levels during times of crises to ensure the public is protected if one agency or one part of the system is compromised.

Question. What impact has the lack of a functioning IWN had on the FBI's ability to carryout its counterterrorism mission?

Answer. Absent the ability to communicate securely with other investigative personnel, FBI personnel use other alternatives, such as commercial services. Commercial devices operate on commercial networks, which may have inadequate capacity in times of crises, may not meet security requirements, and may operate only in areas with adequate infrastructure. For example, commercial LMR peer-to-peer (device-to-device) capabilities usually require that the infrastructure be operational at the time of attempted communication. In the absence of secure communications capabilities, outsiders (including suspects) can use frequency monitoring devices (scanners) to track unencrypted online communications. Unlike most portable devices currently used by the FBI in the field, newer radio models are smaller, can be used to send e-mails and broadcast messages, provide greater voice clarity, and regain range that is lost to systems using DES encryption.

INTELLECTUAL PROPERTY ENFORCEMENT

Question. By some government estimates, U.S. companies suffer \$250 billion in annual losses due to intellectual property theft, which also causes U.S. workers to lose millions of jobs. Aggressive investigation and prosecution of IP crimes is clearly needed to deter such massive infringement. In recognition of this need, the Justice Department's IP Task Force, in its October 2004 Report and a subsequent June 2006 Progress Report, recommended increasing the number of FBI agents investigating intellectual property crimes.

Would you agree with the Task Force's recommendation that, to effectively deter rampant IP infringement, there should be an increase in the number of FBI agents dedicated to investigating IP crimes?

Answer. The FBI SAs assigned to cyber crime programs in the FBI's field offices address intellectual property (IP) infringement matters in the same manner as they address other FBI violations, which is based upon FBI investigative priorities. IP infringement matters that pose a threat to national security (such as certain thefts of trade secrets) are the FBI's highest IP infringement priority. The number of SAs working IP matters has decreased since fiscal year 2005 due to the November 2004 re-ordering of cyber priorities, pursuant to which Innocent Images matters were placed in a higher priority than IP rights. In fiscal year 2005 there were approximately 56 SAs working IP investigations, while in June 2007 there were 48.

NATIONAL SECURITY LETTERS

Question. Director Mueller, as you know, I am very concerned about the widespread abuse of National Security Letters (“NSLs”) at the FBI. Last month, the Justice Department’s Inspector General recently reported on a pattern of unacceptable abuses of NSLs by the FBI, where time and time again the FBI did not follow the law, or even its own rules, in obtaining sensitive personal information about thousands of ordinary Americans and others. According to the Inspector General’s report, one in every five of the NSL files reviewed contained violations of the law, and more than half of the NSLs reviewed did not even meet the FBI’s own standards. During the FBI Oversight hearing that the Judiciary Committee held last month, you promised to promptly address the serious lapses with NSLs.

Director, what are you doing to make sure that the FBI follows the law—and its own policies—when issuing National Security Letters going forward?

Answer. As a result of the OIG report, the FBI has prepared comprehensive guidance concerning the use of National Security Letters (NSLs). Every proposed NSL must be reviewed by the Chief Division Counsel in each FBI field office or by an attorney in the National Security Law Branch (NSLB) at FBIHQ, including review of the relevance of the request to an authorized investigation and the predication for that investigation. In addition, NSLB is developing a training curriculum, which will be mandatory for all employees involved in the NSL process, to address problems created by confusion and lack of familiarity with the provisions and requirements of the various statutes authorizing NSLs. Even before the OIG report was published, the FBI had begun work on a database, based on the successful “FISA Management System,” that will permit the electronic transfer of NSL-related data between databases (this transfer is currently being accomplished manually). Finally, the Inspection Division is investigating in more detail many of the problems identified in the OIG report. This review should identify any areas that require closer scrutiny. Taken together, these measures will both provide a more user-friendly business process for FBI personnel who use NSLs as an investigative technique and enhance management’s audit and oversight capabilities. This system will also enhance the accuracy of the NSL reports provided to Congress.

The FBI has also recognized the need to create a compliance program to ensure we have appropriate policies, procedures, audit capabilities, and training for all our activities. The FBI’s compliance program will be modeled after similar programs in the public and private sectors. While it is too early to say with certainty what the program will look like, it will most likely incorporate features common to most successful programs, such as a written compliance policy, a central compliance officer and office, a senior-level compliance committee, access to and the ability to draw upon the resources of the organization, and an implementing strategy that adjusts as new threats and programs are identified. Audits of practices, not just procedures, will be an essential component of the program, as will effective “two-way” communication channels. In addition, OGC will continue to meet regularly with DOJ’s National Security Division (NSD) to discuss appropriate policies in the national security arena. DOJ’s NSD and the FBI’s NSLB conducted 14 national security reviews of the FBI’s field offices and one of an FBI Headquarters Division in calendar year 2007. There are 14 national security reviews of the FBI’s field offices and one of an FBI Headquarters Division planned for calendar year 2008. Those reviews will include, but not be limited to, the use of NSLs.

Question. One of the most disturbing findings in the Inspector General’s Report was that the FBI improperly issued more than 700 so-called “exigent letters,” seeking telephone and financial records on an emergency basis, which contained blatant factual misrepresentations. Is the FBI still using these so-called “exigent letters,” and if so, based upon what legal authority?

Answer. The OIG identified four problems with the so-called exigent letters as they were used by the FBI’s Communications Analysis Unit (CAU): (1) although the letter asserted there were exigent circumstances, that was not always the case; (2) the CAU maintained no records supporting the claimed emergency; (3) although many of the letters asserted that a Federal grand jury subpoena had been requested, in fact, in most circumstances a grand jury subpoena had not been requested and the intent was to provide the carrier with an NSL; and (4) in many cases, although subsequent legal process had been promised to the carrier, no process (neither a grand jury subpoena nor an NSL) was delivered in a timely fashion.

It was not until the FBI received the draft OIG report that executive leadership became aware of the full scope of the problems with the use of the so-called exigent letters. Upon learning of this matter, the FBI worked quickly to develop policy that would address the shortcomings identified in the OIG report without undermining the FBI’s ability to receive information under 18 U.S.C. § 2702(c)(4), a critical provi-

sion allowing communications service providers to give the government information in certain emergency circumstances. That policy, which was issued on 3/1/07, discontinued the use of “exigent letters” of the sort described in the OIG report, but affirmed that the FBI may continue to receive information pursuant to section 2702. The new form 2702 letter makes it very clear that: production of the records is at the carrier’s discretion; no other legal process is promised; and, by policy, the emergency justifying this requirement must be documented. Accordingly, the FBI believes the new policy deals precisely with the problems identified by the OIG and appropriately balances privacy concerns with investigative needs in case of dire, life-threatening emergencies.

PRIVACY/DNA SAMPLING

Question. Pursuant to a little noticed provision in the Violence Against Women and Department of Justice Reauthorization Act of 2005, the Justice Department is developing new guidelines that would greatly expand the government’s ability to collect DNA samples—which reveal the most sensitive genetic information about an individual—from most individuals who are arrested or detained by federal authorities. Under this policy, the Government will store this sensitive biological information in a federal data base known as the National DNA Index System.

I am very concerned about the privacy implications of this new policy because, unlike fingerprinting—which is commonly used as a means of identification—DNA profiles reveal all kinds of sensitive biological information about a person, including the presence of a physical disease or mental disorder.

Director Mueller, what privacy protections are in place under these new guidelines to ensure that sensitive DNA data contained in the National DNA Index System will not be misused or improperly disclosed by the Justice Department?

Answer. While the FBI is working with others in DOJ to finalize the regulations on DNA sample collection relative to federal arrestees and detainees, there are already a number of protections in place and they are vigorously enforced. When arrestee and detainee DNA samples are collected, they are placed in the National DNA Index System (NDIS) offender database. The offender and crime scene databases are populated by profiles from Federal, state, and local law enforcement agencies. The profiles within the database use only genetic markers that provide identification; no other genetic information, such as medical status, can be gleaned from these markers, and NDIS, which is in essence a pointer system, does not contain any names or personally identifying information. Instead, each profile is associated with a unique identifier that traces back to the laboratory that developed that particular profile and placed it in the database. Once a “hit” occurs and is confirmed, then the two laboratories involved will exchange information regarding the individual involved.

Although all states participate in NDIS, they do not have direct access to the national database. NDIS is searched once a week at the FBI and a hit report is generated. If an individual lab wants to follow up on a particular hit (generally the lab that contributed the forensic sample), it contacts the laboratory that provided the offender information and a confirmation process begins. During that process, the laboratories follow written procedures to ensure the hit is related to the correct offender; these procedures include re-working a portion of the remaining sample and re-comparing results. Under procedures established by the NDIS Board, no names or other personally identifying information may be reported until the confirmation process is complete.

Federal law also provides privacy protections, including criminal penalties. By law, NDIS may only include DNA information that is:

Maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of Title 10) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

- (A) to criminal justice agencies for law enforcement identification purposes;
- (B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;
- (C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or
- (D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol and development purposes, or for quality control purposes. (42 U.S.C. § 14132(b)(3).)

These protections are further bolstered by provisions that reiterate these protections and provide criminal penalties for individuals who knowingly disclose DNA in-

formation from the database to a person or agency not authorized to receive it. (See, for example, 42 U.S.C. § 14133(c) and 42 U.S.C. § 14135e(c).)

Finally, we are conducting a privacy impact assessment to analyze how this DNA information will be handled, determine risks from processing this information, and identify protections to help mitigate any privacy risks.

Question. Another concern that I have about this policy is that it will just add to the already notorious backlog at the FBI's laboratory. According to press reports, the FBI acknowledges that this new policy will result in an increase of as many as one million additional DNA samples a year. Is the Bureau's laboratory equipped to handle this additional workload?

Answer. The FBI's Federal Convicted Offender (FCO) Program is responsible for collecting and processing DNA samples collected from those convicted of Federal felonies for the purpose of retention and cataloging in the FBI's National DNA Database. The FCO Program supplies collection kits and receives samples from over 500 collection sites across the country. Since the program's inception in June 2001, over 225,000 samples have been received. The FCO Program currently receives 7,000 to 8,000 samples monthly. To date, the FCO Program has uploaded over 34,000 samples into the National DNA Database, which has resulted in over 600 hits. The volume of sample submissions to the FCO Program has increased dramatically since 2001.

While much of the DNA analysis process has been automated, a bottleneck continues to exist at the DNA data review stage, which is currently conducted manually. To alleviate this bottleneck, the FBI is evaluating data analysis software packages or expert systems to automate this part of the process. Once implemented, the resulting system would be able to assess 85 percent to 90 percent of the convicted offender data without manual intervention, reducing data analysis time from approximately 60 minutes (per 80 samples) to less than 15 minutes (a four-fold increase in efficiency).

QUESTIONS SUBMITTED BY SENATOR LEAHY PURSUANT TO THE DECEMBER 6, 2006,
SENATE JUDICIARY COMMITTEE HEARING REGARDING FBI OVERSIGHT

The FBI's responses to the Questions for the Record (QFRs) posed by Senator Leahy to Director Mueller following the December 6, 2006, Senate Judiciary Committee hearing, and resubmitted following this hearing, were provided to the Senate Judiciary Committee by letter dated June 14, 2007, along with the rest of the QFRs posed to the FBI following that hearing. Please refer to the record for the responses to those questions.

Iraq Study Group Recommendations

1. In its recent report about the situation in Iraq, the bipartisan Iraq Study Group found that the Iraqi Police Service ("IPS") is in dire straits. In particular, the report states (on pages 9–10):

The state of the Iraqi police is substantially worse than that of the Iraqi Army. The Iraqi Police Service currently numbers roughly 135,000 and is responsible for local policing. It has neither the training nor legal authority to conduct criminal investigations, nor the firepower to take on organized crime, insurgents, or militias . . . Iraqi police cannot control crime, and they routinely engage in sectarian violence, including the unnecessary detention, torture, and targeted execution of Sunni Arab civilians. . . . There are ample reports of Iraqi police officers participating in training in order to obtain a weapon, uniform, and ammunition for use in sectarian violence. Some are on the payroll but don't show up for work. In the words of a senior American general, "2006 was supposed to be 'the year of the police'" but it hasn't materialized that way.

In recommendation #54 of the report, the Iraq Study Group advocates having the Justice Department direct the training mission of the IPS forces that remain within the Iraq Ministry of the Interior.

(a) Please state whether you agree with this recommendation and explain your response.

(b) What role has the FBI had in the training of the Iraqi police, thus far?

(c) What additional steps will the FBI take to train the IPS in light of the Iraq Study Group's report and in particular, this recommendation?

2. In recommendation #57, the Iraq Study Group recommends that the practice of embedding U.S. police trainers with Iraqi police units be expanded and that the number of civilian officers training Iraqi police be increased.

(a) Please state whether you agree with this recommendation and explain your response.

(b) Are there currently any FBI agents embedded with the Iraqi Police Service? If so, how many?

(c) Will the FBI provide additional police trainers to participate in the training of the Iraqi Police Service and, if so, how many?

3. In recommendation #58, the Iraq Study Group further recommends that the FBI expand its investigative and forensic training and facilities in Iraq, to address both terrorism and criminal activity.

(a) Please state whether you agree with this recommendation and explain your response.

(b) How many FBI agents and personnel are currently providing investigative and forensic training in Iraq?

(c) How many FBI agents and personnel are currently assisting with counterterrorism activities in Iraq?

(d) Will the FBI expand its role in these programs as the Iraq Study Group recommends and, if so, what additional resources, including staff, equipment and funding, will be dedicated to that effort?

4. Public corruption is a significant problem in Iraq. According to the Iraq Study Group's report, one senior Iraqi official estimated that official corruption cost the Iraqi Government between \$5 and \$7 billion per year. To address the rampant corruption in Iraq, the Iraq Study Group concludes that Justice Department programs to create institutions and practices to fight public corruption in Iraq "must be strongly supported and funded."

(a) What resources, including staff, equipment and funding, does the FBI currently have dedicated to helping to fight public corruption in Iraq?

(b) Will the FBI increase the resources that it currently has in Iraq to further assist the Iraqi government in fighting public corruption?

Datamining/ATS and IDW

5. At the hearing, I asked you about the Department of Homeland Security's Automated Targeting System ("ATS") and recent revelations that, since 9/11, the Bush Administration has been using this program to secretly assign terror scores to millions of law-abiding Americans who travel across our borders. You were not prepared to answer my questions about ATS at the hearing; however, you stated that you would look into this matter. Please respond to the following questions:

(a) During an unclassified briefing for Judiciary Committee staff, the Department of Homeland Security said that it shares the sensitive personal information in the ATS database with the FBI and checks the information in this database against the Terrorist Watchlist. Does the FBI receive the terror scores or assessments and the other information contained in the ATS database? Please describe the information that the FBI receives from ATS and explain how the Bureau uses this information.

(b) Does the FBI use the information that it receives from ATS to assist it in investigating traditional criminal cases as well as counterterrorism matters?

(c) What safeguards are in place at the FBI to ensure the accuracy of this information and to protect the privacy interests of the millions of law-abiding Americans whose sensitive personal data is contained in ATS?

6. You also testified that you would check into whether the FBI's own Investigative Data Warehouse database ("IDW")—which now contains more than 560 million FBI and other agency documents—shares information or data with ATS. Does the IDW database share information or otherwise interface with the ATS data-mining program?

7. You further testified that the FBI has issued a privacy impact statement for IDW.

(a) Has the Bureau publicly released this privacy impact statement for IDW and, if not when will the FBI do so?

(b) Has the FBI filed a notice in the Federal Register regarding the IDW program? If not, why not, and when will the Bureau do so?

8. What policies are in place to ensure the accuracy and security of the sensitive personal data contained in the IDW database?

Detainee Treatment

9. Last year's Detainee Treatment Act and this year's Military Commissions Act both set standards for what types of interrogation techniques are and are not permissible. In each case, though, the standards are general and open to interpretation.

(a) Did the Office of Legal Counsel or any other legal office at the Justice Department or the FBI provide guidance to the FBI regarding how to interpret the provisions of the Detainee Treatment Act governing what interrogation practices are permissible?

(b) What form did this guidance take? Did it dictate what specific interrogation techniques can and cannot be used?

(c) What was the substance of this legal guidance? Will you share this document with the Committee?

10. Has the Office of Legal Counsel or any other legal office at the Justice Department or the FBI provided guidance to the FBI regarding how to interpret the provisions of the newly passed Military Commissions Act governing what interrogation practices are permissible?

(a) If so, what is that guidance? Please provide a copy of any legal guidance provided to the FBI regarding the Military Commissions Act.

(b) If not, please explain how your agents know what is permitted or prohibited by the broad language of the Military Commissions Act without legal guidance. Do you expect to receive legal guidance in the future?

11. An FBI Supervisory Special Agent at Guantanamo Bay wrote a memo in November 2002 entitled "Legal Analysis of Interrogation Techniques," in which he or she concluded that rendering terrorism suspects to "Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information" would violate 18 U.S.C. § 2340 (the torture statute). Specifically, the memo states:

In as much as the intent of this category is to utilize, outside the United States, interrogation techniques which would violate 18 U.S.C. § 2340 if committed in the United States, it is a per se violation of the U.S. Torture Statute. Discussing any plan which includes this category, could be seen as a conspiracy to violate 18 U.S.C. § 2340. Any person who takes any action in furtherance of implementing such a plan, would inculcate all persons who were involved in creating this plan. This technique cannot be utilized without violating U.S. Federal law.

Legal Analysis of Interrogation Techniques (available online at http://www.humanrightsfirst.org/us_law/etn/pdf/fbi-brief-inter-analysis-112702.pdf).

(a) Do you agree that the "technique" of rendering suspects to third countries in order to allow those countries to use coercive interrogation techniques that violate U.S. law "cannot be utilized without violating U.S. Federal law"?

(b) Does the legal analysis contained in the November 2002 memo reflect the FBI's current thinking with respect to rendition and other interrogation techniques? If not, how does the FBI's current analysis differ from the analysis in the memo?

12. You testified that the FBI is not investigating any of the allegations that have been made by German national Khalid El-Masri and others regarding possible violations of U.S. law in connection with the rendering of individuals to foreign countries. Why isn't the FBI investigating these allegations?

Brandon Mayfield

13. In December, the government agreed to pay \$2 million to settle a case that had been brought by Oregon lawyer Brandon Mayfield. Mr. Mayfield was jailed for two weeks in 2004 as a material witness, in connection with the Madrid train bombing. As part of the settlement, the government made a formal apology to Mr. Mayfield and his family for the suffering caused by his mistaken arrest. Mr. Mayfield was arrested and held for two weeks on a material witness warrant. Under the material witness law, the government is authorized to arrest a witness to secure his testimony in a criminal proceeding. After the 9/11 attacks, the Justice Department began using the material witness law not to secure testimony from possible witnesses, but rather to lock up possible suspects in counter-terrorism investigations without charge until there is enough evidence to indict. Is it accurate to say that this is what happened in the Mayfield case?

14. The Second Circuit Court of Appeals wrote in 2003 [in the *Awadallah* case] that the purpose of the material witness law is to secure testimony where it may become impracticable to secure the presence of the witness by subpoena. The Court added: "It would be improper for the government to use [the material witness law] for other ends, such as the detention of persons suspected of criminal activity for which probable cause has not yet been established." Do you agree that it is improper for the government to use the material witness law for purposes other than securing testimony?

15. The government noted as part of the settlement with Mr. Mayfield that the FBI had taken steps "to ensure that what happened to Mr. Mayfield and the Mayfield family does not happen again." What steps has the FBI taken? Do they include any new guidance respecting the use of the material witness statute?

Sentinel

16. You testified that there will be no cost overruns or budget shortfalls for the Sentinel program. However, in December 2006, the Department of Justice Office of Inspector General ("OIG") released a report that found that the FBI will need an additional \$56.7 million over what the President requested in his budget for next

year to continue the Sentinel project, and that these additional costs could have an adverse impact on the FBI's counterterrorism and other programs. The OIG's report also calls the FBI's cost estimate for the Sentinel program into serious question.

(a) Does the FBI need additional funds to pay for Phase II of Sentinel and if so, how much additional funding is needed?

(b) You testified that the FBI has set aside \$57 million to make up the difference between the President's \$100 million budget request for Sentinel and the anticipated program costs for Phase II. What FBI programs will be cut back or eliminated in order to use these funds to pay for Sentinel?

(c) Will you promptly inform Congress of Sentinel's operational impact on other FBI programs if reprogramming of funds is necessary to pay for Sentinel?

17. Earlier this year, the Government Accountability Office ("GAO") found that the FBI paid about \$10.1 million in unallowable costs to contractors during the Trilogy program. You have said that the FBI would pursue these funds upon completion of a closeout audit of the Trilogy program by the Defense Contract Audit Agency. When will the FBI start to recover these taxpayer funds?

18. Another concern raised by the GAO is the FBI's over-reliance on government contractors to complete Sentinel. According to the GAO, 77 percent of the positions for Sentinel will be filled by contractors rather than by government personnel. Given the FBI's past experiences with contractors on the Trilogy program, is the Bureau overly relying on contractors for Sentinel?

Arabic-speaking Agents and Translators

19. Despite progress on hiring Arabic translators, the FBI lags far behind when it comes to the number of agents who are proficient in Arabic. Recently, The Washington Post reported that only 33 FBI agents have at least a limited proficiency in Arabic and only 1 percent of FBI agents have any familiarity with the language.

(a) How can the FBI effectively fight the war on terror when most of its agents lack even a basic proficiency in the Arabic language?

(b) How has the lack of Arabic speaking agents impacted the Bureau's ability to develop relationships with Arabic-speaking and Muslim communities within the United States?

(c) How has the lack of Arabic speaking agents impacted the Bureau's ability to gather critical counterterrorism intelligence?

20. You previously testified that the FBI can translate high-priority counterintelligence material within 24 hours. Is this still the case, and what are the realistic prospects for this type of material to be translated in something approximating real time?

Afghanistan Opium Trade

21. Earlier this year, the United Nations Office on Drugs and Crime ("UNODC") reported that there has been a surge in opium cultivation in Afghanistan that is fueling the insurgency in that country. According to the report, opium production in Afghanistan has increased 59 percent over last year and in the southern region where Taliban insurgents have intensified their attacks on Afghan government and U.S. forces, opium cultivation has increased by 162 percent. Given that the Bush Administration routinely describes the international narcotics trade as a national security issue, and that the production of opium has skyrocketed since the invasion of Afghanistan and removal of the Taliban, what does this mean for our national security at home and for the safety of our troops in Afghanistan?

Terrorist Watchlist

22. You recently disclosed that the Terrorism Screening Database ("TSDB") contains 491,000 records and that the FBI's review of the database to ensure the accuracy of these records will take years. The glaring errors in the FBI's Terrorist Watchlist—including the names of Members of Congress, infants and even nuns—clearly make the case for why this review is needed. These errors also suggest that any review of the TSDB must also include finding out how the bad information that is in this database got there in the first place.

(a) What is the FBI doing to find out how bad data got into the TSDB and onto the terrorist watchlist?

(b) Is there any procedure in place that requires the FBI to conduct an internal investigation whenever errors are detected in the TSDB? Should there be?

Cyber Security

23. During the hearing, you testified that cyber crime is one of the FBI's top three priorities on the national security side. In late November, there were unconfirmed reports of a threatened attack on U.S. stock market and the Banking industry

websites by a radical Muslim group. According to press reports, the attack would be in retaliation for the detention of Muslim prisoners at Guantanamo Bay.

- (a) What steps did the FBI take to respond to this threat?
- (b) What resources does the FBI currently have dedicated to U.S. cyber security?

Public Corruption

24. In your testimony at the hearing, you called public corruption the FBI's top criminal investigative priority and you asserted that there has been an increase in the number of agents investigating public corruption cases and the number of cases investigated. However, a September 2005 report by the Department of Justice Office of the Inspector General found that, from 2000 to 2004, there was an overall reduction in public corruption matters handled by the FBI. The report also found declines in resources dedicated to investigating public corruption, in corruption cases initiated, and in cases forwarded to U.S. Attorney's Offices. It further found that some field offices were not giving public corruption sufficient emphasis and had scaled back their anti-corruption efforts.

- (a) What have you done since the Inspector General's report came out to ensure that combating corruption gets the resources and attention it needs?
- (b) Would the FBI benefit from additional resources to combat public corruption? If so, what types of resources would be the most helpful?

25. In your written testimony, you cited the Phoenix Division's Lively Green investigation as an example of the FBI's commitment to, and success in, investigating public corruption. The Arizona Republic reported earlier this year that FBI agents working on the Lively Green investigation paid for a room for informants to stay in a presidential suite at the MGM Grand Hotel in Las Vegas. According to a disclosure made by prosecutors, the informants and suspects staying in the room hired prostitutes and sexually abused an unconscious prostitute. Soon after, FBI personnel recorded conversations which included detailed descriptions of the incident, and agents reviewed lewd photographs from the incident. FBI personnel failed to report the incident to prosecutors, who learned of it only many months later from an informant, and one agent was found to have made statements apparently suggesting that the informants get rid of the incriminating photographs. Although the Lively Green prosecutions went forward successfully, these cases were placed in jeopardy by this conduct.

- (a) What is the FBI doing to ensure that the problems that plagued the Lively Green investigation and other past investigations—agents covering for their informants' misconduct—do not happen again?
- (b) Are you satisfied with the steps that the FBI took to investigate and respond to the misconduct in the course of this operation?

FBI Computer System Failure

26. According to several press reports, the FBI's National Instant Criminal Background Check System, which is used to screen gun buyers, crashed several times in November 2006—potentially allowing gun buyers to purchase firearms without being properly screened. According to the FBI, this background check system receives between 30,000 and 50,000 background check request each day, so this is not an insignificant matter. I have three questions:

- (a) Has the FBI determined what caused the system to crash, and has this problem been fixed?
- (b) Does the FBI know how many gun sales were completed without background checks while the system was down?
- (c) What is the FBI doing to make sure that this problem never happens again?

Mike German / Whistleblowers

27. According to the Office of the Special Counsel ("OSC"), the average number of whistleblowers who have filed complaints with the government has increased by 43 percent since September 11, 2001. Yet, sadly, the number of whistleblowers who have filed reprisal complaints with the OSC because their employers have retaliated against them for coming forward has also increased by 21 percent during the same time period. For example, former FBI special agent Michael German has said that his reputation and career were ruined after he reported concerns about misconduct on the Bureau's terrorism investigations to his superiors. What is the Bureau doing to protect the rights of whistleblowers within the FBI to come forward and disclose government fraud, waste and abuse?

28. Many whistleblowers in the intelligence community are discouraged from coming forward because intelligence agencies are exempted from the Whistleblower Protection Act. Would you support legislation to extend whistleblower protections to national security employees?

Anthrax Investigation

29. The Bureau's investigation into the 2001 anthrax attacks that killed 5, infected 17 others and terrified millions of Americans is now well into its fifth year. Many believe that the investigation has gone very cold and no arrests have been made in the case.

- (a) What is the current status of the anthrax investigation?
- (b) Do you expect that criminal charges will be brought in the case and if so, when?
- (c) You testified at the hearing that the FBI currently has 17 agents and 10 postal inspectors assigned to the anthrax investigation. Has the number of personnel dedicated to the investigation changed? Will you consider increasing the number of agents and investigators dedicated to this investigation?
- (d) How much money has the FBI spent on the anthrax investigation to date?

30. A frequent criticism of the anthrax investigation is that the FBI has made a number of incorrect assumptions about the source of the anthrax and refused to heed outside expert advice in the case. Will the Bureau be open to new theories about the case and more receptive to outside expertise and criticism going forward?

31. You testified that the FBI has "periodically" provided briefings for the family members of the anthrax attacks. When was the Bureau's last briefing to victims and their family members? How often does the FBI provide these briefings?

Combined DNA Index System (CODIS)

32. A recent investigation by USA Today uncovered nearly three dozen cases during the past five years in which investigators failed to pursue potential suspects whose DNA matched evidence found at crime scenes. ("Many DNA Matches Aren't Acted On, Nov. 21, 2006). According to USA Today:

The unpursued matches had this in common: All were recorded as "hits" by the CODIS system and added to the list of CODIS-aided investigations that the FBI makes public. Through September, the FBI counted 39,291 such matches since 1990. No one is certain how many of those matches resulted in arrests or convictions, however. In part that's because no law or regulation requires crime labs, the FBI or local law enforcement to follow through and determine what becomes of DNA matches after the CODIS system reports them to the police. Crime lab officials believe hundreds more matches have not been pursued by authorities. They say those matches might become evident only after a perpetrator is caught for a second time.

- (a) Does the FBI keep any data on how many CODIS matches are pursued by investigators?
- (b) Does the FBI keep any data on how many CODIS matches have helped solve crimes?

33. The leader of the FBI's CODIS unit told USA Today that tracking the results of DNA matches would present a "significant task" that the FBI is not geared to undertake, and that accounting for CODIS matches should be the responsibility of local police and prosecutors who are given match information. Do you agree?

34. Do you have any recommendations for improving accountability in this area? How can the federal government get an accurate measure of CODIS's real world value in solving crimes?

Corporate Fraud

35. You testified during the hearing that white-collar criminal cases were one of the FBI's top three priorities on the criminal side. Recently, Deputy Attorney General McNulty issued new guidelines for corporate fraud investigations to address growing concern about the Department of Justice's investigation and prosecution of corporate fraud cases and, in particular, criticisms of the Department's policy—embodied until recently in the so called "Thompson Memorandum"—to request that corporate defendants produce attorney-client privileged and/or work product information in these investigations.

(a) Does the FBI request or demand that corporate defendants turn over attorney-client privileged or work product information in its corporate fraud investigations? If so, would you describe such requests as routine in white collar fraud cases?

(b) What will the FBI do to ensure that agents investigating corporate fraud cases conform their conduct to fit the standards set out in the new McNulty Memorandum?

Gardner-quinn Murder Investigation

36. During the hearing, you testified that the FBI agent who published details of the Gardner-Quinn murder investigation in a Vermont newspaper is under investigation. What is the status of this investigation and has the agent involved been disciplined by the FBI?

QUESTIONS SUBMITTED BY SENATOR LEAHY PURSUANT TO THE MARCH 27, 2007, SENATE
JUDICIARY COMMITTEE HEARING REGARDING FBI OVERSIGHT

The FBI's responses to the below QFRs posed by Senator Leahy to Director Mueller following the 3/27/07 Senate Judiciary Committee hearing were to be provided to the Senate Judiciary Committee with the rest of the QFRs posed to the FBI following that hearing. Because we are not providing those responses here, we have "grayed out" these particular QFRs.

National Security Letters

1. Despite the recent report by the Department of Justice Inspector General finding illegal and improper use of National Security Letters and so-called "exigent letters," I understand that the FBI may still be using exigent letters. Is the FBI still using exigent letters and if so, why have you not stopped this practice?

2. The Attorney General's guidelines require that the FBI use the least intrusive investigative tools to obtain the information that it needs. During the recent hearing that the Committee held on NSLs, Inspector General Glenn Fine testified that the least intrusive NSL are the ones seeking telephone records and that NSLs for financial records and for credit reports are more intrusive of Americans' privacy. During the hearing, you testified that you believed that NSLs seeking credit reports could be intrusive, but less so than those seeking telephone toll records. Does the FBI have a policy in place requiring that agents first use the least intrusive types of NSLs—such as NSLs seeking telephone toll records—when conducting investigations? If not, will you adopt such a policy to better safeguard Americans' privacy?

3. I am also concerned about the kind of information that the FBI is seeking in its National Security Letters.

(a) Is it true that most of the FBI's NSLs seeking telephone or Internet records under the Electronic Communications Privacy Act ("ECPA") seek only subscriber identifying information? What percentage of these NSLs seek other transactional information, such as toll records or billing records?

(b) With regard to NSLs that seek bank or other financial records under the Right to Financial Privacy Act, the Fair Credit Reporting Act and the National Security Act, what percentage of these NSLs seek detailed financial transaction information, such as bank account records and/or full credit reports?

4. During the hearing, you testified that the information that the FBI improperly obtained through unlawful NSLs has been placed into the FBI's database. What steps have you taken to track all of this improperly obtained information, and have you removed it from all of the FBI's files and databases?

5. Has any of the information improperly obtained through unlawful NSLs been used in any criminal cases or investigations and, if so, have you notified appropriate authorities at the Justice Department in order to make sure none of this information has been improperly used in our justice system?

6. Do you believe that the FBI's failure to follow the law in obtaining NSLs may be exculpatory, or Giglio information, that needs to be disclosed if the information is used in court?

7. The Judiciary Committee has received letters and briefings from FBI and Justice Department officials in the past, assuring us that NSLs were being used properly, and that all appropriate safeguards and legal authorities were being followed. For example, in a November 2005 letter to this Committee (attached), the Justice Department asserted emphatically that the FBI was not abusing the process for seeking NSLs, and that all NSL activity was accurately being reported to Congress as required by law. In light of the Inspector General's report, will you review those letters and briefings to see if anyone at the FBI or the Justice Department has misled this Committee about NSLs?

8. According to the Inspector General's report, one of the major reasons that the FBI failed to report thousands of NSLs to Congress was because of a malfunction in a FBI's computer database. Apparently, this breakdown occurred in 2004, causing the loss of information about more than 8,000 NSL requests. What was the cause of this malfunction, and have you corrected it? Why did you fail to report this problem to Congress?

9. You testified during the hearing that the FBI has revised its internal policy on NSLs and adopted the recommendations contained in the Inspector General's report. But, in 60 percent of the NSLs that the Inspector General reviewed, he found widespread failure on the part of the FBI to comply with its own internal control policies. Given this track record, how can you assure Congress that the new policies that you are implementing will prevent future abuses of NSLs, when the Bureau clearly failed to follow its own policies in the past?

10. During the hearing, you testified that “[t]he relevant standard established by the PATRIOT Act for the issuance of National Security Letters is unrelated to the problems identified by the Inspector General.” Yet, given the broad scope of the abuses uncovered by the Inspector General’s report, it appears that there is a need for additional checks and balances on the authority to issue NSLs. Do you believe that an independent check on the NSL process, such as approval of NSLs by a judge, a Justice Department attorney, or an outside review panel, would improve the NSL approval process and prevent future abuses?

Library Records

11. I appreciate your March 30, 2007, letter responding to my question about how often the FBI has used NSLs to obtain records from libraries and educational institutions. In your letter, you state that the FBI’s Office of General Counsel has maintained an informal list of the number of NSLs served on educational institutions or libraries; however, you also state that this list may not be complete or accurate. Given the importance of this issue to Americans’ privacy and civil liberties, will the FBI agree to formally track the number of NSLs issued to libraries and educational institutions and periodically report this figure to Congress?

12. During the hearing, you cited the Inspector General’s Report on Section 215 of the PATRIOT Act, which found that the FBI rarely used this authority to obtain library records. However, I am concerned that the FBI is using other provisions in the PATRIOT Act to obtain this information, thereby circumventing the safeguards and reporting requirements of Section 215. For example in 2005, the FBI issued NSLs to four Connecticut libraries asking them to surrender “all subscriber information, billing information and access logs of any person” related to a specific library computer during a specific time period, pursuant to Section 505 of the PATRIOT Act. These NSLs also prohibited the librarians from disclosing the fact that they had received the NSLs or their contents—the so-called “gag order” under the PATRIOT Act.

(a) Please describe the circumstances surrounding the FBI’s decision to issue these National Security Letters.

(b) Please identify all of the PATRIOT Act provisions that the FBI has used to obtain library records from libraries and educational institutions?

(c) Is the FBI circumventing the requirements of Section 215 by relying on other provisions in the PATRIOT Act to obtain this information?

Arar/Watchlist

13. I have asked before about Maher Arar, a Canadian citizen who when returning home from a vacation in 2002, was detained by federal agents at JFK Airport in New York City on suspicion of ties to terrorism, and was sent to Syria, where he was held for 10 months. After I pressed the Attorney General about the Arar case at a hearing in January, Senator Specter and I were finally granted a classified briefing. After that briefing, we wrote to request a Justice Department investigation into the matter and have learned that the Department’s Office of Professional Responsibility is looking into the Department’s legal decisions.

(a) Is the FBI taking any steps to evaluate whether your agents and officials acted properly in the Arar matter, particularly with regard to the original decision to send him to Syria, rather than to Canada?

(b) Given that a past OPR investigation of a politically sensitive matter, specifically the NSA’s warrantless wiretapping program, appears to have been blocked, will you commit to cooperate with OPR’s investigation of the Arar case?

(c) What steps has the FBI taken to ensure that you do not participate in sending other people in the future to places where they will be tortured?

14. Despite having been cleared of all terrorism allegations by Canada, Mr. Arar remains on a United States terror watch list. In fact, The Washington Post reported on Sunday that our watch lists keep growing, with the Terrorist Identities Datamart Environment (“TIDE”)—the master list from which other lists, like the No Fly list, are taken—now numbering about 435,000 people.

(a) Doesn’t such a large and constantly growing list actually make it harder for the FBI and others to use the information? Wouldn’t the FBI and other agencies be able to do much more to protect us with a more controlled list, focused on serious and proven threats?

(b) The Washington Post article also noted the difficulty that people on the list, or with names similar to people on the list, have in getting off of government lists—which restrict their travel and their lives. The Government Accountability Office issued a report last year setting out some of the failures throughout the government in allowing individuals effective redress if they are wrongly placed on these lists. In light of the Arar situation, Senator Specter and I asked the Government Account-

ability Office to update their review. What steps has the FBI taken to allow individuals who may be wrongly on watch lists to challenge and correct those designations?

Sentinel

15. Now a year into the Bureau's Sentinel computer upgrade program, I remain concerned about the prospect of this program and its ballooning costs to American taxpayers. Earlier this month, the FBI informed the Committee that it had encountered unexpected problems with the deployment of Phase I of the Sentinel program that would delay the program. Even more troubling, the FBI could not tell Committee staff how long it would take to remedy these problems, or how the delay would impact the overall schedule for Sentinel. What is the current status of the Sentinel program and do you anticipate that there will be additional delays in deploying the program or costs overruns? What impact have the delays with Sentinel—and Trilogy before it—had on the Bureau's ability to fulfill its core mission?

Civil Rights Cold Cases

16. In February 2006, the FBI established a nationwide initiative to re-examine civil rights era cold cases. At a press conference on February 27th, the FBI released a press statement announcing that although 100 cold cases have been referred to the Bureau, the FBI has prioritized only a dozen. I applaud the effort to reexamine these cases, but why has the FBI only prioritized a mere handful of civil rights era cold cases? How many agents, analysts, and other resources has the FBI committed towards this important effort?

17. Earlier this year, I joined Senator Dodd in re-introducing the Emmett Till Unsolved Civil Rights Crime Act. This bill creates permanent unsolved civil rights crimes units within the FBI and the Civil Rights Division of the Justice Department to investigate and prosecute these crimes. This bill will also give law enforcement the resources to ensure that justice is served. As a former prosecutor, I strongly believe law enforcement should have the necessary tools to aggressively seek those who have committed these crimes, regardless of the time that has passed. Would you support the Emmett Till bill? Do you believe this bill gives the FBI the resources needed to thoroughly investigate unsolved civil rights murders?

Lost Laptops/Data Security

18. In February, the Inspector General for the Department of Justice released another troubling report finding that the FBI lost 160 laptop computers—including at least ten computers that contained classified information and one that contained sensitive personal information about FBI personnel—during a 44-month period. Even more troubling, the report also found that the FBI could not even account for whether 51 other computers, including seven computers that were assigned to the Bureau's counterintelligence and counterterrorism divisions, might contain classified or sensitive data. What is the Bureau doing to address its problem of lost laptops and lax data security?

19. Earlier this year, Senator Specter and I reintroduced our Personal Data Privacy and Security Act, which would, among other things, require federal agencies to give notice to the individuals whose data is lost or stolen, when a data breach occurs. Did the FBI notify the individuals whose sensitive personal information was lost in the case of the missing laptops? Would you support this legislation?

20. After the VA lost a laptop containing sensitive personal information about millions of veterans and active duty personnel, Secretary Nicholson instituted a new policy requiring that all of the VA's computers contain encryption technology to prevent the unauthorized disclosure of sensitive information. Will you make a similar pledge to use encryption technology for all of the Bureau's computers?

DNA Sampling

21. Pursuant to a little noticed provision in the Violence Against Women Act reauthorization bill, the Department of Justice is currently developing new guidelines that would greatly expand the Government's ability to collect DNA samples—which reveal the most sensitive genetic information about an individual—from most individuals who are arrested or detained by federal authorities and to store this sensitive biological information in a federal data base known as the National DNA Index System. This new policy will allow the Federal Government to collect DNA samples from hundreds of thousands of illegal immigrants who may be detained by federal authorities and from individuals who may be arrested—in essence, making DNA collection as common as fingerprinting. What privacy protections are in place under the Department's new guidelines to ensure that sensitive DNA data contained in the National DNA Index System will not be misused or improperly disclosed by the FBI or other federal and state agencies?

22. I am also concerned about this new policy because the new DNA evidence collected by the Government will add to the already notorious backlog at the Bureau's laboratory. According to press reports, the FBI acknowledges that this new policy will result in an increase of as many as 1 million additional DNA samples a year. Is the Bureau's laboratory equipped to handle this additional workload? What steps are you taking to make sure that the FBI's laboratory can keep up with the demand for DNA samples?

Improper Reporting of Terrorism Statistics

23. The Department of Justice Inspector General found in another recent report that the FBI failed to accurately report eight of the ten terrorism statistics that it reviewed for this report—that is an 80 percent failure rate. Among other things, the FBI overstated the number of terrorism-related convictions for 2004, because it included cases where no terrorism link was actually found. This is no simple matter—the Congress relies upon these statistics to conduct oversight and to make funding and operational decisions regarding the Bureau. What steps have you taken to address the problems with reporting of terrorism statistics at the FBI?

Staffing

24. I also remain concerned about staffing at the Bureau. In January, your Deputy, John Pistole, told the Senate Intelligence Committee that the FBI expects to lose 400 agents and 400 intelligence analysts this year, due to retirement or attrition. Mr. Pistole also stated that approximately 20 percent (370) of the FBI's intelligence analysts have less than a year of experience with the Bureau. I cannot help but worry that the Bureau will not have the staffing and expertise that it needs to carry out its counterterrorism and counterintelligence mission, given these figures on staffing. What are you doing to address the shortage in intelligence analysts and agents? How many agents and analysts do you expect to hire by the end of 2007?

FOIA

25. I was disappointed to learn that the FBI has not met several of its goals to improve FOIA processing under the President's Executive Order 13392, including the important goal to complete all FOIA requests that are more than two years old by August 2006. What is the current status of the FBI's FOIA backlog?

MI5

26. After the horrific attacks of September 11th, I worked very hard with others in Congress to give the FBI the tools that it needed to combat terrorism and carry out its domestic intelligence functions. Given what we have learned about the widespread misuse of National Security Letters and chronic staffing problems in the Bureau's counterterrorism and counterintelligence offices, some are calling for the Congress to put the Bureau's domestic intelligence operations in a new MI5-styled domestic intelligence agency. Do you believe that Congress should create a domestic intelligence agency to carry out the Nation's domestic counterterrorism activities?

POLITICAL LANDSCAPE "INFORMATIONAL BRIEFINGS" BY WHITE HOUSE FOR SENIOR GOVERNMENT OFFICIALS

Question. A number of recent reports, including Tuesday's (April 24, 2007) Los Angeles Times and today's Washington Post, suggest that White House staff, including Ken Mehlman, Scott Jennings and perhaps others, have provided what a White House spokesman calls "informational briefings to appointees throughout the federal government about the political landscape."

Have appointees or employees at the United States Department of Justice received such "informational briefings"?

Answer. The Department queried components to determine whether any political appointees attended or were aware of any employees within the components attended a briefing with White House officials described in the inquiry. The Department's Office of Information and Privacy and the Executive Secretariat also conducted searches of the electronic and paper files.

The Department's information indicates that employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings actually included a political briefing regarding elections or candidates.

Question. Have appointees or employees at the United States Department of Justice received briefings from White House staff that reviewed polling data?

Answer. The Department's search efforts did not reveal information indicating that briefings of the type described in the inquiry were held at the Department of

Justice. The Department's information indicates that DOJ employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings actually included a political briefing regarding elections or candidates.

Question. Have appointees or employees at the United States Department of Justice received briefings that mentioned congressional election or reelection campaigns?

Answer. The Department's information indicates that DOJ employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings included a political briefing regarding elections or candidates.

Question. According to a front page story in today's Washington Post, before the last midterm election, White House staff conducted 20 such briefings in at least 15 government agencies on the electoral prospects of Republican and Democratic candidates. If any such briefings have occurred at the Department of Justice, please provide me with the specifics on when they occurred, who attended, what was shared and said, and all documents reflecting such matters in the custody, possession or control of the Department.

Answer. The Department's search efforts did not reveal information indicating that briefings of the type described in the inquiry were held at the Department of Justice. The Department's information indicates that DOJ employees attended briefings at the White House's Eisenhower Executive Office Building and in one instance, at the U.S. Department of Agriculture. The Department's records do not indicate whether all of the meetings included a political briefing regarding elections or candidates.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

INDIAN COUNTRY METHAMPHETAMINE PROBLEMS

Question. As you know, methamphetamine is a growing problem around the country, second only to alcohol and marijuana as the drug used most frequently in many Western and Midwestern states. Meth has become an epidemic because of its low cost and ready availability. Law enforcement officers continue to raid record numbers of clandestine labs. Despite these efforts, meth use in communities continues to increase. These labs present a clear and present danger to the citizens of my state and to people across the country.

Congress has passed the Combat Meth Act to provide valuable new resources and tools to states, local law enforcement and prosecutors to combat the production and distribution of meth while at the same time educating our communities about meth. The DEA is requesting \$29.2 million for its Southwest Border and Methamphetamine Enforcement Initiative.

I'm told by experts in my home state of New Mexico that many of our meth problems are the result of the drug being brought into the United States from Mexico. I have also been told that the decrease in illegal importation of Meth is directly correlated to the increase in clandestine labs. I am very concerned about meth production and use on the Native American lands in New Mexico. Knowing the FBI's jurisdiction in Indian Country, has the FBI seen an increase in violent crimes and felonies on the Navajo Nation and in the four-corners area of New Mexico that are meth related?

Answer. The FBI has noted increases in the use of methamphetamine and in methamphetamine-related violence in this area over the past four years, and in some locations the increase in violence has included an increase in the number of assaults on law enforcement officers by methamphetamine traffickers and users. While the overall level of violent crime in Indian Country (IC) has remained relatively constant from 2004 to the present (based on the number of pending cases, cases opened, arrests, indictments, informations, and convictions for murder, assault, adult rape, and child physical abuse), the incidence of IC violent crime remains high.

It is the FBI's understanding that research by the Office of National Drug Control Policy indicates a reduction in the number of methamphetamine laboratories in the United States, with much of the methamphetamine used in the United States being manufactured in Mexico. These drugs are often trafficked through IC for sale in the United States. These findings are consistent with the FBI's analysis and experience and, in an effort to address the surge in IC methamphetamine trafficking, the FBI

has continued to expand its STTF initiative. Sixteen STTFs, comprised of Federal, tribal, state, and local law enforcement officers, operate throughout the IC. The interagency partnerships established in these task forces benefit IC law enforcement by leveraging resources. On many Native American Indian reservations, the STTFs provide the only effective narcotics investigation capabilities. Initial data for fiscal year 2007, indicate that STTFs obtained 69 indictments, arrested and/or located 96 subjects, obtained 86 convictions, and disrupted two drug trafficking organizations.

Question. What other trends are you seeing on Tribal Lands relating to felony criminal activity that is under the purview of the FBI's jurisdiction?

Answer. FBI SAs assigned to IC continue to report high levels of violent crime on Native American reservations throughout the United States, including a marked increase in the number of IC child sexual assault cases in fiscal year 2007 as compared with fiscal year 2005 and 2006. The number of child sexual assault cases opened in fiscal year 2007 outnumbered those for fiscal year 2006 by 7 percent.

In order to better equip Federal and tribal officials investigating IC child sexual assault allegations, the FBI has developed a course focused on forensic interviews of children in IC cases. This training was offered regionally on three occasions in fiscal year 2007 and will be offered again in fiscal year 2008. In addition, the FBI has worked to create a state-of-the-art child advocacy center on the Crow Reservation in Montana. This center, which opened on 4/24/07, provides child-appropriate interviewing services to IC investigators on the Crow and Northern Cheyenne Reservations. (This valuable resource has also been used by state officials investigating the alleged sexual abuse of non-Indian children.)

Compounding the problems associated with high violent crime rates and drug trafficking in IC are increasing problems related to IC street gang structures, many of which engage in drug trafficking to enhance their gang influence. The majority of large Native American reservations suffer from some level of gang influence, ranging from "emerging" to established street gang structures engaged in organized criminal activity. In the past, Native American gangs engaged primarily in property-based crimes such as graffiti and vandalism. IC law enforcement officials are particularly concerned about the movement toward more violent criminal acts, including sexual assaults, gang rapes, home invasions, drive-by shootings, beatings, and elder abuse. During a 2006 assessment of gang activity on the rural Crow Indian Reservation in Montana, teenage gang members told FBI SAs of impending drive-by shootings on that reservation and acknowledged "jumping in" (severely beating) and "sexing in" (requiring sexual activity from) prospective female gang members.

The emergence of Native American gangs in IC has largely been attributed to the strained Native American social environment and pervasive media influences. Native American gangs often assume characteristics of urban street gangs, using common signs, symbols, names, slang, and attire. These gangs have been significantly influenced by members who were previously incarcerated and involved in prison gang cultures. As incarcerated individuals have been released from prison to their reservation communities, they have enhanced their influence by promoting their prison gang affiliations, fostering the growth of criminal gang cultures in IC. In addition to prison gang influences, IC law enforcement officials have noted the emergence of female Native American gangs, members of which have escalated their violent behavior in order to prove they are as violent and anti-social as their male counterparts.

The FBI sponsors training for all levels of IC law enforcement, including approximately 25 classes per year for 1,200 Federal, state, local, and tribal law enforcement officials. This training addresses Native American gangs, crime scene processing, child abuse investigations, forensic interviewing of children, homicide investigations, interviewing and interrogation, officer safety and survival, crisis negotiation, and Indian Gaming.

INTERNET CRIME

Question. The Albuquerque Journal reported this week that over the past two years, internet crime in my home state of New Mexico has increased by over 235 percent, while internet crime nationwide has remained at the same levels. This news story went on to state that the technology boom in rural America may be the cause of increased internet criminal activity in New Mexico. Electronic criminal activity is a serious issue that appears to be difficult to investigate and prosecute.

Has the FBI made any inroads into cracking down on this type of criminal activity?

Answer. The series of international searches, arrests, and confessions accomplished in the past several years through Operation Fast Link and Operation Site

Down have enabled the FBI to make significant progress in addressing IP Internet criminal activity. The FBI is also focusing on the counterfeiting of business software and hardware products, which has significant international impact. The FBI will continue to work with industry, state and local law enforcement authorities, and our foreign law enforcement partners to ensure that our IP enforcement measures are as effective as possible and address the problem at all levels.

Question. What is the FBI doing to assist local law enforcement with investigations related to internet crime?

Answer. The FBI's approach to Internet crime includes more than 75 cyber task forces, which include state and local law enforcement and leverage the FBI's ability to provide support and guidance in support of their local investigations. These task forces supplement the FBI's investigative efforts by supporting not only IP rights and Internet crime investigations, but also computer intrusion and "Innocent Images" investigations.

In addition, the Internet Crime Complaint Center (IC3), which is a project jointly run by the FBI and the National White Collar Crime Center, receives over 22,000 Internet crime complaints per month from consumers and businesses. All complaints received by IC3 are accessible to Federal, state, and local law enforcement to support active investigations, trend analysis, and public outreach and awareness efforts. During 2006, IC3 referred 86,279 complaints of crime to Federal, state, and local law enforcement agencies around the country for further consideration. The vast majority of these cases involved fraud and a financial loss on the part of the complainant.

SUBCOMMITTEE RECESS

Senator MIKULSKI. So, this subcommittee stands in recess until 10 a.m., Thursday, May 3, when we will take testimony from the Equal Employment Opportunity Commission.

Mr. MUELLER. Thank you, Madam Chairman, and thank you for letting me out of here so I can attend to the next function I have to make.

Thank you.

[Whereupon, at 11:43 a.m., Thursday, April 26, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, May 3.]