

FEDERAL BUREAU OF INVESTIGATION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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FEDERAL BUREAU OF INVESTIGATION

WEDNESDAY, MAY 20, 2009

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:22 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Cohen, Johnson, Quigley, Sherman, Gonzalez, Schiff, Wasserman Schultz, Maffei, Smith, Sensenbrenner, Coble, Gallegly, Lungren, Issa, King, Franks, Gohmert, Jordan, Poe, Rooney, and Harper.

Staff present: Robert Reed, Majority Oversight Counsel; Crystal Jezierski, Minority Oversight Counsel; and Renata Strause, Majority Staff Assistant.

Mr. CONYERS. Good morning. The Committee will come to order. And now we would like to turn to the business of the day.

This is the regular oversight hearing on the Federal Bureau of Investigation.

We welcome FBI Director Rob Mueller to today's hearing. The FBI is the anchor of the Nation's Federal law enforcement.

The bureau has responsibilities, as we recall, to include the ability to combat crime, conduct surveillance, initiate investigations, and to effectively perform its responsibility requires an internal strength inside its own operations.

And I would like to just point out that the recent inspector general's report regarding the FBI disciplinary system raised questions about the process within the bureau.

We are hoping that FBI personnel who engaged in the improper use of exigent letters, once the IG's upcoming report is released, when we find out what actually happened, we will expect a proper follow-through.

We want to ensure that the FBI has the resources to combat the problems that have arisen out of the global financial crisis that started in the United States with the subprime mortgage meltdown and we want to make sure that FBI has the resources to investigate questionable activity.

We know that there was mismanagement, more than likely, fraud, white-collar crimes, perhaps even RICO issues, that have contributed to this very serious economic problem now facing the country.

I will put the rest of my statement in the record, and turn to Lamar Smith, the Ranking Member of the Committee, from Texas.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, following the terrorist attacks of 9/11, the mission of the bureau changed dramatically from that of a traditional law enforcement agency to an agency tasked with investigating terrorism and national security threats.

The bureau has undertaken significant efforts to conform to its new mission, to revise its investigative techniques, retrain its agents, and more effectively analyze and respond to intelligence information.

America is safer today because the men and women of the bureau and other agencies work tirelessly to protect us.

At the end of this year, the remaining temporary provisions of the USA PATRIOT Act are set to expire. These provisions, which include roving wiretap and FISA business records authority, are essential to the bureau's ability to prevent acts of terrorism and respond to other threats to our national security.

To ensure that there is no lapse in these vital authorities, I have introduced legislation to extend the expiring provisions for 10 years.

The threat to America from terrorists, spies and enemy nations will not sunset at the end of this year and neither should America's antiterrorism laws.

Despite the bureau's efforts to keep America safe from terrorists, I am concerned that the new Administration's decision to close Guantanamo Bay may result in some of the most dangerous terrorists being transferred to the U.S. or released into America's communities.

To me, bringing terrorists to the U.S. undermines the bureau's efforts to prevent another terrorist attack. No good purpose is served by allowing known terrorists, who trained at terrorist training camps, to come to the U.S. to live among us.

Guantanamo Bay was never meant to be another Ellis Island. Terrorists were detained there for a reason—to keep American's safe.

I understand that the bureau is part of the Gitmo detainee review process established by President Obama. I hope that the bureau will express its concerns to the Administration about the threat these terrorists pose to Americans here at home.

While the bureau pursues its national security efforts, I know it will continue its law enforcement mission, including the investigation of widespread fraud associated with America's financial crisis.

Many factors contributed to this collapse, including predatory lending by corrupt lenders, mortgage fraud, and even foreclosure fraud.

Another important focus of the bureau is preventing crimes against children, particularly Internet-based crimes involving child pornography or child exploitation.

Often, the only mechanism for identifying an operator or user of a child pornography Web site is their Internet photo-call address.

Currently, a law enforcement officer can request subscriber information from an Internet service provider. However, ISPs regularly purge these records, making it difficult, if not impossible for law

enforcement officials to apprehend the distributors and consumers of child pornography on the Internet.

I have sponsored bipartisan legislation, the Internet Safety Act, to require ISPs to retain these records for up to 2 years.

I am interested in knowing what are Director Mueller's thoughts on the need for record retention to investigate child pornography and other Internet-based crimes, and I will be asking a question about that in a minute.

Again, Mr. Chairman, I thank Director Mueller for joining us today and I look forward to hearing from him.

I yield back the balance of my time.

Mr. CONYERS. Thank you.

All other Members' statements will be included in the record at this point.

We welcome, again, Robert Mueller, III, director of the FBI since September 4, 2001, from Princeton, Virginia Law School, the Marines, where he received combat medals, assistant United States attorney in San Francisco, in Boston and Washington, DC.

He served with distinction in two law firms and called back from San Francisco to Washington in early 2001 to become acting deputy general, until he served—and is the director.

We welcome you again to our humble Committee room. Your statement is in the record, and we urge you to make your comments as you would like us to hear them.

Welcome, again. Good morning.

**TESTIMONY OF THE HONORABLE ROBERT S. MUELLER, III,
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

Mr. MUELLER. Thank you, Chairman Conyers, Ranking Member Smith, and other Members of the Committee.

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

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

Certainly, the threats currently present in the national security arena continue to be a grave concern. Terrorism remains our top priority and, as was illustrated by the Mumbai attacks, we cannot become complacent.

Al Qaida, lesser known groups and homegrown terrorists will continue to pose a threat to the United States.

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

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

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

As was pointed out, economic crime is, of course, a critical concern now more than ever. For example, the FBI's mortgage fraud caseload has nearly tripled in the past 3 years from over 800 to over 2,400 active investigations.

The FBI currently has more than 580 pending corporate fraud investigations, including cases directly related to the current financial crisis.

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

For example, we created the national mortgage fraud team at FBI headquarters to prioritize pending investigations, provide additional tools to identify the most egregious violators, and provide strategic information to evaluate where additional manpower is needed.

We also have established 18 mortgage fraud task forces and 50 working groups with other government agencies across the country so that we may more effectively focus on these problem areas.

While the FBI is surging resources to mortgage fraud, public corruption investigations, our expectation is that economic crimes will continue to skyrocket.

The unprecedented level of financial resources committed by the Federal Government to combat the economic downturn will lead to an inevitable increase in economic crime and public corruption cases.

Historically, the bureau has handled emerging criminal threats by transferring personnel within its criminal branch to meet the new threat. Since September 11, we have lost some of this elasticity.

In response to the September 11 attacks, the FBI permanently moved approximately 2,000 of its criminal agents to our national security branch. This transfer has substantially improved our counterterrorism program and we have no intention from retreating from preventing another terrorist attack on American soil as our number one priority.

But the logical consequence of cannibalizing our criminal resources to augment our national security efforts is that we have reduced the ability to surge resources within our criminal branch.

Although we have begun an effort to rebuild our criminal resources back to our pre-9/11 levels, we still have a substantial way to go.

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

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

Violent crime, let me discuss this for a moment, because it, quite obviously, is a very serious concern. And although data indicates violent crime continues to decline across the country, in general, the citizens of many communities, especially small to midsized cities, continue to be plagued by gang violence and gun crime.

Since 2001, our gang cases have doubled and the spread of international gangs, such as MS-13, has increased. The FBI continues to combat this threat through more than 200 safe streets, gang violent crime and major theft task forces across the country.

These task forces enable us to work effectively with state, local, tribal and international partners to provide an immediate response to surges in violent crime.

And so, too, must we continue our work with state and local counterparts to combat crimes against children, the most vulnerable members of our communities.

While the FBI is committed to combating child sexual exploitation, child pornography via the Internet, trafficking and child prostitution, or abuse on Federal lands or Indian country, more must be done.

I thank the Committee for its support of increased resources to the bureau in this area and would be happy to continue working with you to ensure our Nation's children are protected.

We are also deeply concerned about the high levels of violence along the southwest border. Gang activity, drug cartel competition for supremacy, murders and kidnappings plague the border in both the United States and Mexico.

The impact of these crimes can even extend well beyond the border into America's communities. And we will continue our strong alliance with our Mexican and domestic law enforcement partners to address border-related crime, especially as it relates to public corruption, gangs, and intelligence analysis.

Finally, we will continue our efforts to combat health care fraud, mindful of estimates that more than \$60 billion of our Nation's health care spending each year is lost to fraud.

In 2008, FBI investigations led to nearly 700 convictions of health care-related crime and we will continue partnerships with the national health care organizations and other Federal agencies to address these cases as we are able.

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

We know that the FBI's best and strongest asset is our people. And so we have paid attention to recruiting, training, and maintaining a workforce with the skills necessary to meet the challenges of today's mission.

Our hiring goals include agents, intelligence analysts, IT specialists, linguists, and professional staff. And this year, we have received more than 450,000 applications and have already extended 5,500 job offers.

Finally, a few words regarding improvements in the FBI's technology. Sentinel, our Web-based case management system, is on

time and on target. The bureau currently has more than 30,000 workstations in the FBI unclassified network, providing desktop Internet connectivity to employees throughout the enterprise.

BlackBerries with internet capability have been issued to 24,000 of our employees, and we are strengthening other information technology programs to help us operate more efficiently.

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

Mr. Chairman, Representative Smith, Members of the Committee, I appreciate the opportunity to be here today and look forward to answering your questions.

Thank you, sir.

[The prepared statement of Mr. Mueller follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT S. MUELLER, III



Department of Justice

STATEMENT OF

ROBERT S. MUELLER, III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

HEARING ENTITLED

"THE FEDERAL BUREAU OF INVESTIGATION"

PRESENTED

May 20, 2009

I. Introduction

Good morning Chairman Conyers, Ranking Member Smith, and Members of the Committee. I am pleased to be here today.

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

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

I want to give you a brief sense of the FBI's current priorities, the key changes we have made in recent months, and the challenges we face.

II. FBI Transformation

In the aftermath of the September 11, 2001, attacks, counterterrorism became our top priority, and it remains our top priority today. Indeed, our top three priorities – counterterrorism, counterintelligence, and cyber security – are national security related. As a result of that shift in our mission, we have made a number of changes in the FBI, both in structure and in the way we do business.

A. Restructuring of FBI Intelligence Program

We have expanded our counterterrorism operations, strengthened our capacity to collect, analyze and use intelligence on potential threats, and expanded our partnerships with other intelligence agencies.

Inside the FBI, we stood up the National Security Branch and the Weapons of Mass Destruction Directorate. We hired hundreds of intelligence analysts, linguists, and surveillance specialists. We created Field Intelligence Groups (FIGs) in each of our 56 field offices. And, we are conducting a strategic, nationwide re-organization of the FBI that has already improved our ability to identify, evaluate and prevent attacks before they get off the ground.

These changes are part of our ongoing campaign to “Know Our Domain,” as we say. Domain awareness is a 360-degree understanding of all national security and criminal threats in any given city or community. It is the aggregation of intelligence, to include what we already know and what we need to know, and the development of collection plans to find the best means to answer the unknowns. It involves intelligence analysts and special agents gathering, analyzing, and using information about threats, and sharing it in near real-time within a community, across the country, and around the world. With this knowledge, we can allocate resources effectively, identify and neutralize emerging threats, and develop new opportunities for intelligence collection and criminal prosecution.

Here are a few examples of the changes we’ve made in order to maximize the effectiveness of our intelligence program and realize our goal to “Know Our Domain.”

We established a Strategic Execution Team (SET) to help us assess our intelligence program, and to standardize it throughout the FBI. The SET, made up of agents and analysts, developed a series of recommendations for accelerating the integration of our intelligence and investigative work. The SET improvements will ensure that we capitalize on our intelligence collection capabilities and develop a national collection plan to fill gaps in our knowledge base. Our objective is to defeat national security and criminal threats by operating as a single intelligence-led operation, with no dividing line between our criminal and counterterrorism programs. We want to make sure that nothing falls through the cracks.

To this end, we have restructured the FIGs in every field office across the country. FIGs are designed to function as the hub of the FBI's intelligence program. They ensure that each field office is able to identify, assess, and attack emerging threats before they flourish. Following the SET's recommendations, the FIGs now conform to one model, based on best practices from the field, and adapted to the size and complexity of each office. Each FIG has well-defined requirements for intelligence gathering, analysis, use, and production. Managers are accountable for ensuring that intelligence production is of high quality and relevant not only to their own communities, but to the larger intelligence and law enforcement communities.

As a result of these changes, the analysts and agents in the FIGs collect intelligence more completely, analyze it more quickly, share it more widely with others who need the information, and take action on it more effectively. Now, FIGS can better coordinate with each other and with Headquarters. And, they can better coordinate with law enforcement and intelligence partners, and the communities they serve. With this

integrated model, we can turn information and intelligence into knowledge and action, from coast to coast.

We are now in the process of implementing SET concepts at FBI headquarters, to improve strategic alignment between the operational divisions and the Directorate of Intelligence. We want to better manage national collection requirements and plans, and ensure that intelligence from our Field Offices is integrated and shared with those who need it at FBI headquarters and in the larger Intelligence Community.

This is not a program that will be implemented as a quick fix. The work of the SET is critical to the long-term success of the FBI. We are training FBI personnel at all levels in order to help us execute these plans long past the initial rollout. We have clear metrics for success, and clear lines of accountability to ensure that we reach our goals. We are committed to implementing these plans and making our national security and intelligence capabilities even stronger.

In addition to our work inside of the FBI, we integrated our intelligence program with other agencies under the Director of National Intelligence, with appropriate protections for privacy and civil liberties. And, we participate in, and share information with, multi-agency intelligence centers, including the Organized Crime Drug Enforcement Task Forces Fusion Center, the El Paso Intelligence Center, and the National Drug Intelligence Center. In short, we have improved our national security capabilities across the board.

B. Improvements to FBI Technology

I want to turn for a moment to recent improvements in FBI technology. We cannot gather the intelligence we need, analyze that intelligence, or share it with our law enforcement or intelligence partners, without the right technology. The right technology will also be crucial to protecting privacy interests and ensuring proper use of sensitive information.

One of our most important programs is Sentinel, our web-based case management system. Phase I was deployed FBI-wide in June 2007. Information is now pushed to users electronically, moving employees away from dependence on paper files and making it faster and easier to access and connect information.

Phase I set the foundation for the entire enterprise. We are working with Lockheed Martin to implement Phase II in increments, with a target completion date of Fall 2009. Throughout this phase, we are delivering new capability to all users with the migration of full Administrative Case Management to Sentinel. Phases III and IV are scheduled to be delivered in early Spring 2010 and Summer 2010, respectively.

Proper training will be provided to all users, ensuring maximum exploitation of Sentinel's capabilities.

We are also strengthening the information technology (IT) programs that allow us to communicate and share with our partners. For example, we launched an initiative to consolidate the FBI's Unclassified Network with Law Enforcement Online (LEO), which is the unclassified secure network we use to share information with registered law enforcement partners.

This will provide a single platform that allows FBI employees to communicate and share with their internal and external partners. Currently, LEO provides a secure communications link to and among all levels of law enforcement and is available to more than 18,000 law enforcement agencies. LEO has a user community of more than 137,000 vetted members.

As part of the LEO platform, the FBI is delivering the eGuardian system – an unclassified counterterrorism tool available to our federal, state, local, and tribal law enforcement partners through the FBI's secure LEO internet portal. The eGuardian system will work in tandem with Guardian, the FBI's classified web-based counterterrorism incident management application. Guardian makes threat and suspicious activity information immediately available to all authorized users. Guardian will then make available unclassified threat and suspicious activity information through eGuardian, enabling law enforcement personnel to receive the most current information. In return, any potential terrorist threat or suspicious activity information provided by law enforcement will be made available in Guardian entries and outward to the FBI task forces.

In September 2008, we piloted eGuardian to several fusion centers, the Department of Defense, and the Federal Air Marshal Service. Today, eGuardian has been deployed nationwide to enable near real-time information sharing and tracking of terrorist information and suspicious activities with the FBI's federal, State, local, and tribal partners.

We are also in the midst of developing what we call "Next Generation Identification" system, which enhances the FBI's fingerprint-based identification, known

as the Integrated Automated Fingerprint Identification System, to include better ways to exchange biometric data. This will better enable us to find criminals and terrorists who are using the latest technology to shield their identities and activities. In support of our multi-modal biometrics efforts, we have also established the Biometrics Center of Excellence at our Criminal Justice Information Services (CJIS) complex in West Virginia. Its mission is to serve as a research and development, test and evaluation, and standards promulgation center for not only U.S. law enforcement, but for other government entities that share similar challenges in the positive identification of individuals of concern.

We have also developed a system called the Law Enforcement National Data Exchange, (N-DEx). N-DEx is a national information-sharing system, accessible to law enforcement agencies through a secure website. It will allow nationwide searches from a single access point and leverages the current IT infrastructure managed by our CJIS division that already interconnects almost every US law enforcement agency. We successfully completed the initial deployment last year and will continue to refine and expand it.

Through N-DEx, law enforcement officers will now be able to search databases for information on everything from tattoos to cars, allowing them to link cases that previously seemed isolated. They will be able to see crime trends and hotspots, access threat level assessments of individuals or locations, and make the best use of mapping technology. It is not a new records management system, but one that allows us to share and link the information we already have.

The FBI also participates in OneDOJ. The OneDOJ System is the result of the Department of Justice Law Enforcement Information Sharing Program strategy among the FBI, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Bureau of Prisons, Drug Enforcement Administration (DEA), and the United States Marshals Service, for the exchange of investigative case/incident, arrest, booking, and incarceration data. These agencies are considered Department of Justice (DOJ) component users, while regional sharing systems are considered remote local, state, and federal law enforcement partners. OneDOJ supports the DOJ component users and remote law enforcement investigators and analysts through storage for contributed data, services for structured and unstructured searching of remote partner data stores and DOJ data, notification, secure communications, and reporting. Currently, the FBI's Criminal Justice Services Division is tightly integrating the OneDOJ System into the Law Enforcement National Data Exchange System for national level investigative information sharing.

We are also working to improve our confidential human source management system. Intelligence provided by confidential human sources is fundamental to the FBI mission. To better manage that data, we are putting in place a program known as DELTA. DELTA will provide FBI agents and intelligence analysts a uniform means of handling the administrative aspect of maintaining human sources. It will also enable FBI headquarters and field offices to better understand, connect, operate, and protect confidential human sources.

We are also improving our crisis management systems. The Operational Response and Investigative Online Network (ORION) is the FBI's next-generation Crisis Information Management System, which provides crisis management services to federal,

state, local, and tribal law enforcement and/or emergency personnel. ORION standardizes crisis and event management processes, enhances situational awareness, and supports the exchange of information with other command posts.

ORION provides a web-based crisis management application hosted on the Sensitive But Unclassified and FBI Secret networks that is also deployable in a stand-alone configuration via Critical Incident Response Group Fly-kits to locations without Internet or Secret network access. The ORION application is accessible from almost any desktop with FBINET or UNET connectivity using a standard web browser. It has been used at both the Democratic and Republican national conventions, major sporting events, to include the Olympics, and this year's Inauguration.

I know the FBI's progress in reducing the backlog of name check requests, especially in the area of immigration, has been of great interest to Members of Congress. We have made significant improvement during Fiscal Year (FY) 2008, with that trend continuing into FY 2009. At the beginning of FY 2008, the FBI had over 402,000 pending name check requests submitted by the United States Citizenship and Immigration Services (USCIS), with over 380,000 of those pending for more than 30 days. As of March 31, 2009, the FBI has processed over 99 percent of all incoming USCIS name checks within 60 days for the fiscal year and had only 30 USCIS name check requests pending for more than 30 days. The FBI will build on this success and will further streamline and improve the name check process.

C. Human Capital

These improvements in structure and technology will strengthen the FBI's intelligence capabilities. But we know that people are the FBI's best and strongest asset – one we must capitalize on to achieve our mission.

As you know, we have been hard at work building a strong Human Resources program to ensure we have the optimum recruiting, hiring, training, and retention practices for our employees.

The changing workforce of the United States will have different expectations than previous generations, challenging the FBI to evolve its career development practices and offer new opportunities for growth in order to attract talent. We must also continue to enhance our intelligence capabilities, adding to the skill sets of on-board employees. Finally, we must ensure there is sufficient leadership bench strength to lead the organization now and into the future.

Historically, the FBI has attracted recruits from the law enforcement, legal, and military communities, particularly to fill our Special Agent ranks. This has served us well as a law enforcement agency.

But as we develop into a national security agency, we also require employees with specialized skills — intelligence analysts, surveillance specialists, scientists, linguists, and computer experts.

Our hiring for FY 2009 includes goals to bring on board approximately 2,800 professional staff, including intelligence analysts, information technology specialists, language specialists, and 850 new agents. Through our recruiting efforts, we have received more than 450,000 applications. We have extended more than 5,500 job offers

and continue to work through the tremendous response from Americans who want to dedicate their careers to public service.

In order to help our people achieve their career aspirations, we have created career paths for agents and analysts alike. For example, the intelligence analyst career path provides early training, including a developmental rotational program, mentoring, and a range of job experiences, as well as opportunities for advancement. We have also developed a dedicated career path for Special Agents who specialize in intelligence. Our goal is to establish career paths for all employees.

We are also focused on strengthening our training programs. The FBI Academy at Quantico and the National Academy have long been considered premier law enforcement training academies. We are enhancing our Intelligence Training School at Quantico to build similarly strong intelligence skill sets. We are leveraging our Intelligence Community partners to help us develop curriculum and provide expert instruction, including a recently introduced human intelligence training course that we developed jointly with the Central Intelligence Agency.

A 2009 priority is to revamp our approach to developing leaders at all levels of the FBI. To that end, we have launched a leadership development initiative to identify and implement an interconnected set of leadership training and developmental experiences for all employees, at all levels.

In order to support our human resources programs, we have also launched an initiative to transition the FBI to an updated Human Resources Information System. We are evaluating systems to identify the best platform for the FBI, which will provide us

with the technological infrastructure that managing a strong Human Resources program requires.

Diversity in the FBI workforce is one of my top human resource priorities. Improving the diversity of our workforce at every level of the organization requires a top-to-bottom effort to recruit, train, retain and promote qualified women, minorities, and persons with disabilities. For example, for some time now, we have been recruiting aggressively in historically black colleges, through the association of Hispanic colleges, and at tribal universities. We have also been placing targeted ads in minority-oriented radio programs, periodicals, job fairs, and other venues that are designed to reach minority communities. We have made progress in our efforts to diversify the FBI, but much work remains to be done.

We are committed to investing the time and resources to provide the training and development, mentoring, and job experiences that will hone our employees' management, leadership, and technical skills. Today's new employees are the leaders of tomorrow's FBI, and we are committed to ensuring the FBI has continuous and strong leadership well into the future.

III. Threat Overview

These improvements are necessary for the work ahead of us. The threats we face are diverse, dangerous, and global in nature.

A. Counterterrorism

As you know, terrorism remains our top priority. We have not had a terrorist attack on American soil in more than seven years, but that by no means indicates the threat is over. We must continue to be vigilant.

Today, we still face threats from Al Qaeda. But we must also focus on less well-known terrorist groups, as well as homegrown terrorists. And we must consider extremists from visa-waiver countries, who are merely an e-ticket away from the United States. Our primary threat continues to come from the tribal areas of Pakistan and Afghanistan. But we are seeing persistent activity elsewhere, from the Horn of Africa to Yemen.

We are also concerned about the threat of homegrown terrorists. Over the years since September 11, 2001, we have learned of young men from communities in the United States, radicalized and recruited here to travel to countries such as Afghanistan or Iraq, Yemen or Somalia. We must also focus on extremists who may be living here in the United States, in the very communities they intend to attack.

Given these substantial threats, terrorism will remain our top priority. But it is by no means our only priority.

B. Economic Crime

In the wake of September 11th, we were confronted with radical changes to the FBI – changes that were necessary to address the terrorist threat. Yet at the same time, we faced a rash of corporate wrongdoing, from Enron and WorldCom to Qwest. We needed to prioritize our resources.

Public corruption is our top criminal priority. We have approximately 2,500 pending public corruption investigations and have seen a significant increase in public corruption cases since 2003. In the past five years, the number of agents working public corruption cases has consistently increased to the current level of over 600 agents. And we have convicted more than 1,618 federal, state, and local officials in the past two years alone.

Apart from public corruption, economic crime remains one of our primary concerns. Our mortgage fraud caseload has more than tripled in the past three years, from over 800 cases to more than 2,400. In addition, the FBI has more than 560 open corporate fraud investigations, including matters directly related to the current financial crisis.

To meet this challenge, we have had to re-prioritize our criminal programs to address the current financial crisis. In FY 2007, we had 120 agents investigating mortgage fraud cases. In FY 2008, that number increased to 180 agents, and currently over 260 agents are assigned to mortgage fraud and related cases.

Unfortunately, there is no sign that our mortgage fraud caseload will decrease in the near future. To the contrary, Suspicious Activity Reports (SARs) from financial institutions have indicated a significant increase in mortgage fraud reporting filed with the Financial Crimes Enforcement Network (FinCEN). For example, during FY 2008, mortgage fraud SARs increased more than 36 percent to a total of 63,173. So far in FY 2009, there have been 33,291 mortgage fraud SARs filed. While the total dollar loss attributed to mortgage fraud is unknown, seven percent of SARs filed in FY 2008 indicated a specific dollar loss, which totaled more than \$1.5 billion.

To make the best use of our resources, the FBI has found new ways to detect and combat mortgage fraud. One example is the use of a property flipping analytical computer application, first developed by the Washington Field Office, to effectively identify property flipping in the Baltimore and Washington areas.

This original concept has evolved into a national FBI initiative that employs statistical correlations and other advanced computer technology to search for companies and persons with patterns of property flipping. As potential targets are analyzed and flagged, information is provided to the respective FBI Field Office for further investigation.

In addition, sophisticated investigative techniques, such as undercover operations and wiretaps, not only result in the collection of valuable evidence, they provide an opportunity to apprehend criminals in the commission of their crimes, thus reducing loss to individuals and financial institutions. By pursuing these proactive methods in conjunction with historical investigations, the FBI is able to realize operational efficiencies in large scale investigations.

In December 2008, the FBI dedicated resources to create the National Mortgage Fraud Team at FBI headquarters. The team has specific responsibility for the management of the mortgage fraud program at both the origination and corporate level. They will assist FBI field offices in addressing the mortgage fraud problem at all levels. And they will provide tools to identify the most egregious mortgage fraud perpetrators, prioritize pending investigations, and provide information to evaluate where additional manpower is needed.

One of the best tools the FBI has for combating mortgage fraud is its long-standing partnerships with government and industry partners. Currently, there are 18 mortgage fraud task forces and 50 working groups across the country. These task forces are strategically placed in areas identified as high threat areas for mortgage fraud.

Partners are varied, but typically include representatives of Housing and Urban Development, the U.S. Postal Inspection Service, the Internal Revenue Service, Financial Crimes Enforcement Network, the Federal Deposit Insurance Corporation, and State and local law enforcement officers. This multi-agency model serves as a force multiplier, providing an array of resources to identify the source of the fraud and finding the most effective way to prosecute each case.

Last June, for example, we worked closely with our partners on “Operation Malicious Mortgage”, a multi-agency takedown on mortgage fraud schemes, with more than 400 defendants across the country. Thus far, 164 defendants have been convicted in federal, State, and local courts for crimes that amount to more than \$1 billion in losses. Forty six of our 56 field offices took part in the operation, which has also resulted in the forfeiture or seizure of more than \$60 million in assets.

The FBI is one of the DOJ participants in the national Mortgage Fraud Working Group, which DOJ chairs. Together, we are building on existing FBI intelligence databases to identify large industry insiders and criminal enterprises conducting systemic mortgage fraud.

We also continue to foster relationships with representatives of the mortgage industry to promote mortgage fraud awareness. We are working with industry partners to develop a more efficient mortgage fraud reporting mechanism for those not mandated to

report such activity. This Suspicious Mortgage Fraud Activity Report concept is being discussed with FinCEN and is under consideration by the Mortgage Bankers Association.

The FBI is the primary federal investigative agency involved in the fight against health care fraud. National health care spending in the United States exceeded \$2.2 trillion and represented 16 percent of the Nation's Gross Domestic Product in 2007. The Federal Government financed more than one-third of the Nation's health care that year; federal and state governments collectively financed 46 percent of U.S. health care costs. The National Health Care Anti-Fraud Association estimates that 3 percent of the nation's health care spending—or more than \$60 billion each year—is lost to fraud. With health care expenditures rising at three times the rate of inflation, it is especially important to coordinate all investigative efforts to combat fraud within the health care system. More than \$1 trillion is spent in the private sector on health care and its related services and the FBI's efforts are crucial to the overall success of the program. The FBI leverages its resources in both the private and public arenas through investigative partnerships with agencies such as the Department of Health and Human Services Office of the Inspector General, the Food and Drug Administration, the DEA, the Defense Criminal Investigative Service, the Office of Personnel Management, the Internal Revenue Service, and various state and local agencies. The FBI is actively involved with national groups, such as the National Health Care Anti-Fraud Association, the Blue Cross and Blue Shield Association, the National Insurance Crime Bureau, and many other agencies, organizations, and professional associations in an effort to expose and investigate fraud within the system.

The Department of Justice and the FBI have resources in every region of the country to investigate and prosecute health care fraud, and have enhanced resources in health care fraud hot spots. The number of pending FBI investigations has shown steady increase from nearly 600 pending cases in 1992 to over 2,400 cases FY2008. FBI led investigations resulted in nearly 700 criminal health care fraud convictions and over 800 indictments and information being filed in FY 2008. The Department of Justice estimates that since the inception of the Health Care Fraud and Abuse Control program (HCFAC) in 1997, the Department of Justice has obtained more than \$14.3 billion in total recoveries, which include criminal fines and Federal and State civil settlements in health care matters, predominantly involving losses to the Medicare program. The HCFAC program funding was used to support 769 FBI positions (460 Agent, 309 Professional Support) in FY 2008.

The FBI also continues to vigorously investigate Intellectual Property crime. In early 2009, the FBI received funding which enhanced the FBI's Intellectual Property Rights (IPR) program. This will allow 31 new FBI Agents to be hired to specifically investigate and oversee IPR violations. This funding also supports the standing up of an IPR Unit to be co-located at the Department of Homeland Security (DHS) led Immigration and Customs Enforcement (ICE) IPR National Coordination Center in Crystal City, VA. The IPR Unit will include five Special Agents tasked with conducting interagency IPR investigations with prosecutive support from Department of Justice Computer Crimes and Intellectual Property Section attorneys. Participation in the IPR will assist in the de-confliction of IPR investigations with other the participating agencies.

The IPR Unit will be tasked with spearheading two high priority major case initiatives, Fractured Skies and Engine Newity. Fractured Skies will focus on counterfeit or substandard aircraft components while Engine Newity will focus on counterfeit automotive parts. Both initiatives are multi-divisional, multi-agency efforts to address dangerous health and safety related IPR violations.

The co-location of the IPR Unit will strengthen the FBI's coordination efforts with several government agencies who share a concern regarding the proliferation of counterfeit goods. These agencies include the US Patent and Trademark Office, US Department of Commerce, US Chamber of Commerce, and domestic and foreign law enforcement agencies.

C. Other Crimes

While Americans justifiably worry about terrorism and white collar crimes, other crimes also impact their daily lives. We understand that national security is as much about stopping crime on our streets as it is about preventing terrorism.

Taking this on requires us to squaring priorities within existing resources. We currently have roughly a 50/50 split in resources between national security and criminal programs. To make the best use of these resources, we will continue to focus on those areas where we bring something unique to the table, and to target those criminal threats against which we will have the most substantial and lasting impact. In addition to public corruption and economic crimes, we investigate many other forms of criminal behavior including violent crime, gangs, criminal enterprises and crimes against children.

Data from the Uniform Crime Report indicates that violent crime continued to decline across the country in 2008. But this may not reflect what is actually happening on the streets, particularly in small to mid-size cities. Street-level crime is a key concern, with gang violence and gun crime largely to blame.

Since 2001, our gang cases have more than doubled. This increase did not happen by chance. Our National Gang Intelligence Center (NGIC) has been a significant source of actionable gang information. We have agents assigned full time to the Department's analytical and operational arm, the National Gang Targeting, Enforcement & Coordination Center (GangTECC), and we work closely with the Department's dedicated gang prosecutors at Gang Unit. We have more Safe Streets Task Forces in more mid-size cities. We have more than 200 Safe Streets, Gang, Violent Crime, Safe Trails, and Major Theft Task Forces across the country, with more than 850 FBI agents. And we continue to work in tandem with our state and local partners to provide a balance between immediate responses to surges in violent crime and long-term solutions.

We are deeply concerned about the high levels of violence in Northern Mexico. All too often, this violence can be traced back to three things: drugs, human smuggling, and cartel and gang activity. Because gangs are a transnational threat, the FBI formed the MS-13 National Gang Task Force. These agents and analysts coordinate investigations with our counterparts in Mexico and Central America.

Of course, drug-related violence is not new to the border area. But there have been shifts in alliances among Mexican drug trafficking organizations. These Mexican cartels are vying for control over lucrative smuggling corridors across the Southwest

border, leading to increasingly violent competition between and within Mexican drug trafficking organizations.

Mexican authorities continue their efforts to cut off drug smuggling routes from Mexico to the United States. Under President Calderon, and with support from the United States, the government of Mexico has made record seizures of drugs, clandestine laboratories, and cash. Mexican law enforcement agencies have arrested many high level drug cartel members who are being extradited to face prosecution in the United States in record numbers. One of the consequences of their efforts has been a surge in violent crime, particularly drug-related homicides in Mexico. As law enforcement cracks down on these drug trafficking organizations, the traffickers often turn against each other and against government authorities. The cartels are engaging ever more heatedly in the types of violent crime frequently associated with drug trafficking, such as murder, extortion, and kidnappings.

To address the surge in kidnappings, the FBI works closely with Mexican police officials on a Bilateral Kidnapping Task Force, as well as other ad hoc task forces and working groups along the border. To combat drug-related violence, FBI agents work with DEA, ATF, and DHS and participate on Organized Crime and Drug Enforcement Task Forces and strike forces, which target the most significant drug trafficking organizations in the region.

We have created Southwest Intelligence Group and located it in the same building as the DEA's El Paso Intelligence Center. Our intelligence group will serve as a clearing house for all intelligence related to Mexico, and provide analysis relating to crime along the border.

In sum, we are taking what we have learned about intelligence and we are applying it to criminal investigations. Rather than focusing on the number of arrests, indictments, and convictions, we are focusing on the intelligence we need to prevent crime in the first place. And we are maximizing our resources by working with partners here at home and abroad.

IV. Global Reach of the FBI

Like other federal agencies, we are worried about the economic downturn and the impact on criminal and terrorist threats against the United States. But at the same time, we understand that our role cannot be limited to the domestic front. The FBI's global role is primarily to address these threats. While there are no borders for crime and terrorism and there can be no borders for justice and the rule of law, borders are far from irrelevant.

Through our 61 Legal Attaché offices around the world, our international training programs, and our joint investigations, we have strengthened our relationships with our international law enforcement partners and expanded our global reach.

Global cooperation is not merely the best way to combat global crime and terrorism, it is the only way. And we must cooperate not only with our international law enforcement and intelligence partners, but with our private partners as well.

Consider cyber crime, for example. As the world grows more dependent on information technology systems, keeping these systems viable and secure has become an increasingly urgent national priority. Our increased reliance on technology has created

an irresistible target for criminal activity, and that activity is by no means limited to the United States.

Currently, the largest source of transnational cyber crime is Eastern Europe. Annual estimated loss to financial institutions in responding to these attacks exceeds \$200 million in the United States alone.

To combat this growing threat, the FBI has developed close working relationships with law enforcement partners within high-value target countries such as Russia and Romania, and also with allies who are victimized by these cyber criminals. We have close working relationships with countries such as Australia, New Zealand, Canada, the United Kingdom, Italy, the Netherlands, Germany, France, Poland, Estonia, and Japan, and these partnerships are paying off.

For example, in November of last year, cyber criminals executed a highly sophisticated scheme to defraud a major payment processor. Hackers gained access to the network of this payment processor and increased the funds available for a small number of payroll debit cards.

In less than 24 hours, more than \$9 million was withdrawn in connection with more than 14,000 automated teller machine transactions in 28 different countries, from the Ukraine to the United States, Canada, Italy, and Japan, among others. To date, there are more than 400 known victims, and the investigation is ongoing.

From a law enforcement perspective, the ability to respond to these attacks is hampered by their scale and their international scope. We simply cannot address this problem alone in its entirety. The growing global threat will continue to pose problems so long as attacks continue from technically sophisticated, underemployed, underpaid

actors operating from countries whose diplomatic relations with the United States may be less than ideal.

We also confront a patchwork of laws, regulations, and private industry requirements – all of which prohibit reporting and investigation on an international scale. By extension, a lack of reporting of such security breaches inhibits information sharing and hampers law enforcement and private industry in the long run.

Global cooperation addressing these cyber threats would better equip victim organizations and support a comprehensive and unified approach by law enforcement, giving us the means to leverage the collective resources of many countries. A global response will ensure deterrence, enhance confidence, and increase security in the long run. For these very reasons, we will continue to build partnerships with our international law enforcement and intelligence counterparts, and our private sector partners as well. And we will continue to investigate these kinds of transnational threats to the fullest extent of our reach and our capability.

V. Conclusion

Over the past 100 years, the FBI has earned a reputation for protecting America that remains unmatched. Many of our accomplishments over the past seven years are in part due to your efforts and your support, and much of our success in the years to come will be due to your continuing support. From addressing the growing gang problem to creating additional Legal Attaché offices around the world, to compensating our personnel and protecting the American people from terrorist attack, you have supported our mission and our budget requests.

Mr. Chairman, I would like to conclude by thanking you and this Committee for your service and your support. On behalf of the men and women of the FBI, I look forward to working with you in the years to come. I would be happy to answer any questions you may have.

Mr. CONYERS. Thanks for your opening statement.
Could I ask Lamar Smith to begin the questioning today?

Mr. SMITH. Thank you, Mr. Chairman.

And, Director Mueller, thank you for being here today.

My first question is this. In general, what concerns do you have about releasing individuals suspected of terrorism into our communities? What dangers could they pose?

Mr. MUELLER. Well, I am quite aware of the discussions that are ongoing in the Department of Justice and elsewhere in the Administration as to what should be done with the detainees in Guantanamo.

I can speak generally, without getting into those discussions, that the concerns we have about individuals who may support terrorism being in the United States run from concerns about providing financing to terrorists, radicalizing others with regard to violent extremism, the potential for individuals undertaking attacks in the United States.

All of those are concerns relevant to an individual who comes into the United States, from whatever source, who may present a challenge.

Mr. SMITH. Thank you.

Recently, you have said that you support reauthorization of the three expiring provisions of the PATRIOT Act.

Do you foresee any need to make any changes in those three expiring provisions?

Mr. MUELLER. No. I previously, when questioned, testified that the three provisions, the first one, the business records provision, has been exceptionally useful for us over the period of time that it has been on the record books and we have used it over 230 times.

The second provision that is sunseting relates to roving wiretaps. We have used that over 140 times. It has been exceptionally useful and cut down on not only paper, but also enabled us to better facilitate our investigations.

And, lastly, the Lone Wolf provision, while we have not used it with regard to an indictment, it continues to be available for that individual whom we lack evidence to put with a particular terrorist group, but does present a threat as an international terrorist.

Each of those three provisions are important to us. And while I don't believe the Department of Justice has yet weighed in with its letter, this is what I have testified to in the past and is my current opinion.

Mr. SMITH. And you don't foresee the need to make any changes in any of those provisions.

Mr. MUELLER. Not at this juncture.

Mr. SMITH. Okay.

Mr. MUELLER. No, sir.

Mr. SMITH. Do you see the need to make any changes in the standards for issuing national security letters?

Mr. MUELLER. No, I do not. I know, in the past, I have had discussion with Congressman Nadler in terms of the standard for the issuance of national security letters and as I have said before and believe to this day, that national security letters enable us to obtain information on the fact of a call as opposed to the content of a call is absolutely essential in order to building the probable cause

we need for a warrant from the Foreign Intelligence Surveillance Act, and we would be badly hampered if we did not have that tool available to us with the current standard.

Mr. SMITH. Thank you for that answer.

The last question is this, and this goes to—and you covered it a little bit in your opening statement—the need to better prosecute and reduce the prevalence of Internet child pornography.

I have introduced a bill, bipartisan bill, that requires the Internet service providers to retain their records for 2 years to allow the law enforcement authorities to be able to go after the individuals who buy their trade.

Would you support that 2-year retention of those records by the ISPs?

Mr. MUELLER. Well, I would be guided by, being in the Department of Justice, by the—guided by the position taken by the Attorney General and the Department of Justice.

On the other hand, I can say that in any investigation, particularly when it comes to child pornography or even terrorism, where you may identify an individual who is utilizing the Internet either for child pornography or either recruiting or operating a terrorist network recruiting or operating over the Internet, it is not just that which you pick up on the first day of the investigation that is essential not only to the investigation, but successful prosecution, but those records, historical records that may be available that enable you to both further the investigation and undertake the prosecution.

Mr. SMITH. So longer record retention would be helpful.

Mr. MUELLER. Yes.

Mr. SMITH. Isn't the international standard 2 years for record retention or don't many countries use that 2-year period?

Mr. MUELLER. I haven't looked at it in a while, but I believe, the last time I looked at it, it was up to 2 years. I think the European Union has adopted a standard of up to 2 years.

Mr. SMITH. Two years, okay. Thank you, Director Mueller.

Thank you, Mr. Chairman.

Mr. CONYERS. The Chairman of the Constitution Subcommittee, Jerry Nadler.

Mr. NADLER. Thank you, Mr. Director.

I heard your answer to Mr. Smith's question a moment ago about the Guantanamo detainees being released to the United States, but you were referring to terrorists released to be free in the United States, obviously, from the context of your question.

My question is: assuming that people at Guantanamo are released into super-maximum security prisons in the United States, is there any problem holding them there?

Mr. MUELLER. Well, I hesitate to get into the specifics. It depends where the person is held, what kind of security procedures there are.

Mr. NADLER. I didn't ask that. I said do we have the capacity to hold dangerous people in our maximum security prisons.

Mr. MUELLER. Yes.

Mr. NADLER. Does their presence in our maximum security prisons present any danger to the United States?

Mr. MUELLER. Again, it depends on the circumstance. If it is a national security, if it is Florence or something, I think it would be very difficult for the person to get out and very difficult for the person to undertake any activity.

However, I will caveat by saying that in gang activity around the country, using it as an analogy, there are individuals in our prisons today, as I think you and others are familiar, who operate their gangs from inside the walls of prison.

So while there may not be the opportunity to escape, there may still be the risk, as we have seen—

Mr. NADLER. We have a very—

Mr. MUELLER [continuing]. Operating.

Mr. NADLER. We have a number of Al Qaida prisoners convicted and things like Ramzi Yousef and the sheikh, what is his name, from the 1990's, and planned to blow up the World Trade Center, planned to blow up the Holland Tunnel and so forth.

We have those people in our prisons today, do we not?

Mr. MUELLER. Yes.

Mr. NADLER. Have they presented any particular danger to us?

Mr. MUELLER. If you are talking about physical danger in terms of being able to escape and undertake an attack, no.

Mr. NADLER. Thank you.

Let me turn to the subject of national security letters. Two years ago, the IG for the Department of Justice issued her first report on the FBI's use of NSLs from 2003 to 2005. The IG made 11 recommendations for improvements.

In the second report, last year, the IG found that a number of actions have not yet been taken to implement their recommendations.

What is the current status of the FBI's implementation of the recommendations from the IG's March 2007 report? Have they all been fully implemented?

Mr. MUELLER. I would have to check on each one of those. I know we pursued every one of them. There may be one or two which we have a disagreement with, but I would have to get you the report card on each of those recommendations.

Certainly, as soon as we have received those reports, we have started implementing those recommendations and, in many cases, to the extent that we have information about a procedure that needs to be upgraded or changed, we would make the changes in anticipation of the report and the recommendations.

Mr. NADLER. Thank you.

Now, as you know, there have been recent reports that—well, actually, these were responses to questions posed to the FBI by the—questions posed to the FBI General Counsel Caproni in response to her March 2007 appearance before this Committee.

And in her answer, provided in January, she said, "The FBI"—the questions were with respect to information collected by NSLs, but not relevant or being no longer relevant, whether those would be destroyed.

And she writes as follows, "The FBI has legitimate investigative reasons for retaining information properly collected during the course of an authorized investigation, even if the data pertains to

individuals who are ultimately determined not relevant to that investigation.”

The answer concludes, “The FBI does not support a policy that requires the destruction of data merely because, upon initial analysis, the person to whom it relates appears irrelevant to national security concerns.”

Is the FBI saying by this answer that all NSL-collected information is kept indefinitely, even when the subject is not relevant to an FBI law enforcement purpose?

Mr. MUELLER. I think you have to put it in the context of a records retention policy for all investigations, whether it be a grand jury subpoena, whether it be records retained as a result of an NSL, and the records retention policy gives us guidelines in terms of how long we maintain those records, even though records may be obtained in the course of an investigation which proved to be irrelevant to the solution.

It can occur in a national security investigation, it could occur in a kidnapping investigation, a public corruption investigation in which we obtain, either by grand jury or administrative subpoena or testimony, records that only are determined to be irrelevant, but we keep that according to our records retention policy.

Mr. NADLER. You keep that indefinitely?

Mr. MUELLER. You keep that, sir, and I think it is 20-25 years.

Mr. NADLER. So you keep for 20 or 25 years—

Mr. MUELLER. Twenty years, yes.

Mr. NADLER. You keep for 20 years information about innocent people, private information that you have collected in the course of an investigation in which it turns out they had nothing to do with.

Mr. MUELLER. We may well undertake an—an allegation may come in as to the involvement of a person in a mortgage fraud scheme. We go and investigate, find that that person is innocent, the allegation is false, we keep those records, yes.

We have a records retention policy, which we have had for the 100 years of our existence, that, in some sense, requires us to keep the records.

I can tell you, from the perspective of the Freedom of Information Act, in terms of what we have to go through, there are substantial records that have been maintained according to our records retention policy, even though it may relate to persons who ultimately are not indicted, are not convicted of a crime for which they are being investigated.

Mr. NADLER. Thank you.

Mr. CONYERS. We now turn to our first ex-attorney general from the State of California, Dan Lungren.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Mueller, a number of years ago, I was in Los Angeles for a hearing that was, at that time, chaired by Jane Harman. It was a meeting of the Homeland Security Committee and it was specifically to investigate the issue of prison radicalization, at least with respect to California prisons, and we had testimony from people who had had experience in New York and I believe we may have had testimony from Federal officials.

This was a concern with respect to hate groups, with respect to terrorist groups and so forth.

Do you share that concern?

Mr. MUELLER. Yes. If I can broaden it somewhat, we recognize that there is a potential for radicalization in a number of ways, whether it be for gang activity, for terrorist groups, for other extremists.

With regard specifically to terrorists, in the wake of September 11, we have now, I think, it is over 100 joint terrorism task forces around the country.

Generally, we will have persons on the task force from certainly the Federal prison entities, but also may well have persons representing the institutions in a particular state, to keep our fingers on the potential for radicalization and prisons.

Also, having been in San Francisco, I am familiar with Pelican Bay, for instance, and the concerns that one has in Pelican Bay, not only physically being within Pelican Bay, but also the operation of those outside of prison.

Mr. LUNGREN. Well, that is our highest security prison and even there we have difficulty ensuring that those inside the prison don't direct actions outside the prison.

Mr. MUELLER. But on the Federal side, as well as the state and local side, there are intelligence efforts to assure that we pick up on individuals who may present threats.

Mr. LUNGREN. Does the name Lynne Stewart mean anything to you?

Mr. MUELLER. Yes.

Mr. LUNGREN. And Lynne Stewart is?

Mr. MUELLER. I believe she was involved with a radical group—I am having trouble—

Mr. LUNGREN. Well, she was a defense attorney representing the blind sheikh.

Mr. MUELLER. Ah, yes, that is—

Mr. LUNGREN. And I believe she has been convicted of Federal offenses relating to being a conveyor of information from the blind sheikh inside the prison setting to those outside.

Does that refresh your recollection?

Mr. MUELLER. Yes.

Mr. LUNGREN. You don't have to state an opinion on that, but to me, that gives reality to the concerns some have about increasing the number of terrorists that we have on our shores, whether they are in prison or out of prison.

I want to give you a hypothetical. If, hypothetically, some who are currently in Guantanamo were to come here to an incarceration facility and then, in accordance with a Federal judge's decision that they be released, they would have to be released in this country, because the country of origin would not take them, under those circumstances, would the FBI view those individuals as suspected terrorists or people that you would have to keep an eye on while they are in the United States?

Mr. MUELLER. I am not certain it is a hypothetical, but in the sense that—

Mr. LUNGREN. Well, I am, because I am not going to presuppose that a Federal judge would do something like that, because we know they have great respect for the executive branch. Under those circumstances.

Mr. MUELLER. I think, generally, to the extent that persons who have some background in either supporting, facilitating or training with terrorists, it would present a concern to which we would utilize—maximize our efforts to minimize and mitigate that concern, whether it be by surveillances or wires or other efforts to assure that we have minimized that concern.

Mr. LUNGREN. I appreciate that, because I think the American people ought to understand that some people held at Guantanamo Bay are most likely not subject to criminal prosecution. We are not holding them for that purpose.

We are holding them because they are combatants in the traditional definition of combatants and under the rules of war, you have the right to hold them until the cessation of hostilities.

However, we have had some Federal judges who take a different position. Therefore, you could have the possibility of someone coming into the United States by access to the Federal courts, making the argument that they are not subject to criminal prosecution, a Federal judge saying you could not hold them indefinitely, and, therefore, allowing them out, and a foreign country not receiving them.

And we have limitations as to how long we can keep someone like that incarcerated before they must go out in the public domain.

And so while I gave you a hypothetical, I think people ought to realize that is a legitimate concern that we in Congress ought to deal with.

And I thank you very much, Mr. Chairman.

And I thank you, Mr. Director, for your time and your service.

Mr. CONYERS. Thank you.

The Chair of the Crime Subcommittee, Bobby Scott of Virginia.

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you, Mr. Director, for being with us.

You mentioned financial crimes, health care, specifically. There are other, of course, financial crimes, ID theft, the securities fraud. We have had a lot of Ponzi schemes revealed, organized retail theft, which are essentially financial crimes, and, of course, the mortgage fraud.

We have testimony that there are only about 250 FBI agents with accounting backgrounds assigned to the mortgage fraud case, whereas approximately 1,000 were assigned to the savings and loan debacle a few years ago, which was only one-third the size.

We just recently passed legislation that would give you resources to hire additional agents to address financial fraud.

Can you provide us with your capacity needs in terms of accountants so that we can address these financial crimes?

ID theft is going on now, to a large extent, because nobody thinks they are going to get caught. If you do the legwork, you can investigate and prosecute those cases, but, basically, they are just—the credit card company wipes it off, there is nobody complaining, and the people continue their fraudulent activities.

Can you give us an idea of your capacity needs to address all of these areas of financial misdeeds?

Mr. MUELLER. Yes, I would be happy to do that. I will say that we have—you are accurate in terms of those on mortgage fraud, we

have 260 agents. We have another 100-plus agents on corporate fraud and another 150 on securities fraud.

But we did have, at the height of the savings and loan crisis, almost 1,000 agents addressing this.

We would be happy to provide that material. There was, in the stimulus package that came from the Senate, a bill which would have accorded us an additional 165 special agents to address this, but did not last and is not part of the legislation.

But we will be happy to provide you with a recitation of the needs that we feel we—or the numbers we would need in order to fully address the issue.

Mr. SCOTT. We have legislation on the way to the President that would authorize additional funding. So hopefully we can address that.

You are familiar with the Federal Prison Industries.

Mr. MUELLER. Yes.

Mr. SCOTT. Do you view that as a positive program that helps reduce recidivism?

Mr. MUELLER. Yes.

Mr. SCOTT. Thank you.

Backlog and DNA kit. As you know, particularly in New York City, there are thousands of untested DNA samples, which means that cases are not being prosecuted and people aren't being caught.

Can you give us an idea of what we need to provide you in terms of resources to eliminate the DNA backlog?

Mr. MUELLER. Let me address it to you and, also, Congressman Schiff, I know, has asked questions in the same area.

If I recall correctly, last week, the question put by Congressman Schiff to the Attorney General related to the fact that we got additional moneys, \$30 million.

We had made an assertion that with that \$30 million, we would have reduced our backlog from the convicted offender program by, I think, January 1 or December of this year.

We got the \$30 million, but we did not get our budget to March. And so the personnel that are reflected in that \$30 million, along with the technical equipment we need, we now have and my expectation in reducing the backlog on the convicted—putting samples into the convicted offender program will be June 1 of next year.

It has been 6 months because of basically the budget delay. But we will have, I believe, by this time next year, by then, have additional persons, but, also, technological improvements, reduce that backlog.

We do have a caseload backlog. Most of that caseload backlog relates to missing persons, and I would be happy to get you additional numbers on that backlog.

When it comes to New York or Los Angeles or other cities where there is a backlog of rape kits, it generally is where the police departments utilize either private laboratories, state laboratories or municipal laboratories, and those—unless they are a Federal case, we generally do not handle them.

Mr. SCOTT. I wanted to get in one more question before time goes out, and that is on the issue of torture.

Can you tell us what participation there was by FBI agents in enhanced interrogation techniques that everybody in the world,

other than a few people in the last Administration, viewed as torture, what participation there was by FBI agents?

Mr. MUELLER. We followed our protocol, which does not include coercion of any kind.

Mr. SCOTT. And what does that mean in terms of your participation in what was going on?

Mr. MUELLER. We did not participate in the—except for maybe an isolated incident, relatively minor, one or two, we did not participate in the use of those techniques, enhanced interrogation techniques.

Mr. SCOTT. Is that because you concluded that they were illegal?

Mr. MUELLER. I would not say that it was because it was illegal. I would say because we felt it was necessary to follow our own protocols. We believe that our protocols work and are effective and given the work that we do, our protocols were appropriate to the work we were asked to do.

Mr. CONYERS. The Chair recognizes Howard Coble of North Carolina, a senior Member of Judiciary.

Mr. COBLE. Thank you, Mr. Chairman. Mr. Chairman, I had to go to a piracy hearing. I am sorry I am late getting here.

Mr. Director, good to have you with us.

Mr. Director, last week, the Attorney General testified before this Committee and I posed a question, as did a couple of my colleagues, regarding the organized retail crime problem.

According to the North Carolina Retail Merchants Association, the FBI, in conjunction with several other law enforcement agencies, successfully apprehended and charged individuals involved in three alleged fencing operations in western North Carolina.

I am told that future operations may be severely affected because of resources or lack of resources.

Will the FBI continue to pursue these cases and are you able to comment on whether the U.S. attorney intends to prosecute the individuals in these three cases?

Mr. MUELLER. I am not in a position to say what the U.S. attorney would do.

In terms of resources, we are—as I have indicated previously, we have to prioritize and the retail fraud is down on our list of priorities.

We try to leverage our capabilities and work closely with state and local law enforcement. And so quite probably, if there is a need in a particular jurisdiction to address a particularized threat, then we would participate and help our state and local law enforcement authorities to address it.

I am not familiar with those three cases, be happy to get back to you in terms of what happened in those cases and whether or not it is likely that we will be participating in additional such cases.

Mr. COBLE. If you could, I would appreciate that, because as you know, it is a problem that just plagues the retail community very severely.

Mr. Director, I am told that the bureau currently operates 18 regional task forces and 47 working groups to investigate mortgage fraud.

Can you update the Judiciary Committee on all the bureau's efforts to combat mortgage fraud specifically, but other types of fraud, as well?

Mr. MUELLER. Well, as I believe I indicated either in my written remarks or my opening remarks or in response to other questions, we have over 2,400 mortgage fraud cases, we have 260 agents that are addressing those; over 580 corporate fraud cases, of which over 40 of those relate to the subprime mortgage industry, with 113 agents; and, over 1,300 cases of securities fraud, with 158 agents.

We have a total of almost 530 agents working in this field. Many of them are accountants. They are backed up by accounting technicians, intelligence analysts and professional staff.

As you pointed out, we have a number of task forces. We have 18 and then another 47 working groups. We have requested additional resources in the budget submissions and our hope is to improve on that.

I will say, over a period of time, we have been very successful in our investigations and prosecutions. What we have to do is prioritize and expedite those investigations and prosecutions to have the maximum deterrent effect.

We prioritize them. We want to make certain that the most culpable are prosecuted swiftly and quickly and are serving time in jail.

We have reached out to the—with the anticipation of additional frauds as a result of the TARP program and other programs, we have reached out to the inspector generals to put into place record-keeping systems that will enable us to better investigate.

I met with the new director of the securities commission, Mary Schapiro, this last week to coordinate better our works with the Securities and Exchange Commission, and my expectation is, working together, that we will continue our successful investigations and prosecutions. It is a question of resources.

Mr. COBLE. Thank you, sir.

Mr. Director, I assume that mortgage fraud is generally regarded as a Federal offense, is it not?

Mr. MUELLER. Yes.

Mr. COBLE. I thank you, sir. I thank you for your service and thank you for being with us.

Mr. MUELLER. I will say, though, that part of our approach in addressing this is it is not only a Federal offense, but often is a state and local offense, and we want to make certain that if, for some reason, we do not take on the Federal side, that state and local law enforcement work closely with us and take it on the state and local side.

Mr. COBLE. And I repeat, thank you for your service, for being here.

Thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Mel Watt is a senior Member of the Committee, Chairman of the Finance Subcommittee, and a past Chairman of the Congressional Black Caucus.

Mr. WATT. Thank you, Mr. Mueller. Thank you for being here. I want to try to get to three different areas, if I can.

First of all, we have had, as a very practical question that I will set up like this, we have had a major spike in my district offices

of complaints about mail fraud and scams on seniors that essentially involve calls from out-of-state sources saying that they have won some lottery or “pay me X number of dollars to go and find this big bucket of money for you.”

And local law enforcement can’t handle that, nor can state law enforcement handle it, because the calls are coming from out of state.

I was on the phone recently with some gentleman in San Francisco professing to be a customs officer with the Federal Reserve is what he represented to me.

As a member of the Financial Services Committee, I immediately contacted the Federal Reserve to find out whether this person existed. He didn’t exist. He was representing, in fact, to my mother that she had won some big pot of money.

My practical question is under those circumstances, what is the best way for me to get you all engaged when we have a specific complaint in our district offices?

Mr. MUELLER. It is your local FBI office. Just pass it on to the local FBI office. There is a complaints agent who is there during the day, will take the complaint and follow up.

What you find is—what we find in these scams, and there are a number of them out there and it is not just a customs officer from the Federal Reserve, they use the FBI and they use me, amongst others.

Mr. WATT. Right.

Mr. MUELLER. And what we try to do is accumulate them, identify the persons responsible, and then pursue them federally, if it all possible.

Mr. WATT. Well, I have a name and a phone number for you, and I will get it to my local.

But I am telling you that because of the allocation of resources that you just discussed with Representative Scott and Representative Coble, the reallocation of resources to terrorism, antiterrorism, which is important, a lot of these things just are not getting priority and they are on the increase.

So I hope that you all are going to aggressively seek more agents to do domestic kinds of situations.

I am not suggesting that we can fall back on our efforts to protect our citizens from the homeland security and terrorism concerns that are going on around the world or in the United States, for that matter, but these things are real to people every day, and, particularly, seniors are vulnerable to those kinds entreats.

And if you don’t pursue them, they just proliferate and get bigger and bigger, and some big case needs to put some of these people in jail so that there will be a deterrent effect.

Let me go on to the second issue, which is—I wasn’t going to ask about this, but Jerry Nadler asked you about record retention policies and it sounded to me like you are following a 100-year-old record retention policy that may or may not be justified.

How aggressively have you, as the FBI director, looked at the rationale of this 100-year-old policy that you are following and evaluated whether it makes sense to keep records on people for 25 years who are not engaged in anything?

That increases the demands that you have to meet under the Freedom of Information Act. If you don't have the files or you have gotten rid of them, no records there to be providing.

How aggressively have you looked at this policy and reevaluated it?

Mr. MUELLER. I have not looked at it hard. I am not sure it is 100 years old. It is certainly many years old.

Mr. WATT. Well, that is what you testified. That was your testimony. It wasn't my testimony.

Mr. MUELLER. I am walking back from maybe 100 years. It has been there, I believe, on the books for a long time and it may well be, and I would have to look at it, a combination of the rules for records retention that have been set by the government and archives, as well as our own internal rules.

But I will go back and look at it, and we will get back to you on that particular issue.

Mr. WATT. Thank you.

I wanted to ask about some discrimination issues, but my time has expired.

I want you all to take care of my mother, first of all. So I will talk to your local people about that.

Mr. MUELLER. Well, you can give us the number, if it is your mother.

Mr. WATT. That is my number one constituent.

Mr. MUELLER. Go talk to the local person.

Mr. WATT. I don't get but one of those. Thank you.

Thank you, Mr. Secretary.

Mr. CONYERS. The Chair recognizes Darrell Issa, who is, in addition to Judiciary Committee, the number two man on the Government Reform Committee, as well as an active participant on the Intelligence Committee.

Mr. ISSA. Thank you, Mr. Chairman. You can revise and extend, if you would like.

I think I will quite while I am ahead there.

Director Mueller, I have got a couple of questions, some of which go to your predecessor, some are yours.

But the FBI is present at Gitmo, correct?

Mr. MUELLER. Yes.

Mr. ISSA. And has been the entire time.

Mr. MUELLER. We have had agents rotating through, yes, for almost the entire time.

Mr. ISSA. And the FBI has presence virtually every place we have an embassy in the world, correct?

Mr. MUELLER. We have over 60 legal attache offices around the world.

Mr. ISSA. Okay. Well, maybe not virtually, but all the places I hate to go to.

The Administration made a determination to do this enhanced interrogation technique or now is commonly one of—one of the techniques being waterboarding.

When were you first made aware of it and when was the FBI first made aware of it overall?

Mr. MUELLER. I believe I first became aware of the use of enhanced interrogation techniques sometime in the summer of 2002

with an agent who was involved in an interrogation overseas who indicated that additional techniques beyond what we traditionally do would be used.

We determined that it was not appropriate for him to continue in the conduct of that particular interrogation.

Mr. ISSA. Was that agent, in 2002 or at the time that you became aware of it in 2002, was he present for that interrogation that included waterboarding or other enhanced interrogation?

Mr. MUELLER. And I do not believe that I became aware of waterboarding, as such, until several years later, and I don't believe—well, I don't—I can't say really what that agent knew, but certainly those were not the enhanced techniques that we, at that time, anticipated were going to be used and triggered the withdrawal of him from that particular interrogation.

Mr. ISSA. Okay. Earlier, you mentioned that once or twice. Was that one of the once or twice that your organization was involved in techniques that would qualify as enhanced interrogation?

Mr. MUELLER. No.

Mr. ISSA. What were the once or twice?

Mr. MUELLER. Can you excuse me just 1 second?

Mr. ISSA. Certainly.

Mr. MUELLER. The inspector general did a report and what I am trying to do is recall from the inspector general's report a couple of instances where he said that, I think, a prisoner's hands were handcuffed behind him and he was given water in a dribble.

It was treatment that is not a treatment that we ordinarily would use, but it is certainly not in the category of the enhanced interrogation techniques that we have been talking about.

I just wanted to be clear that the IG, in his report, had pointed out two instances where we could have done a better job.

Mr. ISSA. Okay. Has the FBI ever given people large amounts of water and then told them to wait to go to the bathroom, that it wasn't available right now?

Mr. MUELLER. Not to my knowledge.

Mr. ISSA. Left lights on deliberately to deny people sleep or rest?

Mr. MUELLER. I can't say for sure, but I have no knowledge of such treatment. That would go against our protocol.

Mr. ISSA. Okay. So each and every one of those techniques that has now become public for enhanced interrogation would be inconsistent with what the FBI would ever allow to be done.

Mr. MUELLER. Yes.

Mr. ISSA. The next one is a little more serious. The speaker of the House has alleged that the CIA outright lied to her.

Is lying to Congress a crime?

Mr. MUELLER. Yes.

Mr. ISSA. Are you investigating that allegation by the speaker of the House?

Mr. MUELLER. No.

Mr. ISSA. Why not?

Mr. MUELLER. The process that is followed generally is that we have a referral—not we—the Justice Department obtains a referral from Congress.

The Justice Department makes a determination as to whether or not the referral warrants further investigation, and then we are called upon to conduct that investigation.

Mr. ISSA. I am a Member of Congress. If CIA is lying to any of us, and I have been briefed many times by them on the Intelligence Committee, it puts me in a position of not being able to do my job properly.

Would you say I have standing to ask you to investigate whether the CIA has lied to any or all of us?

Mr. MUELLER. I am not familiar with the intricacies of the referral process that has been established in such circumstances.

I know that generally it is triggered by a referral from Congress to the Justice Department and then we do the—may well be—others can be asked, but generally we are asked to do the investigation.

Mr. ISSA. Well, then, with my remaining time, I would assert that I believe I should have standing, that I am in doubt as to whether or not, unresolved, I can believe in the briefings that I am receiving from the IT community, and would ask you to investigate it and ask you to respond as to whether you believe that my standing and my asking you to do it represents a proper referral or one that at least you can follow up on.

Mr. MUELLER. We will take what you have indicated, sir, and pass it to the Department of Justice and then follow the directives of the department.

Mr. ISSA. I will look forward to your response. Thank you.

Mr. MUELLER. Thank you, sir.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. CONYERS. The Chair of the Committee on Immigration, from California, Zoe Lofgren.

Ms. LOFGREN. Well, thank you, Mr. Chairman.

It is good to see you, Director Mueller, and thank you for your testimony today.

It is good news that you have continued your march forward with technology, but the march forward with technology also raises questions. And I wanted to briefly touch on the investigative data warehouse data mining issue that both the IG and the Electronic Frontier Foundation have recently discussed.

It is my understanding that there are just shy of a billion individually identifiable pieces of information in the data warehouse, which, by way of comparison, I think the Library of Congress has about 138 million pieces in its collection.

So it is a massive amount of data. And there may have been litigation on this. You can tell me if that is correct. But I believe that the FBI would be required to publish a systems of record notice and a privacy impact assessment related to this data warehouse, and that that has not been done.

Can you tell me anything about the privacy notices and whether those are planned or if they haven't been planned, why not?

Mr. MUELLER. We try to be very careful, in terms of whenever we put a new system online or contemplate it, assuring that we go through all the steps with notification.

If you are talking about the investigative data warehouse, it is—

Ms. LOFGREN. I am.

Mr. MUELLER [continuing]. It is a compendium of our case files, which has grown up since September 11 in a different format, a different—different servers, we have different software, and different type of relational databases. That enables us to search it better than the old VCS.

I will have to check in terms of privacy notices on the data, investigative data warehouse. It has been online for a number of years, but it is our case file system.

Ms. LOFGREN. Well, doesn't it have 58 different sources of data, including—

Mr. MUELLER. It may well.

Ms. LOFGREN [continuing]. US-VISIT and a variety—

Mr. MUELLER. Well, I am not certain which dataset you are talking about. The investigative data warehouse, I am thinking one thing. It may be that you are thinking about the records that are obtained by the foreign terrorist tracking task force, which looks at individuals coming into the country and utilizes other private companies that already have data to locate persons within the United States, which is different than the investigative data warehouse, which is where we house most of our data.

I would have to get back to you in response to those specific questions, to make sure I know which database you are talking about.

Ms. LOFGREN. Yes, it is the investigative data warehouse. And it is my understanding that it includes 58 sources, including SEVIS and US-VISIT and the no fly list, and a whole variety of other items.

And if you want to get back to me, that is absolutely fair. But could I look to a particular time by which you will get back?

Mr. MUELLER. Two weeks.

Ms. LOFGREN. I would appreciate that very much.

Let me move on to another subject, which is the whole—and you mentioned it briefly in your opening statement—the situation of concern at the border.

Two years ago, I and a bipartisan group of Members went to Mexico City and we met with the Mexican attorney general and some of their law enforcement people, and they expressed extreme concern over what the United States was not doing in terms of the flow of guns from the United States to Mexico, as well as a less than aggressive effort, they felt, to track money laundering in the United States.

I think that there has been recent attention, we are ramping up our efforts. But can you tell me—I don't want you to jeopardize an investigation—but how many ongoing investigations do we have now into both the gun running issue, as well as the drug money laundering issue?

Mr. MUELLER. Well, the guns flowing from North America to South America—

Ms. LOFGREN. Correct.

Mr. MUELLER [continuing]. From the United States into Mexico is generally in the purview of ATF. And as you say, they have ramped up. We are going to get additional ATF agents to do that.

Ms. LOFGREN. I thought there were joint task forces underway.

Mr. MUELLER. We do and we participate in task forces along the border and whenever there are guns involved, we bring in ATF, because they not only have the expertise, but the databases that we all use.

We also, though, from our perspective, have increased personnel addressed to cross-border kidnappings, individuals in the United States who travel to Mexico, they may have family, they may have businesses down there, are kidnapped and the victims' families are in the United States. We have ramped it up in places like San Diego and El Paso.

Ms. LOFGREN. And Phoenix, I assume.

Mr. MUELLER. Pardon?

Ms. LOFGREN. Phoenix, as well?

Mr. MUELLER. And Phoenix, yes, but the phenomenon there is a little bit different than in San Diego and El Paso. Phoenix is—they have a very high rate of home invasions and the like and, yes, we work on task forces there.

The other step that we have taken is to combine our intelligence capabilities along the border along with EPIC. So that our field offices, our legal attache office in Mexico has access to the information relating to border crime immediately as opposed to coming back through headquarters and is linked up with EPIC, the El Paso Intelligence Center, to give us a much more effective view of what is happening along the border.

Ms. LOFGREN. My time has expired, Mr. Chairman.

Thank you, Director.

Mr. CONYERS. The gentleman from Iowa, Steve King, Ranking Member on Immigration.

Mr. KING. Thank you, Mr. Chairman. I appreciate being recognized.

And, Director, I appreciate your testimony and I think it reflects the long service to this country and the significant depth of knowledge that has been built upon that experience.

And I would—based upon that, I would ask you if you are familiar with 18 USC 47, 1001, which reads, in part, “Whoever, in any matter, knowingly and willfully falsifies, conceals or covers up, by any trick, scheme or device, a material fact, whoever makes any material false, fictitious or fraudulent statement or representation shall be imprisoned not more than 8 years.” That is in part.

Do you at least have some basis of knowledge that would reflect that section of the—

Mr. MUELLER. I am familiar with 1001, yes.

Mr. KING. And I reiterate this, because would you—would you view that to be at last a statute that you would review if you were to respond affirmatively to Mr. Issa's request?

Mr. MUELLER. I believe the prosecutor is looking at this. Department of Justice attorneys would look at 1001, absolutely, as a possible statute to be applied.

Mr. KING. And with your long and deep experience, and we have, I think, about 15 members of the intelligence community, their sense of integrity in their office, when their integrity is challenged, can you tell us what happens to the morale if that should continue, if their integrity is challenged?

Mr. MUELLER. Well, I understand the import of the question and, generally, I will speak very generally, of course, in any institution in which there has been a challenge to the effectiveness, efficiency, integrity of the department, it does affect morale.

Mr. KING. And if someone challenges the integrity of your agency or any other, is it likely that there would be people within your agency that would volunteer to do a briefing to that person?

Mr. MUELLER. Well, all I know, part of my responsibility is to represent my agency fully and appropriately, I admit mistakes when the mistakes happen and move forward, and to also speak out when you think that your detractors are off base.

Mr. KING. And should there be a reluctance to provide that briefing to whichever individuals would have security clearance, could that potentially impact negatively on our national security due to that lack of information and perhaps lack of appropriations and perhaps policy changes that might flow from that relationship that could be interrupted or distrusted because of the allegations?

Mr. MUELLER. I am sorry, sir. I am not familiar with the predicate of the question in terms of briefing.

Mr. KING. I am seeking to ask the question hypothetically, and so it maybe sounds a little vague and I will try to keep it hypothetical, Director, for the benefit of everyone in this room.

But when that relationship of trust is severed, then the working relationship would, I think, certainly be damaged. And are you concerned that it could affect our national security?

Mr. MUELLER. I can't answer that hypothetical, sir.

Mr. KING. I understand, Director, and I think that you do understand my question.

Let me move—let me, first, join Mr. Issa in his request, if two are better than one. I would ask you to look into the basis that you have responded to Mr. Issa and I won't ask you to respond to that question again to me.

But I would like to take this down to Gitmo and ask you instead, of the techniques that have been used to interrogate the Gitmo detainees, are you aware that there were any techniques used there that were more severe than we have used in training of our own special forces?

Mr. MUELLER. I don't think I have sufficient knowledge to answer the question, sir.

Mr. KING. Well, do you have any indication otherwise?

Mr. MUELLER. I don't have sufficient knowledge to answer the question.

Mr. KING. Do you have any indication that the PATRIOT Act has violated anyone's civil rights—been utilized to violate someone's civil rights?

Mr. MUELLER. I don't believe so, but I must also say that without—and put in context—that when it comes to NSLs, in particular, NSLs, they were issued improperly.

Now, I don't want to parse words in terms of—but I don't want you to think that that is not a concern of ours, was not a concern of ours, and I do believe it was remedied, but that was a concern, because it does affect civil liberties, it does affect the privacy interests of individuals.

Mr. KING. Was there anything done at Gitmo that would be criminal if it was done in the United States?

Mr. MUELLER. I can't answer that question, sir.

Mr. KING. I thank you, Director.

And I yield back the balance of my time.

Ms. LOFGREN. [Presiding.] The gentleman yields back.

I would recognize now the gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you.

Welcome, Mr. Director.

Recently, there has been considerable discussion about Guantanamo and a group of detainees that are Uighurs, Chinese Muslims. And there has been the use of the term "terrorist" as it relates to these Uighurs.

And I have a concern that that is an unfair label and some have indicated that that label came about as a result of communist Chinese intelligence, which, I would submit, is extremely suspect given the history of suppression by the Chinese Communist government as it relates to that particular minority.

There was a report issued in May of 2008 by the Department of Justice inspector general, and I am going to read an excerpt to you and ask you to respond.

"Another FBI agent," and, again, I am reading from the IG report, "Another FBI agent stated in his survey response that several Uighur detainees were subjected to sleep deprivation or disruption while being interrogated at Camp X-Ray by Chinese officials prior to April 2002.

Chinese officials visited Guantanamo and were granted access to these detainees for interrogation purposes. The agent stated that he understood that the treatment of the Uighur detainees was either carried out by Chinese interrogators or was carried out by U.S. military personnel at the behest of the Chinese interrogators."

Are you familiar with the report of Mr. Fine and are you familiar with this report emanating from an FBI agent?

Mr. MUELLER. Now that you read the excerpt, Congressman, I think it was from the report that the inspector general did on the FBI's interrogation or interviewing techniques.

And I would check one thing, if I might.

Mr. DELAHUNT. Please.

Mr. MUELLER. It is a report, I believe, that was done on our interviewing/interrogation techniques. I am not familiar with the incident other than what is in the IG report.

Mr. DELAHUNT. The IG report is, obviously, based on a report by an FBI special agent.

Mr. MUELLER. Apparently.

Mr. DELAHUNT. And you would not contradict that report.

Mr. MUELLER. I have no knowledge of the incident, so I cannot contradict the report.

Mr. DELAHUNT. Okay, but it is in the report and it is a statement by one of your agents that Chinese Communist intelligence agents were allowed to interview Guantanamo detainees. That is their statement according to the IG report, as you understand it.

Mr. MUELLER. In the IG report, the investigators for the IG must have talked to an agent and that is what they wrote down with regard to what the agent told them.

Mr. DELAHUNT. Mr. Director, myself and several other Members of Congress would prefer to have some briefing done by the FBI regarding this particular issue, and I know I would like to have an opportunity to interview the FBI agent that actually wrote this report and would make that request to you, so that we can actually make a determination as to the status of the Uighur, because there was another report that was done by another FBI agent, and I want to read it into the record, if the Chair will indulge me for another minute.

I am reading, again, reading from that report, "The Uighurs are moderate Muslims who occupy east Turkistan, which was taken over by the Chinese. The Uighurs would often land in Afghanistan in order to gather personnel opposing Chinese suppression.

They were often inspired by Radio Free Asia. The Uighurs considered themselves to be fighting for democracy and they idolized the United States. Although the Uighurs are Muslim, their agenda did not appear to include Islamic radicalism.

They claim to have no political connection to Islamic terrorists or the Taliban. However, their camp in Afghanistan was bombed and they fled to Pakistan. The Uighurs were captured by the Pakistanis, with half being transferred to the U.S. and half being remanded directly to the Chinese.

It was alleged that the Uighurs who were transferred directly to the Chinese were immediately executed. The Uighur detainees at Guantanamo were convinced that they would be immediately executed if they were returned to China."

And I would also note that it is a matter of public knowledge that they were captured not by American soldiers. In fact, they were apprehended by Pakistanis, who, in turn, received a \$5,000 bounty for each of these Uighurs that were turned over to the Americans and, presumably, to the Red Chinese, who allegedly executed them upon their release.

I suggest this is a very, very important issue, because questions are being raised, statements are being made, and I dare say we don't really know the truth yet.

And I think before we find ourselves in an embarrassing situation, and I am, again, referring to Members of Congress, that we ought to have a thorough review, and I think the FBI, your credibility, and, again, I think the excellent record of the FBI in terms of Guantanamo ought to lead this investigation and provide information.

Ms. LOFGREN. The gentleman's time has expired.

I would turn now to Mr. Franks.

Mr. FRANKS. Well, thank you, Madam Chair.

And thank you, Director Mueller.

I would say to you, sir, that the way you have comported yourself with the hearing this morning affirms the conclusion that many of us have held in the past that you have personified public service and your patriotism and your professionalism, and I appreciate you being here.

Mr. MUELLER. Thank you, sir.

Mr. FRANKS. Attorney General Holder was here before our Committee last week and, in my judgment, he seemed to have a difficult time articulating what a terrorist really is, and that concerns me, since he is the lead law enforcement official in the country, charged with protecting us from terrorists.

And I was struck to find out that someone in the Obama administration, however, seems to have no difficulty in articulating what a terrorist is, and that is the director of Homeland Security, secretary of homeland security, Janet Napolitano, the former governor of my state.

Ms. Napolitano was the subject of controversy after the Department of Homeland Security threat assessment report, entitled "Right Wing Extremism," was made public in April of 2009.

Now, the report indicated several factors, including the election of the first mixed President in the person of Barack Obama, perceived further gun control measures, illegal immigration, the economic downturn beginning in 2008, disgruntled military veterans' possible vulnerability to recruitment efforts by extremist groups, as risk factors for right-wing extremism.

Then it kind of went on to explain and define right-wing extremism in roughly general terms, like opposing restriction on firearms or opposing lax immigration, opposing the policies of the Obama administration the expansion of social programs, opposing continuation of free trade agreements, paranoia of foreign regimes, fear of communist regimes, fear of one-will governments, and bemoaning the decline of U.S. stature in the world.

Now, Mr. Director, not to be tongue-in-cheek here too much, but that includes about 70 percent of my district and I am concerned, since this report was directed to law enforcement agencies, which I presume means the FBI, as well, I am concerned how the FBI might interpret this report.

I mean, should my district be concerned at this point, being the subjects of concern on the part of the FBI as potential right-wing extremists?

Mr. MUELLER. I don't believe so at all. We open investigations where we have allegations that a person may be involved in violent extremist or illegal activity.

That covers a number of various groups of individuals, but the predicate is illegal activity and, generally, it is violent extremism, and I don't believe the intent of the report was to paint with such a broad brush.

But I do not believe that the question is should persons be concerned about our undertaking investigations against individuals who are exercising, rightfully so, their first amendment privilege or rights under the Constitution. I do not believe so.

We take that exceptionally seriously. When it looks like one of our investigative actions will implicate the first amendment, we have a series of reviews that have to be done to assure that the actions taken are appropriate to the circumstances, and I believe that was the intent of the piece from the Department of Homeland Security.

Certainly, it is our intent in each of our investigations to assure that we don't trespass on the first amendment right without the appropriate, adequate predication.

Mr. FRANKS. Thank you, sir.

Let me shift gears then. We had testimony before this Committee regarding our terrorist surveillance program that people within the United States boundaries don't really need to be fearful of surveillance.

One of the parts of the testimony was that even if Osama Bin Laden was in a downtown hotel making calls, that we couldn't—and we knew it was him, but we couldn't monitor his calls without a warrant.

And I think because he is here in—if he was here in the United States, I think that makes sense, to me. I think that comforts me a great deal.

I guess my question to you, sir, is under the new Administration, has the practice or the policy related to terrorist surveillance changed to any appreciable degree and are you concerned that citizens either in the previous Administration or this Administration need to be concerned about their private phones being tapped here in this country?

Mr. MUELLER. No. As all are well aware, the FISA statute was amended a year or so ago and it answered a number of the issues we have, particularly with regard to the interception of conversations by individuals overseas talking to other persons overseas who are not American citizens. And it addressed, I believe, a difficult issue and resolved that.

I have seen no change in terms of the approach to the FISA statute, any difference in this Administration than I saw in the past Administration.

Mr. FRANKS. Well, thank you for your service, sir. Thank you very much.

Thank you, Madam Chair.

Ms. LOFGREN. The gentleman yields back.

I would recognize Mr. Cohen at this time.

Mr. COHEN. Thank you, Madam Chair.

Director, you have done, I think a marvelous job and you have a great reputation on the Hill, but your activities are so abundant, your areas of investigation, from counterterrorism, which you kept concentrating on, and counterintelligence to the traditional FBI days of criminal activities.

Do you think that the FBI has grown so much that maybe it needs to have two different bureaus, one for homeland security and counterterrorism and counterintelligence and all these areas, our borders, and another for the criminal section?

Mr. MUELLER. For approximately 2 to 3 years now, we have had essentially a criminal branch and a national security branch. The national security branch is counterterrorism and counterintelligence, and the directorate of intelligence.

In the criminal branch, we have the criminal division, we have the cyber division. And I am probably missing one or two, but there has been that development of two branches, we call branches, not the bureau, as you say, for the focus on national security, on the one side, and the criminal programs on the other side.

Mr. COHEN. You don't believe that it would be beneficial possibly to have two different distinct offices. You think that them coming under one umbrella is the most efficient way to operate.

Mr. MUELLER. Absolutely, and, increasingly, in this globalized world, terrorism cuts across—money laundering cuts across cyber issues. Terrorists are funded through narcotics trafficking in Colombia and Afghanistan.

Mr. COHEN. Let me ask you about narcotics trafficking, and I think I asked you about this last year.

The war on drugs has gone on since, I think, President Nixon coined the term maybe and maybe since Harry Anslinger, and we haven't become more successful. I mean, if it goes back to Anslinger, it is like 80 years and we are zero and 79 and winning.

Do you feel we are any closer to winning the war on drugs, based on all of the problems with Mexico and the cartels and the fights over our border and the drugs being imported from Mexico, than we were last year?

Mr. MUELLER. Well, whether you call it a war on drugs or some other term, I mean, I firmly believe that we need to do what we should to stem drug trafficking into the United States and drug usage in the United States, and I do believe there have been some successes, particularly when it comes to the use of drugs by children in high school or college and the like.

There are others, ONDCP and others who are much more familiar with that than I am.

Mr. COHEN. When you say some successes, do you have any statistics to show? Statistics actually say that more people are using, say, marijuana than have, because the public has a feeling about use of certain drugs that maybe the FBI doesn't.

Is there a better way that some people suggest of looking into a system of legalization that might be effective in stemming the tide of drugs from Mexico and in the border wars and the immigration problems from Mexico? Have you considered this as a possibility?

Mr. MUELLER. I think anybody who looks at this problem considers it and, ultimately, when you look at it, rejects it.

I tend to think that the use of particular drugs goes in waves. You will have marijuana for a period of time, then you will have heroin, then you will have cocaine, then you have crack cocaine, then you will have methamphetamine, and then you will have Oxycontin, and it goes in waves.

And too many people—

Mr. COHEN. Let me ask you about—

Mr. MUELLER. I am sorry. There are too many individuals, both parents and others, who have lost their lives to drugs, to give a ready answer that it should be legalized.

Mr. COHEN. I agree with you, sir, and there are lots of parents who have lost their lives to crack cocaine, methamphetamine, heroin, and they have somewhat gone in waves.

Name me a couple of parents who have lost their lives to marijuana.

Mr. MUELLER. Can't.

Mr. COHEN. Exactly, you can't, because that hasn't happened. There hasn't been a wave, because that has been a constant thing in America since Harry Anslinger, because African-Americans used it and saw it as something that was crippling and gave it to the Latin Americans and put an ethnic tone to it.

When have we—don't we—is there sometime we are going to see that we ought to prioritize meth, crack, cocaine and heroin, and deal with the drugs that the American culture is really being affected by and lives are being lost?

Mr. MUELLER. The only thing I would say is that you talk to parents who have lost their children to drugs—

Mr. COHEN. Right.

Mr. MUELLER [continuing]. And they will inevitably say that they started off with marijuana.

Mr. COHEN. The probably started off with milk and then went to beer, and then they went to bourbon, and then they might have gone to marijuana.

The gateway theory doesn't work. It is a reality. Obviously, we are not going to agree there.

Let me ask you about this. In Memphis, we have got a real serious problem with the rape crisis program. We used to have a national honored, awarded rape crisis program.

It has come to light that as much as \$500,000 which has been given to our local city of Memphis government for rape crisis reimbursements for kits and for examinations is not being reported in their budget.

And I know the Federal Government pays for the treatment of the victims and the kits are provided through our state government, I think, through the Fed.

What area in the FBI would look into the misuse of Federal funds, if there is misuse, in local governments and using moneys for rape victims and look into the use of our Federal funds and appropriating those to see if they have been used for the proper purposes?

Mr. MUELLER. I think, initially, it would be up to the state and local law enforcement, whether it be the police departments or district attorneys to look at it.

But we also might be involved in terms of public corruption, fraud and the like, depending on the seriousness of the issue.

Mr. COHEN. Madam Chair, if I could just close.

Would you maybe look into it with your local office in Memphis to see if there has been an abuse of Federal funds? And if there is, that is a serious wrong in these days when we use money for—

Ms. LOFGREN. The gentleman's time has expired.

Mr. COHEN. Thank you, Madam Chair.

Ms. LOFGREN. Mr. Gohmert, the gentleman from Texas, is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Madam Chair.

And, Director, it is good to see you again.

Mr. MUELLER. And you, sir.

Mr. GOHMERT. I am going to change gears from the milk to beer line of questioning.

In the Ted Stevens case, is there any information that any FBI agents were aware of the withholding of exculpatory evidence that the judge got upset about?

Mr. MUELLER. I think it has been made public that there was one agent who brought to the attention of others actions which he was concerned of. But because the case is in litigation—not in liti-

gation, but under investigation, let me just put it that way, in terms of what occurred in the course of that case, under investigation by, I believe, OPR and Department of Justice, I am really constrained from saying much more about it.

Mr. GOHMERT. Was it FBI agents who recorded conversations between Rick Renzi and his attorney that were apparently pretty clear they were attorney-client privileged conversations?

Mr. MUELLER. I think I would have to disagree with you in terms of the context of conversations, and, again, that case is—

Mr. GOHMERT. But they were between an attorney and a client, correct?

Mr. MUELLER. I am not certain what conversations you are talking about and because it is in litigation, I really am precluded from talking about.

Mr. GOHMERT. With regard to the widely reported wiretap of conversations between Jane Harman of this congressional body and two Israelis, was that based—were those wiretaps based on a warrant or were they based on warrantless wiretaps out of the PATRIOT Act?

Mr. MUELLER. I cannot speak to a particular case, but I can tell you that we do not intercept the content of conversations without a warrant from a Federal judge, whether it be from the—

Mr. GOHMERT. But we covered this now when we talked about the PATRIOT Act. And some of us were very defensive of the provision that would allow the wiretapping of suspected foreign terrorists who were calling from a foreign country, and that there would be times that, because they are being wiretapped in a foreign country, when they may call in to the United States, and the wiretap would pick up a conversation with someone in the United States.

And testimony we have heard before indicated, though, that once it was realized it was someone in the United States and it was warrantless, based on the PATRIOT Act, then that would be minimized and no further wiretaps regarding that individual would be had within the United States without first getting a warrant.

That is why I am asking the question. Could that have been—were the Israelis actually outside the country, which would authorize, under the PATRIOT Act, those warrantless wiretaps?

Mr. MUELLER. I can't get into the details of any national security investigations we—

Mr. GOHMERT. Well, somebody has gotten into them, because it is out in the public that Jane Harman was wiretapped. And that is why I am trying to figure out is this consistent with what we were told here in this Committee would be done with the PATRIOT Act or were these wiretaps within the country?

Somebody is getting that information out. Otherwise, I wouldn't know about it, other than reading the paper.

Mr. MUELLER. All I can tell you is that interceptions by the FBI in the United States of individuals in the United States are conducted either under Title 3, in the case of a criminal matter, or under—

Mr. GOHMERT. But you don't know what happened in the case of Jane Harman, correct?

Mr. MUELLER. Pardon?

Mr. GOHMERT. You don't know what happened in the case of Jane Harman.

Mr. MUELLER. I am not going to say that. I am going to tell you I cannot talk to you about ongoing or past national security investigations.

Mr. GOHMERT. So you think Jane Harman is a suspect?

Mr. MUELLER. No, I am not saying that. I am telling you that I cannot discuss the details of the case.

Mr. GOHMERT. Well, since I was one of those who—

Mr. MUELLER. And let me just say that that does not assume there is a case. I am saying that I cannot discuss the matter which you are seeking to get answers.

Mr. GOHMERT. I was one of those who defended the provision that would allow warrantless wiretaps of foreign agents in foreign countries and who may inadvertently pick something up coming in this country. I want to make sure that that is not being violated.

And I know you are concerned about past improprieties not being repeated and this was certainly before your watch, but in the vein of trying to prevent future illegal disclosures of FBI file contents, do you know how it was that 1,000 FBI files, approximately, came into the possession of the Clinton White House and what steps may have been done to prevent that illegality from happening again?

I know Chuck Colson went to prison for having one in the White House. Do you know how that occurred?

Mr. MUELLER. I am not familiar with that.

Mr. GOHMERT. Does it concern you that 1,000 FBI files could make their way into the White House to be reviewed there?

Mr. MUELLER. Well, I can tell you that during the time I have been at the bureau, we, both between—well, the bureau, but, also, with the Department of Justice, assure that we follow the appropriate procedures for keeping the privacy of our files.

Mr. GOHMERT. Madam Chair, could I ask for a written response for one quick question?

Ms. LOFGREN. Certainly.

Mr. GOHMERT. Thank you.

Director, there is information about 15 percent of terrorism cases, this is an IG report, the FBI failed to nominate subjects to a watch list. In 8 percent of closed terrorism cases, they failed to remove subjects from the watch list, and that the FBI removed a subject untimely from the watch list, 72 percent of the time it was untimely.

Could you give us a report on what is being done to try to make that more effective?

As somebody who has prior service members who still find themselves on the watch list inappropriately—

Ms. LOFGREN. I think that is a request for a written answer.

Mr. GOHMERT. Yes, that is correct.

Mr. MUELLER. Let me just respond. There were 16 recommendations made in that IG report and we are pursuing each one of those recommendations, and many of them have already been put into place.

Mr. GOHMERT. Okay. If we could find that out, that would be great.

Mr. MUELLER. I would be happy to get back to you on that.

Mr. GOHMERT. Thank you, Director.

Ms. LOFGREN. The gentleman yields back.

The gentleman from Illinois, Mr. Quigley, is recognized for 5 minutes.

Mr. QUIGLEY. Thank you, Madam Chairman.

I guess good afternoon now, Director.

Sir, if you could respond to the reports that have been listed here, as well, about members of the FBI and ATF not always getting along, I guess is the best way to describe it, reportedly, at crime scenes where FBI and ATF agents threaten to arrest each other or a battle over jurisdiction and key evidence.

Mr. MUELLER. I think that was a problem, it was much more of a problem several years ago. I think we have done much to resolve those issues.

There is overlapping jurisdiction in some areas, but I think we have done much to remove those barriers between the two agencies.

When I travel around, one of the first questions I ask in an office is, "How are you getting along with DEA? How are you getting along with ATF?" The fact of the matter is 99 percent of the times in the field, the answer is, "We get along fine."

There are some cases where we will have somebody who has a long memory about some slight from ATF or somebody in ATF has a long memory about some slight from the FBI, but I do think it is more personality driven in isolated instances as opposed to what I think, some years ago, was an institutional problem.

That does not mean that there are not areas that we still are in the process of resolving in terms of explosives databases and the like, but I think we have made substantial headway.

I will tell you that John Pistole, our deputy, spends a great deal of time with his counterparts at ATF to minimize such problems.

Mr. QUIGLEY. And I appreciate your candor. When it happens on a scene, such as I described, it is one thing. That lack of cooperation, if it dealt with national security type issues, would be all together another and far more important and dramatic, obviously.

Earlier, you spoke about the cartels and the drug wars as relates to the Mexican border, and one of my colleagues discussed the issues of representatives from Mexico concerned how we were tracking weapons or how weapons are—most of the weapons that are being used in Mexico come from the United States.

I guess I juxtaposition this with if these are assault weapons and we are concerned about tracking them, wouldn't it just be a whole lot easier if we renewed the ban on assault weapons as was done previously?

Mr. MUELLER. It might have some impact. One of the things that we talk about the percentage of weapons going to Mexico, large numbers come from the United States, but, also, the cartels, the Zetas and others, are not averse to buying elsewhere.

And so I think you will also find a number of weapons, particularly military style weapons, that come into Mexico from countries other than the United States.

That does not mean that we should not be doing better in terms of stopping the flow from the United States into Mexico, and several, I guess, discussed legislatively may have some impact on it.

Mr. QUIGLEY. Well, the manpower required, the difficulties required with tracking or trying to stop, you are judging how effective that is versus not selling assault weapons in the United States.

Mr. MUELLER. I can't give you an insight into that. I would refer to you my friends at ATF who may have better and more precise knowledge on those particular issues.

Mr. QUIGLEY. Well, I appreciate your candor and your service. Thank you.

Mr. MUELLER. Thank you, sir.

Mr. QUIGLEY. I yield back.

Ms. LOFGREN. The gentleman yields back.

I recognize the gentleman from Texas, Mr. Poe, for 5 minutes.

Mr. POE. Thank you, Madam Chairman, for your patience.

Thank you for being here.

I want to follow up on the weapons in Mexico. Isn't it true that there have been at least 100,000 members of the military that deserted and most of them took their weapons, which many of them, if not all of them, are made in Belgium? The Mexican military. Are you familiar with that?

Mr. MUELLER. I am familiar with the fact that there have been— one of the issues that the military in Mexico faces is desertions. I am not familiar with the numbers.

Mr. POE. And regardless of where the weapons come from, and I take issue that most of them come from the United States, I think the statistics prove they come from all over the world.

Would it seem to you that Mexico has the responsibility to protect their borders from illegal weapons coming in, just like we have the responsibility to keep drugs out of our country?

Mr. MUELLER. Yes, yes, yes, shares responsibility and both sides have a shared responsibility in ensuring that contraband does not flow either way.

Mr. POE. Going on to another issue. I appreciate the fact that you know what terrorism is. FBI has a definition of terrorism, does it not?

Mr. MUELLER. Yes.

Mr. POE. And without going into it today, I was somewhat disturbed that the Attorney General came in here and I asked him what he thought terrorism was and he could not give me an answer. So he is supposed to give us a written answer on that.

But at least the FBI knows terrorism when they see it.

Mr. MUELLER. There is a statutory definition of terrorism.

Mr. POE. You all follow it.

You have been to Guantanamo Bay prison.

Mr. MUELLER. Yes.

Mr. POE. How many times have you been there?

Mr. MUELLER. Once.

Mr. POE. I have been there two. And the information that Khalid Sheikh Mohammed provided the United States in now Justice Department secret memos that have been released to the whole world regarding a plot to blow up the Brooklyn Bridge, a plot to crash a plane into the tower in Los Angeles, ratting on a cell of 17, including Majid Khan, Hambali, Rusman "Gun Gun" Gunawan, he is

an interesting fellow, and Yazid Suffat, Jose Padilla, and Iman Farris.

Did all that information turn out to be true, what he told us?

Mr. MUELLER. That is a very broad question, sir, and—

Mr. POE. I know, because you told us a lot of things.

Mr. MUELLER [continuing]. Individuals, I can't—I can't speak to pieces of information that were provided by those individuals.

Mr. POE. My question is did information that KSM gave the United States, did that information, any of it, turn out to be true?

Mr. MUELLER. Without looking at a particular piece of paper or whatever, yes, I believe so.

Mr. POE. Do you know of any place in the United States where people have offered to house Gitmo detainees in the United States? Do you know any state, local, Federal Government that wants those people?

Mr. MUELLER. I don't, but I would not necessarily be the person to know that, other than what is written—what is in the newspaper.

Mr. POE. Do you have a solution what to do with them all?

Mr. MUELLER. I don't. That is being discussed across the street and down the avenue.

Mr. POE. All right.

Mr. MUELLER. I think it is a very difficult—I mean, I will say I think everybody recognizes it is a very difficult issue and people are honestly wrestling with what the best resolution is, and it is a very difficult issue.

Mr. POE. And my last question. You said you went to Gitmo. When were you there?

Mr. MUELLER. Several years ago. I can't recall. I would have to get back to you on that, if it is important.

Mr. POE. It is all right. You don't have to get back with me on it.

Thank you very much. Yield back.

Ms. LOFGREN. The gentleman yields back.

We have been called for votes, but what I would like to do, if we can and if Members will be very concise, we have two more Members who would like to ask questions. If we can get through this, we can go vote and you can go off to do your work without waiting for us.

So Ms. Jackson Lee is actually, since she was here earlier, is next, and she is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Director, thank you very much. And let me apologize for being in a markup in another Committee, but we had a chance to greet each other just a few—just a day or two ago.

I am very interested in what progress has been made in the diversity of the workforce of the FBI. I think that is crucial.

I also want to emphasize that I have great respect for your special agent in charge, agents in charge across America. And I think it is important for them to be made aware that collaborating with the community is okay.

We realize that the resources are to be spent on investigation, but say, for example, there is a child abduction and the community is in an uproar or a predator on the loose. And, in fact, a few years

ago, I called on the special agent in charge in Houston to help our police department find a predator, but calm a community.

Now, the way they handled that was that they were able to use the FBI's lab. At that time, we were in a flux about DNA. But there is some skepticism and I would appreciate if some protocol would be established that it is okay for SACs to come to a meeting where a community is to explain what the FBI does. Certainly, that is not their main occupation.

So I would like to just capture that in terms of how SACs work in the community.

The other aspect is to comment on the work that the FBI is doing as it relates to civil rights investigations, what level or what percentage of work involves that, and I would include hate crimes in that.

Then, lastly, I would be very interested—we have had challenges on the watch list, which, as you well know, is said to be held by the FBI. That is a complicated, difficult paper list, it appears.

I am interested in how you create or do you create terrorist profiles and what kind of underlying data you use, but, more importantly, I want to know what progress have we made with updating that watch list?

And I thank the gentleman very much.

Mr. MUELLER. Let me see if I can hit the first one in terms of diversity. I absolutely agree with you, the importance of diversity. All of our SACs are evaluated on the contributions made to diversity in their hiring, promotion, and we have made, I believe, good progress, but there is more progress to be made.

I would be happy to get you the—

Ms. JACKSON LEE. I think that would help me, if you would. And I would like to work with you on outreach issues regarding that, please.

Mr. MUELLER. With regard to the civil rights cases, again, I think that would take some time. We have an initiative to look at older civil rights cases, and I would like to have you briefed on where we are in that particular initiative and the numbers we assign to that.

In terms of having our SACs or the office respond to a child abduction or another immediate emergency where persons' lives are at danger, there is not a one that would not do it in a second. And every SAC is encouraged and evaluated on the outreach to the community.

I cannot imagine, in Houston, for instance, that you would not have had the full support at your community meetings or otherwise from our personnel in Houston.

Ms. JACKSON LEE. Now, it will be even better.

Mr. MUELLER. It will, but that is wherever we are. We have got 400 resident agencies, we have got 56 field offices. We know that responding to a child abduction is important to every one of us.

Ms. JACKSON LEE. Thank you. And the terrorists?

Mr. MUELLER. The terrorist screening centers, I indicated before, the IG report that identifies deficiencies made 16 recommendations. Many of those recommendations have already been pursued and the rest of them are being followed up on.

We would be happy to tell you where we are and the progress we have made on that.

Ms. JACKSON LEE. Madam Chair, I am going to yield back, but I am going to ask the director if we can have a more detailed discussion.

I sit on the Homeland Security Committee, as well, and deal with the watch list as relates to airports, and I would like a very detailed briefing, if necessary, classified, on that issue dealing with the watch list.

And I thank you. On the other issues, I will take a briefing on the diversity and, as well, cases involving civil rights and hate crimes.

Mr. MUELLER. A briefing on the terrorist screening center, I think it would be beneficial to have a joint briefing between ourselves and DHS.

Ms. JACKSON LEE. Very good. I yield back.

Ms. LOFGREN. The gentlelady yields back.

The gentleman from California, Mr. Schiff, is recognized for 5 minutes.

Mr. SCHIFF. Thank you, Madam Chair.

And thank you, Mr. Director, for the good work you do.

I have three questions which I am going to just get out very quickly and see if you have time to respond. If not, maybe we could follow up later.

But one brief commentary on some of my colleagues' points on the other side of the aisle vis-a-vis Gitmo. And that is, I assume my colleagues on the other side of the aisle support efforts the Administration is making to get some of our allies to agree to take some of these detainees and detain them.

I don't know where my colleagues think they are going to be detained in these other countries or how we can make the case that Germany or France or England ought to take detainees and detain them if we are unwilling to detain any of them in our maximum security prisons.

That is just an aside.

My three questions are this. First, on the issue of crack cocaine, I know the Administration supports changing the enormous disparity between crack and powder cocaine in terms of sentencing.

Do you, Mr. Director, favor a strict equivalence or are there some reasons that you feel that crack's nature lends itself to some continued disparity or do you think the disparity should be eliminated, both in terms mandatory minimums and in terms of quantities? That is the first question.

The second question is on the DNA issue. If I understood you correctly earlier, you anticipate that there will be no backlog in the offender DNA as of June of next year.

Mr. MUELLER. Yes.

Mr. SCHIFF. What additional resources do you need, if any, to make sure that there is no backlog in June of next year on case samples?

And then, finally, if I could, and you may need to respond to this last question at a later date. When I was with the U.S. attorneys, I handled the Miller spy case involving an FBI agent, Richard Miller.

So I am very interested in the counterespionage and penetration issues. I know the IG did a follow-up report to see how many of its earlier recommendations in terms of performance had been implemented, and there were, I think, a few very pivotal ones that had not yet been implemented in terms of preventing penetration.

One was to create a unit within the bureau focused on internal penetration. A second was developing a computer need-to-know system, but now that we have gone from a virtual case file system to Sentinel, will the Sentinel have that kind of safeguard in it and then will that be ready by the end of the year?

And then, finally, in the Hanson case, he was able to walk out of the FBI with classified documents without any difficulty.

Have measures been taken to be able to detect that people are leaving the premises with classified information?

But if you could address the first two questions and if you get time on the last, great; if not, I will follow up with you at a later date.

Ms. LOFGREN. There are 2 minutes left.

Mr. MUELLER. On crack cocaine, I have not wrestled with that issue. I would have to defer to Justice on that.

On the second one with regard to the resources necessary to reduce the backlog or eliminate the backlog on the case work as opposed to the convicted offender program, I would have to get back to you on that.

We are making progress each day, particularly with regard to technological fixes, but I would have to get back to you on the specific resources.

In terms of the third issue relating to counterespionage, we did establish a unit that is focused on that, which was a recommendation of the IG.

The Sentinel program has those precautions in it to assure that we track and monitor everybody who is using the system and put out alerts if it is being—if persons are trying to get into or get access where they are not allowed to go.

And lastly, in terms of detecting persons who are exiting the building, we have put into place some measures, but it is very difficult to prevent a person who has a classified paper document or a thumb drive from exiting a building. It is near impossible.

So while we have put into place some provisions, I can't tell you that we would be able to stop a person leaving the organization with a thumb drive or a classified document.

Mr. SCHIFF. Mr. Director, thank you. You have managed to do that in 2 minutes, remarkable.

Madam Chair, I yield back.

Ms. LOFGREN. The gentleman yields back.

We have been joined by Mr. Johnson. We do have 2-1/2 minutes before the vote is called.

So we will ask Mr. Johnson to be as terse as possible, and we will conclude our hearing.

Mr. JOHNSON. Thank you, Madam Chair.

I feel abused and discriminated against, and we will talk about this later.

Ms. LOFGREN. Well, we will stay for 5 minutes.

Mr. JOHNSON. All right. I don't think it is going to take that long.

Director Mueller, thank you for your service to the Nation and thank you for coming out today.

And I have three questions, all three of them just simply requiring a yes or no answer, and then I will allow you to follow up.

The first question is: there is a well established link between the drug trade and weapons. Isn't that true?

Mr. MUELLER. Yes.

Mr. JOHNSON. And, also, isn't it a fact that most of the guns that are in the hands of these drug cartels are basically American-made weaponry?

Mr. MUELLER. The figure that is thrown around is 90 percent. I am not certain the basis of that and the accuracy of it, but that is what I have seen elsewhere.

Mr. JOHNSON. If you heard—well, I won't even ask that question.

Mr. MUELLER. I have heard, yes. I mean, I will tell you, I have heard that, also, they have weapons, particularly weapons they cannot get in the United States, higher power, and explosives and the like elsewhere from the United States, from other governments in South and Central America.

Mr. JOHNSON. Okay. And assault weapons, in particular, are the weapon of choice around the world for drug cartels, for street crimes, et cetera, et cetera. Correct?

Mr. MUELLER. I would have to say not necessarily. I know you want a no or a yes, but not necessarily. It depends on where you are in the United States.

There are certain areas of the United States where assault weapons have become a weapon of choice, but there are other areas in the United States, most of the communities in the United States, where that is not the case.

Certainly, around the world, you could make the case that assault weapons are the Kalashnikovs or AK-47s or the like are the weapons of choice.

Mr. JOHNSON. Yes. Well, let me ask this question, then. Given those facts that you have just agreed to, with the exception of the last one, which is qualified, as I would say, can you tell us the justification for the continued failure to address the assault weapons ban in terms of the gun shows, where you can buy anything open and notoriously, without a background check, just any kind of weapon whatsoever?

Can you respond to that?

Mr. MUELLER. I would have to defer to the Department of Justice on that. That is a policy issue that has—I have been through two Administrations and there are questions that are asked in each Administration and each time on this particular issue, I defer to the Department of Justice.

It is a policy issue that the Attorney General generally opines on.

Mr. JOHNSON. Yes, certainly, that would be appropriate.

But I just wanted to know what—and I know that you carry out policies, but I do want to know. Have you discussed this issue with the Administration, with the President?

Mr. MUELLER. Not with the President nor do I think I have discussed it with the Attorney General. It has not been a topic of our discussions to date.

Mr. JOHNSON. Do you think it should be?

Mr. MUELLER. It probably, at some point, will come up. I am not certain I can opine on whether it should or should not be.

Mr. JOHNSON. Is there any justification for gun show loophole remaining like it is, in your mind?

Mr. MUELLER. Well, there are a number of explanations and policy arguments both for and against that.

Mr. JOHNSON. Can you tell us, briefly, what those are?

Mr. MUELLER. It would be hard for me to resurrect them. Clearly, those who oppose the—clearly, on one side will be those that believe that the gun shows are a loophole that allow felons and others to obtain weapons that they ordinarily could not have access to.

There are others who argue that, for the most part, you have antique weapons that are appropriately both kept and sold.

Ms. LOFGREN. The gentleman's 5 minutes has expired.

Mr. JOHNSON. Thank you, Madam Chair.

Ms. LOFGREN. We will adjourn this meeting, with thanks, Mr. Director, for your testimony and your service.

Without objection, Members will have a minimum of 5 legislative days to submit additional written questions to you, Mr. Director, which we will forward and ask that you answer promptly.

Without objection, the record will remain open for 5 legislative days for the submission of other material.

This has been a very useful hearing, I think. We look forward to the additional material you have agreed to send to us.

And this hearing is adjourned.

[Whereupon, at 12:23 p.m., the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND MEMBER, COMMITTEE ON THE JUDICIARY

Thank you, Chairman Conyers. And thank you, Director Mueller, for being here and providing your testimony.

As you may recall, Director Mueller, I am very concerned about National Security Letters (NSLs) and the Federal Bureau of Investigation's (FBI) handling of its NSL authority. In the past I have talked about this at hearings with you and other FBI officials. I am going to keep talking about this issue until the relevant statutes get fixed—the privacy and constitutional rights of the American people are at stake.

NSLs allow the FBI to gain almost limitless personal information about any American from third parties. These requests are done in secret and without court approval—there is no one to check the FBI. These requests for records or other information can go to a variety of third parties, including telephone companies, internet service providers, insurance companies, travel agencies, banks, car dealerships, and so on. And, since the PATRIOT Act, the requests have only to be “relevant” to a counter-terrorism or counter-intelligence investigation.

Not surprisingly, with such a low standard, the number of NSL requests exploded. It rose from 8,500 in 2000 to an average of about 50,000 per year between 2003 and 2006. It is difficult to say what benefits this has yielded, because outside of general statements and idiosyncratic data on their use, I have not seen any hard, empirical evidence that this explosion in requests has had any measurable impact on counter-terrorism or counter-intelligence.

What I have seen is that between 2001 and 2008, outside of spikes in 2002 and 2004, the number of international terrorism prosecutions stayed relatively stable. And, the share of international terrorism cases referred by the FBI but rejected for prosecution by the Department of Justice (DOJ) rose from 33 percent in 2001 to 87 percent in 2006. More information and investigation is not leading to more prosecution.

We also have recently seen evidence of numerous mistakes and abuses by the FBI in using its NSL authority. DOJ Inspector General (IG) reports in March 2007 and 2008 showed that FBI improperly collected or retained personal information. Responses to NSLs were also lost, putting our privacy and security at risk. Another IG report, showing how the FBI abused its authority by issuing so-called “exigent letters,” will hopefully be released shortly.

Not only do NSLs affect the privacy rights of Americans, but they affect the First Amendment rights of third parties as well. Those who are recipients of NSLs are generally prevented from talking about them by the government. Under the statute as written, recipients have the burden of bringing court challenges of these orders, and government assertions that such disclosures would harm national security, diplomatic relations, certain investigations, and so on are treated as conclusive. Fortunately, last December, the Court of Appeals for the Second Circuit, in *Doe v. Mukasey*, struck down some of these “gag order” provisions as unconstitutional. It is time for Congress to fix the statute with respect to gag orders and the entire NSL scheme.

Along with Reps. Delahunt, Flake, and Paul, I have re-introduced legislation, H.R. 1800, the *National Security Letters Reform Act of 2009*, to address these issues. Among other improvements it would restore the pre-PATRIOT Act standard that there must be “specific and articulable facts” that the information requested pertains to a foreign power or agent thereof, provide NSL recipients a meaningful right to challenge the letter and the nondisclosure requirement, allow NSL targets to challenge their issuance, and require procedures so that information concerning per-

sons no longer of interest is destroyed. I think this legislation is critical to restoring the balance between fighting terrorism and protecting our civil liberties and freedoms.

I look forward to talking with you, Director Mueller, about NSLs and hearing your testimony on what I am sure will be a whole host of issues. Thanks again for being here.

With that, I yield back the balance of my time.

PREPARED STATEMENT OF THE HONORABLE MAXINE WATERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND MEMBER, COMMITTEE ON THE JUDICIARY

Mr. Chairman, thank you for arranging today's oversight hearing for the Federal Bureau of Investigation. I'd also like to welcome Director Mueller back before the Committee today.

I'd like to focus my time and questions today on three areas that I believe need more attention: crimes related to mortgage and financial fraud; problems of police misconduct; and the need to address persistent complaints of discrimination and double standards at the FBI. In the limited time I have today, let's see what information you can provide now and the remainder of my questions will be submitted to you in writing.

POST-HEARING QUESTIONS SUBMITTED TO THE HONORABLE ROBERT S. MUELLER, III,
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION*

JOHN CONYERS, JR., Michigan
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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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June 18, 2009

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JASON CHAFFETZ, Utah
THOMAS ROONEY, Florida
GREGG HARTZ, Mississippi

The Honorable Robert S. Mueller, III
Director, Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Dear Mr. Mueller:

Thank you for your recent appearance before the House Committee on the Judiciary at its May 20, 2009, oversight hearing on the Federal Bureau of Investigation. Enclosed you will find additional questions from members of the Committee to supplement the information already provided at the hearing.

Please deliver your written responses to the Committee on the Judiciary by July 6, 2009. Please send them to the Committee on the Judiciary, Attention: Renata Strause, 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Renata Strause at (202) 225-3951.

Sincerely,



John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Richard C. Powers

Enclosure

*Note: At the time of the printing of this hearing, the Committee had not received a response to the post-hearing questions submitted to the this witness.

**QUESTIONS FOR ROBERT MUELLER, III
APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE
May 20, 2009**

QUESTIONS SUBMITTED BY CHAIRMAN JOHN CONYERS, JR.

Inspector General's Report on the FBI's Disciplinary System

1. The Report found that the perception of a double standard of discipline between higher-ranking and lower-ranking employees continues to exist within the Bureau.
 - A. Were you aware of this problem prior to the release of this most recent report?
 - B. If so, what do you intend to do to correct it?
2. The Report found that, in the appellate phase of the disciplinary process, almost all SES appeals were mitigated (83%) and, similarly, found that most of those decisions were unreasonable.
 - A. Why were the appeals for the higher-level SES positions mitigated?
 - B. Doesn't the mitigation of the decisions regarding SES employees foster the perception of a double-standard between higher-ranking and lower-ranking FBI employees? If not, why not?
3. The Report found that allegations of misconduct were much more likely to be unsubstantiated against SES employees than non-SES employees.
 - A. Were you aware of this problem before the release of this most recent report?
 - B. If so, how do you intend to correct this problem?
 - C. Wouldn't this particular issue have a profound effect on the morale of the employees within the Bureau? If not, why not?
4. In the Implementation phase, the Report found that the FBI did not ensure that disciplined employees served their suspensions. In fact, it found many examples of FBI employees whose imposed suspensions were not served at all or were served for the wrong amount of time.
 - A. What is the purpose of having a disciplinary system if employees can avoid serving disciplinary suspensions?

- B. As Director, how do you intend to improve this aspect of the disciplinary process?
5. The Report found that FBI employees were not consistently reporting incidents of potential misconduct. In fact of 818 survey respondents, 226 stated that they had observed or been made aware of incidents of misconduct, and 18% of them stated that they did not report it. As the main reason for why they might not report potential misconduct, respondents explained that they were unsure about whether what they observed was misconduct or a performance-related matter.
- A. What, then, do you intend to do to ensure that the delineation between misconduct and performance-related matters is clear enough that allegations of actual misconduct do not go unreported?
- B. The Report found that some allegations of misconduct were not even reported to the Office of the Inspector General. How is the OIG supposed to do an effective review of your disciplinary procedures if the Bureau does not provide the essential information for the review itself?
6. The Report found variations in discipline imposed among cases that appeared to be similar, and that some of the cases lacked a discussion of FBI OPR's assessment of precedent cases which made it difficult to assess whether the variations in similar cases was actually justified.
- A. Wouldn't unexplained variations in discipline among similar cases affect the morale of FBI employees? If not, why not?
- B. How do you intend to correct this issue?
7. The Report noted that adverse appeals by SES employees are decided by a Disciplinary Review Board consisting of only SES members.
- A. Doesn't this system promote either bias or an appearance of bias in the appellate process? If not, why not?
- B. Do you intend to change this process and, specifically, the composition of the Disciplinary Board? If not, why not?
8. The OIG listed several recommendations for the improvement of the disciplinary system. The Report has noted the FBI's response to each recommendation. OIG has approved of the FBI's response to many of the recommendations, but found some responses to be only partially responsive. Specifically, OIG found that the FBI was only partially responsive to the following recommendations: 1) that the FBI stress to field and headquarters

divisions that they must forward all allegations of potential misconduct they receive to the Internal Investigations Section; 2) the FBI require field and headquarters divisions to submit a Douglas Factors assessment in misconduct cases, except in unsubstantiated Delegated Investigation and Adjudication cases; 3) clarify in policy that FBI OPR and appellate officials should not seek or consider unwritten information when making disciplinary decisions; 4) consider appointing a permanent appeals decision maker or board, rather than an appeals board composed of employees who rotate in and out of their board service after 6 months and consider expanding the board membership for SES appeals beyond only SES employees; and 5) ensure that FBI policies are applied consistently to all levels of employees at all stages of the disciplinary process. Do you ultimately intend to be fully responsive to those recommendations?

A. If not, why not?

9. We are still awaiting the IG's report on the FBI's use of exigent letters. We expect that some employees will need to be disciplined for their actions either in issuing the exigent letter approving their issuance. You have testified in prior hearing that you are awaiting the report before you proceed with disciplining employees. Given some of the problems noted in the IG's report regarding the disciplinary system, how can we be assured that the disciplinary process will work correctly for those who are disciplined for their improper use of exigent letters?

National Security Letters (NSLs) and Exigent Letters

10. We are awaiting the IG's report of the FBI's use of exigent letters. Given briefings that we've received from the FBI on the exigent letters issue, we expect that appropriate FBI employees will be disciplined for their use of exigent letters. Do you still stand by your prior statements that once the report is issued you will then take appropriate measures to discipline the relevant employees? If not, why not?
11. The FBI's improper use of exigent letters suggests a complete disregard for statutory and FBI policy requirements. We know that the FBI has ceased the use of exigent letters, but how can we be assured that this disregard for statutory and policy requirements is not occurring in other contexts of FBI investigations?
12. During the exigent letters briefing, the Bureau noted that certain records obtained from the use of exigent letters were purged. What, specifically, does purging mean?
- A. Are the records completely destroyed, or are they still in the FBI's possession but barred from being used to further a particular investigation?

Inspector General's Report on the FBI's Terrorist Watchlist Practices

13. In 72 percent of the closed cases reviewed, "the FBI failed to remove subjects in a timely manner." For example, one person stayed on the watchlist for nearly five years after the case was resolved. How is the FBI accelerating the process of removing exonerated people from the list?
14. Improperly keeping people on the watchlist can lead to unnecessary delays for travelers at airports, on highways and elsewhere. What is the FBI doing to ensure that people are not detained unnecessarily?

Inspector General's Report on the DNA Backlog Reduction Program

15. The Inspector General's report reads, "[b]etween 1988 and 1998 all 50 states enacted DNA collection statutes. Many of these statutes required that offenders convicted of a limited number of 'new' offenses give a DNA sample to be analyzed and the resulting profile added to the state's convicted offender DNA database."
 - A. What effect have these new state laws had on the Federal Bureau of Investigation's efforts to reduce the DNA backlog?
16. How will the Federal Bureau of Investigation work with the National Institute of Justice to ensure that the each state's individually allocated Backlog Reduction Program funds are used in a timely manner to "analyze, review, and upload" offender samples into the CODIS system?

FBI and Claims of Employment Discrimination

In April 1990, the House Judiciary Committee of Civil and Constitutional Right held a hearing raising concerns about the Federal Bureau of Investigation's (FBI) poor handling of employment discrimination complaints within the Bureau. Specifically, we were troubled by the treatment of Mr. Rochon, the first black FBI agent to publicly challenge the Bureau over discriminatory employment practices and retaliation.

17. Again, issues involving racial discrimination within the Bureau have resurfaced. What process have you instituted to effectively address complaints of racial discrimination within the Bureau?

18. It is the Committee's understanding that the Bureau is in conflict with Mr. Rochon again, now over his retirement benefits.¹ Apparently, retirement benefits were included as a part of Mr. Rochon's 1990 settlement agreement.
- A. Why is the Bureau resisting providing retirement benefits to Mr. Rochon?
- B. According to Mr. Rochon's attorneys, the FBI has refused to honor his retirement rights unless he agrees to drop his 2003 retaliation lawsuit. Do you believe this offer is appropriate? Please explain.

FBI's Investigative Data Warehouse (IDW)

19. During the hearing Congresswoman Lofgren asked you about the degree to which the FBI is conducting privacy impact assessments regarding the information contained in the IDW. You suggested that you would get that information within two weeks. Have you provided that information? If not, why not?
- A. What assurances can you give the Committee and the public that adequate safeguards are in place to protect the privacy of American citizens?

Financial Fraud

20. During the hearing, Congressman Scott asked you to provide the Committee with an idea of your capacity needs to address financial crimes cases, to which you responded that you would be happy to provide that material.
- A. Now that you have had time to acquire the information, what is your answer to Congressman Scott's inquiry?

Record Retention Policy

21. During the hearing, Congressman Watt asked you whether you had examined the rationale of maintaining the FBI's old record retention policy, which includes retaining records on individuals for 25 years, even if they have never engaged in criminal or terrorist activity. You responded that you would "go back and look at it."
- A. What, if anything, has your examination revealed about the need to change or modify the retention policy?

¹ See C. Johnson, "Holder's Comments on Race Prompt Requests for Legal Help: Plaintiffs Seeking Justice Dept. Aid in Rights Cases," Wash. Post, May 13, 2009.

Diversity within the FBI

22. During the hearing Congresswoman Jackson Lee inquired about the progress that has been made regarding the diversity of the workforce within the FBI. You responded by explaining that you believe you have made progress "but there is more progress to be made." Please explain.
- A. What percentage of FBI agents are ethnic and racial minorities? Please also list the percentage for each ethnic minority group.

The Inspector General's 2008 Report Regarding the FBI's Use of Section 215 Orders in 2006

23. The 2008 Inspector General (IG) Report noted that when FBI agents submitted Section 215 requests processed in 2006, they encountered similar processing delays as those identified in the IG's 2007 report. These delays were caused by unfamiliarity with Section 215 orders, too few resources to handle requests expeditiously, the multi-layered review process, and substantive issues regarding whether the application met the statutory requirements. What is the FBI doing to address these problems?
24. The 2008 IG report also recommended that the FBI develop procedures that require FBI employees to review materials received from Section 215 orders to ensure that the material they receive pursuant to Section 215 is authorized by the Section 215 order itself. What has the FBI done to implement this recommendation?

Healthcare Fraud

25. In your oral statement during the hearing, you testified that, in 2008, FBI investigations led to nearly 700 convictions of healthcare related crime. What types of defendants typically get prosecuted for these types of crimes (e.g., healthcare organizations, doctors)?

QUESTIONS SUBMITTED BY REP. JERROLD NADLER

26. The Inspector General (IG) for the Department of Justice (DOJ) made 11 recommendations in its first report in March 2007 on the Federal Bureau of Investigation's (FBI) use of National Security Letters (NSLs). In March 2008, the IG issued its second report and provided an update on the FBI's progress in implementing these 11 recommendations. During the May 20, 2009 hearing, I asked you about this and requested a further update. You testified that the FBI may have a disagreement with one or two of these recommendations and that you would have to get back to me with respect to the FBI's the status of implementation. Which of the 11 recommendations made by

the IG in its March 2007 report does the FBI now disagree with, if any? What is the current status of the FBI's implementation of each of these recommendations? Please provide information, excluding what was already covered in the March 2008 IG report, explaining what actions the FBI has taken and is taking to implement each of the recommendations or why it is taking no such actions.

27. The DOJ IG issued its second report on the FBI's use of NSLs in March 2008. In this second report the IG made 17 recommendations. The FBI said it agreed with and would implement all of these suggestions.
- a. What is the status of the FBI's implementation of each of these 17 recommendations from March 2008? Please provide information explaining what actions the FBI has taken and is taking to implement each of these recommendations or why it is taking no such actions. When do you expect each of these recommendations to be fully put into place?
 - b. Assuming Recommendation Number Two, which calls for the FBI to do spot checks of NSLs to make sure data is being entered properly, has been fully implemented, what has the FBI learned by doing these spot checks?
28. The NSL Working Group was formed to analyze the use and retention of information gained from NSLs. It sent its report to the Attorney General (AG) in August 2007, but it was withdrawn as of February 2008. The DOJ IG expressed several concerns in its March 2008 report about the NSL Working Group's August 2007 conclusions. It suggested the NSL Working Group should reconsider whether additional privacy and civil liberties protections were needed to govern the use and retention of information gained from NSLs. According to the FBI's responses to the IG's recommendations in the March 2008 report, the AG asked the NSL Working Group to continue its work. Has the NSL Working Group finished a new version of its report and conclusions? If so, please provide a copy and explain how the FBI has implemented its recommendations. If not, when do you expect the NSL Working Group to finish and propose new recommendations?
29. In December 2008, the Second Circuit Court of Appeals, in *Doe v. Mukasey*, held unconstitutional both the conclusive treatment of the government's certification that disclosure of NSLs would hurt national security, diplomatic relations, certain investigations, etc. and the imposition of a nondisclosure requirement without the government initiating judicial review. It reasoned that reciprocal notice, in which people who want to challenge the nondisclosure order tell the government as such and then the government has to go to court to maintain the nondisclosure provision, would be constitutional. In a May 9, 2009 letter to Judiciary Committee Chairman John Conyers announcing the government would not appeal this decision, Attorney General Eric Holder suggests this reciprocal notice approach is being used. He writes that since *Doe* the FBI

has issued more than 3,000 NSLs with a notice of the right to challenge the nondisclosure provision, which would force the government to go to court to enforce the nondisclosure requirement, and that so far no one has invoked that right.

- a. To what does the phrase “more than 3,000 NSLs” in the May 9, 2009 letter refer? Is that the number of all national security letters issued by the FBI since the date of the Doe decision (December 15, 2008) or the number of a certain subset of those NSLs? If it is a subset of those NSLs, please explain and describe what is contained by that subset.
 - b. Please provide the exact number of NSLs issued since December 15, 2008, broken down both by the number with and without a nondisclosure requirement and by the number with and without a notice of the right to challenge the nondisclosure requirement.
 - c. Has the FBI provided this notice to recipients of NSLs in all jurisdictions, and not just to recipients in the Second Circuit? In the future, will the FBI be providing this notice to recipients of NSLs in all jurisdictions, and not just in the Second Circuit?
 - d. Has the FBI been providing this notice to all recipients of NSLs, and not just to recipients constrained by a nondisclosure requirement issued pursuant to 18 U.S.C. § 2709? In the future, will the FBI be providing this notice to all recipients of NSLs, and not just to recipients constrained by a nondisclosure requirement issued pursuant to 18 U.S.C. § 2709?
 - e. Please provide a copy of the notice the FBI is sending to NSL recipients that informs them of their right to challenge the nondisclosure provision.
30. Before the Second Circuit’s opinion in Doe, the FBI Office of General Counsel (OGC) issued a directive that the nondisclosure orders were not supposed to be “automatically” included in the NSLs or made in a “perfunctory manner” and only when there was a “genuine need.” In its March 2008 report on NSLs, the DOJ IG found that 97 percent of the NSLs it examined contained a nondisclosure order. Considering that 97 percent of NSLs issued had a nondisclosure order, how would the FBI respond to the conclusion that such orders were being included automatically and not always when there was a genuine need? Does the FBI agree or disagree that such a conclusion would be reasonable? Why or why not?
31. Questions 4 and 5 address the nondisclosure requirements for NSL recipients. Those receiving requests for information under Section 215 of the USA PATRIOT Act also are prohibited from disclosing receipt of that request.

- a. Is the reciprocal notice procedure used by the FBI for NSLs being used for nondisclosure requirements issued under Section 215 of the USA PATRIOT Act?
 - (i) If yes, since what date has the FBI used this procedure for recipients of Section 215 orders? How many Section 215 orders have been issued since that date? Has anyone given notice to the government of their intention to challenge a nondisclosure requirement in a Section 215 order? If so, has the government gone to court to enforce a nondisclosure requirement in a Section 215 order pursuant to notice being given that the recipient wished to challenge? If so, what was the result of the government going to court and asking the court enforce the nondisclosure requirement?
 - (ii) If no, what is the FBI's justification or argument for not using the reciprocal notice system in the context of Section 215 orders? Does the FBI plan to use that system for recipients of Section 215 orders in the future?
 - b. If this reciprocal notice procedure is being used for Section 215 orders, please provide a copy of the notice the FBI is sending to recipients of Section 215 orders that informs them of their right to challenge the nondisclosure provision.
32. Both the March 2007 and March 2008 reports on NSLs by the DOJ IG illustrate numerous errors and abuses with respect to NSLs. It is also clear that errors and abuses were made with specific respect to the use of exigent letters. Were employees of the FBI held accountable or otherwise disciplined for the past errors and abuses outlined in the March 2007 and/or March 2008 reports by the DOJ IG or any other past errors and abuses with respect to NSLs? Are employees of the FBI currently being held accountable or otherwise disciplined for errors and abuses with respect to NSLs? Please provide any applicable information explaining how FBI employees were or are being held accountable or otherwise so disciplined.

QUESTIONS SUBMITTED BY REP. MAXINE WATERS

Impact of Lending Fraud on Minorities

33. There have been a number of reports indicating that minorities were targeted for subprime loans. Lower income African Americans received 2.4 times as many subprime loans as lower income whites, while upper income African Americans received 3 times as many subprime loans as do whites with comparable incomes. At the same time, lower income Hispanics receive 1.4 times as many subprime loans as do lower income whites, while upper income Hispanics receive 2.2 times as many.

- a. Has the Housing Section of the Civil Rights Division brought any Fair Housing Act cases to respond to the growing concerns about predatory lending against minorities? How many? Is this a priority for the Bureau?

Low Number of Lending Cases

- 34. Less than ten fair lending cases were filed between FY2002 and FY2007. This is in spite of the fact that numerous studies have shown the link between predatory and subprime lending and race. With the current foreclosure crisis being a clear indication of the devastating impact that subprime lending has had on our economy, one would have expected to see an increase in these cases by DOJ.
 - a. Can you tell me what if anything the FBI is doing investigate these problems? I know the Bureau doesn't prosecute cases -- it investigates cases. I'd like to know more about the investigations that have resulted in prosecutions? We've heard about previous efforts at the state level in New York, but considering the mortgage meltdown and foreclosure crisis across this country, I'd like to know what's being done to prosecute predators? Is there any coordinated effort between the Bureau and other federal regulators?

Police Misconduct

- 35. Next, I'd like your assessment of recurring problem of police misconduct in various parts of the country, particularly in cases that have resulted in officer-involved shootings of residents in communities. Our constituents look to the police for protection -- not to be injured or killed. Just this past weekend, there was another officer-involved shooting in Inglewood, California and I've already written to the Attorney General requesting that this latest incident be included in the investigation that is finally under way. In response to my questions to you at our last hearing, your office informed me that as of October 2008, there were 857 'color of law' investigations pending nationwide, including 34 in Los Angeles Division, fourth most in the country, behind Jackson, Mississippi (55), New Orleans (50), and San Antonio (39). One of the things that has disturbed me is that we don't learn the outcomes of these investigations. Citizens in these communities want to know if there are prosecutions and convictions.
 - a. Is anyone disciplined or held accountable? I mentioned this to the Attorney General and he's agreed to look into how communities can be appropriately informed. But proactively, what can be done regarding best practices? Are systematic changes being made to correct the culture of some of these departments?
 - b. I'd like to hear more about your plans for making sure that all officers follow the laws they are sworn to enforce. What can this Committee, particularly those of us

who serve on the Crime Subcommittee, do to make sure federal resources are used effectively to ensure "best practices" are practiced?

Gangs

36. As we discussed when you testified last year, and as our staffs have discussed, I am still looking forward to scheduling a time when you will come out to Los Angeles to meet with area officials to discuss the FBI's efforts related to gangs and how we can more effectively fight this problem.

Discrimination & Disciplinary Double Standards at FBI

37. I would like to get your views about some persistent reports of complaints of discrimination and retaliation within the FBI. I have previously asked about the ongoing complaints of discrimination by employees of the Department of Justice in general, but I want to know specifically about the FBI. But unfortunately, I haven't received answers to these questions yet. So let me ask you about a few concerns. I am particularly concerned about discrimination complaints I've heard against the FBI. In the 1990's we held hearings about the Good Old Boys and Roundups, and I was subsequently led to believe that the worst of those problems were addressed. Last year, we heard whistle-blower testimony in the Crime Subcommittee about FBI agents who face discrimination that affects not only their professional careers, but also could jeopardize our national security.
- a. Can you tell me out of the approximately 12,000 agents serving in the FBI, how many are African-American? And how many are female? How many are African-American and female?
 - b. Please tell me what kind of outreach is being done to recruit minority agents to increase the number of African-American and female agents? Equally important, what's being done to retain these agents?
 - c. In earlier hearings, we heard discussion about the Bureau's "up and out" policy. As this policy is currently being carried out, is there a disparate or discriminatory impact on minority agents?
 - d. Regarding the whistle-blower complaints, I'd like to know how many whistle-blower complaints are now pending at the Department and what is their status? How many whistle-blower complaints have been filed since 2001 and what is the outcome or status of those complaints?

QUESTIONS SUBMITTED BY REP. ADAM SCHIFF

38. Given the current challenges in the field of cyber security, are there security issues implicated by allowing a foreign-owned company to be responsible for the Next Generation Identification System?
39. Where a foreign government owns a substantial part of the foreign-owned company, are these security concerns even greater? Can the FBI mitigate or protect against any possible vulnerabilities such as Trojan horses, back doors, hacking, etc., and ensure the biometric data will remain protected from alteration or manipulation?
40. What steps did the FBI take during procurement for the Next Generation Identification System to ensure fair and open competition, taking into account the utilization of a contractor to conduct the requirements development/trade study process?

